HOUSE OF LORDS SESSION 2006–07
[2007] UKHL 6

on appeal from: [2006] EWHC 971 (Admin)

OPINIONS

OF THE LORDS OF APPEAL

FOR JUDGMENT IN THE CAUSE

Dabas (Appellant)
v.
High Court of Justice, Madrid (Respondent) (Criminal Appeal from Her Majesty's High Court of Justice)

Appellate Committee

Lord Bingham of Cornhill
Lord Hope of Craighead
Lord Scott of Foscote
Lord Brown of Eaton-under-Heywood
Lord Mance

Counsel

Appellants:
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Mark Summers
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Respondents:
David Perry QC
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(Instructed by Crown Prosecution Service)

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LORD BINGHAM OF CORNHILL

My Lords,

1. The High Court of Justice of Madrid seeks the surrender of the appellant, Mr Dabas, to face a criminal charge of complicity in Islamic terrorism in connection with the Madrid train bombings of 11 March 2004. It has issued a European arrest warrant, pursuant to which District Judge Anthony Evans, sitting in the Bow Street Magistrates' Court, ordered the surrender of the appellant. The Queen's Bench Divisional Court (Latham LJ and Jack J) affirmed that decision: [2006] EWHC 971 (Admin); [2007] 1 WLR 145.

2. The appellant resists surrender on three grounds. For reasons given by my noble and learned friend Lord Hope of Craighead, whose summary of the relevant materials and provisions I gratefully adopt, I would reject the appellant's arguments based on the second and third grounds. On those I have nothing to add. I have felt more doubt about the first issue raised by the appellant, which is whether the certificate referred to in section 64(2)(b) and (c) of the Extradition Act 2003 can be the European arrest warrant itself.

3. Interpreting section 64(2)(b) and (c) in isolation, I would understand the section to require the issue by "an appropriate authority of the category 1 territory" of something amounting to a certification that the conduct described in the warrant falls within the European framework list (paragraph (b)) and that the conduct is punishable under the law of the category 1 territory with imprisonment or detention for 3 years or more (paragraph (c)). Whether or not the language "I hereby certify" were used, I would understand the subsection to require a

statement to such effect: that is the ordinary meaning of "certificate", and that is the sense in which I understand the expression to be used elsewhere in the Act (see sections 2(7), 17(7), 40(1), 54(3), 56(3), 58(3) and 70(8)). If the authority designated by the Secretary of State under section 2(9) has certified that the foreign authority which issued the Part 1 warrant has the function of issuing warrants in the category 1 territory, and the certificate required by section 64(2)(b) and (c) is contained within the warrant itself, it is difficult to see how the appropriate judge in this country, performing his duty under section 66(2), could do other than believe that the certificate had been issued by a judicial authority of the category 1 territory which had the function of issuing arrest warrants in that territory. The inference that section 64(2)(b) and (c) envisages a separate certificate is strengthened by the reference in section 142(3), not found in section 64(2)(b) and (c), to an arrest warrant "which contains" a certificate. The appellant's argument on the construction of this domestic statute, skilfully advanced by Miss Montgomery QC, has considerable force.

4. But Part 1 of the 2003 Act must be read in the context of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between member states (2002/584/JHA; OJ 2002 L190, p 1). This was conceived and adopted as a ground-breaking measure intended to simplify and expedite procedures for the surrender, between member states, of those accused of crimes committed in other member states or required to be sentenced or serve sentences for such crimes following conviction in other member states. Extradition procedures in the past had been disfigured by undue technicality and gross delay. There is to be substituted "a system of surrender between judicial authorities" and "a system of free movement of judicial decisions in criminal matters" (recital (5) of the preamble to the Framework Decision). This is to implement the principle of mutual recognition which the Council has described as the cornerstone of judicial cooperation (recital (6)). The important underlying assumption of the Framework Decision is that member states, sharing common values and recognising common rights, can and should trust the integrity and fairness of each other's judicial institutions.

5. By article 34(2)(b) of the Treaty on European Union, reflecting the law on directives in article 249 of the EC Treaty, framework decisions are binding on member states as to the result to be achieved but leave to national authorities the choice of form and methods. In its choice of form and methods a national authority may not seek to frustrate or impede achievement of the purpose of the decision, for that would impede the general duty of cooperation binding on member states

under article 10 of the EC Treaty. Thus while a national court may not interpret a national law contra legem, it must "do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with article 34(2)(b) EU" (*Criminal proceedings against Pupino* (Case C – 105/03) [2006] QB 83, paras 43, 47).

6. The wording of the Framework Decision makes no reference to a "certificate" as to the matters specified in section 64(2)(b) and (c) of the 2003 Act. But it does in article 8 require a European arrest warrant to contain "(d) the nature and legal classification of the offence, particularly in respect of Article 2", and it is article 2 which lists the offences for which no verification of double criminality is required ("the framework list"). Article 8 also requires a European arrest warrant to contain "(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". This information must be set out in accordance with the form contained in the annex to the decision. The annex sets out the framework list, with provision for identification of any offence relied on which is punishable by imprisonment or detention for at least 3 years. The warrant is to be signed by or on behalf of the issuing judicial authority.

7. The arrest warrant issued in the present case met the formal requirements of the Framework Decision. It identified terrorism in the framework list as the offence, punishable by imprisonment or detention for at least 3 years, to be charged against the appellant. It was issued by a competent judicial authority in Spain, and signed by a judge acting as such. The issuing authority has been certified by the National Criminal Intelligence Service, then the authority designated by the Secretary of State for purposes of Part 1 of the 2003 Act under section 2(9) of the Act, to be a judicial authority which has the function of issuing arrest warrants in Spain.

8. The short question is whether this arrest warrant, complying with the formal requirements of the Framework Decision, is invalid under the 2003 Act because there is no separate certificate, and no express certification, to the effect specified in section 64(2)(b) and (c). If it is, the effect of the Act would be to introduce a requirement not found in the Framework Decision and thereby to impede, to some extent, achievement of the purpose of the Framework Decision, by reintroducing an element of technicality which the Framework Decision is intended to banish and by frustrating the intention that a warrant in

common form should be uniformly acceptable in all member states. Happily, as I think, the House is not driven to that conclusion, since I consider that the Spanish judge, by signing the warrant, has given his authority to and thereby vouched the accuracy of its contents. Thus the warrant is in substance if not in form a certification by the judge. It would be inconsistent with the trust and respect assumed to exist between judicial authorities to insist on any additional verification, which would impede the process of surrender but do nothing to protect the rights of the appellant.

