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

SECOND SECTION

DECISION

Applications nos. 10100/16 and 29507/21
Rolf Dieter SCHWARZ
against Germany

The European Court of Human Rights (Second Section), sitting on 4 March 2025 as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Pauliine Koskelo,
Jovan Ilievski,
Anja Seibert-Fohr,
Davor Derenčinović,
Stéphane Pisani*, judges*,

and Hasan Bakırcı, *Section Registrar,*

Having regard to the applications (no. 10100/16 and 29507/21) lodged on 11 February 2016 and on 28 May 2021,

Having regard to the decision to give notice to the German Government ("the Government") of the complaints concerning Articles 3 and 5 § 1 of the Convention and to declare the remainder of the applications inadmissible,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the fact that Judge Koskelo continued to sit in the case following the expiry of her term of office pursuant to Article 23 § 2 of the Convention and Rule 26 § 3 of the Rules of Court,

Having deliberated, decides as follows:

INTRODUCTION

1. The applications concern the arrest and detention of the applicant, a German national, in Thailand, where he had been staying on the basis of consecutive tourist visas, after the German authorities had cancelled his passport on the ground that he was seeking to evade prosecution in Germany. The applicant had been arrested by the Thai police after the German

authorities had requested the Thai authorities' assistance in finding and arresting him. Following the applicant's arrest, consular officers from the German embassy notified the applicant in the presence of the Thai police that his passport had been cancelled and they seized it. The cancellation of his passport rendered the applicant's visa invalid and his further presence in Thailand unlawful. The applicant was subsequently kept in immigration detention in the Immigration Detention Centre for eight days before being handed over to German officials at the airport and put on a plane to Germany. The applicant claimed that Germany was responsible for his detention in Thailand in poor conditions and alleged a breach of Articles 3 and 5 § 1 of the Convention.

THE FACTS

2. The applicant, Mr Rolf Dieter Schwarz ("the applicant"), is a German national, was born in 1950 and lives in Rehtymno, Greece. He was represented before the Court by Ms M. Oerder, a lawyer practising in Mönchengladbach.

3. The Government were represented by two of their Agents, Mr H.-J. Behrens and Ms N. Wenzel, of the Federal Ministry of Justice.

The circumstances of the case

4. The facts of the case may be summarised as follows.

1. Background to the case

5. The applicant worked as a payroll administrator for various companies. In 2005 the Düsseldorf public prosecutor's office launched a preliminary investigation against several individuals working for the company group on suspicion of unlawful deduction from wages and tax evasion. On 8 February 2010 the Düsseldorf District Court issued a warrant for the arrest of the applicant as there was a strong suspicion that he had aided and abetted the unlawful deduction from wages in his role as a payroll administrator. The loss caused was estimated at twelve million euros (EUR).

6. The applicant had been living in Thailand, where his partner had an apartment, on the basis of consecutive tourist visas since early 2009. He continued to be registered at an address in Germany and returned to Germany from time to time. When the Düsseldorf District Court issued the warrant for his arrest, he was in Germany attending court in other criminal proceedings. No attempt was made to arrest him at that time. On 16 February 2010 he left for Thailand again.

7. On 22 March 2010 several of the applicant's co-accused were arrested; the applicant himself could not be arrested as he was abroad. The Government asserted that the applicant must have learned of the arrest warrant at the latest

in March 2010 as he instructed a lawyer in respect of the criminal proceedings on 31 March 2010. The applicant stated that, on 19 April 2010, he had learned, through his defence lawyer, that an arrest warrant had been issued for him.

8. Following information received from the German Federal Office for Criminal Investigation (*Bundeskriminalamt*) that an immigration check had shown the applicant to be in Thailand, the Düsseldorf public prosecutor's office requested an international arrest warrant for the applicant and initiated an international search, putting the applicant on Interpol's list of wanted persons.

2. The cancellation of the applicant's passport and his arrest

9. By letter of 6 May 2010, a liaison officer from the German Federal Office for Criminal Investigation in the German embassy in Bangkok informed the Thai Immigration Bureau that criminal charges had been brought against the applicant, stated that it was likely that the applicant would leave Thailand shortly to renew his visa, which was about to expire, and asked to be informed in the event that the applicant left Thailand.

10. On 14 May 2010, the Düsseldorf public prosecutor's office asked the German embassy in Bangkok via the liaison officer of the German Federal Office for Criminal Investigation in Thailand to order the restriction or cancellation of the applicant's passport under sections 7 and 8 of the German Passport Act (see paragraph 40 below). It referred to the criminal investigation into the unlawful deduction from wages and other offences and to the arrest warrant issued by the Düsseldorf District Court (see paragraph 5 above) and explained that it was the established practice of the Thai authorities, when handling international search requests, to arrest and remove the accused provided that the embassy had put the appropriate restrictions on the individual's passport.

11. On 25 May 2010 the German embassy in Bangkok ordered the cancellation of the applicant's passport as well as all other German identity documents in his possession, requiring that the passport and the identity documents be handed over to the embassy immediately and making the decision enforceable with immediate effect. The embassy considered that section 8 in conjunction with section 7, sub-section 1, no. 2 of the Passport Act allowed the passport to be cancelled as there were circumstances that would justify a refusal to issue the applicant with a passport. By leaving Germany for Thailand and staying there continuously for over a year on the basis of consecutive tourist visas, the applicant had evaded criminal prosecution and a criminal trial in Germany in relation to the offences on which the arrest warrant issued by the Düsseldorf District Court of 8 February 2010 was based. In view of the offences which he was suspected of having committed, it could be assumed that he would be given a lengthy prison sentence if found guilty. There was therefore a strong incentive for him not

to return to Germany and not to present himself to the German prosecuting authorities. It could not be assumed that the applicant would return to Germany voluntarily for the purposes of the criminal proceedings against him. The embassy took the view that the cancellation of the applicant's passport was proportionate to the circumstances. Cancellation of his passport would further his criminal prosecution in Germany, as it would make it impossible for him to remain in Thailand and prompt him to return to Germany. No milder measures were available to achieve the aim of bringing on the criminal proceedings in Germany as soon as possible. The public interest in prosecuting criminal offences and punishing offenders outweighed the applicant's interest in continuing his stay in Thailand. The cancellation had to be enforceable with immediate effect as the applicant would otherwise try to have the cancellation overturned and would be able to retain possession of his passport during that process and so might evade prosecution by leaving for a third country. Lastly, the applicant was advised that the German embassy in Bangkok could issue him with a travel document for the purposes of returning to Germany at any time (see Section 7, sub-section 4, of the Passport Act, paragraph 40 below).

