ŞHRMUN'24

ECHR

STUDY GUIDE

Case of Jalloh

USG; CEYLİN MUSALI

#FORABETTERWORLD

LETTER FROM THE SECRETARY GENERAL

Esteemed Participants and Respected Advisors,

Welcome to the Eskişehir Şehir Schools Model United Nations (ŞHRMUN) conference, happening this April at Eskişehir Şehir Schools. As Secretary-General, I'm honored to address you.

ŞHRMUN'24 is our second annual gathering, where students from around the world come together to explore diplomacy, international relations, and how the United Nations works. This year's theme, "For a Better World," aims to spark insightful discussions and find real solutions to global challenges.

Our committee sessions offer workshops led by experts in different fields, providing valuable insights and skills. We'll also delve into various global issues to enrich your understanding.

As we look forward to ŞHRMUN'24, I encourage you to prepare by researching your assigned countries and topics, learning the rules of procedure, and honing your speaking and negotiation skills. Your active participation is key to our success.

I'm excited for the lively discussions, meaningful connections, and memorable experiences that await us at ŞHRMUN'24. Let's seize this chance to inspire positive change and make a difference in our global community.

Warm regards,

Zeynep Turkurkor

Secretary-General

Eskişehir Şehir Schools Model United Nations

LETTER FROM THE UNDER-SECRETARY-GENERAL

Distinguished participants,

I am Ceylin MUSALI, a 10th Grade student in Arı Private Anatolian High School Pre IBDP. I will be the Academic Assistant of UNODC in the first edition of DENGEMUN 2024. First and foremost, I would like to thank my dear friend, my honorable Secretary General Zeynep and Director General Ömer Deniz for giving me this opportunity. I am so grateful for meeting with them at previous MUNs. I would like to thank and appreciate my dearest friend, partner in crime, therapist and supporter Eylül Koçak for not refusing to make a committee with me and being the academic weapon of this committee. Her jaw-dropping academic skills, always meaningful decision making process excites me to team up and attend more conferences with her. Not to mention that she is a very fun person to be around and she always makes me smile. I am so grateful that once you were my best delegate of all times and glad that we kept meeting and grew our friendship.

My sincere advice for the committee members is to read this comprehensive study guide thoroughly that me and my co Under-Secretary-General Eylül Koçak and Academic Assistant Çağan Karacan prepared for all of you. Additionally, do not forget to make use of internet and other resources to investigate this matter.

Ceylin Musalı,

Under Secretary General of ECHR,

email: musaliceylin@gmail.com

LETTER FROM THE CO-UNDER-SECRETARY-GENERAL

My name is Eylül Koçak, and I am a junior at Beştepe College. I will be serving as the Co-Under-Secretary-General of ECHR. I would like to start by thanking the Secretary-General, Zeynep Turkurkor for giving me this opportunity. Continuing with my dearest Under-Secretary-General and MUN partner in crime, Ceylin Musalı, I would like to express my greatest and most sincere appreciation. We have been to so many MUNs that I don't even remember the amount of, but most importantly, she has always been there for me, supporting me the best she could as I did so for her. She is one of the most successful women I know and working together has become a daily routine of both of our lives for the past couple of months. This is a really special opportunity for both of us since we always wanted to do a committee together and she has once again shown me that we make the dream team. Moving on with our dear Academic Assistant Çağan Karacan, who is one of the most hard-working people I know, it was an incredible experience working with him on this project. If you have any questions, please don't hesitate to contact me.

Eylül Koçak,

Co-Under-Secretary-General

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LETTER FROM THE ACADEMIC ASSISTANT

It is my great pleasure to welcome you to the ECHR committee of this year's SHRMUN conference. My name is Çağan Karacan and I'm a current 10th grade student in Bilfen Ankara High School. As you all know, this year ECHR is going to face the case Jalloh v. Germany. This issue is of paramount importance, and our judgment is going to deeply impact the world in front of us for human rights. The judges' deliberations and advocates' submissions will determine the outcome of this committee.

