HUMAN RIGHTS COMMITTEE

Reid v. Jamaica

Communication No. 250/1987

20 July 1990

VIEWS

Submitted by: Carlton Reid (represented by counsel)

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 7 August 1987 (initial submission)

Date of decision on admissibility: 30 March 1989

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 20 July 1990,

Having concluded its consideration of communication No. 250/1987, submitted to the Committee by Mr. Carlton Reid under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol *

1. The author of the communication (initial submission dated 7 August 1987 and subsequent correspondence) is Carlton Reid, a Jamaican citizen awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by the Government of Jamaica of articles 6, 7 and 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author was arrested on 2 December 1983 and charged with the murder, on 10 June 1983, of one Miriam Henry, at the site of the Water Commission at Langley, Mount James. His trial took place in the Home Circuit of Kingston on 25 and 26 March 1985; he was found guilty and sentenced to death. On 6 October 1986, the Jamaican Court of Appeal dismissed his appeal.

2.2 The prosecution accused the author of being one of three armed robbers who raided the payroll of the Water Commission Pumping Station on 10 June 1983. It is reported that the perpetrators first proceeded to the kitchen, where the author purportedly wounded a woman by shooting her in the arm. The shot was not fatal and she, together with others, escaped to another building where they locked themselves in a room on the first floor. Witnesses identified the author as being one of the robbers in the kitchen, but the murder allegedly took place in the upstairs room to where the group had fled. During the trial the prosecution argued that the author had gone upstairs. Of the persons in the upstairs room, the only witness who was called, Mr. P. Josephs, testified that after the door had been opened, the author entered the room with a gun and that the wounded woman was shot in the head.

2.3 According to the author, Mr. Josephs' evidence was unreliable. First, he had described him as wearing no mask, which was in complete contradiction to the evidence of all the other witnesses who had identified him as wearing a mask. Secondly, Mr. Josephs testified that the author had dragged him down the stairs, although none of those downstairs had seen this and no one had identified the author as either walking up or down the stairs at any time. Another witness who had been in the downstairs room, Ms. Hermione Henry, testified during the preliminary inquiry that two men had run upstairs and that one of them was carrying a shotgun. It was agreed that the author was not the man with the shotgun, and Miss Henry never identified either man as the author. During the trial, Miss Henry retracted her testimony given during the preliminary inquiry and claimed that the man with the shotgun had remained downstairs with her all the time.

2.4 At the conclusion of the trial, the author claims, the judge failed to comply with his duty to direct the jury on the relevant points of law and to sum up for the jurors the evidence relevant to the charge. It is alleged that he failed to mention any of the evidence as to what had happened in the upstairs room, where the murder had taken place, and even forgot to tell the jury that the murder had occurred in that room. In short, according to the author, he did not refer to any of the evidence concerning the murder charge on which the jury had to return a verdict. This, in his opinion, was tantamount to summing up a different case altogether, since the judge only focused on the robbery-related evidence, where the identification evidence was strong, although none of that evidence related to the murder.

2.5 Following his conviction, the author appealed to the Jamaican Court of Appeal. He claims that, on appeal, few lawyers are willing to accept legal aid assignments. The lawyer who had been assigned to argue his appeal informed him that an appeal would be futile. The author requested that a different lawyer be assigned to his case. This notwithstanding and against his wishes, the lawyer who had first been assigned to argue the appeal appeared before the Court of Appeal and informed it that there were no grounds of appeal. This, apparently, relieved the Court of Appeal from having to examine the case ex officio, as it would have been required to do if no lawyer had appeared for the author. Faced with the lawyer's concession, the Court of Appeal dismissed the appeal on 6 October 1986.

3. By decision of 12 November 1987, the Human Rights Committee transmitted the communication, under rule 91 of its rules of procedure, to the State party, requesting information and observations relevant to the question of the admissibility of the communication. The Committee further requested the State party, under rule 86 of its rules of procedure, not to carry out the death sentence against the author before the Committee had had the opportunity to decide on the question of admissibility. In addition, the Committee requested clarifications concerning the case from both the State party and the author.

4. By letter dated 29 December 1987, the author provided a number of clarifications. He indicated that the first time he was able to communicate with the legal-aid attorney assigned to his case was on the opening day of the trial. The lawyer requested a postponement because he had not been able to discuss the case with accused, but the judge refused to grant it. Apparently, the lawyer was wholly unprepared and reportedly told the author that he did not know which questions to pose to the witnesses. With respect to the appeal, the author stated in a further letter dated 11 March 1988 that, prior to the hearing of his appeal, he had received a letter dated 1 September 1986 from the lawyer assigned to argue the appeal, reading as follows: "I am sorry to disappoint you, but having read the transcript of your case, I cannot find any merit in the appeal. Four witnesses identified you as the killer. That evidence cannot be overturned on appeal. Unfortunately, I will be unable to assist you any further." Although the author did request the services of a different attorney, this lawyer represented him in the Court of Appeal. In fact, he argued that "having carefully read the record and considered the learned trial judge's summation, he could find no arguable ground to support the application."

5. In its submission under rule 91, dated 26 May 1988, the State party argued that the communication was inadmissible on the grounds of the author's failure to exhaust all available domestic remedies, as required by article 5, paragraph 2(b), of the Optional Protocol. It asserted that the author could still apply, pursuant to section 110 of the Jamaican Constitution, for special leave to appeal to the Judicial Committee of the Privy Council, and that legal aid would be available to him for that purpose. The State party also confirmed that the Court of Appeal dismissed the author's appeal on the grounds outlined in paragraph 4 above.

6.1 Commenting on the State party's submission, author's counsel, by letter dated 10 February 1989, indicates that the Judicial Committee of the Privy Council dismissed the author's petition for special leave to appeal on 29 November 1988. This, it is submitted, means that all available domestic remedies in the case have been exhausted. Counsel explains, in this context, that the only way for the author to file an application for special leave to appeal was to seek the assistance of English solicitors and counsel willing to act pro bono, as legal aid available for defendants to submit their case to the Privy Council is inadequate.

6.2 Counsel further states that the grounds on which the Privy Council will entertain appeals from Commonwealth countries in criminal matters are limited. The Privy Council has established the rule that it will not act as a court of criminal appeal and has restricted appeals in criminal matters to such cases where, in its opinion, some issues of constitutional importance arise or where a "substantial injustice" has occurred. The Privy Council's jurisdiction is, therefore, very narrow. In applying its narrow test, it dismissed the author's petition.

6.3 With respect to the alleged violation of article 14 of the Covenant, counsel specifies that the author was deprived of a fair trial within the meaning of article 14, paragraph 1, because the judge never put to the jury any of the evidence relating to the murder but only evidence relating to the robbery. His subsequent appeal to the Jamaican Court of Appeal, according to counsel, was never determined on the merits because of the concession made by the lawyer. This situated, it is submitted, also constitutes a violation of safeguard No. 4 of Economic and Social Council resolution 1984/50 of 25 May 1984 on "Safeguards guaranteeing protection of the rights of those facing the death penalty", which states: "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts."

6.4 Counsel submits that the State party further violated article 14, paragraph 3(d), of the Covenant, because the author was not present during the hearing of his appeal and did not have legal assistance of his own choosing. The lawyer who appeared for the author before the Court of Appeal had no retainer to act, nor did he seek to obtain the author's express consent to appear before the Court of Appeal and state that there were no grounds of appeal. In these circumstances, the author should have been provided with an opportunity to obtain the services of a different attorney. It is submitted that an individual's right to legal representation of his own choosing does not only comprise the trial but also subsequent appellate procedures. Moreover, given that the author's lawyer failed to represent him, the author should have been allowed to be present during the hearing of the appeal and allowed to argue his own case, if the legal aid lawyer was not prepared to do so. Because the author was denied representation of his choosing and was not present at the appeal, he was also deprived of his right to an effective review of his conviction and sentence by the Jamaican Court of Appeal, in violation of article 14, paragraph 5.

