Neutral Citation Number: [2018] EWHC 1532 (Admin)

Case No: CO/5664/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/06/2018

Before :

LORD JUSTICE SINGH
MR JUSTICE GREEN

- -

Between :

MIROSLAV MURIN	**Appellant**
- and -	
DISTRICT COURT IN PRAGUE (CZECH REPUBLIC)	**Respondent**

- -
- -

John Crawford (instructed by **H.P Gower Solicitors**) for the **Appellant**
Daniel Sternberg (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 22nd May 2018

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Approved Judgment

Mr Justice Green:

A The issue

1. This appeal raises a narrow point of law which is whether a conviction European Arrest Warrant ("EAW") is capable, in principle, of covering a request by a Judicial Authority of a requesting state for return of a requested person to face proceedings to decide whether or not to activate a suspended sentence of imprisonment as a result of the commission of further offences. At the outset I would record my thanks to both counsel for the attractive and focused way in which they advanced their arguments both in writing and orally.

2. The Appellant argues that this situation does not fall within the scope of section 2 Extradition Act 2003 ("EA 2003") which defines a valid arrest warrant. The relevant part of section 2 is in the following terms:

> "(2) a part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains-
>
> (b) the statement referred to in subsection (5) and the information referred to in subsection (6)
>
> …
>
> (5) the statement is one that-
>
> (a) the person in respect of whom the part 1 warrant is issued [has been convicted] of an offence specified in the warrant by a court in a 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."*
>
> (Emphasis added)

3. The Appellant argues, in effect, that a request for the return of a person to face a hearing to determine *whether* a sentence should be imposed is not for a purpose specified under section 2(5)(b). In the Appellant's skeleton argument at paragraph [15] it is said that the appeal is made on a single ground that the District Judge ought to have decided differently, namely:

> "That the Appellant's extradition is barred by section 2(5)(b) of the Extradition Act 2003, as the Appellant is not sought either to be sentenced or to serve the sentence of imprisonment or other form of detention."

4. The Respondent disagrees and argues that the Appellant's case rests upon an overly technical and restrictive interpretation of the EA 2003. It ignores the policy underlying the Act. In any event it is plain that, on proper analysis, the arrest warrant in issue was properly categorised as a conviction warrant, which is perfectly apt to embrace a request for a person to face a hearing to decide whether, or not, to activate a suspended sentence already imposed. For these reasons the Respondent argues that the District Judge did not err and that the appeal should be dismissed.

B The facts

5. There is no material dispute about the facts. These can be summarised as follows.

6. By a EAW issued on 16th February 2017 the Presiding judge of the District Court in Prague 1, in the Czech Republic, the judicial authority, seeks the extradition of the Appellant. The Appellant, Mr Murin, is 50 years of age. His extradition is sought to serve a sentence for 7 offences of theft (or attempted theft) of electronics and similar property in Prague committed between 16th December 2013 and 14th February 2014. Full particulars of the offending are set out in the EAW. It appears from that document that the Appellant was charged with a single criminal offence upon the basis that the criminal acts in question constituted a single course of conduct. In each case the Appellant stole electronic equipment, such as mobile phones, notebook computers, laptops and iPhone from retail outlets. In the EAW (at Box (f)) the following is stated about the sentence imposed upon the Appellant;

> "In this legal case, the sentenced Miroslav Murin was imposed a 2-year imprisonment, the serving of which was suspended for a probationary period of 4-years. During the probationary period the sentenced person has committed another criminal offence, and therefore a public session should be ordered to decide whether the sentenced person shall serve the 2-year imprisonment. For this purpose, the presence of the sentenced person needs to be ensured."

7. The judicial authority has provided further information in this case dated 28th August 2017. It was received on 11th September 2017. The information has been drafted by Judge Kalasova of the District Court for Prague 1. The contents of the further information may be summarised as follows. First, under Czech law the requested person is considered to be a convicted person. Second, he was sentenced by a judgment of the 28th May 2014 to 2 years imprisonment suspended for 4 years. The sentence became final on 12th June 2014 and the period of suspension therefore, runs until 12th June 2018. The requested person committed a further offence in the course of the suspension period and thereby breached the conditions of his suspended sentence. Third, the presence of the Requested Person at the hearing is required to determine whether he will serve the 2-year conditional sentence. The requested person has already been sentenced and he will not be tried again. The hearing will determine only whether to activate the sentence of 2 years imprisonment which was suspended.

