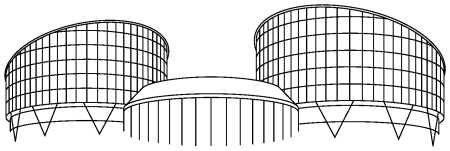

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF LORENZ v. AUSTRIA

(Application no. 11537/11)

JUDGMENT

STRASBOURG

20 July 2017

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 Lorenz v. Austria,

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

Angelika Nußberger, *President,*
Nona Tsotsoria,
André Potocki,
Yonko Grozev,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 27 June 2017,

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

PROCEDURE

1. The case originated in an application (no. 11537/11) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Austrian national, Mr Günter Lorenz ("the applicant"), on 15 February 2011.

2. The applicant was represented by Mr G. Gahleithner, a lawyer practising in Vienna. The Austrian Government ("the Government") were represented by their Agent, Mr H. Tichy, Head of the International Law Department at the Federal Ministry for Europe, Integration and Foreign Affairs.

3. The applicant alleged, in substance under Article 5 §§ 1 and 4 of the Convention, that the length of the proceedings for the review of his detention in an institution for mentally ill offenders (*Anstalt für geistig abnorme Rechtsbrecher*) had violated his rights, and that those proceedings had been unlawful.

4. On 12 May 2014 the complaints concerning the length and lawfulness of the review proceedings were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. On 17 March 2017 additional questions concerning the applicant's complaints were put before the parties.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1964 and is detained in Krems.

A. The applicant's criminal conviction and placement in an institution for mentally ill offenders

7. On 9 February 1983 the applicant shot his cousin, P.D., three times in the chest and stomach. His victim died. The applicant then decapitated P.D. and disposed of his head.

8. On 15 February 1983 the applicant shot dead two women, namely his former girlfriend, U.E., as well as her mother, S.E., using the same gun as he had used for the previous murder.

9. The applicant was arrested on 26 February 1983 and remanded in custody.

10. On 14 March 1984 the Vienna Regional Criminal Court (*Straflandesgericht* – hereinafter, "the Criminal Court"), sitting as an assize court (*Geschworenengericht*), convicted the applicant of triple murder and disturbing the peace of the dead (*Störung der Totenruhe*). He was found to be criminally responsible for his acts and was sentenced to twenty years' imprisonment. In addition to the sentence, the Criminal Court ordered his detention in an institution for mentally ill offenders in accordance with Article 21 § 2 of the Criminal Code (*Strafgesetzbuch*; see paragraph 31 below). A psychiatric expert, Dr Q., had found in his expert opinion that the applicant presented a distinctive picture of secondary personality defence mechanisms, in the sense of suppression of fear, emotion and sexuality. His potential for aggression was increased and he was emotionally unstable and could easily become aggressive. Moreover, there were clear signs of an identity disorder.

11. The above judgment was upheld by the Supreme Court (*Oberster Gerichtshof*) on 27 September 1984.

12. The applicant has been detained in institutions for mentally ill offenders since 27 September 1984. He served his prison sentence until 26 February 2003 (as the time he had spent in pre-trial detention – see paragraph 9 above – was counted towards his prison sentence). Thereafter, he remained in preventive detention, subject to yearly review proceedings in accordance with Article 25 § 3 of the Criminal Code (see paragraph 32 below). He was first detained in the units for mentally ill offenders of the Vienna-Mittersteig Prison and Graz-Karlau Prison (*Justizanstalt*), and since 2008 has been detained in the respective unit of Stein Prison in Krems.

B. Other review proceedings (not the subject of the instant application)

1. The 2008/09 review proceedings

13. On an unknown date in 2008, the applicant applied for release from the institution for mentally ill offenders. He argued that he had completed individual therapy with Professor G. in the Vienna-Mittersteig Prison as well as specialised therapy preparing him for his release with an external therapist. Two psychiatric experts had attested that the danger emanating from him had abated or was significantly reduced. Even though different entities had suggested that he be granted privileges (*Vollzugslockerung*) under section 126 of the Execution of Sentences Act (*Strafvollzugsgesetz* – see paragraph 41 below), he had not yet been granted any. The applicant claimed that his lawyer had offered him a job and a small apartment if he were released.

14. On 25 February 2009 the Krems a.d. Donau Regional Court (*Landesgericht* – hereinafter, "the Regional Court") ordered the continuation of the applicant's detention in the institution for mentally ill offenders. It referred to an expert opinion of 25 January 2009 by Dr L., who had stated that the applicant's condition had stabilised and that the danger emanating from him had considerably abated in respect of the closed and protected living environment of the prison. However, the same could not be said with certainty for a life outside prison. The director of the prison did not recommend releasing the applicant either, as the special therapy he needed in order to be prepared for release was only available in the Vienna-Mittersteig Prison. The applicant waived his right to appeal against that decision.

2. The 2009/10 review proceedings

15. On 20 September 2009 the applicant again applied for release, reiterating that Dr L. in his expert opinion of 25 January 2009 had attested that a process of mental stabilisation had taken place and that it was highly likely that the danger emanating from him was significantly reduced. The applicant claimed that he had successfully completed psychotherapy, which he considered as sufficient preparation for life outside of prison. He emphasised that he was willing to be treated, but that currently he was not receiving any therapy. Moreover, he reminded the court that his lawyer would be able to supply a flat and a job for him if he were released. He complained that the prison authorities had refused his requests to be granted privileges, and as a consequence the domestic courts had dismissed his previous applications for release as he had not been prepared for it.

16. On 15 March 2010 the Regional Court, having held an oral hearing, ordered the continuation of the applicant's detention. It confirmed that

Dr L., in his additional expert opinion of 24 February 2010, had referred to the fact that the applicant's condition had stabilised. Even though the applicant had developed an aversion to psychotherapy, he did not refuse to talk to psychiatrists. He was actively seeking a dialogue with them. However, Dr L. also found that no protection and support would be provided for the applicant after his release. Without such support, conditional release would be too risky from a psychiatric point of view. The stress caused by the overwhelming feeling of unpreparedness for release could lead to near-psychotic or micropsychotic disorders, the danger of which was unpredictable.

