The detention of asylum seekers in the European Union and Australia

Propositions

of the dissertation

The Detention of Asylum Seekers in the European Union and Australia
- A Comparative Analysis

by Mark Provera

1. Subscription to international human rights conventions is not, of itself, a sufficient basis for the trust that States place in each other or that individuals place in States in relation to the treatment of asylum seekers.

2. The European Union and Australia are primarily concerned with immigration control over humanitarian concerns.

3. The principle of proportionality has the potential to be a powerful shield against unjustified intrusions on the right to liberty – that is, if it is not being used as a sword.

4. The effective review of detention decisions encompasses more than just judicial review but also knowledge of one's rights, physical (and, where necessary, financial) access to lawyers and external agencies or organisations.

5. The European Union's accession to the European Convention on Human Rights may finally give the Union the "complete system of legal protection" it always thought it had.

6. The best interests of an unaccompanied minor can only be advanced and protected by a guardian who has no other conflicting interests or roles.

7. To safeguard its own jurisdiction, there is merit in the High Court of Australia following the approach of *R v Panel on Takeovers and Mergers, Ex parte Datafin plc* [1987] QB 815.

8. Personal and non-compellable Ministerial discretion is a forensic noxious weed in the Australian *Migration Act 1958* (Cth).

9. Compassion is a starting point for understanding and explaining the challenges of life.

10. Empathy can lead to more durable solutions to address human suffering.

11. In Maastricht power can be found not in the corridors but, rather, on the stairs.