Lingua del documento :

ECLI:EU:C:2025:230

JUDGMENT OF THE COURT (Grand Chamber)

3 April 2025 (*)

(Reference for a preliminary ruling – 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 – Surrender of a person to the United Kingdom for criminal prosecution – Risk of breach of a fundamental right – Second sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union – Principle that offences and penalties must be defined by law – Changes, to the detriment of the sentenced person, to the licence regime)

In Case C743/24 [Alchaster II], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 22 October 2024, received at the Court on 24 October 2024, in proceedings relating to the execution of arrest warrants issued against

MA,

intervening party:

The Minister for Justice and Equality,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, F. Biltgen, C. Lycourgos (Rapporteur), M.L. Arastey Sahún, D. Gratsias and M. Gavalec, Presidents of Chambers, A. Arabadjiev, I. Ziemele, J. Passer, Z. Csehi, O. Spineanu-Matei, B. Smulders, M. Condinanzi and R. Frendo, Judges,

Advocate General: D. Spielmann,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 21 January 2025,

after considering the observations submitted on behalf of:

– MA, by M. Lynam, Senior Counsel, S. Brittain, Barrister-at-Law, and C. Mulholland, Solicitor,

– the Minister for Justice and Equality and Ireland, by M. Browne, Chief State Solicitor, D. Curley, S. Finnegan and A. Joyce, acting as Agents, and by J. Fitzgerald, Senior Counsel, and A. Hanrahan, Senior Counsel,

– the United Kingdom Government, by S. Fuller, acting as Agent, and by V. Ailes, J. Pobjoy, Barristers, and J. Eadie KC,

– the European Commission, by H. Leupold, F. Ronkes Agerbeek and J. Vondung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 February 2025,

makes the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the second sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in connection with the execution, in Ireland, of four arrest warrants issued against MA by the courts of the United Kingdom of Great Britain and Northern Ireland for the purposes of conducting a criminal prosecution.

The legal framework

The ECHR

3 Article 7(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), provides:

'No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.'

European Union law

4 The 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 (OJ 2021 L 149, p. 10; 'the TCA'), includes, inter alia, Part Three, entitled 'Law Enforcement and Judicial Cooperation in Criminal Matters', which contains Articles 522 to 702 of the TCA.

5 Article 524 of the TCA provides:

'1. The cooperation provided for in this Part is based on the Parties' and Member States' long-standing respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights [adopted by the General Assembly of the United Nations on 10 December 1948] and in the [ECHR], and on the importance of giving effect to the rights and freedoms in that Convention domestically.

2. Nothing in this Part modifies the obligation to respect fundamental rights and legal principles as reflected, in particular, in the [ECHR] and, in the case of the [European] Union and its Member States, in the [Charter].'

6 Article 604 of the TCA provides:

'The execution of the arrest warrant by the executing judicial authority may be subject to the following guarantees:

…

(c) if there are substantial grounds for believing that there is a real risk to the protection of the fundamental rights of the requested person, the executing judicial authority may require, as appropriate, additional guarantees as to the treatment of the requested person after the person's surrender before it decides whether to execute the arrest warrant.'

7 Article 613(2) of the TCA provides as follows:

'If the executing judicial authority finds the information communicated by the issuing State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to … Article 604 …, be furnished as a matter of urgency and may fix a time limit for the receipt thereof …'

The dispute in the main proceedings and the question referred for a preliminary ruling

8 On 26 November 2021, the District Judge of the Magistrates' Courts of Northern Ireland (United Kingdom) issued four arrest warrants against MA for terrorist offences allegedly committed between 18 and 20 July 2020 in Northern Ireland (United Kingdom). The first of those offences incurs a maximum sentence of 10 years' imprisonment, while the other three may justify the imposition of a determinate prison sentence, an extended custodial sentence, an indeterminate custodial sentence or life imprisonment.

9 By judgment of 24 October 2022 and by orders of the same day and of 7 November 2022, the High Court (Ireland) ordered MA to be surrendered to the United Kingdom and did not grant MA leave to appeal to the Court of Appeal (Ireland).

