Michaelmas Term
[2009] UKSC 4
On appeal from: **[2008] EWHC 2907 (Admin)**

JUDGMENT

Louca (Appellant) *v* A German Judicial Authority (Respondents) (Criminal Appeal from Her Majesty's High Court of Justice)

before

Lord Hope, Deputy President
Lord Rodger
Lord Mance
Lord Collins
Lord Kerr

JUDGMENT GIVEN ON

19 November 2009

Heard on 29 July 2009

Appellant	*Respondent*
Conor Quigley QC John R W D Jones (Instructed by Cartwright King Solicitors)	James Lewis QC Daniel Jones (Instructed by Crown Prosecution Service)

LORD HOPE

1. I have had the advantage of reading in draft the opinion which has been prepared by Lord Mance, and I agree with it. For the reasons he gives, I would dismiss the appeal.

LORD RODGER

2. I too have had the advantage of considering in draft the opinion prepared by Lord Mance. I agree with it and, for the reasons which he gives, I would dismiss the appeal.

LORD MANCE

3. The appellant, Mr Louca, is a Cypriot national whose arrest in England and surrender to the Federal Republic of Germany for trial of six alleged offences of tax evasion is sought by the Office of the Public Prosecutor of Bielefeld pursuant to a European Arrest Warrant dated 14 July 2008. The warrant was on that date certified by the Serious Organised Crime Agency ("SOCA") pursuant to s.2(7) of the Extradition Act 2003. Mr Louca challenges its validity on the ground that it contains no reference to two previous European arrest warrants (likewise certified by SOCA), but refers only to a domestic German arrest warrant. A reference to any previous European arrest warrants, was, he submits, essential under s.2(2)(a) and (4)(b) of the 2003 Act, which, read together, require a warrant to contain "particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence". Senior District Judge Workman rejected Mr Louca's challenge on 11 September 2008, and the Divisional Court, in a judgment given by Dyson LJ, dismissed his appeal on 27 November 2008.

4. The two previous European arrest warrants were issued and in turn superseded in a manner that appears not uncommon in relation to requests by overseas authorities for the arrest of suspects in England. The first warrant was dated 14 September 2006 and led to Mr Louca's arrest on 9 April 2008. Shortly thereafter it was withdrawn, Mr Louca was discharged from further proceedings on it, and a second warrant dated 23 April 2008 was issued on which Mr Louca was again arrested on 25 April 2008. That warrant amplified the description of Mr Louca's alleged involvement in the offences and contained other minor changes. It was in turn withdrawn, Mr Louca was again discharged from any proceedings on it, and it was replaced by the subsisting warrant dated 14 July 2008, upon which Mr Louca was again arrested and which is now before the Supreme Court. The

wording of the subsisting warrant differs from that of the second warrant only in the insertion of the words which I have italicised in the time-frame and places of commission given for the alleged offences: "From *a few days before* the 23rd April 2003, till the 8th of April 2004" and "Minden, Seckenhausen and other places in the Federal Republic of Germany, *including the borders of Germany*".

5. Part I of the 2003 Act, in which s.2 appears, falls to be read in the context of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between member states of the European Union (2002/584/JHA; OJ 2002 L190, pl). This is a "ground-breaking measure intended to simplify and expedite procedures for the surrender, between member states, of those accused of crime committed in other member states or required to be sentenced or serve sentences for such crimes following conviction in other member states": *Dabas v High Court of Justice of Madrid, Spain* [2007] UKHL 6; [2007] 2 AC 31, para. 4, per Lord Bingham of Cornhill. Although article 34(2)(b) of the Treaty on European Union makes framework decisions "binding upon member states as to the result to be achieved but [leaves] to national authorities the choice of form and methods", a national court must interpret a national law "as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with article 34(2)(b)": para. 5, per Lord Bingham citing *Criminal Proceedings against Pupino* (Case C-105/03); [2006] QB 83, paras. 43 and 47.

