



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

29 July 2024*

(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 – Surrender of a person to the United Kingdom for criminal prosecution – Competence of the executing judicial authority – Risk of breach of a fundamental right – Article 49(1) and Article 52(3) 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 that person, to the licence regime)

In Case C-202/24 [Alchaster],ⁱ

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 7 March 2024, received at the Court on 14 March 2024, in proceedings relating to the execution of arrest warrants issued against

MA,

intervening party:

Minister for Justice and Equality,

THE COURT (Grand Chamber)

composed of K. Lenaerts, President, L. Bay Larsen (Rapporteur), Vice-President, K. Jürimäe, C. Lycourgos, E. Regan, T. von Danwitz, F. Biltgen and Z. Csehi, Presidents of Chambers, S. Rodin, A. Kumin, N. Jääskinen, M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: M. Szpunar,

Registrar: A. Lamote, Administrator,

having regard to the written procedure and further to the hearing on 4 June 2024,

after considering the observations submitted on behalf of:

- 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, Barrister-at-Law,

* 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.

- MA, by S. Brittain, Barrister-at-Law, M. Lynam, Senior Counsel, C. Mulholland, Solicitor, and R. Munro, Senior Counsel,
- the Hungarian Government, by Z. Biró-Tóth and M.Z. Fehér, acting as Agents,
- 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 27 June 2024,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of 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’), in conjunction with Article 49(1) and Article 52(3) 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 by the courts of the United Kingdom of Great Britain and Northern Ireland against MA for the purposes of conducting a criminal prosecution.

Legal context

The Convention for the Protection of Human Rights and Fundamental Freedoms

- 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

Framework Decision 2002/584/JHA

- 4 Recital 6 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) states:

‘The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the “cornerstone” of judicial cooperation.’

- 5 Article 1(1) of that framework decision provides:

‘The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.’

Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

- 6 Article 126 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7) provides:

‘There shall be a transition or implementation period, which shall start on the date of entry into force of this Agreement and end on 31 December 2020.’

The TCA

- 7 Recital 23 of the TCA is drafted as follows:

‘CONSIDERING that cooperation between the United Kingdom and the [European] Union relating to the prevention, investigation, detection or prosecution of criminal offences and to the execution of criminal penalties, including the safeguarding against and prevention of threats to public security, will enable the security of the United Kingdom and the Union to be strengthened.’

- 8 Article 1 of the TCA provides:

‘This Agreement establishes the basis for a broad relationship between the Parties, within an area of prosperity and good neighbourliness characterised by close and peaceful relations based on cooperation, respectful of the Parties’ autonomy and sovereignty.’

- 9 Article 3(1) of the TCA is worded as follows:

‘The Parties shall, in full mutual respect and good faith, assist each other in carrying out tasks that flow from this Agreement and any supplementing agreement.’

10 Article 522(1) of the TCA provides:

‘The objective of this Part is to provide for law enforcement and judicial cooperation between the Member States and Union institutions, bodies, offices and agencies, on the one side, and the United Kingdom, on the other side, in relation to the prevention, investigation, detection and prosecution of criminal offences and the prevention of and fight against money laundering and financing of terrorism.’

11 Article 524 of the TCA states:

‘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].’

12 Article 596 of the TCA provides:

‘The objective of this Title is to ensure that the extradition system between the Member States, on the one side, and the United Kingdom, on the other side, is based on a mechanism of surrender pursuant to an arrest warrant in accordance with the terms of this Title.’

13 Article 599(3) of the TCA is worded as follows:

‘Subject to Article 600, points (b) to (h) of Article 601(1), and Articles 602, 603 and 604, a State shall not refuse to execute an arrest warrant issued in relation to the following behaviour where such behaviour is punishable by deprivation of liberty or a detention order of a maximum period of at least 12 months:

(a) the behaviour of any person who contributes to the commission by a group of persons acting with a common purpose of one or more offences in the field of terrorism referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, done at Strasbourg on 27 January 1977 ..., or

(b) terrorism as defined in Annex 45.’

14 Articles 600 and 601 of the TCA respectively list the grounds for mandatory non-execution of the arrest warrant.

15 Article 602(1) and (2) of the TCA provides:

‘1. The execution of an arrest warrant may not be refused on the grounds that the offence may be regarded by the executing State as a political offence, as an offence connected with a political offence or as an offence inspired by political motives.

2. However, the United Kingdom and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation that paragraph 1 will be applied only in relation to:

- (a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;
- (b) offences of conspiracy or association to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, if those offences of conspiracy or association correspond to the description of behaviour referred to in Article 599(3) of this Agreement; and
- (c) terrorism as defined in Annex 45 to this Agreement.’

16 Article 603(1) and (2) of the TCA provides:

‘1. The execution of an arrest warrant may not be refused on the grounds that the requested person is a national of the executing State.

2. The United Kingdom, and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on Law Enforcement and Judicial Cooperation that that State’s own nationals will not be surrendered or that the surrender of their own nationals will be authorised only under certain specified conditions. The notification shall be based on reasons related to the fundamental principles or practice of the domestic legal order of the United Kingdom or the State on behalf of which a notification was made. In such a case, the Union, on behalf of any of its Member States or the United Kingdom, as the case may be, may notify the Specialised Committee on Law Enforcement and Judicial Cooperation within a reasonable time after the receipt of the other Party’s notification that the executing judicial authorities of the Member State or the United Kingdom, as the case may be, may refuse to surrender its nationals to that State or that surrender shall be authorised only under certain specified conditions.’

17 Article 604(c) 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.’

18 Article 613(2) of the TCA states:

‘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 597, Articles 600 to 602, Article 604 and Article 606, 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

- 19 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, some of which may justify the imposition of a life prison sentence.
- 20 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).
- 21 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.
- 22 MA claims 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.
- 23 In that regard, that court notes that the TCA provides for a surrender mechanism applicable between the United Kingdom and the Member States. In the light of the identity between that mechanism and the mechanism established by Framework Decision 2002/584 and the Irish legislation transposing that framework decision and the TCA, it considers that, under that Irish legislation and that framework decision, the United Kingdom must be treated as if it were a Member State.
- 24 That court states that, in the event of MA being surrendered to the United Kingdom and sentenced to a term of imprisonment, MA's possible release on licence will be governed by United Kingdom legislation adopted after the suspected commission of the offences in respect of which he is prosecuted.
- 25 The regime permitting release on licence in Northern Ireland (United Kingdom) was amended with effect from 30 April 2021. Before that amendment, a person convicted of certain terrorist offences could be granted automatic release on licence after serving half of his or her sentence. Under the regime in force from that date, the release on licence of such a person must be approved by a specialised authority and may take place only after that person has served two thirds of his or her sentence.
- 26 In that regard, the referring court states that the European Court of Human Rights rejected the argument that retroactive changes to systems for remission or early release constituted a violation of Article 7 ECHR. However, the European Court of Human Rights held, in the judgment of 21 October 2013, *Del Río Prada v. Spain* (CE:ECHR:2013:1021JUD004275009), that measures taken during the execution of a sentence may affect its scope. It is therefore essential, in order to rule on the dispute in the main proceedings, to determine whether that judgment constitutes a change to the earlier case-law of the European Court of Human Rights.
- 27 By judgment of 19 April 2023, the Supreme Court of the United Kingdom held that the application of the new licence regime, as from 30 April 2021, to offences committed before its entry into force is not incompatible with Article 7 ECHR, in so far as that regime amends only the way in which the custodial sentences of the persons concerned are to be executed without increasing the duration of those sentences.

- 28 In that context, in the light, in particular, of the guarantees provided by the United Kingdom judicial system as regards the application of the ECHR, the failure to demonstrate the existence of a systemic deficiency that would suggest a probable and flagrant violation of the rights guaranteed by the ECHR in the event of MA being surrendered, and MA's ability to make an application to the European Court of Human Rights, the referring court rejected MA's argument alleging a risk of a breach of Article 7 ECHR.
- 29 The referring court is uncertain, however, whether a similar conclusion may be reached with regard to a risk of infringement of Article 49(1) of the Charter.
- 30 That court observes, in that regard, that, in so far as Article 49(1) of the Charter corresponds to Article 7(1) ECHR, those two provisions must in principle be given the same scope, in accordance with Article 52(3) of the Charter. Therefore, reliance on the reasoning adopted in relation to Article 7(1) ECHR could be envisaged, without carrying out further checks.
- 31 However, the Court of Justice has not yet ruled on the implications of Article 49 of the Charter as regards an amendment of national provisions relating to release on licence.
- 32 Furthermore, given that the executing State is required to surrender the requested person, it is necessary to assess whether that State is competent to rule on an argument alleging that provisions relating to sentences that may be imposed in the issuing State are incompatible with Article 49(1) of the Charter, where the latter State is not required to comply with the Charter and the Court of Justice has laid down stringent requirements relating to consideration of a risk of a breach of fundamental rights in the issuing Member State.
- 33 Accordingly, the referring court considers it necessary to ask the Court of Justice about the criteria which the executing judicial authority must apply in order to assess whether there is a risk of a breach of the principle of legality in respect of criminal penalties in circumstances where surrender is not precluded either by the national Constitution or by the ECHR.
- 34 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:

'Where, pursuant to the [TCA], 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 [Article] 7 [ECHR] and [Article] 49(1) of the [Charter] 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 [licence] and was adopted after the date of the alleged offence in respect of which his surrender is sought and, where the following considerations apply:

- (i) the requesting state (in this case the [United Kingdom]) is a party to the ECHR and gives effect to [the ECHR] in its domestic law ...;
- (ii) 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 ... to be compatible with the [ECHR];
- (iii) it remains open to any person including the individual if surrendered, to make a complaint to the European Court of Human Rights;

- (iv) there is no basis for considering that any decision of the European Court of Human Rights would not be implemented by the requesting state;
- (v) accordingly, the Supreme Court is satisfied that it has not been established that surrender involves a real risk of a violation of [Article] 7 [ECHR] or the [national] Constitution;
- (vi) it is not suggested that surrender is precluded by [Article] 19 of the Charter;
- (vii) Article 49 of the Charter does not apply to the trial or sentencing process;
- (viii) it has not been submitted that there is any reason to believe there is any appreciable difference in the application of [Article] 7 [ECHR] and [Article] 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 [Article] 52(3) of the Charter and the obligation of trust and confidence between Member States and those obliged to operate surrender to the [European arrest warrant] provisions pursuant to the [TCA], entitled to conclude that the requested person has failed to establish any real risk that his surrender would be a breach of [Article] 49([1]) 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?

Procedure before the Court

- 35 By order of 22 April 2024, *Alchaster* (C-202/24, EU:C:2024:343), the President of the Court decided to initiate the expedited preliminary ruling procedure provided for in Article 105(1) of the Rules of Procedure of the Court of Justice.

Consideration of the question referred

- 36 As a preliminary point, since the national court refers, both in the grounds of the order for reference and in the wording of its question, to Framework Decision 2002/584, it must be borne in mind, as the Advocate General stated in point 33 of his Opinion, that it follows from Article 1(1) of that framework decision that its scope is limited to the execution of European arrest warrants issued by the Member States. It follows that that framework decision does not govern the execution of arrest warrants, such as those at issue in the main proceedings, issued by the United Kingdom after the expiry of the transition period on 31 December 2020, in accordance with Article 126 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.
- 37 Accordingly, the Court of Justice takes the view that, by its question, the referring court asks, in essence, whether 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 that agreement invokes a risk of a breach 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 assess 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 a breach 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.

- 38 In that regard, even if, formally, the referring court has not referred in its question to any specific provision of the TCA, that does not, however, prevent the Court of Justice from providing the referring court with all the elements of interpretation of EU law which may be of assistance in adjudicating in the case pending before it, whether or not the referring court has specifically referred to them in the wording of its question (see, by analogy, judgment of 18 April 2023, *E.D.L. (Ground for refusal based on illness)*, EU:C:2023:295, paragraph 29).
- 39 Article 1 of the TCA provides that that agreement establishes the basis for a broad relationship between the European Union and the United Kingdom, within an area of prosperity and good neighbourliness characterised by close and peaceful relations based on cooperation, respectful of the parties' autonomy and sovereignty.
- 40 To that end, the TCA seeks, inter alia, as is apparent from recital 23 of that agreement, to enhance the security of the European Union and of the United Kingdom by allowing cooperation relating to the prevention, investigation, detection or prosecution of criminal offences and to the execution of criminal penalties, including the safeguarding against and prevention of threats to public security.
- 41 That specific objective, which forms part of the general objective of the TCA set out in Article 1 of that agreement (see, to that effect, judgment of 16 November 2021, *Governor of Cloverhill Prison and Others*, C-479/21 PPU, EU:C:2021:929, paragraph 67), is implemented in Part Three of that agreement, as stated in Article 522(1) thereof.
- 42 As regards the general conditions for the application of Part Three, Article 524(1) of the TCA stipulates that the cooperation provided for in Part Three is based on the long-standing respect of the European Union, the United Kingdom and the Member States 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 and in the ECHR, and on the importance of giving effect to the rights and freedoms in the ECHR domestically.
- 43 In the context of that cooperation, Title VII of Part Three has the objective, in accordance with Article 596 of the TCA, of ensuring that the extradition system between the Member States, on the one side, and the United Kingdom, on the other side, is based on a mechanism of surrender pursuant to an arrest warrant in accordance with the terms of that title.
- 44 Articles 600 and 601 of the TCA set out the cases in which the execution of an arrest warrant issued on the basis of that agreement must or may be refused.
- 45 In addition, Articles 602 and 603 of the TCA lay down the rules relating, respectively, to the political offence exception and to the nationality exception, while Article 604 of that agreement defines the guarantees to be provided by the issuing State in more specific cases.
- 46 Although no provision of the TCA expressly provides that the Member States are required to act upon an arrest warrant issued by the United Kingdom on the basis of that agreement, it follows from the structure of Title VII of Part Three of that agreement and in particular from the respective functions of Articles 600 to 604 of that agreement that, as the Advocate General stated

in point 69 of his Opinion, a Member State may refuse to execute such an arrest warrant only for reasons arising from the TCA (see, by analogy, judgment of 14 September 2023, *Sofiyska gradska prokuratura and Others (Successive arrest warrants)*, C-71/21, EU:C:2023:668, paragraph 48).

- 47 As regards, more specifically, a situation such as that at issue in the main proceedings, Article 599(3) of the TCA, moreover, specifically provides that, subject to Article 600, Article 601(1)(b) to (h) and Articles 602 to 604 of that agreement, a State is not under any circumstances to refuse to execute an arrest warrant related, inter alia, to terrorism, where the offences in question are punishable by deprivation of liberty or a detention order for a maximum period of at least 12 months.
- 48 Although it follows from the foregoing that an executing judicial authority is in principle required to give effect to an arrest warrant such as those at issue in the main proceedings, the fact remains that Article 524(2) of the TCA states that no provision of Part Three of that agreement alters the obligation to respect fundamental rights and legal principles as set out, in particular, in the ECHR and, in the case of the European Union and its Member States, in the Charter.
- 49 The obligation to comply with the Charter, recalled in Article 524(2), is binding on the Member States when they decide on the surrender of a person to the United Kingdom, given that a decision on such surrender constitutes an implementation Union law within the meaning of Article 51(1) of the Charter. The executing judicial authorities of the Member States are therefore required, when adopting that decision, to ensure respect for the fundamental rights afforded by the Charter to the person who is the subject of an arrest warrant issued on the basis of the TCA, without the fact that the Charter is not applicable to the United Kingdom being relevant in that regard (see, by analogy, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraphs 52 and 53).
- 50 Those rights include, in particular, the rights arising from Article 49(1) of the Charter, which states, inter alia, that no heavier penalty is to be imposed than that which was applicable at the time the criminal offence was committed.
- 51 Accordingly, the existence of a risk of a breach of those rights is capable of permitting the executing judicial authority to refrain, following an appropriate examination, from giving effect to an arrest warrant on the basis of the TCA (see, by analogy, judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 59; of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 72, and of 21 December 2023, *GN (Ground for refusal based on the best interests of the child)*, C-261/22, EU:C:2023:1017, paragraph 43).
- 52 As regards the manner in which such an examination is carried out, it is apparent from the Court's case-law on Framework Decision 2002/584 that the assessment, during a procedure for the execution of a European arrest warrant, of whether there is real risk of a breach of the fundamental rights enshrined in Articles 4, 7, 24 and 47 of the Charter must, in principle, be carried out by means of an examination in two separate steps which cannot overlap with one another, in so far as they involve an analysis on the basis of different criteria, and which must therefore be carried out in turn (see, to that effect, judgments of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 89 to 94; of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraphs 60, 61 and 68; of 18 April 2023, *E.D.L. (Ground for refusal based on*

illness), C-699/21, EU:C:2023:295, paragraph 55, and of 21 December 2023, *GN (Ground for refusal based on the best interests of the child)*, C-261/22, EU:C:2023:1017, paragraph 46 and the case-law cited).

- 53 To that end, the executing judicial authority must, as a first step, determine whether there is objective, reliable, specific and properly updated information to demonstrate that there is a real risk of infringement, in the issuing Member State, of one of those fundamental rights on account of either systemic or generalised deficiencies, or deficiencies affecting more specifically an objectively identifiable group of persons (see, to that effect, judgments of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 89; of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 102, and of 21 December 2023, *GN (Ground for refusal based on the best interests of the child)*, C-261/22, EU:C:2023:1017, paragraph 47).
- 54 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 of the examination, referred to in the preceding paragraph of the present judgment, 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 those fundamental rights if surrendered to the issuing Member State (see, to that effect, judgments of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 94; of 31 January 2023, *Puig Gordi and Others*, C-158/22, EU:C:2023:57, paragraph 106, and of 21 December 2023, *GN (Ground for refusal based on the best interests of the child)*, C-261/22, EU:C:2023:1017, paragraph 48).
- 55 However, as the Advocate General observed, in essence, in point 76 of his Opinion, the requirement to carry out such a two-step examination cannot be transposed to the assessment, during the procedure for the execution of an arrest warrant issued on the basis of the TCA, of the risk of a breach of Article 49(1) of the Charter.
- 56 The simplified and effective system for the surrender of convicted or suspected persons established by Framework Decision 2002/584 has as its basis the high level of trust which must exist between the Member States and on the principle of mutual recognition which, according to recital 6 of that framework decision, constitutes the ‘cornerstone’ of judicial cooperation between Member States in criminal matters (see, to that effect, judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraphs 40 and 41, and of 21 December 2023, *GN (Ground for refusal based on the best interests of the child)*, C-261/22, EU:C:2023:1017, paragraphs 35 and 36).
- 57 The principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (see, to that effect, Opinion 2/13 (*Accession of the European Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraph 191, and judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 93).
- 58 Thus, when Member States implement EU law, they may, under that law, be required to presume that fundamental rights have been observed by the other Member States, so that not only may they not demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law, but also, save in exceptional cases, they may not

check whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the European Union (see, to that effect, Opinion 2/13 (*Accession of the European Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraph 192, and judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 94).

