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Magistrate of the Investigating Court
No. 46 of Madrid

CASE LAW REVIEW
2ND CHAMBER OF THE SUPREME COURT

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Summary: 1. STS No. 703/2024 of 4 July. Boarding of a vessel in international waters for drug trafficking. 2. STS No. 699/2024 of 3 July. Drug-facilitated assault resulting in death. 3. STS No. 901/2024 of 28 October. Criminal offence of threats. 4. STS 889/2024 of 23 October. Offence against privacy in the field of labour relations. 5. STS No. 800/2024 of 25 September. Voluntary delivery of a bag to the police by the occupant of a residence during an active police pursuit, when the item in question belongs to a third-party quasi-occupant who has not been asked whether they consent to its surrender. 6. STS No. 794/2024 of 19 September. Police search of a vehicle. 7. STS No. 910/2024 of 30 October. Theory of functional command of the fact and foreseeable deviations. 8. STS 1051/2024 of 20 November. Unlawful arrest, false report and false testimony. 9. STS No. 1021/2024 of 14 November. Offence of sexual assault. Victim testimony and the progressive formation of the story. 10. STS No. 1026/2024 of 14 November. Late confession.

1. STS No. 703/2024 of 4 July. Boarding of a vessel in international waters for drug trafficking[1].

Factual background

Court of Investigation No. 2 in Ibiza initiated preliminary proceedings under number 1243/2021 for a drug-related offence against Pedro Enrique and Álvaro, and once concluded, it referred the case for trial to the Provincial Court of Palma de Mallorca, whose Section 2 delivered a judgement in abbreviated proceedings No. 44/2022 on 28 July 2023, which contains in part the following proven facts: "...The defendants Pedro Enrique and Álvaro, on 20.11.2021 at approximately 6:43 p.m. were surprised by the Customs Surveillance helicopter Argos 2, aboard the sloop-type sailboat, 17 metres long, named x, registration x, flying the Polish flag, in international waters, at position 36° 28ŽN 000° 56šW, heading 210°. At around 20:45 hours, two semi-rigid boats were docked to the vessel, from which several packages were transferred to the vessel.

On 20.11.2021, authorisation for the boarding of the sailing vessel was requested from the Polish authorities under Art 17.3 of the 1988 UN Convention on the Control of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, via CITCOs. At around 02:15 hours on 21.11.2021, the patrol vessel Abanto, belonging to the Spanish Customs Department IIEE, located the accused onboard the sailing vessel x at position 36° 39 ŽN, L000° 13ŽW, and the vessel was boarded by patrol vessel x. By order of 21.11.2021 of the Court of Investigation No. 3 in Ibiza, Prior Proceedings (D.P., as per its Spanish acronym) 1.243/2021, an entry and search of the interior of vessel x was authorised, which was carried out at 16.33 hours.

[1] STS No. 703/2024, Criminal Chamber, Section 1 of 4 July 2024, published on the website of the Judicial Documentation Centre, CENDOJ (ROJ: STS 3769/2024 – ECLI:ES: TS:2024:3769), appeal: 10073/2024. Rapporteur H. E. Ms Carmen Lamela Díaz.

Inside the sailboat, the defendants, by mutual agreement and with the intention of selling to third parties, were carrying nearly 4,000 kg of hashish and €742 from previous drug sales operations...".

The Provincial Court (AP, as per its Spanish acronym) delivered a conviction, which was upheld by the Superior Court of Justice (TSJ, as per its Spanish acronym) on appeal and also by the Supreme Court (TS, as per its Spanish acronym), which dismissed the appeal in cassation.

Legal grounds

The appellants consider that the Spanish Court lacks jurisdiction to hear the facts that are the subject of these proceedings, since they occurred in international waters, in which a ship flying the Polish flag, with Bulgarian crew members and no connection with our country, was boarded by Spanish police forces, without the necessary authorisation having been received from the flag State at the time of its boarding and subsequent court authorisation for its entry and search, as required by Art. 17 of the Vienna Convention. Therefore, they request that the judgement under appeal be overturned, and they be acquitted.

