

“La Suiza” Case Report

Joining a union is not a crime

Confederación Nacional del Trabajo

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The following lines are a short debriefing about a case of workers' persecution that threatens union activity. Originating in 2017, there are currently 6 people condemned to 3,5 years in prison, a sentence that could end in conviction in the following weeks. This document is a retelling of the facts, we do not attach rulings, reports or new evidence. The case files accrue 14.000 pages, plus the additional case files of a few other, separate trials. However, if requested, we can provide more documentation.

The facts

At the start of 2017, an employee of the pastry shop Pastelería La Suiza came to the CNT union of Gijón on account of her work-related problems. She relates working conditions that boil down to marathon-like working days, with barely any weekly time off, a salary below the Labor Branch Convention and unpaid overtime. Also, and the worst of all, she tells about numerous labour violations by her employee. When the worker informs her boss that she is pregnant, he proceeds to make her lift flour sacks, which leads to an abortion scare, that in turn leads to the worker taking a sick leave. But the worst part is the multitude of supposed sexual abuse situations that occur in the workplace: when they're alone, it seems the boss makes lewd comments, asks about her underwear, makes indecent propositions, etc.

In March 2017, the worker is about to end her maternity leave and has to return to work, but doesn't feel she has the strength to come back to a position in which she has to spend time alone with her boss. Also, her partner has a pending trial with said boss: after the abortion scare, the worker's partner went to her place of work and threatened the businessman .

The worker is then lead to the union's legal services. In parallel, and because of the scandalous nature of the case, CNT Xixón's union action team gathers information to corroborate (or deny) the claims the worker is making. A conversation is held with her therapist to contrast her narrative of the facts and to evaluate the abuse, as well as with previous workers of the pastry shop to find out if the workplace conditions has always been like this. Unfortunately, due to not having enough proof to demonstrate these facts, the union action team contacts the pastry shop in order to negotiate ending the worker's contract. In the meantime, a sexual abuse claim is being prepared.

After multiple failed communication attempts (email, registered fax, informal conversations), the businessman refuses to hold any type of meeting, and as a result, CNT calls for two rallies to denounce working conditions at La Suiza. After these rallies, the company agrees to a meeting that ends with no agreement. From this point forwards, more rallies and demonstrations are called to condemn the situation and advances are made on the legal front. At the same time, a retaliation campaign begins. Three workers are detained when exiting their houses, a multitude of activists are fined during rallies and the very union is also sanctioned. On the other hand, the businessman starts lodging complaints against the union and its activists. Finally, during the month of September, the pastry shop closes its doors and the conflict enters an exclusively legal phase.

The complaints

The worker put forwards two complaints with the Court. One for the Social Court, in regards to salaries, and another for the Criminal Court, in regards to the sexual abuse. The first was delayed sine die, until the various criminal claims made by the company against the worker were concluded. The second was archived due to a lack of evidence. It's necessary to note that during the court case of the sexual abuse complaint, a psychological evaluation report we consider of utmost importance was brought forwards cut up and illegible due to a bad scan or printing. The court never asked for a better copy of this piece of evidence.

The businessman, on the other hand, lodged up to thirty claims against CNT Xixon and its activists, that we recount here in order of importance.

The most important of all, and one of the firsts, is the one that ended in a condemnation, the Case 721/2017, lodged before the Magistrates' Court nº4 of Gijón. This case was opened for the supposed criminal libel and slander against the owner of the pastry shop (for calling him a slaver, exploiter and harasser) and had up to 28 people accused, most of them activists and union members of CNT Xixón, but also neighbours of the workers involved. The very union was accused and investigated. The investigation was very long, lasted for two years, and occupies more than 14.000 pages.

In parallel, the pastry shop owner and his son lodged three more criminal complaints, all of them before the Magistrates' Court nº5, that we view as crucial to this process, as they highlight the animosity of the condemning sentence.

The first of these three was investigated under the Case 920/2017. Three union members and activists were accused of obstruction of justice, coercion and threats. These criminal offenses were committed, per the accusing, during the two brief meetings that the accused had in the pastry shop with the businessman. In them, our fellow activists gave information on the main points of the possible negotiation: the worker's exit from the company and the payment of the outstanding concepts. During the investigation, the three union members were detained. After taking their statements, the judge determined there was no cause for it and proceeded to provisionally drop the case. A decision later ratified by the Audiencia Provincial (lit. Provincial Court).

The second claim was investigated under the Case 364/2018. Here, CNT was accused of illicit association. This offense was because of the union's supposed criminal activity in the city, which included extorting businessmen. The union was accused of taking money from businessmen during labor conflicts to finance the union. CNT brought forward past cases of the labor section, legal agreements in all contested cases and declared that any amount debited to a worker was transferred to said worker's account, never to the union's account. After testifying, the judge determined the case was null and provisionally dropped it. A decision also later ratified by the Audiencia Provincial (lit. Provincial Court).

