

Press release issued by the Registrar

**GRAND CHAMBER JUDGMENT
JALLOH v. GERMANY**

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment¹ in the case of *Jalloh v. Germany* (application no. 54810/00).

The Court held by:

- ten votes to seven, that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights as a result of the administration of an emetic to make the applicant regurgitate a tiny plastic bag of cocaine he had swallowed;
- eleven votes to six, that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention as a result of the applicant's conviction on the basis of evidence that had been obtained in violation of the Convention.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,868.88 for costs and expenses. (The judgment is available in English and French.)

1. Principal facts

The case concerns an application brought by Abu Bakah Jalloh, a national of Sierra Leone, who was born in 1965 and lives in Cologne (Germany).

On 29 October 1993, plain-clothes policemen spotted the applicant taking two tiny plastic bags out of his mouth and handing them over for money. Considering that the bags contained drugs, the police officers went over to arrest the applicant.

While they were doing so he swallowed another tiny bag he still had in his mouth. As no drugs were found on him, the competent public prosecutor ordered that he be given an emetic (*Brechmittel*) to force him to regurgitate the bag.

The applicant was taken to a hospital in Wuppertal-Elberfeld, where he saw a doctor. As he refused to take medication to induce vomiting, four police officers held him down while a doctor inserted a tube through his nose and administered a salt solution and Ipecacuanha syrup by force. The doctor also injected him with apomorphine, a morphine derivative. As a result the applicant regurgitated a small bag containing 0.2182 g of cocaine. A short while later he was examined by a doctor who declared him fit for detention. About two hours after being given the emetics, the applicant, who was found not to speak German, said in broken English that he was too tired to make a statement about the alleged offence.

¹ Grand Chamber judgments are final (Article 44 of the Convention).

On 30 October 1993 the applicant was charged with drug-trafficking and placed in detention on remand. His lawyer advanced three main arguments in his defence: firstly, the evidence against him had been obtained illegally and so could not be used in the criminal proceedings; secondly, the police officers and the doctor who had participated in the operation were guilty of causing bodily harm in the exercise of official duties (*Körperverletzung im Amt*); thirdly, the administration of toxic substances was prohibited by Section 136a of the Code of Criminal Procedure (*Strafprozeßordnung*) and the measure was also disproportionate under Section 81a of the Code, as it would have been possible to obtain the same result by waiting until the bag had been excreted naturally.

On 23 March 1994 the Wuppertal District Court convicted the applicant of drug-trafficking and gave him a one-year suspended prison sentence.

His appeal against conviction was unsuccessful, although his prison sentence was reduced to six-months, suspended. A further appeal was dismissed.

The Federal Constitutional Court declared the applicant's constitutional complaint inadmissible, finding that he had not made use of all available remedies before the German criminal courts. It also found that the measure in question did not give rise to any constitutional objections concerning the protection of human dignity or prevention of self-incrimination, as guaranteed under the German Basic Law.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 30 January 2000 and declared partly admissible on 26 October 2004.

On 1 February 2005 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber under Article 30¹ of the Convention. A Grand Chamber hearing took place in the Human Rights building, Strasbourg on 23 November 2005.

Judgment was given by a Grand Chamber of 17 judges composed as follows:

Luzius **Wildhaber** (Swiss), *President*,
Christos **Rozakis** (Greek),
Nicolas **Bratza** (British),
Boštjan M. **Zupančič** (Slovenian),
Georg **Ress** (German),
Giovanni **Bonello** (Maltese),
Lucius **Caflich** (Swiss)²
Ireneu **Cabral Barreto** (Portuguese),
Matti **Pellonpää** (Finnish),
András **Baka** (Hungarian),

¹ Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

² Judge elected in respect of Liechtenstein.

Rait **Maruste** (Estonian),
Snejana **Botoucharova** (Bulgarian),
Javier **Borrego Borrego** (Spanish),
Elisabet **Fura-Sandström** (Swedish),
Alvina **Gyulumyan** (Armenian),
Khanlar **Hajiyev** (Azerbaijani),
Ján **Šikuta** (Slovakian), *judges*,

and also Lawrence **Early**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicant complained that he had been administered an emetic by force and that the evidence thereby obtained – in his view, illegally – had been used against him at his trial. He further complained that his right not to incriminate himself had been violated. He relied on Articles 3, 6 and 8 of the Convention.

Decision of the Court

Article 3

The Court reiterated that the Convention did not, in principle, prohibit recourse to a forcible medical intervention that would assist in the investigation of an offence. However, any interference with a person's physical integrity carried out with the aim of obtaining evidence had to be the subject of rigorous scrutiny.