They explain that the original proceedings began with a request by Group I and II of Narcotics of Udyco Palma de Mallorca together with the Operational Unit of Customs Surveillance in Mallorca, dated 19 November 2021, requesting authorisation to place a geolocation device on the boat x, flying the Polish flag, whose crew consisted of the two accused, on suspicion that it was being used for drug trafficking activities. Court of Investigation No. 2 in Ibiza, on 19 November 2021, decided to initiate D.P. 1243/2021, denying the request made by the acting agents.

On 21 November, the acting agents applied to the duty court (Court of Investigation No. 3) for a warrant to enter and search vessel x. In the official letter requesting this judicial authorisation, the Court was informed that on 20 November 2021, a naval air tracking system had been set up to locate the vessel and, if necessary, to board it. At 20:34 hours on 20 November, the Dava helicopter observed two semi-rigid vessels in position 36.21N-001.01W (international waters) transferring goods to vessel x and at around 02:25 hours, the patrol boat Abanto located the vessel in position 36.39N-000.12W some 27 miles from Cartagena, in international waters, which was boarded, and the narcotic substance seized was found.

In this letter, the Court was informed that based on the legislation in force, in accordance with the provisions of the United Nations Convention of 20 December 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna), CITCO proceeded to request Art. 17, illicit traffic by sea, from the Dutch authorities, there being a typing error since the vessel was flying the Polish flag and the Polish authorities were requested to authorise it, requesting boarding, inspection of the vessel and, if evidence of involvement in illicit traffic was discovered, the adoption of appropriate measures with respect to the vessel, persons and cargo on board, without a reply having been received from the Polish authorities by the time the letter was issued.

The challenger argues that in the case of legitimate flagged vessels, the jurisdiction for prosecution will preferably be that of the flag country, and only secondarily that of the country that carried out the boarding and inspection.

They go on to state that, in spite of this, on 21 November 2021, Court of Investigation No. 3 in Ibiza issued an order to enter and search the vessel and did so without the prior and necessary authorisation of Poland.

In order to refute the arguments of the cassation appeal lodged by the representation of the convicted persons, we therefore start with the possible application of Art. 23.4 d) LOPJ, which confers jurisdiction on Spain to hear cases involving acts committed by Spaniards or foreigners outside national territory that could be classified, according to Spanish law, as illegal trafficking in toxic drugs, narcotics or psychotropic substances committed in marine areas, in the cases provided for in treaties ratified by Spain or in regulatory acts of an international organisation to which Spain is a party.

In our case, as the appellants also admit, we are dealing with an intervention by the Spanish authorities in international waters, through the boarding of a Polish-flagged sailing boat occupied by two Bulgarian citizens, in whose search, authorised by the Court of Investigation No. 3 in Ibiza, a large quantity of hashish was seized. The first connecting factor contemplated in Art. 23.4 d) LOPJ is met, as the prosecuted conduct took place in international maritime space.

Likewise, the second requirement contemplated in the provision under examination is met, since the case under analysis is provided for in treaties ratified by Spain that confer the possibility of conferring jurisdiction on our country in marine waters for the boarding, seizure and prosecution of a crime of illegal trafficking in toxic drugs, narcotics and psychotropic substances. Nor is this disputed by the appellants, who state, in the sense expressed in Plenary Judgements Nos. 592/2014 and 593/2014, that the applicable international treaty precepts are Art. 108 of the United Nations Convention on the Law of the Sea of 10 December 1982 (Montego Bay); and Arts. 4 (regulating jurisdiction in general) and 17 (regulating the prosecution of illicit drug trafficking by sea, also establishing certain rules of jurisdiction) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988, and ratified by Instrument of 30 July 1990 (BOE 10-11-1990). Also cited in the first of the judgements were Art. 22.2(a)(iv) of the 1971 Convention on Psychotropic Substances and the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol (Art. 36), to which we will refer later.

Art. 23.4 d) LOPJ does not foresee any other additional assumptions, whether based on the nationality of the perpetrators or on the carrying out of acts with a view to their commission in Spanish territory.

