



# Stream

Strengthening Trust in the  
European Criminal Justice Area  
through Mutual Recognition  
and the Streamlined Application  
of the European Arrest Warrant

Research Brief

## Italy

Silvia Allegrezza<sup>1</sup>



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<sup>1</sup> Associate Professor of Criminal Law and Criminal Procedure at the University of Luxembourg.

## Introduction

This STREAM Research Brief shows the extent to which rule of law guarantees and EU fundamental rights are treated by the Italian courts. Italian case law is based on the implementation of the European Arrest Warrant Framework Decision 2002/584<sup>2</sup> by Law no. 69/2005, as amended in 2017 (Law No. 117/2017), and again more radically by Legislative Decree no. 10/ 2021.

To this end, the analysis includes several rulings of the Constitutional Court, more than 700 judgments of the Court of Cassation and many judgments of lower jurisdictions, in particular of the Court of Appeals, the judicial body responsible for executing the EAWs. It also considers the recent preliminary references on the EAW sent to the Court of Justice of the European Union (the Court of Justice) by Italian courts between the end of 2021 and April 2023. A selection of those rulings has been made according to the suggested criteria: (i) the protection of fundamental rights as a primary concern for the issuing authorities; and (ii) the protection of fundamental rights by the executing authorities.

The analysis considered rulings targeting fundamental rights, both directly and indirectly.

The relevant judgments are almost entirely related to the previous version of Law 69/2005, in force until February 2021. In a nutshell, that original text prioritised the protection of constitutional fundamental rights over the EU principle of mutual trust. Law 69/2005 adopted a general clause on the need for EAWs to respect fundamental rights and principles contained in both international treaties and the Constitution, mentioning the pivotal role of Articles 5 and 6 of the European Convention on Human Rights (ECHR). Law 69/2005 also transformed all EU grounds of refusal into mandatory grounds and added additional ones.

The later Legislative Decree no. 10/ 2021 radically changed the spirit of the Italian EAW legal framework. Originally oriented toward a nation-based rigid control and the multiplication of mandatory grounds of refusal, the newly amended legislation now adopts a much more European-oriented approach, welcoming the indications of judgments of the Court of Justice in terms of the principle of mutual recognition, rule of law and protection of fundamental rights, optimising the procedure and reducing the many grounds of refusal. In this Research Brief a choice was made to focus only on legal issues that are still valid under the amended law.

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2 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, *OJ L 190*, 18.7.2002, p. 1.

## **Section I – Fundamental rights: primarily a matter for the issuing state?**

Effective judicial protection is effectively guaranteed by the Italian system. However, doubts can be raised as to the fundamental rights compliance of Italy as the decision to issue an EAW by Italian authorities cannot be appealed before Italian courts (see *infra*).

The concept of ‘effective judicial protection’ implies both the competence of a judicial authority to decide on the issuing of the EAW, and the consequent right of the person concerned to appeal the EAW.

As for the first tier, according to Italian law, two authorities are entitled to issue an EAW: a judge - where the EAW is based on a pre-trial detention order or on a house arrest order; and a prosecutor – but only when the EAW has been issued so a custodial sentence or a different measure can be carried out, and when it is based on a final judgment.

The Italian Constitution recognises the full independence of the prosecutor from any interference of other powers, including the Ministry of Justice. Italian prosecutors are considered to be an independent judicial authority, they are part of the judiciary and subject to the disciplinary powers of the Supreme Council of the Judiciary.

In particular, Italian law confers the power to issue a ‘procedural’ EAW (i.e. for the purposes of conducting a criminal prosecution) only to a fully-fledged judicial authority: the judge who ordered the pre-trial detention or the house arrest. It is worth noting that this judicial authority might vary according to the different phases of the procedure: it might first be the judge controlling the investigation, who follows the proceedings, and consequently the power might be conferred to the judge of the preliminary hearing, and later to the court that is competent to rule on the merits of the case.

Italy adopted a Vademecum on the adoption of the EAW, mostly focused on offering guidelines on: (i) what crimes might justify the issuing of an EAW in relation to the amount of the penalty; and (ii) to the specific *an debeatur* assessment in case of a ‘procedural’ EAW issued on the basis of a house arrest order for the sake of proportionality in relation to deprivation of liberty pending trial.

