

LEGAL ANALYSIS REPORT No. 02

1998-2000 Chain: Release into Vulnerability, Renewed Detention, Criminalisation of Non-Duldung, and Consequences for Social and Medical Access

Applicant	Ismail Rustam / Rustem Ismail, born 07.11.1970, Azerbaijani national
Report number	02
Prepared on	06 June 2026, 23:10 CEST (Berlin time)
Relation to Report No. 01	This report follows Legal Analysis Report No. 01 and focuses on the subsequent criminal, administrative and social/medical consequences of the 1998-1999 detention chain.
Main source file	Haz 6, Belge 51.pdf - checked in this session: 392 PDF pages; no embedded file attachments detected.
Method	AI-assisted documentary analysis. Documented facts are separated from the applicant's witness statement and legal assessment.

Important evidentiary distinction: This report treats official court, police, immigration and welfare documents as documentary evidence. The applicant's account of being left on the street in winter 1998/1999 with fever, coughing, bleeding/pneumonia-like illness, and later seizure-like collapse is recorded as a witness statement requiring medical-file and archive verification, but it is legally relevant because it connects the documented release for lack of detention fitness to later documented criminalisation and welfare/medical exclusion.

I. Executive summary

The uploaded file "Haz 6, Belge 51.pdf" contains 392 PDF pages. It is not a 600-page file in its present technical form. It appears to be a large scanned/documentary bundle with numerous documents inside one PDF, but the PDF itself has 392 pages and no embedded PDF attachments were detected during technical inspection.

Report No. 01 established the first chain: detention in August 1998, serious health complaints in custody, and release on 23.11.1998 because detention/custody fitness no longer existed. Report No. 02 analyses the next legal chain: the applicant was allegedly left without papers, accommodation and practical medical access after the 1998 release; was again detained in 1999; and in 2000 was prosecuted and convicted for staying in Germany without a residence permit and without Duldung during 19.01.1999-12.10.1999.

The core legal issue is that the State treated the applicant as criminally responsible for the absence of a Duldung/status, although later courts found that a Duldung should have been examined or granted because removal was not realistically possible. This later led to the reopening of the criminal case and acquittal/freispruch, with the State Treasury ordered to bear costs and compensate for the conviction.

The applicant further states that the 2000 conviction and surrounding administrative position were then used as a gateway to restrict or deny social assistance, accommodation, health coverage/Krankenschein, and access to doctors. The currently visible pages show that the applicant made this same argument in later writings: that the 1998-2000 immigration/criminal chain destroyed his life, that his Krankenschein was removed, and that social rights were taken from him. These allegations require further document-by-document analysis of the social court and welfare-office records contained later in the file.

II. Technical check of the uploaded PDF

Item	Result	Legal-documentary meaning
PDF page count	392 pages	The file is large but not technically above 600 pages in the uploaded version.
Embedded files/attachments	0 detected	The material appears as pages inside one PDF, not as separate embedded PDFs.
File meaning	A compiled evidence bundle	It can still contain many separate

Item	Result	Legal-documentary meaning
		documents; page count is not the same as number of source documents.

III. Chronological reconstruction: documented chain and applicant statement

Date / period	Event	Documentary and legal meaning
05-07.08.1998	Entry/arrest phase	The later criminal indictment and judgment state that the applicant entered Germany on 05.08.1998; police records show arrest/detention documentation beginning 07.08.1998/08.08.1998. Source: Report No. 01 source files; Haz 6, p. 1-5 also repeats the alleged 05.08.1998 entry.
23.10.1998	Health complaints already in detention	In the 1998 detention hearing, the applicant stated that his illness had worsened, that he had night attacks and bleeding, requested a doctor, and had gone on hunger strike. Source: Report No. 01 source file, AG Schöneberg 70 XIV 3148/98 B.
23.11.1998	Release because detention/custody fitness no longer existed	The immigration authority withdrew the detention request and stated that the applicant was released because "Haft- und Verwahrfähigkeit" no longer existed. Source: Report No. 01 source file.
Winter 1998/1999	Applicant witness statement: release into street homelessness and untreated illness	The applicant states that after release he was left without documents, accommodation, health insurance, food money or realistic medical access, and spent the winter coughing, feverish and bleeding/pneumonia-like on the street. This is a witness statement; documentary verification should include welfare-office records, hospital records, shelter records, Krankenschein/AsylbLG files and court files.
18.01.1999	Rejection of residence application / threat of criminality	The authority rejected residence, ordered departure and referred to possible punishment for staying without required residence permission. Source: Report No. 01 source file.
19.01.1999-12.10.1999	Period later criminalised	The 28.03.2000 indictment charged the applicant with staying in Germany during this period without residence permit and without Duldung. Source: Haz 6, p. 1-5.
12-14.10.1999	Renewed arrest and detention	The applicant was again arrested and detained. In the 14.10.1999 detention hearing he stated that after the 1998 release he received neither accommodation nor paper, and that he had been released because of illness. Source: Report No. 01 source file.
02.11.1999	Medical crisis in detention	Correspondence describes acute breathing problems, numb hands/feet, pale body, shivering, inability to walk, and alleged rough treatment/dragging to the doctor. Source: Report No. 01 source file.
23-25.11.1999	Medical examination and lawyer's lack-of-fitness argument	The applicant's lawyer argued that no detention fitness existed due to ongoing stomach bleeding and suspected intestinal wound; independent medical

