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NEWS RELEASE

ICJ Welcomes New Zealand Court of Appeal Decision on Zaoui Case

Sydney, 21 October 2004

“We welcome the decision of the Court of Appeal of New Zealand in the landmark human rights case relating to the deportation of Ahmed Zaoui on grounds of danger to national security. It is the first such case in New Zealand,” said the Hon. John Dowd AO QC, President of the Australian Section of the International Commission of Jurists.

The ICJ was represented by observers at the first instance and at the appeal hearings in the New Zealand High Court.

Mr Zaoui has been held in detention since December 2002 when he arrived in New Zealand. He had been recognised as a refugee, but is the subject of a Security Risk Certificate, which, if confirmed by the Inspector-General of Security, could lead to his deportation by the Minister.

The Attorney-General had argued that the Inspector-General was concerned only with security questions and had no role to consider human rights issues, such as the prohibition under the Refugees Convention of expulsion or return (refoulement) where it would threaten the person's life or freedom.

The Court held that New Zealand's obligations under the Refugee Convention must be taken into account by the Inspector-General in deciding whether there are reasonable grounds for considering Mr Zaoui as a danger to national security. For grounds to be considered reasonable in terms of the Convention, they must be objectively reasonable, and based on credible evidence: “The danger to security must be serious enough to justify frustrating the whole purpose of the Refugee Convention by sending a person back to persecution”. The danger to security must be present or future, rather than past, and must involve a substantial threatened harm. Human rights instruments may also be relevant to the issue of danger to security.

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“In establishing a high threshold for determining whether there is a danger to security, by ensuring that New Zealand’s obligations towards refugees and other human rights issues are relevant to this determination, and by bringing the process within the scope of judicial review, the Court has maintained the important values of human rights and the rule of law in dealing with national security issues. “It has also restated the importance of the humanitarian objectives of the Refugee Convention,” said Mr Dowd.

The decision is in line with decisions of the House of Lords (Rehman) and the Canadian Supreme Court (Suresh).

The New Zealand government has announced its intention to appeal the decision.

For further comment and information, please contact Mr John Dowd, President, Australian Section International Commission of Jurists on 9266 0950, Mr Steve Mark, Chairman, Council of the International Commission of Jurists on 0419 855 002, or Justice Elizabeth Evatt, Council Member, on 9361 3867.

Background: The Zaoui Case

Mr Ahmed Zaoui, an Algerian national, was recognised by the New Zealand Refugee Status Appeals Authority as a refugee on 1 August 2003.

The Director of Security issued Security Risk Certificate in respect of Mr Zaoui. One of the grounds relied on was that there were “reasonable grounds for regarding him as a danger to the security of New Zealand, in terms of Article 33.2 of the Refugee Convention” (New Zealand Security Intelligence Service Act, s 114C(6) (a)). Zaoui applied to the Inspector-General of Intelligence and Security for a review of the Director’s decision to make the Security Risk Certificate.

On 6 October 2003 the Inspector-General gave an interlocutory decision about the procedure that he intended to follow. Mr Zaoui sought judicial review of this decision in the High Court which ruled that he should receive a summary of “classified security information”. There was no appeal on this issue, but other aspects of Williams J decision, including the right to judicial review, were appealed to the Court of Appeal.

The Court of Appeal found that judicial review of the Inspector-General’s ruling was available in this case as the errors asserted were material errors of law and thus were jurisdictional issues. It considered the extent and nature of information which must be provided to the person affected in the review process. The Attorney-General had appealed on the ground that the Inspector-General of Security was concerned only with security issues, and did not have to consider any human rights issues before confirming a security risk certificate. The Court held that the Inspector-General must consider the issue of danger to security in light of New Zealand’s obligations under the Refugee Convention to provide asylum from persecution. Other human rights obligations may also be relevant.

The Court indicated that if the Security Risk Certificate was confirmed by the Inspector-General, the Minister would have to consider human rights issues and weigh those against security risks in deciding whether to rely on the certificate to remove or deport Mr Zaoui. The Minister has to balance the consequences to the individual against the danger to security.

Following the decision, the next step appears to be the completion of the proceedings under which the Inspector-General will decide whether or not to confirm the Security Risk Certificate.

The Court of Appeal was constituted by Anderson P, Glazebrook J and William Young J. Judgment was dated 30 September 2004, delivered on 1 October. The Crown appeal was dismissed and Mr Zaoui’s cross appeal was allowed.

Parties: The Attorney-General, Appellant, Ahmed Zaoui, First Respondent, the Inspector-General of Intelligence and Security, Second Respondent, the Human Rights Commission, Intervener.

 Zaoui v Attorney-General [2004] 2 NZLR 339 (Williams J)
 Suresh v Canada (Minister of Citizenship and Immigration) [2002] 1 SCR 3.
 Secretary of State v Rehman [2002] 1 All ER 2, (H.L.)