



An eleven-month wait to obtain a judicial decision on preventive detention did not comply with the “speediness” requirement

In today’s **Chamber** judgment¹ in the case of **Derungs v. Switzerland** (application no. 52089/09) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 4 (right to a speedy decision on the lawfulness of detention) of the European Convention on Human Rights; and

no violation of Article 5 § 4 of the Convention with regard to the requirement to hold a hearing.

The case concerned the length and conduct of the judicial proceedings brought by a Swiss national to end his preventive detention, which had been imposed by a judge for psychiatric reasons.

The Court found in particular that, in the absence of any exceptional reason justifying the delay in ruling on the case, a judicial decision issued almost 11 months after Mr Derung’s application for release and the court’s decision could not be considered as having been rendered “speedily”.

With regard to the administrative court’s refusal to hold a new hearing on the ground that Mr Derung’s situation had not changed for more than five years, and given that he had been heard in person by the prison authorities in the presence of his lawyer, the Court considered that the principle of equality of arms had been observed. Since Mr Derungs had not provided any relevant information or any evidence concerning his personality that was such as to render a new hearing necessary, the administrative court had not been obliged to hold one.

Principal facts

The applicant, Rudolf Derungs, is a Swiss national who was born in 1961 and lives in Regensdorf (Switzerland).

Mr Derungs was sentenced in 2002 to five months’ imprisonment for drunken driving, by a judgment of the Zurich District Court; that judgment was subsequently partly upheld by a higher court, which also ordered his preventive detention on psychiatric grounds. His applications for release were unsuccessful, as were his appeals against the refusal decisions. On 21 August 2008 the Judicial Enforcements Office interviewed Mr Derungs, who made a number of requests of which almost all, including a fresh application for release, were rejected. He subsequently appealed to the Administrative Court against the decisions of the cantonal justice department confirming these rejections, but his appeal was dismissed on 15 July 2009. The Administrative Court refused to hold a public hearing on the ground that Mr Derungs had already given evidence on 21 August 2008. He appealed against that decision to the Federal Court but was once again unsuccessful. He was released on parole on 17 January 2012.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 5 § 4 (right to a speedy decision on the lawfulness of detention), Mr Derungs complained that the length of time between his application on 21 August 2008 to end his preventive detention and the Administrative Court's decision of 15 July 2009 was excessive. Under the same Article, he complained about the Administrative Court's refusal to hold a hearing.

The application was lodged with the European Court of Human Rights on 2 September 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Luis **López Guerra** (Spain), *President*,
Helena **Jäderblom** (Sweden),
Helen **Keller** (Switzerland),
Johannes **Silvis** (the Netherlands),
Branko **Lubarda** (Serbia),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Article 5 § 4 (compliance with the “speediness” requirement)

A period of almost 11 months had elapsed between Mr Derung's application for release, submitted on 21 August 2008, and the Administrative Court's first judicial decision on 15 July 2009.

The Court considered that such a lengthy period was hard to reconcile with the “speediness” requirement as set out in the Convention. It had therefore to examine whether, in the present case, there existed exceptional reasons which could have justified such a delay in ruling on the application for release. The Government submitted that the delay could be explained by the fact that Mr Derungs had lodged various appeals and had brought parallel proceedings. In the Canton of Zurich, delays were related to the obligation to exhaust first the appeal to a higher administrative authority.

The Court reiterated that the complexity of the domestic proceedings could not justify a delay in the proceedings. It noted that Mr Derungs's case had not been particularly complex from a material standpoint, especially in terms of its medical dimension. Having regard to those elements, the Court established that there existed no exceptional reason explaining the delay in ruling on the application for release. Accordingly, it concluded that the Administrative Court's decision confirming the lawfulness of the preventive detention had not been issued “speedily”. There had therefore been a violation of Article 5 § 4 of the Convention.

With regard to the allegation by Mr Derungs that the “system” in force in the Canton of Zurich was incompatible with the Convention, the Court considered that this was indistinguishable from the “speediness” complaint and that it was not necessary to examine it separately.

Article 5 § 4 (the Administrative Court's refusal to hold a hearing)

The Court noted that Mr Derungs, who had been detained for more than four years, had expressly requested that a hearing be held before the Administrative Court.

The Court considered that a hearing was not essential in all circumstances, particularly where it was unlikely to result in any additional clarification.

In the present case, the most recent reports on Mr Derungs had been drawn up in 2002 and 2003. In its judgment of 15 July 2009, the Administrative Court had found that his situation had not changed

significantly over the previous five years, although it had not ordered a new expert report. In addition, the judgment relied on two expert reports which noted, among other points, the failure of the previous therapies and the lack of progress in his condition.

In addition, the Court reiterated that Mr Derungs had been heard in person by the prison authorities, in the presence of his lawyer, as part of the automatic annual assessment. That interview had been held on 21 August 2008 – in other words, only a few months before his request to be heard by the administrative court. It was on the basis of that previous interview and several reports concerning Mr Derung's psychological state that the Judicial Enforcements Office had refused to grant his release. The Court considered that Mr Derungs had not subsequently provided any relevant information or any evidence concerning his personality that was such as to make a new hearing necessary. It also emphasised that he had had access to all the material in the case file and had been able to express his views, with the help of his lawyer, at the different stages of the proceedings. He had thus had an opportunity to give his opinion and to respond to the arguments against his release, with due regard to the principle of equality of arms.

The Court concluded that Mr Derungs had had access to a judicial procedure that was appropriate to the category of deprivation of liberty in question. Thus, although the hearing of 21 August 2008 had taken place before an authority that was not a court for the purposes of the Convention, the Administrative Court had not been obliged to hear the applicant in person. It followed that there had been no violation of Article 5 § 4 of the Convention.

Article 41 (just satisfaction)

The Court held that Switzerland was to pay Mr Derungs 7,000 euros (EUR) in respect of non-pecuniary damage, and EUR 5,000 in respect of costs and expenses.

The judgment is available only in French.

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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.