12. On 27 May 2010, a liaison officer of the German Federal Office for Criminal Investigation, using the letterhead of the German embassy in Bangkok, asked the Commissioner of the Immigration Bureau of the Royal Thai Police for assistance with the search for and arrest of the applicant. The instructions from the embassy indicated that the applicant was on Interpol's list of wanted persons and that his exact location was not known but it was suspected that he was in Bangkok or Pattaya. The letter of instruction further stated that the German embassy in Bangkok had cancelled the applicant's passport at the request of Düsseldorf public prosecutor's office and had promised that the applicant would be picked up by German officials without delay following his arrest, and that the German authorities would bear the costs incurred by the Royal Thai Police in connection with the search for the applicant and his arrest and removal.

13. On 2 June 2010, the Thai immigration police arrested the applicant and took him to the Thai immigration office in Bangkok. There, officials of the German embassy served the order of 25 May 2010 on him (see paragraph 11 above) and seized his passport while he was in the custody of the Thai authorities. The Thai authorities then arrested the applicant for breaches of Thai visa regulations and took him to the Immigration Detention Centre, a detention facility where foreign nationals awaiting removal are detained.

3. The applicant's detention, removal to Germany and subsequent conviction

14. On 7 June 2010 the German embassy in Bangkok issued the applicant with a substitute travel document, which was given to him in the Immigration

Detention Centre on 8 June 2010. On 10 June 2010, he was taken to the airport by the Thai authorities and handed over to German officials, with whom he then travelled back to Germany.

15. The applicant alleged that the conditions of his detention in the Immigration Detention Centre from 2 to 10 June 2010 had been very poor. He submitted that he had been detained in a cell measuring nine metres by three metres, with the number of his fellow detainees varying between twelve and nineteen; the personal space allocated to him was less than three square metres of floor surface. He had not been allowed to leave the cell. According to the applicant, there were neither sanitary facilities nor beds in the cell, which was extremely unhygienic and dirty and stank of urine.

16. The Government stated that they had no knowledge of the specific conditions of the applicant's detention but that the poor conditions generally prevailing in Thai detention facilities, including the Immigration Detention Centre – in terms of accommodation, sanitary conditions, healthcare provision and diet – were widely known. They added that prison conditions in Thailand generally did not meet international standards and that the Immigration Detention Centre was often even more overcrowded than criminal detention facilities. The cells were sometimes so overcrowded that there was barely enough space for everyone to lie down to sleep. There were no beds at any of the detention facilities. Both at the Immigration Detention Centre and in the criminal detention facilities, detainees typically received three blankets – one to be used as a mattress, one as a pillow and one as a bedspread. Cells typically contained a toilet that was divided from the rest of the cell only by a low screen. They added that they assumed, like the Düsseldorf Regional Court (see paragraph 17 below), that the conditions of the applicant's detention did not meet Convention standards.

17. Upon arrival at Düsseldorf airport, the warrant for the applicant's arrest was served on him and he was detained. By a judgment of 9 December 2010 the Düsseldorf Regional Court convicted the applicant as an accessory to unlawful deduction from wages and tax evasion and, taking into account an earlier conviction, imposed a cumulative prison sentence of two years and eight months. In deciding his sentence, the Regional Court took into account that the applicant had been detained in Thailand with a view to his removal as a result of the cancellation of his passport and decided that that time should be credited against his prison sentence, applying Article 51 § 1 of the Criminal Code (see paragraph 39 below) by analogy. In determining the rate at which that period of detention was to be credited, the Regional Court assumed that the applicant's allegations about the poor detention conditions in Thailand were true and credited him with three days off his sentence in Germany for every day he had spent in detention in Thailand (Article 51 § 4, second sentence, of the Criminal Code).

4. The proceedings brought by the applicant

18. On 7 June 2010, while he was still in detention in Thailand, the applicant lodged an action for the annulment of the cancellation of his passport. After the applicant's return to Germany, the German authorities revoked the decision to cancel his passport on the grounds that the situation had changed and that the purpose of the measure had been fulfilled. Subsequently, the applicant amended his action and sought a finding that the cancellation of his passport had been unlawful. He also sought a finding that the collaboration of the German embassy in Bangkok with the Thai authorities, which had led to his detention in Thailand and his removal to Germany, had been unlawful. He submitted, in particular, that the entire undertaking had been an unlawful "disguised extradition", circumventing the safeguards of formal extradition proceedings and diverting the provisions of the Passport Act from their intended use. The cooperation between the German and the Thai authorities had been of a collusive nature and the actions of the Thai authorities had been initiated and almost entirely controlled by the German authorities. The German authorities were responsible for his detention in Thailand, which they had caused deliberately and which had been unlawful. They were also responsible for the duration of the detention, because the issuing of a substitute travel document had lain within their control, and for the inhuman and degrading treatment he had suffered because of the conditions in which he had been held. The German authorities had been aware that the conditions of detention in Thailand were incompatible with international standards. His deprivation of liberty had been effected on the basis of the Passport Act, which did not provide for such deprivation. The fact that there was a warrant issued for his arrest could not justify the deprivation of his liberty under the provisions of the Passport Act.

