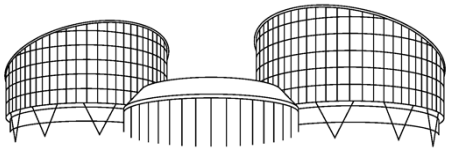

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MIRANDA MAGRO v. PORTUGAL

(Application no. 30138/21)

JUDGMENT

Art 3 (substantive) • Inhuman treatment • Degrading treatment • Art 5 § 1 (e) • Persons of unsound mind • Preventive detention of a mentally ill person, exempted from criminal responsibility, at a prison hospital's psychiatric unit, in inadequate conditions and without appropriate assistance and care, pending placement in an appropriate mental health facility • Unlawful detention in violation of Art 5 § 1 (e) requirements
Art 46 • Execution of judgment • Respondent State required to take general measures to address structural nature of issues arising in context of the enforcement of preventive detention measures in prison facilities • Necessary steps to be taken as a matter of urgency to secure appropriate living conditions and the provision of suitable and individualised forms of therapy to mentally ill persons to support their possible return and integration into the community

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 January 2024

FINAL

09/04/2024

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

In the case of Miranda Magro v. Portugal,

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

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Faris Vehabović,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Sebastian Răduleţu*, judges*,

and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 30138/21) against the Portuguese Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Portuguese national, Mr Rui Miguel Miranda Magro ("the applicant"), on 9 June 2021;

the decision to give notice to the Portuguese Government ("the Government") of the complaints concerning Article 3 and Article 5 § 1 (e) of the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 5 December 2023,

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

INTRODUCTION

1. The application concerns, under Articles 3 and 5 of the Convention, the applicant's detention in the psychiatric unit of the Caxias Prison Hospital. Following his conviction on charges of criminal damage, making threats and sexual harassment he was sentenced to a preventive detention measure (*medida de segurança de internamento*). The applicant complained of the conditions of his detention in Caxias Prison Hospital and submitted that he should have been held in a psychiatric facility in order to have access to the requisite medical care.

THE FACTS

2. The applicant was represented by Mr V. Carreto, a lawyer practising in Torres Vedras.

3. The Portuguese Government ("the Government") were represented by their Agents, most recently Mr. Ricardo Bragança de Matos, Attorney General.

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

5. The applicant was born in 1975 and lives in Évora. He was diagnosed with paranoid schizophrenia in 2002. When he lodged his application, he was being detained in the São João de Deus Psychiatric and Mental Health Clinic at the Caxias Prison Hospital (hereinafter referred to as "the psychiatric unit of the Caxias Prison Hospital"). On 18 October 2021 he was transferred to a mental health facility (see paragraph 15 below).

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

6. On an unspecified date, criminal proceedings were instituted by the Évora public prosecutor's office against the applicant for offences of criminal damage, making threats and sexual harassment, allegedly committed on 15 May 2017.

7. On 2 September 2019 the Évora Criminal Court convicted the applicant of the above-mentioned offences and declared him not criminally responsible owing to his mental disorder in accordance with Article 20 of the Criminal Code (see paragraph 32 below). Having regard to the danger posed to society by the applicant and the risk of his reoffending, the Évora Criminal Court ordered the application of a preventive detention measure for a maximum period of three years in an appropriate psychiatric institution, under the terms of Articles 40 and 91 of the Criminal Code (see paragraphs 33-34 below) and Article 501 of the Code of Criminal Procedure (see paragraph 30 below). The court also ordered the suspension of the execution of the measure applied to the applicant, under Article 98 of the Criminal Code (see paragraph 29 below), subject to his undergoing the necessary psychiatric treatment at the Hospital do Espírito Santo de Évora (hereinafter referred to as "the HESE") and his not reoffending. To that end, a social reintegration plan was drawn up with the applicant's cooperation and approved by the Évora Criminal Court on 26 March 2020.

8. On 29 October 2020 the HESE reported to the Évora Criminal Court that the applicant had missed his appointments scheduled in September and October, and that it had no knowledge of his medical condition after the last appointment he had attended in June 2020.

9. On an unspecified date, the Évora Criminal Court asked the General Directorate for Reintegration and Prison Services (*Direção-Geral de Reinserção e Serviços Prisionais* – "the DGRSP"), the entity responsible for monitoring the applicant's situation, for an update.

10. In a report dated 17 November 2020 the DGRSP informed the court that although the applicant had initially complied with the treatment plan, he had gradually started to miss appointments and had often arrived at the psychiatric department but left without being seen by a specialist, having refused to be treated. Furthermore, his condition had deteriorated, and he had feelings of persecution. The DGRSP further informed the court that it had asked the public health delegate to take the applicant to the local psychiatric

emergency unit for a thorough psychiatric assessment. It added that according to the local police, at least two further criminal complaints had been lodged in the meantime against the applicant for offences against personal liberty, making threats, and coercion. After visiting the applicant's home, the DGRSP concluded that he was in a situation of vulnerability at various levels, giving rise to especially strong concerns in the light of his psychiatric condition.

11. On 18 November 2020 the HESE informed the court that the applicant had in the meantime attended the consultation that was scheduled for November 2020 and had accepted the proposed therapeutic treatment.

12. On 15 December 2020 a hearing was held at the Évora Criminal Court to assess the applicant's compliance with the conditions attached to the suspension of the execution of the detention measure (see paragraph 7 above). The applicant did not attend, despite having been duly notified. He was represented by a court-appointed lawyer. During the hearing, the public prosecutor's office asked the court to revoke the suspension of the execution of the preventive detention because the applicant had failed to comply with the conditions attached to it and because he posed a risk to himself and others owing to his unstable state of health.

13. On 2 February 2021 the Évora Criminal Court granted the public prosecutor's request and ordered the applicant's confinement in an appropriate psychiatric institution where he could receive appropriate treatment as required by his mental health condition. That decision became final on 26 March 2021.

14. On 14 April 2021 the applicant was arrested by the police and taken to the Júlio de Matos Hospital in Lisbon for the purpose of enforcing the preventive detention to which he had been sentenced (see paragraph 7 above). The Júlio de Matos Hospital refused to admit him because of a shortage of places and the fact that he had actually been convicted of a crime – priority being given to situations of compulsory hospitalisation of non-offenders. The applicant was then taken, on the same day, to the psychiatric unit of the Caxias Prison Hospital, where he stayed while waiting to be placed in a mental health facility outside of the prison system.

15. On 18 October 2021 he was transferred to the Sobral Cid Psychiatric Clinic in Coimbra, a mental health facility.

II. PROCEEDINGS FOR COMPULSORY HOSPITALISATION UNDER THE MENTAL HEALTH ACT

16. Previously, on 18 February 2021, the public health delegate had issued a warrant for the applicant to be taken to the HESE for psychiatric medical observation, with a view to assessing the need for possible compulsory hospitalisation (*internamento compulsivo*) under the provisions of the Mental Health Act.

17. On 24 February 2021 the applicant was observed by the HESE's emergency service, and a psychiatric clinical evaluation report was drawn up, proposing his compulsory hospitalisation so that he could receive the psychiatric treatment required by his medical condition.

