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International Court orders Australia to keep seized Timor files sealed

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The International Court of Justice has ordered Australia to keep under seal the files seized by security agents last year from East Timor's lawyer.

Judges at the Hague also told Australia it must not spy on Dili's communication with its legal advisors.

But East Timor did not succeed in persuading the court to order the return of the material.

Correspondent: Mary Gearin

Speakers: Peter Tomka, President of the ICJ; Neil Mules, Australia's ambassador to the Netherlands; Bernard Collaery, Australian lawyer

MARY GEARIN: The materials were seized last year just before East Timor was to use them in arbitration challenging the countries' oil and gas agreements.

Dili has made the explosive claim that in the files was evidence from a former spy that Canberra bugged East Timor's cabinet offices as the 2006 treaty was being negotiated.

East Timor wanted the seized materials returned. Instead the judges ordered Australia must keep them under seal until further notice from the court.

President of the ICJ Peter Tomka said Australia's access to the materials could put Timor at a disadvantage.

PETER TOMKA: The court is of the view that the right of Timor-Leste to conduct arbitral proceedings and negotiations without interference could suffer irreparable harm if Australia failed to immediately safeguard the confidentiality of the material seized by its agents seized on 3rd December 2013.

MARY GEARIN: Australian Attorney-General George Brandis has made several undertakings to the court that he wouldn't look at the files nor would anyone else in government except for national security purposes.

But the panel of judges ruled that wasn't quite enough, as president Tomka explained.

PETER TOMKA: Given that in certain circumstances involving national security, the Government of Australia envisages the possibility of making use of the seized material, the court finds that there remains a risk of disclosure of this potentially highly prejudicial information.

MARY GEARIN: The court also ruled Australia shall not interfere in any way with communication between East Timor and its advisers in connection with pending arbitration, with any future negotiations about maritime delineation or any other related case.

Australia's ambassador to the Netherlands Neil Mules says Canberra would closely review the terms of the decision.

NEIL MULES: The Government remains of the view that it has a very strong case which we will continue to defend strongly in the substantive case, which is of course now underway.

MARY GEARIN: The lawyer whose offices were raided, Bernard Collaery, welcomed the rulings.

BERNARD COLLAERY: Well, this vindicates the firm position taken by Timor-Leste on the matter.

MARY GEARIN: What's the significance of the last ruling by the judges that Australia can't intercept communications between East Timor and its legal advisors?

BERNARD COLLAERY: Well that order extends of course between legal advisors as well. This is highly significant order. I think it's a sad day that an order like that has to be given to a rule of law country that Australia should be.

MARY GEARIN: The judges did not address East Timor's argument that the ASIO raids were illegal. The court's decision is provisional; Australia can still argue to have access to the documents over the coming months.

STATEMENT FROM AUSTRALIAN ATTORNEY GENERAL GEORGE BRANDIS: The Australian Government is pleased with the decision of the International Court of Justice in Timor-Leste v Australia, delivered at The Hague overnight, refusing Timor-Leste's application for the delivery up of the documents taken into possession by ASIO, in execution of a search warrant in Canberra in December 2013.

The order of the Court extended, until the final hearing of the case, undertakings which were offered by Australia during the course of the hearing. These orders will, of course, be complied with. This is a good outcome for Australia.

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