[Seals of the Justice Administrations]

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RT APPEAL PROCEEDINGS 0000072 /2021

Court of origin: NO. 2 COURT OF FIRST INSTANCE AND INSTRUCTION OF NOIA
Proceedings of origin: PRELIMINARY INVESTIGATION IN SUMMARY (CRIMINAL) PROCEEDINGS NO. 0000223/2017

Offence: FALSEHOOD IN PUBLIC DOCUMENTS

Complainant: ASOCIACIÓN VERDEGAIA
Attorney: [REDACTED]
Lawyer: [REDACTED]
Against: LAWYER OF THE [AUTONOMOUS] COMMUNITY [OF GALICIA], [REDACTED], PUBLIC PROSECUTOR'S OFFICE

ORDER

ILLUSTRIOUS MAGISTRATES.
PRESIDENT
MS. [REDACTED]
MAGISTRATES
MR. [REDACTED] – reporting magistrate
MR. [REDACTED]

Given in A Coruña, on the thirtieth day of March in the year two thousand and twenty-one.

THE SECOND SECTION OF THE PROVINCIAL COURT OF A CORUÑA, made up of the distinguished **MAGISTRATES** listed at the margin of this decision

FACTS

SINGLE.- After an order was handed down on 4 February 2021 ruling on the appeal lodged by the Attorney [REDACTED], on behalf of Asociación Verdegaia, a request for clarification and supplementation was submitted.

The other parties to the appeal were then notified and filed written pleadings.

LAW

SINGLE.- The application raises a number of issues, and ends by announcing what the party will understand if the application is rejected. Well, we should certainly be grateful for this, even if we do not understand the purpose. We can only add, in this regard, that we wanted to say what we said, subscribing to the case-law criteria we set out.

No, it is not a private action, but a popular action under the provisions of article 22 of Law 27/2006. But, as objected in the allegations of the other parties, perhaps it could have been necessary before for it to be declared so in the instance (and then the problem of the deposit would have been raised; we read in this sense in the Order of the Provincial Court of Guadalajara, First Section, of 25 May 2020, ROJ AAP GU 350/2020. For example, the Provincial Court of Murcia, 3rd Section, Order 154/2007 of 8 Oct. 2007, Appeal No. 116/2007; "organisations whose purpose is the protection of the environment and the protection of natural resources are recognised as having legal standing in article 22 of Law 27/2006, of 18 July, which defines the legal framework that responds to the commitments assumed with the ratification of the Aarhus Convention by Spain, [but] that legislation does not lead to the exclusion of the provision of bail by the appellant in the case being considered in this appeal, and to that extent the order of the Court of First Instance issued on 31 October 2006 and the order dismissing its appeal of reform must be upheld"). In any event, the problem is of no practical relevance, it is associated with the system for litigation costs, and in the current case they have been declared ex officio and if subsequent costs are incurred in this way, it can be raised. The consequences are a different matter.

Secondly, it is stated in the application that the Court omitted to rule on the claims made by the party in its initial appeal in the first to fifth pleas in law. Nothing further is said in this regard in the appeal, which does not justify such claim even minimally, because we continue to believe that the appeal was resolved with a rejection, obviously global, making the considerations that we considered necessary. And also highlighting certain contradictions which were so obvious that, in themselves, they prevented the claim, as we continue to believe.

Finally, and at the end, the question that seems to be at the heart of the matter, although far removed from the scope of the clarification, arises. It is indeed interesting and, without doubt, still not well resolved in the interpretation of case law. Although the Supreme Court, not us, has already had the opportunity to say, in its Judgement of 8 May 2018, ROJ STS 1551/2018, that "... the new text provides for the validity of what was done prior to the expiry of the deadline, even with regard to what was ordered prior to the expiry of the deadline and incorporated afterwards, which indicates that what was agreed afterwards are invalid procedural actions", which, perhaps, serves the party as a reference.

Reference, only reference, because in this resolution, of a precise object, we are not going to establish binding criteria, nor could we, that may determine the possibilities of reopening, or not, another procedure.

Most of the document refers to the procedural incidents of a previous procedure, RT 869/19 processed by this same Section of the Provincial Court, derived from Proceedings 223/2017 which ended up being dismissed, and to the appeal for clarification presented at that time by the Public Prosecutor's Office, and to the decision adopted to reject the case. This, however, was not based on an *essential* motive but on a *formal* one.

It may have been somewhat frustrating, as responsibility was returned to the Court of instance with regard to the then applicable ruling, but what was being raised was not the object of the original appeal either, and could hardly therefore be resolved through it, much less by way of clarification. And in any case, the parties involved in the earlier proceedings were able to exercise their rights, also in relation to the lodging of appeals, obviously also by challenging the decision to dismiss the case. The remedy cannot be sought in separate and subsequent proceedings.

To sum up. The purpose of the order we issued on 4 February was a precise one, resolving the appeal lodged in that sense, disputing a decision of the instance in that regard, deciding the subject matter of specific proceedings. It did not establish the conditions under which previous proceedings could be reopened, even though we referred to the problem.

The party tells us, in its writ, what are the requirements for a reopening in accordance with the ECHR. We will not go into the discussion, again interesting, but inappropriate now. We can only say in this regard that if it considers that the requirements are met, it can of course apply for it, in the corresponding procedure, the one that was dismissed. A new decision will then be issued and, if it does not satisfy the party, it can, once again, dispute it by lodging appeals and, afterwards, if it is up to us, we will give our opinion, trying, as we always do, to resolve each issue raised, although sometimes, perhaps almost always, it is said in an unsatisfactory way, because the resolution involves rejecting claims, some or all of them, or the opposing claims that are normally raised.

The costs arising from the proceedings will nevertheless be declared ex officio. However, they will be declared ex officio and this in a very broad understanding of the right to appeal.

In view of the above,

OPERATIVE PART

There is no need for the clarification sought by Attorney [REDACTED] on behalf of Asociación Verdegaia.

The costs are to be borne ex officio.

No appeal shall lie from this decision.