6.5 With respect to the alleged violation of articles 6 and 7 of the Covenant, counsel recalls that the author has been confined to death row since his conviction on 26 March 1985. It is claimed that the decision as to whether inmates on death row are to be executed does not depend on legal grounds, but is a function of political considerations, and thus that the author's continued uncertainty as to whether or not a warrant for his execution will be issued, and the concomitant mental anguish, amounts to cruel, inhuman and degrading treatment in violation of article 7. It is submitted that the resumption of executions after a long delay unconnected with legal arguments or procedures would amount to a violation of article 6.

7.1 The Committee ascertained, as it is required to do under article 5, paragraph 2(a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement. With regards to article 5, paragraph 2(b), the Committee concluded, on the basis of the information provided by the parties, that available domestic remedies had been exhausted.

7.2 On 30 March 1989, the Human Rights Committee therefore declared the communication admissible.

8.1 In its submission under article 4, paragraph 2, dated 15 June 1989, the State party contends that the fact that the author's petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed does not necessarily imply that all available domestic remedies have been

exhausted. It points out that the rights under the Covenant which the author alleges have been violated are guaranteed to every Jamaican citizen under Chapter III of the Jamaican Constitution. Thus, section 20, paragraph 1, provides:

"Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

Section 20, paragraph 6, provides:

"Every person who is charged with a criminal offence:
(a) Shall be informed as soon as reasonably practicable, in a language which he understands, of the nature of the offence charged;

(b) Shall be given adequate time and facilities for the preparation of his defence;

(c) Shall be permitted to defend himself in person or by a legal representative of his own choice;

(d) Shall be afforded facilities to examine in person or by his legal representative the witness called by the prosecution before any court and obtain the attendance of witnesses, subject to the payment of their reasonable expenses, and carry out the examination of such witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(e) Shall be permitted to have assigned to him without payment the assistance of an interpreter if he cannot understand the English language."

8.2 The State party adds that the right to life is protected by section 14 of the Constitution, while protection form inhuman or degrading punishment or other treatment is afforded by section 17. Under section 25, anyone who alleges that any of the rights protected by Chapter III have been, or are likely to be contravened in relation to him, may apply to the Supreme (Constitutional) Court for redress. An appeal lies from the decision of the Supreme Court to the Court of Appeal and from the decision of the Court of Appeal to the Judicial Committee of the Privy Council.

8.3 The State party concludes that the right to constitutional redress is a distinct action from an appeal to the Judicial Committee of the Privy Council in a criminal case. Since the author has failed to take steps to pursue his constitutional remedies, the State party argues that his communication is inadmissible on the ground of non-exhaustion of domestic remedies.

9.1 In her comments, dated 19 December 1989, counsel contends that the State party has failed to comply with the Committee's request of 30 March 1989 to provide explanations or statements on the merits of Mr. Reid's case, pursuant to article 4, paragraph 2, of the Optional Protocol. Instead, it tried to revisit the Committee's admissibility decision by arguing that Mr. Reid had failed to exhaust domestic remedies. According to counsel, the State party could have put forward its arguments in its submission under rule 91; at this stage, it is no longer open to the State party to introduce new arguments on admissibility, or at least to do so before providing the information requested by the Committee in its admissibility decision. In her opinion, a different view could be

contrary to rule 93, paragraph 4, of the Committee's rules of procedure.

9.2 Counsel adds that the State party's new arguments on admissibility miss the point since article 5, paragraph 2(b), of the Optional Protocol does not require individuals to prove that they have exhausted every possible domestic course of action which potentially might constitute a remedy. Only such remedies as are both available and effective must be pursued. Accordingly, it should be reasonably assumed that the remedy which the Jamaican Government claims remains open to the author would redress the alleged violations. But this would not be the case if established case law ran counter to the conclusion sought by the author, as is the situation in the instant case. She notes that the State party should provide, in support of its argument, clarifications on whether or not there is any case law which would assist her with her case, given that Mr. Reid is now being asked to argue certain points before a court of lesser jurisdiction in Jamaica, which he had already argued before the Judicial Committee of the Privy Council. Counsel contends that the Judicial Committee, if seized of the constitutional case, would most likely confirm its earlier decision in the case. Moreover, a court of lesser jurisdiction in Jamaica would be bound by the Judicial Committee's earlier decision. Finally, counsel argues that the Constitutional remedy is not only an ineffective but also an unavailable remedy, since it is virtually impossible to secure legal representation in Jamaica to argue constitutional cases on a pro bono basis.

10.1 The Human Rights Committee has considered the present communication in the light of the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

10.2 The Committee has taken due note of the State party's contention that with respect to the alleged violations of article 6, 7 and 14 of the Covenant, domestic remedies have not been exhausted by Mr. Reid. It takes this opportunity to expand upon its admissibility findings.

10.3 The Committee has taken note of the State party's contention that the communication is inadmissible because of the author's failure to pursue constitutional remedies available to him under the Jamaican Constitution. In this connection, the Committee observes that Section 20, paragraph 1, of the Jamaican Constitution guarantees the right to a fair trial, while Section 25 provides for the implementation of the provisions guaranteeing the rights of the individual. Section 25, paragraph 2, stipulates that the Supreme (Constitutional) Court may "hear and determine" applications with regard to the alleged non-observance of constitutional guarantees, but limits its jurisdiction to such cases where the applicants have not already been afforded "adequate means of redress for the contraventions alleged" (Sect. 25, para. 2, in fine). The Committee notes that the State party was requested to clarify, in a number of interlocutory decisions, whether the Supreme (Constitutional) Court has had the opportunity to determine the question pursuant to Section 25, paragraph 2, of the Jamaican Constitution, whether an appeal to the Court of Appeal and the Judicial Committee of the Privy Council constitute "adequate means of redress" within the meaning of Section 25, paragraph 2, of the Jamaican Constitution. The State party has replied that the Supreme Court has so far not had said opportunity. Taking into account the State party's clarification, together with the absence of legal aid for filing a motion in the Constitutional Court and the unwillingness of Jamaican counsel to act in this regard without remuneration, the Committee finds that recourse to the Constitutional Court under Section 25 of the Jamaican Constitution is not a remedy available to the author within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

10.4 Finally, the author's claim that no legal aid is provided to those who envisage filing a constitutional motion and who cannot afford legal representation has remained uncontested. As Mr. Reid is unable to afford legal representation, it follows that even if a constitutional motion were considered an effective remedy, it would not be available to the author, in fact if not in law.

10.5 The Committee has also taken note of the State party's contention that the Committee's established jurisprudence on article 5, paragraph 2(b), of the Protocol, namely that domestic remedies must be both available and effective, is merely the Committee's own interpretation of this provision. a/ It reiterates, in this context, that the local remedies rule does not require the resort to appeals which objectively have no prospect of success, which is an established principle of international law and of the Committee's jurisprudence.

10.6 For the reasons set out above, the Committee finds that a constitutional motion is not a remedy that the author would have to exhaust for purposes of the Optional Protocol. It therefore concludes that there is no reason to revise its decision on admissibility of 30 March 1989.

11.1 With respect to the alleged violation of article 14, three principal issues are before the Committee: (a) wether the alleged inadequacy of the judge's summing-up to the jury in the trial before the Home Circuit Court amounted to a denial of a fair trial; (b) whether the author had adequate time and facilities for the preparation of his defence and (c) whether the author's representation before the Court of Appeal by an attorney not of his choosing constituted a violation of article 14, paragraph 3(d).

11.2 Concerning the first issue under article 14, the Committee reaffirms that it is generally for the appellate courts of States parties to evaluate the facts and the evidence in a particular case. It is not, in principle, for the Committee to review specific instructions to the jury by the judge in a trial by jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The Committee does not have sufficient evidence that the trial judge's instruction suffered from such defects.

11.3 The Committee notes that the State party has not denied the author's claim that the court failed to grant counsel sufficient minimum time to prepare his examination of witnesses. This amounts to a violation of article 14, paragraph 3(b), of the Covenant.

