



27 February 2019

PRESS SUMMARY

Konecny (Appellant) v District Court in Brno-Venkov, Czech Republic (Respondent)
[2019] UKSC 8
On appeal from [2017] EWHC 2360 (Admin)

JUSTICES: Lord Kerr, Lord Hodge, Lady Black, Lord Lloyd-Jones, Lord Kitchin

BACKGROUND TO THE APPEAL

On 12 May 2008, Mr Konecny (“the appellant”), a Czech national, was convicted in his absence by the District Court in Brno-Venkov, Czech Republic (“the District Court”) of three offences of fraud, committed between November 2004 and March 2005, and was sentenced to eight years’ imprisonment. The extradition of the appellant was requested by the District Court by a European Arrest Warrant (“EAW”) dated 17 April 2013 pursuant to the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between member states (2002/584/JHA) (the “Framework Decision”). The Framework Decision is implemented in the United Kingdom by Part 1 of the Extradition Act 2003 (the “2003 Act”).

The EAW states that it is based on an enforceable judgment, namely the judgment of the District Court dated 12 May 2008. The EAW also specifies that the appellant will be afforded an unqualified right to be re-tried upon return in the event that he makes an application to be re-tried. On 2 March 2017, the EAW was certified by the National Crime Agency (“NCA”) and the appellant was arrested. The extradition hearing took place on 10 April 2017. In reliance on section 14(a) of the 2003 Act, the appellant argued that he was an accused person facing a prospective trial and that it would be unjust and oppressive to order his extradition taking into account the delay since 2004. The appellant also maintained that his extradition would infringe his rights under article 8 of the European Convention on Human Rights (“ECHR”).

District Judge Ashworth ruled that it was the conviction provisions in section 14(b) of the 2003 Act which were the operative provisions and that, as a result, the passage of time to be considered under section 11(1)(c) and section 14 was restricted to the period from 12 May 2008 (the date of conviction by the District Court) onwards. He concluded that the circumstances of the delay did not justify a finding that it would be unjust or oppressive to return the appellant to the Czech Republic. He also considered that the public interest factors in favour of extradition outweighed the considerations relating to the appellant’s family and private life under article 8 of the ECHR. In this context he took account of the passage of time since 2004.

On 27 September 2017, the High Court dismissed the appeal. On 7 November 2017, the High Court certified the following point of law of general public importance: “In circumstances where an individual has been convicted, but that conviction is not final because he has an unequivocal right to a retrial after surrender, is he ‘accused’ pursuant to section 14(a) of the 2003 Act, or ‘unlawfully at large’ pursuant to section 14(b) for the purposes of considering the ‘passage of time’ bar to surrender?”. The appellant sought and obtained permission to appeal to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Lloyd-Jones gives the sole judgment with which the other Justices agree.

REASONS FOR THE JUDGMENT

At the heart of the present appeal lies the issue of the characterisation of the appellant as an accused person or a convicted person. The EAW system is founded on the high level of mutual trust and confidence between member states and, as a result, in seeking to give effect to this distinction when applying implementing legislation, a national court will usually attach considerable weight to the description by the requesting judicial authority in the EAW of the position in its own national law. The view of the requesting judicial authority will not always be conclusive, but it will normally be influential and, in the absence of evidence to the contrary, it is likely to be followed [18].

The Court considers that the appellant's case founded on EU law is not made out [28]. It also considers that the appellant's case is inconsistent with the EAW scheme and the express provisions of the 2003 Act [34]. The express provisions in their natural meaning provide a coherent structure within which to address all cases of trial *in absentia* [37].

The Court considers that the following principles should be applied by a court in this jurisdiction when seeking to characterise a case as an accusation case or a conviction case [50]:

- (1) The dichotomy drawn by the Framework Decision between accusation warrants and conviction warrants is a matter of EU law. The Framework Decision does not have direct effect but national implementing legislation should, so far as possible, be interpreted consistently with its terms.
- (2) The court should seek to categorise the relevant facts by reference to their status and effects in the law and procedure of the member state of the requesting judicial authority.
- (3) Ordinarily, statements made by the requesting judicial authority in the EAW or in supplementary communications will be taken to be an accurate account of its law and procedure but evidence may be admitted to contradict them.
- (4) A person may properly be regarded as convicted for this purpose if the conviction is binding and enforceable under the law and procedure of the member state of the requesting authority.
- (5) For this purpose, it is not a requirement that a conviction should be final in the sense of being irrevocable. In particular, a convicted person who has a right to a retrial may, nevertheless, be properly considered a convicted person for this purpose, provided that the conviction is binding and enforceable in the law and procedure of the member state of the requesting authority.
- (6) While the view of the requesting judicial authority on the issue of characterisation cannot be determinative, the question whether a conviction is binding and enforceable will depend on the law of that member state.

The Court accepts that where a person with a right to a retrial is correctly classified as a convicted person for the purposes of the 2003 Act it could work to his disadvantage in the operation of section 14 because the passage of time prior to his conviction is excluded from consideration. This is a deficiency in the drafting of the statute which requires consideration by the legislature at an early opportunity [54]. However, until such time as section 14 can be amended by Parliament, article 8 of the ECHR provides an appropriate and effective alternative means of addressing passage of time resulting in injustice or oppression in cases where the defendant has been convicted *in absentia* [58].

In this case, District Judge Ashworth correctly characterised the EAW as a conviction warrant. The EAW indicated there was an enforceable judgment and a legally effective conviction which would remain such until revoked. The Court was satisfied that full and appropriate account was taken of the passage of time since the offences were allegedly committed, and the appellant has not been disadvantaged in any way as a result [70]. For these reasons, the Court dismisses the appeal [72].

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:

<http://supremecourt.uk/decided-cases/index.html>