

ADVANCE COPY
IN THE CARIBBEAN COURT OF JUSTICE
Original Jurisdiction

CCJ Application No. OA 002 of 2012

Between

SHANIQUE MYRIE **Claimant**

And

THE STATE OF BARBADOS **Defendant**

And

THE STATE OF JAMAICA **Intervener**

THE COURT,

composed of D Byron, President, R Nelson, A Saunders, D Bernard, J Wit, D Hayton and W Anderson, Judges

having regard to the originating application filed at the Court on the 17th day of May 2012, the Defence filed on the 11th day of July 2012, the judgment of the Court of 26th October 2012 allowing the State of Jamaica to intervene in the proceedings and inviting Member States to make submissions on the issues in dispute, the preliminary case management conference held on the 22nd day of November 2012, the case management conference held on the 12th day of December 2012, the written submissions filed on behalf of the Defendant on the 9th day of January 2013, the written submissions filed on behalf of the Intervener on the 29th day of January 2013, the pre-hearing reviews held on the 7th day of February 2013 and the 22nd day of February 2013, the case management conference held in Jamaica on the 4th day of March 2013, the public hearings held on the 4th, 5th, 6th days of March 2013 in Jamaica, the case management conference held on the 26th day of March 2013, the visit to the Grantley Adams International Airport, Barbados by the President and Judges of the Court on the 16th day of March 2013, the public hearings held on the 18th, 19th, 20th, 21st days of March 2013 in Barbados, the supplementary written submissions filed on behalf of the Claimant and of the Defendant both filed on the 4th day of April 2013, and the public hearings held on the 8th and 9th days of April 2013 at the Seat of the Court

and after considering the written submissions and oral observations of:

the Claimant, by Ms Michelle Brown and Ms Nancy Anderson, Attorneys-at-law

the Defendant, by Mr Roger Forde, QC appearing together with Mr Patterson Cheltenham QC, Ms Donna Brathwaite, QC, Dr David Berry and Ms Nargis Hardy, Attorneys-at-law

the Intervener, by Dr Kathy-Ann Brown and Ms Lisa White appearing with Mr O'Neil Francis, Attorneys-at-law

the Community, by Ms Safiya Ali, Ms Gladys Young and Dr Chantal Ononaiwu, Attorneys-at-law


on the **4th day of October 2013** delivers the following

JUDGMENT

Introduction

- [1] This case deals with important issues of Caribbean Community law which have not previously been addressed by this Court. The most prominent among them is whether and to what extent CARICOM (or Community) nationals have a right of free movement within the Caribbean Community. The case also raises other aspects of Caribbean Community law which are of very significant doctrinal and practical relevance. First and foremost, however, this is a case about a young Jamaican woman who one day left her country, for the very first time, in order to travel to another Caribbean country and, having arrived there, found herself in a situation from which, several months later, according to Jamaican medical practitioners, she was still suffering post-traumatic stress.
- [2] On 14 March 2011, the Claimant, Ms Shanique Myrie, then 22 years old, arrived at the Grantley Adams International Airport (the “GAIA”) in Barbados. Far from being welcomed, she was denied entry. According to her testimony she was never told why. She claims that in the process she was subjected to insults based on her nationality and to an unlawful body cavity search in demeaning and unsanitary conditions. Her luggage was also searched but none of these searches revealed any contraband substances. Ultimately, Ms Myrie was not allowed to enter Barbados and was instead detained overnight in a cell at the airport and deported to Jamaica the next day.
- [3] Ms Myrie instituted these proceedings against the State of Barbados, the Defendant. She claims a right to free movement within the Caribbean Community. She also claims that the treatment to which she was subjected by border officials in Barbados amounts to a serious violation of this right. She characterises the body cavity search as an assault, a rape, of such a serious character that it constitutes a violation of her fundamental human rights and freedoms for which the State of Barbados must be held accountable. Ms Myrie further submits that she was singled out and treated in the way that she was because of her Jamaican nationality and that the treatment meted out to her was less favourable than treatment reserved for nationals of other States. For this reason she accuses Barbados of violating her rights under Articles 7 and 8 of the Revised Treaty of Chaguaramas (“RTC”) to non-discrimination on the ground of nationality only

and to treatment that is no less favourable than that accorded to nationals of other CARICOM States or third States. On this basis she has requested the Court to issue a number of Declarations and Orders against Barbados including an order to pay damages, both special and punitive, and an order for the recovery of all her legal costs. In this, Ms Myrie has been joined by the State of Jamaica, which the Court earlier granted the status of Intervener. Counsel for Jamaica supported Ms Myrie's submissions.

[4] Ms Myrie submits that her right to free movement in the Community, more specifically her right to enter Barbados without any form of harassment, is based on Article 45 RTC and a Decision of the Conference of Heads of Government of the Caribbean Community taken at their Twenty-Eighth Meeting ("the 2007 Conference Decision"). 

[5] The State of Barbados denies Ms Myrie's claims. Barbados accepts that Ms Myrie was refused entry, detained overnight and deported the morning after her arrival. Barbados disputes, however, many of the factual submissions underlying the claims made. It denies that she was subjected to a body cavity search or other improper treatment by any of its border officials. It further denies that Ms Myrie was treated badly or unfavourably or that she was denied entry into Barbados because she was a Jamaican national. It submits that Ms Myrie, when interviewed by immigration officers, had been untruthful about the person who she said would host her in Barbados and that it was for this and no other reason she was denied entry. This refusal was, in the view of Barbados, justified because its Immigration Act requires foreigners to answer the questions of immigration officers truthfully. Barbados also submits that Ms Myrie was told that this was the reason for refusing her entry and that her detention overnight was in accordance with the laws of Barbados.

[6] The State of Barbados also makes the following submissions:

1. the 2007 Conference Decision cannot be a proper basis for the conferment of a right to free movement because it was merely an agreement and not a decision within the meaning of Article 28 RTC;
2. if the 2007 Conference Decision is found to be a decision, it does not create any legally binding rights because such a decision requires

unanimity whereas Antigua and Barbuda had entered a “reservation” in connection with the Decision and, in any event, the Decision has not been subjected to Barbados’ constitutional procedures as required under Article 240 RTC;

3. if a right of free movement has been created by the Decision, any denial of that right or allegedly wrongful treatment by the Barbados border officials of those seeking to enforce that right cannot be judicially reviewed under the RTC as the exercise of immigration and customs procedures would constitute “activities” that, in keeping with Article 30(2) RTC, are excluded from the operation of Chapter Three RTC (Articles 30-50) which is the Chapter that contains a reference to the free movement of Community nationals;
4. if the Court concludes that the 2007 Conference Decision created a right of entry for Community nationals, such a right is not absolute or without any restrictions as the Decision itself acknowledges “the rights of Member States to refuse undesirable persons entry and to prevent persons from becoming a charge on public funds”;
5. there was no violation of Article 7 RTC (the non-discrimination Article) as Ms Myrie was not discriminated against let alone discriminated against on the basis of her nationality as alleged;
6. there was no violation of Article 8 RTC (the most favoured nation Article) as this was not a case where a national of a Member State was treated less favourably than nationals of other CARICOM States or third States.

Jurisdiction

[7] In adjudicating these issues the Court must first satisfy itself of its jurisdiction. This process commenced as early as 18 April 2012 at the Special Leave hearing when the parties accepted, and the Court confirmed, that Ms Myrie should have special leave to appear as a party before it in these proceedings. By the grant of Special Leave the Court thereby established that (a) Ms Myrie was a national of Jamaica, thus a Community national and, therefore, a “person of a Contracting Party” and (b) it was *arguable* that (i) by or under the RTC a right had been conferred on Community nationals to enter any Member State without harassment; (ii) this was a right intended to enure to the benefit of such persons directly, and (iii) Ms Myrie had been prejudiced in respect of the enjoyment of that right. The grant of Special Leave also signified that the Court had established that Jamaica, although entitled to espouse Ms Myrie’s claim in proceedings before

the Court, had expressly agreed that she could bring the claim herself, and that the interest of justice required that Ms Myrie should be allowed to do so. In effect, by the grant of Special Leave the Court concluded that Ms Myrie had fully complied with the requirements set out in Article 222 RTC, as consistently interpreted by the Court, and that she had standing to take her case before the Court.¹

[8] This case is thus based on an application by a person in accordance with Article 222 RTC as referred to in Article 211(1)(c) RTC. It presents a dispute not just about what transpired at the GAIA on the day in question but, more importantly, about the interpretation and application by the Court of critical provisions of the RTC. The interpretive exercise necessarily extends to the decisions and other determinations made by relevant authorities in the exercise of their functions to fulfil or further the goals and objectives of the Treaty. This follows from the text of the RTC itself. Article 9, for example, refers to the undertakings of Member States to ensure the carrying out of “obligations arising out of this Treaty or resulting from decisions taken by the Organs and Bodies of the Community”. And Article 222 RTC, which grants *locus standi* to Community nationals, is not confined merely to a right conferred by a specific treaty provision but also speaks to “a right or benefit conferred *by or under* this Treaty”. The forms of secondary “legislation” referred to here (i.e. the decisions and other determinations made by the relevant authorities *under the RTC*) are in principle part and parcel of Community law the content of which encompasses the provisions of the RTC, the decisions adopted by competent Organs and Bodies for its further development and implementation and the judgments of this Court pertaining to the interpretation and application of the Treaty. Accordingly, the Court has jurisdiction to adjudicate the claims of Ms Myrie that her alleged right to freedom of movement derived from the 2007 Conference Decision was denied.

¹ See *Trinidad Cement Limited v The Competition Commission* [2012] CCJ 4 (OJ), (2012) 81 WIR 247 [8] refining the views expressed in *Hummingbird Rice Mills v Suriname and The Caribbean Community* [2012] CCJ 1 (OJ), (2012) 79 WIR 448 [12]; *Trinidad Cement Limited v The Caribbean Community* [2009] CCJ 4 (OJ), (2009) 75 WIR 194 [16] - [18]; *Trinidad Cement Limited v The Cooperative Republic of Guyana* [2009] CCJ 1 (OJ), (2009) 74 WIR 302 [32].

[9] Counsel for Ms Myrie also seeks *Declarations* that Barbados, through its agents, in performing an illegal cavity search on her and in otherwise treating her in the manner that they did, violated her fundamental human rights and freedoms contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the American Convention on Human Rights. Ms Myrie's claims accordingly include a request for *Orders* against Barbados to (1) issue an apology for violating her fundamental rights and (2) conduct further investigations to identify the perpetrators of the assault, rape and unlawful detention and prosecute and punish such perpetrators in domestic criminal proceedings. Counsel for Barbados, however, has stressed that, so far as Ms Myrie seeks to ground at least this part of her case on international human rights law and in particular on certain human rights treaties, the Court has no jurisdiction to grant the orders claimed.

[10] The Court's jurisdiction is established and circumscribed by the parameters of the RTC and the Agreement Establishing the Court. Article 211 of the RTC and Article XII of the Agreement constrain the Court to interpret and apply the RTC and secondary "legislation" emanating from the Treaty. The Court has no jurisdiction to adjudicate violations of international human rights treaties and conventions. Those instruments generally provide for their own dispute resolution mechanism which must be the port of call for an aggrieved person who alleges a breach of those treaties. The Court therefore agrees with Barbados that it lacks jurisdiction to make the Declarations and Orders sought by Ms Myrie relating to breaches of her human rights. It should be noted, however, that the Court is an international court authorised to apply "such rules of international law as may be applicable"² of which human rights law is an inextricable part. It stands to reason therefore that, in the resolution of a claim properly brought in its original jurisdiction, the Court can and must take into account principles of international human rights law when seeking to shape and develop relevant Community law.

The Standard Of Proof

[11] Before embarking on an analysis of the facts of this case the Court must address the issue of the applicable standard of proof. There is no consensus on the

² See Article 217 of the Revised Treaty of Chaguaramas (RTC).

formulation of such a standard in international courts that deal with non-criminal cases. This may be because the issues surrounding the standard are often subsumed under the broad duty cast on litigants to co-operate with international tribunals and courts in all matters relating to proof. This duty in turn can be traced to the general obligation to act in good faith in international dispute resolution.

[12] The Court accepts, however, that the standard of proof to be applied in this case must be lower than the standard used in a criminal case, whether domestic or international. Faced with the contradictory versions of events presented, the Court gave very careful and anxious consideration to all the material before it given the seriousness of the allegations. The Court was ultimately satisfied that its findings were fully supported by the objective evidence, the testimony given and the reasonable inferences that the Court was entitled to make.

The Facts

[13] In order to set out the facts of this case properly it is necessary to put them in a solid and reliable context of time and place. This task is made easier because part of the evidence before the Court consists of video footage from surveillance cameras that were positioned at several places in the Arrivals Hall of the GAIA. It is mainly on the basis of this material that an objectively accurate timeline and sequence of the events that took place in the Arrivals Hall (but outside the Secure Immigration Area) of the airport can be reconstructed. The facts as they unfold from this and other uncontroverted evidence can be summarized as follows.

[14] On 14 March 2011, at 16.30 hrs, Ms Myrie arrived at the GAIA on Caribbean Airlines flight BW 415 from Jamaica. At 16.33 hrs she entered the Arrivals Hall of the Airport and interacted with Immigration Officer Alicia Young at Booth 12 in the Arrivals Hall. At 16.38 hrs Officer Young took Ms Myrie to the Secure Immigration Area (SIA) opposite the Booths. At 17.33 hrs Ms Myrie emerged from the SIA in the company of Police Officers Everton Gittens and Sirphene Carrington, both dressed in plain clothes. They proceeded to the Luggage Hall where Ms Myrie collected her suitcase. They then proceeded to the Customs Area. From 17.35 to 17.43 hrs Ms Myrie was at the Customs Examination desk where her handbags and luggage were searched. During this time Officer Gittens made

two trips outside to the Public Arrivals area. On the second trip he appeared to be speaking on his mobile phone as he walked outside. When he got to the Public Arrivals area outside the airport building he was approached by a Mr Daniel Forde. Officer Gittens and Mr Forde had a brief conversation of less than a minute following which Officer Gittens, again apparently speaking on his phone, re-entered the building and rejoined Officer Carrington at the Customs Area. At 17.45 hrs, Ms Myrie was taken back to the SIA with her luggage, accompanied by Officers Gittens and Carrington. About 44 minutes later, at 18.29 hrs, Ms Myrie and another female passenger, Ms Rickreisha “Susan” Rowe, were taken from the SIA to the Customs Area where Ms Rowe’s luggage was examined. At about 18.36 hrs Ms Myrie and Ms Rowe were returned to the SIA.

[15] Much of the evidence of what transpired during the time sequences mentioned above can readily be established by piecing together the evidence of the witnesses who gave evidence before the Court. Some of this evidence was uncontroverted. In some instances the statements of the witnesses did not significantly differ from each other. The following facts fall broadly into this category.

[16] When Ms Myrie arrived at Booth 12, she handed Officer Young her passport, her return ticket and the Immigration Arrival Form filled out by her. Upon questions posed by Officer Young, Ms Myrie answered that this was her first visit to Barbados, that she had come for a short vacation of two weeks, that she had US\$300.00 cash with her, and that she would be staying with Ms Pamela Clarke, whom she had met “through the internet”. It was this last answer that prompted Officer Young to refer Ms Myrie for a second inspection by her supervisor, Mr Merlo Reid. She therefore escorted Ms Myrie to the SIA and seated her in the waiting room which is situated directly left from the main entrance of the SIA. Officer Young then went to the nearby office of Mr Reid inside the SIA and handed him Ms Myrie’s passport and Immigration Arrival Form with the request that he personally interview Ms Myrie. Officer Young left shortly thereafter to resume her work at Booth 12.

[17] Mr Reid did not immediately attend Ms Myrie. At some point, before attending her, he left the SIA and entered the Arrivals Hall where he was approached by Officer Gittens who told him that he (Officer Gittens) wanted to interview “the

female passenger who had just been brought in for a second inspection” after Mr Reid had completed his interview with her. Mr Reid had no problem with that request which was, as he put it in his evidence, “normal procedure”. When Mr Reid interviewed Ms Myrie, she gave him the same answers as she had given to Officer Young. She also gave him the telephone number for Ms Clarke. Mr Reid was satisfied with her responses. He found no cause to deny her entry into Barbados. He endorsed her passport and granted her thirty (30) days stay after which she was returned to the waiting area. Mr Reid then informed Officer Gittens who was in the company of Officer Carrington that he was finished with Ms Myrie and he returned to his office.

[18] Officers Gittens and Carrington took Ms Myrie to the Drug Squad Office upstairs the SIA to an area which is in exclusive use by the Royal Barbados Police Force. This must have happened around 17.11 hrs, because for the next 20 minutes or so, Officers Gittens and Carrington are not seen on the video footage whether in front of the SIA or elsewhere in the Arrivals Hall. Ms Myrie was interviewed in the Drug Squad Office by both officers about her status in Barbados and Jamaica in order to ascertain whether she was a possible drug courier. After this interview, lasting some 20 minutes, Officers Gittens and Carrington accompanied Ms Myrie to the Customs Area in order to have her luggage checked by the Customs Officers.

[19] At some point in time Ms Myrie had provided Officer Gittens with a cellular phone number for Ms Pamela Clarke. Officer Gittens called the number and when Ms Clarke answered he identified himself to her as a police officer attached to the Drugs Squad. Officer Gittens then informed Ms Clarke that he had interviewed Shanique Myrie and he wanted to know whether Ms Clarke knew her. Ms Clarke denied that she knew Ms Myrie. She told Officer Gittens that she was helping a friend by the name of Daniel Forde who was waiting at the outside of the airport to collect Ms Myrie. Officer Gittens asked her what was Daniel Forde wearing and she told him. Officer Gittens left Ms Myrie and Officer Carrington at Customs and proceeded outside in order to meet Daniel Forde. Initially, he found no one fitting the description given by Ms Clarke and so he returned to the Customs area. He then called Ms Clarke again to confirm the description and once again he left the Customs area and proceeded outside to the Public Arrivals Area. When he arrived

outside the second time he shouted out the name “Daniel Forde” and Mr Forde stepped forward. Mr Forde confirmed that he was at the airport to collect a “Shanique Myrie”. Forde further stated that Ms Pamela Clarke was supposed to collect Ms Myrie but she could not make it because she had hurt her hip.

[20] After this short conversation, Officer Gittens returned to the Customs Area. It appeared that the Customs Officer who had searched Ms Myrie’s luggage had found nothing illegal. A few minutes later Officers Gittens and Carrington took Ms Myrie back to the SIA. The time was, as noted before at [14], 17.45 hrs.

[21] At some point in time thereafter Officer Gittens took Ms Myrie back to the Immigration Supervisor, Mr Reid. Officer Gittens informed him that he had interviewed Ms Myrie and discovered that she was untruthful in relation to the information provided about her staying with Ms Clarke. He also told Mr Reid that there was a Mr Daniel Forde with whom Ms Myrie had intended to stay. Officer Gittens handed to Mr Reid Ms Myrie’s passport and her cell phone and then used Mr Reid’s office phone to contact Ms Pamela Clarke. When Ms Clarke answered he told her to speak to “the senior officer”. Mr Reid spoke with Ms Clarke and enquired if it was a regular practice of hers to seek “to clear” persons at the airport. She told him that it was the first time and that she was doing a favour for a friend. Mr Reid then told her that Ms Myrie would be denied entry. Ms Pamela Clarke apologized for her action and their conversation ended.

[22] After this conversation, Officer Gittens left. Mr Reid went to the waiting area and took Ms Myrie to his office. He told her that she would be denied entry. He then affixed the cancelled stamp to Ms Myrie’s passport and signed it. Thereafter, Mr Reid requested Immigration Officer Saritta Chadderton to escort Ms Myrie and, as he put it, “another detainee” (Ms Rickreisha “Susan” Rowe) to the Customs Area for their luggage to be searched.

[23] The Barbados authorities maintain a register of persons refused entry into that country. In this Refusal Register Mr Reid made the following entry under the name “Myrie, Shanique Samantha”:

“...Subject arrived on BW 415 from Jamaica requesting two weeks c/o Pamela Clarke, Hillaby, St Andrew. She is being denied entry for the following reason: Improper representation. When Ms Clarke was interviewed it was ascertained by way of in-depth interview that she was fronting for a Mr Daniel Forde of Hillaby, St Andrew. In the circumstances therefore the decision to refuse was made. Caribbean Airlines was informed”

[24] After Ms Myrie and Ms Rowe had been returned to the SIA by Officer Chadderton (around 18.36 hrs), they were led to the detention cells inside the SIA where they were detained. They were not allowed to take their luggage with them into the cell nor was Ms Myrie allowed to have her cell phone with her. The cell was rather small and windowless. It was very cold inside. The cell had a bathroom with a toilet and a face basin and one narrow bed. Ms Myrie and Ms Rowe spent the night locked in that cell. The following morning three female immigration officers came in and told them that their flight to Jamaica was about to leave. They were told to wash their faces and mouths. There was no time for them to shower. They were taken to the room where their luggage was stored and subsequently they were taken to the plane in a manner that made it obvious to onlookers that they were being deported. Upon entering the plane, Ms Myrie’s passport was returned to her.

Determination of Disputed Facts

[25] A more ample discussion of the facts is necessary with regard to the strongly disputed issues that were raised before this Court. These issues include in particular the very serious allegations concerning the body cavity search to which Ms Myrie claims she was subjected, the circumstances under which this cavity search allegedly took place and the allegedly insanitary state of the cell in which she was detained. There can be no doubt that in regard to these issues, both involving charges of notable gravity and assertions of international liability of the State of Barbados, the burden of proof rests with Ms Myrie.

The condition of Ms Myrie’s detention cell

[26] In her evidence as to the condition of the detention cell, Ms Myrie stated that the floors of the cell and its bathroom were muddy with water from the bath area in the bathroom. She further alleges that there was no shower curtain or soap in the

bathroom. She testified that the walls of the cell were filthy with brown marks that looked like faeces and there was tissue paper with similar marks thrown all around. The cell also smelled of faeces. This evidence was refuted by Barbados. Immigration Officer Beverley Nicholls testified orally that she had visited the cell during Ms Myrie's stay and she asserted that the detention rooms are cleaned every day and there was no smell of faeces or any other pungent odour. Mr Reid gave similar evidence saying that the holding rooms are kept tidy and cleaned daily. In her first witness statement, however, Officer Nicholls had been less certain. She stated then that the detention room was "relatively tidy" and that she "did not recall" whether there was a pungent smell emanating from the room. The State of Jamaica produced three witnesses to support Ms Myrie's version of the facts. Chevine Edwards, Avia James and Odeisha Brown, all of whom had spent a night in a detention cell at the GAIA respectively on 20 March 2011 (one week after Ms Myrie), 24 September 2012 and 15 July 2009, all testified about insanitary conditions of the cell in which they said they were detained. Mr Edwards testified that he was able to take some photographs of his cell with a mobile phone and these pictures were admitted as part of the evidence before this Court. When shown to Mr Reid, the latter admitted that the photographs resembled the detention cells at the airport and he agreed that the conditions reflected in the pictures were insanitary. After hearing and examining all the evidence adduced the Court accepts that the conditions of Ms Myrie's detention were deplorable, falling well short of what was satisfactory.

Ms Myrie's account of other disputed facts

[27] Ms Myrie testified in Court that she was twice taken upstairs to the Drugs Squad Office by "a male and a female officer". She gave descriptions of these officers which, as the Court observed, fitted the descriptions of Officers Gittens and Carrington. According to Ms Myrie's evidence, she was severely questioned by the male officer who at first hinted and later on bluntly told her that he suspected her of bringing drugs into Barbados. According to Ms Myrie, her bags were searched and the Barbadian telephone numbers in her cell phone were checked. When the male officer told her "Ms Myrie, I feel that you are carrying drugs into my country," Ms Myrie stated that she answered him, "You have searched my

luggage”. According to Ms Myrie, her suitcase was then brought upstairs and the officers began to search it. They opened the bottom and asked her about some ackee and pudding that she was carrying. The male officer took up a pair of slippers from the suitcase, used a pair of scissors to cut the slippers in two, sniffed them and threw them back in the suitcase. At this point, according to Ms Myrie, the male officer told her that he had been working there for seven years and that he knew what he was doing.

[28] Ms Myrie claimed that this interrogation did not take place in the large office of the Drugs Squad but in a smaller one at the left side of the larger office. Ms Myrie gave a detailed description of this smaller office in her witness statement. She recalled that she was asked questions about Ms Pamela Clarke and a “Daniel”, after the male officer had called Ms Clarke on the phone. She was told that the male officer had spoken to Daniel, that Daniel was outside the airport waiting for her and that Daniel knew her full name and what clothes she was wearing. Ms Myrie stated that she told the officers that she did not know this Daniel and that she expected to be picked up by Pamela to whom she had spoken on the phone but had never met in person. When Officer Gittens asked her how it was that Daniel would know her name and what she was wearing, she said to him that Pamela must have told this to Daniel because Pamela knew what she, Ms Myrie, would be wearing. Several times during the questioning Ms Myrie says that she was accused of lying, especially by the female officer who repeatedly uttered slurs and expletives like “I hate these f----- Jamaicans,” “You Jamaicans are all liars” or “they only come here to steal our men and carry drugs into our country.”

[29] After her suitcase was searched, Ms Myrie said that she was told by the male officer that he was going to take her to the hospital for a body search and he called someone on the phone to arrange that possibility. Thereafter, Ms Myrie claims, the two officers discussed something among themselves. The female officer then told Ms Myrie to come with her, which she did. The female officer took her out of the office into an individual bathroom across the hall from the Drugs Squad Office.

[30] Ms Myrie testified that after they entered the bathroom the female officer locked the door and ordered her to take her clothes off. When Ms Myrie asked why, she was told that if she did not obey, she would end up in prison. Ms Myrie states that she complied with the demand and the officer took a pair of gloves out of her pockets and, in extremely humiliating circumstances, conducted a painful body cavity search. When she was through, the officer told Ms Myrie to get dressed, took off the gloves and threw them in a bin. Ms Myrie said that she cried and felt ashamed, dirty and angry. She said she felt she had been treated like a criminal. After the female officer took her back to the Drugs Squad Office, the male officer had Ms Myrie's passport in his hand and he told her "You have been stamped an entry into my country but if you do not tell me the truth I am going to get it cancelled". He asked her what she was bringing for Daniel and who Daniel was. She answered again that she did not know Daniel. He asked her if she was still sticking to that story and she said "yes". The female officer then told her "You are a liar, I don't like you f----- Jamaicans, you are all liars, you think you're going to come here and f--- up [my country, it's not going to happen". And to the male officer she said "we have to go home now, just send her to her f----- yard".

[31] Ms Myrie testified that she then asked and was refused permission to make a phone call to her family in Jamaica. She gave evidence that she also asked if there wasn't a Jamaican embassy that she could contact and again she said she was denied this courtesy. According to Ms Myrie the male officer told her that he would help her and that he would let her go if she told him the truth. Ms Myrie said that she told him that she had been trying to tell the truth ever since she had been there. Before they left the office, Ms Myrie was ordered to put her things back in her suitcase and she was made to take the suitcase down herself. She was then told to wait at the end of the stairs. The officers went into a room for a while and then left. That was the last Ms Myrie saw of them. At that point in time her entry stamp was cancelled. This was the evidence given by Ms Myrie.

The Defendant's version of the disputed facts

[32] Barbados has strenuously disputed the above evidence given by Ms Myrie. Both Officers Gittens and Carrington had given signed statements during an earlier internal police investigation and those statements were before the Court. The two

Officers also gave evidence before the Court. They both testified that during the relevant period Ms Myrie had been constantly under their supervision, that she was not suspected of being a drugs courier, that they had not interrogated her as such and that they never told her that they suspected her of carrying drugs. She was only asked some questions to ascertain whether she was a possible drug carrier but it never went beyond that, according to the officers. They denied that they had ever pressured her or had uttered anti-Jamaican slurs of the sort alleged by Ms Myrie or at all. Officer Gittens denied that he had ever told Ms Myrie that he was working at the airport for seven years. The officers denied having searched Ms Myrie's luggage, cutting her slippers or having examined her cell phone. They both stated that the interview had taken place in the large office of the Drugs Squad Office and not in the smaller office and that it had taken place before they went to the Customs area with Ms Myrie to have her luggage searched by a Customs Officer. They stated that upon their return from Customs Ms Myrie had been seated in the waiting area downstairs and that they had not taken her upstairs again. Neither Officer Carrington nor anyone else had taken Ms Myrie to the bathroom upstairs to subject her to a body cavity search. According to the officers, no such search had occurred.

The Court's assessment of the disputed facts

[33] The Court begins by examining the evidence adduced by Ms Myrie. There were undoubtedly some inconsistencies and inaccuracies in Ms Myrie's evidence. In the main these related to her sense of time and the sequence of events. For example, she stated that she was interrogated by the officers for three hours when in fact the objective evidence discloses that it could not have been for more than about forty minutes. She also testified that Immigration Officer Young had stamped an entry permit in her passport when in fact every indication suggests, and the Court accepts, that it was Supervisor Merlo Reid who had done so. These and other similar inconsistencies, some of which are specifically alluded to in this judgment, appear to arise more from a blurred and imperfect recollection of events that took place long before her witness statement was prepared than from any deliberate attempt to deceive. Inaccuracies of this kind are understandable but they are neither of great consequence nor decisive provided that the witness's evidence is otherwise sufficiently clear and cogent and upon an objective

assessment of the facts in their entirety and all the surrounding circumstances strike the fact finder as honest.

[34] In the first place it has to be noted that Ms Myrie complained about the treatment she received at the Barbados airport immediately after she left Barbados and she acted upon it right away. The evidence shows that directly upon arrival in Jamaica she called Mr Julian Jackson, who had taken her to the airport the previous day. Ms Myrie told him that she had been deported from Barbados. She asked him to pick her up from the airport, which he did. Mr Jackson testified that when he saw Ms Myrie at the airport, she started to cry and immediately told him about the abuse meted out to her by border officials at the Barbados airport. She told him about the disparaging remarks about Jamaicans and that she had been called a liar and accused of carrying drugs. She also told him how she was escorted to an office upstairs and interviewed by a male and a female officer. She told him about the threat to take her to the hospital to search her for drugs and, in a rather detailed manner, about the body cavity search to which she was subjected by the female officer. When Ms Myrie told him this, Mr Jackson became angry and emotional. He immediately drove Ms Myrie to the Ministry of Foreign Affairs and Foreign Trade where she made an oral report to the officials who advised her to put her complaint in writing. That advice was followed by Ms Myrie. The Court notes that the report Ms Myrie made then, and which was adduced before the Court, is consistent with the evidence she has given before the Court. The Jamaica government was sufficiently moved to send a delegation to Barbados in an attempt to investigate the circumstances.

[35] On 9 April 2011 Ms Myrie was seen by a part time medical practitioner (and full time university lecturer), Dr Sonia Davidson, who gave evidence before this Court. Dr Davidson testified that during Ms Myrie's first visit, she spoke with Ms Myrie for about two hours at which time Ms Myrie told her the details of her ordeal in Barbados. The Court notes that what she told Dr Davidson corresponds and is consistent with her later witness statement and evidence before the Court. Dr Davidson had two more sessions with Ms Myrie, on 30 April 2011 and 14 April 2012, and the doctor concluded that Ms Myrie's symptoms were consistent with mild post-traumatic stress syndrome which has been complicated by

embarrassment. In Dr Davidson's view Ms Myrie's post-traumatic stress syndrome was caused by what she had experienced in Barbados. Dr Davidson testified that during her sessions with Ms Myrie no other possible causes had arisen to explain her symptoms. There was no evidence of any pre-morbid pathology. Ms Myrie was referred to a psychiatrist and was seen by Dr Clayton Sewell.

[36] Dr Sewell, a forensic psychiatrist, gave evidence before this Court. He testified that he saw Ms Myrie on 5 February 2013. The interview and examination lasted about 1 hour and 30 minutes. During this interview Ms Myrie provided Dr Sewell with the same facts as the ones she gave in evidence: i.e., being accused of having drugs, the expletives and slurs about Jamaicans and the rough and demeaning way in which the body cavity search was executed by the female officer. Dr Sewell found that Ms Myrie was still suffering from mental or emotional injuries and would continue to do so for some time. He was of the opinion, with a reasonable degree of medical certainty, that these injuries were the result of the events at the Barbados airport on 14 March 2011. He stated that his evaluation was done in such a way as to objectively assess the symptoms Ms Myrie had described, and to determine whether she was not fabricating or exaggerating the symptoms of mental or physical disorders. Having seen and heard both doctors the Court accepts their evidence.

[37] Ms Myrie gave evidence in Jamaica before Officers Gittens and Carrington gave their evidence in Barbados. Ms Myrie, although present in Barbados, was not called to give further evidence. She did not therefore formally identify Officers Gittens and Carrington as the male and female officer she had mentioned in her testimony. From the totality of the evidence, however, it is beyond any doubt that where she spoke about the male and the female officer, she meant Officers Gittens and Carrington whom she had already accurately described. Although Ms Myrie initially had not indicated that she had been taken upstairs twice by Officers Gittens and Carrington, it is clear from the facts she has provided that the more serious questioning must have taken place after she returned from Customs at around 17.45 hrs. It was only thereafter that her suitcase could have been searched in the Drugs Squad Office and given the fact that, according to his own

statements, Officer Gittens spoke with Ms Clarke over the phone, heard about Daniel Forde and spoke with him outside the airport between 17.35 hrs and 17.45 hrs, the interrogation of Ms Myrie with regard to these two persons could not have taken place before 17.35 hrs. Between 17.45 and 18.29 hrs there was ample time (some 44 minutes) for the interrogations, the search of her luggage and the body cavity search, as described by Ms Myrie.

[38] Several aspects of Ms Myrie's evidence were corroborated by other evidence. Two examples will suffice. Firstly, Ms Myrie's detailed description of the small office in which she says she was questioned by Officers Gittens and Carrington and the bathroom in which she claims she was subjected to the body cavity search were essentially accurate as the Court was itself able to establish when it visited the airport on 16 March 2013. What is interesting about this is that if Officers Carrington and Gittens are to be believed, Ms Myrie at no time entered either of these rooms. The Court found to be entirely unconvincing the explanations advanced by Barbados for Ms Myrie's accurate description of rooms Barbados claims she never entered. With respect to her ability to describe the bathroom upstairs, the explanation was provided by Officer Gittens who testified that all the bathrooms in the SIA look the same, a statement that not even Officer Carrington was able to confirm. Even if all the bathrooms look the same, however, it does not explain how Ms Myrie could have known this. She clearly could not.

[39] With respect to her description of the small office in which she was questioned, it was suggested by counsel for Barbados that Ms Myrie was able accurately to describe this room because the Jamaican diplomatic delegation which visited Barbados to investigate this incident could have provided the description to Ms Myrie so that the latter's evidence could be bolstered. This explanation is evidently nothing more than speculation. In any event, this very serious allegation was never put to the Jamaican High Commissioner when she gave evidence and the Court rejects it. Secondly, when he testified, Officer Gittens denied that he had ever said to Ms Myrie the statements attributed to him by her. Uncannily, however, in answer to a question from the Bench, Officer Gittens admitted that at the time of the events in question he had indeed been working at the airport for seven years as Ms Myrie had stated. Here again, no reasonable explanation was

given for the fact that Ms Myrie did know this other than that she had heard it from Officer Gittens himself. The Court rejects the explanation provided by Officer Gittens that Ms Myrie came by that knowledge because he, Officer Gittens, is “a popular and well known man around the airport”. On the evidence before the Court, until recently, Ms Myrie did not even know the name of Officer Gittens to whom she referred in her witness statements as “the male officer”. Interestingly, Officer Carrington testified that not even she was aware of the number of years Officer Gittens had been working at the airport. These two examples are not by themselves decisive but they support and strengthen considerably the conclusion that as between the version of events provided by Ms Myrie on the one hand and that provided by Officers Gittens and Carrington on the other, the former is to be preferred.

[40] There is of course also the evidence given by Officers Gittens and Carrington to consider. Remarkably, the witness statements they provided were almost literally identical, i.e., word for word, in their account of the facts. This is hardly surprising. In the early stages of the internal Barbadian police investigation into this matter, after it was public knowledge throughout the region of the allegations being made by Ms Myrie, it must have become clear that these two officers had played a significant role in Ms Myrie’s treatment at the airport. Astonishingly, they were not separately interviewed by the investigators but were instead allowed to write their own statements which they did, as Officer Gittens testified, in collaboration with each other. Their written evidence and their testimony before this Court did not contain as many inconsistencies as did Ms Myrie’s so far as concerns the timeline and the sequence of events but it must be noted that their recollection of events benefited from considerable advantages that were unavailable to Ms Myrie. Unlike her, they were very well aware of the several locations in the airport and before their witness statements were drawn up they were allowed to see and be guided by the video footage of the cameras in the Arrivals Hall to refresh their memories. By contrast, Ms Myrie was obliged to reproduce her account from her unaided recollection and without the advantage of having a proper matrix of time and place. The Court also considers that Barbados would have known, from the time it carried out its own internal investigation into these allegations made by Ms Myrie, that Officer Carrington was obviously “the

female police officer” who was being accused by Ms Myrie of having executed the cavity search on her. In these circumstances, one would have expected that Barbados would have been anxious to have the officer give evidence to a Court seeking to establish what had transpired. In fact, Barbados declined to call Officer Carrington as one of its witnesses. It was left to the Court to invoke its powers to ensure the attendance of Officer Carrington as a witness in these proceedings.

[41] In considering and weighing the evidence that Officers Gittens and Carrington gave, the Court found it difficult to accept the testimony that trained drug squad officers, as they both stated under oath they were, never suspected Ms Myrie of carrying drugs, never expressed that thought to her and never examined her cell phone or even searched her bags. The Court considers that these denials undermine the credibility of their testimony. Their further denial that they ever questioned Ms Myrie about Mr Daniel Forde is, given the totality of the evidence, equally hard to believe.

[42] Given the totality of the evidence and its overall consistency, the Court was impressed by the sincerity of Ms Myrie and accepts the credibility of her evidence. The Court is satisfied that the essential allegations of Ms Myrie in relation to the body cavity search have been established and that the burden of proof as far as it weighed upon her has been properly discharged.

The Applicable Law

The legal background

[43] The legal provisions which are relevant to the determination of this case are the RTC and the 2007 Conference Decision (“Community law”). In relation to the RTC, Articles 7, 8, 9, 12, 27, 28, 29, 30, 45, 46, 225, 226 and 240 are of particular significance. There is also before the Court for consideration the immigration scheme contained in the national laws of Barbados and in particular, relevant provisions of the Immigration Act and the Administrative Justice Act. These are domestic laws which may or may not be consistent with Community law. For ease of reference, the full text of the aforementioned provisions of the RTC as well as the relevant sections of the Immigration Act and Administrative Justice Act are set out in an annex to this judgment. As the Claimant’s case essentially hinges on the

meaning and efficacy of the 2007 Conference Decision, however, the court considers it necessary to set out this decision here in full. According to the Draft Report of the Twenty-Eighth Meeting of the Conference of Heads of the Caribbean Community, at that Meeting:

“THE CONFERENCE

AGREED that all CARICOM nationals should be entitled to an automatic stay of six months upon arrival in order to enhance their sense that they belong to, and can move in the Caribbean Community, subject to the rights of Member States to refuse undesirable persons entry and to prevent persons from becoming a charge on public funds.

NOTED the reservation entered by ***Antigua and Barbuda*** in this regard”

[44] In other CARICOM documents³ the phrase “should receive a definite entry” is used instead of “should be entitled to an automatic stay” and throughout the hearing no issue was made of the difference between these two formulations. The Court therefore treats them both as meaning the same thing.

The Legal Analysis

The efficacy of the 2007 Conference Decision

[45] Barbados argues that the 2007 Conference Decision is ineffective because it uses the word “agreed” and not “decided”. As the Community has pointed out in its submissions, it is not unusual for the Community to record its *decisions* while using the word “agreed”. This is reflected in several documents which have been submitted to the Court. Thus, in the report of the Second Joint Meeting of the Council for Trade and Economic development (COTED) and the Council for Human and Social Development (COHSOD) the “agreement” reached at the Twenty-Eighth Meeting of the Conference was consistently referred to as a *decision* and in the Summary of Recommendations and Conclusions of the Nineteenth Inter-Sessional Meeting of the Conference of Heads of Government of the Caribbean Community, the Conference urged several Member States to

³ See for example Summary of Recommendations and Conclusions of the 19th Inter-sessional Meeting of the Conference, March 2008 in The Bahamas where the Conference with respect to facilitation of travel “urged Member States, other than Belize, Grenada, Guyana and Suriname to implement the decision taken at its 28th Meeting (July 2007 in Barbados) that CARICOM nationals traveling to other Member States *should be granted a definite entry of six months*, irrespective of the reason of their visit but subject to the right of Member States to reject undesirable persons and to prevent persons from becoming a charge on public funds” (emphasis added).

implement the *decision* taken at its Twenty-Eighth Meeting, that CARICOM Nationals travelling to other Member States should be granted a “definite entry of six months ...”. The CARICOM documents are replete with references to the action taken at the Twenty-Eighth Meeting of the Conference of the Heads of Government as being a binding and implementable decision. The Court considers, therefore, that it is of no consequence that the 2007 Conference Decision uses the word “agreed” and not “decided”.

Issues surrounding the force of the 2007 Conference Decision

(a) Whether the Antigua and Barbuda “reservation” renders the Decision ineffective

[46] Barbados disputes the validity of the 2007 Conference Decision because the “reservation” of Antigua and Barbuda, as noted by the Conference, indicated that there was a dissenting vote. The principle laid down in Article 28 (1) RTC is that for a Conference decision (other than one dealing with procedural issues, which only requires a simple majority) to be binding an affirmative vote of all its members is needed. In this regard an abstention or an omission to vote is not to be construed as impairing the validity of decisions of the Conference provided that Member States constituting three-quarters of the Membership of the Community, vote in favour of such decisions. Further, pursuant to Article 27(4) RTC, it is possible for a Member State to opt out of obligations arising from a decision of the Conference provided that the fundamental objectives of the Community as laid down in the RTC are not prejudiced thereby.

[47] Counsel for the Community indicated that a practice has developed in CARICOM whereby decisions usually are taken by consensus and it is probably for this reason that vetoes or objections rather than affirmative votes are recorded. No one disputed the existence of this practice and the manner in which the 2007 Conference Decision was made fits into this practice. In this context, however, the Court has to address the fact that according to the Report and the Communiqué of the Twenty-Eighth Meeting of the Conference Antigua and Barbuda entered “a reservation” in connection with the recorded Decision. Barbados submits that this “reservation” effectively prevented what was done at the Twenty-Eighth Meeting from amounting to a binding and implementable decision. The Court rejects this

submission. In the first place, there is no evidence to indicate that this “reservation” was intended to amount to a veto and there is nothing to suggest that the decision was not duly made. Secondly, all CARICOM States including Antigua and Barbuda were served with notice of these proceedings. It would be surprising that none of them intervened to protect their interests in a case where a Community national and another Member State were relying on the binding effect of a Conference decision that was not validly made and which imposed obligations on them to permit the rights of entry guaranteed by the 2007 Conference Decision. Thirdly, the Conference, the CARICOM Secretariat and the various Organs of the Community have all regarded and treated the 2007 Conference Decision as valid and binding. Following the Decision all the relevant measures taken by the Conference and other Organs and officials of the Community were clearly geared towards the implementation of the Decision.

[48] In any event, whether or not the “reservation” of the State of Antigua and Barbuda should be construed as an opt out pursuant to Article 27(4) RTC is not relevant to the validity of the Decision as such. The position of Antigua and Barbuda is not at stake in this case and any possible difficulties as to the position of that particular State will have to be decided if and when those issues come before the Court.

(b) *Whether Article 240 RTC requires the Conference Decision to be domestically enacted before it becomes binding*

[49] Barbados has viewed and defended this case almost entirely from the perspective of its national law. The Court, however, disagrees with the submission that the 2007 Conference Decision could not have created a legally binding right for Community nationals since Barbados has not as yet enacted that Decision domestically as required by Article 240(1) RTC.

[50] The basic presumption of the Barbados Immigration Act is that persons who are not citizens or permanent residents of Barbados have no legal right whatsoever to enter the territory. As a general proposition this is a correct reflection of international law regarding immigration, although there are a few exceptions to this rule. The RTC, however, and more particularly the 2007 Conference Decision brought about a fundamental change in the legal landscape of immigration

throughout the Community. In contradistinction to foreigners in general, Community nationals now do have a right to enter the territory of Barbados and that of other Member States unless they qualify for refusal under the two exceptions mentioned above.

[51] Although it is evident that a State with a dualist approach to international law sometimes may need to incorporate decisions taken under a treaty and thus enact them into municipal law in order to make them enforceable *at the domestic level*, it is inconceivable that such a transformation would be necessary in order to create binding rights and obligations *at the Community level*.

[52] Article 240 RTC is not concerned with the *creation* of rights and obligations *at the Community level*. The Article speaks to giving effect to such rights and obligations *in domestic law*. This is clearly reflected in its second paragraph which requires Member States to give effect to decisions of competent Organs and Bodies in their *municipal law* so as to enable Community nationals to enforce their rights at the national level and in the municipal courts. If binding regional decisions can be invalidated at the Community level by the failure on the part of a particular State to incorporate those decisions locally the efficacy of the entire CARICOM regime is jeopardized and effectively the States would not have progressed beyond the pre-2001 voluntary system that was in force. The original jurisdiction of the Court has been established to ensure observance by the Member States of obligations voluntarily undertaken by them at the Community level. The Court is therefore entitled, if not required, to adjudicate complaints of alleged breaches of Community law even where Community law is inconsistent with domestic law. It is the obligation of each State, having consented to the creation of a Community obligation, to ensure that its domestic law, at least in its application, reflects and supports Community law.

[53] Articles 240 (2) and Article 9 RTC when combined require the Member States to honour and carry out the obligations arising out of the RTC as well as those resulting from decisions taken by the Organs and Bodies of the Community. In some cases it may mean that a State needs to enact or amend legislation in order to render its municipal law entirely consistent with those decisions. To state, however, that international rights and obligations resulting from a Conference

Decision are created and binding at the Community level only when they are incorporated into domestic law leads to absurdity, as it cannot possibly be explained how one can “incorporate” a norm that does not yet exist. Further, if domestic incorporation were a condition precedent to the creation of Community rights, an anomalous situation would be created when some States incorporated the Decision and others had not. This would be untenable as it would destroy the uniformity, certainty and predictability of Community law.

[54] The Court makes two further general observations. Firstly, as indicated earlier, Article 240(1) RTC does not require that Member States enact a binding Community decision into domestic law in order to create at the Community level legally binding rights and obligations. The States are merely required to give domestic effect to such a decision *subject to their own relevant constitutional procedures*. If these constitutional procedures require domestic legislation, then the State’s legislature must be involved in order to give municipal courts the authority to adjudicate those rights and obligations at the municipal level. But in lieu of enacting new or amending old legislation this objective may in some cases also be accomplished administratively or even judicially in cases where the Constitution or the existing domestic legislation leaves room for so doing. In such cases domestic effect to the State’s treaty obligations can and, given the duties imposed on Member States by Articles 9 and 240(2) RTC, *must*, if possible, be given by the executive or judicial branches of that State.

[55] Secondly, in the absence of any indication to the contrary a valid decision of a Community Organ or Body taken in fulfilment or furtherance of the RTC or to achieve the objectives of the Community is immediately binding at the Community level.⁴ As a matter of good practice the Community in its decision-making should stipulate a fixed time frame within which such decisions should be implemented after which the decision enters into force with the result that a delinquent State is automatically in violation of the RTC and, in principle, liable for the consequences of such a violation. This approach has the value of simultaneously providing legal certainty to Community nationals and enabling Member States to prepare for the execution of the obligations that accompany the

⁴ See *Hummingbird Rice Mills Limited v Suriname and the Caribbean Community* [2012] CCJ 1 (OJ), (2012) 79 WIR 448 [17].

decision. Article 240(2) RTC also makes clear that the time frame for implementing any such decision in municipal law must be such that it can be described as expeditious.

Whether the activities of border officials are excluded from judicial review by this Court (Art 30 RTC)

[56] Barbados argues that immigration and customs procedures are “activities forming part of a system of national security or for the establishment or maintenance of public order” and thus, in accordance with Article 30(3) RTC, constitute “activities involving the exercise of governmental authority”. Such activities, as Article 30(2) RTC stipulates, are excluded from the operation of Chapter Three of the RTC (Articles 30-50) and thus, so goes the argument, from judicial review. This argument is misconceived. If Article 30(2) were to be construed in the manner indicated by Barbados, then very little would remain of the rights specifically granted in respect of the four freedoms referred to in Chapter Three of the RTC.

[57] The purpose of Article 30 is to allow Member States as part of the exercise of their sovereignty to reserve certain public service positions strictly for their own nationals. The justification for this exception/derogation is that these positions presume “a special relationship of allegiance to the State” and “reciprocity of rights and duties which form the foundation of the bond of nationality”.⁵ Article 30(2) could therefore be applied to limit the right to seek employment in another Member State’s armed forces, the police force, immigration, customs, the judiciary, etc. It is, however, not intended to limit the right to free movement as such nor can it be invoked to prevent the Court from subjecting to judicial scrutiny the actions of functionaries in those areas in the exercise of their duties in the context of the RTC.

Substantive and procedural components of the right of “definite entry”

[58] Barbados submits that if the 2007 Conference Decision gave Ms Myrie a right of entry, such right is not absolute or without any restrictions and, on the facts of this

⁵ See ECJ, Case 149/79 *Commission v Belgium* Judgment of the Court of 17 December 1980 [10].

case, Barbados was justified in refusing her entry. The submission requires the Court to examine the substantive and procedural content of the right of entry into a Member State. That right is part of the broader concept of free movement of Community nationals within the Community. Although Article 45 RTC embodies that concept in aspirational terms, the right has to a great extent already been enshrined and fleshed out in the RTC itself.

[59] A clear example of the above can be found in Article 46 RTC which deals with the right of movement of five specific categories of skilled Community nationals. This provision, considered in its own words “as a first step towards achieving the goal set out in Article 45,” accords these groups of nationals the right to seek employment in any of the Member States. To this end the Member States undertook to “provide for movement of Community nationals into and within (their) jurisdictions without harassment or the imposition of impediments” (Article 46(2)(b) RTC), to the extent even that “the requirement for passports for Community nationals” should be eliminated (Article 46(2)(b)(i) RTC). From Article 46(3) RTC it can be deduced that the concept of free movement entails the right of Community nationals to have unrestricted access to, and movement within, the jurisdictions of the Member States “subject to such conditions as the public interest may require.” The fourth paragraph of Article 46 RTC charges the Conference, *inter alia*, with the duty “to enlarge, as appropriate, the classes of persons entitled to move and work freely in the Community.” In fact, the Conference has already added several new categories to the ones mentioned in Article 46(1) RTC.

[60] But this is not all. Both the rights of establishment and of the provision of services presume of necessity the right of movement of Community nationals. Thus, Article 34 RTC provides that COTED shall, *inter alia* require the Member States “to remove all restrictions on the movement of managerial, technical and supervisory staff of economic enterprises” and “to ensure that nationals of one Member State have access to land, buildings and other property situated in the territory of another Member State, other than for speculative purposes or for a purpose potentially destabilizing to the economy, on a non-discriminatory basis bearing in mind the importance of agriculture for many national economies.”

[61] Article 36 RTC deals with the right to provide services throughout the Community. In Article 36(2) RTC it is specifically stated that “Without prejudice to the provisions relating to the right of establishment, persons providing services may, in order to provide such services, temporarily engage in approved activities in the Member State where the services are to be provided under the same conditions enjoyed by nationals of that Member State.” In accordance with Article 36(4) RTC, “services” in this context means “services provided against remuneration other than wages in any approved sector” and “the provision of services” means the supply of services not only “from the territory of one Member State into the territory of another Member State” but also “in the territory of one Member State to the service consumer of another Member State.” It is clear, therefore, that in certain approved sectors, nationals of a Member State who supply these services must in principle have the right freely to enter any other Member State in order to ply their trade; but, logically following from Article 36(4)(b), also nationals of a Member State desirous of receiving such services in another Member State must be allowed to enter the latter State in order to receive that service without being obstructed by unreasonable restrictions. Without doubt, one of the service sectors capable of triggering these rights is tourism as tourists can reasonably be considered recipients of services.⁶ Interestingly, in a document prepared by the Barbados government “Comprehensive Review of Immigration Policy and Proposals for Legislative Reform - Ministry of Labour and Immigration, October 2000” (commonly referred to as “the Green Paper”), it is stated at paragraph 29 that “the notion of hassle free travel is intended to foster a greater sense of community *and to encourage greater intra-CARICOM tourism*” (emphasis added).

[62] In light of the above, it is clear that the 2007 Conference Decision is just another step in furthering a fundamental Community goal of free movement that is not only envisioned by the RTC but in some instances already achieved by it. The Decision takes this goal beyond the defined group of Community nationals who are seeking economic enhancement in one way or the other and broadens it to Community nationals in general. It clarifies one aspect of the goal in that it gives

⁶ Joined Cases 286/82 and 26/83 *Luisi and Carbone v Ministero del Tesoro*.

every Community national the right to enter any Member State and stay there for up to six months. The right conferred is expressed as an entitlement to “an automatic stay” or “a definite entry” of six months upon arrival.

[63] Given the historic background of this aspect of free movement, a background that can be found both in the well-known report of the West Indian Commission, *Time For Action*,⁷ and in several CARICOM reports, Community nationals are entitled to assume that the purpose of the 2007 Conference Decision is indeed “to enhance their sense that they belong to, and can move in, the Caribbean Community” and in the context of the relevant provisions of the RTC set out in the Annex to this judgment, the full extent of the right is that both entry and stay of a Community national in another Member State must not only be “definite” but also “hassle free” or “without harassment or the imposition of impediments”.⁸ These are essential elements of the right.

[64] The 2007 Conference Decision emphatically states that the right of entry and definite stay of six months is “subject to the rights of Member States to refuse undesirable persons entry and to prevent persons from becoming a charge on public funds”. In its submissions Barbados appears to regard these two qualifications as conditions precedent to the acquisition of the right of entry and six month stay. This would explain why Barbados in construing these words of the Decision leans heavily on its domestic law and the discretion which is accorded to its immigration and customs officers under that law. This approach, however, is not correct. The wording of the Decision where it speaks about “automatic stay” or “definite entry” upon arrival, suggests that the right does not depend on discretionary evaluations of immigration officers or other authorities at the port of entry. The fact that entry and stay are described as “definite” and “automatic” precludes any dependency of the right itself on the exercise of domestic discretion.

[65] As the 2007 Conference Decision seamlessly fits into the legal structure of the RTC concerning the concept of free movement, it is logical to look at that structure when construing the Decision. Performing that exercise leads to a clear

⁷ Report of the West Indian Commission, *Time For Action* (The Press- University of the West Indies 1993) 142.

⁸ See Article 46 (2) (b) RTC.

conclusion. Rights given by or under the RTC may justifiably be curtailed or restricted by a Member State if that State can reasonably invoke one of the exceptions mentioned in Articles 225 and 226 RTC. Similarly, the rights of a Member State to refuse undesirable persons and to prevent persons from becoming a charge on public funds must equally be construed as exceptions to, and restrictions on, the right of Community nationals from other Member States to enter into and move around the receiving State “without harassment or the imposition of impediments.”

[66] In this context, the Court would refer to a comparable use of words in a relevant provision in the EEC Treaty. Article 48 of that treaty⁹ dealt with the “freedom of movement for workers” which according to paragraph 3 of that provision included the right to accept offers of employment actually made and *to move about freely* for this purpose within the territory of Member States, “*subject to limitations justified by reasons of public order, public safety and public health*”. According to the European Court of Justice it was “evident that the exception concerning the safeguard of public policy, public security and public health ... must be regarded not as a condition precedent to the acquisition of the right of entry and residence but as providing the possibility, in individual cases where there is sufficient justification, of imposing restrictions on the exercise of a right derived directly from the Treaty”.¹⁰

[67] The Court finds this reasoning convincing. It is equally applicable in the case at hand. The refusal of a Member State to let Community nationals from other Member States enter its territory on the ground that they are either undesirable persons or because it is evident that they will become a charge on public funds, must be seen as an exception to, or a restriction on, the right of entry. The effect of that characterization is two-fold. Firstly, being an exception to a fundamental principle of free movement, the scope of the refusal and, in particular, the grounds on which it is based must be interpreted narrowly and strictly in order to avoid an unjustified watering down of the importance of the right it seeks to limit. Secondly, being an exception to this fundamental principle, the burden of proof must rest on the Member State that seeks to invoke either ground for refusing

⁹The Treaty Establishing the European Economic Community (“Treaty of Rome”) 1957.

¹⁰ See ECJ Case 48/75 *Jean Noel Royer* [29].

entry. The scope of these grounds of refusal will now be examined. The evidence issues will be dealt with later in the judgment.

Exceptions to the right of definite entry

(a) Undesirability

[68] The concept of “undesirable persons” in Community law must be understood and construed against the background of Article 226(1)(a) and (b) RTC. Undesirability is meant to be concerned with such matters as the protection of public morals, the maintenance of public order and safety and the protection of life and health. In most, if not all, Member States the refusal or non-admittance of foreigners is primarily founded on national immigration legislation which usually allows national authorities broad discretionary powers. Given the proviso in the 2007 Conference Decision “subject to the rights of Member States to refuse undesirable persons entry”, Member States are and continue to be, in principle, free to determine the requirements of public policy in the light of their national needs. As was stated in *R v Pierre Bouchereau*¹¹ the particular circumstances justifying recourse to the concept of public policy may vary from one country to the other and it is therefore only natural, and acceptable, that national legislation on this issue in the Member States will not be the same everywhere. It is also natural and necessary that the competent national authorities should have a level of discretion to deal with individual cases. However, the scope of public policy and particularly that of the concept of “undesirable persons,” which is used as a justification for derogation from the fundamental principle of freedom of movement and hassle free travel of Community nationals, cannot wholly or unilaterally be determined by each Member State without being subject to control by the major Community Organs, in particular the Conference, and ultimately by the Court as the Guardian of the RTC.

[69] Implementation of the very idea and concept of a Community of States necessarily entails as an exercise of sovereignty the creation of a new legal order and certain self-imposed, albeit perhaps relatively modest, limits to particular areas of State sovereignty. Community law and the limits it imposes on the Member States must

¹¹ Case 30/77 *R v Pierre Bouchereau* [33]-[35].

take precedence over national legislation, in any event at the Community level. It follows from the above that a refusal on the basis of “undesirability” may be based on national law and on Community law, with the proviso that where national law does not conform with the parameters laid down by Community law, it will be the latter that ultimately must prevail.

[70] The principle of proportionality is relevant to the application of Community law in this context. In light of, on the one hand, the fundamental nature of the principle of free movement and, on the other, the draconian character of non-admission, which constitutes its total negation, the Court holds that no restrictions in the interests of public morals, national security and safety, and national health should be placed on the right of free entry of a national of any Member State unless that national presents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.¹² Undesirable persons within the meaning of the 2007 Conference Decision are therefore those Community nationals who actually pose or can reasonably be expected to pose such a threat.

[71] For the purposes of this particular case, it is unnecessary to explore the full extent of what would constitute “a threat affecting one of the fundamental interests of society” but the Court holds that in the area of public morals, national security and safety, a reasonable test for assessing such a threat is that, *as a starting point*, it must be shown that the visitor poses a threat to do something prohibited by national law. In practice that threshold will of course be much higher as it also requires that the threat be genuine, present and sufficiently serious. In this vein, which, again, is in accordance with the principle of proportionality, the Court finds persuasive the judgment of the European Court of Justice in *Adoui*¹³ where that court stated that a Member State may not refuse a national of another Member State access to its territory by reason of or the threat of “conduct which, when attributable to the former State’s own nationals, does not give rise to repressive measures or other genuine and effective measures intended to combat such conduct.” In other words, for the receiving State validly to exclude a visitor on

¹² See ECJ case law: Case 36/75 *Rutili and The Minister for the Interior* [27]; Case 30/77 *Regina v Pierre Bouchereau* [33]; Case C-348/96 Criminal proceedings against Donatella Calfa [23]; Joined Cases C-482/01 and C-493/01 *Orfanopoulos and Others and Oliveri v Land Baden-Württemberg* [64]-[65].

¹³ Joined Cases 115 and 116/81 *Rezguia Adoui v Belgian State and City of Liège; Dominique Cornuaille v Belgian State*.

the basis that the visitor poses a realistic threat to engage in conduct prohibited by national law, the receiving state must show that its own nationals who engage in such conduct are routinely prosecuted or otherwise subjected to some legal sanction.

[72] The evidence in this case reveals that under Barbados domestic law, the practice has been that Community nationals are often denied entry into Barbados where they intend to stay with a person who is “not of good repute” or where the Community national is deemed not to be “a *bona fide* visitor.” Neither of these grounds by itself appears to meet the relevant test as previously outlined. In this case, however, it was not alleged that Ms Myrie was deported for either of these reasons. The reason offered by Barbados for refusing her entry was that she had not been truthful with the officials who handled her case. Barbados justifies her deportation on the basis that Ms Myrie had told them that she was invited to Barbados by Ms Pamela Clarke who was to be her host. Barbados insists that was false.

[73] The Court accepts, of course, that a visitor is under an obligation to be truthful to immigration officials. The Court, however, has difficulty with the fairness of the procedure by which it was definitively determined by Barbados that Ms Myrie was lying. The Court has even greater difficulty in itself so concluding in light of all the surrounding circumstances. The evidence adduced on this point consisted of contradictory statements of Ms Clarke and Ms Myrie. Significantly, although Ms Clarke claimed not to know Ms Myrie at all, she did admit that she had given permission for Ms Myrie to use her name and telephone number upon arrival at the airport. It was established that Ms Myrie was indeed in possession of Ms Clarke’s telephone number. There is evidence that there were two other persons who appear to have been involved with Ms Myrie’s visit to Barbados. Firstly, there was Mr Daniel Forde who was at the airport to receive her and who told Officer Gittens that he had been sent by Ms Clarke to do so. There was also a Ms Sheka Rowe, a national of Jamaica at the time apparently residing in Barbados. Both of these persons, material witnesses on this issue, gave statements to the police during the internal investigation conducted by Barbados into this matter. Each of them could have shed more light on the case. On this issue, Barbados, it

must be stressed, had the burden of proof, yet Barbados decided not to call either of these persons as witnesses. In all the circumstances, the Court is of the view that Barbados has not established Ms Myrie's alleged untruthfulness.

[74] Be that as it may, the applicable test is whether Ms Myrie was an undesirable person, i.e., whether she presented on arrival a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. In the Court's view, there were no indications, let alone evidence, that she presented or was capable of presenting such a threat. No evidence was led to show that Ms Clarke, Mr Forde or Ms Rowe are persons of bad repute. In principle, evidence of an intention to stay with a host of ill repute or telling lies to a border official could possibly be an indication that the visitor might present a "threat" of the required category but without more this would be insufficient to establish that fact.

(b) Charge on public funds

[75] The second ground upon which a Community national may be refused entry under the 2007 Conference Decision is whether it is likely that such a person will become a charge on public funds. It appears that this is often understood as requiring the national seeking entry to have sufficient cash at hand. The Court notes that not having sufficient funds available does not necessarily mean that the individual concerned *will become* a charge on public funds. Generally speaking, however, it would seem reasonable for the authorities to assess whether the visitor has funds available and whether these funds would suffice during the time the Community national intends to stay in the country, taking into account factors such as the availability of a credit card and whether or not the visitor is staying with a private person or at an establishment as a paying guest. In this case it was not asserted by Barbados that Ms Myrie lacked sufficient funds to support herself for the relatively short period she wished to stay.

[76] It would not be reasonable to require a visiting Community national to show sufficiency of funds for a period of six months if the national does not intend to stay that long. In addition to giving Community nationals "a sense of belonging" the six month period to which all Community nationals are entitled functions as a mechanism of convenience for the visitor who, having entered, desires to extend

the visit to a period longer than was originally intended albeit less than the outside limit of six months. Community nationals are required to show a return ticket on arrival and visitors will not normally stay longer than financially feasible whether using their own financial means or with the support of their hosts.

Procedural consequences attendant on the right of entry and related issues

[77] The above considerations deal with the justifications of a refusal of admission from the perspective of *substantive* Community law but there are also *procedural* consequences following from the 2007 Conference Decision. Given (a) the exceptional character of a decision to refuse a Community national admission into a Member State of the Community and (b) the principle of accountability which forms part of Community law,¹⁴ it is procedurally required that the reasons for refusal be given to a person denied entry. These reasons must be given promptly and in writing. The only exception to this rule is to be found in Article 225(a) RTC which provides that nothing in the RTC shall be construed “as requiring any Member State to furnish information, the disclosure of which it considers contrary to its essential security interests.” This exception would also require a strict and narrow interpretation and it is evident that only in rare cases will Member States be justified in resorting to it.

[78] The accountability principle requires Member States promptly and in writing to inform a Community national refused entry not only of the reasons for the refusal but also of his or her right to challenge that decision. The principle requires the Member States to provide at the national level an effective and accessible appeal or review procedure with adequate safeguards to protect the rights of the person denied entry. The Court was informed that the practice in Jamaica is to have a decision to deny entry immediately reviewed by a higher placed official. This policy much commends itself to the Court as an advisable first step, although it would not be enough as there should also be some form of judicial oversight available at the domestic level.

¹⁴ See *Trinidad Cement Limited v The Caribbean Community* [2009] CCJ 4 (OJ), (2009) 75 WIR 194 [39]- [41]; *Hummingbird Rice Mills v The Caribbean Community* [2012] CCJ 1 (OJ), (2012) 79 WIR 448 [31]- [32].

[79] Section 23(1) of the Barbados Immigration Act, for example, provides for such oversight but at face value it seems to disentitle the Barbados courts from judicially reviewing an order made by local authorities to refuse permission to enter Barbados to any person who is not a citizen or resident of Barbados. Section 23 is buttressed by section 13(2)(b) of the Administrative Justice Act which provides that no reasons need be given for a decision of an official under the Immigration Act. Ms Myrie and the Intervener submit that these laws are discriminatory in their application to Community nationals and Ms Myrie seeks relief on this basis in the form of a declaration that they (a) violate, or are inconsistent with, her rights under Article 7, 8 or 9 RTC, (b) frustrate and prejudice the object and purpose of the RTC and (c) result in inhumane treatment of Community nationals.

[80] Community law requires access to appropriate judicial review in a case of a denial of entry. It also requires that officials give reasons promptly and in writing for any such denial. Both provisions of domestic law mentioned above, section 23(1) and section 13(2)(b) respectively, appear inconsistent with Community law as set out in this judgment. Nevertheless, the inconsistency may in reality not exist. A violation of Community law is not so much caused by the existence of domestic laws that seemingly contradict it but by whether and how these laws are applied in practice. The Court observes in this respect that the domestic courts of Barbados, including this Court in its appellate jurisdiction, are constrained to interpret domestic laws so as, if possible, to render them consistent with international treaties such as the RTC.¹⁵

[81] Section 23 is a provision that purports to oust the court's jurisdiction. But even where an ouster clause is found in the Constitution itself, a domestic court would be extremely reluctant to give such a clause its literal meaning. An ouster clause cannot, for example, oust a fundamental principle that gives effect to the rule of law.¹⁶ In light of the obligations undertaken by Barbados under the RTC the

¹⁵ See *The Attorney General v Jeffrey Joseph and Lennox Ricardo Boyce* [2006] CCJ 3 (AJ), (2006) 69 WIR 104 [55], [56] and [106] (Judgment of de la Bastide P and Saunders J), [29]-[35] (Wit J).

¹⁶ See *The Attorney General v Jeffrey Joseph and Lennox Ricardo Boyce* [2006] CCJ 3 (AJ), (2006) 69 WIR 104 [40] (Judgment of de la Bastide P and Saunders J), [40] (Wit J).

propriety of the continued application to nationals of other Member States of laws such as section 23(1) of the Barbados Immigration Act and section 13(2) of the Administrative Justice Act may be a matter of legitimate comment. The Court expects that so far as these provisions apply to Community nationals, the Barbados domestic courts will, where possible, apply them liberally so as to harmonise them with Community law.

[82] In this context it is useful to note that in the area of freedom of movement within CARICOM, domestic courts or tribunals will, of course, be guided by this Court as it sets out the relevant Community law. If, in the course of a domestic proceeding, new issues arise that have not been addressed by this Court, domestic courts and tribunals are required by Article 214 RTC to refer these new issues to this Court for determination before delivering judgment.

[83] Given the above characteristics of the right of entry it would only be in exceptional situations that entry into Member States will be denied to Community nationals. In those exceptional cases it would be reasonable, given also the sense of belonging that the 2007 Conference Decision seeks to instill in these nationals, to allow refused visitors the opportunity to consult an attorney or a consular official of their country, if available, or in any event to contact a family member. It may be that some of the Member States have already developed a practice in that direction. In any event, given the current state of Community law, the Court holds that Community nationals are legally entitled to some such treatment.

Discrimination and Most Favoured Nation status

(a) Has there been discrimination on the ground of nationality (Article 7 RTC)?

[84] Within the scope of application of the Treaty Article 7 RTC prohibits discrimination on grounds of nationality. Ms Myrie alleges that she was treated by Barbados in the way that she was only because of her Jamaican nationality. Given the apparent lack of any specific rules in this area (see Article 7.2 RTC), the Court must address this claim from the standpoint of relevant principles of international law. Discrimination in the context of Caribbean Community law occurs where, within the scope of application of the Treaty, the facts of the case disclose treatment that is worse or less favourable than is accorded to a person

whose circumstances are similar to those of the complainant except for their and the complainant's nationality, with no objective and reasonable justification for the difference in treatment. Differentiated treatment is not necessarily less favourable treatment. Invariably, though not always, discrimination must be inferred and so, where a Claimant establishes facts, including for example the presentation of statistical evidence or a proven pattern of conduct, that raise a *prima facie* case that the defendant State is engaged in discriminating on grounds of nationality, the burden shifts to that State to disprove the discrimination.¹⁷ If there is no or no satisfactory explanation for the treatment then it is reasonable to infer discrimination on that basis.¹⁸

[85] The right contained in Article 7 is granted to Member States and enures to the nationals of those States. The latter are entitled to be treated as distinct individuals. According them, on grounds of nationality, less favourable treatment by profiling or stereotyping them is outlawed by Article 7. In other words, if officials of the Defendant State associate some or most nationals of another Member State, whether reasonably so or not, with certain negative attributes or tendencies, it is unlawful for the Defendant State to treat an individual of that other Member State prejudicially by imputing to that individual any of those negative attributes or tendencies. In this regard the Court accepts the statement that “what may be true of a group may not be true of a significant number of individuals within that group”.¹⁹

[86] The production of statistics can naturally play a key part in establishing a breach of Article 7. The critical role relevant statistical evidence can play in establishing or disproving even a presumption of discrimination underscores how important it is for Member States scrupulously to comply with the requests made by the Twenty-Eighth Meeting of the Conference of Heads of Government to the Member States “to provide the relevant data relating to denials of entry of Community nationals into their country and the reasons therefor” and “to put in place the appropriate structures to gather and submit to the CARICOM Secretariat, statistics on the free movement of skills, in particular, the number of

¹⁷ See *Stocia v Romania* Application No 42722/02 (2008) 52 EHRR 98.

¹⁸ See *European Roma Rights Centre v Immigration Officer at Prague Airport* [2004] UKHL 55.

¹⁹ See *Equal Opportunities Commission v Director of Education* [2001] 2 HKLRD 690 (Hartman J).

certificates issued or rejected by nationality”. Member States must comply with these requests in a timely manner and the Secretariat must make every effort to ensure that the statistics are compiled in as nearly a uniform manner as is possible throughout the Community. Since the nationals of CARICOM have a vital stake in these matters Member States and the Secretariat should periodically publish these statistics and make them freely available to the general public.

[87] In examining the evidence and submissions put forward in support of the discrimination claim it is convenient for the Court to consider together what was advanced on behalf of Ms Myrie and the Intervener. The claim of discrimination rests mainly on three evidentiary pillars, namely, (a) the evidence provided by Ms Myrie that she was subjected to repeated intimidatory slurs and taunts aimed at her nationality; (b) the evidence given by a number of Jamaican witnesses produced by the Intervener indicating that they had suffered experiences at the Grantley Adams Airport quite similar to those of Ms Myrie and (c) statistics and records showing, *inter alia*, that of all the Community nationals that arrived in Barbados in 2012 and who were refused entry, Jamaicans held the largest number of refusals in that year.

[88] The Court accepts Ms Myrie’s evidence that she was subjected to jeers directed at her nationality from a Barbadian border official. This fact could indeed be used as evidence of a state of mind of which an intention to discriminate could be presumed. But slurs of this nature, abhorrent as they are coming from a border official, do not constitute a breach of Article 7 without more. Ms Myrie would still have to establish that, quite apart from the words spoken, there is other evidence to suggest that what was actually done by the border officials was consistent with discrimination on the grounds of “nationality only.” In this regard the Court bears in mind that on the flight taken by Ms Myrie into Barbados there were 28 Jamaicans, only two of whom were refused entry and there is no evidence to suggest that a significant number of the Jamaican passengers alighting from that flight were sent for secondary inspection. In any event there was no evidence that Mr Reid, who was the senior supervisor on duty and the official who ultimately had to determine whether Ms Myrie should be refused entry, heard or approved of these slurs.

[89] The Court also accepts Ms Myrie's evidence that Officers Gittens and Carrington had indicated to her that they suspected that she was carrying drugs into Barbados. The evidence does not establish that this suspicion was aroused because of her nationality. Officer Gittens testified that he wanted to interview Ms Myrie because she had been sent for a secondary inspection. According to Mr Reid, whose evidence the Court accepts, this was not unusual. Given the circumstances that Ms Myrie was a young, unemployed, first time traveler sent for a secondary inspection, it cannot reasonably be inferred that she was singled out for interview by the officers of the Drugs Squad because of her Jamaican nationality. It has to be recalled also that Officer Young, the first immigration official with whom Ms Myrie interacted, testified that she decided to send Ms Myrie to undergo a secondary inspection because Ms Myrie had indicated that she did not know her host in Barbados personally but had met her through the internet.

[90] The evidence of the Intervener's witnesses, Chevine Edwards, Avia James and Odeisha Brown, was aimed at demonstrating that apparently there are some Barbadian border officials who seem to have biases against Jamaicans. Whether or not this was the case, it does not reveal with any measure of certainty that any such biases constituted the reason for these border officials to single out these particular Jamaican passengers, let alone Jamaicans in general, in order to harass them or to impede or deny their entry into Barbados.

[91] The statistical and other documentary evidence presented by Jamaica and Ms Myrie are also incapable of raising a *prima facie* case that Ms Myrie was the victim of discrimination as this material did not have enough data to support the proposition that refusals of Jamaicans were mainly based on nationality. Although relatively more Jamaicans were refused entry into Barbados than nationals of other States, this was still a relatively small percentage, some 2%. Clearly, an overwhelming majority of Jamaicans were permitted freely to enter. This is to be contrasted with the facts of the Roma case cited in support by Ms Myrie and Jamaica²⁰ where over 90% of Roma people were refused leave to enter. Further, the data provided in this case do not reveal either the reasons for denying

²⁰ See *European Roma Rights Centre v Immigration Officer at Prague Airport* [2004] UKHL 55.

entry to the small number of Jamaicans who were refused or whether an unusually high percentage of Jamaicans was selected for secondary inspection. Given those weaknesses in the statistical material and the insufficiency of the other evidence relative to this issue it is not possible properly to discern a pattern of discrimination. The claim that there has been a breach of Article 7 RTC must therefore be dismissed.

(b) *Has there been a breach of the right to Most Favoured Nation treatment (Article 8 RTC)?*

[92] Ms Myrie also claimed that, as a Jamaican, she was treated less favourably than nationals of other States. The right to Most Favoured Nation (MFN) treatment set out in Article 8 RTC applies to all rights conferred by or under the RTC. It is a right that enures to Member States and, so far as applicable, to their nationals. The right to MFN treatment guarantees to Community nationals treatment by the defendant State that is no less favourable than is extended by that State to nationals of other States (whether CARICOM States or otherwise). It is significant to note that subject to the provisions of the RTC, MFN treatment does not necessarily require a State to treat nationals of other CARICOM States as favourably as it treats its own nationals. The right to MFN treatment may be regarded as a particular, albeit limited, manifestation of the principle of non-discrimination, although it is broader to the extent that it also allows for a comparison with treatment extended to third non-CARICOM States. Since the Court has dismissed the discrimination claim and little or no evidence has been proffered with respect to the treatment by Barbados of visiting non-CARICOM nationals, it follows that the claim that there has been a breach of Article 8 must automatically also be dismissed.

The Claim For Damages

[93] The Court now considers Ms Myrie's claim for damages. The Court has previously indicated the circumstances under which a claim for damages may succeed. The Claimant must demonstrate that the provision breached was intended to benefit her. The breach giving rise to the claim should be a serious one. The

damages or loss should be substantial and there should be a causal connection between the breach by the State and the loss or damages claimed.²¹

[94] The damages that can be awarded by the Court under the RTC regime are compensatory. There is no room for exemplary or punitive damages before the Court in its original jurisdiction. This has been established by the Court in *TCL v Guyana*.²² It is true that exemplary damages are recognized in all the common law States of the Community but this is not decisive. Only those remedies that are known to both legal traditions of the Community can be applied in the original jurisdiction. As the civil law jurisdictions do not allow exemplary damages, these cannot form part of a legal structure that encompasses both traditions.

[95] The compensatory damages that can be awarded in international law are those for pecuniary loss or damage (in Common Law jurisdictions referred to as “special damages”) and for what is termed moral, non-material or non-pecuniary loss or damage (in Common Law Jurisdictions referred to as “general damages”).²³ In earlier decisions the Court indicated that compensation for pecuniary loss and damage could be awarded under the RTC.²⁴ In this case the pecuniary damages claimed by Ms Myrie are for reimbursement of the costs of her slippers, her medical expenses and her airline ticket to Barbados. The evidence produced regarding the cost of the slippers was inadequate. Ms Myrie did not present an invoice for her airline ticket but the Court is prepared to accept the reasonable amount she said she paid which amounted to JA\$37,000. She presented a receipt from Dr Sewell in the sum of JA\$30,000 and another for JA\$40,000 for the doctor’s court appearance. She also presented a receipt from Dr Davidson for JA\$70,000 of which JA\$25,000 was for the latter’s court appearance. The receipts in the respective sums of JA\$40,000 and JA\$25,000 must be excluded in computing Ms Myrie’s medical expenses as these expenses are classified as legal costs. The total sums claimed for the airline ticket and medical expenses, some JA\$112,000, were not specifically challenged by Barbados and the Court holds that Ms Myrie is entitled to that amount.

²¹ See *Hummingbird Rice Mills v The Caribbean Community* [2012] CCJ 1 (OJ), (2012) 79 WIR 448 [55] –[59]; *Trinidad Cement Limited v The Co-operative Republic of Guyana* [2009] CCJ 5 (OJ), (2009) 75 WIR 327 [27].

²² [2009] CCJ 5 (OJ), (2009) 75 WIR 327 [24] –[29].

²³ In the Civil Law jurisdiction of Suriname categorised as “materiele schade” and “immateriele schade”.

²⁴ See *Trinidad Cement Limited v The Co-operative Republic of Guyana* [2009] CCJ 5 (OJ), (2009) 75 WIR 327 [27].

[96] This is the first case before this Court where a Claimant has asked for compensation for non-pecuniary damage. An award of such damages is a well-established form of relief in international law.²⁵ This principle has its genesis in the seminal *Lusitania Opinion*²⁶ where the Umpire defined moral damages as compensation “for an injury inflicted resulting in mental suffering, injury to his feelings, humiliation, shame, degradation, loss of social position or injury to his credit or to his reputation”. The premise underlying such awards was identified as the “general rule of both the civil and common law that every invasion of private right imports an injury and that for every such injury the law gives a remedy”. The concept was further crystallised in the *Chorzów Factory*²⁷ case where the Permanent Court of International Justice articulated the general philosophical basis upon which compensation is awarded. Its guidance is often cited and is worthy of repetition here:

The essential principle contained in the actual notion of an illegal act - a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals - is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.

[97] The body cavity search and the conditions under which Ms Myrie was detained constituted a very serious breach of her right of entry into Barbados without hassle and harassment. Further, the medical evidence from Dr Sewell and Dr Davidson suggests that the treatment Ms Myrie suffered had a continuing detrimental effect on her well-being. Given the seriousness of the breach and its severe impact on Ms Myrie it would seem that she would be entitled to an award of compensation for this non-pecuniary damage.

²⁵ See Merryl Lawry-White, “Are Moral Damages an Exceptional Case?” (2012) 15 (6) Int ALR 236.

²⁶ (United States v Germany) (1923) 7 RIAA 32, 40.

²⁷ See *Case Concerning the Factory at Chorzów* (Claim for Indemnity) (Germany v Poland) Judgment on the Merits, dated September 13, 1928, PCIJ Ser A, No 17.

[98] The question is, however, whether this treatment was sufficiently connected with the exercise of her right of entry. In this regard Barbados suggested that so far as the cavity search is concerned, if the allegation had been that it had been conducted by *an immigration official* there could have been enough connectivity. The allegation (now found proven) was, however, that the cavity search was conducted by *a police officer* in the course of what could only have been an investigation to assess the possibility that Ms Myrie was a drug trafficker. Counsel submits that this was an activity which was totally separate from, and outside the process of Ms Myrie obtaining entry into Barbados and therefore does not fall to be considered in any assessment as to damages.

[99] The evidence discloses that the cavity search took place within the precincts of the airport. It also shows that police officers Gittens and Carrington, immediately after having established that there was no valid reason to suspect Ms Myrie of any drug trafficking offence, directed their investigation entirely towards her immigration status. They took Ms Myrie to the Customs Area to have her luggage examined and then accompanied her back to the immigration offices in the SIA, an exercise that Mr Reid stated in his witness statement is usually done after an individual has been denied entry. It was Officer Gittens who instigated the process that ultimately led to Ms Myrie's entry stamp being cancelled while she was still at the airport. Given all these facts, the Court finds that the breach of Ms Myrie's right of entry "without harassment or the imposition of impediments" encompassed all that transpired between the time of her arrival in Barbados and her unlawful expulsion the following day. The fact that the cavity search was conducted by police and not immigration officers is of no relevance. The Court notes as significant in this respect that the Community appears to be in the process of developing a "Point of Entry and Departure Complaints Procedure" which would cover "treatment" of Community nationals not only by immigration and customs officers but also police and security officers and "others".²⁸

[100] In fixing the compensation for non-pecuniary damage accompanying the breach of her right of entry (i.e. compensation for the loss, trauma and injury Ms Myrie suffered and continues to suffer) the Court emphasises that it is not awarding

²⁸ See Working Document for the Thirteenth Meeting of Officials on the Free Movement of Skills and Facilitation of Travel, Georgetown, 19-20 September 2012.

damages for human or fundamental rights breaches. It is not directing its attention specifically at fashioning an appropriate remedy for assault or unlawful detention. These are not causes of action actionable before this Court in its original jurisdiction. The Court is instead awarding damages for breach of the right to travel within the Community “without harassment or the imposition of impediments.” The Court notes in passing that the threshold for establishing travel that is “hassle free” or “without harassment” is a lower one than the threshold of “torture, inhuman or degrading treatment” which can be found in most constitutions and several human rights treaties. Indeed, the Court can envisage a situation where the issuance of a mere Declaration may constitute appropriate relief for the breach of this right. Since in this case the breach was accompanied by very serious circumstances the Court must award damages which are at the high end of the spectrum appropriate for breach of this right. In all the circumstances the Court considers that an amount equivalent to Bds\$75,000 constitutes appropriate compensation for the breach of Ms Myrie’s right of entry into Barbados.

Conclusion

[101] It follows from all the above that a Declaration should be granted that the State of Barbados breached Ms Myrie’s right of entry without harassment or the imposition of impediments. The right was breached by the denial of entry, the treatment to which she was subjected, the conditions under which she was detained and her unjustified deportation, all of which contravened the 2007 Conference Decision in conjunction with Article 45 RTC. The Intervener asked the Court to declare that this breach was serious and egregious. The Court accepts that the breach may be so described but sees no purpose in granting the Intervener such a declaration.

[102] The liability of the State of Barbados with respect to this breach, given its seriousness and the causal link between it and the damages Ms Myrie incurred, has been established. The Court is entitled to and does award her both her pecuniary and non-pecuniary damages as the combined amount is substantial. The Court awards these sums in the currency of the State with the liability to pay, i.e., the State of Barbados.

[103] The Court has found no further breaches of the RTC and accordingly dismisses the other Declarations claimed by Ms Myrie. The other Declarations claimed by the Intervener are mostly of a purely theoretical nature and for that reason are not granted.

[104] Ms Myrie has asked the Court to order Barbados to indemnify her in costs. In the circumstances of this case, the Court is of the view that Ms Myrie's costs should be awarded except to the extent unreasonably incurred.

Order

The Court

- (a) **Declares** that the State of Barbados breached the right of the Claimant to enter Barbados pursuant to Article 45 of the RTC in conjunction with the 2007 Conference Decision;
- (b) **Orders** the State of Barbados to pay the Claimant the amount of Bds\$2240.00 (being the equivalent of JA\$112,000.00) for pecuniary damages and the sum of Bds\$75,000.00 for non-pecuniary damages;
- (c) **Orders** the State of Barbados to pay the costs of the Claimant to be taxed if not agreed;
- (d) **Makes no order** as to costs of the Intervener or the Community;
- (e) **Refuses** all other declarations and orders claimed in the Originating Application and in the Statement filed by the State of Jamaica in its capacity as Intervener.

The Rt Hon Mr Justice Dennis Byron, President

The Hon Mr Justice R Nelson

The Hon Mr Justice A Saunders

The Hon Mme Justice D Bernard

The Hon Mr Justice J Wit

The Hon Mr Justice D Hayton

The Hon Mr Justice W Anderson

ANNEX TO
JUDGMENT OF THE CARIBBEAN COURT OF JUSTICE
IN THE CASE OF
SHANIQUE MYRIE V THE STATE OF BARBADOS

COMMUNITY LAW

REVISED TREATY OF CHAGUARAMAS ESTABLISHING THE CARIBBEAN COMMUNITY INCLUDING THE CARICOM SINGLE MARKET AND ECONOMY

ARTICLE 7

Non-Discrimination

1. Within the scope of application of this Treaty and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality only shall be prohibited.
2. The Community Council shall, after consultation with the competent Organs, establish rules to prohibit any such discrimination.

ARTICLE 8

Most Favoured Nation Treatment

Subject to the provisions of this Treaty, each Member State shall, with respect to any rights covered by this Treaty, accord to another Member State treatment no less favourable than that accorded to:

- (a) a third Member State; or
- (b) third States.

ARTICLE 9

General Undertaking on Implementation

Member States shall take all appropriate measures, whether general or particular, to ensure the carrying out of obligations arising out of this Treaty or resulting from decisions taken by the Organs and Bodies of the Community. They shall facilitate the achievement of the objectives of the Community. They shall abstain from any measures which could jeopardise the attainment of the objectives of this Treaty.

ARTICLE 12 (1), (2), (7)***Functions and Powers of the Conference***

1. The Conference shall be the supreme Organ of the Community.
2. The Conference shall determine and provide policy direction for the Community.
3. ---
4. ---
5. ---
6. ---
7. The Conference may issue policy directives of a general or special character to other Organs and Bodies of the Community concerning the policies to be pursued for the achievement of the objectives of the Community and effect shall be given to such directives.

ARTICLE 27***Common Voting Procedures******In Community Organs and Bodies***

1. Subject to paragraph 2 of this Article, each Member State represented on Community Organs and Bodies shall have one vote. A simple majority of Member States shall constitute a quorum.
2. Member States, whose contributions to the regular budget of the Community are in arrears for more than two years, shall not have the right to vote except on matters relating to the CSME, but may otherwise participate in the deliberations of Community Organs and Bodies. The Conference may nevertheless, permit such Member States to vote if it is satisfied that the failure to contribute is due to conditions beyond their control.
3. Decisions on procedural issues in Community organs shall be reached by a simple majority of Member States.
4. Subject to the agreement of the Conference a Member State may opt out of obligations arising from the decisions of competent Organs provided that the fundamental objectives of the Community, as laid down in the Treaty, are not prejudiced thereby.
5. Prior to taking decisions on any issue falling to be determined by Community Organs, the Secretariat shall bring to the attention of the meeting the financial implications of such decisions and any other matters which may be relevant.
6. Recommendations of Community Organs shall be made by a two thirds majority of Member States and shall not be legally binding. Member States omitting to comply

with recommendations shall inform the Secretariat in writing within six months stating the reasons for their non-compliance.

7. Subject to the relevant provisions of this Treaty, Community Organs and Bodies shall establish their rules of procedure.

ARTICLE 28

Voting in the Conference

1. Save as otherwise provided in this Treaty and subject to paragraph 2 of this Article and the relevant provisions of Article 27, the Conference shall take decisions by an affirmative vote of all its members and such decisions shall be binding.
2. For the purpose of this Article abstentions shall not be construed as impairing the validity of decisions of the Conference provided that the Member States constituting three-quarters of the membership of the Community, vote in favour of such decisions.
3. Omission by a Member State to participate in the vote shall be deemed an abstention within the meaning of paragraph 2 of this Article.
4. Parties to a dispute or against which sanctions are being considered shall not have the right to vote on the issue falling to be determined.

ARTICLE 29

Voting in the Community Council And Ministerial Councils

1. Save as otherwise provided in this Treaty and subject to the provisions of this Article and Article 27, the Ministerial Councils shall take decisions by a qualified majority vote and such decisions shall be binding.
2. For the purposes of paragraph 1 of this Article a qualified majority means an affirmative vote of the Member States comprising no less than three-quarters of the membership of the Community.
3. Where issues have been determined to be of critical importance to the national well-being of a Member State, in accordance with paragraph 4 of this Article, such decisions shall be reached by an affirmative vote of all Member States.
4. Decisions that an issue is of critical importance to the national well-being of a Member State shall be reached by a two-thirds majority of the Member States.

5. For the purposes of paragraph 3 of this Article abstentions shall not be construed as impairing the validity of decisions required to be reached by unanimity provided that Member States constituting not less than three-quarters of the membership of the Community vote in favour of such decisions.

ARTICLE 30

Scope of Application

1. Save as otherwise provided in this Article and Article 31, the provisions of this Chapter shall apply to the right of establishment, the right to provide services and the right to move capital in the Community.
2. Activities in a Member state involving the exercise of governmental authority shall, in so far as that Member State is concerned, be excluded from the operation of this Chapter.
3. For the purposes of this Chapter, “activities involving the exercise of governmental authority” means activities conducted neither on a commercial basis nor in competition with one or more economic enterprises, and includes:
 - (a) ---
 - (b) ---
 - (c) activities forming part of a system of national security or for the establishment or maintenance of public order; and
 - (d) ---

ARTICLE 45

Movement of Community Nationals

Member States commit themselves to the goal of free movement of their nationals within the Community.

ARTICLE 46

Movement of Skilled Community Nationals

1. Without prejudice to the rights recognized and agreed to be accorded by Member States in Articles 32, 33, 37, 38 and 40 among themselves and to Community nationals, Member States have agreed, and undertake as a first step towards achieving the goal set out in Article 45, to accord to the following categories of Community nationals the right to seek employment in their jurisdictions:
 - (a) University graduates;

- (b) media workers;
- (c) sportspersons;
- (d) artistes; and
- (e) musicians.

recognised as such by the competent authorities of the receiving Member States.

2. Member States shall establish appropriate legislative, administrative and procedural arrangements to:

- (a) facilitate the movement of skills within the contemplation of this Article;
- (b) provide for movement of Community nationals into and within their jurisdictions without harassment or the imposition of impediments;

including:

- (i) the elimination of the requirement for passports for Community nationals travelling to their jurisdictions;
- (ii) the elimination of the requirement for work permits for Community nationals seeking approved employment in their jurisdictions;
- (iii) establishment of mechanisms for certifying and establishing equivalency of degrees and for accrediting institutions;
- (iv) harmonization and transferability of social security benefits.

3. Nothing in this Treaty shall be construed as inhibiting Member States from according Community nationals unrestricted access to, and movement within, their jurisdictions subject to such conditions as the public interest may require.

4. The Conference shall keep the provisions of this Article under review in order to:

- (a) enlarge, as appropriate, the classes of persons entitled to move and work freely in the Community; and
- (b) monitor and secure compliance therewith.

ARTICLE 225

Security Exceptions

Nothing in this Treaty shall be construed:

- (a) as requiring any Member State to furnish information, the disclosure of which it considers contrary to its essential security interests;
- (b) ---
- (c) ---

ARTICLE 226**General Exceptions**

1. Nothing in this Chapter shall be construed as preventing the adoption or enforcement of any Member State of measures:
 - (a) to protect public morals or to maintain public order and safety;
 - (b) to protect human, animal or plant life or health;
 - (c) ---
 - (d) ---
 - (e) ---
 - (f) ---
 - (g) ---
 - (h) ---
 - (i) ---
 - (j) ---
 - (k) ---
 - (l) ---

but only if such measures do not constitute arbitrary or unjustifiable discrimination between Member States where like conditions prevail, or a disguised restriction on trade within the Community.

2. Measures taken by the Member States pursuant to paragraph 1 shall be notified to COTED.
3. The Community Council shall take appropriate measures to co-ordinate applicable legislation, regulations and administrative practices established in accordance with Article 44.

ARTICLE 240**Saving**

1. Decisions of competent Organs taken under this Treaty shall be subject to the relevant constitutional procedures of the Member States before creating legally binding rights and obligations for nationals of such States.
2. The Member States undertake to act expeditiously to give effect to decisions of competent Organs and Bodies in their municipal law.
3. COTED shall monitor and keep under review the implementation of the provisions of this Article and shall convene a review conference of Member States within five years from the entry into force of this Treaty.

BARBADOS NATIONAL LAW

A. IMMIGRATION ACT

4. (1) A citizen has the right to enter Barbados. Right to
enter
Barbados.
1979-27.
- (2) A permanent resident shall, so long as he continues to be a permanent resident, be permitted to enter Barbados.
- (3) The Minister may prohibit the entry into Barbados of any person other than a citizen or a permanent resident.
-
8. (1) Subject to subsection (2), entry into Barbados of the persons described in the *First Schedule* other than citizens, or subject to section 7, permanent residents is prohibited. Prohibited
persons.
First
Schedule.
-
11. (1) A person who arrives in, seeks to enter or enters Barbados shall appear before an immigration officer at a port of entry for the purpose of being examined as to whether or not he Barbados may be permitted to enter Barbados.
- (2) A person mentioned in subsection (1) shall upon his examination by an immigration officer truthfully answer all proper questions put to him by that officer, and, if so required by that officer, shall
- (a) make and sign a declaration stating whether or not he is carrying or has under his control any documents of any description specified by that officer which, in the opinion of that officer, are relevant for the purposes of the examination;
- (b) produce to that officer any documents specified under paragraph (a) which are in his possession or under his control;
- (c) submit himself and any baggage belonging to him or in his possession or under his control to be searched by that officer or any person acting under the authority of that officer for the purpose of ascertaining whether or not he is carrying or has under his control any documents specified under paragraph (a);
- (d) submit himself to be medically examined by a registered medical practitioner.

(3) No female person may be searched under paragraph (c) of subsection (2) except by another female person.

(4) A person other than a citizen, or, subject to section 7, a permanent resident, who

(a) refuses to be examined as required by subsection (1);

(b) fails or refuses to comply with a request made by an immigration officer under subsection (2),

shall not be permitted to enter Barbados.

Permitted
entrants.

13. (1) Subject to this Act and the regulations, an immigration officer may permit

Second
Schedule.

(a) a person described in Part I of the Second Schedule to enter and remain in Barbados on such conditions and for such period, not exceeding, in the case of a person described in paragraph 2 or 4 of that Part of that Schedule, 3 years, as that officer considers appropriate in the particular case;

(b) a person described in Part II of that Schedule to enter and remain in Barbados on such conditions as that officer thinks fit and for such period not exceeding six months as that officer considers appropriate in the particular case.

23. (1) No court has jurisdiction to review, quash, reverse, restrain or otherwise interfere with any proceeding, decision or order of the Minister or an immigration officer had, made or given under the authority of this Act relating to

(a) the refusal of permission to any person to enter Barbados or the removal of that person from Barbados; or

(b) the detention or deportation of any person, upon any ground whatsoever unless that person is a citizen or a permanent resident.

(2) A citizen or permanent resident may appeal to the High Court and thence to the Court of Appeal against any proceeding, decision or order mentioned in subsection (1).

(3) Appeals under subsection (2) shall be brought by way of originating summons.

(4) Where an appeal is made under subsection (2) the Court may order the detention or admission to bail of the appellant pending the determination of the appeal.

FIRST SCHEDULE

Sections 7(4), 7(A(1)(b) and (8)

Prohibited Persons

1. Persons who are
 - (a) idiots, imbeciles, feeble-minded persons, epileptics, persons of unsound mind or mentally deficient, dumb, blind or physically handicapped to the extent of being unable to earn a living (unless they conclusively establish that they will not have to earn a living), or persons likely to become charges on public funds; or
 - (b) paupers, vagrants or professional beggars.
2. Persons suffering from communicable diseases within the meaning of any regulations relating to such diseases made under the *Health Services Act*.
3. Persons
 - (a) who are prostitutes;
 - (b) who organise prostitution;
 - (b) whose conduct offends public morality; or
 - (c) who sexually assault minors.
4. Person who
 - (a) are addicted to the use of any drug;
 - (b) are or have been at any time engaged or reasonably suspected of being likely to engage in the unlawful giving or using, the offering or

exposing for sale, or the buying of, or the trading or trafficking in, any drug; or

1999-11 (c) have been convicted of on offence under any enactment relating to dangerous or narcotic drugs other than persons referred to in paragraph 4A.

1999-11

4A. Persons

(a) who have been convicted of one offence only of the possession of cannabis, the amount of which was less than trafficable quantity; and

(b) whose sentence in respect of that offence was a non-custodial sentence.

5. Person who

(a) have been convicted of, or admit to having committed, a criminal offence which, if committed in Barbados, is punishable with imprisonment for a term of one year or longer;

(b) knowingly or for profit aid, encourage or procure other persons who are not citizens of Barbados to enter Barbados illegally;

(c) are stowaways or seek to enter Barbados illegally.

6. Persons who are or have been at any time before or after 2nd February, 1976 advocates of

(a) the overthrow by force or violence of the Government of Barbados or any other other country or of all forms of law;

(b) the abolition of organised government;

(c) the assassination of any person or the unlawful destruction of property.

7. Persons who are or have been members of affiliated to any organisation which entertains or teaches any doctrine or practice specified in subparagraph (a) to (c) of paragraph 6.

7A. Persons who have been convicted of the offence of terrorism or in respect of whom there are reasonable grounds for believing they have financed or facilitated acts of terrorism.

8. Persons in respect of whom there are reasonable grounds for believing that they are likely to engage in espionage, sabotage or other subversive activity directed against or detrimental to the security of Barbados.

9. Persons against whom deportation orders have been made.

10. Persons seeking to enter Barbados who are not in possession of a passport.

11. Any dependant accompanying a person who has been prohibited from entering, refused entry into, or deported from, Barbados.

SECOND SCHEDULE

s.13

Permitted Entrants

PART 1

1. Persons who are duly accredited

(a) diplomatic or consular officers of a country other than Barbados; or

(b) representatives or officials of

(i) the United Nations or any of its agencies or sub-agencies, or

(ii) any governmental organisation in which Barbados participates,

entering Barbados to carry out official duties or in transit, and members of the suites or families of such persons.

2. Persons entering Barbados to attend as students at

(a) an educational or training institution approved by the Minister for the purposes of this Act; or

(b) a university or college authorised by law to confer degrees or to offer training in holy orders.

3. Persons entering Barbados for the purposes of employment, trade or business.

4. Persons entering Barbados for other purposes approved by the Minister.

PART 11

1. Passengers in transit through Barbados.

2. Visitors.
3. Persons entering Barbados for medical treatment.
4. Members of crews of vessels entering Barbados for shore leave or some other legitimate and temporary purpose.
5. Persons entering Barbados for the purpose of engaging in sport or in dramatic, artistic or other cultural activities.

B. ADMINISTRATIVE JUSTICE ACT

PART 11

Administrative Procedures

13. (1) It is the duty of any person or body making a decision to which this section applies, if requested in accordance with section 14 by any person adversely affected thereby, to supply to that person a statement of the reasons for the decision.
- (2) This section applies to any decision that is required by law (including any enactment or by contract to be made in accordance with the principals of natural justice or in a fair manner with the exception of
 - (a) any decision for which by express provision of any enactment reasons are not to be required;
 - (b) any such decision as is specified in the First Schedule.