

**APPLICATION/REQUÊTE N° 15090/89**

Ayuntamiento de M v/SPAIN

Ayuntamiento de M c/ESPAGNE

**DECISION** of 7 January 1991 on the admissibility of the application

**DÉCISION** du 7 janvier 1991 sur la recevabilité de la requête

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**Article 25 of the Convention** *A local government organisation such as a municipality does not have the capacity to bring an application, as it is neither a "non-governmental organisation" nor a "group of individuals"*

**Article 25 de la Convention** *N'étant ni une «organisation non gouvernementale» ni un «groupe de particuliers», un organisme de collectivités locales, telle une commune, n'a pas qualité pour introduire une requête*

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*(TRANSLATION)*

## **THE FACTS**

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

The applicant is the M. City Council. The decision to introduce the present application was taken by the mayor of M. under his statutory powers to institute judicial proceedings on behalf of the City Council. The Council is represented before the Commission by its solicitor, Mr. Luis Fernando Granados Bravo.

On a date which has not been specified the M. City Council decided to set up a special centre for the rehabilitation of drug addicts in premises situated in the C. district. It was planned to open other centres of the same type later in all the districts of M.

However, the parents' association of the "Nuestra Señora del Recuerdo" School, situated near the future rehabilitation centre, petitioned the administrative court seeking protection of their fundamental rights. The association maintained in particular that the existence of such a centre in an area with a high concentration of schoolchildren placed in jeopardy the pupils' right to protection from exposure to physical and moral danger and their right to security of person under Articles 15 and 17 of the Spanish Constitution. In its judgment dated 19 September 1986, while recognising that the City Council had a right and at the same time a duty to set up centres for the rehabilitation of drug addicts, the M. Court of Appeal (Audiencia Territorial) ruled that in the circumstances of the case the City Council's decision infringed the pupils' right to protection from exposure to physical and moral danger. The judgment was explicitly based on the Convention and European human rights case-law.

The applicant authority appealed. It contested both the conclusions as to the facts and the interpretation of the Convention set out in the judgment of 19 September 1986. However, in a judgment dated 16 February 1988 the Supreme Court dismissed the appeal.

The City Council then lodged an appeal (*recurso de amparo*) with the Constitutional Court. The Council alleged, firstly, the violation of the right to protection from exposure to physical and moral danger and of the right to liberty and security of person (Articles 15 and 17 of the Constitution). Secondly, it asserted the right to equality of treatment (Article 14 of the Constitution), since the courts had given different decisions in similar cases.

In a decision (*auto*) dated 24 October 1988 the Constitutional Court declared the appeal inadmissible as the City Council did not have *locus standi* to plead Articles 15 and 17 of the Constitution. In any event, the court ruled that the applicant's complaints were manifestly ill-founded

## COMPLAINTS

The applicant authority first submits that it must be regarded as a non-governmental organisation within the meaning of Article 25 of the Convention, since the system of administrative decentralisation that obtains in Spain makes it independent of the Government. Moreover, it enjoys full legal capacity under local government legislation and the Council of Europe's Charter of Local Self-Government.

It raises the following complaints :

1. The applicant authority complains in the first place that the refusal to recognise its capacity to lodge a "de amparo" appeal asserting the right of drug addicts to protection from exposure to physical and moral danger and their right to security of person infringes Articles 13 and 17 of the Convention and the European Charter of Local Self-Government

2. Secondly, it alleges that its case was not given a fair hearing, partly because the Spanish courts based their rulings on an incorrect assessment of the social needs of a city like M, and partly because the Constitutional Court refused to recognise its capacity to complain of the violation of certain fundamental rights on behalf of the disadvantaged people of M. It also maintains that in similar cases the courts have reached different decisions, and relies on Articles 6, 13 and 14 of the Convention.

3. The applicant authority further maintains that the decisions given in this case by the Spanish courts effectively prevent protection of drug addicts' health, contrary to Articles 2 and 5 of the Convention. Relying on Article 14 of the Convention, it also alleges that the Spanish courts interpreted the Convention in an idiosyncratic way, thus discriminating against those living at the margins of society

## THE LAW

The applicant authority complains in the first place of a violation of the rights of drug addicts in M. under Articles 2, 5 and 14 of the Convention. In that connection it considers that in the present case the European Convention on Human Rights was incorrectly applied by the Spanish courts.

The applicant authority further complains that its rights under Articles 6, 13 and 14 of the Convention have also been infringed because the social needs of M. were not properly assessed, because the Constitutional Court refused to recognise

its capacity to assert certain rights and because in other cases the courts have allegedly reached different decisions.

However, the Commission considers that it is first necessary to consider whether the applicant authority is entitled to submit an application under Article 25 of the Convention. In that connection, it notes that according to the provision in question the Commission may receive petitions from any person, non-governmental organisation or group of individuals.

Consequently, the Commission has first examined the question whether the applicant authority, as it claims, can be held to be a non-governmental organisation within the meaning of that provision. It notes that local authorities are public law bodies which perform official duties assigned to them by the Constitution and by substantive law. They are therefore quite clearly governmental organisations (cf. No. 5767/72 and 15 other applications, Dec. 31.5.74, Yearbook 17 pp. 338, 352). In this connection, the Commission reiterates that in international law the expression "governmental organisation" cannot be held to refer only to the Government or the central organs of the State. Where powers are distributed along decentralised lines, it refers to any national authority which exercises public functions.

The Commission also takes the view that the applicant authority cannot be regarded as a person or group of individuals within the meaning of Article 25. It notes that such a construction would not be compatible with the distinction drawn in that provision between non-governmental organisations, on the one hand, and persons or groups of individuals on the other (No. 5767/72, *loc cit.*, p. 352).

Lastly, the Commission observes that the applicant authority is not empowered in any way to represent the drug addicts of M., who are alleged to be the victims of violations of Articles 2, 5 and 14 of the Convention.

It follows that the applicant was not entitled in any capacity to introduce an application based on Article 25 of the Convention. Consequently, the application is incompatible *ratione personae* with the provisions of the Convention and must be rejected pursuant to Article 27 para. 2 thereof.

For these reasons, unanimously, the Commission

DECLARES THE APPLICATION INADMISSIBLE.