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Advocate General's Opinion in Case C-743/24 | [Alchaster II] [1]

AG Spielmann: Arrest Warrants under the TCA with the United Kingdom – changes in parole rules do not, in principle, fall under the concept of "heavier penalty" under the EU Charter

The Irish Supreme Court refers, for a second time, a question to the Court in a matter concerning a case in which the Irish authorities are in doubt as to whether a person alleged to have committed a series of offences under the law of the United Kingdom can be surrendered to the United Kingdom under the relevant provisions of the Trade and Cooperation Agreement (TCA) [2] between the EU and the United Kingdom.

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.

In *Alchaster,* [3] replying to the first reference, the Court held that Member State judicial authorities must independently check whether sending a person to the UK in execution of a warrant could violate their rights under the Charter of Fundamental Rights of the EU. [4] Following that examination, that executing judicial authority could refuse to carry out the arrest warrant only if, after asking for more details and assurances, it had clear and updated proof that the person might face a heavier penalty than what was originally set when the crime was committed.

In this second reference, the Supreme Court is asking whether the concept of a "heavier penalty" under the Charter includes a situation where the rules governing the parole regime have changed.

In today's Opinion, Advocate General Dean Spielmann advises the Court that **the concept of a "heavier penalty" under the Charter does not include changes in parole rules where automatic release after serving half a sentence is replaced with conditional release after serving at least two-thirds, subject to an assessment conducted by Parole Commissioners.**

AG Spielmann observes that the present case revolves around the difference between the imposition and the execution of a penalty, noting that the distinction between the two, while straightforward in theory, is sometimes difficult to draw in practice.

He notes that Article 49(1) of the Charter, modelled on Article 7 of the European Convention on Human Rights (ECHR), [5] encompasses the principle of legality pursuant to which no one is to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. This principle also means that no heavier penalty is to be imposed than the one that was applicable at the time the criminal offence was committed. AG Spielmann stresses that according to the traditional and consistent case-law of the European Court of Human Rights, the UN Human Rights Committee as

well as most national legal orders, the principle of non-retroactivity applies to penalties only, and not to their execution.

Following a review of the relevant case law of the European Court of Human Rights, AG Spielmann finds that where the nature and purpose of a measure relates to the remission of a sentence or a change in regime for early release, this does not form part of the 'penalty' within the meaning of Article 7(1) ECHR. Applying these results to the present case, AG Spielmann examines the legislative changes to the UK parole system and concludes that in his consideration, the amended measures refer to the execution of a sentence. As they do not affect the intrinsic nature of the sentence initially provided for, they fall outside the scope of Article 7(1) ECHR.

Finally, AG Spielmann notes that there is no discernible constitutional tradition common to the Member States to the effect that the scope of Article 49(1) of the Charter would or should be broader than that of Article 7(1) ECHR.

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.

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 29 July 2024, [*Alchaster*], C-202/24 (see also Press Release No 117/24).

[4] Charter of Fundamental Rights of the European Union.

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