19. The domestic courts split the applicant's case into three separate sets of proceedings:

(i) concerning the lawfulness of the decision to cancel the applicant's passport (see paragraphs 20-27 below);

(ii) concerning the lawfulness of the manner in which the passport had been cancelled (see paragraphs 29-31 below); and

(iii) concerning the lawfulness of certain actions of German officials in Thailand leading to the applicant's arrest and the lawfulness of the arrest itself (see paragraphs 33-36 below).

(a) The proceedings concerning the lawfulness of cancelling the passport

20. By a judgment of 29 September 2011 the Berlin Administrative Court dismissed the applicant's action by which he had sought a finding that the cancellation of his passport had been unlawful. It found that it had been lawful to cancel the passport.

21. By a judgment of 2 October 2014 the Berlin-Brandenburg Administrative Court of Appeal rejected the applicant's appeal as ill-founded. It found that the cancellation of the passport had been lawful. The reasoning of the court was based on section 8 in conjunction with section 7, sub-section 1, no. 2 of the Passport Act (see paragraph 40 below). It found that the German embassy had not overstepped its discretion when it had assessed the interest in the prosecution of the applicant as outweighing his interest in remaining in Thailand.

22. There had been grounds to believe that the applicant wanted to evade prosecution by staying in Thailand. He had been staying there for over a year on a tourist visa, which he had renewed multiple times by leaving Thailand for a neighbouring country and then re-entering Thailand. Such conduct militated against a finding that he had had an intention to settle in Thailand, as he had claimed. The punishment which the applicant could expect in Germany – the criminal proceedings against him concerned the loss of about EUR 12 million (see paragraph 5 above) and the sentence set by the statute was imprisonment for up to ten years – was a considerable incentive for him not to return to Germany. The applicant's claim that he would have presented himself if he had been summoned to appear was not credible. No inferences in support of the applicant's claim could be drawn from the fact that he had travelled to Germany to attend separate criminal proceedings against him in February 2010 (see paragraph 6 above): as the Administrative Court had established, the applicant had not had, at that time, knowledge of the arrest warrant or of the criminal proceedings against him in relation to the charges of unlawful deduction of wages and tax evasion. There was no less restrictive measure available than cancelling his passport to achieve his return to Germany to answer the criminal proceedings against him.

23. The Administrative Court of Appeal rejected the applicant's claims that he had been subjected to a "disguised extradition" and that the German embassy had circumvented the norms and safeguards of extradition proceedings by diverting the provisions of the Passport Act from their intended use (see paragraph 18 above). It referred to Guideline no. 88 of the Federal Ministry of Justice's Guidelines for Foreign Relations in Criminal Affairs (see paragraph 42 below) and explained that whether international mutual assistance in criminal matters took the form of an extradition request depended on whether the State where the individual was present was obliged to extradite him or her under a treaty – which was not the case for Thailand – or whether the law of that State allowed for an extradition without a treaty, and also on whether the disadvantages suffered by the wanted person in connection with the extradition, in particular the duration of the extradition proceedings and the detention conditions in the foreign State, were disproportionate to the public interest in prosecution or enforcement of a sentence. The provisions relating to international mutual assistance in criminal matters did not render the relevant provisions of the Passport Act

inapplicable. The fact that an extradition request and passport restrictions might both pursue the same aim, that is, to make the passport holder return to Germany, did not prevent undertaking both measures simultaneously. A passport could be restricted in parallel to, or instead of, making an extradition request. There was no hierarchy between extradition and restrictions on passport facilities. This was illustrated by Guideline no. 88 of the Guidelines for Foreign Relations in Criminal Affairs, which provided that when considering making an extradition request, the public prosecutors' office should also consider whether the German foreign representation should be asked to put restrictions on the wanted person's passport (see paragraph 42 below). Extradition requests under treaties or a country's domestic law served to prevent a State being unable to prosecute one of its own nationals because he or she was in another State; the extradition process was not intended to serve the interests of the individual concerned.

24. The Administrative Court of Appeal found that the applicant's passport had been cancelled with the intention of making him return to Germany with a substitute travel document because the cancellation of the passport made his stay in Thailand unlawful and was expected to prompt that State to ask him to leave the country. However, the cancellation of the passport did not amount to an order for the applicant's detention, nor had it been intended to achieve that result. It was a decision of the Thai authorities, in the exercise of their sovereignty, whether they merely asked the applicant to leave the country after the cancellation of his passport, which had rendered his visa invalid and his stay in Thailand unlawful, or they removed him and, if they chose the latter course of action, whether they detained him for the purposes of ensuring his removal. For his detention in Thailand to be attributable to Germany, Germany would have had to exercise control over Thailand's domestic legal processes and their enforcement. That was not the case either legally or *de facto*. The applicant could have avoided the risk of being detained for the purposes of ensuring his removal by returning to Germany voluntarily with a substitute travel document, it being noted that the decision to cancel his passport had included the information that a substitute travel document could be issued any time for the purposes of his voluntary return to Germany.

25. The Administrative Court of Appeal added that it could be ruled out that the applicant would be exposed to treatment by the Thai authorities falling short of international minimum standards as a result of the cancellation of his passport. While it was known that the conditions of detention in Thailand, including in the Immigration Detention Centre, were poor and that the accommodation, hygiene conditions, health care and nutrition were inadequate by European standards, there were no indications that the applicant's detention there would fall short of international minimum standards, in particular because it was expected to be of a short duration. For

that reason, those factors did not need to be part of the decision to cancel the passport.

