IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2022] EWHC 2020 (Admin)

No. CO/687/2021

Royal Courts of Justice

Thursday, 14 July 2022

Before:

MRS JUSTICE FARBEY

B E T W E E N :

GABRIEL CIOBANU — Appellant

- and -

PUBLIC PROSECUTOR'S OFFICE AT THE COURT OF PAVIA, ITALY — Respondent

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MR B. COOPER QC (instructed by EBA Attridge LLP) appeared on behalf of the Appellant.

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

J U D G M E N T

MRS JUSTICE FARBEY:

1 The appellant, a thirty-five-year-old Romanian national, appeals under s.26(1) of the Extradition Act 2003 ("the Act") against the decision of District Judge Zani ("the DJ") dated 19 February 2021 ordering his extradition to Italy. The appellant's extradition is sought pursuant to seven European Arrest Warrants ("EAWs") for four theft offences, one drugs offence and one immigration offence (entering Italy in breach of a removal order). The appellant has been convicted of all these offences and so the EAWs are "conviction" warrants. He has been sentenced. His extradition is sought for the purpose of his serving his sentence.

2 Permission to appeal was granted on two grounds by Fordham J following a renewed application at a hearing on 8 December 2021. The appellant subsequently made a written application to amend the appeal notice out of time and for permission to appeal on two new grounds of appeal, raising issues in this court that had not been raised before the DJ. In the event, I was not asked to determine that application because Mr Ben Cooper QC, who appears on behalf of the appellant (and who did not appear below), abandoned all but one of the appeal grounds by emails to the court on the morning of the appeal.

3 The remaining ground of appeal – on which Fordham J granted permission – is that the DJ was wrong to conclude that the offence specified in the fifth EAW ("EAW5") was an "extradition offence" within the meaning of ss.10 and 65 of the Act, as the three-month sentence for the immigration offence falls below the threshold of four months required by virtue of s.65(3)(c).

4 I heard argument on that issue the day before yesterday, reserving my decision and reasons until today.

Background

5 The appellant's evidence before the DJ was that his partner and two young children live in Italy. After being expelled from Italy for a second time in July 2017, he returned to Romania, where he lived until February 2019. He then decided to travel to Germany, where he lived until September 2019 before coming to the United Kingdom. Following a short term of imprisonment for burglary, he was detained under immigration powers at Colnbrook Immigration Removal Centre.

6 The appellant has been convicted of seven offences in Italy. Each offence is the subject of a separate EAW. The details of the offence in each EAW, and the sentence imposed by the Italian courts upon conviction, are summarised in a helpful table in Mr Cooper's skeleton argument, which I reproduce for ease of reference:

EAW	DATE OF SENTENCE	OFFENCE	SENTENCE
1	12 December 2012	Theft	4 months
2	15 April 2015	Possession of marijuana	8 months
3	29 May 2017	Possession of articles for use in theft/going equipped	6 months
4	21 March 2014 (finalised by CoA on 23 March 2018)	Theft of items from supermarket	18 months

5	29 January 2018	Entry to Italy following 'removal order' - relevant offence not categorised but legislative provisions cited concern 'free movement'	3 months
6	1 June 2018	Aggravated theft - theft of monies from slot machine	1 year 8 months
7	8 October 2018	Aggravated theft - theft of monies from slot machine	1 year

7 On 25 March 2019, the Office of the Prosecutor of Pavia ordered the sentences for these offences to be aggregated in the sense that the seven different sentences became a single sentence. The process of aggregation was described by the Prosecutor's Office in a response to a request for further information ("FI") made by the Crown Prosecution Service under Article 15 of the Council Framework Decision 2002/584/JHA of 13 June 2002 ("the Framework Decision"). The FI (dated 31 September 2020) states (retaining the stilted translation):

