



Andrew & Renata Kaldor Centre
for International Refugee Law

Casenote

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

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detained at sea

157 Tamil asylum seekers 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 off the coast of Australia. The Security Committee of Cabinet decided that they should be returned to India, reflecting the powers pursuant to it.

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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 off the coast of Australia. The Security Committee of Cabinet decided that they should be returned to India, reflecting the powers pursuant to it.

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ix separate sets of reasons



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

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 not form part of Australian law until it has been enacted in legislation. In construing an Australian statute, our courts will

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

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).