



Jalloh v. Germany

App. No. 54810/00, 44 Eur. H.R. Rep. 32 (2007).

Country: Germany

Region: Europe

Year: 2006

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Controlled substances, Informed consent

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial, Right to privacy

Facts

Jalloh brought an action before the European Court of Human Rights (the Court), arguing that the administration of emetics by force by German officials had constituted a serious interference with his physical integrity and posed a serious threat to his health and life.

Jalloh was a suspected drug dealer who was arrested by the police after observation. The police did not find anything on Jalloh, but suspected that he had swallowed the plastic bag containing the drugs. The public prosecutor ordered that a doctor administer emetics to Jalloh in order to provoke regurgitation of the bag. Jalloh refused to take the medication and was held down by four police officers while the doctor forcibly administered the medication to him. He then regurgitated one plastic bubble containing cocaine. One hour and a half later, he was examined by a doctor and declared fit for detention. Jalloh complained that after the procedure he was able to drink only soup; that his nose repeatedly bled, and that gastroscopy had revealed irritation in the lower area of the oesophagus caused by reflux of gastric acid and stomach troubles.

Jalloh argued that his treatment violated the prohibition on torture and inhuman or degrading treatment or punishment under article 3 of the European Convention on Human Rights (ECHR) and the right to private life under article 8 of the ECHR, and that the use of evidence obtained by his forcible medical treatment violated fair trial rights under article 6(1) of the ECHR. Germany argued that the treatment could be justified, because it was necessary to obtain evidence of a crime, and there had been real and immediate risk that the drug bubble, which had not been packaged for long-term transport inside the body, would leak and poison Jalloh. Germany further argued that because the treatment did not violate article 3 or 8, it was acceptable to admit evidence obtained by these means.

Decision and Reasoning

The Court held that generally, article 3 did not prohibit administering a forcible, non-therapeutic medical procedure to obtain evidence of a crime if, in light of the most rigorous scrutiny, the procedure could be justified on the facts, and did not rise to the minimum level of severity required to engage article 3. Factors that would be relevant to whether or not the procedure could be so justified included the intrusiveness of the procedure, the seriousness of the crime, alternative methods of obtaining the evidence, whether the person undergoing the procedure experienced serious pain or suffering, whether the procedure was administered by doctors with adequate medical supervision afterwards, and any lasting consequences on the health of the person undergoing the procedure.

The Court considered that in this case, article 3 had been violated. It took into account the fact that although drug crimes were serious, Jalloh was not a major drug dealer. It considered that the authorities could alternatively have obtained the evidence by waiting for the drugs to pass through his body naturally, rather than undertake an extremely intrusive procedure. Further, the procedure had disputed but non-negligible health risks, and the doctor had not assessed the risk to Jalloh specifically before undertaking the procedure. Having four police officers hold Jalloh down and force him to take emetics through a nasal tube had caused considerable pain, anxiety and humiliation. The Court drew the inference that Jalloh had not been medically assessed from his violent resistance to the treatment, as well as the fact that he spoke no German and only broken English. As such, although the procedure had been undertaken by trained medical staff and the effect on Jalloh's health was disputed, the procedure violated article 3 of the ECHR.

The Court also ruled that the use of evidence obtained through the procedure violated the fair trial rights

under article 6(1) of the ECHR. Although the Court could rule only on whether Jalloh's trial was fair as a whole, and not on particular rules of evidence in Germany, it considered that the use of the evidence obtained by the forcible treatment impaired the very essence of the privilege against self-incrimination, and hence the rights under article 6(1). In reaching this decision, the Court considered that the treatment was a breach of article 3, that evidence obtained by the treatment was decisive in Jalloh's conviction, that German courts did not have discretion to exclude the evidence under German law, and that the small scale of his crime meant that the public interest in securing his conviction did not outweigh the need not to condone the brutality Jalloh was subjected to. As such, the use of the evidence breached article 6 of the Convention.

The Court considered that it was unnecessary to consider article 8 separately, given the finding of a violation of article 3.

Decision Excerpts

“Even where it is not motivated by reasons of medical necessity, Articles 3 and 8 of the Convention do not as such prohibit recourse to a medical procedure in defiance of the will of a suspect in order to obtain from him evidence of his involvement in the commission of a criminal offence. Thus, the Convention institutions have found on several occasions that the taking of blood or saliva samples against a suspect's will in order to investigate an offence did not breach these Articles in the circumstances of the cases examined by them.” Para. 70.

“However, any recourse to a forcible medical intervention in order to obtain evidence of a crime must be convincingly justified on the facts of a particular case. This is especially true where the procedure is intended to retrieve from inside the individual's body real evidence of the very crime of which he is suspected. The particularly intrusive nature of such an act requires a strict scrutiny of all the surrounding circumstances. In this connection, due regard must be had to the seriousness of the offence in issue. The authorities must also demonstrate that they took into consideration alternative methods of recovering the evidence. Furthermore, the procedure must not entail any risk of lasting detriment to a suspect's health.” Para. 71.

“Although the treatment to which the applicant was subjected did not attract the special stigma reserved to acts of torture, it did attain in the circumstances the minimum level of severity covered by the ambit of the Article 3 prohibition. It cannot be excluded that on the facts of a particular case the use of evidence obtained by intentional acts of ill-treatment not amounting to torture will render the trial against the victim unfair, irrespective of the seriousness of the offence allegedly committed, the weight attached to the evidence and the opportunities which the victim had to challenge its admission and use at his trial.” Para. 106.

“In the present case, the general question whether the use of evidence obtained by an act qualified as inhuman and degrading treatment automatically renders a trial unfair can be left open. The Court notes that, even if it was not the intention of the authorities to inflict pain and suffering on the applicant, the evidence was obtained by a measure which breached one of the core rights guaranteed by the Convention. Furthermore, it was common ground between the parties that the drugs obtained by the impugned measure were the decisive element in securing the applicant's conviction. It is true that, as was equally uncontested, the applicant was given the opportunity, which he took, of challenging the use of the drugs obtained by the impugned measure. However, any discretion on the part of the national courts to exclude that evidence could not come into play as they considered the administration of emetics to be authorised by domestic law. Moreover, the public interest in securing the applicant's conviction cannot be considered to have been of such weight as to warrant allowing that evidence to be used at the trial.” Para. 107.