17. The Regional Court also referred to the expert opinion of Dr H. of 31 October 2006 and the forensic expert opinion by the Vienna-Mittersteig Prison of January 2007, as well as the most recent expert opinion by Dr B. (the resident psychologist of Stein Prison, where the applicant was held at that time) of 3 March 2010. The latter had come to the conclusion that the applicant still suffered from a pronounced combined personality disorder with paranoid, schizoid, emotionally unstable and narcissistic elements. Dr B. responded to the generally positive tenor of Dr L.'s opinion and found that the stabilisation process was rather a reaction to the "enemy" institution, namely the prison, in which the applicant was being held, and was not to be considered real or rendering the applicant capable of surviving the challenges of daily life outside prison. Moreover, at that time, Dr B. did not recommend further therapy for the applicant, who was not prepared for any self-reflection and was not ready to process the experiences and challenges of normal social interaction, and thus was still likely to present a danger to others. The director of Stein Prison also recommended the continuation of the applicant's detention, adding that his institution was not equipped to deal with the preparation of his release, which it considered to be a complex and risk-prone task. Only the Vienna-Mittersteig Prison was capable of preparing the applicant for his release. The applicant in any event refused to undergo any more therapy.

18. The Regional Court found that owing to the applicant's negative approach to therapy, it was impossible to prepare him for release, even though his counsel had confirmed the offer of a flat and a job, and the applicant appeared to be stable. In line with the argumentation of the expert opinions of Dr B. and Dr L., the court held that in the light of the gravity of the underlying criminal offences, there was a danger that an unprepared release would overwhelm the applicant and could have unpredictable consequences. Therefore, the application for conditional release had to be dismissed.

19. On 26 July 2010, the Vienna Court of Appeal (*Oberlandesgericht* – hereinafter, "the Court of Appeal") dismissed an appeal lodged by the applicant. It referred to the expert opinions obtained in 1983, 2000, 2002, 2006, 2009 and 2010, and confirmed the decision of the first-instance court.

It also reiterated that Stein Prison's psychology service had recommended a transfer to the Vienna-Mittersteig Prison, where the necessary therapy was available.

C. Review proceedings which are the subject of the instant application

1. The 2010/11 review proceedings

20. The applicant lodged an application for release with the Regional Court on 20 August 2010 and submitted additional observations on 16 November and 3 December 2010. In essence, he repeated the arguments he had made in the previous review proceedings (see paragraphs 13 and 15 above). He also requested that a new expert opinion be obtained from Dr L.

21. On 7 December 2010 the Regional Court, ordered the continuation of the applicant's detention in an institution for mentally ill offenders, referring to the most recent expert opinion by Dr B. of 3 March 2010 (see paragraph 17 above). It found that there had been no changes in his circumstances and therefore declined the request for a new expert opinion. Recently obtained information from Stein Prison's psychology service stated that the applicant still refused to undergo further therapy at their institution and requested preparation for his release. It reiterated that the necessary preparation was not available in Stein Prison, but only in the Vienna-Mittersteig Prison. However, the latter had not yet responded to a request for the applicant's transfer. The Regional Court further referred to the reasoning in previous review decisions to avoid repetition, in particular the one by the Court of Appeal of 26 July 2010 (see paragraph 19 above). It stressed that the applicant still refused to deal with his offences in a therapeutic setting, which in turn was a prerequisite for being granted privileges. In the light of the gravity of the underlying offence, the statements obtained from the various prison services as well as the recent expert opinions, the Regional Court concluded that the applicant still presented a danger to society.

22. On 25 January 2011 the Court of Appeal dismissed an appeal lodged by the applicant as unfounded, as it was evident that there had not been a change in his negative attitude towards further therapy.

2. The 2011/12 review proceedings

23. On 8 September 2011 the applicant applied for conditional release from the institution.

24. On 23 January 2012 the Regional Court held an oral hearing and subsequently ordered an expert opinion in the framework of the yearly judicial review proceedings. On 1 February 2012 the applicant submitted his observations on the review. He stated that the expert opinion of Dr B. (see

paragraph 17 above) had been wrong and the court should therefore rather rely on Dr L.'s expert opinion (see paragraphs 13-16 above). As the applicant refused to be examined by any expert, the court held another hearing on 23 April 2012. On that occasion, the presiding judge reproached the applicant with the fact that he could not expect to be granted privileges if he did not collaborate with the experts and the authorities. The applicant replied that previously one of the experts had found that privileges were a prerequisite for his release, and that another expert had even come to the conclusion that he could already be released. He explained that he had refused to be examined by a psychiatrist because he was not suffering from a mental illness. The applicant repeated that his lawyer had offered him a small apartment and work in his law firm. He was not willing to live in an assisted-living facility or to follow psychotherapy after his eventual release, but would agree to work with a probation officer.

25. On 23 April 2012, the Regional Court ordered the continuation of the applicant's detention. Based on the information on file, the latest expert opinion of Dr B. of 3 March 2010 and the information from the director of the prison, it concluded that the danger emanating from the applicant still persisted and therefore his application for release had to be dismissed.

26. That decision was upheld by the Court of Appeal on 30 July 2012. The court summarised the genesis of the case so far and the applicant's complaints, and reiterated the lower court's findings. As to its own conclusion, it almost exclusively referred to its previous decisions in the applicant's case of 26 July 2010 and 25 January 2011, holding that there had been no significant changes in the applicant's situation, in particular that he still refused any further therapy.

