

Tomasz Celczynski v Polish Judicial Authority



No Substantial Judicial Treatment

Court

Queen's Bench Division (Administrative Court)

Judgment Date

30 April 2020

Case No: CO/66/2019

High Court of Justice Queen's Bench Division Administrative Court

[2019] EWHC 3450 (Admin), 2020 WL 02069742

Before: Mr Justice Dove

Date: 30/04/2020

Hearing dates: 10th October 2019

Representation

Mr Martin Henley (instructed by AM International) for the Appellant.

Mr Ben Joyes (instructed by Crime Prosecution Service) for the Respondent.

Approved Judgment

Mr Justice Dove

1. On 12 December 2019 I handed down judgement in this case, having concluded that although the appeal under the [Extradition Act 2003](#) brought by the appellant should be dismissed, the decision which had been reached by the District Judge in the present case in relation to whether the appellant had consented to extradition was unlawful for the reasons stated in the judgment. I decided that the appropriate procedure was for the appeal to be reconstituted as an application for judicial review, and that substantive relief should be granted by way of the quashing the District Judge's decision and the remitting of the matter to the Magistrates Court for redetermination. An order reflecting this judgment was agreed and sealed. It appears that on the 30 December 2019 an application was made by the appellant for permission to appeal and the certification of questions of law of general public importance in the case. The respondent provided a response to this application shortly thereafter, followed by a brief reply from the appellant on procedural issues raised by the respondent. Unfortunately, as a result of administrative issues, the paperwork in relation to this application did not reach me until 29 April 2020, leading to the delay in addressing the application until now. This is the decision in relation to it.

2. The appellant's application identifies the questions of law which are sought to be certified in the following terms:

"1. Can an error of law of an appropriate judge under an expressly appealable section of [part 1 of the Extradition Act 2003](#) ("the 2003 Act") be questioned other than by an appeal under that part?

2. Where an error of law of an appropriate judge under an appealable section of [part 1](#) of the 2003 Act gives rise to an unfair extradition hearing must the High Court on appeal under [section 26](#) of the 2003 Act, quash the order of the Appropriate Judge and discharge the Appellant?"

3. Preliminary points have been raised by the respondent in relation to the application, contending in particular, firstly, that the application has not been brought in time, and, secondly, that on the basis that the case was disposed of as an application for judicial review the jurisdiction under [section 32](#) of the 2003 Act does not arise. I do not consider that either of these points stands in the way of the application. In response to the point being taken by the respondent about time-limits the appellant has submitted material to demonstrate that the next business day (given Christmas closures) after Christmas Day, that being the last date upon which the application could have been filed, was 30 December 2019, the date on which it was in fact filed. It was, therefore, in my judgement brought in time. In respect of the second issue, since the application is based upon the decision in the judgment reflected in the order to dismiss the appellant's appeal under the 2003 Act, I am satisfied that there is jurisdiction for this application to be made and determined, notwithstanding the manner in which the case was ultimately dealt with. I propose therefore to consider the merits of the application which has been made.

4. The application made by the appellant indicates at paragraph 4 that the conclusion of the judgment, that the District Judge treated the appellant as having consented to his extradition without legal representation contrary to [section 45 \(5\)](#) of the 2003 Act, may not be the only conclusion which could be reached from the factual material before the court. However, that was the factual conclusion which was reached on the basis of the material, and it is a clear finding based on the evidence before the court recorded in the judgment at paragraph 21. That factual conclusion, which cannot provide material to found an appeal, gives rise to two legal consequences. Firstly, it was an error of law for the District Judge to take the appellant's consent as having been validly given when in fact it was not in accordance with the requirements provided by [section 45](#) of the 2003 Act. Secondly, that illegality is not caught by [section 27 \(3\) or \(4\)](#) of the 2003 Act, since if the District Judge had decided that question correctly, and concluded that the appellant had not consented validly to his extradition, then either a full exploration of the merits would have occurred, or, alternatively, consent would have been given when the appellant had legal representation: either way, deciding this question as to whether the appellant had validly consented to his extradition differently would not have required the appellant's discharge (see paragraph 24 of the judgment). It follows therefore that neither of the questions identified in the application arise, since on the basis of the factual conclusions the error of law or illegality in the case did not occur "under an expressly appealable section" of the 2003 Act. In other words, the questions are put on a false premise, namely that there was an error of law in the present case which fell within the jurisdiction granted to the court by [sections 26 and 27](#) of the 2003 Act. I am not therefore satisfied that the questions which the appellant has identified in fact arise in the circumstances of the present case and for that reason the application is flawed.

5. The availability of judicial review in circumstances where an error of law does not fall within the confines of [section 26 and 27](#) of the 2003 Act is clearly established by the case of *Olah v Czech Republic [2008] EWHC 2701*. The existence of this jurisdiction to correct, in exceptional cases, injustices caused by a failure to comply with the law governing extradition procedures, when that illegality cannot be corrected because it is not an error of law within the scope of [sections 26 and 27](#) of the 2003 Act, is unsurprising and not a matter which raises any point of general public importance. As the case of *Olah* identified, [section 34](#) of the 2003 Act does not exclude the powers of the court to exercise the jurisdiction provided by way of an application for judicial review, and in that case the exercise of those powers was justified in relation to a procedural decision which was clearly and obviously wrong. The decision of the Divisional Court in that case provides clear authority for the proposition that judicial review is available to correct illegality in appropriate exceptional cases where the court does not have jurisdiction to deal with that illegality under the appeal provisions of the 2003 Act.

6. In conclusion, the questions which the appellant seeks to have certified in the present case do not, in truth, arise in the circumstances of the present case. The jurisdiction which was exercised in the present case is one which is founded upon extant authority, and its existence and use in this instance does not give rise to any question of law of general public importance.

The application under [section 32](#) of the 2003 Act to certify the questions set out above as being of general public importance is therefore refused along with permission to appeal.

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