9. For these reasons, as well as those given by Lord Hope, I would dismiss this appeal.

LORD HOPE OF CRAIGHEAD

My Lords,

10. On 17 March 2005 a European arrest warrant was issued by the Central Court of Committal Proceedings, No 6, High Court of Justice, Madrid, for the extradition of the appellant, Moutaz Almallah Dabas, to Spain. The decision on which the warrant was based was an order by Judge Juan del Olmo Galvez that the appellant should be subject to unconditional temporary imprisonment to await his trial for the offence of collaboration with an Islamist terrorist organisation in connection with explosions that took place in four trains in Madrid, with much loss of life, on 11 March 2004.

11. The validity of the warrant falls to be determined under Part 1 of the Extradition Act 2003. This is the measure by which the United Kingdom has transposed into national law the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/548/JHA; OJ 2002 L 190, p1). Spain was designated as a Category 1 territory pursuant to section 1 of the 2003 Act by the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003 (SI 2003/3333).

12. The warrant was in the form which the Framework Decision provides for a European arrest warrant. It was signed by Judge Galvez himself as the issuing judicial authority. It was accompanied by a

translation into English. As translated, it contains a statement that the maximum length of the custodial sentence which may be imposed for the offence is from 5 to 10 years imprisonment. It describes the circumstances in which the offence was committed. Under the heading "Nature and legal classification of the offence and the applicable statutory provision/code" these words appear:

> "Penal Type would be collaboration with islamist terrorist organization foreseen in article 576 of Penal Code."

In the list of offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years which the form contains, a cross appears against the word "terrorism".

13. On 17 November 2005 District Judge Anthony Evans ordered that the appellant should be extradited to Spain to await his trial. The appellant disputed the validity of the warrant, so he appealed against the order for his extradition under section 26 of the 2003 Act. On 4 May 2006 the Queen's Bench Divisional Court (Latham LJ and Jack J) dismissed his appeal: [2006] EWHC 971 (Admin); [2007] 1 WLR 145. The appellant now appeals to your Lordships' House on the following three grounds:

(1) that the warrant did not comply with section 64(2) of the 2003 Act because it was not accompanied by a certificate of the kind referred to in section 64(2)(b) and (c);
(2) that the conduct which was alleged against him did not satisfy the dual criminality requirements of section 64(3) of the 2003 Act because part of it occurred at a time when such conduct did not constitute an offence under English law; and
(3) that the warrant did not satisfy the requirements of section 64(3) of the 2003 Act because it did not set out or otherwise make available the text of the relevant law showing that the conduct constituted an offence under the law of the requesting state.

14. These grounds of challenge to the warrant's validity raise issues as to the proper interpretation of the relevant provisions of the 2003 Act. The exercise of interpretation must be conducted in the light of the obligations which the Framework Decision imposed on the United Kingdom under article 34(2)(b) of the Treaty on European Union. So it is necessary at the outset to see what these obligations are.

The obligations under the Treaty

15. Article 34(2) EU is included in Part VI of the Treaty on European Union, which contains provisions on police and judicial cooperation in criminal matters. It provides that the Council may:

> "(b) adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect."

Framework decisions thus have the same binding effect on Member States as directives under article 249 EC, the third paragraph of which uses the same formula.

16. The Framework Decision on the European arrest warrant is one of the products of the Tampere European Council of 15 and 16 October 1999 in which the concept of an area of freedom, security and justice within the EU was first formulated: see *Office of the King's Prosecutor, Brussels v Cando Armas* [2006] 2 AC 1, para 21. Among the various statements in the preamble which explain the purpose and objectives of the Decision are the following:

> "(5) 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 procedure. 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.
>
> …

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

…

(12) This Framework Decision respects fundamental rights and observes the principles recognised by article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof…

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media."

17. Article 1.2 provides:

"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."

Article 17.1 provides:

"A European arrest warrant shall be dealt with and executed as a matter of urgency."

Time limits are set out in that article within which the final decision must be taken, failing which the issuing judicial authority must be informed, giving the reasons for the delay.

18. These provisions show that the result to be achieved was to remove the complexity and potential for delay that was inherent in the existing extradition procedures. They were to be replaced by a much simpler system of surrender between judicial authorities. This system was to be subject to sufficient controls to enable the judicial authorities

of the requested state to decide whether or not surrender was in accordance with the terms and conditions which the Framework Decision lays down. But care had to be taken not to make them unnecessarily elaborate. Complexity and delay are inimical to its objectives.

19. The scope of the European arrest warrant is described in article 2. It 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: article 2.1. Verification of the double criminality of the act is dispensed with in the case of a European arrest warrant which is issued for any one or more of the 32 offences listed in article 2.2, provided that the act is punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years. Acts which constitute offences other than those on the list may be subject to the condition that they constitute an offence under the law of the executing Member State – that is, subject to verification of their double criminality: article 2.4.

20. The content and form of the European arrest warrant is provided for in article 8. Paragraph 1 of that article describes the information that it is to contain, set out in accordance with a form in the Annex to the Decision. It includes the following:

> "(d) the nature and legal classification of the offence, particularly in respect of Article 2;
>
> (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person.
>
> (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State."

21. The provisions of article 8 are reproduced in the form in the Annex. Box (c) is headed "Indications on the length of the sentence". In cases where there is as yet no sentence, the information to be given is the maximum length of the custodial sentence or detention order which may be imposed for the offence. Box (e) is headed "Offence". The information to be given here falls into four parts. First, the total number of offences to which the warrant relates is to be stated. There then

follows a description of the circumstances in which the offences were committed, including time, place and degree of participation. Then there is the "nature and legal classification of the offence(s) and the applicable statutory provision/code." Finally, a tick is to be placed against one or more of the 32 offences listed in article 2.2 which is punishable by a custodial sentence or detention order of a maximum of at least 3 years, if applicable, failing which a full description of the offence is to be given.

22. Article 10.5 provides that all difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved. Article 15.2 builds on the principle of cooperation between the judicial authorities. It contemplates that cases may arise where the information entered on the form may not be sufficient to satisfy the executing judicial authority in the requested Member State. It provides that, if the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information be furnished to it as a matter of urgency. Article 15.3 provides that the issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

The 2003 Act

23. Part 1 of the 2003 Act was enacted to give effect to the Framework Decision in national law. Article 34(2)(b) EU leaves the choice of form and methods to achieve the result at which the Framework Decision aims to Member States. The United Kingdom has taken full advantage of that method of implementation. The provisions of the 2003 Act which deal with extradition from the United Kingdom are divided into two parts. Part 1 of the Act deals with surrender to category 1 territories. These are territories which have been designated for the purposes of that Part by order made by the Secretary of State under section 1(1) of the Act. In the first instance these are expected to be territories to which the Framework Decision is applicable. Part 2 of the Act provides for a separate system of extradition to territories which have been designated as category 2 territories: see the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (SI 2003/3334). These include some territories to which the Framework Decision is applicable such as Austria, Greece and Hungary. But many of those in this category, such as Argentina, Fiji and Singapore, are territories to

which it is not. Extradition to the United Kingdom is dealt with in Part 3.

