

Federal Court Decisions

Eligibility for social security benefits: Refugee and Stateless Persons Conventions

GOLOVCENCO v CENTRELINK

(Federal Court of Australia)

Decided: 30 May 2003 by Cooper J.

Golovcenco applied for an Order of Review in respect of a decision of Centrelink not to grant him social security benefits.

The facts

Golovcenco was interviewed by Centrelink when he inquired about making a claim for newstart allowance. He did not lodge a claim. Golovcenco was advised by a Centrelink officer during the interview that he was not entitled to newstart allowance because he held a bridging visa and so was not residentially qualified. Golovcenco later contacted Centrelink about a claim for special benefit. Centrelink treated this contact as a claim and rejected the claim on the basis Golovcenco was not residentially qualified for special benefit. Golovcenco did not seek review by an authorised review officer of either 'decision'.

Golovcenco lodged an Order of Review in the Federal Court and the Court directed Golovcenco to lodge a claim for newstart allowance so that there was a decision to review. This claim was rejected by Centrelink because Golovcenco did not meet the residency requirements.

The law

According to s.593(1)(g)(ii) of the *Social Security Act 1991* (the Act) one of the requirements for eligibility for newstart allowance is that the applicant be an Australian resident. The term Australian resident is defined in s.7 of the Act to include an Australian citizen or the holders of certain visas. The bridging visa held by Golovcenco is not included in the classes of visa set out in s.7.

Golovcenco's argument

Golovcenco argued that because Australia was a signatory to the Refugees Convention and the Stateless Persons

Convention, Australia was obliged to afford to a refugee and a stateless person the same treatment as is afforded to nationals with respect to social security benefits. Golovcenco argued he was both a refugee and a stateless person and his entitlement to a social security benefit arose independently of any right under the Act.

A personal enforceable right under the Conventions

Australia has implemented the Refugee Convention by providing for protection visas in the *Migration Act 1958*. Golovcenco had applied for a protection visa and his application had been refused. This decision was affirmed by the Refugee Review Tribunal (RRT) and the Federal Court. Therefore Golovcenco was not a refugee.

The RRT found that Golovcenco was a stateless person because he had renounced his citizenship of Moldova, the country of his birth.

The Stateless Persons Convention has not been adopted into Australian domestic law. Golovcenco argued that as a result of the decision in *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 Australian legislation should be interpreted in such a way that it gives effect to Australia's obligations under the treaty. Cooper J noted that if a treaty had been adopted into Australian domestic law, certain laws would have been created giving rights and obligations to the persons affected. Because the Stateless Persons Convention has not been adopted by Australia, Golovcenco had no enforceable right under it and Australia has no obligations under domestic law to him. The decision in *Teoh* did not change this situation. *Teoh* decided that if a statute is ambiguous and a Convention has not been adopted into Australian domestic law, the courts should favour an interpretation that accords with Australia's obligations under the Convention.

In the present case the applicant does not, and cannot, point to any ambiguity in a statutory enactment which ought to be construed so as to give him enforceable rights to obtain social security benefits on the basis of his being a stateless person.

(Reasons, para. 19)

Golovcenco also referred to the Agreement between Australia and Austria on social security matters. That agreement referred to stateless persons

but only in relation to age, invalid, wife, carer and widowed persons pensions. It had no application to newstart allowance or special benefit and so did not apply to Golovcenco.

Formal decision

The application was dismissed and Golovcenco was ordered to pay the costs.

[C.H.]

FTB debt: residential qualification; waiver

DRANICHNIKOV v CENTRELINK

(Full Federal Court of Australia)

Decided: 19 June 2003 by Hill, Kiefel and Hely JJ.

The issues

There were a number of grounds of appeal before the Court but those of particular interest related to whether Dranichnikov met the residential requirements for family tax benefit or otherwise had an entitlement to that benefit. If he did not, the issue was whether a debt of family tax benefit raised against him should be waived.

Background

Dranichnikov and his wife had applied for a protection visa claiming that they were refugees. They were granted a Bridging Visa A, carrying with it the right for Dranichnikov to work until the final determination of their claims. As at the date of the Court's decision, their claim had not been finalised but as a result of a recent decision of the High Court of Australia, their application to the Refugee Review Tribunal has been remitted to that Tribunal for further consideration.

A tax agent lodged electronically Dranichnikov's income tax return for the year ending 30 June 2001. This occurred after Dranichnikov had been advised by Centrelink that he had no entitlement to a family tax benefit. Apparently, the return stated that Dranichnikov was a resident of Australia for income tax purposes, which was accepted as being correct. Dranichnikov