The Vademecum states that the issuing of an EAW is a possibility but not an obligation, especially when the judicial authorities have doubts as to the *an debeatur* – i.e. on the grounds justifying the deprivation of liberty in a specific case.

Limiting the issuing of an EAW to the execution of a pre-trial detention or a house arrest order implies that the case is mature enough (‘case-ready’ or ‘trial ready’) and that the prosecutor has collected sufficient elements of evidence against the defendant. Article 273 of the Italian Code of Criminal Procedure (CCP) indeed requires the existence of a solid set of evidentiary elements against the defendant for those measures to be adopted.

### **On the observance of the rights of the person whose surrender is requested.**

Two different time-sensitive assessments must be carried out: (i) whether there has been respect of the fundamental rights of the person concerned before the issuing of the EAW (pre-surrender); (ii) and after the warrant has been executed (post-surrender).

No special rule governs the first specific case, but ordinary law applies concerning the fundamental rights of the accused or convicted person during procedural activities leading to the issuing of the warrant. As it might be that the person is or has been absent, special rules on judgment *in absentia* apply (in particular, once the EAW is executed, the person shall have the right to a new trial).

A distinction should be made between the issuing of a 'procedural EAW' and the issuing of an EAW to carry out a custodial sentence based on final judgment. Once a procedural EAW has been executed, the competent Italian judicial authority will be responsible for determining the continued justification of the reasons for the pre-trial detention order, and ordinary appeal proceedings relating to the protection of personal liberty of persons under custody during trial will apply. In particular, the person under pre-trial detention will be entitled at any time to request the competent judicial authority to end their deprivation of liberty. If they are refused, the suspect or accused will be entitled to lodge an appeal against that refusal before a collegial judicial body called 'Tribunale del riesame'.

When the EAW relates to a final custodial sentence, the respect of fundamental rights will be assessed by the 'Tribunale di sorveglianza', a special collegial court composed of professional judges as well as an expert in psychology and sociology, aiming at ensuring respect of the rights of the detainee.

### **On judicial remedies pre- and post-surrender.**

The issuing decision of an Italian EAW cannot be appealed before Italian courts. As a consequence, doubts can be raised as to the fundamental rights compliance of Italian legislation in this sense.

On several occasions, the Italian Court of Cassation refused to allow an appeal of an EAW concerning its issuing by an Italian authority before Italian courts, on the basis that control was limited to the executing Member State and only in relation to the procedure of carrying out the EAW. The person concerned may only appeal the underlying decision adopted by an Italian judicial authority on which the EAW is based before an Italian court, namely the pre-trial detention order or the final judgment. This interpretation runs counter to Article 111§7 of the Italian Constitution, according to which any decision having an impact on personal liberty can be appealed at least before the Court of Cassation. Nevertheless, as the EAW is not a stand-alone order but is based on another judicial decision, the possibility to internally appeal the latter is considered enough.

This leaves room for doubt on the efficacy of judicial control over proportionality of the issued EAWs and on the correct and homogeneous application of the *Vademecum* that has been considered as non-mandatory by the Court of Cassation.

## **Section II - Protecting fundamental rights in the executing state?**

Recent reforms to the Italian law (Law no. 69/2005) have included two general clauses aimed at protecting fundamental rights. First, an EAW cannot be executed where it has been issued by an EU Member State whose participation in the reciprocity mechanism has been suspended by the European Council because of serious and persistent violation of the EU Treaties (Article 1(3 ter)). Second, as a general and mandatory ground of refusal, an EAW implying any breach of fundamental rights protected by the Italian Constitution or by the Charter of Fundamental Rights of the EU or, by the ECHR cannot be executed. (Article 2). In this way, the Italian legislator codified the two step-assessment first established in the Court of Justice's *Aranyosi and Căldăraru* case and further elaborated by its *LM* case,<sup>3</sup> requiring national courts to assess first the systemic and generalised risk together with an individualised analysis of how it might impact the position of the individual for which an EAW has been issued.

