

Romania, Court of Justice of the European Union, Case C-305/22, Request for a preliminary ruling from the Curtea de Apel Bucureşti (Romania) lodged on 6 May 2022 – criminal proceedings against C.J.

Member State

 Romania

Topic

Mutual trust

Sector

European Arrest Warrant; use of the preliminary reference procedure; judicial cooperation

Deciding Court Original Language

Court of Justice of the European Union / Curtea de Apel Bucureşti

Deciding Court English translation

Court of Justice of the European Union / Court of Appeal Bucharest

Registration N

C-305/22

Date Decision

Date of the decision to refer: 11.04.2022

ECLI (if available)

N/A

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

Article 19(3)(b) TEU and Article 267 TFEU

Article 4(5) and (6) and Article 8(1)(c) of the Council Framework Decision 2002/584/JHA of 13

June 2002 on the European arrest warrant and the surrender procedures between Member States
Article 4(2), Article 22(1) and Article 25 of the Council Framework Decision 2008/909/JHA of 27
November 2008 on the application of the principle of mutual recognition to judgments in criminal
matters imposing custodial sentences or measures involving deprivation of liberty for the purpose
of their enforcement in the European Union

Article 54 of the Convention on the Implementation of the Schengen Agreement

Article 50 of the Charter for fundamental rights of the European Union

Judgments of 29 June 2017, Popławski, C-579/15, EU:C:2017:503, paragraph 22 and point 2 of
the operative part; of 24 June 2019, Popławski, C-573/17, EU:C:2019:530, paragraphs 82, 88 and
100 and point 2 of the operative part; of 29 June 2016, Kossowski, C-486/14, EU:C:2016:483,
paragraph 42; and of 27 May 2014, Spasic, C-129/14 PPU, EU:C:2014:586, paragraphs 52, 53,
58, 63 and 64

ECtHR Jurisprudence

N/A

Subject Matter

Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA —
European arrest warrant — Framework Decision 2008/909/JHA — principle of mutual recognition
to decisions in criminal matters – principle ne bis in idem — Opposition to enforcement a decision
in criminal matters by executing State authority — principle of the transfer of sentenced persons

Legal issue(s)

The case deals with essential principles of the cooperation in criminal matters: principle of mutual
recognition of European arrest warrant, principle of mutual recognition of decisions in criminal
matters, principle ne bis in idem, principle of the transfer of sentenced persons.

The European arrest warrant is issued for the enforcement of final criminal decision. The executing
authorities refuse to transfer the requested person and deliver their own decision recognizing the
issuing authority's final decision and enforce this decision on their own territory.

The issuing authority of the final decision makes opposition to the enforcement of their final
criminal decision by an executing authority.

Request for expedited/PPU procedures

N/A

Interim Relief

N/A

National Law Sources

Article 2 of the Law No 340/2009 on the submission by Romania of a declaration pursuant to
Article 35(2) of the Treaty on European Union

