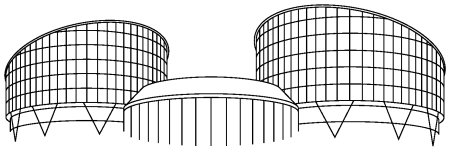

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CUENCA ZARZOSO v. SPAIN

(Application no. 23383/12)

JUDGMENT

STRASBOURG

16 January 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Cuenca Zarzoso v. Spain,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Helena Jäderblom, *President,*
Luis López Guerra,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking, *judges,*
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 19 December 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 23383/12) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Spanish national, Mr Miguel Cuenca Zarzoso ("the applicant"), on 13 April 2012.

2. The applicant was represented by Mr A. Morey Navarro, a lawyer practising in Valencia. The Spanish Government ("the Government") were represented by their Agents, Mr F.A. Sanz Gandasegui and Mr R.A. León Cavero, State Attorneys.

3. The applicant alleged a breach of his right to respect for his home, contrary to Article 8 of the Convention.

4. On 18 December 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1930 and lives in Valencia. He has lived in San José, a residential district of Valencia since 1962. Since 1974 Valencia City Council ("the City Council") has allowed licensed premises, such as bars, pubs and discotheques, to open in the vicinity of his home. In view of the problems caused by the noise, the City Council resolved on 22 December 1983 not to permit any more licensed premises to open in the

area. However, the resolution was never implemented and new licences were granted. In 1993, the Polytechnic University of Valencia carried out a study of the levels of night-time noise during the weekend on behalf of the City Council. It was reported that in the San José district the noise levels were notably higher to the legally accepted norm.

6. In 1994, the applicant became president of the neighbourhood association of his district. In that position, and in an attempt to improve the noise-pollution situation for both himself and his neighbours, he lodged various claims against the City Council. He also asked for the withdrawal of the business licences of several establishments. The City Council replied that in fact no business activities were being carried out in some of the premises, and that the business activities carried out in the others could not be considered as producing a high level of noise (for example bakeries). Lastly, the licences had in any case expired in many of the establishments.

7. On 28 June 1996 the City Council adopted the municipal Ordinance on noise and vibrations (*Ordenanza Municipal de Ruidos y Vibraciones* - hereinafter "the Ordinance"). Furthermore, in July 2000, at the applicant's request, the municipality required the pub located in the basement of the applicant's building to install a noise limiter.

8. Following a resolution of the City Council, sitting in plenary session on 27 December 1996, which was published in the Valencia Official Gazette on 27 January 1997, the area in which the applicant lives was designated an "acoustically saturated zone" (*zona acústicamente saturada*).

9. In view of the fact that the levels of noise pollution did not decrease, the applicant decided to replace his windows with double glazing and to install air conditioning in order to alleviate the high temperatures caused by having the windows permanently closed in summer.

10. On 14 June 1999 the applicant brought a preliminary State liability claim before the City Council, relying on Article 15 (right to life and to physical integrity) and Article 18 § 2 (right to privacy and inviolability of the home) of the Constitution. The applicant asked for compensation for the expenses incurred, as well as for compensation in respect of pecuniary and non-pecuniary damage.

11. Having received no reply from the authorities (*silencio administrativo negativo*), the applicant lodged a complaint with the Valencia High Court of Justice ("the High Court") on 5 December 2001. On 5 January 2001 the City Council issued a resolution denying his preliminary State liability claim. The City Council joined the proceedings before the High Court.

12. The applicant provided the court with two reports: the first one of 1 April 1998 prepared by the municipal service for the environment stated that:

> "Prior to the entry into force of the declaration of an acoustically saturated zone, the levels of disturbance by noise during the night exceeded 65 decibels, mainly during the nights from Thursdays to Sundays from 10 p.m. to 5 a.m. in the morning.
>
> ... after the declaration [of the area] as an acoustically saturated zone and the adoption of some corrective measures the levels of disturbance still exceed [those permitted for night-time].

13. The second report was issued on 28 March 2000 by the same municipal service, which admitted that:

> "... it must be concluded that ... the limits established in Article 30 § 2 of [the Ordinance] are still being exceeded."

