

Order of the Inter-American Court of Human Rights

of December 2, 2008

**Provisional Measures Requested by
the Inter-American Commission on Human Rights
Regarding the State of Barbados**

Case of Tyrone DaCosta Cadogan

Having Seen:

1. The communication of October 31, 2008, in which the Inter-American Commission on Human Rights¹ (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Tribunal," or "the Court") a request for the adoption of provisional measures, in accordance with Articles 63(2) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and 25 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), with the objective that the State of Barbados (hereinafter "the State" or "Barbados") "take all necessary measures to preserve the life and physical integrity of [Tyrone DaCosta Cadogan, a prisoner on death row whose circumstances are the subject of an application filed on October 31, 2008, before the Court,] so as not to hinder the processing of his case."

2. The alleged facts on which the request for provisional measures filed by the Commission is based, namely:

a) Mr. Tyrone Dacosta Cadogan was found guilty of murder and sentenced to death by hanging by the Supreme Court of Barbados on May 18, 2005, pursuant to section 2 of the Offenses Against Persons Act, which calls for the mandatory application of the death penalty for murder. Mr. Cadogan has exhausted available domestic remedies and is awaiting execution at Her Majesty's Prison at Dodds in Barbados;

¹ The Commission designated Commissioner Paolo Sergio Pinheiro and Mr. Santiago A. Canton, Executive Secretary of the Commission, as its delegates in this case, and Elizabeth Abi-Mershed, Deputy Executive Secretary of the Commission, Mario López-Garelli, Ismene Zarifis, and Manuela Cuvi Rodríguez, as its legal advisors.

b) on December 29, 2006, the Commission received a petition² requesting the adoption of precautionary measures on behalf of Mr. Cadogan so that no steps would be taken to carry out his death sentence pending the determination of his petition by the Commission;

c) on January 23, 2007, the Commission adopted precautionary measures on behalf of Mr. Cadogan. It considered that if Mr. Cadogan were to be executed before it had the opportunity to examine his case, any eventual decision would be rendered ineffectual in terms of potential remedies, and he would suffer irreparable harm. Consequently, the Commission requested an urgent response from the State to preserve Mr. Cadogan's life and physical integrity;

d) on January 23, 2007, and January 14 and May 5, 2008, the Commission requested the State to provide information on Mr. Cadogan's situation and any steps adopted by Barbados to protect his life and physical integrity in the context of the precautionary measures;

e) on July 4, 2008, the State informed the Commission that warrants of execution had not been issued against Mr. Cadogan pursuant to the decision by the Caribbean Court of Justice in the case of *Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce*. The State indicated that, according to that decision, "no warrant of execution can be issued [...] while either the Inter-American Commission or the [Inter-American] Court is processing the petition [because] the doctrine of legitimate expectations provide[s] an individual the right to conclude his petition before the Inter-American Commission, to have the Commission's reports considered by the Barbados Privy Council[,] and to have his execution stayed until those processes have been completed"; and

f) the Caribbean Court of Justice stated, in the case of *Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce*, that "[...] protracted delay on the part of [an] international body in disposing of the proceedings initiated before it by a condemned person, could justify the State, notwithstanding the existence of the condemned man's legitimate expectation [not to be executed before or until such international body has disposed of the proceedings], [in] carry[ing] out an execution before completion of the international process."

3. The legal arguments of the Commission on which the request for provisional measures is based, namely, that:

a) Mr. Cadogan "is under a continuing risk of irreparable damage pending the completion of his proceedings before the [I]nter-American human rights system";

b) "the execution of the alleged victim prior to the completion of his process at the Court would render any eventual judgment moot in terms of the efficacy of potential remedies, such as commutation of his death sentence";

c) pursuant to the decision of the Caribbean Court of Justice in the case of *Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce*, there are certain circumstances under which the State "would not move forward with steps to execute a death sentence during the pendency of a petition before an international instance.

