



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

FOURTH SECTION

CASE OF ZAMMIT MAEMPEL v. MALTA

(Application no. 24202/10)

JUDGMENT

STRASBOURG

22 November 2011

FINAL

04/06/2012

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

In the case of Zammit Maempel v. Malta,

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

Nicolas Bratza, *President*,

Lech Garlicki,

David Thór Björgvinsson

George Nicolaou,

Zdravka Kalaydjieva,

Nebojša Vučinić, *judges*,

David Scicluna, *ad hoc judge*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 3 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 24202/10) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Maltese nationals, Mr Frederick Zammit Maempel and Ms Suzette Zammit Maempel, Mr Julian Zammit Maempel and Ms Martina Zammit Maempel (“the applicants”), on 26 April 2010.

2. The applicants were represented by Dr S. Grima, a lawyer practising in Valletta. The Maltese Government (“the Government”) were represented by their Agent, Dr Peter Grech, Attorney General, and Dr Donatella Frendo Dimech, Advocate at the Attorney General’s Office.

3. The applicants alleged that their rights under Articles 8, 6 and 14 in conjunction with Article 8 of the Convention, were being infringed by the permits issued for the letting off of fireworks nearby, without their having had the opportunity to comment on the matter. Moreover, the legislation in force, which they claimed was discriminatory, denied them the relevant protection.

4. On 20 September 2010 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. Mr Vincent De Gaetano, the judge elected in respect of Malta, was unable to sit in the case (Rule 28). Accordingly the President of the Chamber decided to appoint Judge David Scicluna to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are Maltese nationals who were born in 1949, 1956, 1984 and 1986 respectively and live in San Gwann, Malta. The third and fourth applicants are the children of the first and second applicants.

A. Background of the case

7. The applicants have resided in a house in San Gwann owned by the first and second applicants since 1994. Their property includes 4,800 sq. m of surrounding fields. The house is one of three houses in a remote area of grassland.

8. Every year, on the occasion of certain village feasts, firework displays are set up in the fields close to the applicants' residence (a distance of 150 metres or more).

9. The applicants allege that every time fireworks are let off from this area they are exposed to grave risk and peril to their life, physical health and personal security. Moreover, the heavy debris produced causes considerable damage to the residence.

10. In consequence, over the years the applicants complained to the Commissioner of Police ("CoP"), but no remedial action was taken.

11. On an unspecified date the applicants brought their complaint before the Ombudsman. By a report of 10 December 1999, the latter recommended that in considering applications for discharge of fireworks from areas whose residents had put forward complaints, the CoP should request the advice of a group of experts established by law in order to determine whether the area in question ought to be declared a restricted area in terms of Rule 15 of the Control of Fireworks and Other Explosives Regulations ("the regulations").

12. Eventually, the group of experts recommended that the fields from where the fireworks were being let off should be classified as a restricted area in terms of the regulations.

13. In spite of this recommendation the CoP again issued permits for the letting off of fireworks from the field in question for the purposes of two village feasts. Since the committee of experts had not, at the relevant time, been constituted, the CoP acted on the recommendations of the Explosives Committee.

14. The applicants again complained to the Ombudsman. By a report of 22 February 2001, the latter held the complaint justified and noted that the two licences issued were not in accordance with the regulations (regarding the applicable distances and type of fireworks). The group of experts had the duty to give advice and the competent authority had little justification to

exercise its discretion and refuse this expert advice on such technical matters. While the pressure applied on the authorities from various quarters in such cases was well known, this was an instance of maladministration which could not but attract criticism.

15. This notwithstanding, the CoP continued to issue the relevant permits for the purposes of two feasts per year, to the present date.

16. The applicants alleged that further requests to the CoP, by the applicants and their neighbours, for information or reasons as to why they had not been consulted, remained unheeded, except for one meeting which was held at the police station in the absence of the group of experts.

B. Proceedings before the Civil Court (constitutional jurisdiction)

17. On 13 April 2005 the applicants instituted constitutional redress proceedings, complaining that the CoP was not protecting them as he was duty bound to do. While he ignored the experts' recommendations, the applicants had not been consulted about the issue of the relevant permits. They submitted that the law did not protect their interests, in that although it established a certain distance which had to be maintained between residences and the letting off of fireworks, it applied such distances only to "inhabited areas" which according to law meant "an aggregation of houses inhabited, or capable of being inhabited, by more than one hundred persons". However, their house was one of three in the area and thus did not benefit from the protection of the law. Moreover, they claimed that the law was deficient, as it did not provide a procedure for issuing licences whereby the residents were informed and could make submissions to safeguard their interests, or appeal against the issue of such permits. Furthermore, the application of the definition of "inhabited area" resulted in discriminatory treatment against the applicants. They invoked Article 8, alone and in conjunction with Article 14 of the Convention.

18. On 14 February 2006 the Civil Court (First Hall) in its constitutional jurisdiction upheld the applicants' claims in part. It dismissed the complaint about the failure of the authorities to take appropriate procedures for the issue of licences for lack of exhaustion of ordinary remedies. For the rest, it held that the legal definition of "inhabited area" breached the applicants' rights under Article 8, alone and in conjunction with Article 14, and that the law regarding the issue of permits and licences also breached their rights under Article 8, in that its application failed to include sufficient procedural safeguards. The Court noted that the applicants were aware of the situation when they purchased the property. However, it noted that the letting off of fireworks had caused damage to the applicants' property, namely to the roof's membrane and the swimming pool area, as a result of the debris produced; and during the relevant feasts the noise levels were very high, to the extent that the applicants were suffering hearing impairment that could

become permanent. Although the effects of this pollution were not continuous, as in most cases which had been decided by the ECHR, the practice of letting off of fireworks would certainly continue and its effects on the applicants included damage and threats to their person and their home, as dangerous unexploded fireworks were often found in the surroundings. In consequence, the court considered that, while the legality of the issue of these permits was questionable, by depriving the applicants of protection, on the basis that their area did not accommodate a hundred people, the law was not giving due weight to the interests of the applicants.

C. Constitutional Court proceedings

19. The respondent State, together with the Fireworks Association of St Helen and the Maltese society of Pyrotechnics, appealed. In common they submitted, *inter alia*, that unlike the ECHR cases dealing with environmental pollution, the present case did not deal with such pollution, because, among other reasons, the letting off of fireworks was restricted to a few hours over a few days in a whole year.

20. On 30 October 2009, the Constitutional Court reversed the first-instance judgment. It noted that the applicants' case was not grounded on Article 1 of Protocol No. 1 to the Convention, although the applicants had made reference to damage to their property, but on Article 8. Thus, the Court had to establish whether the State had taken all the necessary measures to protect the applicants' rights under this provision. The Court acknowledged that the noise and peril to their lives and property during certain days created an inconvenience for the applicants which amounted to interference. However, the interference was in accordance with the law, as it had its basis in the Control of Fireworks and Other Explosives Regulations, and whether the CoP had issued licences according to the regulations, a matter which was to be examined by the ordinary courts as established by the first-instance court, was irrelevant. As to the proportionality of the interference the Court considered that in the present case the complaint was not directed towards a fireworks factory near the applicants' residence, but simply the venue used to let off the fireworks at a specific time. In the present case, the relevant law struck a balance between the conflicting interests by means of specific measures, such as the times at which fireworks could be let off; the type of fireworks which could be let off; the different venues which could be used; the security distances which had to be complied with; compulsory insurance coverage; the presence of a fire engine; and police on site. Indeed, in the present case the police were on site to make sure that the action was taken according to the permits issued and a person from the relevant association was present in the area of the applicants' houses as a precaution. The latter association also offered the applicants its help and protection to prevent any harm to the property. Thus,

it could not be said that the applicants had not been protected. As to the definition of “inhabited area”, it was to be borne in mind that Malta was a small country, densely populated, with few, if any, areas where no people lived, and such legislation could only be seen in this context. Furthermore, the letting off of fireworks happened in a limited period for a few hours in a week twice a year and some years even less often. Acknowledging that such noise might also cause disturbance to other persons, old and young especially, the court could not ignore the fact that the applicants had been informed of this danger by the previous owner (who had had an accident in the house due to the fireworks) before they bought the house. Yet, they chose to purchase the said property. Overall the court was of the view that the legislator had successfully tried to reach a balance between the right to home and private life of the applicants and the traditional, cultural, religious and touristic needs of Maltese society, bearing in mind the size of the island. This might be otherwise if it were established that the measures applied were or would not be in accordance with the parameters set by law, a matter which the applicants had and have the right to contest before the ordinary courts regarding any future permit granted. In consequence there was no violation of Article 8 of the Convention.

21. As to the alleged discrimination, the court reiterated that the provision only applied to persons in analogous situations. However, the applicants had not proved that they had been treated differently to other persons who resided in “inhabited areas”. Moreover, it has already been held that the applicants were receiving appropriate protection and that the applicants had knowingly decided to move to the area in question.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. Fireworks in Malta have a long-standing tradition which is still very much alive in the crowded calendar of village feasts that take place all over Malta and Gozo, especially in the summer months.

23. The facts of this case deal with a specific area where fireworks are let off during two separate weeks annually and only during particular days, therefore not on a daily basis during those weeks. Moreover, from 1999-2005 the site was used for fireworks less regularly (following a death amongst the pyrotechnic personnel of the relevant parish while manufacturing fireworks).

24. The relevant sections of the Control of Fireworks and Other Explosives Regulations, Subsidiary Legislation 33.03, as amended by Legal Notice 243 of 1998, in so far as relevant at the time of the present case, read as follows:

Section 2

“In these regulations, unless the context otherwise requires -

“inhabited area” means any area in which there is an aggregation of houses inhabited, or capable of being inhabited, by more than one hundred persons;”

Section 12

“Any person who applies for a licence to discharge fireworks as provided for in article 24 of the Ordinance shall -

(a) comply with the times set out in the First Schedule or as otherwise indicated in the licence;

(b) satisfy the Commissioner that the fireworks were manufactured in a licensed factory;

(c) produce a policy of insurance adequately covering any claims arising from the death or personal injury to third parties or from damage to third party’s property that may be caused by any explosion or other factor during discharge of fireworks;

(d) ensure that persons letting off fireworks are in possession of a Category "A", "B" or "C" licence.”

Section 14

“No person shall discharge any fireworks from any site unless -

(a) the site is the one approved for that purpose in a licence issued under the Ordinance;

(b) in the discharge of any fireworks from any approved site, he satisfies the provisions set out in the First and Second Schedules;

(c) the pipes for the discharge of aerial fireworks are effectively screened at the site by wooden boards, sandbags, tyres or cardboard or wooden boxes filled with soil or similar material, so as to prevent the flying of fragments caused by unintentional explosion.”

Section 15

“(1) Only fireworks of the approved type may be let off from a restricted site.

(2) For the purposes of sub-regulation (1) hereof, a "restricted site" is a site so declared by the Commissioner on the advice of the group of experts referred to in regulation 16 and includes an area within such distance from such site as may be declared by the Commissioner on the advice of the same group, and "fireworks of the approved type" are fireworks of such type as may be approved by the Commissioner for the purpose on the advice of the said group.”

Section 16

“(1) The Minister shall appoint a group of experts under the chairmanship of the chairman of the Explosives Committee for the purposes of regulation 15, consisting of

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- (a) all the members of the Explosives Committee,
- (b) a representative of the Museums Department,
- (c) a representative of the Planning Authority,
- (d) a representative of such association as in the opinion of the Minister is most representative of fireworks manufacturers,
- (e) such other person chosen from amongst persons who in the opinion of the Minister have knowledge and experience in explosives and/or fireworks after consultation with the most representative organisations concerned in such matters.

(2) In submitting their advice, the experts shall take into consideration the type of fireworks to be discharged from the site, the value, historical or otherwise, of the site from where these fireworks are intended to be discharged, and the safety distances involved.”

Section 17

“The person licensed to discharge fireworks shall take the necessary steps for the recovery and removal from the area around the site of discharge, of such items of fireworks which fail to ignite or explode as well as any other material resulting from the discharge of such fireworks.”

Section 18

“No aerial fireworks shall be discharged on any day and times other than those indicated in the Police permit.”

25. The First Schedule of the regulations, in so far as relevant at the time of the present case, regarding times of discharging of fireworks, provided as follows:

“1. Moving the Statue from the Niche

8 a.m.. 10 minutes

12 noon 10 minutes

Removal of the statue from the niche 20 minutes

Evening display20 minutes, not to finish later than 10 p.m.

2. First and Second Day of Triduum

8 a.m.. 10 minutes

12 noon 10 minutes

End of religious function (*barka*) 20 minutes

Evening display20 minutes, not to finish later than 10 p.m.

3. Third Day of Triduum

As per days at 1 and 2 above, except that the evening display may extend for up to 45 minutes, but not to exceed 11 p.m.

4. Eve of the Feast

Ta Deum or 8 a.m.. 30 minutes

12 noon 10 minutes

Evening service (*Translazzjoni*)..... 1 hour of daylight fireworks display

Evening display to commence by not later than 10 p.m. but to finish by not later than 11.30pm (provided that any such display shall not exceed in total a maximum of two hours from commencement)

4. Day of the Feast

8 a.m.. 10 minutes

12 noon/Sanctus 20 minutes

Procession (a) 7 p.m. and to finish by 11 p.m. in general

or (b) 8 a.m. to finish by noon”

26. The Second Schedule of the regulations, in so far as relevant at the time of the present case, provided as follows:

D. Distances for the letting off of fireworks

“(a) To be discharged from 60 metres distance from an inhabited area or public streets used regularly by motor vehicles - *bukketti tal-kulur* and *beraq/spanjoli* of up to 5cms diameter; maroons cannot be discharged.

(b) To be discharged from 150 metres distance from an inhabited area or public streets used regularly by motor vehicles - maroons not exceeding 7.6 cm in diameter and 7.6 cm in length; also coloured, whistles or cracker shells (*kaxxi tal-bombi*, *kuluri*, *beraq u sfafar*).

(c) To be discharged from 200 metres distance from an inhabited area or public streets used regularly by motor vehicles - all other types of fireworks.”

27. The Explosives Committee is not constituted by law to advise on such matters, but forms part of the Group of Experts established by Law (section 16, above).

28. According to a report of the Environment Commission of the Archdiocese of Malta, there were fourteen fatalities and thirty-eight injuries related to fireworks between 1997 and 2006, of which only 4% occurred during the actual discharge of fireworks.

29. To date the majority of firework-related accidents remains associated with factory accidents, with, for example, the following data available for the year 2010, according to local newspapers:

February – Two men die in an explosion at St Sebastian fireworks factory in Qormi.

April – Two escape unhurt when the San Bartolomeo factory explodes in Gharghur.

May – One man dies at St Catherine's fireworks factory in Marsaxlokk.

August – A man dies at the August 15 fireworks factory in Mosta.

September – Gharb fireworks factory explodes, three dead, one missing and two injured (with a final tally of six dead).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 8 AND 6 OF THE CONVENTION

30. The applicants complained under Articles 8 and 6 of the Convention that their rights were being infringed by the permits issued for the letting off of fireworks nearby, for two village feasts per year, without their having the opportunity to comment on the matter, and by the fact that the area had not been declared a restricted area following the advice of a group of experts. In consequence, they complained that they were suffering a disproportionate interference with their right to respect for their private life and home.

The relevant Articles, in so far as relevant, read as follows:

Article 8

“1. Everyone has the right to respect for his ... family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 6

“In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing within a reasonable time by an independent and impartial tribunal established by law.”

31. The Government contested that argument.

32. The Court reiterates that it is the master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I). While Article 6 affords a procedural safeguard, namely the “right to court” in the determination of one’s “civil rights and obligations”, Article 8 serves the wider purpose of ensuring proper respect for, *inter alia*, private life. In this light, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see *Iosub Caras v. Romania*, no. 7198/04, § 48, 27 July 2006, and *Moretti and Benedetti v. Italy*, no. 16318/07, § 27, ECHR 2010-... (extracts)).

33. In the instant case the Court considers that the complaint raised by the applicants should be examined under Article 8.

A. Admissibility

34. The Government contended that Article 8 was not applicable to the present case. While cases regarding environmental damage had often been brought before the Court, the provision could not cover the facts of the instant case, which were far less serious in nature and did not produce continuous or permanent pollution. Thus, the inconvenience suffered by the applicants over a few hours yearly was too trivial to be protected by the provision.

35. The applicants submitted that according to the Court’s jurisprudence, noise pollution, damage to property and exposure to physical and personal hazards amounted to an interference with their Article 8 rights. In the present case, noise levels reached at least 120db according to expert reports, and in their view amounted to noise pollution. Moreover, the fireworks industry had claimed ten lives in the last two years, and the applicants had suffered damage to their property and developed hearing impairments.

36. The Court reiterates that Article 8 of the Convention protects the individual’s right to respect for his private and family life, his home and his correspondence. A home will usually be the place, the physically defined area, where private and family life develops. The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area within reasonable limits. Breaches of the right to respect of the home are not confined to concrete breaches such as unauthorised entry into a person’s home, but may also

include those that are diffuse, such as noise, emissions, smells or other similar forms of interference. A serious breach may result in the breach of a person's right to respect for his home if it prevents him from enjoying the amenities of his home (see *Moreno Gómez v. Spain*, no. 4143/02, § 53, ECHR 2004-X, and *Deés v. Hungary*, no. 2345/06, § 21, 9 November 2010). Although there is no explicit right in the Convention to a clean and quiet environment, where an individual is directly and seriously affected by noise or other pollution an issue may arise under Article 8 of the Convention (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII; *López Ostra v. Spain*, 9 December 1994, Series A no. 303-C; *Powell and Rayner v. the United Kingdom*, 21 February 1990, Series A no. 172, § 40; *Furlepa v. Poland* (dec.), no. 62101/00, 18 March 2008; and *Oluić v. Croatia*, no. 61260/08, § 45, 20 May 2010). Specifically, Article 8 of the Convention applies to severe environmental pollution which may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, even without seriously endangering their health (see, among others, *Taşkın and Others v. Turkey*, no. 46117/99, § 113, ECHR 2004-X).

37. However, under Article 8 the alleged nuisance must have attained the minimum level of severity required for it to amount to an interference with applicants' rights to respect for their private lives and their homes. The assessment of that minimum is relative and depends on all the circumstances: the intensity and duration of the nuisance, its physical or mental effects, the general context, and whether the detriment complained of was negligible in comparison to the environmental hazards inherent to life in every modern city (see, among other authorities, *Fadeyeva v. Russia*, no. 55723/00, §§ 66-70, ECHR 2005-IV, and *Galev and Others v. Bulgaria*, (dec.), no. 18324/04, 29 September 2009).

38. The Court has no doubt that the letting off of fireworks in the vicinity of the applicants' home, situated in the "countryside" or what by Maltese standards can be considered a rural area, can reach noise levels of 120db. While it is not disputed that such a level of noise was emitted only during a limited period of time, for two weeks over a whole year, and at intervals (see Relevant domestic law), it can be accepted that the noise had at least a temporary effect on both the physical and to a certain extent the psychological state of those exposed to it. In consequence, such noise, in the Court's view, falls under the notion of noise pollution (see, for example, *Moreno Gómez*, cited above, §§ 59-62; and *Ashworth and Others v. the United Kingdom*, (dec.), no. 39561/98, 20 January 2004) and can be considered to reach the minimum level of severity required for it to affect the applicants' rights to respect for their private lives and their homes (see, for example, *Oluić*, cited above, § 62, in respect of noise from a bar; and *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04, § 97,

25 November 2010, in respect of a computer club's business; and conversely, *Galev and Others*, (dec.), cited above, in relation to noise emanating from a dentist's surgery; *Fägerskiöld v. Sweden* (dec.), no. 37664/04, 26 February 2008, concerning noise from a wind turbine; and *Leon and Agnieszka Kania v. Poland*, no. 12605/03, §§ 101-03, 21 July 2009, concerning noise from a lorry maintenance and metal-cutting and grinding workshop). It also notes that as a consequence of the fireworks display the applicants' property has suffered a certain amount of damage, a matter which has not been contested. Furthermore, the applicants' family may be exposed to some physical and personal risk. Taking into account these factors as a whole, the Court considers that the effects of such displays on the applicants' private and family life and on the enjoyment of their homes was such that the alleged nuisance attained the level of severity required for Article 8 to be engaged.

39. The Government's objection *ratione materiae* is therefore dismissed.

40. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicants' submissions

41. The applicants complained of a continuing violation of their right to respect for private and family life as a result of the issuing of permits for two feasts a year in their locality. The CoP had failed to consider the area a restricted area for the relevant law purposes, against the relevant experts' advice on the matter. Moreover, this procedure denied them the opportunity to make submissions on the matter. Thus, they considered that the recurring firework displays close to their residence (minimum 150m) constituted undue interference with their right to respect for private and family life.

42. Primarily, they contended that according to section 15 (2) of the regulations (see Relevant domestic law) the CoP's discretion was curtailed, as he had to act on the advice given to him by the group of experts. Thus, ignoring that advice clearly resulted in procedural incorrectness, making the interference unjustifiable. Referring to section 16 (2) (see Relevant domestic law) the applicants submitted that there was no point in such a group if their advice went unheeded. Thus, they considered that the decisions taken by the authority were not in accordance with the law, since the relevant distances had not been respected nor had the relevant recommendations from various bodies been taken into account. They therefore contested the validity of the permits issued, claiming that the Government had not proved that all the permits had been properly issued. However, they stated that proceedings in

this respect had not been instituted, because even if the permits were in accordance with the law, it was the application of that law which breached their rights.

43. The applicants claimed that the suffering caused was too serious to be ignored and that therefore the interference could not be considered proportionate, irrespective of any margin of appreciation enjoyed by the state.

44. According to the applicants this activity would last an hour and a half on two days at each feast. This activity caused them to suffer heavy noise pollution (noise levels of at least 120db according to expert reports) which had resulted, for the first applicant, in a mild degree of sensorineural hearing loss (following impulsive shock noise) as shown by a medical report which excluded pertinent disease or age-related changes and where the first applicant declared no history of recreational noise exposure. Moreover, they alleged that smoke inhalation also affected their health. The activity had further caused other damage to their property (as had been the case with the pool and roof membrane) as a result of debris and other residues (such as burning string, cardboard and unexploded fireworks). Furthermore, such fireworks posed an unacceptable risk even to their lives, for example, they alleged that if a container full of fireworks were to explode, their house and the rest of the cluster of houses would be wiped out – as often happened with firework factory explosions. They highlighted that for two days before the feast fireworks were stored in a container close to the applicants' property. They considered that the hazard of such a situation was evident, given that, allegedly, the last fireworks-related accident had claimed five lives, and occurred while fireworks were being stored in such a container before being discharged. The applicants, both in domestic and Court proceedings, submitted a photo of thirty unexploded fireworks collected by them. They noted that unexploded components of fireworks were not easily detectable, by them or others, during onsite inspections.

45. The applicants argued that other security measures would not be sufficient. Indeed, before the domestic courts it had been shown that there was no access to the applicants' property for fire engines, except for a Scout fire engine, which would be inadequate for a house fire. The relevant insurance also did not cover bodily injury or damage to property from a defect in the fireworks, or the failure of fireworks to ignite. They considered it ironic that streets in the vicinity were closed off for safety reasons but that the State felt no need to protect the applicants from the same dangers.

46. They submitted that the protection proposals by the band clubs concerned had been refused, because covering the area with cardboard was not a practical solution, particularly because of the wind which often blew in the direction most likely to affect the applicants' property, according to the statistics of prevailing winds. Moreover, according to the architects it was impossible to cover all the relevant areas.

47. The applicants claimed that although fireworks started being let off in the area in the 1980s before they bought the property, they did not know the damaging effects before they actually moved into the property. Moreover, the Government had issued the relevant permits for their property. In consequence, their right to live there had been in conformity with the law and it followed that they also deserved protection.

48. The applicants further considered that there were available alternatives, such as moving the site further north, but that even if there had not been, it was not reasonable for culture and tradition to prevail in the event that this damaged an individual and breached his or her rights.

49. Lastly, quite apart from this lack of protection, the applicants contended that they had had no opportunity to make submissions, and therefore were excluded from the decision-making process.

2. The Government's submissions

50. According to the Government the CoP always abided by the law in force when issuing the relevant permits, and each discharge of fireworks was covered by a valid permit. They explained that according to the law the Group of Experts and the Explosives Committee could only give advice to the CoP, who ultimately had discretion to decide whether to issue such permits. Similarly, the Ombudsman's recommendations were not binding. However, any allegation in respect of the lawfulness of such an action had not fulfilled the exhaustion requirement, as the applicants had failed to use ordinary domestic remedies, namely a challenge to the administrative acts. Indeed, the applicants had never pursued ordinary civil proceedings contesting any of the CoP decisions. Moreover, the Government disputed the Ombudsman's findings of 22 February 2001, which were based on the premise that the 200 m distance also applied to areas which did not qualify as "inhabited areas". In fact there were no legal minimum distances applicable for areas which were "not inhabited", but safety precautions were in place according to the regulations and the conditions imposed on permits.

51. The Government considered the case as one regarding positive obligations, in that the letting off of fireworks was carried out by third parties but it was the State which issued the relevant conditions, regulations and permits. Such measures regulated interference by third parties with a person's private rights, and required a balance to be reached between the religious and social expression of village communities and the interests of the applicants.

52. The Government also submitted that any interference was proportionate and justified under paragraph two of the provision and that the domestic courts were in the best position to analyse the situation. They noted that firework displays had a long tradition in the country and many people devoted voluntary work, time and money to that cause which they considered their hobby. Village feasts and firework displays were a part of

Maltese character and culture, and were one of the major tourist attractions during the summer period. Moreover, the feasts created substantial economic activity, with a huge positive impact on the economy of the country.

53. Against this background the Government had to provide for regulation to avoid any danger arising from firework displays. For this reason it regulated both the manufacturing of fireworks and the way they were displayed, in such a way as to maintain the tradition and the economic activity whilst protecting and ensuring safety for all concerned. Fireworks legislation had evolved to reflect the urban development of the Maltese islands. These regulations bore in mind the residents in the vicinity of the sites and the size of the country, together with its population density. They noted that had the legislation applied the same distance from any house, the firework tradition, dearly appreciated by many, would cease to exist. Specifically, in the present case, there was no other alternative, such as moving the site further north, since this “new” area would have been far too close to other residences and would virtually abut a road. In the Government’s view the regulations had reached an appropriate balance, as had been held by the Constitutional Court which based its judgment on relevant and sufficient reasons, bearing in mind the size of the country, the duration of the interference, and the element of self-imposed hardship.

54. Acknowledging that noise can be considered a pollutant, the Government submitted that the evidence put forward by the applicants did not show the normal level of noise in their household and whether in their lives they had been subject to high levels of noise, such as clubbing music or use of headphones, other factors which could also have caused an impairment. Indeed, in respect of the first applicant they noted that he was a sixty-one-year-old amateur drummer, and no proof had been submitted that any hearing disability was not already present before he moved to that address. As evidenced by the applicants’ documentation before the domestic courts, their hearing returned to normal just after the letting off of fireworks and therefore the fireworks could only have had a minor temporal effect - and the applicants had been aware of any such possible danger, which had allowed for price negotiation on purchase. The Government noted that the fact that fireworks were discharged in the open abated the effects of noise pollution. Moreover, fireworks were discharged at intervals, over short periods of time, the longest period being a continuous thirty minutes for the main aerial display. The Government also considered that the applicants could stay away from home during that limited period of time if they feared for their hearing to such an extent.

