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Children's Best Interests 2

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On 20 June 2012, the Supreme Court gave judgment in *HH & PH v Deputy Prosecutor of the Italian Republic, Genoa; F-K (FC) v Polish Judicial Authority* [2012] UKSC 25. The key issue before the Supreme Court was whether, and to what degree, the best interests of a child could influence the question of whether to permit the extradition of the child's parent(s) to face criminal proceedings in another country.

This information sheet provides information about the judgment and its importance in immigration proceedings. See also this month's "Children's Best Interests 3" information sheet.

The facts

The Supreme Court was dealing with three appeals. Two of the appeals concerned a wife (HH) and husband (PH), both British citizens, facing extradition to Italy in relation to several offences relating to conspiring in drugs trafficking into Italy. They had fled Italy to escape prosecution, in breach of conditions imposed on their release from custody. They have three children, aged 11, eight and three years at the time of the judgment. The evidence before the court showed that the mother of the children had suffered a collapse of her mental health. The father had, therefore, become the children's primary carer. The evidence indicated that the impact on the children of both parents' extradition would be severe.

The other appeal concerned a mother (F-K) facing extradition to Poland, her country of nationality, in relation to several offences of dishonesty including fraud and falsifying customs documents in Poland. She and her husband had been living in the UK with their five children since 2002. At the time of the judgment, the younger children were aged 13, eight and nearly four years. The evidence before the court indicated that the children, particularly the two younger children, would suffer serious harm at the loss of their mother if she was extradited. The situation of the family was significantly more difficult because of the physical disability and mental ill-health of the children's father.

The Supreme Court press summary provides further details:

http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2011_0129_PressSummary.pdf

The decision

The Supreme Court sat as a panel of seven judges. All seven agreed that the extradition of F-K should not go ahead. All seven agreed that the extradition of HH (the mother) should be permitted to go ahead. By a majority (six to one), it was decided that the extradition of PH (the father) should also be permitted to go ahead.

Lady Hale gave the lead judgment. Lord Hope and Lord Wilson also gave substantial judgments. From these, the following points may be taken:

- Although extradition and immigration (including deportation) proceedings are very different, the approach to considering children's best interests and Article 8 (the right to respect for private and family life) in extradition cases is not significantly different to immigration cases, even though the public interest in favour of an extradition is likely to be significantly more powerful than the public interest in favour of a removal or deportation.
- In any assessment of Article 8, there is a strong public interest in ensuring that children are properly brought up.
- As to whether the public interest in favour of extradition (or removal or deportation) in any particular case outweighs the best interests of the child (and any other Article 8 interests), this cannot be reduced to simply asking whether or not the case is an 'exceptional' one.
- The relevant factors to be considered, including as to the public interest, may be of more or less weight in any individual case. For example, delay on the part of the authorities may reduce the weight to be given to the public interest in favour of extradition.
- As regards consideration of the best interests of children, this will require careful assessment of their particular circumstances, relationships and needs.

The importance of this judgment in immigration cases

The judgment makes clear the potential significance of children's best interests and family life involving children in immigration cases. The Court is clear that there are several powerful reasons in favour of the UK complying with extradition requests. While there may be strong reasons in favour of immigration action (such as removal and deportation), these are not generally as powerful as the reasons in favour of extradition. However, even in extradition cases, Article 8 and the best interests of children must be carefully considered. There can be no absolute rule that Article 8 or children's best interests cannot outweigh the public interest in favour of extradition. It follows that Article 8 and the best interests of children need to be carefully considered in immigration cases, and there can be no absolute rule in such cases that the public interest will always outweigh these interests.

In relation to whether and when Article 8 and/or the best interests of children will outweigh the public interest in any particular case, the Court is clear: "*Exceptionality is a prediction... and not a test.*" (*per* Lady Hale, paragraph 32)

As to how much weight is to be given to the public interest in favour of removal or deportation, this will vary according to the facts of the particular case. For example, delay by the authorities may reduce the weight to be given to the public interest in favour of removal or deportation. The interests of children may be a powerful public interest against removal or deportation. That the interests of children may provide a public interest against removal or deportation is particularly important, because it means that when considered in full the public interest may in a particular case be against the removal or deportation.

Generally, the Supreme Court judgment is a timely reminder of the conclusion of the House of Lords in *EB (Kosovo) v Secretary of State for the Home Department* [2008] UKHL 41:

"The search for a hard-edged or bright-line rule to be applied to the generality of cases is incompatible with the difficult evaluative exercise which article 8 requires."

If that is true in extradition cases, which the Supreme Court has effectively made clear that it is, it also remains true in immigration cases.