

APPLICATION N° 23816/94

Juan Gerardo TORA TOLMOS v/SPAIN

DECISION of 17 May 1995 on the admissibility of the application

Article 6, paragraph 2 of the Convention *The legal obligation imposed on the owner of a car or another person named by him as the driver either to assume responsibility for the use made of it or to inform the authorities of the identity of the actual driver is not contrary to the principle of the presumption of innocence*

Article 14 in conjunction with Article 6 of the Convention *It is not discriminatory for a court which has declared an application in a similar case admissible to refuse to hear the applicant's case*

THE FACTS

The applicant is a Spanish citizen. He was born in 1957 and lives in Molina de Segura (Murcia, Spain). In the proceedings before the Commission, he is represented by Mr Mazon Costa, a lawyer practising in Murcia.

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

On 21 July 1990 the applicant was driving his car when a police radar detected that it was breaking the speed limit.

As a result of the speed check, the Provincial Road Traffic Department commenced a prosecution for speeding against the driver of the vehicle and served notice on the applicant to disclose the name and address of the person driving it on the

day of the radar monitoring. He was informed that if he failed to do so he could be considered as having committed a serious summary offence.

In his formal response to the Department, the applicant stated that he could not identify the driver since, on the day in question, he had lent his car to several of his relatives.

On 10 September 1990, the Provincial Road Traffic Department fined the applicant 50,000 pesetas (ESP) for refusing to identify the person driving his car, contrary to Article 72.3 of the Road Traffic Code.

The applicant applied for judicial review of this decision, invoking his constitutional rights not to confess nor to make self-incriminating statements. In his application, the applicant acknowledged that it was he who had been driving the vehicle on the relevant day.

In the alternative, the applicant requested the court to ask the Constitutional Court for a preliminary ruling as to whether Article 72.3 of the Road Traffic Code was incompatible with the Constitution. The applicant claimed that this provision breached the principle of the presumption of innocence and violated the rights, guaranteed by Article 24 para. 2 of the Constitution, not to be obliged to confess nor to make self-incriminating statements.

In a decision dated 28 September 1992, the Supreme Court of the Autonomous Community of Murcia (Tribunal Superior de Justicia de Murcia) refused to entertain the application. The court held that the penalty had been imposed, not for the speeding offence but for refusing to cooperate with the authorities in the investigation of a road traffic offence. The court pointed out that the duty to cooperate with the authorities in judicial investigations, laid down in Article 118 of the Constitution, could be extended to other aspects of society. The court confirmed that the applicant was never asked to make a self-incriminating statement or to confess to speeding. The court added that it was open to the applicant to refuse to provide the information required, in which case this could not be construed as an admission of guilt or even of involvement in the alleged offence. If there was no other proof, the applicant could not be penalised for speeding.

The applicant lodged an *amparo* appeal before the Constitutional Court, invoking Article 24 para. 2 of the Constitution and arguing *inter alia*, that requiring him to identify the offending driver (on the facts, himself) was tantamount to obliging him to confess.

In a decision (*providencia*) dated 30 June 1993, which became final on 26 July 1993 and was served on the applicant on 1 September 1993, the Constitutional Court declared the *amparo* appeal inadmissible, finding it manifestly ill-founded on the same grounds as the Supreme Court of the Autonomous Community of Murcia.

COMPLAINTS

The applicant complains of the fact that he was fined for refusing to inform the competent authorities as to who was driving his car on the day when a radar device detected it speeding. He submits, invoking Article 6 of the Convention, that the imposition of the fine breached the right of an accused not to confess.

The applicant also alleges that Article 14 of the Convention has been violated, on the grounds that the Constitutional Court has come to a different decision in a similar case, which it declared admissible.

THE LAW

1. The applicant complains of the fact that he was fined for refusing to reveal who was driving his car at the time when a radar device detected it speeding. He invokes Article 6 para. 1 of the Convention, which guarantees the right to a fair trial and which provides, in so far as relevant:

1. In the determination of any criminal charge against him, everyone is entitled to a fair hearing by (a) tribunal

However, the Commission considers that it would be impossible for it to conclude that the requirement in question violated either the right to a fair trial under the first paragraph of Article 6 or the principle of the presumption of innocence guaranteed by the second paragraph.

The Commission recalls that it has already concluded that a finding of criminal liability against the owner of an illegally parked vehicle who is unable or unwilling to identify the driver or to prove that the vehicle had been used against his will does not violate Article 6 of the Convention (see No. 6170/73, Dec. 26.5.75, unpublished).

The regulation in the present case is based on an analogous principle, in that it obliges the owner of a vehicle, or any other person designated by the owner as the driver of the vehicle either to accept responsibility for the use made of it or to disclose the identity of the actual driver.

That being so, the person concerned is not inevitably obliged to admit his or her own guilt or to incriminate a relative. Depending on the circumstances, they may be able to show that they had nothing to do with the offence committed by the driver, for instance by establishing that the vehicle was being used by someone whose identity is unknown to them or whom they had not authorised to use it.

The Commission considers that the regulation in question, as applied in the applicant's case, does not disclose any appearance of a violation of Article 6 of the

Convention It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 27 para 2 of the Convention (see, *mutatis mutandis*, Nos 15135/89, 15136/89 and 15137/89 (joined), Dec 5 9 89, D R 62 p 319)

2 The applicant, invoking Article 14 of the Convention, states that the Constitutional Court has declared an *amparo* appeal in a similar case admissible The Commission considers that this fact alone cannot constitute a violation of the principle of non-discrimination guaranteed by Article 14 of the Convention It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para 2 of the Convention

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE