

Neutral Citation Number: [2024] EWHC 2785 (Admin)

Case No: AC-2023-LON-003825

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1st November 2024

Before :

MRS JUSTICE CUTTS DBE

Between :

ANDREI JIPA
- and -
THE HUNEDOARA COUNTY COURT
(ROMANIA)

Appellant

Respondent

Benjamin Seifert (instructed by **Coomber Rich Solicitors**) for the **Appellant**
Laura Herbert (instructed by **CPS Extradition Unit**) for the **Respondent**

Hearing date: 22nd October 2024

The Honourable Mrs Justice Cutts DBE :

Introduction

1. This is an appeal against a decision of Zani DJ (the “DJ”) made on 20 December 2023 to order the appellant’s extradition to Romania. His extradition is sought pursuant to an arrest warrant (“AW”) issued by the County Court in Hunedoara on 5 December 2022, and certified by the National Crime Agency on 5 February 2023.
2. The AW is a “conviction” warrant based on a decision of 8 July 2020 issued for the appellant to serve a sentence of six years imprisonment for an offence of tax evasion. This was made final on 18 March 2021 by criminal decision number 165/2021 of the Court of Appeal of Alba Iulia.
3. The AW states that the six-year sentence was later merged with a four-year sentence imposed in relation to another matter dated 9 February 2016. The total term to serve is seven years.
4. The single ground of appeal is that the DJ erred in concluding that the AW is a valid Part 1 warrant pursuant to section 2 of the Extradition Act 2003 (“the Act”). It is submitted that the offences are not sufficiently particularised in compliance with section 2(6)(b) such as to amount to a “wholesale failure” of the warrant. Material in the further information from the Judicial Authority cannot therefore be used to fill the gap. This point was not taken in the court below. Leave having been given; the respondent does not seek to suggest that is any bar to my hearing the appeal now.

The AW

5. At box B the AW describes the enforceable judgment as “*criminal sentence no.71 of 08 July 2020 delivered by the Hunedoara County Court, final on 18 March 2021 by the Criminal Decision no. 165/2021 of the Court of Appeal of Alba Iulia. File number 1226/97/2019*”
6. The AW states (at box E) that:

“This warrant refers to a total of 1 crime for which he was tried in this file and 1 crime for which he was tried in files of other courts where penalties were applied that were merged by criminal sentence on the basis of which it is issued this European Warrant and referred to in point 3.”

The description of the circumstances was as follows:

“In the period from June to September 2011, although he had both the capacity of administrator in law and the capacity of administrator in fact of SC NEBSTAR OIL SRL, he omitted to register in the company’s accounting records both the commercial operations performed, respectively deliveries to SE ECO PETRO AS SRL, SC VEKA PETROL SRL, SC TOM&FAN SRL, SC AUTOPIN 2001 SRL, SC LUPINOCOM INTERNATIONAL SRL, SC NOVIMPEX TRADING SRL, SC RAMI IMOBILIAIRE SRL, SC ALEXIA OIL SRL, SC SILFLOR&MOVE IMEX SRL, SC HPC PERFECTION ELECTRIC INSTAL SRL, SC DELLY TEAM SRL and SC BIG STAR OIL SRL, as well as the revenues obtained from these operations, respectively the sum of 80,087,044 RON, all of this in order to evade the fulfilment of fiscal obligations, causing a damage in the

total amount of 41,447,926 RON (composed of 10,443,840 RON representing profit tax 2,440,578 RON – in tax on dividends, 1,584 RON – penalties for delaying tax on dividends, 2,547 RON – interest/increase on late payment tax on dividends, VAT in the amount of 15,665,202 RON, 3,710,825 RON – penalties for late payment of VAT, 5,539,321 RON – late interest/increase related to VAT).

7. At box C the warrant states that the length of the detention imposed was six years imprisonment. The remaining sentence to be served is said to be seven years imprisonment. The rest of box C states:

“It was found that the crime for which the defendant JIPA ANDREI was convicted in the present case is concurrent with the crime for which the same defendant was convicted, by Criminal Sentence no. 24/2016, delivered on 09/02/2016 in file no. 2996/111/2014 of the Bihor County Court, final by the Criminal Decision no. 629/A/03.11.2017 of the Oradea Court of Appeal to the main penalty of 4 years imprisonment, to the complementary penalty of banning the exercise of the rights provided by art.64 para 1 letter a) thesis II, letter b) and letter c) of the Old Criminal Code for a duration of 5 years and to the accessory penalty consisting in the prohibition of the same rights for committing the crime of tax evasion in a continuous form, provided for by art. 9, para 1 letter c) and para 2 of Law no. 241/2005 with the application of art. 41 para 2 of the Old Criminal Code and art 5 of the Criminal Code. Based on art. 33 letter a) relating to art. 34 letter b) and art. 36 of the Old Criminal Code, the 6 year prison sentence, applied to the defendant JIPA ANDREI in the

