

LEGAL ANALYSIS REPORT No. 01

1998-1999 Berlin Immigration Detention, Medical Unfitness, Release, Renewed Detention, and Possible Violations of German and International Human-Rights Law

Applicant: Ismail Rustam / Rustem Ismail

Date of birth: 07.11.1970

Nationality: Azerbaijani

Place: Berlin, Federal Republic of Germany

Prepared on: 06 June 2026, Berlin time

AI-assisted legal-documentary analysis based on uploaded records. This report is a preliminary legal analysis, not a final judicial finding.

Qeyd: Bu sənəd 01 nömrəli rəsmi hüquqi analiz kimi hazırlanmışdır. 1998-ci ildə tibbi səbəblə buraxıldıqdan sonra sənədsiz və müdafiəsiz vəziyyətdə qalmağın 1999-cu ildə yenidən həbs və ittiham əsası kimi istifadə olunması ayrıca əsas məsələ kimi daxil edilmişdir.

I. Scope and evidentiary basis

This report analyses the available documentary material concerning the applicant's immigration-related detention and treatment in Berlin during 1998-1999.

The report distinguishes between documented facts visible in the records, the applicant's statements recorded in official or lawyer correspondence, and preliminary legal conclusions requiring assessment by a competent authority.

The strongest documentary sources are: police/immigration records from August-November 1998; Amtsgericht Schöneberg detention records; the 23.11.1998 release record based on lack of detention/custody fitness; the 1999 renewed arrest and detention records; correspondence by Levent Göktekin; and submissions by attorney Svenja Schmidt-Bandelow.

II. Executive summary

The documentary record shows two connected detention phases: first, detention from August 1998 until release on 23.11.1998 because the applicant was no longer fit for detention or custody; second, renewed detention in October 1999 based on lack of papers, lack of registration, and alleged illegal stay.

The central legal issue is not only that the applicant was detained twice. The more serious issue is that the 1998 release appears to have left him without effective shelter, papers, medical protection, or a realistic route to leave Germany; the unresolved consequences of that release were then used again in 1999 as grounds for renewed detention and criminal/administrative accusation.

This pattern may be described as circular administrative vulnerability: the state releases a medically unfit person without securing effective protection, then later treats the resulting lack of papers, address, and exit capacity as evidence against him.

The documents raise serious concerns under German constitutional law, the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and the UN Convention against Torture.

III. Chronological reconstruction of key events

Date / time	Event	Documented content	Legal significance
07.08.1998, approx. 10:00	Arrest / initial police procedure	Police record identifies Rustem Ismail, born 07.11.1970, Azerbaijani national. Arrest occurred at/around Ziegrastraße 15-19, Berlin-Neukölln, "Festsaal Prestige". Grounds included missing passport/identity documents and immigration-control concerns.	Beginning of first documented deprivation of liberty.
12.08.1998	First court detention order	Amtsgericht Schöneberg ordered detention to secure deportation until 23.10.1998. The applicant stated that he had entered with passport and visa via France, had lost documents, had no money, and did not agree with deportation.	From the start, the case involved deprivation of liberty, poverty/no money, document loss, and need for translation.
19.10.1998	Application to extend detention	Immigration authority requested extension of Abschiebehaft by at least six weeks, referring to passport-procurement issues and alleged lack of cooperation.	Shows administrative reliance on passport-procurement problems.
23.10.1998	Court hearing; health complaints recorded	The applicant stated that illness had worsened in detention, that he had night attacks and bleeding, that police did not obtain a doctor despite requests, and that he had entered a three-day hunger strike.	Authorities had notice of serious health complaints during detention.
23.11.1998	Release due to lack of detention/custody fitness	The immigration authority withdrew the detention application and recorded that the applicant was released because detention and custody fitness no longer existed: "nicht mehr vorhandener Haft- und Verwahrfähigkeit".	Central evidence: release was medical/custody-fitness based, not ordinary regularisation.
21.12.1998 / 18.01.1999	Residence application and rejection	The applicant applied for residence on 21.12.1998. The immigration authority rejected the application on 18.01.1999 and required departure/passport-related action.	Post-release legal instability continued shortly after medically based release.
12.10.1999, approx. 02:15	Renewed arrest	The applicant was stopped at/around Sonnenallee/Pannierstraße, Berlin-Neukölln. Police recorded missing documents and lack of German language capacity; later	Beginning of second detention phase based on unresolved paper/status issues.

