



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

FIFTH SECTION

CASE OF B.M. v. SPAIN

(Application no. 25893/23)

JUDGMENT

Art 5 § 1 (e) • Persons of unsound mind • Applicant's compulsory committal of applicant to a psychiatric hospital • Failure to conduct a thorough scrutiny of the applicant's deprivation of liberty • Manner in which committal approval was processed fell short of the effective procedural safeguards against arbitrary detention

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 November 2025

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 B.M. v. Spain,

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

Kateřina Šimáčková, *President*,

María Elósegui,

Andreas Zünd,

Diana Sârcu,

Mykola Gnatovskyy,

Vahe Grigoryan,

Sébastien Biancheri, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 25893/23) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Spanish national, Mr B. M. (“the applicant”), on 16 June 2023;

the decision to give notice to the Spanish Government (“the Government”) of the application;

the decision not to disclose the applicant’s name;

the parties’ observations;

Having deliberated in private on 7 October 2025,

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

INTRODUCTION

1. The case concerns the applicant’s compulsory committal to a psychiatric hospital. He complained, under Article 5, that the legal requirements for the approval of the measure had not been respected, notably his right to be assisted by a lawyer during the hearing before the judge.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

2. The applicant was born in 1963 and lives in Madrid. He was represented by Mr E. Sanz de Bremond Arnulf, a lawyer practising in Madrid.

3. The Government were represented by their Agent, Mr A. Brezmes Martínez de Villarreal.

4. The facts of the case may be summarised as follows.

5. On Friday 14 May 2021, after a verbal incident at his workplace, the applicant was brought to the emergency room of a public general hospital (GH). The emergency doctors ordered his transfer to a public psychiatric hospital (PH) for compulsory committal. On Saturday 15 May, at 1.21 a.m.,

he was admitted to the psychiatric hospital. The applicant did not consent to hospitalisation or committal.

6. The admission report at the psychiatric hospital stated, *inter alia*:

“Mental Health Centre (C.S.M.): ...

Doctor at C.S.M.: He is not being treated (*No realiza seguimiento*).

Reasons for consultation: Male, 57 years old, transferred from GH in a psychiatric ambulance, unaccompanied, for evaluation for compulsory committal because of serious behavioural changes.

...

Psychiatric record: Serious reactions to stress and adjustment disorder. He was treated at the Mental Health Centre from 2005 until 2009, when he felt anguished in relation to conflicts at the workplace. He contacted [the Mental Health Centre] again in 2014 for symptoms of anxiety and depression and in 2015 after some work issues. The patient has always been reluctant to take medication. In the past he took quetiapine for one month, but, soon after, he decided to stop taking it.

...

Current illness: Male, 57 years old, transferred from GH in a psychiatric ambulance, unaccompanied, for evaluation for committal because of serious behavioural changes. According to the transfer record, the patient was forcibly taken today to the GH emergency room after initiating a significant hetero-aggressive episode at his workplace. It started after he had hung a poster with political content. After this incident, he had a confrontation with a colleague who had removed the poster and the situation escalated until the urgent medical services (*SUMMA*) and police arrived. The patient showed different files from the Primary Care (*Atención Primaria*) and Psychiatry [units], with records of episodes involving stress disorder, adjustment disorder and [complaints of] labour harassment against him. In the psychiatric evaluation he appeared very suspicious about everything related to COVID-19 and the pandemic and was opposed to any type of ‘invasive tests’. [He was] anxious and [showed] significant discomfort when subjected to the tests. [He showed] delusional ideation of harm [with] megalomaniac and mystical-religious content. At one point, he tried to escape by cutting the straps that were holding him using keys that he had in his belongings [and so] the security staff had to intervene again. [He was] restrained on five [locations on his body] and [given] intramuscular medication.

The patient arrived at our emergency services in a psychiatric ambulance. He was taken to the floor unit and had restraints applied to five [locations on his body]. He was interviewed in the observation room. He was angry; it was the first time he had been on a psychiatric floor and expressed complaints regarding the treatment he received and of a violation of his rights. He repeatedly asked to talk to his lawyer.

We enquired about what had happened that morning at his workplace. He related the situation as the colleagues from GH have reported. He denied [displaying] hetero-aggressive behaviour and said that he did not know why it had been necessary to call the police. He believes that people at his workplace want to harass him and that there have been similar situations in the past when his political opinions have not been tolerated. As the interview continued, the delusional content of his speech increased

We explained to him that he was going to spend the night with restraints applied to five [locations on his body] and we agreed not to force him to take medication if he remained quiet and cooperative.

...

Psychopathological exploration: Conscious and focused in the three spheres. Attentive, hyperalert. Partially reachable and collaborating. No serious mnemonic failures. No symptoms of intoxication or abstinence syndrome at present. Euthymia. Psychotic anguish. Minimal at the beginning. Later on, a delusional ideation of harm with mystical and megalomaniac content was observed. Spontaneous speech, fluent, well-articulated and structured; increase in the pressure of speech. Somewhat confrontational and hostile during the interview. No current sensorial perceptive alterations at the moment, although it cannot be definitely discounted. An episode of verbal hetero-aggressive behaviour at work. No auto-hetero aggression at the moment. [He was] reserved (*contenido*) during the entire interview. He denied experiencing suicidal ideation (*ideas pasivas de muerte*) or ideas of self-harm (*ideación autolítica activa*) at the present time. Congruent affect. Affective resonance preserved. Chronobiologic rhythm preserved, as he mentions. Reality testing altered. Null insight.

...

Primary diagnosis: Psychotic symptomatology to be determined (*sintomatología psicótica a filiar*).

Other diagnosis: Cluster A personality traits; labour stress disorder; adjustment disorder.

Treatment indications...: Committal ... for restraint (*contención*) and administration of pharmacological treatment."

7. On 15 May 2021, at 9.54 a.m., the psychiatric hospital sent a fax to the competent judicial authorities to inform them of the applicant's urgent admission. On Monday 18 May 2021 the Madrid Court of First Instance no. 30 held a hearing with the applicant via the Zoom internet platform. The applicant was not assisted by a lawyer. The court's registrar filled out a pre-printed form entitled "Personal examination by the judge". It included a typed part followed by a part which was handwritten. The typed part stated:

"The Magistrate Judge of this Madrid Court of First Instance no. 30 and the forensic doctor, assisted by me, the court's registrar, proceed to the judicial and medical examination of Mr/Ms, [who is] confined in the PH, via Zoom.

Before the judicial examination, the person appearing in court is informed of the reasons for the presence of the Judicial Commission, which is that a judicial examination and medical diagnosis is taking place to evaluate whether his committal because of a psychiatric disorder should be approved or rejected.

He is told that it is a mechanism for the protection of individuals' rights, where they are deprived of freedom, as provided for by law, and that he can appear in the proceedings, assisted by his own representative (*con su propia defensa y representación*).

Thereafter his judicial examination proceeds, [and it is] noted: [blank]"

8. The following part, which was handwritten, stated:

"The patient states that he has problems at his workplace. He feels under pressure at the office. He does not trust the director; he believes that she hates him and treats him in a despotic way. He considers that things are done wrongly. [Last sentence illegible]. I hereby attest (*Doy fe*)".

The form included one mark at the bottom.

9. A second pre-printed form, entitled “Record of the personal examination by the judge and the medical expert opinion (*dictamen facultativo*)”, was drawn up.

The typed part indicated:

“The Judicial Commission, composed of the Honourable Magistrate Judge of this court, the forensic doctor and me, the registrar of the court, proceeds to the judicial examination of Mr/Ms [applicant’s name], committed in the PH, and to issue the doctor’s medical report.

The Judge orders that the proceedings move to a personal examination, as established in section 763 of the Civil Procedure Act.

The forensic doctor has issued the following medical report: [blank]”

The subsequent blank space – the medical part – was handwritten and indicated:

“Psychotic symptomatology to be determined. Requires hospitalisation for an adequate diagnosis and treatment (*sintomatología psicótica a filiar. Precisa ingreso hospitalario para adecuado diagnóstico y tratamiento*)”.

The form included a typed sentence at the bottom of the page:

“[Once] the hearing was finished, the present [record] was issued, which was signed by the Judge, the medical expert and myself. I hereby attest (*Terminado el acto se extiende la presente que firman S.S^{as}, y el Médico Forense; conmigo. Doy fe.*)”.

