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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT  
[2020] EWHC 3856 (Admin)



No. CO/96/2020

Royal Courts of Justice

Thursday, 29 October 2020

Before:

MRS JUSTICE MAY DBE

B E T W E E N :

FREDRICK OSU

Appellant

- and -

AUDIENCIA PROVINCIAL DE VALENCIA SECCION 5A

Respondent

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MR G. HALL (instructed by Tuckers Solicitors) appeared on behalf of the Appellant.

MR T. COCKCROFT (instructed by CPS Extradition Unit) appeared on behalf of the Respondent.

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**J U D G M E N T**

MRS JUSTICE MAY:

### Introduction

- 1 This is an appeal against the decision of District Judge Snow dated 8 January 2020 ordering the appellant's extradition to Spain pursuant to a European Arrest Warrant issued on 3 May 2018 and certified by the NCA on 7 May 2018 ("the EAW").
- 2 Proceedings seeking to appeal the District Judge's decision ordering extradition were issued on 23 January 2020. Permission was initially refused on the papers but was subsequently granted at an oral renewal hearing before Garnham J on 19 March 2020. Garnham J also extended the representation order to cover a full translation of the Spanish sentencing judgment to which I will refer further later on in this judgment.

### The EAW

- 3 The EAW is an accusation warrant. Spain is a Category 1 territory for the purposes of the Extradition Act 2003 ("the EA"). Under Part E of the EAW the appellant is said to be wanted for two offences. Further down, however, under a heading asking for details of the nature and legal classification of the offences, three separate offences are specified. Under the heading "Description of the circumstances in which the offences was/were committed, including the time, place and degree of participation in the offences by the requested person" (my emphasis) these particulars are given:

"During the years 2012 to 2014, the accused participated jointly in the acquisition and remittance to a great number of citizens residing abroad by post or email of hundreds of documents in which they were informed that they were the beneficiaries of substantial legacies or other money funds. For the acquisition of the funds, the accused told the beneficiaries that they had to pay in advance for the processing and managing expenses certain amounts that they had to deposit in bank accounts opened in Spain and controlled by them."

- 4 It is apparent from the details of particular incidents which follow on from the above general statement that the "accused" in the above passage refers to a collection of individuals and not to the appellant alone. The description then goes on to give details of three victims, their contact with particular named accused and by what means each was defrauded of sums of money and how much in each case. The total sums defrauded from the three named victims adds up to approximately €150,000. The appellant is not one of the persons named in connection with the specific frauds said to have been perpetrated on the three named victims. The reference to the appellant in these particulars is to be found at the end of the section as follows:

"In order to check the reported facts and establish the identity of those criminally liable, the following telephone numbers were tapped [numbers given] which turned out being of the accused, Fredrick Chucks Osu and of the accused Jude Onyemечи Mitty respectively, which they used for calling foreign citizens talking about the reception of the relevant paperwork and the payments that had to be made."

Under Section I the framework list is checked for three offences; one, participation in a criminal organisation; two, swindling and, three, forgery of administrative documents and trafficking therein.

## Further information

5 There was a request for further information, in response to which the Judicial Authority provided further details. Relevant questions and answers are as follows:

“i) What is the estimated total loss caused by the organised criminal group’s conspiracy to defraud in which Fredrick Chux Osu? How many persons were defrauded by this scheme?

Its impossible to know exactly the number of persons and the total amount defrauded.

During the police and judicial investigation we examined bank account of the organisation that received approximately 300,000 E from transfers, most of them made from abroad.

These transfers were made by at least 55 persons residing in 10 different countries....”

(The names of the countries are then given.)

“ii) How would you describe the role [the appellant] played in the criminal organisation; leading, significant or peripheral?

During the investigation, we established that [the appellant] maintained telephone conversations with foreign citizen about the reception of documents and payments to be made. Likewise, he kept in touch with other members of the plot. Finally, by judicial order, his domicile was searched and a computer was seized that had an application to import email addresses, elaborate and send emails on a massive scale, together with 11 files with identity documents, thousands of email addresses and lottery prize claim documents.

On that basis, the role of Fredrick Chucks Osu in the criminal organisation can be described as “significant”.”

