



NEWS REPORT

Date: 20 December 2009
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Title: ECHR held that Spain had violated Article 14 of the European Convention on Human Rights in conjunction with Article 1 of Protocol 1
Country: Spain

Context

Ground of discrimination: of Racial/ethnic origin

Source: EctHR, Muñoz Díaz v Spain (Application nº 49151/07), 8 December 2009

Field: Social advantages

Legislative provisions: 30/1981 of 7 July 1981 (Civil Code) and RDL 1/1994 of 20 June 1994 (General Social Security Act)

Content

Case development: The applicant, M.L. Muñoz Díaz, a Roma of Spanish nationality, complained about a refusal to grant her a survivor's pension, following the death of M.D., also a Roma of Spanish nationality, on the sole ground that they were not a married couple under Spanish law. She alleged that there had been a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1 to the Convention and with Article 12 of the Convention.

The applicant and M.D., both members of the Roma community, were married in November 1971 according to their community's own rites. The marriage was solemnised in accordance with Roma customs and cultural traditions and was recognised by that community. For the Roma community, a marriage solemnised according to its customs gives rise to the usual social effects, to public recognition, to an obligation to live together and to all other rights and duties that are inherent in the institution of marriage.

The applicant had six children, who were registered in the family record book issued to the couple by the Spanish civil registration authorities (*Registro civil*) on 11 August 1983. On October 1986 the applicant and her family were granted first-category large-family status.

On 24 December 2000 the applicant's husband died and at the time of his death had been working and paying social-security contributions for nineteen years supporting his wife (registered as such) and his six children as his dependants.

The applicant applied for a survivor's pension. The National Institute for Social Security (INSS) refused to grant her one on the ground that she “[was] not and [had] never been the wife of the deceased prior to the date of death”, as required by the laws 30/1981 of 7 July 1981 (Civil Code) and the General Social Security Act (RDL 1/1994 of 20 June 1994).

The applicant filed a claim with the Labour Court. In a judgment dated 30 May 2002 of Labour Court no. 12 of Madrid, she was granted an entitlement to receive a survivor's pension, her Roma marriage thus being recognised as having civil effects. The judgment said, for example, that

(...) Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin is applicable to the present case, where the denied benefit derives from the employment relationship of the insured person, who died from natural causes while he was still working”.

The INSS appealed. In a judgment of 7 November 2002 the Madrid Higher Court of Justice quashed the impugned judgment. The applicant lodged an *amparo* appeal with the Constitutional Court (any citizen can present a “amparo” appeal with the Constitutional Court if he or she considers that some of his or her fundamental rights have been violated by a public authority) relying on the principle of non-discrimination in terms of race and social condition. In a judgment of 16 April 2007 the Constitutional Court dismissed the appeal.

The applicant complained that the refusal to grant her a survivor's pension, on the grounds that her marriage solemnised according to the rites of the Roma minority to which she belonged had no civil effects, infringed the principle of non-discrimination recognised by Article 14 of the Convention, taken together with Article 1 of Protocol No. 1.

Decision of the Court: The Court finds that it is disproportionate for the Spanish State, which issued the applicant and her Roma family with a family record book, granted them large-family status, afforded health-care assistance to her and her six children and collected social security contributions from her Roma husband for over nineteen years, now to refuse to recognise the effects of the Roma marriage when it comes to the survivor's pension.

The Court did not accept the Government's argument that it would have been sufficient for the applicant to enter into a civil marriage in order to obtain the pension claimed. The prohibition of discrimination enshrined in Article 14 of the Convention is meaningful only if, in each particular case, the applicant's personal situation in relation to the criteria listed in that provision is taken into account exactly as it stands. To proceed otherwise in dismissing the victim's claims on the

ground that he or she could have avoided the discrimination by altering one of the factors in question – for example, by entering into a civil marriage – would render Article 14 devoid of substance.

Consequently, the Court finds that in the present case there has been a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1.

Internet link source and additional information:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=859369&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>