



## PRESS RELEASE No 106/26

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Judgment of the Court in Case C-196/24 | [Aucrinde] <sup>1</sup>

**A court of a Member State cannot refuse to execute a request for a measure of inquiry transmitted by a court of another Member State and seeking the exhumation of the body of a putative parent in order to establish parentage, by justifying that refusal solely on the ground that the exhumation concerned is prohibited under its substantive national law**

In proceedings relating to the establishment of parentage and initiated in Italy, an Italian court requested a French court to exhume the body of the putative father of the applicant, in order to draw up a genetic expert's report post-mortem. The Court holds that the EU Regulation on the cross-border taking of evidence <sup>2</sup> does not allow the French court to refuse to execute that request on the ground that its substantive national law prohibits, in the absence of express consent given during the lifetime of the person concerned, post-mortem genetic identification in civil proceedings. The grounds for refusal of enforcement provided for by that regulation are exhaustive. Since they do not include the existence of a substantive national rule of that type, the prohibition provided for by French law cannot be relied upon in the present case for the purpose of refusing to execute the measure of inquiry requested.

A person brought proceedings before the Italian courts in order to have recognised his parentage with regard to his putative father, whose body is buried in France. In order to draw up a genetic expert's report post-mortem, the Italian court requested the French court with jurisdiction, pursuant to the Regulation on the cross-border taking of evidence, to exhume the body of the putative father and collect a DNA sample.

However, French law prohibits, in the absence of express consent given during the lifetime of the person concerned, such post-mortem genetic identification for the purposes of proceedings establishing parentage. The French court asks the Court of Justice whether that substantive national rule is capable of justifying the refusal to execute the measure of inquiry concerned.

The Court replies that the Regulation on the cross-border taking of evidence does not allow a requested court to refuse to execute a request for a measure of inquiry seeking the taking of evidence consisting of a genetic sample, collected after exhumation of the body of the putative parent, by justifying that refusal on the ground that a rule of national substantive law prohibits the taking of that evidence.

**That regulation is strictly limited to the procedural aspects of the taking of evidence** in judicial proceedings with cross-border effects. The decision to order a measure of inquiry is a matter for the court adjudicating on a dispute in a civil or commercial matter, whereas the requested court is responsible for executing that measure of inquiry in accordance with the procedural rules of its Member State.

In addition, the grounds on which a request for a measure of inquiry may be refused are exhaustively listed in the Regulation and must be interpreted strictly. **A requested court therefore may not rely on a rule of its substantive national law**, including a rule derived from fundamental principles of its legal order, in order to refuse to execute a request for a measure of inquiry.

Lastly, it is for the requesting court alone to verify that the measure of inquiry which it orders in judicial proceedings pending before it is consistent with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union ('the Charter').

In the present case, as regards the questions of the French court concerning the respect for the right to human dignity enshrined in Article 1 of the Charter, it is not apparent in any way from the file before the Court that, when weighing up the competing interests in the present case, the Italian court failed to give proper consideration to that right. In addition, no systematic risk of infringement of fundamental rights before the Italian courts can be identified here. Accordingly, it is not warranted for the French court to verify whether the Italian court in fact complied with the fundamental rights guaranteed by the Charter with a view to derogating from the principle of mutual trust and refusing on that basis the execution of the measure of inquiry requested.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup> The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

<sup>2</sup> [Regulation \(EU\) 2020/1783](#) of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence).