



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 196/21**

Luxembourg, 9 November 2021

Advocate General's Opinion in Case C-479/21 PPU  
Governor of Cloverhill Prison and others

**Advocate General Kokott: The provisions of the Withdrawal Agreement and of the Trade and Cooperation Agreement, which provide for the continuation of the European arrest warrant regime in respect of the United Kingdom, are binding on Ireland.**

Mr. Sd, the subject of an European arrest warrant dated 20 March 2020, issued by a judicial authority of the United Kingdom, was arrested in Ireland on 9 September 2020. On 8 February 2021, the High Court (Ireland) made an order for Mr. Sd's surrender to the United Kingdom and a consequential order committing him to prison pending his surrender. Mr. Sn, the subject of a European arrest warrant dated 5 October 2020, also issued by a judicial authority in the United Kingdom, was arrested in Ireland on 25 February 2021 and remanded in custody pending the hearing of the application for his surrender.

Separate applications were made to the High Court (Ireland) on behalf of Mr. Sd and Mr. Sn seeking an inquiry under the Constitution of Ireland into the legality of their detention. It was argued that they were not lawfully imprisoned on the ground that the European arrest warrant regime no longer applied between Ireland and the United Kingdom. The High Court determined that both Mr. Sd and Mr. Sn were lawfully held in custody and, therefore, refused to direct their release. Both were given leave to appeal directly to the Supreme Court, but were to remain in custody pending the result of their respective appeals to the Supreme Court.

In this preliminary reference, the Supreme Court asks the Court whether or not the arrangements contained in the Withdrawal Agreement <sup>1</sup> and the Trade and Cooperation Agreement <sup>2</sup>, insofar as they relate to the European arrest warrant regime, are binding on Ireland. Should they be found to be not binding, the national measures adopted by Ireland for the purposes of retaining the European arrest warrant regime in respect of the United Kingdom would be invalid and, consequently, the continued imprisonment of the appellants would be unlawful.

In her Opinion delivered today, Advocate General Juliane Kokott proposes that the Court of Justice find that **Article 62(1)(b) and Article 185 of the Withdrawal Agreement and Part Three, Title VII, of the Trade and Cooperation Agreement, and in particular Article 632 thereof, which provide for the continuation of the European arrest warrant regime in respect of the United Kingdom, are binding on Ireland.**

Advocate General Kokott explains that under Irish law, the execution of a European arrest warrant issued by the United Kingdom and the detention of the requested person is permissible only if there is a corresponding obligation under EU law that is binding on Ireland. Before the United

<sup>1</sup> Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion 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. 1).

<sup>2</sup> Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, 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, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ 2021 L 149, p. 2).

Kingdom's withdrawal from the European Union took effect on 31 January 2020, that obligation resulted directly from Framework Decision 2002/584<sup>3</sup>. The Framework Decision 2002/584 continued to apply during the transition period; however, the present cases are not covered by those rules because Messrs. Sd and Sn had not been surrendered to the UK before the end of the transition period.

Advocate General Kokott notes that Protocol No 21<sup>4</sup> to the TEU and the TFEU, in force since 1 December 2009, provides that Ireland is not bound by European Union measures related to the Area of Freedom, Security and Justice, unless that Member State expressly opts in to the measure in question. Ireland did not opt in to the relevant provisions of the two agreements concerned. Therefore, she examines whether, as a consequence of the United Kingdom's withdrawal from the Union, Ireland needed to have opted in to the provisions relating to the European arrest warrant in order for those provisions to apply.

Since the material scope of Protocol No 21 is expressly limited to the Area of Freedom, Security and Justice. Protocol No 21 only applies in respect of measures that have been, or should have been, based on a competence derived from Title V of Part Three of the FEU Treaty. Conversely, a measure that touches on the Area of Freedom, Security and Justice will not be covered by the Protocol if it is not necessary to base it on such a competence.

Examining the two agreements under scrutiny, Advocate General Kokott notes that said agreements are not based on competences relating to the Area of Freedom, Security and Justice, but rather, respectively, on the competence relating to the arrangements for a withdrawal, and on the competence to conclude an association agreement.

With regards to the Withdrawal Agreement, Advocate General Kokott notes that to require a withdrawal agreement also to be based on provisions other than Article 50(2) TEU whenever the agreement touches on a specific area would in practice be liable to render devoid of substance the competence and procedure prescribed in Article 50(2) TEU. The surrender regime of Article 62(1)(b) of the Withdrawal Agreement does not in any case create extensive obligations that constitute a distinct objective from the aim to ensure an orderly withdrawal process. It merely extends and modifies existing obligations in the light of the withdrawal for a limited transition period. Furthermore, it cannot successfully be argued that Article 62(1)(b) of the Withdrawal Agreement creates new obligations for Ireland because that Member State was subject to similar obligations under Framework Decision 2002/584 before the agreement became effective. Therefore, Article 62(1)(b) of the Withdrawal Agreement is correctly based on Article 50(2) TEU alone. It is not necessary to combine this competence with a competence relating to the Area of Freedom, Security and Justice.

With regards to the Trade and Cooperation Agreement, Advocate General Kokott notes that this is concluded on the basis of Article 217 TFEU which permits the conclusion of agreements with third countries establishing an association involving reciprocal rights and obligations, common action and special procedure. That competence empowers the European Union to guarantee commitments towards non-member countries in all the fields covered by the Treaties. Its broad scope is justified by the objective of creating special, privileged links with a non-member country, which must, at least to a certain extent, take part in the European Union system. In the present case, taking part in the European Union system means participating in the surrender regime established for the European arrest warrant by the Framework Decision 2002/584. That regime applies to Ireland. Furthermore, the conclusion of association agreements requires unanimity in the Council and this means that Ireland agreed to be bound by the surrender regime laid down in the Trade and Cooperation Agreement. In view of the absence of any exception for Ireland, the binding effect on that Member State must have been clear.

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<sup>3</sup> Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

<sup>4</sup> Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice.

Advocate General Kokott finally notes that at least in the context of the relationship between Ireland and the United Kingdom, the surrender regime set up in the Trade and Cooperation Agreement would not create materially new obligations, but merely continue most of the obligations that existed under the previous regime provided for by the Framework Decision 2002/584 and the Withdrawal Agreement.

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**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 European Union law or the validity of a European Union 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.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit 📞 (+352) 4303 3355