Cases and Materials

Sharan Chohan & Imogen Mellor

Case No 00230/2020 REg.PROV.CAU. No. 10215/2019 REG.RIC.

Lega Anti Vivisezione Ente Morale Onlus ("LAV"), (Appellant) represented and defended by lawyer Monica Squintu v Ministry of Health, the University of Studies of Parma, & the University of Studies of Turin, represented and defended by the Attorney General of the State

On 23rd January 2020, the Consiglio di Stato (Italian Supreme Court for administrative law) upheld an appeal by LAV to suspend experimentation on six macaque monkeys, overturning a decree by the Regional Administrative Court of Lazio (Section Three) (No. 07130/2019).

The planned primate experiments are funded by the European Research Council to develop treatments for human patients with vision loss due to brain damage (e.g. following a stroke). (Anatomical-physiological mechanisms underlying the recovery of visual awareness in the monkey with cortical blindness" issued by the Ministry of Health, no. 803/2018-PR on 15.10.2018). The experiment involves making lesions in the visual cortex of the macaques' brains to generate blindness, and the electrical signals around the lesion studied. The macaques would subsequently be euthanised.

The experiment was approved by the ethics committees of the ERC, the University of Parma and the Ministry of Health. LAV's request for documentation relating to the approvals (to assess the experiment's compliance with European and Italian regulations) was initially rejected in part. Following a resubmission by LAV, the documents were released.

It is notable that an online petition opposing the experiment, organised by LAV, received more than 425,000 signatures.

According to the judgment, (and following a laboratory inspection prior to the hearing), the interests of the animals "at the time of comparison" were not outweighed by the scientific need, since the competent authorities failed to prove that an experiment of this nature is unavoidable. The court ordered that the Ministry of Health must urgently provide evidence of the impossibility of an alternative to invasive animal testing, as well as a detailed report on the provision of sufficient food and liquids to the animals (to be provided in such a way that does not "enslave the will of sensitive animals such as primates".)

Following this report, a hearing on the merits (including an assessment of the documentation), is set by the Lazio Regional Court for 21 April 2020.

The court also ordered the Ministry and the Universities to pay LAV 3000 Euros in legal fees.

Denmark: recognising all animals as sentient beings

The Danish Parliament will be adopting a proposal for a new, simplified animal welfare law which will merge 11 existing animal welfare laws into one and cut the number of current regulations by half. This new legislation is being demanded by three major Danish political parties and will include a provision to state that all animals must be protected from pain, suffering, anxiety, permanent injury and significant disadvantage and that they should be respected as living and sentient beings with behavioural needs.

The Parliamentary committee commented that by including the word 'sentience' within the new legislation, the law is recognising that all animals are capable of sensing and interacting with their surroundings such as responding to sensory impressions such as light, sound, pressure, temperature and chemicals. The committee agreed that the addition of the word 'sentience' is required as it has a broader meaning and extends further than the word 'living', as 'living' refers to

animals being able to feel and sense pain and suffering.

Anders Kronborg, from the political party 'Social Democrats', has stated: "When we write that animals are sentient beings, we send a stronger signal that animals should be treated properly". He goes on to say "I must also acknowledge that the arguments are strong and I also think it sends a good signal that we are in 2020. Animals are sentient beings that can feel and we must treat them properly".

Søren Egge Rasmus, an animal welfare spokesman, also commented "they [animals] are sentient beings, saying anything else is completely grotesque discussion".

The UK Government is currently working on ways in which to enshrine animal sentience in law and it will be interesting to see how Denmark achieves this when the new Animal Welfare Act comes into effect after 1st January 2021 and if the UK will adopt similar changes to its current legislation.

Sharan Chohan

Christopher Connolly v Bord na gCon and Irish Coursing Club

Facts

The case concerned a dog handler, Connolly (C), from Ireland, who had used a live piglet as bait to train greyhounds whilst he was living in Australia in 2014. As a result, on 12 June 2015, the Greyhound Racing Appeals and Discipline Board ('the Disciplinary Board') had found him guilty of breaches of the Greyhound Racing Victoria ('GRV') Local Racing Rule 18.5 and Greyhounds Australasia Rule 86(af) and consequently, C was subject to a lifetime ban from racetracks and coursing events. However, on appeal to the Victorian Civil and Administrative Tribunal ('VCAT') the ban was reduced to ten years. Five of those years were suspended on condition that C remained of good behaviour. It was recorded that C had pleaded guilty to the offences.

The GRV applied to the Board in Ireland (Bord na gCon) seeking approval to conduct an investigation into the implications of the outcome of the VCAT proceedings on the Irish Greyhound Industry. It sought approval for three named individuals to conduct the investigation.

Meanwhile, C had returned to Ireland in 2015. In 2016, he applied to the Bord na gCon ("the Board") in the form of a licence to work as a kennel hand. He was refused and he appealed to the Board control committee which also held that he was "not a fit and proper person to be certified". C appealed the decision and an 'independent' control committee upheld the Board's decision.