Along the same lines, STS No. 755/2014 of 5 November, with special mention of the STC 237/2005 of 26 September, which recalls that the courts, when interpreting the procedural requirements provided for by law, should bear in mind the reasoning behind a rule in order to prevent merely formal or unreasonable interpretations of procedural rules from preventing a judgement on the merits of the case, violating the requirements of the principle of proportionality. (STC 220/2003, 15 December 2003, legal ground 3), as it

constitutes a denial of access to jurisdiction based on an excessively rigorous consideration of the applicable rules. (STC 157/1999 of 14 September, legal ground 3).

This evidentiary framework was obtained from numerous qualified testimonies, such as that of the head of the SVA Operational Unit, who revealed a piece of information that supports another point of connection between Spain and the events under investigation, namely that they verified that on 20 November, the boat x left Ibiza, and therefore Spanish sovereignty, heading south, and they assumed that it was heading towards international waters to load narcotic substances. In this way, the vessel was related to Spain in its drug activity and, in fact, the installation of a geolocation device had previously been requested, albeit unsuccessfully. Furthermore, the investigation was initiated in Spanish maritime space as a result of the information provided by the British authorities, and the vessel was tracked during its stay in the ports of the Balearic Islands and during its navigation, until it reached international maritime space. It was also established that the Spanish authorities complied with the protocol established in Art. 17.3 of the Convention, in that they contacted the Polish authorities prior to the start of the operation and that communications were maintained between them. Therefore, there is no irregularity in international law and the Polish State, far from showing its opposition, collaborated with the Spanish authorities and did not request the prosecution of the facts, a situation that allowed and authorised the exercise of jurisdiction by Spain, which carried out the visit and subsequent boarding to repress an act constituting a crime.

Conclusions

The international and cross-border prosecution that the principle of universal justice seeks to impose is based exclusively on the particular characteristics of the crimes subject thereto, as the harm these crimes cause transcends that of their specific victims and reaches the international community as a whole.

The competent court for the investigation was that of the port where the departure of the suspicious vessel, Ibiza, was known, just as it could have been a Central Court of Investigation if it were known that the vessel was going to enter international waters on an unknown course.

2. STS No. 699/2024 of 3 July. Drug-facilitated assault resulting in death[2].

Factual background

Court of Investigation No. 3 in Madrid conducted the procedure foreseen in the Organic Law of the Jury Court under number 1995/2021 for crimes of homicide/murder, violent robbery and fraud against Jerónimo and Indalecio, and once the oral trial was opened, it was referred to the Provincial Court of Madrid, Section 16, where the case was heard by the Jury Court (Proceedings No. 236/2023) and Judgement No. 224/2023 was delivered on 9 May, which partially contains the following proven facts: "At 5 a.m. on 29 October 2021, Nicolás went to room number x of the Westin Palace Hotel, located at Plaza de las Cortes No. 7 in Madrid, where he was staying, accompanied by the accused Indalecio and

[2]STS No. 699/2024, Criminal Chamber, Section 1 of 03 July 2024 published on the website of the Judicial Documentation Centre, CENDOJ (ROJ: STS 3772/2024 – ECLI:ES: TS:2024:3772), appeal: 11323/2023. Rapporteur H. E. Mr Andrés Palomo del Arco.

Jerónimo. Once inside the aforementioned room, the accused, or one of them with the knowledge and consent of the other, poured gamma-hydroxybutyric acid (GHB) into the white wine that Nicolás was drinking and, taking advantage of the state of unconsciousness or semi-consciousness in which Nicolás was left, the accused took the following objects from inside the room: a) an Apple iPhone mobile phone; b) a Microsoft Surface Pro 6 tablet; c) an Apple Watch; d) a metallic blue bank card of entity x with number x; e) a metallic blue bank card of entity x with number x; and f) a red bank card of the Bank of America with an unknown number. At 6 a.m., the two accused left the room, subsequently going to an ATM to withdraw money... to a tobacconist to buy tobacco... to a betting shop to gamble... At around 10 a.m. on 30 October 2021, Nicolás' lifeless body was found in room number x of the Westin Palace Hotel, the toxicology report stating a blood intake of GHB of 155.85 milligrams per litre...".

