



Appeal court's failure to hold a hearing made criminal trial unfair

In today's **Chamber judgment**¹ in the case of [Gómez Olmeda v. Spain](#) (application no. 61112/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights

The case concerned the complaint by a criminal convict that he had not been able to defend himself in open court in the appeal proceedings in his case.

The Court considered that the appeal court had made a full assessment of the question of Mr Gómez Olmeda's guilt after reassessing both the facts and the law. It would have therefore been necessary to conduct a personal examination of the evidence given by him – who denied having committed the act in question – which the court had failed to do.

Principal facts

The applicant, Jorge Gómez Olmeda, is a Spanish national who was born in 1967 and lives in Plasencia (Spain).

In January 2011 Mr Gómez Olmeda was convicted of serious disobedience to public authority and sentenced to six months' imprisonment by a first-instance court. At the same time he was acquitted of other charges against him, including the charges of false accusation of a crime and defamation. The judge found it established that, as the webmaster of an Internet forum in which defamatory statements about certain individuals – the claimants in the proceedings against him – had been published, Mr Gómez Olmeda had deliberately disregarded the request by the police not to alter those statements. Instead he had removed the forum webpage altogether. As regards the charge of false accusation of a crime, the judge found that there were reasonable doubts as to whether Mr Gómez Olmeda had been aware of the statements in question before he was interviewed by the police and that he should therefore be acquitted in that regard. It was also not proven that he had protected the individuals who had made the defamatory statements, as had been alleged by the prosecution.

Both the prosecution and the defence appealed against the judgment before the *Audiencia Provincial* ("the appeal court"). Mr Gómez Olmeda did not request a hearing, nor did the appeal court order one. Instead, the court watched a video recording of the trial before the first-instance court.

In May 2011 the appeal court upheld Mr Gómez Olmeda's conviction for serious disobedience to public authority. In addition it found him guilty of continuous and false accusation of a crime. He was given a daily fine of 15 euros for a period of 18 months in addition to the prison sentence and ordered to pay damages. The appeal court stated that it had relied on the facts established by the first-instance judge as well as on the testimony by the complainants, by Mr Gómez Olmeda and by the witnesses in the trial before the first-instance court. In particular, as opposed to the first-instance judge, the appeal court found that Mr Gómez Olmeda had been aware of the insulting

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

statements – which were directed against clearly identifiable individuals and imputed crimes, such as sexual assault, to them.

Mr Gómez Olmeda's request to have the proceedings before the appeal court declared void was dismissed. His *amparo* appeal with the Constitutional Court, complaining that he had been convicted without being given the opportunity to plead his case in open court, was declared inadmissible in March 2012.

Complaints, procedure and composition of the Court

Mr Gómez Olmeda complained that his conviction on appeal, without being heard in person by the appeal court, of an offence of which he had been acquitted at first instance was in violation of Article 6 § 1 (right to a fair trial).

The application was lodged with the European Court of Human Rights on 11 September 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena Jäderblom (Sweden), *President*,
Luis López Guerra (Spain),
George Nicolaou (Cyprus),
Johannes Silvis (the Netherlands),
Branko Lubarda (Serbia),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court did not share the Spanish Government's argument that Mr Gómez Olmeda had no reason to reproach the authorities with the fact that no hearing had been held in the appeal proceedings in his case since he had failed to request one. The Court considered that the appeal court had been under an obligation to take the appropriate measures notwithstanding the fact that he had not expressly asked for a hearing.

As the Court had found in a previous similar case², a public hearing was necessary where the appeal court was called upon to examine anew facts taken to have been established at first instance and reassess them, going beyond strictly legal considerations. In Mr Gómez Olmeda's case, the appeal court, in finding that he had been aware of the insulting statements published in the online forum, had departed from the conclusions of the first-instance judge. It had made a full assessment of the question of his guilt after reassessing the case as to both the facts and the law. It would have therefore been necessary for the appeal court to conduct a personal examination of the evidence given by the accused, who denied having committed the act in question.

The failure to hear Mr Gómez Olmeda in person was moreover aggravated by the fact that in his case the court of last resort had been the first court to convict him of one of the charges against him. The Court considered that the fact that the appeal court had viewed the video recording of the first-instance trial had not compensated for the lack of a hearing because Mr Gómez Olmeda had had no possibility to address the appeal court. In this context the Court noted that the Spanish

² *Igual Coll v. Spain* (no. 37496/04), Chamber judgment of 10 March 2009

Constitutional Court had found, in similar cases, that the viewing of such a video recording did not enable an appeal court to assess personal evidence.

In conclusion, in Mr Gómez Olmeda's case, the appeal court had failed to comply with the requirements of a fair trial. There had accordingly been a violation of Article 6 § 1.

Just satisfaction (Article 41)

The Court held that Spain was to pay Mr Gómez Olmeda 6,400 euros (EUR) in respect of non-pecuniary damage and EUR 3,138.62 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.