HRRS-Nummer: HRRS 2010 Nr. 886
Bearbeiter: Karsten Gaede
Zitiervorschlag: EGMR HRRS 2010 Nr. 886, Rn. X

EGMR Nr. 24478/03 (5. Kammer) - Urteil vom 21. Oktober 2010 (Großkopf vs. Germany)

Vereinbarkeit der Sicherungsverwahrung mit dem Recht auf Freiheit und Sicherheit (substantielle Verbindung zur Verurteilung; Defizite im Vollzug der Sicherungsverwahrung; Maßregeln der Besserung und Sicherung).

Art. 5 Abs. 1 lit. a EMRK; Art. 2 Abs. 2 GG; Art. 20 Abs. 3 GG; § 66 StGB; § 67d StGB; § 67e StGB

Leitsätze des Bearbeiters

1. Art. 5 Abs. 1 EMRK enthält eine abschließende Aufzählung legitimer Gründe für Freiheitsentziehungen. Eine Einschränkung der Freiheit der Person, die nicht unter einen oder mehrere dieser Gründe zu subsumieren ist, verstößt gegen Art. 5 EMRK. Art. 5 Abs. 1 lit. a EMRK legitimiert nur Freiheitsentziehungen, die in einer substantiellen Verbindung mit der Verurteilung stehen.

2. Die Sicherungsverwahrung nach deutschem Recht ist - einschließlich der Entscheidungen für ihre Fortsetzung infolge einer fortbestehenden Gefährdung - prinzipiell eine gemäß Art. 5 Abs. 1 lit. a EMRK gerechtfertigte Freiheitsentziehung.

3. Der EGMR hat Bedenken gegen den tatsächlichen Vollzug der Sicherungsverwahrung in Deutschland, weil sich dieser nicht durch spezielle Maßnahmen auszeichnet, die - über die Angebote für jeden Langzeitinhaftierten hinaus - das Risiko eines Rückfalls mindern und die Haftdauer auf das zwingend Notwendige begrenzen sollen. Jedenfalls in einem Fall, in dem der Inhaftierte Therapien abgelehnt hat, ist daraus allein aber kein Verstoß gegen Art. 5 EMRK festzustellen.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1945 and is currently detained in Aachen. 1

A. Proceedings concerning the applicant's preventive detention

1. Background to the case

6. On 17 May 1995 the Cologne Regional Court convicted the applicant on three counts of attempted burglary as a member of a gang. Including the sentence imposed for a previous conviction of attempted burglary, the court fixed a cumulative sentence of seven years' imprisonment and ordered the applicant's preventive detention pursuant to Article 66 of the Criminal Code (see paragraphs 27-28 below). 2

7. The Regional Court found that, having regard to his personality and to his numerous previous convictions of burglary, the applicant had a disposition to commit serious offences causing serious economic damage and was therefore dangerous to the public. The applicant had repeatedly declared that the burglaries he had committed, which had been aimed at obtaining several ten thousand Deutschmarks and of which he had made his living, were not immoral. As confirmed by a psychiatric expert, the applicant, who was of at least average intelligence, was therefore liable to reoffend. The judgment became final on 10 February 1996. 3

8. The applicant served his full prison sentence until 18 February 2002. Since 19 February 2002 the applicant has been in preventive detention. 4

2. First set of proceedings

9 . On 6 February 2002 the Aachen Regional Court, sitting as a chamber for the execution of sentences (Strafvollstreckungskammer), decided that the applicant should be kept in preventive detention following the end of his 5

prison term on 18 February 2002. Relying on Article 67c § 1 of the Criminal Code (see paragraph 29 below), the court considered that his preventive detention was still necessary in view of the objective of such detention.

10. The Regional Court, agreeing with the views taken by the director of Aachen Prison and by the Public Prosecutor's Office, found that the applicant was very liable to reoffend and to commit serious offences if released (Article 67d § 2 of the Criminal Code; see paragraph 30 below). It noted that the applicant, who was represented in the proceedings by a court-appointed defence counsel but had refused to participate in an oral hearing, had numerous previous convictions of burglary for which he had spent already more than 26 years in prison. He had always made his living outside prison from crime and had hardly worked in prison, arguing that the remuneration for his work was insufficient. The applicant insisted that the police had arrested him by having recourse to illegal methods of investigation and that he had wrongfully been convicted. He thus failed to accept that the court was bound by the findings in the final judgment of the Cologne Regional Court. The applicant was free to deny having committed the offences he was convicted of by that final judgment in 1995, which as such did not mean that he risked being found to be a recidivist. However, he refused to reappraise his entire criminal past. The findings of the psychiatric expert consulted by the Cologne Regional Court on the applicant's personality were therefore still valid. The fact that the applicant could stay with his son or with a writer when released did not warrant the conclusion that he would not reoffend on release. 6