The conviction delivered by the AP was upheld by the TSJ and subsequently by the TS, dismissing the appeal in cassation.

Legal grounds

The appellant contests the conviction by pointing out that, as regards the crime of murder, given the trajectory of Nicolás and the two defendants that night, Nicolás drank enough to reach a significant ethyl intoxication of 2.02 gr./l in the vitreous humour and states that it is not discernible whether Nicolás voluntarily ingested the GHB or whether it was the defendants who, without the victim's knowledge, poured the substance into the wine that the victim was consuming. He states that deaths from GHB overdoses are frequent, that it is a drug that is also used as a sexual enhancer, that the remains of GHB were found in the mouth of the bottle, not inside it, and adds various alternatives to the fact that the container of this drug was not found, or that traces of the drug were found in the bottle due to contamination and, finally, he denies that they cleaned their own glasses, given that they were not concerned about many other traces of their stay in the hotel, as well as their habitual practice of these practices, given that nothing was found in the searches of their homes.

The appellant adds that it is logical to infer that the defendants could in no way have known essential data on the substance, its composition, adulteration and degree of purity, from which to deduce its degree of toxicity and its dangerousness, so that the defendants could not imagine that Nicolás could die as a result of the GHB they had given him as they were unaware of its toxicity, and, furthermore, the supply would have occurred after a night of partying during which the defendants themselves had also consumed alcohol and drugs and would not have had sufficient lucidity to consider the risk that could arise from the clandestine supply of the drug to Nicolás.

In contrast to this exculpatory plea, the TS indicates that the Jury obtained its conviction on the basis of five fundamental facts: 1) The exclusive presence of the accused alongside Nicolás in the hotel room, as recorded by the entry and exit footage, corroborated by the identification of fingerprints and the check-in record. 2) The amount of GHB in both the bottle and the glass from which the deceased drank, as demonstrated by the reports from the Provincial Brigade of Scientific Police and the National Institute of Toxicology, is a fact that the Jury considers incompatible with voluntary consumption. This inference aligns with the rules of human reasoning, as it is illogical to add something to a drink while it is still bottled only to then serve it in a glass. The presence of GHB in

both containers clearly suggests that it was introduced into the bottle without the knowledge of the person who would later drink the wine, 3) The fact that no drugs were found during the subsequent search of the room, as evidenced by the minutes and reports from the police inspection, suggests that the accused took the container. The alternative explanation, that it disappeared due to the actions of the victim or police negligence, is deemed far-fetched, 4) The established use of GHB as an agent for drug-facilitated assault in predatory acts, as testified by specialists in toxicology and forensic medicine during the trial, combined with the proven and acknowledged fact that at least one of the accused stole valuable items, results in the incriminating conclusion accepted by the Jury Court, 5) The victim's behaviour and coordination, as demonstrated by the recordings from the hotel entrance cameras, together with forensic reports, lead to the conclusion that the GHB consumption occurred entirely or mostly within the room and before the accused left. Prior to entering the room, the victim showed no signs of intoxication that would suggest impairment.

The STS ends by refuting the thesis of deliberate ignorance on the part of the defendants, when it states that the quantity and lethality of the dose used, revealed by the expert reports of toxicologists and forensic experts, lead to the conclusion that both defendants, knowing the risks derived from supplying this substance in high doses, did so with disregard for the result that could occur. The pretext of not knowing the dose, purity, possible adulteration, etc. is not a suitable argument to counteract the elements of malice. On the contrary, this alleged ignorance would imply a greater and more serious indifference to the result that could occur.

Conclusions

Cases of drug-facilitated assault are becoming increasingly frequent, and although they are generally linked to allegations of sexual assault, they cannot be ruled out in other criminal contexts such as crimes against persons or property.