Additional rules protect specific fair trial guarantees when the person has not appeared in person during the trial for which an EAW has been adopted. They must provide for an indication of effective knowledge of the trial, of the presence of a lawyer and of the right of the person to file an appeal for a new trial, if he or she did not expressly waive such a right (Article 6), in line with Article 4a of the EAW FD and its related case law. Fundamental rights are also protected by two of the three mandatory grounds of refusal foreseen by the law: (1) a previous final decision on the same facts has been adopted by Italian or other Member States' courts and the related penalty has been executed or cannot be executed anymore according to the relevant law; (2) the person in question committed the offence when he was younger than 14 years of age (Article 18).

### **On how Italian courts used fundamental rights to challenge the execution of an EAW**

The majority of the existing case-law relates to the version of Law no. 69/2005 before reform, where several specific grounds of refusal somehow related to the protection of fundamental rights were listed (see the Introduction of the Periodic Country Report for Italy). However, the different nature of an 'open clause' on fundamental rights compared to a ground of refusal has an impact on the way the courts have assessed the potential risk of fundamental rights.

The fundamental rights exceptions, being strictly listed or in an open clause, have often been used to challenge the execution of an EAW, as the rich case-law of the Court of Cassation shows.

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<sup>3</sup> Judgment of the Court of Justice of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198; and of 25 July 2018, *LM (or Minister for Justice and Equality)*, C-216/18 PPU, ECLI:EU:C:2018:586.

However, it is very hard to assess the number of cases in which the EAW has then been refused by the lower courts. When the Court of Cassation identifies a risk for fundamental rights not duly assessed by the Court of Appeal, it quashes the decision and sends it back to the lower court. The follow up is not always available as the decisions of Court of Appeal are not often published.

In a nutshell, when the execution of an EAW depends on the potential risk for a fundamental right, specific refusals are related to:

- **Inhuman and degrading treatment due to poor detention conditions:**

Even though the recent reform of February 2021 abrogated the specific ground of refusal based on the risk of inhuman and degrading treatment in case of surrender (previous Article 18(h) Law 69/2005), the Court of Cassation immediately stated that the same principle is still in force thanks to the general clause of protection of fundamental rights as recognised by the Italian Constitution, by Article 6 TEU and by the ECHR. Even when the claimed breach of fundamental rights is linked to generalised and systemic deficiencies such as **structurally poor detention conditions**, potentially leading to inhuman and degrading treatment, the Court of Cassation does not allow an automatic refusal to execute the EAW. It rather imposes the two-step test: first, an objective assessment of the general serious risk in relation to the issuing Member State and, second, it requires national judicial authorities to ask for information to the issuing authority on the specific objective risk for the person in question. The Italian court should ask for individualised information on the detention measures the issuing Member State will adopt in the specific case.<sup>4</sup> That information should be complete (including the indication of the specific ground for detention, the space available inside the cell, the hours to be spent outside, when the specific detention regime allows it). A constant update is needed in order to verify any change occurring in the foreign prison system. Once the relevant information has been received, the court should execute the EAW. Very recently the Court of Cassation excluded the possibility to ask for additional guarantees.<sup>5</sup>

- **A procedural EAW merely issued to question the suspect:**

The principle of proportionality imposes a limited use of the EAW and promotes the use of the European Investigation Order.<sup>6</sup>

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4 Corte di Cassazione, judgment of 1 June 2016, *Barbu*, ECLI:IT:CASS:2016:23277PEN.

5 Corte di Cassazione, judgment of 22 November 2022, *Prinzhausen*, ECLI:IT:CASS:2022:44015PEN; Corte di Cassazione, judgment of 1 June 2016, *Barbu*, ECLI:IT:CASS:2016:23277PEN; Corte di Cassazione, judgment of 9 November 2018, *Moisa*, ECLI:IT:CASS:2018:52541PEN.