24. This case is concerned only with provisions which are set out in Part 1 of the Act. The seven territories which were designated as category 1 territories by the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003 (SI 2003/3333) are all Member States of the EU. Other Member States have taken their place in the list of category 1 territories under subsequent Orders. The power to designate territories as category 1 territories under section 1(1) of the Act is not restricted to such territories. The only restriction on designation that is set out in the statute is in section 1(3), which provides that a territory may not be designated for the purposes of Part 1 if a person found guilty in the territory of a criminal offence may be sentenced to death for the offence under the general criminal law of the territory. All Member States are, of course, parties to the European Convention on Human Rights, and a restriction in such terms is unnecessary in their case. It appears that a territory may be designated for the purposes of Part 1 which is not a Member State of the EU. This impression is reinforced by the fact that the system of extradition that is set out in Part 1 of the Act, although closely modelled on the Framework Decision, uses its own language to describe what a warrant for the purposes of Part 1 of the Act must contain. It is not a prerequisite for designation as a category 1 territory that the Framework Decision applies to it.

25. As the case of *Office of the King's Prosecutor, Brussels v Cando Armas* [2006] 2 AC 1 has demonstrated, the fact that Part 1 of the 2003 Act does not match the requirements of the Framework Decision has given rise to difficulty. This case is a further demonstration of this point. Part 1 is perhaps open to the criticism that it tries to do too much. But it is important not to lose sight of the fact that this is where one must go to find the provisions that give effect to the United Kingdom's obligation under article 34(2)(b) EU as to the result to be achieved. The wording of the provisions of the Act that are under scrutiny must be construed in that context.

26. Part 1 of the Act, so far as is relevant to this appeal, provides that the procedure that it lays down must be initiated by what it refers to as a Part 1 warrant: section 2(1). Where the person in respect of whom the warrant is issued is accused in the category 1 territory of the commission of an offence and it is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being prosecuted for the offence, it must contain the information set out in section 2(4). This

includes particulars of the circumstances in which the person is alleged to have committed the offence. It also includes particulars of any provision of the law of the category 1 territory under which the conduct is alleged to constitute an offence. Miss Montgomery QC for the appellant suggested that the requirements of section 2(4) as to particulars of the law of the category 1 territory were not fulfilled in this case. But the main thrust of her argument, as her three grounds of appeal indicate, was directed to the requirements of section 64(2) and 64(3).

27. Section 10(2) of the Act provides that 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, the judge must decide whether any of the offences specified in the Part 1 warrant is an extradition offence. In order to conduct this exercise the judge must address himself to section 64 which applies where the person has not been brought to trial and sentenced for the offence, or to section 65 which applies where the person has been sentenced for the offence. As the appellant has not been brought to trial and sentenced for the offence that is alleged against him, the section which applies to his case is section 64. Miss Montgomery submitted that, for the various reasons already mentioned, the District Judge was not entitled to hold that the offence that was specified in the Part 1 warrant in his case was an extradition offence as defined in either section 64(2) or section 64(3).

28. Section 64(2) and section 64(3) provide as follows:

> "(2) The conduct constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied –
>
> (a) the conduct occurs in the category 1 territory and no part of it occurs in the United Kingdom;
>
> (b) a certificate issued by an appropriate authority of the category 1 territory shows that the conduct falls within the European framework list;
>
> (c) the certificate shows that the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 3 years or a greater punishment.

(3) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied –

(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) the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law)."

29. The European framework list of conduct to which section 64(2)(b) refers is set out in Schedule 2 to the Act. It reproduces the list of offences which the Framework Decision sets out in article 2.2. Terrorism, which is the offence which the appellant is alleged to have committed, is one of the offences on the European Framework list.

30. The Divisional Court certified that the following points of law of general public importance were involved in its decision:

"1. Whether section 64(3) of the Extradition Act 2003 requires that the court be satisfied that the conduct relied on constitutes an offence under the law of the requesting state and whether, for that purpose, the text of the relevant law must be set out in the European arrest warrant or otherwise made available to the court?

2. Whether, in a case where section 64(3) of the Extradition Act 2003 applies, and where part of the conduct complained of did not constitute an offence under English law at the time it occurred, the court may nonetheless order extradition based upon the part of the conduct which would have constituted an offence under English law?

3. Whether the 'certificate' referred to in section 64(2)(b) and (c) of the Extradition Act 2003 can be the European arrest warrant itself?"

31. Counsel were agreed that it was preferable to deal with these questions in reverse order. An affirmative answer to the third question

will determine the appeal in favour of the respondent, regardless of the answers to the two remaining questions. This is because it would follow that the judge was entitled, in that event, to find that the conduct complained of constituted an extradition offence as defined by section 64(2) and accordingly that the requirement set out in section 10(2) was satisfied. If the appeal is to be determined in his favour the appellant must show that the judge was not entitled to find that the conduct constituted an extradition offence under either section 64(2) or section 64(3). So he can only succeed if the third question is answered in the negative and an answer in his favour is given to at least one of the two remaining questions also.

The "certificate" issue

32. The question is whether the "certificate" referred to in section 64(2)(b) and (c) can be the Part 1 warrant itself or whether, as Miss Montgomery contended, a separate document must be produced in the form of a certificate showing the matters referred to in these paragraphs. The word "certificate" is not defined anywhere in the 2003 Act. But section 202(3) of the 2003 Act provides that a document issued in a category 1 territory may be received in evidence if it is duly authenticated. Section 202(4), as amended by Schedule 13, para 26 of the Police and Justice Act 2006, provides that a document issued in a category 1 territory is duly authenticated if it purports to be signed by a judge, magistrate or officer.

33. The statutory language indicates that the word "certificate" in section 64(2)(b) and (c) was used deliberately by Parliament to ensure the accuracy of the statements referred to in these paragraphs. This is not surprising, as the effect of a finding that the conduct constitutes an extradition offence under section 64(2) is to exempt it from the requirement of double criminality. The "certificate" must "show" that the conduct falls within the European framework list: section 64(2)(b). It must also "show" that it is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 3 years or a greater punishment: section 64(2)(c). Section 64(3), which retains double criminality, does not require the production of a "certificate" which "shows" that the conduct satisfies the conditions that it sets out for the offence to be an extradition offence within the meaning of that subsection. The requirement for a certificate as to the matters referred to in section 64(2)(b) and (c) cannot be dismissed as unimportant. It must be taken to have been included in this subsection as an additional safeguard.

34. The language of these provisions may be contrasted with that of section 2(2) which sets out what an arrest warrant must contain if it is to qualify as a Part 1 warrant. Section 2(2) provides that a Part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains one or other of the "statements" referred to in paragraphs (a) or (b) of that subsection. The only reference to a "certificate" in section 2 is to the certificate which the designated authority referred to in section 2(9) may issue under section 2(7) if it believes that the authority which has issued the Part 1 warrant has the function of issuing arrest warrants in the category 1 territory. A further indication that a "certificate" is something more than a "statement" appears in section 142. This section sets out the contents of a Part 3 warrant for the extradition of a person from category 1 territories. A Part 3 warrant has to contain a "statement" of the matters set out in subsections (4) or (5) and a certificate "certifying" the matters referred to in subsection (6).

35. Persons who are sought to be removed under the procedures that Part 1 of the 2003 Act lays down are entitled to expect the courts to see that the procedures are adhered to according to the requirements laid down in the statute: *Office of the King's Prosecutor, Brussels v Cando Armas* [2006] 2 AC 1, para 24. The fact that no reference is made to a separate "certificate" in article 8 or the Annex to the Framework Decision which sets out the content and form of the European arrest warrant is not determinative of the issue. Parliament has chosen not to follow in the same words what the Framework Decision says about this. It has chosen instead to set out its own requirements as to the form and method of giving effect to it, as article 34(b) EU permits. They must be approached on the assumption that, where there are differences from what the Framework Decision lays down, they were regarded by Parliament as a necessary protection against an unlawful infringement of the right to liberty. It was with this point in mind that Miss Montgomery submitted that a separate certificate was required in order to ensure that the matters referred to in section 64(2)(b) and (c) were not simply the subject of a mechanical, and potentially fallible, rubber-stamping or box-ticking exercise.

36. On further examination, however, it became apparent that this argument was much more about form than it was about substance. Miss Montgomery accepted that the matters referred to in section 64(2)(b) and (c) were sufficiently dealt with by the information which a Part 1 warrant must contain to satisfy the requirements of section 2(4). The purpose of the certificate, then, is not to provide any further information than that which in a Part 1 warrant is already available. Its purpose is to

vouch for, or affirm, its accuracy. She accepted, too, that it was not an essential requirement, for a document to qualify as a certificate within the meaning of section 64(2)(b) and (c), that it should contain the word "certify". The 2003 Act does not say that the use of this word is mandatory. Any form of words will do, so long as they indicate that the person who authenticates the document accepts responsibility for its accuracy.

37. What, then, if the Part 1 warrant itself purports to have been issued by a judge, magistrate or officer who, by signing it, can be taken to have accepted responsibility for its accuracy? Why should it not be held to constitute a "certificate" for the purposes of section 64(2)(b) and (c)? Section 2 does not say that an arrest warrant must be signed by a judge, magistrate or officer. It refers to an arrest warrant which has been "issued" by a judicial authority of the category 1 territory. The annex to the Framework Decision, on the other hand, requires the document to be signed. The signature may be that of the issuing judicial authority "and/or its representative." The requirement for a "certificate" which "shows" that the conduct is of the kind described in section 64(2)(b) and (c) adds something to the requirements that a Part 1 warrant must satisfy. But it does not follow that there must be a separate document.

38. The search for the meaning and effect of the reference to a "certificate" does not consist only of an examination of the words of the statute. The Framework Decision, to which Part 1 of the 2003 Act gives effect in national law, must be interpreted in conformity with Community law. This is in fulfilment of the state's obligations under European Union law and the general duty of cooperation referred to in article 10 EC. Two recent cases in the Court of Justice in which framework decisions were under scrutiny illustrate this point.

39. In *Criminal proceedings against Pupino* (Case C-105/03) [2006] QB 83, 91, para 23, Mrs Advocate General Kokott said that the object of creating an ever closer union among the people of Europe to which article 1 EU refers will not be achieved unless the member states and institutions of the Union co-operate sincerely and in compliance with the law. She then explained how framework decisions must be given effect in accordance with article 34(2)(b) EU:

> "28. Framework decisions in Union law are also largely identical in their structure to directives in Community law.

Under article 34(2)(b) EU, they are binding on the member states as to the result to be achieved but leave the choice of form and methods to the national authorities. Although direct effect is expressly excluded, at least the wording concerning their binding character as to the result to be achieved corresponds to that of the third paragraph of article 249 EC, on the basis of which – together with other reasons – the Court of Justice has developed the doctrine of the application of national law in conformity with Community directives.

…

36. In summary, it follows from article 34(2)(b) EU and from the principle of loyalty to the Union that every framework decision obliges national courts to bring their interpretation of national laws as far as possible into conformity with the wording and purpose of the framework decision, regardless of whether those laws were adopted before or after the framework decision, so as to achieve the result envisaged by the framework decision."

40. In its judgment in the *Pupino* case the Court of Justice said:

"34. The binding character of framework decisions, formulated in terms identical to those of the third paragraph of article 249EC, places on national authorities, and particularly national courts, an obligation to interpret national law in conformity with Community law.

…

42. It would be difficult for the Union to carry out its task effectively if the principle of loyal co-operation, requiring in particular that member states take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under European Union law, were not also binding in the area of police and judicial co-operation in criminal matters, which is moreover entirely based on co-operation between the member states and the institutions, as the Advocate-General has rightly pointed out in para 26 of her opinion.

43. In the light of all the above considerations, the court concludes that the principle of interpretation in conformity with Community law is binding in relation to framework decisions adopted in the context of Title VI of

> the Treaty on European Union. When applying national law, the national court that is called on to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with article 34(2)(b) EU."

41. In *Advocaten voor de Wereld VZW v Leden van de Ministerraad* (Case C-303/05) the Belgian Constitutional Court has asked the Court of Justice, pursuant to article 35 EU, to rule on the Framework Decision's validity. In an opinion which was delivered on 12 September 2006 Advocate General Colomer proposed that the Court should hold that the Framework Decision does not infringe article 34(2)(b) EU and that, by abolishing the requirement of double criminality for the offences listed therein, it is compatible with article 6(2) EU. The appellant has not raised these issues in the present case. The judgment of the Court of Justice is not yet available. But it is worth noting the following observations in the opinion of the Advocate General:

> "25. The order must contain the information necessary for its execution, in particular the details of the identity of the person sought and the nature and classification of the offence (article 8(1)). Any difficulties which may arise during the procedure must be dealt with by direct contact between the courts involved, and, where appropriate, with the involvement of the supporting administrative authorities.
>
> …
>
> 49. The European arrest warrant, a measure which is vital to the creation of an area of freedom, security and justice (articles 2 EU and 29 EU), is an embodiment of judicial cooperation…It is, therefore, a decision governed by the procedural law of the issuing Member State which, in accordance with the principle of mutual recognition, is treated in the other Member States in the same way as a decision of a national court, from which it follows that legislative harmonisation is essential…."

