Trinity Term

[2016] UKSC 36

On appeals from: [2015] EWHC 332 (Admin) and [2015] EWHC 648 (Admin)

JUDGMENT

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)

before

Lord Neuberger, President

Lord Mance

Lord Wilson

Lord Hughes

Lord Toulson

JUDGMENT GIVEN ON

29 June 2016

Heard on 14 March 2016

Appellant (Goluchowski)	Respondents
Clare Montgomery QC	Julian B Knowles QC
James Stansfeld	Mary Westcott
	Saoirse Townshend
(Instructed by Lawrence & Co Solicitors)	(Instructed by CPS Appeals Unit)

Appellant (Sas)

Mark Summers QC

Nicholas Hearn

(Instructed by Kaim Todner Solicitors Ltd)

LORD MANCE: (with whom Lord Neuberger, Lord Wilson, Lord Hughes and Lord Toulson agree)

1.

These appeals raise issues about the validity of European arrest warrants (“EAWs”) issued by two Polish courts with a view to the extradition and surrender by the United Kingdom of the appellants,

Maciej Goluchowski and Marek Sas. They are wanted for the purpose of serving sentences of imprisonment in Poland which were, in the case of Goluchowski, (a) conditionally suspended and later activated and, in the case of Sas, either (b) due to be served only after an unsuccessful appeal (case II K 52/06, and EAW 1) or (c) the subject of a conditional early release which was revoked for breaches of the relevant conditions (case II K 498/03, and EAW 3). (Mr Sas was the subject of a further, accusation EAW, EAW 2, which can be ignored for the purposes of these proceedings.) Various domestic summonses or warrants were issued in unsuccessful attempts to find and arrest the appellants in Poland, before the relevant EAWs were issued.

2.
In each appeal, the High Court has certified a question asking whether an EAW is 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". In the case of Goluchowski, the further question is certified:

"… 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 4162 (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?"

3.
What section 2(6)(c) in fact requires is that an EAW issued to ensure that a person wanted to serve a sentence of imprisonment contain "particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence". Sections 2(6)(b) and (e) require that it also contain "particulars of the conviction" and "particulars of the sentence which has been imposed …". The submissions before the court have in the circumstances ranged more widely than the second question certified in the case of Goluchowski.

4.
In brief outline:

i)
Both appellants submit that an EAW must contain particulars of any, or if not all then at least the most recent, domestic warrant issued to arrest a person wanted to serve a sentence of imprisonment.

ii)
Miss Clare Montgomery QC for Goluchowski submits that an EAW must also contain particulars evidencing a judicial decision activating a suspended sentence. Mr Mark Summers QC for Sas submits that a similar objection in fact applies to the EAW issued in respect of his client in case II K 498/03.

iii)
Both counsel submit that their submissions follow from the terms of the 2003 Act, whatever the position may be under European law under the terms of Council Framework Decision of 13 June 2002 (2002/584/JHA).

iv)
On point (ii), Miss Montgomery submits that her submissions also follow from the terms of the Framework Decision. Mr Summers was not inclined to go so far, but noted that there may be respects

in which the United Kingdom Parliament introduced conditions for surrender more specific or protective than those contained in the Framework Decision.

v)
That last possibility was identified by Lord Hope in Office of the King's Prosecutor, Brussels v Cando Armas [2005] UKHL 67; [2006] 2 AC 1, para 24, when he observed that "unfortunately" the wording of Part I of the 2003 Act does not in every respect match that of the Framework Decision, but that the task of interpreting and applying the 2003 Act "has to be approached on the assumption that, where there are differences, these were regarded by Parliament as a necessary protection against an unlawful infringement of the right to liberty".

vi)
However, United Kingdom courts will, if reasonably available, always prefer an interpretation of a domestic Act which accords with the United Kingdom's international obligations: Assange v Swedish Prosecution Authority (Nos 1 and 2) [2012] UKSC 22; [2012] 2 AC 471, and, since 1 December 2014 (after the United Kingdom's opt back into the Framework Decision under Protocol No 36 to the Treaty of Lisbon), it has also been the United Kingdom courts' duty if possible to interpret the 2003 Act consistently with the Framework Decision (Criminal Proceedings against Pupino (Case C-105/03) [2006] QB 83) and the Supreme Court's duty to refer to the Court of Justice any issue of European law which it is necessary to resolve for the purpose of resolving an appeal and which is not acte clair.

