(Non-)Extradition in the Nord Stream Case and the Limits of Executing State Authority in Mandatory European Arrest Warrant Proceedings

Summary and Analysis of the Italian Supreme Court Judgment No. 1428/25 of 15 October 2025 in K

Nicola Canestrini *

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Article

ABSTRACT

On 15 October 2025, the Italian Supreme Court (Corte Suprema di Cassazione) halted the surrender of a former Ukrainian military officer from Italy to Germany. The requested person was sought by the German authorities for "sabotage" in connection with the attacks on the Nord Stream gas pipelines in the Baltic Sea in 2022. The Supreme Court annulled the decision of the Bologna Court of Appeal, which had previously authorised surrender. The judges in Rome expressly rejected the approach according to which the executing authority in a European Arrest Warrant (EAW) proceeding may reclassify the issuing authority's designation of a "list offence" under Art. 2(2) of the Framework Decision on the European Arrest Warrant for purposes of determining domestic custodial or procedural measures. This article explains the reasoning of the Supreme Court's ruling and comments on its implications. The author concludes that the Court's approach paradoxically strengthens, rather than diminishes, the procedural safeguards available to persons subject to surrender, in particular by reinforcing the traditional extradition principle of specialty.

AUTHOR

Nicola Canestrini

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On 15 October 2025, the Italian Supreme Court issued its judgment in *K.*, halting the surrender of a former Ukrainian military officer sought by German authorities for his alleged involvement in the 2022 attacks on the Nord Stream gas pipelines in the Baltic Sea.[1] The Court in Rome overturned a decision by the Bologna Court of Appeal, which had previously authorized the execution of the German EAW, and remitted the case for a new decision.

Beyond its immediate procedural outcome, the *K.* judgment carries wider doctrinal significance. It constitutes the Supreme Court's most authoritative interpretation to date of the scope of executing-state powers following Italy's 2021 reform of its implementing legislation for the Framework Decision on the European Arrest Warrant (FD EAW)[2]. Moreover, the case also brings into focus fundamental questions about the interplay between mutual recognition principles, domestic procedural autonomy, and the classification of offences within the FD's mandatory surrender categories. The following sections first outline the case background and lower court decision, before examining the reasoning and implications of the Italian Supreme Court's ruling.

I. Facts of the Case and Bologna Court Decision

K., a former Ukrainian military officer, was arrested in Italy while on a family vacation in August 2025, pursuant to a German European Arrest Warrant (EAW). The German authorities classified his alleged conduct in the 2022 attacks on the Nord Stream pipelines as "sabotage" within the meaning of Art. 2(2) FD EAW. This is one of the categories for which the executing State is exempted from verifying double criminality of the act. The German authorities specifically invoked Sections 88, 305, and 308 of the German Criminal Code (*Strafgesetzbuch*, StGB), relating to anti-constitutional sabotage and the destruction of vital public infrastructure.

In its decision on the execution of this German EAW, the Bologna Court of Appeal acknowledged Germany's classification for surrender purposes but nonetheless undertook a "reclassification" of the facts. It termed this approach a "nationalization" (*nazionalizzazione*) of the offence for domestic procedural purposes, holding that the conduct corresponded to Art. 280-bis of the Italian Criminal Code (*Codice penale*), which covers offences aggravated by terrorist purposes. This "reclassification" was later recognized as erroneous by the same Bologna Court in its final surrender decision, but in the meantime it had had two main consequences:

- The placement of K. under the high-surveillance custodial regime (*regime di alta sorveglianza*) reserved for terrorism-related offenses;
- K.'s participation via videoconference in the chamber's surrender hearing (*camera di consiglio*) pursuant to Arts. 45-bis and 146-bis of the Implementing Provisions of the Italian Code of Criminal Procedure (*disposizioni di attuazione del codice di procedura penale*), which permit — or, more precisely, require — remote appearances for certain high-risk crime categories, including terrorism.

II. The Italian Supreme Court's Ruling and Its Reasoning

One of the legal issues on appeal before the Italian Supreme Court concerned this bifurcated approach to reclassification. Specifically, the question was whether executing States retain any residual authority to reclassify offences that the issuing State has already designated as falling within one of the mandatory

categories under Art. 2(2) of the Framework Decision on the EAW, particularly for the purpose of determining domestic custodial or procedural legal framework.

