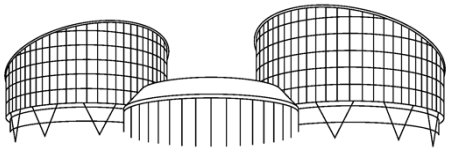

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF M.B. v. SPAIN

(Application no. 38239/22)

JUDGMENT

Art 5 § 1 • Deprivation of liberty • Art 5 § 1 e) • Persons of unsound mind • Imposition of a security measure of continued detention on the applicant on mental health grounds fell short of guarantees against arbitrariness • Minimum conditions of Art 5 § 1 e) not met • Domestic courts' assessment of the applicant's mental health condition limited to the day of the offence, almost two years before the measure's imposition • Failure to establish at the time of the imposition whether there was any improvement to her mental condition or whether she posed any danger • No assessment of the applicant's therapeutic or medical needs or the need to monitor her, and no mention of the prediction of future behaviour

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 February 2025

FINAL

06/05/2025

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of M.B. v. Spain,

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

Mattias Guyomar*, President*,
María Elósegui,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
Gilberto Felici,
Andreas Zünd,
Diana Sârcu*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 38239/22) 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 Moroccan national, Ms M.B. ("the applicant"), on 28 July 2022;

the decision to give notice to the Spanish Government ("the Government") of the complaints concerning Articles 5 and 7 of the Convention;

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated in private on 14 January 2025,

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

INTRODUCTION

1. The case concerns the deprivation of liberty of the applicant, a woman with mental health problems. She complained, under Articles 5 and 7, about her pre-trial detention and the security measure imposed on her in the form of continued detention following her acquittal on grounds of diminished responsibility.

THE FACTS

2. The applicant was born in 1978. She was represented by Mr C. Pinto Cañón, a lawyer practising in Madrid.

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

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

I. PROCEEDINGS BEFORE THE SALAMANCA No. 1 INVESTIGATING JUDGE

5. In the early hours of 12 March 2018 the applicant was detained for setting fire to the flat in which she was living (see paragraph 13 below). She

was immediately taken to hospital by the police for a medical assessment. The report mentioned that the applicant had been previously admitted to hospital due to psychotic symptoms and that she was under treatment, and concluded that she showed a disruptive behaviour due to an alcohol intoxication.

6. On the same day the Salamanca no. 1 investigating judge gave a decision to place the applicant in pre-trial detention in connection with the charge of aggravated arson (starting a fire that could threaten the life or physical integrity of others – Article 351 of the Spanish Criminal Code; see paragraph 38 below). The judge noted that the applicant had acknowledged that she had committed the acts in question and that there was a clear risk of reoffending as, according both to her own statements and to a forensic report issued on the same day, she had a mental disorder that could cause her to harm herself or others. He ordered that she should be taken to hospital for an assessment of her mental state and the necessary treatment, and subsequently taken to prison so that the staff there, on the basis of the medical report, could assess whether she should be admitted to prison under the ordinary regime or to a specific section of the hospital for the detention and treatment of persons deprived of their liberty. A second medical report was issued, basically reiterating the findings of the previous one. This report further added that the applicant claimed to hear voices. There is no information concerning the assessment made of that report by the prison staff, but it appears from the available documents that the applicant remained in prison.

7. The applicant, represented by a lawyer of the Salamanca Bar Association, appealed against the decision, arguing that the prison was not appropriate for someone with her condition and asked to be admitted to a psychiatric centre in order to continue her treatment. On 21 March 2018 the investigating judge dismissed the appeal (*reforma*), reiterating his previous arguments. On 3 May 2018 the Salamanca *Audiencia Provincial* dismissed an additional appeal lodged by the applicant (*apelación*), upholding the arguments of the investigating judge and stating that the applicant's mental health had been sufficiently taken into account.

8. On 19 February 2019 the investigating judge declared the applicant to be an accused person (*procesada*) and extended her pre-trial detention without further reasoning.

II. PROCEEDINGS BEFORE THE SALAMANCA *AUDIENCIA PROVINCIAL*

9. On 29 January 2020 the *Audiencia Provincial* requested the prison where the applicant was held to report on her mental health condition and the relevant treatment provided. On 4 February 2020, the medical services of the prison submitted a report that stated:

> Her clinical file includes the following personal records: (i) psychotic disorder, (ii) borderline personality disorder; (iii) use of several substances (cocaine, alcohol).
>
> Current treatment: Xeplion...; Invega...; Olanzapine...; Paroxetine...; Lorazepam...; Akineton...
>
> Progress: since she was admitted to this prison, in August 2018 [following her transfer from a prison in Salamanca to a prison in Ávila], she has been monitored by external mental health services at the Ávila Hospital due to her psychotic disorder. Those appointments take place every two or three months. Nowadays the auditory hallucinations are almost controlled by medication. She lives in a respect module and participates in activities.

As attachments to this report, the prison sent two reports prepared by the psychiatric doctors of the Ávila Hospital. The first report, dated 8 August 2018, stated that the applicant suffered from a psychotic disorder, a post-traumatic stress disorder, and an anxiety disorder, and prescribed several medications. In the second document, dated 12 November 2019, it seems that the medical services of the prison reported to the psychiatric doctors of the hospital that the applicant had been hearing voices and several medications were prescribed.

10. At the hearing, two doctors were examined as experts. It seems that they had examined the previous forensic report of March 2018 (see paragraph 6 above), but it is unclear whether they had directly examined the applicant. The doctors stated that the applicant's mental disorder required monitored treatment for some three years in order to be stabilized before replacing it by outpatient treatment under supervision. They added that stable periods could last for long periods as long as there were no factors causing an imbalance, such as use of drugs or interruption of the treatment.

11. On 24 February 2020 the Salamanca *Audiencia Provincial* delivered its judgment on the criminal charges against the applicant. The *Audiencia Provincial* found that the facts constituted the offence of aggravated arson (Article 351 of the Spanish Criminal Code) and that the applicant was responsible of the offence in question as the perpetrator. Nevertheless, it held that the applicant was excluded from criminal responsibility (*inimputable*) as, owing to the state of her mental health, she had not been able to comprehend the criminal nature of her actions (Article 20 of the Criminal Code; see paragraph 38 below). Consequently, the applicant was acquitted.

12. The *Audiencia Provincial* imposed a security measure on the applicant entailing treatment in a secure unit for a period of between five and fifteen years, which could be replaced by treatment in a mental health facility depending on the progress of the treatment and the relevant reports and assessments to be made during the execution of the judgment. The judgment further identified the damage suffered by some of the neighbours and determined the corresponding compensation to be paid by the applicant.

13. The *Audiencia Provincial* considered the following facts proved:

"Shortly before midnight on 11 March 2018, the accused, M.B., encouraged by voices she was hearing which she thought she had to obey, after having consumed a significant amount of alcohol, and with her mental capacities fully diminished, decided to burn everything from her previous life[. So] she took a lighter and set her quilt on fire in the bedroom of the flat she had rented from M.J.... and let the fire spread throughout the room and the rest of the flat. She subsequently closed all the windows of the flat and left the scene with the aim of [letting] everything burn and leaving behind all her bad memories.

Alerted by the smoke and the fire, the neighbours called the police and the firefighters[. Some of them] were evacuated [from their homes] and the rest were advised to stay in their homes, with the doors and windows closed, while the firefighters extinguished the fire, which fortunately had not spread from the flat in which it had started.

Only the rapid intervention of the firefighters, promptly alerted by the neighbours and whose headquarters are very close to where the fire took place, prevented the fire from spreading and avoided the more severe losses that would have otherwise occurred."

14. With regard to her criminal responsibility and her acquittal, the *Audiencia Provincial* stated:

"In this case, it has been proved, and it has been declared as such, that the accused was suffering at the time of the events from a mental disorder, probably a form of schizophrenia, which led her to be completely unbalanced at the moment of committing the offence as a result of the large amount of alcohol she had consumed. The applicant thus connected the acts committed by her, namely the above-mentioned fire, to the voices she had heard ordering her to burn her memories and bad moments and leave them behind. On the day of the events, her intellectual and volitional capacities were thus fully diminished and, therefore, she was excluded from criminal responsibility according to the medical evidence.

According to the forensic doctors' opinions, the impact of the accused's mental disorder, a form of schizophrenia, together with her habitual use of drugs and alcohol on the day of the events, was essential and decisive in the subsequent course of events. In this regard, it is important to note that her behaviour was the result of a sudden impulse, voices she had heard in her head, without any planning, assessment or reasoning on her part.

The complete exemption provided for in Article 20 § 1 of the Criminal Code will thus be applied, as it has been demonstrated that the accused had a mental disorder or disturbance that prevented her from understanding the unlawfulness of her behaviour and from acting in accordance with that understanding.

As requested by the public prosecutor, the accused M.B. must therefore be acquitted, as she committed the acts in a situation of total absence of criminal responsibility (*plena inimputabilidad*). However, a security measure must be imposed on her entailing treatment in a secure unit (*tratamiento en centro adecuado, con internamiento en centro cerrado*), for a minimum period of five years up to a maximum of fifteen years. Depending on the progress of her treatment, and on the basis of the relevant reports and assessments to be made ..., [the above-mentioned measure] could be replaced with treatment in a mental health facility (*tratamiento en centro adecuado en regimen abierto*), monitored by monthly reports."

15. The applicant appealed against that judgment, arguing that the minimum and maximum periods of the security measure were not sufficiently

based on relevant evidence, namely on the forensic medical reports. She further contended that those periods were not in accordance with the relevant provisions of the Criminal Code; the relevant sentence, if the applicant had been criminally responsible, would not have been longer than ten years in any circumstance. She asked for the measure to be reduced to a period of two and a half years to five years or, alternatively, a period of five to ten years.

16. On 21 May 2020 the *Audiencia Provincial* extended the applicant's pre-trial detention for a maximum of two additional years, during the appeal proceedings. It referred to Article 504 § 2 of the Spanish Code of Criminal Procedure (see paragraph 41 below), noting that there would not be a final decision before the expiry of the relevant time-limit.

III. PROCEEDINGS BEFORE THE CASTILE AND LEÓN HIGH COURT

17. On 15 October 2020 the Castile and León High Court dismissed the applicant's appeal against the judgment of 24 February 2020. In relation to the measure imposed, it stated the following:

> "The security measure, which is not only imposed as a therapeutic remedy for mentally ill persons, but on the basis of the person's danger to society and the likelihood of reoffending, must have a dual purpose: (a) the protection of society against the risks posed by the person affected by the measure; and (b) the protection of the very person affected who will receive the medical and therapeutic treatment, inasmuch as it can help control his or her own criminal impulses and have a normal life.
>
> ...
>
> The implicit reasons considered by the *Audiencia* to apply Article 101 of the Criminal Code comply with the requirements of the constitutional case-law ... as the mental derangement [*sic*] was duly demonstrated, and it can be stated that its nature or extent justified the detention (*internamiento*); aspects that will not be analysed in further detail as they have been admitted to by the [applicant]".