10 By decision of 17 January 2023, the Supreme Court (Ireland), the referring court, granted MA leave to appeal against that judgment and those orders of the High Court.

11 MA submits, before the referring court, that his surrender to the United Kingdom would be incompatible with the principle that offences and penalties must be defined by law, on the ground that, in the event of being sentenced to a term of imprisonment, his possible release on licence would be governed by United Kingdom legislation which was adopted after the commission of the offences for which he is prosecuted and which is more severe than the legislation applicable at the time those offences were committed.

12 After rejecting MA's argument alleging a risk of infringement of Article 7 ECHR, the referring court considered that there was uncertainty as to the need to examine, in addition, whether there was a risk of an infringement of Article 49(1) of the Charter and, if necessary, the rules governing such examination. Consequently, on 7 March 2024, it decided to stay the proceedings and to refer a question to the Court of Justice for a preliminary ruling on the interpretation of the TCA.

13 In the judgment of 29 July 2024, *Alchaster* (C202/24, EU:C:2024:649), the Court held, in response to that question, that Article 524(2) and Article 604(c) of the TCA, read in conjunction with Article 49(1) of the Charter, must be interpreted as meaning that, where a person who is the subject of an arrest warrant issued on the basis of the TCA invokes a risk of an infringement of Article 49(1) in the event of surrender to the United Kingdom, on account of a change, which is unfavourable to that person, in the conditions for release on licence, which occurred after the alleged commission of the offence for which that person is being prosecuted, the executing judicial authority must undertake an independent examination as to the existence of that risk before deciding on the execution of that arrest warrant, in a situation where that judicial authority has already ruled out the risk of an infringement of Article 7 ECHR by relying on the guarantees offered generally by the United Kingdom as regards compliance with the ECHR and on the

possibility for that person to bring an action before the European Court of Human Rights. Following that examination, that executing judicial authority will have to refuse to execute that arrest warrant only if, after requesting additional information and guarantees from the issuing judicial authority, it has objective, reliable, specific and properly updated information establishing that there is a real risk of a change to the actual scope of the penalty provided for on the date on which the offence at issue was committed, involving the imposition of a heavier penalty than the one that was initially provided for.

14 In the light of that reply, the referring court, pursuant to Article 613(2) of the TCA, requested the United Kingdom authorities to provide further information on the United Kingdom legislation that would be applicable to MA if he were convicted of one or more of the offences for which he is being prosecuted. The District Judge of the Magistrates' Courts of Northern Ireland replied to that request on 17 September 2024.

15 On the basis, inter alia, of that answer, the referring court states that, according to the legislation which was applicable in Northern Ireland at the date of the alleged commission of the offences at issue in the main proceedings, the court imposing a determinate prison sentence had to fix a 'custodial period', not exceeding one half of the term of the sentence imposed, at the end of which the sentenced person was automatically entitled to be released on licence.

16 Under the new legislation applicable in Northern Ireland as from 30 April 2021, including offences committed before that date, a determinate prison sentence for a 'specified terrorism offence' consists of an 'appropriate custodial term', determined by the court, plus a further period of one year, for which the sentenced person is to be subject to licence; the aggregate duration of those periods may not exceed the maximum term of imprisonment provided for. That person may also be eligible for release on licence after having served two thirds of the 'appropriate custodial term' and provided that the Parole Commissioners (United Kingdom) consider that his or her continued imprisonment is not necessary for the protection of society.

17 The referring court states that MA's complaints relate exclusively to the changes made to the legislation on determinate prison sentences, with the result that the rules relating to the release on licence of a person sentenced to an extended custodial period, an indeterminate custodial sentence or a life sentence are not relevant in the case in the main proceedings.

18 That court considers that there is a real possibility of MA being sentenced to a determinate term of imprisonment in the event of his surrender to the United Kingdom. While indicating that the maximum term of the penalty provided for in respect of the first offence at issue in the main proceedings continued to be 10 years, it states that the changes to the licence regime at issue in the main proceedings mean, inter alia, that persons sentenced to such a penalty for a 'specified terrorism offence' will remain in custody for a longer period.

