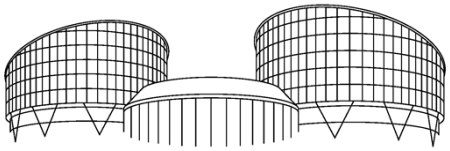

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF GALEANO PEÑAS v. SPAIN

(Application no. 48784/20)

JUDGMENT

Art 5 § 1 • Sentence of imprisonment, suspended pending pardon request and executed several years later, not arbitrary • Lawful detention compatible with the aims of the initial conviction • Reasonably foreseeable interruption of limitation period in the circumstances

STRASBOURG

31 May 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Galeano Peñas v. Spain,

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

Georges Ravarani, *President,*
María Elósegui,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma,
Andreas Zünd,
Frédéric Krenc, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 48784/20) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Spanish national, Mr Ruben Galeano Peñas ("the applicant"), on 26 October 2020;

the decision to give notice to the Spanish Government ("the Government") of the applicant's complaints concerning the alleged expiry of the time-limit for enforcing the sentence of imprisonment and his allegedly unlawful deprivation of liberty following his imprisonment under Article 7 and Article 5 § 1 of the Convention;

the parties' observations;

Having deliberated in private on 15 March and 3 May 2022,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The application concerns the alleged violation of Article 7 and Article 5 § 1 of the Convention on the grounds of the expiry of the time-limit for enforcing the sentence of imprisonment which the applicant was serving when he lodged his application with the Court.

THE FACTS

2. The applicant was born in 1987 and lives in Griñón. He was represented by Mr J. Gomez Deiros, a lawyer practising in Seseña (Toledo).

3. The Government were represented by their Agent, Mr L.E. Vacas Chalfoun.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 17 December 2011, the applicant, an officer of the Civil Guard (*Guardia Civil*), had an argument with a woman over a traffic incident while

he was driving off duty. Subsequently, he allegedly reported that the woman had committed two traffic offences.

6. In a judgment of 15 July 2013, the *Audiencia Provincial* of Madrid convicted the applicant of the offence of forgery of facts in a public record committed by a civil servant. Among other penalties, he was sentenced to three years' imprisonment, suspension of his right to stand for election for the same period, day-fines of 6 euros per day for a period of six months, and disqualification from holding any public office or employment for two years.

7. On 8 January 2014 the *Audiencia Provincial* declared the judgment final and opened execution proceedings no. 2/2014. The applicant was ordered to go to prison, pay the fine and comply with the disqualification from public office.

8. On 17 January 2014 the applicant requested a pardon in respect of the sentence of imprisonment. On 20 January 2014 he requested the suspension of the execution of the sentence pending the examination of the pardon request, which was to be decided by the Council of Ministers upon a recommendation of the Ministry of Justice.

9. On 28 January 2014 the *Audiencia Provincial* granted the suspension (under Article 4 § 4 of the Criminal Code; see paragraph 27 below).

10. The established time-limit for the Council of Ministers to decide on a pardon request is one year, after which requests may be deemed to have been rejected (see paragraph 31 below).

11. In the meantime, the *Guardia Civil* opened disciplinary proceedings against the applicant. Following his conviction for an intentional offence committed in relation to his duties, he was suspended from his employment for three years (from 27 February 2015 to 26 February 2018).

12. The applicant also paid the fine imposed in the criminal proceedings on 13 January 2017.

13. On 19 May 2017 the *Audiencia Provincial* delivered a decision (*providencia*) according to which, given that there had been no express granting of the pardon, the pardon request was to be considered rejected, and therefore the execution of the sentence was to be resumed. In the decision the applicant was summoned to collect the order to voluntarily go to prison. The applicant lodged an appeal against the decision.

14. On 29 June 2017 the *Audiencia Provincial* declared the appeal partly admissible and ordered that the Ministry of Justice be contacted again in order to obtain an express clarification about whether the applicant's pardon request was still pending or whether it should be understood that it had been rejected.

15. On 17 July 2017 the Ministry of Justice replied that the pardon request was still pending. Accordingly, on 14 September 2017 the *Audiencia Provincial* decided once again to suspend the execution of the sentence until the pardon request had been decided.

16. On 27 November 2018 the *Audiencia Provincial* requested an update from the Ministry of Justice on the status of the pardon request, and informed

it that the time-limit for enforcing the sentence imposed on the applicant would expire in January 2019.

17. On 3 January 2019 the Ministry of Justice once again informed the *Audiencia Provincial* that the pardon request was still pending.

18. On 20 March 2019 the *Audiencia Provincial* requested information from the public prosecutor's office regarding the possible expiry of the time-limit for enforcing the applicant's sentence of imprisonment. According to a report issued by the public prosecutor's office on 27 March 2019, the limitation period had not expired, given that that period had not elapsed before it had been decided to maintain the suspension of the execution pending the decision on the pardon request. In the view of the public prosecutor's office the suspension had interrupted the limitation period.

19. On 4 April 2019 the *Audiencia Provincial* lifted the suspension of the execution of the sentence of imprisonment, and the applicant was once again requested to voluntarily go to prison to serve the sentence imposed. In its decision it held that the suspension of the execution of penalties was a provisional measure of an exceptional nature that should only be applied restrictively, given the general interest in sentences being served. It also pointed out that the length of the sentence was a relevant aspect to take into consideration when deciding whether to suspend its execution and that, in the case at hand, the fact that the penalty entailed three years' imprisonment justified the refusal to continue to suspend its execution pending a pardon request. Therefore, the *Audiencia Provincial* ordered the execution of the applicant's sentence of imprisonment to be resumed.

20. The applicant lodged an appeal, requesting the *Audiencia Provincial* to declare that the time-limit for enforcing the sentence had expired or, in the alternative, to maintain the suspension until a decision concerning his pardon request had been taken by the Council of Ministers.

21. The appeal was dismissed on 13 May 2019. The *Audiencia Provincial* considered that the time-limit for enforcing the applicant's sentence had been interrupted by its previous decision to suspend the execution pending the outcome of the pardon request. By virtue of that decision, the applicant was requested to voluntarily go to prison.

22. On 24 May 2019 the applicant lodged a plea of nullity (*incidente de nulidad*) against the decision of 13 May 2019, which was dismissed by the *Audiencia Provincial* on 28 June 2019.

23. On 3 June 2019 the applicant was admitted to Alcalá de Henares Prison.

24. On 20 June 2019 the *Guardia Civil* issued Resolution 160/09999/19, under which the applicant lost his professional status as an officer and member of the military with effect from 13 May 2019 and his remuneration with effect from 26 June 2019. The Resolution was enforcing the applicant's penalty of disqualification from holding any public office or employment for

two years, as had been established by the *Audiencia Provincial* (see paragraph 6 above).

25. On 17 September 2019 the applicant lodged an *amparo* appeal with the Constitutional Court. The appeal was declared inadmissible for lack of constitutional relevance on 17 February 2020, and the decision was served on the applicant on 26 February 2020.

26. From his admission to prison until 12 February 2021, the applicant served his sentence under a closed regime. From 13 February 2021 to 31 May 2021, he was moved to an open regime, so he no longer had to sleep in prison. From 1 June 2021 to date, the applicant has reportedly remained on parole. His sentence will be fully served on 1 June 2022.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LEGISLATION

27. Article 4 § 4 of the Criminal Code sets out the following:

> "4. Should there be a request for a royal pardon, and if the judge or court has noted in a duly reasoned decision that the execution of the sentence might result in a violation of the right to proceedings without undue delay, the execution shall be suspended until the pardon request has been decided."

28. Article 133 § 1 of the Criminal Code sets the time-limits for enforcing sentences imposed by final judgments. The period is five years for "less severe" sentences. Article 33 § 3 of the Criminal Code provides that sentences of imprisonment ranging from three months to five years are "less severe" sentences.

29. Article 134 of the Criminal Code as in force when the applicant was convicted, that is, before the reform of July 2015, provided as follows:

> "The time-limit for enforcing the sentence shall be calculated from the date of the final judgment, or from the breach of the sentence, if it has begun to be served."

30. Article 134 of the Criminal Code as amended by Organic Law no. 1/2015, which reformed the Criminal Code and came into force in July 2015, provides as follows:

> "1. The time-limit for enforcing the sentence shall be calculated from the date of the final judgment, or from the breach of the sentence, if it has begun to be served.
>
> 2. The limitation period of the sentence shall be interrupted:
>
> (a) while enforcement of the sentence is suspended;
>
> (b) while other sentences are being served, where the provisions of Article 75 are applicable."

31. Article 6 § 1 of the Royal Decree 1879/1994, of 16 September, concerning some procedural rules in the Justice sector provides as follows:

"Proceedings concerning the exercise of the right to pardon must be resolved within a maximum period of one year, and requests may be deemed to have been rejected if no express decision has been handed down within the aforementioned period."

