

**Short Presentation of an Application and it's success at the ECHR
(Application no. 19359/04)**

I would like to introduce the judgement of the European Court of Human Rights of the 17 Decembre 2009, Case of M. v. Germany. ECHR decided that the complaint was justified. Germany violated **Article 5 § 1** of the Convention by the continued preventive detention of the applicant. Under the legal provisions applicable at the time of the offence the maximum for such detention had been ten years. The applicant had been detained since 1986. The retrospective extension of his preventive to an unlimited period of time had also breached his right under **Article 7 § 1** of the Convention not to have a heavier penalty imposed on him than the one applicable at the time of his offence.

The judgement is of great relevance for the Convention generally and in particular for the discussion in Germany regarding the so-called measures of correction and prevention. Those are in the view even of the German Federal Constitutional Court (who had decided in the same case in 2004) not penalties, but solely preventive measures. Penalties in the legal sense however are only such measures which expresses sovereign censure of illegal and culpable conduct and involved the imposition of a penalty to compensate for guilt. The prohibition of retrospective criminal laws applied only to the latter and was – in the case of the applicant – not violated. After the decision of the ECHR this argumentation will be not justifiable anymore.

I attach an extract of the decision for better understanding the subject.