The third and last claim was the Case 621/2018, in which the General Secretary of the CNT Xixón was accused of, supposedly, obstructing justice, coercion and threats. These criminal offenses were supposedly undertaken during a meeting in the lawyer's office with the accusing parts. The accusation considered that the mere suggestion of the possibility of dropping the claim against the worker's partner and trying to find a total solution to the conflict, was a criminal act. After taking testimony from all parts and evaluating the edited extract of a recording of said conversation, brought forwards by the accusing, the judge determined that there was no case and

provisionally dropped it. Another decision later ratified by the Audiencia Provincial (lit. Provincial Court).

In other words, in three separate occasions, both the Magistrates' Court nº5 and the Oviedo Provincial Court ruled in favour of the CNT and its activists, that there was no indication of criminal offenses in regards to obstruction of justice, coercion or threats. On the other hand, as the sexual abuse complaint was dropped, the businessman accused both the worker and her lawyer of a false accusation crime. The claim was immediately archived. The judge's appraisal was that it's one thing to have insufficient evidence, as was the case, and another to be lying.

Also, the CNT was accused about a dozen times more for all the rallies and demonstrations held for this conflict. Related to this, Government Deputy Gabino de Lorenzo (affiliated to the PP or Popular Party, a right-wing Spanish party), was also accused by the businessman's family for omission of duties, because, they claimed, the rallies should be forbidden. These claims were archived with no further consequence. Finally, a few union activists were accused of supposed death threats against the businessman and his son. Of the six cases, five were acquittals and one was a guilty verdict. The judge of the Magistrates' Court nº2 ruled that while there were no death threats as such, the phrase "Where are you going, Brushy?" undermined the accusing's dignity.

A new wave of accusations

When everything seemed to indicate the legal aspect was going to be limited to bringing forwards the relevant appeals to the sentence, the year 2023 brought a new wave of accusations against our comrades for one reason and one reason only: publicly defending their innocence. Namely, two of the condemned have to face the following:

The first was the Case 1951/2023, investigated by the Magistrates' Court nº5 of Gijón. In this lawsuit, our fellow activist was taken to court over narrating the process of supporting the worker through all this and how she talked about situations that could be defined as sexual abuse in a radio show. The journalist who interviewed her to give the case visibility was also included in the lawsuit. The judge archived the case, but this has been appealed. The second claim was the Case 1347/2023, also investigated by the Magistrates' Court nº3 of Gijón. One of our comrades was sued over giving his opinion about the case in a different radio show, manifesting his disagreement with the lawsuit, the case's development, the sentence given and for referring to the judge's case history, one that paints him as hostile to unions and social movements through the past decades. The judge archived the case.

In short, the strategy behind this new batch of lawsuits is just another way of trying by all means necessary, and especially through fear, to deny our comrades their freedom of expression and their freedom to defend their innocence. It's an attempt at denying their freedom of speech in a way that's borderline harassment.

The abuse

Throughout this conflict, there have been a multitude of legal defenselessness and abuse against the CNT that were lodged in different legal instances, but that never gained any traction. But before proceeding to enumerate some of them, it should be brought to your attention

that the pastry family was, at least at the time, very well connected with the PP and the police. The businessman's son boasted of it in various occasions and in on social networks it was common to see him in pictures with notorious party members such as Esperanza Aguirre, Ana Botella, Pablo Casado, or the commissioner of the state police force in Gijón. Also, during the trials, he tried to surround himself with the most prestigious name lawyers possible, both at the local and state level.

In total, the number of lawyers to represent them in trial ascends to 14. Notably, three of them are relevant. Rafael Felgueroso, who in between 2011 and 2015 held the Citizen Security Councilman seat; Teresa Bueyes, known as the celebrities' lawyer and a recurring presence in trash tabloid TV shows, and lastly, Javier Gomez Bermudez, of the prestigious Ramon y Cajal law firm (which counts among its clients the Botin family). Gomez Bermudez is also a lawyer who is on an extended leave of absence from the Provincial Audience. The employment of these lawyers is not a trivial matter: how can a person who claims to be absolutely bankrupt because of CNT Xixon be capable of acquiring the financial means to cover the expenses of 14 lawyers, three of whom, and especially Gomez Bermudez, are the most expensive in the country?

Beyond the questionable legal practices, which will be examined in the next section, over the course of the conflict there were several situations that deserve to be highlighted, such as:

- Three comrades were detained as they were exiting their homes for an investigation that required no such detainment and was immediately dropped by the judge.
- For almost two years, 28 activists were indicted simply for going to rallies and demonstrations which were properly communicated.
- CNT was fined for what the state police considered a too slow crossing of the road during a properly communicated parade.
- One of the CNT activists was fined without having been identified. When appealing the fine, the statement from the General Police Governance office was that they were a recognizable enough person and that, as it is, they needed no IDing.
- CNT Xixon had to file a complaint when some of the city's neighborhoods sprouted posters overnight signed by the CNT, boasting of having closed the pastry shop. These posters were fakes and the company's lawyer submitted it to the court to justify the demand for hundreds of thousands of euros to the CNT per the closing of the business.

The police was incapable of figuring out where the posters came from. Both the businessman and their lawyer manifested having copies of the posters picked up from the streets. However, when asked to produce them, both said the other had the posters. After this, the lawyer, Rafael Felgueroso, resigned from the defense. During the court case, these contradictions kept piling up, to the judge's complete indifference.

Judicial inconsistencies

Along with the file of the harassment complaint, the judicial action in case 721/2017 and the subsequent trial have been the most shameful of the process. As has been pointed out, case 721/

2017 investigated a alleged offence of insult and slander against the employer. However, near the end of the investigation process, the Instruction Court No. 4 of Gijón decided that the accused should also be investigated for obstruction of justice, coercion and threats. The curious and outrageous thing is that he intended to do so for the same events investigated in previous proceedings by the Instructional Court No. 5 and despite the lack of new evidence. In other words, although both the Instructional Court and the Provincial Court had already taken a position on this issue, it was intended to re-investigate it. It's a hit. Defence resources were not taken into account. Finally, in May 2021 the criminal procedure 340/19 was held, in which the most important was not the alleged slander but the obstruction of justice and coercion. On this trial, attention should be drawn to the following:

- The CNT of Gijón, the main indicted at the beginning of the investigation, was not finally tried, without the investigating judge or the prosecutor's office specified why. None of the accused were convicted of any offence of insult or slander.
- Three women were convicted of an offence of obstruction of justice and serious coercion, despite the fact that the facts tried were the same as those on which the Instruction Court No. 5 and the Provincial Audience had determined that there was nothing to judge.
- The then trade union secretary was convicted of an offence of obstruction of justice and serious coercion, despite the fact that the facts tried were the same as those on which the Instruction Court No. 5 and the Provincial Audience had determined that there was nothing to judge.
- The rest of the convicts were convicted in the same terms as the previous ones for issues as incredible as having worn a megaphone during a demonstration.

All convicted persons were condemned to pay €125,000 in compensation to the entrepreneur, despite the fact that during the trial it was shown that the financial situation of the company and the businessman was not good prior to the conflict. The bakery was on sale from a year before the conflict, the business was not profitable and the entrepreneur hid financial information from economists experts, such as prior mortgages and personal and intra-family loans.

Both the prosecution and the prosecutor's office acknowledged that there was no credible evidence that no one had committed a crime, but they produced a report according to which each of the convicts performed a role and played a role.

There was a beginning and an end and, therefore, things had happened in the middle, things that were just conjecture, but that should have happened. He gave exactly the same explanations of how the labour conflict had been managed and coordinated, the sentences delivered and the judicial records.

The judge who judged the case, Lino Rubio Mayo, issued a conviction. This veteran judge is not precisely an unknown person but a person who has a long career condemning trade unionists and social activists.

In 2007 she sentenced to prison the unionists of the navy sector of Gijón: Cándido González Carnero and Juan Manuel Martínez Morala, who were held responsible for the fire of a security camera during a demonstration. They also provided video evidence showing that they were elsewhere in the demonstration at the same time.

Accidentally, Cándido and Morala were two leaders of the naval sector, with a long history of fighting and known in the city. Among the asturian insubordinates, Lino Mayo is known as “2 years, 4 months and 1 day” for this sentence with which he condemned the insubordinate who fell in his court. A sentence that guaranteed his entry into prison.

Recovered the descriptive thread, once the judgment was appealed to the Provincial Audience, it was pronounced in less than a month. A rapporteur was appointed in December 2021. At the end of March 2022, documentation was required from the parties. In May the judgment of the Provincial Audience was made public: the conviction was confirmed for 6 of the 8 convicted. Something that draws our attention, given that the verdict was given very quickly, given the complexity of the case.

The problem for the condemned

To date, six persons, including the worker, are sentenced to 3 years and 6 months in prison. 2 years for an offence of obstruction of justice and 18 months for a crime of coercion. The convicted, five women and one man, are fully integrated in society, with families and children. Taxi driver, waitress, storer, singer, clinic assistant and teacher are their professions.

In addition to the solidarity they have shown to a person in a situation of abuse and indefence, these people are convicted of having practiced trade unionism and for this fact can be forced to go to prison.

The problem that affects us all

But this is not a problem that is confined to specific people or a small radical organization (so radical that all I was asking was for a convention to be fulfilled), but it is a threat to the whole of trade unionism in this country. It is not intended to make those convicted believe they are martyrs or that they are the only ones who have suffered judicial arbitrariness or union repression. Nothing further from reality. However, the case is serious enough and illustrative enough. Firstly, because judges are being allowed to convict a group of people for facts different from those they were instructed in and for actions that both the Instructional Court No. 5 and the Provincial Audience had considered to be restricted to normal trade union action, which is why these cases were raised.

But the underlying problem is that six people are convicted for carrying out trade union action. This is a very serious problem that affects the whole of trade unionism in this country, but also society as a whole.

This sentence opens the way for thousands of people throughout the country to be sentenced for merely mobilizing in the face of a conflict. By obstruction of justice, any representative of a business committee, trade union section, workers’ assembly or organization risks being convicted if, in negotiating a conflict, he raises the possibility of withdrawing a complaint for events occurring during that conflict. After the sentence for coercion, any person who manifests himself against a company may find himself in the same situation.

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