The Supreme Court unequivocally rejected such a power. In doing so, its ruling marks a decisive shift toward stricter deference to the issuing authority within Italy's post-2021 reform framework implementing the FD EAW and raises important questions about the balance between efficiency and rights protection in EU criminal cooperation. The Supreme Court's rejection rests on textual, structural, and functional grounds that merit careful examination.

1. Textual reasoning

Textually, the Court observed that the abrogation of Art. 8(2) of Law 69/2005, following from Legislative Decree 10/2021[3], removed the executing State's competence to verify whether the offence indicated by the issuing authority corresponds to the categories mandating surrender. The previous legal regime had explicitly required Italian judicial authorities to ascertain "the definition of the offences for which surrender is requested, according to the law of the issuing State, and whether it corresponds to one of the offences for which surrender is mandatory." The Court held that the repeal of this provision was not merely cosmetic but reflected a deliberate legislative choice to eliminate any residual power of review, save for cases of manifest error. Under the amended law, Italian courts must simply accept that, "according to the law of the issuing Member State," the offence "falls within the categories referred to in Article 2, paragraph 2" FD EAW, without any authority to second-guess or recharacterize that determination.

2. Structural reasoning

Structurally, the Supreme Court dismissed the Bologna tribunal's attempt to distinguish between a "surrender decision phase" (governed by the FD EAW categories) and a separate "custodial-procedural phase" governed by domestic classificatory authority. This distinction, the Court concluded, lacks any foundation in statutory text and generates systemic inconsistency. Precautionary measures adopted during surrender proceedings exist solely to effectuate potential surrender and are therefore inseparably linked to the classification under the FD EAW. For instance, Art. 13 of Law 69/2005 permits immediate provisional release only upon "manifest error" (e.g., the wrong person has been apprehended or an extralegal arrest occurred), not where the executing authority disagrees with the issuing State's legal characterization. Divergent classifications for custodial purposes would generate cascading inconsistencies: Which classification would govern the analysis of refusal grounds pursuant to Art. 18 of Law 69/2005? Which classification would determine the application of the specialty principle pursuant to Article 26 of Law 69/2005? The Court thus found that any purported separation between surrender phase and custody phase represents an artificial compartmentalization that frustrates the structural logic of the FD EAW.

3. Functional reasoning

Functionally, the Supreme Court anchored its reasoning in the principle of mutual recognition and the specific architecture of mandatory surrender under Art. 2(2) FD EAW. The 32 listed offence categories — including sabotage, terrorism, organized crime, etc. — function as normative equivalents across the EU legal systems precisely because they eliminate the need for double criminality verification. Citing its recent decision in *Ruba*,[4] the Court emphasised:

> (W)hen the offence falls within one of the categories that give rise to surrender irrespective of double criminality, the conduct need not be subsumed under a specific criminal provision of the domestic law of the requested State. The judicial authority to which the surrender request is

addressed is bound by the assessment made by the issuing authority as to whether the offence belongs to one of the listed categories.

This binding character extends not merely to the abstract question of category membership but to all derivative procedural consequences. Allowing executing States to reclassify offences for custodial or procedural purposes would, in effect, reintroduce the very double criminality verification that Art. 2(2) FD EAW was designed to eliminate through a procedural backdoor. This would cause unpredictability and undermine the FD EAW's objective of creating a simplified and more effective surrender system.

III. Consequences of the Court's Reasoning

The Italian Supreme Court's analysis of Germany's deliberate choice to classify the alleged conduct at issue as sabotage rather than terrorism reinforces this logic. German criminal law, like Italian law, contains specific provisions addressing terrorist offences, which also appear as a distinct category in Art. 2(2) FD EAW. According to the Court, Germany possessed full authority to invoke the category of "terrorism" had it deemed the alleged pipeline sabotage to constitute terrorist conduct within the meaning of Framework Decision 2002/475 on combating terrorism[5] and Article 270-sexies of the Italian Criminal Code, which implements it. By choosing to instead rely on the category of "sabotage" — specifically targeting Section 88 StGB, which addresses damage to infrastructure "vital to the supply of the population" and directly encompasses energy pipeline sabotage — the German authority made a sovereign decision on the charge that merits respect.

The Bologna tribunal's decision to substitute its own classification, treating the same conduct as a terrorism-aggravated offence under Italian law, therefore amounted to an impermissible encroachment on the issuing State's prerogative and a violation of the mutual recognition principle underlying the entire FD EAW system.