26. By a decision of 10 February 2015, the Federal Administrative Court rejected the applicant's application for leave to appeal on points of law. It held that section 7, sub-section 1, no. 2 of the Passport Act by virtue of section 8 of that Act (see paragraph 40 below) also gave a power to cancel a passport in order to ensure an effective criminal prosecution; given that purpose, it was not only intended to prevent an accused from leaving Germany but also to give power to refuse to grant or to cancel a passport in order to make an accused person who was abroad return to Germany. The requirements of section 7, sub-section 1, no. 2 of the Passport Act were met if the passport holder was and intended to remain abroad to avoid criminal prosecution. To determine whether or not that was the situation, a global assessment of all the circumstances of the case was required, including, in particular, the individual's conduct and the sentence he or she might face. The Administrative Court of Appeal had applied these criteria and had found that the applicant had sought to evade prosecution by remaining in Thailand. The Federal Administrative Court added that it was irrelevant to the determination of whether the cancellation of a passport had been lawful whether the German foreign representation had or had not notified the authorities of the foreign State in which the individual was present of that cancellation. Such considerations were not to be taken into account, even if the foreign representation had notified the foreign State on the assumption that it would then take measures to terminate the individual's stay in the country. As the Administrative Court of Appeal had rightly found, it was a domestic matter for the authorities of the State in which the German national was present how they reacted to being notified that the individual's passport had been cancelled. Although the German foreign representation might have been able to foresee that reaction, that did not alter the fact that it had no legal means of influencing it. Lastly, the Federal Administrative Court added that the Administrative Court of Appeal had established, in a legally binding manner, that the conditions of detention in Thailand complied with international minimum standards. The question of whether the cancellation of the passport had to take into account a risk that the individual would be exposed to treatment in breach of human rights standards by the State in which he then was did not arise in the present case.

27. On 14 July 2015, the Federal Constitutional Court declined to accept the applicant's constitutional complaint (no. 1 BvR 817/15) for adjudication without providing reasons. The decision was served on the applicant's lawyer on 17 August 2015.

28. On 11 February 2016 the applicant lodged application no. 10100/16 in respect of this set of proceedings.

(b) The proceedings concerning the lawfulness of the enforcement of the decision to cancel the applicant's passport

29. By a judgment of 30 November 2015 the Berlin Administrative Court dismissed the applicant's application for a declaration that the cancellation of his passport as carried out by the German embassy in Bangkok had been unlawful while observing that certain measures taken by officials of the German embassy and the German Federal Office for Criminal Investigation leading to the applicant's arrest were subject to separate proceedings in the civil courts (see paragraphs 33-36 below). It found that the actions of the German embassy officials in Bangkok and of the liaison officer of the German Federal Office for Criminal Investigation had been lawful and had not infringed the applicant's rights. The decision concerned, *inter alia*, the actions of the officials of the German embassy who had served the decision to cancel the passport on the applicant while he was in the custody of the Thai authorities, after the German embassy had been informed of his arrest in accordance with the request of 27 May 2010 (see paragraphs 12 and 13 above). It was the role of consular officials to serve documents on persons present within their consular district at the request of German authorities. Those documents included, in particular, decisions from the embassy such as the order to cancel the applicant's passport. The detention of the applicant by the Thai authorities with a view to his removal following the cancellation of his passport was however not attributable to Germany. The questions of whether the decision to cancel his passport had been lawful and what aims that cancellation could legitimately pursue were *res judicata*.

30. By an order of 16 September 2019 the Berlin-Brandenburg Administrative Court of Appeal rejected the applicant's application for leave to appeal. It found, *inter alia*, that the causal link between the cancellation of the applicant's passport and his detention by the Thai immigration authorities did not make the cancellation a measure depriving the applicant of his liberty. The applicant's detention had been based on a sovereign and autonomous decision by the Thai authorities, which was not attributable to Germany simply because the German authorities had cancelled the applicant's passport while fully aware that the Thai response to international search requests was to detain and remove foreign nationals after their own States had restricted or cancelled their passports. The Thai authorities had not become Germany's "tool". The finding that the applicant's detention was based on an autonomous decision of the sovereign Thai authorities was not called into question by the fact that the German authorities had requested the Thai authorities' assistance with the applicant's arrest. In international relations, Germany was bound to accept the procedures of another State in so far as doing so did not conflict with higher-ranking legal principles; there had been no unlawful circumvention of the provisions on international cooperation in criminal matters and no "disguised extradition". The detention of the applicant in Thailand was not attributable to Germany and the German

authorities could not be reproached for the length of that detention: as illustrated by the request for the Thai authorities' assistance in finding and arresting the applicant, his whereabouts were unknown to the German authorities and the Administrative Court's finding that the applicant could not require German officials to travel to Thailand to return him to Germany in the uncertain event of his arrest was clearly correct.

31. On 16 December 2020 the Federal Constitutional Court declined to accept the applicant's constitutional complaint (no. 1 BvR 2401/19) for adjudication without providing reasons. The decision was served on the applicant's lawyer on 21 January 2021.

32. On 28 May 2021 the applicant lodged application no. 29507/21 in respect of this set of proceedings.

(c) The proceedings concerning the lawfulness of certain actions of German officials in Thailand leading to the applicant's arrest

33. By an order of 7 December 2016 the Düsseldorf District Court found that the letter of 6 May 2010 to the Thai Immigration Bureau (see paragraph 9 above), the request of 27 May 2010 to the Royal Thai Police for the Thai authorities' assistance in finding and arresting the applicant (see paragraph 12 above) and the applicant's arrest in Bangkok on 2 June 2010 (see paragraph 13 above) had been lawful. It had been necessary for the search and arrest to be carried out by the Thai authorities since Germany did not have jurisdiction in Thailand. The letters of 6 and 27 May 2010 and the applicant's arrest by the Thai police had made that search and arrest by the Thai authorities possible and had therefore been lawful.