8. Judge Kalasova has set out, for the benefit of this court, the relevant provisions of the Czech Penal Code.

9. The Appellant was arrested on 16th July 2017. An initial hearing took place the following day before DJ Rose. The Appellant took no issue pursuant to sections 4 or 7 EA 2003 at the initial hearing in relation to matters such as prompt production, service of the EAW or identity. The Appellant did not consent to his extradition. The extradition hearing was opened. The issue was identified as the validity of the EAW pursuant to section 2 EA 2003. It was further argued that extradition was incompatible with Article 8 ECHR. Directions were set for service of a proof of evidence and statement of issues by 7th August 2017. The Appellant was granted bail. However, those directions were not complied with and the matter was re-listed on 10th August 2017. It was explained in the course of that hearing that the Appellant was failing to cooperate with his legal representatives.

10. He failed to attend an extradition hearing on 15th August 2017 and a warrant not backed for bail was issued. The matter was listed for full hearing on 18th September 2017. The Appellant did not attend that hearing.

11. DJ Inyundo heard argument from counsel for the judicial authority and for the requested person on the matters in issue. He reserved judgment until the Appellant was arrested. The warrant for the Appellant's arrest was executed and he was produced at Westminster Magistrates' Court on 30th November 2017. He entered a plea of guilty to the charge of failure to surrender. He was sentenced to 10 weeks imprisonment. The judgment in this extradition matter was handed down that day and the extradition of the Appellant was ordered.

12. By a notice of appeal dated 6th September 2017 the Appellant sought permission to appeal. Grounds of appeal were served with the notice of appeal. Perfected grounds were subsequently served in accordance with the Criminal Procedure Rules. The one ground raised, which was the same jurisdictional issue raised before the District Judge, was whether the Judge was correct to conclude that the EAW was valid pursuant to section 2 EA 2003. Permission to appeal was granted by Lewis J in an oral hearing on the 27th February 2018.

C The judgment of the District Judge

13. The Judge in a careful judgment described the contents of the EAW and further information received. He summarised the submissions of the parties. In relation to the Appellant's argument pursuant to section 2 EA 2003 he encapsulated the nub of the argument in the following way:

> "…there was no dispute that the requested person had received the sentence set out in the EAW. However, the purpose of the EAW was not for the requested person to serve the sentence. He would have to be extradited, for that decision to be made. As such he had not been sentenced because there remained a possibility that the hearing, as set out in the EAW, would result in the requested person's favour. As such, he would have been extradited, but not required to serve the sentence. The EAW was therefore inconsistent with the Act. If the hearing at which the decision was to be made was found in the requested person's favour, the requirements of section 2(5)(b) of the Act would not be met. As a final decision had not been made,

> extradition would not be "for the purpose of being sentenced for the offence or serving a sentence of imprisonment or another form of detention imposed in respect of the offence". As such the warrant was invalid because there was intermediate penultimate step[s] to be undertaken, which was incompatible with the act."

14. The Judge did not accept this submission. He observed (judgment paragraph [32]) that it was not necessary for an EAW to describe in great detail the circumstances surrounding the offence. Instead the particulars need only provide sufficient information to enable the requested state and the requested person to know whether any barriers to extradition applied. The court was required to examine the EAW as a whole and, if necessary, to consider further supplementary information. He then stated as follows:

> "… I am satisfied that the EAW is clear. Although not necessary to consider, the RFFI underscores the clarity of the EAW. I am satisfied that the EAW is a "conviction warrant". It is not contended otherwise. I am satisfied that the requested person was present at the proceedings which resulted in the decision (sentence). A 2-year sentence of imprisonment was imposed. That period of imprisonment remains to be served, as a result of the requested person breaching his obligations. The request is to allow for that sentence to be served. The requested person needs to be present for that decision to be completed."

