



HIGH COURT OF AUSTRALIA

18 December 2013

COMMONWEALTH MINISTER FOR JUSTICE v ADRIAN ADAMAS & ANOR

[2013] HCA 59

Today the High Court held that the Commonwealth Minister for Home Affairs and Justice correctly determined to surrender to Indonesia an Australian citizen who, in his absence, had been convicted by an Indonesian court of an offence under Indonesian law and sentenced to life imprisonment. The Court, unanimously allowing the Minister's appeal from a decision of the Full Court of the Federal Court of Australia, held that Australian standards of a fair trial were relevant to, but not determinative of, the Minister's decision.

Mr Adamas was the President Director of Bank Surya in Indonesia between 1989 and 1998. He moved to Australia in 1999 and became an Australian citizen in 2002. In 2002, in his absence, an Indonesian court convicted Mr Adamas of a corruption offence, involving misuse of bank funds that caused liquidity problems for Bank Surya and extensive losses to the Indonesian Central Bank. He was sentenced to life imprisonment. Indonesian authorities sought his extradition from Australia.

The Minister was required to determine whether Mr Adamas should be surrendered to Indonesia. By force of an extradition treaty between Australia and Indonesia given effect in domestic legislation, Mr Adamas was to be surrendered only if, among other things, the Minister was satisfied that, in the circumstances of the case and taking into account the nature of the offence and the interests of Indonesia, surrender would not be "unjust, oppressive or incompatible with humanitarian considerations". Adopting the analysis and recommendation of officers of the Attorney-General's Department, the Minister determined that Mr Adamas should be surrendered to Indonesia.

Mr Adamas sought judicial review of the Minister's determination. The Federal Court, both at first instance and on appeal to the Full Court, held that the Minister applied a wrong legal test because the analysis that he adopted failed to recognise that whether or not it would be unjust, oppressive or incompatible with humanitarian considerations to surrender Mr Adamas was to be determined according to "Australian standards", which would not ordinarily permit the trial and conviction of a person for a serious criminal offence in his or her absence. By special leave, the Minister appealed to the High Court.

The High Court held that the standard of "unjust, oppressive or incompatible with humanitarian considerations", being contained in a bilateral treaty between Australia and Indonesia, encapsulated a single broad evaluative standard to be applied alike by Australia and Indonesia. Domestic standards, and international standards to which Australia and Indonesia had assented, were relevant to the application of the standard in the treaty but were not determinative. The Minister was correct not to confine his consideration to the application of Australian standards.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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