18. On 25 February 2021 the Évora Criminal Court ordered the compulsory hospitalisation of the applicant at the HESE, on the grounds that he posed a danger to himself and others and would not accept treatment, and that his hospitalisation was the only way to provide him with the treatment he needed.

19. A medical report of 1 March 2021 noted the seriousness of the applicant's state of health and the need to ensure regular medication and psychiatric hospitalisation, despite his rejection of the treatment plan and refusal to recognise the need for treatment. According to the same report, failure to comply with the suggested therapeutic measures would lead to a worsening of the patient's clinical condition, rendering him a risk to himself and others, which is why it was proposed to continue his compulsory hospitalisation.

20. On 9 March 2021 a medical report proposed that the applicant be discharged and proceed with outpatient psychiatric treatment in view of his clinical progress thanks to the medication he was being given.

21. On 10 March 2021 the Évora Criminal Court ordered the applicant to undergo compulsory outpatient treatment (*tratamento ambulatório compulsivo*).

22. On 29 April 2021 the Évora Criminal Court declared the termination of the applicant's outpatient treatment, as he had in the meantime been admitted to the psychiatric unit of the Caxias Prison Hospital for the execution of the preventive detention (see paragraph 14 above).

III. THE HABEAS CORPUS PLEA TO THE SUPREME COURT OF JUSTICE

23. On an unspecified date the applicant's brother lodged a habeas corpus application with the Supreme Court of Justice, claiming that his brother was unlawfully detained at the Caxias Prison Hospital.

24. On 21 April 2021 the Supreme Court dismissed that application on the grounds that the applicant's detention was based on a final judicial decision, in accordance with the procedure provided by law, against which he had not appealed. The Supreme Court noted, however, that the applicant's detention in the psychiatric unit of the Caxias Prison Hospital was of a temporary nature and that he should be urgently transferred to a health facility outside of the prison system.

IV. THE CONDITIONS OF DETENTION OF THE APPLICANT AND THE CARE PROVIDED TO HIM IN THE PSYCHIATRIC UNIT OF THE CAXIAS PRISON HOSPITAL FROM 14 APRIL UNTIL 18 OCTOBER 2021

A. Submissions by the applicant

25. The applicant described his conditions of detention at the Caxias Prison Hospital as follows.

26. He had not received the medical treatment required by his mental health condition but had instead been subjected to a therapeutic approach based on excessive medication with long-lasting effects (the administration of injections with a prolonged effect). He argued that the psychiatric unit of the Caxias Prison Hospital was a prison hospital and not a mental health facility aimed at treating people suffering from serious mental illness, as he did. He alleged that he should have been admitted to a proper mental health psychiatric institution in order to have access to the medical care, psychological support, and the therapies he needed.

27. He further claimed that his detention in the prison hospital had contributed to a deterioration in his condition and aggravated his state of confusion and fear, given the repressive environment of the prison, which was surrounded by bars and barbed wire and guarded by uniformed warders equipped with means of physical repression, and which lacked access to the medical care, psychological support, and therapy he needed to get better.

B. Submissions by the Government

28. The Government contested the applicant's version.

29. They submitted that the applicant had been given the medical and specialist care he needed and had been prescribed the appropriate therapy and medication for his symptoms. To that end the applicant had been integrated into the long-term mental healthcare service. He had agreed to a therapeutic plan drawn up according to his clinical pathology and had participated in all the activities and group dynamics organised and run by health professionals, psychological nursing staff, occupational therapists, and re-education technicians. Additionally, he had participated in various occupational therapy activities during his stay, such as the in-house newspaper, community meetings, film screenings, celebrations of festive seasons, football tournaments and games, and musical activities. Regular medication had also been supplied to him since his admission, which had helped to improve his mental state. The Government further submitted that the applicant had received a visit from his brother during his detention and had maintained daily contact with him through telephone calls.

30. The Government emphasised that the psychiatric unit of the Caxias Prison Hospital was a healthcare unit that offered specialist mental healthcare. They also explained that the reason for the applicant's subsequent transfer to the Sobral Cid Hospital (a mental health unit outside of the prison system – see paragraph 15 above) had not been the lack of specialist psychiatric treatment, but rather the need to ensure that his detention was in accordance with the terms of Article 126 of the Code of Execution of Sentences (see paragraph 39 above).

31. The Government further submitted that the applicant had been held in adequate material conditions at the psychiatric unit of the Caxias Prison Hospital. He had been accommodated in one of the seven beds in a 54 sq. m infirmary, which had windows to the exterior, ventilation, and natural light, as well as its own sanitary facilities, including a shower room. In addition, the psychiatric unit of the Caxias Prison Hospital had a renovated recreational patio, where the patients had the benefit of daily outdoor recreation, as well as an enclosed area with a bar, television and snooker table. Cleaning was carried out daily by a specialist company and the furniture was old but in decent condition. Referring to the CPT report of 27 January 2018 (see paragraph 60 above), the Government concluded that the applicant had not been subjected to inhuman and degrading treatment in the psychiatric unit of the Caxias Prison Hospital.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. LEGISLATIVE FRAMEWORK ON MENTALLY ILL PERSONS AND EXECUTION OF SENTENCES

A. Criminal Code

32. Article 20 of the Criminal Code establishes that a person cannot be held criminally accountable if, owing to a mental illness, he or she is incapable, at the time of committing the offence, of understanding its unlawfulness or of shaping his or her conduct in accordance with that understanding.

33. Article 40 of the Criminal Code defines the aim of preventive detention measures as the protection of legal interests and the reintegration into society of the offender. It also states that preventive detention can only be applied if it is proportionate to the gravity of the act and the level of danger posed by the offender.

34. Article 91 of the Criminal Code defines the requirements and minimum length of preventive detention as follows:

> "1. A person who commits a punishable offence and who is found not to be criminally responsible within the meaning of Article 20 shall be ordered to be detained in an asylum, hospital or secure unit, if there is reason to believe, in view of his or her mental

illness and the nature and seriousness of his or her offence, that he or she may commit further serious offences.

2. Where the offence committed by a person found not to be criminally responsible is an offence against the person or a crime punishable by more than five years' imprisonment, he or she shall be ordered to be detained for a minimum period of three years, save where his or her release is not incompatible with the protection of the legal system and public order."

35. At the material time, Article 93 of the Criminal Code provided that preventive detention is subject to judicial review two years after the beginning of its execution. Furthermore, it may be the subject of an assessment by the court at any time if a reason for ending the detention is put forward.

36. Article 98 of the Criminal Code provides that the execution of preventive detention may be suspended where the court is of the view that it is reasonable to expect that the purpose of the measure will be accomplished by the suspension. The suspension imposes rules of conduct on the offender, as well as a duty to submit to appropriate treatments and regimes of outpatient care and to undergo examination and observation in any places which may be indicated to him or her. The execution and supervision of the suspended measure is the responsibility of the DGRSP (see paragraphs 9-10 above).

B. Code of Criminal Procedure

37. Article 501 of the Code of Criminal Procedure states that the decision ordering a preventive detention must specify the type of institution in which it is to be carried out and must determine, where appropriate, the maximum and minimum duration of detention; it also provides that, in any event, the start and end of the detention are to be ordered by the court.

C. Code of Execution of Sentences

38. Article 20 of the Code of Execution of Sentences sets out the criteria to be taken into account in the decision to assign a person to a particular prison or prison unit, including his or her legal and penal status, sex, age and state of health, previous sentences served, the nature of the offence committed and the length of the sentence to be served, as well as the need for public order and security, the regime of execution of the sentence, or the proximity to the family, social, educational and professional environment, or the need to participate in certain programmes and activities, including educational ones.

39. Article 126 of the Code of Execution of Sentences reads as follows:

"1. The execution of a measure of deprivation of liberty applied to a person who is found not to be criminally responsible or to a person who is criminally responsible and has been detained by judicial decision in an institution for persons incapable of assuming criminal responsibility shall be aimed at the rehabilitation of the detainee and

his or her reintegration into family and social life, thus preventing the commission of new offences and serving to protect society and the victim in particular.

2. The measures referred to in the previous paragraph and preventive detention shall preferably be carried out in a non-custodial mental health unit and, whenever justified, in prison or in specially designated units, having regard to the judicial decision and the criteria provided for in Article 20 [of the Code of Execution of Sentences], with the necessary adjustments.

3. The decision to assign a person to a prison or to a specially designated prison unit under the terms of the previous paragraph shall be the responsibility of the Director-General of Prison Services and shall be transmitted to the supervisory court.

4. The execution of a measure of deprivation of liberty applied to a person who cannot be held criminally responsible or to a person who is criminally responsible and has been detained by judicial decision in an institution for persons incapable of assuming criminal responsibility, or of preventive detention, shall be carried out in accordance with the provisions of this Code, with any adjustments that may be justified by the different nature and purposes of such measures and with the specifications established in this chapter and in the General Regulations.

5. When the execution of such a measure takes place in a non-custodial mental health unit, the provisions of this Code shall apply with the adjustments that may be established by a specific statute."

40. As for the manner in which such sentences are executed, Article 127 of the Code provides that the detention should take place either under the ordinary regime or under the open regime. The ordinary regime is characterised by the organisation of activities in common living spaces inside the unit and by such contact with the outside world as may be allowed by law (Article 12 § 2 and Article 13 of the Code). The open regime favours contact with the outside world and closeness to the wider community and can include the organisation of activities within the perimeter of the unit or in its surroundings with a lower level of surveillance, and the organisation of educational activities, vocational training, work, or programmes in an open environment, without direct surveillance (Article 12 § 3 and Article 14 of the Code).

41. Under Article 128 of the Code, the choice of the regime in which the preventive detention will be served and any adjustments to it must be based on the initial and any further medical assessments of the detainee, with consideration being given to including aspects related to security requirements, any possible danger of absconding, risks to the safety of third parties or to the detainee's own safety (such as the risk of suicide) and particular vulnerability, namely his or her individual, clinical, rehabilitation, safety and social reintegration needs and his or her evolution during the period of detention.

D. General Regulations of Prison Facilities

42. Pursuant to section 253 (1) of the General Regulations of Prison Facilities, approved by Legislative Decree no. 51/2011 of 11 April 2011, detainees must be subjected to permanent medical monitoring from the moment of their admission and their treatment should follow a mandatory therapeutic and rehabilitation plan.

E. Legislative Decree no. 70/2019 of 24 May 2019

43. Legislative Decree no. 70/2019 of 24 May 2019 regulates the execution of preventive detention in mental health institutions outside the prison system. It aims at implementing the general principle set out in Article 126 § 2 of the Code of Execution of Sentences (see paragraph 39 above). Therefore, it establishes the guiding principles for the enforcement of the preventive detention measures, clarifies the legal status of the detainees, strengthens the mechanisms for the protection of their rights and regulates the preparation of their therapeutic and rehabilitation plans, which are essential instruments for the individualised, planned, and successful implementation of the preventive measures. Similarly, the requirements and procedures for placement under the open regime and for granting leave were revised, as was the disciplinary regime. The changes were also applied to detention in units in the prison system.

F. The Mental Health Act

44. At the material time, the Mental Health Act (Law no. 36/98 of 24 July 1998) set out the general principles of mental health policy and regulates the voluntary and compulsory hospitalisation of patients with psychiatric disorders. The relevant provisions read as follows:

Section 22
Requirements

"A person with a mental disorder may be compulsorily hospitalised as a matter of urgency, under the terms of the following sections, whenever there is imminent danger to the legal interests referred to therein, due to an acute deterioration of the person's condition."

Section 31
Habeas corpus on account of unlawful deprivation of liberty

"1. A person with a mental disorder who has been deprived of his or her liberty, or [on his or her behalf] any citizen enjoying political rights, may apply to the court in the area where the person is located to request his or her release on one of the following grounds:

(a) the time-limit provided for in section 26(2) has been exceeded;

(b) the deprivation of liberty was carried out or ordered by an entity which was not competent to do so;

(c) the justification for the deprivation of liberty lies outside the cases or conditions provided for in this law.

2. Once the request has been received, the judge, if he or she does not consider it manifestly unfounded, shall order, if necessary, by telephone, the immediate appearance of the person with the mental disorder.

3. Together with the order referred to in the previous subsection, the judge shall order that the entity that has the person with the mental disorder in its custody, or its representative, be notified that it must appear at the same hearing with the information and clarifications necessary for the decision on the application.

4. The judge shall give a decision after hearing the public prosecutor's office and defence counsel retained or appointed for this purpose."

Section 33
Replacement of hospitalisation with other measures

"1. Hospitalisation shall be replaced by compulsory treatment on an outpatient basis whenever it is possible to keep the patient at liberty without prejudice to the provisions of sections 34 and 35.

2. The replacement shall depend on the express acceptance, on the part of the person, of the conditions set by the psychiatrist for outpatient treatment.

3. The replacement shall be notified to the competent court.

4. Whenever the person with a mental disorder fails to comply with the conditions set, the psychiatrist shall notify the competent court of such non-compliance and hospitalisation shall be resumed.

5. Whenever necessary, the institution shall request the competent court to issue warrants [for the person to be brought before the court], to be executed by the police forces."

Section 34
Cessation of hospitalisation

"1. Hospitalisation shall end when the conditions that gave rise to it cease.

2. The end of the hospitalisation shall be brought about by a discharge certificate issued by the clinical director of the institution, based on a clinical psychiatric evaluation report by the health service where the hospitalisation took place, or by court decision.

3. The discharge shall be immediately notified to the competent court."

Section 35
Review of the situation of the person detained

"1. If the existence of a justifiable reason for the termination of hospitalisation is invoked, the competent court shall review the matter at any time.

2. A review must take place, whether or not a request has been received, two months after the beginning of the hospitalisation or a decision to continue it.

3. The person detained, his defence counsel and the persons referred to in section 13(1) shall have the right to apply for a review.

4. For the purpose of subsection 2, the psychiatric institution concerned shall submit to the court a clinical psychiatric evaluation report drawn up by two psychiatrists, with the possible collaboration of other mental health professionals, no later than ten days before the date set for the review.

