Case Commentary: Not a Trial, Yet Not Merely Administrative? Judicial Power and the Minister's Direction in PP & Ors v. Wong Ong Hua & Anor and Wong Ong Hua & Anor v. PP & Ors

Faizul Aswad Masri*, Rohaida Nordin, Muhamad Helmi Md Said

Faculty of Law, Universiti Kebangsaan Malaysia (UKM), Bangi, Malaysia

***Corresponding Author**

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ABSTRACT

The Court of Appeal's decision in PP & Ors v. Wong Ong Hua & Anor arose from a constitutional challenge to sections 4 and 20 of the Extradition Act 1992, with the appeal focusing on the exercise of judicial power under Article 121(1) of the Federal Constitution. The High Court in Wong Ong Hua & Anor v. PP & Ors had declared both provisions unconstitutional on the ground that the Minister's direction under section 4, when read together with the mandatory language of section 20, interfered with the Sessions Court's exercise of judicial power. The Court of Appeal reversed that decision, holding that extradition proceedings do not involve the exercise of judicial power for the purposes of Article 121(1). This commentary examines the reasoning of both courts, particularly the legal effect attributed by the High Court to the Minister's direction. It argues that the High Court's conclusion regarding executive interference does not necessarily follow from its characterisation of the Sessions Court's functions as judicial. The Minister's direction determines the applicable extradition procedure, whereas the Sessions Court remains responsible for determining whether the statutory conditions for committal have been satisfied. This distinction provides an alternative basis for examining the High Court's constitutional reasoning without disputing the Court of Appeal's conclusion that sections 4 and 20 are constitutionally valid.

Keywords: Extradition; Extradition Act 1992; Committal proceedings; Malaysia

INTRODUCTION

Extradition is a legal process by which a person accused of or convicted of an offence in one jurisdiction is surrendered by another jurisdiction for prosecution or punishment (van der Wilt, 2022). In most states, such surrender is governed by bilateral or multilateral treaties supported by domestic legislation (Bassiouni, 2014). Although extradition proceedings may result in the deprivation of personal liberty and eventual surrender to a foreign state, they have traditionally been distinguished from criminal trials (Bassiouni, 2014; Bifani, 1993).

Malaysian courts have consistently recognised that extradition proceedings are concerned not with determining the guilt or innocence of a fugitive criminal but with whether the person should be committed pending the Minister's order for surrender. This principle was established by the Federal Court in Chua Han Mow v. Superintendent of Pudu Prison (1980) and subsequently reaffirmed in Said Mir Bahrami v. Pengarah Penjara Sungai Buloh, Selangor (2013, p. 487), where the Federal Court observed:

"This is because extradition proceeding is in the nature of a committal proceeding. It cannot be equated with a trial proper. A committal proceeding of this nature is not a trial to determine the guilt of the appellant but only to determine whether the evidence adduced is sufficient to commit the appellant for the purpose of extradition."

In Malaysia, extradition is governed by the Extradition Act 1992 (Act 479) ("EA 1992"). Under the Act, extradition proceedings may be conducted pursuant to section 19 or, where the Minister issues a direction under section 4, section 20. The principal distinction between these procedures lies in the requirement to establish a prima facie case against the fugitive criminal, which is dispensed with under section 20. The constitutionality of

this statutory arrangement was considered in Wong Ong Hua & Anor v. PP & Ors (2023) and subsequently on appeal in PP & Ors v. Wong Ong Hua & Anor (2025).

In Wong Ong Hua & Anor v. PP & Ors (2023), the High Court held that sections 4 and 20 of the EA 1992, when read together, were unconstitutional on the ground that they infringed Article 121(1) of the Federal Constitution. The High Court reasoned that proceedings under section 20 require the determination of legal questions and therefore cannot be regarded as purely administrative. On that basis, the court considered the functions performed by the Sessions Court under section 20 to constitute an exercise of judicial power protected by Article 121(1). It further held that the Minister's direction under section 4, when read together with the mandatory language of section 20, impermissibly interfered with the Sessions Court's exercise of that judicial power.