11.4 Concerning the issue of the author's representation before the Court of Appeal, the Committee reaffirms that it is axiomatic that legal assistance must be made available to a convicted prisoner under sentence of death. b/ This applies to the trial in the court of first instance as well as to appellate proceedings. In the author's case, it is uncontested that legal counsel was assigned to him for the appeal. What is at issue is whether the author had a right to contest the choice of his court-appointed attorney, and whether he should have been afforded an opportunity to be present during the hearing of the appeal. The author's application for leave to appeal to the Court of Appeal, dated 6 April 1985, indicates that he wished to be present for the hearing of this appeal. However, the State party did not offer this opportunity, since legal aid counsel had been assigned to him. Subsequently, his counsel considered that there was no merit in the author's appeal and was not prepared to advance arguments in favour of it being granted, thus effectively leaving him without legal representation. In the circumstances, and bearing in mind that this is a case involving the death

penalty, the Committee considers that the State party should have appointed another lawyer for his defence or allowed him to represent himself at the appeal proceedings. To the extent that the author was denied effective representation at the appeal proceedings, the requirements of article 14, paragraph 3(d), have not been met.

11.5 The Committee is of the opinion that ht imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is available, a violation of article 6 of the Covenant. As the Committee noted in its general comment 6 (16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal". In the present case, since the final sentence of death was passed without having met the requirements for a fair trial set forth in article 14, it must be concluded that the right protected by article 6 of the Covenant has been violated.

11.6 As to the allegation that the delays in the execution of the sentence passed on the author amount to a violation of article 7 of the Covenant, and that the author's execution after the delays encountered would amount to an arbitrary deprivation of life, the Committee reaffirms its earlier jurisprudence pursuant to which prolonged judicial proceedings do not per se constitute cruel, inhuman or degrading treatment even if they can be a source of mental strain for convicted prisoners. However, the situation may be different in cases involving capital punishment, although an assessment of the circumstances of each case would be necessary. c/ In the present case the Committee does not find that the author has sufficiently substantiated his claim that delay in judicial proceedings constituted for him cruel, inhuman and degrading treatment under article 7.

12.1 The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts, as found by the Committee, disclose a violation of articles 6 and 14, paragraph 3(b) and (d), of the Covenant.

12.2 It is the view of the Committee that, in capital punishment cases, the duty of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant is even more imperative. The Committee is of the view that Mr. Carlton Reid, a victim of a violation of articles 6 and 14, paragraph 3(b) and (d), is entitled to remedy entailing his release.

13. The Committee also takes this opportunity to express concern about the practical operation of the system of legal aid under the Poor Prisoners' Defence Act. On the basis of the information before it, the Committee considers that this system, in its current form, does not appear to operate in ways that would enable legal representatives working on legal aid assignments to discharge themselves of their duties and responsibilities as effectively as the interests of justice would warrant. The Committee considers that in cases involving capital punishment, in particular, legal aid should enable counsel to prepare his client's defence in circumstances that can ensure justice. This does include provision for adequate remuneration for legal aid. While the Committee concedes that the State party's authorities are in principle competent to spell out the details of the Poor Prisoners' Defence Act, and while it welcomes recent improvements in the terms under which legal aid is made available, it urges the State party to review its legal aid system.

14. The Committee would wish to receive information on any relevant measures taken by the State party in respect of the Committee's views.

(Done in English, French, Russian and Spanish, the English text being the original version.)

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*/ An individual opinion submitted by Mr. Bertil Wennergren is appended.

a/ State party's submission dated 25 May 1989 in communication No. 249/1987 (T.P. v. Jamaica), not yet reported.

b/ See communication No. 223/1987 (Robinson v. Jamaica), final views adopted on 30 March 1989, para. 10.3.

c/ See communication Nos. 210/1986 and 225/1987 (Earl Pratt and Ivan Morgan v. Jamaica), final views adopted on 6 April 1989, para. 13.6.