5. The mandatory review shall take place with the hearing of the public prosecutor, defence counsel and the person concerned, unless his or her state of health renders the hearing of him or her useless or impracticable."

II. RELEVANT DOMESTIC MATERIAL

A. The DGRSP annual report of 2021

45. According to the DGRSP's annual report for 2021, there are, at national level, three public mental health institutions outside the prison system for the detention of those who are legally incapable of assuming criminal responsibility, with the following capacity:

(a) the Júlio de Matos Psychiatric and Mental Health Hospital in Lisbon, with 45 beds;

(b) the Sobral Cid Psychiatric and Mental Health Hospital in Coimbra, with 110 beds, including 20 for women; and

(c) the Magalhães Lemos Hospital in Porto, with 40 beds.

Those facilities operate under the responsibility of the Ministry of Health.

46. Additionally, there are two psychiatric and mental health clinics within the prison system:

(a) the Santa Cruz do Bispo Psychiatric and Mental Health Clinic; and

(b) the psychiatric unit of the Caxias Prison Hospital, designed for the temporary detention of ordinary prisoners who require psychiatric assistance while serving their sentences.

The above facilities operate under the responsibility of the Ministry of Justice (the DGRSP).

47. According to the 2021 DGRSP report, the psychiatric unit of the Caxias Prison Hospital was created by Legislative Decree no. 469/88 of 17 December 1988. Although the unit was intended for the temporary detention of regular prisoners suffering from mental health conditions, in practice it has been used to detain persons who, having been found not criminally responsible owing to a mental illness, have been sentenced to preventive detention and are in need of psychiatric treatment.

48. The report also indicates that in 2021 there were 398 persons serving preventive detention in Portugal, of whom 201 were detained in prison psychiatric clinics (157 in Santa Cruz do Bispo and 44 in the psychiatric unit of the Caxias Prison Hospital and other prisons) and 197 in clinics and psychiatric hospitals outside of prison.

49. The 2021 DGRSP report describes the mental health situation in prisons as follows:

> "...
>
> Prisons house inmates with severe psychiatric disorders, depression (sometimes with suicidal tendencies), personality disorders, behavioural disorders, addiction problems and also persons incapable of assuming criminal responsibility, with or without dual diagnosis, who constitute an added difficulty for the prison system and can be catalysts for serious disruption of the institutional framework if not properly monitored."

50. It also states that public health services have been encountering increasing difficulties in providing the legally required response to the psychiatric and therapeutic treatment needs of people with psychiatric illnesses who are under the jurisdiction of the justice system. The frequent overcrowding of the units belonging to the Ministry of Health translates into considerable difficulties in responding to requests for hospitalisation from the DGRSP. This reality has led to overcrowding in prison psychiatric facilities and to cases where mentally ill offenders who have been declared not criminally responsible are detained in prisons or left at liberty while awaiting hospitalisation in an appropriate unit.

B. Reports of the Portuguese Ombudsman in her role as "National Preventive Mechanism"

51. By Resolution of the Council of Ministers no. 32/2012 of 20 May 2012, the Portuguese Ombudsman (*Provedor de Justiça*) was appointed as the National Preventive Mechanism ("NPM"), under Article 17 of the 2002 Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2375 UNTS 237), which was ratified by Portugal on 15 January 2013 and came into force in respect of it on 14 February 2013.

1. The 2019 report

52. In her annual report for 2019 in her role as NPM, the Ombudsman noted that, owing to overcrowding and the type of structure, ordinary prisons could not provide the conditions necessary to accommodate those in need of special mental healthcare, which resulted in increased risk for the inmates concerned, for other inmates and for everyone involved in the prison. The report also referred to the shortage of professionals qualified to deal with mental health detainees. In most of the observed cases, many of the consultations were short, infrequent, and limited to a quick prescription of medication.

53. The report specifically addressed the situation of the psychiatric unit of the Caxias Prison Hospital, where there was only one psychiatrist working

five hours a week, although sixty inmates were identified as needing regular psychiatric monitoring. The report further added:

> "In this prison, six persons with diagnosed mental disorders recognised by a court remained in prison for an indefinite period of time and in a manner not differentiated from the rest of the population. After consulting the files of those inmates, it was found that all of them had been given a preventive detention measure in a healthcare establishment suitable for psychiatric treatment and had been waiting ever since (in some cases for about a year) because of a lack of vacancies in the Lisbon Psychiatric Hospital."

2. The 2020 report

54. In her annual report for 2020 in her role as NMP, the Ombudsman pointed out that mental health issues remained one of the main challenges in the prison system. She added that, despite some positive legislative developments in 2019 (see paragraph 43 above), those legal changes had not resulted in the immediate establishment of non-custodial healthcare units capable of receiving all prisoners with a mental disorder, leading to an overload of patients for the only two existing psychiatric clinics in the prison system, one in the Caxias Prison Hospital and the other in Santa Cruz do Bispo.

55. With regard to the situation at the psychiatric unit of the Caxias Prison Hospital, she further noted:

> "... more than 60% of the 50 hospitalised inmates found in the psychiatric unit of the Caxias Prison Hospital were there on the basis of court orders following criminal proceedings and not owing to the need to respond to an acute situation or to be integrated into a medium- or long-term treatment plan. This situation caused great concern, not only for its direct implications for the occupancy rate of the Prison Hospital – and especially in terms of its reduced capacity to respond to acute situations – but also for its indirect implications, such as the need to accommodate psychiatric patients in medical wards (namely in the surgery department and in the infectious diseases department). This heterogeneity was viewed as lacking clinical adequacy, mainly in view of the principle of individualisation that requires inmates to be placed in a context that ensures the fulfilment of a therapeutic and rehabilitation plan developed according to the needs and risks of to each inmate."

56. Also with regard to the psychiatric unit of the Caxias Prison Hospital, the report further noted with concern the lack of available places to meet demand. At the time of the visit conducted by the NPM during the reporting period, there were only 43 beds for 50 inpatients in the psychiatric ward. The NPM expressed particular concern at finding several elderly people hospitalised in clinical departments, who were completely detached from reality and immobilised in beds or in wheelchairs. They were placed there indefinitely, owing solely to the inability of the prison to provide them with the necessary assistance with the basic tasks of daily life. The report concluded in that connection:

> "... these are inmates whose cognitive capacity is apparently irreversibly compromised and whose ability to understand the meaning of the execution of their sentence is predictably affected, and who could certainly benefit from an adjustment of their sentence [which would entail] clear benefits for them and [facilitate] the full accomplishment of the main mission of the Caxias Prison Hospital psychiatric unit."

57. Regarding the material conditions of detention at the psychiatric unit of the Caxias Prison Hospital, the report pointed out:

> "... the existence of unprotected electrical sockets ... in the isolation room, ... [as well as] ... of possible attachment points (on the horizontal bars on the iron grid of the window) and of a peephole too small for checking the whole interior. It is important to note that the room is a space for the confinement of patients in a state of psychomotor agitation or restlessness who require redoubled vigilance, so that the conditions just described (not forgetting the degradation of ceilings and walls) do not seem fit for purpose."