42. The result that the Framework Decision is designed to achieve is to remove the complexity and potential for delay that was inherent in the previous extradition procedures. It seeks to introduce in place of these procedures a system of free movement of judicial decisions in criminal matters within an area of freedom, security and justice: para (5) of the

preamble. The principle on which this new system is based is the mutual recognition of criminal decisions between the Member States. The European arrest warrant is designed to have a uniform effect throughout the European Union. The effect at which it aims is that of swift, speedy surrender. It must be borne in mind too that, for obvious practical reasons, a large number of European arrest warrants are not directed at only one Member State: see the House of Lords European Union Committee Report, "European Arrest Warrant – Recent Developments" (HL Paper 156), para 21. The form in the annex to the Framework Decision has been designed on this assumption. The person who issues a European arrest warrant is not required to address it to any particular Member State. Once issued, it is available to be used wherever the requested person happens to be when it is executed.

43. There is no doubt that the imposition of additional formalities, not to be found in the Framework Decision itself, by one Member State to suit its own purposes would tend to frustrate these objectives. As my noble and learned friend Lord Bingham of Cornhill said in *Office of the King's Prosecutor, Brussels v Cando Armas* [2006] 2 AC 1, para 8, the interpretation of Part 1 of the 2003 Act must be approached on the assumption that Parliament did not intend the provisions of Part 1 to be inconsistent with the Framework Decision or to provide for a lesser degree of cooperation by the United Kingdom than the Framework Decision requires. I can find nothing in the wording of section 64(2), read as a whole and in the light of the other provisions of Part 1, to indicate that it was the intention of Parliament that a Part 1 warrant which clearly set out all the relevant information had to be accompanied by a separate document certifying the matters referred to in section 64(2)(b) and (c). It is to be noted, as Latham LJ pointed out in the Divisional Court [2007] 1 WLR 145, para 26, that section 142(3) as to the form of the Part 3 warrant supports the proposition that a warrant can contain a certificate and that it is not a necessary requirement that it be contained in a separate document.

44. For these reasons, and for those given by my noble and learned friends Lord Bingham of Cornhill and Lord Brown of Eaton-under-Heywood with which I agree, I would answer this question in the affirmative. In my opinion a European arrest warrant can itself be the "certificate" referred to in section 64(2)(b) and (c). The European arrest warrant that was issued in this case contains all the information that was needed for it to be a Part 1 warrant. Its authentication by the issuing judicial officer was sufficient for it to satisfy the formality expected of a certificate that vouches the information contained in it. It follows that the District Judge was entitled to hold that the appellant's alleged

conduct constituted an extradition offence in relation to Spain within the meaning of section 64(2).

45. On this view the two remaining questions do not arise for decision. The test of double criminality which section 64(3) preserves in cases to which it applies, consistently with article 2.2 of the Framework Decision, does not require to be satisfied. The issues which these two questions raise are of general public importance, however. So I think that it is appropriate that your Lordships should answer them.

The "divided conduct" issue

46. One of the conditions that conduct must satisfy if it is to constitute an extradition offence under section 64(3) is that it 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. For the purposes of enabling the judge to determine under section 10(2) whether this condition was satisfied, the respondent's opening note identified the offence in United Kingdom law as the offence of conspiracy to support terrorism contrary to section 12 of the Terrorism Act 2000. The period of the conspiracy is stated to be "between a date unknown before the year 2000 and the 12th day of March 2004". Section 12 of the 2000 Act came into force on 19 February 2001: Terrorism Act (Commencement No 3) Order 2001 (SI 2001/421). It is well settled that, where double criminality is required for an offence to constitute an extradition offence, the conduct must have been criminal in the United Kingdom at the time when the alleged offence was committed: *R v Bow Street Metropolitan Stipendiary Magistrate, Ex p Pinochet Ugarte (No 3)* [2000] 1 AC 147, 196E-G per Lord Browne-Wilkinson. If the statement in the opening note is accurate, the test of double criminality throughout the period referred to was not satisfied.

47. It is not obvious from the narrative of the circumstances set out in the arrest warrant, however, that the date when the relevant conspiracy is alleged to have begun was as early as "before the year 2000". The essence of the allegation is that the appellant was involved in a conspiracy which led up to the train bombings in Madrid on 11 March 2004. Mention is made of the appellant's activities during an earlier period, but this part of the narrative appears to have been included simply as background. This impression is reinforced by the statement of facts, in which it is recorded that the appellant had previously been investigated in Spain because of his supposed relations with a separate

cell of Al-Qa'eda which was dismantled in November 2001. While he is said to have been responsible for collecting voluntary donations to favour the activities of radical jihadist islamists, the principal activity which is alleged against him is that he and others continued to maintain contact with such persons after November 2001 and established a new terrorist group which was linked to the Madrid bombings. In the Divisional Court Latham LJ said that all the material before the court postdates February 2001, and that he was unclear why the notional conspiracy count sought to backdate the commencement of the conspiracy to before 2000: [2007] 1 WLR 145, para 32.

48. In the light of this narrative I would have been willing to hold, had it been necessary to do so, that throughout the period of the conduct which is said to constitute the offence in this case the requirement of double criminality was satisfied. A narrative of events prior in date to the conduct relied on will not be objectionable if it is included merely in order to set the scene - to identify the people with whom the person concerned was associating, for example, and their backgrounds and associates. Information of that kind is relevant and admissible to enable inferences to be drawn as to the nature of the offence constituted by the conduct for which extradition is sought. But it is the conduct for which extradition is sought, not any narrative that may be included in the Part 1 warrant simply by way of background, that must satisfy the test of double criminality.

49. I would add two further observations in response to this question. First, a judge conducting an extradition hearing under section 10 of the 2003 Act may find that the information presented to him is insufficient to enable him to decide whether or not the offence specified in the Part 1 warrant is an extradition offence within the meaning of section 64(2) or section 64(3). If so, he will be at liberty to request further information from the appropriate authority of the category 1 territory, and to adjourn the hearing to enable it to be obtained. He has not been given power to do this expressly by the statute. But articles 10.5 and 15.2 of the Framework Decision show that it is within the spirit of this measure that the judge should be assumed to have this power. The principle of judicial cooperation on which it is based encourages this approach.

50. 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.

