



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

FIRST SECTION

CASE OF MILLAN I TORNES v. ANDORRA

(Application no. 35052/97)

JUDGMENT
(Friendly settlement)

STRASBOURG

6 July 1999

In the case of Millan i Tornes v. Andorra,

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

Mrs E. PALM, *President*,
Mr J. CASADEVALL,
Mr GAUKUR JÖRUNDSSON
Mr R. TÜRMEŒ,
Mr C. BİRSAN,
Mrs W. THOMASSEN,
Mr R. MARUSTE, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 29 June 1999,

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

PROCEDURE

1. The case originated in an application (no. 35052/97) against the Principality of Andorra lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Joan Millan i Tornes ("the applicant"), an Andorran national, on 7 August 1996. The applicant is represented by the law firm Cabrerizo-Miño-Monegal-Rascagneres, Andorra la Vella. The Andorran Government ("the Government") are represented by Mrs I. Tor Faus, the Permanent Representative of the Principality of Andorra to the Council of Europe.

2. On 8 September 1997 the Commission decided to give notice of the application to the Government and invited them to lodge written observations on the admissibility and merits of the complaint, which concerned the refusal of Principal State Counsel of Andorra to grant permission to lodge an *empara* appeal. It declared the remainder of the application inadmissible. The Government lodged their observations on 26 November 1997, to which the applicant replied on 2 February 1998.

3. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with the provisions of Article 5 § 2 thereof, the case falls to be examined by the Court.

4. In accordance with Rule 52 § 1 of the Rules of Court¹, the President of the Court, Mr L. Wildhaber, assigned the case to the First Section. The Chamber constituted within the Section included *ex officio* Mr J. Casadevall, the judge elected in respect of Andorra (Article 27 § 2 of

1. *Note by the Registry*. The Rules of Court came into force on 1 November 1998.

the Convention and Rule 26 § 1 (a)), and Mrs E. Palm, President of the Section (Rule 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr Gaukur Jörundsson, Mr R. Türmen, Mr C. Bîrsan, Mrs W. Thomassen and Mr R. Maruste (Rule 26 § 1 (b)).

5. On 17 November 1998 the Chamber declared the application admissible as it considered that the applicant's complaint concerning the dismissal of an *empara* appeal by Principal State Counsel of Andorra (Article 6 § 1 of the Convention) should be examined on the merits.

6. On 13 January 1999, the Representative of the Principality of Andorra to the Council of Europe made proposals with a view to a friendly settlement of the case within the meaning of Article 38 § 1 (b) of the Convention. On 22 January 1999 the Section Registrar informed the applicant thereof in writing. On 1 June 1999 the applicant indicated that he agreed to the proposals.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. In 1995 the applicant became acquainted with one J.P., who knew and colluded with one A.G. to smuggle tobacco from the Principality of Andorra to France and Spain. To that end A.G. purchased a vehicle in Andorra which he registered in the applicant's name.

8. Towards 10 p.m. on 22 March 1995 the applicant accompanied J.P. to A.G.'s home. From there all three travelled together in the applicant's car to a place known as "Coll d'Ordino". On the way there, J.P. and A.G. had an altercation. At "Coll d'Ordino" J.P. asked A.G. to get out of the car and to carry on the discussion in a nearby wood. J.P. took a 0.22 calibre rifle from the boot of the car, loaded it and, once in the wood, shot A.G. several times before finishing him off with two shots from point-blank range.

9. The applicant witnessed the scene and, allegedly after being threatened by J.P., helped him to hide the body in the car before setting fire to the car. Immediately afterwards, J.P., a Spanish national, left Andorra and the applicant was arrested by the police.

10. Following police investigations, the applicant was charged by the public prosecutor with concealing a body; he was detained pending trial.

11. In a judgment of 22 November 1995, following adversarial proceedings, in which the applicant was represented by a lawyer, and a hearing in public, the *Tribunal de Corts* of Andorra found the applicant guilty of an aggravated case of concealing the body (of a murder victim) and sentenced him to six years' imprisonment. At the hearing the applicant argued that he could not stand trial until the principal offender had been tried in Spain and that the investigating judge had refused to seek the additional evidence he had requested; in particular, he had refused to send letters rogatory to the Spanish authorities with a view to questioning J.P.