> "According to the Italian law, when several sentences or criminal decrees have become irrevocable for different crimes against the same person, the public prosecutor determines a single sentence to be executed cumulatively in compliance with the rules on the concurrence of penalties (art. 663 Code of Criminal Procedure and following).
>
> If the convictions have been imposed by different judges, the Public Prosecutor provides to the judge who issued the provision that became irrevocable last: In the case in question, this judge appears to be the Court of Pavia (sentence pronounced on 8.10.2018 irrevocable the 8.10.2019 -- 111/2018 RG -- No. 5857/2015 RGNR) who is also the sentencing judge.
>
> Given that against the convicted CIOBANU Gabriel born on 1.1.1986 when the jurisdiction of the Public Prosecutor of Pavia took root (8/10/2019), as attested by the individual prosecutors, the following sentences were enforceable:
>
> 1. 12.12.2012 Court of Lodi enforceable on 8.3.2013
> 2. 15.4.2018 Court of Lodi enforceable on 23.5.2015
> 3. 29.5.2017 Court of Pavia enforceable on 28.10.2017
> 4. 21.3.2014 Court of Lodi Pavia enforceable on 23.3.2018
> 5. 29.1.2018 Court of Lodi Pavia enforceable on 15.6.2018
> 6. 1.6.2018 Court of Lecco enforceable on 26.9.2018
> 7. 8.10.2018 Judgment Court of Pavia enforceable on 21.2.2019
>
> the office proceeded, on 25.3.2019, to issue a provision for the unification of concurrent penalties, determining the overall penalty to be expiated in

> YEARS 5 MONTHS 4 DAYS 28 OF RECLUSION AND EURO 2600.00 FINE -- MONTHS 6 ARREST AND EURO 120.00 OF FINE.
>
> …
>
> [T]he accumulation measure, issued pursuant to art. 663 of the Criminal Code, has an administrative and non-judicial nature and, therefore, it can be revoked or modified, in order to keep the procedural position of the convicted person constantly updated; this act never becomes definitive unless the execution judge decides on it, whose intervention can be requested by the condemned without time limits. The execution judge, in addition to being able to revoke or modify this provision, proceeds, at the request of the convicted person, to examine the complaints on the same and which concern the correct exercise of Public Prosecutor's power."

8 The appellant's return is therefore requested to serve an overall sentence of five years, four months and twenty-eight days' immediate imprisonment and a fine.

9 On 20 January 2019, the appellant was arrested at Colnbrook Immigration Centre on EAW6. The initial hearing at Westminster Magistrates' Court was held on the same day. He was further arrested on the remaining EAWs on 18 February 2020. The initial hearing in relation to those warrants took place at Westminster Magistrates' Court on that day.

10 On 7 January 2021, the extradition hearing proceeded before the DJ. The appellant gave evidence. Dr Giulia Borgna, an Italian lawyer and academic instructed as an expert on behalf of the appellant, gave evidence on prison conditions (particularly during the Covid-19 pandemic) and on a number of procedural issues arising in Italian law. Her written report stated that (with emphasis in the original):

> "80. After having carefully examined the EAWs, it is my opinion that the applicable legislation has not been fully complied with by the Italian authorities. I have identified three sets of issues pertaining to both the substantial requirements to issue an EAW and to the formal requirements in filling in an EAW form.
>
> 81. **First**, it is trite that **the issuance of an EAW is subject to a minimum penalty threshold**. Article 2(1) of the EAW Framework Decision 2002/584/JHA states that an EAW to enable a sentence to be carried out may be issued where that sentence is for at least four months.
>
> 82. The EAW Framework Decision is not as such directly applicable and needs to be transposed into national legislation. Italy transposed the EAW Framework Decision with Law no. 69/2005, Article 28 of Law no. 69/2005 lays down the requirements that must be satisfied to issue an EAW by the Italian authorities. For our purposes, Article 28(1)(b) states -- in relation to conviction EAWs -- that *"The European Arrest Warrant is issued (…) by the Prosecutor (…) provided that **the sentence is no less than one year** and that the execution was not suspended".*
>
> 83. As may be readily inferred from the wording of this provision, Italy decided to depart from the minimum threshold set in the EAW Framework Decision (four months for conviction EAWs) and adopted a more stringent