I would like to start by thanking the Secretary-General Zeynep Turkurkor for her support throughout this process. Then, I would like to show my gratitude to the amazing Under-Secretary-General Ceylin Musalı. I've known her for almost 2 years, and her amazing support as an Under-Secretary-General and as a friend has been incredibly valuable for me. And, finally, I would like to acknowledge the Co-Under-Secretary-General Eylül Koçak. Her expertise in the topic has been more than helpful.

I look forward to a productive and fruitful conference and wish you all the best in your deliberations. In case you have questions or inquiries, please do not hesitate to contact me. Hope you'll have an incredible experience in ECHR.

Çağan Karacan

Academic Assistant

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I. INTRODUCTION TO THE ECHR

1. History of ECHR

The European Court of Human Rights (ECHR) is a judicial body established in 1959 to oversee the implementation of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (1950), also known as the European Convention on Human Rights. The convention requires signatories to guarantee various civil and political liberties, such as freedom of expression and religion, as well as the right to a fair trial. It is based in Strasbourg, France. In addition to outlining a set of civil and political rights and freedoms*, the Convention established a mechanism for contracting states to enforce their obligations [1]. Individuals who believe their human rights have been violated and who are unable to remedy their claim through their national legal system may petition the ECHR to hear the case and render a verdict. The court, which also can hear cases brought by states, may award financial compensation, and its decisions often require changes in national law. In order to handle the growing number of cases more efficiently, the European Court of Human Rights and the European Commission of Human Rights, which was established in 1954, were merged in 1998 into a reconstituted court and enabled to hear individual cases without the prior assent of the individual's national government [2]. Despite these changes the ECHR's backlog continued to grow, prompting the adoption in 2010 of additional streamlining measures, which included prohibiting the court from hearing individual cases in which the applicant has not suffered a "significant disadvantage." The court's decisions are binding on all signatories [3] . As of 2015, the ECtHR had issued approximately 18,500 judgments, nearly half of which concerned only five member states (Turkey, Italy, Russia, Romania and Poland). Since 1959, the Court has found at least one violation of the Convention in 84% of cases. The most common violation (25% of all 2015 violations) was the right to a fair hearing, specifically excessive length of proceedings. In

addition to that, whereas, the official languages of the Court are English and French, applications may be drafted in any one of the official languages of the Contracting States, and there are at present 41 official languages in these States [4]. The Court receives around 900 letters per day and some 250 international telephone calls a day. In terms of functionality, the European Court of Human Rights is evolving into a European quasiconstitutional court. It is less concerned with the exceptional cases that drew the attention of the Convention's founders and more concerned with becoming a broad-based, 'normal' institution [5].

2. Structure

To handle multiple cases at once, the ECtHR is divided into five sections, or administrative entities, each with its own judicial chamber. Each section is led by a President, a Vice President, and a panel of judges. The Court's 47 judges are chosen by the Council of Europe's Parliamentary Assembly from a list of applicants proposed by the Member States.

Within the Court, the judges work in four different kinds of groups, or 'judicial formations'. Applications received by the Court will be allocated to one of these formations:

1. Single Judge: only rules on the admissibility of applications that are clearly inadmissible based on the material submitted by the applicant.

2. Committee: composed of 3 judges, committees rule on the admissibility of cases as well as the merits when the case concerns an issue covered by well-developed case law (the decision must be unanimous).

3. Chamber: composed of 7 judges, chambers primarily rule on admissibility and merits for cases that raise issues that have not been ruled on repeatedly (a decision may be made by a

majority). Each chamber includes the Section President and the ‘national judge’ (the judge with the nationality of the State against which the application is lodged).

4. Grand Chamber: composed of 17 judges, the Grand Chamber hears a small, select number of cases that have been either referred to it (on appeal from a Chamber decision) or relinquished by a Chamber, usually when the case involves an important or novel question. Applications never go directly to the Grand Chamber. The Grand Chamber always includes the President and vice president of the Court, the five Section presidents, and the national judge [6].

