



10 July 2013

PRESS SUMMARY

Kapri (Appellant) v The Lord Advocate representing the Government of the Republic of Albania (Respondent) (Scotland)

[2013] UKSC 48

On appeal from [2012] HCJAC 84

JUSTICES: Lord Hope, Lady Hale, Lord Kerr, Lord Sumption and Lord Toulson

BACKGROUND TO THE APPEAL

The question in this appeal is whether extraditing Mr Kapri to Albania would breach his right to a fair trial under article 6 of the European Convention on Human Rights (“the Convention”).

Mr Kapri is an Albanian national. In 2001 he was present in the UK as an illegal immigrant. He is alleged to have been responsible for the murder of another Albanian national in London on 7 April 2001. The Metropolitan Police were unable to locate Mr Kapri, who had left the day after the murder for Glasgow and assumed a false Macedonian identity. They invited the Albanian authorities to prosecute him, since Albania has jurisdiction to prosecute in cases of homicide committed abroad where the victim and the alleged perpetrator are both Albanian. Mr Kapri was tried in his absence in Albania, convicted, and sentenced to 22 years’ imprisonment.

On 3 January 2003 the decision against Mr Kapri became final. His whereabouts remained unknown to the Albanian authorities. In May 2010, the UK police became aware that he was living in Glasgow. On 22 June 2010, the Albanian authorities formally requested his extradition to Albania.

Mr Kapri was arrested in Glasgow on 24 June 2010 and has been in custody ever since. On 20 January 2011, the Sheriff decided that there were no bars to extradition and ordered that the case be sent to the Scottish Ministers. The Scottish Ministers decided that they were not prohibited from ordering his extradition and on 15 March 2011 an extradition order was served on him.

Mr Kapri appealed and lodged a devolution minute explaining the nature of his Convention rights challenge under the Scotland Act 1998. He was allowed to amend his Note of Appeal such that only two grounds of appeal were before the Appeal Court: ground (iv) (relating to the likelihood of a retrial in Albania) and a new ground (v) (relating to the alleged systemic corruption in the Albanian judicial system). He also lodged a devolution minute in relation to ground (v). However, on 2 February 2012, the Appeal Court refused to admit certain new evidence which arose under ground (v), effectively excluding that ground. Following a hearing on ground (iv), on 1 June 2012 the Appeal Court dismissed the appeal. It later granted permission to appeal to the Supreme Court. At the appeal hearing in the Supreme Court, Mr Kapri only relied on ground (v).

JUDGMENT

The Supreme Court unanimously allows Mr Kapri's appeal. The case will be returned to the Appeal Court for consideration of the question whether Mr Kapri would suffer a flagrant denial of justice if he were to be extradited to Albania [33, 34]. Lord Hope gives the judgment of the Court.

REASONS FOR THE JUDGMENT

The question is whether Mr Kapri would suffer a flagrant denial of justice if he were to be extradited to Albania. This threshold test is stringent. In a recent case, the European Court of Human Rights observed that until now it has been or would be met only in certain very exceptional circumstances. It will require a breach of the relevant right in the country to which the person is to be extradited which is so fundamental that it nullifies, or destroys the very essence of, the right. None of the cases in which the test has been described was concerned with a complaint of systemic judicial corruption as in the present case. It is not apparent that the only way it can be met, as it was in those cases, is by pointing to particular facts or circumstances affecting the case of the particular individual [29, 32].

It is hard to get at the true facts, but where allegations of corruption are widespread they must be taken seriously. When corruption affects the whole system, it may involve simple bribery of judges and court officials, or it may involve interference with the judicial system for political reasons of a much more insidious kind. Unjust convictions may result, just to keep the system going and keep prices up. Those who are familiar with the system may know what they need to do or pay to obtain a favourable decision but be quite unable to come up with what is needed. Those who are not familiar with it will be at an even greater disadvantage. Systemic corruption in a judicial system affects everyone who is subjected to it. No tribunal that operates within it can be relied upon to be independent and impartial. It is impossible to say that any individual who is returned to such a system will receive the right to a fair trial under article 6 of the Convention [28, 32].

The allegations that Mr Kapri makes in relation to the corruption of the Albanian judicial system are sufficiently serious for it to be necessary to have a closer look at the evidence on which Mr Kapri attempted to rely before the Appeal Court. The Supreme Court is not in a position to determine how systemic or widespread the problem now is. The evidence may not reflect the current position and further studies have since been conducted for the Lord Advocate. The case should be returned to the Appeal Court so that it can be provided with up to date information and reach a properly informed decision as to whether or not the threshold test is satisfied. The further delay that will result is regrettable, but it is plain that the matters must be properly investigated before a decision is taken as to whether the appellant's extradition should go ahead. For the time being he must remain in custody [33 – 35].

A preliminary issue arose as to whether the question in this appeal raises a devolution issue in terms of the Scotland Act 1998 or a compatibility issue in terms of the Criminal Procedure (Scotland) Act 1995 as recently amended. The Court holds that it raises a devolution issue. The Lord Advocate does not act in his capacity as head of the prosecution service in Scotland when he performs functions under the Extradition Act 2003. Since the question in this appeal is not a question that arises in criminal proceedings it cannot raise a compatibility issue [23].

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