In this STS, the results of the different analyses do allow us to conclude that there has been such drug-facilitated assault, which is not always the case due to the volatility of the substances used and leaves us with an important consideration: whoever uses this type of substance for any purpose, licit or illicit, must assume a risk derived from the potentially harmful nature of this product. Lastly, as a hypothesis, one might wonder what would have happened if the property crime—which so strongly convinced the jury to interpret the premeditated and malevolent use of GHB to commit a crime—had not been present. Perhaps the role of the Forensic Science Police at the crime scene with a detailed and thorough visual inspection would be of even greater value in providing us with the correct answer.

3. STS No. 901/2024 of 28 October. Criminal offence of threats[3].

Factual background

Criminal Court No. 2 in Cádiz conducted investigation proceedings for fast-track procedure No. 22/2021, against José Ángel and another. Once concluded, it issued a judgement dated 11 March 2021 which contains the following proven facts: "...the accused José Ángel with an uncancelled criminal record, already convicted of a minor offence of threats by judgement of 20 December 2016, on 12 November 2020 at around 7.15 p.m., went to the flat he owned in Cádiz and which he rented to Jesús Carlos, Juan Luis and José María and, after entering the flat without permission, being reproached by Jesús Carlos, he took a knife from the kitchen and addressed the latter, telling him in a threatening manner, "Leave, or I'll kill you". After calming down and leaving the house, José Ángel returned, this time in the company of the also accused Marco Antonio, carrying two dogs as on other occasions. José Ángel addressed Juan Luis in a threatening manner and said, "Get out of the way, or I'll take your life". He then turned his attention to José María and realised that he was calling the police, raising his fist against him in a threatening manner...".

The sentence of the Criminal Court convicts the accused as the perpetrator of a less serious offence of threats and two minor offences of threats with the aggravating circumstance of recidivism. On appeal, Section 4 of the Provincial Court of Cádiz delivered judgement on 30 December 2021 rejecting the appeal, although it eliminated the aggravating circumstance of recidivism as the criminal record could be cancelled.

The TS dismissed the appeal and upheld the defendant's conviction.

Legal grounds

The offence of threats is a crime of hypothetical danger, not because the threats may or may not be carried out, but because it is not required that there be an actual disturbance of the threatened person's mind or that his or her feeling of security be affected.

The offence of threats is consummated when the addressee receives the intimidating message, even if, because of his or her spirit, character, feeling protected or for a thousand other possible reasons, there is no real impact on what is to be protected: the feeling of tranquillity and security. Therefore, it is not an offence of result, although this does not exclude imperfect forms of commission, as it is an activity which, depending on the case, can be divided and dissected (STS 179/2023 of 14 March).

Therefore, the argument, a mere reiteration of what was argued in the appeal of the absence of any of the elements of the offence of threats, based on the alleged strength of mind of the threatened person who did not feel violated and disturbed by the verbal and gestural threat, knife in hand, must be rejected.

[3] STS No. 901/2024 of 28 October 2024, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STS 5222/2024), ECLI:EN:TS: 2024:5222, Criminal Division, Section 1, Appeal: 2254/2022. Rapporteur H. E. Mr Antonio del Moral García.

Indeed, the fact that he did not flee or did not feel intimidated are not circumstances that dilute the offence of threats, nor does the fact that he tried to calm him down neutralise the potential in the abstract of the manifestation to cause fear in the person receiving it. It is enough that it is suitable to intimidate or frighten. Moreover, to a certain extent, the reasoning follows factual paths that are not strictly in line with the proven fact. The terms and context of the expression, in a confrontation while carrying a bladed weapon, cannot be understood literally as a genuine intent to cause death, as the Prosecutor astutely points out. However, it does serve as a warning that the individual would not relent in their effort to evict the other person from the residence, regardless of the actions required, which has the potential to instil fear.

Citing the STS 869/2015 of 28 December, the case law of this Chamber has long considered the offence of threats as a mere activity (SSTS 9-10-1984, 18-91986, 23-5-1989 and 28-12-1990), which is consummated with the arrival of the announcement to its addressee, and its execution consists of the threatening of harm with the appearance of seriousness and firmness, without it being necessary to produce the mental disturbance that the perpetrator seeks, so that it is sufficient that the expressions used are suitable to intimidate the victim.

