

Casenote

CPCF v MINISTER FOR IMMIGRATION AND BORDER PROTECTION [2015] HCA 1

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The High Court of Australia's decision on 157 Tamil asylum seekers detained at sea

By a narrow 4:3 majority, the High Court of Australia has held that Australia's detention of 157 Tamil asylum seekers at sea was not contrary to Australian law. The decision turned on the scope of powers conferred on Australian officials under the Maritime Powers Act, and the legality of their actions under that statute. The judges did not engage in any detailed analysis of international refugee law. Instead, they focused squarely on the construction of an Australian statute, and the Australian government's powers pursuant to it.

The plaintiff was a Tamil asylum seeker from Sri Lanka, who, along with 156 other asylum seekers, was intercepted by an Australian border protection vessel on 29 June 2014. The asylum seekers had set sail from a refugee camp in India, and were stopped 16 nautical miles from Christmas Island (within Australia's contiguous zone). Australia's National Security Committee of Cabinet decided that they should be returned to India, reflecting the government's policy that persons seeking to enter Australia by boat without a visa would be intercepted and removed. The asylum seekers were placed on board the Australian border protection vessel, which arrived near India some 10 days later. They were not disembarked; they had no right to enter India or permission to do so. The plaintiff argued that this detention by the Australian vessel (for over three weeks) was unlawful, and that he should be awarded damages for wrongful imprisonment.

The seven judges of the High Court set out their views in six separate sets of reasons (Hayne and Bell JJ jointly). The majority was comprised of French CJ, Crennan J, Gageler J and Keane J, while Hayne, Kiefel and Bell JJ were in dissent.

The High Court did not engage in any detailed analysis of Australia's obligations under international refugee law. In particular, it did not address submissions about the scope of Australia's non-refoulement obligations, including their extraterritorial application. Nevertheless, French CJ and Crennan J did acknowledge that such obligations may have extraterritorial effect.¹

It was noted that neither the plaintiff nor the Australian government had argued that the plaintiff was at risk of persecution or other significant harm within India. As such, the relevant question was whether the plaintiff faced a risk of refoulement by India to Sri Lanka. A number of judges stated that they had insufficient material before them (as to Indian law and practice) to determine this question.²

Keane J's observations on the relationship between Australian law and international law show why the case must be understood within its national legal context:

Australian courts are bound to apply Australian statute law 'even if that law should violate a rule of international law'. International law does not form part of Australian law until it has been enacted in legislation. In construing an Australian statute, our courts will read 'general words ... subject to the established rules of international law' unless a contrary intention appears from the statute. In this case, there is no occasion to invoke this principle of statutory construction. The terms of the Act are specific. They leave no doubt as to its operation.³

The High Court's decision in this case relates only to Australian law, and it neither examines nor affects the lawfulness or otherwise of practices such as interception, detention and removal under international law.

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Other resources

- [Full judgment](#)
- [Summary of judgment](#)
- [UNHCR Statement on the case](#)

¹ French CJ, para 10; Crennan J, para 219.

² See eg French CJ, para 13; Crennan J, para 304; Gageler J, para 391.

³ Keane J, para 462, citing relevant High Court authority (references omitted here).