51. The second observation, which I make with reference to the test of double criminality in section 64(3), is this. A judge may conclude that this test is not satisfied because part of the conduct which is said to constitute the offence mentioned in the Part 1 warrant occurred before it constituted an offence under the law of the relevant part of the United Kingdom if it occurred there. The question is whether in that situation he has no alternative other than to order the person's discharge under section 10(3). In my opinion it would be open to the judge in such circumstances to ask that the scope of the warrant be limited to a period that would enable the test of double criminality to be satisfied. If this is not practicable, it would be open to him to make this clear in the order that he issues when answering the question in section 10(2) in the affirmative. The exercise that was undertaken by your Lordships in *Pinochet Ugarte (No 3)*, pp 229-240, shows how far it was possible to go under the pre-existing procedure to avoid the result of having to order the person's discharge in a case where part of the conduct relied on took place during a period when the double criminality test was not satisfied. It can be assumed that the Part 1 procedure was intended to be at least as adaptable in that respect as that which it has replaced.

The "foreign law" issue

52. Section 64(3) does not in terms require the judge to examine the details of the foreign law in order to determine whether the conduct constitutes an extradition offence within the meaning of that subsection. Nevertheless Miss Montgomery submitted that the person whose extradition is being sought had the right to be informed about the foreign law and to obtain legal advice on it so that he could, if so advised, dispute the legality of his detention. She said that articles 5 and 6 of the European Convention on Human Rights gave him this right, even although it was not spelled out in so many terms in the statute. It was consistent with those articles that he should be given the fullest and most detailed information that was possible to enable him to dispute this point. She said that this information ought to be included in the Part 1 warrant, as part of the particulars referred to in section 2(4)(c), to enable the judge to determine whether the conduct constituted an extradition offence within section 64(3).

53. In *Office of the King's Prosecutor, Brussels v Cando Armas* [2006] 2 AC 1, para 30, I said that the judge need not concern himself with the criminal law of the requesting state when he is asked to decide under section 10(2) whether the offence specified in the Part 1 warrant is an extradition offence. Miss Montgomery said that this was not so, but I believe that what I said there was accurate. The system on which the European arrest warrant is based depends on cooperation between the judicial authorities of member states. Any scheme which retained scrutiny of the text of the foreign law as a requirement would be bound to give rise to delay and complexity – the very things that in dealings between Member States the Framework Decision was designed to eliminate. In my opinion section 2(4)(c) does not require the text of the foreign law to be set out in the Part 1 warrant. Article 8.1(d) of the Framework Decision states that among the information that the European arrest warrant must contain is "the nature and legal classification of the offence". Section 2(4)(c) requires no more than that.

54. Consistent with the Framework Decision, the judge need not examine the text of the foreign law in order to decide whether the conditions set out in section 64(3) are satisfied. Section 2(4)(c) is not to be read as requiring material to be included in a Part 1 warrant, not mentioned in the Framework Decision, that the judge does not need when he is conducting that exercise. A warrant which contains the statements referred to in section 2(2) is a Part 1 warrant for all purposes. So I do not think that it is possible to spell out of the language of the statute the requirement for which Miss Montgomery contends.

55. Moreover, none of the conditions set out in section 64(3) require an analysis of the foreign law for the judge to decide under section 10(2) whether they are satisfied. Section 64(3)(c) directs attention to the question of punishment. All the judge needs to examine this question are particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence if the person is convicted of it. Those are among the particulars which the warrant must contain if it is to be dealt with as a Part 1 warrant: see section 2(4)(d). This consistent with article 8.1(f) of the Framework Decision which requires only that information be given as to 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. There is no requirement here that the text of the law which gives rise to that punishment must be made available. The requested person's article 5 and article 6 Convention rights are sufficiently protected by the procedures that are laid down in Part 1 of the 2003 Act.

Conclusion

56. I would answer the third certified question in the affirmative. In the light of the answer that I would give to that question, I would dismiss the appeal.

LORD SCOTT OF FOSCOTE

My Lords,

57. I have had the advantage of reading in draft the opinions of my noble and learned friends Lord Bingham of Cornhill, Lord Hope of Craighead and Lord Brown of Eaton-under-Heywood and have the misfortune to disagree with their conclusion, concurred in by my noble and learned friend Lord Mance, that the content of the European Arrest Warrant issued against the appellant can be treated as the certificate required by section 64(2) of the 2003 Act. On all other points I am in full agreement with my noble and learned friends and, accordingly, since I agree that each of the conditions referred to in section 64(3) of the Act is satisfied, I agree that this appeal must be dismissed. In the circumstances I proposed to deal only with my one point of dissent.

58. The Extradition Act 2003 was enacted in order, among other purposes, to implement the Framework Decision of 13 June 2002 (2002/584/JHA). The intention of the Framework Decision was to speed up extradition procedures as between member states of the European Union (see para (1) of the preamble). It was premised on the principle that there should be "mutual recognition" by each member state of the validity of judicial orders and decisions of other member states (para (6) of the preamble) and it proposed, accordingly, that as between member states the traditional extradition procedures should be replaced by a system of surrender between judical authorities. If the judicial authorities of one member state wanted to prosecute a person located in another member state, the judicial authorities of the latter member state should surrender the person to the requesting member state speedily and without investigating the merits of the proposed prosecution.

59. A very important, and novel, feature of the Framework Decision was that, in relation to certain offences that under the law of the requesting member state were punishable by a sentence of at least three years imprisonment, the requirement of double criminality was removed, that is to say, it would not be a condition of extradition that the alleged conduct of the person whose extradition was sought was not only a criminal offence in the requesting member state but would also have been a criminal offence if done in the requested member state. The offences in respect of which the requirement of double criminality were to be removed were those falling within one or other of the categories specified in article 2.2 of the Framework Decision. These categories were expressed in very general terms e.g. "terrorism", "corruption", "racism and xenophobia", "swindling" etc. Whether the conduct in question fell within a specified category was for the law of the requesting state to define. Thus, for example, various forms of undesirable conduct might constitute "corruption" under the law of one member state that would not constitute a criminal offence at all under the law of another. The same could be said in respect of many of the categories specified in article 2.2. There has been no harmonisation of the criminal laws of the European Union member states and, I believe, no widespread enthusiasm for any such harmonisation. So the possibility of surrender for prosecution in relation to conduct that would not be criminal in the requested state is a very live one.

60. Article 8 of the Framework Decision says that

> "The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex."

The article then, in a number of sub-paragraphs, sets out the types of information to be contained in the warrant. These include "The nature and legal classification of the offence, particularly in respect of article 2." The Annex contains a form with boxes for the requisite information, and certain other information, to be included.

61. The terms of a Framework Decision, in order to become enforceable in a member state, require implementation into domestic law by that member state. Article 34(2)(b) of the EU Treaty says that:

> "Framework decisions shall be binding upon the member states as to the *result* to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect."
>
> (Emphasis added)

The United Kingdom implemented the Framework Decision by enacting the Extradition Act 2003. The relevant provisions, so far as extradition by the United Kingdom is concerned, are to be found in Part 1 of the Act which deals with extradition to "Category 1 Territories". Every member state of the European Union, and therefore Spain, is a category 1 territory. Section 2 of the Act describes a "Part 1" arrest warrant and the requisite contents of such a warrant. A European arrest warrant, as defined and described in articles 1 and 2 of the Framework Decision and containing the information specified in article 8, would be a Part 1 warrant.