Moreover, we are not dealing with two minor offences, but with the offence categorised in Arts.169.2 and 171.7 of the Penal Code (hereinafter CP), modalities of serious and minor offences, respectively, which share the same name and legal structure. They are differentiated only by the seriousness of the threat, which must be assessed, as the Prosecutor's report states, according to the occasion on which it is made; the persons involved, previous, simultaneous and subsequent acts... In short, by the collection of circumstances surrounding the event. It is a predominantly circumstantial distinction, difficult to reduce to measurable objective guidelines in a laboratory, isolating all the nuances and elements of the specific case (SSTS 938/2004 of 12 July, 259/2006 of 6 March, or 1068/2012 of 13 November).

The assessment made at first instance and endorsed on appeal is correct. The expressions uttered by the accused while wielding a knife are objectively apt and suitable to cause disquiet, fear or unease to the addressee. The ostensibly aggressive attitude he displayed reinforces this assessment. The frightening potential of the expressions in the abstract cannot be doubted. We are facing a threat that is serious and credible, capable of affecting the feeling of security and tranquillity.

Addressing the victim with a knife and threatening him or her with the words, “Leave, or I'll kill you”, in this climate of confrontation over housing, is a serious announcement that fulfils the content of Art 169.2 CP.

This estimation is reinforced, as expressed in the appeal judgement, and now mentioned by the Public Prosecutor, by recalling the reasoning of the judge *a quo*. That is, that the national police officer who arrested José Ángel—part of the police contingent that appeared at the scene of the events—stated that José Ángel told his opponents that he would not let this go and that when they got out, he would deal with them. Thus, he did not even change his behaviour in the presence of the police.

Conclusions

The offence of threats is a mere activity offence and does not require the recipient's state of mind to be disturbed.

The difference between a lesser offence and a minor offence lies both in the seriousness of the content of the threat and in the assessment of the agent's intent in terms of seriousness, persistence and credibility. A minor offence occurs when the concurrent circumstances demonstrate the lesser seriousness of the threat or its inconsistency, but when they occur in another context and with significant differential elements, such as the existence of a weapon, it can give rise to a less serious offence punishable by imprisonment.

For the purposes of appropriate police action to qualify the intensity of the threat, less serious or minor, it should be noted that Final Provision 1 of LO 5/2024 of 11 November on the Right to Defence, amends Art. 495 of the Lecrim and indicates that arrests may not be made for the alleged commission of minor offences, unless the alleged offender has no known address or does not provide sufficient bail, in the opinion of the authority or agent attempting to arrest him/her.

4. STS 889/2024 of 23 October. Offence against privacy in the field of labour relations[4].

Factual background

Criminal Court No. 5 of San Sebastián delivered a judgement of acquittal for the crime against privacy, No. 470/2021 of 29 October, confirmed by the Provincial Court of Guipúzcoa, Section 3, in summary appeal No. 3132/2021, Judgement No. 61/2022 of 22 March.

In summary, the factual account states that the complainants, who are the private prosecutors, were dismissed by the company for which they worked, a dismissal which was annulled by the labour courts on the grounds that the access to the personal emails of the three complainants via the computer equipment supplied by the company was unlawful.

The proven fact refers that the labour regulations applicable to workers subject to the Offices Agreement state that the use of computers and technical means provided by the company for activities outside the company is considered an example of serious misconduct and that the workers had been warned, at least eight times between 29 December 2011 and 5 February 2015, with repeated orders regarding the use of the company's computer means, that they should only be used for work and not for personal use.

On 13 March 2015, the complainants signed, without any reservation, a document in which they were again informed of and required to comply with the unavoidable obligation to respect the absolute confidentiality of the information relating to the work

[4] STS No. 889/2024 Criminal Chamber, Section 1 of 23 October 2024 published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STS 5200/2024 – ECLI:ES: TS:2024:5200). Appeal: 3302/2022. Rapporteur H. E. Mr Andrés Martínez Arrieta.

activity. Furthermore, it was declared proven that in the e-mails between the three complainants, there were continuous demands for the immediate deletion of their content, aware of the obligation assumed not to use them for private purposes unrelated to the work activity. In this context, when a backup of the corporate e-mail was made, a large number of e-mails were detected among the complainants of a personal nature unrelated to the work activity for which the computer equipment was supplied.

The TS upholds the acquittal for the crime against privacy.

Legal grounds

The judgement declares it proven that the owner of the IT resources supplied to the plaintiffs was the company, which provided its workers with IT equipment with a corporate email account assigned to each of them, with a password that was known to all of them and without requiring any password to access each one's email. It is stated that the applicable collective bargaining agreement considers the unauthorised use of company tools or materials for own use to be serious misconduct. At regular meetings, on at least eight occasions between December 2011 and February 2015, employees were given repeated orders regarding the use of IT resources... which could only be used for work-related purposes. Furthermore, the complainants had signed a document in March 2015 reiterating the unavoidable obligation to respect confidentiality...

It refers to the discovery of emails obtained during a backup, which the company used to terminate the employment relationship, a fact that was challenged by the employees, and which was upheld by the labour courts.

At the heart of the matter is the question of deciding on the nature of the appropriation required for the criminalisation of the offence charged. To this end, we must focus on the examination of the case law of this Chamber, the Constitutional Court and the European Court of Human Rights in order to determine the wrongfulness of the employer's conduct.

The examination of Art. 20 bis of the Workers' Statute recognises the right of workers to privacy in the use of digital devices made available to them by the employer, in compliance with the provisions on the protection of personal data and guarantees of digital rights.

Conflict situations arise in the exercise of the respective rights to privacy and control of the means of production, in which the decisions delivered by the labour courts on labour matters, and of the criminal courts, approach conflict situations from different perspectives: the work relationship and the assault on fundamental legally protected interests.

Several judgements have been key in resolving the conflictive situation that can arise when the use of computer media provided by the employer is used by the employee for his or her personal use. Most of the judgements in which this issue has arisen refer to information obtained from corporate devices into which the employee has entered personal data and which are intended to be used as evidence.

Thus, in Judgement 528/2014 of 16 June, a restrictive position was upheld. In order for evidence provided by employers—obtained by intercepting employee communications—to be accepted and effective, Court intervention was considered to be necessary, and this by virtue of the essential content of Art. 18. 3 of the Constitution. Subsequently, Judgement 489/2018 of 23 October, in a case in which a programme had been installed that detected the origin of different communication messages within corporate mail, it was stated as case law that the evidence obtained by the employer was not admissible because there was no prior clause, express or implicit, that legitimised the control measure, thereby producing a violation of the expectation of privacy on the part of the employer. The judgement pointed out that there are fundamental rights at stake that no one can doubt, as has been graphically stated in a felicitous and therefore oft-repeated phrase: workers leave neither their privacy nor the rest of their rights at the office and company gates. The judgement analyses the jurisprudence of the Social Chamber and those resulting from the judgements of the European Court of Human Rights contained in the so-called Barbulescu I and II judgements of the European Court of Human Rights, those contained in the so-called Barbulescu I and II doctrine, respectively of 12 January 2016 and that of the Grand Chamber of 5 September 2017, and concludes by stating that this is the key to resolving the case, there could be well-founded reasons to suspect and understand that the examination of the computer was a proportionate measure for clarifying the unfair conduct and assessing the damages. A formula was also sought that was as non-invasive as possible, but an inexcusable *prius* was missing. If there was an express reference or instruction regarding the need to limit the use of computer to professional tasks, from which tacit consent for such control could be surmised or, at least, knowledge of this supervisory power and/or a clause known by both parties authorising the company to take measures such as the one carried out here; or if the consent of the person who had been using the computer exclusively had been obtained previously, there could be little doubt as to the legitimacy of the investigations carried out by the company. However, given the circumstances in which it was carried out, it must be affirmed that the legal system neither consents, nor did it consent at the time of the facts, to an action so intrusive and detrimental to fundamental rights.

Employers and employees can set the terms of this control, agreeing to waive not only privacy but also the very inviolability of communications. And where there is an express agreement on oversight, employees' expectation of privacy, even in the workplace, is excluded.

