



## Grand Chamber hearing on the lawfulness of a convicted murderer's preventive detention

The European Court of Human Rights is holding a **Grand Chamber**<sup>1</sup> hearing today **Wednesday 29 November 2017 at 9.15 a.m.** in the case of **Ilseher v. Germany** (applications nos. 10211/12 and 27505/14).

*The hearing will be broadcast from 2.30 p.m. on the Court's Internet site ([www.echr.coe.int](http://www.echr.coe.int)). After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.*

The applicant, Daniel Ilseher, is a German national who was born in 1978 and is currently detained in a centre for persons in preventive detention on the premises of Straubing Prison (Germany).

In 1999, Mr Ilseher was convicted of murder in the Regensburg Regional Court and sentenced to ten years' imprisonment under the criminal law applicable to young offenders. The court found that in June 1997, Mr Ilseher, then aged 19, had strangled a woman who had been jogging on a forest path.

From July 2008 onwards, after he had served his full prison sentence, Mr Ilseher was remanded in provisional preventive detention. In June 2009, the Regensburg Regional Court ordered his retrospective preventive detention. The court, having regard to reports by a criminological expert and a psychiatric expert, found that Mr Ilseher was still harbouring violent sexual fantasies and that there was a high risk that he would again commit serious violent and sexual offences if released, including murder for sexual gratification.

From March 2010 until December 2013, Mr Ilseher engaged in proceedings before the German courts challenging the lawfulness of his preventive detention. In May 2011, he successfully appealed to the Federal Constitutional Court, which quashed the order for his preventive detention and remitted his case to the Regional Court. On 6 May 2011, the Regional Court, however, once again ordered Mr Ilseher's provisional preventive detention. After a series of appeals, the courts ultimately found that his preventive detention had been necessary, as a comprehensive assessment of Mr Ilseher, his offence, and his development during the enforcement of his sentence revealed that there was a high risk that he could commit serious crimes of a violent and sexual nature, similar to the one he had been found guilty of, if released. It was further noted that he still suffered from a sexual preference disorder (sexual sadism) which had caused and been manifested in his offence and that the therapy he had undergone until 2007 had not been successful. Since 20 June 2013, Mr Ilseher has been detained in a newly-built preventive detention centre at Straubing Prison. He has refused all offers of therapy at that centre.

In the new main proceedings on his retrospective preventive detention before the Regensburg Regional Court in 2011/2012, Mr Ilseher also lodged a motion for bias against one of the judges of that court, Judge P., who had ordered his retrospective preventive detention in June 2009. Judge P.

<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

had allegedly made a remark in a private meeting between Mr Ilseher's counsel and judges of the Regional Court in 2009, warning Mr Ilseher's lawyer to be careful after his release not to find him standing in front of her door waiting to "thank" her in person. The case was dismissed and was also dismissed on appeal to the Federal Court of Justice and the Federal Constitutional Court.

The proceedings for review of Mr Ilseher's provisional preventive detention lasted in total 11 months and one day over three levels of jurisdiction; and in particular eight months and 22 days before the Federal Constitutional Court.

Relying on Article 5 § 1 (right to liberty and security) and Article 7 § 1 (no punishment without law) of the European Convention on Human Rights, Mr Ilseher complains that his retrospective preventive detention has violated his right to liberty, and his right not to have a heavier penalty imposed than the one applicable at the time of his offence. Lastly, he complains under Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) about the duration of the proceedings for review of his provisional preventive detention and under Article 6 § 1 (right to a fair trial) about the lack of impartiality of one of the judges who had ordered his retrospective preventive detention.

## Procedure

The applications were lodged with the European Court of Human Rights on 24 February 2012 and 4 April 2014 respectively.

In its Chamber [judgment](#) of 2 February 2017, the European Court of Human Rights held, unanimously, that there had been no violation of Article 5 § 1 or Article 7 of the European Convention on account of Mr Ilseher's retrospective preventive detention from the moment when he was placed in a centre for psychiatric treatment, namely 20 June 2013 onwards; no violation of Article 5 § 4 on account of the duration of the proceedings for review of Mr Ilseher's provisional preventive detention; and no violation of Article 6 on account of the alleged lack of impartiality of one of the judges who had ordered his retrospective preventive detention. Furthermore, the Chamber decided, unanimously, to strike out of its list of cases the part of the application concerning Mr Ilseher's preventive detention from 6 May 2011 (namely, the date when the preventive detention order in question was issued) until 20 June 2013, in view of the Government's declaration recognising that Mr Ilseher had not been detained in a suitable institution for the detention of mental health patients during that period and awarding him compensation.

On 29 May 2017 the case was referred to the Grand Chamber at the request of Mr Ilseher<sup>2</sup>.

The following organisation was granted leave to intervene in the written proceedings as a third party: European Prison Litigation Network (EPLN).

## Composition of the Court

The case will be heard by a Grand Chamber, composed as follows:

**Guido Raimondi** (Italy), *President*,  
**Angelika Nußberger** (Germany),  
**Linos-Alexandre Sicilianos** (Greece),  
**Helena Jäderblom** (Sweden),

<sup>2</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Robert Spano (Iceland),  
Vincent A. De Gaetano (Malta),  
Nona Tsotsoria (Georgia)  
Işıl Karakaş (Turkey),  
Kristina Pardalos (San Marino),  
Paulo Pinto de Albuquerque (Portugal),  
Aleš Pejchal (the Czech Republic),  
Dmitry Dedov (Russia),  
Iulia Motoc (Romania),  
Jon Fridrik Kjølbro (Denmark),  
Georges Ravarani (Luxembourg),  
Alena Poláčková (Slovakia),  
Pauliine Koskelo (Finland), *judges*,  
Stéphanie Mourou-Vikström (Monaco),  
Lətif Hüseyinov (Azerbaijan),  
Jovan Ilievski (“the former Yugoslav Republic of Macedonia”), *substitute judges*,

and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

## Representatives of the parties

### Government

Almut Wittling-Vogel and Katja Behr, *Agents*,  
Thomas Giegerich, *Counsel*,  
Petra Viebig-Ehlert, Kristina Müller, Bernd Bösert, Christoph-Severin Haase, Soledad Bender, and  
Andreas Stegmann, *Advisers*;

### Applicant

Ingo-Jens Tegebauer and Markus Mavany, *Counsels*,  
Diana Thörnich, *Adviser*.

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.