

# Italian Supreme Court Applies Manifest Error Doctrine: Personal Drug Use Cannot Be Treated as Illicit Trafficking under EU Mutual Recognition Framework



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News

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On 14 March 2025, in a landmark ruling, the Italian Court of Cassation clarified the powers of the executing state's obligations under Framework Decision 2008/909/JHA concerning the mutual recognition of criminal judgments imposing custodial sentences (Corte di Cassazione, sez. VI penale, sentenza n. 10395/2025). An unofficial machine translation of the ruling into English is available at the [website of canestriniLex](#).

The case involved the recognition in Italy of two German convictions for possession of narcotics for personal use, submitted with a certificate ticking the box for "illicit trafficking in narcotic drugs and psychotropic substances" - a category exempt from the double criminality check under said Framework Decision. In overruling the lower courts' decision to recognize the German convictions, the Italian highest court ruled that while the executing authority is in principle bound by the classification made by the issuing state (cf. CJEU, Case C-136/20, LU), it may contest a "manifest error" in the completion of the certificate. The Court of Cassation relied on Framework Decision 2004/757/JHA, which provides minimum rules for drug offenses. Article 2 of this Framework Decision excludes any conduct committed solely for personal consumption, as defined by national laws from "illicit trafficking".

In case at issue, classifying the simple possession for personal use, which is not a crime under Italian criminal law, as illicit drug trafficking constituted such a "manifest error", according to the Court of Cassation. It ruled that possession for personal use, although criminalized in some EU Member States, falls outside the EU-harmonized concept of trafficking and does not correspond to an Italian offense under Article 73 of the Italian Drug Bill, DPR 309/1990, when not linked to distribution.

The judgment emphasizes the mandatory interlocutory procedure under Article 10(3) of Legislative Decree 161/2010 for partial recognition, requiring the Italian court to consult with the German authorities before proceeding.

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