



## Five-day detention to prevent young men's participation in G8 summit demonstrations not justified

In today's Chamber judgment in the case **Schwabe and M.G. v. Germany** (application nos. 8080/08 and 8577/08), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been **a violation of Article 5 § 1 (right to liberty and security)** and **a violation of Article 11 (freedom of assembly and association)** of the European Convention on Human Rights.

The case concerned the detention of two young men for more than five days in June 2007, to prevent them from participating in demonstrations against the G8 summit of Heads of State and Government held in Heiligendamm near Rostock, Germany.

### Principal facts

The applicants, Sven Schwabe and M.G., are German nationals who were both born in 1985 and live in Bad Bevensen and Berlin, respectively. In June 2007, they drove to Rostock in order to participate in demonstrations against the G8 summit. In the evening of 3 June, their identity was checked by the police in a car park in front of a prison near Rostock, where they were standing next to a van in the company of seven other people. According to the police, one of the applicants physically resisted the identity check. The police found banners in the van with the inscriptions "freedom for all prisoners" and "free all now". The applicants were arrested.

In the early morning of 4 June 2007, the Rostock District Court ordered the applicants' detention until 9 June 2007 at midday at the latest. Relying on the Public Security and Order Act of the *Land* of Mecklenburg Western-Pomerania, the court found that the applicants' detention was lawful in order to prevent their committing an offence. Given that banners calling for the liberation of prisoners had been discovered in the van, it had to be assumed that they had been about to commit, or aid and abet, a criminal offence. On the same day, the Rostock Regional Court dismissed the applicants' appeals against those decisions. It concluded from the banners' inscriptions that the applicants had intended to incite others to free prisoners, which constituted an offence.

Subsequent appeals by the applicants - who argued that the slogans had been addressed to the police, urging them to end the numerous arrests and detentions of demonstrators, and had not been meant to call upon others to free prisoners by force - were dismissed by the Rostock Court of Appeal on 7 June. The court held that while the slogans on the banners could be understood in different ways, the police had been authorised, in view of the security situation in Rostock ahead of the G8 summit, to prevent ambiguous declarations leading to a risk to public security. They had been entitled to assume that the applicants intended to drive to Rostock and display the banners at the partly violent demonstrations there.

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<sup>1</sup> 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)

While in detention, the applicants also lodged a constitutional complaint with the Federal Constitutional Court and applied for an interim injunction ordering their immediate release. On 8 June, they were informed that the court would not take a decision on the request for an interim injunction. On 9 June, at midday, they were released. On 6 August 2007, the Federal Constitutional Court declined to consider their constitutional complaints.

Criminal proceedings, which had been instituted against the applicants for having obstructed public officers in the exercise of their duties, were subsequently discontinued.

## Complaints, procedure and composition of the Court

The applicants complained about their detention for five-and-a-half days, relying in particular on Article 5 § 1 (right to liberty and security), Article 10 (freedom of expression), and Article 11 (freedom of assembly and association).

The application was lodged with the European Court of Human Rights on 8 February 2008.

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

Dean **Spielmann** (Luxembourg), *President*,  
 Elisabet **Fura** (Sweden),  
 Karel **Jungwiert** (the Czech Republic),  
 Boštjan M. **Zupančič** (Slovenia),  
 Mark **Villiger** (Liechtenstein),  
 Ganna **Yudkivska** (Ukraine),  
 Angelika **Nußberger** (Germany), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 5 § 1

Having regard to the German Government's submissions, the Court first examined whether the applicants' detention had been justified under Article 5 § 1 (c) as detention reasonably considered necessary to prevent them committing an offence. It observed that the German courts had diverged on the specific offence the applicants were about to commit. While the district and regional courts had considered that they had intended to incite others to free by force prisoners detained in the prison in front of which the applicants were arrested, the appeal court had considered that their intention was to drive to Rostock and incite the crowd at the demonstrations there by displaying the banners.

The applicants had been detained for five-and-a-half days - a considerable time. Moreover, the inscriptions on the banners could have been understood in different ways, as the appeal court had accepted. It was uncontested that the applicants had not carried any instruments which could have served to liberate prisoners in a violent manner. The Court was therefore not convinced that their continuing detention could have reasonably been considered necessary to prevent them from committing a sufficiently concrete and specific offence. It was further not convinced that the detention had been necessary at all, given that it would have been sufficient to seize the banners in order to prevent them from inciting others to liberate prisoners.

The Government had further argued that the detention had been justified, as the applicants would not have respected an order to report to a police station in their respective towns of residence at regular intervals or an order not to enter the area in which the G8-related demonstrations took place. However, the Court pointed out that the police had not ordered them to report to the police stations in their respective towns nor prohibited them from entering the area where the demonstrations took place. The duty not to commit a crime could finally not be considered as sufficiently concrete and specific to qualify, in accordance with the Court's case-law, as an "obligation prescribed by law" for the purpose of Article 5 § 1 (b) and thus justify the applicants' detention.

The German courts had not found the applicants guilty of any criminal offence, but had ordered their detention in order to prevent them from committing a potential future offence. While the Convention obliged State authorities to take reasonable steps to prevent criminal offences of which they had or ought to have had knowledge, it did not permit a State to protect individuals from criminal acts committed by a particular person by measures which were in breach of that person's Convention rights. There had accordingly been a violation of Article 5 § 1.

### Article 11

The applicants' complaints under Articles 10 and 11 mostly concerned their right to freedom of assembly. The Court therefore decided to examine that part of the complaint under Article 11 alone. It was uncontested by the parties that the applicants' detention had interfered with their right to freedom of peaceful assembly, as they had been prevented from taking part in the demonstrations against the G8 summit.

The Court found that the authorities' aim in ordering the applicants' detention, namely to prevent them from committing a crime, was as such legitimate. It also accepted that guaranteeing the security of the participants and maintaining public order at the summit, with an expected 25,000 demonstrators, including a considerable number of people prepared to use violence, was a considerable challenge for the authorities. However, as the Court found under Article 5, it was not established that the applicants had intended, by displaying the banners, to deliberately stir up other demonstrators prepared to use violence to liberate prisoners.

Moreover, the Court found that that, by taking part in the demonstrations against the G8 summit, the applicants had intended to participate in a debate on matters of public interest, namely the effects of globalisation on peoples' lives. By displaying the slogans on their banners, they had aimed to criticize the security measures taken by the police, in particular the high number of detentions. Depriving them of their liberty for several days for trying to display the impugned banners had had a chilling effect on the expression of such an opinion and restricted public debate on that issue. The Court concluded that no fair balance had been struck between the aims of securing public safety and prevention of crime on the one hand and the applicants' interest in freedom of assembly on the other. Furthermore, the Court was not convinced that less intrusive measures could not have been found to attain those aims in a proportionate manner, such as seizing the banners. There had accordingly been a violation of Article 11.

### Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Germany was to pay each applicant 3,000 euros (EUR) in respect of non-pecuniary damage, and EUR 4,233.35 to Mr Schwabe and EUR 4,453.15 to Mr G. in respect of costs and expenses.

*The judgment is available only in English.*

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