

**IN THE EASTERN CARIBBEAN SUPREME COURT
HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2007/0338

BETWEEN:

FRANKLIN JOSE ARCIA CAMPOS

Claimant

and

ATTORNEY GENERAL

Defendant

Appearances:

Mr. Steadroy Benjamin for the Claimant
Mrs. Karen Defreitas-Rait for the Defendant

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2009: October 6
2010: April 3
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JUDGMENT

- [1] **MICHEL, J.:** By Fixed Date Claim Form filed on 18th June 2007 the Claimant, Franklin Jose Arcia Campos, claimed against the Defendants, Colin Derrick (the Minister of Justice), Eric Henry (the Superintendent of Her Majesty's Prison) and the Attorney General, the following relief:

- (a) A Declaration that during the period 27th May 2005 to 10th April 200[7] the Claimant's constitutional and human rights were violated by the Prison Superintendent and other subordinate Prison Officers at Her Majesty's Prison acting in the performance or purported performance of their duties as employees, servants and/or agents of the Government of Antigua and Barbuda.
 - (b) A Declaration that the Claimant was subjected to cruel and inhuman treatment by the employees, servants and/or agents of the Government of Antigua and Barbuda in breach of Section 7 (1) of the Antigua and Barbuda Constitution Order 1981.
 - (c) Compensation and/or damages.
 - (d) Costs.
- [2] An Affidavit in Support of the Fixed Date Claim was filed on the same 18th June 2007, together with exhibits.
- [3] The documents having been served on the Defendants on 13th September 2007, the Attorney General's Chambers filed an Acknowledgement of Service on behalf of the Defendants on 26th September 2007.
- [4] By Order of Blenman, J. in Chambers dated 15th February 2008, Messrs Colin Derick and Eric Henry were struck out as defendants to the claim and the Attorney General, as the sole remaining defendant, was granted leave to file and serve an affidavit in answer to the claim within 6 weeks, while the Claimant was granted leave to file and serve a reply if necessary within 7 days thereafter.

- [5] On 12th and 13th June 2008, Affidavits in Response, together with exhibits, were filed on behalf of the Defendant, while on 26th June and on 1st July 2008, Affidavits in Reply were filed on behalf of the Claimant.
- [6] On 3rd July 2008 the Claimant filed a Pre-Trial Memorandum containing a concise statement of the nature of the proceedings, a statement of the issues to be determined at the trial and the factual and legal contentions of the parties.
- [7] On 25th July 2008 the Defendant filed a Pre-Trial Memorandum containing a concise statement of the nature of the proceedings, a statement of the issues to be determined at the trial, details of admissions made by the Defendant and the factual and legal contentions of the parties.
- [8] At the Pre-Trial Review of the matter on 19th September 2008, it was ordered that the affidavits filed by the parties would stand as evidence in the case and with the deponents attending the trial of the matter to be cross examined on their affidavits, unless their attendance is dispensed with.
- [9] On 14th May 2009 two Trial Bundles were filed by the Claimant, which included a Statement of Facts, Issues and Law submitted on behalf of the Claimant and the authorities intended to be relied on by the Claimant.
- [10] The trial of the matter took place on 6th October 2009.
- [11] At the commencement of the trial, Counsel for the Claimant informed the Court that the Claimant intends to proceed only with the claims and declarations relative to the cruel and inhuman treatment of the Claimant and will not urge any evidence on the issue of the delay in his trial. Paragraphs 8 to 20 of the Claimant's Affidavit in Support, filed on 18th June 2007, were accordingly expunged from the Court's record and the Affidavit consequentially renumbered and the Affidavit in Reply by Nicole Edwards, filed on 1st July 2008 on behalf of the Claimant, was also

expunged from the record. The Affidavit in Response by Curtis Bird, filed on 12th June 2008 on behalf of the Defendant, was also expunged from the record as a result of the Claimant's abandonment of part of his original claim.

[12] This left only 3 affidavits remaining – the Claimant's Affidavit in Support of the Fixed Date Claim filed on 18th June 2007, the Affidavit of Percy Adams in Response filed on 13th June 2008 and the Claimant's Affidavit in Reply filed on 26th June 2008. Only the Claimant and Mr. Adams were therefore called as witnesses to be cross examined on their affidavits, which constituted their evidence in chief.

[13] The evidence of the Claimant, as per his first affidavit, is that he is a national and resident of Venezuela. That on 27th May 2005, whilst going through the check-in procedures at the V. C. Bird International Airport to board a flight to travel to Venezuela, he was detained by officers of the Customs Department stationed at the said airport for having in his possession the sum of US\$135,000 and 24,000 pounds sterling, which said sums it was alleged he had failed to declare prior to his intended departure from Antigua in violation of the laws of Antigua and Barbuda. That he was subsequently charged for offences arising therefrom and was remanded in custody at Her Majesty's Prison from 27th May 2005 until 10th April 2007. That he was subjected to inhuman and cruel treatment contrary to section 7 (1) of the Antigua and Barbuda Constitution Order 1981. That at all material times during the period from 27th May 2005 to 10th April 2007 he was housed in a prison cell measuring 8 feet by 10 feet, with 5 other prisoners. That he suffered from asthma and claustrophobia. That many times during the 1 year and 11 months of his detention, because of the cramped, foul-smelling and badly-ventilated cells in which he was placed, he felt as though he was about to die. That rashes appeared all over his body and he suffered tremendous stomach aches and head-splitting headaches. That chronic headaches were frequent because at nights and even during the day his cell mates and himself were forced to relieve themselves in a small utensil which must be kept in the cell at all times

until permission was given to empty the receptacles. That the foul smell thus generated, the humidity during the day and the cold conditions during the night, mixed with human body odour cramped in a poorly-ventilated 8 feet by 10 feet cell, made it difficult to breathe and, when he did breathe, he was breathing foul air. That those were the conditions in which he lived for a period of 1 year and 11 months while he was on remand awaiting his trial. That he was allowed only 20 minutes out of his cell each day, during which time he had to take a bath, clean himself and take care of his immediate hygienic needs. That he spent 23 hours and 40 minutes every day locked in his prison cell. That he suffered in his health and was constantly sick. That he complained all the time to the prison guards, the nurse and even to the Superintendent of the Prison, all to no avail. That he implored them to help, but his pleas fell on deaf ears. That the food provided to him during his detention was imbalanced. That as a detained prisoner on remand he was forced to eat food without vegetables. That the food was under prepared and was served in very small quantities. That he was always hungry, but because he had to eat ill prepared food he suffered from diarrhoea and stomach cramps. That he was treated cruelly and inhumanely and he often has nightmares about his experience in Her Majesty's Prison.

- [14] The evidence of the Claimant, as per his second affidavit, is that he read the Affidavit in Response sworn to by the Chief Prison Officer, Mr. Percy Adams, on 13th June 2008 and he is amazed at its contents. That at all material times he was a person on remand and was not therefore entitled to the same privileges extended to convicted persons. That for the first 3 months of his remand he was held in the area of the prison known as "Maximum Security." That at that time he was permitted out of the prison cell for 20 minutes per day to allow him to bathe and clean himself. That apart from being taken out of the cell to go to court every 7 days, even though he was on remand, he spent at least 23 hours per day in his cell. That in the cell in Maximum Security he did not have any slop pails in which to relieve himself and was given plastic bags which he had to use for that purpose. That there was a lavatory site right opposite his cell, but it was so dirty and