- 59 In that context, the obligation to find that there are deficiencies such as those referred to in paragraph 53 above 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 precisely aimed at preventing such an investigation from being conducted outside exceptional cases and 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 (see, to that effect, judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraphs 114 to 116).
- 60 Compliance with that obligation makes it possible, in particular, to ensure the division of responsibilities between the issuing Member State and the executing Member State as regards safeguarding the requirements inherent in the fundamental rights arising from the full application of the principles of mutual trust and mutual recognition which underpin the operation of the European arrest warrant mechanism (see, to that effect, judgments of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 46; of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraphs 72 and 96, and of 21 December 2023, *GN (Ground for refusal based on the best interests of the child)*, C-261/22, EU:C:2023:1017, paragraph 43).
- 61 The principle of mutual trust specifically characterises relations between Member States.
- 62 That principle 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, as stated in Article 2 TEU (see, to that effect, Opinion 2/13 (*Accession of the European Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraph 168).
- 63 That principle is also of fundamental importance to the European Union and its Member States in so far as it allows a European area without internal borders to be created and maintained (see, to that effect, Opinion 2/13 (*Accession of the European Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraph 191).
- 64 The Court has further stated that the limitation to exceptional cases of the possibility of verifying whether another Member State has actually complied, in a specific case, with the fundamental rights enshrined in the Charter is linked to the intrinsic nature of the European Union and contributes to the balance on which the Charter is founded (see, to that effect, Opinion 2/13 (*Accession of the European Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraphs 193 and 194).
- 65 It is true that it cannot be ruled out that an international agreement may establish a high level of confidence between the Member States and certain third countries.

- 66 The Court thus held that that was the case as regards relations between the Member States and the Kingdom of Norway (see, to that effect, judgment of 14 September 2023, *Sofiyyska gradska prokuratura (Successive arrest warrants)*, C-71/21, EU:C:2023:668, paragraphs 32 and 39).
- 67 That third country is, however, in a particular situation in that it has a special relationship with the European Union, going beyond economic and commercial cooperation, since it is a party to the Agreement on the European Economic Area, it participates in the Common European Asylum System, it implements and applies the Schengen *acquis* and it has concluded with the European Union the Agreement on the surrender procedure between the Member States of the European Union and Iceland and Norway, which entered into force on 1 November 2019 (see, to that effect, judgment of 17 March 2021, *JR (Arrest warrant – Conviction in a third State, Member of the EEA)*, C-488/19, EU:C:2021:206, paragraph 60).
- 68 The Court also pointed out, first, that, in the preamble to that agreement, the contracting parties expressed their mutual confidence in the structure and functioning of their legal systems and their ability to guarantee a fair trial and, second, that the provisions of that agreement are very similar to the corresponding provisions of Framework Decision 2002/584 (see to that effect, judgment of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, EU:C:2020:262, paragraphs 73 and 74).
- 69 The consideration referred to in paragraph 66 above, which is based on specific relations between the European Union and certain EEA Member States, cannot, however, be extended to all third countries.
- 70 As regards, more specifically, the arrangements established by the TCA, it is important, first of all, to note that that agreement does not establish, between the European Union and the United Kingdom, a relationship as special as the one described in the case-law cited in paragraphs 67 and 68 above. In particular, the United Kingdom is not part of the European area without internal borders, the construction of which is permitted, inter alia, by the principle of mutual trust.
- 71 Next, although it is apparent from the wording of Article 524(1) of the TCA, referred to in paragraph 42 above, that cooperation between the United Kingdom and the Member States is based on long-standing respect for the protection of the fundamental rights and freedoms of individuals, that cooperation is not presented as being based on the preservation of mutual trust between the States concerned which existed before the United Kingdom left the European Union on 31 January 2020.
- 72 Finally, there are substantial differences between the provisions of the TCA relating to the surrender mechanism established by that agreement and the corresponding provisions of Framework Decision 2002/584.
- 73 In that regard, it should be noted, in particular, that that framework decision does not contain any exceptions relating to the political nature of the offences or the nationality of the requested person that allow a derogation from the execution of European arrest warrants in situations comparable to those referred to in Article 602(2) and Article 603(2) of the TCA. Such exceptions illustrate the limits of the trust established between the parties to that agreement.
- 74 Similarly, that framework decision does not include a provision comparable to Article 604(c) of the TCA, which specifically provides that, if there are substantial grounds for believing that there is a real risk to the protection of one or more of any 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.

