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Meanwhile, down south one slips past the keeper

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On the very day this week that the full Federal Court was ever so gently reading up our rights by doing away with the World Youth Day regulation that clumsily sought to protect "pilgrims" from annoyance, a different bench of the court in Melbourne was reading down our rights, with much more serious and fundamental implications.

That court confirmed the right of the Federal Government to interfere in decisions affecting the basic human rights of Australian citizens.

We enter the province of the Attorney-General's magic certificates in so-called security cases.

Syed Mustapha Hussain is the man at the eye of this storm. He's a 24-year-old Australian citizen. He came to this country with his family in 1991, went to school in Melbourne and enrolled in a bachelor of medical science degree course at La Trobe University.

Hussain studied there for one semester before receiving a scholarship to the Islamic University of Medina in Saudi Arabia. In 2005 he returned to Australia for a holiday and while he was here the Australian Security Intelligence Organisation came calling and interviewed him.

Following that discussion with the authorities his passport was cancelled by the then minister for foreign affairs, Alexander Downer, and his application for a new passport was refused.

The decision was based on an adverse security clearance given by ASIO, an organisation whose infallibility can never be questioned. ASIO declared that if Hussain travelled overseas he might get involved with people who would pose a risk to Australia's security or even to the security of a foreign country.

When Hussain sought a review before the Administrative Appeals Tribunal the then attorney-general, Philip Ruddock, started issuing certificates that forbade the disclosure of the ASIO assessment.

Not only that, Hussain's lawyers, Julian Burnside and Laurence Maher, were not allowed to see the reasons for the adverse security assessment, which as you might imagine made the job of successfully challenging the original decision well nigh impossible.

So here we have hearings, whose outcome affects the liberty and movement of a citizen, large parts of which are held in secret, with the citizen's counsel removed from the proceedings and the essential documents kept from them.

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Further, the attorney-general's reasons for issuing these certificates can amount to a meaningless fudge of bureaucratise.

In this case Ruddock declared: "Disclosure of the contents of the documents ... would be contrary to the public interest because the disclosure would prejudice security." End of explanation.

Even after the tribunal hearing was over, ASIO slipped further affidavit evidence before the tribunal of which the citizen was unaware until after its edited reasons had been released.

In addition, the full Federal Court that heard the appeal did not even see the ASIO assessment.

This is the Australia of 2008.

Incredibly, in the portion of its reasons that were open, the Administrative Appeals Tribunal said: "There is no evidence ... to suggest that, if Mr Hussain is permitted to hold an Australian passport, he is likely to engage in military jihad type activities in Iraq. His relations with people who may hold extremist views appear innocent."

However, in the light of the certified material provided by the Government, the tribunal said Hussain had not been honest in answer to some questions and that this adversely affected his credibility.

As if this legislative regime were not troubling enough, the court's handling of it can be described only as depressing. The reasons on Tuesday came from Justices Mark Weinberg, Annabelle Bennett and Richard Edmonds.

They accepted that even if hypothetically Hussain could have a complete answer to whatever is in the ASIO assessment, nonetheless the tribunal can never learn of that answer because it is not in a position to test any evidence led against him.

Even the Commonwealth's counsel, the next solicitor-general, Stephen Gageler, acknowledged that "a hearing of this nature could not be characterised as fair".

The important question then was whether judges who take part in this sort of process would erode the public confidence in the judiciary and judicial independence.

Not at all, the full court pronounced, and then gallivanted off to explain that there are lots of circumstances where judges quietly cross-dress as administrators. It cited the issuing of various warrants and control orders, judges sitting as royal commissioners and even Sir Owen Dixon becoming ambassador to the United States while on leave from the High Court, between 1942 and 1944.

Nonetheless, there remains a very nasty taste in the mouth about the raw and brutal way that judges are being jiggled up under the security law to provide a "veneer of impartiality" to what really are rigged proceedings.

The court said it doubted that "ordinary members of the community" would be concerned that judicial integrity could be compromised by such an arrangement.

Where's the evidence for that?

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