



CORTE INTERAMERICANA DE DERECHOS HUMANOS
COUR INTERAMERICAINE DES DROITS DE L'HOMME
CÔRTE INTERAMERICANA DE DIREITOS HUMANOS
INTER-AMERICAN COURT OF HUMAN RIGHTS



PRESIDENTE DE LA CORTE

**ORDER OF THE PRESIDENT
OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JUNE 14, 2007**

CASE OF BOYCE ET AL. V. BARBADOS

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal") of May 29, 2007, in which this Presidency considered, *inter alia*:

10. That although the proposed expert declaration of Mr. Adrian King was not objected to by any of the parties, this Presidency [...] noticed from the evidence before the Court that he has represented Jeffrey Joseph, one of the alleged victims in this case, as counsel before the Caribbean Court of Justice, as well as before the Court of Appeal and the High Court of Justice of Barbados.

11. That Article 50.1 of the Court's Rules of Procedure, read in light of Article 19.1 of the Court's Statute, determines the grounds for disqualification that shall apply to expert witnesses. In accordance with said provisions, expert witnesses "may not take part in matters in which, in the opinion of the Court, they or members of their family have a direct interest or in which they have previously taken part as agents, counsel or advocates, or as members of a national or international court or an investigatory committee, or in any other capacity".

12. That the evidence shows that Mr. Adrian King has participated as counsel for one of the alleged victims in the domestic proceedings during the years 2004 to 2006. Therefore, this Presidency consider[ed] that, according to Article 50.1 of the Court's Rules of Procedure and Article 19.1 of the Court's Statute, Mr. Adrian King is disqualified to act as an expert witness in the present case.

and decided, *inter alia*:

4. To convoke the Inter-American Commission, the representatives and the State to a public hearing that will take place at the seat of the Inter-American Court of Human Rights, on July 11, 2007, starting at 9:00 a.m., in order to receive their oral arguments on the preliminary objection and on possible merits, reparations and costs in the present case, as well as testimony from the following witnesses and expert witness:

[...]

1. Charles Leacock, who will specifically testify about:

- (i) the legal procedures followed in prosecutions for the crime of murder,
and
- (ii) the exercise of the prerogative of mercy.

[...]

2. The communication of May 31, 2007, by which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") noted this Presidency's decision not to call Mr. Adrian King as an expert witness in this case (*supra* Having Seen 1), and requested this Presidency to consider calling Mr. Adrian King to testify as a witness, rather than an expert witness, during the public hearing in the present case. The Commission's proposed object for Mr. King's testimony is the "death penalty legislation and procedure in Barbados in the present case and other such cases[;] the nature of mandatory sentencing and the exercise of the Prerogative of Mercy in Barbados in this case and in other such cases[, as well as] the procedures followed in prosecutions for the crime of murder in this and other such cases".

3. The communication of June 1, 2007, by which the representatives of the alleged victims and their next of kin (hereinafter "the representatives") noted this Presidency's decision not to call Mr. Adrian King as an expert witness in this case (*supra* Having Seen 1), and requested that Mr. King "be allowed to offer testimony as a witness during the public hearing". The representatives' proposed object for Mr. King's testimony is "the criminal justice process as it applies to those accused of murder[, in] particular, Mr. King is to offer testimony concerning the constitutional history and sources of law in Barbados; the law of murder in Barbados and the history and working of the Offences Against the Person Act 1994; an overview of the criminal procedure; the stages of the criminal process in murder cases; the mandatory death penalty and savings clauses; the prerogative of mercy, and the operation of the Prison Rules".

4. The communication of June 1, 2007, by which the Secretariat, upon instructions of this Presidency, informed the Illustrious State of Barbados (hereinafter "the State" or "Barbados") that it had until June 6, 2007 to submit any observations it deemed pertinent regarding the Commission and representatives' request to call Mr. Adrian King as a witness during the public hearing in this case.

5. The communication of June 6, 2007, by which the State informed the Court that "it ha[d] no objection to the testimony of Mr. Adrian King as a witness" in this case.

6. The communication of June 6, 2007, by which the Illustrious State submitted that "it wishe[d] to substitute Mr. Charles Leacock's nominee, Mr. Alliston Seale, as a witness in place of Mr. Leacock, who will be otherwise unavoidably engaged during [...] the Court's oral hearings" in the present case. Additionally, the State submitted Mr. Seale's *curriculum vitae*.

