

## Italy, Court of Cassation, 45291/2023, supreme instance, 08/11/2023

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. Vi

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Deciding Court English translation

Court of Cassation

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Registration N

45291/2023

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Date Decision

8/11/2023

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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

Articles 7, 15, and 17 of Framework Decision 2002/584

C-659/15 PPU, Aranyosi and Caldaru

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### Subject Matter

Appeal before the Court of Cassation of the decision of the Court of Appeal of Genova not to execute an EAW issued by Greece for lack of information capable to exclude a risk of inhuman and degrading treatment by reason of the systemic deficiencies in the detention conditions. The Court of Cassation found the appeal well founded because the Court of Appeal had not followed the procedural steps identified in the CJEU's case law.

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### Legal issue(s)

Grounds to deny execution of an EAW in cases of risk of inhuman and degrading treatment by reason of 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; time limit for the receipt of the supplementary information requested from the issuing judicial authority.

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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 16 and 22-bis of Law No 69/2005

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### Facts of the case

EAW issued by Greece for the surrender of M.A., who was under investigation for the crime of robbery. The Court of Appeal of Genoa had initially ordered the surrender, but its decision was overruled by the Court of Cassation for lack of sufficient information regarding the prison treatment that Greece would reserve to the person to be surrendered. The case was returned to the Court of Appeal, which, this time, rejected the EAW request and denied surrender because of the lack of sufficient information regarding the prison treatment that would be reserved to M.A. in Greece. In light of the overcrowded conditions of the detention facilities in Greece, the Court of Appeal considered that the risk of inhuman or degrading treatment could not be ruled out. The Prosecutor appealed the judgment before the Court of Cassation claiming that the Court of Appeal had not done everything within its powers to obtain from the issuing judicial authority the necessary information allowing the surrender, thus failing to meet the requirements arising from the principle of mutual trust between EU Member States.

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

The Court of Cassation held that the appeal of the Prosecutor was well-founded. It did not dispute that the Greek authorities have failed to provide the necessary information. However, it found that the Court of Appeal had merely taken note of the Greek judicial authority's inaction without following all the procedural steps identified by the Court of Justice in its case law on the EAW. In

particular, the Court of Cassation noted that in Aranyosi and Caldaru the Court of Justice stressed that in case the executing judicial authority finds that there is a risk of inhuman or degrading treatment, the execution of the EAW must be postponed but not abandoned. Indeed, it is possible that information that would exclude the existence of such a risk is received at a later date.

At that point, the Court of Cassation considered that what remained to be established was how long the procedure for the execution of the warrant could last, considering that it cannot obviously continue indefinitely. In the silence of the Framework Decision, as well as of the Italian law implementing it, the Court of Cassation found the reference point in the already mentioned Aranyosi and Caldaru judgment of the CJEU. Indeed, in that occasion the Court of Justice specified that the executing judicial authority may fix a reasonable time limit for the receipt of the supplementary information requested from the issuing judicial authority, provided that that time limit is such as to allow to that authority the time required to collect the information. Furthermore, the Court of Cassation noted that, if the executing authority decides, in the light of the information provided by the issuing authority, in favor of the postponement, the Court of Justice requires the executing Member State to inform Eurojust and give reasons for the delay. The Court of Cassation recognized that such a duty of information should logically be extended to the case of the absence of information on the side of the issuing judicial authority. The intervention of Eurojust could indeed be a mean to urge the issuing State to comply with the request for information. Since the Court of Appeal had not followed such a procedure, the Court of Cassation annulled its judgment and returned the proceedings to the Court of Appeal, with a view of renewing the request for additional information to the Greek authorities and setting a final deadline for this purpose.

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#### Relation of the case to the EU Charter

The Court of Cassation did not mention any provision of the Charter but only Article 3 ECHR. However, since it discussed to the CJEU judgment in Aranyosi and Caldaru and the grounds not to execute an EAW because of the risk of inhuman and degrading treatment in the issuing Member State, it implicitly referred to Article 4 of the Charter.

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#### Relation between the EU Charter and ECHR

The Court of Cassation cited Article 3 ECHR as the provision prohibiting inhuman and degrading treatment. It can be inferred from the judgment that such a provision was mentioned as it corresponds to Article 4 of the Charter.

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#### Use of Judicial Interaction technique(s)

Mutual recognition; consistent interpretation

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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 Genoa which was at the origin of the appeal before it.

Second, the Court of Cassation engaged with an in-depth assessment of the judgment of the Court of Justice in Aranyosi and Caldaru (C-404/15 and C-659/15 PPU). It recognized that in

such a case the Court of Justice outlined the relevant procedure to be followed to request information from the issuing judicial authority in order to rule out the possibility that the surrender entails a risk of inhuman and degrading treatment for the concerned person because of the deficiencies in the detention conditions. In particular, the Court of Cassation stressed that the Court of Justice considers that, in case of risk of inhuman and degrading treatment in the issuing State, the execution of the EAW must be suspended but not abandoned. The Court of Cassation noted that such a rule of the Court of Justice is that the decision of the national court should not prevent surrender if the necessary information allowing for surrender is subsequently received, provided that this is done within a reasonable time. It also found that in Aranyosi and Csáka the Court of Justice had filled the gap of the absence of a reference in the EAW Framework Decision to the time limit for the receipt of the supplementary information requested from the issuing judicial authority.

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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 first to reconcile the principle of mutual recognition with the protection of fundamental rights. In particular, referring to the CJEU judgment in Aranyosi and Csáka on the requirements not to execute and EAW based on fundamental rights considerations, the Court of Cassation tried to strike a balance between the duty of surrender and the protection from the risk of inhuman and degrading treatment. Furthermore, by referring to Aranyosi and Csáka the Court of Cassation filled a legislative gap. Indeed, neither the EAW Framework Decision nor the Italian law implementing shed light on the rules concerning the deadline to receive information on the detention conditions by the issuing judicial authority. Yet, the Court of Cassation held that the relevant procedure to be followed in this respect could be found in the Aranyosi and Csáka judgment.

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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?

No reference to soft law

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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 the judgment of the VI Section n. 23277 of 01/06/2016 referring to the fact that, in the lack of information ruling out the risk of inhuman and degrading treatment in the issuing State, surrender under the EAW must be postponed but not abandoned because the relevant information could come at a later stage.

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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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