



20 June 2012

PRESS SUMMARY

HH (Appellant) v Deputy Prosecutor of the Italian Republic, Genoa (Respondent); PH (Appellant) v Deputy Prosecutor of the Italian Republic, Genoa (Respondent)

On appeal from the High Court: [2011] EWHC 1145 (Admin)

F-K (FC) (Appellant) v Polish Judicial Authority (Respondent)

On appeal from the High Court: [2012] EWHC 25 (Admin)

[2012] UKSC 25

JUSTICES: Lord Hope (Deputy President), Lady Hale, Lord Brown, Lord Mance, Lord Judge, Lord Kerr and Lord Wilson

BACKGROUND TO THE APPEALS

These appeals concern requests for extradition in the form of European Arrest Warrants (EAWs) issued, in the joined cases of HH and PH, by the Italian courts, and in the case of FK, a Polish court. The issue in all three is whether extradition would be incompatible with the rights of the Appellants' children to respect for private and family life under article 8 of the European Convention on Human Rights (ECHR).

HH is the mother and PH the father of three children: 'X' aged 11, 'Y' aged 8 and 'Z' aged 3. HH and PH are both British citizens, although HH was born and bred in Morocco. In 2003 they were arrested in Italy and prosecuted on eight charges relating to the importation of cannabis into Italy from Morocco on various dates earlier that year. After a month HH was released under house arrest. She fled the country in July 2004. PH spent a year in custody before being conditionally discharged whereupon he also fled. They were later convicted of all charges although PH received a lesser sentence in respect of the eighth charge, that of conspiracy, because of his lesser degree of participation.

HH's EAW states that she has just over nine and a half years of her prison sentence to serve. PH's states that he has eight years and four months to serve. According to calculations made by PH's legal team, he is likely in fact to have only around four and a half years to serve. Further, as primary carer for the children, were the family living in Italy he would be allowed to serve all but a few months of that at home.

PH has become the primary carer for the children because HH had experienced a collapse in her mental health. There was expert evidence of the serious harm which would be suffered by the children if both their parents were extradited, in particular by Z who would be separated from her primary attachment figure. The District Judge ordered extradition of both HH and PH. Their appeals were dismissed by the Administrative Court on 11 May 2011.

FK and her husband are Polish and have five children aged 21, 17, 13, 8 and 3. They have lived in the United Kingdom since 2002. The two youngest children were born in this country. FK is charged with offences of dishonesty with a total equivalent value of less than £6,000. She fled Poland in 2002 and has not been tried or convicted of the alleged offences. There was expert evidence of the serious harm which would be suffered, in particular by the two youngest children, if their mother was extradited. The children had reacted badly to her arrest in 2010. FK's husband is physically impaired and was found to display signs of psychological disturbance. The Senior District Judge ordered extradition. Her appeal was dismissed by the Administrative Court on 1 January 2012.

JUDGMENT

The Supreme Court unanimously allows the appeal in the case of FK. The appeal in respect of HH is unanimously dismissed. By a majority, the Court also dismisses PH's appeal, Lady Hale dissenting.

REASONS FOR THE JUDGMENT

References in square brackets are to paragraphs in the judgment

Lady Hale gives the lead judgment. The application of article 8 of the ECHR in the context of extradition was considered by the Supreme Court in *Norris v Government of the United States of America (No 2)* [2010] UKSC 9, [2010] 2 AC 487. The case concerned the effect on Mrs Norris of her husband of many years being extradited to face charges of conspiracy. Whilst not involving the rights of children, the following principles can nonetheless usefully be drawn from that case [08].

First, there may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation, but the court must still carefully examine the way in which it will interfere with family life. Secondly, there is no test of exceptionality. Third, the question is whether the interference with private and family life is outweighed by the public interest in extradition. Fourthly, there is a constant and weighty public interest in extradition: people should stand trial and serve appropriate sentences for their crimes, the United Kingdom should honour its treaty obligations towards other States, and there should be no “safe haven” for fugitive offenders. Fifthly, the public interest will always carry great weight but the weight does vary according to the nature and seriousness of the crimes involved. Sixthly, delay in seeking extradition may diminish the public interest element and increase the impact on family life. Lastly, as a result of the above it is likely that the public interest will outweigh the article 8 rights of the family unless the interference is exceptionally severe.

In *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166 the Supreme Court considered the potential impact of H’s deportation on the article 8 rights of her two children, British citizens who had always lived here. The United Nations Convention on the Rights of the Child required that the best interests of the child shall be *a* primary consideration (not, it should be noted, *the* primary consideration or *the paramount* consideration, [11]), although they can be outweighed by the cumulative effect of other considerations [15].

The approach of the court to article 8 rights is not “radically different” as between extradition and expulsion cases [29]. The countervailing public interest arguments may be different, in particular because extradition is an obligation owed by the requested state to the requesting state, but the balancing process involves asking the central question set out above. In all cases there must be a careful analysis under article 8 of the potential effects of extradition [31, 32]. For guidance as to procedure in respect of gathering evidence, see [82-86].

In respect of FK, her extradition would have a severe effect on her two youngest children, who would lose their primary attachment figure. That loss could have a lasting impact on their development. Their father, though well-intentioned, is unlikely to be able to fill that gap [44]. The alleged offences are not trivial but are of no great gravity [45]. There is no prosecutorial discretion in Poland and there has been considerable delay which may indicate the importance attached to her offending by the Polish authorities [46]. The public interest in extraditing FK does not justify the inevitable harm that it would cause to the lives of her children [48].

In the Italian case, the extradition of both parents would have a severe impact on the children. However, having regard to the limited role of HH in the children’s lives and the central part she played in the very serious offences committed, the interference with the rights of the children is outweighed by the public interest in her extradition. On this point all members of the Court agree. As regards PH, the majority conclude that he ought to be extradited also. Lord Judge notes that in the domestic sentencing context judges have for many years considered the effects of imprisonment on the children of offenders. Unfortunately, the seriousness of the offences committed often means that innocent members of the offender’s family will suffer as a result of their crimes [130, 131]. Given the nature of the crimes committed by PH, the public interest in extradition outweighs the interference with the rights of his children [135-138], a sentiment echoed by the majority: Lord Hope, [94]; Lord Brown, [96]; Lord Mance, [103]; Lord Kerr, [149]; and Lord Wilson at [170-172]. Lady Hale would have found that the current effect on the children and in particular the youngest is such that the extradition of their father in addition to their mother is not justified at present [79].

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:
www.supremecourt.gov.uk/decided-cases/index.html