



Reference for a preliminary ruling from Supreme Court (Ireland) made on 14 March 2024 – Criminal proceedings against MA

(Case C-202/24, Alchaster ⁽¹⁾)

(C/2024/3592)

Language of the case: English

Referring court

Supreme Court

Criminal proceedings against

MA

Question referred

1. Where, pursuant to the Trade and Cooperation agreement of 30.12.2020 ⁽²⁾ (incorporating the provisions of the Framework Decision of 13 June 2002 in respect of the surrender of persons pursuant to European arrest warrants ⁽³⁾) surrender is sought for the purposes of prosecution on terrorist offences and the individual seeks to resist such surrender on the basis that he contends that it would be a breach of Art. 7 of the ECHR and Art. 49(2) of the Charter of Fundamental Rights of the European Union on the basis that a legislative measure was introduced altering the portion of a sentence which would be required to be served in custody and the arrangements for release on parole and was adopted after the date of the alleged offence in respect of which his surrender is sought and, where the following considerations apply
 - a) The requesting state (in this case the UK) is a party to the ECHR and gives effect to the Convention in its domestic law pursuant to the Human Rights Act, 1998;
 - b) The application of the measures in question to prisoners already serving a sentence imposed by a court, has been held by the courts of the United Kingdom (including the Supreme Court of the United Kingdom) to be compatible with the Convention;
 - c) It remains open to any person including the individual if surrendered, to make a complaint to the European Court of Human Rights;
 - d) There is no basis for considering that any decision of the European Court of Human Rights would not be implemented by the requesting state;
 - e) Accordingly, the Court is satisfied that it has not been established that surrender involves a real risk of a violation of Art. 7 of the Convention or the Constitution ;
 - f) It is not suggested that surrender is precluded by Art. 19 of the Charter;
 - g) Article 49 of the Charter does not apply to the trial or sentencing process;
 - h) It has not been submitted that there is any reason to believe there is any appreciable difference in the application of Art. 7 of the Convention and Art. 49 of the Charter;

Is a court against whose decision there is no right of appeal for the purposes of Article 267(3) TFEU, and having regard to Art. 52(3) of the Charter and the obligation of trust and confidence between member states and those obliged to operate surrender to the EAW provisions pursuant to the Trade and Cooperation Agreement, entitled to conclude that the requested person has failed to establish any real risk that his surrender would be a breach of Art. 49(2) of the Charter or is such a court obliged to conduct some further inquiry, and if so, what is the nature and scope of that inquiry?

⁽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⁾ OJ 2021, L 149, p. 10.

⁽³⁾ OJ 2002, L 190, p.1.