For the purposes of this judgment it is not necessary to refer to any other questions and answers from the further information.

## The Spanish judgment

6 Upon the conviction and sentence of the appellant’s co-conspirators at trial in Spain, the Spanish court issued a written judgment setting out the facts found proved, the convictions and the sentences passed. The District Judge only saw an English translation of the final page of that judgment which summarised the offences and the sentences passed. Following Garnham J’s extension of the representation order there was available at this appeal hearing a translation of the full judgment. It is to be noted that the sentencing judgment is dated 16 April 2018, just under a month before the EAW was issued.

7 Section 1 of the judgment is headed “Findings of Fact”. Having named the various accused, it goes on to set out “the facts that lead to the accusation” and there follows a detailed description from which the particulars given at Section E of the EAW have clearly been taken. There are some key differences in the details given, however: although the same three victims are named, the sums by which the third victim (Mr Botros) is said to have been defrauded are given as €2,805 and €18,500 in the judgment, whereas the sums identified in the EAW are €2,805 and €128,500.

## The Law

- 8 Article 81E of the Framework Decision 2002/584/JHA provides that an EAW must contain “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”.

The requirement for information about the offending to be given in an EAW is to be found at s.2(4) of the EA.

“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—

(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).

(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.”

- 9 The necessary degree of particularity in the information required under s.2(4)(c) has been reviewed in a number of cases. Mr Hall helpfully took me to several. It will suffice to set out passages from just two of them. The case of *M and B v Italy* [2018] EWHC 1808 concerned a European Arrest Warrant alleging four separate conspiracies for trafficking and prostitution. The Divisional Court was required to consider, amongst other things, whether the district judge’s decision in that case finding the requirements of s.2 satisfied was correct or not. At para.46 to 47 of the judgment Nicol J (with whom Gross LJ agreed) said this:

“46. I do not consider that the following propositions are controversial:

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

ii) It is for the Judicial Authority to show that what purports to be an EAW does indeed satisfy the requirements of s.2 – see EA s.206.

iii) In this, as in all other matters relating to the extradition, the Judicial Authority must prove its case to the criminal standard *ibid*.

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

47. It is fundamental, as is clear from EA s.2, that the warrant should identify the offence or offences for which the Requested Person is sought. One reason for this is that the offence (and each offence if there is more than one) must be an ‘extradition offence’ – see EA ss10(2) and 64. A second reason is that, if extradited, the Requested Person can only

(putting it over-simply) be prosecuted for the offences for which extradition was ordered. A Requested Person is unable to assert his or her entitlement to Specialty Protection if insufficient particulars are provided.”

In *Alexander v Marseille District Court* [2017] 3 WLR 1427 the Divisional Court also had before it an EAW alleging conspiracy where the issue again concerned the adequacy of particulars and dealt with the degree of particularity required when a conspiracy is alleged. At para.73 to 75 of his judgment Irwin LJ summarised the position thus:

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

74 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 document. 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”

- 10 So far as multiple offences are concerned, there is a requirement to particularise each offence - see para 1 of the Schedule to the Extradition Act 2003 (Multiple Offences) Order 2003.

### **The District Judge’s decision on s.2 requirements**

- 11 The appellant was represented at the hearing before the District Judge, who had before him also a witness statement from the appellant attaching a letter from his wife setting out her position in the event of extradition being ordered. In relation to s.2, the District Judge set out his reasoning as follows at paras.13 to 15 of his judgment:
- “13. The particulars set out in the EAW and further information describe a conspiracy where victims are tricked into believing that money will be sent to them in return for payments of administrative and other fees. When the payments is (sic) transferred the monies are not paid. Box E describes the conduct as occurring between 2012 and 2014 within Spanish territory. The RP’s conduct is more fully particularised in the further information where he is described as maintaining contact with the victims by telephone to arrange for reception of documents and monies. His role was also to keep in contact with his co-conspirators. The further information describes at least 55 victims in 10 countries and 300,000 euros gain for those conspirators.