18. The High Court stated that the duration of the measure imposed was in line with the Supreme Court's case-law, according to which the maximum duration of a security measure was to be determined in relation to the penalty established, in the abstract, for the relevant offence, which in this case was ten to twenty years' imprisonment.

IV. PROCEEDINGS BEFORE THE SUPREME COURT

19. On 21 October 2020 the applicant, represented by an officially appointed lawyer of the Burgos Bar Association, requested leave to appeal on points of law (*preparación del recurso de casación*) and asked for the appointment of a lawyer of the Madrid Bar Association to lodge the appeal. On 18 November 2020 the High Court granted her leave to appeal.

20. On 12 January 2021 the applicant, represented by an officially appointed lawyer of the Madrid Bar Association (Mr Pinto Cañón, her representative before the Court), lodged an appeal on points of law against

the High Court's judgment. That appeal contained, as a preliminary issue, a complaint alleging a violation of the applicant's right to liberty as a result of the extension of her pre-trial detention on 21 May 2020 (see paragraph 16 above). She argued that, according to the Constitutional Court (namely its judgment no. 217/2015 of 22 October 2015), there was no legal basis to order the extension of the pre-trial detention in cases in which the accused had been acquitted on the grounds of his or her exclusion from criminal responsibility. She asked the Supreme Court to take all necessary measures for her release. The main part of the appeal on points of law was based on three grounds: (i) insufficient reasons had been given for the imposition of the security measure, as there had not been an assessment of the dangerousness of the applicant, as required by Articles 6 and 101 of the Criminal Code; (ii) insufficient reasons had been given for the maximum duration of the security measure as, had the applicant been found guilty, a less severe penalty could have been imposed on account of the circumstances (see the specific provision of Article 351 of the Criminal Code in paragraph 38 below); and (iii) the minimum duration of the security measure had been contrary to Articles 6, 97 and 98 of the Criminal Code and had thus violated the principle of legality.

21. On 13 May 2021 the Supreme Court declared the applicant's appeal on points of law inadmissible. The decision omitted any reference to the applicant's complaint concerning the extension of her pre-trial detention.

22. Regarding the first ground of the appeal on points of law, the Supreme Court stated:

> "The imposition of the security measure was justified on account of the mental disturbance and disorder suffered by the [applicant] – objectively and scientifically verified – that resulted in her acquittal.
>
> The penalty [*sic*] imposed, in its extension, is in line with ... Article 101 of the Criminal Code. The security measure imposed is within the abstract limits of the penalty attached to the relevant offence but its actual duration is delimited by the development of the disorder, in accordance with the treatment and its results.
>
> The [applicant] has merely repeated the arguments of her [ordinary] appeal. The matter, consequently, does not present any relevance for an appeal on points of law ... [the decision of the appellate court] was logical and reasoned, and was in line with the relevant case-law ..."

23. Concerning the second ground of the appeal on points of law, the Supreme Court affirmed:

> "[It appears that] this issue was not raised in the [ordinary] appeal and that the defence did not oppose the legal classification of the facts at that stage ... the defence agreed with the classification [of the facts], and the dispute was based on the existence of a circumstance affecting criminal responsibility.
>
> ... The main complaint was based on the duration of the measure and, especially, its minimum duration ... The judgment implies that the duration of the measure and, especially, the treatment in a secure unit depends on the development of the [applicant's] disorder, and there is nothing preventing that measure being replaced by a more lenient measure if appropriate."

24. With regard to the third ground of the appeal on points of law, the Supreme Court held:

> "[T]his matter is irrelevant, since ... the minimum duration depends on the progress of the treatment, so, if the results are successful, it would be possible to replace the measure of confinement in a secure unit with placement in a mental health facility.
>
> [Therefore, and taking into account the provisions of Article 97 of the Criminal Code], the measure is in line with the Criminal Code, and it must be stressed that the duration of the treatment in a secure unit would depend on the progress of the [applicant]".

V. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

25. On 23 July 2021 the applicant lodged an *amparo* appeal, alleging violations of her right to liberty, her right to legal protection and the principle of legality (Articles 17, 24 and 25 of the Spanish Constitution) on account of the judgments of the *Audiencia Provincial* and the High Court, the decision of the Supreme Court, and the lack of a response from the Supreme Court to the complaint concerning the extension of her pre-trial detention. She argued that the judicial decisions did not provide sufficient reasons for the security measure imposed, particularly with regard to her dangerousness, as well as its maximum and minimum duration. She contended that the courts had only taken into account her mental status at the moment of the events, but not her possible rehabilitation prior to the judicial decisions, or the likelihood of her reoffending. She added that, contrary to the reasoning of the Supreme Court, the statement of the *Audiencia Provincial* deciding on the security measure to be imposed and its conditions seemed to imply that she would have to be subjected to a security measure for a minimum of five years and limited the possible decisions that could be taken during the execution of the judgment, such as lifting the security measure (as provided for by Article 97 of the Criminal Code). She maintained that the inaction of the Supreme Court with regard to the extension of the pre-trial detention had constituted, in itself, a violation of her right to liberty.

26. On 24 May 2022 the Spanish Constitutional Court declared the *amparo* appeal inadmissible. It stated that the applicant had not exhausted prior judicial remedies in relation to the complaint alleging a breach of her right to liberty attributed to the Supreme Court (namely by lodging an action for the annulment of proceedings against the Supreme Court's decision) and that the remainder of the allegations did not present any special constitutional relevance.

VI. PROCEEDINGS CONCERNING THE EXECUTION OF THE SECURITY MEASURE

27. Following the inadmissibility decision of the Supreme Court (see paragraph 21 above), on 28 June 2021 the *Audiencia Provincial* declared its

judgment of 24 February 2020 final and ordered its execution. In particular, it ordered the applicant to be transferred to a prison that would be able to cater to her condition. She was admitted to the prison psychiatric hospital of Alicante (*Hospital Psiquiátrico Penitenciario de Alicante*) on 16 July 2021.

28. On 23 July 2021 the Salamanca *Audiencia Provincial*, with no opposition from the applicant, gave a decision determining the remaining time of the security measure, which was to expire on 7 March 2033.

29. On 23 March 2022 the prison psychiatric hospital of Alicante proposed replacing the security measure imposed on the applicant with her placement in a centre for persons with mental health problems. On 20 May 2022 the Alicante judge responsible for the execution of sentences referred the proposal to the Salamanca *Audiencia Provincial*, stating that the replacement of the measure was appropriate in view of the available medical reports.

30. On 14 June 2022 the *Audiencia Provincial* ordered the replacement of the security measure imposed on the applicant with her placement in a centre for persons with mental health problems (*Centro Específico de Enfermos Mentales de la Comunidad Valenciana*). It noted that, according to the available reports, the applicant was less dangerous, was conscious of her disorder and was responding appropriately to medical treatment. It added that the decision could be revoked if the applicant's mental health deteriorated.

31. According to the applicant's observations and additional information submitted to the Court, she was not transferred to a centre for persons with mental health problems until November 2023.

VII. THE APPLICANT'S MEDICAL CONDITION

32. The medical reports submitted by the parties refer to several mental health disorders affecting the applicant (namely schizophrenia, personality disorder, post-traumatic disorder, anxiety disorder and psychotic episodes). She had also used several drugs. She had frequently had auditory (and sometimes visual) hallucinations, hearing at least two voices. One of them in particular had often encouraged her to harm herself "to put an end to her suffering" and insisted that she burn things. On several occasions, she had been taken to the emergency department at a hospital because of those hallucinations. According to those reports, her condition was mainly treated through medication, which was adjusted frequently. Although not specified by the parties, it appears that those reports were mostly internal documents of the prison aimed at monitoring the applicant's situation and communications between the prison staff and the psychiatrists of the hospital. It appears from the information in the file that those reports were not systematically submitted to the domestic courts.

33. On 8 April 2022 she was recognised as having a 65% disability based on her mental condition, identified as paranoid schizophrenia. Since 1 June 2022 she has been receiving a pension.

VIII. PROCEEDINGS BEFORE THE COURT

34. On 14 February 2023 the Court rejected a request by the applicant under Rule 39 of the Rules of Court for it to indicate that the Spanish authorities should transfer her to a specific centre for persons with mental illness.

IX. OTHER ACTIONS BROUGHT BY THE APPLICANT

35. Between March and July 2021 the applicant's representative lodged several complaints with the Spanish Ombudsman, the regional Ombudsman of the Valencian Community (*Síndic de Greuges*) and the Disability Office (*Oficina de atención a la discapacidad*) of the Ministry of Social Rights and Agenda 2030 concerning the extension of the applicant's pre-trial detention after her acquittal and the allegedly inadequate care received during her detention.

36. On 13 May 2021 the applicant's representative lodged a complaint with the United Nations Working Group on Arbitrary Detention (the "WGAD") alleging that the extension of the applicant's pre-trial detention following her acquittal had not had a legal basis. Allegedly, no reply has been received. The applicant stated in the application form that on the date of submission of her complaint, the judgment of the *Audiencia Provincial* was not final as she had not been notified of the Supreme Court decision delivered on the same day. The applicant maintained that the issues raised in her complaint to the WGAD were different from those submitted to the Court, as the complaint sought to call on the WGAD to examine her situation and, eventually, bring about her release from detention.

37. On 6 July 2022 the applicant lodged a State liability claim with the Ministry of Justice based on the alleged unlawfulness of her pre-trial detention. On 11 July 2022 the applicant lodged a second State liability claim with the Ministry of the Interior, based on the inadequate conditions in the centres in which she had been detained, namely the lack of appropriate treatment for her mental health condition. On 6 June 2023 the Ministry of the Presidency informed the applicant that since the damage was attributed to departments of the two different ministries mentioned above, the complaint would be examined by the Ministry of the Presidency. It appears that no further information about those claims has been received by the applicant.

RELEVANT LEGAL FRAMEWORK

38. The relevant provisions of the Criminal Code concerning the offence committed by the applicant and exclusion from criminal responsibility state as follows:

Article 20

"The following persons shall be excluded from criminal responsibility:

1. Those who, at the time of committing a criminal offence, owing to any mental disorder or disturbance, cannot understand the unlawful nature of their actions, or act in line with that understanding.

...

In the first three cases, the security measures provided for in this Code shall be applied."

Article 351

"Any person who causes a fire that endangers the life or physical integrity of persons shall be punished by imprisonment for a term of between ten and twenty years. The judges or courts may impose a [more lenient] sentence, taking into account the lower risk of danger posed and other circumstances."

39. The relevant provisions of the Criminal Code concerning security measures provide as follows:

Article 1

"...

2. Security measures may only be imposed when the requirements provided for by law are met."

Article 6

"1. Security measures shall be based on the criminal dangerousness of the person on whom they are imposed, externalised by the commission of an act defined as a criminal offence.

2. Security measures shall not be more severe or of longer duration than the penalty applicable in the abstract to the offence committed, nor shall they exceed the limit of what is necessary to prevent the dangerousness of the perpetrator."