present case was merged with the 4 year prison sentence applied to the same defendant by Criminal Sentence no. 24/2016, delivered on 09/02/2016 in file no. 2996/111/2014 of the Bihor County Court, final by the Criminal Decision no. 629/A/03.11.2017 of the Oradea Court of Appeal, in the heaviest penalty of 6 years imprisonment to which an increase of 1 year in prison was added, the defendant to serve the resulting sentence of 7 years imprisonment. The period served from 19/11/2017 to 19/02/2020 was deducted from the sentence applied. The warrant for execution of punishment no. 76 issued on 03/11/2017 by the Bihor County Court was cancelled.”

8. The appellant is therefore wanted to serve a sentence of six years in prison. However, that term was merged with the four-year sentence imposed as he was convicted in another case in criminal sentence 24/2016 delivered on 9 February 2016 in file number 2996/111/2014. As a result of the merger the total penalty was increased by one year resulting in a seven-year sentence to serve. The period in custody from 19 November 2017 to 19 February 2020 has been deducted from the global sentence and the previous execution warrant for that sentence was cancelled.

9. Prior to the extradition hearing the CPS requested further particulars of the previous offence for which the appellant was sentenced to four years imprisonment. Upon receipt of that information a further request was made. Thus, it was that before the DJ the AW was supplemented by further information of 27 June 2023 (“FI1”) and 11 August 2023 (“FI2”). FI1 set out over seven pages the details of the offending in criminal case 24/2016. In

summary this too was a tax fraud. It was perpetrated by a man named Vasile Boer. Between 2008 and 2012 he set up fake companies for the purchase of energy produce, especially diesel fuel with the aim of using fake invoices to evade excise duty and VAT. Two of the appellant's companies (both named) were involved in the fraud and used to evade excise duty. Further investigations revealed that neither of these companies were operating from the addresses at which they were registered. He assigned one of these companies to a Moldavian citizen and transferred shares in the other to a Ukrainian citizen who has never been in Romania. This was to conceal his actions from the investigative bodies. The crimes were committed between 2020-2011. There is a detailed summary as to the role of each company. The appellant accepts that if this information was contained in the AW the requirements of s2(6) of the Act would have been satisfied.

10. FI2 was a response to further requests for information from the respondent. It confirmed that the offending for which extradition was sought was entirely separate from that in criminal case 24/2016. Further information was provided concerning the appellant's knowledge of the proceedings about which no issue is taken.

The District Judge's decision

11. As I have already said, no issue with s2(6) of the Act was taken in the court below. The DJ did not therefore deal specifically with the point now raised.
12. He set out the offence as described in [6] above, noting as he did so that "the other crime was not described". He then set out a summary of what was contained in FI1 (as in paragraph 8 above) and in FI2. He noted that as the

period 19 December 2017 to 19 February 2020 was to be deducted from the seven-year sentence the appellant had four years and nine months to serve.

13. The rest of the judgment set out the DJ's findings on fugitivity. He set out a summary of the appellant's evidence and performed the Article 8 balancing exercise as that was the only challenge to extradition at that time.

The legal framework – section 2 of the Act.

14. By virtue of section 2 of the Act, every AW must contain certain information.

Under section 2(6) a “conviction” warrant, as this is, must provide:

- “(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.”

15. Section 2(6) of the Act is derived from Article 8(1) of the Council Framework Decision 2002/584/JHA which provides that the following should be particularised in the AW:

“(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.”

16. It is common ground that the Trade and Cooperation Agreement implemented by section 2 of the Act reflects its predecessor, the European Framework Decision, and governs the surrender procedure between member states. This requirement is therefore the same.
17. In *Edutanu and others* [2016] EWHC 124 (Admin) at paragraph 113 the Divisional Court held that where it appears from the terms of an EAW read as a whole that the IJA is seeking a return that would mean the requested person will serve a longer sentence than the sentences for the offences for which extradition is sought and that the total sentence is in respect of offences which have not been particularised rather than only aggravating those which have been particularised it will not be valid. The fact that the EAW refers to a total sentence to be served which is longer than the sentence for the particularised offences is a strong indicator to construing the sentence as “originating from” and being for the unparticularised conduct.
18. It is common ground that in this case, for the warrant to be valid, section 2(6) of the Act required it to set out particulars of the earlier offence for which the appellant was sentenced to four years imprisonment. That this warrant did not do on its face. The question is whether the DJ was entitled to have regard to the further information in providing those particulars when considering the validity of the warrant. I will come later to the submissions from the parties but in brief summary Mr Seifert on behalf of the appellant submits that he was not so entitled. He argues that the failure to particularise the details of the

earlier offence was a wholesale failure which rendered the warrant invalid and no further information could cure the defect. Miss Herbert for the respondent submits that there was no such wholesale failure but a lacuna which could be and was filled by the further information to which the DJ had proper regard, and which rendered the warrant valid.

