



Slander conviction for publicly accusing police officers of “torture” violated right to free speech

In today’s **Chamber** judgment¹ in the case of **Toranzo Gómez v. Spain** (application no. 26922/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of speech) of the European Convention on Human Rights.

The case concerned the applicant being found guilty of slander after accusing police officers of torture.

The Court found in particular that the applicant was likely to have suffered pain and distress when the police had used a rope to try to pull him out of a makeshift tunnel during a sit-in protest at a social centre. He had later described that treatment as torture, a word the courts had focussed on to find him guilty of slandering two police officers.

However, the courts had applied an overly strict legal definition to his statement of torture, which he had meant in a colloquial sense as excessive force. He had also been fined, or given a prison sentence in default, which was a severe penalty, which could have a chilling effect on freedom of expression. There had therefore been a violation of the applicant’s rights under Article 10.

Principal facts

The applicant, Agustin Toranzo Gómez, is a Spanish national who was born in 1970 and lives in Seville (Spain).

In 2007 Mr Toranzo Gómez, a member of an activist group, occupied a social centre. A court issued an eviction order in November of that year and police officers entered the building.

Mr Toranzo Gómez and another protester had fixed themselves to the floor of a tunnel they had constructed underneath the building so they could not be moved. This included inserting their arm inside an iron tube, which was attached to the floor, and locking their arm in place inside the tube.

The police put a rope around Mr Toranzo Gómez’s waist and tried to pull him out and when that failed they tied the two protesters up to immobilise them. Both men ended their protest on November 30. Fire service personnel also took part in the action to remove the men, telling them, among other things, that the building might collapse or that the police might use gas against them.

At a press conference in December the applicant described the police’s actions in trying to pull him out as torture. He said the method had caused him great pain, which had eventually led him to give up. He said the “act of torture” had been carried out by two police officers who had appeared in photographs in the press.

Mr Toranzo Gómez was charged with slandering the police officers and in July 2011 he was found guilty and fined. The court found that the authorities had acted in a proportionate manner in order

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.

to persuade the applicant and the other protester to end their action. On appeal, Mr Toranzo Gómez's fine was reduced but the rest of the judgment was upheld.

The courts relied on the definition of the word "torture" in the Criminal Code and found that the police officers' actions had fallen short of that standard. The applicant's accusation was therefore untrue. He had also used the word torture repeatedly and knowingly in his statements.

Complaints, procedure and composition of the Court

The applicant complained that the domestic courts' decision to find him guilty of slander was an undue interference with his rights under Article 10 (freedom of expression).

The application was lodged with the European Court of Human Rights on 26 March 2014.

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

Vincent A. **De Gaetano** (Malta), *President*,
Branko **Lubarda** (Serbia),
Helen **Keller** (Switzerland),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),
María **Elósegui** (Spain),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

The Court had to balance the applicant's rights under Article 10 with those of the police officers under Article 8 (right to respect for private and family life).

It noted the domestic findings that the police had tied a rope around Mr Toranzo Gomez's waist to try to pull him out, had threatened him with the use of gas, had warned of the imminent collapse of the building and had tied his hand to his ankle in a painful position for a long time. It concluded that even if he had exaggerated his situation, he was likely to have suffered some distress, fear and mental and physical suffering.

His statements had been made in good faith as part of a debate on a matter of public interest, that being the actions of the policemen as a public authority. The main area of disagreement was the use of the word "torture", but the Court found he had been using it as a value judgment, which could not be proved, and that he had meant it colloquially to describe an excessive use of force and to criticise the methods used by the police and fire service in the case.

The domestic courts had taken no account of whether the applicant had urged violence against the police officers before resorting to criminal sanctions against him and there was no reference in their decisions to whether there had been negative consequences for the police officers.

The Court also had to take account of the nature and severity of the penalty, finding that the fine and threatened prison sentence if he did not pay could have had a "chilling effect" on his freedom of expression by discouraging him from criticising the actions of public officials. He had also suffered a heavy burden as he had had to adhere to the legal definition of torture in the Criminal Code.

Overall, the punishment had lacked an appropriate justification and the standards applied by the domestic courts had not provided a fair balance between all the rights and related interests. The interference with Mr Toranzo Gomez's rights had not been "necessary in a democratic society" and there had been a violation of Article 10.

Just satisfaction (Article 41)

The Court held that Spain was to pay the applicant 1,200 euros (EUR) in respect of pecuniary damage, EUR 4,000 in respect of non-pecuniary damage and EUR 3,025 for 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.