



Criminal proceedings in Germany against German doctor responsible for a patient's death in the UK were adequate

In today's Chamber judgment in the case of [Gray v. Germany](#) (application no. 49278/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 2 (right to life) of the European Convention on Human Rights.

The case concerned the death of a patient in his home in the United Kingdom as a result of medical malpractice by a German doctor, who had been recruited by a private agency to work for the British National Health Service. The patient's sons complained that the authorities in Germany, where the doctor was tried and convicted of having caused the death by negligence, had not provided for an effective investigation into their father's death.

The Court accepted that the German trial court had sufficient evidence available to it for the doctor's conviction by penal order without having held a hearing. Moreover, the applicants had been sufficiently informed of the proceedings in Germany, and the German authorities had been justified in not extraditing the doctor to the United Kingdom in view of the proceedings before the German courts.

Principal facts

The applicants, Stuart and Rory Gray, brothers, are British nationals. Stuart Gray lives in Blakedown (United Kingdom) and Rory Gray lives in Darmstadt (Germany).

The applicants' father, David Gray, who had been suffering from kidney stones, died on 16 February 2008, at the age of 71, in his home in Cambridgeshire after having been treated for acute pain by a German doctor. The doctor, U., had arrived in the United Kingdom the previous day and had been recruited by a private agency to work as a locum doctor in the United Kingdom to provide out-of-hours medical services for the National Health Service (NHS). Following the patient's death, the private agency immediately suspended U. from duty and he returned to Germany. As U. later explained to the German health authorities, he had confused two drugs and had mistakenly injected the patient with diamorphine, a drug with which he was unfamiliar, instead of pethidine.

Following David Gray's death, criminal proceedings were opened against U. in the United Kingdom. In June 2008 the German prosecuting authorities, having been requested by their British counterparts to provide assistance in obtaining information concerning U.'s medical qualification, also opened criminal proceedings against U. In cooperation with British police officers, German investigators heard as witnesses, among others, representatives of the regional public health authorities in Germany. Written evidence, including a post mortem report by a forensic pathologist in the United Kingdom establishing that the injection of a large dose of diamorphine had significantly contributed to Mr Gray's death, was provided by the Cambridgeshire police. U. made use of his right not to testify in the criminal investigation. However, the German prosecuting authorities took into

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

consideration that in a letter of July 2008 to Mr Gray's partner and one of his sons, which was included in the case file, U. had apologised for his medical malpractice when treating the patient. In March 2009 a German district court convicted U., by penal order, without having held a hearing, of having caused the patient's death by negligence, and sentenced U. to nine months' imprisonment, suspended, and to payment of a fine. As U. lodged no appeal, the penal order became final on 15 April 2009. Having regard to his conviction, the German authorities rejected a request for U.'s extradition to the United Kingdom under the European Arrest Warrant issued by a British court. As a consequence, the criminal proceedings in the United Kingdom were discontinued.

In 2009, the applicants brought and settled civil claims before the courts in the United Kingdom against U., the agency which had recruited him, and the NHS.

Complaints, procedure and composition of the Court

The application, initially against the United Kingdom and Germany, was lodged with the European Court of Human Rights on 10 September 2009.

Relying in particular on Article 2 (right to life), the applicants principally complained: that shortcomings in the British health system concerning the recruitment of locum doctors and supervision of out-of-hours locum services had led to their father's death as a consequence of medical malpractice by U.; that both the British and the German authorities had not provided for an effective investigation into their father's death; that they – the applicants – had not been sufficiently involved in the criminal proceedings conducted in Germany; and, that the German authorities had refused to allow U.'s extradition to face trial in the United Kingdom.

On 18 December 2012 the application was declared partly inadmissible, pursuant to Article 35 of the Convention, as being manifestly ill-founded as regards the complaints against the United Kingdom. Having regard to the fact that the applicants had brought and settled civil claims before the courts in the United Kingdom against the doctor, the agency and the NHS, the Court found that they could no longer claim to be victims of an alleged violation of Article 2. The Court further held that there was nothing to establish that the proceedings conducted in the United Kingdom had not complied with the procedural obligations under Article 2. At the same time, the Court decided to communicate to the German Government the applicants' complaints concerning the German authorities' alleged failure to provide for an effective investigation.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark Villiger (Liechtenstein), *President*,
Angelika Nußberger (Germany),
Boštjan M. Zupančič (Slovenia),
Ann Power-Forde (Ireland),
Vincent A. de Gaetano (Malta),
André Potocki (France),
Helena Jäderblom (Sweden),

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

Article 2

The Court underlined that States were obliged, under Article 2 of the Convention, to set up an effective independent judicial system so that the cause of death of patients in medical care could be determined and those responsible made accountable. However, this obligation did not necessarily

require a criminal-law remedy in every case. In certain cases of medical negligence the obligation could also be satisfied if remedies were available to the victims before the civil courts.

The Court observed that the applicants had not suggested that their father's death had been intentionally caused by the doctor. Nor had they contested that the German legal order in principle provided for an effective independent judicial system with a view to determining the cause of death of patients in medical care.

The Court noted that the German authorities, having been informed of the incident by their British counterparts, had started criminal investigations into the circumstances of Mr Gray's death on their own initiative. In due course and in cooperation with the British investigators they had conclusively established the cause of his death and U.'s involvement in the underlying events. The Court observed that U. had confessed from the outset that his medical malpractice had been at the origin of Mr Gray's death. The description of the incident in his letter of apology had been consistent with witness testimonies and expert reports.

Having regard to the available body of evidence taken together, the Court accepted the German Government's finding that the prosecution authorities' decision to apply for U.'s conviction by penal order without a hearing had been justified and that the district court had sufficient evidence available to it to proceed to a thorough assessment of the circumstances of the case and U.'s guilt.

Concerning the applicants' allegations that they had not been sufficiently involved in the criminal proceedings in Germany, the Court recognised that, as submitted by the Government, under German criminal procedure the prosecution authorities had not been obliged to inform the applicants on their own initiative about the proceedings against U. Furthermore, it was arguable whether and to what extent the applicants' involvement as next of kin had been required under Article 2 of the Convention, as in cases of medical negligence – in contrast to cases where the responsibility of State officials for a victim's death was at issue – there was no requirement for a criminal law remedy. In any event, once the German prosecuting authorities had been contacted by the lawyer of one of the applicants, they had informed him of the proceedings and had included U.'s letter of apology, which had been provided to them by the lawyer, in the case file.

As regards the applicants' complaint about the fact that U. had been convicted in Germany and not in the United Kingdom – where he might have faced a heavier penalty – the Court noted that the German authorities had been obliged under national law to open criminal proceedings against U. once they had learned of his involvement in the events surrounding Mr Gray's death. Having regard to the proceedings in Germany, they had consequently had a basis for their decision not to extradite U. to the United Kingdom under national and international law. Finally, the procedural guarantees under Article 2 of the Convention did not require for a particular sentence to be imposed.

In conclusion, there had been no violation of Article 2.

The judgment is available only in English.

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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.