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Extradition and article 8

The Supreme Court decisions in the combined hearings of *F-K (FC) v Polish Judicial Authority*; *R (on the application of PH) v Deputy Prosecutor of the Italian Republic, Genoa UKSC*, 20 June 2012, made woeful reading. The case must have made Lady Hale, at least, feel like King Solomon as he decided on the fate of a child claimed by two women to be theirs. The two cases heard together involved the parents of young children. European Arrest Warrants had been issued by Poland in 2006 regarding an incident in 2001; with a second EAW issued in 2007 regarding three other incidents of dishonesty by the mother of the five children, the youngest being only 8 and 3 years of age. This mother was not arrested until 2010 and the trial judge ordered her extradition. The Supreme Court decided not to extradite her to Poland in view of the length of time that had passed.

The extradition to Italy of PH and HH (British nationals) was however, quite different in many ways. There were very serious drug trafficking offences and they had been convicted in Italy in their absence. HH and PH have three small children aged 10, 7 and 2. Their youngest child was born after proceedings had commenced against both parties. Notwithstanding the harrowing history of the effect of the extradition process on the wife, and even taking into account the tender ages of the children, they were both to be extradited to Italy. One observer noted how the British are always the first to obey the rules of the European Union, unlike say, Germany. (See Professor J.H.H.Weiler (2005) 'European constitutionalism and the European Arrest Warrant: contrapunctual principles', The Jean Monnet Program). The problem is with extraditing our own nationals, as Douglas-Scott pointed out, the extradition procedure is *political in nature*, which was shown by the case of General Pinochet in *R v Bow Street Metropolitan Stipendiary Magistrate and Others ex p. Pinochet Ugarte (No.2)*.¹

Article 8 rights could have been activated by the husband for his ill wife according to the case of *R (on the application of Mann) v Westminster MC, SOCA and a Portugese Judicial Authority*, 19th January 2010. In this case each and every child should have been called to the lower courts to give witness, as per *R v B²*, in which it was noted that, by the Youth Justice and Criminal Evidence Act 1999 s.53, the competence of witnesses to give evidence is clear and unequivocal and the competence of a four year old child to give evidence is established. **CL**