However, the Court of Appeal reversed the High Court's decision (PP & Ors v. Wong Ong Hua & Anor, 2025). Relying on earlier Malaysian extradition authorities, it held that extradition proceedings are committal proceedings rather than criminal trials and do not involve the exercise of judicial power for the purposes of Article 121(1) of the Federal Constitution. Accordingly, the Court of Appeal concluded that sections 4 and 20 did not infringe Article 121(1) and were constitutionally valid.

Although both courts examined the same statutory provisions, their reasoning differed. The High Court considered that the Minister's direction under section 4, when read together with the mandatory language of section 20, interfered with the Sessions Court's exercise of judicial power. By contrast, the Court of Appeal rejected the constitutional challenge on the ground that proceedings under section 20 did not involve the exercise of judicial power for the purposes of Article 121(1). Although the Court of Appeal explained the circumstances in which section 20 applies and recognised the statutory conditions for committal, it did not separately determine whether the Minister's direction had the legal effect attributed to it by the High Court.

This commentary examines that aspect of the High Court's reasoning. It does not challenge the established principle that extradition proceedings are not criminal trials, nor does it dispute the Court of Appeal's conclusion that sections 4 and 20 are constitutionally valid. Rather, it argues that the High Court attributed an unduly broad legal effect to the Minister's direction by treating it as executive interference with the Sessions Court's decision-making role. The commentary distinguishes between the Minister's power to determine the applicable extradition procedure and the Sessions Court's responsibility to determine whether the statutory conditions for committal have been satisfied. It is argued that the High Court's conclusion regarding executive interference does not necessarily follow from its characterisation of the Sessions Court's functions as judicial.

To avoid confusion arising from the change in party designations between the High Court and Court of Appeal proceedings, this commentary adopts the designation used in PP & Ors v. Wong Ong Hua & Anor (2025). Accordingly, the Public Prosecutor and other authorities are referred to as the Appellants, while Wong Ong Hua and Ling Yang Ching are referred to as the Respondents throughout this commentary, unless the context otherwise requires.

Facts and Procedural History

The Respondents were sought for extradition by the Government of the United States of America ("USA") pursuant to the Extradition Treaty between the Government of Malaysia and the Government of the USA, signed on 3 August 1995. At the request of the USA, the Kuala Lumpur Magistrates' Court issued a provisional warrant of apprehension under section 13(1)(b) of the EA 1992. The Respondents were arrested on 14 September 2020 and subsequently remanded pursuant to section 16(1) of the Act.

On 8 October 2020, the Minister of Home Affairs signified to the Magistrates' Court that the USA had made a requisition for the Respondents' return under section 12 of the EA 1992. On the same day, the Minister issued a written direction under section 4, requiring the extradition proceedings to be conducted in accordance with the procedure prescribed under section 20. The direction stated that "the procedures under section 20 of the Extradition Act 1992" were to apply to this extradition request made by the USA.

Following the Minister's direction, the Magistrates' Court transmitted the proceedings to the Sessions Court on

13 October 2020 pursuant to section 16(2) of the EA 1992. The Respondents were subsequently granted bail on 9 February 2021.

While the extradition proceedings were pending before the Sessions Court, the Respondents filed an originating summons in the High Court on 14 September 2021, challenging the constitutionality of sections 4 and 20 of the EA 1992. They sought, among other reliefs, declarations that both provisions were unconstitutional and void for contravening Articles 4(1), 5(1) and (2), 8(1) and (2), 9(1) and (2), and 121(1) of the Federal Constitution. The challenge centred on the combined effect of the Minister's direction under section 4 and the mandatory committal requirement under section 20, which the Respondents contended interfered with the Sessions Court's exercise of judicial power.

On 26 January 2023, the High Court granted the declarations of unconstitutionality sought under those constitutional provisions. However, its finding of unconstitutionality rested on Article 121(1) of the Federal Constitution. The Appellants appealed against that decision. The Court of Appeal noted that the High Court had granted declarations extending beyond the constitutional ground on which its finding was based and accordingly confined its consideration to whether section 4, read together with section 20 of the EA 1992, contravened Article 121(1). On 12 July 2024, the Court of Appeal unanimously allowed the appeal and set aside the High Court's decision.

Sections 4 and 20 of the EA 1992

Sections 4 and 20 of the EA 1992 establish a distinct procedure for extradition requests where the applicable extradition treaty or agreement permits the prima facie requirement to be dispensed with. Under section 4, the Minister may issue a written direction requiring that the procedure prescribed under section 20 apply where the relevant arrangement provides for such a dispensation. In the absence of such a direction, extradition proceedings are conducted under section 19, which requires the Sessions Court to determine, among other matters, whether a prima facie case has been established.

Section 20 dispenses with the requirement to establish a prima facie case. Before ordering committal, the Sessions Court must hear any representation in support of the extradition request, receive the prescribed supporting documents and be satisfied that the alleged act or omission would constitute an offence under Malaysian law if it had occurred in Malaysia. The fugitive criminal may resist committal by satisfying the court that there are substantial grounds for believing that one of the matters specified in subsection 20(1)(d) exists. These include the political character of the offence, a time bar in the requesting country, a military offence not also punishable under the general criminal law, a previous acquittal or pardon, or completion of the punishment prescribed for the relevant offence or conduct. Subsection 20(1)(e) additionally requires the court to be satisfied that the fugitive criminal is not accused of, or serving a sentence for, another offence in Malaysia. Subsection 20(2) prohibits evidence contradicting the allegation that the fugitive criminal committed the relevant act or omission, while subsection 20(3) prescribes the supporting documents.

Under this statutory framework, the Minister's direction determines whether the proceedings are conducted under section 20 instead of section 19. Once section 20 applies, the Sessions Court must determine whether the prescribed conditions for committal have been satisfied. If those conditions are met, committal is mandatory, pending the Minister's order for surrender. The relationship between the Minister's direction and the Sessions Court's determination of these conditions formed the basis of the constitutional challenge in Wong Ong Hua & Anor v. PP & Ors (2023).

High Court Decision

The principal constitutional issue addressed by the High Court was whether sections 4 and 20 of the EA 1992, when read together, were inconsistent with Article 121(1) of the Federal Constitution by interfering with the Sessions Court's exercise of judicial power. The challenge rested on the constitutional principle that judicial power is vested in the courts under Article 121(1), and that neither Parliament nor the Executive may impermissibly encroach upon the exercise of that power (Wong Ong Hua & Anor v. PP & Ors, 2023, paras. 72–74, 80–81).

The High Court first considered the relevance of the Federal Court's decision in Said Mir Bahrami v. Pengarah Penjara Sungai Buloh, Selangor (2013). The Appellants argued that the Federal Court had already examined the operation of section 20 and rejected the contention that dispensing with prima facie proof deprived a fugitive criminal of a fair trial (Wong Ong Hua & Anor v. PP & Ors, 2023, paras. 43–45). However, the High Court distinguished Said Mir Bahrami on the ground that the constitutionality of sections 4 and 20 had not been directly raised or determined in that case. Therefore, it considered that the constitutional validity of those provisions remained open for examination (Wong Ong Hua & Anor v. PP & Ors, 2023, paras. 58–63, 79).

Turning to the functions performed by the Sessions Court under section 20, the High Court rejected the argument that the Sessions Court performs a purely administrative role in extradition proceedings. It placed particular emphasis on sections 20(1)(b) and (c), which require the Sessions Court to examine supporting documents and determine whether the alleged conduct would constitute an offence under Malaysian law. The High Court considered these functions to involve legal determinations that are judicial in nature rather than merely administrative. It also referred to parliamentary debates preceding the enactment of the EA 1992, noting that extradition proceedings had been entrusted to the Sessions Court because they frequently involve complex legal questions requiring judicial consideration (Wong Ong Hua & Anor v. PP & Ors, 2023, paras. 64–70, 79).

Having characterised the Sessions Court's functions as judicial, the High Court examined the combined operation of sections 4 and 20. It considered that the mandatory language of section 20, particularly the word “shall”, left no room for judicial discretion once the prescribed statutory conditions had been satisfied. The High Court further considered that the Minister's power to issue a “direction” under section 4, when read together with section 20's mandatory committal requirement, effectively prevented the Sessions Court from exercising independent judgment over the outcome of the proceedings. In its view, the combined operation of these provisions suggested that the Minister could direct the Sessions Court to commit the fugitive criminal pending surrender (Wong Ong Hua & Anor v. PP & Ors, 2023, paras. 58–63, 79).

