



HIGH COURT OF AUSTRALIA

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SZATV v MINISTER FOR IMMIGRATION AND CITIZENSHIP AND REFUGEE REVIEW
TRIBUNAL

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Relocation to another part of a country of nationality by applicants for protection visas may sometimes be reasonable, the High Court of Australia held in two judgments today.

SZATV, from Chernovtsky in what is now Ukraine, trained as a civil engineer but worked as a journalist. He wrote stories on regional government corruption but after a campaign of alleged intimidation he came to Australia in 2001. He was refused a protection visa. That decision was affirmed by the Refugee Review Tribunal in 2003. The RRT accepted that SZATV had been subjected to systematic harassment, including physical mistreatment, but held that the persecution was localised and he could reasonably move to another part of Ukraine so his fears of persecution upon returning to Ukraine were not well-founded. Appeals to the Federal Magistrates Court and the Federal Court of Australia were dismissed. SZATV appealed to the High Court. The appeal was heard with the appeal by SZFDV also concerning the internal relocation principle.

SZFDV, from the Indian State of Tamil Nadu, claimed his family were Communist sympathisers and that his brother was killed by members of the major Tamil parties, the DMK and AIADMK. At the mill where he worked he was elected a trade union leader and was involved in pay disputes. SZFDV said the mill owners held him responsible for the mill's closure by government order in 2002, that the owners used their DMK influence to procure the laying of false charges of murder of a DMK leader, and that he was assaulted by DMK members and his family threatened. He moved to the capital Chennai (formerly Madras) where he continued to fear DMK persecution. He left for Australia in May 2004. An application for a protection visa was refused. This decision was upheld by the RRT, the Federal Magistrates Court and the Federal Court. The RRT noted that the adjoining State of Kerala had a large Tamil-speaking community and that the Communist Party had a significant presence. SZFDV appealed to the High Court.

The Court unanimously allowed SZATV's appeal but refused SZFDV's appeal by a 4-1 majority. It held that whether it is reasonable or practicable to relocate to another part of the country depends upon the particular circumstances of the applicant and the impact upon that person of relocation. Differential treatment in matters like race or religion may be encountered in parts of a country whereas in other parts there is insufficient basis for a well-founded fear of persecution. In other cases, the conduct or attribute of an individual attracting persecution may be unrelated to regional geography.

In SZATV's case, the Court held that the effect of the RRT's decision was that SZATV was expected to move elsewhere, not work as a journalist, and live discreetly so as not to attract the attention of authorities. It held that the RRT had not properly considered whether his fear of persecution was well-founded and ordered the RRT to reconsider SZATV's application for review. In SZFDV's case, the Court held that it may be reasonable to relocate in the country of nationality to a region where objectively there is no appreciable risk of recurrence of the feared persecution. It held that the RRT had properly considered that SZFDV could safely relocate to Kerala and that it would not be unreasonable to expect him to do so.

- *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.*