Neutral Citation Number: [2023] EWHC 467 Admin

Case No: CO44472020

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/03/2023

Before :

MRS JUSTICE CUTTS DBE

- -

Between :

MARIAN VASILE	**Appellant**
- and -	
JUDECATORIA OLTENITA ROMANIA	**Respondent**

- -
- -

John Crawford (instructed by **Law & Co. Solicitors**) for the **Appellant**
Stefan Hyman (instructed by **The CPS Extradition Unit**) for the **Respondent**

Hearing dates: 23rd February 2023

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: this judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time of hand-down is 14:00 on Friday 3rd March 2023.

Mrs Justice Cutts DBE :

Introduction

1. With permission of Sir Ross Cranston granted on 19 May 2021, the appellant appeals against the decision of District Judge Brennan ("the judge") to order his extradition to Romania on 24 November 2020.

2. The Appellant's Notice was filed and served on 30 November 2020. There has thus been considerable delay before the final appeal hearing in this Court. The appeal hearing was originally listed before Johnson J on 22 June 2021 but adjourned due to a lack of court time. The appeal was listed before me on 17 July 2021. Prior to that hearing on 11 June 2021 further information was served indicating that the respondent would consider allowing the appellant to attend his trial for driving offences remotely. I adjourned the appeal to accommodate the Romanian trial proceedings which were due to begin on 1 September 2021.

3. The Romanian case was heard on 8 December 2021 with the appellant appearing remotely from the United Kingdom. He was convicted on 29 December 2021 and received a sentence of two years imprisonment. On 11 January 2022 the appellant lodged an appeal against the Romanian proceedings. This appeal against the appellant's extradition, due to be heard on 8 March 2022, was adjourned to allow the appeal proceedings to conclude. On 15 June 2022 the appellant's Romanian appeal was dismissed.

4. By further information dated 26 January 2022 the JA notified the respondent of the results of the appellant's trial and, stating that the EAW remained valid, maintained its extradition request.

5. The appellant has since lodged an application to merge sentences. This is in respect of the two year sentence of imprisonment he received for the offence which is the subject of this extradition appeal and 559 days left from a sentence of 10 years' imprisonment imposed upon him in 2014 for human trafficking offences.

6. On 6 December 2022 Bourne J declined to further adjourn the current proceedings to the conclusion of the application for merger. The respondent has confirmed that the EAW is only seeking the appellant's return in respect of the 2 year sentence for the driving offence.

7. The appeal is brought on the sole ground that extradition is barred by s.2 of the Extradition Act 2003 ("the Act") by virtue of deficient particulars of the EAW concerning its nature as either a conviction or an accusation warrant which render it invalid and irremediable by way of further information. The appellant concedes that if the further information was properly admitted into evidence then that information filled the lacuna in the otherwise invalid EAW.

Extradition Request

The European Arrest Warrant

8. It is necessary in this case to set out the terms of the EAW, dated 14 January 2020, in some detail. It is headed with the following:
" I request that the person mentioned below be arrested and surrendered for the purposes of trial."

9. Box B.1 sets out the decision on which the warrant is based as:
" Warrant of remand custody no.13/UP issued on 20.12.2019 by Judecatoria Oltenita (Oltenita Court), Calarasi county."

10. Box B.2 sets out the enforceable judgment as a "*decision of the Council Chamber dated 20.12.19, final by not filing a challenge*" and the case file reference is given.

11. Box C.1 states the maximum sentence for the offence(s) as five years.

12. Box C.2 and C.3 state the length of the custodial sentence or detention order imposed and the remaining sentence to be served respectively. In each case "30 days" has been typed in and then crossed out. By asterisk, it is stated *"Corrected as per the decision pronounced on 21.01.20 by Oltenita Court which ordered to delete the 30-day period from the lines [in Boxes C.2 and C.3]."* This entry has the stamp of the court.

13. Box D is headed "Indicate if the person appeared in person at the trial resulting in the decision". D.2 states that the person did not appear in person at the trial resulting in the decision. Box D.3.1a states that the person was summoned thereto and D.3.4 states that the person will be personally served with the decision after surrender and expressly informed of his right to a retrial or appeal.

14. Box E sets out the criminal offence for which extradition was sought. At around 15.20 on 15 October 2019, the Appellant drove an identified mechanically propelled vehicle on a specified public road otherwise than in accordance with a licence. When police officers signalled to the appellant that he should stop he continued driving and ran into his house. The conduct violated Article 335(1) of the Romanian Criminal Code, Driving without a licence, which is aggravated by Article 41(1) thereof because of his antecedents.

15. Box F, which gives an opportunity to give other circumstances relevant to the case is marked "not applicable".

Supplementary information

16. The judge at the court below had sight of supplementary information dated 27 May 2020 given at the request of the respondent. Inter alia this stated that the appellant was being investigated for the offence at Box E. He had been summoned for questioning

as a suspect on 23.10.19 and 01.11.19 and did not appear before the requisite authorities although the summonses had been handed to him personally. Efforts were made to locate him on several occasions but without success. After being personally summoned the appellant had fled Romania and police saw that he had travelled to Italy. It was therefore ascertained that although he personally received the summons, he did not appear before the requisite authorities for hearing and later left the country.

17. At the extradition hearing the judge found the appellant to be a fugitive.

The extradition hearing

18. The appellant raised a number of issues at the extradition hearing which included the validity of the warrant under s.2 of the Act. As already indicated the sole ground of appeal relates to this issue. In summary the appellant through his counsel, as on appeal, submitted that the EAW was invalid due to "internal contradictions" within it. It was (and is) argued that it is wholly deficient and cannot be cured by any further information. This is because it is unclear on its face whether it is an accusation or conviction warrant. If that is right those defects cannot be cured and the further information, if it is to be used to assist the respondent, is not admissible.

19. The respondent submitted, as on appeal, that the EAW is on its face unambiguously an accusation warrant but if it has contradictions these are lacunae and the further information can be used to clear those up. The respondent argued that the judge should take a "cosmopolitan approach" to the issue.

20. The judge found, taking a "cosmopolitan approach", that the EAW is clearly on its face an accusation warrant. He came to that conclusion for the following reasons:

    i) The unambiguous statement that the EAW was issued to prosecute the appellant. This is clearly stated.

    ii) Box B.1 relates to "an arrest warrant or judicial decision having the same effect". Here it was clearly a "Warrant of remand custody" on 20/12/19, entirely consistent with the need to have an arrest warrant in an accusation EAW, before an EAW can be issued. Box B.2 goes on to refer to an "enforceable judgment" of the same date. That must refer back to the issuance of the arrest warrant and it was made final because there was no appeal against it. The judge accepted the argument of the respondent that the respondent allows for a process of challenge to the issue of an arrest warrant. It simply cannot (taken with the rest of the warrant) be taken to mean a conviction albeit without a penalty.

    iii) As the term of 30 days has been struck out in Box C, that box only has the maximum sentence of 5 years' imprisonment. There is no actual sentence as no trial has yet taken place. The judge agreed with the respondent that this 30 day period is standard for the initial maximum period of detention on arrest on

an arrest warrant rather than being indicative of an actual sentence. The judge inferred that the removal of this term was simply to make it explicit that this was an accusation EAW.

iv) He did not read Box D as the appellant represented it. He found that the wording was standard but the entries clearly referred to the issuing of the arrest warrant on 20/12/19. Box F is the usual place to have the procedural history but was marked "not applicable" here.

21. The judge accepted that internal contradictions can result in a wholesale failure but that was not the position with this EAW which he found to be clear.

22. The judge went on to find that, if he was wrong about that and there were lacunae caused by the manner of entries in Boxes B, C and D, he was entitled to admit the further information to assist. The matters set out in it only point in one direction – that it was an accusation warrant and the matters in those boxes could now properly be understood as referring to the procedural steps of investigating the appellant and summoning him to the police station to be interviewed and then, in the absence of success with that course, issuing an arrest warrant which culminated in the issuing of the EAW.

23. The judge also relied on the Romanian antecedent record to show that this was an accusation warrant due to the absence of any conviction for the offence set out therein.

The Law

Section 2 of the Extradition Act 2003

24. The material parts of s.2 of the Act provide as follows:

> (2) A Part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains—
> (a) the statement referred to in subsection (3) and the information referred to in subsection (4), or
> (b) the statement referred to in subsection (5) and the information referred to in subsection (6).
>
> (3) The statement is one that—
> (a) the person in respect of whom the Part 1 warrant is issued is accused in the category 1 territory of the commission of an offence specified in the warrant, and
> (b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being prosecuted for the offence.
>
> (4) The information is—

> (a) particulars of the person's identity;
> (b) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;
> (c) particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which he is alleged to have committed the offence and any provision of the law of the category 1 territory under which the conduct is alleged to constitute an offence;
> (d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence if the person is convicted of it.
>
> (5) The statement is one that—
> (a) the person in respect of whom the Part 1 warrant is issued has been convicted of an offence specified in the warrant by a court in the category 1 territory, and
> (b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.
>
> (6) The information is—
> (a) particulars of the person's identity;
> (b) particulars of the conviction;
> (c) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;
> (d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence, if the person has not been sentenced for the offence;
> (e) particulars of the sentence which has been imposed under the law of the category 1 territory in respect of the offence, if the person has been sentenced for the offence.
> […].

25. Article 8 of the Council Framework Decision on the European arrest warrant provides that it must contain:

> (a) the identity and nationality of the requested person:
> (b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
> (c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;
> (d) the nature and legal classification of the offence, particularly in respect of Article 2;

> (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
> (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;
> (g) if possible, other consequences of the offence.

The relevant authorities

26. Both parties have drawn my attention to the judgment of Lord Sumption in *Zakrzewski v Regional Court in Lodz, Poland [2013] 1 WLR 324* and in particular [8], [9] and [10]. The question in that case concerned the validity of a European arrest warrant in circumstances where the representations made therein as to the sentence imposed were inaccurate. Answering that question at [8] Lord Sumption said that the validity of the warrant depends on whether the prescribed particulars are to be found in it and not on whether they are correct. He went on to say that validity is not a transient state. It is either valid or not. It cannot change from one to the other over time. At [9] he said that it does not follow from this that there is nothing that can be done about it if the prescribed particulars in the warrant are or have become incorrect. It only means that the remedy must be found at the stage at which the court is deciding whether to extradite. The two safeguards are firstly in the mutual trust between Member States and the right of the issuing authority to forward further information at any time. Second, the English court has the inherent jurisdiction to ensure that its process is not abused.

27. Mr Crawford for the appellant relies upon this authority to the effect that the validity of the warrant is not a transient state. Mr Hyman for the respondent points to the fact that with regard to the validity of the warrant further information can be used as a remedy at the extradition hearing. He submits that this is what happened in the current proceedings. Even if the warrant was not clear on its face, further information was before the court in the extradition hearing which made it so. No prejudice results and there is certainly no abuse of process.

28. Both parties also drew my attention to *Alexander v Public Prosecutor's Office, Marseilles District Court of First Instance, France; Di Benedetto v Court of Palermo, Italy [2017] EWHC 1392 (Admin)*. This too concerned the validity of the warrants and their compliance with s.2 of the Act. The central issue was whether the omission of information from a warrant required inter alia by s.2(4) of the Act could be remedied by the provision of further information at a later date. The Divisional Court held that provided there was a document which was presented as a warrant in the prescribed form and which sought to address the information required by the Act, any required information which was missing could be supplied by the issuing judicial authority by

way of further information; that is so whatever the missing information and there was no need to determine whether the matters were formal or substantive in nature. Where information was missing, the court had to decide whether, on the specific facts of the case, there was a lacuna which could be addressed by requesting supplementary information, or whether there had been a wholesale failure to provide the particulars. Of importance to this case at [73], [74] and [75] Irwin LJ said:

[73]" It is clearly open to a requesting judicial authority to add missing information to a deficient EAW so as to establish the validity of the warrant

[74] The effect of the two recent decisions is, we conclude, that missing required matters may be supplied by way of further information and to provide a lawful basis for extradition.

[75] None of this means that extradition can properly be achieved on the basis of "a bit of paper". In our view there must be a document in the prescribed form, presented as an EAW, and setting out to address the information required by the Act. An otherwise blank document containing the name of a requested person, even if in the form of an EAW, will properly be dismissed without more ado. The system of mutual respect and co-operation between states does not mean that the English court should set about requesting all the required information in the face of a wholly deficient warrant. Article 15(2) of the Framework Decision expressly concerns itself with 'supplementary' information, and can properly be implemented with that description in mind. That will of course include resolution of any ambiguity in the information provided. It will include filling 'lacunae'. The question in a given case whether the court is faced with lacunae or a wholesale failure to provide the necessary particulars can only be decided on the specific facts."

29. Mr Crawford submits that the problems he identifies in the warrant set out in [33] below represent a wholesale failure which cannot be rectified by the further information provided in this case. Mr Hyman submits that the warrant is plain on its face and there is no failure at all. If I do not accept that submission he argues that the problems are no more than lacunae which can be filled by the further information which resolved any ambiguity.

30. *Alexander* was cited with approval by the Divisional Court in *FK v Stuttgart State Prosecutor's Office, Germany [2017] EWHC 2160* where at [54] Hickinbottom LJ said:

" The following propositions regularly repeated in the authorities…are uncontroversial. There is a particularly high level of mutual trust, confidence and respect between states which are parties to the Framework Decision. The object of the EAW process is to remove the complexity and potential for delay in extradition between such states. There is consequently no requirement for full and exhaustive

particularisation, the appropriate level of particularisation being dependent on the circumstances of the specific case. In assessing whether a description is adequate, the EAW should be considered as a whole. However, sufficient circumstances must be set out to enable the requested person and the requested state (i) to identify the offence with which the requested person is charged; (ii) to understand, with a reasonable certainty, the substance of the allegations against the requested person and in particular when and where the offence is said to be committed, and what he is said to have done; (iii) to perform a transposition exercise when dual criminality is in issue; and (iv) to determine whether any compulsory or optional barriers to extradition apply…"

31. Mr Crawford submits that the fourth requirement is where this warrant fails. He submits that the warrant is internally contradictory as to whether it is an accusation or conviction warrant. There are significant statutory differences with the approach the court should take to accusation and conviction warrants. The dual criminality requirements differ as does the availability of the proportionality bar. In addition, although not related to the decision to surrender, the courts approach to bail varies between the two types of warrant. Mr Hyman does not accept that the warrant is internally contradictory.

The position of the parties.

Appellant's submissions

32. I have already referred to the appellant's submissions in summary in this judgment. Mr Crawford submits that the only question on this appeal is whether the warrant as originally issued was suffering from "*a wholesale failure."*

33. Mr Crawford submits that the warrant is inherently contradictory by virtue of deficient particulars concerning its nature as a conviction or an accusation warrant. In particular:

    i) He accepts that the header at the top of the document requests that the appellant be arrested and surrendered for the purposes of trial (an accusation).

    ii) This he submits is at odds with what is said at Box D where the issuing judicial authority is required to indicate if the person appeared in person **at the trial resulting in the decision.** These words in bold, together with an endorsed Box D 3.4 (to the effect that the appellant would be personally served with the decision and informed of his right to a retrial or appeal in which he has the right to participate and which allows the merits of the case, including fresh evidence to be re-examined) clearly relate to a conviction warrant. Mr Crawford relies in this regard on the definition of "trial" in *Samet Ardic (C-571/17 PPU)* in which it was said that the concept of "trial" had to be given the same interpretation within the EU. The concept must be understood

as referring to the proceedings that led to the judicial decision which finally sentenced the person whose surrender is sought in connection with the execution of an EAW.

iii) The crossed out "30 days" in Box C cannot give clarity to Box D. The finding of the judge relating to the deletion at [20] above is mere speculation. No reason is given on the document itself. Where the criminal standard of proof applies it is unsatisfactory to rely on a presumption when there is a more fundamental problem with Box D.

iv) Box F does not assist one way or another as it is entirely blank. There was no basis for the judge's conclusion that this Box supports the contention that this was an accusation warrant.

v) Box B also fails to take the matter any further. It can relate to either conviction or an initial arrest warrant. It also at B.2, in saying that the decision is final by not filing a challenge, is contradictory to Box D which states there could still be a challenge to the decision.

34. Although accepting that this is not determinative of the point, Mr Crawford also points to the fact that at the lower court the respondent initially thought this was a conviction warrant before changing its mind. This must be because of the contradictory nature of it.

Respondent's submissions

35. I have also alluded to the respondent's submissions in the course of this judgment. Mr Hyman submits first that there is no internal contradiction in the warrant. In particular:

i) The heading is clear that this is an accusation warrant.

ii) Box B does not say otherwise. When asked about the arrest warrant or judicial decision having the same effect it speaks of a "warrant of remand in custody" issued by the court on 20.12.2019. This he submits clearly relates to a remand warrant. B.2 refers to the decision of the Council Chamber being final on 20.12.2019. This is the same date and clearly relates to the decision to remand into custody.

iii) Box C.2 asks for the length of the custodial sentence or detention order imposed. The crossed out 30 days relates to the remand warrant. In any event the term is crossed out because it needn't be there. Thus, in Box C there is no sentence recorded to indicate a conviction warrant.

iv) On a reading of the warrant as a whole Box D must relate to the decision recorded. This is the remand warrant. The information contained therein is to

the effect that when the appellant returns he can challenge the decision to hold him for detention.

36. Alternatively, Mr Hyman submits that if there was any problem with the warrant it was not a wholesale failure but lacunae creating an ambiguity which could be and was corrected by the further information before the judge at the extradition hearing. This was the type of remedy at the hearing envisaged by Lord Sumption in *Zakrewski*. There was no prejudice to the appellant who knew by that time, if not before, that this was an accusation warrant and what bars to extradition were open to him. In those circumstances Mr Hyman invites me to take a purposive approach and focus on the substance rather than form of the EAW and the appellant's challenge to it.

Discussion and Conclusion

37. As stated by Nicol J at [46] in *M, B v Preliminary Investigation Tribunal of Napoli, Italy v X, Y, Z (by the Official Solicitor; his Litigation Friend)* the following propositions are not controversial.

    i) Unless an EAW satisfies the terms of s.2 of the Act extradition cannot be ordered.

    ii) It is for the an issuing judicial authority to show that what purports to be an EAW does indeed satisfy the requirements of s.2.

    iii) In this, as in all matters on which the burden rests on an issuing judicial authority in a Part 1 case at the extradition hearing, must prove its case to the criminal standard.

    iv) In approaching the EAW the judge must do so in the spirit of mutual trust and confidence. This must include making reasonable allowance for difficulties that may arise because of documents being written in languages other than English.

38. I agree with the appellant, as did the judge, that whether an EAW is a conviction or accusation warrant is fundamental. As Mr Crawford points out, the potential bars to extradition are different and it is vital that the requested person is aware of why his extradition is sought. I agree that the issues on appeal are whether the original warrant was inherently contradictory and, if so, whether that represented a wholesale failure such that it could not be remedied by further information.

39. I have come to the conclusion that the warrant in this case is not internally contradictory and that it is, on consideration of the warrant as a whole, clearly an accusation warrant. First it is plain and clear from the heading on the warrant that the request is that the appellant "be arrested and surrendered for the purposes of trial."

40. Box B requires information of the decision upon which the warrant is based. The information at B.1 is that the decision was a warrant of remand in custody on 20 December 2019. There is nothing here to indicate that the decision was a conviction after trial and nothing therefore to contradict the plain wording of the heading. The enforceable judgment at B.2 (said to be final as no challenge was filed) is said to be the decision of the Council Chamber on 20 December 2019. This must therefore relate to the decision of the warrant of remand. I consider the judge right to have so found.

41. Box C requires indications on the length of sentence. C.1 gives the maximum sentence which may be imposed for the offence of 5 years' imprisonment. C.2 and 3 each relate to the actual sentence imposed and remaining sentence to be served. An entry of 30 days was put into each of these boxes but clearly in error as they have been crossed out by order of the same court which issued the warrant of remand in custody. There is nothing in Box C which indicates that this is a conviction warrant.

42. The information in Box D is where Mr Crawford focussed his complaint of internal inconsistency. It may at first sight seem unusual that this box was completed when there had been no conviction but it is important to read the warrant as a whole. This box requires the person completing the form to "indicate if the person appeared in person at the trial resulting in the decision". (My emphasis). These words in my view must relate to the decision set out in Box B.1. That decision is a warrant of remand in custody. That in turn is to be read together with the heading making clear that extradition is sought for the purposes of trial. I do not accept in those circumstances that completion of Box D makes the warrant inherently contradictory and a wholesale failure such that further information is not admissible. In my view the judge was entitled to come to the conclusion that he did and to admit the further information to assist.

43. Even had the judge considered there was some ambiguity in the completion of Box D he was, in my view entitled to admit the further information to resolve the matter. The completion of Box D does not of itself state that this was a conviction warrant. Following the decision in *Alexander* if there were any ambiguity in the what the entries meant further information could be used to resolve it. As is conceded by the appellant, in this case the further information before the judge at the extradition hearing stated that he was being investigated for the offence set out in the EAW. He was summoned for questioning and did not appear before the requisite authorities when required to do so on two occasions. In this way, as envisaged in *Zakrzewski,* the remedy was found at the extradition hearing. As is conceded, there is no question of prejudice or abuse of process.

44. I conclude therefore that the judge was entitled and indeed right to conclude that the warrant was not internally contradictory and that it complied with s.2 of the Act. This appeal is accordingly dismissed.