14. In order to sustain his arguments, the applicant also produced an expert report, produced by an applied physics professor, which was joined to his complaint. The report noted as follows:

> "The measured noise on the street and the noise perceived by neighbours in their homes, in the Xuquer area of Valencia – which is where the applicant lives – rise high total levels of ... 70 decibels ... Those levels are clearly related to the presence of a concentration of the entertainment industry in that area (pubs and discotheques).

15. As a result of this situation, the expert stated that it could be estimated that the sound levels for instance in a front facing bedroom were approximately 50 decibels (hereinafter dBA) and sometimes they could even reach 60 dBA. The expert highlighted that the City Council had recommended a maximum permitted level at night of 30 dBA. Consequently, there was a difference of 20-30 dBA. However, the expert report pointed out that this was a general estimation and that it was made without measuring the inside of the dwellings concerned.

16. Lastly, the applicant produced a medical report stating that he was suffering from anxiety due to the excessive noise inside his flat. The report concluded by considering that there was a relationship of cause-effect between the noise pollution and his psychiatric illness.

17. During the proceedings, the High Court ordered a legal medical expert report by a specialist in preventive medicine. The appointed expert reported that:

> "... the nocturnal noise altered necessarily the physiological sleep of Mr Cuenca and his family, [although it is not] possible to ascertain the intensity of the disturbance owing to the lack of corresponding sleep studies".
>
> "... the sleep disturbance as a consequence of that noise produced in Mr Cuenca an 'anxious depressive syndrome reacting to the noise, change in his psychiatric state manifested by irritability with his, anxiety, diminution of intellectual ability and somatization'".

18. The City Council maintained that it was not proven that the applicant was suffering the noise level which he claimed in his home, as the environmental noise is perceived differently in each home, according to its height, aspect and other particularities. Furthermore, the City Council had

been carrying out extensive activities in order to enforce compliance with the legislation on noise. It could not be said that the City Council tolerated infractions of that legislation.

19. In a judgment of 20 June 2003 the High Court dismissed the complaint. It found that there was no causal connection between the noise pollution and the alleged damage caused to the applicant, since there was no evidence proving that in his particular flat the level of noise pollution exceeded the established limits. Indeed, the applicant had decided to replace his windows without previously asking for a measurement of the noise inside his flat, as provided by Article 54 of the Ordinance. Furthermore, it should be taken into account that the applicant's flat was on the fourth floor, where the noise would certainly be less intense than on a lower floor.

20. The applicant lodged an *amparo* appeal before the Constitutional Court, claiming that the State had violated his fundamental rights protected by Articles 14 (equality before the law), 15 (right to life and to physical and moral integrity), 18 (inviolability of the home) and 24 (right to a fair trial) of the Spanish Constitution. This appeal was initially dismissed on 18 October 2004.

21. On 16 November 2004 the European Court of Human Rights (hereinafter "the Court") delivered a judgment in the case of *Moreno Gómez v. Spain* (no. 4143/02, ECHR 2004-X). In the light of this judgment, the public prosecutor lodged an appeal against the Constitutional Court's decision, asking for the admission of the applicant's *amparo* appeal. On 31 January 2005 the Constitutional Court upheld the public prosecutor's appeal and declared the *amparo* appeal admissible. The Constitutional Court stated that the judgment issued by the European Court of Human Rights in the case of *Moreno Gomez*:

> "... justifie[d] entirely the reconsideration of the present *amparo* appeal, in order to ascertain the measure in which it might deal with an analogous case, and to examine whether the objects of analysis of the [Strasbourg] Court [had been] the same fundamental rights as in this *amparo* appeal".

22. In the proceedings before the Constitutional Court, the public prosecutor claimed that there had been a violation of Articles 15 and 18 § 2 of the Constitution. He argued that the Court had already addressed this issue in the case of *Moreno Gómez*, which had dealt with the exact same situation suffered by the applicant's neighbour, and declared that Spain had violated Article 8 of the Convention. The prosecutor considered that *Moreno Gómez* and the applicant's case were similar in terms of the facts as well as in the object and the merits, which was in principle sufficient to deliver a judgment on the merits on the alleged violations of the right to private and family life and to inviolability of the home.

23. In a judgment of 29 September 2011, served on the applicant on 19 October 2011, the plenary of the Constitutional Court dismissed the *amparo* appeal, arguing that (1) both cases were not identical, (2) the

applicant had not proved that in his particular case the noise at his flat was above the permitted level, (3) that the City Council had indeed adopted specific measures to reduce noise pollution at the applicant's neighbourhood and (4) that he had not proved that his health problems had been directly caused by noise pollution. The judgment was not adopted by unanimity.

24. Three judges out of twelve issued a dissenting opinion holding that there had been a violation of Articles 10 § 2, 18 §§ 1 and 2 of the Constitution. In particular, the dissenting judges argued that the standard employed by the Constitutional Court to decide when the right to privacy and family life had been infringed should have been based on the case-law of the Court and that prolonged exposure to a high levels of sound that could be qualified as avoidable and unbearable deserved the protection of the courts, given that it impeded him from living a normal life. They reiterated that according to the judgment delivered in the *Moreno Gómez* case (cited above), the assessment of a violation no longer depended on the evidence provided by the applicant about the seriousness of the noise pollution inside his home. Instead, the decisive element was to be hereafter the location of the house in an excessively noisy area and it would be enough for the applicant to prove the excessive level of noise in the street. Furthermore, the effects of noise on the applicant's health had been confirmed by the expert report issued in the proceedings before the High Court.

II. RELEVANT DOMESTIC LAW

A. Constitution

25. The relevant provisions of the Constitution read:

Article 10 § 2

"The provisions relating to the fundamental rights and freedoms recognised under the Constitution shall be construed in accordance with the Universal Declaration of Human Rights and the international treaties and agreements which Spain has ratified in that sphere."

Article 14

"Spaniards are equal before the law; they may not be discriminated against in any way on grounds of birth, race, sex, religion, opinions or any other condition or personal or social circumstance."

Article 15

"Everyone shall have the right to life and to physical and mental integrity. ..."

Article 18 § 2

"The home shall be inviolable. ..."

Article 24

"1. All persons have the right to obtain effective protection by the judges and the courts in the exercise of their rights and legitimate interests, and in no case may this result in a party not being able to put forward a defence...

2. Likewise, everyone has the right of access to the ordinary courts in accordance with the law; to defence and assistance by a lawyer; to be informed of the charges brought against them; to a public trial without undue delays and with full guarantees; to the use of evidence appropriate to their defence; not to make self-incriminating statements; not to incriminate themselves; and to be presumed innocent ..."

Article 45 § 1

"Everyone shall have the right to enjoy an environment suitable for personal development and the duty to preserve it ..."

Article 53 § 2

"Every citizen shall be entitled to seek protection of the freedoms and rights recognised in Article 14 and in the first section of Chapter II by bringing an action in the ordinary courts under a procedure designed to ensure priority and expedition and, in appropriate cases, by an appeal [*recurso de amparo*] to the Constitutional Court ..."

B. Fundamental Rights (Protection) Act (Law no. 62/1978)

26. The relevant provision of Law no. 62/1978 read:

Article 6
(repealed by the Administrative Courts Act of 13 July 1998 Law no. 29/1998)

"... [a]n application for judicial review may be brought in accordance with the procedural rules set out in this section in respect of decisions of the public authorities that are subject to administrative law and liable to affect the exercise of the fundamental rights of the person ..."

C. Constitutional Court Act (Law no. 2/1979)

27. The relevant provision of Law 2/1979 reads:

Article 44 -1c

"1. An *amparo* appeal for violations of rights and guarantees amenable to constitutional protection ... will lie only if:

...

(c) the party relying on the alleged violation formally pleads it in the relevant proceedings after becoming aware of its occurrence."

D. European Union Law

28. After the *Moreno Gomez* judgment (*Moreno Gómez v. Spain*, no. 4143/02, ECHR 2004-X), the EU issued the Directive 2006/12, which in its Article 4 § 1(a) regulates pollution which causes "a nuisance through noise or odours". This Directive was transposed into Spanish law by Law 13/2009 of 17 November.

E. Ordinance on noise and vibrations issued by the City Council on 28 June 1996 ("the Ordinance")

29. The relevant provisions of the said bylaw read:

Article 8 § 1

"Permitted external noise levels shall be determined by reference to the main user of each of the areas marked on the city development plan and shall not exceed:

Maximum noise levels:

...

Multiple family residences:

Daytime (from 8 a.m. to 10 p.m.): 55 dB (A)

Night-time (from 10 p.m. to 8 a.m.): 45 dB (A)

..."

Article 30

"1. Zones that are acoustically saturated by additional causes are areas or places in which a large number of establishments, the activity of the people frequenting them and passing traffic expose local residents to high noise levels and cause them serious disturbance.

2. An area may be designated an acoustically saturated zone (*zona acústicamente saturada*) if, though individual activities are compliant with the levels set out in this bylaw, the level of disturbance due to external noise as referred to in Article 8 is exceeded twice weekly in consecutive weeks, or three times intermittently over a period of thirty-five days, and exceeds 20 dB (A)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

30. The applicant complained under Article 8 of the Convention of inaction on the part of the local authorities in Valencia, in particular the City Council, which had failed to put a stop to the night-time disturbances. In particular, he claimed that the City Council had not fulfilled its positive duty

to take reasonable and appropriate measures to secure the applicant's rights under Article 8, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

31. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

32. The Government submitted that the City Council had implemented several and sufficient measures to remedy the situation. These measures had included declaring the zone where the applicant's building was located an acoustically saturated zone and imposing administrative sanctions against commercial premises which did not respect the noise limits.

33. According to the Government, thanks to the measures implemented by the City Council, the ambient noise had notably decreased in the vicinity of the applicant's home during the whole day and especially during the night. During the measurements carried out in 1996 the noise had been found to have been above the 65 dBA (limit considered to be harmful following medical experts) on more than one hundred occasions, exceeding at least this limit once per week, in 2015 only twenty-five measurements exceeded the limit. Moreover, in 1996 the measurements that had exceeded the limit had been taken at 6 a.m., while on 2015 they had been taken at 1 a.m. at the latest, which in their view meant that the noise pollution had decreased progressively.

34. As regards the applicant's specific situation, the Government pointed out that he had replaced the windows before lodging the liability claim and noted that the City Council had carried out several measures and obliged the pub located in the basement of the applicant's building to install a noise limiter. Additionally, the City Council had performed some noise tests inside another neighbour's flat, which had showed that the noise had

reached 35 dBA, but not 50 dBA or 60 dBA as reported by the applicant, although indeed that noise had itself been above the 30 dBA considered the maximum permissible level by the City Council.

35. The Government further stated that the declaration of an acoustically saturated zone had been an effective instrument to control noise pollution in cities. Therefore, if the Court concluded in the present application that there had been a violation of the fundamental rights of those who live in such an area, this would imply an obligation on the City Council to compensate all the residents of the area who had installed double glazing or carried out sound-proofing work, even in those cases where the claimant had not proved the effect of the noise inside his or her home. As a consequence, the City Council would stop declaring some neighbourhoods as acoustically saturated zones, which would in the end be contrary to citizens' interests.

36. The Government argued that the present case had to be distinguished from the case of *Moreno Gómez* (cited above) because the domestic courts had found that the applicant had failed to establish the noise levels inside his home. The Government also argued that the applicant could have asked the City Council for a free noise-level test, in accordance with Article 54 of the Ordinance.

(b) The applicant

37. The applicant argued that requiring him to provide an individual test of the noise level inside his house was contrary to the Court's case-law. The applicant cited, in particular, the case of *Moreno Gómez* (cited above). Ms Moreno Gomez lived in the same residential district as the applicant. According to the applicant, Ms Moreno Gomez's case shared exactly the same background as his. In the applicant's view, the differences between *Moreno Gomez* and his own case were insignificant.