14. I am satisfied so that I am sure that the RP has been provided with sufficient particulars to allow him to understand the substance of the allegations against him, to perform the transposition exercise and to identify any barriers. The identification of 3 potential offences in Box C does does (sic) not lead me to conclude that the RP is unable to identify the offences for which he is sought. The nature of his alleged criminal conduct is set out within Box E and the further information.

15. I am satisfied so that I am sure that the EAW complies with s.2 2003 Act.”

### **The parties submissions on s.2**

- 12 Mr Hall, for the appellant, makes the following points. First, he says that the EAW has failed to particularise each offence. Whether there are two or three offences intended to be relied on, which is itself unclear, none are individually particularised. Although the District Judge in his judgment dealt with the alleged conspiracy, he did not consider whether the fraud or misrepresentation offences had been adequately described and particularised. Mr Hall says they are not.
- 13 Next, Mr Hall submits that the description in the EAW of the appellant’s role is in such general terms that it is impossible to work out precisely what he is said to have done. He describes it as a “broad omnibus description” of the kind disapproved by the court in *Von Der Pahlen v The Government of Austria* [2006] EWHC 1672 at [22]. Mr Hall says that the further information entirely fails to supplement the EAW so as to fill any lacuna. On the contrary, he points out, it considerably changes the entire picture, as it now refers to 55 victims over 10 different countries with a total sum defrauded of some €300,000. This is not filling lacuna, Mr Hall says, it is undermining the EAW itself. These are failings on the face of the EAW and the further information, Mr Hall argues, but the difficulties are further evident upon consideration of the court’s sentencing judgment where, as I pointed out above, there is no mention of 55 victims, but only three, and the total sums of which these three victims were said to have been defrauded amounted to some €50,000, not €150,000 and still less €300,000. The wrong particulars, Mr Hall says, materially impact the operation of the statutory scheme so as to amount to abuse as discussed by Lord Sumption in the Supreme Court case of *Zakrzewski* [2013] 1 WLR 324 - see, in particular, [11], [13] and [15]. The absence of detail in the EAW, combined with discrepancies between the EAW, the further information and the court’s judgment are material as they prevent the appellant from understanding what case he is being ordered to go back to meet. How many victims is he alleged to have defrauded? In what way and in what sum? How, without knowing such details, Mr Hall asks rhetorically, is the appellant to be able to assert any speciality protection on return? See, for instance, *M and B v Italy* at [47].
- 14 Mr Cockcroft, for the respondent, submitted succinctly that the District Judge had identified the correct test, namely the s.2 adequacy of information, and that he was correct to conclude that the test had been met. He pointed out that although the facts in relation to the co-defendants were restricted to three victims and €50,000 the prosecution of the appellant on return may encompass many more victims and greater sums of money defrauded.

### **Conclusions**

- 15 As the court pointed out in *Alexander*, it is a matter for the judgment of each court to determine which side of the line between wholesale failure of particulars or lacuna which the further information can properly fill and that this will depend on the particular facts of each case. I am quite satisfied that the EAW in this case is defective. I agree with Mr Hall that, rather than filling any lacuna, the further information only serves to underscore how inadequately particularised the EAW is. There are no particulars given of the fraud or

misrepresentation offences if, in fact, three rather than two offences are intended to be alleged. As to the conspiracy offence the EAW is wholly devoid of the level of detail which would permit the appellant to ascertain what case he will be required to meet on return. Is he to be expected to face allegations in respect of three victims or 55 or somewhere in between? What is his part in the defrauding said to have been? What is he said to have done in relation to each victim? What is the total sum in respect of which he is to be held responsible, is it €50,000 or €150,000 or €300,000? It is for these reasons that I allow this appeal.

- 16 Mr Hall addressed me on other matters arising from the District Judge's decision in relation to s.14 delay, Article 8, s.21(a) proportionality and abuse of process. In the light of my decision on s.2, it is unnecessary now to address those arguments. Indeed, having found the EAW to be inadequately particularised, I do not see how I could properly do so, since the seriousness of offending and likely penalty are considerations which must always weigh heavily in the balance when addressing such matters as oppression under s.14 and the *Celinski* balancing exercise under Article 8 and s.21(a).
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**CERTIFICATE**

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This transcript has been approved by the Judge.