HIGH COURT OF AUSTRALIA

Manager, Public Information

19 May 2010

REPUBLIC OF CROATIA v DANIEL SNEDDEN [2010] HCA 14

On 30 March 2010 the High Court pronounced orders allowing this appeal and confirming the orders of Deputy Chief Magistrate Cloran, who had determined that the respondent was eligible for surrender to the Republic of Croatia for prosecution for war crimes he allegedly committed contrary to Articles 120 and 122 of its Basic Penal Code. Today the Court published its reasons for allowing the appeal.

On 20 January 2006 the Republic of Croatia issued a request to the Australian Government for the extradition of the respondent. His extradition was sought so that he could be prosecuted before a Croatian court for war crimes against prisoners of war (under Article 122) and the civilian population (under Article 120). The crimes are said to have taken place while the respondent was the commander of a unit of Serbian paramilitary troops during the Croatian-Serbian conflict in the early 1990s.

Under s 19(2) of the *Extradition Act* 1988 (Cth) ("the Act"), a person may only be surrendered if that person does not satisfy the magistrate that there are "substantial grounds" for believing that there is an "extradition objection" in relation to the offence for which extradition is sought. Section 7(c) provides that there is an extradition objection in relation to an offence if "on surrender…the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, by reason of his race, religion, nationality or political opinions".

In April 2007, Cloran DCM of the Local Court of New South Wales determined that the respondent was eligible for surrender to Croatia. An application for review of that decision was dismissed by a judge of the Federal Court of Australia in February 2009. On 2 September 2009, the Full Court of the Federal Court allowed the respondent's appeal, finding that there were substantial grounds for believing an extradition objection existed within the meaning of s 7(c) of the Act. There had been evidence before Cloran DCM that, in sentencing offenders for war crimes, Croatian courts had treated prior service in the Croatian armed forces as a mitigating factor. The Full Court accepted the submission that the application of the mitigating factor in favour of Croatian forces meant that the respondent would, if convicted, be imprisoned for a longer period than a Croatian counterpart. Noting the respondent's expressed belief in the "self determination of Serbian people in the Balkans", his significant role as a military commander in the conflict, and the terms of the extradition request (which referred to the conflict between "the armed forces of the Republic of Croatia and the armed aggressor's Serbian paramilitary troops") the Full Court found that the mitigating factor is applied by reason of a person's political beliefs. It held that there were therefore substantial grounds for believing the respondent may be "punished" and that such treatment would occur "by reason of" his political opinions.

The Republic of Croatia was granted special leave to appeal to the High Court on 12 February 2010. On 30 March, following the hearing of the appeal, orders were pronounced allowing the appeal and confirming the orders of Cloran DCM. Today the High Court published its reasons. The Court held that acceptance that the respondent had certain political opinions, and that such opinions motivated him to join the Serbian forces (and precluded his joining the Croatian forces), was not

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enough to sustain an objection under s 7(c) based on the treatment by Croatian courts of service in the Croatian forces as a mitigating factor. It was necessary for the respondent to show that courts in Croatia apply the mitigating factor because of political opinions. No such conclusion could be drawn from the evidence.

- *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.*