11. On 28 March 2002 the Cologne Court of Appeal, endorsing the reasons given by the Aachen Regional Court, dismissed the applicant's appeal. 7

12. On 17 May 2002 the applicant lodged a constitutional complaint with the Federal Constitutional Court. He argued that his preventive detention violated the right to liberty and the prohibition on punishment without guilt under the Basic Law. His preventive detention also breached the prohibition of torture in that it was aimed at extracting from him a confession to the offences for which he had been convicted in 1995. Moreover, the proceedings before the Regional Court had been unfair because that court had refused to verify the police methods of investigation leading to his arrest and conviction. 8

13. By a decision of 18 December 2002 (which the applicant received on 21 December 2002) the Federal Constitutional Court declined to consider the applicant's constitutional complaint (file no. 2 BvR 808/02). 9

3. Second set of proceedings

14. On 21 February 2006 the Aachen Regional Court, in review proceedings pursuant to Article 67d § 2 and Article 67e § 2 of the Criminal Code (see paragraphs 30 and 31 below), allowed the Public Prosecutor's request and refused to suspend the applicant's placement in preventive detention on probation. 10

15. Having heard the applicant, represented by counsel, in person, the Regional Court found that he was still liable to reoffend if released. It referred to the findings in its previous decision of 24 February 2004 not to suspend the applicant's placement in preventive detention on probation and argued that there had been no developments indicating that the applicant was now less likely to be recidivist. His numerous previous convictions showed that he had chosen at an early stage to make his living from crime. Having regard to the report submitted by the director of Aachen Prison, who had opposed to the suspension on probation of the applicant's placement in preventive detention, the Regional Court noted that since his dismissal from his job as editorial journalist of the prison journal for misuse of the computer made available for editing that journal, the applicant was out of work due to his own fault. As the applicant refused any therapy, there was no expert opinion on him and thus no visible positive development. 11

16. On 16 May 2006 the Cologne Court of Appeal, endorsing the reasons given by the Regional Court, dismissed the applicant's appeal. It took the view that his preventive detention was covered by Article 5 § 1 (a) of the Convention. It further confirmed that the applicant's final convictions could not be reviewed in the proceedings at issue, but could only be subject of reopening proceedings. Even assuming that the applicant, as he had claimed, had been dismissed from his job as editing journalist of the prison journal without good cause, this did not alter the fact that owing to his disrespect for the property of others, he was liable to reoffend if released. Whilst the applicant did not sell the house he owned (valued at some EUR 250,000), he did not have at his disposal the necessary funds to make his living so that there was a risk that he would reoffend. 12

17. On 5 June 2006 the applicant lodged a constitutional complaint with the Federal Constitutional Court. He claimed that his detention, being a preventive measure, violated his right to liberty. Moreover, it breached the prohibition of torture in that it was aimed at extracting from him a confession to the offences he had been convicted of. The low remuneration for his forced labour disregarded human dignity. The courts' refusal to review the lawfulness of his criminal convictions also violated Article 13 as the court proceedings at issue were ineffective without doing so. 13

18. On 21 June 2006 the Federal Constitutional Court declined to consider the applicant's constitutional complaint (file no. 2 BvR 1169/06). 14

B. Proceedings concerning the remuneration for the applicant's prison work

19. While in preventive detention, the applicant worked for a private company between September 2002 and January 2004 and as editorial journalist for the prison journal between February and September 2004. He was paid an average of some EUR 300 net per month by the State. 15

20. On 3 December 2002 the North Rhine-Westphalia Office for the Execution of Sentences (Justizvollzugsamt) dismissed the applicant's objection to his wage slip. It noted that the applicant's remuneration was in accordance with the rates fixed in the Execution of Sentences Act. It argued that his wage was not unreasonably low, given that the remuneration included other advantages and that the Land paid contributions to the unemployment insurance and did not deduct a contribution to the cost of keeping him in prison from his wages. 16