> approach. Thus, in the Italian legal system, a conviction EAW may be issued only if the sentence is greater than one year of imprisonment.
>
> 84. In the present case, 4 out of the 7 EAWs issued by the Italian authorities against the [appellant] fall below the one-year threshold required to issue an EAW (i.e. EAWs nos. 1, 2, 3, 5). As a result, these EAWs have been issued in breach of Article 28 of Law no. 69/2005.
>
> …
>
> 85. In fact, in the Italian legal system, an order of aggregation of sentences cannot, as such, ground an EAW, only judgments of conviction can. According to the consolidated stance of the Italian Supreme Court, an order of aggregation of sentences is merely an administrative act and does not have judicial nature … This is precisely the reason why, when surrender is requested for multiple sentences that have been aggregated, the Italian requesting authorities must issue as many EAWs as the underlying judgments of conviction.
>
> …
>
> 95. In my view, the EAWs may be viewed as incomplete … insofar as they fail to mention the length of the aggregated sentence imposed upon the [appellant]. This information is of paramount importance, first and foremost to ensure the proper discharge of the obligations stemming from the specialty rule. In addition, information on the length of the aggregated sentence is crucial to determine whether the RP would be eligible to access alternative measures to detention upon (or possibly even prior to) surrender to Italy …
>
> 96. In conclusion, in my view, surrender should be refused:
>
> - in relation to EAWs no. 1, 2, 3 and 5, because they have been issued in breach of Article 28 of Law no. 69/2005, which sets a one-year sentence threshold to issue an EAW;
>
> - in relation to EAW no. 4, because the underlying conviction is below the four months' sentence threshold."

11 While I have set out the relevant part of Dr Borgna's evidence for background and context, neither party directed my attention to any part of it at the hearing.

The District Judge's judgment

12 In his written judgment, the DJ set out the factual background and procedural history before dealing with each of the numerous grounds for resisting extradition raised by the appellant's counsel at that time. Given the narrow point before me, I do not propose to set out every aspect of the DJ's conclusions. Insofar as relevant to this appeal, he held that the failure to provide the length of the aggregate sentence in the various EAWs did not invalidate the warrants because the length of the sentence was set out in the FI in a way that was "entirely permissible". In respect of EAW5, he held (with emphasis in the original):

> "33. This challenge is promoted on the basis that the sentence in respect of EAW5 is only of 3 months' imprisonment, and is therefore below the statutory minimum required (of 4 months). However I note that the Further Information…makes it clear that the sentence for this offence is included in the aggregate sentence which exceeds the required period.
>
> …
>
> 35. I am entirely satisfied that the statutory provisions have been complied with and that, accordingly, this challenge must **fail**."

13 Having concluded that there were no bars to the appellant's extradition, he made an order for extradition to Italy. The appellant lodged an appeal to this court on 25 February 2021.

Legal framework

14 The proceedings before the DJ and this appeal are governed by Part 1 of the Act. Since the arrests in this case occurred prior to 11:00pm on 31 December 2020, the case falls to be considered under the EAW legislative background (*Polakowski v Poland* [2021] EWHC 53 (Admin), [2021] 1 WLR 2521). The provisions of the Act must therefore be interpreted, so far as possible, in a manner which will achieve the objectives of the Framework Decision.

15 Article 2 of the Framework Decision deals with the scope of an EAW and states so far as relevant:

> "A European arrest warrant 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 sentence of at least four months."

16 By virtue of s.2(6)(e) of the Act, a conviction warrant must contain:

> "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."

17 Section 10 of the Act provides:

> "(1) This section applies if a person in respect of whom a Part 1 warrant is issued appears or is brought before the appropriate judge for the extradition hearing.
>
> (2) The judge must decide whether the offence specified in the Part 1 warrant is an extradition offence.
>
> (3) If the judge decides the question in subsection (2) in the negative he must order the person's discharge.
>
> (4) If the judge decides that question in the affirmative he must proceed under section 11."

A person cannot, therefore, be extradited under an EAW unless the offence specified in the warrant is an "extradition offence."

18 Section 65 of the Act provides:

> "**65 Extradition offences: person sentenced for offence**
>
> (1) This section sets out whether a person's conduct constitutes an 'extradition offence' for the purposes of this Part in a case where the person---
>
> (a) has been convicted in a category 1 territory of an offence constituted by the conduct, and
>
> (b) has been sentenced for the offence.
>
> (2) The conduct constitutes an extradition offence in relation to the category 1 territory if the conditions in subsection (3) or (4) are satisfied.
>
> (3) The conditions in this subsection are that---
>
> (a) the conduct occurs in the category 1 territory;
>
> (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the United Kingdom;
>
> (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct."

