



20 December 2021

PRESS SUMMARY

“Maduro Board” of the Central Bank of Venezuela (Respondent/Cross-Appellant) v “Guaidó Board” of the Central Bank of Venezuela (Appellant/Cross-Respondent)

[2021] UKSC 57

On appeal from: [2020] EWCA Civ 1249

JUSTICES: Lord Reed (President), Lord Hodge (Deputy President), Lord Lloyd-Jones, Lord Hamblen, Lord Leggatt

BACKGROUND TO THE APPEAL

In May 2018, a Presidential election took place in Venezuela, which the incumbent, Mr Nicolás Maduro Moros, claimed to have won. Her Majesty’s Government in the United Kingdom (“**HMG**”) considered that this election was deeply flawed. On 15 January 2019, the Venezuelan National Assembly announced that Mr Juan Gerardo Guaidó Márquez was the interim President of Venezuela. On 4 February 2019, the then UK Foreign Secretary declared that the United Kingdom recognises Mr Guaidó “as the constitutional interim President of Venezuela, until credible presidential elections can be held”. That statement was reiterated by HMG in a subsequent letter and in statements made to the Court on behalf of the Foreign Secretary in these proceedings.

The Maduro Board and the Guaidó Board both claim to act on behalf of the Central Bank of Venezuela (the “**BCV**”). The Maduro Board claims to have been appointed to represent the BCV by Mr Maduro as President of Venezuela. The Guaidó Board claims to be an ad hoc board of the BCV, appointed by Mr Guaidó as interim President of Venezuela under a ‘transition statute’ passed by the Venezuelan National Assembly. The Venezuelan Supreme Tribunal of Justice (the “**STJ**”) has issued several judgments holding that the transition statute is null and void. The Maduro Board and the Guaidó Board both claim to be exclusively authorised to act on behalf of the BCV, including in arbitration proceedings in the London Court of International Arbitration and in respect of gold reserves of about US\$1.95 billion held by the Bank of England for the BCV. The central issue in this appeal is which of these two parties is entitled to give instructions on behalf of the BCV.

The Commercial Court ordered a trial of two preliminary issues. The first (the “**recognition issue**”) is whether HMG recognises Mr Maduro or Mr Guaidó and, if so, in what capacity and on what basis. The second (the “**act of state issue**”) is whether courts in this jurisdiction may consider the validity under Venezuelan law of (among other things) the appointments to the BCV board made by Mr Guaidó and the transition statute passed by the Venezuelan National Assembly.

At first instance, Teare J held, in respect of the recognition issue, that HMG had conclusively recognised Mr Guaidó as Venezuela’s head of state. The judge further held that the validity of the transition statute and the appointments of Mr Guaidó engaged the act of state doctrine and were thus non-justiciable. The Maduro Board appealed successfully to the Court of Appeal on both issues. On the recognition issue, the Court of Appeal considered that HMG had recognised Mr Guaidó as the person entitled to be head of state (de jure) but had left open the possibility that it impliedly recognised Mr Maduro as in fact exercising some or all of the powers of head of state (de facto). It considered that this issue was best determined by posing further questions of the Foreign Commonwealth and Development Office and remitted the matter to the Commercial Court for this purpose. The Court of Appeal held that the act of state issue could not be answered at that stage without considering both whether HMG recognises Mr

Guaidó as Venezuela's head of state for all purposes and whether the STJ judgments should be recognised by courts in this jurisdiction.

JUDGMENT

The Supreme Court unanimously allows the appeal in part. Lord Lloyd-Jones gives the Court's judgment.

REASONS FOR THE JUDGMENT

The recognition issue

Under the United Kingdom's constitutional arrangements, the recognition of foreign states, governments and heads of states is a matter for the executive [64]. Courts in this jurisdiction thus accept statements made by the executive as conclusive as to whether an individual is to be regarded as a head of state [69], [79]. This rule is called the 'one voice principle'. Its rationale is that certain matters are peculiarly within the executive's cognisance [78]. Historically, courts have drawn a distinction between the recognition of a government de jure and de facto [83]-[85]. This distinction is now unlikely to have any useful role to play before courts in this jurisdiction [99].