The relevant legislation

5.
Under the 2003 Act, an EAW is a Part 1 warrant, and the language of section 2 makes clear that a Part 1 warrant to be valid must satisfy various requirements. In particular:

"(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)."

This introduces an important distinction between EAWs issued in respect of (a) persons accused and wanted for prosecution ("accusation cases") and (b) persons wanted after conviction either for sentencing or to serve a sentence of imprisonment or another form of detention imposed in respect of the offence ("conviction cases").

6.
In respect of a conviction warrant, subsection (5) specifies that:

"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."

Although the term is not used in section 2, a person wanted under subsection (5) is a person "unlawfully at large" within a definition contained in section 68A (as inserted by section 42 of and paragraph 2 of Schedule 13 to the Police and Justice Act 2006 - "the 2006 Act"):

"68A. (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.

(2) This section applies for the purposes of this Part, other than sections 14 and 63."

7.
Subsections (4) and (6) specify the information required in respectively accusation and conviction warrants. For an accusation warrant:

"(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."

8.
For a conviction warrant:

"(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."

9.
The scheme of the Framework Decision to which these provisions give effect is different. It deals with accusation and conviction cases together. Article 1.1 provides:

“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.”

10.
Article 8.1 sets out the required content and form of an EAW:

“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.”

11.
The form contained in the Annex to the Framework Decision contains a box (“box (b)”) for completion with the information referred to in article 8.1(c), providing as follows:

“(b) Decision on which the warrant is based:

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

Type: .....

2. Enforceable judgment: .....

.....

Reference: .....”

12.
Article 15 addresses the surrender decision and sufficiency of information:

“15.1. 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."

13.
In the 2003 Act, the admissibility in evidence of such further information is secured by section 202 (as amended by section 42 of and paragraph 26 of Schedule 13 to the 2006 Act), which provides:

"(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.

(3) A document issued in a category 2 territory may be received in evidence in proceedings under this Act if it is duly authenticated.

(4) A document issued in a category 1 or category 2 territory is duly authenticated if (and only if) one of these applies -

(a) it purports to be signed by a judge, magistrate or officer of the territory;

(aa) it purports to be certified, whether by seal or otherwise, by the Ministry or Department of the territory responsible for justice or for foreign affairs;

(b) it purports to be authenticated by the oath or affirmation of a witness.

(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."

The facts in more detail

(a) Goluchowski

14.
The EAW in respect of Goluchowski was dated 13 August 2010 in relation to two offences, relating to what I can call cases I and II. The translation from the Polish shows that box (b) was completed as follows:

"1. Type:

Decision of provisional detention: x

Judicial decision concerning application of other measures, which is deprivation of freedom, if yes, what: x

Enforceable judgment: x

1) Regional Court in Elblag, dated October 22, 2007

2) Regional Court in Elblag, dated April 8, 2008

2. File signature, for which decision was given [a better translation might be: "reference of decision given"]:

1) X K 986/07

2) II K 105/08".

Under “Indications on the length of sentence”, there then appeared in relation to case I ten months and in relation to case II two years, with the further information that both sentences remained to be served in full.