38. In *Moreno Gomez*, the Court had stated that the existing noise in the area had been notorious and undeniable, and had therefore considered that the "requirement of evidence [such as a noise test from inside the home had been] formalistic", since the municipal authorities had labelled the area "acoustically saturated" (*Moreno Gómez*, cited above, § 59).

39. In addition to that, the applicant stated that it was not true that he had simply claimed to live in an acoustically saturated zone, but that he had tried to prove that his rights had been affected by the noise by three means: firstly, through two medical expert reports; secondly through measurements carried out in the area before and after it had been an acoustically saturated zone; and lastly through invoices for his medical treatment and for the replacement of his windows and the installation of air conditioning.

2. The Court's assessment

(a) General principles

40. Concerning the relevant general principles, the Court refers to paragraphs 53 to 56 of the above-mentioned judgment in the *Moreno Gómez* case.

41. In that judgment, which was quoted by the applicant and which was also analysed by the Spanish Constitutional Court in its resolution delivered in the present case, the Court noted that the applicant lived in an area that was indisputably subject to night-time noise and that clearly disturbed the applicant's daily life, particularly at weekends. The Court established that the principal issue consisted in determining whether the nuisance caused by the noise attained the minimum level of severity required to constitute a violation of Article 8 (see *Moreno Gómez*, cited above, § 58).

42. As regards the necessary evidence concerning the excessive noise suffered in particular by the applicant in her flat, the Court considered that it would be unduly formalistic to require such evidence in the case, since the City authorities had already designated the area in which the applicant lived an acoustically saturated zone, which, within the meaning of the municipal Ordinance of 28 June 1996, meant an area in which local residents were exposed to high noise levels which caused them serious disturbance (see *Moreno Gómez*, cited above, § 59).

43. Lastly, the Court concluded that in view of the volume of the noise - at night beyond the permitted levels – and in view of the fact that it had been present over a prolonged period of a number of years, there had been a breach of the rights protected by Article 8.

(b) Application to the present case

44. As in *Moreno Gómez*, the present application does not concern interference by public authorities with the right to respect for the home, but their failure to take action to put a stop to third-party breaches of the right relied on by the applicant (see *Moreno Gómez*, cited above § 57).

45. As in that case, the Court notes that the applicant lives in an area that is indisputably subject to night-time disturbances; this clearly unsettles the applicant as he goes about his daily life, particularly at weekends. The Court must now determine whether the nuisance caused by the noise attained the minimum level of severity required for it to constitute a violation of Article 8 (see *Moreno Gómez*, cited above, § 58).

46. The Court observes that the City Council was aware of the fact that the volume of the noise in that particular neighbourhood went beyond the permitted levels. Firstly, the City authorities had already designated the area in which the applicant lived an acoustically saturated zone, which, within the meaning of the Ordinance, meant an area in which local residents were exposed to high noise levels which caused them serious disturbance.

Secondly, those high noise levels have continued for several years after the declaration of the district as an acoustically saturated zone, as confirmed by the official reports provided by the City Council services in 1998 and 2000 (see paragraphs 12 and 13 above). Indeed, that fact has been confirmed by the Government, who acknowledged that several years after the applicant's claim the volume of the noise was 35 dBA in the applicant's neighbour's flat, above the 30 dBA considered the maximum permissible level by the City Council itself (see paragraph 34 above).

47. Furthermore, the Court notes that, as pointed out in the dissenting opinion to the Constitutional Court judgment, the expert report ordered by the High Court stated that there had been a relation of causality between the nocturnal noise level and the alteration of the physiological sleep of the applicant and his family, and his anxious depressive syndrome.

48. In these circumstances, the Court considers that it would be unduly formalistic in the instant case to require the applicant to provide evidence of the noise in his flat, as the City authorities have already designated the area in which the applicant lives an acoustically saturated zone (see *Moreno Gómez*, cited above, § 59). The same argument can be brought up as far as the link of causality is concerned.

49. Additionally, the Court observes that, contrary to what the Government stated, the applicant, in his position as president of the neighbourhood association of his district, had lodged numerous claims against the City Council before he replaced his windows. It cannot be considered that the applicant's behaviour has been abusive or disproportionate to the disturbances he was suffering. In this regard, the Court observes that it is not reasonable to require a citizen suffering harm to his or her health to wait until the end of the proceedings before using the legal means he or she has at his or her disposal.