19 In that regard, MA and the Minister for Justice and Equality (Ireland) disagree as to the compatibility of those changes with the principle that penalties must be defined by law, in that those changes call into question a regime in which release on licence occurred automatically. In that context, the referring court asks whether those changes can still be regarded as relating solely to the execution of the penalties or whether they must, on the contrary, be regarded as retroactively altering the actual scope of the penalty incurred by MA in the event of his surrender to the United Kingdom.

20 In those circumstances, the Supreme Court decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Would the application, to a person convicted of an offence or offences and sentenced to a determinate sentence(s), of amended rules having the effect that he or she will have to serve at least [two thirds] of such sentence and then will have only a conditional right to release on licence dependent on an assessment

of dangerousness, whereas under the rules applicable at the time of the alleged offences, that person would have been automatically entitled as a matter of law to release on licence once he had served [one half] of that sentence, involve the imposition of a "heavier penalty" on the convicted person than the penalty applicable at the time of the alleged offences such as to amount to a breach of Article 49(1) of the Charter?'

Procedure before the Court

21 By order of 26 November 2024, *Alchaster II* (C743/24, EU:C:2024:983), the President of the Court decided to apply the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice to the present reference for a preliminary ruling.

Consideration of the question referred

22 By its question, the referring court asks, in essence, whether the second sentence of Article 49(1) of the Charter must be interpreted as meaning that the application, to a person who may be sentenced to a determinate term of imprisonment, of a regime under which that person must serve at least two thirds of a fixed custodial period before being eligible for release on licence, such release is conditional upon a specialised authority finding that the continued imprisonment of that person is no longer necessary for the protection of society and that person is necessarily eligible for release on licence one year before the end of the sentence imposed, constitutes the imposition of a heavier penalty, when, under the rules applicable on the date of the alleged commission of the offences at issue, he or she should automatically have been eligible for release on licence after having served half of that sentence.

23 The second sentence of Article 49(1) of the Charter provides that no heavier penalty is to be imposed than that which was applicable at the time the criminal offence was committed.

24 It follows from the case-law of the Court that Article 49 of the Charter contains, at the very least, the same guarantees as those provided for in Article 7 ECHR which must be taken into account by virtue of Article 52(3) of the Charter as a minimum threshold of protection (judgment of 29 July 2024, *Alchaster*, C202/24, EU:C:2024:649, paragraph 92 and the case-law cited).

25 Since the question referred concerns the application of changes to a licence regime to a person who is sentenced to a determinate term of imprisonment for an offence committed before the entry into force of those changes, it must be borne in mind that it follows from the case-law of the European Court of Human Rights that, for the purposes of the application of Article 7 ECHR, a distinction must be drawn between a measure that constitutes in substance a 'penalty' and a measure that concerns the 'execution' or 'enforcement' of the penalty. Thus, where the nature and purpose of a measure relate to the remission of a sentence or a change in the regime for release on licence, this does not form part of the 'penalty' within the meaning of Article 7 (ECtHR, 21 October 2013, *Del Río Prada v. Spain*, CE:ECHR:2013:1021JUD004275009, § 83, and judgment of 29 July 2024, *Alchaster*, C202/24, EU:C:2024:649, paragraph 94).

26 Since the distinction between a measure that constitutes a 'penalty' and a measure that concerns the 'execution' of a penalty is not always clear-cut in practice, it is necessary, in order to determine whether a measure concerns only the manner of execution of the sentence or, on the contrary, affects its scope, to ascertain in each case what the 'penalty' imposed or incurred actually entailed under domestic law in force at the material time or, in other words, what its intrinsic seriousness was (ECtHR, 21 October 2013, *Del Río Prada v. Spain*, CE:ECHR:2013:1021JUD004275009, §§ 85 and 90, and judgment of 29 July 2024, *Alchaster*, C202/24, EU:C:2024:649, paragraph 95).