3. The 2013 review proceedings

27. On 26 March 2013 the applicant applied for release from the institution for mentally ill offenders.

28. On 20 June 2013 the Regional Court again ordered the continuation of the applicant's detention, essentially reiterating the reasoning it had given in its decision of 23 April 2012 (see paragraph 25 above). It appears that the Regional Court did not hold an oral hearing prior to that decision. It referred to the "current" expert opinion of Dr B. of 2010 (see paragraph 17 above) and statements by the prison administration and the social service of the prison (*Maßnahmenteam*) that the applicant should not be released, as he refused to undergo therapy and still posed a threat. The Regional Court reiterated that the applicant could only be prepared for his release at the Vienna-Mittersteig Prison, but found that it would be unreasonable to order his transfer because of his negative attitude towards therapy.

29. On 19 July 2013 the Court of Appeal dismissed an appeal lodged by the applicant as unfounded. It held that the Regional Court had had no choice but to take into consideration the expert opinion of 2010, as in the

course of the 2011/12 review proceedings the applicant had refused to be examined by an expert. The Court of Appeal again referred to the reasoning it had given in its three previous decisions relating to the applicant.

30. At the time of the above decision, the applicant was almost forty-nine years old and had spent some twenty-nine years of his life in different institutions for mentally ill offenders.

II. RELEVANT DOMESTIC LAW AND PRACTICE

31. The placement in an institution for mentally ill offenders as a preventive measure is dealt with under Article 21 of the Criminal Code, the relevant parts of which read as follows:

> "(1) If a person commits an offence punishable by a term of imprisonment exceeding one year, and if he cannot be punished for the sole reason that he committed the offence in a state of mind that excludes responsibility (Article 11) resulting from a serious mental or emotional disorder, and if in view of his mental state, his condition and the nature of the offence it is feared that he might otherwise, in view of his mental or emotional disorder, commit another criminal offence with serious consequences, the court shall order his placement in an institution for mentally ill offenders.
>
> (2) If such a fear exists, an order for placement in an institution for mentally ill offenders shall also be made in respect of a person who, while not lacking responsibility, commits an offence punishable by a term of imprisonment exceeding one year on account of his severe mental or emotional abnormality. In such a case the placement is to be ordered at the same time as the sentence is passed."

32. The duration of those preventive measures is governed by Article 25 of the Criminal Code, which states:

> "(1) Preventive measures shall be ordered for an indefinite period. They shall be implemented for as long as is required by their purpose ...
>
> (2) The termination of the preventive measure shall be decided by the court.
>
> (3) The court shall, of its own motion, examine at least once per year whether the placement in an institution for mentally ill offenders ... is still necessary."

33. According to the case-law of the Supreme Court, Article 25 § 3 of the Criminal Code is complied with where the review of the necessity of further detention has started within one year of the last decision on that matter. The law guarantees an examination at regular intervals, but does not fix a time-limit for the actual decision. It is therefore not necessary that the first and/or second-instance decisions be taken within a one-year time-limit (Supreme Court, judgment of 30 September 1980, no. 10 Os 79/80). Domestic law does not give any time-limits for the examination of an application lodged by a detained person before the yearly review is due.

34. In accordance with Article 47 § 2 of the Criminal Code, conditional release from a preventive measure which is combined with deprivation of liberty must be ordered if, from the demeanour and development of the

detained person, his or her state of health, personality, past life, and prospects for living an honest life, it can be assumed that he or she no longer presents the level of dangerousness that had led to the preventive measure.

35. Section 164 of the Execution of Sentences Act stipulates that the purpose of placing a person in an institution for mentally ill offenders is to deter him or her from committing further offences as a result of his or her mental illness. The purpose of the placement is to improve the person's mental state, so that he or she is unlikely to commit further criminal acts.

36. In accordance with section 134(1) of the Execution of Sentences Act, as in force at the relevant time, the Directorate for the Enforcement of Sentences (*Vollzugsdirektion*) decides, among other things, in which institution a mentally ill offender will be remanded. Under section 134(6) the directorate also decides, *ex officio*, whether it is necessary to transfer a detainee to another institution. In taking such a decision, it must consider whether such a transfer is necessary for the individual concerned in order to achieve the aims of his or her detention (see sections 134(2) and 164 of the Execution of Sentences Act; for the latter see paragraph 35 above).

37. In accordance with section 162(3) of the Execution of Sentences Act, applications for the review of a person's further detention in an institution for mentally ill offenders are considered by a single judge. Save for cases where the Act contains more specific provisions, the Code of Criminal Procedure (*Strafprozessordnung*) applies, *mutatis mutandis*, to the review proceedings. Accordingly, a person in an institution for mentally ill offenders has largely the same rights as an accused in criminal proceedings, such as the right to have access to the case file, the possibility to lodge requests for the taking of evidence (such as, for example, to obtain an expert opinion), and the right to be represented by counsel.

38. Section 178 of the Execution of Sentences Act, read in conjunction with section 152(2), provides that a person who is detained in an institution for mentally ill offenders has the right to apply for a review of the lawfulness of his or her detention.

39. In accordance with section 167(1) of the Execution of Sentences Act, the detainee must be heard in person by the court competent for the review of his or her detention at least once every two years. This provision, read in conjunction with Articles 126 § 1 and 127 § 3 *in fine* of the Code of Criminal Procedure, stipulates that an expert opinion must also be obtained every two years, namely on the occasion of such a hearing.

40. Article 127 § 3 of the Code of Criminal Procedure states that a third expert must be consulted if the findings of the two previous experts are contradictory on essential points and those contradictions cannot be resolved by putting questions before them.

41. The conditions for the execution of a prison sentence in a less restrictive manner (*Strafvollzug in gelockerter Form*) are governed by

section 126 of the Execution of Sentences Act. It provides that prisoners must be granted one or more of the following privileges, provided that they are not expected to abuse them: detention without the doors of the common rooms or the gates being locked during the daytime; limited or no supervision of the inmate during his or her work, even outside the prison; leaving the prison premises for the purposes of vocational training or medical treatment; or one or two unaccompanied outings per month for reasons other than those mentioned above. The head of the prison decides whether a prisoner will be granted privileges.