II. RELEVANT DOMESTIC CASE-LAW

A. The Constitutional Court

32. The Constitutional Court has accepted that time-limits for enforcing criminal sentences are a legislative (not constitutional) matter which, in itself, does not have an impact on the fundamental rights of the defence or the prosecution (see, among other references, judgment no. 192/2013 of 18 November 2013 of the Constitutional Court).

33. The Constitutional Court has thus established that its task is not to set out a general theory as to how the execution of sentences should be regulated, or the conformity of such regulations with constitutional rights. It limits itself to examining whether the requirement of reinforced reasoning required in this area by Article 24 of the Spanish Constitution (equivalent to Article 6 of the Convention) has been complied with. This was reiterated, for example, in judgment no. 12/2016 of 1 February 2016 (and the judgments cited therein), which stated as follows:

"... Once the scope of the statute of limitations has been established in law, the application of the legal provision cannot be understood as an infringement or impairment of the right to criminal prosecution or the right to criminal prosecution of the offence alleged by the prosecuting parties (*Stubbings and Others v. the United Kingdom*, 22 October 1996, §§ 46 et seq., *Reports of Judgments and Decisions* 1996-VI]). In the same way, the peculiarities of the legal regime of the statute of limitations, thus determined, cannot be considered, in themselves, harmful to any fundamental right of the accused ...

In accordance with well-established constitutional case-law, reiterated in Constitutional Court Judgment no. 63/2015, the assessment of the statute of limitations in each specific case, as a cause for discontinuing the execution of the sentence in accordance with the legal provision, is a question of ordinary law, lacking in constitutional relevance on account of its own content. It is a different matter if the specific judicial decision on whether the limitation period has expired or not ignores the terms of the applicable rule or does not comply with the constitutionally required standard of reasoning, in which case that decision will be subject to challenge by means of an appeal for constitutional protection [*recurso de amparo*]. That is a matter that this court must examine both from the perspective of the right to criminal legality (Article 25 § 1 of the Constitution) and from the perspective of the right to effective judicial protection (Article 24 § 1 of the Constitution), with repercussions in both cases on the right to personal freedom ...

... The terms in which the criminal statute of limitations is regulated must be interpreted with particular rigour 'in so far as they are prejudicial to the defendant' ... The verification of the statute of limitations by the Constitutional Court will therefore be based on the prohibition of interpretations *contra legem*, and of extensive interpretations *in malam partem*.

> It has also been established by the [Constitutional] Court that, given the relevance of the constitutional values and fundamental rights concerned, when personal freedom is at stake, ... the standard of reasoning applicable to these cases will therefore be particularly rigorous, and must include both the externalisation of the reasoning by which it is considered that the case contemplated in the law is – or is not – present, as well as the link of coherence between the decision adopted, the rule on which it is based and the aims that justify it (STC 63/2001, of 17 March, FJ 7; followed, among others, by STC 63/2005)."

34. Subsequent to these general considerations, in several judgments the Constitutional Court upheld *amparo* appeals in cases similar to the one in issue, on the grounds that the domestic courts had considered that the suspension of the sentence interrupted the limitation period, despite the fact that such interruption was neither provided for in Article 134 in its original wording nor in the rest of the Criminal Code. Judgment no. 192/2013 of 18 November 2013, mentioned above, is noteworthy:

> "... The suspension of the execution of the sentence as a consequence of the processing of a pardon request or an *amparo* appeal is not provided for in law as a reason to interrupt the limitation period, and the effects of the suspension [pending a] pardon or any measure adopted by this Court cannot be equivalent to those of the interruption of the limitation period in terms of the elimination or loss of the period that has already elapsed, since the 1995 Criminal Code does not provide for any grounds for interruption of the limitation period other than in cases of breach of the sentence.
>
> ...
>
> 5. In the case under examination, an interruptive effect was applied to the suspension [pending a] pardon request while the case was being processed and until the presumed refusal occurred (one year), which is not in line with the case-law set out in the aforementioned STC 97/2010, which expressly rules out this interruptive effect in cases of processing of a pardon request.
>
> As is clear from our case-law, the precautionary measure of suspension, whether resulting from a request for a pardon or adopted in *amparo* proceedings, does not interrupt the time-limit for enforcing the sentence. We have also reiterated that compliance with the sentence is the only hypothesis that prevents the expiry of the limitation period as provided for in Article 134 of the Criminal Code.
>
> In view of the foregoing considerations, we must conclude that the interpretative criterion used by the courts in the impugned decisions on the time-limit for enforcing the sentence imposed on the present appellant does not satisfy the standard of reinforced reasoning required of any judicial decision in matters of criminal limitation periods, and consequently violated his right to effective judicial protection (Article 24 § 1 of the Constitution), in relation to the right to liberty (Article 17 § 1) and the right to criminal legality (Article 25 § 1); and therefore, the *amparo* relief sought must be granted and the appellant's infringed fundamental rights must be fully restored."

35. In the same vein, judgment no. 87/2013 of 4 November 2013 established that

> "the processing of a pardon or an *amparo* appeal is not provided for in law as a reason to interrupt a limitation period and the effects of the suspension [pending a] pardon or any measure adopted by this Court cannot be equated to the interruption of the limitation period".

36. The case-law of the Constitutional Court in this regard has been consistent even after the entry into force of Organic Law no. 1/2015, which amended Article 134 of the Criminal Code and expressly recognised the suspension of the execution of the sentence as interrupting the time-limit for enforcing sentences, where the facts had taken place before that amendment. For instance, the relevant extracts of judgment no. 12/2016 of 1 February 2016 provide as follows:

> "4. Article 134 of the Criminal Code, in the wording then in force for its application to the present case, stated: 'The time-limit for enforcing the sentence shall be calculated from the date of the final judgment, or from the breach of the sentence, if it has begun to be served.'
>
> The precept is logically based on what is the natural prerequisite for the statute of limitations to come into play, which is none other than the passage of time before the sentence imposed has begun to be enforced, regardless of the reason for the delay, whether it is due to evasion of the court order or flight from justice, or postponement of the start of enforcement for other reasons, including those provided for in the law. The commencement of enforcement of the sentence is therefore the first natural cause of interruption of the statute of limitations, when for some reason there has been a delay. The delay is to be calculated from the date of the final judgment, the date which, as explained in Article 134 of the Criminal Code, determines the start of the limitation period. In the event of a breach of a sentence which was already being served, the calculation of the time-limit for the purposes of the possible limitation period comes into play again.
>
> ...
>
> Hence, this Court has determined, from the aforementioned constitutional perspective and under the aforementioned wording of Article 134 of the Criminal Code, that the acts of summonses or orders concerning the execution of the sentence, as long as they do not determine the start of its enforcement, *in natura* or as a substitute, are not relevant to interrupt the limitation period (STC 187/2013, judgment of 4 November, FJ 4, citing STC 109/2013, judgment of 6 May, FJ 5; and subsequent ones, in particular, STC 63/2015, FJ 5).
>
> ...
>
> The attempt at enforcement ... is not equivalent to the actual commencement of enforcement required by Article 134 of the Criminal Code. ... To affirm [that] ... would be to create *ex novo* a cause of interruption not foreseen in the law. Such an interpretation is arbitrary because it is contrary to the applicable law and, to that extent, infringes Article 25 § 1 of the Constitution. It also disregards the required standard of reasoning (Article 24 § 1), which must begin by respecting the content of the criminal provision. It ultimately affects the applicant's right to personal freedom (Article 17 § 1)."

B. The Supreme Court

37. The Supreme Court has stated in judgment no. 164/2018 of 6 April 2018, among others, that the rules regarding the suspension of penalties are a matter that affects the processing of the execution of the sentence and,

therefore, the rules in force at the time execution proceedings began are to be applied (*tempus regit actum*).

38. In particular, the Supreme Court specifically stated in judgment no. 22/2015 of 29 April 2015 that the provisions of the Criminal Code that do not set out offences or penalties, but only refer to specific execution issues, have to be applied at the time execution proceedings are carried out.

39. However, with regard to the reform introduced by Organic Law no. 1/2015, in judgment no. 452/2018 of 10 October 2018 the Supreme Court applied the new wording of Article 134 of the Criminal Code to execution proceedings initiated after its entry into force, even though the acts subject to prosecution had taken place prior to that time:

> "... on the other hand, the execution in issue (including the very passing of the sentence), dates from 2016, that is, when the reform introduced by Organic Law no. 1/2015 was already in force, subsequent to which Article 134 § 2 of the Criminal Code provides that the limitation period of the sentence is to be interrupted while execution of the sentence is suspended; but also while other sentences are being served where the provisions of Article 75 are applicable, as would be the case here, where the limitation period could not apply owing to the fact that the person was already serving other, more serious sentences."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