Article 95

"1. Security measures shall be imposed by judges or courts, reports deemed appropriate, on persons in the situations set out in the following chapter of this Code, provided that the following circumstances are present:

(1) The person has committed an act defined as a criminal offence;

(2) From the act and the person's personal circumstances, a prediction of future behaviour may be inferred that reveals the likelihood of the commission of further offences.

...”

Article 96

“1. The security measures that may be imposed under this Code may or may not involve deprivation of liberty.

2. The following are measures involving deprivation of liberty:

(1) Committal to a psychiatric institution;

(2) Committal to a rehabilitation centre;

(3) Committal to a special education centre.

...”

Article 97

“During the execution of the sentence, the sentencing judge or court shall make any of the following decisions:

(a) Continuing the execution of the security measure imposed.

(b) Lifting any security measure imposed as soon as the person no longer presents a criminal danger.

(c) Replacing the security measure with another regarded as more appropriate, from among those provided for in the case concerned. In the event of a negative development in the person, the replacement measure shall be revoked, and the replaced measure reapplied.

(d) Suspending the execution of the measure in view of the result already obtained from its implementation, for a term not exceeding that which remains until the maximum indicated in the judgment imposing the sentence. The suspension shall be conditional upon the person not committing an offence during the period set, and it may be revoked if any of the circumstances provided for in Article 95 of this Code are evidenced again.”

Article 98

“1. For the purposes of the preceding Article, in the case of a security measure of deprivation of liberty or a measure of probation that must be executed after the completion of a custodial sentence, the judge responsible for the execution of sentences shall submit – at least once a year – a proposal for its continuation, lifting, replacement or suspension. In order to draw up that proposal, the judge must assess the reports issued by the experts and professionals caring for the person subject to the security measure, or by the competent public authorities, and, where appropriate, the result of any other actions ordered for that purpose.

...

3. In all cases, the sentencing judge or court shall give a reasoned decision concerning the proposal or reports referred to in the two preceding paragraphs, having heard the person subject to the measure, as well as the public prosecutor and the other parties ...”

Article 101

"1. Persons who have been declared exempt from criminal responsibility under Article 20 § 1 may be committed, if necessary, for medical treatment or special education at an appropriate facility for their mental disorder or disturbance, or any of the other measures established by Article 96 § 3 may be imposed on them. The confinement may not exceed the duration that a sentence of imprisonment would have lasted, had the individual been declared responsible, and to that end the judge or court shall set that maximum limit in the sentence."

40. The relevant provisions of the Prison Rules concerning security measures (Royal Decree no. 190/1996 of 9 February 1996) provide as follows:

Article 183

"Prison psychiatric facilities or units are special centres for the enforcement of security measures involving deprivation of liberty imposed by the relevant courts."

Article 184

"Committal to such facilities or units shall occur in the following situations:

...

(b) Persons to whom a security measure of committal to a prison psychiatric centre has been applied, in accordance with the circumstances exempting them from criminal responsibility as established in the Criminal Code."

Article 187

"1. The singular nature of the confinement of [persons with mental disorders] shall call for periodic monitoring by the courts. [To] that end, the personal situation of the patient shall be reviewed at least every six months by a multidisciplinary team, issuing a report on his or her condition and progress.

2.The above-mentioned report ... shall be sent to the public prosecutor ..."

41. The relevant provisions of the Code of Criminal Procedure concerning pre-trial detention state as follows:

Article 503

"1. Pre-trial detention shall only be ordered when the following requirements are met:

(1) There is evidence of one or more acts which may be regarded as an offence punishable by a maximum sentence of two or more years' imprisonment ...

(2) There are sufficient grounds to believe that the person whose detention is ordered is criminally responsible for the offence.

...

2. Pre-trial detention may also be ordered if the requirements set out in points (1) and (2) of the previous paragraph are met, in order to prevent the risk of the accused committing further offences.

To assess the existence of such risk, the circumstances of the act shall be taken into account, as well as the seriousness of the offences that could be committed.

..."

Article 504

"1. Pre-trial detention shall last for as long as it is essential to achieve any of the purposes provided for in the previous Article and for as long as the grounds justifying it still exist.

2. Where pre-trial detention is ordered under points (a) or (c) of paragraph 1(3) or paragraph 2 of the previous Article, it may not exceed one year if the offence carries a sentence of three years' imprisonment or less, or two years if the sentence is more than three years' imprisonment. However, in circumstances which make it likely that the case may not be tried within those time-limits, the judge or court may, under the terms provided for in Article 505 [regulating the relevant hearing], order a single extension of up to two years, if the offence carries a sentence of more than three years, or up to six months if the offence carries a sentence of three years or less."

42. Article 763 of the Code of Civil Procedure regulates the procedure to be followed in order to decide on the involuntary confinement of a person based on his or her mental condition.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 1, 3 AND 4 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S PRE-TRIAL DETENTION

43. The applicant argued that she had been deprived of her liberty for more than three years while the criminal proceedings had been pending, despite her mental health condition and without the authorities meeting her specific needs. She further complained that during that period her pre-trial detention had not been reviewed. She alleged a violation of her right to liberty, as provided in Article 5 of the Convention, the relevant parts of which 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:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by

law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. 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.

..."

Admissibility

44. The Government, as mentioned above, objected that the application in general was inadmissible as the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention. With regard to the pre-trial detention, they argued that the applicant had only challenged the initial decision of 12 March 2018, despite the possibility under domestic law of having pre-trial detention reviewed at any point during the proceedings and of appealing against any decision rejecting a review, even by means of an *amparo* appeal.

45. The applicant argued that communication with the officially appointed lawyers had been difficult. She had been represented by three different appointed lawyers, depending on the place where each court was based, and she had been detained in different locations, sometimes even in different provinces, far away from her lawyers. She argued that her failure to challenge the relevant decisions or to request a review of her situation had in any case been the responsibility of the public legal aid services, as she could not have been expected to take such steps herself. She further stated that the authorities had failed to meet their positive obligations to prevent the deprivation of liberty of vulnerable persons.

46. The Court finds it appropriate to analyse two different periods separately, namely the periods before and after the decision of 21 May 2020.

1. The applicant's deprivation of liberty between 12 March 2018 and 21 May 2020

47. In this first period the pre-trial detention of the applicant was based on two different orders of the investigating judge, made on 12 March 2018 and 19 February 2019. Only the initial decision of 12 March 2018 was challenged, and subsequently upheld by both the investigating judge and the *Audiencia Provincial*, without any further appeal being lodged with the Constitutional Court. The decision of 19 February 2019 was not challenged by the applicant (see paragraphs 7 and 8 above). Apart from the appeal against the decision of 12 March 2018, no requests for a review of the pre-trial decision were submitted to the investigating judge. Furthermore, neither the appeal on points of law nor the *amparo* appeal contained any reference to the decisions of the investigating judge.

48. The Court is mindful of the vulnerable situation of the applicant, a foreign woman with a mental health condition who was held in pre-trial detention in different locations during the criminal proceedings against her. The Court acknowledges that this may have resulted in several obstacles to her communication with her lawyers. The Court reiterates in this connection that the first sentence of Article 5 § 1 must be construed as laying down a positive obligation on the State to protect the liberty of those within its jurisdiction and that the State is therefore obliged to take measures providing effective protection of vulnerable persons, including reasonable steps to prevent a deprivation of liberty of which the authorities have or ought to have knowledge (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 120, ECHR 2012). The Court has further held that it does not consider that the mere appointment of a lawyer, without him or her actually providing legal assistance in the proceedings, could satisfy the requirements of necessary "legal assistance" for persons confined under the head of "unsound mind", under Article 5 § 1 (e) of the Convention. This is because an effective legal representation of persons with disabilities requires an enhanced duty of supervision of their legal representatives by the competent domestic courts (*M.S. v. Croatia (no. 2)*, no. 75450/12, § 154, 19 February 2015).

49. However, in this case, it is not disputed that the applicant was represented by an officially appointed lawyer at all stages of the proceedings and that those lawyers provided legal assistance to the applicant, namely by appealing against several judgments and decisions. There is no information in the case file about any complaint lodged before the domestic authorities concerning the quality of the legal aid provided, nor was there any specific complaint in this regard in the application before the Court (contrast *Czekalla v. Portugal*, no. 38830/97, ECHR 2002-VIII). In addition, the applicant's representative before the Court was also her representative in the proceedings before the Supreme Court and the Constitutional Court. While the appeal on points of law and the *amparo* appeal referred to the extension of the pre-trial decision by the *Audiencia Provincial*, they did not make any reference to the decisions of the investigating judge. It also appears from the material before the Court that the applicant's representative was at some point in contact with the lawyer representing her before the *Audiencia Provincial*. That second lawyer could, as indicated by the Government, have requested a review of the applicant's pre-trial detention. However, it seems that, for whatever reason, no formal steps were taken before the competent domestic courts to have the applicant's pre-trial detention reviewed.

50. In view of these circumstances, the Government's preliminary objection of non-exhaustion of domestic remedies concerning the applicant's deprivation of liberty between 12 March 2018 and 21 May 2020 must be upheld by the Court.

2. The applicant's deprivation of liberty between 21 May 2020 and 16 July 2021

51. The second period started with the decision of the *Audiencia Provincial* of 21 May 2020 and ended with the applicant's transfer to a prison psychiatric hospital on 16 July 2021 (see paragraph 27 above). No appeals were lodged against the decision of 21 May 2020, nor were any requests for a review filed with the *Audiencia Provincial*. However, both the appeal on points of law and the *amparo* appeal lodged by the applicant referred to her situation, alleging that an extension of pre-trial detention following an acquittal did not have a basis in domestic law. The Supreme Court did not refer to that complaint in its decision and the Constitutional Court declared the related complaint inadmissible because the applicant had not exhausted available remedies, namely by lodging an action for the annulment of proceedings against the Supreme Court decision.

52. The Court reiterates that, in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Jasinskis v. Latvia*, no. 45744/08, § 50, 21 December 2010).

53. The Court observes that the applicant did not dispute that the available remedies indicated by the Government could be considered effective, but rather referred to her own specific vulnerable circumstances (see paragraph 45 above). The Court reiterates in this connection that the applicant was assisted by a lawyer, who did appeal against the judgment of the *Audiencia Provincial*, and that, at least from the proceedings before the Supreme Court onwards, she was represented by the same lawyer who assisted her before the Court (see paragraph 49 above). In the particular circumstances of the case, the Court fails to see how the claim raised before the Supreme Court concerning the allegedly unlawful extension of the pre-trial detention could have had any direct effect in the applicant's situation, taking into account the fact that the appeal on points of law was not brought against the *Audiencia Provincial*'s decision of 21 May 2020, but its judgment of 24 February 2020 (see paragraphs 11 and 16 above).

54. Furthermore, the Court observes that the Constitutional Court declared the applicant's complaint on this issue inadmissible for not having exhausted prior judicial remedies. The Court reiterates that Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been made to the domestic courts in compliance with the formal requirements and time-limits laid down in domestic law and, consequently, domestic remedies have not been exhausted when an appeal is not accepted for examination because of a procedural mistake by the applicant (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 142-43, ECHR 2010). The Court notes that, in the applicant's *amparo* appeal, this

specific violation of her right to liberty was attributed to the Supreme Court for not responding to her allegations (see paragraph 25 above). The requirement of having submitted an action for the annulment of proceedings against the Supreme Court decision prior to the *amparo* appeal thus seems reasonable and foreseeable and there are no reasons for the Court to question it (contrast *Olivares Zúñiga v. Spain*, no. 11/18, §§ 30 and 34, 15 December 2022).

55. In any event, the Court notes that another complaint concerning the applicant's pre-trial detention is still pending before the domestic authorities (see paragraph 37 above).

56. In these circumstances, the Government's preliminary objection of non-exhaustion of domestic remedies concerning the applicant's deprivation of liberty between 21 May 2020 and 16 July 2021 must therefore be upheld by the Court.

3. Conclusion

57. It follows that these complaints are inadmissible within the meaning of Article 35 § 1 of the Convention and must be dismissed in accordance with Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION ON ACCOUNT OF THE IMPOSITION OF A SECURITY MEASURE

58. The applicant complained that the insufficient reasoning of the decision to impose the security measure of continued detention following her acquittal on grounds of diminished responsibility was in breach of her right to liberty, as provided in Article 5 § 1 of the Convention, and in particular of sub-paragraphs (a) and (e), which read:

> "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 for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> ..."

59. It is undisputed that the imposition of the security measure on the applicant was based on her mental health condition. The Court will therefore ascertain whether the applicant's deprivation of liberty was consonant with the requirements of sub-paragraph (e) of Article 5 § 1. It notes in this regard that sub-paragraph (a) refers to a situation in which there has been a

conviction, whereas in the present case the applicant was acquitted (see *Luberti v. Italy*, 23 February 1984, § 25, Series A no. 75).

A. Admissibility

60. The Government objected that the application, in general, was inadmissible, as the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention. With regard to the security measure, they stated that the applicant could have requested a review of the measure, but had failed to do so.

61. The applicant stated that she had appealed against the judgment of the *Audiencia Provincial* imposing the security measure, and had thus exhausted all available remedies.

62. The Court reiterates in this connection that the purpose of the exhaustion rule is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court. Accordingly, the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits (see *Micallef v. Malta* [GC], no. 17056/06, § 55, ECHR 2009).

63. The Court observes that the applicant appealed both against the judgment of the *Audiencia Provincial* imposing a security measure on her, and against the decisions of the higher courts upholding it. The sufficiency of the reasoning behind the security measure and its extension was analysed by the High Court and the Supreme Court (see paragraphs 17-18 and 22-24 above). The Constitutional Court, for its part, did not question whether the available judicial remedies regarding that complaint had been exhausted (see paragraph 26 above).

64. Taking into account the distinctive and cumulative protections offered by paragraphs 1 and 4 of Article 5, the former strictly regulating the circumstances in which one's liberty can be taken away whereas the latter requires a review of its legality thereafter (see *H.L. v. the United Kingdom*, no. 45508/99, § 123, ECHR 2004-IX), the Court considers that there was no reason for the applicant to pursue another remedy concerning the present complaint. The Government's preliminary objection must therefore be dismissed.

65. The Court notes that this complaint 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

66. The applicant argued that, when imposing the security measure on her, the domestic courts had not assessed whether a prediction of future behaviour revealed the likelihood of further offences being committed, as required by Article 95 of the Criminal Code, nor had they analysed whether she was likely to harm herself or others. Accordingly, it had not been shown that her mental disorder had been of a kind or degree warranting compulsory confinement.

67. The Government argued that the applicant's mental condition had been conclusively established on the basis of the forensic doctors' statements in the hearing and medical reports. They further held that the applicant's confinement had been necessary, as the forensic doctors had stated that her hospitalisation had been for her own benefit. In any event, the available medical reports showed not only the distress suffered by the applicant, but also the risk she had posed to herself and others, as she had continued hearing voices telling her to harm herself and start fires. Lastly, they affirmed that the applicant's medical condition had been examined on a regular basis.

1. General principles

68. 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).

69. 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). In particular, it is essential, in matters of deprivation of liberty, that the domestic law define clearly the conditions for detention and that the law be foreseeable in its application (see *Creangă v. Romania* [GC], no. 29226/03, § 101, 23 February 2012).

70. As regards the deprivation of liberty of persons suffering from mental disorders, an individual cannot be deprived of his or her liberty as being of "unsound mind" unless the following three minimum conditions are satisfied: firstly, he or she 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, among many other authorities, *Ilnseher v. Germany* [GC],

nos. 10211/12 and 27505/14, § 127, 4 December 2018; *Rooman v. Belgium* [GC], no. 18052/11, § 192, 31 January 2019; and *Denis and Irvine*, cited above, § 135).

71. As regards the first condition for a person to be deprived of his or her liberty as being of "unsound mind", namely that a true mental disorder must have been established before a competent authority on the basis of objective medical expertise, the Court reiterates that, despite the fact that the national authorities have a certain discretion, in particular on the merits of clinical diagnoses, the permissible grounds for deprivation of liberty listed in Article 5 § 1 are to be interpreted narrowly. A mental condition has to be of a certain severity in order to be regarded as a "true" mental disorder for the purposes of sub-paragraph (e) of Article 5 § 1, as it has to be so serious as to necessitate treatment in an institution for mental health patients (see *Ilnseher*, cited above, § 129, and *Denis and Irvine*, cited above, § 136). The objectivity of medical expertise entails a requirement that it was sufficiently recent. The question whether medical expertise was sufficiently recent depends on the specific circumstances of the case before the Court (see *Ilnseher*, cited above, § 131, and the references therein). In order for the mental disorder to have been established before a competent authority, and particularly the domestic courts, the domestic courts must sufficiently establish the relevant facts on which their decision to detain the person concerned is based with the help of adequate medical expert advice. In the Court's view, this requires the domestic authority to subject the expert advice before it to a strict scrutiny and reach its own decision on whether the person concerned suffered from a mental disorder with regard to the material before it (ibid., § 132).