6. The Framework Decision provides inter alia:

> *Article 1(1):* 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.
>
> …..
>
> *Article 2(1*): A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.
>
> ……"
>
> *Article 8(1):* The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:
>
> (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 annexed form contains boxes for completion, including:

(b) Decision on which warrant is based:

1. Arrest warrant or judicial decision having the same effect: …..

Type: ……..

2. Enforceable judgement: …….

Reference: ……..."

and

"(f) Other circumstances relevant to the case (optional information):

(NB This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)

……"

7. In the present case, box (b) of the form was completed in the European arrest warrant (as in the two withdrawn warrants) with a reference to a domestic warrant issued by the Bielefeld County Court reference 9Gs 2740/06 dated 27 July 2006 for Mr Louca's "imprisonment on remand".

8. In *Ruiz v Central Criminal Court of Criminal Proceedings No 5 of the National Court, Madrid* [2007] EWHC 2983 (Admin); [2008] 1 WLR 2798, Dyson LJ in an obiter dictum rejected a prosecution submission that "the enforceable judgment, etc. [referred to in article 8(1)(c) of the Framework Decision] is the domestic warrant on which the index EAW is based" (para. 26). The words in article 8(1)(c) "coming within the scope of Articles 1 and 2" in his view precluded that submission, on the basis that Articles 1 and 2 were only concerned with European arrest warrants. The actual decision was that article 8(1)(c) and s.2(4)(b) were only concerned with *currently enforceable* warrants. However, Dyson LJ's view that they were also only concerned with European arrest warrants was adopted in *Zakowski v Regional Court in Szczecin Poland* [2008] EWHC 1389 (Admin). That was a case on s.2(6)(c) of the 2003 Act, which mirrors the language of s.2(4) in relation to the situation of a person unlawfully at large after conviction. Maurice Kay LJ, with whom Penry-Davey J agreed, held that s.6(2)(c) "should be construed as referring only to other EAWs issued in respect of the offence" (paras. 25-26).

9. In his judgment in the present case, Dyson LJ reconsidered the position and concluded that the interpretation of ss.2(4)(b) and 2(6)(c) proposed in *Ruiz* and adopted in *Zakowski* was wrong. His reasoning covered five points: (i) the Framework Decision does not in article 8(1)(c) use the phrase "European arrest warrant", as it does consistently elsewhere when referring to such a warrant; (ii) the concepts of "an enforceable judgment, an arrest warrant or any other enforceable judicial decision" cannot easily be understood as limited to an European arrest warrant; (iii) the phrase "coming within the scope of Articles 1 and 2" can and should simply be understood as meaning that the enforceable judgment, arrest warrant or other enforceable judicial decision must be "for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order" and be "issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months"; (iv) one European arrest warrant is most unlikely to be based on another, and (v) there is no point in requiring such a warrant to contain information about an earlier European arrest warrant on which it is not based, and on which reliance is no longer placed.

10. On this basis, the present Divisional Court held that article 8(1)(c) and ss.2(4)(b) and 2(6)(c) are concerned with domestic judgments, arrest warrants or other decisions, and not with any other European arrest warrant issued in respect of the alleged offending, still less one which has been withdrawn. Before the House in July 2009, Mr Conor Quigley QC had to accept the first part of this conclusion – inevitably so, in my view, in the light of the first four reasons given by Dyson LJ and also having regard to article 8(1)(c) of and box (b) in the form annexed to the Framework Decision. It is entirely understandable that the Framework Decision should require a European arrest warrant to set out its jurisdictional basis in the domestic law of the issuing state.

