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

Press Release
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ECHR 260 (2025)
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Spanish court's failure to protect psychiatric patient's rights during hearing breached the Convention

In today's **Chamber** judgment[1] in the case of B.M. v. Spain (application no. 25893/23) the European Court of Human Rights held, unanimously, that there had been:

Violation of Article 5 § 1 (e) (lawful detention of persons of unsound mind) of the European Convention on Human Rights.

In May 2021 the applicant was detained in a psychiatric hospital under the Civil Procedure Act. His detention was approved by the Madrid Court of First Instance no. 30. The applicant attended the hearing online from hospital and was not assisted by a lawyer.

The Court found that the manner in which the authorities had processed the approval of the applicant's compulsory detention had fallen short of the effective procedural safeguards against arbitrary detention. In particular, it found that the applicant's rights would have been better protected had the first-instance court actively sought to find out whether he wished to have legal assistance or not. Indeed, that was particularly significant in a case such as the applicant's, involving a person in a situation of vulnerability who had repeatedly expressed the wish to speak to a lawyer and had complained about his treatment.

Principal facts

The applicant, B.M., is a Spanish national who was born in 1963 and lives in Madrid (Spain).

On Friday 14 May 2021, following an aggressive outburst at work, the applicant was taken to the accident and emergency department of a public general hospital by the police. At 1.21 a.m. on Saturday 15 May 2021, he was admitted to a psychiatric hospital on an involuntary basis. At 9.54 a.m. that day, the psychiatric hospital sent a fax to the judicial authorities to inform them of the applicant's urgent admission. On Tuesday 18 May 2021, the Madrid Court of First Instance no. 30 ("the first-instance court") held a hearing via the Zoom internet platform and approved the applicant's detention. The applicant attended the hearing online from the hospital and was not assisted by a lawyer.

On 5 November 2021, the Madrid *Audiencia Provincial* rejected an appeal by the applicant against the first-instance court's decision of 18 May 2021, finding that he had not expressly requested the assistance of a lawyer during the hearing and in any event, he had since been discharged from hospital. The Constitutional Court declared an *amparo* appeal lodged by the applicant inadmissible for lack of constitutional significance.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 June 2023.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Relying on Article 5 § 1 (e), the applicant complained that the legal requirements for the approval of the detention measure had not been respected, in particular, his right to be assisted by a lawyer during the hearing before the judge.

Judgment was given by a Chamber of seven judges, composed as follows:

Kateřina **Šimáčková** (the Czech Republic), *President*,
María **Elósegui** (Spain),
Andreas **Zünd** (Switzerland),
Diana **Sârcu** (the Republic of Moldova),
Mykola **Gnatovskyy** (Ukraine),
Vahe **Grigoryan** (Armenia),
Sébastien **Biancheri** (Monaco),
and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 5 § 1 (e)

The Court considered, firstly, that while the applicant had not contested the very grounds for his deprivation of liberty in his application form, his complaints concerned more than only the lack of legal representation during the hearing. The Court would therefore review all the circumstances of his complaint.

The Court went on to note that the applicant's detention in a psychiatric hospital had been judicially approved within 72 hours as required under the Civil Procedure Act. Under that Act, the first-instance court had been required to have at its disposal a medical report prepared by a doctor. Indeed, a doctor appointed by the first-instance court had been present in the courtroom together with the judge and the registrar during the hearing. However, the doctor had never apparently met the applicant in person, let alone examined him before the hearing. The medical report merely reiterated the same preliminary diagnosis that had been made on the day of the applicant's admission, without further consideration. The Court questioned whether the detention of a person of unsound mind could be approved on the basis of a medical report issued in those conditions.

The applicant had not been assisted by a lawyer during the hearing. Under the domestic law, while the presence of a lawyer was not compulsory, the applicant had had the right to be represented during the proceedings should he have so chosen. The Court could not be sure that he had expressly stated his wish to dispense with legal assistance. On the contrary, the applicant had tried to contact a lawyer before the hearing and his admission report noted that he had repeatedly asked to speak to his lawyer and had made complaints about his treatment.

It was essential that a person being detained in psychiatric hospital should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation. In a case such as the applicant's, involving a person in a situation of vulnerability, the right to legal assistance would have been better protected had the first-instance court actively sought to find out the applicant's position on the matter. That was particularly significant considering the information contained in the admission report (that the applicant wished to speak to a lawyer and had made complaints about his treatment), which had been at the first-instance court's disposal.

The Court concluded that the Spanish authorities had failed to conduct a thorough scrutiny of the applicant's deprivation of liberty and that the manner in which they had processed the approval of the applicant's compulsory detention had fallen short of the effective procedural safeguards against arbitrary detention.

There had accordingly been a violation of Article 5 § 1 (e) of the Convention.

Just satisfaction (Article 41)

The Court held that Spain was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 7,000 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.