



23 May 2012

PRESS SUMMARY

Lukaszewski v The District Court in Torun, Poland; Pomiechowski v District Court of Legunica 59-220 Poland; Rozanski v Regional Court 3 Penal Department Poland; R (on the application of Halligen) v Secretary of State for the Home Department [2012] UKSC 20

On appeal from [2011] EWHC 2060 Admin; [2011] EWHC 1584 Admin

JUSTICES: Lord Phillips (President); Lady Hale; Lord Mance; Lord Kerr; Lord Wilson

BACKGROUND TO THE APPEAL

Lukaszewski (“L”), Pomiechowski (“P”) and Rozanski (“R”) are Polish citizens who are each the subject of a European Arrest Warrant (“EAW”) issued by the Polish court. Each is wanted in order to serve an existing sentence. L is wanted, in addition, to stand trial on ten charges of fraud. The fourth appellant, Halligen (“H”), is a British citizen whose extradition is sought to the USA under Part 2 of the Extradition Act 2003 (the “Act”) to face allegations of wire fraud and money laundering. All four appellants were arrested and brought before Westminster Magistrates’ Court. L, P and R’s extradition were ordered on (respectively) 28th January 2011, 2nd March 2011 and 4th March 2011. H’s case was sent to the Secretary of State for her to decide whether H should be extradited. On 22nd December 2010, H’s extradition was ordered by the Secretary of State, and the order and a letter setting out the Secretary of State’s reasons were sent by post and fax (at either 15.48 or 16.48) to H’s solicitors on that same day. All four appellants were remanded in custody at HMP Wandsworth pending extradition. The permitted time-period for giving notice of appeal against an extradition order was 7 days in the case of L, P and R, and 14 days in the case of H.

L, P and R were each assisted by a prison officer working in the legal services department at HMP Wandsworth to complete a notice of appeal. The legal services department faxed the notices of appeal to the Administrative Court for filing and stamping, which faxed back a copy of the sealed front page to the legal services department. The legal services department then faxed to the Crown Prosecution Services (“CPS”), as legal representatives of the judicial authority of the state requesting surrender, a copy of the sealed front page together with a cover sheet. In the case of each of L, P and R, all this occurred within the 7-day permitted period. However, in each case, the CPS was not served with a full copy of the notice of appeal, sealed or unsealed, until after the 7-day time limit had expired. The High Court held it had no jurisdiction to hear the appeals. A notice of appeal had to be both filed and served within the non-extendable permitted period, and must (a) identify the appellant, (b) identify the decision against which he seeks to appeal, and (c) set out at least the gist of the basis on which the appeal is sought to be presented. Accordingly, the purported notices of appeal were invalidly constituted and served out of time.

H’s solicitors prepared a notice of appeal, attaching grounds of appeal, on 23rd December 2010. The notice of appeal was filed and stamped on 29th December 2011, well within the 14-day permitted period which expired at midnight on 4th January 2011. However, only on 5th January 2011 did H’s solicitors send the notice of appeal to the CPS by fax and to the Home Office by post (reaching the latter on 6th January 2011). H himself had written from prison by fax to the Home Office on 29th December 2010 asking them to “accept the letter as notice & service of my intent to appeal that decision” and stating that he had instructed solicitors for that purpose. The High Court held it had no jurisdiction to hear H’s appeal, that H’s letter of 29th December 2011 did not constitute a valid notice of appeal, and the Secretary of State should be treated as having informed H of her decision on 22nd

December, not 23rd December, 2011, so that the purported notice of appeal was in any event served out of time.

All four appellants appealed the decisions of the High Court to the Supreme Court.

JUDGMENT

The Supreme Court allows all four appeals unanimously. Lord Mance gives the leading judgment of the Court. Lady Hale gives a separate concurring judgment.

REASONS FOR THE JUDGMENT

The requirement under the Act that a notice of an appeal be given within the relevant permitted period meant that it had to be filed in the High Court *and* served on all respondents to the appeal within such period (following the decision of the House of Lords in *Mucelli v Government of Albania* [2009] UKHL 2) [5], [17]. However, a generous view should be taken of this requirement, bearing in mind the shortness of the permitted periods under the Act and that what really matters is that an appeal should have been filed and that all respondents be on notice of this, sufficient to warn them that they should not proceed with extradition pending an appeal [18]. In the cases of L, P and R, the irregularity involved in the absence of pages following the sealed front page of their notices of appeal was capable of cure. The CPS, having received in time the sealed front page of each notice of appeal, can have had no difficulty in identifying the decisions being appealed. It would be disproportionate if the practice followed by the court and the prison legal services department should lead to the appellants losing their right of appeal [19].

The Court regards H's letter as notice to the Secretary of State of an appeal within the Act, albeit that the letter was highly irregular in its form [20]. However, even if it is accepted that H's solicitors only received the relevant fax from the Secretary of State at 16.48, there was no basis for deeming the fax to have been received the following day. It follows that no notice of an appeal was given to the CPS within the permitted period, and H's appeal is on its face impermissible as against both respondents [21]. In these circumstances, the question for the Court is whether the apparently inflexible time limits for appeals within the Act are subject to any qualification or exception [22].

Under Article 6(1) of the Human Rights Convention, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the determination of his civil rights and obligations or of any criminal charge against him. The Court is satisfied that extradition does not involve the determination of a criminal charge [31]. However, H, as a UK citizen, enjoyed a civil right to enter and remain in the UK as and when he pleased [32]. Proceedings under the Act, in that they may affect H's freedom to remain in the UK, at least for the duration of foreign extradition proceedings, involve the "determination" of that civil right [32]. It follows that the extradition proceedings against H fall within Article 6(1) [33]. In the case of a UK citizen, the statutory provisions concerning appeals can and should be read (pursuant to the obligation of conforming interpretation under section 3(1) of the Human Rights Act 1998) as being subject to the qualification that the court must have a discretion in exceptional circumstances to extend time for both filing and service, where such statutory provisions would otherwise operate to prevent an appeal in a manner conflicting with the right of access to an appeal process under Article 6(1).

Accordingly, the Court allows all four appeals and remits each appeal against extradition to the High Court to be heard there [19], [41].

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 the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html