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Judgment of the Court in Case C-202/24 | [Alchaster] ¹

Arrest warrants issued by the United Kingdom: the Court clarifies the conditions under which they may be executed in the European Union

Since the withdrawal of the United Kingdom from the European Union, the execution of arrest warrants issued by the United Kingdom in the European Union is governed by the Trade and Cooperation Agreement (TCA) between the European Union and the United Kingdom. The Court holds that the judicial authorities of the Member States requested to execute such a warrant must undertake an independent examination of the risk of a breach of the Charter of Fundamental Rights of the European Union which the person concerned claims to run if he or she is surrendered to the United Kingdom. The surrender mechanism provided for by the TCA differs from the one provided for by the Framework Decision on European arrest warrants.

The Trade and Cooperation Agreement (TCA) ² between the European Union and the United Kingdom to regulate their relations after Brexit provides, inter alia, for judicial cooperation in criminal matters based on a mechanism of surrender pursuant to an arrest warrant.

A district judge of the Magistrates' Courts of Northern Ireland (United Kingdom) issued four arrest warrants against a person suspected of having committed terrorist offences. In his appeal to the Supreme Court of Ireland, the interested party 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 suspected commission of the offences in question.

The Supreme Court of Ireland states that the Supreme Court of the United Kingdom has already concluded that those rules are compatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) ³ and that, in that context, the Supreme Court of Ireland has already rejected the argument of the interested party concerning a risk of violation of the ECHR. Asking whether the same conclusion could be drawn in respect of the principle that offences and penalties must be defined by law, enshrined in the Charter of Fundamental Rights of the European Union ('the Charter') ⁴, it referred a question to the Court of Justice on that point.

In today's judgment, the Court clarifies the role to be played by the executing judicial authority of a Member State in the event that a person who is the subject of an arrest warrant on the basis of the TCA claims that he or she will run a risk of a breach of that principle if surrendered to the United Kingdom. The Court states that that executing judicial authority must undertake an independent examination of that risk in the light of the Charter, even though a risk of a violation of the ECHR has already been ruled out.

The executing judicial authority will have to refuse to execute the arrest warrant only if, after requesting additional information and guarantees from the issuing judicial authority, it has objective, reliable, specific and properly updated information which establishes that there is a real risk that a heavier penalty will be imposed than the one initially provided for on the day on which the offence was committed.

The Court begins by pointing out that **the Framework Decision on the European arrest warrant** ⁵ **does not**

govern the execution of arrest warrants issued by the United Kingdom after the expiry of the transition period specified in the Withdrawal Agreement. ⁶ **Since that date, that execution has been governed by the TCA.** Pursuant to that agreement, a Member State may refuse to execute such an arrest warrant only for reasons arising from that agreement. In that context, when they adopt a decision to surrender a person to the United Kingdom on the basis of the TCA, the executing judicial authorities of the Member States are required to ensure respect for the fundamental rights recognised by the Charter.

The Court observes in that regard that the simplified and effective system for the surrender of convicted or suspected persons, established by the Framework Decision on the European arrest warrant, has as its basis the high level of **trust** which must exist **between the Member States** and on the **principle of mutual recognition**. That principle constitutes the ‘cornerstone’ of judicial cooperation between Member States in criminal matters. This is a specific feature of the relationship between the Member States which is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of **common values on which the European Union is founded**.

Such a level of trust can also be established by international agreements between Member States and certain third countries which have a special relationship with the European Union. However, **the TCA does not establish such a special relationship between the United Kingdom and the European Union, especially since the United Kingdom is not part of the European area without internal borders**. Furthermore, the surrender mechanism provided for by the TCA, in certain respects, differs substantially from the one provided for by the Framework Decision on the European arrest warrant.

In that context, where the requested person relies on a risk of a breach of a fundamental right enshrined in the Charter, the executing judicial authority must examine all the relevant factors in order to assess the foreseeable situation of that person if he or she is surrendered to the United Kingdom. Unlike the two-step examination ⁷ required in the context of the European arrest warrant, that assumes that both the rules and practices that are generally in place in that country and, if the principles of mutual trust and recognition are not applied, the specific features of that person’s individual situation are to be taken into account simultaneously.

Finally, as regards the change to the rules for release on licence, the Court holds that a measure relating to the execution of a sentence will be incompatible with the Charter only if it entails a change in the actual scope of the sentence provided for on the day on which the offence at issue was committed, thus resulting in the imposition of a heavier penalty than the one initially provided for.

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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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.

³ [European Convention on Human Rights](#) as amended by Protocols Nos 11 and 14, supplemented by Protocols Nos 4, 6, 7, 12, 13 and 16.

⁴ [Charter of Fundamental Rights of the European Union](#).

⁵ [Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures](#) between Member States, as amended by Council Framework Decision No 2009/299/JHA of 26 February 2009 ('the Framework Decision').

⁶ [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland](#) from the European Union and the European Atomic Energy Community.

⁷ As regards a European arrest warrant, the executing judicial authority must, as a first step, determine whether there is evidence indicating that there is a real risk of a breach, in the issuing Member State, of a relevant fundamental right on account of either systemic or generalised deficiencies, or deficiencies affecting more specifically an objectively identifiable group of persons. In the context of a second step, the executing judicial authority must determine, specifically and precisely, to what extent the deficiencies identified in the first step are liable to have an impact on the person who is the subject of a European arrest warrant and whether, having regard to his or her personal situation, there are substantial grounds for believing that that person will run a real risk of a breach of a relevant fundamental right if surrendered to the issuing Member State. The obligation to find that there are general deficiencies before being able to verify, specifically and precisely, whether the person who is the subject of a European arrest warrant runs a real risk of a breach of a fundamental right is aimed at preventing such an investigation from being conducted outside exceptional cases. It is thus the consequence of the presumption of respect for fundamental rights by the issuing Member State which stems from the principle of mutual trust.