

HUMAN RIGHTS COMMITTEE

Sánchez López v. Spain

Communication No 777/1997

18 October 1999

CCPR/C/67/D/777/1997

ADMISSIBILITY

Submitted by: Antonio Sánchez López (represented by José Luis Mazón Costa)

Alleged victim: The author

State party: Spain

Date of communication: 22 October 1996

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 18 October 1999

Adopts the following:

Decision on admissibility

1. The author of the communication is Mr. Antonio Sánchez López, a primary schoolteacher living in Molina de Segura, Murcia, Spain. He claims that he is a victim of a violation by Spain of article 14, paragraphs 2 and 3 (g), of the International Covenant on Civil and Political Rights. He is represented by counsel, Mr. José Luis Mazón Costa.

The facts as submitted by the author

2.1 On 5 May 1990, the author was driving his car at 80 km/h in an area where the speed limit was 60 km/h. The car was photographed after being detected by the police radar. The General Department of Traffic (Ministry of the Interior) asked him, as the owner of the vehicle by means of which the offence had been committed, to identify the perpetrator of the offence or driver of the vehicle, in other words, himself. This request was made on the basis of article 72 (3) of Royal

Legislative Decree No. 339/1990 (Road Safety Act - Ley de Seguridad Vial (LSV)), which states: "The owner of the vehicle, on being duly asked to do so, has the duty to identify the driver responsible for the offence; if he fails to fulfil this obligation promptly without justified cause, he shall be liable to a fine for having committed a serious misdemeanour".

2.2 Pursuant to this request and exercising the fundamental right not to confess guilt, Mr. Sánchez López sent the traffic authorities a letter in which he stated that he was not the driver of the vehicle and did not know who had been driving it since he had lent it to several people during that period. As the perpetrator of a serious misdemeanour, he was fined 50,000 pesetas (the speeding fine was 25,000 pesetas).

2.3 The author took his case to the courts (Administrative Litigation Division, Murcia), claiming that the imposition of the fine constituted a violation of his fundamental rights, in particular the right to presumption of innocence, the right not to confess guilt and the right not to testify against oneself, all of which are recognized in article 24 (2) of the Spanish Constitution. He also requested that an action of unconstitutionality should be brought before the Spanish Constitutional Tribunal. The competent Division rejected the appeal, stating that the penalty was lawful.

2.4 The decision was the subject of an action for amparo before the Constitutional Tribunal, which, in a substantiated decision of 2 February 1996, dismissed the appeal, citing the doctrine established in another decision adopted on 21 December 1995 by that Tribunal in plenary resolving a number of questions of unconstitutionality raised by judicial bodies concerning article 72 (3) of the LSV.

2.5 Counsel maintains that the decision is contradictory in that it recognizes the fundamental right not to testify against oneself as an integral part of the Spanish Constitution, a right which is also applicable to punitive procedures resulting from failure to comply with administrative provisions of the State. It is nevertheless seriously contradictory in stating that the duty imposed on the vehicle owner who is compelled to reveal or identify the name of the driver when it is himself does not constitute a violation of the fundamental right not to confess guilt. The decision comprises a separate opinion signed by two judges stating that without doubt the fundamental right not to testify against oneself is violated by article 72 (3) of the LSV.

The complaint

3.1 Counsel maintains that the author has been the victim of a violation of article 14, paragraph 3 (g), of the Covenant in that he has been obliged to confess guilt to the extent that the request for identification was addressed to the owner of the vehicle, who was in fact the driver responsible for the offence. In this case he is being obliged to make a self-accusatory statement, which contravenes the right protected in the Covenant.

3.2 He further maintains that one of the fundamental elements of the presumption of innocence (article 14, paragraph 2), namely that the burden of proof rests on the prosecution and not the defence, has been violated since the action required from the author by the authorities is equivalent to proof of his innocence. It is in fact incumbent on the authorities themselves to identify the driver presumed to be responsible for the offence.¹

3.3 This complaint has not been submitted to any other international settlement procedure.

State party's information and observations, and counsel's comments

4.1 In its statement dated 19 January 1998 on the admissibility of the case, the State party requested that it should be declared inadmissible on the basis of article 5, paragraph 2 (a), of the Optional Protocol since, in its view, the present communication is identical to a communication submitted by the same counsel to the European Court of Human Rights. The State party nevertheless informs the Committee that it will reply as to the merits of the question within the time limit set.

4.2 In its submission, dated 20 May 1998, concerning the merits of the case, the State party reiterates its request that the complaint should be declared inadmissible. The facts are not contested by the State party but it considers that there has not been a violation of any of the rights protected in the Covenant, since the potential danger constituted by a motor vehicle requires that road traffic should be rigorously protected.

4.3 It further draws attention to the obligation under Spanish law whereby the offence should be "personalized". The offence cannot automatically be attributed to the owner of the vehicle, and so the law requires that the perpetrator of the offence should be personally identified. He may or may not be the owner and, if the owner of the vehicle is a juridical entity, they will certainly not be the same. Consequently, according to the State party's counsel, article 72 (3) of the LSV stipulates that the competent authority shall transmit to the owner of the vehicle a communication concerning the complaint (for speeding) and request him to inform the Department of Traffic of the name and address of the driver, with a warning that, if he fails to do so, he will, as owner, be regarded as having failed to fulfil the duty of cooperation. Although the owner of the car replied that he did not know who had been driving it on the day in question, he gave a list of 17 possible drivers. The administrative authorities took the view that this reply did not amount to proper fulfilment of the duty of cooperation with the authorities and, after the relevant administrative formalities, proceeded to fine Mr. Sánchez 50,000 pesetas for having committed a serious misdemeanour. The State party maintains that the penalty was imposed on the perpetrator for his failure to perform the legal duty imposed by the LSV on the owner of a vehicle to identify the driver responsible for the offence, and not as a consequence of the fine for speeding, which was dropped. In addition, the State party considers that the author was punished after proceedings comprising the author's pleadings and all procedural safeguards, proceedings which were the subject of a judicial review, were adversarial, and were confirmed by the Constitutional Tribunal.

4.4 As regards the possible violation of article 14, paragraph 2, of the Covenant (presumption of innocence), the State party's counsel considers that, since the Constitutional Tribunal rejected the arguments on the grounds that they were not substantiated, this constitutes non-exhaustion of domestic remedies and the complaint should be declared inadmissible. In this connection, the State party's counsel says that the author appears to confuse the presumption of innocence in respect of the punitive process for the traffic offence (the said process having been dropped) with the punitive process for failure to cooperate with the authorities.

4.5 As to the alleged violation of article 14, paragraph 3 (g), of the Covenant, the author considers that the provision in question obliges him to testify against himself or confess guilt contrary to the

provisions of the Covenant. The State party's counsel affirms that, in accordance with the decision of 21 December 1995, the Constitutional Tribunal has ruled that "the principles underlying the penal legislation are applicable, with certain nuances, to administrative law relating to penalties". The Tribunal also draws attention to "the caution which should be exercised when the essential guarantees relating to procedure and directly related to criminal proceedings are transferred to the administrative sphere in respect of penalties, since this operation cannot be effected automatically, given the differences existing between the two types of procedures".

4.6 As to the case under consideration, the penalty imposed on the author is not the consequence of any infringement of traffic regulations, but is the consequence of the offence committed by the owner of the vehicle vis-à-vis the duty to cooperate required by law of any vehicle owner. This obligation derives from the potential risk which the use of a motor vehicle may entail for the lives, health and safety of individuals. To this should be added, according to the State party's counsel, the requirement that the penalty should be personalized, which imposes on the authorities the obligation to assign responsibility for the infringement of a traffic regulation to the perpetrator of the infringement, i.e. the driver of the vehicle at a particular moment and not the owner of the vehicle.

4.7 According to the State party's counsel, the duty to cooperate, set forth in article 72 (3) of the LSV, in no way obliges the vehicle owner to make a statement on the alleged traffic violation admitting his guilt or assuming responsibilities. In this connection he adds that the Constitutional Tribunal has made it clear that, although the provision reads "identify the driver responsible for the offence", this wording is "technically infelicitous" since the purpose of the duty of cooperation is to identify not the person responsible, but only the person who was driving the vehicle. It is, therefore, to this person that the authorities have to address themselves through the punitive procedure of article 73. After concluding the appropriate procedure with all the constitutional and legal safeguards, it is incumbent on the authorities to establish whether or not the person identified was responsible for the offence.

5.1 The author's counsel rejects the claim of inadmissibility entered by the State party: although the complaint submitted to the European Commission of Human Rights relates to the same matter, in that complaint the offence, the victim and, of course, the Spanish judicial decisions, including the relevant application for amparo, were not the same.

5.2 With regard to the State party's submissions on substance, the author's counsel reiterates his allegations of violations of article 14, paragraphs 2 and 3 (g), of the Covenant. He thus reiterates that article 73 (2) of the LSV raises no problem when the driver of the vehicle is not the owner, but that the situation is different if he is the owner since he is compelled, as owner, to testify against himself in having to identify the driver as himself. The State party's defence is based on denying the literal sense of the provision violating the Covenant, claiming that it says something that it does not say.

5.3 As to the argument concerning the need to protect society against the danger of motor vehicles, the author's counsel explains that the State party could fulfil the obligation to personalize the offence by identifying the driver at the time of the offence, through the use of two police vehicles, one with the radar and the second stopping the vehicle, as is the current practice of the Spanish police. This practice, which, according to counsel, is now general, reinforces the submission concerning the incompatibility of the provision contained in article 72 (3) of the LSV with the right not to confess

guilt, as protected by the Covenant.

5.4 On the question of the violation of the presumption of innocence covered by article 14, paragraph 2, of the Covenant, counsel maintains that there has been a violation of this right by the State party since it has inverted the burden of proof incumbent on the prosecutor (the traffic authorities, in this case); the authorities have in fact required the owner to prove who was driving the vehicle. As to the State party's argument that the author cannot invoke this right since he did not do so before the national courts, counsel dismisses the argument since the question was raised before the Constitutional Tribunal, which rejected it, according to counsel, because of the excessive formalism of the Tribunal, which was unwilling to go into the merits of the case.

Admissibility considerations and examination of the merits

6.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 87 of its rules of procedure, whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 With regard to article 5, paragraph 2 (a), of the Optional Protocol, the Committee cannot accept the State party's contention that "the same matter" has already been submitted to the European Court of Human Rights because another person brought his particular case before that body in connection with an apparently identical claim. The words "the same matter", within the meaning of article 5, paragraph 2 (a), of the Optional Protocol, must be understood as referring to one and the same claim concerning the same individual, as submitted by that individual, or by some other person empowered to act on his behalf, to the other international body. Since the State party has itself acknowledged that the author of the present communication has not submitted his specific case to the European Court of Human Rights, the Human Rights Committee considers that it is not precluded from considering the communication under article 5, paragraph 2 (a), of the Optional Protocol.²

6.3 The Committee observes that, for the purposes of the Optional Protocol, all available domestic remedies have been exhausted with the rejection of the amparo application by the Constitutional Tribunal. In this regard, the Committee has taken note of the fact that the State party challenges the admissibility of the claim of a violation of the presumption of innocence (article 14, paragraph 2) on the ground of failure to exhaust domestic remedies. The Committee also takes note of the written information before it stating that the alleged violation of the presumption of innocence was brought to the attention of the Constitutional Tribunal and that the latter rejected the claim. The Committee considers that, in accordance with article 5, paragraph 2 (b), of the Optional Protocol, there is nothing in the circumstances of the case to prevent it from considering the communication.

6.4 With regard to the claim that the author's rights to the presumption of innocence and the right not to testify against himself as protected by article 14, paragraphs 2 and 3 (g) of the Covenant were violated by the Spanish State, since he had to identify the owner of the vehicle reported for committing a traffic offence, the Committee considers that the documentation in its possession shows that the author was punished for non-cooperation with the authorities and not for the traffic offence. The Human Rights Committee considers that a penalty for failure to cooperate with the authorities in this way falls outside the scope of application of the above-mentioned paragraphs of the Covenant. Accordingly, the communication is held to be inadmissible under article 1 of the

Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible under article 1 of the Optional Protocol;
- (b) that this decision shall be communicated to the State party and to the author's counsel.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra N. Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Roman Wieruszewski, and Mr. Maxwell Yalden.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Notes:

1/ In this respect he cites a decision of the European Court of Human Rights, Oztürk v. Germany case, adopted on 21 February 1984, series A, No. 73, in which it is established that the guarantees contained in article 6 of the European Convention and for defendants are fully applicable to punitive administrative procedures when the State itself has recognized this set of regulations for any punitive procedure, even though a custodial penalty is not automatically applicable.

2/ See communication No. R.18/75 (Faneli v. Italy).