As a result, the Supreme Court held that the videoconference authorisation lacked statutory basis and infringed Articles 45-bis and 146-bis of the Implementing Provisions of the Code of Criminal Procedure, since it rested entirely on the erroneous terrorism classification. Consequently, the Court found that the Bologna tribunal's proceedings were tainted by a "nullity of a general nature" under Article 178(1)(c) of the Code of Criminal Procedure, which safeguards the right of the accused to be present and assisted by counsel. Having been timely raised by defense counsel at the initial hearing of 3 September 2025, the nullity vitiated the entire *camera di consiglio* proceeding, including the surrender decision itself.

The practical implication is significant: custodial and procedural measures predicated on reclassification by the executing State are not merely irregular but fundamentally void *ab initio* when they violate the rights of the defendant, requiring annulment irrespective of whether the ultimate surrender decision might otherwise have been substantively justified.

IV. The Immunity Issue and Further Implications of the Case

Other grounds of appeal put forward by the defence – including the quality of interpretation, functional immunity for alleged military operations, risk of inhuman or degrading treatment, *ne bis in idem* considerations, and access to the case file — received only passing attention in the Supreme Court's reasoning. Nonetheless, they represent important issues that will likely resurface after remittal.

The defence's claim of functional immunity, in particular, raises profound questions at the intersection of international humanitarian law, State immunity, and EU criminal cooperation. It argued that the alleged

sabotage constituted a legitimate military operation within the armed conflict between Russia and Ukraine, targeting strategic infrastructure of an adversary state in accordance with Additional Protocol I to the Geneva Conventions[6]. This claim, based on customary international law incorporated into the Italian legal order through Article 10 of the Italian Constitution, was dismissed by the Bologna Court on the ground that the act occurred outside the theatre of war and lacked official Ukrainian acknowledgment. Whether that reasoning can withstand closer scrutiny, given the substantial circumstantial evidence of coordinated military planning and the strategic significance of disrupting Russian energy exports financing Russia's invasion in Ukraine, remains to be seen.

The case thus exposes structural tensions between the summary nature of EAW surrender proceedings and fact-intensive immunity determinations involving constitutional or international law defences. Certain refusal grounds in Art. 2 of Law 69/2005, i.e., conflicts with "supreme principles of constitutional order" or violations of "inalienable rights," may require evidentiary efforts incompatible with the Framework Decision's strict sixty-day timeline and streamlined surrender procedures.

Similarly, the Supreme Court's brief treatment of the *Aranyosi and Căldăraru*[7] standard for inhuman and degrading treatment leaves unresolved important questions regarding the adequacy of German assurances about detention conditions and family visitation rights, especially in light of the reports by the German National Agency for the Prevention of Torture[8], which documented serious concerns about certain pre-trial detention facilities.

V. Conclusion

The broader implications of the judgment in *K.* for European criminal law cooperation extend well beyond its immediate doctrinal findings. The Supreme Court's strict deference to the issuing State's classification represents not merely an efficiency-driven choice but rather the only approach fully consistent with the principle of mutual trust and is essential for protecting fundamental rights within the EAW system. Permitting executing States to reclassify "euro-crimes" would pose serious risks to core procedural guarantees, most critically the specialty principle enshrined in Art. 27 FD EAW. Where surrender is granted on the basis of an issuing State's classification of sabotage, a subsequent prosecution for terrorism (or vice versa) would contravene the essence of specialty, as the executing State's consent would have been obtained under materially different legal premises. The rigid categorial binding endorsed in *K.* therefore safeguards the surrendered person's legitimate expectation that the criminal trial will proceed under the same offence characterization that formed the basis for the surrender decision, preventing post-surrender prosecutorial reformulations that would circumvent specialty limitations.

The Italian Supreme Court's interpretation of the FD EAW in the "Nord Stream extradition case" aligns with the European Court of Justice's sustained jurisprudential commitment to mutual trust as the organizing principle of judicial cooperation in criminal matters within the EU. By anchoring the authority to classify offences under Art. 2(2) FD EAW exclusively in the issuing State's sovereign determination, the Italian Supreme Court's approach paradoxically strengthens, rather than diminishes, the procedural safeguards available to persons subject to surrender. Ensuring classificatory stability across the surrender and prosecution continuum can protect defendants from being tried for materially different charges than those for which surrender was granted, thereby reinforcing the principle of specialty and the broader guarantees of fair process inherent in European criminal law cooperation.

