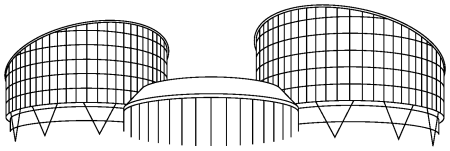

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KLINKENBUSS v. GERMANY

(Application no. 53157/11)

JUDGMENT

STRASBOURG

25 February 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Klinkenbuß v. Germany,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Ganna Yudkivska, *President,*
Angelika Nußberger,
Khanlar Hajiyev,
Erik Møse,
Faris Vehabović,
Síofra O'Leary,
Carlo Ranzoni, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 2 February 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 53157/11) 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") by a German national, Mr Andreas Klinkenbuß ("the applicant"), on 18 August 2011.

2. The applicant was represented by Mr D. Schneider-Addae-Mensah, a lawyer practising in Strasbourg. The German Government ("the Government") were represented by two of their Agents, Mr H.-J. Behrens and Mrs K. Behr, of the Federal Ministry of Justice and Consumer Protection.

3. The applicant alleged, in particular, that his continued confinement in a psychiatric hospital had breached his right to liberty under Article 5 § 1 of the Convention.

4. On 14 April 2014 the complaint concerning the continuation of the applicant's detention in a psychiatric hospital was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and is currently detained in a psychiatric hospital in Lippstadt.

A. The applicant's conviction and the order for his placement in a psychiatric hospital and execution thereof

6. In 1979 the applicant forced two seven-year-old girls, and in 1980 a four-year-old girl, to undress and hit them with a stick. In 1981 the applicant forced a seven-year-old girl to undress and lay on top of the girl on a bench. The criminal proceedings relating to these offences were discontinued because of the applicant's lack of criminal responsibility as a minor.

7. On 21 January 1983 the Münster Regional Court convicted the applicant of attempted rape together with sexual assault and dangerous assault and of attempted murder and assault. Applying the criminal law relating to young offenders, it sentenced him to five years' imprisonment and ordered his detention in a psychiatric hospital under Article 63 of the Criminal Code (see paragraph 28 below).

8. The Regional Court found that on 22 June 1982 the applicant, then aged seventeen, had forced a fourteen-year-old girl to follow him into a forest where he had attempted to rape her, sexually assaulted her with a stick and then attempted to kill her by strangling her to cover up his offences. When, on return to the crime scene, he realised that his victim was not dead, he forcefully hit her buttocks with a branch.

9. In the Regional Court's finding, it was necessary to order the applicant's detention in a psychiatric hospital under Article 63 of the Criminal Code. It considered that the applicant had acted with diminished criminal responsibility (Article 21 of the Criminal Code; see paragraph 27 below). Having regard to the findings of expert H., the court was convinced that the applicant had reduced mental capacities which had been caused by infantile brain damage. This damage, combined with failings in his upbringing (he had repeatedly been hit by his father with a stick himself), had caused a consciousness disorder and the sadistic sexual tendencies the applicant had disclosed in his offence. These disorders amounted to an "other serious mental abnormality" for the purposes of Articles 20 and 21 of the Criminal Code (see paragraphs 26-27 below). Moreover, a comprehensive assessment of the applicant's personality revealed that, as a result of his condition and notably the sadistic tendencies which had manifested themselves in the offence of which he was found guilty, he could be expected to commit further unlawful acts and was therefore dangerous to the general public.

10. Since 29 January 1983 the applicant has been detained in a psychiatric hospital.

11. In December 1990, when the applicant was granted leave from detention, he attacked a twenty-six-year-old cyclist, threatened her with a knife and attempted to force her into a forest. He was chased away by a car driver. The criminal proceedings in this respect were discontinued with regard to his previous conviction.

12. The courts dealing with the execution of sentences reviewed the applicant's detention at regular intervals. In particular, on 5 February 2010 the Paderborn Regional Court ordered the applicant's detention in a psychiatric hospital to continue. It had noted, in particular, that the applicant had refused therapeutic discussions. There was stagnation in the applicant's treatment, the representatives of the psychiatric hospital having explained that they considered substantial changes in the applicant's personality by sex therapy no longer possible.

B. The proceedings at issue

1. The proceedings before the Paderborn Regional Court

13. On 28 January 2011 the Paderborn Regional Court ordered the continuation of the applicant's detention in a psychiatric hospital under Articles 67d and 67e of the Criminal Code (see paragraphs 29-31 below).

14. The Regional Court noted that external psychiatric expert T., in his report dated 28 January 2010, had diagnosed the applicant, whom he had examined in person, with an abnormality of the sex chromosomes (so-called Klinefelter syndrome). The latter had most probably caused an endocrine personality syndrome characterised by retardation and disorders in the development of a person's personality and by an insufficient internalisation of ethical rules. The applicant had therefore developed a dissocial and schizoid personality. It was unclear whether the applicant still suffered from sadistic paraphilia. The expert considered that the applicant's retardation had partially been offset by hormonal treatment. Moreover, the applicant's dissocial conduct and schizoid personality disorder had been alleviated by social therapy and psychotherapy.

15. In assessing the risk emanating from the applicant, the expert considered that it had to be taken into account that the applicant had already committed a number of sadistic offences against children. Moreover, the seriousness of the offence of which the applicant had been convicted in 1983, and the attack on a woman at a time when he had already been detained in the psychiatric hospital in 1990, had to be taken into consideration. It appeared that it had not been possible to continuously pursue sex therapy with the applicant during his long psychiatric internment. There was a risk that, if the applicant were overstrained or frustrated, he might commit offences as a result of sadistic tendencies. The expert stated, however, that it was impossible for him to assess how far the applicant was still driven by sadistic fantasies. Consequently, the risk that the applicant would reoffend if released was difficult to assess and could only be determined in the course of further therapy.

16. A representative of the psychiatric hospital, in submissions to the court dated 7 December 2010, confirmed that the applicant had spoken with

a psychologist on his request. However, he was still unable to reflect on the motives for his offence. Therefore, it was difficult to assess how dangerous the applicant was; there was a risk that he would reoffend if released. Furthermore, the therapist responsible for the applicant confirmed that it was impossible to make a proper assessment of the danger posed by the applicant.

17. The Regional Court, having heard the applicant and having regard to the evidence before it, considered that the continuation of the applicant's detention in a psychiatric hospital had to be ordered. Despite the fact that the applicant had proved reliable during leave from detention during recent years, it could not be expected with sufficient probability that the applicant would not reoffend if released. In particular, it could not be ruled out that his sadistic tendencies persisted. The applicant was currently not undergoing therapy, in the proper sense of the term, and suffered from hospitalism.

18. The Regional Court further considered that the continuation of the applicant's detention was proportionate. In support of this view, it referred to the serious offence which had led to the applicant's placement in a psychiatric hospital, to the fact that he had relapsed during the execution of his detention order and to the potential risk, as confirmed by the expert and the psychiatric hospital staff, that the applicant would reoffend if released.

2. The proceedings before the Hamm Court of Appeal

19. On 23 February 2011 the applicant lodged an appeal against the Regional Court's decision.

20. On 15 March 2011 the Hamm Court of Appeal, endorsing the reasons given by the Regional Court, dismissed the applicant's appeal.

3. The proceedings before the Federal Constitutional Court

21. By submissions dated 1 April 2011, the applicant lodged a constitutional complaint with the Federal Constitutional Court. He argued that his continued detention in a psychiatric hospital for more than twenty-eight years was disproportionate and had therefore breached his constitutional right to liberty and the constitutional protection of the rule of law. It had been insufficient for the courts to base their assessment that he was currently still dangerous on offences dating back more than twenty-eight years and on an incident during the execution of his detention order dating back more than twenty years. Moreover, the experts and courts had confirmed that he was no longer undergoing any therapy and that it was unclear whether he was still dangerous to the public.

22. On 27 July 2011 the Federal Constitutional Court declined to consider the applicant's constitutional complaint, without giving reasons (file no. 2 BvR 735/11).