19. In *Alexander v Public Prosecutor's Office, Marseilles District Court of First Instance* [2017] EWHC 1392 (Admin) the Divisional Court considered this same issue - whether and to what extent further information from a Judicial Authority can validate or cure a defect in an accusation EAW by supplying further information where the EAW in question is said to lack some of the particulars required by section 2 of the Act. Both parties in this case accept that this judgment is directly relevant to the issue in this case. Nothing turns on it relating to an accusation rather than a conviction warrant.
20. The orthodox approach had been, as explained in *Dabas v High Court of Justice in Madrid, Spain* [2007] UKHL 6, that an EAW stood or fell according to its terms and that further information could not be deployed to fill lacunae in it. At paragraph 50 Lord Hope said:

“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”

21. In *Alexander* the Divisional Court analysed what it described as “the considerable line of English authority” which followed that analysis and in so doing found there to have been a “sea change” in approach. The court concluded at [73] that the effect of *Bob-Dogi*’s case [2016] 1 WLR 4583 and *Goluchowski*’s case [2016] UKSC 36 was 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 based on the wording of the Act has not survived and “*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.*” At [74] the court underlined that the effect of these two decisions was that missing required matters may be supplied by way of further information.

22. That was not to be taken to extremes. At [75] the court said:

“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 of 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 is whether the court is faced with lacunae or a wholesale failure to provide the necessary particulars can only be decided on the specific facts.”

23. In *Litvinchuk v The Circuit Court in Szczecin, Poland* [2019] EWHC 2745 (Admin), a case concerning an issue with compliance with s.12A of the Act, at [23] Julian Knowles J described the effect of *Alexander* as 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). 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.*” Mr Seifert submits, and I accept, that there is no difference in this context between a warrant being a “nullity” or suffering from a “wholesale failure to provide the necessary particulars.”
24. It is by reference to the last question at [22] above that the parties have made representations about “wholesale failure” and “lacunae”.

The submissions of the parties.

Appellant’s submissions

25. Mr Seifert referred me to paragraph 100 of *Alexander* where the court, in analysing the circumstances of one of the cases before it, identified that the first question which arises is whether, taken in isolation, the warrant complied with section 2(4)(c) of the Act (in this case section 2(6)(b)). Mr Seifert submits that in this case it does not. There are no particulars of the offence for

which he was sentenced to four years imprisonment. It is a wholesale failure to comply with section 2. There is nothing to supplement.

26. Mr Seifert also relies on the cases of *Doga v The General Prosecutor of the Lyon Court of Appeal (France)* [2022] EWHC 3342 (Admin) and *Grozavu v Romanian Judicial Authority* [2018] EWHC 2606 (Admin) as demonstrating the need to first, without reference to the further information, determine whether the warrant on its face complied with section 2 of the Act. He relies in particular on *Grozavu* which, he submits, is factually similar to this appeal in that it concerned the merger of the sentence for the offence subject to extradition proceedings with a sentence earlier imposed.
27. In *Doga* the court decided that the warrant contained only a broad omnibus description of some of the offences for which extradition was sought. These were insufficiently particularised and amounted to a wholesale failure to comply with section 2 of the Act. The further information upon which the judicial authority sought to rely, which was not before the DJ and provided for the appeal, could not therefore be relied upon to make good the deficiency.
28. In *Grozavu* the conviction warrant related to an offence of driving a vehicle on a public road having his driving licence suspended and failing to provide a specimen of blood when required to do so (the excess alcohol offence) for which he was sentenced to two years imprisonment. The warrant stated that the overall term to be served was four years imprisonment. It referred to a suspended sentence of two years imprisonment for a different offence (identified by number) which was activated. There was then reference to that activated sentence being merged with six months' imprisonment for a third

offence (identified by number) before being added to the sentence for the excess alcohol. There was no further information before the DJ or on appeal to particularise the other offences. In allowing the appeal Nicola Davies J (as she then was) observed that the final sentence of four years' imprisonment was not the sentence of two years' imprisonment originally imposed for the 2010 offence; it was a sentence which included periods of imprisonment in respect of unparticularised offences which had been discharged. The warrant did not therefore meet the identified requirements of section 2(6) of the Act. In so finding Nicola Davies J stated that one purpose of section 2 is to protect the rights of a requested person. The means of so doing is to ensure that the AW complies with its provisions.

29. Mr Seifert accepts that the detail in FI1 meant that the DJ in this case was in a different position from the DJ in *Grozavu* as he was aware of the particulars of the conviction for the other offence, the sentence for which was merged with the sentence for the offence subject of the warrant. He accepts that if the details in the further information were not on a separate piece of paper but contained in the body of the warrant section 2(6) of the Act would be satisfied. He submits however that the fact that there was no prejudice to the appellant is irrelevant. The warrant was invalid on its face for a wholesale failure to comply with section 2 and could not be cured by the further information whenever it was acquired.

