
Canada

Court slams IRB order for Tamil's release; Possible Terrorist; Refugee board ignored safety fears: judge

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The Federal Court of Canada has rebuked the Immigration and Refugee Board for putting the rights of a foreign national being investigated for possible links to a terrorist group above the protection of Canadians.

The sternly worded court ruling overturns the IRB's release of one of 76 Tamil migrants fleeing the Sri Lankan civil war who arrived off the West Coast in October aboard the Ocean Lady before the government could finish investigating any links to the Tamil Tigers, saying the IRB "effectively usurped" the government's role of probing security threats.

"While the importance of not unduly detaining such persons cannot be forgotten, the protection of Canadians and Canada's pressing interest in securing its borders are also worthy considerations," wrote Justice Robert L. Barnes in his ruling released this week.

While the government cannot use the Immigration and Refugee Protection Act (IRPA) to detain a foreign national indefinitely, "it is entitled to a reasonable time to complete its admissibility investigation," he wrote.

The case assessed for the first time the power of the IRB to dismiss government suspicion of migrants for security reasons and found it was "misconstruing the scope of its authority."

The migrant, who cannot be identified by order of the court, was among those found aboard a ship intercepted off the coast of Vancouver Island on Oct. 17. All were detained under IRPA until their admissibility to Canada was determined -- particularly while the government investigated if any are members of the Liberation Tigers of Tamil Eelam (LTTE), an outlawed terrorist group under Canadian law.

At a detention review on Nov. 5, an adjudicator for the IRB agreed his detention was justified while the investigation was underway.

Another detention hearing, as required by law, was convened on Dec. 9, at which IRB adjudicator Otto Nupponen ordered the man's release.

Mr. Nupponen accepted the government's evidence that the Ocean Lady was, in fact, a ship named Princess Easwary that "possibly was an LTTE-controlled ship;" that there were likely "several" LTTE members among the passengers; "traces of several explosives" had been found on board; and the clothing of two passengers also tested positive for explosives.

Nevertheless, Mr. Nupponen criticized the impartiality of evidence from Dr. Rohan Gunaratna, a

Singapore-based terrorism specialist, concluding there was no evidence the man in question was a Tamil Tiger. He accepted the migrant's testimony as "nothing other than fully open and fully honest."

Mr. Nupponen was also critical of the wisdom and quality of the government's probe.

Government agents were swabbing areas of the ship in search of more evidence of explosives, comparing testimony from all onboard, investigating phone numbers and email addresses the man had with him, tracing the route and origin of the vessel and looking for any hidden meaning in his tattoos.

"One questions whether that type of ongoing investigation is a useful use of an officer's time," Mr. Nupponen said. "The steps to be taken are essentially, at this point, no more than a fishing expedition and are not necessary steps as regarding the statute."

Justice Barnes was as critical of Mr. Nupponen's assessment as Mr. Nupponen was of the government's case.

"In cases of mass arrivals from some parts of the world it may well take several months for the Minister to complete an investigation, particularly where the identity of the individuals is in issue. In this case, the Minister's investigation was clearly incomplete and it was wrong for the Board to decide for itself that, in the case of the [migrant], enough had been done or that more should have been done," Justice Barnes wrote.

He added that Parliament clearly did not intend IRB adjudicators to conduct their own, fresh investigations to decide if there is a reasonable security suspicion about a migrant.

The ruling means the man will officially return to custody -- although he never left, since he was held pending the outcome of the government's appeal to the court.

The case was one of the first of the Ocean Lady migrants to go before the IRB. Since then, the IRB has ordered the release of all 76 of the travellers on conditions, said Paula Faber of the IRB. Of those 76, 48 have already been released.

"We are studying the decision with interest," she said.

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Black & White Photo: Ian Smith, Canwest News Service Files / A group claiming to be fleeing the Sri Lankan civil war arrived by boat off the West Coast last October.