Facts of the case

On 27 June 2017 Court of Appeal Bucuresti has sentenced C.J. to four years and two months' imprisonment. Its decision become final on 10 November 2020 by decision of High Court of Cassation and Justice. On 20 November 2020 Court of Appeal Bucuresti issued the warrant for the execution of custodial sentence, a European Arrest Warrant, as well as an international wanted person notice. Following the location and detention of C.J. by police on 29 December 2020 on Italian territory, on 31 December 2020 the Italian Ministry of Justice informed the Court of Appeal of Bucharest of his arrest, requesting that the EAW in Italian and any further information to be forwarded to the Corte d'appello di Roma (Court of Appeal, Rome, Italy). The EAW was faxed on the same date, and on 5 January 2021 it was sent to the Italian judicial authorities, in Romanian and Italian, by email and by post. On 12 January 2021, the Italian judicial authorities requested the transmission of the criminal conviction judgment. On 14 January 2021, the Court of Appeal of Bucharest forwarded that judgment to the Court of Appeal of Rome. At the same time, the Court of Appeal of Bucharest, in its capacity as executing court, indicated that it did not agree with the judgment being recognised and the execution of the sentence against the convicted person C.J. being taken over by Italy. The Court of Appeal of Bucharest stated on 20 January 2021 that, in the event of a refusal of the execution of the EAW issued for the purpose of executing a custodial sentence, it would not give its consent to the recognition of the judgment in incidental proceedings and to the taking over of the execution of the sentence by the Italian Republic in the context of those proceedings, and that it would reiterate its request. On 22 February 2021 the Italian judicial authorities were requested to provide information regarding the issuance of a decision to execute the EAW and to surrender C.J. to Romania, and, in the absence of such a decision, to provide information on the progress of the proceedings. On 20 May 2021, the Italian Ministry of Justice transmitted judgment of the Court of Appeal of Rome – Second Criminal Division, which ordered, on the one hand, the refusal to surrender C.J. under the EAW issued on the basis of the criminal conviction judgment and, on the other hand, the recognition of that judgment and its enforcement in Italian territory. Recognising the abovementioned criminal judgment, the Italian judicial authorities determined that the total remaining sentence was 3 years, 6 months and 21 days in jail and ordered that the sentence be executed in Italy in accordance with Italian domestic law. The judgment of the Court of Appeal of Rome was communicated to the Court of Appeal of Bucharest without any reference to the actual enforcement of the C.J. recognised judgment. After the Court of Appeal of Rome and the Italian Ministry of Justice were asked, on 3 June 2021, to communicate whether the manner of execution of the sentence had changed, as well as for information on the commencement and expiry of the sentence, the Italian Ministry of Justice transmitted, on 24 June 2021, a certificate concerning the state of execution, issued by the Procura della Repubblica di Roma – Ufficio Esecuzioni Penali [Rome Public Prosecutor's Office – Office for the Execution of Sentences] on 11 June 2021: the execution mandate is concurrently suspended, the legal position of the convicted person is house arrest, commencement of penalty: 29 December 2020, and end of penalty: 28 November 2024. By letter of 28 June 2021 addressed to the Court of Appeal of Rome and to the Italian Ministry of Justice, the Court of Appeal of Bucharest reiterated, firstly, that the Romanian judicial authorities had not given their consent to the recognition by the Italian Republic of the criminal conviction judgment and to the taking over of the execution of the sentence imposed on the defendant C.J. and, secondly, that, until notice was given of the commencement of the execution of the custodial sentence by means of the imprisonment of the sentenced person, Romania retained the full right to proceed with the execution of the sentences passed in its territory, with the warrant for the execution of custodial sentence and the EAW remaining valid. On 14 July 2021, the Italian judicial authorities transmitted the certificate of execution issued by the Rome Public Prosecutor's Office – Office for the Execution of Sentences on 1 July 2021, which has the same content as the certificate transmitted on 11 June 2021, but

bears the following addition: 'Regarding the status of the house arrest, a decision on the alternative measure is awaited from the Tribunale di sorveglianza [Italian Court of Supervision]'. In view of the conflict existing between the way in which the Romanian and Italian courts interpret Framework Decision 2002/584 and Framework Decision 2008/909, the Court of Appeal of Bucharest, First Criminal Division – referring court – is asked to rule on the validity of both the national warrant to proceed with the execution of the custodial sentence and of the EAW, and to make a reference to the Court of Justice for a preliminary ruling.

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

CJEU is asked to examine the validity of the national warrant for the execution of the custodial sentence and the EAW and, more precisely, to assess whether the warrant for the execution of the custodial sentence issued by the Romanian authorities should be annulled in the event that it is considered that the conviction verdict has been executed, or is being executed, by the authorities of the Italian Republic.

The referring court states that a similar objection to enforcement, brought by the Court of Appeal of Bucharest – First Criminal Division on 11 February 2022 in proceedings concerning the convicted person AR, is already pending before it. The only difference between those two requests for a preliminary ruling is the reference to Article 54 of the Convention Implementing the Schengen Agreement, which, however, is not applicable to the case at hand, with the result that the request for a preliminary ruling in the present case relates to the same provisions of EU law that are the subject of the request for a preliminary ruling in AR (C-179/22).

As regards the content of the request for a preliminary ruling, that court asks the Court of Justice to establish, first, whether, for the purposes of recognition of a judgment indirectly in proceedings for the execution of an EAW – an execution refused on the basis of Article 4(6) of Framework Decision 2002/584 – the consent of the sentencing State is required under Article 25 and Article 4(2) of Framework Decision 2008/909 and, secondly, whether such proceedings conducted in breach of Article 25 and Article 4(2) of Framework Decision 2008/909 may have any legal effect, as regards the conviction, in the territory of Romania, in the sense that, as long as the commencement of execution of the custodial sentence by means of imprisonment of the sentenced person is not notified, the sentencing State (Romania) fully retains the right to proceed with the execution of the sentences passed in its territory, in accordance with Article 22(1) of the Framework Decision 2008/909. 5.2.4. In its reasoning for the request for a preliminary ruling, the referring court adopts the arguments set out by Office for the Execution of Sentences at the Court of Appeal of Bucharest – Second Criminal Division.