34. By an order of 23 February 2017 the Düsseldorf Regional Court dismissed the applicant's appeal as ill-founded. It had not been possible for the Federal Office for Criminal Investigation or other German authorities to search for and arrest the applicant in Thailand because Germany did not have the jurisdiction to do so. It was for that reason that it had been necessary for the Thai authorities to carry out the search and arrest; the execution of that search and arrest was not attributable to the German authorities. The Regional Court found that the actions of the German embassy and of the German Federal Office for Criminal Investigation had been based on a valid warrant for the arrest of the applicant. In cases where a wanted person was abroad, extradition proceedings did not, as a general principle, take precedence over measures to restrict an individual's passport, such measures having been the basis for the applicant's removal by the Thai authorities in the present case. According to Guideline no. 88(1) of the Guidelines for Foreign Relations in Criminal Affairs (see paragraph 42 below), an extradition request could only be initiated if the disadvantages suffered by the wanted person in connection with the extradition, in particular the duration of the extradition proceedings and the prison conditions in the foreign State, were not disproportionate to the public interest in prosecution or the enforcement of a sentence. Under the

second paragraph of that Guideline, the public prosecutor's office should also consider whether the German foreign representation should be asked to order restrictions on the wanted person's passport. In view of the expected duration of the extradition proceedings and the correspondingly long duration of his detention with a view to his extradition from Thailand, which would most likely have affected the applicant much more severely, it was appropriate to avoid extradition proceedings and instead to consider restrictions on the applicant's passport.

35. The Regional Court found the further measures taken by the German authorities on that basis to have been lawful. The lawfulness of the decision to cancel the applicant's passport was *res judicata*. The Federal Administrative Court had established in earlier proceedings that whether the German foreign representation had or had not notified the authorities of the State in which an individual was present that the individual's passport had been cancelled was irrelevant to the determination of whether it had been lawful to cancel the passport, even if the foreign representation had given that notification on the assumption that the foreign authorities would then take measures to end the individual's stay in their country (see paragraph 26 above). All communications between liaison officers of the German Federal Office for Criminal Investigation and the Thai authorities had been the lawful implementation of the lawful decision to cancel the applicant's passport. The measures subsequently taken by the Thai authorities were not attributable to Germany as they were matters domestic to Thailand, and Germany could not influence those measures. Even though the actions of the German Federal Office for Criminal Investigation had been a concurrent cause *((mit-)ursächlich gewesen sind*) of the applicant's deprivation of liberty by the Thai authorities, there had been no breach of Germany's obligations under international law. Besides their not being attributable to Germany, neither the circumstances of the applicant's arrest and removal nor his detention pending removal, nor the conditions of that detention, had breached international law standards, as had also been established in the administrative court proceedings (see paragraphs 25 and 26 above). The German authorities had acted on the basis of a valid arrest warrant and the applicant's deprivation of liberty did not breach Article 5 of the Convention. Lastly, the measures taken by and attributable to the German authorities were not disproportionate in terms of the disadvantages suffered by the applicant, as the public interest in effective criminal prosecution outweighed the applicant's right to liberty.

36. On 18 November 2020 the Federal Constitutional Court, after requesting and receiving a submission from the Federal Prosecutor General, declined to accept the applicant's constitutional complaint (no. 2 BvR 604/18) for adjudication without providing reasons. That decision was served on the applicant's lawyer on 30 November 2020.

37. On 28 May 2021 the applicant lodged application no. 29507/21 in respect of this set of proceedings.

5. The applicant's earlier applications to this Court

38. The applicant had lodged two earlier applications with this Court, in 2011 and 2015. These related, broadly speaking, to the same events as those at issue in the present applications. He had complained, in particular, about his detention in Germany following his return from Thailand and about his criminal conviction in Germany. Both applications were declared inadmissible by the Single Judge. In so far as the applicant had also complained in one of his earlier applications about the measures at issue in the present applications, his complaints had been declared inadmissible by the Single Judge on the ground that they were premature, given that relevant proceedings before the domestic courts were still pending.

RELEVANT DOMESTIC LEGAL FRAMEWORK AND PRACTICE

A. The Criminal Code

39. Article 51 of the Criminal Code, in so far as relevant, reads as follows:

Article 51 [Crediting of time spent in remand detention]

"(1) If a convicted person has been remanded in detention or otherwise subjected to deprivation of liberty because of an offence which is or was the subject of the proceedings, that time is credited against a determinate sentence of imprisonment or a fine. ...

(4) When crediting a fine against time spent in detention on remand or vice versa, one day of deprivation of liberty corresponds to one day's fine at a daily rate. Where a foreign penalty or deprivation of liberty is to be credited, the court determines the rate at its discretion."

B. The Passport Act

40. The relevant provisions of the Passport Act (*Passgesetz*) read as follows:

Section 7

"(1) The authorities shall refuse to issue a passport when there are reasonable grounds to believe that the passport applicant

...

2. intends to evade prosecution or sentencing or the imposition or execution of a custodial measure of rehabilitation and prevention which is to be carried out in the territory in which this Act applies;

...

(4) The authorities may not refuse to issue passports or passport substitutes to enter the territory to which this Act applies."

Section 8

"Passports or other official identification papers intended exclusively for use as passport substitutes may be revoked if facts come to light which would justify refusing a passport pursuant to Section 7, sub-section. 1."

C. The Administrative Procedures Act

41. Section 43 of the Administrative Procedures Act (*Verwaltungsverfahrensgesetz*) provides:

Section 43 [Validity of an administrative act]

"(1) An administrative act shall become effective as regards the person for whom it is intended or who is affected by it when she or he is notified of it. The administrative act shall apply in the meaning notified.

..."

D. Guidelines for Foreign Relations in Criminal Affairs

42. Guideline no. 88 of the Guidelines for Foreign Relations in Criminal Affairs (*Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten*) of the Federal Ministry of Justice reads as follows:

No. 88 [Initiation of an extradition request, measures imposing passport restrictions]

(1) The appropriate German authority shall initiate a request for extradition with the supreme judicial authority if:

(a) there are specific reasons to believe that the wanted person is currently in a particular foreign State;

(b) that State is under a treaty obligation to extradite the person or the extradition appears to be admissible under that State's law notwithstanding the absence of a treaty obligation; and

(c) the disadvantages suffered by the wanted person in connection with the extradition, in particular the duration of any extradition proceedings and the prison conditions in the foreign State, are not disproportionate to the public interest in prosecution or enforcement of a sentence. The significant challenges associated with issuing extradition documents, and the fact that the costs incurred in connection with issuing the documents and carrying out the extradition are likely to be high, can also be taken into account in the balancing exercise.

(2) The public prosecutor shall examine whether the German foreign representation should be asked to impose passport restrictions (Sections 7, 8 and 19 of the Passport Act)."

E. Extradition and removal practice between Germany and Thailand

43. There is no international treaty governing extradition between Germany and Thailand. The conditions under which Germany may request extradition or it may be approved by Thailand are governed by the relevant national laws. When initiating an extradition procedure, the appropriate public prosecutor's office also examines whether the overseas German representation should be asked to impose passport restrictions under paragraph 2 of Guideline no. 88 of the Guidelines for Foreign Relations in Criminal Affairs (see paragraph 42 above). According to the Government, at the time of the applicant's removal the German authorities were frequently told by their Thai counterparts that Thailand would not agree to extradition but would instead wish to remove the individual in question: extradition has however subsequently been preferred. At the time of the exchange of observations in 2023, a total of seventeen extradition requests had been made to Thailand since 2012 and Thailand had granted the extradition request and extradited the individual in question in four of those cases.

COMPLAINTS

44. The applicant alleged that Germany was responsible for his arrest and his detention in Thailand in poor conditions. The German authorities had caused his detention in Thailand by cancelling his passport, which had rendered his previously legal stay in Thailand illegal and thus led to his being detained with a view to removal. He had been the victim of a "disguised extradition" and the German authorities had circumvented the extradition procedure and its safeguards, which should have taken precedence over the restrictions on his passport, by misusing the power to cancel his passport and cooperating with the Thai authorities in a collusive manner. His detention in Thailand had not been brought about in a manner provided for by law, in breach of Article 5 § 1. The German authorities had moreover breached his rights under Article 3 of the Convention by deliberately bringing about his detention in Thailand in poor conditions which were incompatible with international standards.

THE LAW

45. Article 3 of the Convention provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

46. Article 5 § 1 of the Convention provides, in so far as relevant, as follows:

> "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:
>
> ...
>
> (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;
>
> ..."

A. Joinder of the applications

47. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

B. The parties' submissions

1. The Government

48. The Government asked the Court to examine whether the applicant's complaints were inadmissible based on Article 35 § 2 (b) of the Convention given the applicant's earlier applications, which the Court had declared inadmissible (see paragraph 38 above). The Government were not in a position to ascertain whether the applicant had already complained about the disputed measures in those applications.

49. The Government submitted that the applications were inadmissible because Germany had not had jurisdiction for the purposes of Article 1 of the Convention with respect to the applicant's arrest and detention in Thailand. The recognised requirements for extraterritorial jurisdiction were not met. The German consular officers had given the applicant a copy of the decision to cancel his passport while he was in the custody of the Thai authorities (see paragraph 13 above). However, the German officials did not have physical control over the applicant and the applicant's detention was not a necessary consequence of the German authorities ordering the cancellation of the passport. The order only obliged him to hand over his passport and identity papers. The applicant's arrest and detention were sovereign decisions of the Thai authorities and did not engage Germany's responsibility. It would amount to a "cause and effect" notion of jurisdiction if Germany were responsible for the applicant's detention in Thailand. The present case differed from that of *Öcalan* v. *Turkey* ([GC], no. 46221/99, ECHR 2005-IV), where the applicant had been arrested by the Kenyan authorities and had then immediately been under the physical control of Turkish officials, who had

deprived him of his liberty and removed him to Türkiye. Türkiye had exercised extraterritorial jurisdiction in that case. In the present case, German officials did not have physical control over the applicant during his eight-day detention in Thailand. Germany had no decisive influence over the Thai authorities either.

50. The present case also differed from *Stephens v. Malta (no. 1)* (no. 11956/07, 21 April 2009) and *Vasiliciuc v. the Republic of Moldova* (no. 15944/11, 2 May 2017). In both of those cases, the Court had attributed the applicants' arrest and detention in another State to the Contracting Party which had issued the arrest warrant and requested the applicants' extradition on the basis of that warrant. While the applicants had been under the control and authority of the State which arrested them, the request for extradition had been the reason for their arrest and detention there. In the Government's view, the Court had established two requirements which had to be satisfied for a deprivation of liberty that occurred in one State to be attributable to another State: (i) the reason for the arrest and detention had to be the actions of the State requesting extradition; and (ii) the arrest in the requested State had to be in response to that State's international obligations (they referred to *Stephens (no. 1)*, §§ 51-52, and *Vasiliciuc*, §§ 23-24, both cited above). The requested State had to be entitled to presume the validity of the documents on which the extradition request was based, in particular the arrest warrant. The Government submitted that these requirements had not been met in the present case.

51. In this respect they emphasised that the arrest warrant issued by the German authorities had not been the reason for the applicant's arrest and detention in Thailand. Rather, the applicant's arrest and detention were based on the fact that, under Thai law, the lawfulness of the stay of foreign nationals required the foreign national to hold valid travel documents. In the absence of such documents, Thai law allowed for the foreign national's removal. The German authorities had not been able to influence the exercise of the Thai authorities' discretion in deciding to remove the applicant. The position was not the same as it would have been had they been facing a request to detain an individual with a view to extradition within the framework of an extradition treaty, when they could either order detention with a view to extradition or refuse to do so. Instead, in the present case, the Thai authorities had had a range of options to choose from to address the situation, including, for example, merely asking the applicant to leave the country or imposing a monetary fine on him. Neither the applicant's removal nor his detention with a view to ensuring his removal had been necessary consequences of the applicant's stay in Thailand having become unlawful and the Thai authorities had not been under any international law obligations that would have guided their decisions in that respect, which remained discretionary. The applicant would have had to assert his rights concerning his arrest and detention in

Thailand against the Thai authorities, which were bound by international human rights obligations in that respect.

52. The Government rejected the applicant's claim that the extradition process had been circumvented by the cancellation of his passport. With reference to Guideline no. 88 of the Guidelines for Foreign Relations in Criminal Affairs (see paragraph 42 above), they asserted that both German and Thai law provided for two options of mutual assistance in criminal matters: extradition and removal under immigration law. The German authorities had undertaken all the steps necessary for the applicant's extradition: the next step would have been the applicant's arrest by the Thai authorities based on the Interpol search notice, informing the German authorities of that arrest and asking them to formally request the applicant's extradition. It had been the Thai authorities that had chosen the procedure at issue, that is, to remove the applicant rather than to extradite him, in line with their practice at the relevant time; this choice was not attributable to the German authorities. Over the years the Thai authorities had changed their practice – either proceedings on the basis of formal extradition requests or removing the accused following the cancellation of their passports – back and forth at irregular intervals: at the time of the exchange of the parties' observations, they preferred formal extradition requests to be made, unlike their preferred practice at the time of the facts in the present case. The Government added that mutual assistance in criminal matters with certain States, which took place largely without treaty obligations, as in the present case, would come to a standstill, if Convention obligations were applied on the basis of a very extensive concept of jurisdiction. It also had to be taken into account that the applicant, by remaining in Thailand despite knowing that the German authorities had issued an arrest warrant against him, had decided to expose himself to the risk of repatriation in whatever form it might take; he could have avoided the arrest in Thailand by travelling back to Germany.

53. The Government added that the approach taken in *Stephens (no. 1)* and *Vasiliciuc* (both cited above) with respect to Article 5 § 1 could not be transferred to Article 3. The State issuing an arrest warrant was only responsible for those circumstances which were subject to its own jurisdiction and which directly caused the arrest and detention in the requested State. It did not follow from the Court's case-law that the requested State's own obligations under international law were transferred to the requesting State. From the outset there would be no causal connection between the equipment and operation of detention facilities in another State and the State requesting extradition. The conditions of detention in the facilities within its jurisdiction were the sole responsibility of the State that was extraditing or removing the individual. Taking a different approach would entail allowing persons accused of a criminal offence to decide, by choosing which State to go to and by relying on the Convention, whether a Contracting Party was able to enforce its legitimate interest in criminal prosecution and punishment.

54. Lastly, the applicant could no longer claim to a be "victim" for the purposes of Article 34 of the Convention in respect of the alleged violation of Article 3. In convicting and sentencing him as an accessory to unlawful deduction from wages and tax evasion, the Düsseldorf Regional Court had held that the applicant had been detained in Thailand as a result of the cancellation of his passport, and it had assumed that the applicant's allegations about the poor detention conditions in Thailand were true and credited the time which the applicant had spent in detention in Thailand at a one-to-three ratio (see paragraph 17 above). The Regional Court's assumption – in the applicant's favour – that his allegations about the conditions of his detention in Thailand had been true constituted an acknowledgment of the alleged Article 3 violation "in substance" and the crediting of the time spent in that detention at a one-to-three ratio constituted sufficient redress.

2. The applicant

55. The applicant submitted that Germany had exercised jurisdiction over his arrest and detention in Thailand. German officials had deliberately brought about his arrest and detention in collaboration with the Thai authorities and they had had decisive influence over all the essential aspects of the procedure. The German authorities had not only cancelled his passport but had informed the Thai authorities about the cancellation, requested the Thai authorities' support in arresting him and assured the Thai authorities that they would cover the costs of his arrest and removal (see paragraph 12 above). German consular officials had handed him the decision cancelling his passport in the presence of the Thai immigration police, who had arrested him shortly beforehand (see paragraph 13 above). In reality, the Thai authorities had not had a free choice as to whether they would arrest and detain him following the cancellation of his passport or whether they would refrain from doing so if, for example, he showed them that he had a ticket for a flight to Germany: by seizing his passport and identity documents in the presence of the Thai authorities, the German authorities had ensured that the Thai authorities would arrest and detain him for a breach of visa regulations and act in accordance with the request of the German authorities to arrest and detain him for the purposes of removing him to Germany. The German authorities had also been in control of the duration of his detention in Thailand as he had had to remain there until he was picked up by German officials, which made it impossible for him to return to Germany voluntarily at an earlier point.

56. In the applicant's view, Germany's responsibility under Article 3 of the Convention was essentially based on the fact that the German authorities had known about the conditions of detention in Thailand and that they had nonetheless brought about his detention and had had it maintained for eight days on the basis of their collaboration and agreement with the Thai

authorities. In particular, the German and the Thai authorities had agreed that he had to remain in detention until he was picked up by German officials. Other Europeans who had been detained together with him with a view to removal because of infringements of visa rules had been released from detention after one day for the purposes of voluntary departure. His partner would have been in a position to purchase a ticket for a flight to Germany but the German authorities had prevented him, by the said agreement, from putting an end to his detention in poor conditions. The duration of his detention could also have been shorter if his flight to Germany had already been organised when his passport was cancelled.

57. The applicant further argued that he had not lost his victim status. Firstly, he had not been afforded redress for the violation of his rights under Article 3 of the Convention and the domestic authorities had not acknowledged the Convention violation which he had suffered on account of the conditions of his detention in Thailand. The Regional Court's judgment (see paragraph 17 above) had neither expressly acknowledged that nor considered whether there could have been a Convention violation. The mere fact that the Regional Court had assumed that the applicant's allegations about the poor detention conditions in Thailand were true could not be treated as an acknowledgment of the disputed Convention violation. That assumption had been made in line with the requirement under Article 51 of the Criminal Code (see paragraph 39 above) to credit time already served in detention: crediting time served in detention abroad under Article 51 of the Criminal Code did not require the detention abroad to have been in breach of the Convention nor did it constitute awarding compensation for that. Crediting his time of detention in Thailand at a one-to-three ratio served to compensate for the poor conditions of his detention abroad, as foreseen by domestic law, but it did not allow for any inferences to be drawn that there had been a Convention violation; that that violation was being acknowledged; or that giving credit at the said ratio served to compensate for that Convention violation. The acknowledgement of a Convention violation "in substance" had to be discernible for the individual who had suffered it, which was not the case here.

C. The Court's assessment

58. The Government asked the Court to examine whether the applicant's complaints were inadmissible because he had complained in earlier applications about his deprivation of liberty in Thailand following the cancellation of his passport and the allegedly unlawful cooperation between the German and the Thai authorities (see paragraph 48 above). The Court observes that the applicant's complaints in one of his earlier applications had been declared inadmissible on the grounds that they were premature and therefore inadmissible for non-exhaustion of domestic remedies because the

relevant domestic proceedings were still ongoing (see paragraph 38 above). The present applications were lodged after the conclusion of those domestic proceedings and in respect of judgments of the domestic courts finding against the applicant. In those circumstances, the applicant's complaints before the Court cannot be declared inadmissible as being substantially the same, for the purposes of Article 35 § 2 (b) of the Convention, as the complaints which he had raised in his earlier application, prior to having exhausted domestic remedies (see also *Saure v. Germany (no. 2)*, no. 6091/16, § 7, 28 March 2023, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 120, 20 March 2018, and *Kafkaris v. Cyprus* (dec.), no. 9644/09, § 68, 21 June 2011).

59. As jurisdiction is a threshold criterion and jurisdiction for the purposes of Article 1 of the Convention is primarily territorial (see *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, §§ 184-185, 14 September 2022), the Court needs to determine whether Germany exercised jurisdiction within the meaning of Article 1 in respect of the applicant's arrest and detention in Thailand.

60. As a starting point, the Court notes that the mere fact that decisions taken at national level have had an impact on the situation of individuals residing abroad is not, in principle, such as to establish the jurisdiction of the State concerned over them outside its territory (see *M.N. and Others v. Belgium* (dec.) [GC], no. 3599/18, § 112, 5 May 2020, and *H.F. and Others v. France*, cited above, § 200). The Court has, however, recognised an exception to this principle in that it found that requesting an individual's extradition in the framework of an extradition treaty triggers the requesting State's jurisdiction in respect of Article 5 of the Convention in respect of the individual's detention in the requested State, because the requested State acted in response to an international obligation from the extradition treaty (see *Stephens (no. 1)*, §§ 50-54, and *Vasiliciuc*, §§ 23-25, both cited above).

61. In the present case, no extradition treaty existed between Germany and Thailand (see paragraphs 23 and 43 above) and the German authorities did not request the applicant's extradition. The Thai authorities did therefore not act in response to any international obligations when they decided to remove the applicant following the cancellation of his passport by the German authorities (contrary to the situation at issue in *Stephens (no. 1)*, §§ 51-52, and *Vasiliciuc*, §§ 23-24, both cited above).

62. Moreover, according to the Government's uncontested submissions, it had been the Thai authorities, not the German authorities, that had chosen the procedure of international cooperation in criminal matters in the applicant's case, i.e. to remove him following the cancellation of his passport rather than to proceed on the basis of an extradition request, in line with their practice at the relevant time (see paragraphs 43 and 52 above). By choosing this procedure of international cooperation, which was not subject to any treaty obligations, the Thai authorities retained full control of the entire

process. Notably, the Thai authorities were free to decide whether or not to expel the applicant following the cancellation of his passport (see paragraphs 24, 26 and 30 above) and, if they chose to do so, whether to detain him in this connection.

63. The Court further observes that there is no doubt that only the Thai authorities had physical power and control over the applicant when they arrested him for breaches of Thai visa regulations immediately after the cancellation and seizure of his passport and during his detention in the Immigration Detention Centre (see *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, § 569, 30 November 2022, and *Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC], no. 39371/20, § 205, 9 April 2024, and paragraph 13 above; compare and contrast *Al-Saadoon and Mufdhi v. the United Kingdom* (dec.), no. 61498/08, §§ 84-88, 30 June 2009, where the respondent State exercised control over the facilities in which the applicants were detained in Iraq, as well as *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 234-235 and 238-239, ECHR 2012, where officials of the respondent State arrested and handed over the applicant to US agents on the respondent State's territory). In this connection, the Court cannot but note that the Thai authorities arrested the applicant because the German authorities did not have jurisdiction to do so in Thailand, as the domestic courts pointed out (see paragraphs 34-35 above), and that the German authorities' course of action served to respect Thailand's sovereignty and to respect international law (see *Öcalan*, cited above, §§ 90 and 93-99). It follows that, in the absence of physical power and control over the applicant, Germany did not exercise extraterritorial jurisdiction over the applicant's arrest and detention on the basis of the personal concept of jurisdiction (see *Ukraine and the Netherlands*, cited above, §§ 559 and 569).

64. In the light of the foregoing, the Court concludes that Germany did not exercise jurisdiction within the meaning of Article 1 of the Convention in respect of the applicant's arrest and detention in Thailand because (i) the Thai authorities did not act in response to any international obligations when they decided to remove the applicant following the cancellation of his passport by the German authorities and (ii) the German authorities did not exercise physical power and control over the applicant in respect of his arrest and detention in Thailand.

65. The considerations apply *a fortiori* in respect of the applicant's complaint under Article 3 of the Convention, as a State does not exercise control and authority over the conditions of detention in the facilities in another State (see *H.F. and Others v. France*, cited above, § 198), the detained individual being under the exclusive control of the authorities of that other State (compare and contrast in the factually distinct scenario of military occupation *Al-Saadoon and Mufdhi*, cited above, §§ 84-88). The German authorities did not exercise physical power and control over the detention

conditions in the Immigration Detention Centre (see *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 136, ECHR 2011, and *Ukraine and the Netherlands*, cited above, § 569).

66. It follows that the applications must be found incompatible *ratione personae* with the provisions of the Convention and therefore inadmissible pursuant to Article 35 §§ 3 and 4 thereof.

For these reasons, the Court, unanimously,

Declares the applications inadmissible.

Done in English and notified in writing on 27 March 2025.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President