

## Italy, Court of Cassation, 34816/2023, supreme instance, 08/08/2023

### Member State

 Italy

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### Topic

Mutual trust

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### Sector

Judicial Interaction Techniques; European Arrest Warrant; role of national higher courts

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### Deciding Court Original Language

Corte di Cassazione, sez. fer.

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### Deciding Court English translation

Court of Cassation

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### Registration N

34816/2023

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### Date Decision

8/8/2023

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### ECLI (if available)

N/A

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### National Follow Up Of (when relevant)

No direct follow

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### EU legal sources and CJEU jurisprudence

Article 6 TEU, Articles 4 and 35 of the Charter; Framework Decision 2002/584

C-699/21, EDL; C-404/1 5 and C-659/15 PPU, Aranyosi and Caldaru; C-128/18, Dorobantu

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### Subject Matter

Appeal before the Court of Cassation of the decision of the Court of Appeal of Naples to execute an EAW issued by Romania despite the systemic deficiencies in the detention conditions and the illness of the person concerned by the EAW capable to entail a violation of Article 4 of the Charter. The Court of Cassation dismissed the appeal as unfounded.

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### Legal issue(s)

Grounds to deny execution of an EAW in cases of risk of violation of Articles 4 and 35 of the Charter by reason of the health condition of the person concerned and the deficiencies in the detention system of the issuing Member State; test to be performed by the judicial authority executing the EAW; mutual recognition; information to be requested from the issuing judicial authority and assessment.

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### Request for expedited/PPU procedures

No

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### Interim Relief

No interim relief asked

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### National Law Sources

Articles 2, 3, 32 and 111 Cost of the Italian Constitution; Law No 69/2005; Legislative Decree No 10 of 2021; Article 6 of the Italian Code of Criminal Procedure

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### Facts of the case

EAW issued by Romania against V.D.B. for the execution of six-year prison sentence for the crimes of influence peddling and money laundering. The Court of Appeal of Naples ordered the surrender of V.D.B. to the Romanian authorities in execution of the EAW. V.D.B. appealed against this judgment before the Court of Cassation. He argued that, first, the Court of Appeals did not rule on the possibility of suspending the execution of the EAW due to the pathology of the person concerned who was affected by alleged psychological disorder and also threaten suicide. Second, he claimed that the Court of Appeal ignored the evidence produced by the defense regarding the receptive capacity of Romanian prisons and the total lack of units destined for medical care with respect to a multitude of detainees in need of care. Such a situation would amount to a violation of Articles 4 and 35 of the Charter, Article 3 ECHR and Article 32 of the Italian Constitution.

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### Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Court of Cassation found the appeal inadmissible. Firstly, it considered that the health condition of the requested person had been sufficiently investigated by the Court of Appeal and from the documentation produced by the defense it was not possible to infer the existence of a seriously precarious health conditions of permanent nature that could not be appropriately treated by the supervision and treatment facilities indicated by the authorities of the issuing Member State. The Court of Cassation referred to the EDL judgment of the Court of Justice and the subsequent

judgement of the Italian Constitutional Court concerning the possibility to suspend execution of the EAW where the surrender of the requested person, who is seriously ill, would expose him/her to a real risk of a significant reduction in his or her life expectancy or of a rapid, significant and irreversible deterioration in his or her state of health in violation of Article 4 of the Charter.

Second, the Court of Cassation discussed the claim concerning the existence of inhuman and degrading detention conditions in Romania. It recognized that the underlying issue was that of the reasonable balance between the respect for fundamental rights and the principle of mutual recognition. It quoted the case law of the Court of Justice, and in particular the judgments in *Aranyosi and Caldáru* and *Dorubantu*, recognizing that the Court of Justice “has specified the procedure to be followed” as regards situations where surrender under the EAW could entail a violation of Article 4 of the Charter. The Court of Cassation found that the Court of Appeal had made good use of the directions of the Court of Justice and, without any apparent flaws in the motivation, carefully evaluated the prison treatment reserved for the person to be surrendered and expressly recognized the absence of deficiencies likely to expose him to a serious risk of inhuman or degrading treatment.

