

US SUPREME COURT RULING STRIKES DOWN MILITARY COMMISSION AND AFFIRMS THE RULE OF LAW

Wednesday 7 July 2006

Liberty Victoria welcomes the United States Supreme Court's decision that the Guantanamo Bay military commission, convened to try David Hicks and other prisoners, violates international law and the US Constitution.

In *Hamdan v. Rumsfeld*, handed down last Thursday 29 June 2006, five of eight Supreme Court judges held that the deeply flawed structure and procedures of the military commission meant it could not conduct fair trials.

The flaws identified by the Court were numerous and profound. The commission's military judges were at risk of bias, since they were appointed by the charging prosecutor, who in turn was appointed by Defense Secretary Donald Rumsfeld. Prisoners tried in the commission were not to have access to evidence used against them. Moreover, such evidence could include anything that 'would have probative value to a reasonable person', even when obtained by way of cruel, inhumane or degrading treatment. The commission system contained no proper appeals process, and its rules were subject to *ad hoc* changes at the behest of the Government.

On these grounds, said the Supreme Court, the military commission violated the Geneva Conventions. The Geneva Conventions provide that all foreign nationals captured in war have the right to a trial by impartial judges, in accordance with due process.

In a significant rebuke to the Bush Administration, the Court also held that the military commission went beyond the wartime powers granted to President Bush by the US Congress, after the terrorist attacks of 11 September 2000. This aspect of the ruling may affect the legality of other White House activities, such as phone tapping without judicial oversight.

The decision in *Hamdan v. Rumsfeld* is a victory for the rule of law, and a timely brake on the Bush Administration's misuse of executive power in its so-called 'war on terror'. Liberty Victoria applauds the American Civil Liberties Union for its comprehensive

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friend-of-the-court brief, and its ongoing efforts to hold George W. Bush accountable for his Government's human rights abuses.

Liberty Victoria now calls on Prime Minister John Howard to acknowledge the deficiencies of the US military justice system, and to demand David Hicks' return to Australia.

Liberty further calls on Foreign Minister Andrew Downer to desist from his continuing public condemnation of David Hicks. The Minister's comments demonstrate his contempt for the independence of the judicial process, and for the important principle that an accused person is innocent until proven guilty. These comments seriously prejudice Mr Hicks's chances of receiving a fair trial in any tribunal.

Links

US Supreme Court ruling in *Hamden v. Rumsfeld*: [www.supremecourtus.gov](http://www.supremecourtus.gov/opinions/05pdf/05-184.pdf)
(<http://www.supremecourtus.gov/opinions/05pdf/05-184.pdf>)

American Civil Liberties Union friend-of-the-court brief:
www.aclu.org/scotus/2005/hamdanv.rumsfeld05184/23395lgl20060104.html