15. The Judge thus concluded that the hearing described in the EAW concerned an "*enforcement decision*".

D Appellant's submissions

16. I can summarise the submissions advanced by Mr Crawford on behalf of the Appellant in the following way.

17. First, a request does not fall within the phrase "…*for the purpose of being sentenced*" in section 2(5)(b) because the Appellant has already been sentenced. It is referred to in both the EAW and the further information as "*the sentenced person*" and box c of the EAW described the sentence which has already been imposed. The public hearing that is proposed to be undertaken cannot be viewed as a further sentencing exercise in the light of section 330(1) of the Criminal Procedure Code of the Czech Republic. An English translation of this provided by the judicial authority is in the following terms:

> "whether the person conditionally convicted has proven themselves competent or whether the conditional deferral of serving a sentence is enforced shall be decided on by the Court in a public hearing."

18. The public hearing is therefore not a re-sentencing exercise but, instead, is to decide whether to enforce a previously imposed sentence. In short it cannot be argued that the Appellant is being returned for the purpose of being sentenced.

19. Second, in relation to the phrase "*for the purpose of serving a sentence of imprisonment*" in section 2(5)(b) the request does not fall under this limb since at the contemplated hearing the Appellant will not automatically serve a sentence of imprisonment. This also follows from section 330(1) of the Czech Criminal Procedure Code which makes clear that the issue for the Judge is a binary "whether or not" decision which, plainly, contemplates the possibility that the Appellant will not be sentenced to any period of imprisonment at all. The Appellant relies further on section 83 (1) of the Czech Criminal Procedure Code which confirms that, in exceptional circumstances, the court may retain the conditional conviction. The Czech court will thus have a discretion at the hearing as to how it deals with the Appellant's case. This supports the Appellant's argument that the extradition will not be for the purpose of serving a sentence.

20. Third, with regards to the phrase *"for the purpose of serving another form of detention"* in section 2(5)(b) it is said that the request does not fall under this limb for the same reasons as apply to a term of imprisonment. In short, the court does not have to impose any form of detention upon the Appellant following the contemplated public hearing.

21. Fourth, Mr Crawford contends that the Appellant is not unlawfully at large pursuant to section 68A EA 2003, which states that a person is alleged to be unlawfully at large following conviction of an offence if he is alleged to have been convicted of it and "*…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."* It is argued that there is an overlap between section 68A and section 2(5) as was recognised by the recent judgment of the Supreme Court in *Goluchowski v Poland* [2016] UKSC 36; [2016] 1 WLR 2665 ("*Goluchowski*"), at paragraph [6]. Mr Crawford argues that an individual should not be treated as being unlawfully at large pursuant to section 68A pending a decision to activate a suspended sentence and an individual who has not had their suspended sentence activated therefore falls outside the ambit of section 2(5): see the observations of Mr Justice Ouseley in *Lewandowski v Poland* [2015] EWHC 3796 at paragraph [17]. It is said that this supports the analysis that the contemplated hearing should not be construed as a sentencing exercise. Reference is also made to *Wisniewski v Poland* [2016] EWHC 386 (Admin); [2016] 1 WLR 3750, which was a judgment in the context of section 14 (b) EA 2003 (relating to the passage of time as a bar to extradition). That case concerned an individual subject to a conditional (suspended) sentence which was subsequently activated. Pursuant to section 68A (2) EA 2003 the definition of unlawfully at large therein does not apply to section 14. In the judgment in that case Lloyd Jones LJ stated, at paragraph [52]:

> "As Mr Hardy QC points out, it follows that a conviction EAW cannot be issued in respect of a person who is yet to become liable to serve a custodial sentence… in my view a person is not unlawfully at large within section 14(b) when he is not subject to an immediate sentence of imprisonment and it would require a further judicial act before he could be lawfully detained.
>
> Applying these authorities it is argued that in the Appellant's case a further judicial act is required before he may be lawfully

> detained, namely the decision to be taken at the contemplated hearing in the Czech Republic"

E Discussion and analysis

22. Notwithstanding the attractive arguments of Mr Crawford, I do not accept these submissions. In my judgment section 2(5)(b) EA 2003 covers the situation of a requested person whose extradition is sought to face a hearing to decide whether (or not) to activate the custodial element of a past conditional sentence. There are a number of reasons for this.

23. First, Mr Crawford clarified during the hearing that the effect of his submissions was that there was indeed a gap in the extradition system whereby persons sought to face a hearing to decide whether or not to activate a prior suspended sentence were beyond the limits of the extradition system; they were subject to neither a conviction or an accusation warrant. In my view the extradition system creates a seamless mechanism governing the return of persons who are sought to face trial or serve a sentence and it does not countenance particular types of sentence imposed following conviction falling outwith the extradition regime. Section 2(5)(b) EA 2003 provides no basis for creating an exception in the words: "*… 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.*" The assumption is that in every case the requested person will be sought either to be sentenced or to serve a sentence. It is not contemplated that there are interstices between the two into which certain types of sentence following conviction would fall.