unsanitary and smelt so obnoxiously that no one could use it. That the conditions in which he was housed in the cells were beneath the minimum standard established by international dictates on individual human rights. That at first he was forced to sleep on the floor of the cell with only a piece of thin sponge spread on the floor protecting him from the cold and wet concrete. That his body trembled from the extreme cold, discomfort and abuse to which he was assigned. That in the fourth month of his incarceration he was moved to another cell where he was given a bed. That he was forced to carry the same blanket which had been given to him whilst he was in Maximum Security. That in fact he used the same unwashed blanket for the entire period he was at Her Majesty's Prison. That if there were cells with ventilation provided through open, decorative-type concrete blocks which run along the full length of the cell, as described by Mr. Adams, he (the Claimant) certainly did not enjoy the benefits of that preferred and special accommodation. That he never knew of or enjoyed the comfort of the luxury of being provided with detergent and disinfectant to clean slop pails. That he did not have regular visits to the prison doctor even though he needed frequent medical attention. That he was attacked by parasites, lice, mosquitoes and particularly vermin in his stomach. That his complaints were for food and unhealthy conditions in which he found himself. That he is a citizen of Venezuela and he had no relatives or friends in Antigua. That he did in fact receive visits from officials from the Venezuelan Embassy acting in their official capacity as his government's representatives, who are duty bound to look after the interest of nationals who are in crises in foreign lands. That the suggestion that he received snacks from his country's representatives acting in their official capacity is untrue. That the only things he kept in his various cells were the clothes allotted to him, his [slop] pail or plastic bag and his prescription glasses. That he had such problems with the food he was served in prison that he was often on medication, especially "flagyl." That it is untrue that he received fresh vegetables daily. That except when he was taken to court or had a 20 minute bath, he was always in his confined prison cell space. That at no time was he permitted to [walk] freely between cells and connecting corridor areas or hallways during most days. That had that benefit

been allowed to him his horrifying experience in Her Majesty's Prison would not have been so inhumane, dehumanizing, demoralizing, demotivating, destructive, unbearable and unpleasant. That all his constitutional rights were taken from him whilst he was on remand. That he was treated with cruelty and in an inhumane manner. That he was violated whilst imprisoned in Antigua and Barbuda.

- [15] Under cross examination, the Claimant testified that the first place he was housed in the prison was in Maximum Security, where he remained for about 3 months. That after that he was moved to Section B on the second floor of the prison, where he remained for more than a year. That Section B is the 8 feet by 10 feet cell he referred to in his affidavit. That from there he moved to the lower section on the ground floor in an area called the bull pen where they keep crazy people and sick people from the street. That he remained there for about 4 months until the conclusion of his case. That he determined that the cell in Section B was 8 x 10 because he studied architecture and from his architectural knowledge this is the standard measurement for cells. That the size of the cell could have been 12 feet by 13 feet. That during the year he spent in Section B the number of people in the cell with him varied – normally there were 6 of them in the cell, but when there were too many inmates in the prison they put 7 or 8 of them in one cell. That only on one occasion there was less than 6 people in the cell and this was for about 2 days. That it is a lie that there were several times when there were less than 6 people in the cell. That when he was in the cell he did not have a blanket assigned to him; he was using a towel he brought with him in his baggage. That he never really had a blanket, but a couple of months after, a prisoner who was freed gave him his blanket, but it was so old and dirty that he (the Claimant) could not use it. That it is normal that blankets are interchanged between prisoners when a prisoner is freed. That when he was moved from Maximum Security to Section B he did not have a blanket. That the prison never gave him a blanket; he always used a towel that he brought with him in his luggage. That if someone were to say that he carried a blanket from Maximum Security to Section B that person would be lying.