27 In that regard, the European Court of Human Rights has confirmed that the fact that the extension of the eligibility threshold for release on licence after a conviction may have led to a hardening of the

detention situation concerned the execution of the sentence and not the sentence itself and that, therefore, it cannot be inferred from such a circumstance that the penalty imposed would be more severe than the one imposed by the trial judge (ECtHR, 31 August 2021, *Devriendt v. Belgium*, CE:ECHR:2021:0831DEC003556719, § 29, and judgment of 29 July 2024, *Alchaster*, C202/24, EU:C:2024:649, paragraph 96).

28 On the other hand, the European Court of Human Rights has held that the retroactive application of a measure consisting in converting a reducible life sentence into an irreducible life sentence is contrary to Article 7 ECHR (ECtHR, 10 November 2022, *Kupinskyy v. Ukraine*, CE:ECHR:2022:1110JUD000508418, §§ 56 and 64).

29 Accordingly, a measure relating to the execution of a sentence will be incompatible with the second sentence of Article 49(1) of the Charter only if it retroactively alters the actual scope of the penalty provided for on the date on which the offence at issue was allegedly committed, thus entailing the imposition of a heavier penalty than the one initially provided for. Although that is not, in any event, the case where that measure merely delays the eligibility threshold for release on licence, the position may be different, in particular if that measure essentially repeals the possibility of release on licence or if it forms part of a series of measures which have the effect of increasing the intrinsic seriousness of the sentence initially provided for (judgment of 29 July 2024, *Alchaster*, C202/24, EU:C:2024:649, paragraph 97).

30 It follows from the foregoing that the fact that national legislation provides, in the case of offences committed before its entry into force, for the extension of the part of a prison sentence which must necessarily be served in custody before release on licence may be ordered cannot, taken in isolation, entail an infringement of the second sentence of Article 49(1) of the Charter.

31 However, the question referred concerns changes to a licence regime which go beyond merely extending the eligibility threshold for such release. Those changes have the specific feature of calling into question a rule under which release on licence had to occur automatically when half of the sentence had been served. They thus replace that rule with a system in which release on licence, as a first step, is subject to an assessment of the dangerousness of the sentenced person by a specialised authority, after a predetermined part of the sentence imposed has been served, and then, as a second step, must occur automatically one year before the end of that sentence.

32 It is true that such a change leads, in itself, to a hardening of the detention situation. Thus, that change creates uncertainty as to when the release on licence of a sentenced person will occur and may mean, in certain cases, that such release will occur only in the final year of the sentence imposed, whereas, under the rules applicable on the date of the alleged commission of the offences at issue, that person had the certainty that he or she would automatically benefit from that regime on a date before that final year.

33 That being said, it is apparent from the case-law referred to in paragraphs 27 and 29 above that the fact that changes to the licence regime lead to a hardening of the detention situation does not necessarily have to be regarded as entailing the imposition of a heavier penalty, within the meaning of the second sentence of Article 49(1) of the Charter.

34 That finding stems from the separation between the concept of ‘penalty’, understood as being 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. It applies not only to the extension of the eligibility threshold for release on licence, but also to changes to other conditions to which the grant of a release on licence is subject or to the procedural rules governing such a grant.

35 Thus, in so far as those 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 second sentence of Article 49(1) of the Charter.

36 As regards the first of those two conditions, it should be noted that a change such as the one referred to in paragraph 31 above does not lead, either in pursuance of the law or in practice, to a repeal, in essence, of the possibility of a release on licence.

37 First, that change preserves the possibility of ordering the release on licence of the sentenced person, depending on the assessment of dangerousness of the sentenced person, once the threshold of eligibility established by the relevant national legislation has been reached.

38 In that regard, it is not apparent from the documents before the Court that the exercise of the Parole Commissioners' powers concerning release on licence could lead, in practice, to the repeal of the possibility of such release on the basis that such exercise was not subject to adequate procedural safeguards, including as regards the time limit for processing applications for release on licence.