24. There is moreover no basis in Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between member States ("the Framework Decision"), for the proposition that there is a category of criminal judgment which falls outside of the regime[1]. This is evident from Article 1(1) and (2) of the Decision which, in broad terms, defines an arrest warrant and the concomitant duty on Member States to execute "*any*" warrant on the basis of mutual recognition:

> "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.
>
> 2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision."

[1] The Framework Decision was supplemented by Council Framework Decision 2009/299/JHA which introduced a new Article 4a dealing with the position of decision rendered at a trial at which the defendant did not appear in person. The purpose of the Decision was to lay down clear common rules governing the non-recognition of decisions rendered at a trial held in the absence of the defendant.

25. The purpose behind the regime is set out in recital (5) which refers to the purpose behind a EAW as being "*execution or prosecution*" and it covers "*pre-sentence and final decisions*":

> "The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities.
>
> Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice."

26. In Article 2 on "*Scope of the European arrest warrant*" it is provided that an EAW may be issued "*…for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months*." There is no provision in the Decision which excepts requests for the extradition of convicted persons sought to face a hearing to determine whether a prior (suspended) sentence should be activated. In my view if such an important category of sentence was to be subject to an exception that it would have been expressly designated as such and further in the recitals to the Framework Decision a reasoned basis for the exception would have been given. Yet there is none.

27. Equally there is no exception carved out of the EA 2003, which implements the Framework Decision, for such sentences. Section 2(5) presupposes that there are, and can only be, two types of situation encompassing persons who are to be tried and persons who have already been convicted. Again, if there was to have been an exception for such an important category of sentence as the non-activated suspended sentence it would have been expressly catered for in the drafting. But, again, it was not.

28. Mr Sternberg for the Respondent also pointed out, in my view correctly, that section 2(5) implements Article 8 of the Framework Decision. This defines the content and form of an EAW. It nowhere distinguishes between accusation and conviction warrants but predicates the warrant upon it containing information as to the existence of an "*enforceable judgment*" (Article 8(1)((c)) and "*…the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing state*" (Article 8(1)(f)).

29. In short, my first reason for rejecting the appeal is that properly construed the Framework Decision and the EA 2003 are intended to embrace all criminal proceedings and do not contemplate any fault line running through the middle into which non-activated suspended sentences fall. In so far as exceptions exist then they

are expressly catered for in the Framework Decision. There is no exception for extradition to consider the activation of suspended sentences.

30. The second reason why I do not accept the Appellant's arguments is that it collides with the basic purpose behind the Framework decision and, it follows, the EA 2003. The guiding objectives are well established in both domestic and EU case law. They were reiterated in a recent judgment of the CJEU. In Case C-571/17 PPU *Ardic* (22nd December 2017) the Court was concerned with the scope of Article 4a of the Framework Decision (implemented by section 20 EA 2003) and whether it applied to a hearing to activate a suspended sentence. In the course of that judgment the Court reiterated the purpose and objective behind the extradition regime. At paragraph [69] the Court stated as follows:

> "…It should be pointed out that Framework decision 2002/584 seeks, by the establishment of a simplified and effective system for the surrender of persons convicted or accused of having infringed criminal law, to facilitate and accelerate judicial co-operation with a view to contributing to the objectives set for the European Union to become an area of freedom, security and justice, founded on the high level of trust which should exist between the Member States in accordance with the principles of mutual recognition…"

31. A person sought in order to face a hearing to decide whether a prior suspended sentence should be activated is by no means in an unusual situation. Such individuals pose as big a threat to peace and justice across the EU (which includes in the state in which the requested person resides) as any other convicted criminal who remains at large. No reason has been advanced in argument to explain why such a gaping hole in the extradition system would amount to good policy. The conclusion that there is no such reason is supported by the decision of the Supreme Court in *Goluchowski* (ibid). Lord Mance, giving the judgment of the court, at paragraph [27], construed section 2(6)(c) EA 2003 in the manner most likely to have "*bite*". He eschewed an approach to interpretation which placed excessive emphasis on the "*supposed precision*" of the drafters of the act and he emphasised the need to make the system "*work*". In paragraph [30] he stated:

> "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 would cater for such sentences."

