



## The Swiss Federal Supreme Court's failure to address the applicant's complaint specifically was in breach of the Convention

In today's Chamber judgment<sup>1</sup> in the case of [Uche v. Switzerland](#) (application no. 12211/09) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 6 §§ 1 and 3 (a) (right to be informed of the nature and cause of the accusation) of the European Convention on Human Rights, and**

**a violation of Article 6 § 1 (right to a reasoned judgment).**

The case concerned an applicant who was convicted of drug trafficking and complained of violations of his right to be informed of the nature and cause of the accusation against him, and of his right to have a reasoned judgment.

The Court found in particular that the Federal Supreme Court, in its judgment of 20 June 2008, had not addressed the applicant's complaint alleging a breach of the adversarial principle. In the absence of a specific reply to this complaint, which had nonetheless been sufficiently substantiated in the appeal pleadings submitted to that court, it was impossible to ascertain whether it had simply neglected to deal with the submission that the adversarial principle had been breached or whether it had intended to dismiss it and, if that were its intention, what had been its reasons for so deciding. It followed that the judgment convicting the applicant had not been adequately reasoned.

### Principal facts

The applicant, Magma Uche, has joint Swiss and Nigerian nationality. He was born in 1967 and lives in Gampelen (Switzerland).

In 2002 Mr Uche's telephone was tapped by the Cantonal Police Department, which suspected him of drug trafficking. On 19 November 2004 the Bern-Laupen District Court found him guilty of money laundering and the import, purchase and sale of 4.4 kg of cocaine and 153 grams of heroin, and sentenced him to 69 months' imprisonment.

Mr Uche lodged an appeal against that decision, arguing that the district court had breached the adversarial principle by failing to specify in the indictment the quantity of drugs involved. The Bern Cantonal Supreme Court dismissed the appeal and upheld the district court's decision.

On 28 January 2008 Mr Uche lodged a criminal-law appeal with the Federal Supreme Court. He submitted that there had been a breach of the adversarial principle, arguing that the indictment was incomplete in that the prosecutor had mentioned the amount of 1,748.8 grams of cocaine and heroin, although the conviction was ultimately based on 4.4 kg. He claimed that he had been unable to prepare his defence.

In a judgment of 20 June 2008, the Federal Supreme Court dismissed the applicant's appeal.

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](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Articles 6 §§ 1 and 3 (a) (right to a fair trial), the applicant alleged, in particular, breaches of his right to be informed of the nature and cause of the accusation and of his right to a reasoned judgment.

The application was lodged with the European Court of Human Rights on 18 December 2008.

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

Helena **Jäderblom** (Sweden), *President*,  
Branko **Lubarda** (Serbia),  
Helen **Keller** (Switzerland),  
Pere **Pastor Vilanova** (Andorra),  
Alena **Poláčková** (Slovakia),  
Georgios A. **Serghides** (Cyprus),  
Jolien **Schukking** (the Netherlands),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### [Article 6 §§ 1 and 3 \(a\) \(right to be informed in detail of the nature and cause of the accusation against him\)](#)

The Court noted that Mr Uche knew, on the basis of the indictment, that the quantity of drugs in question was substantial (more than 1,748.80 grams) and held that it was not decisive whether he could assess this quantity exactly. Mr Uche had been provided with sufficient information as was necessary to understand fully the extent of the charges against him, with a view to preparing an adequate defence. In this connection, he had had the opportunity to submit his complaint alleging a violation of the adversarial principle to the Supreme Court of the Canton of Bern, which had carried out a full assessment of the case.

The Court therefore held that any defects in the proceedings before the district court were redressed before the Supreme Court. It followed that there had been no violation of Article 6 §§ 1 and 3 (a).

### [Article 6 § 1 \(right to have a reasoned judgment\)](#)

The Court noted that, in its judgment of 20 June 2008, the Federal Supreme Court did not address the complaint alleging a violation of the adversarial principle submitted by Mr Uche, assisted by his lawyer. This complaint had nonetheless been sufficiently substantiated in the appeal pleadings submitted to the Federal Supreme Court. If the Federal Supreme Court had held Mr Uche's appeal to be well-founded, it ought to have accepted the appeal. If, on the other hand, it had held that the appeal was ill-founded, it ought to have dismissed it, setting out the reasons for the inadmissibility.

In the absence of a specific reply, it was impossible to ascertain whether the Federal Supreme Court had simply neglected to deal with the submission that the adversarial principle had been breached or whether it had intended to dismiss it and, if that were its intention, what had been its reasons for so deciding.

In consequence, the Court concluded that there had been a violation of Article 6 § 1.

### [Article 6 §§ 1 and 3 \(d\) \(right to examine witnesses\)](#)

The Court noted that the Swiss courts had carefully analysed the facts and that detailed reasons had been given for their decisions. Mr Uche had been offered an opportunity to contest the translation

of the telephone-tapping transcripts, to compare them with the recordings and to submit to the cantonal court any passages that he might have wished to add. The Court considered that Mr Uche, who had not made use of this possibility, had been provided with sufficient means to defend himself. This complaint was manifestly ill-founded and had to be dismissed.

#### Just satisfaction (Article 41)

The Court held that Switzerland was to pay the applicant 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,720 in respect of costs and expenses.

*The judgment is available only in French.*

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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.