



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2025] HCJAC 26
HCA/2025/2/XM

Lord Doherty
Lady Wise
Lord Ericht

OPINION OF THE COURT

delivered by LORD DOHERTY

in

APPLICATION FOR LEAVE TO APPEAL

UNDER SECTION 26 OF THE EXTRADITION ACT 2003

by

KAROL MEGER

Applicant

against

THE LORD ADVOCATE, REPRESENTING THE REPUBLIC OF POLAND

Respondent

Applicant: Loosemore; Dunne Defence
Respondent: McCulloch, sol adv; Crown Agent

20 June 2025

Introduction

[1] The applicant is a Polish national. He was convicted after trial by the District Court of Tczew of robbery of a minor on 17 April 2022, the offence having been aggravated by its commission within 5 years of two similar offences for which he had served previous sentences of imprisonment. He was present at the trial and was sentenced to 3 years'

imprisonment, of which 2 years 6 months and 10 days remain to be served. The applicant did not present himself at prison to serve the sentence. He came to Scotland. He is unlawfully at large in terms of section 68A of the Extradition Act 2003.

[2] The Republic of Poland is a designated Part 1 territory in terms of Part 1 of the Extradition Act 2003. On 27 October 2023 the Regional Court in Gdansk, a Polish judicial authority in terms of section 2 of the 2003 Act, issued an arrest warrant seeking the applicant's extradition to serve the remainder of his sentence. The applicant was arrested in Scotland. A preliminary hearing before the sheriff at Edinburgh was assigned for 19 September 2024, with an evidential hearing to take place on 26 September 2024. As a result of various motions made by the applicant the evidential hearing was continued to 23 January 2025. After business hours on 22 January 2025 a case and argument for the applicant were lodged which contended, for the first time, that the warrant was invalid because it did not specify the place of the applicant's participation in the offence. In light of the late raising of this objection, on 23 January the sheriff continued the hearing until 30 January. On 27 January the respondent sought clarification from the requesting authority of the place of the applicant's participation in the offence. On 30 January 2025 the authority confirmed by email letter that the applicant had committed the offence in Tczew. That confirmation was lodged in terms of section 202 of the Extradition Act 2003. At the evidential hearing the applicant's solicitor submitted that the defect in the warrant was fundamental, and that it could not be cured by the further information. The sheriff ordered parties to prepare written submissions. He continued the hearing until 27 February. At the continued hearing he offered the applicant's solicitor the opportunity to make additional oral submissions, but he had nothing to add.

[3] The sheriff held that sections 2(2)(b) and 2(6)(b) of the Extradition Act 2003 required that a Part 1 conviction warrant should specify the place of the offender's participation in the offence; but that the absence of such specification could be cured, and had been cured, by the subsequent provision of the necessary information. Both of those matters were clear from sections 2(2)(b), 2(6)(b) and 202, read in light of the EU-UK Trade and Co-operation Agreement ("the TCA"). The TCA was adopted into UK national law by the European Union (Future Relationship) Act 2020. The sheriff drew support for his conclusions from (i) the decision of the Court of Justice of the European Union in *Case C-241/15 Criminal Proceedings against Bob-Dogi* [2016] 1 WLR 4583; (ii) the decision of the Supreme Court in *Gołuchowski v District Court in Elblag, Poland* [2016] UKSC 36, [2016] 1 WLR 2665; and (iii) the judgment of the Queen's Bench Divisional Court in *Alexander v Public Prosecutor's Office, Marseilles* [2017] EWHC 1392 (Admin), [2018] QB 408. He found that the arrest warrant was a Part 1 warrant; that the applicant was alleged to be unlawfully at large (section 11(4)); that he had been convicted in his presence (section 20(1)); and that the extradition was compatible with the applicant's Convention rights (section 21(1)). He ordered the applicant's extradition.

[4] The applicant seeks leave to appeal. The sole ground of appeal is that the sheriff erred in holding that the arrest warrant is a Part 1 warrant. It is maintained that it is not a Part 1 warrant because of the lack of specification of the place of the applicant's participation in the offence, and that the defect was not cured by the obtaining of the further information.