6 Corte di Cassazione, judgment of 21 February 2023, *Arciszewski*, ECLI:IT:CASS:2023:7861PEN.

- **On trials *in absentia*:**

Italian courts recognised the principles enshrined in Article 4-bis of the EAW FD and excluded the refusal when the conditions of the latter are respected,<sup>7</sup> in particular when there is the possibility to appeal the previous conviction and obtain a new trial.<sup>8</sup> If no defence lawyer was present during trial, the execution of the EAW is submitted to the specific guarantee of the issuing State on the possibility for the person once surrendered to have a new trial. Italian authorities are in these cases asking for specific guarantees to confirm the effectiveness of such a right.<sup>9</sup> The Court of Appeal of Lecce refused the execution of the EAW in case of proceedings *in absentia* where the defendant has been deprived of the presence of a lawyer.<sup>10</sup>

### On the two-step test in cases involving the independence of the judiciary

The two-step test has been applied in relation to the critical situation of independence and impartiality of the judiciary in some EU Member States. The Court of Cassation has been entirely respectful of the Court of Justice's criteria as established in the *LM* case and the *L and P* case.<sup>11</sup> Once the need to respect the principle of mutual recognition and the duty to proceed with a strict scrutiny of grounds of refusal was reaffirmed, the Court of Cassation fully relied on the Court of Justice's case law: the national court cannot deny the status of 'issuing judicial authority' to the court which issued the EAW and cannot presume that there are substantial grounds for believing that that person will, if he or she is surrendered to that Member State, run a real risk of breach of his or her fundamental right to a fair trial.

No general allegation based on EU resolutions – in a specific case the Resolution of the European Parliament of 17 September 2020 on the risk of breach of the rule of law in Poland – might suffice to justify the refusal to execute an EAW. There must be 'a specific and precise verification which takes account of, inter alia, his or her personal situation, the nature of the offence in question and the factual context in which that warrant was issued, such as statements by public authorities which are liable to interfere with how an individual case is handled a concrete risk in the specific case having been proved' (see Corte di Cassazione, judgment of 17 February 2021, *Mokrycki*, IT:CASS:2020:15922PEN, quoting the Court of Justice's judgment of *L and P*. A previous decision in the same case already affirmed the same principle (see Corte di Cassazione, judgment of 21 May 2020, *Mokrycki* (not published). In the

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7 Corte di Cassazione, judgment of 23 February 2021, *Delic*, IT:CASS:2021:7275PEN, recalling Judgments of the Court of Justice of 23 February 2013, *Melloni*; EU:C:2013:107; of 10 August 2017, *Tupikas*, C-270/17 PPU, § 55, EU:C:2017:628; and of 17 December 2020, *TR*, C-416/20 PPU, EU:C:2020:1042.

8 Ex multis Corte di Cassazione, judgment of 30 March 2017, *Locorotondo*, IT:CASS:2017:19226PEN; Corte di Cassazione, judgment of 9 October 2012, *Neagu*, IT:CASS:2012:43542PEN.

9 Corte di Cassazione, judgment of 22 March 2019, *Balescu*, IT:CASS:2019:12923PEN.

10 Corte d'appello of Lecce, 15 January 2021, no. 9, at .

11 Judgment of 17 December 2020, Joined Cases *L and P*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033.

light of these considerations, the Italian courts' approach is in line with the indications of the Court of Justice stemming from the *L and P* decision.

The Italian courts impose on the defendant the burden to prove the potential breach of fundamental rights because of the systemic or generalised deficiencies concerning the independence of the judiciary.

### **Section III Protecting fundamental rights through horizontal and vertical cooperation?**

The Italian Court of Cassation emphasised the importance of a constant dialogue between European judicial authorities in order to overcome differences in legal frameworks hindering smooth cooperation. The importance of information requests under Article 16 of Law 65/2005 should be highlighted: they are used very often by Italian courts to trigger judicial dialogue on the respect of fundamental rights.<sup>12</sup>

To this end, the Court of Cassation often forced the Court of Appeal to ask foreign colleagues directly to provide additional information that might help to clarify apparent clashes of rules, insisting on the need to use formal communication channels to grant receipt of the request,<sup>13</sup> and imposing the non-execution of the EAW when the foreign authorities were not responding adequately.<sup>14</sup> This method produced excellent results in solving specific issues, such as the lack of maximum duration of pre-trial detention, where the rigidity of the Italian Constitutional framework could have led to a systematic refusal of several EAWs.

The executing judicial authorities should rely on information exchange as a mechanism to obtain additional information as to whether the EAW adopted by the police or the prosecutor will be submitted to a fully-fledged judicial review even as an appeal on the request of the person concerned (see Corte di Cassazione, judgment of 5 March 2020, *Occhipinti Calogero*, IT:CASS:2020:9582PEN).

