



30 May 2012

PRESS SUMMARY

Assange (Appellant) v The Swedish Prosecution Authority (Respondent) [2012] UKSC 22
On appeal from [2011] EWHC Admin 2849

JUSTICES: Lord Phillips (President), Lord Walker, Lady Hale, Lord Brown, Lord Mance, Lord Kerr, Lord Dyson

BACKGROUND TO THE APPEALS

The appellant, Mr Assange, is the subject of a request for extradition by the Swedish Prosecuting Authority for the purposes of an investigation into alleged offences of sexual molestation and rape.

Mr Assange is in England. A domestic detention order was made by the Stockholm District Court in Mr Assange's absence, and was upheld by the Svea Court of Appeal. A prosecutor in Sweden thereafter issued a European Arrest Warrant ('EAW') on 2 December 2010 pursuant to the arrangements put in place by the Council of the European Union in the Framework Decision of 13 June 2002 on the EAW and the surrender procedures between Member States (2002/584/JHA) ('the Framework Decision'), which were given effect in the United Kingdom in Part 1 of the Extradition Act 2003 ('the 2003 Act').

Mr Assange challenged the validity of the EAW on the ground (amongst others) that it had been issued by a public prosecutor who was not a 'judicial authority' as required by article 6 of the Framework Decision and by sections 2(2) and 66 of the 2003 Act. Sweden had designated prosecutors as the sole competent authority authorised to issue EAWs in accordance with article 6(3) of the Framework Decision. Mr Assange contended that a judicial authority must be impartial and independent both of the executive and of the parties. Prosecutors were parties in the criminal process and could not therefore fall within the meaning of the term. If, contrary to this argument, prosecutors could issue EAWs under the Framework Decision, then he still submitted that they fell outside the definition in the 2003 Act, as it was clear that Parliament had intended to restrict the power to issue EAWs to a judge or court.

His challenge failed before the Senior District Judge at the extradition hearing and on appeal before the Divisional Court. The Supreme Court granted permission to bring an appeal on this ground as the issue was one of general public importance.

JUDGMENT

The Supreme Court by a majority of 5 to 2 (Lady Hale and Lord Mance dissenting) dismisses the appeal and holds that an EAW issued by a public prosecutor is a valid Part 1 warrant issued by a judicial authority within the meaning of section 2(2) and 66 of the 2003 Act.

REASONS FOR THE JUDGMENT

References in square brackets are to paragraphs in the judgment

Article 34 (2)(b) of the Treaty on European Union provides that framework decisions are binding on member states as to the result to be achieved but that national authorities may choose the form and

method of achieving this. For the reasons given by Lord Mance in his judgment [208-217] the Supreme Court is not bound as a matter of European law to interpret Part 1 of the 2003 Act in a manner which accords with the Framework Decision, but the majority held that the court should do so in this case. The immediate objective of the Framework Decision was to create a single system for achieving the surrender of those accused or convicted of serious criminal offences and this required a uniform interpretation of the phrase ‘judicial authority’ [10][113]. There was a strong domestic presumption in favour of interpreting a statute in a way which did not place the United Kingdom in breach of its international obligations [122]

An earlier draft of the Framework Decision would have put the question in this appeal beyond doubt, because it stated expressly that a prosecutor was a judicial authority. That statement had been removed in the final version. In considering the background to this change, the majority concluded that the intention had not been to restrict the meaning of judicial authority to a judge. They relied, as an aid to interpretation, on the subsequent practice in the application of the treaty which established the agreement of the parties. Some 11 member states had designated public prosecutors as the competent judicial authority authorised to issue EAWs. Subsequent reviews of the working of the EAW submitted to the European Council reported on the issue of the EAWs by prosecutors without adverse comment and on occasion with express approval [70] [92][95][114-119][160-170].

Lord Phillips felt that this conclusion was supported by a number of additional reasons: (1) that the intention to make a radical change to restrict the power to issue EAWs to a judge would have been made express [61], (2) that the significant safeguard against the improper use of EAWs lay in the preceding process of the issue of the domestic warrant which formed the basis for the EAW [62], (3) that the reason for the change was rather to widen the scope to cover some existing procedures in member states which did not involve judges or prosecutors [65] and that the draft referred to ‘competent judicial authority’ which envisaged different types of judicial authority involved in the process of executing the warrant [66]. Lord Dyson preferred not to infer the reasons for the change [128] and did not find the additional reasons persuasive [155-159]. Lord Walker and Lord Brown also found these reasons less compelling [92][95]. Lord Kerr relied on the fact that public prosecutors in many of the member states had traditionally issued arrest warrants to secure extradition and a substantial adjustment to administrative practices would have been required [104].

Parliamentary material relating to the debates before the enactment of the 2003 Act were held by the majority to be inadmissible as an aid to construction under the rule in *Pepper v Hart* [1993] AC 593, given the need to ensure that the phrase ‘judicial authority’ had the same meaning as it had in the Framework Decision [12] [92][98]. Lord Kerr remarked that that it would be astonishing if Parliament had intended radically to limit the new arrangements (thereby debarring extradition from a number of member states) by use of precisely the same term as that employed in the Framework Decision [115][161].

Lord Mance, dissenting, held that the common law presumption that Parliament intends to give effect to the UK’s international obligations was always subject to the will of Parliament as expressed in the language of the statute [217]. In this case, the correct interpretation of ‘judicial authority’ in the Framework Decision, a question of EU law, was far from certain [244]. Thus if Parliament had intended to restrict the power to issue EAWs to judges or courts, that would not have required a deliberate intention to legislate inconsistently with the Framework Decision. As the words in the statute were ambiguous, it was appropriate to have regard to ministerial statements, and those statements showed that repeated assurances were given that an issuing judicial authority would have to be a court, judge or magistrate [261]. Lady Hale agreed with Lord Mance that the meaning of the Framework Decision was unclear and that the Supreme Court should not construe a UK statute contrary both to its natural meaning and to the evidence of what Parliament thought it was doing at the time [191].

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