

ECJ: Surrender to UK Can Be Done Despite Hardening of Conditions for Release

News

Thomas Wahl

On 3 April 2025, the ECJ ruled in [Case C-743/24 \(Alchaster II\)](#) that a hardening of the conditions for release on licence from custody against a requested person does not, in principle, preclude surrender of that person from an EU country to the UK.

Background of the case

In its judgment *Alchaster I* of 29 July 2024 (→ [eucrim 2/2024, 137-138](#)), the ECJ, at the request of the Irish Supreme Court, clarified the conditions under which arrest warrants issued by the United Kingdom can be executed in the EU. In particular, the ECJ defined the limits under which violations of fundamental rights in the United Kingdom can lead to the refusal of extradition under the Trade and Cooperation Agreement (TCA) between the European Union and the United Kingdom. The Irish Supreme Court has again referred the matter to the ECJ for a preliminary ruling in the same surrender proceedings. It now wishes to know, in a specific application of the fundamental rights test established by the Luxembourg Court in *Alchaster I*, whether the term "heavier penalty" enshrined in Art. 49(1), second sentence CFR also covers cases in which the rules on release on licence have changed.

In the main proceedings, a person is sought for terrorism-related offences by authorities in Northern Ireland. In the extradition proceedings in Ireland, the requested person argued, in particular, that Northern Ireland changed the licence regime for sentences of imprisonment to his detriment: On the date of the alleged commission of the offences at issue (July 2020), he could automatically have been eligible for release on licence after having served half of that sentence. As from 30 April 2021, under amended rules, he has a right to release on licence only if he has served at least two thirds of such sentence and under the condition that an assessment of dangerousness by a specialised authority is negative. He claims that this amendment infringes the principle that offences and penalties must be defined by law as provided for in Art. 49(1) CFR. The Irish Supreme Court wondered whether this is really the case here so that surrender may be denied by Ireland due to the UK risking an infringement of this fundamental Charter right.

The ECJ's judgment

Referring to the case law of the European Court of Human Rights on Art. 7 ECHR, [the judges in Luxembourg state](#) 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 Art. 49(1) CFR.

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The ECJ explains this finding as follows: "[It] 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. 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."

According to the ECJ, a convicted person preserves the possibility for release on licence also with the new regime. The extension of the period of possible release also leaves unchanged the maximum period in which the person concerned can 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.

In sum, there should be no obstacle for surrender of the requested person.

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