The form had one signature, presumably that of the court’s registrar.

10. In a written statement in which she cited Article 12 § 4 of the Convention on the Rights of Persons with Disabilities, the public prosecutor did not oppose the committal.

11. The Madrid Court of First Instance no. 30 approved the committal of the applicant in a decision delivered on 18 May 2021 which included the following reasoning:

“In the present case the evidence produced shows that the detainee has a psychiatric pathology, medically diagnosed as psychotic symptomatology to be determined (*a filiar*). At this time this mental illness requires, from a therapeutic point of view, the adoption of the measure of compulsory committal in a psychiatric centre because of the impossibility of containing (*contención*) and treating the patient in outpatient care.

For all [of the above], it is advisable to approve the measure of compulsory committal for as long as it is deemed necessary, at the discretion of the doctors assisting the patient”.

12. The operative part of the decision ruled as follows:

“(1) The applicant’s compulsory committal in the psychiatric hospital is approved for medical treatment as long as it is deemed necessary; (2) the applicant’s doctors must inform the court, on a monthly basis, of the need to prolong the committal, unless the applicant is discharged; (3) a copy of the present decision must be sent to the hospital; (4) the hospital must inform the court of the end of compulsory committal, either because of the applicant’s discharge or because of his transfer to a different institution;

(5) in the event that [the patient] escapes the compulsory committal (*quebrantamiento del internamiento*), the court must be informed ...; (6) the public prosecutor and the applicant must be notified of the present decision”.

13. A copy of the decision was sent by email from the court’s email account to the psychiatric hospital’s email account at 1.15 p.m. on 18 May 2021, with the following message:

“To the attention of the employees of the hospital, I enclose a copy of the committal decisions for the seven patients who were evaluated today. One copy is for the patients (*internos*) and another copy is for the hospital. I wish you a good evening”.

14. On 21 May 2021 the registrar of the court notified the public prosecutor of the decision.

15. The applicant tried to contact a lawyer twice. The first time was on the afternoon of 14 May 2021 at 4.48 p.m., while he was at the GH, when he sent an email from his mobile phone to a lawyer, saying:

“Urgent[:] I am detained in GH at the emergency room[:] they want to violate (*me quieren violar*) with unauthorised tests and they are forcing me”.

The second time was on 19 May 2021, when he made a phone call to the same lawyer from the psychiatric hospital.

16. The applicant’s lawyer went to the hospital on 20 May 2021. The lawyer could not visit the applicant, although he was allowed to retrieve a signed power of attorney in which the applicant authorised him to request a copy of his medical report, the decision authorising the committal and any other important document that might facilitate his defence.

17. On the same day the applicant’s lawyer lodged an application for a writ of habeas corpus with the duty judge of the Madrid Investigating Court no. 52. He complained about the fact that the applicant had been involuntarily committed and that his right to be assisted by a representative had been infringed. He sought the applicant’s immediate release and, in the alternative, that the hospital would allow the lawyer to visit the applicant, the provision of a copy of the medical reports and the notification of the decision of 18 May 2021 in order to lodge an appeal against it; or that he be informed of the case number and the court which had authorised the committal. The duty judge, in a decision delivered on the same day, declared the *habeas corpus* application inadmissible because the committal had been approved by a judge and because it was unknown whether the impossibility of visiting the applicant at the hospital had been based on medical reasons.

18. On 25 May 2021, after the lawyer had submitted the power of attorney to the Madrid Court of First Instance no. 30, the decision approving the committal was notified to him, whereupon he lodged an appeal against it. In the appeal, the applicant complained about the detention and about the lack of representation during the hearing and sought to have the court’s decision of 18 May 2021 declared null and void.

19. The applicant was released from the hospital on 28 May 2021 at 12.28 p.m. The discharge report included a diagnosis of paranoid personality disorder (F60.0, CIE-10) as a probable primary diagnosis (*diagnóstico principal probable*) and explained that the committal had no longer been necessary because, even though the patient had initially refused pharmacological treatment, he had gradually accepted it and had committed to continuing it as ambulatory treatment supervised by the Mental Health Centre. The report prescribed a treatment and recommended that the applicant request an appointment with the Mental Health Centre for control and follow-up.

20. On 5 November 2021 the Madrid *Audiencia Provincial* rejected the appeal, finding in its decision (*auto*) that the applicant had not expressly requested to be assisted by a lawyer at the hearing. It found that, in any event, the appeal had become devoid of merit because the applicant had been released from the hospital on 28 May 2021.

21. The applicant lodged an *amparo* appeal, which the Constitutional Court declared inadmissible for lack of constitutional significance in a decision notified on 17 February 2023.

II. RELEVANT DOMESTIC LAW

22. Article 17 of the Spanish Constitution secures the right to personal liberty and security and sets out the conditions under which a person may be deprived of his or her liberty.

23. Section 763 of Civil Procedure Act no. 1/2000 of 7 January (*Ley 1/2000, de 7 de enero, de enjuiciamiento civil*) regulates the procedure to be followed in order to decide on the involuntary placement of a person on the basis of his or her mental condition. The relevant sections state as follows:

Section 763. Compulsory committal on the basis of mental disorder

“1. The compulsory committal, on the basis of mental disorder, of a person who is not able to make decisions on his or her own, and despite him or her being under parental authority or guardianship, shall require a judicial authorisation, which shall be given from the court located in the place where the person concerned by the committal resides.

The authorisation shall be given prior to the committal unless urgent reasons require the immediate adoption of the measure. In that event, the person in charge of the centre in which the committal has taken place shall give account of the [committal] to the competent court as soon as possible, in any event within the following twenty-four hours, so that the mandatory authorisation of the measure can be issued within a maximum time-limit of seventy-two hours after the notice of the committal reaches the court.

...

3. Before giving the authorisation for committal or authorising a committal which has already taken place, the court shall hear the person affected by the measure, the public prosecutor and any other person whose presence the court may deem appropriate or

who is requested by the person concerned. In addition, and notwithstanding the possibility of gathering any other evidence relevant to the case, the court shall itself examine the person who was or is to be confined and acquire a medical report provided by a doctor appointed by it (*por él designado*). During the proceedings, the person affected by the committal may be represented and defended as provided for in section 758 of this Act.

In any event, the court's decision regarding the compulsory committal is subject to appeal.

...”.

24. Section 758 of the Civil Procedure Act no. 1/2000 of 7 January (*Ley 1/2000, de 7 de enero, de enjuiciamiento civil*), as worded at the material time, stated as follows:

Section 758. Respondent's attendance

“The presumedly incapacitated [person] or person whose declaration of prodigality is requested, may appear in the proceedings with their own defence and representation.

If they do not do so, they shall be represented by the public prosecutor's office, unless the latter instituted the proceedings. Otherwise, the court's clerk shall appoint a judicial defence, unless it has already been chosen.”

25. In judgment no. 141/2012 of 30 July 2012, which has been referred to by both parties in their submissions, the Constitutional Court found a violation of Article 17 of the Spanish Constitution (see paragraph 22 above) on account of the lack of information provided to the applicant concerning the right to legal assistance in the hearing for the urgent approval of the committal decision. It further found a violation because the lower court had made an “uncritical assumption” (*asunción acrítica*), that is, without any specific reasoning regarding why the measure had been necessary or proportionate to the circumstances.

THE LAW

I. SCOPE OF THE CASE

26. In their observations, the Government pointed out as a preliminary consideration that the scope of the dispute should be limited to one procedural aspect, specifically the lack of legal representation during the hearing, as the applicant did not allege before the Court any failure to comply with the clinical requirement for his compulsory committal. They argued that, despite the applicant making allegations before the domestic courts regarding the lack of reasoning of the court's authorisation decision and the lack of personal notification to the applicant of the decision authorising his compulsory committal, he failed to reproduce these allegations in his submissions to the Court. Furthermore, he did not complain of the way in which the hearing had

been conducted, notably via the internet platform Zoom, because he had only briefly mentioned it in his application to the Court.

27. The applicant argued that he had, before every level of jurisdiction, complained that his right to liberty had been breached and that if he had had proper representation at the hearing, he could have challenged the necessity of the committal. In his application before the Court, he complained that the personal examination had not complied with the guarantees established in Spanish legislation to prevent arbitrariness and to guarantee his right to a representative. He referred both to unlawfulness and the breach of national law as regards his procedural rights.

A. General principles

28. The Court reiterates that, for the purposes of Article 32 of the Convention, the scope of a case “referred to” the Court in the exercise of the right of individual application is determined by the applicant’s complaint or “claim” (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 109, 20 March 2018). A complaint consists of two elements: factual allegations and legal arguments (*ibid.*, § 126; see also *S.M. v. Croatia* [GC], no. 60561/14, § 216, 25 June 2020). In addition, the Court cannot rule beyond or outside what is alleged by the applicants. Thus, it cannot rule on the basis of facts not covered by the complaint, it being understood that while the Court has jurisdiction to review circumstances complained of in the light of the entirety of the Convention or to “view the facts in a different manner”, it is nevertheless limited by the facts presented by the applicants in the light of national law. However, this does not prevent an applicant from clarifying or elaborating upon his or her initial submissions during the Convention proceedings. The Court has to take account not only of the original application but also of the additional documents intended to supplement the latter by eliminating any initial omissions or obscurities. Likewise, the Court may clarify those facts *ex officio* (see *Radomilja and Others*, cited above, §§ 121-22 and 126, and *S.M. v. Croatia*, cited above, § 219).

B. Application of those principles in the present case

29. The Court notes that the applicant did not contest in his application the very grounds for his deprivation of liberty. However, in the application form he did refer to the fact that the hearing had taken place via the Zoom platform, without it being recorded, and that he had not had the assistance of a lawyer, despite his protests which had been written down in the hospital report. He also mentioned that he had been unable to request or submit a medical report by a doctor appointed by him. He alleged that he had only been able to contact a lawyer via a phone call on 19 May 2021, after five days of confinement. In addition, he complained that he had only been personally

notified of the court's decision when he had been discharged from the psychiatric hospital on 28 May 2021. The Court further notes that in section F of the application form, the applicant relied on Article 5 § 1 of the Convention and complained of both the unlawfulness of the confinement and the procedure that had been followed to adopt the measure. The applicant complained that there had been a breach of national law with regard to his procedural rights.

30. The Court considers that the applicant's complaints concern more than only the one procedural aspect pointed to by the Government. It must therefore review all the circumstances complained of in their entirety, although its assessment must be limited to the facts as they have been presented by the parties. The Government's preliminary objection must accordingly be rejected.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

31. The applicant complained that his compulsory committal had not been lawful or in accordance with the procedure prescribed by law as provided for in Article 5 § 1 (e) of the Convention, which reads 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:

...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants”

A. Admissibility

32. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant

33. The applicant argued that, even though the pre-printed form entitled “Record of the personal examination by the judge and the medical expert opinion” contained a typed paragraph stating that he had been told that he could appear with his own representative (*comparecer en el procedimiento con su propia defensa y representación*), in the handwritten part there was no record of the applicant's reply to the possibility of having legal representation, or that he had refused to reply or had not been able to do so.

He asserted that he had repeatedly asked during the hearing that his lawyer be present. In addition, he asserted that there was no signature of the applicant on that form or on any other document. Moreover, he submitted that his demands at the hospital for legal representation had been written down in the admission report, which had been at the disposal of the court during the hearing.

34. The applicant maintained that he had only been provided a copy of the judicial decision when he had been discharged from the hospital, on 28 May 2021. He submitted that when the lawyer had gone to the hospital on 20 May 2021, he had not been allowed to visit him, and that neither he nor the applicant had been informed of any details of the case and that the hospital workers had apparently told the lawyer that they had not yet received the decision. The applicant argued that this proved that he had not yet been notified of the decision on that date.

(b) The Government

35. The Government submitted that the present case did not concern a detention related to the investigation of an offence and that without prejudice to being subject to certain procedural guarantees, involuntary commitment proceedings could not be equated with criminal proceedings subject to the guarantees provided under Article 6 of the Convention. The sole purpose of the committal had been to protect the applicant's own integrity and it had been ordered while taking into account the applicant's mental disorder, which had been duly examined by doctors and court officers, following a report from the public prosecutor's office.

36. The Government added that legal assistance was not mandatory in proceedings for the approval of compulsory committal and that there was a record showing that the court had informed the applicant of his right to legal assistance. Furthermore, they submitted that the applicant had failed to explain in the application why on 20 May 2021 he had appointed a lawyer, even though he had allegedly not been informed of this right, and that there was only a record of the expression of the applicant's wish in that respect at an earlier stage (when the doctors had examined him). Moreover, the applicant had not challenged or questioned the veracity of the forms and had not provided evidence that he had expressed his wish to be assisted by a lawyer to the court officers. Lastly, they argued that the alleged violation of the applicant's right to legal assistance would have been a purely procedural defect. In addition, the domestic court had ruled that the decision should be notified to the applicant.

37. In sum, the Government considered that the domestic courts had complied with the guarantees of Article 5, as the applicant had been informed from the outset of the procedure and of his right to legal assistance and he had been heard in person by the court. Furthermore, they asserted that the public prosecutor's office had submitted a report and that the applicant had had

access to a lawyer in the proceedings before the court of appeal, which had upheld the lawfulness of the committal.

2. *The Court's assessment*

(a) General principles

38. 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 of that law (see *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 125, 1 June 2021).

39. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1, failure to comply with domestic law entails a breach of the Convention, and the Court can and should therefore review whether this law has been complied with (see *Mooren v. Germany* [GC], no. 11364/03, § 73, 9 July 2009, with further references, and *M.S. v. Croatia (no. 2)*, no. 75450/12, § 141, 19 February 2015).

40. In addition to being in conformity with domestic law, Article 5 § 1 requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among recent authorities, *Rooman v. Belgium* [GC], no. 18052/11, § 190, 31 January 2019, and *Denis and Irvine*, cited above, § 129).

41. No detention which is arbitrary can be compatible with Article 5 § 1, the notion of “arbitrariness” in this context extending beyond the lack of conformity with national law. As a consequence, a deprivation of liberty which is lawful under domestic law can still be arbitrary and thus contrary to the Convention (see *Mooren*, cited above, § 77, and *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008).

42. As to what types of conduct on the part of the authorities might constitute “arbitrariness” for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. It is, moreover, clear from the case-law that the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved. One general principle established in the case-law is that detention will be “arbitrary” where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities or where the authorities neglected to apply the relevant legislation correctly (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, §§ 75-76, 22 October 2018, and *M.S. v. Croatia (no. 2)*, cited above, § 142).

43. In the context of sub-paragraphs (b), (d) and (e), the Court has affirmed that the notion of arbitrariness also includes an assessment of

whether detention was necessary to achieve the stated aim. The detention of an individual is such a serious measure that it is justified only as a last resort where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained (see *S., V. and A. v. Denmark*, cited above, § 77; *Saadi*, cited above, § 70; and *Denis and Irvine*, cited above, § 130).

44. In deciding whether an individual should be detained as a “person of unsound mind”, the Court gives certain deference to the national authorities. It will not substitute the decisions of States on how to apply the Convention rights to concrete factual circumstances. 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.

45. However, in order to defer to the judgment of domestic authorities, who are indeed better placed to assess the facts of a given case, the Court must be satisfied that they have assessed and scrutinised the pertinent issues thoroughly. This means that the domestic courts must subject deprivations of liberty to thorough scrutiny so that the detained persons enjoy effective procedural safeguards against arbitrary detention in practice.

46. Thus, in order to comply with Article 5 § 1 (e) of the Convention, the proceedings leading to the involuntary placement of an individual in a psychiatric facility must necessarily provide clearly effective guarantees against arbitrariness given the vulnerability of individuals suffering from mental disorders and the need to adduce very weighty reasons to justify any restriction of their rights (see *M.S. v. Croatia (no. 2)*, [cited above](#), §§ 145-47, and the references cited therein).

(b) Application of these principles to the present case

47. The Court notes at the outset that in the past the applicant had been treated at a mental health centre more than once because he had had some anxiety symptoms and labour conflicts (see the “Psychiatric record” in paragraph 6 above). However, when he was sent to GH on 14 May 2021, the applicant was not under any treatment and, despite some references to adjustment disorders, he had never been diagnosed with a mental illness.