19 The requirement in s.65(3)(c) that "a sentence of imprisonment … for a term of 4 months or a greater punishment has been imposed … in respect of the conduct" is consistent with Article 2 of the Framework Decision set out above.

20 The Extradition Act 2003 (Multiple Offences Order) 2003 SI 2003/3150 ("the Order") at Article 2 provides for the situation where a single Part 1 warrant is issued for more than one offence or a single request for extradition is made in respect of more than one offence. In such cases, the Act is to have effect with the modifications specified in the Schedule to the Order.

21 Paragraph 2 of the Schedule provides:

> "(1) Section 10 is modified as follows.
>
> (2) In subsection (2) for 'the offence' substitute 'any of the offences'.
>
> (3) For subsection (3) substitute---
> '(3) If the judge decides the question in subsection (2) in the negative in relation to an offence, he must order the person's discharge in relation to that offence only'."

22 On behalf of the respondent, Mr Hoskins submitted that nothing in the Schedule altered the effect of the requirement of the requesting judicial authority to specify "the sentence" in a conviction case. The words "particulars of the sentence" in s.2(6)(e) of the Act are not modified by the Order and they are broad enough to include an overall aggregated sentence. If Parliament had intended that each extradition offence in a multiple offence case should have its own separate four-month minimum sentence, the Order would have amended s.2 to say so, in the same way that it had modified s.10 of the Act to ensure that its safeguards apply to each offence in a request for extradition.

23 In the absence of any submissions from Mr Cooper to the contrary, I accept Mr Hoskins' interpretation. It is consistent with Lord Hope's holding in *Pilecki v Circuit Court of Legnica, Poland* [2008] UKHL 7, [2008] 1 WLR 325 that it may not be necessary in a multiple offence case for the judge to examine each of the offences separately in order to examine whether the requirements of s.65(3)(c) as to the length of the sentence are satisfied. In this regard, the Framework Decision does not require such separate consideration (*Pilecki*, para 23).

24 The court's task is to determine whether the particulars in the warrant required by s.2 have been properly given. That task must be undertaken "with firm regard to mutual cooperation, recognition and respect" and "does not extend to … a detailed critique of the law of the requesting state as given by the issuing judicial authority" (*Criminal Court at the National High Court, First Division v Murua* [2010] EWHC 2609 (Admin) [58], per Sir Anthony May, P; cited in *Zakrzewski v Regional Court in Lodz, Poland* [2013] UKSC 2, [2013] 2 WLR 324, para 12).

25 In *Pilecki*, the House of Lords considered two EAWs issued by the court for the extradition of the appellant to Poland. According to the headnote of the report, the warrants were based on orders for the appellant's arrest for the purpose of serving custodial sentences imposed on him by judgments of the court on two separation occasions. In each warrant the length of the custodial sentence imposed on the appellant was said to be more than four months. The Polish court provided FI about the sentences. Sentences for some individual offences were for less than four months and some for longer periods and the court had aggregated the sentences in its judgments. In each case, the aggregated sentence was more than four months but the combined punishment was less than the sum of the individual sentences for each offence. It was not possible to say how much of the aggregated sentence was attributable to each offence.

26 In a judgment with which the other members of the court agreed, Lord Hope said (at para 5):

> "The short but important question on this appeal is whether, for the purposes of Part 1 of the 2003 Act, it has to be shown that the sentence that was imposed in respect of each offence, taken on its own, was at least four months or whether it is sufficient, where the person has been convicted of several offences and an aggregated sentence has been imposed on him, that the aggregated sentence was for four months or a greater period."

27 Referring to the Framework Decision, he held:

> "25. A close examination of article 2(1) shows that it provides two different tests as to whether the purpose for which the surrender of the requested person is sought is sufficiently serious to justify his arrest and surrender to the requesting state under the Framework Decision. In accusation cases the acts for which a criminal prosecution is to be conducted must be punishable by a custodial sentence or a detention order

for a maximum period of at least 12 months. This requirement is directed to the level of penalty that is attached to the offence which the requesting state wishes to prosecute. It is built into the definition of what constitutes an extradition offence in section 64 of the 2003 Act. In conviction cases the test is not directed to acts but to the execution of sentences. This can be seen from a reading of article 2(1) which strips out the words that relate to accusation cases and concentrates on the remainder. So read it states: 'A European arrest warrant may be issued …where a sentence has been passed or a detention order has been made, for sentences of at least four months.' It is the length of the sentence alone that determines whether or not it falls within the scope of a European arrest warrant.

