



6 September 2017

## HIGH COURT OF AUSTRALIA

SZTAL v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR;  
SZTGM v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR  
[2017] HCA 34

Today the High Court, by majority, dismissed two appeals from a decision of the Full Court of the Federal Court of Australia. The High Court held that "cruel or inhuman treatment or punishment" or "degrading treatment or punishment" within the complementary protection regime in s 36 of the *Migration Act* 1958 (Cth) require the existence of an actual subjective intention by a person to inflict pain or suffering or to cause extreme humiliation.

SZTAL and SZTGM ("the appellants") came to Australia from Sri Lanka and applied for protection visas under the complementary protection regime. The appellants' applications for protection visas were refused by delegates of the Minister for Immigration and Border Protection. The appellants each applied for review of these decisions by the Refugee Review Tribunal ("the Tribunal"). The issue for the Tribunal was whether the appellants were eligible for protection visas under the complementary protection regime in the *Migration Act*. The complementary protection regime allows a protection visa to be granted to a non-citizen if there is a real risk that the non-citizen would suffer "significant harm" as a consequence of being removed from Australia. The definition of "significant harm" includes "cruel or inhuman treatment or punishment", relevantly defined as an act or omission by which pain or suffering is "intentionally inflicted", and "degrading treatment or punishment", relevantly defined as an act or omission which is "intended to cause" extreme humiliation.

The Tribunal found that the appellants would likely be held in remand for a short period if they were returned to Sri Lanka and accepted that prison conditions in Sri Lanka were such that the appellants may be subjected to pain or suffering, or humiliation. However, the Tribunal concluded that there was no intention to inflict pain or suffering, or to cause extreme humiliation. Country information indicated that the conditions in prisons in Sri Lanka were the result of a lack of resources, which the Sri Lankan government acknowledged and was taking steps to improve.

On applications for judicial review, the Federal Circuit Court of Australia considered that the Tribunal did not err in concluding that "intentionally inflicted" and "intended to cause" connote the existence of an actual subjective intention on the part of a person to bring about pain or suffering, or extreme humiliation. A majority of the Full Court of the Federal Court agreed.

By grant of special leave, the appellants appealed to the High Court. The High Court dismissed the appeal. A majority of the Court held that the expressions "intentionally inflicted" and "intended to cause" require actual subjective intention to bring about pain or suffering or humiliation. The majority rejected the appellants' contention that the element of intention was satisfied where a person did an act knowing that the act would, in the ordinary course of events, inflict pain or suffering or cause extreme humiliation.

- *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.*