



PRESS RELEASE No 152/25

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Advocate General's Opinion in Case C-528/24 | [Boothnesse] ¹

AG Medina: Under the EU-UK Trade and Cooperation Agreement, the rule of speciality is an enforceable essential procedural guarantee

In today's Opinion, Advocate General Laila Medina considers, for the first time, the scope of the rule of speciality contained in the Trade and Cooperation Agreement concluded between the European Union and the United Kingdom (the "TCA"). ² That rule prevents a person surrendered under the TCA from being prosecuted, sentenced or otherwise deprived of liberty for an offence committed prior to surrender other than the offence for which surrender was granted.

Three individuals, LQ, NT and RM, are the subject of arrest warrants issued by the Portsmouth Magistrates' Court (United Kingdom – UK) for the purpose of prosecuting them for alleged fraud. Before the Irish courts, they objected to the surrender on the ground that, in earlier proceedings before the Reading Crown Court (United Kingdom – UK), they had been sentenced in their absence to six months' imprisonment for contempt of court for failing to comply with restraint orders. Under English law, that contempt is classified as civil rather than criminal and was therefore not included in the arrest warrants. The Supreme Court (Ireland) referred questions to the Court of Justice concerning whether the contempt of court in question may constitute an "offence" within the meaning of Article 625(2) TCA, and whether surrender must be refused where there is a risk that the persons concerned may be prosecuted, sentenced or otherwise deprived of liberty for such conduct after surrender.

The Advocate General observes that, unlike the European Arrest Warrant, **the surrender mechanism under the TCA is not founded on mutual trust but on reciprocal cooperation subject to safeguards. Within the EU legal order, provisions of Part Three of the TCA – such as those governing surrender – may confer directly enforceable rights on individuals. The TCA forms part of EU law, which means that its interpretation must be consistent with the Charter of Fundamental Rights of the European Union, in particular Article 6, Article 47 and Article 49(1) thereof, which safeguard the right to liberty, effective judicial protection and the legality and foreseeability of penalties.**

In that context, Advocate General Medina proposes that the term "offence" in Article 625(2) TCA requires an autonomous interpretation, independent of the issuing State's formal classification. The relevant criterion is whether the conduct and sanction at issue are criminal in nature, assessed according to the Court's judgment in *Bonda*, ³ which reflects the criteria developed by the European Court of Human Rights for determining whether a measure is criminal. The severity of the sanction is an important indicator.

The Advocate General further emphasises that **the rule of speciality constitutes an enforceable essential procedural guarantee, protecting both the sovereignty of the executing State and the rights of the individual concerned. It must therefore be capable of being invoked by that individual before the courts of Member States.**

In practice, the executing judicial authority must determine whether contempt of court falls within the scope of

Article 625(2) TCA (96). That requires an independent evaluation based on the *Bonda* criteria. If that judicial authority determines that a conduct or a sanction is criminal in nature, that authority must then determine, on the basis of objective, reliable and specific information, whether there are substantial grounds for believing that the person would face prosecution, sentencing or otherwise deprivation of liberty for that conduct after surrender, in breach of Article 625(2) of the TCA.

If necessary, the authority must seek additional guarantees from the issuing State to ensure full respect for the rule of speciality. If such guarantees are absent or insufficient, surrender must be refused.

Advocate General Medina proposes that **the TCA, read in conjunction with the Charter, precludes surrender in circumstances where the contempt, while classified as civil under the law of the issuing State, is criminal in nature according to the executing judicial authority and where a real risk persists that the person concerned would, after surrender, be detained in breach of the rule of speciality, unless the issuing State provides adequate guarantees that no such detention will occur.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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.

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The [full text](#) of the Opinion is 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 party 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.

³ Judgment of the Court of 5 June 2012, *Bonda*, [C-489/10](#); see also [Press Release No. 71/12](#).