40. The applicant complained that he had been serving a sentence for which the limitation period had already expired, as a result of the retroactive application of a legal provision detrimental to him, which was contrary to Article 7 § 1 of the Convention. That provision reads as follows:

> "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

Admissibility

1. The parties' submissions

41. The Government did not deny that the new wording of Article 134, as introduced by Organic Law no. 1/2015, had been applied to the applicant to his detriment after his sentence had been suspended for the second time in 2017 (see paragraphs 13-15 above). However, this did not fall within the scope of the prohibition in Article 7 of the Convention. First, the execution of sentences was a matter of procedural (not substantive) law and the principle of *tempus regit actum* applied. Second, the issue arising in the present case related to the rules on prescription, and the rules on limitation periods did not define the offences or corresponding penalties. The *Audiencia*

Provincial had not altered the sentence imposed on the applicant by applying the new wording of Article 134 of the Criminal Code, and as a result, this case did not fall within the prohibition on the retroactive application of less favourable law.

42. The Government relied in that regard on the judgment in the case of *Coëme and Others v. Belgium*, nos. 32492/96 and 4 others, § 149, ECHR 2000-VII), concerning the offence limitation period, where it was established that Article 7 cannot be interpreted as prohibiting an extension of limitation periods through the immediate application of a procedural law where the relevant offences have never become subject to limitation. They therefore invited the Court to declare that complaint inadmissible as incompatible *ratione materiae.*

43. The applicant replied that the issues raised by his case went beyond mere sentence enforcement. It had not been foreseeable that the *Audiencia Provincial* would apply the new wording of Article 134 of the Criminal Code, which had come into force on 1 July 2015. Moreover, the *Audiencia Provincial* itself had recognised that the time-limit for enforcing his sentence would expire in January 2019 (see paragraph 16 above).

44. He contended that this had clearly been detrimental to his interests and took the view that the retroactive application of a less favourable law concerning the interruption of the penalty prescription period had led to a redefinition of the scope of the "sentence" imposed, bringing it within the ambit of Article 7 of the Convention.

2. The Court's assessment

45. The guarantee enshrined in Article 7, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 of the Convention in time of war or other public emergency. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment (see *Del Río Prada v. Spain* [GC], no. 42750/09, § 77, ECHR 2013, and *Antia and Khupenia v. Georgia*, no. 7523/10, § 35, 18 June 2020).

46. The Court observes at the outset that the Government's objection concerns whether the interruption of the prescription period for the execution of the applicant's penalty falls within the scope of Article 7 of the Convention.

47. While Article 7 of the Convention prohibits in particular extending the scope of existing offences to acts which were not previously criminal offences, it also lays down the principle that criminal law must not be extensively construed to an accused's detriment, for instance by analogy (see *Del Río Prada*, cited above, § 78, and the case-law cited therein, in particular *Coëme and Others*, cited above, § 145).

48. The concept of a "penalty" in Article 7 § 1 of the Convention is an autonomous one. The Court must remain free to go behind appearances and assess for itself whether a particular measure amounts in substance to a "penalty" within the meaning of that provision (see *Del Río Prada*, cited above, § 81).

49. The Court has repeatedly drawn a distinction between a measure that constitutes in substance a "penalty" and a measure that concerns the "execution" or "enforcement" of the "penalty" (see, among other authorities, *Kafkaris v. Cyprus* [GC], no. 21906/04, § 142, ECHR 2008).

50. Limitation of an offence was defined by the Court as the statutory right of an offender not to be prosecuted or tried after the lapse of a certain period of time since the offence was committed (see *Coëme and Others*, cited above, § 146). The Court has not defined the concept of limitation of a penalty. But it has established that changes made to the manner of execution of the sentence do not fall within the scope of Article 7 § 1 *in fine*. Hence, in order to determine whether a measure taken during the execution of a sentence concerns only the manner of execution of the sentence or, on the contrary, affects its scope, the Court must examine in each case what the "penalty" imposed actually entailed under the domestic law in force at the material time or, in other words, what its intrinsic nature was. In doing so, it must have regard to the domestic law as a whole and the way it was applied at the material time (see *Kafkaris*, cited above, § 145).

51. The applicant's conviction had become final on 8 January 2014. The time-limit for enforcing the sentence imposed would have expired five years later, that is, on 9 January 2019. The execution of his sentence had been suspended from 28 January 2014 pending the examination of his pardon. In accordance with the relevant provisions of the Criminal Code as in force when the execution of the penalty was suspended (see paragraph 28 above), that suspension had not interrupted the five-year time-limit. Had the wording of Article 134 of the Criminal Code not changed, it is undisputed that, by the time the suspension of the execution was revoked on 4 April 2019 and his sentence executed on 3 June 2019, the time-limit for enforcing the sentence would have already expired. However, Article 134 of the Criminal Code was modified as from 1 July 2015, to specifically provide that the suspension in the execution did interrupt the statute of limitation of the penalty.

52. The Court notes that the solution adopted by the national court was consistent with its case-law to the effect that laws modifying the rules on limitation were to be regarded as legislation on matters of jurisdiction and procedure. It accordingly followed the generally recognised *tempus regit actum* principle that, save where expressly provided to the contrary, procedural rules apply immediately to proceedings that are under way (see, among others, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 35, *Reports of Judgments and Decisions* 1997-VIII).

53. The modification of the interruptive effects that suspension in the execution of a penalty had to the statute of limitations of penalties brought about by Organic Law no. 1/2015, and the immediate application of the amended version of Article 134 of the Criminal Code by the national court did prolong the period of time during which the applicant's penalty could be executed.

54. The Court notes that the *Audiencia Provincial* itself had stated that the time-limit for enforcing the applicant's sentence would expire in January 2019 (see paragraph 16 above), thus potentially creating an expectation on the applicant that Article 134 of the Criminal Code was being applied to the execution of his sentence as in force when he was convicted. However, the measure taken under the *tempus regit actum* principle led in practice to the applicant having to serve three years of imprisonment and be disqualified over five years after his sentence had become final.

55. This did not entail an infringement of the rights guaranteed by Article 7 of the Convention. Since the Court has repeatedly held that that provision cannot be interpreted as prohibiting an extension of pending limitation periods through the immediate application of a procedural law (see *Coëme and Others*, cited above, §§ 148-150), it follows that, *a fortiori*, it cannot prohibit a modification of the interruption of limitation periods for the execution of the sentence, even if it is to the applicant's detriment (see *Borcea v. Romania*, no. 55959/14, §§ 64-65, 22 September 2014).

56. The Court notes that when the applicant committed the offence that led to his prosecution and conviction, the relevant Spanish law and case-law were formulated with sufficient precision to enable him to discern the scope of the penalty imposed on him, which remained unchanged notwithstanding the change in the law concerning the interruptive effects of the suspension of the penalty in the statute of limitation of such penalty. Despite being executed over five years after the sentencing, the penalty imposed on the applicant was not heavier than the one imposed at the material time. Hence, the change of the regulation of the interruption of the execution of the penalty's prescription period cannot be considered a change in the "penalty" applied to the applicant.

57. The Court, accordingly, upholds the Government's objection as regards the applicability *ratione materiae* of Article 7 of the Convention, and concludes that the measure in issue does not fall within the scope of the last sentence of Article 7 § 1 of the Convention.

58. It follows that this complaint must be rejected as incompatible with the provisions of the Convention in accordance with Article 35 §§ 3 (a) and 4.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

59. The applicant complained that he had been unlawfully deprived of his liberty as a consequence of having been imprisoned to serve a sentence for which the limitation period had already expired, in violation of Article 5 § 1 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:
>
> (a) the lawful detention of a person after conviction by a competent court."

A. Admissibility

60. 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

61. The applicant asserted that the time-limit for enforcing his sentence had expired six months before it had actually been executed. He emphasised that the Government had not denied that he had begun serving his sentence more than five years after it had become final, and insisted that it had not been foreseeable for him to have to go to prison at that time. He repeatedly quoted the Court's Grand Chamber case of *Del Río Prada* (cited above).

62. The Government submitted that the arguments put forward with regard to Article 7 of the Convention led to the conclusion that there had been no violation of Article 5 § 1 of the Convention either. In addition, they observed that the Court required that any deprivation of liberty had to be in accordance with domestic law in order to be regarded as lawful under Article 5 § 1 of the Convention.

63. In the Government's submission, there could be no doubt that the applicant's deprivation of liberty had been in full compliance with domestic law, as reasonably interpreted by the *Audiencia Provincial*. He had known from the outset that he had to serve the three years' imprisonment imposed in the judgment of 15 July 2013.

64. The Government noted that the applicant had not challenged the content of the law amending Article 134 of the Criminal Code, but only the way it had been applied by the *Audiencia Provincial*. Not only had the detention been carried out on the basis of a conviction handed down by a competent court, but it had also been in accordance with domestic law, and both that law and its interpretation and application by the *Audiencia Provincial* had met the requirements of being "sufficiently accessible, precise

and foreseeable in [their] application, in order to avoid all risk of arbitrariness", as required by the Court in order not to violate Article 5 § 1 of the Convention.

2. The Court's assessment

(a) General principles

65. The Court notes as a preliminary point that the above conclusion under Article 7 of the Convention, in particular, concerning the distinction between the "penalty" as such and "execution" or "enforcement" of the penalty, is not decisive in connection with Article 5 § 1 (a). Measures relating to the execution of a sentence or to its adjustment can affect the right to liberty protected by Article 5 § 1, as the actual deprivation of liberty depends on their application, among other things (*Grava v. Italy*, ECHR 10 July 2003, §§ 45 and 51 and *Del Río Prada*, cited above, § 127). While Article 7 applies to the "penalty" as imposed by the sentencing court, Article 5 applies to the resulting detention (ibid., § 127).

66. Sub-paragraphs (a) to (f) of Article 5 § 1 of the Convention contain an exhaustive list of permissible grounds for deprivation of liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds (see *Del Río Prada*, cited above, § 123, and *M. v. Germany*, no. 19359/04, § 86, ECHR 2009). Article 5 § 1 (a) permits "the lawful detention of a person after conviction by a competent court". 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 national law.

67. Furthermore, the word "after" in sub-paragraph (a) does not simply mean that the detention must follow the "conviction" in point of time: in addition, the "detention" must result from, "follow and depend upon" or occur "by virtue of" the "conviction". In short, there must be a sufficient causal connection between the two (see *Weeks v. the United Kingdom*, 2 March 1987, § 42, Series A no. 114; *Stafford v. the United Kingdom* [GC], no. 46295/99, § 64, ECHR 2002-IV; *Kafkaris*, cited above, § 117; and *M. v. Germany*, cited above, § 88).

68. It is well established in the Court's case-law on Article 5 § 1 that all deprivation of liberty must not only be based on one of the exceptions listed in sub-paragraphs (a) to (f) but must also be "lawful".

69. The "lawfulness" also relates to the quality of the law, which implies that where a national law authorises a deprivation of liberty, it must be sufficiently accessible, precise and foreseeable in its application to avoid all risk of arbitrariness (see, among other authorities, *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III). The standard of "lawfulness" set by the Convention requires that all law be sufficiently precise to allow the person –

if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, among others, *M. v. Germany*, § 90, and *Del Río Prada*, § 69, both cited above). Factors relevant to this assessment of the "quality of law" – which are referred to in some cases as "safeguards against arbitrariness" – will include the existence of clear legal provisions for ordering detention, for extending detention, and for setting time-limits for detention; and the existence of an effective remedy by which the applicant can contest the "lawfulness" and "length" of his continuing detention (see *J.N. v. the United Kingdom*, no. 37289/12, § 77, 19 May 2016 and the case-law cited therein).

(b) Application of the above principles to the present case

70. The Court has no doubt that the applicant was convicted by a competent court, in accordance with a procedure prescribed by law, within the meaning of Article 5 § 1 (a) of the Convention. Indeed, the applicant did not challenge the lawfulness of his three-year sentence of imprisonment imposed by the *Audiencia Provincial* of Madrid in its judgment of 15 July 2013. The question is rather whether his detention after 9 January 2019, the date on which he claims the time-limit for enforcing the sentence had expired, was not arbitrary, which requires an assessment of the quality of the law authorising the deprivation of liberty.

71. In the present case, the Court must verify that the deprivation of liberty, taking account of the applicable rules on time-limits for the enforcement of sentences, was sufficiently "foreseeable" for the applicant in the light of the circumstances of his case; not only at the time of the initial conviction or once he was detained, but also during the in-between period when the execution of the penalty consisting of a deprivation of liberty was suspended and could, depending on the applicable procedural law, become time-barred.

72. The domestic courts had a discretionary power to suspend the execution of the applicant's sentence while the pardon request was pending (see paragraph 27 above); however, once that suspension had been granted, it could have different effects on the statute of limitation period of the sentence depending on the law in force at each particular moment under the *tempus regit actum* principle.

