High Court agrees to hear challenge to processing of asylum seekers on Manus Island

By Lorna Knowles

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The full bench of the High Court has agreed to hear a case that could end the processing of asylum seekers on Manus Island.

The plaintiff in the case, known as S156, is a detainee on Manus Island. He is suing the Commonwealth, alleging the establishment of the regional processing centre and the decisions to send him there were unlawful and unconstitutional.

He is seeking to be returned to Australia for processing.

In August 2012, the former Labor government controversially reopened the Manus Island regional detention facility. It began sending detainees there in November that year.

In written submissions before the court, the plaintiff's lawyers say the immigration minister at the time, Chris Bowen, made the decision to set up the centre on the island in unseemly haste.

The documents accuse Mr Bowen of trading human suffering on a massive scale and to sentence thousands of people, many of them genuine refugees, for an anticipated decrease in boats emanating from Indonesia.

It was illogical and irrational for the minister to determine to send possibly thousands of men and women to a remote island in a largely undeveloped country in circumstances where they would be indefinitely detained, where the necessary facilities and processes had not been established, and where the health and safety and refugee status of those persons would be risky and uncertain ...

Counsel will argue the decision was disproportionate because it exposed potentially thousands of genuine refugees to unknown suffering and delay in the processing of their claims.

Constitutional power in question

The application to the High Court was initially filed last August, and during a subsequent hearing barrister Mark Robinson SC argued the Commonwealth did not have the constitutional power to send asylum seekers to Manus Island.

We say the power in the constitution, primarily the immigration power, is not a power to pick someone up on arrival and to remove them to a third country at all, or to a third country where they will be detained, Mr Robinson told the court.

That was not envisaged by the founding fathers of the constitution.

Mr Robinson said section 198AB of the Migration Act was invalid, or alternatively that the declaration of the regional processing country of Papua New Guinea in October 2012 was invalid.

Alternatively, the plaintiff will argue the minister failed to consider other reasons why PNG was an unsuitable country for an offshore processing centre.

They argue Mr Bowen should have waited for a UNHCR report which found there was a total lack of legal or regulatory framework in PNG to deal with refugees.

A spokesman for Mr Bowen declined to comment.

A spokesman for current Immigration Minister Scott Morrison also declined to comment, saying the matter was before the courts.

It is the second time the High Court has been asked to rule on Australia's offshore processing plans.

In 2011 the High Court halted a plan for offshore processing in Malaysia.

The case will be heard on May 9.

Internet:

http://www.abc.net.au/news/2014-04-03/high-court-agrees-to-hear-challenge-to-processing-of-asylum-see/5364360