The High Court also considered the Federal Court's decision in Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case (2017). Drawing an analogy with section 40D of the Land Acquisition Act 1960, which had been declared unconstitutional for restricting the exercise of judicial power, the High Court reasoned that section 20 similarly reduced the Sessions Court to a passive role. Referring to the language used in Semenyih Jaya, the court observed that the Sessions Court judge would effectively “sit by the sideline” and merely commit the fugitive criminal to prison pending the Minister's decision on surrender. The High Court further observed that Said Mir Bahrami should be approached with caution because it relied on Loh Kooi Choon v. Government of Malaysia (1977), whose approach to constitutional review had been departed from in subsequent Federal Court decisions, particularly Sivarasa Rasiah v. Badan Peguam Malaysia & Anor (2010) and Semenyih Jaya. Ultimately, the High Court considered that the Minister's direction under section 4, when read together with the mandatory language of section 20, impermissibly interfered with the Sessions Court's exercise of judicial power under Article 121(1) (Wong Ong Hua & Anor v. PP & Ors, 2023, paras. 72–79).

Accordingly, the High Court declared sections 4 and 20 of the EA 1992 unconstitutional and void. Nevertheless, it emphasised that its decision did not undermine Malaysia's extradition regime as a whole. Extradition proceedings could still be conducted under section 19 of the EA 1992, even where the applicable extradition treaty dispensed with the prima facie requirement (Wong Ong Hua & Anor v. PP & Ors, 2023, para. 82).

Court of Appeal Decision

The principal issue before the Court of Appeal was whether sections 4 and 20 of the EA 1992 were inconsistent with Article 121(1) of the Federal Constitution. Having noted that the High Court's finding of unconstitutionality rested on Article 121(1), despite the broader declarations granted, the Court of Appeal confined its consideration to whether the impugned provisions interfered with the exercise of judicial power under that Article.

The Court of Appeal began by examining the relationship between sections 4, 19 and 20 of the EA 1992. It noted that the principal distinction between sections 19 and 20 lies in the requirement to establish a prima facie case. Under section 19, the Sessions Court must determine, among other matters, whether a prima facie case supports the requesting country's requisition. By contrast, section 4 permits the Minister to issue a written direction

requiring the proceedings to be conducted under section 20 where a binding extradition arrangement provides for the dispensation of the prima facie requirement. In the present case, Article 7(3)(c) of the Malaysia–USA Extradition Treaty expressly provided that proof of a prima facie case was not required as a condition of extradition (PP & Ors v. Wong Ong Hua & Anor, 2025, paras. 18–26).

The Court of Appeal disagreed with the High Court's conclusion that the functions performed by the Sessions Court under section 20 involved the exercise of judicial power. It considered that the issue had been addressed by the Federal Court in Said Mir Bahrami v. Pengarah Penjara Sungai Buloh, Selangor (2013). Although the constitutionality of sections 4 and 20 had not been directly challenged in that case, the Court of Appeal observed that the Federal Court had examined the operation of those provisions and rejected the contention that dispensing with prima facie proof deprived the fugitive criminal of a fair trial. The Court of Appeal also relied on the Federal Court's earlier decision in Chua Han Mow v. Superintendent of Pudu Prison (1980), where Raja Azlan Shah CJ (Malaya) described extradition proceedings as being in the nature of committal proceedings rather than criminal trials.

Relying on these authorities, the Court of Appeal reiterated that extradition proceedings are concerned not with determining the guilt or innocence of a fugitive criminal, but with whether the person should be committed for extradition. Therefore, it concluded that because extradition proceedings are not criminal trials, the functions performed by the Sessions Court under section 20 do not involve the exercise of judicial power for the purposes of Article 121(1) of the Federal Constitution (PP & Ors v. Wong Ong Hua & Anor, 2025, paras. 31–43, 46).

