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Judgment of the Court in Case C-743/24 | [Alchaster II] ¹

Arrest warrants issued by the United Kingdom: a hardening of the conditions for release on licence does not, in principle, preclude the surrender of the requested person

Such hardening does not, in principle, amount to the imposition of a heavier penalty than the one initially provided for

The Supreme Court of Ireland, for the second time, is referring a question to the Court of Justice in a case in which the Irish authorities question whether a person suspected of having committed a series of criminal offences in the United Kingdom should be surrendered to the latter State under the relevant provisions of the Trade and Cooperation Agreement (TCA) ² between the European Union and the United Kingdom.

A District Judge of the Magistrates' Courts of Northern Ireland (United Kingdom) issued four arrest warrants in respect of a person suspected of having committed terrorism-related offences in Northern Ireland. Before the Supreme Court of Ireland, he claimed that his surrender would be incompatible with the principle that offences and penalties must be defined by law because of an unfavourable change to the rules on release on licence adopted by the United Kingdom after the alleged commission of the offences at issue.

In its judgment in *Alchaster*, ³ in response to the first request for a preliminary ruling, the Court held that a judicial authority of a Member State must examine whether the surrender of a person to the United Kingdom pursuant to an arrest warrant is liable to infringe that person's rights under Article 49(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), which prohibits, in particular, the retroactive imposition of a heavier penalty. At the end of that examination, the executing judicial authority may refuse to execute the arrest warrant only if, after having requested additional information and guarantees, it has specific and updated information proving that the person could be sentenced to a heavier penalty than the one that was initially provided for on the date of the alleged commission of the offence.

By its second request for a preliminary ruling, the Supreme Court of Ireland asks whether the prohibition laid down in the Charter on imposing a 'heavier penalty' than the one that was applicable at the time when the offence was allegedly committed covers a situation where the conditions for release on licence have been hardened.

The Court's reply is that **a change which requires a detainee to serve at least two thirds of his or her sentence before being eligible for release on licence, on the condition that a specialised authority considers that his or her continued imprisonment is no longer necessary for the protection of society, but which provides, in any event, for such release on licence one year before the end of the sentence, is not regarded as imposing a heavier penalty, even though the previous regime allowed for automatic release on licence after the completion of half of the sentence in custody.**

The Court considers that the fact that a change to the licence regime leads to a hardening of the detention situation does not necessarily have to be regarded as entailing the imposition of a heavier sentence. That consideration

stems from the separation between the concept of 'penalty', understood as the sentence handed down or capable of being handed down, on the one hand, and that of measures relating to the 'execution' or 'enforcement' of the penalty, on the other.

In so far as the changes do not, in essence, repeal the possibility of such release and do not lead to an increase in the intrinsic seriousness of the penalty provided for on the date of the alleged commission of the offences at issue, their application to offences committed before their entry into force does not infringe the fundamental right guaranteed by the Charter not to be given a heavier sentence than the one that was applicable at the time the offence was allegedly committed.

The Court considers that a regime such as the one that would apply in the event of the surrender to the United Kingdom of the person concerned preserves the possibility for release on licence. It also notes that removing the obligation to release that person on licence automatically after he or she has completed half of the sentence in custody does not lead to an extension of the maximum period in which that person could, ultimately, be placed in custody. Furthermore, the application of a criterion based on the danger posed by the sentenced person at the time of his or her possible release on licence is, by its nature, linked to the execution of the penalty.

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 EU law or the validity of an EU 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.

Unofficial document for media use, not binding on the Court of Justice.

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

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.

² Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part.

³ Judgment of the Court of 29 July 2024, [*Alchaster*], [C-202/24](#) (see also press release [No 117/24](#)).