15.
Mr Goluchowski was arrested under the EAW on 1 August 2014, and further information was supplied, presumably at request, by the Regional Court of Elblag through Interpol on 29 August 2014. It showed that the sentence imposed in case I on 22 October 2007 had been suspended for a probation period of four years, that on 13 June 2008 he was ordered to serve the sentence as a result of having committed a similar intentional offence during that probation period, that he was summonsed to attend the correction facility on 28 July 2008, but that on 17 June 2008 he filed a motion to defer the sentence, leading to a six month deferral until 19 February 2009, when he was required to attend the facility without further summons, that on 20 February 2009 he failed to do this, that on 10 March 2009 the police were ordered to bring him to the facility and on 30 June 2009 a search with a domestic arrest warrant was started.

16.
As to case II, the EAW showed that the sentence of two years’ imprisonment imposed on him on 8 April 2008 was conditionally suspended for five years and was subject to probationary supervision, that on 10 March 2009 he was ordered to serve the sentence because he had evaded the supervision of his probation officer, that on 23 April 2009 he was summonsed to attend the correction facility, that he did not do this and that on 8 January 2010 a domestic arrest warrant was issued for this offence.

17.
Based on police information that he might be in England, the EAW was issued by the District Court in Elblag in respect of both cases on 13 August 2010.

(b) Sas

18.
There are two outstanding EAWs in respect of Mr Sas. The first, EAW 1, was issued by the Zielona Gora Circuit Court on 23 January 2008. Box (b) is completed (in translation):

“1. Type of decision:

Enforceable arrest warrant: n/a

Other enforceable judicial decision involving personal liberty deprivation: n/a

Enforceable judgment:

Judgment of April 24, 2006, by the District Court in Zagan, changed by the judgment of November 2, 2006, by the Circuit Court in Zielona Gora (ref no VII Ka 783/06).

2. Decision reference:

II K 52/06, District Court in Zagan”

The length of sentence was given as eight months, all remaining to be served.

19.
Mr Sas was arrested under EAW 1 on 30 July 2014 and on 14 October 2014 the Zielona Gora Circuit Court passed on further information provided by the Zagan District Court. The Zielona Gora Circuit

Court had on 2 November 2006 varied the basis of the original conviction, so that it was now found in article 297 para 1 in conjunction with article 11 para 3 of the Penal Code. Both Mr Sas and his wife who was convicted with him:

“were free when they testified before the first and second instance courts. Only after the appeal proceedings were finished and the judgment became final were they summonsed to report to their penitentiaries. … Marek Sas was to report to the detention facility … on January 25, 2007 …”

20.
He did not do this. So, on 12 March 2007, the District Court in Zagan issued an order for the police to bring him in, but this could not be executed as he was not residing at his usual address. The court therefore issued a wanted notice for him on 27 July 2007, and “suspended the enforcement proceedings” against him. Since that produced no arrest, at the Zagan District Court’s request, the Public Prosecutor of Zielona Gora applied on 31 December 2007 for an EAW, which the Zielona Gora Circuit Court issued on 23 January 2008.

21.
The other, EAW 3, was issued by the District Court in Jelenia Gora on 21 August 2008. Box (b) was again completed with the first entries being said to be “not applicable”. Under them, the entry “Enforceable judgment” was completed with the information “Cumulative judgment issued by the District Court in Boleslawiec on 11 February 2004” and the case reference given of “II K 498/03”. Two sentences were specified one of two years and two months, the other of one year, and the remaining sentence to be served was given as “one year, six months and 23 days imprisonment, off-setting from the term of penalty, the periods of provisional custody served between 13.11.2003 and 05.04.2004 and between 20.04.2004 and 01.07.2005”. It thus appeared on the face of EAW 3 that Sas had served part of the sentences imposed on 11 February 2004 and was wanted to serve the balance.

22.
Information provided by the District Court in Jelenia Gora at the request of the Crown Prosecution Service on 1 October 2014 showed that the “cumulative” judgment of 11 February 2004 resulted from four separate frauds committed by Sas between 2000 and 2002, that the District Court had on 30 June 2005 granted Sas early conditional release from the sentence then imposed, but that on 29 September 2007 the same Court had revoked the conditional release for breach of the condition that he undergo supervision and because of other pending charges against him, that when he failed to surrender, the District Court in Boleslawiec issued a warrant for his compulsory appearance at prison, and that thereafter on 21 August 2008 EAW 3 was issued.

