

**QLN 147 v Republic of Nauru**

**RESPONDENT'S OUTLINE OF ORAL ARGUMENT**

1. This outline is in a form suitable for publication on the internet.

**Facts**

2. The Tribunal had before it a submission from the appellant's advisers dated 28 June 2016 ("the Document") which, among other things, noted that the appellant might be imprisoned if he returned to Sri Lanka. The document:
  - a. quoted a UN report referring to the problems of deficient prison infrastructure and their consequences (AFM 110 line 40);
  - b. asserted that prison conditions in Sri Lanka had been recognised as breaching Art 3 of the European Convention on Human Rights and had been found to suffer from "overcrowding, antiquated infrastructure and limited access to food and basic assistance" (AFM 118 [100]) (the source for the latter proposition was an Australian judicial review decision);
  - c. noted decisions by the UN Human Rights Committee that inhumane prison conditions would breach Art 7 of the ICCPR and submitted that that might occur in the appellant's case (AFM 118 [101]).
3. At the hearing the Tribunal sought the applicant's response to the suggestion that, although Negombo Prison was "old and it's dirty and it's crowded", there was no evidence that people held there for short periods were harmed. The appellant's response went to a different point. (AFM 239 line 14).
4. The Tribunal in its reasons:
  - a. referred to the Document (CAB 11 [16]) and said that it had had regard to the country information cited therein (CAB 15 [31]);

- b. referred again to the Document in its analysis of the treatment of failed asylum seekers (CAB 20 [52]);
  - c. accepted the possibility that the appellant might be placed in remand, possibly for some days (CAB 21 [58]);
  - d. referred to the appellant's evidence at the hearing (CAB 22 [59]);
  - e. dealing specifically with complementary protection claims, accepted a possibility that the appellant might be "held on remand for a small number of days ..., in cramped and unsanitary conditions," but did not consider that this in itself would constitute torture or cruel, inhuman or degrading treatment (CAB 23 [67]).
5. This last passage should be read, in context, as accepting the substance of the evidence in the Document that prison conditions in Sri Lanka were poor as a consequence of overcrowding and deficient infrastructure. As the primary judge noted (CAB 42 [40]), it "captures the flavour" of that evidence. (WS [10]-[11])
6. The alternative construction is that the Tribunal accepted conditions were "cramped and unsanitary" but did not accept the further assertions concerning lack of food, water or medical services. That construction is open because the Tribunal was not under any duty to refer to those assertions if it did not accept them (WS [8]). The Tribunal was entitled not to be persuaded by those assertions (WS [10.b], [11]).
7. The argument that the Tribunal overlooked part of the Document is unpersuasive in circumstances where the Document was expressly referred to and, on this issue, broadly accepted at a factual level. It is also implausible that the Tribunal regarded "cramped and unsanitary" conditions as potentially relevant, but lack of food, water or medical services as irrelevant.
8. Nor is there any basis to conclude that the Tribunal's statement of reasons fails to set out the reasons for its decision adequately for the purposes of s 34(4) of the Refugees Convention Act. Even if it did, that would not justify an order setting the decision aside. (WS [13])

## Law

9. If part of the Document was overlooked it does not follow that there was an error of law.

- a. It is clear that the Tribunal considered whether the appellant might be subjected to conduct in breach of Art 7 of the ICCPR, and specifically whether (a) he might be held in prison on his return to Sri Lanka and (b) the conditions of imprisonment would breach Art 7. Failure to consider questions identified at a higher level of particularity (such as specific claimed features of those prison conditions) is not an error of law in the absence of a legal requirement to consider those questions (WS [14]).
- b. Overlooking evidence does not, without more, constitute error of law (WS [14]).

Geoffrey Kennett

Catherine Symons

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