The European Court of Human Rights' judges are elected by the Council of Europe's Parliamentary Assembly, giving them democratic legitimacy. Judges must "be of high moral character and possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence," according to the European Convention on Human Rights. To ensure that these standards are met, the election process is divided into two stages: the national selection procedure, in which each state party selects a list of three qualified candidates, and the Assembly's election procedure, in which a special parliamentary committee evaluates the qualifications of the three candidates, as well as the fairness of the national selection procedure, before the Assembly proceeds with the election. When selecting their three candidates, states should ensure that their national procedure is fair and transparent, for example by issuing public and open calls for candidates. All candidates must have appropriate legal qualifications and experience and must have an active knowledge of either English or French – the languages in which Court judgments are drafted – and at least a passive knowledge of the other language [7].

To ensure gender-balance on the Court, states are also asked to put forward at least one candidate from 'the under-represented sex' unless there are exceptional circumstances. As a result, around a third of the judges on today's Court are women.

To help ensure candidates are fully qualified, an advisory panel of experts offers governments confidential advice on potential candidates before the final list of three is sent to the Assembly. Following receipt of the list of candidates by the Assembly, the Committee on the Election of Judges of the European Court of Human Rights – a special parliamentary committee comprised of legal experts – assesses the fairness and transparency of the national procedure used to select them. It then conducts in-person interviews with each of the candidates and reviews their CVs, which are submitted in a standardised format, to determine whether all three are sufficiently qualified for the job. If the committee determines that all of the conditions have been met, it will make a recommendation to the Assembly on which candidate or candidates it believes are the strongest. If not, it may recommend that the state submit a new list. The Assembly – made up of 324 parliamentarians – then proceeds to vote on the candidates in a secret ballot, held during plenary sessions, in the light of the committee's recommendations. An absolute majority of votes cast is required in the first round. If this is not achieved, a second round is held and the candidate with the most votes is duly elected to serve on the Court for a single term of nine years [8].

3. Proceedings Before Court

The Court's proceedings are mostly written; public hearings are uncommon. There is no fee to submit an application, and the applicant may apply for legal aid to cover expenses incurred later in the proceeding. Legal aid is not granted automatically, and awards are not made immediately but only at a later stage of the proceedings. While a lawyer is not required to file

a complaint, applicants should have representation once the case has been declared admissible and must be represented by a lawyer at any hearing before the Court. Applications to the ECtHR are processed in two stages: admissibility and merits. The speed and course of the proceedings will be determined by the facts of the case. However, it could take months or even years for an applicant to receive a decision or judgment.

a. Admissibility criteria

Applicants may lodge an application with the Court if they consider that they have personally and directly been the victim of a violation of the rights and guarantees set out in the Convention or its Protocols. The alleged violation must have been committed by one of the States bound by the Convention. Applicants do not need to be a national of one of the States bound by the Convention. The violation they are complaining of must simply have been committed by one of those States against a person within its "jurisdiction", which usually means on its territory. Applications to the European Court of Human Rights must comply with the requirements described in Article 47 of the Rules of Court. Applicants should be aware that the Court periodically modifies its rules and procedures; in 2014, it began applying stricter requirements for individual applications. To submit an application, applicants should use the application form, which is available online and must be filled out in its entirety. Copies of all relevant documents must be included along with the application, which must be submitted by postal mail. A substantial majority of the applications submitted to the Court are struck from the list or declared inadmissible because they fail to meet one or more of the admissibility criteria. The Court may choose not to examine an application that does not fulfill all of the requirements. 32 When the Court receives an application, the Court must determine if it meets all of the admissibility requirements. An admissibility

decision may be made by a single judge, a three-judge committee, or a seven-judge chamber. To be declared admissible, an application must meet the following criteria:

- Exhaustion of domestic remedies
- Four-month application deadline (from the final domestic judicial decision
- Complaint against a State party to the European Convention on Human Rights

b. Merits

If an application is not removed from the list or declared inadmissible earlier, it is assigned to one of the ECtHR's five sections and the State is notified of the complaint. Both parties will have the opportunity to submit observations to the Court at this time. These observations may include specific information requested by the Chamber or the President of the Section, as well as any other material deemed relevant by the parties. The Chamber has the option of considering admissibility and merits separately or concurrently, but it must notify the parties if it intends to do so. When a Chamber issues a judgment on the merits, there is a three-month period before the decision becomes final. During this period, either or both of the parties may request that the application be referred to the Grand Chamber. However, the Grand Chamber only hears a limited number of exceptional cases. If the Court ultimately decides a case in favor of the applicant, it may award just satisfaction (monetary compensation for the damages suffered) and require the State to cover the cost of bringing the case. If the Court finds that there has been no violation, then the applicant is not liable for the State’s legal expenses. The Committee of Ministers of the Council of Europe is responsible for enforcing the Court’s judgments. States are bound by the decisions of the Court and

must execute them accordingly. Often this means amending legislation to ensure that the violation does not continue to occur. However, the Court does not have the authority to overrule a national decision or annul national laws [9].

c. Friendly Settlements

Prior to making a decision on the merits, the Court will make every effort to facilitate the formation of a friendly settlement. If an amicable settlement cannot be reached, the Court will issue a decision on the merits. In cases where the Chamber hearing the case decides to issue an admissibility decision alongside a judgment on the merits, the parties may include information about friendly settlements in their observations to the Court. The procedure before the Court is a litigation. Like in every other litigation, the parties are entitled to reach a settlement during the procedure. Theoretically, it can be initiated by either party, but in the vast majority of cases it is the Court who suggests to the parties to settle the case. In its motion the Court proposes a concrete compensation amount as well. If the parties accept it, they each sign a declaration. In one of them the state concerned acknowledges the human rights violation and undertakes to pay the compensation established. In the other the Applicant accepts the proposed sum and undertakes not to initiate another compensation procedure for the injustice suffered, since it has been remedied.

4. Effects of the ECHR Judgement and its Enforcement

When the Court delivers a judgment finding a violation, the Court transmits the file to the Committee of Ministers of the Council of Europe, which confers with the country concerned and the department responsible for the execution of judgments to decide how the judgment should be executed and how to prevent similar violations of the Convention in the future. This

will result in general measures, especially amendments to legislation, and individual measures where necessary [10],

5. Jurisdiction of the Court

While the judgments of the Court are essentially declaratory in nature, in certain special circumstances, it may seek to indicate the type of measure that might be taken in order to put an end to a violation it has found to exist. Occasionally, the Court has included indications with relevance to the execution process concerning both individual and general measures. However, taking account of the institutional balance between the Court and the Committee of Ministers under the Convention, and of the States' responsibility in the execution process, the ultimate choice of the measures to be taken remains with the States under the supervision of the Committee of Ministers. Advisory jurisdiction will allow the highest courts in those States that are party to Protocol 16 to refer questions to the Court on its interpretation of State obligations under the European Convention on Human Rights or its protocols. Protocol 16 brings the European Court's jurisdiction within the same practices as other regional human rights courts; the African Court on Human and Peoples' Rights and the Inter-American Court of Human Rights both may issue advisory opinions, as established in Article 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and Article 2(2) of the Statute of the Inter-American Court of Human Rights in conjunction with Article 64 of the American Convention on Human Rights, respectively. The 10th ratification of Protocol 16 comes in the midst of ongoing reforms of the European Court, including the recent Copenhagen Declaration [11]. The Copenhagen Declaration calls for a reduction in the backlog of cases at the European Court, an increase in communication between States parties and the Court, and an improvement in the domestic implementation of European Court judgments. A State court must provide reasons for its

request, provide the relevant legal and factual background of the case, and have the issue currently pending before it in order to request an advisory opinion. Protocol No. 16 to the Convention on the Rights of the Child was adopted on October 2, 2013, and it entered into force on August 1, 2018. Within the framework of this protocol, a panel consisting of five judges from the European Court of Human Rights (ECtHR) Grand Chamber is responsible for determining whether to accept a request for an advisory opinion, and they are obliged to furnish reasons for rejecting any such request. In the event that the panel grants the request, the Grand Chamber will issue and publicly release the advisory opinion, accompanied by a detailed rationale. In addition, any judge who dissents with the opinion is entitled to provide a separate dissenting opinion. It is imperative to emphasize that the advisory opinion delivered by the ECtHR is not legally binding on the concerned state. The panel charged with reviewing the request must incorporate a judge from the country in which the requesting court is situated. If the designated judge is unable to participate, the President of the ECtHR will appoint a judge from a list supplied by the State. Furthermore, the State that initiated the request is afforded the opportunity to submit written comments and attend the related hearing. The President of the ECtHR is also empowered to extend invitations to other States or individuals to submit comments or take part in the hearing [12]

II. INTRODUCTION TO THE CASE

1. Overview of the Case

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, 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 offense. On October 30, 1993, the applicant was charged with drug trafficking and placed in detention on remand.