HMG's statement was a clear and unequivocal recognition of Mr Guaidó as President of Venezuela, which necessarily entailed that Mr Maduro was not recognised as the President of Venezuela [92]. Under the one voice principle, it is therefore unnecessary to look beyond the terms of HMG's statement [93]. No question of implied recognition thus arises, and the Court of Appeal was wrong to think it did [98]. The Court of Appeal's reliance on the outdated concepts of de jure and de facto recognition was also misplaced [99]. The question of recognition in this case has also been unnecessarily complicated by the distinction between whom HMG recognises as Venezuela's head of state and whom it recognises as head of government [106]. The relevant matter in these proceedings is the identity of Venezuela's head of state, not its head of government [109].

It follows that courts in this jurisdiction are bound to accept HMG's statements which establish that Mr Guaidó is recognised by HMG as the constitutional interim President of Venezuela and that Mr Maduro is not recognised by HMG as President of Venezuela for any purpose [110], [181(1)].

The act of state issue

There are two aspects of the act of state doctrine with which this appeal is concerned. The first ("Rule 1") is that the courts of this country will recognise and will not question the effect of a foreign state's legislation or other laws in relation to any acts which take place or take effect within the territory of that state. The second ("Rule 2") is that the courts of this country will recognise, and will not question, the effect of an act of a foreign state's executive in relation to any acts which take place or take effect within the territory of that state [113]. Although Rule 2 has been doubted, in light of the substantial body of authority in its support its existence should now be acknowledged [135]. Furthermore, there is no basis for limiting Rule 2 to cases of unlawful executive acts concerning property, such as expropriation or seizures [139]-[142].

Rule 2 thus applies to an exercise of executive power such as Mr Guaidó's appointments to the BCV's board [146]. However, there are several exceptions to the act of state doctrine, including for acts which take place outside a state's territory, for challenges to acts which arise incidentally, and for judicial acts [136]. The extra-territorial exception does not apply in this case because the relevant acts of appointment were made within Venezuela and were not in excess of the jurisdiction of Venezuela in international law [149]. The incidental exception does not apply either, because these proceedings involve a direct attack upon the validity of Mr Guaidó's appointments to the BCV's board [152]. However, judicial rulings of a foreign state are not subject to the act of state doctrine [157]-[161]. For a court in this jurisdiction to decide whether to recognise or to give effect to the STJ judgments would therefore not engage the act of state doctrine. This is a matter which falls outside the preliminary issues and must therefore be remitted to the Commercial Court for further consideration. However, courts in this jurisdiction will refuse to recognise or give effect to foreign judgments such as those of the STJ if to do so would conflict with domestic public policy. The public policy of the United Kingdom will necessarily include the one voice principle which is a fundamental rule of UK constitutional law. As a result, if and to the extent that the reasoning of the STJ leading to its decisions that acts of Mr Guaidó are unlawful and nullities

depends on the view that he is not the President of Venezuela, those judicial decisions cannot be recognised or given effect by courts in this jurisdiction because to do so would conflict with the view of the United Kingdom executive [170].

The transition statute is foreign legislation. Its validity may thus fall within Rule 1. There is no doubt about the existence of Rule 1, which would ordinarily prohibit challenges to the transition statute [172], [174]. However, the validity of the STJ judgments impugning the transition statute is not subject to the act of state doctrine [177]. In any event, Rule 1 is not necessary to the analysis because, subject to the effect to be given to STJ judgments, Rule 2 precludes questioning Mr Guaidó's appointments to the BCV's board [180].

Courts in this jurisdiction will therefore (subject to the effect to be given to the STJ judgments) not question the lawfulness or validity of the appointments to the BCV board made by Mr Guaidó [181(2)]. However, it remains necessary to consider whether the STJ judgments should be recognised or given effect in this jurisdiction. The proceedings are remitted to the Commercial Court for it to do so [181(3)].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for that decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>