



Admission of evidence obtained through ill-treatment was in breach of the European Convention

In today's **Chamber judgment**¹ in the case of **Ćwik v. Poland** (application no. 31454/10) the European Court of Human Rights held, by five votes to two, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned Mr Ćwik's complaint that proceedings against him for drug-trafficking had been unfair. He complained in particular that the courts had admitted in evidence statements by a third party which had been obtained through torture by members of a criminal gang.

The Court found in particular that the domestic courts dealing with the applicant's case had left no room for doubt that the statements at issue had been obtained as a result of ill-treatment prohibited by Article 3. The courts had, however, accepted the use in evidence of such statements to convict the applicant, in breach of the absolute prohibition of ill-treatment guaranteed by Article 3 of the Convention, and without taking into account the implications from the point of view of his right to a fair trial under Article 6 § 1 of the Convention.

The Court reiterated in particular its rule that admitting into evidence statements obtained as a result of torture or ill-treatment prohibited by Article 3 of the Convention rendered the proceedings as a whole unfair. This is the first case in which the Court has applied this rule in respect of evidence obtained as a result of ill-treatment inflicted by private individuals. All previous cases have concerned evidence obtained as a result of ill-treatment inflicted by public officials.

Principal facts

The applicant, Grzegorz Ćwik, is a Polish national who was born in 1968.

Mr Ćwik was part of a criminal gang involved in large-scale trafficking of cocaine into Poland. In 1997, when the applicant and another member of the gang, K.G., tried to start operating independently, they failed to account for a large load of cocaine. The gang subsequently abducted K.G. and tortured him to obtain information about the unaccounted for cocaine and money belonging to the gang, recording certain statements on an audio cassette. The police, who had been tipped off by the owner of the house where K.G. was being held, freed the hostage and seized the audio cassette.

Some years later, in 2008, the applicant was convicted of three counts of cocaine-trafficking and sentenced to 12 years' imprisonment. The trial court mainly relied on statements by two members of the applicant's former criminal gang, who had decided to cooperate with the authorities. It also relied, as supplementary evidence, on the transcript of K.G.'s statements taken from the gang's recording, ruling that it confirmed the applicant's involvement in the cocaine business.

In his appeal, the applicant contested, among other things, the trial court's use of the transcript, arguing that the statements had been obtained by torture and were thus inadmissible under the

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.

relevant rule of the Code of Criminal Procedure which excluded any evidence obtained by coercion. The Court of Appeal dismissed the challenge, finding that the rule applied exclusively to the authorities conducting the investigation, and did not concern private individuals.

The Supreme Court dismissed the applicant's cassation appeal in 2009 as manifestly ill-founded.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), the applicant alleged that the courts should not have admitted into evidence the transcript of K.G.'s statements obtained as a result of ill-treatment inflicted by members of the criminal gang.

The application was lodged with the European Court of Human Rights on 13 May 2010.

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

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Aleš **Pejchal** (the Czech Republic),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),
Raffaele **Sabato** (Italy),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

The Court reiterated that the prohibition of torture and inhuman or degrading treatment or punishment under Article 3 of the Convention was a fundamental value in democratic societies. Such prohibition was absolute; no derogation from it was permissible. It also protected every person irrespective of whether the ill-treatment had been administered by a public official or a private individual.

In the light of those principles and the Court's extensive case-law on the issue, the Court found that Article 3 was applicable to the facts of the applicant's case where the domestic courts had repeatedly referred to K.G.'s treatment as "torture" or "assault".

The Court further reiterated that a series of cases had led it to formulate the rule that admitting into evidence statements obtained as a result of torture or ill-treatment prohibited by Article 3 of the Convention rendered the proceedings as a whole unfair. The common thread in all those cases was that such evidence had been obtained by public officials.

The question in the applicant's case, which had not previously arisen before the Court, was whether that rule could be transposed to evidence obtained from a third party as a result of ill-treatment inflicted by private individuals.

The Court ruled that the same logic applied to the applicant's case, where, as noted above, K.G.'s statements had been obtained as a result of ill-treatment to which Article 3 was applicable. The Court of Appeal had, however, accepted the use in evidence of such statements, in breach of the absolute prohibition of ill-treatment guaranteed by Article 3, and without taking into account the applicant's arguments with regard to the unreliability of such evidence or the implications from the point of view of his right to a fair trial under Article 6 § 1 of the Convention.

The Court therefore found that the admission of the transcript into evidence in the criminal proceedings against the applicant had rendered the proceedings as whole unfair, in breach of Article 6 § 1.

Just satisfaction (Article 41)

The Court held that Poland was to pay the applicant 8,000 euros (EUR) in respect of non-pecuniary damages.

Separate opinion

Judges Wojtyczek and Pejchal expressed a joint dissenting opinion which is annexed to the judgment.

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.