7. The communication of June 7, 2007, by which the Secretariat, upon instructions of this Presidency, informed the Commission and the representatives that they had until June 12, 2007 to submit their respective observations to the State's offering of Mr. Alliston Seale as a substitute witness for Mr. Charles Leacock.

8. The communication of June 12, 2007, by which the representatives expressed that they had "no objection to the State replacing Mr. Charles Leacock with Mr. Alliston Seale, as a witness at the Court's oral hearings" in the present case (*supra* Having Seen 6).

9. The communication of June 12, 2007, by which the Commission stated that it had "no observations" regarding the request made by the State to replace Mr. Charles Leacock with Mr. Alliston Seale as a witness at the public hearing in the present case (*supra* Having Seen 6).

CONSIDERING:

1. That regarding the admission of evidence, Article 44 of the Rules of Procedure provides:

1. Items of evidence tendered by the parties shall be admissible only if previous notification thereof is contained in the application and in the reply thereto and, when appropriate, in the document setting out the preliminary objections and in the answer thereto.

[...]

3. Should any of the parties allege *force majeure*, serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the opposing parties are guaranteed the right of defense.

4. In the case of the alleged victim, his next of kin or his duly accredited representatives, the admission of evidence shall also be governed by the provisions of Articles 23, 36 and 37(5) of the Rules of Procedure.

2. That with respect to the admission of evidence presented by the representatives of the alleged victims, Article 23(1) of the Rules of Procedure states that

[w]hen the application has been admitted, the alleged victims, their next of kin or their duly accredited representatives may submit their pleadings, motions and evidence, autonomously, throughout the proceedings.

3. That Article 47 of the Rules of Procedure stipulates that

1. The Court shall determine when the parties are to call their witnesses and expert witnesses whom the Court considers it necessary to hear. Furthermore, the summons shall indicate the name of the witness or expert witness as well as the object of the testimony.

2. The party proposing testimonial or expert evidence shall bear the costs of the appearance of its witness or witnesses before the Tribunal.

[...]

4. That the Inter-American Commission, the representatives and the State were given the right of defense with regard to the evidentiary proposals made by each of the parties at the different procedural junctures (*supra* Having Seen 4 and 7).

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5. That, in the Order of May 29, 2007, this Presidency considered that, "according to Article 50.1 of the Court's Rules of Procedure and Article 19.1 of the Court's Statute, Mr. Adrian King is disqualified to act as an expert witness in the present case" (*supra* Having Seen 1).

6. That the Inter-American Commission and the representatives noted this Presidency's decision not to call Mr. Adrian King as an expert witness in this case, and requested this

Presidency to consider calling Mr. Adrian King to testify as a witness, rather than an expert witness, during the public hearing in the present case (*supra* Having Seen 2 and 3).

7. That the State informed the Court that it had no objection to the testimony of Mr. Adrian King as a witness in this case (*supra* Having Seen 5).

8. That the proceedings before this Court, as an international tribunal that seeks the protection of human rights, differ from proceedings in domestic law. This Court's procedure is less formal and more flexible than that of the domestic system. Nevertheless this Court's procedure allows for juridical security and for the procedural balance of the parties¹. For this reason, the Court, in exercise of its contentious function, has expanded faculties to receive evidence it considers necessary or pertinent.

9. That, in light of the above considerations, and because this Presidency finds that the proposed subject matter of Mr. Adrian King's testimony is relevant to the adjudication of the present case, this Presidency considers it convenient to receive the testimony of Mr. Adrian King, in the manner stated in this Order's operative paragraphs, in order for the Tribunal to assess its evidentiary value within the context of the body of evidence in the case, and according to the rules of sound criticism.

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10. That, in the Order of May 29, 2007, this Presidency summoned Mr. Charles Leacock to the public hearing in the present case as a witness proposed by the State (*supra* Having Seen 1).

11. That on June 6, 2007, the State informed the Court that it wished to substitute Mr. Charles Leacock with his nominee, Mr. Alliston Seale, due to Mr. Leacock's previous unavoidable engagement on the date this Presidency has set for the public hearing (*supra* Having Seen 6).

