

CASE NOT SUSTAINED

CS/485

COMPLAINT AGAINST HM CUSTOMS FOR THE LENGTH OF TIME THAT THE COMPLAINANT WAS KEPT IN DETENTION BEFORE HE WAS TAKEN TO BE X-RAYED AT ST BERNARD'S HOSPITAL

1. Late at night on 10th August 2003 the Complainant arrived at the Gibraltar Port in a chartered catamaran from Tangier, Morocco. Upon arrival he was stopped and questioned about the purpose of his visit to Morocco and an intimate search was carried out.
2. The results of the search proved negative but the customs officer on duty informed him that he had to be detained until it could be confirmed whether he was concealing an illegal substance within his body. He was asked whether he consented to be medically examined and X-rayed, which he did and was then told that he would have to remain in custody overnight, as the X-ray facilities at the hospital were not available during the silent hours. He was transferred to the new holding facilities at the Four Corners Station where an arrest record was opened and a custody officer appointed. He was also offered food which he declined.
3. Upon his arrival at the detention room at the land frontier customs post he underwent another intimate search, but again nothing was found. The Complainant felt that he had already been humiliated and degraded by the first search, and he thought that the second search was unnecessary.
4. At around 8:00 am the Complainant started asking the officer in charge if he would soon be taken to the hospital in order to be X-rayed (for which he had willingly signed a consent form); he was simply informed that arrangements were being made. At this stage he started to feel the effects of the hours in the detention room, and he broke down in tears.
5. At around 10:30 am the Complainant was taken to the Hospital, where the X-rays were carried out. The results proved negative for concealed drugs, and the Complainant was released from custody.
6. The Complainant described to the Ombudsman that when he was X-rayed by customs officials at the port of Algeciras on another occasion he was not even asked to remove his shirt and yet in Gibraltar he was asked to remove all of his clothes and given a gown. He complained that this was degrading. He further complained that he was not offered to take a laxative during the hours in detention. He would have taken one gladly he said, as this would have established his innocence. The Complainant added that after he was led from the X-ray room by the customs officers he was not informed by them that he was now a free man. On the contrary, as he was led from the X-ray room, their behaviour and demeanour was no different to that before the X-ray. He found this to be very inconsiderate.

7. Customs explained to the Ombudsman that the Complainant had been detained because his characteristics fit the profile of the typical drugs smuggler. Since the beginning of 2002, 33 persons who had fit this profile had been stopped and 28 of them had been found out to be concealing drugs within their person. According to customs 98.5% of detainees who had been screened resulted in a positive seizure of over 27 kilos of Cannabis resin.

8. Customs further explained that the Complainant had travelled to Morocco from Algeciras via Ceuta and returned from Tangier to Gibraltar. This was the route preferred by smugglers in order to avoid the X-ray facilities at the port of Algeciras.

9. In response to the accusation that it was unnecessary to search the detainee more than once, customs explained that the second search was conducted to remove any items that could pose a danger to the person whilst in custody. This search is conducted without regard to any previous searches and should a person be charged and handed over to Police custody another one would have to be conducted by the Royal Gibraltar Police custody officer prior to being placed in police cells.

10. In his statement to the Ombudsman, the Collector of Customs stated that *“the unfortunate side of this case”* was *“the matter of the long detention period. This I am afraid is out of my Department’s hands.”* The Collector of Customs explained to the Ombudsman that the matter had been addressed and discussed at length with GHA personnel but the problem was that radiographers refused to react to call-outs by Customs outside normal office hours *“due to them not considering them to be of a medical nature.”* Customs did not concur with this position stating that were the substance to rupture within the smuggler’s body, the detainee’s life would be in grave danger.

11. Customs further outlined to the Ombudsman their policy regarding the provision of laxatives to detainees and their guidelines as regards X-ray examinations. No drugs of any sort are administered to any detainee without the prior approval of the forensic medical examiner. Laxatives are only administered at the request of the detainee once the person has admitted that he has concealed drugs internally and the laxatives are administered to facilitate and speed up the expelling these drugs and not before. In this case the Complainant never asked for laxatives.

12. In respect of X-rays, again it is the forensic medical examiner who issue the X-ray form which is then processed through the radiologist at the X-ray department at St Bernard's Hospital. The normal procedure is that the radiologist hands the X-ray of the detainee in an envelope to the customs officers present for them to pass on to the forensic medical examiner who examines the X-ray and gives them result at his clinic at Marina Bay. It is normally at this time that the detainee is informed of the result and he is either released or detained further, depending on the circumstances.

13. Customs stressed that at no time does the radiologist examine or read the X-ray giving the customs officers any indication as to the result.

14. The Ombudsman accepted the position of H M Customs and pointed out that even though the right to move freely without having to fear that we may be deprived of our personal freedom was one of our basic human rights, sometimes the rights of the individual had to be balanced with those of society as a whole. It was unfortunate that often the rights of the individual had to be curtailed to protect or safeguard those of the general public.

15. Unfortunately for the Complainant his characteristics matched the profile of a typical drugs smuggler. It seems that he also satisfied the profile held by Spanish customs officials because he himself admitted to the Ombudsman that customs at the port of Algeciras, Spain also detained and X-rayed him a few times.

16. Section 9 of the Imports & Exports Ordinance gives Customs the power to detain any person suspected of concealing a forbidden substance on or within his person for a period not exceeding 96 hours. The Ombudsman also visited the holding facility at the Land Frontier customs post and was satisfied that it was adequate for a short detention pending the carrying out of an X-ray examination.

17. In order to verify whether it was reasonable for a suspect to be kept in detention until X-ray facilities became available the Ombudsman contacted HM Customs at Gatwick and Heathrow airports and enquired about the procedure in place for such instances. The UK customs authorities provided the Ombudsman with a very detailed reply in which they confirmed that the procedure in place for circumstances such as the one in question was identical to the one in place in Gibraltar. UK customs added that in cases where the detainee has to wait a long time before he is taken to a hospital to be X-rayed, he always has the choice of using the special toilet facilities which would invalidate the need for an X-ray.

18. The Ombudsman noted that the holding facility at the Land Frontier customs post had toilet facilities and the Complainant's arrest record showed that he was offered food which he refused.

19. It was unfortunate that the Complainant had to undergo such an ordeal, but the Ombudsman noted that even major airports such as Heathrow and Gatwick appeared to operate in a similar manner to Customs in Gibraltar. The Ombudsman sympathised with what must have certainly been an extremely unpleasant experience for the Complainant, but he held that no maladministration had been committed. With these words he closed the report.