



HIGH COURT OF AUSTRALIA

11 September 2019

DANIEL TAYLOR v ATTORNEY-GENERAL OF THE COMMONWEALTH
[2019] HCA 30

Today the High Court published reasons for the answers given on 19 June 2019 to questions stated in a special case. A majority of the Court held that it was unnecessary to answer the substantive questions stated in the special case in order to determine the plaintiff's entitlement to relief, on the basis that s 268.121(2) of the *Criminal Code* (Cth) precludes the private prosecution of an offence against Div 268 of the *Criminal Code*.

Under s 13(a) of the *Crimes Act 1914* (Cth), any person may institute proceedings for the commitment for trial of a person in respect of an indictable offence against the law of the Commonwealth, unless the contrary intention appears in the Act creating the offence. Section 268.121(1) of the *Criminal Code* provides that proceedings for an offence against Div 268 of the *Criminal Code* must not be commenced without the written consent of the Attorney-General of the Commonwealth. Section 268.121(2) of the *Criminal Code* provides that an offence against Div 268 "may only be prosecuted in the name of the Attorney-General".

On 16 March 2018, the plaintiff lodged a charge-sheet and draft summons at the Melbourne Magistrates' Court alleging that Aung San Suu Kyi, Minister for the Office of the President and Foreign Minister of the Republic of the Union of Myanmar, had committed a crime against humanity in contravention of s 268.11 of the *Criminal Code*, a Commonwealth indictable offence that appears in Div 268 of the *Criminal Code* and is unable to be heard and determined summarily. The plaintiff lodged the charge-sheet and draft summons in purported reliance on s 13(a) of the *Crimes Act*. Also on 16 March 2018, the plaintiff requested the consent of the Attorney-General of the Commonwealth under s 268.121(1) of the *Criminal Code* to the commencement of the prosecution. The Attorney-General did not consent to the prosecution.

On 23 March 2018, the plaintiff commenced a proceeding against the Attorney-General in the original jurisdiction of the High Court, seeking to quash the decision not to consent to the commencement of the prosecution and to compel the Attorney-General to reconsider the request for consent. A majority of the Court held that, by providing that an offence against Div 268 of the *Criminal Code* "may only be prosecuted in the name of the Attorney-General", s 268.121(2) of the *Criminal Code* provides a contrary intention for the purpose of s 13(a) of the *Crimes Act* so as to preclude the private prosecution of an offence against that Division. Accordingly, a majority of the Court held that the decision made by the Attorney-General not to consent to the plaintiff's proposed prosecution of Ms Suu Kyi was the only decision legally open and that the relief sought by the plaintiff could only be refused.

- *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.*