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 [13].

2. Timeline of the Case & Domestic Court Proceedings

1. The applicant was born in 1965 and lives in Cologne (Germany).

2. On October 29, 1993, four plain-clothes policemen observed the applicant on at least two different occasions take a tiny plastic bag (a so-called "bubble") out of his mouth and hand it over to another person in exchange for so-called money. Believing that these bags contained drugs, the police officers went to arrest the applicant, whereupon he swallowed another bubble he still had in his mouth. Therefore, the police officers did not find any drugs on the applicant. And, since further delay might have frustrated the conduct of the investigation, the public prosecutor ordered that emetics (*Brechmittel*) be administered to the applicant by a doctor in order to provoke the regurgitation of the bag (*excorporation*). As a result, the applicant was taken to a hospital in Wuppertal-Elberfeld. According to the government, the doctor who was to administer the emetics questioned the applicant about his medical history (a procedure known as obtaining an anamnesis). This was disputed by the applicant, who claimed that he had not been questioned by a doctor. As the applicant refused to take the medication necessary to provoke vomiting, he was held down and immobilized by four police officers. The doctor then forcibly administered to him a salt solution and the emetic ipecacuanha syrup through a tube introduced into his stomach through the nose. In addition, the doctor injected him with apomorphine, another emetic that is a derivative of morphine. As a result, the applicant regurgitated one bubble containing 0.2182 grams of cocaine. Approximately an hour and a half after being arrested and taken to the hospital, the applicant was examined by a doctor and declared fit for detention. When visited by the police in his cell 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 offense.

3. Pursuant to an arrest warrant that had been issued by the Wuppertal District Court, the applicant was remanded in custody on 30 October 1993.

4. The applicant maintained that for three days following the treatment to which he was subjected, he was only able to drink soup and that his nose repeatedly bled for two weeks because of wounds he had received when the tube was inserted. This was disputed by the Government, who stressed that the applicant had failed to submit a medical report to prove his allegation.

5. Two and a half months after the administration of the emetics, the applicant underwent a gastroscopy in the prison hospital after complaining of continuous pain in the upper region of his stomach. He was diagnosed as suffering from irritation in the lower area of the esophagus caused by the reflux of gastric acid. The medical report did not expressly associate this condition with the forced administration of the emetics.

6. The applicant was released from prison on 23 March 1994. He claimed that he had had to undergo further medical treatment for the stomach troubles he had suffered as a result of the forcible administration of the emetics. He did not submit any documents to confirm that he had received medical treatment. The Government, for their part, maintained that the applicant had not received any medical treatment.

7. In his submissions dated 20 December 1993 to the Wuppertal District Court, the applicant, who was represented by counsel throughout the proceedings, objected to the use at his trial of the evidence obtained through the administration of emetics, a method

he considered to be illegal. By using force to provoke the regurgitation of the bubble of cocaine, the police officers and the doctor concerned were guilty of causing him bodily harm in the course of their duties (*Körperverletzung im Amt*). The administration of toxic substances was prohibited by Article 136a of the Code of Criminal Procedure (see paragraph 34 below). His bodily functions had been manipulated, since bodily activity had been provoked by suppressing the control reactions of the brain and the body. In any event, administering emetics was a disproportionate measure and therefore not authorized by Article 81a of the Code of Criminal Procedure (see paragraphs 33 and 35-40 below). It would have been possible to obtain evidence of the alleged offense by waiting for the bubble to pass through his system naturally. The applicant further argued that the only other method authorized by Article 81a of the Code of Criminal Procedure would have been irrigation of the stomach.

