



20 November 2013

PRESS SUMMARY

Bucnys (Appellant) v Ministry of Justice, Lithuania (Respondent)
Sakalis (Appellant) v Ministry of Justice, Lithuania (Respondent)
Lavrov (Respondent) v Ministry of Justice, Estonia (Appellant)

[2013] UKSC 71

On appeal from [2012] EWHC Admin 2771

JUSTICES: Lord Mance, Lord Kerr, Lord Wilson, Lord Hughes, Lord Toulson

BACKGROUND TO THE APPEALS

These three appeals concern requests for extradition under European arrest warrants (“EAWs”). The Lithuanian Ministry of Justice issued EAWs for Mindaugas Bucnys based on convictions for housebreaking and fraud and for Marius Sakalis based on his conviction for sexual assaults. The Estonian Ministry of Justice issued an EAW for Mr Dimitri Lavrov based on a conviction for murder.

EAWs are warrants intended to meet the requirements of Council Framework Decision 2002/584/JHA on surrender procedures between member states of the EU (the Framework Decision). Within the United Kingdom, Part 1 of the Extradition Act 2003 (the 2003 Act) was enacted to give effect to the same requirements. Under section 2(7) of the 2003 Act the requests were, after receipt in this country, certified by the Serious Organised Crime Agency (SOCA) (now the National Crime Agency (NCA), the designated authority under section 2(8), as Part 1 warrants issued by a judicial authority of a category 1 territory having the function of issuing arrest warrants.

The questions of principle raised by the present appeals are whether the requests are open to challenge on the basis that (i) they were not the product of a ‘judicial decision’ by a ‘judicial authority’ within the terms of the Framework Decision and/or of Part 1 of the United Kingdom Extradition Act 2003, and (ii) the ministries making them did not have the function of issuing domestic arrest warrants and were incorrectly certified by SOCA under section 2(7) of the 2003 Act. If a challenge is open on either or both of these bases, the third question is (iii) whether the challenge is on the evidence well-founded in the case of either or both of the Ministries.

On 12 December 2012, the Divisional Court answered the first question affirmatively and the second negatively. As to the third, it concluded that a ministry of justice would, under European law, be regarded as a ‘judicial authority’ for the purposes of issuing a conviction warrant if it was sufficiently independent of the executive for the purposes of making that ‘judicial decision’ (para 98), and that, in this connection, the antecedent process, in the form of a request for the issue of a European arrest warrant coming from the court responsible for the conviction, was relevant. On the evidence before it, it held that the EAWs issued by the Lithuanian Ministry in respect of Mr Bucnys and Mr Sakalis were valid, while the EAW issued by the Estonian Ministry in respect of Mr Lavrov was invalid. Mr Bucnys and Mr Sakalis now appeal, while the Estonian Ministry appeals in the case of Mr Lavrov.

During the appeal further evidence was adduced about the legal position and procedures in Lithuania and Estonia. Since the hearing, the Court has been informed by those instructed by Mr Bucnys that he has [regrettably] died. The issue remains of importance, and this judgment records the Court’s conclusions on it.

JUDGMENT

The Supreme Court unanimously holds that the arrest warrants issued for Mr Bucnys and Mr Lavrov were valid, whereas that issued for Mr Sakalis was not. Mr Bucnys's appeal is therefore dismissed. Mr Sakalis's appeal and the Estonian Ministry's appeal in Mr Lavrov's case are allowed.

REASONS FOR THE JUDGMENT

Whether a justice ministry can be a 'judicial authority'

Mr Bucnys, Mr Sakalis and Mr Lavrov submitted that the relevant ministries of justice could not be a 'judicial authority' because they were not part of the courts or judiciary as ordinarily understood.

The Supreme Court, in a judgment given by Lord Mance with which all other Justices agree, holds that member states were not intended to have *carte blanche* to define 'judicial authority' however they choose. The concept is embedded in European Union law. The Framework Decision is based on article 31(1)(a) of the former Treaty of European Union, which itself distinguishes between 'ministries' and 'judicial authorities' [23]. The concept falls under EU law to be interpreted by looking at the instrument's context and intended effects [45].

In the context of the Framework Decision, the most obvious purpose of insisting on the concept was to ensure objectivity (including freedom from political or executive influence) in decision-making and to enhance confidence in a system which was going to lead to a new level of mutual cooperation including the surrender of member states' own nationals to other member states [45].

An EAW issued by a ministry for a convicted person with a view to his or her surrender can be regarded as issued by a judicial authority if the ministry under the relevant national law issues the warrant at the request of, and by way of endorsement of a decision that the issue of such a warrant is appropriate made by, the court responsible for the sentence or by some other person or body properly regarded as a judicial authority responsible for its execution [66].

If this condition is satisfied, the existence of a discretion on the part of the ministry not to issue a EAW which the responsible court (or other judicial authority) has decided appropriate and requested it to issue does not affect this [66]. That could work only in favour of the person sought by the warrant and would be in the spirit of the Framework Decision [56].

In issuing the EAWs for the arrest of Mr Bucnys and Mr Lavrov, the respective ministries acted only at the request of and by way of endorsement of a decision made by a court responsible for the sentence. These two EAWs therefore satisfied the above test [66] and are valid.

However, in issuing the EAW for Mr Sakalis's arrest, the Lithuanian ministry was acting only on a request from the prison service, and this EAW did not meet the above test and is invalid [67].

The certification of the requests

Mr Bucnys, Mr Sakalis and Mr Lavrov also submitted that the terms of section 2(7) of the 2003 Act meant that a ministry of justice could be certified by SOCA only if it was responsible for issuing domestic arrest warrants rather than European ones. While that was not inconsistent with the bare language of the Act, such an interpretation would involve SOCA in onerous investigations of overseas practice and may have perverse results where, for example, the European warrants with which Part 1 is concerned were issued by a different, but more senior, judicial authority than the domestic ones [26–28]. The correct interpretation was that section 2(7) referred to the authority responsible for issuing European arrest warrants [33]. The warrants and certification were thus unobjectionable in that respect.

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.gov.uk/decided-cases/index.html.