Appendix

Individual opinion: submitted by Mr. Bertil Wennergren pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, concerning the views of the Committee on communication No. 250/1987, Carlton Reid v. Jamaica

The Vienna Convention on the Law of Treaties states, inter alia, that a treaty provision shall be interpreted in accordance with the ordinary meaning to be given to its terms, placed in their context and in the light of the treaty's object and purpose. The object and purpose of article 6, paragraph 2, of the Covenant is obvious. It is to circumscribe the imposition of death sentences. The travaux préparatoires characterize it as a yardstick to which national law authorizing the imposition of the death sentence must conform. This yardstick consists of a number of prerequisites, some of which reflect guarantees also laid down in other articles of the Covenant. The prerequisites are: (a) "only for the most serious crimes"; (b) "only in accordance with the law in force at the time of the commission of the crime", cf. article 15, paragraph 1; (c) "only pursuant to a final judgement rendered by a competent court", cf. article 14, paragraph 1. The same requirements are to be found in article 4 of the American Convention on Human Rights, which reads: the death penalty "may be imposed only for the most serious crimes and pursuant to a final judgement rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime." Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is less complete. It merely states that "no one shall be deprived of his life intentionally save in the execution of a sentence of a court following conviction of a crime for which this penalty is provided by law." Thus the Convention provision focuses more than similar provisions on the purpose to protect an individual from any intentional deprivation of his life by State organs. Article 6, paragraph 2, of the Covenant adds a prerequisite that is not included in either the European or the American Conventions, namely (d) "not contrary to the provisions of the

present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide". The latter Convention includes provisions that prohibit any killing - i.e. also execution pursuant to a death sentence - that can be subsumed under the term genocide. Article 6, paragraph 5, of the Covenant prohibits in addition the imposition of a sentence of death for crimes committee by persons below eighteen years of age. Thus the prerequisite (d) evidently in the first place aims at those provisions in the Covenant and the Genocide Convention dealing with the imposition and execution of death sentences. It is, however, worded in such general terms that it might be understood as applying to other provisions of the Covenant as well, and not merely to provisions which would apply to the imposition itself of a death sentence, for instance article 26. The Committee has in this case interpreted it that way and found that a violation of the provisions in article 14 about a fair trial has to be looked upon as a violation also of article 6, paragraph 2, when the trial ended with a death sentence. I cannot find grounds for such an interpretation for the following reason: in the context where this prerequisite has been place - i.e. in paragraph 2 and not in paragraph 1 - and in the light of the object and purpose of that paragraph, it is difficult to assume that it should be given an independent significance apart from its specific purpose (paragraph 5 and article 26 observance) and that it adds to what already is made clear by article 6, paragraph 5. The travaux préparatoires do not provide any useful guidance; moreover, any State power to investigate a crime that may lead to a death sentence, indict a person for such a crime and conduct a trial against him is outside the focal point of article 6, paragraph 2, that deals only with the power to sentence an individual to death. The exercise of these related powers will then instead fall under paragraph 1, which provides that no one shall be arbitrarily deprived of his life, a term which according to the travaux préparatoires was preferred to "without due process of law". In my opinion violations of the safeguards for a fair trail in article 14 in a capital punishment case cannot be deemed to also constitute violations of article 6, paragraph 2. However, I agree with the Committee that unfairness in a capital punishment case is of utmost gravity. When someone's life is at stake, all possible precautions and safeguards must come into full play. A breach of article 14 in such a case therefore constitutes a particularly grave violation. But, it cannot, even for that reason, be deemed to constitute a violation of article 6, paragraph 2. It is only - and only then - if the trial does not display the characteristics of a real trial but rather those of a mock trial, lacking the paramount characteristics of due process of law, that a violation of article 6 of the Covenant besides a violation of article 14 of the Covenant may arise, namely a violation of article 6, paragraph 1. The trial in this case undoubtedly was a very unsatisfactory one, but the information available does not, in my view, justify the conclusion that the elements of unfairness were such that the trial may be looked upon as arbitrary. I note in this connection that the Judicial Committee of the Privy Council received a petition from the author for special leave to appeal because of the trial deficiencies, but that the Judicial Committee did not grant leave. My conclusion therefore is that, just as under the American and European Conventions, violations of the fair trial safeguards cannot as such at the same time be deemed to be violations of provisions concerning the imposition of death sentences.