Relevant legislation

[5] The Extradition Act 2003 provides:

“2 Part 1 warrant and certificate

- (1) This section applies if the designated authority receives a Part 1 warrant in respect of a person.
- (2) A Part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains—
 - ...
 - (b) the statement referred to in subsection (5) and the information referred to in subsection (6).
 - ...
- (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.
- ...

26 Appeal against extradition order

- (1) If the appropriate judge orders a person's extradition under this Part, the person may appeal to the High Court against the order.
- ...
- (3) An appeal under this section—
 - (a) may be brought on a question of law or fact, but
 - (b) lies only with the leave of the High Court.
- ...

27 Court's powers on appeal under section 26

- (1) On an appeal under section 26 the High Court may —
 - (a) allow the appeal;
 - (b) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that —
 - (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
 - (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.
- ...
- (5) If the court allows the appeal it must —
 - (a) order the person's discharge;
 - (b) quash the order for his extradition.
- ...

68A Unlawfully at large

- (1) A person is alleged to be unlawfully at large after conviction of an offence if —
 - (a) he is alleged to have been convicted of it, and
 - (b) his extradition is sought for the purpose of his being sentenced for the offence or of his serving a sentence of imprisonment or another form of detention imposed in respect of the offence.
- ...

202 Receivable documents

- (1) A Part 1 warrant may be received in evidence in proceedings under this Act.
- (2) Any other document issued in a category 1 territory may be received in evidence in proceedings under this Act if it is duly authenticated.
- ...
- (5) Subsections (2) and (3) do not prevent a document that is not duly authenticated from being received in evidence in proceedings under this Act."

[6] The European Union (Future Relations) Act 2020 provides:

"29 General implementation of agreements

- (1) Existing domestic law has effect on and after the relevant day with such modifications as are required for the purposes of implementing in that law the Trade and Cooperation Agreement or the Security of Classified Information Agreement so far as the agreement concerned is not otherwise so implemented and so far as such implementation is necessary for the purposes of complying with the international obligations of the United Kingdom under the agreement.
- ...

- (4) In this section—
 ‘domestic law’ means the law of England and Wales, Scotland or Northern Ireland;
 ‘existing domestic law’ means—
 (a) an existing enactment, or
 (b) any other domestic law as it has effect on the relevant day;
 ‘existing enactment’ means an enactment passed or made before the relevant day;
 ...”

Framework Decision

[7] The Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedure between member states (2002/584/JHA) provides:

“Article 8

Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:
 ...
 (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;
 ...

Article 15

Surrender decision

1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.
2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.
3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.”

[8] The 2003 Act was intended to give effect to the Framework Decision.

The TCA

[9] At the expiry of the Brexit transition period the Framework Decision ceased to apply to extradition between the UK and EU states. It was replaced by the TCA. Article 606 of the TCA mirrors the terms of Article 8 of the Framework Decision, and Article 613 of the TCA mirrors Article 15 of the Framework Decision. Articles 606 and 613 provide:

“Article 606

Content and form of the arrest warrant

1. The arrest warrant shall contain the following information set out in accordance with the form contained in Annex 43:
 ...
 (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;
 ...

Article 613

Surrender decision

1. The executing judicial authority shall decide whether the person is to be surrendered within the time limits and in accordance with the conditions defined in this Title, in particular the principle of proportionality as set out in Article 597.
2. 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, taking into account the need to observe the time limits provided for in Article 615.
3. The issuing judicial authority may forward any additional useful information to the executing judicial authority at any time.”

Submissions for the applicant

[10] The arrest warrant is not a Part 1 warrant in terms of section 2 the 2003 Act because it does not specify the place of the applicant’s participation in the offence. Section 2(2)(b) requires that a Part 1 warrant contains *inter alia* the information specified in section 2(6), including “particulars of the conviction” (section 2(6)(b)). It is clear from Article 8.1(e) of the Framework Decision and from Article 606.1(e) of the TCA that “particulars of the

conviction” include the place of participation in the offence. *Sandi v Romania* [2009] EWHC 3079 (Admin), decided at a time when the Framework Decision had effect in the United Kingdom, confirms that position.