- 75 Article 604(c) thus allows additional guarantees to be sought in order to seek to dispel doubts relating to respect for fundamental rights in the issuing State, which cannot be discarded on the basis of the trust between the United Kingdom and the Member States without the implementation of that mechanism being subject to a prior finding of systemic or generalised deficiencies or deficiencies affecting more specifically an objectively identifiable group of persons.
- 76 It is true that Article 604(c) of the TCA does not expressly provide that the executing judicial authority may refuse to give effect to the arrest warrant in a situation where it has not received additional guarantees or where the additional guarantees received are insufficient to exclude the reasons which had initially led it to believe that there was a real risk to the protection of the requested person's fundamental rights.
- 77 However, any other interpretation of that provision would deprive the mechanism provided for therein of any practical effect.
- 78 It follows that the executing judicial authority called upon to rule on an arrest warrant issued on the basis of the TCA cannot order the surrender of the requested person if it considers, following a specific and precise examination of that person's situation, that there are valid reasons for believing that that person would run a real risk to the protection of his or her fundamental rights if that person were surrendered to the United Kingdom.
- 79 Therefore, where the person who is the subject of an arrest warrant issued on the basis of the TCA claims before that executing judicial authority that there is a risk of a breach of Article 49(1) of the Charter if that person is surrendered to the United Kingdom, that executing judicial authority cannot, without disregarding the obligation to respect the fundamental rights enshrined in Article 524(2) of that agreement, order that surrender without having specifically determined, following an appropriate examination, within the meaning of paragraph 51 above, whether there are valid reasons to believe that that person is exposed to a real risk of such a breach.
- 80 For the purposes of that determination, it is necessary, in the first place, to point out that, although the existence of declarations and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of a breach of fundamental rights and freedoms (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 57), the executing judicial authority must, however, take into account the long-standing respect by the United Kingdom for the protection of the fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights and in the ECHR, which is expressly referred to in Article 524(1) of the TCA, and the provisions laid down and implemented in United Kingdom law to ensure respect for the fundamental rights set out in the ECHR (see, by analogy, judgment of 19 September 2018, *RO*, C-327/18 PPU, EU:C:2018:733, paragraph 52).
- 81 However, the fact that the executing judicial authority has already ruled out the risk of a breach 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 the requested person to bring an action before the European Court of Human Rights, cannot, in itself, be decisive.