73. When the applicant was sentenced and first obtained the suspension of the execution of his penalty in 2014, this suspension did not entail an interruption of the five-year time-limit for enforcing his sentence. But Article 134 of the Criminal Code (see paragraphs 29-30 above) was amended in 2015 to expressly recognise that circumstance as a ground for interrupting the limitation period and this did not constitute a modification of the "penalty" as such (see paragraphs 48-56 above). For the Court, the law allowed the applicant to foresee (if needed, with appropriate advice) the consequences that the amended Article 134 of the Criminal Code would have

for the suspension of the execution of his penalty. The solution adopted in the instant case by the Spanish authorities followed the general principle that procedural rules apply immediately to proceedings that are under way (see among others *Brualla Gómez de la Torre*, cited above, § 35).

74. Under the domestic legislation (see paragraph 31 above), the applicant's pardon request should have been resolved within a maximum period of one year. Most importantly, the Spanish legislation provides that pardon requests may be deemed to have been rejected if no express decision has been handed down within one year. The applicant requested a pardon in respect of his sentence of imprisonment on 17 January 2014 (see paragraph 8 above). It is apparent that the domestic legislation would have allowed the *Audiencia Provincial* to consider that the applicant's pardon request had been rejected already in January 2015. When on 19 May 2017 the *Audiencia Provincial* decided that, given that there had been no express granting of the pardon, the pardon request was to be considered rejected and therefore the execution of the sentence was to be resumed (see paragraph 13 above), the applicant decided to lodge an appeal against that decision. The appeal was partially upheld by the *Audiencia Provincial*, and the suspension was reinstated. It should be noted that, by then, the new version of Article 134 was already in force, and therefore, the fact that the new suspension had the effect of interrupting the statute of limitation of the penalty was foreseeable to a degree that was reasonable in the circumstances.

75. The applicant, who could not have been unaware that he was sentenced to three years' imprisonment, did not serve a sentence which had already become time-barred before the entry into force of the new version of Article 134 of the Criminal Code; the new provision, which came into force in July 2015, did not have the effect of reviving a sentence which had already become subject to limitation (in this regard, see *Coëme and Others*, cited above, §§ 149-150). In the circumstances of this case, the Court cannot consider that the applicant had a legitimate expectation which would render the execution of the sentence arbitrary. The fact that the *Audiencia Provincial* sent a letter on 27 November 2018 stating that the time-limit would expire in January 2019 (see paragraph 16 above) was not sufficient to provide the applicant with a reasonable expectation that this would actually be the case, given the unequivocal response by the Ministry of Justice on 3 January 2019 (see paragraph 17 above).

76. Moreover, on 27 March 2019, the public prosecutor issued a report according to which the limitation period of the applicant's penalty had not expired, given that the suspension of the execution pending the decision on the pardon request had interrupted the limitation period under the amended version of Article 134 of the Criminal Code (see paragraph 18). The applicant was ordered to go to prison in June 2019, and his pardon request was never explicitly resolved.

77. The Court has acknowledged that limitation periods, which are a common feature of the domestic legal systems of the Contracting States, serve several purposes, which include ensuring legal certainty and finality and preventing infringements of the rights of defendants (see, among others, the *Stubbings and Others v. the United Kingdom* judgment of 22 October 1996, *Reports* 1996-IV, pp. 1502-03, § 51).

78. In the context of the assessment of the "lawfulness" of the detention under Article 5 § 1, the Court has indicated that arbitrariness may arise where there has been an element of bad faith or deception on the part of the authorities; where the order to detain and the execution of the detention did not genuinely conform to the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1; where there was no connection between the ground of permitted deprivation of liberty relied on and the place and conditions of detention; and where there was no relationship of proportionality between the ground of detention relied on and the detention in question (see *James, Wells and Lee v. the United Kingdom*, nos. 25119/09 and 2 others, §§ 191-95, 18 September 2012; and *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 68-74, ECHR 2008).

79. In the present case, the applicant's detention at the time he was ordered to serve the sentence cannot be considered incompatible with the aims of his initial conviction. The Court observes that the applicant was lawfully convicted to three years of imprisonment, and that the fact that he had to serve that sentence, although admittedly several years after it had become final, cannot be considered arbitrary. For the Court, there is a causal link for the purposes of Article 5 § 1 (a) of the Convention between the sentence imposed on the applicant and his detention, stemming from the guilty verdict and the three-year prison term sentence received, as well as from the application of the procedural laws applicable at the time of his detention concerning the statute of limitation of sentences.

80. Accordingly, in the present case there has been no violation of Article 5 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 5 § 1 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 5 § 1 of the Convention.

Done in English, and notified in writing on 31 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Georges Ravarani President