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void. The matter was heard by the Industrial Court during April 1991 and judgment reserved. The judgment of the court was ultimately delivered March 27, 1996.

The applicant sought a declaration that the delay of 3 years and 8 months in handing down judgment was unconstitutional and monetary compensation for this constitutional breach.

In an affidavit in reply, the President of the Industrial Court explained the factors underlying the delay which factors included: backlog of 1,400 matters, the shortage and retirement of members of the Industrial Court and the numerous collective agreements and terms of settlement for consideration, registration and attention.

Held: Notice of Motion dismissed.

In the circumstances of the instant case the delay and time taken was reasonable. In deciding whether the delay in a particular case was unreasonable a court was entitled to have regard to the prevailing system of legal administration and the local economic, social and cultural conditions.

Siewraj Sookermary v Director of Public Prosecutions et. al. (CA/Civ. No. 153 of 1995) referred to.

Director of Public Prosecutions et. al. v Jaikaram Tokai et al. (CA/Civ. No. 116 of 1994) referred to.

Attorney-General of Trinidad and Tobago v Ramnarine Jorsingh (CA/Civ. No. 108 of 1985) per Davis J at 9, 12 & 13 adopted.

Mr. S. Gopaul-Gosine for the applicant.

Mr. L. Sheppard for the respondent.

Nicole Clarke

Benjamin et al. v Minister of Information and Broadcasting

Anguilla. High Court (No. 56 of 1997)

7 January 1998.

Fundamental Rights and Freedoms - Freedom of expression - Suspension of call-in programme aired on government radio station - Locus standi - Legitimate expectation - Whether the decision to suspend the programme breached the applicants' right to freedom of expression.

This case concerned a decision by the Government of Anguilla to discontinue a call-in programme 'Talk Your Mind' which the applicants claimed

violated their constitutional rights. The first applicant, Mr. Benjamin was the host of the call-in programme while the other two applicants were persons who listened and contributed to the programme.

Radio Anguilla was owned by the Government of Anguilla and operated as a Government department. 'Talk Your Mind' was aired on Radio Anguilla. Prior to accepting the position of host of the programme, Mr. Benjamin sought and obtained explicit Government endorsement for the concept of the programme as a forum for people to raise topical issues and to express their views freely.

Following repeated criticism of the government during the programme, the Minister of Information suggested to Mr. Benjamin that the programme be changed from a call-in programme to a panel discussion only. He further suggested that since the radio station was a government station, the programme should be slanted to promote the government of the day. Mr. Benjamin disagreed and shortly thereafter the Minister directed that 'Talk Your Mind' be discontinued without giving any reason for this decision. In place of 'Talk Your Mind' a new programme, 'On Line', was introduced. This programme was primarily regional and international in flavour and did not focus on Anguillan affairs to any significant degree.

Following strong protests by the public, the government changed its position and the Minister of Information promised that the programme would be resumed without further interference. 'Talk Your Mind' returned to the airwaves in October with its format unchanged. As the programme continued to grow, Mr. Benjamin attended a number of training courses in radio broadcasting. He personally absorbed the cost of collating information, travelling and related matters. He also obtained sponsors etc. The radio station made significant profits from the programme.

The 'Talk Your Mind' programme of 16 July 1997 centred on a lottery that had been recently introduced into Anguilla and was quite controversial. The operations of the lottery were criticised as was the role of the government. During an exchange Mr. Benjamin expressed the view that the lottery was illegal. Another caller, Mr. Washington, who was associated with the lottery, called in to refute this view. After a long discussion between Mr. Benjamin and Mr. Washington, Mr. Benjamin terminated the call.

Following the broadcast of the programme, the Director of Information and Broadcasting received a letter from an American firm informing him of the Anguilla Lottery Gaming Company Limited's intention to sue Radio Anguilla and Mr. Benjamin for defamation, malicious intent to injure and

destroy the economic interests of the company and over serious tortious actions. The letter was brought to the attention of the Minister of Information. Following this, the Director of Information and Broadcasting was advised that, in light of the threatened law suit, the Ministers of Government had collectively agreed that 'Talk Your Mind' should be suspended until further notice. Further instructions were given that the contents of the letter be published on the radio together with the position adopted by the government.

On 21 July 1997, after the announcement was made of the decision to suspend 'Talk Your Mind', Mr. Washington informed the Director of Broadcasting that the threatened legal action would be discontinued. This statement was confirmed in writing.

No one consulted Mr. Benjamin prior to taking the decision to suspend 'Talk Your Mind'. He was not afforded an opportunity to respond to the grounds upon which the threat to institute legal action was made by the American law firm. There was no evidence that the *bona fides* of their threat was ever investigated. Mr. Benjamin maintained his position that the lottery was being operated illegally. There was no evidence that prior to the suspension any attempt was made to discover whether there was any basis for this view.

Following the suspension of 'Talk Your Mind' Mr. Benjamin spoke with the Director of Information and Broadcasting several times about the programme but he was unable to give any indication that the airing of the programme would be resumed.

Mr. Benjamin was left embarrassed with his sponsors. He was unable to get a private owned stations to carry the programme or to publish his views in the newspaper.

Implicit in the applicants' argument was the assertion that the court ought to find *mala fides* on the part of the Minister in that the real reason for suspending 'Talk Your Mind' was government's wish to stifle criticism and manipulate the programme for their own political end and not threatened law suit as indicated by the Minister.

Held: Applications granted.

1. The receipt of ideas through the mass media necessarily has a social character. Where the state interfered with the conveyance of these ideas, an affected citizen could come to the court to have his/her rights vindicated notwithstanding that other citizens are simultaneously hin-

dered in their enjoyment of that right. The courts ought not to be quick to deny standing if there is any evidence of constitutional infringement that affects the litigant.

Thomas v Olufosoye (1986) L.R.C. (Const) 636 distinguished.
Attorney-General v Payne (1982) 30 W.I.R. 88 considered.

2. Even if Mr. Benjamin had a bare licence to be on the radio, the Minister was still obliged to observe the principles of natural justice.
Burrowes v Rampargat (1992) 40 WIR 287 distinguished.
Marks v Minister of Home Affairs (1984) 35 WIR 106 considered.
3. An allegation of mala fides on the part of a minister should be specifically pleaded and had to be based on more concrete evidence than that presented. The courts would not be quick to find bad faith on the part of a Minister.
4. Although on the facts certiorari proceedings were open to the applicants, that remedy was very limited in nature since they would first have to seek leave and could not claim damages or declarations. Accordingly, their failure to seek certiorari did not bar them from seeking constitutional redress.
Harrikisson distinguished.
Smith v L.J. Williams Ltd. (1982) 32 WIR 395.
5. The applicants exercised their right to freedom of expression whenever 'Talk Your Mind' was aired. The decision to suspend 'Talk Your Mind' directly infringed the applicants' right to hold opinions and to receive and impart ideas and information' and was calculated to do so. The fact that this was a purely executive act and not a legislative one was immaterial. The Minister's decision was an interference with the applicants' fundamental rights.
Francis v Chief of Police (1973) 20 W.I.R. 550, 559 considered.
6. Applying the principle of proportionality, it was unreasonable for the radio station to summarily suspend a call-in programme simply because a member of the public objected to something said on the programme and gave notice of his intention to institute legal proceedings against the state. The Minister and his colleagues should have assessed the *bona fides* of the threat and imposed only such measures as were reasonably necessary. Accordingly, the interference with the applicants' fundamental rights was not justified.
Rangarajan v Jagjivan Ram (1990) L.R.C. 412, 427.

7. The applicants' legitimate expectation had no bearing on the question of whether their rights had been infringed.
8. Mr Benjamin deserved to be compensated in light of the public censuring which he had experienced. There would be no award of damages to the other applicants since the other reliefs were sufficient and adequate redress for the infringements suffered by them.

Per Saunders, J.:

Mr. Benjamin had a legitimate expectation that 'Talk Your Mind' would continue with him as its host unless there was some overriding public interest or rational basis for its suspension or termination. As a result of this legitimate expectation, the Minister was obliged to proceed with fairness. He could not suspend the programme without first affording Mr. Benjamin an opportunity to be heard.

In construing Article 19 of the Bill of Rights one should bear in mind the fact that Britain was one of the architects of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights which enjoins state members to adopt such measures as may be necessary to give effect to the freedom of opinion and expression and Anguilla is a dependent territory of Britain.

Ms. B. Lake QC, Mr. H. Rawlins and Mr. E. Gaskin for the first and second applicants.

Mr. J. Simon and Ms. J. Kentish for the third applicant.

Mr. R. Scipio, Attorney-General (Ag.) with Mr. S. Reid and Ms. M. Petty for the respondents.

Nicole Clarke

Fisher v Minister of Public Safety and Immigration

Bahamas. Privy Council (P.C. App. No. 53 of 1997)
 Lord Goff of Chieveley; Lord Steyn; Lord Hoffman;
 Lord Hurton; Mr. Justice Gault
 16 December 1997

Death Penalty - Whether pre-trial detention of an accused falls to be taken into account for the purposes of the principle established in Pratt v Attorney-General of Jamaica.

On 4 October 1990 the appellant was arrested for murder and for attempted murder arising out of a separate incident. On 8 October 1990 he was charged with both offences and on the same day pleaded guilty to and was sentenced for possession of a firearm and ammunition. The appellant was convicted of attempted murder on 3 November 1992 and of murder on 25 March 1994 and was sentenced to death. The present case was an appeal from the dismissal by the Court of Appeal of the appellant's originating motion seeking constitutional relief in respect of the murder conviction. At issue in the case was whether the three years and five months during which the appellant had been detained prior to trial fell to be taken into account for the purposes of the principle established in *Pratt v Attorney-General of Jamaica*.

Held: Appeal dismissed.

1. As a general rule, the period of delay which falls to be taken into account for the purposes of the principle established in *Pratt v Attorney-General of Jamaica* is the period beginning with the sentence of death. The principle was established to address a specific problem which had arisen in a number of Caribbean jurisdictions and did not admit to being extended to address the wholly different problem of pre-trial delay.
2. On the basis of the principle established in *Guerra v Attorney-General of Trinidad and Tobago*, pre-trial delay could be taken into account in determining whether it would be inhumane punishment to execute an accused notwithstanding that the relevant period of post-conviction delay had not expired. Such a case would only arise in exceptional circumstances and the present case was not such an instance.
3. The action of the Bahamian authorities in proceeding to prosecute the appellant for the offence of attempted murder before he was tried on the outstanding murder charge did not constitute of itself inhumane treatment contrary to Article 17(1) of the Constitution.

The Board also referred to a number of subsidiary matters before concluding their judgement:

Inter-American Commission on Human Rights

The Board ruled that its decision in *Henfield v Attorney-General of The Bahamas* [1997] 1 AC 413 was made per incuriam in so far as it decided that a period of three and half years was applicable in the Bahamas for the purposes of the principle in *Pratt v Attorney-General of Jamaica*, and that