The Court of Appeal further observed that proceedings under section 20 are not devoid of statutory safeguards. The prosecution must produce the prescribed supporting documents, the Sessions Court must be satisfied that the alleged conduct would constitute an offence under Malaysian law, and the fugitive criminal remains entitled to raise the statutory objections specified in subsection 20(1)(d). The court considered that these requirements provided safeguards notwithstanding the absence of a requirement to establish a prima facie case (PP & Ors v. Wong Ong Hua & Anor, 2025, paras. 44–45).

Having concluded that proceedings under section 20 did not involve the exercise of judicial power for the purposes of Article 121(1), the Court of Appeal found no unconstitutional interference arising from the combined operation of sections 4 and 20. Therefore, it allowed the appeal, set aside the High Court's declaration of invalidity, and upheld the constitutional validity of both provisions (PP & Ors v. Wong Ong Hua & Anor, 2025, paras. 46–47). Although the Court of Appeal explained the circumstances in which the Minister could issue a direction under section 4 and recognised the statutory conditions governing committal under section 20, it did not separately determine whether that direction had the legal effect attributed to it by the High Court. This question forms the basis of the analysis that follows.

Commentary

Although the Court of Appeal set aside the High Court's declaration of invalidity, the High Court's reasoning nevertheless warrants further examination. Of particular significance is the legal effect attributed by the High Court to the Minister's direction under section 4 of the EA 1992. The question is whether the High Court's conclusion regarding the effect of that direction necessarily follows from the statutory framework established by sections 4 and 20.

The High Court’s Reasoning

Two aspects of the High Court's reasoning are particularly relevant to this commentary. First, the High Court rejected the Appellants' submission that the Sessions Court performs a merely administrative role in proceedings under section 20 of the EA 1992. It observed that the Sessions Court must examine the supporting documents produced by the requesting state and determine whether the alleged conduct would constitute an offence under Malaysian law. These functions require the application of legal principles and cannot readily be characterised as purely administrative.

Having reached that conclusion, the High Court considered the combined operation of sections 4 and 20. It

placed particular emphasis on the Minister's power to issue a direction under section 4 and on the mandatory language of section 20, which requires the Sessions Court to commit the fugitive criminal once the prescribed statutory conditions have been satisfied. The High Court considered that these provisions, when read together, deprived the Sessions Court of meaningful independence in determining whether the fugitive criminal should be committed for extradition. On that basis, it held that sections 4 and 20 violated Article 121(1) of the Federal Constitution.

The Court of Appeal adopted a different approach. Relying on the established principle that extradition proceedings are committal proceedings rather than criminal trials, it concluded that proceedings under section 20 do not involve the exercise of judicial power for the purposes of Article 121(1). Accordingly, the constitutional challenge failed, and the High Court's declaration of invalidity was set aside.

The Legal Effect of the Minister's Direction under Section 4 of the EA 1992

Although the Court of Appeal examined the operation of section 4, it did not separately determine whether the Minister's direction had the legal effect attributed to it by the High Court. This raises a distinct question, namely, even if the functions performed by the Sessions Court under section 20 were assumed to attract constitutional protection under Article 121(1), would the Minister's direction necessarily interfere with the court's determination of whether the statutory conditions for committal have been satisfied?

The High Court's concern is understandable. Judicial independence requires that the Executive should not determine matters entrusted to the courts by law. Therefore, statutory provisions that appear to authorise executive direction over court proceedings warrant scrutiny, particularly where personal liberty is at stake. In this case, the High Court considered that the Minister's direction under section 4, when read together with the mandatory language of section 20, effectively determined the outcome of the committal.

However, the Minister's direction under section 4 determines which statutory procedure applies to the extradition proceedings. It does not, by itself, establish that the conditions for committal have been satisfied. Nevertheless, the direction has significant legal consequences, including dispensing with the requirement to establish a prima facie case and engaging the restriction on contradictory evidence under subsection 20(2). As recognised by the Court of Appeal, the dispensation of the prima facie requirement does not, in itself, remove the procedural safeguards available to a fugitive criminal under section 20. Within that statutory framework, the Sessions Court remains responsible for determining whether the prescribed conditions have been met. Once those conditions are satisfied, committal is mandatory.

