

**OPINIONS**  
**OF THE LORDS OF APPEAL**  
**FOR JUDGMENT IN THE CAUSE**

**Office of the King’s Prosecutor, Brussels (Respondents)**

**v.**

**Armas (Appellant) and others**

**Appeal Committee**

Lord Bingham of Cornhill  
Lord Hope of Craighead  
Lord Scott of Foscote  
Baroness Hale of Richmond  
Lord Carswell

**Counsel**

*Appellants:*

Edward Fitzgerald QC  
Steven Powles

(Instructed by Bindman & Partners)

*Respondents:*

James Lewis QC  
John Hardy

(Instructed by Crown Prosecution Service)

*Hearing date:*

12 OCTOBER 2005

ON  
THURSDAY 17 NOVEMBER 2005

**HOUSE OF LORDS**

**OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT  
IN THE CAUSE**

**Office of the King's Prosecutor, Brussels (Respondents) v. Armas  
(Appellant) and others**

**[2005] UKHL 67**

**LORD BINGHAM OF CORNHILL**

My Lords,

1. The Kingdom of Belgium seeks the surrender of the appellant, Mr Cando Armas, an Ecuadorean citizen who was convicted in Brussels in his absence of three charges. He was sentenced to five years' imprisonment, and his surrender is sought in order that (subject to any order made on a retrial) he may serve that sentence. The Belgian request is governed by Part 1 of the Extradition Act 2003, which was enacted in discharge of the United Kingdom's duty to transpose into national law the obligations imposed on it by the European Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA). The crucial issue between the parties is whether the Belgian request falls within section 65 of the 2003 Act: the appellant contends, and Deputy Senior District Judge Wickham held, that it does not; the prosecutor submits, and the Queen's Bench Divisional Court (Henriques and Stanley Burnton JJ) held, that it does: [2004] EWHC 2019 (Admin); [2005] 1 WLR 1389. The appellant challenges that conclusion.

*The legislation*

2. It is not unusual for those facing prosecution or imprisonment in one country to take refuge in another in the hope of evading trial or punishment as the case may be. Procedures have long existed enabling the first country to seek the surrender of the fugitive by the second. But the procedures established by bilateral treaty have in the past been characterised by technicality and delay so great as to impede or even frustrate the efficacy of the process. There has accordingly been a

movement among the Member States of the European Union, gaining strength in recent years, to establish, as between themselves, a simpler, quicker, more effective procedure, founded on Member States' confidence in the integrity of each other's legal and judicial systems.

3. The legal foundation of this movement is now found in articles 31(a) and (b) and 34(2)(b) of the Treaty on European Union, providing for judicial cooperation in criminal matters, the facilitation of extradition and the adoption of framework decisions for the purpose of approximating the laws and regulations of Member States. At a meeting of the European Council at Tampere in Finland on 15 and 16 October 1999 it was resolved (in para 35 of the Presidency's conclusions) that the formal extradition procedure should be abolished among Member States as far as persons were concerned who were fleeing from justice after having been finally sentenced, and replaced by a simple transfer of such persons. The Council and the Commission were invited (para 37) to adopt a programme of measures. On 30 November 2000 the Council duly adopted a programme of measures, one of the express objects of which (measure 15) related to the transfer of persons intent on fleeing justice after they have been finally sentenced: OJ C12, 15.1.2001. The Commission, on 27 November 2001, made a very detailed proposal for a Council Framework Decision on a European arrest warrant: COM/2001/0522 final – CNS 2001/0215. This was considered, and was the subject of detailed consultation, by the European Parliament, A5-0003/2002, 9 January 2002. The stage was thus set for the Council Framework Decision which gives rise, although indirectly, to these proceedings.

4. The purpose of the Council Framework Decision is clearly outlined in recitals (5), (6), (10) and (11) of the preamble:

“(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 procedures. Traditional cooperation relations which have prevailed up till now between Member States

should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

- (6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the ‘cornerstone’ of judicial cooperation.
- (10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.
- (11) In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.”

Article 1 of the Framework Decision defines the European arrest warrant for which provision is made and imposes an obligation on Member States to execute it:

- “1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
- 2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.”

The European arrest warrant may, by article 2, be issued for acts punishable by the law of the issuing Member State (that is, the requesting state) by a custodial sentence or detention order for a maximum period of at least 12 months or, where a sentence has been passed or detention order made, for sentences of at least 4 months.

5. Paragraph 2 of article 2 of the Framework Decision is central to the main issue in this appeal. It sets out a list of offences which have been conveniently labelled “framework offences”. These are not so much specific offences as kinds of criminal conduct, described in very general terms. Some of these, such as murder and armed robbery, are likely to feature, expressed in rather similar terms, in any developed criminal code. Others, such as corruption, racism, xenophobia, swindling and extortion, may find different expression in different codes. Included in the list, and relevant to this case, are the offences of trafficking in human beings, facilitation of unauthorised entry and residence and forgery of administrative documents. Underlying the list is an unstated assumption that offences of this character will feature in the criminal codes of all Member States. Article 2(2) accordingly provides that these framework offences, if punishable in the Member State issuing the European arrest warrant by a custodial sentence or detention order for a maximum period of at least three years, and as defined by the law of that state, shall give rise to surrender pursuant to the warrant “without verification of the double criminality of the act”. This dispensation with the requirement of double criminality is the feature which distinguishes these framework offences from others. The assumption is that double criminality need not be established in relation to these offences because it can, in effect, be taken for granted. The operation of the European arrest warrant is not, however, confined to framework offences. Paragraph 4 of article 2 provides:

“For offences other than those covered by paragraph (2), surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing [i.e., the requested] Member State, whatever the constituent elements or however it is described.”

While, therefore, Member States may not require proof of double criminality where framework offences are in question they may do so in relation to any offence not covered by that list.

6. Article 3 lays down grounds on which the judicial authorities of executing Member States must refuse execution of a European arrest warrant, and article 4 grounds on which they may refuse. The mandatory grounds of refusal are not relevant to this appeal, but two of the discretionary grounds are. The executing judicial authority may refuse to execute the warrant

“1. if, in one of the cases referred to in Article 2(4) [i.e., non-framework offences], the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State;...