26. An examination of the other provisions of the Framework Decision confirms this approach. First, there is paragraph 5 of the Preamble. The last sentence is in these terms:

> '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.'

This system is based on the principle of mutual recognition: see article 1(2). As was observed in *Dabas v High Court of Justice in Madrid, Spain* [2007] 2 AC 31, para 18, it was to be subject to sufficient controls to enable the judicial authorities of the requested state to decide whether or not surrender is in accordance with the conditions which the Framework Decision lays down. But they are not to be unnecessarily elaborate, as complexity and delay are inimical to its objectives.

27. Then there is Article 8(1) of the Framework Decision. It states that the European arrest warrant shall contain information set out in accordance with the form contained in the Annex about, among other things, '(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.' The relevant part of the form contained in the Annex sets out this requirement in these words:

> '(c) Indications on the length of the sentence:
> 1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):…
> 2. Length of the custodial sentence or detention order imposed:…
> Remaining sentence to be served:…'

28. It is plain that paragraph (c) 1 refers to accusation cases. In those cases, as article 8(1)(f) states, information is required about the prescribed scale of penalties for the offence that the issuing member state wishes to prosecute so that the executing member state can determine whether the offence falls within the scope of a European arrest warrant as defined in article 2(1). Paragraph (c) 2, on the other hand, refers to conviction cases. As both article 8(1)(f) and this paragraph make clear, all that the executing member state needs to know is the length of the sentence. The words 'penalty', 'sentence' and 'detention order' are all stated in the singular.

> There is no indication here or anywhere else in the Framework Decision that the sentence needs to be examined more closely to see how it was arrived at."

28 In a passage on which Mr Hoskins placed emphasis, Lord Hope went on to hold (also in para 28):

> "There is no indication that it is any concern of the executing member state to inquire as to the number of offences to which the sentence relates, if there was more than one. It is the length of the sentence that the requested person is to be required to serve, and the length of that sentence alone, that determines whether or not it falls within the scope of a European arrest warrant."

Lord Hope also held at para 29:

> "The principle of mutual recognition dictates that effect must be given to the sentence that was passed in the issuing member state. All the executing member state needs to know in these circumstances is whether or not the sentence was one for at least four months. It is not for the judicial authorities in the executing member state to question how the sentence was arrived at."

29 The question of the effect of one aggregate sentence for the purposes of determining whether an offence amounts to an extradition offence under the 2003 Act has been considered in a number of subsequent cases, particularly in the context of aggregate sentences that relate to a series of offences where at least one offence in the series did not satisfy the requirement of dual criminality. The authorities were reviewed by Dingemans J (as he then was) in *District Court in Wroclaw, Poland v Horbacz* [2019] EWHC 1071 (Admin). He held at para 19:

> "It seems possible, in my judgment, therefore, to state the following propositions from that review of the authorities. First, the court is to take the aggregate sentence as the relevant sentence for the purposes of the 2003 Act even where those offences include an extraditable offence and a non-extraditable offence. Secondly, the court is to have regard to the assumption that the relevant judicial authority will, in the absence of further information, comply with specialty when disaggregating the sentence on the return of the requested person."

30 Permission to appeal in the present case was granted on the basis that there is no direct authority applying *Pilecki* in a case where an aggregated sentence has been imposed in relation to a series of offences in different warrants where one of those warrants does not specify a sentence of more than four months. Both warrants in *Pilecki* had specified aggregated sentences of more than four months for the offences in the warrant.

The parties' submissions

31 In his written and oral submissions, Mr Cooper emphasised the importance of the content of an EAW within the scheme of both the Framework Decision and Part 1 of the Act. Insofar as extradition is effected by direct execution of the warrant, the domestic courts must ensure that the requirements of an EAW are strictly enforced (*Zakrzewski*, para 6). The legal effect and validity of EAW5 should be determined by reference only to its own terms as a freestanding

warrant. The DJ ought to have ignored all the other warrants when considering whether EAW5 showed an extradition offence.

