

IN THE COMMONWEALTH MOOT COURT

In the matter between

***Rene Descartes
Jean-Jacques Rousseau***

***First Appellant
Second Appellant***

and

Her Majesty the Queen

Respondent

.....

The Appellants are two Canadian businessmen who were arrested in Thainam, a small landlocked country in Asia, and charged, along with two German nationals, with attempting to smuggle 10 kg of cocaine into that country. Thainam has huge oil reserves and Canada has recently entered into a multi-billion-dollar contract with the government of Thainam for the supply of oil to Canada. Despite its reserves of oil, Thainam is an underdeveloped country with a very poor infrastructure. Its prisons are in a very poor state of repair and the officials within its criminal justice system are very badly paid. At the Bangong prison where the Appellants have been detained for three months pending their trial, which is due to take place in one month's time, 60 prisoners or more are forced to sleep in cells designed to accommodate 20 inmates. There are no beds, and the prisoners are forced to sleep in rows on the concrete floor. The single blankets provided to prisoners are infested with lice and are not sufficient to protect against the cold of the Thainam winter. Toilet facilities are totally inadequate and prisoners are only allowed one shower per week. A recent report by the human rights group Amnesty International maintains that prisoners detained in the Bangong prison are regularly beaten by prison warders with canes, and the Appellants claim that they were severely beaten on six different occasions. The judges of the Thainam Supreme Court where the Appellants are to be tried are all related to the royal family of Thainam, which controls the legislature, executive and judiciary. The penalty for smuggling over 1kg of cocaine in Thainam is death by decapitation, which takes place in a public square situated in the centre of the capital city Penong, and is carried out within 24 hours of the verdict being handed down by the Supreme Court. Officials from both the Canadian Embassy and the German Embassy in Penong have been allowed access to the Appellants and the two German nationals. Officials from the Canadian Embassy in Penong visited the Appellants in Banong prison on two occasions, but told them that although the embassy had considered their matter, the Canadian government could not intervene in their case, since it was "not in the interests of the Canadian people as a whole to upset the delicate relationship which exists between Canada and the Kingdom of Thainam". The German nationals met with more success. The German Government intervened on behalf of the German nationals and secured from the Thainam Government an assurance that the German nationals would be tried in accordance with fair trial standards and if convicted, would not be subject to the death penalty. After two months in custody, the Appellants were able to consult a Thainamese lawyer, who advised them that there was no prospect of them being granted bail or of their conditions of detention being improved. The lawyer was also not optimistic of

their chances of success at their forthcoming trial. Lawyers acting for the Appellants in Canada then launched an urgent application in the Supreme Court of Canada, ordering the government to provide them with diplomatic protection, in the form of an official request to the government of Thailand to ensure that the conditions of detention of the Appellants meet internationally acceptable standards; that the appellants be given a fair trial before an impartial court; and that should the appellants be sentenced to death such sentence will not be carried out. The Supreme Court refused to order the Canadian Government to provide diplomatic protection in this form. The Appellants now appeal the matter to the Moot Court on an urgent basis.

Suggested Reading:

Kaunda v President of the RSA and Others 2004 (10) BCLR 1009 (CC)

Mohamed v President of the RSA 2001 (3) SA 893 (CC)

R v Abbasi [2002] EWCA Civ 1598 (6 November 2002)

The Mavromattis Palestine Concessions case (1924) PCIJ Reports Series A (2)12

Öcalan v Turkey, ECHR application 46221/99, 12 March 2003

Barcelona Traction Light and Power Company Ltd 1970 ICJ Reports 3; 46 ILR 178

La Grand case (Germany v United States), re the 1963 Vienna Convention on Consular Relations judgment of 27 June 2001, 40 ILR 1069

United States v Burns (2001) 1 SCR 283

Dugard *First Report on Diplomatic Protection* (March 2000) A/CN.4/506

Dugard *Second Report on Diplomatic Protection* (March 2001) A/CN.4/514

The 2005 moot problem was written by Max du Plessis and Steve Pate of the University of Kwa-Zulu-Natal and received considerable praise from the judges for both its originality and its topicality.