

Casenote

PLAINTIFF S99v MINISTER FOR IMMIGRATION AND BORDER PROTECTION (High Court of Australia, 2016)

Last updated: July 2016

This case note provides an overview of the matter heard by Bell J, sitting as a sole judge of the High Court of Australia on 31 May 2016. The case concerns the detention of men in the Regional Processing Centre (RPC) on Manus Island in Papua New Guinea. The case has not yet reached judgment.

The Plaintiff

The plaintiff, Benham Satah, is a 33 year old male of Kurdish ethnicity from the Islamic Republic of Iran (Iran). The plaintiff claims that he is a refugee and is seeking protection due to a well-founded fear of harm from the Islamic Revolutionary Guard on the basis of his Kurdish ethnicity, his profession as a journalist for a number of Iranian newspapers and membership of the Kurdish Democratic Party.

The plaintiff left Iran in February 2013 and was intercepted at sea by officers of the Australian Commonwealth in July. He was taken to and detained on Christmas Island until August 2013, when he was forcibly transferred to the Manus RPC. As at May 2016, the plaintiff had been detained in the Manus RPC against his will and without his consent for approximately two years and eight months. During this time his movement had been restricted: the plaintiff was not permitted to move between compounds or associate with detainees in other compounds without permission and was under permanent security surveillance. The plaintiff could only leave the Manus RPC for scheduled appointments or excursions under escort by security guards, who were contracted by the Australian Government.

Facts

The Manus RPC is an aspect of the Australian offshore processing regime, governed by a [Memorandum of Understanding](#) between the Australian and PNG governments. The plaintiff claims that Australia and/or the Minister for Immigration and Border Protection (Minister) have been his 'de facto and/or effective gaolers' as they have funded, coordinated or otherwise sought to procure the detention of the plaintiff in the Manus RPC against his will.

On 26 April 2016, in the case of [Namah v Pato](#), the Supreme Court of PNG held that the 'forceful bringing into and detention of the asylum seekers [in the Manus RPC] is unconstitutional and is therefore illegal.' The following day, the Prime Minister of PNG [Peter O'Neill stated](#) that 'PNG will immediately ask the Australian Government to make alternative arrangements for the asylum seekers currently held at the RPC.' However, the Australian government did not immediately provide an alternative arrangement. The [Minister stated](#) that Australian 'policy is not going to change' and that persons detained in the Manus RPC 'won't be settling in this country.' In early May 2016, immigration authorities in PNG were reported to have '[opened the gates](#)' to the Manus RPC, and claimed that the men in the RPC now had freedom of movement. However, there remains a dispute as to whether or not the men on Manus Island are in fact 'free'.

Proceedings on 31 May 2016

The [proceedings on 31 May 2016](#) highlighted a problem with the form in which the case was brought. The case was originally a class action brought on behalf of multiple plaintiffs. However, Bell J found that there was enough 'difference in the situation of [the plaintiffs]' to 'raise a question about the appropriateness' of the 'global' action. As such, Bell J suggested that new proceedings may be brought by a single plaintiff with the intention that it would provide guidance as to the circumstances of all the other plaintiffs. The proceedings were stood over. It was expected that the next steps would be for lawyers for the plaintiff to file a notice of discontinuance and commence fresh proceedings with a single plaintiff.

Further reading

- [Plaintiffs S99-2014 v Minister for Immigration and Border Protection \(Cth\) & Ors, transcript of proceedings](#), [2016] HCATrans 125 (31 May 2016)
- [Namah v Pato](#) [2016] PGSC 13; SC1497 (26 April 2016), Supreme Court of Papua New Guinea
- Madeline Gleeson, '[Refugee status determination on Manus Island, Papua New Guinea](#)', Andrew & Renata Kaldor Centre for International Refugee Law, May 2016
- '[Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues](#)', 3 August 2013
- Michael Koziol '[Manus court ruling: Peter Dutton holds the line on refugees – but what happens next?](#)', *Sydney Morning Herald*, 27 April 2016
- Michelle Grattan, '[PNG asylum seeker judgment doesn't bind Australia: Dutton](#)', *The Conversation*, 26 April 2016

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