The Board carried out an investigation pursuant to s. 43 of the Greyhound Industry Act 1958 in order to decide whether to issue an exclusion order (pursuant to s. 47 of the Greyhound Industry Act 1958). The Board wrote to C as part of the investigative process, requesting him to submit his observations on the published outcome of events in Australia for consideration of the Board, but he did not respond to his correspondence. On 27 July 2017, the Board wrote to the ICC seeking consent to issue an exclusion order. On 10 May 2018, the ICC wrote to the Board consenting to the exclusion order. Whilst recognising that an exclusion order in Ireland was open ended, the ICC observed that the C's sanction in the state of Victoria would expire on 12 February 2020. As the exclusion order related directly to the incident which was the subject of the Victorian sanction, the ICC took the view that, subject to the appellant's compliance with the conditions attached to the order, favourable consideration should be given to rescinding it at the time of the expiry of the sanction, if C so requested. On 19 December 2018, the High Court rejected C's application to set aside the decision of the Board and the ICC.

Court of Appeal decision

C appealed to the Court of Appeal. First, he argued that the investigation conducted by the Board was insufficient such as to satisfy the requirements of s. 43 before it decided to make an exclusion order under. 47. Secondly, he argued that the procedure adopted by the Board did not meet the requirements of natural and constitutional justice.

The Court of Appeal confirmed the case of Mc-

Donald v Bord na gCon, in which it was held that s. 47 cannot be read in isolation or divorced from s. 43. The statute conferred onto the Board a wide latitude in determining how an investigation was to be conducted and how the results of such an investigation were published. In carrying out its investigation, the Board had to comply with the principles of natural justice. [49] – [50]

The Board's investigation pursuant to s. 43 of the Act preceded the Board's proposal to exclude C. The fact that the form which the investigation actually took did not follow, precisely, the format originally anticipated (in the form of the three party independent review) when approval was sought in July 2016 could not be said, in and of itself, to have undermined or diminished the validity of the investigation that ensued. The Board took detailed steps to investigate the matter in line with the wide latitude conferred upon it. There were no adverse consequences for C as a result of the departure from the originally anticipated format for the s. 43 investigation. [53], [58]. Despite the C's arguments that the investigation which occurred concerned the implications of the outcome of the VCAT ruling for the Irish greyhound industry and that did not constitute as an 'occurrence' pursuant to s. 43, the Court of Appeal held that it was an event which happened and therefore, was an occurrence. The background and implications of such an event were matters of interest to the Board in view of its statutory remit. [59]

C's argument that there had been a 'mixing of processes' between the s. 43 investigation and the kennel hand authorisation process was rejected. The approval for the s. 43 investigation had been sought in July 2016 upon receipt of the VCAT papers, which demonstrated that the s. 43 investigation was envisaged before the Board had received C's application for a kennel handling licence. The fact that each distinct process intersected and involved consideration of the same materials and evidence did not undermine the validity of either inquiry. Since the subject matter of both inquiries concerned the conduct and character of the appellant, it was inevitable that materials flowing from the live baiting incident would be relevant to both. Even still, the matters were considered distinctly and were not mixed together. [60] - [63]

C also argued that a report or an instrument which authenticated the outcome of the s. 43 investigation was necessary, but the Board failed to do so. Thus he argued that the Board engaged in a s. 47 procedure without completing the process under s. 43 and there was 'no outcome' to the investigation, no authentication of a decision and no reportage of the result. C claimed that this amounted to a breach of his right to natural and constitutional justice. The Court of Appeal rejected this, stating that though there was no report, a result had been reached from the investigation. The relevant law requires only that the proposal to exclude is grounded on a 'result' as opposed a report, which had been the case in these circumstances. [64] – [69]

The Court of Appeal rejected the further argument that C was deprived of fair procedures as the 'result' of the investigation was not communicated with him. One factor of relevance in reaching this conclusion included the fact that C had admitted his guilt to the criminal offence of live animal baiting, which meant that it would have been an artificial exercise for the Court to insist that C ought to have been apprised, separately, of the investigation's findings in circumstances where that finding, and his own admission of guilt were so closely connected. Another factor of importance was the Board providing C with the opportunity to make submissions on more than one occasion, and notably, when the Board proposed making an exclusion order, C was informed of his right to make submissions thereon, in compliance with s. 47(2). [70] – [79]

It was concluded that C knew the case which he had to meet in the context of the s. 43 investigation and on no occasion throughout the process did he indicate that he disputed or contested any of the findings of the VCAT at which he was represented and to which he made submissions and guilty pleas. In light of these facts, the Court was satisfied that C had had every opportunity to present his case to the Board and that he had not been deprived of his constitutionally protected right to fair procedures in the context of the s. 43 investigation. [80] – [81].

Imogen Mellor