

Institution: Inter-American Commission on Human Rights
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Title/Style of Cause: Steve Clark v. Grenada
Doc. Type: Decision
Decided by: Chairman: Professor Claudio Grossman;
First Vice Chairman: Ambassador John S. Donaldson;
Second Vice Chairman: Professor Carlos Ayala Corao;
Members: Dr. Oscar Lujan Fappiano, Professor Robert Kogod Goldman, Dr. Jean Joseph Exume, Ambassador Alvaro Tirado Mejia.
Dated: 1 March 1996
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I. ALLEGED FACTS:

A summary of the alleged facts of the case as submitted by the Petitioners follows:

1. On March 31st, 1989, a petition was received by the Inter-American Commission on Human Rights which stated that four boxes of Pathfinder books were seized on March 8, 1989, at Grenada's Point Salines Airport. It stated that these books were still being held by Grenadian police, and were being checked against a list of "banned books." Efforts to retrieve the books had failed.
2. The books were sent from Pathfinder Press, New York to Dr. Terence Marryshow, (Terry Marryshow) leader of the Maurice Bishop Patriotic Movement of Grenada (MBPM.) Titles seized included, *The Struggle Is My Life*, by Nelson Mandela; *Maurice Bishop Speaks*; *The Grenada Revolution 1979-83*; *Nothing Can Stop the Course on History*; *An Interview with Fidel Castro* by U.S. Congressman, Mervyn Dymally, and Jeffrey M. Elliott; *One People, One Destiny*; *The Caribbean and Central America Today*, edited by Don Rojas; and *Malcolm X Speaks*. It was alleged that a personal copy of the mystery novel, *Our Man in Havana*, by Graham Greene was taken from Meryl Lynn Farber.
3. On March 8, 1989, Government officials granted three day visas to the Director of Pathfinder Press, Steve Clark, Meryl Lynn Farber, Argiris Malapanis, and Minnesota Professor August Nimtz, upon their arrival in Grenada. They were denied visa extensions to remain in Grenada to attend a conference on March 11-13 sponsored by the Maurice Bishop Patriotic Movement commemorating the tenth anniversary of the Grenadian Revolution of March 1979 and to participate in the celebrations.

4. The petitioners allege that they were threatened by Grenadian Immigration officials who stated that if they attempted to stay in Grenada and attend the gathering, they would be arrested and deported.

5. The petition referred to allegations stating that U.S. visitors to Grenada do not normally need visas, but officials explained that their policy was not to permit any international participation at the conference.

II. THE PETITIONERS REQUEST THAT:

The Commission should inquire and protest the attack on freedom of speech, press, and information, to Grenadian officials.

III. ARTICLES ALLEGEDLY VIOLATED:

Article 13 of the American Convention on Human Rights, "Freedom of Thought and Expression." (Petitioners have not specifically cited this article.)

IV. PROCEEDINGS BEFORE THE COMMISSION:

1. Upon the receipt of the petition the Commission complied with the procedural requirements of its Regulations. In this regard, during the pendency of the case, the Commission transmitted notes to the petitioners and the Government of Grenada, studied and examined the case.

2. The Commission transmitted several notes to the Government of Grenada. In the first note dated May 2, 1989, it transmitted the pertinent parts of the complaint and requested that the Grenadian Government supply it with information which it deemed appropriate to the allegations of the complaint and which addressed the issue of exhaustion of domestic legal remedies within 90 days. The Commission qualified the request by stating that the request for information did not constitute a decision as to the admissibility of the communication.

3. In the second note dated September 21, 1989, it reiterated the request for information, referred to in its note of May 2, 1989 and stated that if the information was not received within 30 days it would consider the application of Article 42 of the Regulations. Article 42 of the Commission's Regulations provide:

The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

4. The Commission received several notes and enclosures from the petitioners, including a Decree[FN1] by the former British Commonwealth Governor General Paul Scoon, banning the said books, several international letters of protests from various members of Congress, members

of the British Parliament and other persons, denouncing the Grenadian Government's actions, addressed to then Prime Minister, Herbert Blaize and several Pathfinder Press releases depicting the contents of the complaint.

[FN1] Attached list appended.

5. The petitioners informed the Commission by note that on March 20th, 1989, Maurice Bishop's Patriotic Movement leader, Terry Marryshow filed suit in Grenada's High Court challenging the constitutionality of the 1951 British Colonial Law, under which the books were banned and that on April 7 and April 21st, 1989, the Grenadian Government's lawyers requested a postponement and were granted a postponement of the trial.

6. The case was presented to the Commission on October 2, 1992, at its Eighty Second Period of Sessions. The Commission examined the case and on that day sent a letter to the parties requesting additional information.

7. To date in response to the Commission's letter of October 2, 1992, the Commission has not received any arguments from the Grenadian Government with regard to the admissibility of the petition, nor on the merits of the case. The Commission has sent several letters to the Government reiterating its request for information concerning the case[FN2] and its status in the Courts, in Grenada. The only documentation received from the Government was a statement referring to Section 6 of the Importation of Publications (Prohibition) Act, (Chapter 145), of the Revised Laws of Grenada, Order, 1989 (S.R. & O. No. 6 of 1989, and a note dated May 17, 1993, stating the following:

The Permanent Mission of Grenada presents its compliments to the Executive Secretary of the Inter-American Commission on Human Rights of the Organization of American States and has the honour to transmit from the Government of Grenada the attached information regarding Case No. 10.325 in response to communication in the matter dated October 2, 1992, to the Prime Minister of Grenada.

The Permanent Mission of Grenada avails itself of this opportunity to renew to the Executive Secretary of the Inter-American Commission on Human Rights of the Organization of American States the assurances of its highest consideration.

[FN2] April 28, 1993, May 25, 1993, November 23, 1994, May 17, 1995, and June 21, 1995.

8. The Commission sent a copy of this Order to the petitioners for their comments and observations. In response to the Commission's letter of October 2, 1992, requesting information from the petitioners and their comments and observations on the Importation and Publication Order, the petitioners sent several notes to the Commission concerning the status of the case in the Courts of Grenada. Included in the information sent to the Commission, is a note dated June

20, 1995, in which the petitioners informed the Commission that "the suit contesting the banning decree remains before the High Court, which heard the case in 1989, but has yet to issue a ruling, in the absence of a ruling, the ban remains in effect." More than eighty books and pamphlets published by Pathfinder Press remain banned. Attached to the letter of June 20, 1995, was a letter from the petitioner's lawyer, which stated the following: "Please be advised that I am still awaiting Judgment in the above matter. I have written several times to the Judge without result. I have since written to the Chief Justice in an effort to have the same delivered." The suit was entitled "Suit 129 of 1989, In the matter of the Importation of Publication (Prohibition) Ordinance Chapter 145 of the Revised Laws of Grenada as amended."

V. SUBMISSION OF THE PARTIES:

1. The Government of Grenada has not presented any arguments on the admissibility and merits of the petition. However, attached to its note of May 17, 1993, the Government made the following statement: "The power to prohibit the importation of certain publications is provided for by section 3 of the Importation of Publications (Prohibition) Act (Chapter 145 of the Revised Laws of Grenada, under which section the Importation of Publications (Prohibition) Order, 1989 (S.R. & O. No. 6 of 1989), was made." Section 6 of the said Act, gives power to:

- (a) any officer of the Post Office Department not below the rank of Deputy Post-master;
- (b) any officer of the Customs Department not below the rank of Chief Revenue Officer;
- (c) any member of the Police Force, and
- (d) any other official authorized in that behalf by the Governor-General, to examine and detain any package or article which he suspects to contain any prohibited publication or extract therefrom.

2. The Government of Grenada also stated that the domestic legal remedies and procedures are provided for under section 16 of the Grenada Constitution Order 1973 (S.I. 1973 No. 2155), which reads as follows:-

16. (1) If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

16. (2) The High Court shall have original jurisdiction -

- (a) to hear and determine application made by any person in pursuance of subsection (1) of this section; and
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section and may make such declarations or orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive) of this Constitution:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are to have been available to the person concerned under any other law.

3. The Petitioners have not presented any arguments to the Commission but stated in their letter to the Commission of June 20, 1995, that in Grenada, "the suit contesting the banning decree remains before the High Court, which heard the case in 1989, but has yet to issue a ruling. In the absence of a ruling, the ban remains in effect." They also state that they have made several written requests to the Judge to issue a ruling, but no decision has been made and that a written request of the same was made to the Chief Justice.

VI. THE ISSUES TO BE DECIDED BY THE COMMISSION:

1. Is this petition admissible?
2. Do the alleged facts constitute a violation of Article 13 of the American Convention on Human Rights?

VII. COMMISSION'S ANALYSIS:

A. IS THIS PETITION ADMISSIBLE?

1. Grenada is a party^[FN3] to the American Convention on Human Rights and is subject to its provisions. Article 46 of the American Convention provides that: Admission by the Commission of a petition or communication lodged in accordance with articles 44 or 45 shall be subject to the following requirements:

- a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
- b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;
- c. that the subject of the petition or communication is not pending in another international proceeding for settlement; and
- d. that, in the case of article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.

[FN3] Grenada ratified the Convention on 18 July, 1978.

2. The provisions of paragraphs 1.a and 1.b of this Article shall not be applicable when:
 - a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
 - b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

2. Petitioners have alleged that suit was filed in the High Court of Grenada on March 20th, 1989, challenging the constitutionality of the 1951 British Colonial Law, under which books have been banned, and despite several written requests to the Court to render a decision, none has been forthcoming.

3. The Government has not argued that domestic remedies have not been exhausted and are available to the petitioners in the courts in Grenada. It has however, stated, that the power to prohibit the importation of certain publications is provided for by section 3 of the Importation of Publications (Prohibition) Act (Chapter 145) of the Revised Laws of Grenada, under which section the Importation of Publications (Prohibition) Order, 1989 (S.R. & O: No.6 of 1989) was made. It referred to Section 6 of the Act which grants power to certain government officials to enforce the Act, and Section 16 which states that domestic legal remedies and procedures are provided for under Section 16 of the Grenada Constitution Order 1973 (S.I. 1973 No. 2155).

4. It also referred to Section 16 (1) which provides: "If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress." Section 16(2) grants original jurisdiction to the High Court to deal with matters arising under thereof and can hear and determine the application or any question arising thereunder, can make declarations or orders pertaining to the same, including the declining of jurisdiction.

5. The Commission finds that the petitioners have exhausted domestic remedies as provided by Article 46 (2) (c) because there has been unwarranted delay by the High Court of Grenada in rendering a final judgment of their suit filed on March 26, 1989. The Government of Grenada has not presented any arguments as to why the provisions of Article 46(2)(c) should not apply. The Commission finds that this petition is admissible.

B. DO THE ALLEGED FACTS CONSTITUTE A VIOLATION OF ARTICLE 13?

1. Article 13 of the American Convention provides:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. respect for the rights or reputations of others; or

b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

2. Section 10 of the Constitution of Grenada of 1973[FN4] provides for the "protection of freedom of expression." Section 10 provides:

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(c) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

[FN4] 1973 No. 2155, Grenada, The Grenada Constitution Order 1973, at 15.

3. The facts presented to the Commission establish that the Government of Grenada banned 4 books published by Pathfinder Press. The books were seized at Grenada's Point Salines Airport on March 8, 1989 and were still being held by Grenadian police. The Grenadian

Government has not offered any arguments on the merits of the case, nor has it contested the facts of the case. Both the American Convention on Human Rights and Article 10 of the Constitution of Grenada 1973, grant the petitioners the right to freedom of thought and expression, which includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally or in writing, in print, in the form of art, or through any other medium of one's choice, without interference, freedom to communicate ideas and freedom from interference of correspondence.

4. In addressing this issue, the Inter-American Court of Human Rights have stated that:

Article 13, indicates that freedom of thought and expression "includes freedom to seek, receive and impart information and ideas of all kinds...." This language establishes that those to whom the Convention applies not only have the right and freedom to express their own thoughts but also the right and freedom to seek, receive and impart information and ideas of all kinds. Hence, when an individual's freedom of expression is unlawfully restricted, it is not only the right of that individual that is being violated, but also the right of all others to "receive" information and ideas. The right protected by Article 13 consequently has a special scope and character, which are evidenced by the dual aspect of freedom of expression. It requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.[FN5]

[FN5] Advisory Opinion OC-5/85 of November 13, 1985, at 100, paragraph 30.

5. The Government's act of seizing and banning the books has the effect of imposing "prior censorship" on the freedom of expression and therefore has violated the two-fold aspects of the right to receive and impart information to "everyone" both within and outside of the community, regardless of frontiers as provided by Article 13 of the American Convention. The Government has not shown how the contents of the books fall within the exception, "respect for the rights or reputations of others;" or "the protection of national security, public order, or public health or morals," as provided by Article 13 of the American Convention.

6. Moreover, the Government of Grenada has not presented any arguments to the Commission demonstrating that the banned books, *The Struggle is My life*, by Nelson Mandela; *Maurice Bishop Speaks*; *The Grenada Revolution 1979-1983*; *Nothing Can Stop the Course on History*; *An Interview with Fidel Castro* by U.S. Congressman, Mervyn Dymally, and Jeffrey M. Elliott; *One People, One Destiny*; *The Caribbean and Central America Today*; edited by Don Rojas; *Malcolm X Speaks*; and a personal copy of the mystery novel, *Our Man in Havana*, by Graham Greene which was taken from Meryl Lynn Farber, violated the respect for the rights or reputations of others; or the protection of national security, public order, or public health or morals and therefore, "shall be subject to the imposition of liability," expressly established by law to the extent necessary to ensure protection of such rights pursuant to the exceptions referred to in Article 13 (2) of the American Convention.

7. On this issue the Inter-American Court of Human Rights stated further that:

In its individual dimension, freedom of expression goes further than the theoretical recognition of the right to speak or to write. It also includes and cannot be separated from the right to use whatever medium is deemed appropriate to impart ideas and to have them reach as wide an audience as possible. When the Convention proclaims that freedom of thought and expression includes the right to impart information and ideas through "any ...medium," it emphasizes the fact that the expression and dissemination of ideas and information are indivisible concepts. This means that restrictions that are imposed on dissemination represent, in equal measure, a direct limitation on the right to express oneself freely. The importance of the legal rules applicable to the press and to the status of those who dedicate themselves professionally to it derives from this concept.[FN6]

In its social dimension, freedom of expression is a means for the interchange of ideas and information among human beings and for mass communication. It includes the right of each person to seek to communicate his own views to others, as well as the right to receive opinions and news from others. For the average citizen it is just as important to know the opinions of others or to have access to information generally as is the very right to impart his own opinions.[FN7]

[FN6] Id. at 100-101, paragraph 31.

[FN7] Id. at 101, paragraph, 32.

8. Based on the exposition above, the Commission finds that the Government of Grenada violated the rights of the petitioners to "freedom of thought and expression," when it seized and banned the books belonging to the petitioners. The two dimensions referred to by the Inter-American Court in (supra 30) of the right to freedom of expression must be guaranteed simultaneously. "One cannot legitimately rely on the right of a society to be honestly informed in order to put in place a regime of prior censorship for the alleged purpose of eliminating information deemed to be untrue in the eyes of the censor. It is equally true that the right to impart information and ideas cannot be invoked to justify the establishment of private or public monopolies of the communications media designed to mold public opinion by giving expression to only one point of view." [FN8] The petitioners' right to transport the books to Grenada and the right to receive such books in Grenada are protected by Article 13 of the American Convention.

[FN8] Id. at 103, paragraph 33.

9. Article 2 of the American Convention provides that: "Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be

necessary to give effect to those rights or freedoms."[FN9] Therefore, the Grenadian Government must ensure that its Legislation complies with the provisions of Article 13 of the American Convention.

[FN9] Article 2 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

FINDS THAT:

1. The "right to freedom of thought and expression" of the petitioners has been violated by the Government of Grenada. This right to "freedom of thought and expression" is one which is contained in Article 13 of the American Convention on Human Rights.
2. The Government of Grenada must lift the ban on the books which remain under the banning order.
3. The Government of Grenada must adopt the necessary measures to ensure that its Legislation is brought into conformity with Article 13 of the American Convention on Human Rights.
4. Publish this report in the Annual Report to the General Assembly.