



II Annual Caribbean Court of Justice International Law Moot (2010)

Latour

v

the Attorney General of Antigua and Barbuda

Jerry Latour was born in 1967 in Haiti. He is now a citizen of Dominica, where he has lived since childhood with an interruption of two years (1990-1991) when he resided in Jacmel, Haiti. He holds a Dominican passport and is a qualified teacher with a Master's degree in Caribbean History, which he obtained at the Sorbonne University in Paris, France.

On 22 January 2009, Latour entered Antigua and Barbuda as a tourist. Two weeks later he reported to the Immigration Office in Antigua and presented a Caricom Skilled National Certificate issued by the Government of Dominica and dated 9 January 2009. He requested and received a permit to remain in Antigua for a period of six months in order to seek employment.

On 20 April 2009, Latour was approached by two immigration officers who handed to him an order to leave the country within four days. The order referred to an undated decision revoking the permit on the following grounds:

- a. The permit which had been issued pursuant to section 5(1) of the Caribbean Community Skilled Nationals Act 1997 ("the 1997 Act") was *ultra vires* since Latour had entered Antigua on his Dominican passport while he was not born in that State (as required by s. 5(2)(a) of the 1997Act);
- b. He had been working on a freelance basis for a local newspaper and not as a history teacher;
- c. Recently the immigration office had received official notice that Latour had been convicted and sentenced to two months imprisonment by the Tribunal de Première Instance of Jacmel, Haiti, for taking part in an unlawful and violent demonstration in October 1991.

On 23 April 2009, Latour filed an application in the High Court of Antigua and Barbuda seeking to prevent his impending deportation, submitting that none of the grounds mentioned in the order could justify the revocation of his permit, even if permitted by the 1997 Act or regulations made thereunder, because the provisions of the Act must be interpreted in the light of the Revised Treaty of Chaguaramas (RTC) which lays down the principles with respect to free movement of skilled labour in Caricom.

The Attorney General of Antigua and Barbuda averred that the measures taken against Latour were in accordance with the Caribbean Community Skilled Nationals Act and regulations and that the Act was in accordance with the RTC. He stressed, however, that the RTC, although enacted by the Caricom Community Act, was not in force because that Act had not yet been proclaimed by the Minister as required by Antiguan law. For that same reason, it was submitted, the High Court was not entitled to refer the case to the CCJ in order to get a determination on the interpretation of the RTC provisions relevant to the case at hand.

In ruling against the Attorney General, the High Court in Antigua decided that the case could not be properly decided without reference to the RTC even though this Treaty was not yet in force. The judge, after examining the relevant domestic legislation, *inter alia* the aforementioned Acts and the Caribbean Court of Justice Act, No. 10 of 2004, took the view that in order to enable the Court to give judgment in the case, it was necessary to get a determination on certain questions of interpretation of the RTC by the CCJ. Consequently, the High Court referred the case to the CCJ pursuant to article 214 of the RTC. The Court reasoned that, although it was correct that the RTC was not yet part of the law of Antigua and Barbuda and, consequently, the Antigua Court was under no obligation to refer the case to the CCJ, it was not prohibited from requesting the CCJ to give a determination.

The High Court formulated the following questions for determination by the CCJ:

- a. Is section 5(2) of the 1997 Act in accordance with article 46 of the RTC?
- b. Are the grounds for revoking the permit of Latour, even if they have a legal basis in domestic law, permissible under the RTC, and, if so, why?

In preliminary observations before the CCJ, the State of Antigua and Barbuda has submitted that the CCJ has no jurisdiction to answer these questions because the referral is *ultra vires* as the High Court was not entitled by domestic law to make the referral, and, in any event, the referral is irrelevant as “in the dualist State of Antigua and Barbuda” it is the State’s domestic courts, and not the CCJ, that are exclusively responsible for the proper interpretation of the 1997 Act or other domestic legislation.

The CCJ has directed that the following issues shall be determined:

- (1) Does the CCJ have jurisdiction to give a determination on the questions posed by the High Court?
- (2) If the answer to (1) is in the affirmative, what is the proper response to the questions posed by the Antigua Court?