		records link alias data to Ismail Rustem.	
13.10.1999	Provisional deprivation of liberty	Amtsgericht Schöneberg ordered provisional detention until 05.11.1999; record noted the applicant barely spoke German and a full decision could not be made because no interpreter was reachable.	Interpreter and effective-hearing concerns.
14.10.1999	Detention ordered until 21.12.1999	At the hearing, the applicant stated he had already been in Abschiebehaft in 1998, had been released and sent to an authority, but received neither accommodation nor papers. He stated he had been released due to illness and had neither money nor papers to leave.	Directly supports the argument that the first release left him in a state later used against him.
28.10.1999	Immediate complaint by attorney	Attorney Svenja Schmidt-Bandelow argued that detention until 21.12.1999 was disproportionate and that, after release at the end of 1998, the applicant should have been tolerated ("geduldet") due to passportlessness and lack of money; instead, he was allegedly sent away and told to leave.	Strong legal support for circular vulnerability / failure to regularise or protect after release.
02.11.1999	Medical-room crisis / property-damage allegation	Correspondence describes a medical-room incident involving administration of medicine, difficulty breathing, being locked in the medical room, distress, cutting arms/hands on a mirror, and alleged suicide risk; authorities pursued property-damage issues.	Possible criminalisation of a medical emergency; need for independent medical and psychological assessment.
23.11.1999	Medical examination in Alt-Moabit	Levent Göktekin reported that the applicant was examined at the prison hospital and that internal/intestinal injury or bleeding was discussed.	Medical condition again became central during second detention.
24.11.1999	Witness account and detainee signatures	Göktekin's letter reports that detainees saw the applicant collapse, with stiff hands, arms, and feet, feared he might die, and alleged he was dragged on the floor after detainees were locked in cells.	Strong witness block; needs independent investigation.
25.11.1999	Lawyer argues no detention fitness	Attorney Schmidt-Bandelow submitted that no detention fitness remained, referring to continuing stomach bleeding, serious illness, urgent need for treatment, inadequate care in Abschiebehaft, and need for immediate release and independent medical review.	Formal legal claim that continued detention created serious health danger.

27.11.1999 / 29.11.1999	External hospital examination reported	Göktekin reported that the applicant had been examined outside detention in Köpenick and that doctors allegedly said he had an intestinal hole/wound and should consume only water and tea, while the detention doctor allegedly said nothing was wrong.	Contradictory medical assessments; independent expert review was required.
01.12.1999	DRK Salvador-Allende hospital identified	Göktekin identified the hospital as DRK Dr. Salvador-Allende-Krankenhaus, Salvador-Allende-Straße 2, 12559 Berlin-Köpenick, and sought access to records.	Identifies a concrete hospital file for future evidence retrieval.
02.12.1999	Illegal-stay accusation period	LKA correspondence described an investigation for violation of the Aliens Act due to illegal stay, listing the alleged period as 19.01.1999-12.10.1999.	Shows that the post-release period after the 18.01.1999 rejection was treated as an offence period.

IV. Special issue: renewed detention after medically based release

The applicant's additional clarification is legally important: he argues that after the 1998 release he was not given the necessary documents, shelter, or realistic ability to leave Germany, and that in 1999 he was again detained within the same unresolved administrative situation.

The 14.10.1999 hearing record supports this point because it records the applicant's statement that, after the 1998 detention, he was released, sent to an authority, and received neither accommodation nor papers. It also records his statement that he was released due to illness and had neither money nor papers to leave.

The 28.10.1999 attorney complaint strengthens the same argument: it states that after release at the end of 1998 the applicant appeared before the authority; because of passportlessness he should already have been tolerated, but instead he was allegedly sent away and referred to departure, although the authority knew he lacked financial means to obtain a passport.

This is not framed here as a final finding of "double punishment" in the strict criminal-law sense. Under German constitutional law, the strict rule against punishment twice for the same act belongs to criminal-law punishment. Immigration detention is formally administrative. However, the same facts may still create a serious proportionality, fairness, non-arbitrariness, and human-dignity issue: the state may not create or leave unresolved an impossible situation and then use that situation as a basis for renewed detention.

V. Main possible legal violations under German law

1. Grundgesetz Article 1(1) - Human dignity

Possible violation if a medically vulnerable detainee was left without effective protection, detained despite serious health risks, or treated in a manner incompatible with basic human dignity.

2. Grundgesetz Article 2(2) - Life, physical integrity, and liberty

Relevant to detention despite bleeding, collapse, seizure-like symptoms, medical unfitness, and alleged lack of adequate care.

3. Grundgesetz Article 3(1) - Equality before the law

Relevant if the applicant's foreign status, language barrier, illness, or poverty led to inferior protection or harsher administrative treatment.