62. Section 10 of the Act requires that the person in respect of whom a Part 1 warrant has been issued be brought before a judge for an extradition hearing and (as amended by the Extradition Act 2003 (Multiple Offences) Order 2003) that

> "(2) The judge must decide whether any of the offences specified in the Part 1 warrant is an extradition offence."

If the judge decides the question in the negative he must order the person's discharge (in relation to that offence) (subsection (3)).

63. The expression "an extradition offence" is defined in and limited by section 64 of the Act. The section applies "in relation to conduct of a person if – (a) he is accused in a category 1 territory of the commission of an offence constituted by the conduct …" The appellant is so accused and the section therefore applies. Subsection (2) provides as follows:

> "The conduct constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied –
>
> (a) the conduct occurs in the category 1 territory and no part of it occurs in the United Kingdom;

(b) a certificate issued by an appropriate authority of the category 1 territory shows that the conduct falls within the European framework list [ie the article 2.2 list];

(c) the certificate shows that the conduct is punishable under the law of the category 1 territory with imprisonment … for a term of 3 years or a greater punishment."

Each of these three conditions must be satisfied. Otherwise the conduct would not constitute an "extradition offence" and the person whose extradition is being sought must be discharged.

64. A European arrest warrant that has adopted the form set out in the Annex to the Framework Decision will have included a description of the "Nature and legal classification of the offence(s) and the applicable statutory provision/code" and, if it is an offence said to fall within one or other of the article 2(2) categories, the relevant category will have been identified with a tick (see box (e) in the Annex Form). In the present case the warrant did substantially follow the Annex form: box (e) contained details of the conduct of the appellant alleged to constitute the offence and, under the "Nature and legal classification of the offence(s)" heading, was typed

> "Penal Type would be collaboration with islamist terrorist organisation foreseen in article 576 of Penal Code".

A tick was placed against the category "terrorism" in the article 2.2 list (set out in box (e)). In box (c) of the warrant "Indications of the length of the sentence", was typed "punish from 5 up to 10 years imprisonment". The warrant was signed by Magistrate-Judge Gálvez, the issuing judicial authority.

65. It may be said, therefore, that, for section 64(2)(b) purposes, box (e) of the warrant asserts that the appellant's conduct as described in the warrant falls within the European Framework list and that, for section 64(2)(c) purposes, box (c) asserts that the conduct is punishable under article 576 of Spain's Penal Code with imprisonment for at least five years. The warrant has certainly been signed by "an appropriate authority" (see section 66(2) and section 67(1)(a) of the Act).

66. The question is whether section 64(2)(b) and (c) requires anything more. In my opinion, a normal construction of section 64, in the context of the Act as a whole, would require the answer that it does. The section certainly reads as though a separate and express certification signed by a judicial authority and additional to the arrest warrant itself is required. And there is good reason to suppose that the normal construction reflects Parliament's intention. The implementation of the Framework Directive by the 2003 Act raised a good deal of concern in both Houses of Parliament. The imprecision of the Framework List categories coupled with the removal of the requirement of double criminality was the basis of much of that concern. The main answer to the concern was that every member state owes to its fellow member states due respect for their judicial systems and procedures and for the orders and decisions emanating from their courts, in short, 'mutual recognition' should apply. The presence in section 64 of the requirement of a "certificate" by a judicial authority *showing*, first, that the conduct on which the proposed prosecution was to be based did fall within one or other of the article 2.2 categories and, second, that such conduct would be punishable by a sentence of three years imprisonment or more, i.e. *showing* that double criminality was not a condition of extradition, is consistent with a Parliamentary intention to alleviate that concern. The requirement of the certificate would, at least, make certain that in every case where double criminality was not a requisite a judicial mind had been brought to bear on the two points and that the judge was prepared to certify accordingly.

67. Your Lordships, however, notwithstanding agreement that a natural reading of section 64(2)(b) and (c) would be that a separate and express certification was indeed required, are prepared to read down the section so as to allow the arrest warrant itself without any express certification to constitute the section 64 certificate. This reading down is said to be required in order to give proper effect to the Framework Decision and comply with article 34(2)(b) of the Treaty (see paragraph 61). It is said to be required also by the decision of the Court of Justice of the European Communities in the *Pupino* case [2006] QB 83. In my respectful opinion neither of these grounds justifies the reading down of a clear statutory provision.

68. Article 34(2)(b) requires no more that that the *result* of the member state's implementation be consistent with and give proper effect to the Framework Decision in question. Article 2.2 of the Framework Decision removes the requirement of double criminality from offences that, as defined by the law of the requesting state, fall within one or other of the Framework List categories and can be punished by a

sentence of at least 3 years imprisonment. The first of these requirements, in particular, requires a legal analysis of the conduct on which the prosecution will be based. In some cases the analysis and consequent classification of the conduct may not be straightforward and the requirement for a certificate ensures that a judge will have directed his mind to the issue and is prepared to commit himself to the requisite classification and consequent possible punishment. It does not follow that the judge who has signed the arrest warrant, the contents of which may or may not have received his personal attention, will necessarily have done so. The certificate constitutes an assurance from a judicial authority in the requesting country that the express Framework Decision requirements for the loss of double criminality have been met. There is nothing in article 8 of the Framework Decision that is inconsistent with a member state's implementing measure requiring, in effect, an express judicial assurance that the details given in compliance with paragraphs (d) and (f) of article 8 are correct. This express assurance assists in ensuring that, as to the conditions for the removal of double criminality, the "result" intended by the Framework Decision is achieved. For these reasons I do not agree that the requirement for the certificate can be represented as constituting an infringement of article 34(2)(b) of the Treaty.

69. As to the *Pupino* case, the Court of Justice of the European Communities said, in paragraph 36 (p.93), that

> "… every framework decision obliges national courts to bring their interpretation of national laws as far as possible into conformity with the wording and purpose of the framework decision, …, so as to achieve the result envisaged by the framework decision."

The requirement in section 64(2)(b) and (c) for a certificate by a judicial authority of the requesting state, showing that, in effect, the requirement of double criminality does not apply to the extradition request, is not inconsistent with any wording to be found in the Framework Decision. One of the main purposes of the Framework Decision was to speed up and facilitate extradition requests between member states and the requirement of the section 64 certificate is, I agree, a requirement additional to those expressly required by the Framework Decision for a warrant under article 2.2. But it is not a requirement that is in the least inconsistent with the important principle of mutual recognition that informs the Framework Decision. If the Framework Decision is read as a whole, it does not seem to me that the requirement of the section 64

certificate from a judicial authority of the requesting state can be represented as being inconsistent with the purposes of the Framework Decision.