[11] It follows that the arrest warrant is invalid. The invalidity was not cured by the subsequent provision of the necessary information by the requesting state. In *Dabas v Spain* [2007] UKHL 6, [2007] 2 AC 31, Lord Hope opined at paragraph 51:

“I wish to stress, however, that the judge must first be satisfied that the warrant with which he is dealing is a Part 1 warrant within the meaning of section 2(2). A warrant which does not contain the statements referred to in that subsection cannot be eked out by extraneous information. The requirements of section 2(2) are mandatory. If they are not met, the warrant is not a Part 1 warrant and the remaining provisions of that Part of the Act will not apply to it.”

Counsel acknowledged that developments since *Dabas* indicated that such an absolute approach was not correct in every case. It was clear from *Bob-Dogi* and *Goluchowski* that some defects in an arrest warrant could be cured by the subsequent obtaining of the missing information. However, a distinction required to be drawn between formal and substantive defects (*Goluchowski*, paragraph 45). Counsel recognised that in *Alexander* the court had indicated (paragraph 61) that there had been a “sea-change” since 2014 when the UK had opted back into the Framework Decision, and (paragraph 62) that “[i]nto that altered environment fell the two decisions of *Bob-Dogi* and *Goluchowski*”. She accepted the correctness of the court’s conclusion at paragraph 73 of *Alexander*. However, she submitted that a warrant could not be saved where, as here, it was defective on its face and the defect was substantive rather than formal. *Bob-Dogi* provided an example of a substantive defect. There had in fact been no underlying domestic warrant. The absence of specification of the place of participation in the offence was a substantive defect. Accordingly, the warrant was not a Part 1 warrant and the applicant should be discharged in terms of section 27(5).

Submissions for the respondent

[12] The solicitor advocate for the respondent accepted that “the particulars of the conviction” referred to in section 2(6)(b) included the place of participation in the offence. That was clear when the subsection was construed having regard to the UK’s international law obligations, in particular Article 606.1(e) of the TCA. Formerly, when the UK had been bound by the Framework Decision, the position had been the same because of the terms of Article 8.1(e) of the Framework Decision.

[13] Lord Hope’s observation in *Dabas* that a warrant which did not contain the statements referred to in section 2(2) could not be eked out by extraneous information was no longer correct. It was plain following *Bob-Dogi* and *Goluchowski* that it was open to a requesting authority to supply information which was missing from an arrest warrant, and that such provision could cure the warrant’s deficiency. That was also clear from *Alexander*, at paragraphs 73 - 75. This was not a case where the arrest warrant was wholly deficient - where there had been a wholesale failure to provide the necessary information. On the contrary, the only information said to be missing was the place of participation in the offence. That information had been provided. It was right that the requesting authority had been given the opportunity to do that (section 202, interpreted having regard to the terms of Article 613 of the TCA). There was no unfairness to the applicant in that course being followed. It had not been suggested that it prejudiced the exercise of any of his rights under the 2003 Act.

Decision and reasons

[14] We are content to proceed on the basis that “particulars of the conviction” in section 2(6)(b) include the place of participation in the offence(s). That was clear when the subsection required to be construed having regard to Article 8.1(e) of the Framework Agreement. It is equally clear now that it requires to be construed having regard to Article 606.1(e) of the TCA (as to which see section 29(1) of the European Union (Future Relations) Act 2020).

[15] In *Bob-Dogi* an EAW in an accusation case did not make any reference to the underlying national arrest warrant as required by Article 8(1)(c) of the Framework Decision. The Court of Justice made it clear that in determining the validity of the EAW the requested authority could have regard to information provided pursuant to Article 15(2) of the Framework Decision and any other information available to it. In fact, as the additional information indicated that there was no underlying national arrest warrant, the court concluded that the EAW was invalid.