11. Mr Quigley submitted, nonetheless, that the latter part of the Divisional Court's decision does not follow, and challenged Dyson LJ's fifth reason. There is a purpose, he

argued, in also requiring evidence of any other European arrest warrant, even if withdrawn, because this could constitute the basis of, or be relevant to, a decision by the executing court to set aside or consider whether to set aside the subsisting European arrest warrant as an abuse of process. He relied upon the statement by Bingham LJ, as he was, in *R v. Liverpool Stipendiary Magistrates ex p. Ellison* [1990] RTR 220, 227 that:

> "If any criminal court at any time has cause to suspect that a prosecutor may be manipulating or using the procedures of the court in order to oppress or unfairly to prejudice a defendant before the court, I have no doubt that it is the duty of the court to inquire into the situation and ensure that its procedure is not being so abused. Usually no doubt such inquiry will be prompted by a complaint on the part of the defendant. But the duty of the court in my view exists even in the absence of a complaint."

12. In support of these submissions, Mr Quigley pointed to various recitals in the Framework Decision. Under recital (8), "the execution of the European arrest warrant must be subject to sufficient controls"; under recital (10), its mechanism is "based on a high level of confidence between Member States". and under recital (12), the "Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union" and "does not prevent a Member State from applying its constitutional rules relating to due process". Mr Quigley noted that, under Article 8(1), "The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex: …..(g) if possible, other consequences of the offence". He suggested that, in order to give effect to all these provisions, ss.2(4)(b) and 2(6)(c) must be understood as embracing not only domestic judgments, warrants or decisions, but also prior European arrest warrants, even if withdrawn. Otherwise, mutual confidence would not be promoted and the executing court would not be able to inquire into whether there had been any abuse of process.

13. In my opinion, this is to seek to make bricks without straw. The words "if possible, other consequences of the offence" and box (f) in the annexed form "Other circumstances relevant to the case (optional information)" do not carry the obligatory connotation for which Mr Quigley argues; the note to box (f) lends no support to Mr Quigley's case; and there is no reason to read ss.2(4)(b) and 2(6)(c) in the 2003 Act as intended to require the executing court to be informed by the European arrest warrant of one (and only one) point - the existence of another European arrest warrant - which might, in some conceivable case, be of some conceivable relevance to an argument of abuse of process. The duty which a criminal court may have, if prosecution authorities appear to be committing an abuse of process, is no basis for reading either the Framework Decision or the 2003 Act as requiring the inclusion in a European arrest warrant of that or any other information on which a defendant wishing to raise an argument of abuse of

process might conceivably wish to rely. Ss.2(4)(b) and 2(6)(c) are designed on their face simply to give effect to article 8(1)(c) and box (b) in the annexed form. Other "due process" factors are comprehensively covered by ss.11 to 20, dealing with double jeopardy, extraneous considerations, passage of time, age, hostage-taking considerations, speciality, earlier extradition to the United Kingdom and trial *in absentia*, as well as by the general safeguard in s.21 that the judge must decide whether surrender would be compatible with the European Human Rights Convention rights.

14. The unreal consequences of the appellant's argument in this particular case also need no stressing. Mr Louca was arrested under the previous European arrest warrants, and he and his advisers were fully aware at every stage of their issue and withdrawal. Their withdrawal and the changes made in successive warrants lend no support to any suggestion of abuse of process. (Arguments based on oppression due to passage of time and interference with the right to family life were mounted, unavailingly, in the courts below.) Mr Quigley was nevertheless compelled by his argument to submit that, however obvious it might be that the reason for the withdrawal of a previous European arrest warrant was technical or irrelevant to any question of abuse of process, a new European arrest warrant would be invalid unless it gave particulars of the previous warrant.

15. The question certified by the Divisional Court is: "Whether the reference to 'any other warrant' in s.2(4)(c)of the Extradition Act 2003 properly construed is a reference to any other domestic warrant on which the European arrest warrant is based". For the reasons given above and those given by the Divisional Court, the answer is that the reference is to any domestic warrant on which the European arrest warrant is based, and not to any other European arrest warrant which may have been issued on the basis of any such domestic warrant. Mr Louca's appeal falls to be dismissed accordingly.

LORD COLLINS

16. I too agree with the opinion prepared by Lord Mance, and I would dismiss the appeal.

LORD KERR

17. I also agree with the opinion prepared by Lord Mance, and I would dismiss the appeal.