THE LAW

I. SCOPE OF THE CASE BEFORE THE COURT

42. The Court considers it necessary to clarify at the outset that the instant application concerns solely the following review periods:

- the proceedings which started with the applicant's application for release lodged on 20 August 2010, and ended with the decision by the Court of Appeal of 25 January 2011 (see paragraphs 20-22 above);
- the proceedings which started with the applicant's application for release lodged on 8 September 2011, and ended with the decision by the Court of Appeal of 30 July 2012 (see paragraphs 23-26 above); and
- the proceedings which started with the applicant's application for release lodged on 26 March 2013, and ended with the decision by the Court of Appeal of 19 July 2013 (see paragraphs 27-29 above).

43. The content of other decisions concerning earlier review proceedings as set out in the facts part of the instant judgment (see paragraphs 13-19 above) are relevant in order to get a broader view of the development of the applicant's case, but are not as such the subject of the instant application.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

44. The applicant complained in substance under Article 5 § 1 of the Convention that the review proceedings of 2010/11, 2011/12 and 2012/13 and his continued detention had not been lawful. The relevant parts of this provision read 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 of unsound mind ...”

A. Admissibility

45. 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. Submissions by the parties

(a) The applicant’s arguments

46. The applicant complained that the periodic review of his detention had not been carried out in accordance with the domestic legal provisions. The courts had failed to adduce relevant and sufficient reasons in their decisions for the continuation of his detention. Those proceedings had therefore not been lawful.

(b) The Government’s arguments

47. The Government pointed out that the applicant had repeatedly made use of his right to apply for a review of his detention in an institution for mentally ill offenders, in accordance with section 178 of the Execution of Sentences Act, read in conjunction with section 152(2) (see paragraph 38 above). Furthermore, he had been heard in person every second year, as required by section 167 of the Execution of Sentences Act (see paragraph 39 above). The applicant had not asked to be heard more often.

48. In relation to the 2010/11 review proceedings, the Government submitted that the relevant facts had not changed since the previous review decision of 15 March 2010. In particular, the applicant still refused to undergo therapy.

49. Before taking the decision of 23 April 2012 on the continuation of the preventive measure, the Regional Court had tried in vain to obtain a fresh psychiatric assessment of the applicant, who refused to be examined. The court therefore had no other choice than to base its decision on the previous expert opinion by Dr B. of 2010. The most decisive factor of that decision, however, was that the applicant continuously refused to undergo therapy and showed no awareness of his illness. The same applied to the review proceedings of 2013, where the Regional Court had had to assume that the applicant would again refuse to be examined by an expert.

50. The Government emphasised that the recourse to the last available expert opinion of 2010 in the three review proceedings in question was

solely due to the applicant's conduct and his failure to cooperate with the authorities.

51. The Government asserted that in proceedings concerning the review of the lawfulness and necessity of further detention in an institution, the person concerned basically had the same procedural rights as an accused. In the present case, the applicant had been – at least partly – represented by counsel. It could thus be assumed that he had adequately been informed by his legal representative of both his rights and his obligation to actively participate in the rehabilitation measures specifically developed for him. The applicant had nonetheless continuously refused to undergo therapeutic treatment.

52. When it comes to the question why the applicant had not been transferred to the Vienna-Mittersteig Prison despite repeated recommendations to that end (see paragraphs 14, 17 and 21 above), the Government stated that the applicant had been *ex officio* transferred to Stein Prison in 2007. Thereafter, neither the applicant nor the prison authorities have requested a transfer, which is why no decision in that respect was taken. The applicant had twice requested his transfer to Garsten Prison, but these requests have been refused.

2. The Court's assessment

(a) General principles

53. The relevant general principles have recently been summarised in the Court's judgment in the case *Bergmann v. Germany*, no. 23279/14, §§ 95-102, 7 January 2016:

> "95. The Court reiterates that Article 5 § 1 sub-paragraphs (a) to (f) contain an exhaustive list of permissible grounds for deprivation of liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds (see *Del Rio Prada v. Spain* [GC], no. 42750/09, § 123, 21 October 2013 with further references). The applicability of one ground does not necessarily preclude that of another; detention may, depending on the circumstances, be justified under more than one sub-paragraph (see *Kharin v. Russia*, no. 37345/03, § 31, 3 February 2011 with further references). Only a narrow interpretation of the exhaustive list of permissible grounds for deprivation of liberty is consistent with the aim of Article 5, namely to ensure that no one is arbitrarily deprived of his liberty (see, among many others, *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33; and *Shimovolos v. Russia*, no. 30194/09, § 51, 21 June 2011).
>
> 96. The Court further reiterates that the term "persons of unsound mind" in sub-paragraph (e) of Article 5 § 1 does not lend itself to precise definition since its meaning is continually evolving as research in psychiatry progresses (see *Winterwerp*, cited above, § 37, and *Rakevich v. Russia*, no. 58973/00, § 26, 28 October 2003). An individual cannot be deprived of his liberty as being of "unsound mind" unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind, that is, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the

validity of continued confinement depends upon the persistence of such a disorder (see *Winterwerp*, cited above, § 39, and *Stanev v. Bulgaria* [GC], no. 36760/06, § 145, ECHR 2012).

97. A mental disorder may be considered as being of a degree warranting compulsory confinement if it is found that the confinement of the person concerned is necessary as the person needs therapy, medication or other clinical treatment to cure or alleviate his condition, but also where the person needs control and supervision to prevent him from, for example, causing harm to himself or other persons (compare, for example, *Witold Litwa v. Poland*, no. 26629/95, § 60, ECHR 2000-III, and *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 52, ECHR 2003-IV).