[16] The Claimant was then referred to paragraph 10 of his affidavit of 26th June 2008 where he stated that when he was moved from Maximum Security he was forced to carry the same blanket which had been given to him whilst he was in Maximum Security and that he used the same unwashed blanket for the entire period he was incarcerated at Her Majesty's Prison. He then said that when he said that he was forced, he meant that they made him carry the same blanket that was given to him by another inmate, which was a foul-smelling blanket. That he now says that he had a blanket when he came from Maximum Security. That the testimony that he gave earlier when he said he did not have a blanket when he came from Maximum Security was because they forced him to carry something that he did not want, given to him by a person who did not want it; it was dirty and foul smelling; it was depressing; he never used it; he used his towel; a blanket was never officially issued to him. That when he was moved from Section B to the lower section of the prison, he was moved to an area like a corridor which was probably about 5 feet or 1 ½ metres wide and about 8 or 9 metres long. That there were 4 beds, one after the other; they were double-bunk beds. That with 4 double-bunk beds you could sleep 8 people. That when he came to this section (the bull pen) there were no beds; he and the other prisoners slept on the floor; then they brought beds. That when he went to Section B there were beds. That he had one of these beds for his use. That when he moved to the lower section there were beds there as well. That it is not correct that throughout his stay at the prison he always had a bed to sleep on. That in Maximum Security he did not have a bed. That it is a closed space. That he did not have anything to relieve himself. That there were so many depressing things that were done to him, he does not feel to bring them up. That he does not feel comfortable for people to know everything that happened to him in prison. That the staff of the Venezuelan Embassy came to know that he needed medication because he called them from court. That when he made his visits to court he spoke to the judge who sent a policeman with him to his Chambers so he could use his phone. That it is not true that the Embassy staff visited him frequently; they visited him once for Christmas, once when he had a

problem with parasites and on 2 or 3 other occasions when they left a bag containing soap, toothpaste, toothbrush, shampoo, toilet paper and shaver. That he was free to receive items from the Embassy. That he was also free to receive food and other such items from the Embassy or from others.

[17] The Claimant was then referred to paragraph 18 of his affidavit of 26th June 2008 where he denied that he got snacks from the Venezuelan Embassy and stated that it is correct that in December 2006 the Embassy brought him food. That in the 2 years he was in prison the Embassy only brought him food once, so one cannot say that he was receiving food; it was a gesture from the Embassy around Christmas time. That he received food from the Embassy once and never from anybody else because he did not have family or friends in Antigua. That he did not receive snacks and food from the families or friends of other prisoners. That from time to time inmates were moved from cell to cell. That the reason he was moved from Section B to the ground floor is because he has asthmatic problems and the inmates used to have some kind of tape which they used to light cigarettes and because he started to complain they started to have problems with him. That because he complained he was moved to the bull pen. That his accommodation there was dirtier than in Section B because of the type of people that were kept in the bull pen. That it was worse to be there but at least no one was abusing him. That there was more ventilation in this section. That in the open part of the wall there were bricks with holes and the door was some kind of iron gate. That the bricks with holes were in the upper part of the wall and went through the entire length of the wall.

[18] The Claimant was then referred to paragraph 11 of his affidavit of 26th June 2008 where he denied that he was accommodated in cells with open, decorative-type concrete blocks which run along the full length of prison cells and said that the cell where he was in the upper section had solid walls and he was there for almost the total time he was in prison.

[19] The Claimant admitted to having been attended to by a nurse and by a doctor and to receiving medication while he was in prison. The Claimant described the meals which he received in prison and denied that he received any significant amount of vegetables whilst he was in prison. He also denied that he was allowed 1 hour out of his cell for exercise or anytime apart from 20 minutes for hygiene purposes. That on one occasion he complained to the Venezuelan Embassy about the conditions which he experienced in prison. That the Embassy told him that he had to wait till the judicial process came to an end because they could not get into the process while he was on remand. That he did not instruct his lawyer to make a complaint to the Prison Committee that is charged with dealing with prison complains. That they never spoke about it. That the action taken by him is not an attempt by him to make some money from the government. That his action is against the prison because his human rights were violated.

[20] In re examination by his Counsel, the Claimant testified that it is false that he brought this action because he wanted money from the government. He testified that he brought this action to try to explain the situation in Her Majesty's Prison, which was inhuman, degrading and unhygienic. That the prison does not have the minimum standard of human rights for the prisoners because in one cell there is no bathroom and toilet and one has to relieve oneself in a container and there is a lot of disease that is transmitted because of the concentration of fecal gasses and that was his constant complaint. That on some occasions he had rashes on his skin and he had to be medicated with antibiotics. That he had vomiting and diarrhoea and breathing problems. That apart from beans he did not get any vegetables with his meals and, when he complained about it, the officer in charge of the prison told him that the only prisoners entitled to vegetables are the prisoners who are already convicted and are working for the prison, and since he was not a convicted prisoner, he could not enjoy these culinary benefits. The antibiotics he received were for rashes and stomach problems. That he was so concerned about the parasites he saw in his stool that he called the Venezuelan Embassy and they brought antibiotics for him. That this was the first time he had

ever experienced that. That he was never assigned any blanket by the prison authorities. That he said he studied architecture and although he did not finish the career he has a wide knowledge of architecture.

[21] This then was the case for the Claimant.

[22] The evidence of Percy Adams, as per his affidavit, is that he is the Chief Officer of Her Majesty's Prison and was the Assistant Chief Officer during the period between 31st May 2005 and 10th April 2007 when the Claimant was an inmate on remand at Her Majesty's Prison. That he denies that the Claimant was subjected to inhuman and cruel treatment contrary to section 7 (1) of the Constitution. That whilst the Claimant was an inmate at the prison he was housed in various cells. That initially he was housed in Division B upstairs, but was moved to Division A downstairs because he complained that he and the other remand prisoners with whom he shared a cell could not get along. That he spent most of his time at the prison in Division A.

[23] According to Chief Prison Officer Adams, Division B consists of 12 cells with 3 bunk beds in each cell accommodating up to 6 prisoners. That no more than 6 prisoners were housed in these cells at any one time. That the cells in Division B vary in size from a minimum of approximately 11 feet by 12 feet to a maximum of 12 feet by 13 feet 3 inches. That there are no cells measuring 8 feet by 10 feet in Division B. Division A consists mainly of smaller cells which each contain one bunk bed to accommodate a maximum of 2 prisoners at any one time. That the cells in Division A vary in size from a minimum of 5 feet 6 inches by 8 feet to a maximum of 7 feet 6 inches by 8 feet. That no more than 2 prisoners were housed in each of these cells at any one time. That there is one large cell in Division A measuring 5 feet by 37 feet and containing 4 bunk beds to accommodate up to 8 prisoners at any one time. That during the Claimant's stay in Division A he was housed in the large cell. That typically there would have been about 5 or 6 remand prisoners in that cell at any one time. That from time to time there would

have been 8 remand prisoners, including the Claimant, who would have been in that cell, but on no occasion did the total number of prisoners there exceed 8. That at no time was the Claimant housed in a cell measuring 8 feet by 10 feet with 5 other prisoners. That the condition of the cells in which the Claimant was housed at various times could not (in the view of the witness) be described as cramped, foul smelling and badly ventilated. That the accommodations were humane and adequate. That each prisoner is provided with a bed and a blanket, as was the Claimant. That prisoners are permitted time and provided with disinfectant and brooms with which to clean their cells daily. That all cells in Division A and B are adequately ventilated with at least one window measuring approximately 18 inches by 24 inches. That in the case of the larger cell in Division A, where the Claimant was housed for the vast majority of his time at the prison, ventilation was provided through open, decorative-type concrete blocks which run along the full length of the cell. That each cell in Divisions A and B contains slop pails for use by the prisoners and the prisoners are required as part of their daily morning routine to clean the slop pails from their cells and they are provided with detergent and disinfectant for that purpose. That during his period on remand the Claimant had regular access to doctors and medical staff and he received prompt and appropriate medical care whenever it was needed. That a medical record is kept of every prisoner and a copy of the Claimant's medical record from Her Majesty's Prison was attached to Mr. Adams' affidavit. That he does not recall the Claimant ever complaining of asthma, claustrophobia or headaches or of ever seeking or receiving treatment for these ailments. That he recalls that the Claimant did see the prison doctor on various occasions and was prescribed various medications, including antibiotics. That he also recalls the Claimant complaining of rash on at least one occasion and of abdominal pain on another occasion. That the Claimant's ailments were not the result of poor or imbalanced diet. That the Claimant ate meals provided and had the option of having meals brought to him from friends or family outside the prison. That the Claimant did receive occasional visits from representatives of the Venezuelan Embassy and did from time to time receive snack foods from such visitors. That

all meals provided to prisoners were prepared by the Kitchen Officer and consisted of a balanced diet. That all main course meals include vegetables. That the Claimant often complained that he did not like the food provided and it appeared that, due to cultural differences, he was not accustomed to West Indian style cooking. That in August 2005 the Claimant complained of his diet and saw the prison doctor who recommended a vegetarian diet for him. That thereafter the Claimant received a vegetarian diet only. That vegetarian diets provided to prisoners typically included bread, tea, cocoa, cheese, butter, porridge, seasoned rice (without meat), peas, beans, seasonal vegetables and soups, among other things. That the Claimant received servings of fresh vegetables daily, including carrots, tomatoes, lettuce and cabbage. That he denies that the Claimant was allowed only 20 minutes outside of his cell every day. That every prisoner on remand is permitted 1 hour of exercise daily during which time prisoners are allowed to be in the courtyard of the prison where they may play basketball, warri and other games. That this is in addition to other time spent outside of a cell, such as during the morning routine of daily hygiene when prisoners leave their cells to shower and empty their slop pails, and on occasions when they wash their clothes. That in the case of the Claimant he would also have been out of the prison grounds for several hours at a time on the several occasions when he attended court. That it was also not unusual for remand prisoners to be permitted to walk freely between their cells and the connecting corridor areas or hallways during the day. That the Claimant was at no time treated cruelly or inhumanly during his remand at the prison and his constitutional rights were never compromised or violated in any way during his stay at the prison.

- [24] Under cross examination, the Chief Prison Officer admitted that there was a situation of serious overcrowding at Her Majesty's Prison in 2006, 2007 and 2008 and that even in 2005 there was overcrowding to the extent that convicted prisoners and remand prisoners sometimes occupied the same cell. He testified that what he meant when he said in paragraph 16 of his affidavit that each cell contains slop pails for use of the prisoners is that each cell has slop pails, but not

necessarily one for each prisoner in the cell; sometimes there are 2 or 3 pails for 6 prisoners. That the pails are covered. That if a person uses a pail and it is uncovered there is an obnoxious odour that would emanate from it. That in the morning the pails are emptied into a pit toilet at the back by 3 guys from the cell. That they would take the pails to be emptied and wash and return them.

[25] Chief Prison Officer Adams further testified under cross examination that the Claimant had 3 meals per day at the prison. That for breakfast there would be bread with butter or cheese or sardine or cornbeef. That the only time the Claimant would not receive this breakfast is if he did not go for breakfast. That for lunch there would be baked chicken some days, rice, soup. That it is not correct that soup was on Saturdays only. That the Claimant was fed like the other prisoners. That it is not true that because of his status as a remand prisoner the Claimant was not fed like other prisoners. That it is untrue that because of his poor diet he had parasites and suffered stomach cramps and because of the cramped conditions he suffered severe headaches. That he got snacks brought by friends. That he made friends in the latter stage of his confinement.

[26] That apart from any admissions or concessions made heretofore, the Chief Prison Officer denied all what was put to him by Counsel for the Claimant as representing the case for the Claimant and asserted that at no time were the Claimant's constitutional rights to be treated in a humane manner violated by prison officers at Her Majesty's Prison.

[27] In re examination, the Chief Prison Officer maintained that when there were difficulties with one supplier of food to the prison an alternative supplier was used and the prisoners were always fed. He testified too that sponges are used as beds throughout the prison. That in Maximum Security the sponge is on the floor, but in Divisions A and B the sponge is on a bunk.

- [28] This concluded the case for the Defendant and the evidence in the case as a whole.
- [29] On 26th October 2009 written closing submissions were filed on behalf of the Claimant, with the legal authorities having been previously filed (before trial) on 14th May 2009.
- [30] On 29th October 2009 written closing submissions and legal authorities were filed on behalf of the Defendant.
- [31] The Court, having reserved its judgment, now delivers same.
- [32] In his Fixed Date Claim and Affidavit in Support the Claimant sought two declarations and two consequential orders. The first declaration sought by the Claimant was a declaration that during the period 27th May 2005 to 10th April 2007 his constitutional and human rights were denied by the Prison Superintendent and other subordinate Prison Officers at Her Majesty's Prison acting in the performance or purported performance of their duties as employees, servants and/or agents of the Government of Antigua and Barbuda. The second declaration sought by the Claimant was a declaration that he was subjected to cruel and inhuman treatment by the employees, servants and/or agents of the Government of Antigua and Barbuda in breach of section 7 (1) of the Antigua and Barbuda Constitution Order.
- [33] Two issues relevant to the Court's determination of this case can be resolved at the outset. Firstly, that the Constitution of Antigua and Barbuda provides at section 7 (1) that no person shall be subjected to torture or to inhuman or degrading punishment or other such treatment. No reference is made in the Constitution to "cruel and inhuman treatment." The Court will therefore concern itself with the right actually referred to in the Constitution not to be subjected to "inhuman or degrading ... treatment." Secondly, the Claimant having at the

commencement of this trial abandoned the claim of delay as giving rise to any entitlement to relief, the only right which the Claimant averred in this case was violated by the prison authorities and/or any other employees, servants and/or agents of the Government of Antigua and Barbuda, was his right not to be subjected to cruel and inhuman treatment in accordance with section 7 (1) of the Antigua and Barbuda Constitution Order 1981, which right has been restated in accordance with the actual words of the Constitution to be a right not to be subjected to inhuman or degrading treatment. The Court will accordingly seek to determine whether this right of the Claimant, protected by the Constitution of Antigua and Barbuda and alleged by the Claimant to have been violated by the employees, servants and/or agents of the Government of Antigua and Barbuda, was in fact violated on the facts of this case.

[34] According to the Convention for the Protection of Human Rights and Fundamental Freedoms (also called the European Convention on Human Rights) – the provisions of which may well have given rise to the language in the fundamental rights sections of the Constitutions of Antigua and Barbuda and other Commonwealth countries which became independent after 1950 - the prohibition against “inhuman or degrading treatment” usually applies to cases of severe police violence and poor conditions in detention. In the present case there is no allegation of police violence and so the allegation of inhuman or degrading treatment would have to be founded on poor conditions in detention. Indeed, the Claimant’s allegation in this case that his constitutional right not to be subjected to inhuman or degrading treatment was violated is based on his alleging that for a period of nearly two years as a remand prisoner at Her Majesty’s Prison (between May 2005 and April 2007) he was detained in cramped, foul-smelling and poorly-ventilated cells and was deprived of proper or sufficient food and of adequate time outside of his prison cell.

[35] Based on the evidence presented to the Court, this Court accepts that the Claimant was detained as a remand prisoner at Her Majesty’s Prison from 31st

May 2005 to 10th April 2007. This Court accepts that the standard of accommodation which the Claimant experienced during his period of detention was not such that one would wish upon oneself or upon those whom one is favourably disposed to, or even possibly upon one's enemies, in that the quantity and quality of ventilation of the cells were probably less than adequate and the number of room mates relative to room size was probably too high. The Court accepts too that the quality and quantity of rations served to prisoners on a daily basis were probably such that a person accustomed to better might become ill as a result. The Court also accepts that there may not have been sufficient time allowed to the Claimant on a daily basis outside of the confines of his prison cell for exercise and access to the open air.