Therefore, the mandatory language of section 20 must be considered in the context of the conditions prescribed by that provision. Although the word "shall" requires the Sessions Court to order committal once those conditions have been satisfied, it does not dispense with the court's responsibility to determine whether they have been met. The court must examine the supporting documents, consider whether the alleged conduct constitutes an offence under Malaysian law, and determine any statutory objections raised by the fugitive criminal. These determinations precede the obligation to order committal. Accordingly, the mandatory nature of the committal order should be distinguished from the court's responsibility to determine whether the statutory grounds for making that order exist.

This distinction is illustrated by the operation of sections 4 and 20 in PP lwn. Ali Reza Moa Zami Goudarzi (2014). That case also concerned an extradition request by the USA, in which the Minister issued a written direction requiring the procedure under section 20 to apply. Despite that direction, the Sessions Court examined the statutory requirements before deciding whether the fugitive criminal should be committed for extradition. The court considered the supporting documents produced by the requesting state, the requirement of dual criminality, the statutory objections raised by the fugitive criminal and the other conditions prescribed under section 20. Only after examining these matters did the court conclude that the requirements for committal had been satisfied.

Although the case of Ali Reza Moa Zami Goudarzi did not determine the constitutional validity of sections 4 and 20, it illustrates how these provisions operate in practice. The Minister's direction determined the applicable

procedure, while the Sessions Court remained responsible for deciding whether the statutory conditions for committal had been satisfied.

Viewed in this context, the constitutional difficulty identified by the High Court appears to arise from the legal effect attributed to the Minister's direction rather than merely from the existence of that power. Respectfully, treating the direction as effectively determining the outcome of the extradition proceedings extends the operation of section 4 beyond what its statutory language supports. Section 4 requires only that the procedure prescribed under section 20 apply. It does not authorise the Minister to determine whether the statutory conditions for committal have been satisfied or to direct the Sessions Court to commit the fugitive criminal irrespective of those conditions.

Accordingly, even if the functions performed by the Sessions Court under section 20 were assumed, for the purposes of argument, to attract constitutional protection under Article 121(1), it would not necessarily follow that the Minister's direction constitutes executive interference with the court's decision-making role. The constitutional character of the Sessions Court's functions and the legal effect of the Minister's direction are distinct questions. While the Minister determines the applicable statutory procedure, the responsibility for determining whether the conditions requiring committal have been satisfied remains with the Sessions Court. The mandatory nature of committal under section 20 does not alter that distinction.

CONCLUSION

The decisions in Wong Ong Hua & Anor v. PP & Ors (2023) and PP & Ors v. Wong Ong Hua & Anor (2025) represent an important development in Malaysian extradition jurisprudence concerning the constitutional validity of sections 4 and 20 of the EA 1992. Although the High Court and the Court of Appeal reached opposing conclusions under Article 121(1) of the Federal Constitution, their reasoning reflected different approaches to the constitutional issue. The High Court considered that the Minister's direction under section 4, when read together with the mandatory language of section 20, interfered with the Sessions Court's exercise of judicial power. By contrast, the Court of Appeal held that extradition proceedings did not involve the exercise of judicial power for the purposes of Article 121(1) and accordingly upheld the constitutionality of both provisions.

This commentary has examined the legal effect attributed by the High Court to the Minister's direction under section 4. It argues that the direction determines the applicable extradition procedure but does not itself determine whether the statutory conditions for committal have been satisfied. Although section 20 requires committal once those conditions are met, the responsibility for determining whether they have been satisfied remains with the Sessions Court. Therefore, the mandatory nature of committal does not, by itself, establish that the Minister's direction determines the outcome of the proceedings.

Accordingly, even if the functions performed by the Sessions Court under section 20 were assumed to attract constitutional protection under Article 121(1), it would not necessarily follow that the Minister's direction interferes with the court's decision-making role. The constitutional character of the Sessions Court's functions and the legal effect of the Minister's direction are distinct questions. Recognising this distinction provides an alternative basis for examining the High Court's reasoning without disputing the Court of Appeal's conclusion that sections 4 and 20 are constitutionally valid.

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