In light of fostering judicial dialogue, Italian courts have always been very keen to ask the Court of Justice for preliminary rulings for every concern of judicial cooperation in criminal matters, including the EAW.

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12 Corte di Cassazione, judgment of 27 January 2012, *Baldi*, IT:CASS:2012:4528PEN.

13 Corte di Cassazione, judgment of 18 June 2020, *PG in c Ali Ali*, IT:CASS:2020:18711PEN, in which the Court criticised the choice to send the request via email.

14 Corte di Cassazione, judgment of 4 March 2020, *Martin*, IT:CASS:2020:9039PEN. A simple delay does not preclude the execution of the EAW.



Recently, the Italian Constitutional Court asked the Court of Justice for a preliminary ruling in two cases:

- on whether Article 1(3) EAW FD which requires respect for the fundamental rights enshrined in Article 6 TEU, read in the light of Articles 3, 4 and 35 of the Charter, must be interpreted as meaning that, where the executing judicial authority considers that the surrender of a person suffering from a serious, chronic and potentially irreversible disease could place him in danger of suffering serious harm to his health, it must request from the issuing judicial authority information enabling it to rule out the existence of such a risk, and must refuse to surrender the person if it does not obtain such assurances within a reasonable period of time.<sup>15</sup>
- on whether the surrender should be refused when a third-country national has stable family and occupational roots in Italy, a solution partially adopted by Advocate General Sánchez-Bordona in his Opinion in *OG*.<sup>16</sup>

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<sup>15</sup> Opinion of Advocate General Campos Sánchez-Bordona in the case *EDL*, C-699/21, delivered on 1 December 2022, ECLI:EU:C:2022:955.

<sup>16</sup> Corte Costituzionale, Judgement of 20 October 2021, no. 217. See Opinion of Advocate General Campos Sánchez-Bordona in the case *OG*, C-700/21, delivered on 15 December 2022, ECLI:EU:C:2022:995.

## REFERENCES

### National Legislation

#### Law No. 69/2005

Law 22 April 2005, No. 69, “Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d'arresto europeo e alle procedure di consegna tra Stati membri”, [www.normattiva.it/eli/id/2005/04/29/005G0081/CONSOLIDATED](http://www.normattiva.it/eli/id/2005/04/29/005G0081/CONSOLIDATED).

#### Law No. 117/2019

Law 4 October 2019, No. 117, “Delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea - Legge di delegazione europea 2018”, <https://www.normattiva.it/eli/id/2019/10/18/19G00123/ORIGINAL>.

#### Legislative Decree No. 10/2021

Legislative Decree 2 February 2021, No. 10, “Disposizioni per il compiuto adeguamento della normativa nazionale alle disposizioni della decisione quadro 2002/584/GAI, relativa al mandato d'arresto europeo e alle procedure di consegna tra stati membri, in attuazione delle delega di cui all'articolo 6 della legge 4 ottobre 2019, n. 117”, <https://www.normattiva.it/eli/id/2021/02/05/21G00013/ORIGINAL>.

