



HIGH COURT OF AUSTRALIA

Public Information Officer

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DRAGAN VASILJKOVIC v COMMONWEALTH OF AUSTRALIA; MINISTER FOR JUSTICE
AND CUSTOMS; THE GOVERNOR, PARKLEA CORRECTIONAL CENTRE; AND
MAGISTRATE MOORE, CENTRAL LOCAL COURT, SYDNEY

Parliament can decide the conditions under which extradition is carried out and the rules laid down in the Commonwealth *Extradition Act* conform with both international practice and the Constitution, the High Court of Australia held today.

Mr Vasiljkovic, 51, a resident of Perth, is a citizen of both Australia and Serbia, having arrived in Australia with his family from Belgrade in 1954 and taking out Australian citizenship in 1975. He allegedly carried out three offences against the Basic Criminal Code of the Republic of Croatia during the conflict between Croatian armed forces and Serbian paramilitary troops in which he was a captain. Mr Vasiljkovic is alleged to have tortured and murdered civilians and prisoners of war in 1991 and 1993. The offences carry a maximum penalty of 20 years' imprisonment. A Croatian court issued a warrant for Mr Vasiljkovic's arrest last December and Croatia sought his extradition. In January a Perth magistrate issued a warrant. Mr Vasiljkovic was then arrested by Australian Federal Police while visiting Sydney and has been in custody at Parklea Correctional Centre in Sydney since.

Before extradition proceedings before Magistrate Allan Moore began, Mr Vasiljkovic, by application to the High Court, challenged his detention and the validity of Part II of the *Extradition Act* to the extent that it confers a power to deprive an Australian citizen of liberty other than in the exercise of the judicial power of the Commonwealth. He also claimed Part II of the Act, read together with the *Extradition (Croatia) Regulations*, is invalid to the extent to which it confers a power to deprive a citizen of liberty other than upon a finding of a prima facie case of the commission of offences alleged by the State seeking extradition. On 15 June the High Court, by a 4-1 majority, upheld the validity of the Act and the Regulations as they related to Mr Vasiljkovic. Today the Court published reasons for its orders.

The Court held that the Act and the Regulations for the treatment of fugitive offenders properly fell within Parliament's power to make laws related to external affairs, conferred by section 51(xxix) of the Constitution. Australia has no extradition treaty with Croatia, but extradition does not rely upon the existence of a treaty and the Regulations declare Croatia to be an extradition country. Extradition involves no determination of guilt or innocence. The Court held that the Constitution, either expressly or impliedly, did not prevent the "no-evidence" model of extradition from being a valid legislative choice. A magistrate determines whether a person is eligible for extradition – an administrative rather than a judicial process – and the person is only to be surrendered if the Attorney-General is satisfied that there is no extradition objection and if he or she is satisfied that the person will not face torture or the death penalty and will not be tried for additional or alternative offences. Although the *Administrative Decisions (Judicial Review) Act* does not apply to the extradition process, the Court said extradition decisions are subject to judicial scrutiny in the Federal Court. In accordance with international practice, Parliament has given the executive, subject to the requirements of the Act, the ultimate discretion to decide whether and upon what conditions a person shall be surrendered. The Court held that it is for Parliament to determine criteria for eligibility for surrender. It held that detention is not undertaken as punishment but as a necessary part of the extradition process due to a well-founded fear of flight by those facing extradition and to assist guilt or innocence to be determined in the requesting State.

- *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.*