Date / period	Event	Documentary and legal meaning
		assessment and immediate release were requested. Source: Report No. 01 source file.
28.03.2000	Indictment 52 Js 7/00	Staatsanwaltschaft Berlin filed indictment against Hasanov Hyesjm alias Rustem Ismail for alleged violation of § 92 Abs. 1 Nr. 1 AuslG. Source: Haz 6, p. 1-6.
02.05.2000 and 30.06.2000	Duldung extension records under AuslG § 55	LEA notes show Duldung validity being extended to 01.07.2000 and 01.10.2000, with employment, study/training prohibited, Berlin-only residence restriction and passport-presentation requirement. Source: Haz 6, p. 12-13.
19.07.2000	Conviction by Amtsgericht Tiergarten, 251 a Ds 349/00	The applicant was convicted of violation of § 92 Abs. 1 Nr. 1 AuslG and sentenced to 120 daily rates of 10 DM; judgment became final on 27.07.2000. Source: Haz 6, p. 26-27.
19.01.2001	Correction of identity rubrum	The court corrected the judgment: Hasanov Hyesjm was to be treated as alias; Rustem Ismail was the correct name. Source: Haz 6, search result and file bundle.
17.12.2003	Landgericht Berlin, 528 Qs 49/03	The Landgericht Berlin set aside the Amtsgericht decision rejecting reopening and declared reopening admissible. Source: Haz 6, p. 81 ff / search result.
03.01.2005 / 02.01.2005 in the file text	Reopening and acquittal	The Amtsgericht Tiergarten ordered reopening, lifted the 19.07.2000 judgment, acquitted the applicant, ordered publication in the Bundesanzeiger, and held the State Treasury responsible for compensation/costs. Source: Haz 6, p. 111-112.
18.04.2005 and later	Costs and consequences	A later cost decision fixed fees/expenses at 31.32 EUR in one part; other records discuss costs and legal expenses after acquittal. Source: Haz 6, p. 123-125 and related cost pages.

IV. Core legal analysis

A. Criminalisation of a status problem that the State itself had to resolve

The 28.03.2000 indictment framed the case as a simple violation of § 92 Abs. 1 Nr. 1 AuslG: the applicant allegedly remained in Germany from 19.01.1999 to 12.10.1999 without a residence permit and without Duldung. The 19.07.2000 judgment adopted this logic and imposed a criminal fine of 120 daily rates.

The later reopening materials fundamentally weaken that logic. The 2005 reopening/acquittal reasoning refers to the constitutional requirement that criminal courts must not merely ask whether a Duldung document existed; they must examine whether the conditions for a Duldung existed. If the person could not be removed for factual reasons, a Duldung claim could exist, and criminal liability for non-Duldung becomes constitutionally problematic.

This directly supports the applicant's central argument: the authorities did not merely punish a neutral immigration violation. They punished him for an unresolved administrative situation created after his illness-related release and later corrected by reopening and acquittal.

B. The 1998 release and winter homelessness as a causal bridge

Report No. 01 documented that the applicant was released in November 1998 because detention/custody fitness no longer existed. In such a situation, a State authority cannot treat the person as a normal, healthy, self-sufficient

migrant immediately capable of leaving the country, obtaining documents, paying for a ticket, securing accommodation and accessing doctors without assistance.

The applicant's witness account is that he was released into the street during winter 1998/1999 while coughing, feverish and bleeding, and that this worsened into pneumonia-like conditions and later neurological/seizure-like symptoms observed in 1999. Even if some parts require medical-file verification, the legal relevance is already clear: a medically unfit person released from detention required structured follow-up, medical access, and minimum subsistence protection.

The documented 14.10.1999 hearing statement that he had received neither accommodation nor papers after the 1998 release is highly important because it independently fits the applicant's present explanation: the second detention and 2000 criminal case were not isolated events; they arose from an unresolved release situation.