48. The Court observes that the applicant has not disputed the grounds on which he was deprived of his liberty (see paragraph 29 above). From the Government’s observations it can be inferred that they relied on Article 5 § 1 (e) of the Convention in justifying the contested measure (see paragraph 35 above). The Court further notes that the applicant’s deprivation of liberty was based on section 763 of the Civil Procedure Act, which provides the procedure to be followed for compulsory committal on the basis of mental disorder (see paragraph 23 above). In these circumstances, the

applicant's detention falls under sub-paragraph (e) of Article 5 § 1 of the Convention.

49. The Court observes that the applicant focused in his complaints on the procedural aspects of the hearing held by the court and whether his right to have legal representation had been respected. However, considering that the term "lawful" within sub-paragraph (e) of Article 5 § 1 covers substantive as well as procedural rules, it may overlap to some extent with the requirement stated at the beginning of Article 5 § 1, namely observance of "a procedure prescribed by law" (see *Winterwerp v. The Netherlands*, 24 October 1979, Series A33, § 39). Moreover, the Court undoubtedly has jurisdiction to verify the lawfulness of the detention, even if it is in the first place for the national authorities to evaluate the evidence adduced before them in a particular case; it is the Court's task to review under the Convention the decisions of those authorities (*ibid.*, § 40).

50. In the present case the applicant's compulsory committal was decided by the psychiatric hospital on Saturday, 15 May 2021, at 1:21 a.m., according to the admission report, and the primary diagnosis was "psychotic symptomatology to be determined (*a filiar*)", which revealed its preliminary nature and the fact that a complete diagnosis had not yet been reached. The Court is mindful that the applicant's situation, considering the incident at his workplace and the subsequent apparently delusional content of his speech at the hospitals, might have required urgent medical attention.

51. In such situations the Court has already found it acceptable (see *P.W. v. Austria*, no. 10425/19, § 51, 21 June 2022, and references cited therein) that an objective medical opinion was obtained immediately after, rather than before, the deprivation of liberty occurred. In the present case, the psychiatric hospital gave notice of the committal to the competent court in time for approval (see paragraph 7 above), as required by section 763 of the Civil Procedure Act.

52. The Court observes that the applicant's committal was approved by an order by the Madrid Court of First Instance no. 30 on Monday, 18 May 2021, within seventy-two hours of the moment the decision had been taken by the hospital, again, as required by section 763 of the Civil Procedure Act.

53. In accordance with this provision, a court must have at its disposal a medical report prepared by a doctor appointed by it. In the present case, a doctor appointed by the court (the forensic doctor, see paragraph 7 above), was indeed present in the courtroom together with the judge and the registrar during the hearing, held by way of the internet platform Zoom, with the applicant, who was detained at the psychiatric hospital (see paragraph 7 above). However, it is not apparent that the Court appointed doctor ever met the applicant in person, let alone examined him before the hearing. Nor had he or she addressed any question to the applicant during the online hearing.

54. Furthermore, the statement in the relevant medical report said "psychotic symptomatology to be determined" and bore only one signature,

presumably that of the registrar, given the expression “I hereby attest (*Doy fe*)” (see paragraph 9 above). The Court doubts that the approval of the committal of a person “of unsound mind” could be based on a medical report issued in these conditions, as the doctor appointed by the court apparently never examined the applicant in person and the report merely reiterated the same preliminary diagnosis that had been made on the day of the applicant’s admission, without further consideration (see the “Primary diagnosis” in paragraph 6 and paragraphs 9 and 50 above).

55. The Court also notes that the court-appointed doctor was of the view that the applicant required hospitalisation in order to be properly diagnosed. In contrast, in a decision with limited reasoning, the Madrid Court of First Instance no. 30 held that the applicant had already been diagnosed with “psychotic symptomatology to be determined” and defined the latter as a mental illness. In addition, the court indicated that it was impossible to contain (*contención*) and to treat the applicant in an outpatient setting (see paragraph 11 above), but it failed to explain why.

56. Furthermore, the Court notes that the applicant was not assisted by a lawyer during the hearing. Under domestic law, the applicant had the right to appear in the proceedings with his own representative, although the assistance of a lawyer was not compulsory (see paragraph 24 above).

