

Issuing permits for firework displays close to people's homes did not breach their human rights

In today's Chamber judgment in the case **Zammit Maempel v. Malta** (application no. 24202/10), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 8 (right to private and family life) of the European Convention on Human Rights.

The case concerned the complaint by a family that the issuing of permits for fireworks, which took place twice a year, every year, in the vicinity of their home, breached their Article 8 rights and endangered their life and property.

Principal facts

The applicants are four Maltese nationals, two parents and their two children, who were born respectively between 1949 and 1986, and live in San Gwann (Malta).

They have lived in their house since 1994. It is one of three houses in a remote area of grassland which has not been classified as "inhabited" given that less than 100 people live in the area.

Every year, to celebrate certain village festivals ("feasts"), there is a firework display in the fields, at a distance of 150 metres or more from the applicants' house. The applicants allege that every time fireworks have been let off from that area, their lives, physical health and personal safety have been put at risk. In addition, the debris produced has caused considerable damage to their home.

Over the years, the applicants complained to the Commissioner of Police, to no avail. They also turned to the Ombudsman who concluded, in December 1999, that the Commissioner of Police should seek expert advice. A group of experts entrusted with looking into the situation recommended that the fields used for the firework displays should be classified as a restricted area under the applicable regulations.

On another occasion, in 2001, the Ombudsman criticised the issuing of licenses, in particular as regards the applicable distances and type of fireworks. Nonetheless, the Commissioner of Police has continued to issue permits for two feasts a year ever since.

In 2005, the applicants brought constitutional redress proceedings in the civil court in its constitutional jurisdiction which found partly in their favour agreeing that the noise levels caused by the fireworks were too high and that the fireworks had damaged the applicants' property and impaired the hearing of at least one of them.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Those findings were overturned on appeal. In 2009, the Constitutional Court found that, while the noise and peril from the fireworks had caused the applicants some inconvenience, the relevant regulations had been applied correctly and had struck a fair balance between the applicants' rights and the interest of the community as a whole.

Complaints, procedure and composition of the Court

Relying on Article 8, Article 14 (prohibition of discrimination) and Article 1 of Protocol No 1 (protection of property), the applicants complained that the permits issued for fireworks had caused them suffering in breach of their Article 8 rights.

The application was lodged with the European Court of Human Rights on 26 April 2010.

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

Nicolas **Bratza** (the United Kingdom), *President*,
Lech **Garlicki** (Poland),
George **Nicolaou** (Cyprus),
Päivi **Hirvelä** (Finland),
Zdravka **Kalaydjieva** (Bulgaria),
Nebojša **Vučinić** (Montenegro), *judges*,
David **Scicluna** (Malta), *ad hoc Judge*,

and also Fatoş **Araci**, *Deputy Section Registrar*.

Decision of the Court

Article 8

It was undisputed that the noise produced by the fireworks had lasted only for a limited time. Despite that, it had affected – even if only temporarily – the physical and psychological state of the applicants who had been exposed to it. Consequently, their right to respect for their private lives and home had been disturbed sufficiently to make their complaint admissible under Article 8.

The Court accepted that firework displays were one of the highlights of a village feast which undeniably generated an amount of income and which, therefore, aided the general economy. Moreover, traditional village feasts could be considered as part of the Maltese cultural and religious heritage.

The Court then noted that the noise levels could have impaired the hearing of at least one of the applicants. At the same time, there had not been a real and immediate risk to the applicants' life or personal integrity. The letting off of fireworks had also damaged the applicants' property, although the damage had been minimal and reversible.

In addition, the Government had been aware of the dangers of fireworks and had put in place a system whereby people and properties were protected to a certain degree. Thus, the issuing of permits for firework displays, as well as for transportation and uploading of fireworks, had been provided for in specific regulations. The actual letting off of fireworks had been further monitored by police inspectors and firefighters. Insurance covering the activity had also been mandatory.

It had been true that experts had made recommendations supporting the applicants' position. Given that the Commissioner of Police had not followed the experts' advice, the applicants could have challenged his/her decisions in ordinary civil court proceedings; therefore, an avenue for seeking redress at national level had been open to them. As they had instead undertaken constitutional redress proceedings, it could not be said that they had not had an opportunity to make their views heard. The fact that the outcome of those

proceedings had not been favourable to them was not sufficient to establish that they had not had access to the decision-making process.

Finally, they had acquired the property while aware of the situation of which they were complaining.

Consequently, there had been no violation of Article 8.

[Article 14 and Article 1 of Protocol No 1](#)

The Court dismissed the applicants' remaining complaints under Article 14 and Article 1 of Protocol No 1.

In respect of the complaint alleging discriminatory treatment, it reiterated that a fair balance had been struck between the applicants' and the community's interests, and that any difference in treatment between the applicants and people living in areas classified as "inhabited" had been objectively justified.

The Court rejected the complaint related to their property, finding that the applicants had not raised the issue before the Maltese courts.

The judgment is available only in English.

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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.