32 Mr Cooper submitted that, by virtue of s.65(3)(c) of the 2003 Act, it is an essential element of an extradition offence that a sentence of imprisonment has been imposed in the category 1 territory in respect of the conduct set out in the EAW. Reading EAW5 on its own, the only clear or meaningful statement of the sentence of imprisonment is in Box C which refers to a term of three months. The reference to aggregation in Box B does not state any term of imprisonment and strays beyond the sentence imposed for the "conduct" with which EAW5 deals. The provision of FI about the length of the sentence does not cure the defect in the warrant.

33 Mr Cooper submitted that the present case may be distinguished from *Pilecki*. Although *Pilecki* holds that a composite approach can be taken to constituent offences within a single EAW, it does not follow that an "in the round" approach may be taken to separate EAWs. Accepting that a single composite EAW would in the present case have been unimpeachable, the Italian authorities had used seven individual EAWs, each of which requires to be examined pursuant to the provisions of the statutory scheme.

34 Mr Hoskins essentially submitted that the case could not, upon analysis, be distinguished from *Pilecki*. In "conviction" warrant cases, such as the present case, the focus under the Framework Decision is on the final sentence, not the conduct for the individual offence. It is the single, aggregated sentence that bears on whether an offence falls within s.10 of the Act. Where a sentence is aggregated but includes conduct in relation to which the individual sentence was less than the four-month minimum, extradition will follow.

The Court's jurisdiction on appeal

35 An appeal from the DJ may be brought, with permission, on a question of law or fact (s.26(3) of the Act). The court may allow an appeal only if:

(a) the appropriate judge ought to have decided a question raised at the extradition hearing differently; and

(b) if the question had been answered as it ought to have been, the DJ would have been required to order the person's discharge (s.27(3) of the Act).

Discussion

36 It is a fundamental feature of Part 1 of the Act that a person may only be extradited for an "extradition offence" which must be specified in the EAW (s.10 and s.2(2)). In "conviction" cases, a person's conduct will not amount to an extradition offence unless a sentence of at least four months' imprisonment has been imposed "in respect of that conduct" (s.65(3)(c)), meaning the conduct specified in the warrant (*Zakrzewski*, para 6).

37 In the present case, EAW5 states both that an individual sentence of three months was originally imposed for the immigration offence and that that offence was included in the prosecutorial order for the aggregation of concurrent sentences. As the DJ noted, the FI makes plain that the sentence for EAW5 is included in the aggregated sentence which exceeds the four-month period required under s.65(3)(c).

38 Mr Cooper did not object to the content of the FI; nor did he object to my reading the FI as though it were part of the EAW in accordance with well-established case law (see e.g. *Imre v*

District Court in Szolnok (Hungary) [2018] EWHC 218 (Admin), para 37). His submission was in effect that the aggregation order should be ignored because it could not override the clear statement in EAW5 that the sentence for the immigration offence was three months. He relied in particular on Lord Hope's observation, at para 34 of *Pilecki*, in relation to how a judge should reach a decision on whether the four-month threshold was met:

> "… The information on which this decision is to be based must be found within the Part 1 warrant itself: section 2(6)(e). Further information such as that which was made available in this case will be irrelevant to [the judge's] decision on this issue."

39 In my judgment, Lord Hope was not in this passage saying that a court is bound to ignore properly formulated FI in ascertaining whether the warrant specifies an extradition offence within the meaning of ss.10 and 65(3)(c). The FI under consideration in *Pilecki* showed that several of the offences of which the requested person had been convicted had been dealt with by way of penalties that failed to meet the four-month threshold in s.65(3)(c). The FI also showed that the warrants themselves were defective because they did not give particulars of the sentences that had been imposed for each offence. Lord Hope held that that sort of information – insofar as it went behind the aggregated sentence in the warrant – did not affect the nature of the overall sentence specified for the multiple offences in the warrant. Read in the context of the judgment as a whole, it was (in effect) the invitation to disaggregate that Lord Hope regarded as impermissible in this passage. In my judgment, Lord Hope's judgment in *Pilecki* is not authority for the proposition that, in determining the sentence imposed by the requesting state, a judge cannot consider any FI that may cast light on information within the warrant.

