

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)

On 26 April 2016, in the case of Namah v Pato, the Supreme Court of PNG held that the government did not immediately provide an alternative arrangement. The Minister stated that