98. In deciding whether an individual should be detained as a person "of unsound mind", the national authorities are to be recognised as having a certain discretion, in particular on the merits of clinical diagnoses, since it is in the first place for the national authorities to evaluate the evidence adduced before them in a particular case; the Court's task is to review under the Convention the decisions of those authorities (see *Winterwerp*, cited above, § 40; *X v. the United Kingdom*, 5 November 1981, § 43, Series A no. 46; *H.L. v. the United Kingdom*, no. 45508/99, § 98, ECHR 2004-IX; and *S. v. Germany*, no. 3300/10, § 81, 28 June 2012). The relevant time at which a person must be reliably established to be of unsound mind, for the requirements of sub paragraph (e) of Article 5 § 1, is the date of the adoption of the measure depriving that person of his liberty as a result of that condition (compare *Luberti v. Italy*, 23 February 1984, § 28, Series A no. 75, and *B v. Germany*, no. 61272/09, § 68, 19 April 2012).

99. Furthermore, there must be some relationship between the grounds of permitted deprivation of liberty relied on and the place and conditions of detention. In principle, the "detention" of a person as a mental-health patient will only be "lawful" for the purposes of sub-paragraph (e) of Article 5 § 1 if effected in a hospital, clinic or other appropriate institution (see *Hutchison Reid*, cited above, § 49; *Brand v. the Netherlands*, no. 49902/99, § 62, 11 May 2004; *Kallweit v. Germany*, no. 17792/07, § 46, 13 January 2011; and *Glien v. Germany*, no. 7345/12, § 75, 28 November 2013 with further references).

(...)

101. Any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof (see, among many other authorities, *Erkalo v. the Netherlands*, 2 September 1998, § 52, Reports 1998-VI; *Baranowski v. Poland*, no. 28358/95, § 50, ECHR 2000-III; and *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008).

102. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Winterwerp*, cited above, §§ 37 and 45; *Saadi*, cited above, § 67; and *Reiner v. Germany*, no. 28527/08, § 83, 19 January 2012). "

54. 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 still posed a danger to the public, notably because the courts had 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*, no. 17167/11, § 107, 19 September 2013; compare, *mutatis mutandis*, *Ruiz Rivera v. Switzerland*, no. 8300/06, § 60, 18 February 2014).

55. The reason why the medical assessment must be sufficiently recent is to enable the authorities to assess the mental health of the person concerned at the time when the request for discharge is examined. In the case of *Herz v. Germany* (no. 44672/98, § 50, 12 June 2003), for example, the Court found that a psychiatric assessment dating back a year and a half was not sufficient by itself to justify deprivation of liberty. In *Ruiz Rivera* (cited above, § 63), the Court equally found that, for that purpose, a psychiatric report dating back more than three years was not sufficiently recent either.

56. When it comes to the evaluation of psychiatric expert opinions, the Court has held that it is primarily for the domestic courts to assess the scientific quality of diverging psychiatric opinions, and in that context the national authorities have a certain margin of appreciation (see, in relation to Article 5 § 4 of the Convention, *Ruiz Rivera*, cited above, § 62).

57. The Court has found that the successful completion of therapeutic measures obviously necessitates the cooperation of the person concerned (*Rangelov v. Germany*, no. 5123/07, § 98, 22 March 2012). Where no other possibility exists, for instance because the person concerned has refused to appear for an examination, a medical expert's assessment on the basis of the case file of the actual state of that person's mental health must at least be sought, failing which it cannot be maintained that the person has reliably been shown to be of unsound mind, which would in turn render his or her further detention unlawful (see *Varbanov v. Bulgaria*, no. 31365/96, § 47, ECHR 2000‑X, and *Constancia v. the Netherlands* (dec.), no. 73560/12, § 26, 3 March 2015).

58. Lastly, a decision not to release a detainee may become inconsistent with the objectives of the sentencing court's order for preventive detention if the person concerned was detained because there was a risk that he or she would reoffend, but the person was, at the same time, deprived of the necessary means, such as suitable therapy, to demonstrate that he or she was no longer dangerous (see *Klinkenbuss v. Germany*, no. 53157/11, § 47, 25 February 2016, with further references).

(b) Application of the above general principles to the present case

59. At the outset, the Court observes that during the review periods in question, the applicant refused to undergo further therapy at Stein Prison and in the course of the 2011/12 proceedings also refused to be examined by

a psychiatric expert. Moreover, the Court notes that the intervals at which oral hearings were held appear to have been in accordance with domestic law, and that the applicant did not request that oral hearings be conducted more often. These facts were not in dispute between the parties.

60. The Court considers that the following issues require a closer examination: Whether the domestic courts have sufficiently examined the question of transferring the applicant to the Vienna-Mittersteig Prison in order to receive the appropriate treatment and be prepared for an eventual release; whether the domestic courts had a sufficient factual basis at their disposal for deciding on the continuation of the applicant's detention, in particular whether psychiatric expert opinions were obtained at reasonable intervals; and whether the domestic courts' decisions had been sufficiently reasoned.

(i) The recommended transfer of the applicant to the Vienna-Mittersteig Prison

61. First, the Court will examine whether the applicant had been offered the opportunity to undergo the necessary treatment and preparation for release, which – according to the domestic courts – could only be provided in the Vienna-Mittersteig Prison. The Court reiterates that, under its well-established case-law, the detention of a person as a mental-health patient will, in principle, only be "lawful" for the purposes of sub-paragraph (e) of Article 5 § 1 if effected in an appropriate institution (see *Bergmann*, cited above, § 99). Moreover, when dealing with mentally ill offenders, the authorities are under an obligation to work towards the goal of preparing the person concerned for their release, for example by providing incentives for further therapy such as the transfer to an institution where they can actually receive the necessary treatment, or by granting certain privileges, if the situation so allows (compare and contrast *Rangelov*, § 98 *in fine*, cited above).

