EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Applications nos. 47935/20 and 18032/21
A.K.
against Germany

The European Court of Human Rights (Third Section), sitting on 27 September 2022 as a Committee composed of:

Georgios A. Serghides*, President,*
Anja Seibert-Fohr*,*
Andreas Zünd*, judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to the applications (nos. 47935/20 and 18032/21) against Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 16 and 30 March 2021 respectively by a German national, Mr A.K. ("the applicant"), who was born in 1971 and is currently detained in Klingenmünster, and who was represented by Ms A. Maeß, a lawyer practising in Karlsruhe;

Having regard to the decision to grant the applicant anonymity, in accordance with Rule 47 § 4 of the Rules of the Court;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case concerns the continuation of the applicant's detention in a psychiatric hospital.

2. The applicant was first diagnosed with a delusional disorder in 2003. On 23 September 2005 he stabbed and injured an innocent bystander with a knife because he felt threatened. Subsequently, the Kaiserslautern Regional Court ordered his placement in a psychiatric hospital under Article 63 § 1 of the Criminal Code. This provision allows the sentencing court to order the placement in a psychiatric hospital if someone commits an unlawful act without criminal responsibility if a comprehensive assessment of the perpetrator and his act reveals that, as a result of his condition, he can be

expected to commit serious unlawful acts and that he is therefore dangerous to the general public (compare *Klinkenbuß v. Germany*, no. 53157/11, § 28, 25 February 2016). Since 27 September 2005 the applicant has been detained at the Klingenmünster Psychiatric Hospital, where he receives regular psychological therapy. During his detention, only one act of physical aggression has occurred, in 2009, which was directed against another patient. Starting in 2014, the conditions of the applicant's detention were gradually loosened. In particular, the applicant was allowed to leave the hospital grounds unaccompanied four times a month and to spend nights at his mother's home.

3. The applicant's detention was reviewed at regular intervals by the Landau Regional Court under Article 67d of the Criminal Code. This provision was last amended in 2016. Continued placement in a psychiatric hospital for over ten years now requires there to be a specific danger that the detainee will commit further serious crimes resulting in severe emotional trauma or physical injury to the victims.

4. In the proceedings at issue in application no. 47935/20, on 3 April 2018 the Landau Regional Court ordered the continuation of the applicant's placement in a psychiatric hospital. On the basis of a report by an external psychiatrist dated 19 January 2016 and a statement from the hospital, the court held that, since the applicant was still suffering from the mental disorder, further violent acts were likely.

5. An appeal by the applicant was dismissed. On 14 September 2020 the Federal Constitutional Court declined to consider his subsequent constitutional complaint, without providing reasons (no. 2 BvR 1395/19).

6. In the proceedings at issue in application no. 18032/21, on 30 April 2019 the Landau Regional Court again ordered the continuation of the applicant's detention. A new external psychiatric expert had examined the applicant and stated that the delusional disorder was less pronounced but that the applicant still suffered from it. According to her findings, further violent acts could not be ruled out and, if the applicant were to be confronted with a situation he perceived as threatening, such acts were even very likely. Like the external expert, the hospital advised against the release of the applicant at that time since it was not clear to what extent his condition had stabilised. In order to better assess the applicant's progress, it referred to plans to move the applicant into an institution for assisted living for a limited period. The Regional Court, having heard the applicant, the hospital's psychiatrist and the external expert in person, considered it necessary to uphold the continued detention. However, the court stressed that the conditions of the applicant's detention should continue to be relaxed in order to prepare for his release.

7. Following the dismissal of the applicant's subsequent appeal against the Regional Court's decision, the Federal Constitutional Court, by a decision of 26 September 2020, declined to consider a constitutional complaint by the applicant, without providing reasons (no. 2 BvR 1825/18).

8. The applicant complained that his continued preventive detention was in breach of Article 5 § 1 (e) of the Convention. The psychiatric expert had found that his mental health had improved. Moreover, the negative prognosis required by Article 67d of the Criminal Code for detention exceeding ten years could not be sustained where there had been no relevant incidents for several years during which he had had periods of unaccompanied leave outside the hospital grounds. Lastly, the continuation of the detention for fourteen years was disproportionate given the nature of the original act.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

9. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

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

10. The general principles for assessing whether a detention was lawful for the purpose of Article 5 § 1 (e) of the Convention have been summarised in *Ilnseher v. Germany* ([GC], nos. 10211/12 and 27505/14, §§ 126-134, 4 December 2018) and *W.P. v. Germany* (no. 55594/13, §§ 47-49, 6 October 2016).

11. The domestic courts' assessment that the applicant was still suffering, as at the time of his offence, from a mental illness which made him dangerous to the public was based on sufficiently recent reports by psychiatric experts. While the psychiatric expert consulted in the second set of proceedings found that the applicant's mental health had somewhat improved, the fact that he was still suffering from the delusional disorder that had caused his criminal act was never contested. Furthermore, the courts addressed the proportionality of the applicant's continued detention. In that regard, the Regional Court took note of the expert's view that further violent acts were very likely if the applicant were to be confronted with a situation he perceived as threatening and thus considered that his request for release could not be allowed at this time. However, it also emphasised that further relaxations of the conditions of his detention were necessary in order to allow the applicant to work towards his release.

12. In so far as the applicant challenged the lawfulness of his detention, the Court notes that under Article 67d of the Criminal Code, detention for over ten years requires a specific danger of criminal acts resulting, notably, in physical injury to the victims. The domestic courts considered that these conditions were currently met. Given the nature of the applicant's original act, namely a violent attack with a knife, and the psychiatric experts' assessment of his condition, their decisions do not disclose any

unreasonableness in this respect. On the same grounds the applicant's detention for a period of over fourteen years cannot be considered arbitrary (compare *Klinkenbuß*, cited above, § 59, and *W.P.*, cited above, § 67).

13. It follows that the applications must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 20 October 2022.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President