



## HIGH COURT OF AUSTRALIA

Public Information Officer

8 May, 2003

### SERGEY DRANICHNIKOV v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS

### RE MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS AND OTHERS; EX PARTE SERGEY DRANICHNIKOV

Mr Dranichnikov sought both special leave to appeal against a decision of the Full Court of the Federal Court and relief under section 75(v) of the Constitution. He claimed the Federal Court wrongly dismissed his application for a review of the Refugee Review Tribunal's decision upholding the Immigration Department's refusal to give him a protection visa. The section 75(v) application, seeking constitutional writs against the Minister, the RRT and various departmental officers, raised the question of whether the RRT failed to exercise its jurisdiction to review the department's decision.

In 1997, Mr Dranichnikov, his wife Olga and daughter Maria arrived in Australia from Vladivostok in Russia where he had managed a company providing real estate and legal services. He said he tried to interest authorities to combat the increasing attacks, sometimes fatal, on business people. Mr Dranichnikov made representations to the mayor, organised public meetings to draw attention to corruption and lawlessness in the city, and formed a committee for the registration of property titles. He was stabbed in 1994 and claimed he agreed, under duress by police, to the investigation being discontinued. In Australia, Mr Dranichnikov claimed refugee status on the basis of a well-founded fear of persecution if he returned to Russia for speaking out on law and order issues.

The RRT dismissed his case on the basis that any persecution Mr Dranichnikov had suffered was not due to membership of a particular social group and that his claim had no connection with the United Nations Convention Relating to the Status of Refugees. A single judge of the Federal Court, and the full Federal Court on appeal, held that no error on the part of the RRT was shown.

But the High Court, by a 4-1 majority, held that the RRT misunderstood Mr Dranichnikov's case and failed to make a preliminary determination of whether the narrower group or class to which Mr Dranichnikov claimed to belong – business people who publicly protested against organised crime and state-sanctioned corruption – constituted a social group for the purposes of the Convention.

The majority held that Mr Dranichnikov, who represented himself, had made out his entitlement to relief under section 75(v), and ordered the issuing of writs of certiorari to quash the RRT's decision, mandamus to compel it to again review the department's decision, and prohibition to prevent the Minister implementing the RRT's original decision.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*