[16] In *Goluchowski*, a conviction case, the requested persons were required to surrender themselves to the Polish authorities to serve outstanding sentences but failed to do so. Various summonses and arrest warrants were issued in Poland which failed to achieve the apprehension of the requested persons and, upon discovering that they were in England, EAWs were issued and served. The EAWs outlined the convictions and sentences imposed but did not provide details of the Polish summonses and arrest warrants which had been issued to secure the detention of the requested persons. The Crown requested further information from the Polish authorities as to that matter. That information was provided. The requested persons challenged the validity of the EAWs on the ground that they contained no reference to the previous Polish arrest warrants, which, they said, contravened

the mandatory requirement in section 2(6)(c) of the 2003 Act that a warrant had to contain “particulars of any other warrant issued” in the requesting state “for the person’s arrest in respect of the offence”, reflecting requirements of Article 8.1(c) of the Framework Decision.

The Supreme Court held that in the circumstances the EAWs had not required to contain details of the Polish summonses and warrants; but that if the information had been required the defect would have been rectified by the further information. Lord Mance delivered the leading judgment, with which all of the other Justices agreed. He opined at paragraph 45:

“45 Accordingly, even if a reference to the activating decisions should strictly have been made in the EAWs alongside the reference to the judgment as enforceable, this cannot as a matter of European law mean that the EAWs should be treated as invalid or incapable of being executed. That being so, I consider that the same position must once again carry through into section 2(6) of the 2003 Act. Section 202 must be understood as enabling the same sort of co-operation and regularisation of formal, rather than substantive, defects appearing in an EAW that article 15 of the Framework Decision contemplates.”

He referred to *Dabas* at paragraph 46 and observed at paragraph 47:

“On the present appeals, we have a clear decision of the Court of Justice [Bob-Dogi] that a requirement for information in an EAW should not be read as a condition, non-compliance with which is by itself fatal to the validity of the EAW, and that the EAW may be enforced if and when separately supplied information establishes a sound factual basis for surrender. In the context of a request for surrender under an EAW and in the light of section 202, I consider that the requirements of section 2(2)(b) read with section 2(6)(b) and (e) can and should be read in a like sense. Lord Hope’s words [in para 51 of *Dabas*] must be qualified to enable the process of investigation, involving where deemed appropriate a request for and examination of further information, to be undertaken and taken into account, in determining whether an EAW should be given effect under the 2003 Act, in a manner paralleling that indicated by the Court of Justice to be appropriate under the Framework Decision.”

[17] *Alexander* concerned accusation EAWs. The judgment of the court (delivered by Irwin LJ) discussed the required contents of arrest warrants and the possibility of remedying deficiencies by obtaining further information in light of *Bob-Dogi* and *Goluchowski*. It concluded:

“73 In the event, we conclude that the previous approach to the requirements of an EAW and the role of further information must be taken no longer to apply. The formality of Lord Hope’s approach in *Cando Armas*’s case [2006] 2 AC 1, based on the wording of the Act, has not survived. 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 We do not see an easy distinction, in practice, between ‘formal’ and ‘substantive’ requirements of an EAW, despite the remarks of Lord Mance JSC in *Goluchowski*’s case [2016] 1 WLR 2665, para 45. An EAW requires certain specified information. If that information is not forthcoming, then extradition cannot lawfully be ordered. Are the date, place and nature of the offence, and the question of maximum sentence, to be regarded as ‘formal’ or ‘substantive’ matters? They are required matters. The effect of the two key recent decisions is, we conclude, that missing required matters may be supplied by way of further information and so 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 as insufficient 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.

76 We note the indication in *Bob-Dogi*’s case [2016] 1 WLR 4583, para 65, that a court has a duty to make further inquiries as to further information before declining to execute a warrant. We accept that there is an obligation on a court to consider in each case, before ordering extradition, whether the necessary information is present. We accept that, subject to any exception which may arise, an English court may inquire as to further information, before concluding against extradition...”