62. Turning to the instant case, the Court notes that in accordance with section 134(6) of the Execution of Sentences Act as in force at the relevant time (see paragraph 36 above), the Directorate for the Enforcement of Sentences is the competent authority to decide *ex officio* on the transfer of a detainee. In taking such a decision, it must consider whether such a transfer is necessary for the individual concerned in order to reach the purpose of the detention. In the applicant's case, it was clear from the domestic courts' review decisions that being prepared for his release was a prerequisite for them granting his requests for release. It appears that he had already received such preparation prior to 2008, when he was transferred to Stein Prison. However, it seems that this preparation had not been considered sufficient by the domestic authorities, as the applicant's detention continued. It was not contested that Vienna-Mittersteig Prison was the only institution where the applicant could adequately be prepared for his release (see paragraphs 14, 17 and 19 above).

63. The reasons adduced by the domestic courts as to why the authorities had not transferred the applicant to the Vienna-Mittersteig Prison varied. In the decision of 25 February 2009 the Regional Court simply pointed out that therapy in the Vienna-Mittersteig Prison was a precondition for release and since the applicant had not completed this therapy, release was not possible. Later, in its decision of 7 December 2010, the Regional Court stated that the Vienna-Mittersteig Prison had not responded to a request to accept the applicant's transfer. It appears that the obvious necessity for the applicant's transfer had not been followed up thereafter. The courts mentioned it in their review proceedings, but did not consider that it was a prerequisite for his release, and in this context did not examine the question of whether the applicant was detained in an appropriate institution. In the course of the 2013 review proceedings, the applicant was still detained in Stein Prison. The Regional Court then based the fact that the applicant had still not been transferred on his refusal to undergo therapy.

64. The Court concludes from the above that the prison authorities ignored, over several years, the obvious need – which had clearly been stated in the domestic courts' decisions – that the applicant be transferred to the Vienna-Mittersteig Prison to receive the appropriate therapy and be prepared for an eventual release, even though at the latest from 2009 the authorities could and should have been alerted that this was the only institution where the applicant could receive such treatment. While the applicant refused to undergo any more therapy, he requested measures for his release. It was thus for the authorities to find a way to overcome this obvious deadlock and examine the question of the transfer of the applicant to that prison.

65. Thus, because the authorities failed to examine in the review proceedings the question of the applicant's transfer to the Vienna-Mittersteig Prison, the applicant's detention was not in line with the requirements of lawfulness of Article 5 § 1 (e) of the Convention. For the same reasons as those set out above, the Court finds that the causal connection between the applicant's initial sentence and his continued detention was broken, which is why his detention following the review proceedings in question could not be justified under sub-paragraph (a) of Article 5 § 1 of the Convention either.

(ii) The intervals at which psychiatric expert opinions have been obtained

66. Second, the Court will examine whether the psychiatric expert opinions have been obtained at reasonable intervals. The Court reiterates that since his criminal conviction became final on 27 September 1984, the applicant has been remanded in institutions for mentally ill offenders. The review proceedings in question took place in 2010/11, 2011/12 and 2013 respectively, hence some seven, eight and ten years after the applicant, on 26 February 2003, had completed the prison sentence imposed on him (see

paragraph 12 above). The Court finds that when a person has spent such a substantial amount of his lifetime in preventive detention, special diligence is required from the authorities when deciding on the continuation of his or her detention, as the longer the detention continues, the more remote the link to the initial conviction and the decision to place him or her in an institution for mentally ill offenders becomes.

67. The Court observes that domestic law requires that an expert opinion be obtained and an oral hearing held every second year (see paragraph 39 above). Those intervals have been respected during the three sets of proceedings in question when it comes to the oral hearings, but not as regards the expert opinions. The Court considers that the 2010/11 review proceedings were based on a sufficiently recent expert opinion, namely the opinion by Dr B. of 3 March 2010 (see paragraph 17 above) and were conducted with the necessary diligence. However, in the course of the 2011/12 review proceedings, when the law proscribed an expert opinion to be obtained, the applicant refused to be examined. It appears that domestic law does not provide an answer to the question whether this meant that in the following review period a new attempt had to be made to obtain an expert opinion. In the 2013 review proceedings, the Regional Court did not commission an expert, but based its decision to dismiss the applicant's application for release on – among other things – Dr B.'s expert opinion of 2010, which was about three years old by that time. No new attempt to have the applicant examined was made.

68. The Court has previously found that when a person is unwilling to be examined by an expert, a medical expert's assessment, on the basis of the case file, of the actual state of that person's mental health must at least be sought. Otherwise it cannot be maintained that the person has reliably been shown to be of unsound mind, which in turn renders his or her further detention unlawful (see *Varbanov*, § 47, and *Constancia* (dec.), § 26, both cited above). In the instant case, it appears that in the 2011/12 and 2013 review proceedings this was not done, and no expert opinion was obtained at all, even though, under domestic law, this had been envisaged (see paragraph 39 above). The decisions by the Regional Court were taken on the basis of the old expert opinions as well as the statements obtained by the prison services and authorities.

69. In that context, the Court reiterates that special diligence is required from the authorities when deciding whether to continue the preventive detention of someone like the applicant, who has already spent such a substantial amount of time in an institution for mentally ill offenders.

70. The Court is conscious that the applicant has not shown much willingness to cooperate with the domestic authorities in the review proceedings in question. He refused to undergo further therapy and also refused, in the course of the 2011/12 proceedings, to be examined by an expert. However, at the time of the 2011/12 review proceedings he had

already spent some twenty-seven years in an institution for mentally ill offenders, and in previous expert opinions there had been at least indications that he had become less dangerous (see paragraphs 13-16 above). The Court reiterates that the purpose of obtaining an expert opinion would not only have been to reassess the applicant's dangerousness, but also to obtain fresh proposals for initiating the necessary therapeutic treatment (see *H.W. v. Germany*, cited above, § 112).

71. The Court takes the view that, in line with domestic law (see paragraph 39 above), and with special regard to contradictions in the existing assessments (see paragraph 17 above) and to the obvious deadlock (see paragraph 64 above), the domestic courts in the 2011/12 review proceedings should have obtained an expert opinion based on the case file. As they did not do so, they should have attempted to obtain a new expert opinion *proprio motu* in the course of the 2013 review proceedings. Therefore, in the particular circumstances of the instant case, the Court is not convinced that the domestic courts had a sufficient factual basis at hand in the course of the 2011/12 and 2013 review proceedings to decide on the applicant's requests for release.

