



29 June 2016

PRESS SUMMARY

Goluchowski (Appellant) v District Court in Elblag, Poland (Respondent)
Sas (Appellant) v Circuit Court in Zielona Gora and District Court in Jelenia Gora, Poland (Respondent) [2016] UKSC 36
On appeals from: [2015] EWHC 332 (Admin) and [2015] EWHC 648 (Admin)

JUSTICES: Lord Neuberger (President), Lord Mance, Lord Wilson, Lord Hughes, Lord Toulson

BACKGROUND TO THE APPEALS

European Arrest Warrants (EAWs) have been issued for the Appellants' extradition to Poland, where they are wanted for the purposes of serving sentences of imprisonment. The Appellants' extradition to Poland was ordered pursuant to the EAWs, and they have appealed against the orders on the grounds that the EAWs are defective under section 2(6)(c) of the Extradition Act 2003. This requires that an EAW in a "conviction case" contains "particulars of any other warrant issued in the Category 1 territory for the person's arrest in respect of the conviction". Various domestic summonses or warrants were issued in Poland unsuccessful attempts to find and arrest the Appellants there, before the EAWs were issued. The Appellants' case is that such domestic summonses or warrants required to be particularised in the EAWs. The High Court dismissed their appeals and certified two questions:

"(1) Is an EAW defective for the purposes of section 2(6)(c) of the Extradition Act 2003 if it does not also give particulars of domestic warrants issued in the category 1 territory to enforce that judgment or order within the issuing state?"

(2) Does the term "any other warrant issued in the category 1 territory for the person's arrest in respect of the offence" in section 2(6)(c) of the Extradition Act 2003 only require the European arrest warrant to include the conviction of the requested person, or does it, following *Poland v Wojciechowski* [2014] EWHC 412 (Admin), require the particularisation of the decision that required the requested person to serve an immediate sentence of imprisonment and was the decision following which it could be said that the requested person was unlawfully at large?"

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Mance gives the leading judgment, with which the other members of the Court agree. Lord Neuberger gives a short concurring judgment.

REASONS FOR THE JUDGMENT

Although the EU Framework Decision, on which the provisions of section 2 of the Extradition Act 2003 are based, does not explicitly distinguish between accusation and conviction cases, in practice there are significant differences in the bases on which EAWs in each category of case will rest [23-24]. In an accusation case, an EAW will normally be based on a domestic arrest warrant whereas in a conviction case, the natural basis of an EAW will be an enforceable judgment [25-26]. Where there exists an enforceable judgment, there is no reason why there should necessarily be any domestic warrant and, if there is, there is no obvious reason why it should be required to be evidenced in the EAW [26].

A domestic warrant may be required in a conviction case where a person is at large when convicted, has absconded, and is wanted for sentencing, and might in such circumstances be regarded as constituting the basis of any EAW issued to secure his surrender for sentencing [27]. But, where a person has been sentenced to an immediate sentence of imprisonment and is due to be in prison but has absconded, there is no obvious reason why there should be any domestic warrant at all or why, if there is one, it should be required to be evidenced in any EAW issued to secure the offender's return to serve his sentence [29].

The circumstances of the present appeals involve sentences of imprisonment which did not take immediate effect. Only the first and third EAWs issued in relation to Mr Sas are presently relevant. As regards the conviction the subject of the first EAW, Mr Sas was free until he lost his appeal, whereupon he was summonsed to report to detention, which he failed to do. A court order later issued to secure his attendance was irrelevant to the enforceability of the sentence, and could not constitute a warrant for the purposes of section 2(6)(c), and did not therefore need to be particularised in the EAW [31].

As regards the conviction the subject of the third EAW relating to Mr Sas, Mr Sas was given an immediate sentence of imprisonment but granted conditional release which was revoked when he breached the conditions of his release. When he failed to surrender, a domestic warrant was issued for his arrest [33]. As regards the conviction the subject of the EAW relating to Mr Goluchowski, the sentences of imprisonment passed were suspended, but ordered by the court to be served when he broke certain conditions. In these circumstances, both Appellants were due to attend prison without more as a result of court orders, and only when they failed to obey those orders were any domestic court orders, summonses or warrants issued to secure attendance at the relevant correction facility [32]. Those summonses or warrants are therefore irrelevant to the EAWs, did not need mentioning in them and did not constitute warrants under section 2(6)(c) of the 2003 Act [34].

It was not necessary for the EAWs to contain evidence of the decisions resulting in suspension of Mr Goluchowski's original sentence and subsequent activation of it, nor of Mr Sas's conditional release and the subsequent revocation of that [35, 42-44]. On the face of the EAWs, details are given of judgments which by themselves required the Appellants to begin immediate service of a sentence [36]. Though they do not contain details of every judicial decision by virtue of which the sentence has become enforceable, to require such details would (i) mean that an EAW should set out a quite complex history of proceedings whereas box (b) of the prescribed form of EAW contemplates a single reference, (ii) run counter to principles of mutual confidence on which the EAW regime is based, and (iii) overlook the fact that it is always open to an executing state to request more information from the requesting state, as the UK seems to have done in these cases [43]. But a final decision on the extent of the details required is unnecessary since the processes by which the judgments became enforceable is clear from the subsequently obtained information, and EU caselaw establishes that an otherwise valid EAW is not to be treated as invalid or ineffective merely because the full history is not contained in the EAW itself [44]. Even if a reference to the activating decisions should, strictly speaking, have been made in the EAWs alongside the reference to the judgment as enforceable, this cannot mean, under European law or the Extradition Act 2003, that the EAWs should be treated as incapable of being executed [45].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>