² The petitioners were Messrs. Alair P. Shepherd Q.C. and M. Tariq Khan.

Those circumstances are, however, subject to policy considerations of the State, and are not concretized in a judicial stay"; and

d) "there is no guarantee or even a specific undertaking that warrants of execution will not be issued at the discretion of the [...] State."

4. The request of the Inter-American Commission that the Court, based on Article 63(2) of the American Convention, order the State to "take all measures necessary to preserve [the] life and physical integrity [of Tyrone DaCosta Cadogan] so as not to hinder the processing of his case before the Inter-American Court and inform the Court immediately concerning the measures taken to comply with the request."

5. The application filed with the Court by the Commission on October 31, 2008, regarding case No. 12.645 (Tyrone DaCosta Cadogan).

6. The Order of the President of the Court of November 4, 2008, whereby the President

DECIDE[D]:

1. To order the State to adopt the provisional measures necessary to protect the life and physical integrity of Mr. Tyrone DaCosta Cadogan, so as not to hinder the processing of his case before the Inter-American system.

2. To require the State to inform the Inter-American Court of Human Rights, within 15 days of the notification of the present Order, regarding the steps it has taken in fulfillment of this Order.

3. To require the representatives of the beneficiary of the present urgent measures to submit their observations to the State's report within five days of its reception, and to require the Commission to submit its observations to the State's report within seven days of its reception.

[...]

7. The State's communication of November 19, 2008, whereby it informed that "Mr. Tyrone DaCosta Cadogan is incarcerated at Her Majesty's Prison at Dodds and has not been executed." The State also "reiterate[d] [...] that under Barbadian law no warrant of execution can be issued against an individual while either the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights is processing his petition, as a result of the doctrine of legitimate expectation, as established in [the decision of the Caribbean Court of Justice in the case of] *Attorney General et al. v. Jeffrey Joseph and Lennox Ricardo Boyce*. In this case, the Caribbean Court of Justice decided, *inter alia*, that the doctrine of legitimate expectation provides an individual with the right to conclude his petition before the Inter-American Commission on Human Rights, to have the Commission's reports considered by the Barbados Privy Council, and to have his execution stayed until those processes have been completed."

8. The Commission's communication of December 2, 2008, whereby it observed that:

a) the information sent by the State is the same that had been provided to the Commission on July 4, 2008, and to which the Commission gave due consideration, as stated in its request for provisional measures;

b) the case law referred to by the State indicates that, in some circumstances, it would not move forward with steps to execute a death sentence during the pendency of a petition before an international instance, but that those circumstances are subject to policy considerations of the State, and are not concretized in a judicial

stay. Thus, the Commission observed that, while a person in Mr. Cadogan's situation may have a legitimate expectation that the sentence will not be executed, he does not have a right not to be executed; and

c) the State has not provided any information on the concrete application of that decision to the specific case of Mr. Cadogan. Thus, the Commission considered that there is no guarantee or even a specific undertaking that warrants of execution will not be issued at the discretion of the State.

Considering:

1. That Barbados has been a State Party to the American Convention since November 27, 1982 and, in accordance with Article 62 thereof, recognized the contentious jurisdiction of the Inter-American Court on June 4, 2000.

2. That Article 63(2) of the American Convention establishes that, "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission."

3. That in relation to this issue, Article 25 of the Rules of Procedure establishes that:

1. At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

3. In contentious cases already submitted to the Court, the victims or alleged victims, their next of kin, or their duly accredited representatives, may present a request for provisional measures directly to the Court.

[...]

4. That on October 31, 2008, the Commission filed an application with the Court regarding case No. 12.645 (Tyrone DaCosta Cadogan) (*supra* Having Seen 5), based on the subject-matter of the request for provisional measures, which was notified to the State on November 17, 2008.