70. In any event, however, the requirement by section 64(2)(b) and (c) for an express certification from the requesting state that the conditions for the removal of double criminality are met was a clear requirement incorporated by Parliament into the implementation provisions of the 2003 Act. The likely purpose for this inclusion in the Act was to meet the concerns to which I have referred. It is not, in my opinion, for the judiciary to remove from the Act provision that Parliament thought it right to include for the greater protection of those who are for the time being in this country and therefore entitled to the protection of our laws.

71. Nonetheless since, for the reasons given by Lord Hope, the conduct of the appellant as alleged in the arrest warrant constitutes an extradition offence under section 64(3) his appeal must be dismissed. My dissent is limited to my disagreement that his conduct constituted an extradition offence under section 64(2).

LORD BROWN OF EATON-UNDER-HEYWOOD

My Lords,

72. I have had the advantage of reading in draft the opinions of my noble and learned friends, Lord Bingham of Cornhill and Lord Hope of Craighead. I agree with them and I too would dismiss the appeal. It is, of course, an appeal which, to be effective for defeating the appellant's surrender to Spain, must succeed both as to issue one (to prevent surrender under section 64(2) of the Extradition Act 2003 on the ground that the conduct falls within the framework list and is on that basis an extradition offence), and as to one or other (or both) of issues two and three (to prevent surrender under section 64(3) on the ground that the conduct in any event satisfies the dual criminality test and is on that alternative basis an extradition offence).

73. The first issue is obviously one of great importance and it is upon this issue that I wish to add a short judgment of my own. If the

appellant's argument upon it is correct, it seems inevitable that many European arrest warrants which satisfy the requirements of article 8 of the framework decision will nonetheless fail to qualify as a sufficient basis for surrendering the person arrested: to satisfy the judge that the offence specified in the warrant is, within the meaning of section 64(2) "an extradition offence" it would be necessary in addition to produce a separate "certificate". Failing that, (unless, of course, section 64(3) were satisfied) the judge would be bound under section 10(3) of the 2003 Act to order the person's discharge.

74. For the reasons given by Lord Bingham, the appellant's argument on the construction of section 64(2), if addressed simply in the context of the 2003 Act itself, is a powerful one. Although section 142 of the Act demonstrates that an arrest warrant may indeed "contain" a certificate (the very contention which the respondent advances in respect of section 64(2)), it is striking, first, that such a certificate under section 142 is one which actually "certifies" the relevant facts (as opposed to a "statement", which is also to be contained in the section 142 warrant but which is merely that—a statement to the given effect); and, secondly, that section 142's description of the warrant as a document containing the specified certificate is notably absent from section 64(2) itself. As Lord Bingham explains, moreover, section 64(2) plainly appears to require something more than the basic form of article 8 warrant such as was issued by Spain in the present case.

75. That being so, the recent decision of the Court of Justice of the European Communities in *Criminal proceedings against Pupino* (Case C-105/03) [2006] QB 83, obviously assumes considerable importance and it is that decision upon which the respondent principally relies. It is worth setting out paragraphs 43 and 47 of the court's judgment in *Pupino* in full:

> "43 In the light of all the above considerations, the court concludes that the principle of interpretation in conformity with Community law is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on European Union. When applying national law, the national court that is called on to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with article 34(2)(b) EU.

> 47 The obligation on the national court to refer to the content of a framework decision when interpreting the relevant rules of its national law ceases when the latter cannot receive an application which would lead to a result compatible with that envisaged by that framework decision. In other words, the principle of interpretation in conformity with Community law cannot serve as the basis for an interpretation of national law contra legem."

76. Put shortly, *Pupino* imposes upon national courts the same interpretative obligation to construe national law so far as possible to attain the result sought to be achieved by framework decisions as the ECJ in *Marleasing SA v La Comercial Internacional de Alimentación SA* (Case C-106/89) [1990] ECR I-4135 had earlier imposed upon national courts to achieve the purpose of directives. And that in turn, as Lord Steyn explained in *Ghaidan v Godin-Mendoza* [2004] 2 AC 557, para 45, is essentially the same strong interpretative obligation which section 3 of the Human Rights Act 1998 imposes (not just on courts, of course, but on all public authorities) to avoid breaches of the European Convention on Human Rights: the requirement "so far as it is possible to do so" to read and give effect to legislation in a way which is compatible with Convention rights.

77. I understand Miss Montgomery QC to advance two alternative arguments as to why the respondent cannot rely on the *Pupino* principle here. First, she submits that *Pupino* has no application: there is, she suggests, no incompatibility between section 64(2) on its ordinary meaning and the purpose of the framework decision. The framework decision itself by recital (8) provides that "decisions on the execution of the European arrest warrant must be subject to sufficient controls"; the article 64(2) requirement for a separate certificate, she submits, is designed to ensure no more than that. Secondly, she submits that in any event section 64(2) is so clear in its meaning and effect that it cannot be construed as the respondent invites. To do so, she argues, would be to construe it "contra legem", something which *Pupino* expressly recognises cannot be done.

78. I should state briefly why I cannot accept either of these submissions. The first I reject because it seems to me clear that recital (8) requires no more than that the surrender decision be taken by a judge; the only grounds permitted for failing to execute the warrant (assuming always that it complies with the framework decision) are those specified in articles 3 or 4 (or where the conditions provided for

by article 5 are not met). It is not a permissible ground for refusing to execute a warrant that the issuing state has failed to provide a separate certificate as well as a European arrest warrant. As Lord Bingham explains, that would be to frustrate the intention that a common form warrant should be uniformly acceptable in all member states and inconsistent with the principle of mutual recognition which underlies third pillar framework decisions.

79. The second argument I reject because it seems to me well within the court's power to construe section 64(2) as permitting the basic assertions in the warrant itself to constitute the necessary certificate. That would not be regarded as exceeding the permissible bounds of the court's interpretative power under section 3 of the Human Rights Act; it would not, to use Lord Steyn's phrase, cross the Rubicon. No more is it to be regarded as a construction "contra legem", forbidden by the Luxembourg case law.

80. For these reasons too, therefore, I would dismiss the appeal.

LORD MANCE

My Lords,

81. I have had the benefit of reading in draft the opinions prepared by my noble and learned friends, Lord Bingham of Cornhill, Lord Hope of Craighead and Lord Brown of Eaton-under-Heywood. I entirely agree with their reasoning and conclusions and there is nothing that I would wish to add. I therefore agree that the appeal should be dismissed.