

EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

CHAMBER JUDGMENT IN THE CASE OF MORENO GÓMEZ v. SPAIN

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *Moreno Gómez v. Spain* (application no. 4143/02). The Court held unanimously that there had been a **violation** of Article 8 of the European Convention on Human Rights (right to respect for private life and the home).

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 3,884 euros (EUR) for pecuniary and non-pecuniary damage and EUR 4,500 for costs and expenses.

(The judgment is available in English and in French.)

1. Principal facts

The applicant, Pilar Moreno Gómez, is a Spanish national who was born in 1948. She has lived in a flat in a residential quarter of Valencia since 1970.

Since 1974 the Valencia City Council has allowed bars, pubs and discotheques to open in the vicinity of her home, making it impossible for local residents to sleep. In view of the problems caused by the noise, the City Council commissioned a report by an expert who found that the noise levels were unacceptable and exceeded permitted levels, reaching 115 dB after 3.30 a.m. on Saturday mornings. An independent police report to the City Council indicated that the local residents' complaints were founded and that nightclubs and discotheques in the sector did not systematically close on time.

In 1996 the City Council designated the area an acoustically saturated zone, thereby imposing a ban on new activities, such as opening a nightclub, that led to acoustic saturation. Despite the ban, the City Council granted a licence a month later for a discotheque to be opened in the building in which the applicant lived. The licence was subsequently declared invalid by the court in October 2001.

In August 1997 the applicant lodged a preliminary claim with the Valencia City Council. Having received no reply from the authorities, she followed it up with an application for

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

judicial review to the Valencia High Court of Justice, which was dismissed in a judgment of 21 July 1998.

The applicant then lodged an *amparo* appeal which the Constitutional Court declared admissible. However, by a judgment of 29 May 2001, it dismissed her appeal, holding that she had not proved the existence of a direct link between the noise and the alleged damage or the existence of a nuisance in her home amounting to a violation of the Constitution.

2. Procedure and composition of the Court

The application was lodged on 22 November 2001 and declared admissible on 29 June 2004.

Judgment was given by a Chamber of 7 judges, composed as follows:

Nicolas **Bratza** (British), *President*,
Matti **Pellonpää** (Finnish),
Josep **Casadevall** (Andorran),
Stanislav **Pavlovschi** (Moldovan),
Javier **Borrego Borrego** (Spanish),
Elisabet **Fura-Sandström** (Swedish),
Ljiljana **Mijović** (citizen of Bosnia and Herzegovina), *judges*,

and also Michael **O'Boyle**, *Section Registrar*.

3. Summary of the judgment¹

Complaint

The applicant complained of noise and of being disturbed at night by nightclubs near her home. She alleged that the Spanish authorities were responsible and that the resulting noise pollution constituted a violation of her right to respect for her home, as guaranteed by Article 8 of the Convention.

Decision of the Court

The Court noted that the applicant lived in an area that was indisputably subject to night-time disturbances that clearly unsettled her as she went about her daily life, particularly at weekends. The existence of the disturbances had been noted on a number of occasions. In the circumstances, there appeared to be no need to require, as the Spanish authorities had done, a person from an acoustically saturated zone to adduce evidence of a fact of which the municipal authority was already officially aware.

In view of the volume of the noise, at night and beyond permitted levels, and the fact that it had continued over a number of years, the Court found that there had been a breach of the rights protected by Article 8. Although the City Council had adopted measures intended to secure respect for the rights guaranteed by the Convention, it had tolerated, and thus contributed to, the repeated flouting of the rules which it itself had established.

¹ This summary by the Registry does not bind the Court.

The Court found that the applicant had suffered a serious infringement of her right to respect for her home as a result of the authorities' failure to take action to deal with the night-time disturbances and held that the respondent State had failed to discharge its obligation to guarantee her right to respect for her home and her private life, in breach of Article 8 of the Convention.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.