The Court was acutely aware of the problem confronting States in their efforts to combat the harm caused to their societies through the supply of drugs. However, in the case before it, it had been clear before the impugned measure was ordered and implemented that the street dealer on whom it was imposed had been storing the drugs in his mouth and could not, therefore, have been offering drugs for sale on a large scale. That had also been reflected in the sentence. The Court was not satisfied that the forcible administration of emetics had been indispensable to obtain the evidence. The prosecuting authorities could simply have waited for the drugs to pass out of the applicant's system naturally, that being the method used by many other member States of the Council of Europe to investigate drugs offences.

The Court noted that neither the parties nor the experts could agree on whether the administration of emetics was dangerous. The Court was not satisfied that the method, which had already resulted in the deaths of two people in Germany, entailed merely negligible health risks. It noted that in the majority of the German *Länder* and in at least a large majority of the other member States of the Council of Europe the authorities refrained from forcibly administering emetics, a fact that tended to suggest that the measure was considered to pose health risks.

As to the manner in which the emetics were administered, the Court noted that, after using force verging on brutality, a tube was fed through the applicant's nose into his stomach to

¹ This summary by the Registry does not bind the Court.

overcome his physical and mental resistance. This must have caused him pain and anxiety. He was then subjected to a further bodily intrusion against his will through the injection of another emetic. The Court said that account also had to be taken of the applicant's mental suffering while he waited for the emetics to take effect and of the fact that during that period he was restrained and kept under observation. Being forced to regurgitate under such conditions must have been humiliating for him, certainly far more so than waiting for the drugs to pass out of the body naturally.

As regards the medical supervision, the Court noted that the impugned measure was carried out by a doctor in a hospital. However, since the applicant had violently resisted the administration of the emetics and spoke no German and only broken English, the assumption had to be that he was either unable or unwilling to answer any questions that were put by the doctor or to submit to a prior medical examination.

As to the effects of the impugned measure on the applicant's health, the Court found that it had not been established that either his treatment for stomach troubles in the prison hospital two and a half months after his arrest or any subsequent medical treatment he had received was caused by the forcible administration of the emetics.

In conclusion, the Court found that the German authorities had subjected the applicant to a grave interference with his physical and mental integrity against his will. They had forced him to regurgitate, not for therapeutic reasons, but in order to retrieve evidence they could equally have obtained by less intrusive methods. The manner in which the impugned measure was carried out had been liable to arouse in the applicant feelings of fear, anguish and inferiority that were capable of humiliating and debasing him. Furthermore, the procedure had entailed risks to the applicant's health, not least because of the failure to obtain a proper anamnesis beforehand. Although this had not been the intention, the measure was implemented in a way which had caused the applicant both physical pain and mental suffering. He had therefore been subjected to inhuman and degrading treatment contrary to Article 3.

Article 8

The Court said that it had already examined the applicant's complaint concerning the forcible administration of emetics to him under Article 3 of the Convention. In view of its conclusion that there had been a violation of that provision, it found that no separate issue arose under Article 8 of the Convention

Article 6

The Court noted that, even if it had not been the authorities' intention to inflict pain and suffering on the applicant, the evidence was nevertheless obtained by a measure which breached one of the core rights guaranteed by the Convention. Furthermore, the drugs obtained by the impugned measure proved the decisive element in securing the applicant's conviction. Lastly, the public interest in securing the applicant's conviction could not justify allowing evidence obtained in that way to be used at the trial. Accordingly, the use in evidence of the drugs obtained by the forcible administration of emetics to the applicant had rendered his trial as a whole unfair.

Despite that finding, the Court considered it appropriate to address also the applicant's argument that the manner in which the evidence had been obtained and the use that had been made of it had undermined his right not to incriminate himself.

As regards the nature and degree of compulsion that had been used to obtain the evidence, the Court reiterated that the administration of the emetics amounted to inhuman and degrading treatment. The public interest in securing the applicant's conviction could not justify recourse to such a grave interference with his physical and mental integrity. Further, although German law afforded safeguards against arbitrary or improper use of the measure, the applicant, in reliance upon his right to remain silent, had refused to submit to a prior medical examination and had been subjected to the procedure without a full examination of his physical aptitude to withstand it. Lastly, the drugs thereby obtained were the decisive evidence in his conviction.

Consequently, the Court would also have been prepared to find that allowing the use at the applicant's trial of evidence obtained by the forcible administration of emetics had infringed his right not to incriminate himself and therefore rendered his trial as a whole unfair.

Judges Bratza and Zupančič each expressed concurring opinions. Judges Wildhaber and Caflisch expressed a dissenting opinion. Judges Ress, Pellonpää, Baka and Sikuta expressed a joint dissenting opinion and Judge Hajiyev a dissenting opinion. The texts are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.