50. The Court agrees with the Government that the City Council took various measures in order to solve the problem of noise pollution in the area in which the applicant lived (see paragraph 32 above). The Court observes that the City Council adopted general measures such as the Ordinance, the declaration of the neighbourhood as an acoustically saturated zone and, particularly concerning the applicant, the order given to the pub located in the basement of the applicant's building to install a noise limiter, which should in principle have been adequate to secure respect for the guaranteed rights.

51. However, the Court observes that those measures were insufficient in this particular case. Regulations to protect guaranteed rights serve little purpose if they are not duly enforced and the Court must reiterate that the Convention is intended to protect effective rights, not illusory ones. The Court has repeatedly emphasised that the existence of a sanction system is not enough if it is not applied in a timely and effective manner (see *Bor v. Hungary*, no. 50474/08, § 27, 18 June 2013). In the present case, the

decrease in the number of times that the legal dBA levels were exceeded on a daily basis and the administrative sanctions imposed by the City Council cannot be considered sufficient measures. The facts show that the applicant suffered a serious infringement of his right to respect for his home as a result of the authorities' failure to take action to deal with the night-time disturbances (see *Moreno Gómez*, cited above, § 61).

52. The Court agrees with the Government assertion that the mere declaration of an area as an acoustically saturated zone cannot be considered a justification to recognise damage caused to all the residents. In the present case, however, the disturbances suffered by the applicant were present for a long time previous to and following the declaration of the acoustically saturated zone, and implied therefore a continuous infringement of his private life.

53. For all these reasons, the Court concludes that contrary to the Government statements, the present case is very similar to *Moreno Gómez* (cited above). The applicant in the present case lives in the same acoustically saturated zone as Ms Moreno Gómez did – just some metres away in fact – and the applicant presented – as Ms Moreno Gómez had done too – sufficient proof of the consequences that the noise had caused to his health.

54. In these circumstances, the Court finds that the respondent State has failed to discharge its positive obligation to guarantee the applicant's right to respect for his home and his private life, in breach of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

56. The applicant claimed 4,321.76 euros (EUR) in respect of pecuniary damage, including:

- EUR 3,042.12 for the installation of double glazing in his home;
- EUR 1,075.81 for the installation of air conditioning to avoid having to sleep in excessive heat at night as a result of having his windows closed;
- EUR 98.93 for the building permit fee for the above mentioned work;
- EUR 104.90 for tax on buildings, installations and building work;

The applicant also claimed EUR 3,005.05 in respect of non-pecuniary damage, on the grounds of the sleeplessness and distress caused by the

situation and the impact to the applicant's health, which had been certified through the medical reports presented before the courts.

57. The Government contested those claims.

58. The Court notes that the sole ground for awarding the applicant just satisfaction in the instant case was the failure of the relevant authorities to take the action they could reasonably have been expected to take to put a stop to the infringement of the applicant's right to respect for his home. The Court therefore finds that there was a causal link between the violation of the Convention and the pecuniary damage sustained by the applicant. He is therefore entitled to an award under that head. In addition, the authorities' failure to take action undeniably caused the applicant non-pecuniary damage for which he should also receive compensation. Ruling on an equitable basis, as required by Article 41, the Court awards the applicant the amount of EUR 7,000 to cover both pecuniary and non-pecuniary damage. It rejects the remainder of the claim.

B. Costs and expenses

59. The applicant also claimed EUR 6,671.26 for the costs and expenses he had incurred before the domestic courts and the Court, which included EUR 3,111.26 for the costs and expenses incurred before the domestic courts, EUR 1,140 for the costs of expert reports and EUR 2,420 for those incurred before the Court.

60. The Government did not make any submissions on this point.

61. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 6,671.26 covering costs under all heads.

C. Default interest

62. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, at the rate applicable at the date of settlement:

(i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, covering pecuniary and non-pecuniary damage;

(ii) EUR 6,671.26 (six thousand six hundred and seventy-one euros twenty-six cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Helena Jäderblom
President