4. Grundgesetz Article 19(4) - Effective legal remedy

Relevant if the applicant could not effectively challenge detention, medical neglect, or administrative decisions.

5. Grundgesetz Article 103(1) - Right to be heard

Relevant where the applicant could not meaningfully present facts because of language barriers, lack of documents, illness, or lack of legal support.

6. Grundgesetz Article 103(3) - No multiple punishment for the same act

This should be used carefully. The 1999 renewed detention may not be "punishment" in the strict criminal-law sense. However, the principle is relevant as an analogy and warning: the state should not repeatedly burden a person on the basis of the same unresolved factual situation it failed to remedy.

7. Grundgesetz Article 104 - Safeguards for deprivation of liberty

Directly relevant to immigration detention, judicial review, proportionality, interpreter access, and the requirement that deprivation of liberty follow strict constitutional safeguards.

8. Proportionality principle - Verhältnismäßigkeit

Detention must be suitable, necessary, and proportionate. Detaining a person who is medically unfit, or whose lack of papers resulted from unresolved post-release vulnerability, may be disproportionate.

9. State duty of care - staatliche Schutzpflicht / Fürsorgepflicht

The state has heightened duties toward persons in custody, including medical protection, suicide-prevention measures, and independent review when serious illness is alleged.

VI. Possible violations under international human-rights law

European Convention on Human Rights - Article 2

Right to life. Relevant if authorities knew or should have known of a real medical or suicide-related risk and failed to take reasonable protective measures.

European Convention on Human Rights - Article 3

Prohibition of torture and inhuman or degrading treatment. Relevant to serious medical neglect in custody, detention despite unfitness, alleged dragging, collapse, and failure to respond to health emergencies.

European Convention on Human Rights - Article 5

Right to liberty and security. Relevant to immigration detention, renewed detention, arbitrariness, proportionality, and effective judicial control.

European Convention on Human Rights - Article 6

Fair hearing. Relevant to any criminal allegation, such as property damage, and to fairness where language and health barriers prevent effective defence.

European Convention on Human Rights - Article 13

Effective remedy. Relevant if complaints about detention conditions, medical neglect, or ill-treatment were not effectively examined.

European Convention on Human Rights - Article 14

Non-discrimination. Relevant if foreign status, language barrier, poverty, or illness affected access to protection.

ICCPR Articles 6, 7, 9, 10, 14, 26

Right to life; prohibition of cruel, inhuman or degrading treatment; liberty and security; humane treatment of detained persons; fair procedure; equality before the law.

UN Convention against Torture - Articles 2, 11, 12, 13, 16

Duties to prevent torture and ill-treatment, systematically review detention practices, investigate credible allegations, allow complaints, and prevent cruel, inhuman or degrading treatment.

VII. Preliminary legal finding

The documents create a serious evidentiary basis for the conclusion that the applicant's 1998-1999 case was not a simple immigration-control matter. It involved repeated deprivation of liberty, serious medical vulnerability, lack of detention fitness, lack of post-release protection, renewed detention based on unresolved paper/status problems, and a later medical crisis supported by witness material and lawyer submissions.

The 23.11.1998 release due to lack of detention and custody fitness is the central turning point. After such a release, the authorities should have ensured a lawful, realistic, and medically safe solution. The later 1999 renewed detention appears to have relied on the same unresolved consequences - lack of papers, lack of address, lack of means, and inability to leave - that followed the first release.

This may amount to arbitrary or disproportionate detention, failure of medical protection in custody, denial of effective remedy, and inhuman or degrading treatment, depending on full file review and independent legal assessment.

VIII. Evidence index for this report

Document 1: 1998 police, immigration, and court records, including arrest, detention orders, health complaints, and the 23.11.1998 release due to lack of Haft- und Verwahrfähigkeit.

Document 2: 1999 immigration/court records and lawyer submissions, including renewed detention, the 14.10.1999 hearing, the 28.10.1999 immediate complaint, and authority arguments about the period between first and second detention.

Document 3: Levent Göktekin correspondence and related 1999 medical/witness material, including the 24.11.1999 report, detainee signatures, 25.11.1999 lawyer submission, and DRK/Köpenick hospital references.

IX. Legal-source references

Basic Law for the Federal Republic of Germany (Grundgesetz), official English translation: gesetze-im-internet.de.

European Convention on Human Rights, official Council of Europe/ECHR text.

International Covenant on Civil and Political Rights, official OHCHR text.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, official OHCHR text.

Prepared as Legal Analysis Report No. 01. The report should be reviewed by a qualified lawyer before formal filing.