12. That the representatives and the Commission expressed that they had no objection to the State replacing Mr. Charles Leacock with Mr. Alliston Seale as a witness at the Court's oral hearing in the present case (*supra* Having Seen 8 and 9).

13. That, in light of the above considerations, and because this Presidency finds that the proposed subject matter of Mr. Alliston Seale's declaration is the same as that of Mr. Charles Leacock, this Presidency considers it convenient to receive the testimony of Mr. Alliston Seale, as a substitute for Mr. Charles Leacock, in the manner stated in this Order's operative paragraphs, in order for the Tribunal to assess its evidentiary value within the context of the body of evidence in the case, and according to the rules of sound criticism.

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¹ Cf. *Case of Boyce et. al.* Order of the President of the Inter-American Court of Human Rights of May 29, 2007, Considering nineteenth; *Case of the Saramaka Community.* Order of the President of the Inter-American Court of Human Rights of March 30, 2007, Considering nineteenth, and *Case of Chaparro Álvarez and Lapo Iñiguez.* Order of the President of the Inter-American Court of Human Rights of March 15, 2007, Considering sixth.

14. That the appearance of Mr. Adrian King and Mr. Alliston Seale in an oral proceeding will contribute to the Court's elucidation of the facts in the present case; thus, it is appropriate to receive their testimonies in a public hearing, in accordance with Article 47(1) and (2) of the Court's Rules of Procedure.

NOW THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in accordance with Articles 24(1) and 25(2) of the Court's Statute and Articles 4, 14(1), 24, 29(2), 40, 42, 43(3), 44, 45, 46, 47, 49, 50, 51 and 52 of its Rules of Procedure, and having consulted the other Judges of the Tribunal,

DECIDES:

1. To reaffirm the Order of the President of May 29, 2007, with the exception of the modifications made to said Order as stated in the second Operative Paragraph of the present Order.

2. To receive, during the public hearing that will take place at the seat of the Inter-American Court of Human Rights, on July 11, 2007, starting at 9:00 a.m., in addition to the witnesses summoned in the Order of the President of May 29, 2007, the testimony from the following witnesses:

A. *Proposed by the Inter-American Commission and the Representatives of the Alleged Victims and their Next of Kin*

1. *Adrian King*, who will specifically testify about:

- (i) the death penalty legislation and procedure in Barbados applied in the present case and in other cases of which Mr. King has personal knowledge;
- (ii) the nature of mandatory sentencing and the exercise of the prerogative of mercy in Barbados as applied in the present case and in other cases of which Mr. King has personal knowledge;
- (iii) the operation of the prison rules applied in the present case and in other cases of which Mr. King has personal knowledge.

B. *Proposed by the State of Barbados*

2. *Alliston Seale*, who will appear as a substitute for Mr. Charles Leacock, and will specifically testify about:

- (i) the legal procedures followed in prosecutions for the crime of murder in Barbados applied in the present case and in other cases of which Mr. Seale has personal knowledge, and
- (ii) the exercise of the prerogative of mercy in Barbados as applied in the present case and in other cases of which Mr. Seale has personal knowledge.

3. To require the State of Barbados, in accordance with Article 24(1) of the Court's Rules of Procedure, to facilitate the departure and return of Mr. Alliston Seale, who has been summoned by the present Order to testify in the public hearing in this case.

4. To require the Inter-American Commission, the representatives, and the State to notify the present Order to each witness it has proposed and to advise each one that he has been summoned to testify before this Court, in accordance with Article 47(2) of the Court's Rules of Procedure.

5. To inform the Inter-American Commission, the representatives and the State that each must cover the costs incurred in the production of the evidence that each has requested, in accordance with Article 46 of the Court's Rules of Procedure.

6. To require the Inter-American Commission, the representatives, and the State to inform the witnesses summoned by the Inter-American Court of Human Rights that, in accordance with Article 52 of the Rules of Procedure, the Inter-American Court of Human Rights will inform States whenever those called upon to testify before this Tribunal do not appear before it or refuse to testify without a legitimate motive, or of those that, in the Court's opinion, have violated their oath or solemn declaration, for whatever purpose foreseen in the corresponding national legislation.

7. To require the Secretariat of the Court to notify the present Order to the Inter-American Commission, the representatives of the alleged victims and their next of kin and the State.

Sergio García Ramírez
President

Pablo Saavedra Alessandrini
Registrar