Respondent's submissions

30. Miss Herbert submits that the DJ was right to take the further information and the AW together when considering whether the warrant was in compliance

with section 2 of the Act and therefore valid. She points to paragraph 64 of *Alexander* which cited *Bob-Dogi* as authority for the proposition that further information can determine the fundamental question of the validity of an EAW. Paragraph 73 states in terms that ‘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.’ In paragraph 74 the court concluded that missing required matters may be supplied by way of further information and so provide a lawful basis for extradition.

31. Whilst in this case the warrant did not particularise the offence which resulted in a longer sentence for the appellant than the term imposed for the offence subject to extradition, the file reference and sentence for that conviction is provided as well as how the sentences were merged. It represents a lacuna rather than a wholesale failure.
32. This is not a case where the AW is so deficient as to be a nullity. Although the description of the conduct provided in the AW is the offending for which extradition is sought (1226/97/2019) it is clear from the description in the warrant that the Appellant is not wanted for a single offence of tax evasion but “a total of 1 crime for which he was tried in this file and 1 crime for which he was tried in files of other courts”. Therefore, from the outset the AW makes clear that the warrant relates to two crimes. It is not an internally contradictory warrant and is different from the warrant in *Grozavu* which was described as “extremely confusing, complicated and unclear”.
33. It is clear from the warrant read as a whole, including the further information, that it does not expose the requested person to serve longer than the sentence

for which extradition is sought. Particulars of the convictions are given and the rationale at [40] of *Goluchowski v District Court in Elblag Poland* [2016] 1 WLR 2665 applies:

“In light of the Bob-Dog casei, it is therefore clear under European Union law that, if information obtained under article 15 subsequently to the EAW show 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 judgement or equivalent judicial decision, it could not be right to give effect to the EAW willy-nilly”

34. It is perfectly proper following *Goluchowski* and *Alexander* for the CPS extradition unit to request further information to provide particulars of offences to clarify the full details of the offences for which the appellant is wanted. The questions asked and answers given were specifically asked to ensure that the appellant had the full details of the offences and that the offences in the warrant were different. It is submitted that obtaining this information and the particulars of the merged sentence offence is consistent with the system of mutual co-operation between judicial authorities on which the extradition is based.
35. Unlike the situation in *Grozavu* this further information was obtained; it was obtained prior to the extradition proceedings to give clarity to the warrant.

36. Unlike the situation in *Goluchowski* this is not a situation where the further information undermines the AW, it is consistent with it. The appellant is also not prejudiced in any way. The AW and further information provide him with full details of the case and the sentences for which he is wanted to serve the sentence. The appellant was fully aware of the sentence merger as he instructed his lawyer to appeal the sentencing decision where the decision to merge the sentence was made.
37. The appellant has all the relevant information in the warrant and the further information which are to be read together. An appeal on the basis that the warrant should be withdrawn and replaced with the same information on one document (the warrant) is not logical. The purpose of section 2 of the Act is to provide information about the offences and the nature and extent of them (see *Gilbert Ektor v National Public Prosecutor of Holland* [2007] EWHC 3106 at [7]). To proceed in the way suggested by the appellant would serve no useful purpose and simply frustrate the extradition process for a period of time. It would undermine the mutual trust and respect between states.

Discussion and conclusion

38. It was for the respondent IJA to prove that the AW complied with section 2(6)(b) of the 2003 Act. Sufficient particulars of the offence for which extradition was sought were set out sufficiently to satisfy section 2(6)(b).
39. Following *Edutanu*, the particulars of the offence for which four years were imposed (such sentence being merged with that for the offence for which extradition was sought and resulting in a longer sentence) was a required

matter under section 2(6)(b). In relation to that earlier offence the AW specified:

- i) Its number – 24/2016
- ii) The date upon which it was delivered – 09/02/2016
- iii) File number of the Bihor County Court – 2996/111/2014
- iv) The number of the case made final by Oradea Court of Appeal – 629/A/03.11.2017.

40. The further information dated 27 June 2023 sets out in full the details of that earlier offence. Further information dated 11 August 2023 confirmed that the offending for which extradition was sought was entirely separate from that in criminal case 24/2016.

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. It did not simply state that there was another offence. It provided the information set out in [39] above.

43. That information was plainly insufficient of itself to fulfil the requirement of section 2(6) of the Act. If this is where matters stood, as in *Grozavu*, the AW would have been invalid. In this case, in distinction to the situation in *Grozavu*, further information was sought and provided before the extradition hearing. It is consistent with the AW.
44. This 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.
46. For these reasons the appeal is dismissed.