21. On 25 February 2003 the Aachen Regional Court dismissed as ill-founded the applicant's request for judicial review of the low remuneration for his prison work, for which he claimed some EUR 1000-1500 net per month, and of the failure of the prison authorities to disclose the financial agreement between them and the private company he worked for. It took the view that the remuneration for prison work, which had recently been raised by 80 per cent in order to comply with a judgment of the Federal Constitutional Court of 1 July 1998, was constitutional. Endorsing the reasons given by the North Rhine-Westphalia Office for the Execution of Sentences, the court argued that if prisoners received a higher remuneration, private companies might no longer place any orders in view of the considerably lower productivity of prisoners and prisoners would then not be able to work at all. As the applicant's remuneration was lawful, he could not claim the disclosure of the terms of the contract concluded between the prison authorities and the private company. 17

22. On 15 May 2003 the Hamm Court of Appeal dismissed the applicant's appeal on points of law as inadmissible. It found that a review of the Aachen Regional Court's decision was not necessary for the development of the law or in order to secure consistency in the case-law. 18

23. On 13 July 2003 the applicant lodged a constitutional complaint with the Federal Constitutional Court. He argued that the unduly low remuneration for his prison work was degrading and disregarded human dignity. Moreover, the failure of the prison authorities to disclose the wage paid to them by the private company for his work breached his right to effective judicial review. 19

24. On 30 September 2003 the Federal Constitutional Court declined to consider the applicant's constitutional complaint (file no. 2 BvR 1177/03). 20

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. A comprehensive summary of the provisions of the Criminal Code and of the Code of Criminal Procedure governing the distinction between penalties and measures of correction and prevention, in particular preventive detention, and the making, review and execution in practice of preventive detention orders, is contained in the Court's judgment in the case of M. v. Germany (no. 19359/04, §§ 45-78, 17 December 2009). The provisions relevant in the present case can be summarised as follows: 21

A. The order of preventive detention by the sentencing court

26. The German Criminal Code distinguishes between penalties (Strafen) and so-called measures of correction and prevention (Maßregeln der Besserung und Sicherung) to deal with unlawful acts. Preventive detention (Article 66 et seq. of the Criminal Code) is classified as a measure of correction and prevention. The purpose of such measures is to rehabilitate dangerous offenders or to protect the public from them. They may be ordered for offenders in addition to their punishment (compare Articles 63 et seq.). They must, however, be proportionate to the gravity of the offences committed by, or to be expected from, the defendants as well as to their dangerousness (Article 62 of the Criminal Code). 22

27. The sentencing court may, at the time of the offender's conviction, order his preventive detention under certain circumstances in addition to his prison sentence if the offender has been shown to be dangerous to the public (Article 66 of the Criminal Code). 23

28. In particular, the sentencing court orders preventive detention in addition to the penalty if someone is sentenced for an intentional offence to at least two years' imprisonment and if the following further conditions are satisfied. Firstly, the perpetrator must have been sentenced twice already, to at least one year's imprisonment in each case, for intentional offences committed prior to the new offence. Secondly, the perpetrator must previously have served a prison sentence or must have been detained pursuant to a measure of correction and prevention for at least two years. Thirdly, a comprehensive assessment of the perpetrator and his acts must reveal that, owing to his propensity to commit serious offences, notably those which seriously harm their victims physically or mentally or which cause serious economic damage, the perpetrator presents a danger to the general public (see Article 66 § 1). 24

B. The order for execution of the placement in preventive detention

29. Article 67c of the Criminal Code governs orders for the preventive detention of convicted persons which are not executed immediately after the judgment ordering them becomes final. Paragraph 1 of the Article provides that if a term of imprisonment is executed prior to a simultaneously ordered placement in preventive detention, the court responsible for the execution of sentences (that is, a special Chamber of the Regional Court composed of three professional judges, see sections 78a and 78b(1)(1) of the Court Organisation Act) must review, before completion of the prison term, whether the person's preventive detention is still necessary in view of its objective. If that is not the case, it suspends on probation the execution of the preventive detention order; supervision of the person's conduct (Führungsaufsicht) commences with suspension. 25

C. Judicial review of the placement in preventive detention

30. Article 67d of the Criminal Code, in its versions in force as of 31 January 1998, lays down rules on judicial review of the placement in preventive detention. If there is no provision for a maximum duration of the measure of correction and prevention or if the time-limit has not yet expired, the court (i.e. the chamber responsible for the execution of sentences) shall suspend on probation further execution of the detention order as soon as it is to be expected that the person concerned will not commit any further unlawful acts on his or her release. Suspension shall automatically entail supervision of the conduct of the offender (paragraph 2 of Article 67d). 26

31. Pursuant to Article 67e of the Criminal Code the court (i.e. the chamber responsible for the execution of sentences) may review at any time whether the further execution of the preventive detention order should be suspended on probation. It is obliged to do so within fixed time-limits (paragraph 1 of Article 67e). For persons in preventive detention, this time-limit is two years (paragraph 2 of Article 67e). 27

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

32. The applicant complained that his placement in preventive detention since 19 February 2002 breached his right to liberty as provided in Article 5 § 1 of the Convention, which, in so far as relevant, reads as follows: 28

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court; ...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; ..."