8. On 23 March 1994 the Wuppertal District Court convicted the applicant of drug trafficking and sentenced him to one year's imprisonment, suspended, and probation. It rejected the defense's argument that the administration of emetics under Article 81a of the Code of Criminal Procedure was a disproportionate means of recovering a bubble containing just 0.2 g of cocaine.

9. The applicant appealed against the judgment.

10. On 17 May 1995 the Wuppertal Regional Court upheld the applicant's conviction but reduced the length of the suspended prison sentence to six months. It further ordered the forfeiture (*Verfall*) of 100 German marks that had been found on the applicant at the time of his arrest on the ground that it was the proceeds of sale of two drug bubbles.

11. The Regional Court found that the evidence obtained following the public prosecutor's order to provoke the regurgitation of the bubble of cocaine was admissible. The measure had been carried out because further delay might have frustrated the conduct of the investigation. Pursuant to Article 81a of the Code of Criminal Procedure, the administration of the substances in question, even if effected against the suspect's will, was legal. The procedure had been necessary to secure evidence of drug trafficking. It had been carried out by a doctor and in compliance with the rules of medical science. The defendant's health had not been put at risk and the principle of proportionality had been adhered to.

12. The applicant appealed against this judgment on points of law. He argued in particular that Article 81a of the Code of Criminal Procedure did not authorize the administration of emetics, as it did not permit the administration of life-threatening substances by dangerous methods. Furthermore, Article 81a prohibited measures such as the one in question that resulted in a suspect effectively being forced to contribute actively to his own conviction. He further submitted that the impugned measure had violated Articles 1 and 2 of the Basic Law (*Grundgesetz* – see paragraphs 31-32 below), and disregarded in particular the right to respect for human dignity.

13. On 19 September 1995 the Düsseldorf Court of Appeal dismissed the applicant's appeal. It found that the Regional Court's judgment did not contain any error of law that was detrimental to the accused.
14. The applicant lodged a complaint with the Federal Constitutional Court. He reiterated that the administration of emetics was a disproportionate measure under Article 81a of the Code of Criminal Procedure.

15. On 15 September 1999 the Federal Constitutional Court declared the applicant's constitutional complaint inadmissible under the principle of subsidiarity.

16. It considered that the administration of emetics, including apomorphine, a morphine derivative, raised serious constitutional issues with respect to the right to physical integrity (Article 2 § 2 of the Basic Law – see paragraph 32 below) and to the principle of proportionality which the criminal courts had not yet addressed.

17. The Federal Constitutional Court found that the applicant had not availed himself of all the remedies at his disposal (*alle prozessualen Möglichkeiten*) to contest the measure before the criminal courts in order to avoid any underestimation of the importance and scope of the fundamental right laid down in Article 2 § 2, first sentence, of the Basic Law (*um eine Verkennung von Bedeutung und Tragweite des Grundrechts des Art. 2 Abs. 2 Satz 1 GG zu verhindern*).

18. It further stated that the administration of emetics did not give rise to any constitutional objections of principle either with respect to human dignity protected by Article 1 § 1 of the Basic Law or the principle against self-incrimination guaranteed by Article 2 § 1 read in conjunction with Article 1 § 1 of the Basic Law.

3. Claims of the Parties

a. Claims of the Applicant Party

1. The applicant claims that the administration of the emetics was illegal and violated Articles 3 and 8 of the Convention.
2. The applicant part claims that the evidence obtained through the administration of emetics formed the sole basis for his conviction, rendering the criminal proceedings against him unfair.

3. The applicant claimed that he had been subjected to inhuman and degrading treatment as a result of having been forcibly administered emetics. He relied on Article 3 of the Convention, which provides:

   "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

4. The applicant claims that the administration of emetics was comparable to the administration of a truth serum to obtain a confession, a practice that was expressly forbidden by Article 136a of the Code of Criminal Procedure.

5. The applicant claims a total of 51.12 euros (EUR) in pecuniary damage, this being the amount he had forfeited as a result of the judgment of the Wuppertal Regional Court.