We respectfully agree with those observations, subject to the qualification that it is now

Article 613 of the TCA which applies, not Article 15 of the Framework Decision. The

observations, adjusted to refer to the Scottish courts, represent the correct approach in

Scotland to extradition requests under Part 1 of the 2003 Act.

[18] In *Litvinchuk v The Circuit Court in Szczecin, Poland* [2019] EWHC 2745 (Admin) Julian Knowles J discussed *Dabas*, *Bob-Dogi*, *Goluchowski* and *Alexander*. He opined:

“23. The effect of these decisions is that further information is to be treated as if it were part of – in other words, incorporated into – the EAW (save where the EAW is so deficient as to be a nullity: see *Alexander*, supra, [75]). Such extreme cases aside, the EAW and the further information are not to be treated as separate and distinct documents but as part and parcel of the same document ...”

Once again, we respectfully agree. *Jipa v the Hunedoara County Court, Romania* [2024]

EWHC 2785 (Admin) provides a further example of the correct approach. The appellant argued that a conviction arrest warrant did not comply with section 2(6)(b) because the particulars of a prior conviction which was relevant to sentence were insufficiently specified. Further information was obtained from the requesting authority. Cutts J dismissed the appeal. She stated:

“41. There is no dispute that, taken alone, the information in the AW about the earlier offence would be insufficient to comply with section 2(6)(b). That is why further information was sought – to furnish the court with the particulars of criminal case 24/2016. The question is whether the DJ was entitled to take the two documents together in determining the validity of the warrant or whether there was a wholly deficient warrant by reason of a wholesale failure to provide the necessary particulars such as to render it a nullity. As *Alexander* made clear this question can only be answered on the specific facts of each case.

42. In this case there was a document in the prescribed form, presented as an AW and setting out to address the information provided by the Act, including giving particulars of the offence of which the appellant was convicted which was the subject of extradition proceedings. Whilst the detail of the offending of criminal case 24/2016, relevant to sentence, is absent from the warrant, I do not consider there to have been a wholesale failure to provide the necessary particulars such as to make the AW a nullity. The AW is not internally contradictory or confusing. It did not merely state that there was a longer sentence to be served than that imposed for the offence for which extradition was sought without more...

44. The further information filled the lacuna and gave the details of criminal case 24/2016. In my view, as described in and for the reasons set out in the case of *Litwinczuk*, the further information is to be treated as if it was incorporated into the AW.

45. It follows that the DJ was entitled to take the further information provided into account when determining the validity of the warrant. Taken as a whole the AW (which means looking both at the AW itself and the further information) does provide information about the offences and the nature and extent of them. There are sufficient particulars of both the offence for which extradition is sought and of criminal case 24/2016 to explain the total sentence of seven years imprisonment and to satisfy section 2(6)(b) of the Act.”

[19] It is common ground in the present case that the supplementary information which was obtained clarified the place of participation in the offence. Before that clarification, the warrant satisfied all of the other requirements of subsections 2(2) and 2(6) of the 2003 Act. It was not internally contradictory or confusing. This is not the sort of extreme case where an arrest warrant and further information ought not to be read together.

[20] The applicant’s objection to the validity of the warrant appears technical and opportunistic. He was present at the trial and was well aware of the place of his participation in the offence. There is no unfairness to him in the particulars in the warrant being supplemented by the further information. It was not suggested that it prejudiced him exercising of any of his rights under the 2003 Act.

[21] We are satisfied that on the facts of this case the lack of specification of the place of participation in the offence was properly characterised as a lacuna. There was not a wholesale failure to provide the necessary particulars. The warrant was not wholly deficient. This is a case where it was appropriate to treat the warrant and the further information as being part and parcel of the same document, the particulars of which complied with section 2(2) and 2(6)(b).

[22] It follows that the sheriff was correct to hold that the warrant is a Part 1 warrant.

Disposal

[23] We shall grant the application for leave to appeal. However, for the foregoing reasons, the appeal is dismissed.