

AUSTRALIA NEW ZEALAND INTERNATIONAL LAW CONFERENCE

2004

Cases through the year – Crown Law Office

1. *Zaoui*: The issue of a security risk certificate, under which an individual can be held and, if the certificate is confirmed, deported on grounds of national security, in respect of Mr Zaoui, an Algerian national, has raised a range of international law issues in the past year. Mr Zaoui has been detained since arriving in New Zealand and has successfully sought refugee status but is awaiting the outcome of the security risk certificate procedure.
2. In two sets of proceedings, one currently awaiting judgment from the Court of Appeal and the other pending trial before the High Court, Mr Zaoui has invoked aspects of the Refugee Convention and a number of international human rights treaties. The central issue is the extent to which fair trial, non-refoulement and other protections ought to be incorporated into the security risk certificate procedure, under which classified security information may be relied upon by the Minister of Immigration and need be disclosed only to the Inspector-General, a former senior judicial officer who reviews whether the certificate was properly made, and not to the person affected.
3. The extent to which the security risk certificate procedure is compatible with the non-refoulement obligation under the Convention against Torture has also been the subject of comment by the Committee against Torture in its review of New Zealand's periodic report under that Convention. The New Zealand government has to date taken the position that non-refoulement is a separate issue from the security risk certificate, which is concerned with whether a precondition for deportation is met, rather than whether deportation occurs. It has also indicated its intention to review the procedure once proceedings involving Mr Zaoui are completed.

(One reported decision: *Zaoui v Attorney-General* [2004] 2 NZLR 339.)
4. *Hosking v Runtig* (2004). 7, HRNZ301. This case involved the invocation of international human rights law and in particular UNCROC in an unsuccessful privacy claim affecting children of a celebrity.

5. *Rajan v Minister of Immigration*, CA89/03, 3 July 2003, Court of Appeal (unreported). This case involved the practical issue of interaction of the Human Rights Committee under the optional protocol to the ICCPR and immigration decision-making.
6. *Ramek & Ors v New Zealand*, Communication No 1090/2002, UN Doc CCPR/C/79/D/1090/2002 (15 December 2003). This was a challenge to the sentence of preventive detention, as arbitrary detention, cruel or inhuman punishment and contrary to the presumption of innocence, where offenders who had engaged in a pattern of very serious offending may, if judged to present a substantial risk of future offending, be detained pending release by a Parole Board in an annual review. The committee broadly rejected the communication but upheld the complaint by one of the authors, who would have served to the determinant part of his sentence two and a half years before becoming eligible for annual review.

Further information

New Zealand Court of Appeal decisions are available online at the website of the Australasian Legal Information Institute at <http://www.austlii.edu.au/nz/cases/NZCA/>.

The Crown Law Office website is <http://www.crownlaw.govt.nz>.

Human Rights Committee decisions are available online at <http://www.unhchr.ch>.