72. As regards the second requirement for an individual to be deprived of his or her liberty as being of "unsound mind", namely that the mental disorder must be of a kind or degree warranting compulsory confinement, the Court reiterates that 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 because the person needs therapy, medication or other clinical treatment to cure or alleviate his or her condition, but also where the person needs control and supervision to prevent him or her from, for example, causing harm to himself or herself or other persons (ibid., § 133; see also *Stanev*, cited above, § 146, ECHR 2012).

73. 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. However, as shown by the third minimum condition for the detention of a person for being of "unsound mind" to be justified, namely that the validity of continued confinement must depend on the persistence of the mental disorder, changes, if any, to the mental condition of the detainee following the adoption of the detention order must be taken into account (see *Denis and Irvine*, cited above, § 137).

2. Application of those principles to the present case

74. The Court observes that, under domestic law, security measures must be based on the criminal risk of the individual and require a prediction of future behaviour that reveals the likelihood of further offences being committed (see paragraph 39 above).

75. The Court notes in this connection that the *Audiencia Provincial*'s assessment of the applicant's criminal responsibility was based on her condition on the day of the events. Referring to the medical and forensic evidence, it found that, on that day, she had been suffering from a mental disorder as a result of which she had become unbalanced, and her mental health, together with the use of drugs and alcohol on that day, had been decisive in the subsequent course of the events (see paragraph 14 above). Nevertheless, the judgment did not contain any specific assessment of the applicant's mental health condition at the time when the hearing took place or when the judgment was delivered, despite the fact that almost two years had passed between the offence and the judgment; nor did it refer to any prediction of future behaviour. The court did not establish whether her medical condition had improved since that day, or whether she posed a danger to herself or others, owing in particular to her psychiatric disorder (see *N. v. Romania*, no. 59152/08, § 155, 28 November 2017).

76. The laconic character of the *Audiencia Provincial*'s reasoning was apparently acknowledged by the High Court, which stated that the imposition of the security measure had been based on implicit reasons, without any further analysis of those reasons (see paragraph 17 above). The appeals lodged by the applicant with the High Court, the Supreme Court and the Constitutional Court did not provide any kind of clarification on the potential risks posed by the applicant. Moreover, at no point did the domestic courts consider whether any alternative measures could have been implemented in the present case (see paragraphs 14, 17 and 22 above). There can be, therefore, doubts about the lawfulness of the measures under domestic law.

77. Nonetheless, the Court considers that, in the present case, the question of the compliance of the applicant's detention with domestic law is not decisive, as the imposition of a security measure on the applicant on mental health grounds fell short of guarantees against arbitrariness enshrined in the Court's case-law (see paragraphs 70 -73 above), to which the requirements of domestic law appear to be closely related.

78. With regard to the first condition, namely whether the applicant was reliably shown to be of "unsound mind", the Court observes, as mentioned above (see paragraph 75), that the assessment made by the domestic courts was limited to the mental state of the applicant on the date on which she started the fire, that is, almost two years before the imposition of the security measure, without any assessment of the seriousness of her specific mental health condition at the time of the imposition of the measure (see paragraphs 72 and 73 above). Although the medical reports submitted to the

Audiencia Provincial stated that the applicant suffered from several mental health disorders (psychotic disorder, personality disorder, post-traumatic stress disorder, and anxiety disorder – see paragraph 9 above), no strict scrutiny of those reports and of the seriousness of her condition can be found in the *Audiencia Provincial*'s judgment, or in the higher courts' rulings upholding it (see paragraphs 14, 17 and 22 above).

79. Concerning the second condition, that is, the necessity of compulsory confinement, the Court cannot but observe that the judgment of the *Audiencia Provincial* made no reference to the applicant's therapeutic or medical needs or to the need to monitor her in order to prevent her from, for example, causing harm to herself or others (see paragraph 72 above). The Court does not doubt that those aspects were at least partially addressed in the hearing during the examination of the forensic doctors (see paragraphs 10 and 67 above). However, no assessment of those aspects, nor any mention of the required prediction, can be found in the rulings of the domestic courts.

80. The foregoing considerations are sufficient to enable the Court to conclude that the imposition of the security measure on the applicant did not meet the minimum conditions to be in accordance with sub-paragraph (e) of Article 5 § 1. There has therefore been a violation of Article 5 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

81. Lastly, the applicant complained that the security measure had been imposed on her without a determination of her dangerousness or the likelihood of her committing further offences, as required by law, in violation of Article 7 of the Convention. In view of its findings in relation to Article 5 § 1, the Court considers that a separate examination of the admissibility and merits of the complaint under Article 7 is not necessary.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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."

83. The applicant claimed 168,280 euros (EUR) in respect of non-pecuniary damage. She did not claim reimbursement of costs and expenses.

84. The Government stated that the applicant would be able to have recourse to domestic remedies should the Court find a violation of Article 5, and that the mere acknowledgment by the Court of the infringement of some

or all of the rights relied on would be an appropriate form of redress for any non-pecuniary damage caused to the applicant.

85. The Court, having regard to the periods of time during which the applicant's Article 5 rights were violated, awards the applicant EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 5 § 1 on account of the imposition of the security measure admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 7 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, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Mattias Guyomar
Registrar	President