

The Result

The *Alvarez* case presents several legal questions, and the US Supreme Court has a number of alternatives. It can:

- Preserve victims' right to sue for human rights violations by focusing on other questions before the court;
- Decide to clarify the scope of human rights abuses that fall under ATCA;
- Address the specific facts of the *Alvarez* case and rule on the question of whether transborder abduction is or is not a violation of the law of nations;
- Examine whether the US government is liable to the plaintiff under another law, such as the *Federal Tort Claims Act*, which under some circumstances waives the sovereign immunity the government generally enjoys from lawsuits; and
- Reject the DOJ's position and hold that ATCA does, indeed, create a cause of action for human rights abuses.

The *Alvarez* case is scheduled to be heard this year. Many are interested in the result.

TENDER PROCEDURES*

Pratt Contractors Ltd v Transit New Zealand (Privy Council [2003] UKPC 83 1 December 2003)

Tender – Preliminary contract – Procedures – To act fairly doesn't mean a requirement to act judicially

Background

The case was an appeal from the New Zealand Court of Appeal regarding what are the requirements for a preliminary "procedural" contract arising from the issue of a request for tenders for a roading contract.

Facts

Transit New Zealand requested tenders for a contract to realign State Highway 1. Pratt Contractors was unsuccessful. Pratt Contractors argued that the terms of the request for tenders gave rise, immediately upon submission of the tender, to a preliminary contract which contained express and implied terms as to the method by which Transit would select the successful tenderer and that Transit acted in breach of these terms.

Judgment

The Privy Council agreed with the Court of Appeal that the request for tenders did not incorporate Transit's manual of competitive pricing procedures. The requirement to act fairly meant all the tenderers had to be treated equally. Transit was permitted to appoint members of the tender evaluation team who had views about the tenderers, whether favourable or adverse. The obligation of good faith and fair dealing did not mean that the tender evaluation team had to act judicially.

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