



24 February 2010

PRESS SUMMARY

Norris (Appellant) v Government of the United States of America (Respondent)

[2010] UKSC 9

On appeal from the High Court of Justice [2009] EWHC Admin 995

JUSTICES: Lord Phillips (President), Lord Hope (Deputy President), Lord Rodger, Lady Hale, Lord Brown, Lord Mance, Lord Judge, Lord Collins, Lord Kerr

BACKGROUND TO THE APPEAL

The United States Government is seeking the extradition of the appellant, Mr Norris, so he may be tried on an indictment charging him with obstruction of justice. He had originally faced a further charge of price fixing. The House of Lords ruled in 2008 ([2008] UKHL 16) that the conduct alleged in relation to the price fixing charge was not capable of amounting to an extradition offence as it was not a crime under English law when it was committed. His case was then sent back to the district judge to decide whether he should be extradited on the remaining charges in the indictment.

Mr Norris submitted that extradition would cause disproportionate damage to his and his wife's physical and psychological wellbeing having regard to their age, their state of health and the likely effect of the separation that extradition would impose upon them. Thus extradition would be incompatible with his right to private and family life under article 8 of the European Convention on Human Rights and he should be discharged pursuant to s 87 Extradition Act 2003.

The district judge found there to be no bars to extradition. His decision was upheld on appeal to the High Court, which found that the public interest in honouring extradition treaties was such as to require Mr Norris to show 'striking and unusual facts' or reach 'a high threshold' if his article 8 rights were to prevail. Mr Norris appealed to the Supreme Court, arguing that the courts below had wrongly required him to demonstrate 'exceptional circumstances' in order to show that his extradition would be disproportionate.

JUDGMENT

The Supreme Court unanimously dismissed the appeal. It held that a test of exceptional circumstances had not been applied. However, in an extradition case, the consequences of any interference with article 8 rights would have to be exceptionally serious before this could outweigh the public importance of extradition. This was not such a case.

REASONS FOR THE JUDGMENT

Lord Phillips (with whom all the members of the court agreed) stated that it was common ground that the extradition of Mr Norris would interfere with the exercise in this country of his right to respect for his private and family life. The critical question was whether this interference was necessary in a democratic society for the prevention of disorder or crime.

On the issue of principle of whether a court could properly require a person resisting extradition on article 8 grounds to demonstrate exceptional circumstances, there was no rule of law that this was the test of disproportionality but the public interest in extradition weighed very heavily indeed [paragraph 51]. It was of critical importance in the prevention of disorder and crime that those reasonably suspected of crime were prosecuted and, if found guilty, duly sentenced. Extradition was part of the process for ensuring that this occurred on a basis of international reciprocity [paragraph 52]. The reality was that only if some quite exceptionally compelling feature, or combination of features, was present that interference with family life consequent upon extradition would be other than proportionate to the objective that extradition served. ‘Exceptional circumstances’ was a phrase which said little about the nature of the circumstances: it was more accurate and more helpful to say that the consequences of interference with article 8 rights must be exceptionally serious before this could outweigh the importance of extradition. The courts below were justified in considering how if at all the impact of extradition on family life would differ from the normal consequences of extradition [paragraph 56].

Three subsidiary issues arose,, which the court answered as follows:

- The gravity of the offence could be of relevance, especially if it was at the bottom of scale, but it usually would not be [paragraph 63];
- The effect of extradition on innocent members of the family of a person resisting extradition was relevant and could be a cogent consideration [paragraph 64]; and
- It would rarely be relevant to consider whether the person resisting extradition could be prosecuted in the requested state. The extradition process should not become an occasion for debate about the most convenient forum for criminal proceedings [paragraph 67]

On the facts of Mr Norris’ case, he was now 67 and had suffered ill health for some years. His wife’s psychiatric condition would preclude her from travelling to the United States to support her husband and she would lose his support. The offences of obstructing justice, although subsidiary to the price fixing charge, were however very grave indeed [paragraph 72]. The public interest would be seriously damaged if any defendant with family ties and dependencies such as those which bound Mr Norris and his wife was thereby rendered immune from being extradited to be tried for serious wrongdoing [paragraph 82].

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