- 82 It follows from paragraph 78 above that Article 524(2) and Article 604(c) of the TCA, read in conjunction with Article 49(1) of the Charter, require the executing judicial authority to examine all the relevant factors in order to assess the foreseeable situation of the requested person if he or she is surrendered to the United Kingdom, which, unlike the two-step examination referred to in paragraphs 52 to 54 above, assumes that both the rules and practices that are generally in place in that country and, if the principles of mutual trust and mutual recognition are not applied, the specific features of that person's individual situation are to be taken into account simultaneously.
- 83 Therefore, as the Advocate General observed in points 78 and 79 of his Opinion, the executing judicial authority must carry out an independent assessment, in the light of the provisions of the Charter, without merely taking into account the case-law of the Supreme Court of the United Kingdom, referred to in paragraph 27 above, or the general guarantees provided by the judicial system of that State, referred to in paragraph 28 above.
- 84 In that context, the possible finding of a real risk, if the person concerned is surrendered to the United Kingdom, of a breach of Article 49(1) of the Charter must have a sufficient factual basis (see, by analogy, judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraphs 60 and 61).
- 85 Consequently, the executing judicial authority may refuse to give effect to an arrest warrant on the basis of Article 524(2) and Article 604(c) of the TCA, read in conjunction with Article 49(1) of the Charter, only if it has, having regard to the individual situation of the requested person, objective, reliable, specific and properly updated information establishing substantial grounds for believing that there is a real risk of a breach of Article 49(1) of the Charter (see, by analogy, judgments of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 59, and of 19 September 2018, *RO*, C-327/18 PPU, EU:C:2018:733, paragraph 61).
- 86 In the second place, in accordance with the obligation of mutual assistance in good faith laid down in Article 3(1) of the TCA, the executing judicial authority must, when examining whether there is a risk of a breach of Article 49(1) of the Charter, make full use of the instruments provided for in that agreement in order to foster cooperation between it and the issuing judicial authority.
- 87 In that regard, first, Article 613(2) of the TCA provides that, if the executing judicial authority finds the information communicated by the issuing State to be insufficient to allow it to decide on surrender, it is to request that the necessary supplementary information, in particular with respect to Article 604 of the TCA, be furnished as a matter of urgency.
- 88 That judicial authority is therefore required to request that any supplementary information it deems necessary in order to adopt a decision on the surrender of a person who is the subject of an arrest warrant issued on the basis of the TCA be furnished as a matter of urgency.
- 89 Thus, since a finding that there is a serious risk of infringement of Article 49(1) of the Charter is necessarily based on an analysis of the law of the issuing State, the executing judicial authority cannot, if it is not to infringe the obligation of mutual assistance in good faith laid down in Article 3(1) of the TCA, make that finding without first requesting from the issuing judicial authority information concerning the rules of that law and the manner in which they may be applied to the individual situation of the requested person.

- 90 Second, in accordance with Article 604(c) of the TCA, it is for the executing judicial authority to request the grant of additional guarantees where it considers that there are valid reasons to believe that there is a real risk of a breach of Article 49(1) of the Charter.
- 91 Therefore, the executing judicial authority will be able to refuse to give effect to an arrest warrant issued on the basis of the TCA on the ground that such a risk exists only in the situation where additional guarantees have been requested by the executing judicial authority and where that authority has not obtained sufficient guarantees to rule out the risk of a breach of Article 49(1) of the Charter which it had initially identified.
- 92 In the third place, as regards, more specifically, the scope of Article 49(1) of the Charter, 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 (see, to that effect, judgments of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 164; of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraph 54; of 2 February 2021, *Consob*, C-481/19, EU:C:2021:84, point 37, and of 10 November 2022, *DELTA STROY 2003*, C-203/21, EU:C:2022:865, paragraph 46 and the case-law cited).
- 93 In that regard, the referring court notes that, under United Kingdom legislation adopted after the alleged commission of the offences at issue in the main proceedings, the perpetrators of certain terrorist offences, such as those of which MA is accused, can benefit from release on licence only in so far as it is approved by a specialised authority and only after having served two thirds of their sentence, whereas the old system provided for automatic release on licence after the convicted person had served half of his or her sentence.
- 94 It follows from the case-law of the European Court of Human Rights that, for the purposes of applying 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).
- 95 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 taken during the execution of a sentence 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 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).
- 96 In that regard, the European Court of Human Rights has recently 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).

- 97 Therefore, a measure relating to the execution of a sentence will be incompatible with Article 49(1) of the Charter only if it retroactively alters the actual scope of the penalty provided for on the day on which the offence at issue was 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.
- 98 In the light of all of the foregoing, the answer to the question referred is 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 that agreement invokes a risk of a breach 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 a breach 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 day on which the offence at issue was committed, involving the imposition of a heavier penalty than the one that was initially provided for.

Costs

- 99 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:

Article 524(2) and Article 604(c) of 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, read in conjunction with Article 49(1) of the Charter of Fundamental Rights of the European Union

must be interpreted as meaning that, where a person who is the subject of an arrest warrant issued on the basis of that agreement invokes a risk of a breach of Article 49(1) in the event of surrender to the United Kingdom of Great Britain and Northern Ireland, 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 a breach of Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed

in Rome on 4 November 1950, 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 day on which the offence at issue was committed, involving the imposition of a heavier penalty than the one that was initially provided for.

[Signatures]