

Press release issued by the Registrar

Chamber judgment¹

[Muñoz Díaz v. Spain](#) (application no. 49151/07)

ROMA MARRIAGE: DENIAL OF SURVIVOR'S PENSION WAS DISCRIMINATORY

***Violation of Article 14 (prohibition of discrimination)
in conjunction with Article 1 of Protocol No. 1 (protection of property)
to the European Convention on Human Rights***

Principal facts

The applicant, María Luisa Muñoz Díaz, is a Spanish national belonging to the Roma community. She was born in 1956 and lives in Madrid.

In November 1971 she married M.D., who also belonged to the Roma community, in a marriage solemnised according to the rites of that community. They had six children, who were all listed in a family record book issued by the Spanish authorities. In 1986 they were granted "large family" status.

M.D. died on 24 December 2000. He had worked as a builder and had paid social security contributions for over 19 years. Mrs Muñoz Díaz applied for a survivor's pension but it was refused by the National Social Security Institute on the ground that her marriage to M.D. had not been registered in the Civil Register. That decision was confirmed in May 2001.

The applicant applied to the Labour Court and, in a judgment of 30 May 2002, was recognised as being entitled to a survivor's pension. The court held that the National Social Security Institute's decision represented discriminatory treatment based on ethnic identity.

On an appeal by the other party, the Madrid Higher Court of Justice quashed that judgment on 7 November 2002, on the ground that the couple had not been married according to the applicable law but in a customary form that produced no civil effects.

¹ Under Article 43 of the Convention, 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.

The applicant lodged an *amparo* appeal but it was dismissed by a Constitutional Court judgment of 16 April 2007. The court found that Mrs Muñoz Díaz and M.D. had chosen not to get married in a statutory or other recognised form whilst being free to do, as anyone could enter into a civil marriage regardless of ethnic considerations. The court further pointed out the importance of limiting the survivor's pension to marital relationships, in a context of limited social security resources that had to cater for a wide variety of needs. One of the Constitutional Court judges delivered a dissenting opinion.

Complaints, procedure and composition of the Court

The applicant complained that the refusal to grant her a survivor's pension on the ground that her marriage had no civil effects contravened the principle of non-discrimination guaranteed by Article 14, in conjunction with the protection of property under Article 1 of Protocol No. 1.

Relying on Article 14 (prohibition of discrimination) taken together with Article 12 (right to marry), Mrs Muñoz Díaz further complained that the Spanish authorities' failure to recognise Roma marriage – the only valid form of marriage in her community – as having civil effects, even though the community had been in Spain for at least five hundred years, breached her right to marry.

The application was lodged with the European Court of Human Rights on 29 October 2007 and on 26 May 2009 a public hearing was held in the Human Rights Building in Strasbourg.

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

Josep **Casadevall** (Andorra), **president**,
Elisabet **Fura** (Sweden),
Corneliu **Bîrsan** (Romania),
Boštjan M. **Zupančič** (Slovenia),
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (the Netherlands),
Luis **López Guerra** (Spain), **judges**,

and also Santiago **Quesada**, **Section Registrar**.

Decision of the Court

Article 14 taken together with Article 1 of Protocol No. 1

Mrs Muñoz Díaz had had six children with M.D. and they had lived together until his death. The civil registration authorities had issued them with a family record book and they had obtained the administrative status of large family, for which the parents had to be "spouses". Moreover, M.D. had been covered by social security for more than 19 years and his benefit card had indicated that he supported the applicant, as his wife, and his six children. The Court noted that this card was an official document as it had been stamped by the National Social Security Institute.

The Court emphasised the importance of the beliefs that the applicant had derived from belonging to the Roma community, which had its own values that were well established and deeply rooted in Spanish society. The applicant could not have been required, without infringing her right to religious freedom, to marry under canon law – the only possibility in 1971 – when she expressed her wish to marry according to Roma rites.

The Court observed that there was an emerging international consensus amongst European States recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle, to safeguard their interests and preserve cultural diversity.

The applicant had believed in good faith that the marriage solemnised according to Roma rites and traditions had produced all the effects inherent in the institution of marriage, especially as official documents showed her as a wife, and had thus had a legitimate expectation that she would be entitled to a survivor's pension. In their refusal the authorities had not taken account of her good faith or of her social and cultural specificities.

It was disproportionate for the Spanish State, which had granted large-family status, had provided health coverage to M.D.'s family and had collected M.D.'s social security contributions for over 19 years, then to have refused to recognise the effects of Mrs Muñoz Díaz's Roma marriage when it came to the survivor's pension. The Court could not accept the Government's argument that the applicant could have avoided the discrimination by entering into a civil marriage: to accept that a victim could have avoided discrimination by altering one of the factors at issue would render Article 14 devoid of substance.

The Court thus found, by six votes to one, that there had been a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1

Article 14 taken together with Article 12

The Court observed that civil marriage in Spain, as in force since 1981, was open to everyone, and it took the view that its regulation did not entail any discrimination on religious, cultural, linguistic or ethnic grounds.

Whilst certain religious forms (Catholic, Protestant, Muslim and Jewish) of expression of consent were accepted under Spanish law, they were recognised by virtue of agreements with the State and thus produced the same effects as civil marriage.

The fact that Roma marriage had no civil effects as desired by Mrs Muñoz Díaz did not constitute discrimination prohibited by Article 14. That complaint was thus rejected as manifestly ill-founded.

Article 41

By way of just satisfaction, the Court awarded the applicant 70,000 euros for all heads of damage combined, plus 5,412.56 euros for costs and expenses.

Judge Myjer expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available in French and English. This press release is a document produced by the Registry. It does not bind the Court. The judgments are available on its website (<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.