(iii) The complaint of a lack of relevant and sufficient reasons

72. In the light of the above findings, the Court does not consider it necessary to examine separately the applicant's complaint that the domestic courts' reasoning was not relevant and sufficient.

(c) Conclusion

73. The applicant's detention during the review periods in question was therefore not "lawful" for the purposes of sub-paragraph (a) or (e) of Article 5 § 1 of the Convention, on account of the domestic courts' failure to examine the question of his transfer to the Vienna-Mittersteig Prison (see paragraph 65 above), and the lack of a sufficient factual basis in the 2011/12 and 2013 review proceedings to decide on the applicant's applications for release (see paragraph 71 above).

74. There has accordingly been a violation of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

75. The applicant complained under Article 5 § 4 of the Convention that the review proceedings in question (see paragraph 42 above) had not been conducted "speedily" as required by that provision, which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

76. 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. Submissions by the parties

(a) The applicant's arguments

77. The applicant asserted that the review proceedings in question had not been conducted with sufficient expediency.

(b) The Government's arguments

78. The Government referred to the Supreme Court's case-law (see paragraph 33 above), reiterating that the requirement of an annual review in accordance with Article 25 § 3 of the Criminal Code has been complied with if proceedings are instituted within one year of the previous review decision. Where an appeal is lodged against the first-instance court's decision, the beginning of the one-year period for the following periodic review will be the date of the second-instance decision. In addition, a detainee has the right to request his or her release at any time, which in that case would result in shorter review intervals.

79. In the instant case, the applicant's request of 20 August 2010 was thus the relevant date for the beginning of the 2010/11 review proceedings, which were terminated by the Court of Appeal's final decision of 25 January 2011. The proceedings thus lasted around five months.

80. The proceedings instituted by the applicant's request of 8 September 2011 were terminated by the Court of Appeal's decision of 30 July 2012. They thus lasted for around ten months.

81. The proceedings instituted by the applicant's request of 26 March 2013 were terminated by the Court of Appeal's final decision of 19 July 2013. They thus lasted for around four months.

82. The Government concluded from the above that the review decisions had been taken speedily. The necessity of conducting an oral hearing or obtaining an expert opinion affected the duration of the proceedings. Under section 167(1) of the Execution of Sentences Act a detainee must be heard in person by the competent court at least once every two years. That legal requirement was fulfilled in the instant case, as the applicant was heard in person on 15 March 2010 during the 2009/10 review proceedings, and subsequently on 23 January 2012 in the course of the 2011/12 review proceedings. Equally, an expert opinion had been requested by the domestic

courts every second year, namely during the same review proceedings in which oral hearings were held (2009/10 and 2011/12).

83. The complexity of the instant case resulted from the fact that the applicant had not only refused to undergo the therapeutic treatment offered to him, but during the review proceedings had refused to be examined by the (external) court-appointed experts. Moreover, each time an independent expert opinion had been obtained, the Regional Court had had to forward the opinion to the public prosecutor's office (securing the public interest in the proper administration of criminal justice and protection from potentially dangerous criminals), the head of the institution in charge of the enforcement of the detention, and the psychology staff for their comments. These comments in turn had had to be forwarded to the applicant to give him the possibility to submit his reply. Therefore, in the Government's view, the requirement of a speedy decision had been complied with in the applicant's case.

2. The Court's assessment

(a) General principles

84. The applicable general principles have recently been summarised in *Kuttner v. Austria* (no. 7997/08, §§ 36-38, 16 July 2015) as follows:

> "36. The Court reiterates that Article 5 § 4 of the Convention proclaims the right to a speedy judicial decision concerning the lawfulness of detention, and to an order for release if it proved unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000‑III, and *Kadirzhanov and Mamashev v. Russia*, nos. 42351/13 and 47823/13, § 119, 17 July 2014). Whereas the Court has held above, that Article 5 § 4 is applicable in this case, it reiterates that Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. However, where domestic law provides for an appeal, the appellate body must also comply with the requirements of Article 5 § 4, for instance as concerns the speediness of the review in appeal proceedings. Accordingly, in order to determine whether the requirement that a decision be given "speedily" has been complied with, it is necessary to effect an overall assessment where the proceedings have been conducted at more than one level of jurisdiction (see *Mooren v. Germany* [GC], no. 11364/03, § 106, 9 July 2009). At the same time, the standard of "speediness" is less stringent when it comes to proceedings before an appellate court (see *Lebedev v. Russia*, no. 4493/04, § 96, 25 October 2007).
>
> 37. The question of whether periods comply with the requirement of "speediness" under Article 5 § 4 must be determined in the light of the circumstances of each case (see *Sanchez-Reisse v. Switzerland*, 21 October 1986, § 55, Series A no. 107, *Oldham v. the United Kingdom*, no. 36273/97, § 31, ECHR 2000-X, and *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII). Although the amount of time taken by the relevant proceedings is obviously an important element, it is not necessarily in itself decisive for the question of whether a decision has been given with the requisite speed (see *Merie v. the Netherlands* (dec.), no. 664/05, 20 September 2007). What is taken into account is the diligence shown by the authorities, the delay attributable to the applicant, and any factors causing delay for which the State cannot be held responsible, such as the complexity of a case (see, mutatis mutandis,

Jablonski v. Poland, no. 33492/96, §§ 91-94, 21 December 2000). The Court must also examine whether any new relevant factors that have arisen in the interval between periodic reviews have been assessed, without unreasonable delay, by a court having jurisdiction to decide whether or not the detention has become "unlawful" in the light of these new factors (see *Abdulkhakov v. Russia*, no. 14743/11, § 215, 2 October 2012).