7. where the European arrest warrant relates to offences which:

(a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or

(b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.”

Thus the law of a Member State may, consistently with the Framework Decision, provide for refusal to execute a European arrest warrant where a non-framework offence is in question and the requirement of double criminality is not met, or where the law of the executing Member State regards the offence in question as committed wholly or partly in its territory (so as to confer territorial jurisdiction on the Member State requested to execute the warrant) or where the issuing Member State is seeking to exercise an extra-territorial jurisdiction for which the law of the executing Member State does not provide.

7. It is unnecessary to recite or attempt to summarise the very detailed provisions of the Framework Decision, but two further provisions must be mentioned. First, article 8 requires that a European arrest warrant shall contain the information set out in the article in accordance with a form annexed to the Decision, which must be translated into the language of the executing Member State. Secondly, article 34 requires Member States to comply with the Decision by 31 December 2003 and to transmit to the Council and the Commission the text of the provisions transposing into their national law the

obligations imposed on them under the Decision. The United Kingdom performed its duty by enacting Part 1 of the 2003 Act, which received the royal assent on 20 November 2003.

8. Part 1 of the 2003 Act did not effect a simple or straightforward transposition, and it did not on the whole use the language of the Framework Decision. But its interpretation must be approached on the twin assumptions that Parliament did not intend the provisions of Part 1 to be inconsistent with the Framework Decision and that, while Parliament might properly provide for a greater measure of cooperation by the United Kingdom than the Decision required, it did not intend to provide for less.

9. In the terminology of Part 1, Member States are called “category 1 territories”, a class which of course includes both Belgium and the United Kingdom, and Part 1 governs the United Kingdom’s response to a warrant issued by a category 1 territory, which is called a Part 1 warrant. This may seek the surrender of a person whom the category 1 territory wishes to prosecute or may be issued where, by section 2(5),

“(a) the person in respect of whom the Part 1 warrant is issued is alleged to be unlawfully at large after conviction of an offence specified in the warrant by a court in the category 1 territory, and

(b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.”

Paragraph (a) does not reflect any express provision of the Framework Decision and uses language familiar in domestic law, but is plainly intended to exclude from the operation of the scheme a person who is lawfully at liberty, whether on bail or parole or under deferred enforcement provisions, even after conviction or sentence. Paragraph (b), like the Framework Decision, applies both to those who have been convicted but not sentenced and to those who have been sentenced but have not served the requisite term of imprisonment.

10. It is again unnecessary to recite or attempt to summarise the very detailed provisions of Part 1, which exceed the scope of the Framework Decision. Material for present purposes are sections 64 and 65, which are in the same terms save that section 64 applies to persons who have not been sentenced for the offence in question and section 65 to persons who have. Part 1, unlike the Framework Decision, uses the language of extradition and these sections define the offences for which a person may be extradited (or, in Framework Decision terminology, the offences in respect of which the issuing Member State may seek the surrender of a person by the executing Member State). I must quote the full terms of section 65, which governs this appeal:

“65 *Extradition offences: person sentenced for offence*

- “(1) This section applies in relation to conduct of a person if?
- (a) he is alleged to be unlawfully at large after conviction by a court in a category 1 territory of an offence constituted by the conduct, and
  - (b) he has been sentenced for the offence.
- (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 a sentence of imprisonment or another form of detention for a term of 12 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct.
- (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) 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.

- (4) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied?
  - (a) the conduct occurs outside the category 1 territory;
  - (b) 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;
  - (c) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.
- (5) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied?
  - (a) the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;
  - (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment 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.
- (6) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied?
  - (a) the conduct occurs outside the category 1 territory and no part of it occurs in the United Kingdom;
  - (b) 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;
  - (c) the conduct constitutes or if committed in the United Kingdom would constitute an offence mentioned in subsection (7).
- (7) The offences are?

- (a) an offence under section 51 or 58 of the International Criminal Court Act 2001 (c.17) (genocide, crimes against humanity and war crimes);
  - (b) an offence under section 52 or 59 of that Act (conduct ancillary to genocide etc committed outside the jurisdiction);
  - (c) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to an offence falling within paragraph (a) or (b);
  - (d) an offence under section 1 of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes);
  - (e) an offence under section 2 of that Act (conduct ancillary to genocide etc committed outside the jurisdiction);
  - (f) an ancillary offence, as defined in section 7 of that Act, in relation to an offence falling within paragraph (d) or (e).
- (8) For the purposes of subsections (3)(b), (4)(c) and (5)(b) ?
- (a) if the conduct relates to a tax or duty, it is immaterial that the law of the relevant part of the United Kingdom does not impose the same kind of tax or duty or does not contain rules of the same kind as those of the law of the category 1 territory;
  - (b) if the conduct relates to customs or exchange, it is immaterial that the law of the relevant part of the United Kingdom does not contain rules of the same kind as those of the law of the category 1 territory.
- (9) This section applies for the purposes of this Part.

11. It is evident that section 65 specifies five categories of case in which extradition may be requested or surrender sought. The list is cumulative, as shown by “also” in subsections (3), (4), (5) and (6). The categories are different, but a condition applicable to one category may also be applicable to another: for example, the condition that no part of the conduct should occur in the United Kingdom is applicable to each of the categories in subsection (2), (5) and (6). Only in subsection (2) is express reference made to the European framework list, but there is nothing to suggest that the conduct referred to in subsections (3), (4), (5) and (6) may not constitute an offence within that list. Section 215(1)

provides that the European framework list is the list of conduct set out in Schedule 2 to the Act, where the offences specified in article 2(2) of the Framework Decision are repeated verbatim.

### *The facts*

12. On 6 May 2003 the appellant was convicted and sentenced to five years' imprisonment in his absence by the magistrate's court in Brussels. A year later the appropriate Belgian authority issued a European arrest warrant for him. The warrant was in Flemish with an English translation, which stated:

“Cando Armas is a member of an organized gang which is responsible for the systematic illegal immigration of Ecuadorean citizens towards Europe. This organization was directed from London by Cando Armas. Once arrived in Belgium, Cando Armas took care of accommodation and fake passports for the illegal Ecuadorean immigrants. If necessary, the illegal immigrants were escorted to Great Britain.

The above-mentioned facts took place between 1/9/2001 and 12/10/2001, within the district of Brussels.

Nature and legal classification of the offence(s) and the applicable statutory provision/code: Art 77 al 1-80 Law of 15.12.1980 (foreigner-assistance) Art 322-323 al 2 SWB\* (criminal conspiracy – commit criminal offences as instigator or leader)

Art 193-198-213-214 SWB\* (Forgery – fake up of a passport and use of a false passport)

\*penal code.”

The warrant was in the form prescribed in the annex to the Framework Decision, and in its Flemish version identified people trafficking, facilitation of unauthorised entry and residence and forgery of administrative documents as the framework list offences for which the appellant's surrender was sought. The warrant recorded that a custodial sentence of five years had been imposed on the appellant, of which the whole term remained to be served. It was a judgment by default, and the appellant would be granted a new trial before the same court if he appealed against it.

13. The appellant was arrested and in due course appeared before the Deputy Senior District Judge at Bow Street on 26 July 2004. She held that the offences charged against the appellant fell within the European framework list, that section 65(2) of the Act did not apply because some of the appellant's conduct was said to have occurred in the United Kingdom and that section 65(3) did not apply because, if that subsection had been intended to apply in a case of this nature, it would have stipulated that the conduct constituted an extradition offence under the subsection if some of the conduct had occurred in the category 1 territory. She accordingly ordered the discharge of the appellant.

14. The Divisional Court allowed the prosecutor's appeal against this decision. In a judgment delivered by Stanley Burnton J the court held that section 65(2) to (6) formed a list, that conduct constituted an extradition offence if it fell within any of these subsections, which were not mutually exclusive, and that there was no reason to confine subsections (3) to (6) to non-framework list offences. The court construed "the conduct" in section 65(2) to (6) to mean "such of the conduct as constitutes a criminal offence (under the law of the category 1 territory)", and held that the present case fell within both (2) and (3) of section 65.

#### *The legal issue*

15. The argument of Mr Edward Fitzgerald QC for the appellant was admirably clear and simple. He submitted, correctly, that the offences charged against the appellant appear in the European framework list (and in Schedule 2 to the 2003 Act), and that section 65(2) is specifically directed to framework list offences. But some of the conduct alleged against the appellant is said in the warrant to have taken place in the United Kingdom, so subsection (2)(a) is not satisfied and that precludes the application of subsection (2). That is, however, the only subsection applicable to framework list offences, so subsections (3) to (6) cannot be relied on. In any event, the conduct charged did not occur wholly within Belgium, the category 1 territory, so the condition in subsection (3)(a) is not satisfied, and on the facts stated in the warrant it is plain that the condition in subsections (4)(a), (5)(a) and (6)(a) is not satisfied. Therefore the conduct alleged against the appellant does not constitute an extradition offence within section 65 and his discharge was rightly ordered.

16. I would accept the submission of Mr James Lewis QC for the prosecutor that “the conduct” in section 65 means the conduct complained of or relied on in the warrant. Such a reading is consistent with the language and purpose of the Framework Decision, obviates the need for an undesirable enquiry into the niceties of a foreign law and is consistent, so far as that is relevant, with the earlier decision of the House in *In re Nielsen* [1984] AC 606, 614-615. I would accordingly agree with the Deputy Senior District Judge and differ from the Divisional Court in holding that, since some of the conduct complained of or relied on in the warrant occurred in the United Kingdom, the condition in subsection (2)(a) is not satisfied and subsection (2) is accordingly inapplicable.

17. I cannot, however, accept that subsection (3) is to be read as requiring that all the conduct complained of should have occurred in the category 1 territory. The subsection does not so provide, and the qualification that no part of the conduct should have occurred in the United Kingdom, expressly stipulated in subsections (2)(a), (5)(a) and (6)(a), is not found in (3)(a). It must be inferred that that qualification was not intended. It is enough, under subsection (3)(a), if some of the conduct complained of or relied on occurred in the category 1 territory. More fundamentally, I cannot accept that, because subsection (2)(a) is specifically directed to framework list offences, subsections (3) to (6) should be understood to exclude such offences. It is only if a case falls within subsection (2) that the double criminality requirement is dispensed with, as subsections (3)(b), (4)(c), (5)(b) and (6)(c) make clear. This reflects the thrust of the Framework Decision. But there is nothing in the section to suggest that subsections (3), (4), (5) and (6) cannot apply to framework list offences where the relevant requirement of double criminality is met. No reason of logic or justice was suggested to support such a rule, and it is plain from hypothetical examples suggested in argument that it would lead to results which neither the European Council nor Parliament could ever have intended. I am accordingly of opinion that there is nothing in the language of subsection (3) which would preclude its application to this case. I would accordingly, for these reasons and those given by my noble and learned friend Lord Hope of Craighead, dismiss the appeal and uphold, for slightly different reasons, the Divisional Court’s order that the matter be remitted to the Deputy Senior District Judge to continue the hearing.

18. At that hearing points properly open to the appellant may be pursued. I would wish to reserve my opinion on the matters to which my noble and learned friend alludes in paras 42- 48 of his judgment, save to say that I share his doubts and would for my part be slow to read

into Part 1 of the 2003 Act a condition not found in the Framework Decision.

## **LORD HOPE OF CRAIGHEAD**

My Lords,

19. I have had the advantage of reading in draft the speech of my noble and learned friend Lord Bingham of Cornhill. For the reasons that he has given I too would dismiss the appeal and make the order that he proposes.

20. The Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190) (“the Framework Decision”) is an instrument about which, as Dr Alastair Brown has observed in his helpful annotations to the Extradition Act 2003 in *Current Law Statutes*, p 41-8, there has been much heat but little light. The system that it introduced, which has now been incorporated into domestic law by Part 1 of the Extradition Act 2003 (“the 2003 Act”), was highly controversial. The controversy has not been confined to our own country. On 18 July 2005 the German Constitutional Court upheld a constitutional complaint against the German European Arrest Warrant Act (*Europäisches Haftbefehlsgesetz*) and declared it void because, when implementing the Framework Decision, the legislature had failed to take account of the special protection against extradition that article 16.2 of the Basic Law affords to German citizens: 2 BvR 2236/04, 18 July 2005.

21. The Tampere European Council of 15 and 16 October 1999 which laid the foundations for this system was the highlight of Finland’s first Presidency of the European Union. Its theme was the creation of an area of freedom, security and justice within the EU, based on a shared commitment to freedom based on human rights, democratic institutions and the rule of law. In para 35 of the Presidency conclusions Member States were asked to abolish extradition in the case of persons who were fleeing from justice after having been finally sentenced and to replace it by a simple transfer of such persons. There was to be a new approach to judicial co-operation between Member States. The essence of that approach is described in recital 5 of the preamble to the Framework Decision in these words:

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

22. Recital 6 of the preamble states that the European arrest warrant is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which was referred to at Tampere as the cornerstone of judicial cooperation. The use of the word “extradition” to describe the system which is then laid down is only possible, as Dr Brown points out in his commentary at p 41-9, if one subscribes to the *Through the Looking Glass* school of legislative drafting. What Part 1 of the 2003 Act provides for, in its simplest form (where the conduct occurs in the territory of the requesting state, no part of it occurs in the United Kingdom and it falls within the European framework list of offences set out in Schedule 2: sections 64(2) and 65(2) of the 2003 Act), is really just a system of backing of warrants. It is designed to enable the persons against whom they are directed to be handed over in the shortest possible time to the requesting authorities. The grounds on which a Member State can decline to give effect to the European arrest warrant are, as my noble and learned friend Lord Scott of Foscote points out, very limited.

23. But a system of mutual recognition of this kind, such as that which in their relations with each other the three jurisdictions within the United Kingdom have long been used to, is ultimately built upon trust. Trust in its turn is built upon confidence. As recital 10 of the preamble puts it, the mechanism of the European arrest warrant is based on a high level of confidence between Member States. The reason why discussions about the introduction of the European arrest warrant generated so much heat in the United Kingdom was a lack of confidence in the ability of the criminal justice arrangements of other Member States to measure up to the standards of our own, and a corresponding lack of trust in the ability of the new system to protect those against

whom it might be used. Now that the argument is over and the new system is in force it has to earn that trust by the way it is put into practice. The system has, of course, been designed to protect rights. Trust in its ability to provide that protection will be earned by a careful observance of the procedures that have been laid down.

24. In *R v Governor of Ashford Remand Centre, Ex p Postlethwaite* [1988] AC 924, 947 Lord Bridge of Harwich said that the court should not apply the strict canons appropriate to the construction of domestic legislation to extradition treaties. In *In re Ismail* [1999] 1 AC 320, 327 Lord Steyn, noting that there was a transnational interest in bringing those accused of serious crime to justice, said:

“Extradition treaties, and extradition statutes, ought, therefore, to be accorded a broad and generous construction so far as the texts permits it in order to facilitate extradition.”

These passages describe the approach to the issues of statutory construction that have been raised in this appeal. But the liberty of the subject is at stake here, and generosity must be balanced against the rights of the persons who are sought to be removed under these procedures. They are entitled to expect the courts to see that the procedures are adhered to according to the requirements laid down in the statute. Unfortunately this is not an easy task, as the wording of Part 1 of the 2003 Act does not in every respect match that of the Framework Decision to which it seeks to give effect in domestic law. But the task has to be approached on the assumption that, where there are differences, these were regarded by Parliament as a necessary protection against an unlawful infringement of the right to liberty.

#### *Part 1 of the 2003 Act*

25. Belgium is one of the territories, referred to in section 1(2) of the 2003 Act as category 1 territories, which have been designated for the purposes of Part 1 of the Act by the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003 (SI 2003/3333). Part 2 provides for a separate system of extradition to category 2 countries. Those which have been designated as category 1 countries must make use of the procedure laid down in Part 1. The extradition procedure in that Part of the Act is initiated by what section 2(2) describes as a Part 1 warrant.

This is an arrest warrant which is issued by a judicial authority of a category 1 territory. Its contents are prescribed by the statute.

26. One might have expected the draftsman, when he was prescribing its contents, simply to have followed what the Framework Decision says about this. The content and form of the European arrest warrant is laid down in article 8, in accordance with a form contained in an Annex to the instrument. But the 2003 Act has not adopted that approach. Section 2(2) provides that a Part 1 warrant must contain a statement which is not expressly provided for in the article, and it provides that it must contain information which lacks some of the details which the article requires. These details vary according to whether the person in respect of whom the warrant is issued is unconvicted (“accusation cases”) and is being sought for the purpose of being prosecuted for the offence which it specifies, or has been convicted and is being sought for the purpose of being sentenced for that offence or for the serving of a custodial sentence that has been imposed in respect of it (“conviction cases”). Here too section 2(2) departs from the article, which makes no distinction as to the contents of the warrant between accusation and conviction cases. The same form is prescribed for them both.

27. The contents of the warrant are crucial to the operation of the system which has been laid down in Part 1. Section 10(2) states that the judge must decide whether the offence specified in the warrant is an extradition offence. That expression is defined in sections 64 and 65 of the Act. Section 64 applies to accusation cases. Section 65 applies to conviction cases. These definitions are almost identical, except that where the test of double criminality must be satisfied in accusation cases the conduct must be punishable by a custodial sentence of 12 months or more (see section 64(3)(c)), whereas in conviction cases the minimum sentence is 4 months (see section 65(3)(c)). Nothing turns on that distinction in the present case. What does matter is that the Part 1 warrant is the initiating document in all cases, irrespective of whether the offence is within the Framework list and irrespective of whether the double criminality requirement which is dispensed with in the cases referred to in sections 64(2) and 65(2) applies to it.

28. The issue in the certified question is directed to the definition in sections 64 and 65 of the offences which are to be treated as extradition offences. But it is not possible to address this issue without having in mind the requirements which a Part 1 warrant must satisfy. Both points lie at the heart of the procedure that has been laid down by Part 1 of the 2003 Act. If the warrant does not conform to the requirements set out in

section 2, it will not be a Part 1 warrant within the meaning of that section and Part 1 of the Act will not apply to it. And if the offence that it describes is not an extradition offence within the meaning of section 64 or 65, as the case may be, the judge must order the person's discharge: section 10(3). In either of these two situations there is no way back for the judicial authority of a category 1 territory. The procedure in Part 2 of the Act applies only to the territories that have been designated for the purposes of that Part: section 69(2).

*Sections 64(3) and 65(3)*

29. My noble and learned friend has set out the facts, and I gratefully adopt his description of the legislation and of the legal issue that has to be addressed under this heading. I respectfully agree with the conclusions that he has reached for the reasons which he has given. But I should like to add some comments of my own on the meaning that is to be given to the word "conduct" in this context. For convenience I shall concentrate on the wording of section 65 bearing in mind that, for present purposes, the wording of the two sections is identical.

30. The definitions of what constitute an extradition offence for the purposes of Part 1 are based on the principle, recognised in international law, that States claim criminal jurisdiction over conduct which takes place within their territory. The judge need not concern himself with the criminal law of the requesting state when he is addressing the question whether the offence specified in the Part 1 warrant is an extradition offence. But he does have to consider where the conduct which is alleged to constitute the offence took place.

31. Section 2(4) requires particulars to be given in accusation cases of the circumstances in which the person is alleged to have committed the offence, including the time and place at which he is alleged to have committed it. This requirement is absent from the list of particulars in section 2(6) which must be given in conviction cases. Its omission from this list in section 2(6) is hard to understand, as the question where the conduct is alleged to have taken place is just as relevant in that context. As I have already noted, article 8 of the Framework Decision which sets out the information which it "shall contain" makes no distinction between accusation and conviction cases as to the content and form of a European arrest warrant. Moreover the offence will not be an extradition offence in domestic law unless the territorial requirements laid down in section 64 or section 65, as the case may be, are satisfied.

32. The background to section 65 is to be found in two instruments. One of these, of course, is the Framework Decision itself, which provides in article 1.2 that Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and sets out in article 2.2 a list of the offences (“the Framework offences”) which give rise to an obligation on the executing Member State to surrender without verification of double criminality. But article 4.7(a) of the Framework Decision provides that the judicial authority of the executing Member State may refuse to execute a European arrest warrant where it relates to offences which:

“are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such.”

This provision appears to have left it open to the United Kingdom to disapply the procedure provided for in the Framework Decision to cases of that kind. In such cases, although the European arrest warrant continues to be the relevant initiating instrument (see articles 1.1 and 2.4), the system for extradition continues to be governed by the rules in the European Convention on Extradition which was entered into on 13 December 1957 (Cm 1762). Article 2.1 of the Convention applies the test of double criminality. It defines extraditable offences as those which are punishable under the laws of the requesting party and of the requested party by deprivation of liberty or under a detention order for a maximum period, in accusation cases, of at least one year or by a more severe penalty or, in conviction cases, for a period of at least four months.

33. Section 65(2)(a) applies where the conduct falls within the Framework list: see para (b) of that subsection. It sets out two conditions about the place where the offence took place that must be satisfied if it is to be exempted from the requirement of double criminality. These are, first, that the conduct occurred in the territory of the requesting State – the category 1 territory; and, secondly, that no part of it occurred in the United Kingdom. Section 65(3)(a) is not restricted to Framework offences. It is capable of applying to any offence which satisfies the requirements of article 2.1 of the European Convention, including those on the Framework list. It sets out only the first of the conditions about the place of the conduct which are to be found in section 65(2). The second is absent, reflecting the fact that in the case of

offences falling within this subsection the test of double criminality has not been dispensed with.

34. Common to the first condition about the place of the conduct, irrespective of the subsection under which it has to be satisfied, are two questions: (1) whether the person must be within the territory of the requesting State at the time of the conduct which he is alleged to have committed, and (2) whether the conduct must have occurred exclusively within that territory. In many cases, of course, these will not be live issues as it will be plain that the conduct occurred exclusively in the territory of the requesting State. But many of the offences in the Framework list such as trafficking in human beings are commonly committed across borders. The appellant is alleged to have engaged in conduct of that kind, so these questions must be addressed in his case.

35. The answers are to be found in the first place in the language which has been used by the legislature which Lord Bingham has analysed. The context in which that language has been used is, of course, provided by the common law. It is provided in particular by the rules which apply when jurisdiction is claimed on the basis of territoriality. It is now well established that the physical presence of the defendant in the territory is not required so long as the effects of his actions were intentionally felt there. That rule is matched by its corollary which is that, if the effects of those actions were intentionally felt here, criminal jurisdiction can be exercised in respect of their effect irrespective of where the actions took place that gave rise to them. Section 65(2) modifies these rules in the case of Framework offences where the test of double criminality is dispensed with, as it requires that no part of the conduct took place in the United Kingdom. But the test of whether conduct occurs in the category 1 territory is satisfied for the purposes of section 65(3) so long as its effects were intentionally felt there, irrespective of where the person was when he did the acts which constituted such conduct.

36. A few examples will suffice to illustrate this point. In *Director of Public Prosecutions v Stonehouse* [1978] AC 55 the defendant was charged with attempting to obtain property by deception by fabricating his death by drowning in the sea off Miami in Florida. The final act alleged to constitute the offence occurred outside the jurisdiction of the English courts, but it was held that the charge was justiciable in England. Applying what Professor Glanville Williams in his article "Venue and the Ambit of Criminal Law" (1965) 81 LQR 518 called the terminatory theory of jurisdiction, Lord Diplock said at p 66:

“The basis of the jurisdiction under the terminatory theory is not that the accused has done some physical act in England, but that his physical acts, wherever they were done, have caused the obtaining of the property in England from the person to whom it belonged.”

Lord Keith of Kinkel at p 93 based his decision on the principle that an offence is committed within the jurisdiction if the effects of the act intentionally operate there or exist within it:

“This would be the situation if a bomb or a letter sent from abroad were found anywhere within the jurisdiction. Its presence at that spot would be an intended effect of the act of despatching it. In my opinion it is not the present law of England that an offence is committed if no effect of an act done abroad is felt there, even though it was the intention that it should be. Thus if a person on the Scottish bank of the Tweed, where it forms the border between Scotland and England, were to fire a rifle at someone on the English bank, with intent to kill him, and actually did so, he would be guilty of murder under English law. If he fired with similar intent but missed his intended victim, he would be guilty of attempted murder under English law, because the presence of the bullet in England would be an intended effect of his act. But if he pressed the trigger and his weapon misfired, he would be guilty of no offence under the law of England, provided at least that the intended victim was unaware of the attempt, since no effect would have been felt there.”

37. The same approach is taken in Scotland. In *Clements v HM Advocate*, 1991 JC 62, one of the offences charged was a contravention of section 4(3)(b) of the Misuse of Drugs Act 1971. Observing that the criminal enterprise with which the appellants were concerned was the whole network or chain of supply, right up to the end of the chain where the harmful effects were to be felt, the Lord Justice General (Hope) said at p 71:

“The underlying mischief at which these provisions are directed is the supply or offer to supply of a controlled drug to another, and to look to the place of the mischief as the place where jurisdiction can be established against all

those involved would be consistent with the idea that the courts of the place where the harmful acts occur may exercise jurisdiction over those whose acts elsewhere have those consequences: see Lord Diplock's discussion of this point in *R v Treacy* [1971] AC 537, 562. This is not to say that the courts in other parts of the United Kingdom might not also have jurisdiction in an appropriate case. But, as Lord Diplock pointed out, the risk of double jeopardy is avoided by the common law doctrines in bar of trial, in England, of *autrefois convict* and, in Scotland, that the accused has *tholed his assize*"

38. The gravest of all such crimes which have occurred so far in the United Kingdom was the explosion of a civilian airliner as it was passing over the Scottish Borders, killing its 259 occupants and 11 residents of the crash site in Lockerbie. The two men who were eventually brought to trial in the High Court of Justiciary at a special hearing convened at Kamp van Zeist in the Netherlands were charged, among other things, with conspiracy to cause the explosion. The charge alleged that they did or caused to be done various things in pursuance of the conspiracy in countries outside the United Kingdom which culminated in the placing of an explosive device on an aircraft in Malta from where the device was transported to Frankfurt and thereafter to London where it was loaded onto an aircraft on PanAm flight 103 which it destroyed when it was in the air over Scotland: *Megrahi v HM Advocate*, 2002 JC 99.

39. A preliminary objection was taken to this charge on the ground that it was not subject to the jurisdiction of a Scottish court: *HM Advocate v Megrahi*, 2000 JC 555. Rejecting the objection, Lord Sutherland recognised at p 560, para 18, that there might have been force in it if the conspiracy had not reached fruition and if there had been no overt act in Scotland to carry on the conspiracy. At para 19 he added these comments:

“Where however, a crime of the utmost gravity has been in fact committed in a particular country and it can be shown that that crime is the culmination of a long drawn out and complex conspiracy, it appears to me quite illogical to say that that country has no interest in putting the conspirators on trial for their part in what has happened, even though their activities were all carried out abroad. Defence counsel recognise that this is undoubtedly so in relation to

the charge of murder in Scotland. I see no logical reason why the same principle should not apply to the charge of conspiring to commit the final criminal act, which is alleged to be the culmination and the whole purpose of the conspiracy.”

Referring to what was said to same effect in *R v Doot* [1973] AC 807 and *Liangsiriprasert (Somchai) v Government of the United States* [1991] 1 AC 225, he observed that the way English law dealt with what was needed to complete the crime of conspiracy appeared to be entirely consistent with the law in Scotland.

40. I would construe the word “conduct” in sections 65(2)(a) and 65(3)(a) of the 2003 Act in the light of these authorities. The conduct must occur “in” the category 1 territory if the condition which is set out in these paragraphs to be satisfied. But a purposive meaning must be given to the word “conduct” in this context. It would impose a wholly artificial restriction on the extradition process if it were to be taken as meaning that all the conduct which resulted in the offence must have taken place exclusively within the category 1 territory. Actings elsewhere will be sufficient to constitute conduct in that territory so long as their intended effect was to bring about harm within that territory. It would be immaterial to a request for extradition to Belgium, for example, that the actings which had a harmful effect were all in France or in Germany. The situation would be different, of course, if some part of those actings occurred in the United Kingdom. But that is because of the qualification that section 65(2)(a) has introduced, which prevents cases where some of the conduct occurs in the United Kingdom from being treated as an extradition offence under that subsection. The fact that it was thought necessary to insert this qualification is consistent with the existence of a general rule of the kind that I have described.

#### *The section 2(5) statement*

41. Mr Fitzgerald QC drew your Lordships’ attention to a number of arguments that he wished to present to the effect that the warrant issued by the Belgian prosecutor fell short of the requirements of section 2 of the 2003 Act and that it did not, in any event, provide sufficient information for a determination of the question whether the offences referred to were extradition offences. The certified question does not mention any of them, and they were touched on only briefly in the course of the hearing of the appeal. There will be an opportunity for

these points to be addressed by the Deputy Senior District Judge when the case returns to the Magistrates' Court, and I think that they should be reserved for decision at that stage. But the question whether the warrant contains either of the two statements which section 2(2) requires raises a question of statutory interpretation. So it may be helpful, as Lord Bingham has mentioned, to indicate how this requirement should be applied in practice.

42. The requirement is unequivocal. Section 2(2) states that a Part 1 warrant is an arrest warrant which contains the statement referred to in subsection (3) or the statement referred to in subsection (5). If it does not do so it is not a Part 1 warrant and the provisions of that Part cannot apply to it. The statement referred to in subsection (3) which applies to accusation cases is that the person in respect of whom the warrant is issued is accused in the category 1 territory of the commission of an offence specified in the warrant, and that the warrant is issued with a view to his arrest and extradition to that country for the purpose of being prosecuted for the offence. The statement referred to in subsection (5) which applies to conviction cases is that the person in respect of whom the warrant is issued is alleged to be unlawfully at large after conviction of an offence specified in the warrant by a court in the category 1 territory, and that the warrant is issued with a view to his arrest and extradition to that country for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or any other form of detention imposed in respect of it.

43. There is no corresponding requirement in article 8 of the Framework Decision which sets out the content and form of the European arrest warrant. That is the source of the problem that appears to have arisen in this case. The warrant states that a decision was rendered against the appellant in absentia which resulted in a custodial sentence for five years being imposed on him. At first sight this is a conviction case which requires the warrant to contain the statement referred to in section 2(5) and the information referred to in section 2(6) if section 2 of the 2003 Act is to apply to it. But there is no mention in article 8 of the Framework Decision of the need to state that the requested person is unlawfully at large, nor has provision been made in the form for the making of a statement to this effect. The Belgian prosecutor used the form which the Annex to the Framework Decision prescribes, as he was directed to by article 8.1. So the warrant which he prepared does not state that the appellant is unlawfully at large.

44. It would be unduly strict in these circumstances to insist that a statement must appear in the actual words used in section 2(5) if a European arrest warrant is to qualify as a Part 1 warrant. The purpose of the requirement is to provide protection against an unlawful infringement of the right to liberty, so it is an important part of the procedure provided for by Parliament. But the court should be slow to construe those words in a way that would make it impossible to give effect to a warrant which is in the terms which the Framework Decision has laid down. The purpose of the statute is to facilitate extradition, not to put obstacles in the way of the process which serve no useful purpose but are based on technicalities.

45. Crane J had to consider this point in *R (Bleta) v Secretary of State for the Home Department* [2004] EWHC 2034 (Admin), [2005] 1 WLR 3194. In that case extradition was sought to a category 2 territory under Part 2 of the 2003 Act. It was a conviction case, and the extradition was sought for the purpose of requiring the claimant to serve a sentence that had been imposed on him. The system which Part 2 lays down is a different system from that in Part 1, and the request was not made by way of a European arrest warrant. But the problem was, in essence, the same problem as that which has been raised in this case, as the warrant did not contain a statement that the claimant was unlawfully at large as required by section 70(4)(b) of the Act. At p 3198, para 11, Crane J said that counsel for the claimant had been correct to concede at an early stage that the actual words of the Act were not required. He accepted the respondent's argument that the Secretary of State was entitled to look at the request together with the documents incorporated in it by reference, in order to determine whether the request was in effect stating that the claimant is unlawfully at large following a conviction.

46. Crane J summed the matter up in *Bleta* in this way, at p 3198, para 14:

“Even if the actual words of the Act are not incorporated in the request, and even if there is no equivalent wording, in my view, at least in a clear case, it is permissible for the Secretary of State to look at the request itself and its supporting documents to see whether the matter is clear. Adopting a purposive interpretation of the 2003 Act, it seems to me that this is, in effect, an examination of whether the request contains the necessary statement.”

But at p 3202, para 28 he restated this proposition more narrowly in these terms:

“My conclusion is that it is only in a clear case that the Secretary of State should conclude, in the absence of a statement by the requesting state, that the relevant defendant is not only at large but unlawfully at large.”

47. As to the facts in that case, the information made it clear that the claimant had been convicted. There was no dispute that the inference was that he had never been in custody in connection with that conviction. But there was no evidence that he ever became aware of his conviction or of its terms. The judge noted that there were possible situations where, although he was at large in the United Kingdom, he was not unlawfully so in the sense that he was liable to immediate arrest in the requesting country. At p 3203, para 32 he said that the court should hesitate before filling a gap which could so easily have been filled. He quashed the Secretary of State’s certificate.

48. I would wish to hear further argument on this issue before concluding that the approach which Crane J took to the facts in *R (Bleta) v Secretary of State for the Home Department* [2005] 1 WLR 3194 was the correct one, especially as your Lordships were not referred to his decision during the hearing of this appeal. It is sufficient for present purposes to say that it is open to the court to draw inferences from the material available to it to determine whether the requirements of the statute have been satisfied. But those against whom the system for extradition is invoked are entitled to protection against its use in circumstances which have not been provided for by Parliament. So I think that Crane J was right to indicate that, if there is a gap in the information, it ought not to be filled by mere guesswork. The fact that Part 1 of the 2003 Act does not match the requirements of the Framework Directive is confusing to the unwary, and it appears likely that it will be a source of continuing difficulty. Steps should be taken to remind the authorities in the category 1 territories that the statements referred to in section 2(2) of the Act are a necessary part of the procedure that has been laid down in Part 1 of the Act.

## LORD SCOTT OF FOSCOTE

My Lords,

49. I have had the advantage of reading in advance the opinions of my noble and learned friends Lord Bingham of Cornhill and Lord Hope of Craighead and am in agreement with their conclusions, first, that the request by Belgium for the extradition of the appellant cannot be brought under section 65(2) of the 2003 Act – because part of the conduct of the appellant specified in the arrest warrant took place in the United Kingdom (see section 65(2)(a)) – and, secondly, that the request can, in principle at least, be brought under section 65(3) of the Act – because it does not matter for the purposes of that subsection that the conduct took place not only in Belgium but also in the United Kingdom. I cannot add anything of value to the reasons my noble and learned friends have given for coming to those conclusions, with all of which I agree, but I want to add a word or two about the contents of this arrest warrant under which the extradition of the appellant to Belgium is being sought. May I say at once that I am in full agreement with what Lord Hope has said about this.

50. Lord Hope has referred to the background to the European Council Framework Decision of 13 June 2002. The Framework Decision was intended to simplify the procedures for extradition of individuals from one Member State to another either for the purpose of being prosecuted for alleged criminal conduct or for the purpose of serving a sentence imposed after conviction. There were two particular features of the Framework Decision extradition scheme that, having regard to the issues raised by this appeal, deserve mention. First, in relation to offences falling within the so-called Framework List the requirement of double criminality was removed, that is to say, it would not be necessary to show that the conduct of the accused for which he was to be prosecuted in the requesting State, or which had constituted the offence of which he had been convicted in the requesting State, would have been criminal conduct for which he could have been prosecuted or convicted in this country.

51. Secondly, the Framework Decision was intended to make it unnecessary, whether in relation to Framework List offences or any other offences, for the requesting State to have to show that the individual had a case to answer under the law of that State. The merits of the extradition request were to be taken on trust and not investigated

by the Member State from which extradition was sought. Article 1(2) says that:

“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.”

And recital (5) of the Framework Decision speaks of “abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities.”

52. The principle underlying these changes is that each Member State is expected to accord due respect and recognition to the judicial decisions of other Member States. Any enquiry by a Member State into the merits of a proposed prosecution in another Member State or into the soundness of a conviction in another Member State becomes, therefore, inappropriate and unwarranted. It would be inconsistent with the principle of mutual respect for and recognition of the judicial decisions in that Member State.

53. Accordingly, the grounds on which a Member State can decline to execute a European arrest warrant issued by another Member State are very limited. Article 3 sets out grounds on which execution must be refused. Article 4 sets out grounds on which execution may be refused. None of these grounds enable the merits of the proposed prosecution or the soundness of the conviction or the effect of the sentence to be challenged. There is one qualification that should, perhaps, be mentioned. The execution of an arrest warrant can be refused if, broadly speaking, there is reason to believe that its execution could lead to breaches of the human rights of the person whose extradition is sought (see recitals (12) and (13)).

54. These features of the Framework Decision explain, I think, the inclusion in the 2003 Act of the requirement that if an arrest warrant is issued for the purpose of prosecuting the person named in the warrant, the arrest warrant must so state (see section 2(3)(b)). Extradition for the purpose of interrogation with a view to obtaining evidence for a prosecution, whether of the extradited individual or of anyone else, is not a legitimate purpose of an arrest warrant. But the judicial authority in the requested State cannot inquire into the purpose of the extradition.

It is therefore necessary for there to be an unequivocal statement of that purpose in the arrest warrant itself. Hence the requirement in section 2(3)(b). It is to be noted that the opening words of the form of arrest warrant set out in the Annex to the Framework Decision refer to a request that

“the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.”

It is presumably intended that the inapplicable alternative be deleted. The person in question is surely entitled to know which of the alternatives apply to him.

55. Where extradition is sought for the purpose of executing a custodial sentence, the form in the Annex to the Framework Decision does not provide for any information to be given as to the legal effect of the sentence on the right of the person sentenced to remain at large or as to whether any supervening events have altered its effect. In the present case, for example, it appears that the appellant was sentenced following a judgment in default given in his absence. It may be the case, but cannot, in my opinion, simply be assumed, that such a sentence takes immediate effect. It may be that notice of the sentence has to be served on or given to the person sentenced before he can be described as being unlawfully at large. In other cases, similar uncertainties might arise. An individual might have been released on licence on conditions that are alleged to have been broken. Or he might have been given bail pending appeal and the conditions of bail then broken. Would he then be unlawfully at large? It appears to me that it would be quite contrary to an important principle underlying European arrest warrants for the judicial authority in the requested State to have to inquire into the question whether under the law of the requesting State the individual who had been sentenced was unlawfully at large.

56. These potential problems explain, I think, why section 2(5)(a) of the 2003 Act requires an arrest warrant issued for the purpose of executing a custodial sentence to state that the person whose extradition is sought is unlawfully at large. An arrest warrant which contains neither the section 2(3) statement nor the section 2(5) statement does not, it appears to me, comply with the requirements of the Act and, if that is right, would not constitute a warrant on which an extradition under Part 1 of the Act could be ordered.

57. The requirement that an arrest warrant must contain one or other of these statements seems to me to be a natural and desirable feature of an extradition system that does not permit the merits of the extradition request to be investigated by the judge who is asked to order the execution of the arrest warrant. At the least, the State seeking extradition can be, and under section 2 of the Act is, asked to commit itself to the propriety of the extradition. These statements are not, in my opinion, formalities. They form an important part of the new extradition procedure.

58. Since this is a case where the appellant appears to have been convicted and sentenced under a default judgment given in his absence, it is the “unlawfully at large” statement that needed to be included in the warrant. It is nowhere expressly included. It would be possible for the Deputy Senior District Judge to whom the case is to be remitted to enquire into the question whether under Belgian law the default judgment took effect automatically, or whether it first had to be served on the absent defendant or otherwise drawn to his attention, or whether any other procedure was necessary before it could be said that the appellant was “unlawfully at large”. But such an enquiry would, it seems to me, be inconsistent with the principle on which the new extradition procedure is based. We have not heard argument on the issue but my present, necessarily provisional, view is that if the “unlawfully at large” statement is included in a warrant to which subsection (5) applies the judge cannot go behind it, but that if it is not included, and cannot be unequivocally implied from what is included, the warrant is bad.

59. There are several other points on the content of this arrest warrant that might be raised but that must be left, if they are raised, to be considered by the judge. I agree with the order Lord Bingham has proposed.

#### **BARONESS HALE OF RICHMOND**

My Lords,

60. I agree with the conclusions reached by my noble and learned friends, Lord Bingham of Cornhill and Lord Hope of Craighead, and for the reasons they give, would dismiss this appeal. I also share their

concerns about the problem posed by section 2(5) of the Act. It would be most unfortunate if the judicial authorities in our European partner states, using the form of warrant prescribed by the Framework Decision, were to find that the English judicial authorities were unable to implement it. Whether the solution should be legislative, or administrative, for example by way of routine requests to include such a statement where none appears on the face of the warrant initially presented, or whether it is possible for the judiciary to find a practical solution which is true to the spirit and the requirements of the Framework Decision, while properly safeguarding the liberty of the individual, it is not at present possible to say.

## **LORD CARSWELL**

My Lords,

61. I have had the advantage of reading in draft the opinions prepared by my noble and learned friends Lord Bingham of Cornhill and Lord Hope of Craighead. I agree with their conclusions and for the reasons which they have given I would dismiss the appeal and make the order proposed.