The referring court also states that, for the purposes of recognizing a criminal conviction judgment in the context of the procedure for the execution of an EAW, whose execution has been refused in accordance with Article 4(6) of the Framework Decision 2002/584/JHA, it is necessary to consult the authorities concerned and obtain the prior express agreement/consent of the sentencing State to the recognition of the criminal judgment and the taking over of execution in the requested State, in accordance with the provisions of Article 4(2) and (5) of the Framework Decision 2008/909/JHA, in so far as the legislation of the executing State allows a sentence to be executed in a form other than that established by the court of the sentencing State. However, such consent is not constituted by the mere fact that, in the context of the execution procedure for an EAW, a copy of the criminal conviction judgment has, at the request of the executing court, been communicated, since the sentencing State has not received any guarantee that the essential functions of the custodial sentence are fully satisfied and that at the same time the social rehabilitation and the

successful reintegration into society of the sentenced person are facilitated.

The referring court states that the refusal to surrender the requested person and the actual taking over of the custodial sentence, by the executing Member State, entails an obligation upon that State to ensure that that sentence is actually applied. The failure of the executing State to comply with such an obligation would guarantee the sentenced person impunity incompatible with Framework Decision 2002/584/JHA and Framework Decision 2008/909/JHA.

Relation of the case to the EU Charter

The Charter was not referred to in this case.

Criminal Enforcement Office of the Court of Appeal Bucuresti asked to the Court of Appeal Bucuresti – the referring court -to make a request for preliminary ruling regarding, inter alia, whether “the provisions of Art. 54 of the Convention on the Implementation of the Schengen Agreement related to Art. 50 of the Charter of Fundamental Rights of the European Union must be interpreted in the sense that a decision to refuse the execution of a European arrest warrant issued for the execution of a custodial sentence and recognition of the conviction pursuant to Art. 4 paragraph 6 of the Framework Decision 2002/584/JAI, but without the effective implementation through imprisoning the convicted person and without obtaining the consent of the sentencing state in the recognition procedure, it represents a decision of "conviction for the same facts"?”. For a positive answer to this question, it was added another question related to the Charter: “The provisions of Art. 54 of the Convention on the Implementation of the Schengen Agreement related to Art. 50 of the Charter of Fundamental Rights of the European Union must be interpreted in the sense that a decision to refuse the execution of a European arrest warrant issued for the execution of a custodial sentences and recognition of the conviction pursuant to Art. 4 paragraph 6 of Framework Decision 2002/584/JAI, with the suspension of the execution of the sentence according to the law of the executing state, represents a "sentence in progress" if the supervision execution of the sentence has not yet begun?

On 11 April 2022, the referring Court specified that there is already a registered similar request, referred by the Bucharest Court of Appeal – Criminal Section I on 11.02.2022, in case no. 6393/2/2021 regarding the AR, the only difference between the two requests being the reference to Art. 54 of the Agreement Implementation Convention Schengen related to Art. 50 of the Charter of Fundamental Rights of the European Union.

Relation between the EU Charter and ECHR

The ECHR was not referred to in this case.

Use of Judicial Interaction technique(s)

Strategic use of the preliminary reference mechanism by the national ordinary courts in order to clarify the execution of the European arrest warrant in case of opposition to enforcement of the criminal decision in executing State; consistent interpretation with EU law of the national provisions by the national referring court; comparative reasoning with Italian legislation and case law; preserving the efficiency of the judicial cooperation mechanism through art. 267 TFEU.

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

foreign courts)

The national referring court pointed out that conflicting perspectives of the Italian and respectively the Romanian judicial authorities on the interpretation of the Framework Decision 2002/584 and Framework Decision 2008/909, differences which had the role to undermine the coherent application of EU law horizontally at the national level.

Different approaches are adopted by the referring court – Court of Appeal Bucuresti – and its Criminal Enforcement Office related to the application of Article 54 of the Convention on the Implementation of the Schengen Agreement in the case related to C.J. : “The subject of this case is only the execution of the sentence applied to the convicted person, not the possibility of its prosecution and trial for the "same deed" in third countries, this aspect being regulated by Art. 54 of the Convention on the Implementation of the Schengen Agreement, according to which a person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party”.