III. RELEVANT INTERNATIONAL LAW AND MATERIAL

58. The most relevant international law and guidelines concerning the rights of persons with disabilities and mental disorders are set out in *Rooman v. Belgium* ([GC], no. 18052/11, §§ 116-19, 31 January 2019). In addition, the following materials are relevant in respect of Portugal.

A. Reports from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

1. *Report of 13 November 2020 (CPT/Inf (2020) on the* ad hoc *visit to Portugal from 3 to 12 December 2019*

59. The treatment of vulnerable people in Portuguese prisons was one of the main concerns raised by the CPT in its report of 13 November 2020. In particular, the CPT reported that overcrowding in prisons such as Caxias, Porto and Setúbal remained a serious problem, which severely affected living conditions, the regime, staff-inmate relations, and good order. It further pointed out that vulnerable persons detained in those three prisons were held in very poor conditions with less than 3 sq. m of living space each and confined to their cells for up to twenty-three hours a day.

2. *Report of 27 January 2018 (CPT/Inf (2018) 6) on the visit to Portugal from 27 September to 7 October 2016*

60. In its report of 27 January 2018, the CPT described patients' living conditions and activities at the psychiatric unit of the Caxias Prison Hospital as follows:

> "101. Living conditions at the psychiatric unit of Caxias Prison Hospital were generally good. Male patients were accommodated in large dormitory-style rooms

(65m²) for 7 to 8 patients each, while the female ward consisted of three smaller rooms (15m²) with two to three beds each. All rooms were bright, well ventilated and clean.

However, patients at the acute ward were not provided with lockable spaces for their personal belongings and the windows lacked window shades or curtains which are particularly necessary in summer when the dormitories get very hot from the direct sunlight. Further, all dormitories were austere and impersonal with little or no space permitted for private decoration. There is also a need to improve the heating system in the whole psychiatric unit, as many patients complained about being very cold in winter when each dormitory is supplied with only one electric radiator.

...

103. As regards outdoor exercise, male patients reportedly had access to the outdoor yard for only half an hour during weekdays and not at all during weekends. Further, the outdoor yard was not equipped with any means of rest and did not provide any shelter against inclement weather.

...

104. Moreover, the offer of organised purposeful activities needs to be improved. Twelve patients worked (kitchen, laundry, maintenance), but many of the other patients complained to the delegation that they had virtually nothing to do. The dormitories were unlocked from 7 a.m. until 7 p.m. and patients had access to a small library and a multi-purpose room with handicraft materials when a prison officer agreed to accompany them. Twice a day (for half an hour each), patients could go to the cafeteria and buy soft drinks/food or play billiards. Apart from occasional therapeutic, rehabilitative or cultural activities (e.g., a monthly theatre group and film screenings), patients were left to their own devices for most of the day in their rooms and the adjacent corridors.

..."

61. As regards living conditions in the psychiatric unit of the Caxias Prison hospital, the CPT recommended that the Portuguese authorities pursue their efforts to establish an adequate therapeutic environment for forensic patients in order to increase the number and variety of day-to-day organised activities offered to patients and the provision of adequate facilities for occupational and recreational activities.

62. In this connection, regarding the treatment and the therapeutic environment needed for mentally ill patients, the CPT noted:

"111. Treatment for forensic psychiatric patients should involve a wide range of therapeutic, rehabilitative and recreational activities – including appropriate medication and medical care – and should be aimed at both controlling the symptoms of the illness and reducing the risk they might pose to society. Rehabilitative psycho-social activities should prepare patients for an independent life or return to their families; occupational therapy – as an integral part of the rehabilitation programme – should aim at raising motivation, developing learning and relationship skills, supporting the acquisition of specific competences and improving self-image.

112. At both establishments there was an evident lack of structured therapeutic and rehabilitative activities for patients and the treatment consisted essentially of pharmacotherapy. Only a few patients in both clinics benefited from individual or group therapy and many had no access to occupational or vocational training, which was a result of limited staff resources as well as a lack of adequate facilities.

113. Moreover, many patients at both establishments showed clear signs of overmedication such as blurred speech, psychomotor retardation and drowsiness during daytime.

...

The overmedication in some of the cases observed was severe and would most likely prevent the patients concerned from participating in therapeutic activities."

63. In that connection, the CPT recommended that the authorities increase the range and number of therapeutic and psychosocial rehabilitation activities available to patients in both psychiatric institutions visited. It also added that the authorities should establish clear procedures to ensure that there was no overuse of medication at the forensic psychiatric clinics visited and at other forensic psychiatric services.

64. Regarding the staff, the CPT emphasised at the outset that both hospitals visited had competent, dedicated, and well-trained healthcare staff who displayed considerable professionalism in their attitude towards patients. However, the CPT noted that the presence of therapists and educators was insufficient and constituted a limiting factor in the provision of appropriate treatment to psychiatric patients. Referring specifically to the situation at the psychiatric unit of the Caxias Prison Hospital, the CPT observed:

"116. Five psychiatrists were responsible for the psychiatric clinic with its capacity of 51 patients. They were present during weekday mornings (from 9 to 12.30 or 1 p.m.) and in the afternoons were available on call (and one psychiatrist remained on call at night and during weekends). In addition, patients could be seen by one occupational therapist and three educators, but they were responsible for the whole prison hospital (with its capacity of 185 beds) and could therefore only devote part of their time to the psychiatric clinic.

...

117. Nurses and orderlies were working on a duty roster during weekdays with six nurses and three orderlies present in the mornings (8 a.m. to 4 p.m.), four nurses and three orderlies present in the afternoons (4 p.m. to 11 p.m.), and three nurses and three orderlies at night (11 p.m. to 8 a.m.). On weekends, four nurses and two orderlies were present in the mornings and in the afternoons respectively, while three nurses and two orderlies were present at night."

65. In the CPT's view, the number of nurses was insufficient for a psychiatric clinic with capacity for fifty-one patients. The situation was further exacerbated by the instability of the nursing team and the deleterious effects of the lack of experience and high turnover among contracted nurses. In this regard, the CPT recommended that the authorities should take urgent steps to strengthen and stabilise the nursing team at the psychiatric unit of the Caxias Prison Hospital.

B. Observations and recommendations from the relevant United Nations (UN) monitoring bodies

1. UN Committee against Torture, Concluding observations on the seventh periodic report of Portugal (CAT/C/PRT/CO/7, 18 December 2019)

66. In its concluding observations of 18 December 2019, the UN Committee against Torture noted that the shortage of prison staff, including healthcare personnel, despite efforts to augment their numbers, and the deficiencies in the mental healthcare services remained serious problems in the prison system. It invited the State party to continue its efforts to improve conditions of detention, to seek to eliminate overcrowding in penal institutions and other detention facilities, including through the application of non-custodial measures, to recruit and train enough prison personnel to ensure the adequate treatment of detainees, and to ensure the allocation of the necessary human and material resources for the proper medical and health care of prisoners.

2. UN Human Rights Committee, Concluding observations on the fifth periodic report of Portugal (C/PRT/CO/5, 28 April 2020)

67. In its concluding observations of 28 April 2020, the Human Rights Committee expressed concerns about the detention of persons with intellectual and psychosocial disabilities in prison psychiatric wards, where the care was described as insufficient and appropriate treatment was lacking. It thus recommended that Portugal should increase the use of alternatives to deprivation of liberty in prison for persons with mental disorders.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

68. The applicant complained of a lack of adequate medical treatment during his detention from 14 April until 18 October 2021 in the psychiatric unit of the Caxias Prison Hospital, which, combined with the inappropriate conditions of detention, had in his opinion amounted to a breach of Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

69. 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

1. The parties' submissions

(a) The applicant

70. The applicant submitted that his detention in the psychiatric unit of the Caxias Prison Hospital, combined with the inadequate medical treatment he had received (see paragraphs 26-27 above), amounted to inhuman and degrading treatment.

(b) The Government

71. The Government denied the applicant's allegations. They explained that he had been initially referred to the Júlio de Matos Hospital, a mental health unit outside the prison system, which had refused to admit him because it was not a case of compulsory hospitalisation but of a preventive detention measure (paragraph 14 above). The applicant had consequently been admitted to the psychiatric unit of the Caxias Prison Hospital by decision of the DGRSP, which had informed the Évora Criminal Court accordingly.

72. The Government submitted that the applicant had received adequate treatment for his illness at the psychiatric unit of the Caxias Prison Hospital (see paragraph 29-31 above). They concluded that there had been no violation of Article 3 of the Convention.

2. The Court's assessment

(a) General principles

73. The Court refers to the general principles concerning the responsibility of States *vis-à-vis* the provision of healthcare to detainees in general and to detainees suffering from mental disorders in particular as set forth in its judgments in *Rooman v. Belgium* ([GC], no. 18052/11, §§ 141-48, 31 January 2019). Specifically, the Court refers to the following passage from *Rooman* (references omitted):

> "146. The Court also takes account of the adequacy of the medical assistance and care provided in detention. A lack of appropriate medical care for persons in custody is therefore capable of engaging a State's responsibility under Article 3. In addition, it is not enough for such detainees to be examined and a diagnosis made; instead, it is essential that proper treatment for the problem diagnosed should also be provided.
>
> 147. In this connection, the 'adequacy' of medical assistance remains the most difficult element to determine. The Court reiterates that the mere fact that a detainee

> has been seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention, that diagnosis and care are prompt and accurate, and that where necessitated by the nature of a medical condition supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through. Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities.
>
> 148. Where the treatment cannot be provided in the place of detention, it must be possible to transfer the detainee to hospital or to a specialised unit ..."

74. Furthermore, the Court has adopted the standard of proof "beyond reasonable doubt" in assessing evidence in cases which concern conditions of detention. When collecting evidence poses an objective difficulty, an applicant must nevertheless provide an elaborate and consistent account of the conditions of his or her detention mentioning the specific elements, such as, for instance, the dates of his or her transfer between facilities, which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds. Only a credible and reasonably detailed description of the allegedly degrading conditions of detention constitutes a prima facie case of ill-treatment and serves as a basis for giving notice of the complaint to the respondent Government. After the Court has given notice of the applicant's complaint to the Government, the burden is on the latter to collect and produce relevant documents. A failure on their part to submit convincing evidence on material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 121-23, 10 January 2012; and *Kaganovskyy v. Ukraine*, no. 2809/18, § 121, 15 September 2022).

(b) Application to the present case

75. The Court notes, firstly, that the existence of the mental health problems which led to the applicant's detention is not disputed. He was placed under preventive detention on the basis of a serious mental illness (paranoid schizophrenia) rendering him incapable of controlling his actions. In consequence, he was detained in the psychiatric unit of the Caxias Prison Hospital, where he was held from 14 April 2021 until his transfer on 18 October 2021 to the Sobral Cid Hospital (see paragraphs 5, 7 and 14-15 above).

76. Since the applicant has complained under Article 3 of the Convention of the material conditions of his detention and the inadequacy of the medical treatment he received in the psychiatric unit of the Caxias Prison Hospital (see paragraphs 68 and 70 above), the Court will concentrate its examination of the complaints under Article 3 of the Convention on those elements which concern the period of detention in that unit. When examining Article 3 complaints, account must be taken of the cumulative effects of the conditions of detention and any inadequacy of the medical treatment (see *Dybeku v. Albania*, no. 41153/06, § 38, 18 December 2007).

77. The Court notes that the parties disagree as to the conditions of detention and the care received by the applicant in the psychiatric unit of the Caxias Prison Hospital (see paragraphs 26-31 above). It acknowledges the findings of the CPT report of 27 January 2018, which were emphasised by the Government in their observations (see paragraph 60-61 and 31 above). However, in its analysis, the Court draws on the findings of the CPT in its reports of 13 November 2020 (see paragraph 59 above), as well as those of the reports of the NPM of 2019 and 2020 and other relevant UN human rights monitoring bodies, which have identified mental health-related issues as one of the main challenges facing the prison system in Portugal (see paragraphs 52-57 and 66-67 above). Those reports shed light on several general problems associated with detention conditions and healthcare provision in prisons for detainees with mental illnesses, who in principle should be placed in suitable facilities for psychiatric treatment but are not because of a lack of spaces, as was the case with the applicant. For instance, with particular reference to the situation in the psychiatric unit of the Caxias Prison Hospital, the NPM pointed out that accommodation was inadequate and that there was a lack of staff and of clinical adequacy, especially in view of the principle of individualised treatment required in such situations (see paragraphs 55-56 above). Those major concerns are supported by similar findings by the CPT, according to which overcrowding continued to be a serious problem that negatively affected the living conditions, staff-inmate relations and the maintenance of good order in that prison hospital (see paragraph 59 above). In the CPT's view, patients in that situation did not have an adequate therapeutic environment, which should include an increased variety and number of organised activities being offered daily and the provision of adequate facilities for occupational and recreational activities (see paragraphs 61-62 above).

78. In the Court's view, those findings and conclusions call into question the Government's claims as to the suitability of the psychiatric unit of the Caxias Prison Hospital for the detention of seriously mentally ill patients such as the applicant and, in his particular case, as to the appropriateness of the medical treatment he received in that facility (see paragraphs 29-31 and 72 above), particularly in the light of the principle of individualised treatment.

79. Furthermore, the Court notes the concerns expressed in the annual report for 2021 of the DGRSP (see paragraphs 47-50 above), according to which the psychiatric unit of the Caxias Prison Hospital was intended for the temporary detention of regular inmates with mental health problems. Nonetheless, owing to the shortage of spaces in the regular mental health institutions, in practice it has been housing on a permanent basis mentally ill persons subject to preventive detention who were in need of psychiatric treatment. This issue is also addressed in the NMP report for 2019, which notes that this situation creates great difficulties for the prison system, making it difficult to respond appropriately to the psychiatric and therapeutic needs of people with psychiatric disorders who are imposed a preventive detention (see paragraphs 52-53 above).

80. In this connection, the Court observes that the Government in the present case did not provide any evidence, such as medical reports or a copy of the applicant's individual therapeutic plan, attesting that he had received individualised, continuous and specialised care and follow-up treatment, and that appropriate therapy and medication had been prescribed and provided to him (compare *Strazimiri v. Albania*, no. 34602/16, § 108, 21 January 2020). For instance, no information has been provided to indicate that he had regular and continued psychiatric follow-up aimed at adequately treating his illness, preventing its worsening, or carrying out preparatory work towards the applicant's release and reintegration into the community. The Court notes, therefore, that the Government have failed to demonstrate that the applicant received the therapeutic treatment required by his condition (see *Murray v. the Netherlands* [GC], no. 10511/10, § 106, 26 April 2016; *Rooman*, cited above, §§ 146-47; and *Strazimiri*, cited above, §§ 108-12; and contrast *Moxamed Ismaaciil and Abdirahman Warsame v. Malta*, nos. 52160/13 and 52165/13, § 95, 12 January 2016), as it has not been shown that the administration of drugs with long-lasting effects was complemented by the implementation of a comprehensive treatment strategy. In circumstances such as these, where the Government have failed to refute the applicant's consistent allegations with convincing evidence, the Court is prepared to accept the applicant's account of the conditions of his detention in the psychiatric unit of the Caxias Prison Hospital (see the case-law quoted in paragraph 74 above).

81. The Court accepts that the very nature of the applicant's psychological condition rendered him more vulnerable than the average detainee and that his detention in the conditions described above may have exacerbated to a certain extent his feelings of distress, anguish and fear. In this connection, the Court considers that the failure of the authorities to provide the applicant with appropriate assistance and care has unnecessarily exposed him to a risk to his health and must have resulted in stress and anxiety (see, *mutatis mutandis*, *Sławomir Musiał v. Poland*, no. 28300/06, § 96, 20 January 2009).

82. In view of the above, the Court concludes that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

83. Without relying on a specific provision of the Convention, the applicant submitted that his detention in the psychiatric ward of a regular prison had not been lawful since he had not received the level of treatment and therapeutic care required by his mental health. He argued that he should have been detained in an appropriate psychiatric institution in the healthcare system.

84. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114, 124 and 126, 20 March 2018), the Court considers that the applicant's complaint should be examined from the standpoint of Article 5 § 1 (e) 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:
>
> ...
>
> (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

85. 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

1. The parties' submissions

(a) The applicant

86. The applicant submitted that his detention in the psychiatric unit of the Caxias Prison Hospital had not been "lawful" and had denied him access to adequate medical treatment. He claimed that, instead of being placed in "an appropriate mental health facility" as ordered by the Évora Criminal Court, he had been abruptly detained in a prison hospital, where he had not received the medical care and therapeutic treatment required by his state of health.

87. The applicant also argued that his detention in the psychiatric unit of the Caxias Prison Hospital had contributed to the deterioration of his mental

health, given, in particular, the lack of adequate treatment there, as well as the impact of the detention itself on his mental health, in view of the fear and uncertainty it created and the restrictive environment in which he was held.

(b) The Government

88. The Government submitted that the applicant's detention in the psychiatric unit of the Caxias Prison Hospital had been lawful, given that he had been detained in conformity with the requirements of a domestic criminal court's decision under a procedure prescribed by law.

89. The Government further explained that it had not been possible to find a place for the applicant in a healthcare unit outside the prison system, which was the main reason why he had been transferred to the psychiatric unit of the Caxias Prison Hospital. Although part of a prison hospital, the latter was nevertheless a specialist mental health unit intended for the treatment of inmates with mental illness and was therefore able to provide the specialised medical care required by the applicant's mental health condition, which he had in fact received.

2. The Court's assessment

(a) General applicable principles

90. The Court refers to the general principles laid down in the Grand Chamber's judgment in *Rooman* (cited above, §§ 190-214). In particular, the Court refers to the following paragraphs (references omitted):

> "208. ... the current case-law clearly indicates that the administration of suitable therapy has become a requirement in the context of the wider concept of the 'lawfulness' of the deprivation of liberty. Any detention of mentally ill persons must have a therapeutic purpose, aimed specifically, and in so far as possible, at curing or alleviating their mental-health condition, including, where appropriate, bringing about a reduction in or control over their dangerousness. The Court has stressed that, irrespective of the facility in which those persons are placed, they are entitled to be provided with a suitable medical environment accompanied by real therapeutic measures, with a view to preparing them for their eventual release ...
>
> 209. As to the scope of the treatment provided, the Court considers that the level of care required for this category of detainees must go beyond basic care. Mere access to health professionals, consultations and the provision of medication cannot suffice for a treatment to be considered appropriate and thus satisfactory under Article 5. However, the Court's role is not to analyse the content of the treatment that is offered and administered. What is important is that the Court is able to verify whether an individualised programme has been put in place, taking account of the specific details of the detainee's mental health with a view to preparing him or her for possible future reintegration into society ... In this area, the Court affords the authorities a certain latitude with regard both to the form and the content of the therapeutic care or of the medical programme in question.
>
> 210. Further, the assessment of whether a specific facility is 'appropriate' must include an examination of the specific conditions of detention prevailing in it, and particularly of the treatment provided to individuals suffering from psychological

> disorders. Thus, the cases examined in the case-law illustrate that it is possible that an institution which is *a priori* inappropriate, such as a prison structure, may nevertheless be considered satisfactory if it provides adequate care ..., and conversely, that a specialised psychiatric institution which, by definition, ought to be appropriate may prove incapable of providing the necessary treatment ... These examples make it possible to conclude that appropriate and individualised treatment is an essential part of the notion of 'appropriate institution'. This conclusion stems from the now inevitable finding that the deprivation of liberty contemplated by Article 5 § 1 (e) has a dual function: on the one hand, the social function of protection, and on the other a therapeutic function that is related to the individual interest of the person of unsound mind in receiving an appropriate and individualised form of therapy or course of treatment. The need to ensure the first function should not, *a priori*, justify the absence of measures aimed at discharging the second. ..."

(b) Application to the present case

91. It is undisputed that the applicant's detention amounted to a deprivation of liberty and that Article 5 is applicable. In that connection, the Court observes that, at first sight, the three minimum conditions set out in the Court's case-law concerning the deprivation of liberty of "persons of unsound mind" have been met in the present case (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 127, 4 December 2018; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 145, ECHR 2012). The applicant suffers from paranoid schizophrenia, a serious mental illness, with which he was medically diagnosed in 2002 (see paragraph 5 above). His detention was ordered by a domestic court under a "procedure prescribed by law" based on his mental disorder and the danger he posed to himself and others. Prior to that he had been convicted of criminal damage, making threats and sexual harassment, and declared not to be criminally responsible because of his mental disorder. Subsequently, on 19 September 2019, he was sentenced to preventive detention by the Évora Criminal Court, the execution of which was initially suspended for a period of three years subject to the applicant's compliance with several conditions, including his undergoing the necessary psychiatric treatment and not committing other criminal offences (see paragraph 7 above). As the applicant failed to comply with those conditions, on 2 February 2021 the Évora Criminal Court ordered the execution of the preventive detention. That decision became final on 26 March 2021 and was enforced on 14 April 2021, leading to his detention in the psychiatric unit of the Caxias Prison Hospital (see paragraphs 8-14 above). Furthermore, the applicant's detention on the basis of the court order was confirmed by the Supreme Court of Justice on 21 April 2021, which found that the preventive detention was in accordance with the law (see paragraph 24 above). The Court notes in this connection that the applicant's detention was a measure decided in accordance with a procedure prescribed by law and was therefore covered by Article 5 § 1 (e) of the Convention.

92. In that connection, the Court notes that the conditions in which a person suffering from a mental health disorder receives treatment are also relevant in assessing the lawfulness of his or her detention within the meaning of Article 5 of the Convention (see *Rooman*, cited above, §§ 194 and 208). In order to determine whether the detention of the applicant as a "person of unsound mind" has been "lawful" in the present case, the Court, taking into account its findings under Article 3, will assess the appropriateness of the institution in which he was detained, including whether an individualised treatment plan was put in place. Such a plan should have taken account of the specific needs of his mental health and have been aimed specifically, in so far as possible, at curing or alleviating his condition, including, where appropriate, bringing about a reduction in or control over the level of danger posed, with a view to preparing him for possible future reintegration into society (ibid., § 208).

93. The Court notes that between 14 April and 18 October 2021, the applicant, who was found to be not criminally responsible, was detained in the psychiatric unit of the Caxias Prison Hospital (see paragraph 14-15 above); the prison hospital is primarily aimed at serving the ordinary prison community suffering from mental illness and is not part of the health system (see paragraphs 39 and 47 above). The Court accepts that the mere fact that the applicant was not placed in an appropriate facility does not, *per se*, render his detention unlawful (see *Rooman*, cited above, § 210). However, the Court reiterates that keeping detainees with mental illnesses in the psychiatric ward of ordinary prisons pending their placement in a proper mental health establishment, without the provision of sufficient and appropriate care, as appears to have been the case with the applicant, is not compatible with the protection ensured by the Convention for such individuals.

94. Having considered the submissions of both parties and in view of its findings in paragraphs 77-82 above, the Court is not convinced that the applicant was offered appropriate treatment or that the therapeutic environment he was placed in was suitable for his condition. In this connection, the Court reiterates that the level of care provided must go beyond basic care. Mere access to health professionals, consultations and the provision of medication cannot suffice for treatment to be considered appropriate and thus satisfactory under Article 5 of the Convention (see *Rooman*, cited above, § 209). Also, as already found in paragraph 80, the Government did not present the therapeutic plan for the applicant or other documents in this respect. Furthermore, having regard to the applicant's state of health and special vulnerability, the Court also takes note of the impact his detention had on him, namely in aggravating his state of confusion and fear owing to the restrictive and anti-therapeutic environment that detention in a prison facility entailed.

95. In view of the foregoing, the Court considers that the applicant's deprivation of liberty in the psychiatric unit of the Caxias Prison Hospital was

not lawful and violated the requirements of Article 5 § 1 (e) of the Convention.

96. Therefore, the Court concludes that there has been a violation of Article 5 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

97. In his observations on the admissibility and merits of the case, submitted to the Court on 27 March 2022, the applicant reiterated the complaints under Articles 4, 6 and 13 of the Convention that he had submitted in his application form.

98. These complaints were declared inadmissible by the Section President in the exercise of the competencies under Rule 54 § 3 of the Rules of Court. Consequently, they fall outside the scope of the case.

99. In his response to the Government's submissions, the applicant further complained under Article 8 of the Convention that during his detention in the psychiatric unit of the Caxias Prison Hospital, his contact with his family and external support networks had been very limited. His brother and friends had not been able to visit him owing to the distance between their hometown and the prison.

100. In analysing the applicant's complaints under Article 8, the Court notes that it is an essential part of a prisoner's right to respect for family life that the prison authorities assist him or her in maintaining contact with his or her close family (see, for instance, *Khoroshenko v. Russia* [GC], no. 41418/04, § 106, ECHR 2015, with further references). This is of particular relevance when dealing with mentally ill offenders, in which case the authorities are under an obligation to work towards the goal of preparing the persons concerned for their release (see *Rooman*, cited above, § 204), for instance by facilitating their social and family contacts.

101. That being said, the Court takes note of the information provided by the Government in that connection, according to which the applicant, during the period of detention at issue in the psychiatric unit of the Caxias Prison Hospital, received a visit from his brother and maintained daily contact with him through telephone calls (see paragraph 29 *in fine* above).

102. In view of the above, the Court finds that the applicant's complaints under Article 8 are manifestly ill-founded. This part of the application must therefore be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

103. Article 46 of the Convention provides, in so far as relevant:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

..."

104. Article 41 of the Convention provides as follows:

"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. Article 46

105. The Court reiterates that, in accordance with Article 46 of the Convention, a finding of a violation imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible its effects (see, among other authorities, *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V; *Dybeku*, cited above, § 63; and *Sławomir Musiał*, cited above, § 106). In this regard, the Court considers that the infringements found in the present case are not attributable solely to the applicant's personal circumstances, but are the result of a structural problem which, according to the above case-law, fully justifies the imposition of general measures under Article 46 of the Convention.

106. In this connection, the Court has taken due note of the positive steps recently taken in national legislation to favour the placement of persons with mental disorders in mental health facilities in the wider health system (see paragraph 43 above), in accordance with the aims of Article 126 of the Code of Execution of Sentences (see paragraph 39 above). However, while offering a good starting-point, the enactment of legislation will not in itself solve the problems described above, as effective measures are needed to implement and enforce the provisions thus introduced.

107. To that end, the Court would encourage the Government to take an approach to the matter in keeping with the spirit of the protection system set up by the Convention. The Court considers that, in view of its findings in the present case, as well as the structural nature of the issues arising in the context of the enforcement of preventive detention measures in prison facilities, the necessary steps should be taken as a matter of urgency in order to secure appropriate living conditions and the provision of suitable and individualised forms of therapy to mentally ill persons who need special care owing to their state of health, such as the applicant, in order to support their possible return and integration into the community. In this connection, the Court notes that the respondent State, subject to supervision by the Committee of Ministers,

remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII).

B. Article 41

1. Damage

108. The applicant claimed 75,000 euros (EUR) in respect of non-pecuniary damage. The Government considered his claim excessive.

109. The Court finds that the applicant undoubtedly suffered distress on account of his detention without appropriate treatment for his mental disorder, in violation of Article 3 and Article 5 § 1 of the Convention. Making its assessment on an equitable basis and having regard to the fact that the applicant's detention in the psychiatric unit of the Caxias Prison Hospital between 14 April 2021 and 18 October 2021 lasted more than six months, the Court awards him EUR 34,000 in respect of non-pecuniary damage.

2. Costs and expenses

110. The applicant also claimed EUR 5,000 in respect of costs and lawyer's fees. The Government contested the claim, arguing that it was unsubstantiated.

111. 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. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the above requirements have been met (see *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, § 94, 18 July 2013). In the present case, no such documents have been submitted, nor has the applicant provided any breakdown of fees on the basis of the proceedings before the Court and the time spent on them (see, *mutatis mutandis*, *Rooman*, cited above, § 265). The Court therefore rejects this claim.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 3 and Article 5 § 1 (e) of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 1 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 34,000 (thirty-four 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 9 January 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Section Registrar	Gabriele Kucsko-Stadlmayer President