6. The applicant party further claims a minimum compensation of EUR 30,000 for non-pecuniary damage, referencing his physical injuries and the mental distress and feelings

of helplessness he had suffered as a result of the lengthy administration of emetics, as well as his being remanded in custody for five months before being convicted and given a six-month suspended prison sentence and probation because of this illegal measure.

b. Claims of the Respondent Party

1. The respondent party claims that the administration of the emetics to the applicant had not contravened either Article 3 or Article 8 of the Convention, as determining the exact nature, amount, and quality of the drugs being sold by the applicant had been a crucial factor in securing the applicant's conviction and passing sentence.
2. The respondent party claims that consequently, the use of the drug bubble thereby obtained as evidence in the criminal proceedings against the applicant did not render his trial unfair.

3. Respondent party further claims that the right not to incriminate oneself only prohibited forcing a person to act against his or her will, as the accused's initial refusal to take the emetics could not be relevant, as otherwise all investigative measures aimed at breaking a suspect's will to conceal evidence, such as taking blood samples by force or searching houses, would be prohibited, hence the administration of emetics was done *lege artis.*

4. The respondent party claims that according to the Court's judgment in Saunders, drugs obtained by the forcible administration of emetics were admissible evidence; hence, the administration of emetics, which the applicant merely had to endure passively, was not comparable to the administration of a truth serum as prohibited by Article 136a of the Code of Criminal Procedure, which broke the suspect's will not to testify.

5. The government did not comment on the applicant's claim for pecuniary damage but maintained that the sum claimed by him for non-pecuniary damage was excessive.

III. APPLICABLE LAW

1. Relevant Domestic Law

(a) The Basic law

1. Article 1 § 1 of the Basic Law reads as follows:

"The dignity of human beings is inviolable. All public authorities have a duty to respect and protect it."

2. Article 2, in so far as relevant, provides:

i. "Everyone shall have the right to the free development of their personality provided that they do not interfere with the rights of others or violate the constitutional order or moral law [Sittengesetz]."

ii. "Every person shall have the right to life and physical integrity. ..."

(b) The Code of Criminal Procedure

1. Article 81a of the Code of Criminal Procedure, in so far as relevant, reads as follows:

i. "A physical examination of the accused may be ordered for the purpose of establishing facts of relevance to the proceedings. To this end, blood samples may be taken and other bodily intrusions effected by a doctor in accordance with the rules of

medical science for the purpose of examination without the accused's consent, provided that there is no risk of damage to his health."

ii. "Power to make such an order shall be vested in the judge and, in cases in which delay would jeopardise the success of the examination, in the public prosecutor's office and officials assisting it ..."

2. Article 136a of the Code of Criminal Procedure on prohibited methods of interrogation (*verbotene Vernehmungsmethoden*) provides:

i. "The freedom of the accused to make decisions and to manifest his will shall not be impaired by ill-treatment, induced fatigue, physical interference, the administration of drugs, torment, deception or hypnosis. Coercion may be used only in so far as it is permitted by the law on criminal procedure. Threatening the accused with measures that are not permitted under the law on criminal procedure or holding out the prospect of an advantage that is not contemplated by statute shall be prohibited."

ii. "Measures which impair the accused's memory or ability to understand and accept a given situation [Einsichtsfähigkeit] shall not be permitted."

iii. "The prohibition under sub-paragraphs i and ii shall apply even if the accused has consented [to the proposed measure]. Statements obtained in breach of this prohibition shall not be used [in evidence], even if the accused has agreed to their use."

2. Relevant International law

(a) United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as adopted by the United Nations General Assembly on 10 December 1984 (resolution 39/46), provides:

Article 1 § 1

"For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Article 15

"Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

Article 16 § 1

"Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in Articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment."

Article 3 - Prohibition of torture

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 6 – Right to a fair trial

1. *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*
2. *"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."*
3. *"Everyone charged with a criminal offence has the following minimum rights:*

a. *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*

b. *to have adequate time and facilities for the preparation of his defence;*

c. *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*

ç. *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

d. *to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

Article 8

1. *"Everyone has the right to respect for his private and family life, his home and his correspondence."*
2. *"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

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