55. Making reference to the Court’s case-law, the Government reiterated that there had not been any serious environmental pollution, the letting off of fireworks was not a permanent source of pollution, nor did it create any irreversible damage - just marks and spots on the swimming pool deck and

the roof membrane of the applicants' house. They argued that the probability that the applicants' property was affected by debris and so on was heavily dependent on the wind direction, which was subject to constant change. Moreover, the applicants never instituted claims against the third parties responsible in respect of the minimal damage they had suffered, nor did they accept any precautionary assistance, such as protecting the swimming pool, its deck and the house roof with protective fire retardant material, which would absorb the effect of any falling material. The Government contended that the allegation that unexploded material or burning fireworks fell on to the property had not been supported by irrefutable evidence. While it had not been established where the applicants collected the unexploded fireworks, the Government noted that thirty pieces of unexploded material over twelve years showed how limited the impact was.

56. Thus, in the Government's view it would not be proportionate to exclude firework displays from these two village feasts because one family's swimming pool might be dirtied or slightly damaged. Indeed, the minimal inconvenience to the applicants was acceptable, given that in a diverse modern and organised society everyone had to endure some inconvenience, this being inherent in the principle of social solidarity.

57. The Government noted that, as prescribed by law, the exercise was strictly monitored to prevent accidents, and safety measures (including a fire engine) were in place to respond where necessary, together with the relevant insurance policy. Police inspectors ensured that the fireworks were being let off according to the regulations in force, and accompanied transportation of the fireworks from the factory to the site. Moreover, the Government noted that one of the permit conditions was that persons discharging fireworks had the duty to search the surrounding area for unexploded material after the fireworks were let off. Thus, the associations responsible for discharging fireworks engaged individuals to attend to the site and ensure safety precautions were implemented and adhered to. Indeed, these associations had offered to cover the applicants' outdoor areas, but the applicants, unlike their neighbours, had refused the offer. Since this action required the authorisation of the applicants, the Government could not be blamed for the applicants' refusal to allow such an action.

58. The Government considered that the applicants' allegations were exaggerated and that the rate of accidents during the discharge of fireworks was, though regrettable, comparable to accidents at places of work or traffic accidents. Moreover, accidents during displays were invariably suffered by the people discharging the fireworks, apart from exceptional circumstances when inexperienced third parties came across unexploded material and attempted to discharge it. The Government insisted that accidents related to firework manufacturing could not be of any relevance to the present case. As to the storage of fireworks in containers, the Government submitted that,

as a security measure, fireworks were brought on site on the day of the display. They were handled carefully, spread around the area and not left in clusters, to reduce the danger of accidental ignition. The operation was constantly monitored by fire-fighters. It followed that the applicants' allegation that an explosion would wipe out their house was unfounded and unsubstantiated.

59. The Government highlighted that the applicants knew about the current practice and the damage which the previous owner had suffered as a result of the discharge of fireworks, and yet they chose to purchase the relevant property, which at the time was a farmhouse and which the applicants converted into a luxurious property. Thus, any damage suffered by the applicants was self-imposed as they knowingly chose to purchase the property, and remained living there for a number of years, notwithstanding that they were financially able to move elsewhere. Referring to the Court's recent case-law (see *Galev and Others v Bulgaria*, (dec.), cited above; *Deés v. Hungary*, no. 2345/06, 9 November 2010; and *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04, 25 November 2010) the Government noted that in these cases the interference resulted from actions which disturbed previously peaceful situations, and not, as in the applicants' case, a self-inflicted hindrance, due to their choice to set up home in that specific location.

60. Lastly, the Government submitted that the CoP gave ample opportunity to the applicants to make submissions, even when there was no legal obligation to do so. Indeed, the applicants were present at a number of meetings, both at the police station and on site. Although taking into account the advice given, the CoP also had to establish a proper balance between the interests involved, while acting within the limits of the law. Thus, while such recommendations were followed when possible, this had not always been the case. The Government concluded that the applicants' argument was unfounded, since their complaints and submissions had led to an examination of their case by the CoP, the Group of Experts, the Explosives Committee and also by the Ombudsman, before reaching the domestic courts.

3. General principles

61. Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it may involve the authorities' adopting measures designed to secure respect for private life and home, even in the sphere of the relations of individuals between themselves (see *Moreno Gómez*, cited above, § 55). Thus, Article 8 may apply in environmental cases, whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private-sector activities properly. Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate

measures to secure the applicants' rights under paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 8, in striking the required balance the aims mentioned in the second paragraph may be of certain relevance (see *Powell and Rayner*, § 41, and *López Ostra*, § 51, both cited above).

62. Although Article 8 contains no explicit procedural requirements, the decision-making process must be fair and must afford due respect to the interests safeguarded to the individual by Article 8. It is therefore necessary to consider all the procedural aspects, including the type of policy or decision involved, the extent to which the views of individuals were taken into account throughout the decision-making process, and the procedural safeguards available (see *Hatton and Others*, cited above, § 104, and *Giacomelli v. Italy*, no. 59909/00, § 82, ECHR 2006-XII). Individuals concerned must also be able to appeal to the courts against any decision, act or omission where they consider that their interests or their comments have not been given sufficient weight in the decision-making process (*Giacomelli*, cited above, § 83).

4. Application to the present case

63. It is clear that in the present case the disturbances complained of were not caused by the State or by State organs, but that they emanated from the activities of private individuals. While the case may therefore be seen as giving rise principally to the positive obligations of the State, rather than as an interference by the State, the Court is not required finally to decide this question, the test being essentially the same. The question is whether the law, as applied in the present case, struck a fair balance between the competing interests of the individuals affected by the disturbance and the community as a whole.

64. In order to justify the letting off of fireworks at the relevant distances from the specific location, in the vicinity of the applicants, the Government referred not only to the cultural and religious interests of the Maltese community but also to the economic interests of the country as a whole. In their submission these considerations serve to justify impinging on the Article 8 rights of the persons affected by this tradition. The Court considers it reasonable to assume that firework displays are one of the highlights of a village feast which attracts village locals, other nationals and tourists, an occasion which undeniably generates an amount of income and which therefore, at least to a certain extent, aids the general economy. Moreover, it

has no doubt that traditional village feasts can be considered as part of Maltese cultural and religious heritage. The Court observes that according to the second paragraph of Article 8 restrictions are permitted, *inter alia*, in the interests of the economic well-being of the country and for the protection of the rights and freedoms of others. It is therefore legitimate for the State to have taken the above interests into consideration in the shaping of the regulatory framework applicable to the fireworks culture.

65. The Court considers that the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention when it comes to the determination of regulatory and other measures intended to protect Article 8 rights. This consideration also holds true in situations which do not concern direct interference by public authorities with the right to respect for the home but involve those authorities' failure to take action to put a stop to third-party breaches of the right relied on by the applicant (see *Deés*, cited above, § 23)

66. As the Court has held on a number of occasions in cases involving environmental issues, as in the present case, the State must be allowed a wide margin of appreciation (see *Hatton and Others*, cited above, § 100; *Buckley v. the United Kingdom*, 25 September 1996, §§ 74-77, *Reports* 1996-IV; *Taşkın and Others*, cited above, § 116; and *Giacomelli*, cited above, § 82). Whilst the State is required to give due consideration to the particular interests, the respect for which it is obliged to secure by virtue of Article 8, it must in principle be left a choice between the different ways and means of meeting this obligation. The Court's supervisory function being of a subsidiary nature, it is limited to reviewing whether or not the particular solution adopted can be regarded as striking a fair balance (see *Hatton and Others*, cited above, § 123).

67. In the present case the Court first notes that the noise disturbance could have, at least in respect of one of the applicants, actually led to deterioration in his hearing. Moreover, it has already damaged the applicants' property, although the Court finds it pertinent to note that the damage which the property has suffered is minimal, and reversible. Furthermore, the applicants can take action against those responsible for such damage through ordinary civil proceedings. As to any other risks pertaining to the letting off of fireworks, while the Court notes that the mortality rate relating to the fireworks industry in Malta is alarming, as noted by the Government, such accidents occur less frequently during the actual displays and are often related to fireworks manufacturing. Indeed, in the applicants' case no risk to life or personal integrity has to date materialised (see, conversely, *Georgel and Georgeta Stoicescu v. Romania*, no. 9718/03, 26 July 2011). Moreover, the applicants have not adduced evidence as to any real risk of an explosion destroying their property or substantially damaging it. Thus, although the Court is not in a position to entirely exclude any risk of personal injury, in particular having regard to

the unexploded material which has allegedly been found on the applicants' property, it finds that it has not been established that the applicants are subject to a real and immediate risk to their life or their physical integrity. Neither does the Court find it sufficiently established that fireworks give rise to any health concern, other than that mentioned above. This having been said, the Court is ready to accept that the repeated letting off of fireworks at sound levels reaching at least 120db, for two weeks each year, even though intermittently, creates considerable inconvenience for the applicants, which must be balanced against the interests of the community.

68. The Court accepts that in this context the authorities were entitled, having regard to the general nature of the measures taken, to identify distances from where third parties could perform the relevant displays, taking into account the geographical situation in Malta and its population density. The Court further accepts that it was justifiable to allow for the designation, as letting off sites, of areas in the rural zones, which were further away from densely inhabited areas, even though this might result in there being a shorter distance from other existing properties. As to the measurements applied, the Court notes that the security distance applicable to inhabited areas was that of 150 or 200 metres, according to the type of fireworks concerned. In the applicants' case, while no minimum distance was applicable, as they lived in an "uninhabited" area, in practice the actual distance between their home and the letting off zone was, as recognised by the parties, 150 metres. The Court, acknowledging that this might offer a lower degree of protection, notes that such a distance in principle still affords a certain degree of protection. Moreover, the application of this distance in practice and the lack of regulation in respect of distances applicable to uninhabited areas did not mean that the concerns of the people affected were totally disregarded.

69. The Court notes that the State was not oblivious to the dangers inherent in the fireworks tradition, and had provided for a certain degree of protection. Quite apart from the relevant procedure and requirements for the issuance of permits to allow such displays (see section 14 of the regulations), as submitted by the Government, regulations were in place in respect of transportation and unloading of fireworks. Such actions and the actual letting off of the fireworks were accordingly monitored by police inspectors and fire-fighters. Insurance covering the activity was also mandatory. Moreover, obligations were imposed on the third parties operating such displays (see section 17 of the regulations) and it has not been contended that the third parties failed to fulfil these obligations, in so far as it depended on them. Thus, in assessing whether the right balance has been struck, the availability of these measures to mitigate the effects of such displays is a relevant factor carrying considerable weight.

70. On the procedural aspect of the case, the Court notes that a governmental decision-making process concerning issues of cultural, environmental and economic impact such as in the present case must necessarily involve appropriate investigations and studies in order to allow them to strike a fair balance between the various conflicting interests at stake. However, this does not mean that decisions can only be taken if comprehensive and measurable data are available in relation to each and every aspect of the matter to be decided. In this respect, the Court notes that the Government have not adduced evidence in respect of any impact assessment studies made in this respect; indeed relevant studies have only been put forward by the applicants, who, however, have not focused on this aspect of the case. The Court also notes, however, that the authorities have enacted legislation in this field and have provided consistent monitoring of the situation through the appointment of a group of experts (see section 16 of the regulations).