32. Mr Crawford sought to distinguish *Goluchowski* upon the basis that on the facts the judgment sought to be enforced against the requested person was definitive, and the EAW was to have him returned to prison (ibid paragraph [22]). However, this in my view is a distinction without a real difference. If it were a valid distinction then a criminal justice system which accords enhanced rights to the requested person (for

instance enabling them to make appropriate submissions in court upon extradition before any adverse decision is taken) cannot use the EAW system to enforce extradition; whereas a criminal justice system that denies the requested person rights of access to a court and compels the immediate delivery of the requested person to a prison, can use the EAW system. This would turn a system which is intended to respect the right to a fair trial and the rights of the defence (cf eg recital (12) of the Framework Decision) on its head. It would mean that if the requesting judicial authority grants fewer right to the requested person on return the EAW applies; but if greater rights are accorded it does not. This would create a perverse incentive to minimise the rights of requested persons on return. The fact that this is a consequence of the Appellant's argument is a strong indicator that it cannot have been within the purposes of either the Framework Decision or the EA 2003.

33. The third reason why I do not accept the Appellant's arguments is that they run counter to the jurisprudence of the CJEU in relation to suspended sentences. There is no judgment which address precisely the scenario arising in this case. However, there are cases where the Court has focused upon different types of conditional sentence and in my view the principles and analysis applied by the CJEU in these cases is strongly indicative of the conclusion that I have arrived at. The judgments of the CJEU are: Case C-270/17 PPU *Tadas Tupikas* (10th August 2017) at paragraphs [97]-[99] ("*Tupikas*"); Case C-271/17 PPU *Zdziaszek* (10th August 2017) at paragraphs [83]-[92] ("*Zdziaszek"*); and *Ardic* (ibid) at paragraphs [68]-[92]. The judgment in *Tupikas* (ibid) was considered and applied by the Divisional Court in *Imre v District Court in Szolnok, Hungary* [2018] EWHC 218 (Admin) ("*Imre"*) at paragraphs [53]-[58].

34. In *Tupikas* (ibid) the issue concerned the scope of Article 4a(1) of the Framework decision (the provision introduced by amendment to address trials in absentia) and the Court addressed at which point in a criminal trial involving several degrees of jurisdiction the "*trial resulting in the decision*" occurred. The Court (at paragraph [98]) held that this was at the point when the final merits decision on guilt was established and a penalty imposed upon the defendant. The Court emphasised that even in relation to a person who knowingly declined to appear at trial and left the jurisdiction there needed to be an "*a posteriori*" right to be heard (paragraph [85]). The reasoning of the Court does not lend any support to the Appellant's submissions that the conferral by the Czech Criminal Code of a right to be heard on the part of the requested person can serve to disapply the EAW system. In my view in so far as the case has relevance it supports the Respondent's analysis. In *Zdziaszek (ibid)* the CJEU was again concerned with Article 4a(1) and considered whether the "*trial resulting in the decision*" underlying an EAW included subsequent proceedings to execute the sentence. The ruling has no direct relevance to the present case. However, at no point in any of these judgments was it suggested, as it could have been, that surrender pursuant to an EAW for a hearing to determine whether or not to activate all or part of a suspended sentence was an improper use of an EAW. In each case the Court sought to ensure that the system established by the Framework decision operated effectively and in accordance with its overarching objectives.

35. The case of greatest relevance is *Ardic* where the Court held that the protection of Article 4a(1) did not apply to hearings to activate suspended sentences. Mr Ardic was resident in the Netherlands. He was sought on an EAW because he had been

convicted in person in Germany and had been sentenced. Having served a portion of the sentence the remainder was suspended. Mr Ardic did not attend the hearing where the suspended sentences were revoked. He argued, in seeking to resist revocation, that had he attended he would have sought to resist revocation. The Dutch Court held that the German Court had the power to take Mr Ardic's situation into account in determining whether or not to revoke the sentence (cf paragraph [39]). On a reference the CJEU confirmed that Article 6 ECHR did not apply to issues relating to the execution of sentences (paragraph [54]). The Court also held: (i) that the fact that Mr Ardic would *a posteriori* have the right to be heard under German law did not affect the enforceable nature of the revocation decision (paragraph [35]); (ii) the enforcement of arrest warrants is the rule and a refusal to execute such a warrant is an exception which should be construed strictly (paragraph [70]); (iii) where proceedings concern only revocation and the imposition of a suspended sentence that "*sentence once again produces all its effects*" (which indicates that it is the initial conviction and sentence that is the basis of the EAW paragraph [81]).