38. The Court observes that it is not its task to attempt to rule on the maximum period of time between reviews which should automatically apply to a certain category of detainees (see *Kadirzhanov and Mamashev v. Russia*, cited above, § 130). The requirements of Article 5 § 4 as to what may be considered a "reasonable" interval in the context of periodic judicial review vary from one domain to another, depending on the type of deprivation of liberty in question (see, for a summary of the Court's case‑law in the context of detention for the purposes set out in sub‑paragraphs (a), (c), (e) and (f) of Article 5 § 1, *Abdulkhakov v. Russia*, §§ 212-14, cited above). Long intervals in the context of automatic periodic review may give rise to a violation of Article 5 § 4 (see, among other authorities, *Herczegfalvy v. Austria*, 24 September 1992, § 77, Series A no. 244)."

(b) Application of these principles to the present case

85. Looking at the intervals between the review proceedings, the Court notes that the 2011/12 review was initiated following the applicant's application of 8 September 2011, hence less than eight months after the previous review decision by the Court of Appeal of 25 January 2011. The 2013 review period was initiated following the applicant's application of 26 March 2013, also less than eight months after the previous decision by the Court of Appeal of 30 July 2012. The Court is therefore satisfied that the domestic courts met the deadlines in accordance with domestic case-law and initiated review proceedings on a yearly basis (see paragraph 33 above).

86. Next, the Court will examine the respective duration of the review proceedings in question. Taking as the starting point the date on which the applicant applied for release, and as the end point the final decision by the appellate court (see *Sanchez-Reisse v. Switzerland*, 21 October 1986, § 54, Series A no. 107), the Court reiterates that in the yearly review proceedings of 2010/11 it took the domestic courts little more than five months to decide; in the review proceedings of 2011/12 it took them almost eleven months; and in the 2013 proceedings less than four months. In the course of the 2011/12 proceedings the Regional Court held two oral hearings and tried to obtain an expert opinion. In the review proceedings of 2010/11 and 2013 the courts neither held oral hearings nor sought an expert opinion, which explains the relatively short duration of those two sets of proceedings.

87. The Court considers that the duration of neither the 2010/11 review proceedings nor the 2013 review proceedings raises issues concerning the speediness of the domestic courts' decisions (see *Abdulkharov*, cited above, § 212, with further references) and hence finds no violation of Article 5 § 4 of the Convention in that respect.

88. The Court notes, however, that the duration of the 2011/12 review proceedings was considerably longer and therefore requires a more in-depth examination. After the applicant had lodged his application for release on 8 September 2011, the Regional Court took more than four and a half months before holding an oral hearing, namely until 23 January 2012. It is noted in that context that under domestic law, it was a legal requirement to hold an oral hearing in the course of those review proceedings (see paragraph 39 above). The Regional Court then appointed an expert to draw up an opinion. However, the applicant refused to be examined by the expert. The Regional Court therefore held another hearing and finally dismissed the applicant's application for release on 23 April 2012. It is not evident from the documents at hand why the Regional Court did not decide more promptly on the applicant's application, given that it was clear that it would not have to wait for a psychiatric expert opinion, and also given that the applicant had lodged his application in September of the previous year. The Court of Appeal did not dismiss the applicant's appeal against that decision until 30 July 2012, more than four months later, giving barely any reasoning of its own, but referring largely to its decisions in previous review proceedings (see paragraph 26 above). There is therefore no indication from the documents at hand as to why the 2011/12 review period took almost eleven months. The Court takes the view that this duration cannot be explained by the complexity of the case or by the applicant's conduct. The Government have not adduced any relevant arguments in that respect either.

89. The foregoing considerations are sufficient to enable the Court to conclude that the 2011/12 review proceedings were not conducted with the necessary expediency. There has accordingly been a violation of the "speediness" requirement under Article 5 § 4 of the Convention in respect of these proceedings.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

91. The applicant claimed 29,200 euros (EUR) in respect of pecuniary damage, namely for loss of earnings he could have generated had he been released in 2010 and taken up his lawyer's offer of employment. He further claimed non-pecuniary damages of EUR 32,000 in relation to the alleged

violation of Article 5 § 1 of the Convention, and EUR 3,600 in relation to the alleged violation of Article 5 § 4 of the Convention.

92. The Government contested those claims. As regards the claim for non-pecuniary damage, it noted that the finding of a violation of a Convention right often constituted sufficient reparation in itself. Moreover, it could not be assumed that the outcome of the proceedings in question would have been any different had the domestic authorities or courts acted in conformity with the provisions of the Convention. Turning to the applicant's claim for pecuniary damage, the Government submitted that there was no causal link between the damage claimed and the alleged violation of the Convention, in addition to the fact that the claim was not sufficiently detailed.

93. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant has suffered certain non-pecuniary damage, which is not sufficiently compensated for by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 under this head.

B. Costs and expenses

94. The applicant also claimed EUR 3,155.16 for the costs and expenses incurred before the Court.

95. The Government considered these claims to be excessive. They argued that according to the General Remuneration Criteria (*Allgemeine Honorarkriterien*) of the Austrian Bar Association (*Österreichische Rechtsanwaltskammer*) read in conjunction with the Lawyers' Remuneration Act (*Rechtsanwaltstarifgesetz*), the applicant could only claim EUR 650.30 for the proceedings before the Court.

96. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 for the proceedings before it. As the applicant has not made a claim for the costs and expenses incurred in the domestic proceedings, no award is made under that head.

C. Default interest

97. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there have been violations of Article 5 § 1 of the Convention, as (i) in the review proceedings in question the courts failed to examine the question of the applicant's transfer to the Vienna-Mittersteig Prison; and (ii) in the 2011/12 and 2013 review proceedings the domestic courts did not have a sufficient factual basis to decide on the applicant's requests for release;

3. *Holds* that there has been no violation of Article 5 § 4 of the Convention in respect of the 2010/11 and 2013 review proceedings, and a violation of Article 5 § 4 of the Convention in respect of the 2011/12 review proceedings;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Angelika Nußberger
Deputy Registrar	President