33. The Government contested that argument. 29

A. Admissibility

34. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible. 30

B. Merits

1. The parties' submissions

(a) The applicant

35. The applicant argued that he was deprived of his liberty in breach of Article 5 § 1 since he had been placed in preventive detention. Such detention was not covered by any of the sub-paragraphs (a) to (f) of Article 5 § 1. Preventive detention did not occur "after conviction" within the meaning of sub-paragraph (a) of Article 5 § 1 because it was not a sanction for an offence committed by a perpetrator - that sanction was the term of imprisonment imposed alone - , but a purely preventive measure aimed at averting future offences and at protecting the public from dangerous offenders. However, as the Court had found in its judgment of 6 November 1980 in the case of Guzzardi v. Italy, a person's deprivation of liberty for purely preventive purposes was incompatible with Article 5 § 1 (a). Moreover, the applicant submitted that his detention was not lawful because the sentencing courts were not authorised to order a deprivation of liberty twice for the same offence, namely both a term of imprisonment and preventive detention. 31

36. In the applicant's view, his preventive detention was also not covered by sub-paragraph (c) of Article 5 § 1 as being detention "reasonably considered necessary to prevent his committing an offence". That provision only covered detention pending trial effected for the purpose of bringing a person before a court and not preventive detention. Likewise, his preventive detention did not serve any of the preventive purposes listed in sub-paragraph (e) of Article 5 § 1. 32

37. The applicant further submitted that in view of the lack of adequate offers for therapy in Aachen Prison, it was impossible for him to prove that he was no longer dangerous to the public. Moreover, despite its objective to rehabilitate dangerous offenders, the execution of preventive detention in practice hardly differed from that of a prison sentence. In particular, persons in preventive detention did not have any significant privileges compared to persons serving a term of imprisonment. 33

(b) The Government

38. The Government took the view that the applicant's preventive detention complied with Article 5 § 1. The applicant's detention was covered by sub-paragraph (a) of Article 5 § 1 as being detention "after conviction" as it had been ordered by the judgment of the Cologne Regional Court of 17 May 1995 together with his conviction of attempted burglary. 34

39. The Government argued that there was a sufficient causal connection between the applicant's criminal conviction and his preventive detention. In their decisions taken in 2002 and 2006, the Aachen Regional Court and the Cologne Court of Appeal, having regard to the report drawn up by a psychiatric expert, convincingly found that, if released, the applicant was likely again to commit offences against the property of others similar to the offences he had previously been convicted of. The courts reached the conclusion that the applicant's preventive detention was still necessary in view of the objective of such detention having regard to the applicant's personality, his previous convictions, the weight of the legal interests at stake in case of recidivism, the applicant's conduct in prison and, in particular, his failure to reappraise his criminal past, as well as his perspectives upon release. 35

40. The Government further considered that it had been justified and proportionate for the domestic courts to order the applicant's preventive detention under the very restrictive conditions laid down in Article 66 of the Criminal Code in order to protect the public from further serious thefts he was liable to commit if released. They stressed that the execution of preventive detention orders differed significantly from the enforcement of prison sentences as, compared to ordinary prisoners, persons in preventive detention had a number of privileges. 36

41. Moreover, in the Government's submission, the applicant's preventive detention was also covered by the wording of sub-paragraph (c) of Article 5 § 1 as it could be considered as detention of a person which was "reasonably considered necessary to prevent his committing an offence". In exceptional cases, preventive detention might further be justified in order to prevent the spreading of infectious diseases within the meaning of sub-paragraph (e) of Article 5 § 1. 37

2. The Court's assessment

(a) Recapitulation of the relevant principles

42. The Court reiterates that Article 5 § 1 sub-paragraphs (a) to (f) contain an exhaustive list of permissible grounds for deprivation of liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds (see, inter alia, Guzzardi v. Italy, 6 November 1980, § 96, Series A no. 39; Witold Litwa v. Poland, no. 26629/95, § 49, ECHR 2000-III; and Saadi v. the United Kingdom [GC], no. 13229/03, § 43, ECHR 2008-...). However, the applicability of one ground does not necessarily preclude that of another; a deprivation of liberty may, depending on the circumstances, be justified under one or more sub-paragraphs (see, among other authorities, Eriksen v. Norway, 27 May 1997, § 76, Reports of Judgments and Decisions 1997-III; Erkalo v. the Netherlands, 2 September 1998, § 50, Reports 1998-VI; and Witold 38

Litwa, cited above, § 49).