12. The applicant appealed against that judgment to the Andorra Higher Court of Justice. He maintained, *inter alia*, that the trial court had erred in its assessment of the evidence and had failed to take sufficient account of the conclusions of the psychiatric reports on him or to apply the presumption of innocence. In a judgment of 3 April 1996 the Andorra Higher Court of Justice upheld the impugned judgment and dismissed the appeal. It declared in its decision that the judgment of the trial court contained an accurate and objective description of the offence that had been made out. It added that expert evidence could not be binding on the court which was under an obligation to consider all the facts and evidence and found that the court below had in any event given due weight to the psychiatric report.

13. The applicant then lodged an application with State Counsel's Office for permission to lodge an *empara* appeal with the Andorran Constitutional Court on the grounds that there had been a failure to comply with the rights of the defence, the principle that everyone was equal before the law and his right to a fair hearing. He submitted that there had been a violation of Article 10 of the Andorran Constitution (right to a fair hearing).

14. In a reasoned decision of 26 April 1996 Principal State Counsel of the Principality of Andorra refused the application for permission to lodge an *empara* appeal on the ground that it was unfounded. In his decision, he said firstly that the applicant could not use the *empara* appeal process to complain of the rejection of his submission that he should not have been tried until the principal offender had been tried in Spain, as he had failed to put that argument on appeal to the Higher Court of Justice. As regards the complaint that he had been denied a fair hearing, Principal State Counsel likewise ruled that the applicant had failed to raise the point with the appellate court. He found, too, that the applicant had been permitted to adduce in his defence before the trial and appellate courts all the evidence in his favour on which he had chosen to rely.

II. RELEVANT DOMESTIC LAW

15. The Andorran Constitution

“...

Chapter III: Fundamental rights of the person and public freedoms

...

Article 10

1. Everyone shall have the right to a remedy before a court, a judicial decision based in law and a fair hearing before an impartial court previously established by law.

2. Everyone shall have the right to defend himself and to the assistance of a lawyer, to a hearing within a reasonable time, to be presumed innocent, to be informed of the accusation, not to be forced to plead guilty, not to incriminate himself and, in criminal proceedings, to an appeal.

3. The cases in which, in order to ensure compliance with the principle of equality, access to the courts shall be free of charge shall be determined by statute.

...

Chapter VII: Guarantees of rights and freedoms

Article 41

1. Statutory provision shall be made for protection of the rights and freedoms recognised in Chapters III and IV before the ordinary courts through an expedited procedure incorporating, in all cases, two levels of jurisdiction.

2. Statutory provision shall be made for special judicial review by the Constitutional Court (*empara* appeals) of acts of public authorities infringing the rights referred to in the preceding paragraph.”

“Title VII: Justice

Article 93

1. State Counsel’s Office shall be responsible for ensuring the legality and proper application of statutes, the independence of the courts, the protection of citizens’ rights and the defence of the general interest.

2. State Counsel’s Office shall be composed of members selected from among persons satisfying the conditions required to be members of the judiciary and appointed by the High Council of Justice, on the proposal of the Govern, for a renewable period of six years. Their legal status shall be governed by statute.

3. State Counsel's Office, under the supervision of Principal State Counsel, shall comply with the principles of legality, unity and internal hierarchy.

Title VIII: The Constitutional Court

Article 98

The Constitutional Court shall have jurisdiction to hear:

...

(c) applications for constitutional protection (*empara* appeals);

...

Article 102

The following persons shall be entitled to seek the protection of the Constitutional Court through an application for judicial review (*empara* appeal) against acts of public authorities that violate fundamental rights:

...

(c) State Counsel's Office if there has been a violation of the fundamental right to a court."

16. The Constitutional Court Act of 3 September 1993

Section 94

"1. Anyone whose rights set out in Article 10 of the Constitution have been infringed during or as a result of judicial proceedings or procedures preliminary thereto must lodge his complaint with the courts and state his case using the procedure and remedies laid down by statute.

2. Once the ordinary means of asserting the infringed constitutional right have been exhausted without success, the party concerned may within six working days after service of the last judgment dismissing his appeal request State Counsel's Office in writing to lodge an *empara* appeal ...

3. State Counsel's Office must deliver its decision within six working days if the appeal is admissible under Article 102 of the Constitution. No appeal shall lie from that decision.

4. If the decision is positive or admissible, the *empara* appeal must be lodged within twenty working days after the last judgment dismissing the appeal. State Counsel's Office and the person having an interest in the constitutional right concerned shall be co-appellants in the appeal ..."

17. On 22 April 1999 the Andorran parliament approved the Constitutional Court (Amendment) Act of 3 July 1993. The Act was published in the 19 May 1999 edition of the Official Gazette of the Principality of Andorra and came into force the following day. By section 2 of that Act, which amended section 94 of the Constitutional Court Act of 3 July 1993, any person who considers that his constitutional right to the protection of the courts has been infringed may lodge an *empara* appeal directly with the Constitutional Court. Furthermore, under paragraph 2 of the transitional provision, anyone who had been refused permission to lodge an *empara* appeal by State Counsel's Office had fifteen days after the amending legislation came into force in which to lodge an *empara* appeal with the Constitutional Court.

THE LAW

18. The applicant complained that the Andorran Principal State Counsel's refusal to grant permission to lodge an *empara* appeal had denied him access to the Andorran Constitutional Court and alleged a violation of Article 6 § 1 of the Convention.

19. Under cover of a letter of 15 June 1999, the Court received from the Permanent Representative of the Principality of Andorra to the Council of Europe the following document (in Catalan and French), signed on 1 June 1999 by the Andorran Government and the applicant's lawyer:

"BETWEEN

Of the first part, Mr Estanislau Sangra Cardona, Minister of the Presidency and of the Interior, acting on behalf and as representative of the Government of Andorra, pursuant to the agreement of 23 December 1998,

And, of the other part, Mr Jean Michel Rascagneres, lawyer of 7, rue de les Canals, fourth floor, Andorra la Vella, acting on behalf and as representative of Mr Joan Millan i Tornes.

The parties acknowledge that each has the necessary capacity to enter this agreement and

DECLARE

A. On 7 August 1996 Mr Rascagneres, in his capacity as Mr Joan Millan i Tornes's lawyer, lodged an application with the European Court of Human Rights that was registered on 25 February 1997 under number 35052/97 in which he complained that the Andorran State Counsel's Office had not declared his '*empara* appeal' admissible on 26 April 1996.

B. On 17 November 1998 the European Court of Human Rights (First Section) delivered a decision concerning the admissibility of the application lodged by Mr Millan's legal representative regarding the refusal of the Andorran State Counsel's Office to refer the '*empara* appeal' to the Constitutional Court.

C. On 11 January 1999 the parties sought a two-month adjournment from the European Court of Human Rights (First Section) in which to reach a final friendly settlement, as the Government had prepared a bill amending the Constitutional Court Act that was to be submitted to the General Council (the Andorran parliament) for approval.

D. On 11 March 1999 the parties sought a further three-month adjournment from the European Court of Human Rights (First Section) in which to reach a final friendly settlement, as the Constitutional Court (Amendment) Bill had been published in the Gazette of the General Council.

E. On 19 May 1999 the Constitutional Court (Amendment) Act was published in the Official Gazette of the Principality of Andorra (no. 27). That amendment allowed Mr Millan to lodge an appeal with the Constitutional Court without having to obtain the agreement of State Counsel's Office.

In the light of the above, the parties

AGREE

(i) that Mr Jean Michel Rascagneres, acting on behalf and as representative of Mr Joan Millan i Tornes, considers that the case forming the subject-matter of the application lodged with the European Court of Human Rights (First Section) and registered under number 35052/97 has been settled and that he will take no further action before any national or international authority regarding the matters complained of in that application;

(ii) to ask the European Court of Human Rights (First Section) for the proceedings to be discontinued;

(iii) that this agreement shall be forwarded to Mr de Salvia, the Registrar of the European Court of Human Rights, so that the Court may declare that the proceedings have been discontinued if it considers it appropriate to do so.

As evidence of the conformity of this agreement, which has been drawn up on the front of two sheets of plain paper, the parties have at the place and on the date referred to above signed three copies of this document, each to the same effect, at the foot of the last page after initialling the other sheets in the left-hand margin."

20. In the same letter, the Permanent Representative of the Principality of Andorra to the Council of Europe asked the Court to strike the case out of the list.

21. The Court takes note of the friendly settlement reached between the Government and Mr Millan i Tornes. In that connection, it observes that a statute amending the Constitutional Court Act of 3 July 1993 came into

force on 20 May 1999 and affords litigants direct access to the Constitutional Court through an *empara* appeal without having to obtain prior permission from State Counsel's Office. It further notes that under paragraph 2 of the transitional provision of that statute, anyone who had been refused permission to lodge an *empara* appeal by State Counsel's Office was entitled to lodge such an appeal with the Constitutional Court within fifteen days after the statute came into force.

22. Having regard to its duties under Article 37 § 1 *in fine* of the Convention, the Court may nonetheless decide to continue with its examination of the case if it is not satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Rule 62 § 3 of the Rules of Court); that is not the position here.

23. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in French, and notified in writing on 6 July 1999, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President