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### Relation of the case to the EU Charter

The Court of Cassation referred to Articles 4 and 35 of the Charter as the violation of the corresponding fundamental rights could lead to exceptional deny of surrender in the execution of an EAW. It however found the assessment of the Court of Appeal valid and excluded risks of violation of those fundamental rights.

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### Relation between the EU Charter and ECHR

The Court of Cassation cited Article 3 ECHR as corresponding to Article 4 of the Charter two times. First, when referring to the case law of the Court of Justice on the test to be followed in order to deny surrender under the EAW in a situation of the risk of inhuman and degrading treatment due to poor detention conditions. Second, it referred to the minimum standard that personal living space for detainees shall respect to be compliant with Article 3 ECHR. However, the Court of Cassation did not quote any judgments of the ECtHR.

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### Use of Judicial Interaction technique(s)

Mutual recognition

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### Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

The Court of Cassation did not engage with horizontal dialogue with other courts.

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### Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

First, the Court of Cassation engaged with an in-depth assessment of the order of the Court of Appeal of Naples which was at the origin of the appeal before it.

Second, the Court of Cassation refereed indirectly to the “dialogue” that took place between the Italian Constitutional Court and the Court of Justice on the matter of the execution of an EAW against a person with a chronic and irreversible disease, which was at the origin of the CJEU judgment in *EDL* (C-699/21). The Court of Cassation recalled the findings reached by the Court of Justice in *EDL* and stressed how such conclusions were “fully shared” by the Italian Constitutional Court, which deemed unnecessary a declaration of unconstitutionality of the Italian law

implementing the EAW.

Third, the Court of Cassation referred to the CJEU judgments in *Aranyosi e Csátdávid* (C-404/15 e C-659/15 PPU) and *Dorobantu* (C-128/18) recognizing that in such cases the Court of Justice outlined the procedure to be followed in order to balance the principle of mutual recognition in the EAW and the fundamental right under Article 4 of the Charter. It then found that the Court of Appeal had rightly followed the case law of the Court of Justice and, after having carefully assessed the detention conditions that the person subject to the EAW would face in Romania, had decided in favor of surrender.

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#### Strategic use of judicial interaction technique (purpose aimed by the national court)

The scope pursued by the Court of Cassation when using judicial interaction techniques was to reconcile the principle of mutual recognition with the protection of fundamental rights. In particular, the Court of Cassation, referring to the CJEU case law on the grounds not to execute an EAW based on fundamental rights considerations, discussed the Court of Appeal's assessment of the information received by the issuing judicial authority on detention conditions in Romania and the treatment that the concerned person will face there.

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#### Impact on Legislation / Policy

N/A

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#### Notes on the national implementation of the preliminary ruling by the referring court

N/A

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#### Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

See points 4.3 and 6.3 above

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#### Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

The Court of Cassation quoted the report on Romania of the Council of Europe anti-torture Committee (CPT) (no CPT/Inf. 2022-06) that required the acquisition of updated information on the detention conditions, in relation to a specific detention institution, for persons subject to an EAW.

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#### Did the national court take into account national case law on fundamental rights?

The Court of Cassation referred to its own case law on the relationship between the EAW and fundamental rights. In particular, it quoted its case law according to which it considered optional the ground of refusal of an EAW based on the risk of inhuman and degrading detention conditions and the need to ask for detailed information in this respect to the issuing judicial authority (Judgments of the VI Section 14220/2021, and 14220/2021). Furthermore, the Court of Cassation referred to the judgment no 177/2023 of the Italian Constitutional Court which was issued after having made the reference for preliminary ruling that was at the origin of the EDL judgment of the Court of Justice.

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If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

The court that issued the preliminary reference is a last instance court

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Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

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Impact on national case law from the same Member State or other Member States

N/A

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Connected national caselaw / templates

N/A

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Other

N/A

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[\(Link to\) full text](#)

The text of the case is not yet available on-line.

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