Analysis

23.
Underlying the provisions of section 2(4) and 2(6) of the 2003 Act are the requirements of article 8.1 of the Framework Decision. Article 8.1(c) draws no explicit distinction between accusation and conviction cases, but embraces both. The declared purpose of article 8.1(c) is to ensure that the EAW demonstrates that the case falls within articles 1 and 2, that is to say that it shows that the case is either an accusation or a conviction case (article 1.1) and that the offence qualifies under article 2. In Parchetul de pe lângă Curtea de Apel Cluj v Bob-Dogi (Case C-241/15) (“Bob-Dogi”) the opinion of Advocate General Yves Bot EU:C:2016:131, (unreported) 2 March 2016, recently stressed the importance of the requirement that every EAW rest on a basis specified in article 8.1(c).

24.

In practice, however, a significant difference exists in the bases on which EAWs will rest in accusation and conviction cases. In an accusation case, the requirement in section 2(4)(b) of the 2003 Act for information consisting of “particulars of any other warrant issued in the category 1 territory for the person’s arrest in respect of the offence” refers 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”: Louca v Public Prosecutor, Bielefeld, Germany [2009] UKSC 4; [2009] 1 WLR 2550, para 15. As was also observed at paras 9-10 in Louca , the language of article 8.1 draws a distinction between a “European arrest warrant” and in sub-paragraph (c) “an arrest warrant”, which indicates that the latter words refer to any domestic warrant.

25.
In an accusation case, any EAW will normally be based on a domestic arrest warrant. The language of article 8.1(c) also covers “any other enforceable judicial decision having the same effect”. The concept of a “warrant” in section 2(4)(b) can no doubt be read widely enough to cover “any other enforceable judicial decision having the same effect” on which an EAW may be based in other European countries party to the Framework Decision.

26.
In a conviction case, it is equally necessary to satisfy article 8.1(c), but the natural basis of an EAW is “an enforceable judgment” or, again perhaps, “any other enforceable judicial decision having the same effect”. Where there exists such an enforceable judgment or equivalent decision, there is no reason why there should necessarily be any domestic warrant or equivalent, and, if there is, there is no obvious reason why it should also be required to be evidenced in the EAW. In the judgment in Bob-Dogi EU:C:2016:385 (unreported) 1 June 2016, para 51 the Court of Justice was careful to say that an EAW:

“must, in all cases, be based on one of the national judicial decisions referred to in the provision [viz article 8.1(c)], which may be, where relevant, the decision issuing a national arrest warrant.”

The phrase “where relevant” might here have been better expressed “as the case may be” - the phrase used earlier in a parallel context in para 49. In the French, German and Spanish, the same words are used in each context (le cas écheant, gegebenfalls and en su caso). In other words, article 8.1(c) offers alternative possibilities, according to the context. Miss Montgomery’s suggestion in further written submissions on Bob-Dogi that the drafting history somehow supports a view that there must always, or at least in a case where the original judgment is not immediately executable, be a prior national arrest warrant has in fact no support in paras 50-51 of the court’s judgment or para 49 of Advocate General Yves Bot’s opinion to which she refers. All the drafting history shows is, as the Court of Justice said in para 51, that (whereas originally it was contemplated that there might or might not be a relevant decision) ultimately it became, in accordance with article 8.1(c), mandatory that there should be at least one of the national judicial decisions mentioned in that clause of that article.

