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

THIRD SECTION

DECISION

Applications nos. 36306/20 and 37250/21
Mike FILIPS
against Germany

The European Court of Human Rights (Third Section), sitting on 13 September 2022 as a Committee composed of:

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

Having regard to:

the applications (nos. 36306/20 and 37250/21) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 18 August 2020 and 20 July 2021 respectively by a German national, Mr Mike Filips, who was born in 1967 and is detained in Werl ("the applicant") and was represented by Ms B. Steeger, a lawyer practising in Kevelaer;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present applications raise the issue of whether the applicant's preventive detention complied with Article 5 § 1 of the Convention and in particular whether that detention was justified under sub-paragraph (a) of that provision.

2. On 15 December 2003 the Münster Regional Court convicted the applicant of aggravated robbery, sentenced him to five years' imprisonment and ordered his preventive detention under Article 66 § 1 of the Criminal Code. This provision allows the sentencing court to order a person's preventive detention under certain circumstances in addition to a prison sentence if the offender has been shown to be dangerous to the public (compare *M. v. Germany*, no. 19359/04, §§ 49-50, ECHR 2009). The

Regional Court found that, owing to the applicant's propensity to commit serious offences causing considerable damage to persons or property, he represented a danger to the public. The court observed that the applicant had been previously convicted of more than 100 offences. Referring, in particular, to numerous robberies, but also to an assault and coercion of his then partner committed in 2002, one day after his release from prison, and to the sexual assault and battery of a minor committed in 1988, the court considered that the applicant had repeatedly demonstrated his propensity to violence.

3. In the proceedings at issue in application no. 36306/20, on 25 October 2018 the Arnsberg Regional Court refused to suspend the execution of the applicant's preventive detention, enforced since July 2013. It found that there was still a high risk that the applicant would commit further violent offences, including sexual offences, if released. It endorsed in this regard the findings of psychological expert S. whom it had heard in the proceedings as well as the findings of four different experts heard in previous periodic review proceedings. In contrast to S., who had considered social therapy unnecessary, the court further considered, in line with the findings of experts heard in previous proceedings, that the applicant had to address his sexual offences – which he continued to deny – in social therapy. While the applicant had participated in other, in particular psychological, therapy, he had to date refused offers to participate in social therapy, which had to precede any further relaxation of the conditions of his detention.

4. Following the dismissal of the applicant's appeal against the Regional Court's decision, the Federal Constitutional Court, by a decision of 10 February 2020 served on 19 February 2020, declined to consider the applicant's constitutional complaint.

5. In the proceedings at issue in application no. 37250/21, the Arnsberg Regional Court, on 26 September 2019, again refused to suspend the execution of the applicant's preventive detention because of his continuing dangerousness. It found that the applicant still refused to complete the necessary social therapy which had repeatedly been offered to him. The applicant's appeal was to no avail. By a decision of 9 January 2021, served on 25 January 2021, the Federal Constitutional Court declined to consider the applicant's constitutional complaint.

6. The applicant complained that his detention had breached Article 5 § 1 as it had not been justified under sub-paragraph (a) of that provision. In particular, there was no longer a causal connection between his conviction – ordering his preventive detention for aggravated robbery – and his continued preventive detention with reference to a sexual offence dating back a long time. Moreover, he had completed all therapy considered necessary by expert S. to address his violent offences. He had been offered neither suitable therapy nor any relaxation of the conditions of his detention, which were necessary for him to show that he was no longer a danger to the public.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

7. 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

8. According to the applicant's submission, his preventive detention had violated Article 5 § 1. It had not complied with sub-paragraph (a) of Article 5 § 1 for lack of a causal connection between his conviction and his continued preventive detention.

9. The general principles for assessing whether there was a sufficient causal connection between the detention of a person and their conviction for the purposes of sub-paragraph (a) of Article 5 § 1 have been summarised in *M. v. Germany* (cited above, § 88) and *Del Río Prada v. Spain* ([GC], no. 42750/09, § 124, ECHR 2013). The Court reiterates, in particular, that the causal link required under sub-paragraph (a) between the detention of a person and their conviction might eventually be broken if a position were reached in which a decision not to release a person was based on grounds that were inconsistent with the objectives of the sentencing court, or on an assessment that was unreasonable in terms of those objectives (*Del Río Prada*, cited above, § 124, with further references). A decision not to release a detainee may notably become inconsistent with the objectives of the sentencing court's order for that person's detention if the person concerned was placed, and later remanded, in detention as there was a risk that he or she would reoffend, but the person was, at the same time, deprived of the necessary means, such as suitable therapy, to demonstrate that he or she was no longer dangerous (see *Ostermünchner v. Germany*, no. 36035/04, § 74, 22 March 2012, and *Klinkenbuß v. Germany*, no. 53157/11, § 47, 25 February 2016).

10. In so far as the applicant alleged that there was no longer a causal connection between his conviction for robbery and his detention based on a sexual offence dating back a long time, the Court observes that the applicant's preventive detention was indeed ordered by the sentencing court following his conviction for aggravated robbery. However, contrary to what the applicant appears to suggest, in determining whether the grounds given by the domestic courts to extend preventive detention were consistent with the objectives of the decision by the sentencing court when ordering that detention, the Court must not only have regard to the offences in relation to which the preventive detention order was imposed, but also take into account the reasons given by the sentencing court for imposing that sanction (see *Reiner v. Germany*, no. 28527/08, § 92, 19 January 2012). The

sentencing Münster Regional Court ordered the applicant's preventive detention because of his propensity to commit serious offences causing considerable damage not only to property, but also to persons. It had referred in that context to numerous robberies committed by the applicant and to two offences with a sexual element, an assault and coercion against his then partner in 2002 and a sexual assault and battery committed in 1988 (see paragraph 2 above).

11. Having regard to these elements, the Court considers that the reasons given by the courts in the proceedings at issue to extend the applicant's preventive detention, namely a high risk that the applicant would commit further violent offences, including sexual offences (see paragraphs 3 and 5 above), were consistent with the objectives of the decision by the sentencing court when ordering that detention.

12. The applicant further argued that there was no longer a causal connection between his conviction and his continued preventive detention for the purposes of Article 5 § 1 (a) because he had completed all therapy which expert S. had considered necessary to address his violent offences and had not been offered suitable therapy and relaxation of the conditions of his detention necessary to show that he was no longer dangerous.

13. The Court reiterates in this regard that in taking their decision not to release a person, the national authorities have a certain discretion since they are better placed than the international judge to evaluate the evidence in a particular case (see *Weeks v. the United Kingdom*, 2 March 1987, § 50, Series A no. 114, and *Reiner*, cited above, § 78). It observes that in both sets of proceedings at issue, the domestic courts had found that the applicant was still a danger to the public as he had not yet addressed his sexual offences in necessary and suitable social therapy (see paragraphs 3 and 5 above). The findings of the domestic courts in this regard, which differed from the findings of expert S. but were in line with the views of several experts consulted in previous proceedings, cannot be considered as arbitrary. The Court further observes that the applicant had repeatedly been offered social therapy, which had to precede any further relaxation of the conditions of his detention, but had refused to undergo that therapy. He had thus not been deprived of the necessary means to show that he was no longer dangerous. Therefore, the decision not to release the applicant had not become inconsistent with the objectives of the sentencing court when ordering that detention.

14. Accordingly, in the present case the causal link between the applicant's initial conviction and the extension of his preventive detention was not broken. The applicant's lawful preventive detention was thus justified under sub-paragraph (a) of Article 5 § 1.

15. 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 6 October 2022.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President