[36] These conditions were less than adequate and were probably in breach of the Prison Rules, but the Court is not satisfied that they amounted to inhuman or degrading treatment.

[37] In the Trinidad and Tobago case of **Darrin Roger Thomas et al v Cipriani Baptiste et al**¹, the Judicial Committee of the Privy Council opined that "the question for consideration is whether the conditions in which the [Claimant] [was] kept involved so much pain and suffering or such deprivation of the elementary necessities of life that they amounted to treatment which went beyond the harsh and could properly be described as [inhuman and degrading]." Lord Millett, delivering the judgment of the majority of their Lordships, went on to say at page 265 of the report that: "Prison conditions in third world countries often fall lamentably short of the minimum which would be acceptable in more affluent countries. It would not serve the cause of human rights to set such demanding standards that breaches were commonplace. Whether or not the conditions in which the applicants were kept amounted to cruel and unusual treatment is a value judgment in which it is necessary to take account of local conditions both in and outside prison. Their Lordships do not wish to seem to minimise the appalling

¹ [1999] 3 W.L.R. 249

conditions which the applicants endured. As the Court of Appeal emphasised, they were and are completely unacceptable in a civilised society. But their Lordships would be slow to depart from the careful assessment of the Court of Appeal that they did not amount to cruel and unusual treatment.”

[38] This Court adopts and adapts the reasoning of the Privy Council in that case and holds that, although the conditions in which the Claimant in the present case was detained were less than adequate and far from acceptable, they do not amount to inhuman and degrading treatment.

[39] The Court therefore declines to grant the declarations sought by the Claimant and the consequential orders arising therefrom. The Court however also declines to grant the cost orders sought by the Defendant on the basis that the Claimant was not unreasonable in seeking the redress that he did, having regard to the Court's finding that the conditions in which he was detained for nearly two years as a remand prisoner were less than adequate and far from acceptable, although not constituting inhuman and degrading treatment.

[40] The Claimant's case is accordingly dismissed, with no order as to costs.

[41] The following authorities were cited by Counsel and considered by the Court in this case:

By Counsel for the Claimant –

(a) **The Antigua and Barbuda Constitution Order 1981**

(b) **The Prison Act**, Cap. 341 of the 1992 Revised Laws of Antigua and Barbuda

(c) **The Prison Rules**

- (d) The European Convention on Human Rights
- (e) The Standard Minimum Rules for the Treatment of Prisoners - Office of the United Nations High Commissioner for Human Rights
- (f) **Darrin Roger Thomas et al v Cipriani Baptiste et al²**
- (g) **Ilanthe Harding v The Attorney General of St. Lucia et al³**
- (h) **Tyrer v The United Kingdom⁴**
- (i) **Selmouni v France ⁵**

By Counsel for the Defendant –

- (a) **Ilanthe Harding v The Attorney General of St. Lucia et al²**
- (a) **The Antigua and Barbuda Constitution Order 1981**
- (b) **Darrin Roger Thomas et al v Cipriani Baptiste et al¹**
- (c) **The Prison Act, Cap. 341 of the 1992 Revised Laws of Antigua and Barbuda**
- (d) **The Prison Rules**
- (e) **Statutory Interpretation by Francis Bennion, 2nd Edition, Pages 858 – 865**

² [1999] 3 W.L.R. 249

³ St. Lucia Civil Appeal No. 13 of 2000

⁴ HER Court Series A 026

⁵ [1999] 7 BH RR1

- (f) **The Ratification of Treaties Act**, Cap. 364 of the 1992 Revised Laws of Antigua and Barbuda
- (g) **J. H. Rayner (Mincing Lane) Ltd et al v Department of Trade and Industry et al**⁶
- (h) **Natural Resources Conservation Authority v Seafood and Ting International Ltd**⁷



Mario Michel
High Court Judge

⁶ [1990] 2 A.C. 418
⁷ (1999) 58 WIR 269