### National Judgments

#### *Italian Constitutional Court (Corte Costituzionale)*

Judgment of 12 May 2010, no. 227

Judgment of 11 March 2021, no. 60

Judgment of 20 October 2021, no. 217

#### *Italian Supreme Court (Corte di Cassazione)*

Judgment of 19 April 2006, ECLI:IT:CASS:2006:16478PEN

Judgment of 30 January 2007, ECLI:IT:CASS:2007:4614PEN

Judgment of 13 March 2007, ECLI:IT:CASS:2007:11598PEN

Judgment of 3 May 2007, ECLI:IT:CASS:2007:17632PEN

Judgment of 18 June 2007, ECLI not available

Judgment of 29 April 2008, ECLI:IT:CASS:2008:26635PEN  
Judgment of 22 October 2009, ECLI:IT:CASS:41631PEN  
Judgment of 2 July 2010, ECLI:IT:CASS:2010:26194PEN  
Judgment of 27 January 2012, ECLI:IT:CASS:2012:4528PEN  
Judgment of 1 February 2012, ECLI:IT:CASS:2012:4538PEN  
Judgment of 17 May 2012, ECLI:IT:CASS:2012:19406PEN  
Judgment of 21 June 2012, ECLI:IT:CASS:2012:30769PEN  
Judgment of 9 October 2012, ECLI:IT:CASS:2012:43542PEN  
Judgment of 22 October 2012, ECLI:IT:CASS:2012:44160PEN  
Judgment of 22 November 2013, ECLI:IT:CASS:2013:47013PEN  
Judgment of 28 November 2013, ECLI:IT:CASS:2014:2850PEN  
Judgment of 30 December 2014, ECLI:IT:CASS:2015:49PEN  
Judgment of 8 January 2015, ECLI:IT:CASS:2015:1199PEN  
Judgment of 12 January 2016, ECLI:IT:CASS:2016:8209PEN  
Judgment of 1 June 2016, ECLI:IT:CASS:2016:23277PEN  
Judgment of 28 June 2016, ECLI:IT:CASS:2016:35879PEN  
Judgment of 24 November 2016, ECLI:IT:CASS:2016:50814PEN  
Judgment of 24 January 2017, ECLI:IT:CASS:2017:3679PEN  
Judgment of 30 January 2017, ECLI:IT:CASS:2017:4614PEN  
Judgment of 30 March 2017, ECLI:IT:CASS:2017:19226PEN  
Judgment of 5 April 2017, ECLI:IT:CASS:2017:17592PEN  
Judgment of 5 April 2017, ECLI:IT:CASS:2017:19025PEN  
Judgment of 3 May 2017, ECLI:IT:CASS:2017:22249PEN  
Judgment of 29 May 2017, ECLI:IT:CASS:2017:27483PEN  
Judgment of 11 July 2017, ECLI:IT:CASS:2017:34439PEN  
Judgment of 20 July 2017, ECLI:IT:CASS:2017:39522PEN  
Judgment of 15 September 2017, ECLI:IT:CASS:2017:43136PEN  
Judgment of 11 October 2017, ECLI:IT:CASS:2017:47891PEN  
Judgment of 9 November 2017, ECLI not available  
Judgment of 28 February 2018, ECLI:IT:CASS:2018:9391PEN

Judgment of 5 June 2018, ECLI:IT:CASS:2018:26383PEN  
Judgment of 9 November 2018, ECLI:IT:CASS:2018:52541PEN  
Judgment of 22 March 2019, ECLI:IT:CASS:2019:12923PEN  
Judgment of 30 July 2019, ECLI:IT:CASS:2019:35186PEN  
Judgment of 27 August 2019, ECLI:IT:CASS:2019:36844PEN  
Judgment of 29 October 2019, ECLI:IT:CASS:2019:44397PEN  
Judgment of 30 October 2019, ECLI:IT:CASS:2019:51014PEN  
Judgment of 22 January 2020, ECLI:IT:CASS:2020:2739PEN  
Judgment of 18 February 2020, ECLI:IT:CASS:2020:10473PEN  
Judgment of 26 February 2020, ECLI:IT:CASS:2020:7979PEN  
Judgment of 4 March 2020, ECLI:IT:CASS:2020:9039PEN  
Judgment of 5 March 2020, ECLI:IT:CASS:2020:9582PEN  
Judgment of 7 May 2020, ECLI not available  
Judgment of 21 May 2020, ECLI:IT:CASS:2020:15922PEN  
Judgment of 21 May 2020, ECLI:IT:CASS:2021:15924PEN  
Judgment of 1 June 2020, ECLI:IT:2020:20571PEN  
Judgment of 18 June 2020, ECLI:IT:CASS:2020:18711PEN  
Judgment of 28 August 2020, ECLI:IT:CASS:2020:23952PEN  
Judgment of 23 February 2021, ECLI:IT:CASS:2021:7275PEN  
Judgment of 10 March 2021, ECLI:IT:CASS:2021:9821PEN  
Judgment of 16 March 2021, ECLI:IT:CASS:2021:10822PEN  
Judgment of 14 April 2021, ECLI:IT:CASS:2021:14220PEN  
Judgment of 6 May 2021, ECLI:IT:CASS:2021:18126PEN  
Judgment of 26 May 2021, ECLI not available  
Judgment of 22 November 2022, ECLI:IT:CASS:2022:44015PEN  
Judgment of 21 February 2023, ECLI:IT:CASS:2023:7861PEN