5. That Article 1(1) of the Convention establishes the general obligation of States Parties to respect the rights and freedoms recognized therein and to ensure the full and free exercise of those rights and freedoms to every person subject to their jurisdiction; this duty

is particularly compelling in the case of persons currently the subject of a proceeding before the supervisory organs of the American Convention.³

6. That the urgent measures ordered by the President on November 3, 2008 (*supra* Having Seen 6), are in force.

7. That in this case the measures requested in favor of Mr. Cadogan seek to allow the organs of the Inter-American system of human rights protection to evaluate the possible existence of violations of the American Convention to his detriment.

8. That the Court observed in the case of *Boyce et al. v. Barbados, inter alia*, that:

113. [...] it is fundamental that litigants be able to complete their [...] petitions and applications before the Commission and Court, respectively, before any execution may be carried out. This is a natural consequence of Barbados' ratification of the American Convention and recognition of the jurisdiction of this Court. A different reading of the Convention would be contrary to its object and purpose, and would render the access of the individual to the Inter-American System, as well as Articles 62(3) and 63(1) of such instrument, meaningless.⁴

9. That if the State executes Mr. Tyrone DaCosta Cadogan before the processing of his case before this Court is completed, it would cause an irreparable situation as well as constitute conduct incompatible with the object and purpose of the Convention.⁵

10. That the situation described in the present case (*supra* Having Seen 2, 3, 7, and 8) reveals *prima facie* the possible existence of a situation of extreme gravity and urgency, rendering it necessary to avoid irreparable damage to the right to life and physical integrity of Mr. Tyrone DaCosta Cadogan.

11. That the adoption of these provisional measures does not entail a decision on the merits of the controversy.⁶

³ Cf. *Matter of Giraldo Cardona*. Provisional Measures regarding Colombia. Order of the President of the Inter-American Court of October 28, 1996. Considering clause seven; *Matter of Colotenango*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 12, 2007. Considering clause four; and *Case of the Mayagna (Sumo) Awas Tingni Community*. Provisional measures regarding Nicaragua. Order of the Inter-American Court of Human Rights of November 26, 2007. Considering clause four.

⁴ Cf. *Case of Boyce et al. v. Barbados*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C N^o. 169, para. 113.

⁵ Cf. *Matter of James et al.* Provisional measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998. Considering clause eight; *Matter of Tyrone DaCosta Cadogan*. Provisional Measures regarding Barbados. Order of the President of the Inter-American Court of Human Rights of November 4, 2008. Considering clause ten; and *Matter of Boyce and Joseph*. Provisional measures regarding Barbados. Order of the Inter-American Court of Human Rights of July 14, 2005. Considering clause eight.

⁶ Cf. *Matter of James et al.* Provisional measures regarding Trinidad and Tobago. Order of the President of the Inter-American Court of Human Rights of July 13, 1998. Considering clause six; *Matter of Tyrone DaCosta Cadogan, supra* note 5, Considering clause twelve; and *Matter of Capital El Rodeo I & El Rodeo II Judicial*

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in accordance with Article 63(2) of the American Convention and Article 25 of the Rules of Procedure,

DECIDES:

1. To ratify all the terms of the Order of the President of the Inter-American Court of Human Rights of November 4, 2008 (*supra* Having Seen 6).
2. To request the State to maintain the provisional measures necessary to protect the life and physical integrity of Mr. Tyrone DaCosta Cadogan, so as not to hinder the processing of his case before the Inter-American system.
3. To require the State to inform the Inter-American Court of Human Rights every four months regarding the measures it adopts, and to require the representatives of the beneficiary of the present provisional measures and the Inter-American Commission to submit their observations to those State reports within two and three months, respectively, of the reception of such reports.
4. To require the Secretariat of the Court to notify this Order to the State of Barbados, the Inter-American Commission on Human Rights, and the representatives of the beneficiary of these measures.

Drafted in English and Spanish, the English text being authentic, during the XXXVII Extraordinary Period of Sessions held in Mexico City, on December 2, 2008.

Cecilia Medina Quiroga
President

Diego García-Sayán

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Registrar

So Ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Registrar