36. The fourth reason leading me to reject the Appellant's submissions is that the extradition system is based upon principles of international comity, mutual respect and "…*a high level of confidence between the Member States*" (cf recital (11) of the Framework Decision). One aspect of this is the acknowledgment that criminal justice systems will vary in their procedures and approach and indeed nomenclature. In *Istanek v District Court of Prerov* [2011] EWHC 1498 (Admin) Laws LJ, at paragraph [21] emphasised that the EA 2003 had to operate "…*in relation to warrants from different jurisdictions where the principles and procedures of the criminal courts often differ, both from each other and certainly- most of them being civilian jurisdictions, from criminal process in England."* In paragraph [22] Laws LJ observed that the statements and information prescribed to be given by section 2(3)-(6) EA 2003 would in every case "…*reflect local practice*". It was possible that what one state regarded as an accusation case could well in another case be treated as a conviction case. Evidence which was before the court demonstrated that there was "... *no consensus across the European Union as to the approach to be taken within the EAW scheme to convictions in absence where the individual enjoys an unqualified right of re-trial".* Laws LJ commented that even the Czech authorities appear to have shifted ground on that issue. In the light of this, in paragraph [23] Laws LJ stated as follows:

> "It must be inherent in the scheme that our courts, in deciding whether the fugitives extradition is sought on a valid EAW within the meaning of Section 2 of the 2003 Act, will go on the basis of the statement in the warrant; and will properly categorise the relevant facts according to the procedures and laws of the requesting state."

37. A similar approach was adopted by the Divisional Court in *Imre* (ibid) at paragraph 57] where Males J (having reviewed various rulings of the CJEU) stated that he saw nothing in that body of case law which required the court *"…to disregard the statement in the further evidence … that according to Hungarian law and procedure, the appellant remains accused*".

38. In the present case the judicial authority has categorised the EAW as a conviction warrant. I would not preclude the possibility that exceptionally a court might question

the categorisation of a warrant by the requesting judicial authority (cf *Istanek v District Court of Prerov* [2011] EWHC 1498 (Admin) at paragraph [25] citing *Caldarelli v Court of Naples* [2008] UKHL 51; [2008] 1 WLR 1724 at paragraph [24] per Lord Bingham) but in my judgment it would take a very strong reason indeed for this court to reject that categorisation and on the facts of the present case I can perceive none to exist. To the contrary I believe that the categorisation of a warrant to extradite a person to attend a hearing designed to decide whether or not to activate a conditional sentence already imposed, as a conviction EAW, is logical and correct.

39. The fifth and final reason why I reject the Appellant's submission is based upon the argument that the phrase "*unlawfully at large*" in section 68A EA 2003, and in case law considering the passage of time under section 14 thereof, is relevant. These are not, in my judgment, pertinent to the analysis. It is significant that the qualifying words are absent from section 2(5) and there is no reason of policy or logic to import them. The bridge, creatively constructed between sections 68A and section 2(5) by Mr Crawford, is not one which is sustainable in law. Mr Crawford drew our attention to paragraph [6] of *Goluchowski* (ibid) where Lord Mance seems to draw a connection between section 68A and section 2(5). I do not read that short and unexplained reference as addressing the issue that arises in this case. Once again, the sense of the point can be seen by assuming that Mr Crawford is correct. On that premise section 2(5) is rewritten to insert a substantive condition precedent that is presently missing; it has the effect of creating an implied exception to the extradition system which is inconsistent with its overall object and it is also inconsistent with the broad and purposive tenets of construction that Lord Mance himself endorsed in paragraph [30] in *Goluchowski*.

40. For all of these reasons I would dismiss this appeal. An EAW for the extradition of a requested person to face a hearing to determine whether to activate an existing conditional suspended sentence is properly categorised as a conviction warrant under section 2(5)(b) EA 2003.

Lord Justice Singh:

41. I agree.