### ***Court of Appeal***

Corte d'Appello of Milano, order of 17 September 2020, ECLI not available  
Corte d'Appello of Lecce, Judgment of 15 January 2021, ECLI not available

## **EU Legislation**

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, *OJ L 190, 18.7.2002, p. 1.*

## **Judgments of the Court of Justice of the European Union**

Judgment of 17 July 2008, *Kozłowski*, C-66/08, ECLI:EU:C:2008:437

Judgement of 10 December 2008, *Leymann and Pustovarov*, C-388/08 PPU, ECLI:EU:C:2008:669

Judgment of 6 October 2009, *Wolzenburg*, C-123/08, ECLI:EU:C:2009:616

Judgment of 16 November 2010, *Mantello*, C-261/09, ECLI:EU:C:2010:683

Judgment of 28 June 2012, *West*, C-192/12 PPU, ECLI:EU:C:2012:40

Judgment of 23 February 2013, *Melloni*; ECLI:EU:C:2013:107

Judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198

Judgment of 24 May 2016, *Dworzecki*, C-108/16, ECLI:EU:C:2016:346

Judgment of 29 June 2017, *Poplawski I*, C-579/15, ECLI:EU:C:2017:503

Judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628

Judgment of 10 August 2017, *Zdziaszek*, C-271/17, ECLI:EU:C:2017:629

Judgment of 25 July 2018, *ML*, C-220/18 PPU, ECLI:EU:C:2018:589

Judgment of 25 July 2018, *LM*, C-216/18 PPU, ECLI:EU:C:2018:586

Judgment of 27 May 2019, *OG and PI*, C-508/18 and C-82/19, ECLI:EU:C:2019:456

Judgment of 27 May 2019, *PF*, C-509/18, ECLI:EU:C:2019:457

Judgment of 24 June 2019, *Poplawski II*, C-573/17, ECLI:EU:C:2019:530

Judgment of 12 March 2020, *VW*, C-659/18, ECLI:EU:C:2020:201

Judgment of 17 December 2020, *L and P*, C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033

Judgment 17 December 2020, *TR*, C-416/20 PPU, EU:C:2020:1042

Opinion of AG Campos Sánchez-Bordona, 1 December 2022, *EDL*, C-699/21, ECLI:EU:C:2022:955

Opinion of AG Campos Sánchez-Bordona, 15 December 2022, *OG*, C-700/21, ECLI:EU:C:2022:995

## Literature

Aprile, E., "Garanzie del giusto processo e divieto di testimonianza indiretta della polizia giudiziaria, nell'esecuzione in Italia del mandato di arresto europeo", *Cassazione Penale*, 2008/7-8.

Bargis, M. & Selvaggi, E. (Eds.), *Mandato d'arresto europeo. Dall'extradizione alla procedura di consegna*, Giappichelli, 2005.

Calvano, R., *Legalità costituzionale e mandato d'arresto europeo*, Jovene, 2007.

Chelo, A., *Il mandato d'arresto europeo*, CEDAM, 2010.

Chiavario, M., *Manuale dell'extradizione e del mandato d'arresto europeo*, UTET, 2013.

Chiavario, M., De Francesco, G., Manzione, D. & Marzaduri, E. (Eds.), *Il mandato d'arresto europeo. Commento alla legge 22 aprile 2005 n. 69*, UTET, 2006.

Colaiocono, G., "Mandato di arresto europeo, limiti all'applicazione della legge penale e sovrappollamento carcerario in una sentenza della Corte di Cassazione", *Sistema penale*, 28 July 2020.

De Amicis, G. & Iuzzolino, G., *Guida al mandato d'arresto europeo*, Giuffrè, 2008.

Ferrua, P., Grifantini, F.M., Illuminati, G., Orlandi, R., *La prova nel dibattimento penale*, IV ed., Giappichelli, 2010.

Ferrua, P., *Il giusto processo*, Zanichelli, 2012.