C. The execution of the applicant's detention in a psychiatric hospital

23. The applicant underwent several courses of therapy, including social therapy and psychotherapy, during his detention in the psychiatric hospital. After the applicant had failed in his attempts to complete a sex therapy course on a number of occasions, the Lippstadt Psychiatric Hospital authorities decided to discontinue attempts at sex therapy for some time. The applicant was transferred to the so-called "long-stay" department of the hospital in 2006, where he was detained during the time covered by the proceedings at issue and where he did not undergo any sex therapy. The purpose of the applicant's placement in the "long-stay" department was in fact to grant him a break from his failed attempts to complete sex therapy. He was being prepared for another attempt at completing sex therapy in psychotherapeutic one-to-one meetings with a psychologist. However, he had repeatedly declined offers to restart such individual or group therapy.

24. The applicant has been working in the factory on the premises of the psychiatric hospital. When granted leave under escort several times per year, he has visited members of his family.

D. Further developments

25. On 18 January 2012 the Paderborn Regional Court, endorsing the reasons given in its previous decision, ordered the applicant's continued detention in a psychiatric hospital. It agreed with the view expressed by the psychiatric hospital representative that sadism could not be cured and considered that there was a high risk that the applicant would again commit further serious offences against the life and sexual self-determination of others. On 20 March 2012 the Hamm Court of Appeal dismissed the applicant's appeal.

II. RELEVANT DOMESTIC LAW

A. Provisions on criminal liability

26. Article 20 of the Criminal Code contains rules on the lack of criminal responsibility owing to mental disorders. It provides that a person who, upon commission of an act, is incapable of appreciating the wrongfulness of the act or of acting in accordance with such appreciation owing to a pathological mental disorder, a profound consciousness disorder, a mental deficiency or any other serious mental abnormality acts without guilt.

27. Article 21 of the Criminal Code governs diminished criminal responsibility. It provides that the punishment may be mitigated if the

perpetrator's capacity to appreciate the wrongfulness of the act, or to act in accordance with such appreciation, is substantially diminished upon commission of the act owing to one of the reasons indicated in Article 20 of the Criminal Code.

B. Provisions on detention in a psychiatric hospital

1. The order for a person's detention in a psychiatric hospital

28. Article 63 of the Criminal Code provides that if someone commits an unlawful act without criminal responsibility (Article 20 of the Criminal Code) or with diminished criminal responsibility (Article 21 of the Criminal Code), the court shall order his placement – without any maximum duration – in a psychiatric hospital, 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. That measure of correction and prevention (see Articles 61 et seq. of the Criminal Code) serves to rehabilitate detainees by therapy and to protect the public from further considerable unlawful acts (see section 1 § 1 of the North-Rhine Westphalia Execution of Measures of Correction and Prevention Act (*Maßregelvollzugsgesetz*)).

2. Judicial review and duration of detention in a psychiatric hospital

29. Pursuant to Article 67e of the Criminal Code, the court (that is, the chamber responsible for the execution of sentences) may review at any time whether the further execution of the order for a person's placement in a psychiatric hospital should be suspended, and a measure of probation applied, or should be terminated. It is obliged to do so within fixed time-limits (paragraph 1 of Article 67e). For persons detained in a psychiatric hospital, this time-limit is one year (paragraph 2 of Article 67e).

30. Article 67d of the Criminal Code contains provisions on the duration of detention. Paragraph 2 of that provision sets out that if there is no provision for a maximum duration of the confinement, or if the time-limit has not yet expired, the court shall suspend on probation further execution of the detention order as soon as it is to be expected that the person concerned will not commit any further unlawful acts on his or her release. Suspension shall automatically entail supervision of the conduct of the person concerned.

31. Article 67d § 6 of the Criminal Code provides, in particular, that if, after enforcement of an order for placement in a psychiatric hospital has started, the court finds that the conditions for the measure no longer persist or that the continued enforcement of the measure would be disproportionate, it shall declare the measure terminated. On termination of the measure, the conduct of the person concerned shall be supervised.

C. Provision on sentencing in respect of juvenile offenders

32. Under Article 18 § 1 of the Juvenile Courts Act, the maximum term of imprisonment which can be imposed on a juvenile offender (aged between fourteen and eighteen years) for a criminal offence is ten years.

THE LAW

ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

33. The applicant complained that the order for the continuation of his placement in a psychiatric hospital – without his receiving any therapy any longer, on the basis of insufficient expert advice and for a duration exceeding twenty-eight years – had violated his right to liberty. He relied on Article 5 § 1 of the Convention, which, in so far as relevant, reads 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:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ...
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; ..."

34. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

36. The applicant took the view that the order for the continuation of his detention had violated Article 5 § 1 of the Convention. It had neither been justified under sub-paragraph (e), a special provision for psychiatric

internment nor, even assuming that it was applicable, under sub-paragraph (a) of that provision.

37. The applicant submitted that there was no causal link between his conviction and his continued detention, a purely preventive measure, for the purposes of Article 5 § 1 (a).

38. The applicant further argued that he remained in detention despite the fact that it had not been proved that he suffered from a mental illness, which he contested, even according to the reports drawn up after an insufficient examination by medical experts. The domestic courts had not determined from which disease exactly he was suffering; some of the disorders diagnosed by the experts, in particular the personality disorder, could not be classified as illnesses. In any event, the alleged danger he represented did not result from a mental illness.

39. Moreover, the applicant submitted that he had no longer received any therapy since 2005 and thus had no prospect of a life outside prison. He stated that he was ready to undergo further social therapy, but such therapy was not available to him at his current place of detention. He could not be forced to share intimate thoughts with therapists in sex therapy as this violated his right to privacy.

40. In any event, in the applicant's submission, he considered the continuation of his detention disproportionate in view of the total duration of his internment, of some thirty years. He stressed that he had not been convicted of any offence other than the single offence of which he had been found guilty in 1982, which he had committed as a minor and which could not be classified as most serious. Prison sentences for minors could not exceed ten years and detention in a psychiatric hospital should not exceed that time-limit either.

(b) The Government

41. In the Government's submission, the applicant's detention in a psychiatric hospital had complied with Article 5 § 1 of the Convention. It had been justified under both sub-paragraph (a) and sub-paragraph (e) of that provision.

42. The Government argued, in particular, that the applicant's deprivation of liberty was justified as detention after conviction within the meaning of sub-paragraph (a) of Article 5 § 1. There was still a causal link between the applicant's conviction by the Münster Regional Court and his continuing detention, as the applicant was still detained for the protection of the public. All medical experts, albeit using different terminology, had agreed that the applicant continued to suffer from the same mental illness, namely a pathological personality disorder with schizoid and dissocial elements and a sexual preference disorder including sadism. As he had been unable to address, in sex therapy, his condition and the most serious sexual

offences he had committed, there was a high risk that he would commit further similar serious sexual offences if released.

43. The Government confirmed that the applicant was currently detained in a so-called "long-stay" department of the psychiatric hospital, in which he did not receive any sex therapy. He had been transferred to that department in order to allow him a break after his repeated failed attempts to complete sex therapy. He had individual meetings with a therapist. He was being prepared to restart and complete therapy addressing his sexual offences. Until now the applicant had, however, declined repeated offers to restart therapy.

44. In the Government's submission, the applicant's detention was also proportionate despite the length of the applicant's confinement in a psychiatric hospital. They stressed that the Regional Court had examined that issue in its decision. The applicant had committed a very serious sexual offence, had relapsed subsequently and had refused sex therapy throughout his placement in a psychiatric hospital. The public interest in security outweighed the applicant's interest in his personal liberty in these circumstances.

2. The Court's assessment

(a) Recapitulation of the relevant principles

45. The Court reiterates that Article 5 § 1, sub-paragraphs (a) to (f), contain an exhaustive list of permissible grounds for deprivation of liberty; deprivation of liberty may, depending on the circumstances, be justified under one or more sub-paragraphs (see *Witold Litwa v. Poland*, no. 26629/95, § 49, ECHR 2000-III with further references).

46. Detention of a person "after" conviction, for the purposes of sub-paragraph (a) of Article 5 § 1, means that there must be a sufficient causal connection between the conviction and the deprivation of liberty at issue (see, *inter alia*, *Kafkaris v. Cyprus* [GC], no. 21906/04, § 117, ECHR 2008). However, with the passage of time, the link between the initial conviction and further deprivation of liberty gradually becomes less strong. The causal link required by sub-paragraph (a) might eventually be broken if a position were reached in which a decision not to release was based on grounds that were inconsistent with the objectives of the initial decision (by a sentencing court) or on an assessment that was unreasonable in terms of those objectives. In those circumstances, a detention that was lawful at the outset would be transformed into a deprivation of liberty that was arbitrary and, hence, incompatible with Article 5 (see *M. v. Germany*, no. 19359/04, § 88, ECHR 2009 with further references).

47. A decision not to release a detainee may 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 is, 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 *H.W. v. Germany*, no. 17167/11, § 112, 19 September 2013).

48. The reasonableness of the decision to extend a person's detention in order to protect the public from further offences committed by that person is called into question, in particular, where the domestic courts plainly had at their disposal insufficient elements warranting the conclusion that the person concerned was still dangerous to the public, notably because the courts failed to obtain indispensable and sufficiently recent expert advice (see, in the context of preventive detention, *Dörr v. Germany* (dec.), no. 2894/08, 22 January 2013; and *H.W. v. Germany*, cited above, § 107; compare, *mutatis mutandis*, in the context of Article 5 §§ 1 (e) and 4, *Ruiz Rivera v. Switzerland*, no. 8300/06, § 60, 18 February 2014).

(b) Application of these principles to the present case

49. In determining whether the applicant's detention complied with Article 5 § 1, the Court observes that his detention in a psychiatric hospital was ordered by the Münster Regional Court together with his conviction for, *inter alia*, attempted rape and attempted murder, and was extended in the proceedings at issue. It might therefore be justified under both sub-paragraph (a) of Article 5 § 1 as lawful detention of a person after conviction by a competent court and under sub-paragraph (e) of that provision as detention of a person of "unsound mind". Given that the applicant's psychiatric internment results from a criminal conviction, the Court shall examine, first, whether his detention was justified under Article 5 § 1 (a).

50. The applicant's detention occurred "after" conviction, within the meaning of that provision, if there was still a sufficient causal connection between the applicant's criminal conviction in 1983 and his continuing detention ordered in 2011. The Court observes that the reason for the domestic courts to extend the applicant's detention in a psychiatric hospital was to prevent the applicant from committing, as a result of his mental condition, further serious sexual offences similar to the offence of which he had been found guilty in 1983. The sentencing Münster Regional Court, for its part, had ordered the applicant's placement in a psychiatric hospital because it had to be expected that the applicant, as a result of his mental retardation and, in particular, his sadistic tendencies which had manifested themselves in the offence of which he was found guilty, would commit further unlawful acts. The domestic courts' decision not to release the applicant was therefore, as such, in line with the objectives of the judgment of the sentencing court.

51. The Court further takes note, in this context, of the applicant's argument that he was no longer receiving any therapy and was therefore deprived of any prospect of a life outside prison. It reiterates that the failure to offer suitable therapy to a person deprived of his or her liberty for being dangerous, thereby putting that person in a position to demonstrate that he or she was no longer dangerous, may result in the decision not to release the detainee becoming inconsistent with the objectives of the sentencing court's order for the person's detention (see paragraph 47 above).

52. The Court observes that it is uncontested between the parties that, at the relevant time, the applicant was detained in the so-called "long-stay" department of a psychiatric hospital in Lippstadt, where he did not complete the sex therapy considered necessary by the domestic courts in line with the findings of the psychiatric expert they had consulted. However, it takes note of the Government's explanation that the applicant had in fact been transferred to that department in order to grant him a break following several failed attempts to complete sex therapy. At the relevant time, he was being prepared by a psychologist to make a fresh attempt to complete sex therapy, but had repeatedly refused to restart such individual or group therapy as this interfered with his right to privacy.

53. The Court would stress that the objective of the applicant's detention in a psychiatric hospital, a measure of correction and prevention, was not only to protect the public from him as long as he was dangerous as a result of his condition: it was equally aimed at offering the applicant the necessary treatment to improve his state of health and thus to permit his rehabilitation. The Court has repeatedly stressed in that context that in order not to deprive persons placed in a psychiatric hospital of a prospect of release, the national authorities should see to it that any such placement be accompanied by efficient and consistent therapy measures, the implementation of which should be subject to particular scrutiny by the domestic courts (compare, *inter alia*, *Frank v. Germany* (dec.), no. 32705/06, 28 September 2010).

54. It is therefore essential that the applicant continued to be offered suitable treatment aimed at reducing the danger he represented to the public. Having regard to the material before it, the Court is satisfied that this condition was met during the applicant's detention at the relevant time. The applicant in fact did not contest that he had been offered the therapy reasonably considered necessary by the domestic courts, that is, sex therapy, and confirmed that he had refused to restart such a therapy. It follows that the domestic courts' decision not to release the applicant was consistent with the objectives of the judgment of the sentencing court in the present case.

55. In assessing whether the order for the continuation of the applicant's detention in a psychiatric hospital was also based on an assessment that was reasonable in terms of the objectives pursued by that measure by the sentencing court, the Court notes that in the applicant's submission, the

decision to extend his detention was based on an insufficient establishment of the facts, with the help of expert advice, as regards his alleged mental illness and the danger he represented.

56. The Court observes that the domestic courts based their assessment that the applicant was still suffering, as at the time of his offence and conviction, from a mental illness which made him dangerous to the public, on a sufficiently recent report by an external psychiatric expert, T., dating back one year. Having regard to the courts' findings in the light of the expert's advice, the Court is satisfied that they had at their disposal sufficient elements for their conclusion, for the purposes of Article 67d of the Criminal Code, that the applicant was suffering from a mental condition owing to which there was a risk that he would commit further serious sexual offences. They endorsed the expert's finding that the applicant suffered, in particular, from a schizoid personality disorder caused by so-called Klinefelter syndrome. Remaining uncertainties as to whether the applicant was still suffering, in addition, from sadistic paraphilia, do not call into question those findings. Moreover, it is uncontested that the applicant failed to complete the sex therapy considered necessary by the domestic courts, on the basis of expert advice, in order to reduce the danger he represented which had manifested itself in the serious sexual offence he had committed. The domestic courts' decision not to release the applicant was, therefore, based on an assessment which does not disclose any unreasonableness in this respect.

57. In determining whether the extension of the applicant's psychiatric internment was based on an assessment that was reasonable in terms of the objective pursued by that measure by the sentencing court to protect the public from sexual offences, the Court further takes note of the total duration of the applicant's detention. At the time of the proceedings at issue the applicant, aged 46, had been remanded in a psychiatric hospital for more than 28 years and thus for a considerable time. That detention had been ordered in respect of an offence the applicant had committed at the age of seventeen.

58. The Court observes that, while a term of imprisonment for an offence committed as a minor could not exceed ten years under domestic law, there was no maximum duration of detention in a psychiatric hospital (see paragraphs 32 and 28 above). It considers, however, that the reasonableness of the extension of a placement in a psychiatric hospital should be subject to particular scrutiny the longer the detention lasts (see, *mutatis mutandis*, in the context of Article 5 § 1 (e), *Frank*, cited above; *Graf v. Germany* (dec.) no. 53783/09, 18 October 2011; and *Klouten v. Germany* (dec.), no. 48057/10, § 60, 19 March 2013).

59. The Court notes that the Paderborn Regional Court, whose reasoning the Court of Appeal endorsed, addressed the issue of the proportionality of the continuation of the applicant's detention, albeit with relatively short

reasoning. The domestic courts based their decision on the fact that the offences the applicant had committed – attempted rape together with sexual assault and dangerous assault and attempted murder and assault of a fourteen-year-old girl – were serious, an assessment which is shared by the Court. Moreover, they considered – reasonably, as shown above – that there was a risk that the applicant would commit further similar serious offences if released. In view of these elements, the Court concludes that the domestic courts' assessment that the applicant's continuing detention was necessary despite the fact that it had already lasted a considerable time does not disclose any unreasonableness in this respect either.

60. Therefore, there was still a sufficient causal connection between the applicant's criminal conviction in 1983 and his detention at issue for the purposes of sub-paragraph (a) of Article 5 § 1.

61. The enforcement court's order for the continuation of the applicant's detention in a psychiatric hospital, which was based on Articles 67d and 67e, read in conjunction with Article 63 of the Criminal Code, was also lawful and ordered in compliance with a procedure prescribed by law, as required by Article 5 § 1 (a).

62. In view of the fact that the applicant's detention was therefore justified under sub-paragraph (a) of Article 5 § 1, the Court does not consider it necessary to examine whether that detention was justified, in addition, under sub-paragraph (e) of that provision.

63. There has accordingly been no violation of Article 5 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 5 § 1 of the Convention admissible;

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

Done in English, and notified in writing on 25 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Ganna Yudkivska
President