71. The Court notes that the applicants addressed their complaints directly to the CoP, who was responsible for issuing such permits. Similarly, the Ombudsman's reports reflecting the applicants' concerns had been brought to the CoP's attention. It was also open to them to make any representations they felt appropriate to the Explosives Committee or directly to the group of experts. Indeed, the group of experts not only considered their representations but made recommendations supporting the applicants' position. Had any representations not been taken into account, or had the CoP, as happened in the present case, not taken such advice, the applicants were able to challenge the decisions in the ordinary courts, a course of action which they chose not to take. The Court notes, however, that while the CoP's decisions were not contested through ordinary proceedings, the applicants undertook constitutional redress proceedings. In consequence, it cannot be said that they did not have an opportunity to make their views heard. The fact that the outcome of the proceedings was not favourable to the applicants is not sufficient to establish that they were not involved in or given access to the decision-making process.

72. Moreover, the Court notes that the applicants acquired the property while aware of the situation of which they are now complaining. Notwithstanding that the previous owners had informed them of their experience, the applicants proceeded to purchase the property and made it their home. The Court considers, as did the domestic courts, that this is a weighty factor in the relevant balancing exercise, irrespective of the fact that they were lawfully entitled to live there (see, *mutatis mutandis*, *Lacz v Poland*, (dec.), no. 22665/02, 23 June 2009).

73. In these circumstances the Court does not find that the authorities overstepped their margin of appreciation by failing to strike a fair balance between the rights of the individuals affected by those regulations to respect for their private life and home and the conflicting interests of others and of

the community as a whole, nor does it find that there have been fundamental procedural flaws which impinged on the applicants' Article 8 rights.

74. There has accordingly been no violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 READ IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

75. The applicants complained of a violation of Article 14 read in conjunction with Article 8 that the legislation in force was discriminatory, as it denied them protection. They relied on Article 14 of the Convention, which, in so far as relevant, reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

76. The Government contested that argument.

A. The parties' submissions

77. The applicants claim that the definition of inhabited areas was discriminatory. The difference in treatment lay precisely in the fact that people who lived in inhabited areas were more deserving of protection than those who lived in “uninhabited” areas: this, in their view, constituted discrimination on the basis of residence. The applicants submitted that such a legislative decision could never be considered reasonable in that it was not acceptable to compromise on the safety and security of people.

78. The Government submitted that no breach of Article 14 could be found in the absence of an interference with Article 8. Moreover, the applicants had not established on which ground covered by the Convention they claimed to be suffering discrimination. Furthermore, the applicants had not been identified as being in an analogous situation to any person treated differently from them. Indeed, it had not been proved that other persons living in an “inhabited area” had been given preferential treatment. In actual fact, distances of sites for letting off fireworks were always measured from areas where at least a hundred people lived.

79. However, even assuming that there had been such a distinction, the Government referred to its margin of appreciation, and to an objective and reasonable justification, bearing in mind that the distinction was between people living in an area consisting of small hamlets which might accommodate one hundred people, and others who lived in sparsely inhabited areas where fewer than one hundred people lived. According to the Government, it was clear that the risk of injury or damage was much

higher in densely populated areas than in sparsely inhabited areas. Thus, once again the State achieved a balance between the safety and security of people and the country's traditions. This balance was all the more clear, bearing in mind that protective measures were still in place for the safety of people living in uninhabited areas.

80. In the applicant's case, fireworks were let off from three different places, and the relevant distances were respectively 150, 159 and 200 metres away, distances permissible in law for such an area. The distance of 200 m was also applicable to inhabited areas. However, if this distance was applied to all areas, firework displays close enough to the relevant village would not be possible, thus, this was an unacceptable alternative in view of the geographical context. In setting the 200 m distance the State had considered the importance of regulating the letting off of fireworks, the small size of the country, improving good practice, and the balance between individual interests and those of the community at large. There had therefore been no violation of Article 14.

B. The Court's assessment

1. General Principles

81. The Court reiterates that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see *Mintoff v. Malta*, (dec.), no. 4566/07, 26 June 2007).

82. In order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007, and *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008-). Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 61, ECHR 2010-...). The Court also points out that the grounds on which those differences of treatment are based are relevant in the context of Article 14. Only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of

Article 14 (see *O'Donoghue and Others v. the United Kingdom*, no. 34848/07, § 101, ECHR 2010-... (extracts)).

2. Application to the present case

83. The Court notes that Article 8 has been held to be applicable in the present case, it follows that Article 14, in conjunction with the latter provision, is also applicable.

84. The Court refers to its findings in paragraphs 68-73 above, whereby it concluded that in issuing permits for the letting off of fireworks in the applicants' vicinity, and the application of the national legislation in this respect, the authorities struck a fair balance between the right of the applicants to respect for their private life and home and the conflicting interests of others. Thus, even assuming that the applicants can be considered to be in an analogous situation to persons living in an inhabited area, the Court considers that, bearing in mind the relatively small difference in the applicable distances in practice, the geographical limitations of the country and the fact that the applicants have not been wholly deprived of protection, any difference in treatment was objectively and reasonably justified.

85. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

86. Lastly, the applicants make reference to Article 1 of Protocol No. 1 in respect of the damage they have sustained to their property, as a consequence of fireworks, over the years.

87. The Court notes that reference to the damage to the applicants' property was a matter debated before the national jurisdictions in the ambit of the applicants' Article 8 complaint. In this light the Court notes that in so far as this complaint goes beyond the allegations made under Article 8 which the Court has rejected in paragraph 73 above, the applicants failed to bring domestic proceedings in relation to any damage caused by third parties, a possibility open to them under domestic law. Nor did they cite this provision before the domestic constitutional jurisdictions.

88. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 8 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 22 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President