Illuminati, G., "The Frustrated Turn to Adversarial Procedure in Italy (Italian Criminal Procedure Code of 1988)", *Washington University Global Studies Law Review*, 2005/3.

Impalà, F., "The European Arrest Warrant in the Italian Legal System: Between Mutual Recognition and Mutual Fear within the European Area of Freedom, Security and Justice", *Utrecht Law Review*, 2005/2.

Iovino, P.F., *La costituzionalità del mandato di arresto europeo*, ESI, 2009.

Iuzzolino, G., "voce Mandato d'arresto europeo (dir. pen.)", *Enciclopedia giuridica Treccani*, 2006.

Kalb, L. (Ed.), *Mandato d'arresto europeo e procedure di consegna*, Giuffrè, 2005.

Marchetti, M.R., "voce Mandato d'arresto europeo", *Enciclopedia del diritto*, Annali, II, 2008.

Marafioti, L., "Italian Criminal Procedure: A System Caught Between Two Traditions", in J. Jackson, M. Langer & P. Tillers (Eds.), *Crime, Procedure and Evidence in a Comparative and International Context*, Hart, 2008.

Pansini, G. & Scalfati, A. (Eds.), *Il mandato d'arresto europeo*, Jovene, 2005.

Panzavolta, M., “Reforms and Counter-Reforms in the Italian Struggle for an Accusatorial Criminal Law System”, *North Carolina Journal of International Law*, 2004/3

Panzavolta, M., “Humanitarian concerns in the European Arrest Warrant”, in N. Keijzer, & E. V. Sliedregt (Eds.), *The European Arrest Warrant in Practice*, T.M.C. Asser Press/Cambridge University Press, 2009.

Tiberi, M., “voce Mandato d’arresto europeo”, *Dig. pen., Agg.*, III, 2005.

Zanetti, E., *Il mandato d’arresto europeo e la giurisprudenza italiana*, Giuffrè, 2009.

## Websites

### Archivio Penale

Pisa University Press, ‘Archivio Penale’, <https://archiviopenale.it/>

### Diritto penale contemporaneo – Rivista Trimestrale

Associazione “Progetto Giustizia Penale”, ‘Diritto penale contemporaneo – Rivista Trimestrale’, <https://dpc-rivista-trimestrale.criminaljusticenetwork.eu/it>

### Giurisprudenza penale

Avv. Guido Stampanoni Bassi, ‘Giurisprudenza penale’, <https://www.giurisprudenzapenale.com/>

### Sistema penale

Associazione “Progetto Giustizia Penale”, ‘Sistema Penale’, <https://www.sistemapenale.it/it>

### Vademecum

Ministero della Giustizia – Direzione Generale per la Giustizia Penale, ‘Vademecum per l’emissione del mandato d’arresto europeo’, [www.giustizia.it/resources/cms/documents/Vademecum\\_mandato\\_arresto\\_europeo.pdf](http://www.giustizia.it/resources/cms/documents/Vademecum_mandato_arresto_europeo.pdf).

## Availability of EAW-related jurisprudence

EAW-related judgments of (i) the Constitutional Court (<https://www.cortecostituzionale.it/default.do>) are publicly available, open access: all decisions are published; (ii) Court of Cassation, but access is limited to paying users ([https://www.italgiure.giustizia.it/index\\_it.asp](https://www.italgiure.giustizia.it/index_it.asp)). The large majority of the judgements are published, the decision is based on their relevance and taken by the *Ufficio del Massimario*, the court's research office. Decisions of every level and type (adopted by the Court of Appeal - the large majority in EAW execution cases - or tribunals in relation to issuing procedures) are public if and when they are selected by open access legal journals such as *Sistema penale* (<https://www.sistemapenale.it/>) or *Archivio penale* (<https://archiviopenale.it/>). When they are selected by traditional legal journals, public access is possible only in public library. Selection criteria are determined by the Editors and mostly related to the innovative content of the decision or the relevance of the case.

Difficulties in accessing decisions of the Court of Appeal have consequences, as it is often impossible to follow up the decision of the Court of Cassation to quash a lower decision. Consequently, we do not know how the judge ruling on the merits decided in relation to cases where fundamental rights issues have been raised.