

COMMONWEALTH MINISTER FOR JUSTICE v ADAMAS & ANOR (P50/2013)

Court appealed from: Full Court of the Federal Court of Australia

Date of judgment: 15 February 2013

Date of grant of special leave: 12 September 2013

This appeal concerns the extradition of the first respondent, who is an Australian citizen, to the Republic of Indonesia. On 17 December 2010, the appellant (“Minister”) approved the first respondent's extradition to Indonesia under s 22(2) of the *Extradition Act 1988* (Cth) (“the Act”) in relation to his earlier *in absentia* conviction in Indonesia for the offence of corruption.

The first respondent filed an application for judicial review of the Minister's determination on 20 December 2010. On 15 March 2012 Gilmour J quashed the Minister's decision as well as the surrender warrant issued under s 23 of the Act finding the decision took into account irrelevant matters and failed to take into account relevant matters concerning the standard to be applied when considering whether the extradition of the first respondent would be unjust, oppressive or incompatible with humanitarian considerations having regard to the *in absentia* nature of the conviction, and was unreasonable in any event having regard to the *in absentia* nature of the conviction.

The Full Court (Lander, McKerracher and Barker JJ) dismissed the Minister's appeal. The Court was unanimous in its decision that the primary judge had erred in finding that the Minister's decision under s 22 of the Act was unreasonable in the *Wednesbury* sense. The Court was divided on the question whether the Minister had taken into account irrelevant matters or failed to take into account relevant matters in determining whether the extradition of the first respondent would be “unjust, oppressive or incompatible with humanitarian considerations” pursuant to Article 9(2)(b) of the Extradition Treaty between Australia and the Republic of Indonesia.

The grounds of appeal include:

- The majority of the Full Court erred in holding that the appellant committed a jurisdictional error by failing to take into account a relevant consideration or taking into account an irrelevant consideration in determining, under s 22(3)(e) of the Act that the first respondent is to be surrendered to the Republic of Indonesia in relation to the extradition offence.

The first respondent has filed a notice of contention contending that the decision of the Full Court should be affirmed on the ground that the Court erroneously decided or failed to decide some matter of fact or law. The grounds include: "That the Court erred in law in failing to hold that the decision of the appellant, either that in the circumstances of the first respondent's case he was satisfied extradition would not be “unjust, oppressive or incompatible with humanitarian considerations” or that he was satisfied that the surrender of the first respondent should nevertheless not be refused, was unreasonable.