27.
A situation in which a domestic warrant may be required, in a conviction case, is where a person is at large when convicted, has absconded and is wanted for sentencing. A warrant issued for his arrest might in this situation be regarded as constituting the basis of any EAW then issued to secure his surrender for sentencing. That situation could explain the reference in section 2(6)(c) of the 2003 Act to “particulars of any other warrant issued in the category 1 territory for the person’s arrest”. Otherwise, I consider that section 2(6)(c) is unlikely to have any bite. It is submitted that this interpretation of section 2(6)(c), with its necessary restriction to cases where a person has been

convicted but not yet sentenced, cannot stand with the careful delineation and differentiation of the scope of section 2(6)(d) and (e) between such cases and cases where the person wanted has been both convicted and sentenced. I accept the point forensically, but I think that it gives too much weight to a distinction which had necessarily to be expressed when drafting subsections (d) and (e), too little weight to the use of the word “any” in subsection (c) and too much weight to the supposed precision of the drafters of the 2003 Act generally.

28.
As an indication of the last point, I have already observed that the word “warrant” in section 2(4)(b) must probably be interpreted as embracing “any other enforceable judicial decision having the same effect”. Further, in contrast with the position in section 2(6)(c), the word “any” in section 2(4)(b) must be seen as over-cautious, since it is clear that any EAW must be based on a domestic warrant or equivalent in accusation cases - a point which Advocate General Bot went to great pains to stress.

29.
In a conviction case, where the person has been sentenced to an immediate sentence of imprisonment, is due to be in prison but has absconded, perhaps even from the dock or from prison, there is no obvious reason why there should be any domestic warrant at all, or why, if any has been issued, it should be required under article 8.1(c) of the Framework Decision to be evidenced in any EAW which is issued to secure the offender’s return to serve his sentence. This is confirmed by the alternative formulation of the various possibilities in article 8.1(c), as well as in box (b) of the annexed form. The same logic can and, in order to ensure consistency, should in my opinion be carried through to section 2(6)(c) of the 2003 Act.

30.
The present appeals are however concerned with sentences of imprisonment following conviction which did not take immediate effect. It is a notable feature of the Framework Decision and the 2003 Act that neither appears to show any consciousness of the possibility of such sentences, which are by no means uncommon. That cannot mean that they are not covered. The Framework Decision and the 2003 Act must be understood and made to work in a manner which will cater for such sentences.

Sas (EAW 1)

31.
I will start with EAW 1 issued in respect of Sas. In accordance with a common continental practice (in contrast with normal British practice), Sas was and remained free both when originally sentenced to imprisonment and when his appeal was heard. His sentence became final and enforceable when his appeal failed. His summonsing to report to the detention or correction facility on 25 January 2007 was evidently a formal step necessary to implement that outcome. He should then have attended at the facility. The court order later issued to secure this was irrelevant to the enforceability of his sentence. Neither the summons, which followed from the court order, nor the court order required mention in the EAW under article 8.1(c), and neither could constitute a warrant within section 2(6)(c) of the 2003 Act. The EAW mentioned both the original District Court judgment of 24 April 2006 and the judgment of the Circuit Court on appeal of 2 November 2006. So there can be no question of non-compliance with the terms of article 8.1(c) or of failure to particularise either the conviction or the sentence under section 2(6)(b) or (e) of the 2003 Act. EAW 1 was therefore valid.

Goluchowski and Sas (EAW 3)

32.

Both the sentences of imprisonment passed on Goluchowski were conditionally suspended, in each case he breached the conditions and was ordered by the court to serve the relevant sentence, in one case only after a further court order deferring the time when he should start to do so. In each case, when he failed to attend the correction facility on the date ordered, domestic court orders, summonses or arrest warrants were issued in order to try to secure this.

33.
In the case of Sas, a somewhat different course of events preceded EAW 3. He was given an immediate sentence of imprisonment, but was later granted a conditional release. He breached the conditions, whereupon the court revoked his conditional release, but he failed to surrender to serve the outstanding balance of his sentence. A domestic warrant was issued for his arrest, and then EAW 3.