43. For the purposes of sub-paragraph (a) of Article 5 § 1, the word "conviction", having regard to the French text ("condamnation"), has to be understood as signifying both a finding of guilt after it has been established in accordance with the law that there has been an offence (see Guzzardi, cited above, § 100), and the imposition of a penalty or other measure involving deprivation of liberty (see Van Droogenbroeck v. Belgium, 24 June 1982, § 35, Series A no. 50). 39

44. Furthermore, the word "after" in sub-paragraph (a) does not simply mean that the "detention" must follow the "conviction" in point of time: in addition, the "detention" must result from, follow and depend upon or occur by virtue of the "conviction" (see Van Droogenbroeck, cited above, § 35). In short, there must be a sufficient causal connection between the conviction and the deprivation of liberty at issue (see Weeks v. the United Kingdom, 2 March 1987, § 42, Series A no. 114; Stafford v. the United Kingdom [GC], no. 46295/99, § 64, ECHR 2002-IV; Waite v. the United Kingdom, no. 53236/99, § 65, 10 December 2002; Kafkaris v. Cyprus [GC], no. 21906/04, § 117, ECHR 2008-...; and M. v. Germany, no. 19359/04, § 88, 17 December 2009). However, with the passage of time, the link between the initial conviction and a further deprivation of liberty gradually becomes less strong (compare Van Droogenbroeck, cited above, § 40, and Eriksen, cited above, § 78). The causal link required by sub-paragraph (a) might eventually be broken if a position were reached in which a decision not to release or to re-detain was based on grounds that were inconsistent with the objectives of the initial decision (by a sentencing court) or on an assessment that was unreasonable in terms of those objectives. In those circumstances, a detention that was lawful at the outset would be transformed into a deprivation of liberty that was arbitrary and, hence, incompatible with Article 5 (compare Van Droogenbroeck, cited above, § 40; Eriksen, cited above, § 78; Weeks, cited above, § 49; and M. v. Germany, cited above, § 88). 40

(b) Application of these principles to the present case

45. The Court is called upon to determine first, in the light of the above principles, whether the applicant, during his preventive detention at issue in the proceedings he brought before the domestic courts, was deprived of his liberty in accordance with one of the grounds listed in sub-paragraphs (a) to (f) of Article 5 § 1. 41

46. In that connection, the Court refers to its findings in its recent judgment of 17 December 2009 in the case of M. v. Germany (cited above). In that judgment, it found that Mr M.'s preventive detention, which, as in the present case, was ordered by the sentencing court under Article 66 § 1 of the Criminal Code, was covered by sub-paragraph (a) of Article 5 § 1 in so far as it had not been prolonged beyond the statutory maximum period applicable at the time of that applicant's offence and conviction (see ibid., §§ 96 and 97-105). The Court was satisfied that Mr M.'s initial preventive detention within that maximum period occurred "after conviction" by the sentencing court for the purposes of Article 5 § 1 (a). The Court took note of the fact that preventive detention was fixed with regard to the danger the person concerned presented to the public - and thus served (also) a preventive purpose. It considered, however, that an order of preventive detention under Article 66 § 1 of the Criminal Code was nevertheless always dependent on and ordered together with a sentencing court's finding that the person concerned was guilty of an offence and thus resulted from a "conviction" (ibid., § 96). 42

47. Having regard to these findings in its judgment in the application of M. v. Germany, from which it sees no reason to depart, the Court considers that the preventive detention under Article 66 of the Criminal Code of the applicant in the present case was based on his "conviction", for the purposes of Article 5 § 1 (a), by the Cologne Regional Court in May 1995. It would clarify in that context that, other than the applicant in the M. v. Germany case, the applicant in the present case was not detained for a period beyond the statutory maximum period applicable at the time of his offence and conviction. 43

48. It remains to be determined whether the applicant's preventive detention throughout the period here at issue occurred "after" conviction, that is, whether there remained a sufficient causal connection between his conviction and the deprivation of liberty at issue. The Court reiterates in this context that the causal link required might be broken if the courts' decisions not to release the person concerned were based on grounds that were inconsistent with the objectives of the decision by the sentencing court when ordering preventive detention or based on an assessment that was unreasonable in terms of those objectives (see paragraph 44 above). 44

49. The Court notes that the sentencing Cologne Regional Court ordered the applicant's preventive detention in view of the applicant's conviction on several counts of attempted burglary and of his numerous previous convictions of burglary. By ordering the applicant's preventive detention, that court intended to prevent the applicant from committing further similar offences causing serious economic damage to their potential victims (see paragraph 7 above). In the 2002 and 2006 review proceedings here at issue, the courts dealing with the execution of sentences, having regard to 45

the applicant's previous convictions, his conduct in prison and his attitude towards work, found that the applicant was liable to reoffend and to commit further burglaries or other property offences in order to make his living. The domestic courts further considered that there was no positive development as the applicant refused to undergo therapy and to reappraise his criminal past (see paragraphs 9 et seq. above).

50. Having regard to these grounds given for the order and execution of the applicant's preventive detention, the Court considers that the decisions of the courts responsible for the execution of sentences not to release the applicant were consistent with the objectives of the judgment of the sentencing court. These decisions were based on the same grounds as the judgment of the Cologne Regional Court ordering the applicant's preventive detention, namely to prevent the applicant from committing further serious property offences such as burglaries. 46

51. Furthermore, having regard to the assessment made by the domestic courts that the applicant was liable to reoffend in that manner, the Court reiterates the concerns it expressed in its judgment in the case of M. v. Germany regarding the realities of the situation of persons in preventive detention. There appear to be no special measures, instruments or institutions in place, other than those available to ordinary long-term prisoners, directed at persons subject to preventive detention and aimed at reducing the danger they present and thus at limiting the duration of their detention to what is strictly necessary in order to prevent them from committing further offences (cited above, § 128). 47

52. Nevertheless, the domestic courts' decisions in the present case that it was necessary to prolong the applicant's preventive detention cannot be considered as unreasonable in terms of the objectives of the preventive detention order. The applicant had not only refused to undergo any therapy. There were also no other signs that he reappraised his criminal past nor any indication that other measures were at hand to effectively prevent him from committing further serious property offences. 48

53. Therefore, there was a sufficient causal connection between the applicant's conviction and his preventive detention throughout the period here at issue. As the applicant's detention was also lawful in that it was based on a foreseeable application of Articles 66, 67d and 67e of the Criminal Code, it complied with the requirements of Article 5 § 1 (a) of the Convention. 49

54. Consequently, there has been no violation of Article 5 § 1 of the Convention. 50

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. The applicant further complained, in relation to his proceedings concerning his preventive detention, that his detention amounted to torture contrary to Article 3 of the Convention in that it was aimed at extracting a confession from him. Invoking Article 5 § 5 of the Convention, he claimed compensation for his remand in preventive detention. Moreover, he argued that the domestic courts' failure to examine the circumstances leading to his arrest and their refusal to review the lawfulness of his criminal convictions violated Article 13 of the Convention as the court proceedings at issue were ineffective without doing so. 51

56. With respect to the proceedings concerning the remuneration for his prison work, the applicant further complained under Article 3 of the Convention that this remuneration was so low as to breach the prohibition of degrading treatment. Moreover, the fact that he was forced to work while in illegal preventive detention violated Article 4 of the Convention. The failure of the prison authorities to disclose the remuneration paid for his work by the private company to the State breached Article 13 of the Convention. 52

57. The Court notes that the applicant did not raise a complaint about his duty to work in prison as such in the proceedings concerning the remuneration for his prison work before the domestic courts, in particular before the Federal Constitutional Court. His complaint under Article 4 § 2 of the Convention must therefore be dismissed for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention. As regards the remainder of the applicant's complaints, the Court has examined them as submitted by the applicant. However, having regard to all material in its possession, the Court finds that, even assuming their compatibility ratione materiae with the provisions of the Convention in all respects, these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. 53

58. It follows that the remainder of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention. 54

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declares the complaint under Article 5 § 1 of the Convention concerning the applicant's preventive detention admissible and the remainder of the application inadmissible;

2. Holds that there has been no violation of Article 5 § 1 of the Convention.