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

On application of national criminal law legislation, ordinary courts of different levels adopted the same approach on the facts and evidences of the case. Thus, Court of Appeal Bucuresti delivered the Criminal Judgment No 131 of 27 June 2017 which became final by means of Criminal Decision No 335/A of 10 November 2020 of the Înalta Curte de Casa?ie ?i Justi?ie – Sec?ia penal? (High Court of Cassation and Justice – Criminal Division, Romania) (‘the criminal conviction judgment’), that judgment, the defendant C.J., having been found guilty of several offences, was sentenced definitively to four years and two months’ imprisonment.

There are not any other discussions of the referring court with superior national courts or supranational courts, other than the request for preliminary ruling.

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

The referring court used the preliminary ruling mechanism as a strategic litigation tool, in order to circumvent the decision of the Italian Court which infringed the European arrest warrant which it issued, hindering the transfer of the sentenced person and the enforcement of his criminal conviction decision. All the complex arguments presented in its decision of request for a preliminary ruling demonstrate its full commitment to interpret and to apply uniformly EU law and to find the proper manner to convince executing State authorities to find a solution in the case in conformity with EU law.

Impact on Legislation / Policy

Case C-305/22 is a pending case at the European and national levels, there not any effects to the national level.

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

The referring court mentions in its decision on the request for a preliminary ruling that “the solution

in this case depends on the decision to be pronounced by the Court of Justice of the European Union, especially from the perspective of the interpretation of the Court of Justice of the Union European on the issue of whether for the recognition of an incidental decision in within the framework of a procedure for the execution of a European arrest warrant, refused pursuant to Art. 4 paragraph 6 of the Framework Decision 2002/584/JAI, consent is required the sentencing state under Art. 25 and art. 4 paragraph 2 of the framework decision 2008/909/JAI and on the issue of whether such a procedure, carried out in violation of Art. 25 and art. 4 paragraph 2 of the Framework Decision 2008/909/JHA cannot have any legal effect with regarding the judgment of conviction on the territory of Romania, in the sense that as long as not the beginning of the execution of the custodial sentence was announced the convicted person, the sentencing state (Romania) fully retains its right to enforce the decisions pronounced on its territory, in relation to the provisions of Art. 22 paragraph 1 of the Framework Decision 2008/909/JAI.”

[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?](#)

The national referring court quote other judgements of the CJEU/ECtHR than those mentioned at point 4.3, making reference to the proposal made by its Criminal Enforcements Office arguments C-573/17, judgment of June 24, 2019; Judgment of 29 June 2017, Pop?awski, C?579/15, paragraph 23, EU:C:2017:503, and Judgment of 13 December 2018, Sut, C?514/17, paragraph 47, EU:C:2018:1016; Judgment of 25 July 2018, Generalstaatsanwaltschaft (Detention conditions in Hungary), C?220/18 PPU, paragraph 86, EU:C:2018:589; C-486/14, Kossowski, judgment of 29 June 2016; Judgment of 10 March 2005, Miraglia, C-469/03, EU:C:2005:156, paragraph 30, and Judgment of 5 June 2014, M, C-398/12, EU:C:2014:1057, paragraph 28; C-129/14 PPU, Spasic, judgment of 27 May 2014; Judgment Åkerberg Fransson, C-617/10, EU:C:2013:105, paragraph 33; Kretzinger judgment, C-288/05, paragraph 51, EU:C:2007:441.

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

The standards and recommendations of any soft law instruments are not mentioned by the ordinary referring court in its decision of request for a preliminary ruling.

[Did the national court take into account national case law on fundamental rights?](#)

The national case law on fundamental rights was not considered an important element in this case.

[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](#)

Case C-305/22 is a pending case both in front of the CJEU and the national referring court.

[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?](#)

Case C-305/22 is a pending case both in front of the CJEU and the national referring court.

[Impact on national case law from the same Member State or other Member States](#)

N/A

[Connected national caselaw / templates](#)

Case C-179/22 AR Request for a preliminary ruling from the Curtea de Apel București (Romania)

Other

N/A

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

N/A

Author

Alina Gentimir, “Alexandru Ioan Cuza” University of Iasi

History of the case: (please note the chronological order of the summarised/referred national judgments.)

CJEU, Case C-305/22, C.J., Registration of the request for a preliminary ruling made on 6 May 2022

Court of Appeal Bucuresti, File no. 6684/2/2021 (3109/2021), Sentence of 11 April 2022 of request for preliminary ruling