39 Second, following a change such as that referred to in paragraph 31 above, release on licence must, in any event, automatically occur one year before the end of the sentence imposed, with the result that the view cannot be taken that that sentence must henceforth be systematically served, in its entirety, in custody.

40 As regards the second condition referred to in paragraph 35 above, it does not appear that a change such as that referred to in paragraph 31 above forms part of a series of measures which have the effect of aggravating the intrinsic nature of the penalty initially provided for.

41 In that regard, it should be noted that this a change does not extend the maximum duration of the determinate prison sentence applicable for an offence, the execution of which will be covered by the licence regime resulting from the change. It is also apparent from the order for reference that the maximum duration of the penalty applicable for the first offence at issue in the main proceedings continued to be 10 years.

42 The length of the prison sentence to be imposed by the criminal court constitutes, both under that regime and under the rules governing release on licence that were applicable on the date of the alleged commission of the offences at issue, the maximum period in which the sentenced person could, ultimately, be placed in custody.

43 Both licence regimes mentioned in the question referred entail the possibility that the person who was eligible for such release may be detained again, within the limits of the period of imprisonment fixed at the time of his or her sentencing, if that person's conduct justifies the revocation of that release. Neither of those regimes therefore provides that person with a guarantee that he or she will remain free for a predetermined part of the prison sentence to be imposed by the criminal court.

44 Furthermore, as regards the conditions for release on licence resulting from a change such as that referred to in paragraph 31 above, the criterion relating to the dangerousness of the sentenced person as assessed at the time of the possible release on licence constitutes, as the Advocate General observed in point 96 of his Opinion, a standard criterion in prison policies. Such a criterion, in so far as it presupposes a prospective assessment of the foreseeable conduct of the sentenced person in the light of his or her situation as it stands after that person has served a substantial part of his or her sentence in custody, involves an assessment of a different nature from that which was initially carried out when the sentence was handed down and is therefore linked to the execution of the penalty.

45 In that regard, it is not apparent from the documents before the Court that the Parole Commissioners have a purely discretionary power that goes beyond the discretion relating to the assessment, inter alia, of

the dangerousness of the sentenced person after that person has served a substantial part of his or her sentence in custody. In particular, it is not apparent from those documents that those commissioners could rely on criminal policy considerations independent of that assessment.

46 In those circumstances, neither the fact that changes to the licence regime such as those at issue in the main proceedings concern only certain categories of sentenced persons nor the reasons underlying those changes mean that they are incompatible with the second sentence of Article 49(1) of the Charter. That fact and those reasons have no implications in terms of the effects of those changes on the objective situation of those persons, with the result that they cannot, as such, lead to the conclusion that those changes entail the application of a heavier penalty to those persons.

47 In the light of all those factors, the answer to the question referred is that the second sentence of Article 49(1) of the Charter must be interpreted as meaning that the application, to a person who may be sentenced to a determinate term of imprisonment, of a regime under which that person must serve at least two thirds of a fixed custodial period before being eligible for release on licence, such release is conditional upon a specialised authority finding that the continued imprisonment of that person is no longer necessary for the protection of society and that person is necessarily eligible for release on licence one year before the end of the sentence imposed, does not constitute the imposition of a heavier penalty, when, under the rules applicable on the date of the alleged commission of the offences at issue, he or she should automatically have been eligible for release on licence after having served half of that sentence.

Costs

48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

The second sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the application, to a person who may be sentenced to a determinate term of imprisonment, of a regime under which that person must serve at least two thirds of a fixed custodial period before being eligible for release on licence, such release is conditional upon a specialised authority finding that the continued imprisonment of that person is no longer necessary for the protection of society and that person is necessarily eligible for release on licence one year before the end of the sentence imposed, does not constitute the imposition of a heavier penalty, when, under the rules applicable on the date of the alleged commission of the offences at issue, he or she should automatically have been eligible for release on licence after having served half of that sentence.

[Signatures]

* Language of the case: English.

i 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.