34.
The position is therefore that Goluchowski, in respect of both sentences of imprisonment passed on him, and Sas, in respect of the sentence the subject of EAW 3, were due to attend in prison without more as a result of court judgments, but defaulted. The EAWs in respect of these sentences could be based on these court judgments. Any domestic summonses or warrants seeking to secure their compliance with these judgments were irrelevant, and did not require mention in the EAWs under article 8.1(c). By the same token, they could not constitute warrants requiring mention under section 2(6)(c) of the 2003 Act.

35.
That leads however to the further points covered by the parties' submissions before the Supreme Court, in particular whether the language of the Framework Decision and/or of section 2(6) of the 2003 Act required these EAWs to evidence or particularise (i) in the case of Goluchowski, the suspension of the original sentences and the court decisions by which the suspended sentences were activated so as to fall due to be served and/or (ii) in the case of EAW 3 relating to Sas, his conditional release and the court decision by which this was revoked.

36.
That depends on what is meant by the requirement in article 8.1(c) that an EAW "shall contain … information set out in accordance with the form contained in the Annex" consisting of "evidence of an enforceable judgment … or any other enforceable judicial decision having the same effect". In the case of all the EAWs, it can be said that, read literally, they do contain such information. After the printed form words "enforceable judgment" in box (b), there is in each a reference to a judgment and, under that, its case file number is also entered. Details of the length of sentence imposed and outstanding are also given in the completed form. On the face of the EAW relating to Goluchowski, the two judgments recorded could have imposed sentences due for immediate service, with the lapse of time explicable by for example absconding when the sentence was passed or at some later date. On the face of EAW 3 relating to Sas, the judgment did impose a sentence for immediate service, and the fact that a balance remained unserved could again be explicable by for example absconding.

37.
Lord Sumption has recently stated, in a judgment with which Lord Neuberger, Lord Kerr, Lord Clarke and Lord Wilson all agreed, that

"It follows that the scheme of the Framework Decision and of Part 1 of the 2003 Act is that as a general rule the court of the executing state is bound to take the statements and information in the warrant at face value. The validity of the warrant depends on whether the prescribed particulars are

to be found in it, and not on whether they are correct. It cannot be open to a defendant to challenge the validity of a warrant which contains the prescribed particulars by reference to extraneous evidence tending to show that those statements and information are wrong."

See Zakrzewski v District Court in Torun, Poland [2013] UKSC 2; [2013] 1 WLR 324, para 8. On that basis, it might be said to be irrelevant that information subsequently made available by the relevant Polish courts, it seems at the request of the United Kingdom prosecuting authorities, shows a more complex position than appears on the face of the EAWs themselves.

38.
I consider that it is clear in the light of the very recent decision in Bob-Dogi that the Court of Justice would not take so austere a view. In that case, box (b) of the EAW was completed in terms indicating on their face that the EAW was relied on as being itself also the national arrest warrant referred to in article 8.1(c). The Court of Justice, having held that an EAW must, in that case (an accusation case) be based on a prior separate national arrest warrant, said:

"64. Given that article 8.1(c) of the Framework Decision lays down a requirement as to lawfulness which must be observed if the European arrest warrant is to be valid, failure to comply with that requirement must, in principle, result in the executing judicial authority refusing to give effect to that warrant."

39.
The better interpretation of para 64 appears to be that article 8.1(c) requires an EAW to evidence on its face a prior separate national arrest warrant in order to comply with article 8.1(c), and that it is not sufficient that such a prior separate arrest warrant actually exists. However, despite the words "shall contain" used by article 8.1 and the language of "requirement" used by the Court of Justice, it is also clear that the Court was not treating the identification on the face of the EAW of a prior separate national arrest warrant as an absolute condition of an EAW's validity. On the contrary, the executing court was obliged to investigate the underlying factual position further, by requesting further information under article 15. Whether the EAW was to be treated as valid and enforceable would depend not on how it was expressed, but on the underlying factual question whether or not it proved actually to be based on a prior separate national arrest warrant. As the court put it:

"65 … before adopting such a decision [ie one refusing to give effect to the European arrest warrant], which, by its very nature, must remain the exception in the application of the surrender system established by the Framework Decision, as that system is based on the principles of mutual recognition and confidence, the executing judicial authority must, pursuant to article 15.2 of the Framework Decision, request the judicial authority of the issuing member state to furnish all necessary supplementary information as a matter of urgency to enable it to examine whether the fact that the European arrest warrant does not state whether there is a national arrest warrant may be explained either by the fact that no separate national warrant was issued prior to the issue of the European arrest warrant or that such a warrant exists but was not mentioned. …

67. In the light of the foregoing considerations, the answer to Question 2 is that article 8.1(c) of the Framework Decision is to be interpreted as meaning that, where a European arrest warrant based on the existence of an 'arrest warrant' within the meaning of that provision does not contain any reference to the existence of a national arrest warrant, the executing judicial authority must refuse to give effect to it if, in the light of the information provided pursuant to article 15.2 of the Framework Decision and any other information available to it, that authority concludes that the European arrest

warrant is not valid because it was in fact issued in the absence of any national warrant separate from the European arrest warrant."

40.
In the light of Bob-Dogi , it is therefore clear under European Union law that, if information obtained under article 15 subsequently to the EAW shows that a European arrest warrant was in fact based on an "enforceable judgment" or equivalent judicial decision, even though this was not fully or accurately "evidenced" on its face, the EAW will be valid and enforceable. On the other hand, if subsequently obtained information undermines in a fundamental respect a statement in an EAW which on its face evidences an enforceable judgment or equivalent judicial decision, it could not be right to give effect to the EAW willy-nilly.

41.
It is, nonetheless, of potential relevance to consider what is meant by "evidence of an enforceable judgment" or of an equivalent "enforceable judicial decision", since such evidence must appear either in the EAW or, if not, then in separate and subsequently obtained information.

42.
Mr Summers was, as I have said, inclined to accept that as a matter of European law, the present EAWs contained all the evidence that could be required in any form under article 8.1. It was sufficient to enter against the words "enforceable judgment", details of the original sentences, while the fact that they had become enforceable - by being activated, in the case of the two sentences passed on Goluchowski, or had become enforceable for its full length as a result of revocation of Sas's conditional release, in the case of the sentence the subject of EAW 3 in his case - was sufficiently evidenced by completion and certification by signature by the relevant courts at the end of the relevant EAWs. If that be the correct analysis, then I would have no difficulty in treating the position under section 2 of the 2003 Act as paralleling that under European law. It would be sufficient under subsections (5)(b) and (6)(b) and (e) for the EAW to identify the original convictions (which these EAWs did) and the length of the sentences passed (which these EAWs again did), bearing in mind that subsection (5)(b) clearly implies and that box (b) of the EAW must confirm that the sentence will in one way or another be or have become due to be served immediately.

43.
Miss Montgomery submits however that evidence of an enforceable judgment or other enforceable judicial decision having the same effect encompasses all judicial judgments or decisions by virtue of which the sentence has become enforceable. I am not attracted by this view, not least because (i) it could mean that the EAW should set out a quite complex history of court judgments and decisions, whereas article 8.1(c) and box (b) contemplate a single reference, (ii) mutual confidence would seem better served by accepting at face value, at least at an initial stage, an accurate statement that a sentence was (even though it was originally suspended or had been the subject of a conditional release) now "enforceable" and (iii) it would always be open to an executing state to request further information under article 15, as the United Kingdom prosecuting authorities appear to have done in the present cases.

44.
However, it is in my opinion unnecessary to resolve this point in order to decide these appeals. Here, the bases on which and the processes by which the judgments became enforceable are made clear by the subsequently obtained information. Bob-Dogi establishes that an EAW could not be treated as invalid or ineffective merely because that full history did not appear in the EAW itself and only

became apparent from information subsequently requested. Bob-Dogi concerned an EAW which was on its face problematic. It is inconceivable that an EAW which was in terms valid could fall to be treated as invalid in the light of subsequent information which confirmed that it did indeed rest on a valid foundation in terms of enforceable court judgment(s) and/or decision(s). That would be perverse.