40 This reading of Lord Hope's judgment receives support from an earlier passage in para 34, in which he held that it is not necessary for a judge to ask whether the sentence that was passed for each offence satisfied the test that is set out in s.65(3)(c). If the other requirements of s.65(3) are satisfied, all the judge needs to do is to determine whether the sentence for the conduct, taken as a whole, meets the requirement that it is for a term of at least four months. That earlier part of para 34 – which essentially disapproves an inquiry by a judge into the constituent parts of a single overall sentence – reflects the broader proposition that an inquiry into how the sentence was arrived at in a "conviction" case would be contrary to the principle of mutual recognition on which the Framework Decision is founded and a matter which is exclusively for the issuing member state (*Pilecki*, para 30).

41 Mr Cooper's interpretation of Lord Hope's judgment is inconsistent with *Zakrzewski* which considered *Pilecki* and which held (at para 14) that in a multiple offence case the supply of FI by the requesting judicial authority was "effective to explain the contents of the warrant." Aspects of criminal procedure, which vary from one jurisdiction to another, may require explanation in FI but such information supplements the warrant and does not undermine the purpose of the Framework Decision or Part 1 of the Act (*Zakrzewski*, para 16).

42 Turning to the present case, there is, in my judgment, no reason of law or principle as to why the DJ should not have read the various parts of the EAW and the FI as a whole. Reading those documents as a whole, the evidence before the DJ pointed only in one direction: that the appellant is subject to an aggregated sentence that has replaced and supersedes the various constituent sentences marked on the various EAWs. Any incompleteness or inaccuracy in EAW5 was cured by the FI. It was not the role of the DJ – still less this court on an appeal – to question how the aggregated sentence was arrived at. Rather, the sentencing practice in Italy falls to be respected. Any further analysis would rely on an invitation to disaggregate which the DJ would have ben entitled, indeed bound, to reject.

43 Once it is seen that the wording of EAW5, supplemented by the FI, provides all the necessary information, it follows that the Italian authorities have proved by reference to a single warrant and the related FI that the immigration offence in EAW5 is an extradition offence. There is upon analysis no material difference between the present appeal and the situation which confronted the court in *Pilecki*. The DJ was entitled to consider the content of EAW5 and the FI relating to it. Having done so, as *Pilecki* holds, he was entitled to consider the aggregated sentence that governs the offence in EAW5. He was entitled to conclude that EAW5 specifies an offence on which the appellant may and should be extradited.

44 On the evidence before the DJ, disaggregation would in any event have been an inherently complex and risky task. In my judgment, the content of Dr Borgna's report does not adequately tackle the issue and would not have assisted the DJ to undertake disaggregation. In fairness to Mr Cooper, he did not rely on her report in relation to this issue.

45 There was nothing else which could have prompted the DJ to require the Italian authorities to divide up the overall sentence into constituent parts. The situation may have been different and may have permitted further inquiry if there had been (for example) the risk of an abuse of process (*Zakrzewski*, para 11) or questions of specialty where the aggregated sentence extended to offences which were not extradition offences for reasons other than sentence length (*Horbacz*, paras 17-19 and cases cited therein). In the absence of any particular factor which might call for an inquiry into disaggregation, the DJ was correct to rely on the overall sentence alone in determining whether the offence in EAW5 met the four-month threshold.

46 I am fortified in my conclusions above by logic and justice. There would be no logical reason for having one rule for a single composite EAW (as in *Pilecki*) and a different rule for multiple EAWs (as in the present case). Nor is there any real injustice. All the information that is needed to ascertain whether the appellant would serve a sentence of at least four months is contained in the EAW as properly supplemented by the FI. Both the United Kingdom authorities and the appellant know everything they need to know about the length of the sentence from those two sources of information.

47 As Fordham J noted in granting permission to appeal, a single composite warrant in the present case would have been unimpeachable. As Dr Borgna set out in her report, it is the provisions of Italian law that required a series of separate EAWs. Those provisions fall to be respected by United Kingdom courts without detailed critique.

48 The multiple warrants were considered by the DJ in the same proceedings and a single extradition order was made in light of all the relevant information that may affect the appellant's rights in the United Kingdom and in Italy. For all these reasons, I would echo Lord Sumption's words in *Zakrzewski*, para 4, that the point at issue is "about as technical as it could possibly be."

Conclusion

49 For these reasons, I am not satisfied that the DJ ought to have decided a question raised at the extradition hearing differently or that he was required to order the appellant's discharge. The appeal is dismissed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge