



5 November 2014

PRESS SUMMARY

(1) VB; (2) CU; (3) CM; (4) EN (Appellants) v (1) Westminster Magistrates' Court; (2) The Government of Rwanda; (3) The Crown Prosecution Service (Respondents) and CMK (Interested Party) [2014] UKSC 59

On appeal from [2014] EWHC 889 (Admin)

JUSTICES: Lord Neuberger (President), Lord Mance, Lord Reed, Lord Hughes, Lord Toulson

BACKGROUND TO THE APPEALS

The issues in this appeal are (a) whether, in the absence of any statutory power, a District Judge in extradition proceedings has the power to admit the evidence in a closed material hearing (without disclosing it to the State requesting extradition); and alternatively (b) whether, in such proceedings, a witness anonymity order can be made under the Coroners and Justice Act 2009, s.87 [2].

The facts were that the Government of Rwanda had, under Memoranda of Understanding with the United Kingdom dated 8 March 2013, requested the extradition of the Appellants and the Intervener to stand trial in Rwanda for war crimes [1].

In the extradition proceedings before Westminster Magistrates' Court, the Appellants sought to establish that their extradition risked exposing them to a flagrantly unfair trial (contrary to Article 6 of the ECHR) and even torture or mistreatment (contrary to Article 3 of the ECHR). Evidence on which they sought to rely came from witnesses who were unwilling to reveal their identity to the Rwandan Government and the Appellants argued that this evidence should be considered by the judge without being disclosed to the Rwandan Government or the CPS (who were acted on its behalf).

The District Judge found that she could not consider evidence in a closed hearing or make witness anonymity orders [4]-[8]. The Administrative Court dismissed the challenge to the District Judge's decision but commented that the Coroners and Justice Act 2009, s.87 enabled witness anonymity orders to be made in extradition proceedings [9]. On appeal to the Supreme Court, it was common ground between the parties that the Coroners and Justice Act 2009, s.87 had no relevant application to extradition proceedings [47].

JUDGMENT

The Supreme Court dismisses the appeal by a 4-1 majority (Lord Toulson dissenting), finding that:

- (1) The judge had no power to order a closed material hearing or otherwise limit disclosure and was right not to do so [27] and [34].
- (2) The judge had no power to order disclosure to the CPS on the condition that further disclosure to the Rwandan Government was prohibited and was right not to do so [35] and [37].

- (3) The judge had no power to make a witness anonymity order under s.87 of the Coroners and Justice Act 2009 [47].

Lord Mance (with whom Lord Neuberger and Lord Reed agrees) gives the lead judgment and agrees with the judgment of Lord Hughes on the admissibility of anonymous evidence in extradition proceedings. Lord Hughes (with whom Lord Neuberger and Lord Reed also agree) agrees with Lord Mance but adds further comments. Lord Toulson dissents, but agrees with Lord Hughes on the admissibility of anonymous evidence in extradition proceedings.

REASONS FOR THE JUDGMENT

Lord Mance reasons that:

- (1) Section 77(1) of the Extradition Act 2003 provides that in extradition hearings the judge “*has the same powers (as nearly as may be) as a magistrates’ court would have if the proceedings were the summary trial of an information against the person whose extradition is requested*” [13]. That includes matters of evidence and procedure [19]. Although the parties were agreed that the normal rules of evidence should be relaxed in extradition hearings raising issues of human rights [21], the power of the court to order a closed material hearing remained limited to the exceptional circumstances recognised in *Al Rawi v Security Service* [2011] UKSC 34 (to protect the best interests of a child or where disclosure would undermine the whole object of the proceedings) [27] and [34]. It would not be in the interests of justice to allow further departure from the normal principle of open justice, as the relevance, truthfulness and persuasiveness of the evidence could not be tested in a closed material hearing [29].
- (2) As the proceedings were, in substance, between the Appellants and the Rwandan Government, and the CPS represented the latter, there was no power to order disclosure to the CPS but prohibit disclosure to the Rwandan Government [37].
- (3) The judge would not, as was common ground between the parties, have had the power to make a witness anonymity order under s.87 of the Coroners and Justice Act 2009 [47]-[48].

Lord Hughes agrees with the conclusion of Lord Mance that an extradition court lacks the power to embark upon closed material hearings [53], but makes additional comments on (a) the relationship between extradition proceedings and any subsequent immigration or human rights claims [54]-[62]; and (b) the power of the court to admit anonymous evidence in extradition proceedings conducted under the Extradition Act 2003, provided that the proceedings are nevertheless fair [63]-[74]:

Lord Toulson dissents on the basis that the District Judge had accepted that the proposed evidence was relevant [82] and that it would be wrong to assume (in effect) that the evidence was untrue merely because its veracity could not be tested in a closed material hearing [84]. He concluded that there should be an exception to the principle of open justice where, as here, not ordering a closed material hearing or not prohibiting disclosure to the State requesting extradition would facilitate a foreseeable and potentially serious breach of human rights [86]-[93].

References in square brackets are to paragraphs in the judgment

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.uk/decided-cases/index.html