

December 2011

Schwabe and M.G. v. Germany - 8080/08 and 8577/08

Judgment 1.12.2011 [Section V]

Article 5

Article 5-1

Lawful arrest or detention

Detention aimed at preventing participation in demonstration: *violation*

Article 11

Article 11-1

Freedom of peaceful assembly

Detention aimed at preventing participation in demonstration: *violation*

Facts – The applicants drove to Rostock with a view to participating in demonstrations against the G8 summit in Heiligendamm, which was due to take place from 6 to 8 June 2007. In the evening of 3 June 2007 their identity was checked by the police in a car park in front of Waldeck prison. Having searched their van, the police found banners bearing the inscription “freedom to all prisoners” and “free all now” and arrested them. The next day a district court ordered their detention until 9 June to prevent the imminent commission of a criminal offence. On appeal, a regional court upheld the first-instance decision finding that with their banners the applicants had intended to incite others to free prisoners from Waldeck prison. A court of appeal rejected the applicants’ further appeals finding that the police had been entitled to assume that the applicants would drive to Rostock and display their banners at the demonstrations, which were partly violent. No criminal proceedings were ever brought against the applicants for incitement to free prisoners.

Law – Article 5 § 1: The second alternative of Article 5 § 1 (c) allowed the States to detain a person as a means of preventing a concrete and specific offence as regards, in particular, the place and the time of its commission and its victims. In the applicants’ case the domestic courts had diverged on the specific offence they considered the applicants were about to commit: while the district and regional courts had considered that the applicants had intended to incite others to free prisoners detained in Waldeck prison, the court of appeal had considered that they intended to use their banners to incite demonstrators in Rostock to liberate prisoners by force. In addition, the inscriptions on the banners could have been understood in different ways; for their part, the applicants had explained during the domestic proceedings that the slogans were addressed to the police, urging them to end the numerous detentions of demonstrators, and not intended to call upon others to free prisoners by force. Furthermore, the applicants had not themselves carried any instruments which could have served to violently free prisoners. The Court was therefore not convinced that the applicants’ continuing

detention could have reasonably been considered necessary to prevent them from committing a sufficiently concrete and specific offence. Nor could it have been justified under Article 5 § 1 (b) "in order to secure the fulfilment of any obligation prescribed by law" since the police had not ordered them to report to a police station in their town of residence or prohibited them from entering the area in which the summit-related demonstrations were to take place. The applicants' preventive detention was not justifiable under any other sub-paragraph of Article 5 § 1 of the Convention.

Conclusion: violation (unanimously).

Article 11: Given their detention for the entire duration of the G8 summit, the applicants had been prevented from participating in the demonstration against the summit, which did not appear to have been organised with violent intentions. Contrary to what the Government had claimed, it had not been proven that the applicants themselves had had any violent intentions either. No weapons had been found on them and the ambivalent nature of the slogans on their banners could not serve to prove that they had deliberately intended to incite others to violence. The applicants' detention had therefore interfered with their right to freedom of peaceful assembly. As to the proportionality of that interference, the Court acknowledged the considerable challenge the authorities were facing in order to guarantee the security of the participants at the summit and maintain public order. However, by participating in the demonstration the applicants had sought to take part in a debate on a matter of public interest, whose aim was to criticise the high number of detentions of demonstrators rather than to resort to violence or incite others to do so. Their almost six-day detention, which the Court had found to be in breach of Article 5, was not a proportionate measure to prevent the possible incitation of others to free demonstrators detained during the summit. There had been other effective but less intrusive measures available to the authorities to achieve their aims, such as seizing the banners they had found in the applicants' possession.

Conclusion: violation (unanimously).

Article 41: EUR 3,000 to each applicant in respect of non-pecuniary damage.

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