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 cooperation and regularisation of formal, rather than substantive, defects appearing in an EAW that article 15 of the Framework Decision contemplates.

46.
In Dabas v High Court of Justice in Madrid, Spain [2007] UKHL 6; [2007] 2 AC 31, para 50, Lord Hope expressed the view, which with other members of the House including myself concurred, that an EAW "which does not contain the statements referred to in [section 2(2)] cannot be eked out by extraneous information", that the requirements of section 2(2) are "mandatory" and that, if they are not met, "the warrant is not a Part 1 warrant". That was said taking account of the principle of conforming interpretation, which was at that date treated (albeit wrongly) as applicable, but which is now on any view applicable: see Assange v Swedish Public Prosecutor [2012] UKSC 22; [2012] 2 AC 471, paras 198-217, Mugurel Cretu v Local Court of Suceava, Romania [2016] EWHC 353 (Admin), paras 14-18.

47.
The issue in Dabas was whether the reference in section 2(7) to a certificate from the designated authority involved a certificate separate from the EAW itself. Applying the principle in Pupino , the House nevertheless held by a majority that it did not. On the present appeals, we have a clear decision of the Court of Justice 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 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.

48.
Furthermore, and in any event, the present EAWs appear on their face to meet all the requirements of section 2(6). They particularise in each case an enforceable judgment and the sentence passed and due to be served in respect of it. They cannot be challenged on their face: Zakrzewski , cited above. It is only the subsequently obtained information which enables any suggestion that the particulars in the EAWs were incomplete, by providing at the same time full information: see para 35 above. Where, as here, that information shows that the EAWs were in all substantial respects entirely justified, it would be absurd to create the exception to the rule in Zakrzewski which would be involved in setting them aside.

Conclusions

49.
I would therefore dismiss the appeal in respect of EAW 1 relating to Mr Sas for the reasons given in para 31 above, and dismiss the appeals in relation to the EAW relating to Mr Goluchowski and in relation to EAW 3 relating to Mr Sas for the reasons given in paras 32-48 above. I would therefore affirm the judgments given in the High Court and dismiss the appeals in the cases of both Mr Goluchowski and Mr Sas.

LORD NEUBERGER:

50.
I agree with Lord Mance that these appeals should be dismissed for the reasons which he gives. I give this very short judgment simply because, as Lord Mance records in para 37 above, I agreed with what Lord Sumption said in Zakrzewski v District Court in Torun, Poland [2013] 1 WLR 324, para 8.

51.
In that case, an EAW had been issued against Mr Zakrzewski based on four convictions by Polish courts for which he had received aggregated sentences of 45 months, as recorded in the EAW. After Mr Zakrzewski had been brought before the District Judge (and the hearing of his case had been adjourned), an order had been made by the Polish court, on his application, replacing the aggregated sentences of 45 months with a cumulative sentence of 22 months. Accordingly, his case on the adjourned hearing before the District Judge and on appeal (which unsurprisingly was described by Lord Sumption, at para 4, as “hardly overburdened with merit”) was that the EAW had been invalidated by the cumulative sentence replacing the aggregated sentences.

52.
Read in the light of those facts, it appears to me that the remarks of Lord Sumption quoted in para 37 above were justified. However, Lord Mance is right to suggest that Lord Sumption’s remarks should not be taken as representing some sort of absolute rule that the facts in an EAW must be assumed to be correct by the courts of the executing state in every case, irrespective of the evidence. Nor were they intended to be so read: the first sentence of the quoted passage includes the words “as a general rule”, and the “two safeguards” identified by Lord Sumption in paras 9ff of his judgment make that clear.