57. The Government submitted that the applicant had been duly informed of his right to appear with a legal representative because in the relevant form it had been stated so by the registrar. Given the fact that the hearing was remote, it is, however, not entirely clear to the Court how the contents of that document were communicated to the applicant (compare *M.S. v. Croatia* (no. 2), cited above, § 157). Be that as it may, the Court observes that there is no element in the case file which demonstrates that the applicant understood that information. There is no record of his reply to it, if there was one. In these circumstances, it cannot be said with any certainty that the applicant expressly wished to dispense with legal assistance. On the contrary, he tried to contact a lawyer by his own means two times, and once before the hearing (see paragraph 15 above). The admission report, which was at the disposal of the court during the hearing, stated that the applicant had complained about the treatment he had received and had repeatedly asked to talk to his lawyer (see paragraph 6 above). These elements show clearly that it was the applicant’s wish to be assisted by a representative.

58. It is true that the procedural guarantees in the proceedings for involuntary committal need not always be equated with those required under Article 6 § 1 for civil or criminal litigation. Nonetheless, it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation (see *M.S. v. Croatia* (no. 2), cited above, § 152).

59. In the present case the Court notes that the applicant was heard in person, although remotely, and finds that the pre-typed sentence regarding

the right to be assisted by a representative in the court record covered *a minima* the requirements of domestic law. Nonetheless, the Court reiterates that an individual confined in a psychiatric institution because of his or her mental condition should, unless there are special circumstances, actually receive legal assistance in the proceedings relating to the continuation, suspension or termination of his or her confinement. The importance of what is at stake for him or her, taken together with the very nature of the affliction, compel this conclusion (*ibid.*, § 153). Moreover, this does not mean that persons committed to care under the head of “unsound mind” should themselves take the initiative in obtaining legal representation before having recourse to a court (see *Winterwerp*, cited above, § 66).

60. The Court has further constantly held that the Convention guarantees rights that are practical and effective and not theoretical and illusory (see *Stafford v. the United Kingdom* [GC], no. 46295/99, § 68, ECHR 2002-IV). It considers that, in a case such as the present one involving a person in a situation of vulnerability, the right to legal assistance would have been better protected had the court actively sought to find out the applicant’s position in the matter. This was particularly significant considering the information which the applicant provided in this connection in the admission report, which was at the court’s disposal (see paragraphs 6 and 57 above).

61. Furthermore, the Court observes that, while section 763 read in conjunction with section 758 of the Civil Procedure Act stated that assistance by a legal representative was not mandatory, the procurement of the public prosecutor’s opinion was compulsory (see paragraph 23 above). Indeed, in the absence of a lawyer, the public prosecutor’s role became essential for the protection of the applicant’s rights. However, the public prosecutor’s written statement merely quoted Article 12 § 4 of the Convention on the Rights of Persons with Disabilities, without any reference to the situation of the applicant, and she had neither met the applicant nor been present at the hearing.

62. Lastly, the Court finds problematic the fact that the responsibility to provide the applicant with a copy of the committal decision was apparently placed on the employees of the hospital and that the court failed to secure a lawful serving of the decision (see paragraphs 13 and 14 above).

63. In view of all the elements above and in the particular circumstances of the present case, the Court concludes that the Spanish authorities failed to conduct a thorough scrutiny of the applicant’s deprivation of liberty and that the manner in which they processed the approval of the applicant’s compulsory committal fell short of the effective procedural safeguards against arbitrary detention. There has accordingly been a violation of Article 5 § 1 (e) of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government contested this claim.

67. The Court considers that the applicant must have experienced distress for which the Court’s finding of a violation alone cannot constitute just satisfaction. The Court considers it equitable to uphold the applicant’s claim and award him EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

68. The applicant also claimed EUR 2,918.07 for the costs and expenses incurred before the domestic courts and EUR 4,291.19 for those incurred before the Court.

69. The Government contested this claim.

70. 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 were 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 7,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the preliminary objection of the Government that the scope of the case should be limited to the lack of legal representation during the hearing;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 5 § 1 (e) of the Convention;
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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 7,000 (seven 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 6 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Kateřina Šimáčková
President