VI. Update

Following the Italian Supreme Court's remittal in judgment No. 1428/25, which was analysed here, the Bologna Court of Appeal reconvened the surrender hearing with K. present in court. On 23 October 2025, the Bologna Court of Appeal – the extradition court – issued a new decision ordering K.'s surrender to Germany.[9] In this second ruling, the Bologna court addressed the procedural defect that had invalidated the previous proceedings, namely the unlawful remote participation via videoconference. However, it did not substantively revisit the classification question or the other grounds of refusal raised by the defence, including functional immunity, *ne bis in idem* and risks of violations of Article 3 of the European Convention on Human Rights (ECHR). The defence appealed against the second surrender decision to the Italian Supreme Court, reiterating the constitutional and international law arguments that had been given only cursory consideration in the initial annulment. However, in its judgment No. 37897/25 of 19 November 2025,[10] the Sixth Criminal Section of the Supreme Court definitively rejected the appeal and confirmed the surrender order. The Supreme Court held that, following the procedural rectification ordered in judgment No. 1428/25, the extradition court in Bologna had conducted the remand proceedings properly and that no further nullities had affected the decision. Significantly, the Supreme Court declined to engage substantively with the defence's claims regarding functional immunity under international humanitarian law, the applicability of the Geneva Convention protections, and the structural deficiencies in Germany's assurances regarding detention conditions and access to the case file. The judgment's narrow focus on procedural regularity, at the expense of the substantive human rights and international law issues raised, suggests a limited approach to the scope of judicial review in mandatory European Arrest Warrant proceedings under Art. 2(2) FD EAW — an approach that prioritises expedited surrender over a comprehensive examination of potential grounds for refusal, where the issuing state has invoked a “list offence” category. K. was surrendered to German custody on 27 November 2025, and the questions of immunity, the lawfulness of the military operation and fundamental rights protections were transferred to the German judicial authorities for determination at trial.

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1. Corte Suprema di Cassazione, Sesta Sezione Penale, Sentenza n. 1428/25, decided on 15 October 2025, filed on 16 October 2025. A machine translation of the judgment in English can be retrieved here: <https://canestrinilex.com/en/readings/limits-of-executing-state-authority-in-mandatory-eaw-proceedings-cass-142825>. All hyperlinks were last accessed on 21 October 2025.↩
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, 18.07.2002, 1.↩
3. An English version of the Italian law implementing the FD EAW and reformed in 2021 can be retrieved here: <https://canestrinilex.com/en/readings/italian-european-arrest-warrant-implementation-law-692002>. On Italy’s implementation, see also the information on the practical application of EU legal instruments by Italy provided by the European Judicial Network at:<https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCou/EN/295>; Periodic Country Report: Italy by S. Allegrezza within the Stream project, < https://stream-eaw.eu/wp-content/uploads/2023/07/STREAM_Country-Report_Italy3.pdf>.↩
4. Corte Suprema di Cassazione, Sesta Sezione Penale, Sentenza n. 22376/25, decided in 11 June 2025, filed on 13 June 2025. The judgment in Italian can be retrieved here: <https://canestrinilex.com/risorse/mae-impossible-rivalutare-qualificazione-del-reato-cass-2237625>.↩
5. Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism, OJ L 164, 22.6.2002, 3. The Supreme Court makes reference to this FD. The FD was repealed and replaced by Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, OJ L 88, 31.3.2017, 6.↩
6. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977?activeTab=>).↩
7. ECJ, 5 April 2016, Joined Cases C-404/15 and C-659/15 PPU, *Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen*.↩
8. Cf. <ps://www.nationale-stelle.de/fileadmin/dateiablage/Dokumente/Berichte/Jahresberichte/NSzVvF_annual_report_2022-web.pdf>.↩
9. See EURACTIV, “Italy court reorders extradition of Ukrainian to Germany in Nord Stream case”, 27 October 2025, <https://www.euractiv.com/news/italy-court-reorders-extradition-of-ukrainian-to-germany-in-nord-stream-case/>.↩
10. An automatic machine translation in English of this second judgment of the Supreme Court in the Nord Stream II extradition case can be retrieved here: <https://canestrinilex.com/en/readings/nord-stream-extradition-italian-supreme-court-confirms-surrender-and-narrows-space-for-rights-in-eaw-proceedings-cass-3789725>.↩

* Author statement

The author is defense attorney in the case presented in this article.

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