C. Duldung records undermine the criminal conviction

The file contains LEA records from 02.05.2000 and 30.06.2000 extending Duldung under AuslG § 55. Later reopening reasoning treated the impossibility of removal / lack of valid return papers as legally important because it meant a Duldung should have been examined or granted for the earlier period.

The legal consequence is serious: if the factual situation justifying Duldung in 2000 already existed during the charged period 19.01.1999-12.10.1999, then the applicant should not have been criminally convicted for the absence of a document the authority itself had a duty to issue or at least examine.

D. Restrictions attached to Duldung and their social-medical impact

The Duldung notes also show restrictions: employment prohibited, study/training prohibited, residence restricted to Berlin, passport-presentation required. These restrictions are important because they show that even when Duldung was finally provided, the applicant remained structurally dependent on welfare/medical assistance and could not self-correct his situation through employment or relocation.

Therefore, if welfare offices, social courts, or administrative bodies later used the immigration/criminal situation to deny accommodation, food support, health assistance or Krankenschein, the result would be a closed circle: the applicant was prevented from regularising his life, punished for being irregular, and then denied the minimum means needed to survive and obtain medical care.

E. Later documents showing the applicant's consistent claim about Krankenschein and social rights

Pages 158-159 and 263-264 of the uploaded bundle contain later writings by the applicant stating that in the cold winter months of 1998 he became seriously ill due to being put on the street; that the Ausländerbehörde was the reason for his second detention in 1999; that the 2000 procedure 251 a Ds 349/00 was used against him; and that in other proceedings his social rights were taken away, especially his Krankenschein.

These pages are not neutral court findings; they are the applicant's own written statements. However, they are legally relevant because they show that the chain argument was not invented now. The same connection - 1998 street release, 1999 detention, 2000 criminal conviction, loss of Krankenschein/social rights - appears in earlier written material contained in the evidence bundle.

V. Possible violations of German law and constitutional principles

Norm / principle	Possible relevance in this case
Grundgesetz Art. 1(1) - Human dignity	Leaving a medically unfit person without shelter, papers and medical access, then criminalising the resulting status situation, raises a dignity issue.
Grundgesetz Art. 2(2) - Life, physical integrity and personal liberty	Relevant to detention despite severe medical symptoms, release without medical follow-up, street homelessness in winter, and obstruction of treatment.
Grundgesetz Art. 3(1) - Equality before the law	Relevant if foreign status, language barriers and illness resulted in inferior procedural and medical protection.
Grundgesetz Art. 19(4) - Effective legal remedy	Relevant if the applicant could not effectively challenge detention, welfare denial, lack of Duldung, or lack of medical

Norm / principle	Possible relevance in this case
	access.
Grundgesetz Art. 103(1) - Right to be heard	Relevant to language barriers and whether courts adequately heard the applicant's health and impossibility-of-departure arguments.
Grundgesetz Art. 104 - Deprivation of liberty safeguards	Relevant to repeated immigration detention and detention despite medical unfitness.
Ausländergesetz § 55 Duldung logic	Later reopening materials indicate the court should have examined whether Duldung conditions existed, not merely whether a Duldung paper was physically held.
Asylbewerberleistungsgesetz §§ 3, 4, 6 - minimum subsistence and health-related support	Relevant where accommodation, food support, acute medical care, medicines, and indispensable health-related services were denied or blocked.
Administrative proportionality principle	Detention, refusal of Duldung, denial of medical access, and welfare exclusion must be suitable, necessary and proportionate; a medically vulnerable person requires special balancing.
State duty of care in custody and after medical release	A person released for lack of detention fitness requires safe handover, medical follow-up and minimum survival support.

VI. Possible violations of international human-rights law

Instrument / article	Possible relevance
ECHR Article 2 - Right to life	Relevant where authorities knew or should have known of serious medical risk and failed to protect life/health.
ECHR Article 3 - Prohibition of inhuman or degrading treatment	Relevant to detention of a seriously ill person, alleged dragging/rough treatment, inadequate medical care, and winter street abandonment.
ECHR Article 5 - Right to liberty and security	Relevant to repeated immigration detention, proportionality and arbitrariness where removal was not realistically possible.
ECHR Article 6 - Fair trial	Relevant to the 2000 criminal case if the court failed to examine Duldung entitlement/impossibility of removal and language/health barriers.
ECHR Article 13 - Effective remedy	Relevant to failures to provide effective complaint mechanisms for detention, medical neglect and social/medical denial.
ECHR Article 14 - Non-discrimination	Relevant if foreign status, illness or language barriers led to unequal protection.
ICCPR Articles 6, 7, 9, 10, 14, 26	Right to life; prohibition of cruel/inhuman treatment; liberty; humane treatment of detainees; fair process; equality before law.
ICESCR Articles 9, 11, 12	Social security, adequate standard of living, and highest attainable standard of health; relevant to accommodation, food and medical access.
UN Convention against Torture Articles 2, 11, 12, 13, 16	Duty to prevent and review detention practices, investigate ill-treatment, allow complaints, and prevent cruel/inhuman/degrading treatment.
UN Standard Minimum Rules for the Treatment of Prisoners / Nelson Mandela Rules	Relevant as interpretive standards for medical care and treatment of persons deprived of liberty.

VII. Preliminary findings for Report No. 02

The 2000 criminal case was not an isolated event. It was the continuation of the 1998-1999 detention/release chain.

The State documented medical unfitness for detention in 1998, but the later criminal charge treated the applicant's post-release lack of status/Duldung as his own wrongdoing.

The 2000 conviction under § 92 Abs. 1 Nr. 1 AuslG was later undermined by the Duldung/impossibility-of-removal issue and ultimately lifted through reopening and acquittal.

The applicant's statement that the conviction and immigration position were later used to block social assistance, accommodation, health insurance/Krankenschein and doctor access is legally plausible as a chain argument and is supported by later writings in the bundle, but each welfare/social-court decision must be separately analysed.

The strongest legal theory is "administrative circularity": the authorities released a medically unfit person without safe status and survival support, later punished him for the resulting irregularity, and then allegedly used that irregularity/conviction to deny the minimum means of health and survival.

The strongest immediate documentary anchor is the later reopening/acquittal: it confirms that the criminal conviction should not be treated as a valid moral or legal basis for denying rights.

VIII. Documents still needed for a complete evidence chain

- The complete 23.11.1998 release/medical-fitness file and any medical reports behind the release.
- Shelter/welfare records for winter 1998/1999 showing whether accommodation, food support or medical assistance were requested or denied.
- Krankenschein/AsylbLG records from 1999-2004, especially decisions denying medical certificates, treatment costs, medicines or insurance access.
- Full file for the 19.07.2000 criminal hearing, including interpreter information, defence submissions and any mention of health/impossibility of departure.
- Full Landgericht Berlin 528 Qs 49/03 decision and Amtsgericht Tiergarten reopening/acquittal decision with complete page sequence.
- Later welfare/social-court decisions which allegedly relied on the 2000 conviction or immigration status to deny accommodation or medical care.
- Medical records for pneumonia/respiratory illness, bleeding, seizure-like episodes, neurological symptoms, and later chronic consequences.

IX. Key source references used in this report

Source	What it supports
Haz 6, Belge 51.pdf, p. 1-6	28.03.2000 indictment by Staatsanwaltschaft Berlin, 52 Js 7/00.
Haz 6, Belge 51.pdf, p. 9-11	08.06.2000 notification of indictment; 23.06.2000 opening/lading to trial.
Haz 6, Belge 51.pdf, p. 12-13	LEA Duldung extensions under AuslG § 55 with restrictions.
Haz 6, Belge 51.pdf, p. 26-27	19.07.2000 Amtsgericht Tiergarten judgment, 251 a Ds 349/00; 120 daily rates.
Haz 6, Belge 51.pdf, p. 81-90 / 111-112	Reopening reasoning, Duldung entitlement/impossibility of removal, and acquittal after lifting the judgment.
Haz 6, Belge 51.pdf, p. 123-125	Later costs/reimbursement discussion and significance of the acquittal.
Haz 6, Belge 51.pdf, p. 158-159 and p. 263-264	Applicant's later written statements connecting 1998 winter street abandonment, 1999 detention, 2000 criminal case, and loss of Krankenschein/social rights.
Report No. 01 source files	1998 arrest/detention, 23.11.1998 release due to lack of detention/custody fitness, 1999 renewed detention and medical-crisis records.

X. Official legal source references

- Basic Law for the Federal Republic of Germany - official English translation: https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html
- Asylbewerberleistungsgesetz § 4 - acute illness and pain treatment: https://www.gesetze-im-internet.de/asylblg/_4.html
- Asylbewerberleistungsgesetz § 6 - indispensable other benefits: https://www.gesetze-im-internet.de/asylblg/_6.html

- European Convention on Human Rights - official Convention text:
https://www.echr.coe.int/documents/d/echr/convention_ENG
- International Covenant on Civil and Political Rights - OHCHR: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- International Covenant on Economic, Social and Cultural Rights - OHCHR:
<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>
- Convention against Torture - OHCHR:
<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment>

End of Legal Analysis Report No. 02