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

THIRD SECTION

DECISION

Application no. 513/18
Jose Antonio RUIZ CUBO
against Spain

The European Court of Human Rights (Third Section), sitting on 25 January 2022 as a Committee composed of:

Andreas Zünd, *President,*
María Elósegui,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 513/18) against Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 23 December 2017 by a Spanish national, Mr Jose Antonio Ruiz Cubo, who was born in Málaga and lives in Aranjuez ("the applicant") who was represented by Mr D. Fernández Fernández, a lawyer practising in Madrid;

the decision to give notice of the application to the Spanish Government ("the Government"), represented by their Agent, Mr. A. Brezmes Martínez de Villareal, State Attorney, Head of the Legal Department for Human Rights, Ministry of Justice;

the parties' observations.

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1. The applicant was convicted on 31 July 2013 by Criminal Court no. 2 of Toledo for threatening his partner to forty days of community work. The court also issued a restraining order to maintain distance from his partner of no less than 500 metres and to refrain from communicating with her for eighteen months, and a prohibition to own and use guns for the same period. The applicant submitted several pieces of evidence in his defence at the trial, not all of which were accepted by the Criminal Court. He was convicted

essentially based on the threatening nature of the text messages received by his partner, witness testimonies made by his daughter and his partner, and his own testimony.

2. The applicant lodged an appeal. On 14 November 2014 the *Audiencia Provincial* of Toledo dismissed the appeal and confirmed the applicant's conviction.

3. In May 2016 the applicant's representative requested a copy of the entire judicial file (*testimonio íntegro*) in the context of other proceedings. It was then that he realised that some of the evidence presented before the Criminal Court in the proceedings where he had been convicted for threats was allegedly missing from the file.

4. The applicant concluded that the missing parts of the file, including some of the evidence presented in his defence and the recording of the trial, had not been sent to the *Audiencia Provincial* at the time when it considered his appeal. He lodged a motion for annulment (*incidente de nulidad*) seeking to have the judgment of 14 November 2014 declared void on the grounds that his right to equality of arms and fair trial had been violated. The motion was dismissed on 16 December 2016. The *Audiencia Provincial* confirmed that the recording of the trial had been submitted with the rest of the judicial file, and that there had been no infringement of the applicant's procedural rights.

5. In a decision notified on 16 June 2017, the Constitutional Court declared the applicant's *amparo* application inadmissible because the applicant had failed to "specifically and sufficiently justify its constitutional relevance".

6. Relying on Article 6 § 1 of the Convention, the applicant complained that there had been a breach of the principle of equality of arms inasmuch as the court of appeal had decided his appeal and upheld his conviction without having examined all the evidence because the entire file had not been sent.

THE COURT'S ASSESSMENT

7. The Government challenged the admissibility of the application on a number of grounds. The Court does not find it necessary to deal with these objections in detail, in view of its analysis below.

8. The Court considers that, in the light of all the material in its possession, there is no evidence to conclude that the alleged irregularities took place. The allegedly incomplete judicial file presented by the applicant to the Court does not show that there are any missing documents. Moreover, the Government was able to obtain a copy of the file and there is no evidence that its content did not match the file sent to the *Audiencia Provincial* for it to examine the applicant's appeal.

9. In fact, the Court observed that some of the evidence allegedly missing from the file was indeed in the file; some pieces of evidence were never accepted as evidence for the trial by Criminal Court no. 2 of Toledo; other

pieces of evidence had been presented orally and not as documents; and the *Audiencia Provincial* had already confirmed that it was in possession of the recording of the trial when it examined the appeal.

10. In any event, even considering that some of the alleged irregularities had taken place, they would not have been sufficient to render the proceedings as a whole unfair. The conviction was essentially founded on the nature of the messages received by the applicant's partner (which were examined by both the first instance court and the appeal court) and by the assessment of the credibility of the witnesses and the accused (now applicant). That evidence was assessed directly by Criminal Court no. 2 of Toledo, and the *Audiencia Provincial* which, after having watched a recording of the trial where such evidence had been presented, did not find the assessment arbitrary or insufficiently motivated.

11. Having regard to the foregoing, the application must be rejected as being manifestly ill-founded according to Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 February 2022.

Olga Chernishova Deputy Registrar	Andreas Zünd President