



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

Communicated on 10 July 2015

THIRD SECTION

Application no. 12518/14
José Antonio LÓPEZ GALLEGO
against Spain
lodged on 30 January 2014

STATEMENT OF FACTS

A. The circumstances of the case

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

1. Proceedings before the Murcia Juvenile Judge No. 1

1. The applicant, Mr José Antonio López Gallego, is a Spanish national, who was born in 1956 and lives in Molina de Segura.

2. On 21 April 2009, within the framework of an action for civil responsibility as part of criminal proceedings instituted against a minor before the Murcia Juvenile Judge No. 1, the applicant was summoned to a hearing as a witness. The hearing was to take place on 22 April 2009.

3. The applicant failed to appear without providing a proper justification and the hearing had to be postponed. The Murcia Juvenile Judge No. 1 instituted disciplining proceedings against the applicant for having failed to appear at the hearing without a proper justification. On 29 September 2009 the judge ruled against the applicant and imposed him a fine of 450 euros (EUR). The applicant appealed against this decision, which was upheld on 6 November 2009.

4. The applicant was newly summoned to the hearing, which this time was to take place on 20 May 2009. Days before this date, the applicant sent a letter to the Judge, arguing that he should not be summoned as a witness but as an expert witness. The applicant failed to appear again, but this time he sent a medical certificate stating that he was suffering from lower back pain that made it impossible for him to attend the hearing. The hearing had to be postponed.

5. On the morning of 21 May 2009 the police tried to summon the applicant to the hearing that was to take place on 16 September 2009.

Despite the fact that the applicant was allegedly suffering from lower back pain the day before – and, according to the medical certificate, he had to rest –, the police could not find him, for he was that morning in another city 50 kilometres away from his home. The applicant was finally summoned in the afternoon of 21 May 2009. The applicant failed to appear in court again, once more without providing justification and the hearing had to be postponed. The judge instituted disciplinary proceedings against the applicant, as a result of which a new fine of EUR 600 was imposed on him.

6. On 21 October 2009 the applicant was, again, summoned to the hearing which, this time, was to take place on 18 November 2009. The applicant failed to appear in court and the hearing had to be postponed. On 18 November 2009, the Murcia Juvenile Judge No. 1 imposed him another fine in the amount of EUR 600, for it was the third time he had failed to abide by the judge's order. At the same time, the Murcia Juvenile Judge No. 1 decided to send the case to the public prosecutor for a decision as to whether the applicant's behaviour could amount to a crime of serious disobedience to a person in authority as provided by Article 556 of the Criminal Code and, consequently, whether criminal proceedings should be brought against him.

2. The criminal proceedings before the Murcia Criminal Judge No. 5

7. Criminal proceedings were instituted before the Murcia Criminal Judge No. 5 against the applicant, who was prosecuted for a crime of serious disobedience to a person in authority pursuant to Article 556 of the Criminal Code.

8. On 3 October 2011 the Murcia Criminal Judge No. 5 found the applicant guilty of this crime and sentenced him to nine months' imprisonment. The judge found that the applicant had intentionally and consistently failed to obey the Juvenile Judge's summons only because he disagreed with the court's decision to summon him as a witness and not as an expert. According to the Murcia Criminal Judge No. 5, the applicant was not entitled to disobey court orders on that ground, for it was not for the applicant to decide in which capacity he should give statement before the courts. The Judge further argued that this sentence was not the result of the different occasions where the applicant failed to appear, but of his "tenacious, stubborn and obstinate" attitude to "disobey authority" along the whole proceedings.

3. Proceedings before the Murcia Audiencia Provincial and Constitutional Court

9. The applicant appealed against the first-instance judgment before the Murcia *Audiencia Provincial*. He invoked his right not to be punished without law and his right not to be punished twice for the same facts. As regards the first ground of appeal, the applicant submitted that the facts for which he had been held guilty did not constitute a criminal offence under national law. He relied on the Supreme Court's case-law according to which for those acts to constitute a crime it was required that the judge who had been disobeyed had explicitly warned the defendant of the possibility of being prosecuted under Article 556 of the Criminal Code. The applicant

argued that Article 292 § 2 of the Civil Procedure Code provided for a warning in that respect. According to the applicant, he was never duly and expressly warned about this specific consequence. As regards the second ground of appeal, the applicant argued that his conviction had infringed the *ne bi in idem* principle as he had been criminally convicted for the same facts for which he had already been disciplinarily punished with three fines.

10. On 18 March 2013 the Murcia *Audiencia Provincial* upheld the applicant's conviction. As regards the applicant's grief concerning his right not to be punished without law, the Murcia *Audiencia Provincial* firstly stated that Article 292 § 2 of the Civil Procedure Code was irrelevant to the instant case, for it only was conceived to regulate civil proceedings and not criminal ones. Additionally, the court stressed that the applicant had in fact been warned. However, for the sake of legal certainty and foreseeability, the court considered it worthwhile to clarify the case-law in this respect. In this regard, the court stressed that the jurisprudence that was mentioned by the applicant in support of his allegations had been superseded by a constant and more recent Supreme Court's case-law according to which it sufficed that the defendant had been duly served with the summons. Consequently, it was no longer necessary that those summons contained a specific warning in relation to the possibility of being prosecuted under Article 556 of the Criminal Code in case of non-compliance with the court orders.

11. As regards the applicant's complaint based on the principle of *ne bis in idem*, the appellate court found that the applicant had never paid the fines and that no execution proceedings had been initiated by the Administration. As a result of this, in practice, the applicant had not been punished twice. For the sake of completeness, the court also stressed that both proceedings were different in their "nature and origin". Additionally, it stated that the facts for which the applicant had been firstly disciplinarily fined and the facts for which he was criminally convicted were not the same. The disciplinary fines had been imposed on him for each individual and isolated act of non-appearance at the hearings, which had provoked the stay of the proceedings. On the other hand, the criminal conviction had been the result of a toughly obstinate and continuous attitude of contempt on the part of the applicant towards multiple court summonses. Consequently, the applicant's appeal was dismissed.

12. The applicant lodged an *amparo* appeal with the Constitutional Court that was declared inadmissible by a decision of 21 October 2013 due to the "lack of violation of a fundamental right".

B. Relevant domestic law and practice

1. Criminal Code

Article 556

"Those who (...) resist the authority or its agents, or seriously disobeys the orders given by them in the performance of their duties, shall be punished with a term of imprisonment of six months to one year."

2. *Criminal Procedure Code*

Article 716

“A witness who refuses to testify before the Court shall be punished with a fine from 200 up to 5,000 euros, which will be imposed immediately.

If despite of this punishment, this attitude persists, the witness will be prosecuted for committing a crime of serious disobedience to a person in authority.”

3. *Law 30/1992 of 26 November 1992 on the legal rules governing public administrative authorities and ordinary administrative proceedings*

Article 133

“No one shall be punished more than once in criminal or administrative proceedings for the same act or on the same account of which he or she has been previously punished.”

COMPLAINT

The applicant complains under Article 4 § 1 of Protocol No. 7 to the Convention that in both disciplining and criminal proceedings he was found guilty in respect of the same facts.

QUESTION TO THE PARTIES

1. Has the applicant been punished twice for the same offence, as prohibited by Article 4 § 1 of Protocol No. 7?

2. The Government are requested to provide the Court with the complete files concerning the case on civil liability No. 832/06 before the Murcia Juvenile Court No. 1 (*Pieza de Responsabilidad Civil no. 832/06 seguida ante el Juzgado de Menores Número 1 de Murcia*) and the criminal summary proceedings No. 55/11 before the Murcia Criminal Court No. 5 (*Procedimiento Abreviado no. 55/10 seguido ante el Juzgado de lo Penal No. 5 de Murcia*).