However, the exclusion of this expectation must be express and conscious and cannot be equated with an alleged waiver derived from the employee's will.

A worker who is aware of the prohibition on using the computers made available to him/her by the company for private purposes, and nevertheless fails to comply with that mandate, commits an offence that must be punished in the terms that are proper to the employment relationship, but that offence does not deprive the offending employee of his/her right to define a circle of exclusion vis-à-vis third parties, including of course, whoever provides him with those means of production.

Judgement 56/2022 of 24 January deals with a specific case in which there was no warning, nor were the persons concerned present, nor was the precise purpose identified, nor was any formula adapted to mitigate the subjective extension of access.

Finally, in this jurisprudential review, Judgement 89/2023 of 19 February deals with the carrying out of an internal "forensic" audit, in which a number of e-mails are intercepted in the course of the investigation. The judgement distinguishes between appellants who consented to the interception of their emails and those who did not. The Court concluded that there was no unlawful interference in cases where explicit consent was given. Given the notification conditions outlined, it was clear that no legitimate expectation of privacy could have been frustrated for those who explicitly agreed to the monitoring of the company systems they used for the stated purpose and objective. The Court determined that the investigation was conducted with the explicit consent of the affected parties, thereby nullifying any legitimate expectation of privacy. It was deemed fully proportionate to the legitimate goals pursued and necessary to understand the commercial activities carried out by the company's executives and employees. These activities were examined to determine the company's true economic situation and its causes, entirely separate from the private or personal activities of the individuals, which were naturally not reflected in any of the digital evidence included in the report. A different decision is given in respect of the appellants who did not give their consent.

Analysing the question from the perspective of the case before us, it is established that the complainants, now appellants, had been warned and were aware of the prohibitions on making any particular use of the computer equipment made available to them by their employer for the performance of their work activities. Nor were their e-mails protected by their own personal passwords. The factual account states that the employees had been informed, without any reservation, of the requirements and the unalterable obligation to maintain absolute confidentiality regarding work-related information and the use of company systems, including proprietary systems and software. These were strictly limited to professional work tasks. Employees had, at times, been explicitly reminded of these obligations, and they themselves acknowledged in their messages the need to delete certain communications and use alternative methods of communication. Given these precautions, they were fully aware of the limitations on the use of the systems and the restrictions governing their utilisation. Furthermore, the factual account indicates that there was no act of intrusion. Instead, while performing a backup and noting that the email inbox had reached its storage limit, it became evident that the system was being used for matters outside the scope of its intended purpose as a work tool.

Conclusions

In offences against privacy and the disclosure of secrets, the legally protected interest is individual privacy. While the concept of secrecy can encompass broader meanings, such as knowledge accessible only to a few, it must be directly tied to privacy, as this is the protective intent of such legal provisions. Privacy refers to a personal and reserved domain, shielded from the actions and knowledge of others.

In this case, there was no reasonable expectation of privacy that could invalidate the employer's actions. The employees were aware that use of the company's IT tools was subject to certain restrictions, which they knowingly, consciously, and voluntarily exceeded, despite receiving explicit warnings and formally accepting these terms in writing.

5. STS No. 800/2024 of 25 September. Voluntary delivery of a bag to the police by the occupant of a residence during an active police pursuit, when the item in question belongs to a third-party quasi-occupant who has not been asked whether they consent to its surrender[5].

Factual background

Court of Investigation No. 1 in La Coruña opened abbreviated proceedings No. 85/2019, for the offence of drug trafficking and, once concluded, referred it to the Provincial Court of La Coruña (Sect. 2 97/19), which, on 13 April 2021, delivered judgement, in which it declared, among other proven facts, the following: "Enrique, who had arrived in the country a few days earlier and was staying at a residence in La Coruña, met Cecilio in the morning at the Alcampo hypermarket. Afterward, each in their own vehicle, they travelled to an area near Arteixo, close to the Tambar's bar. Enrique stayed nearby, while Cecilio approached the entrance of the establishment. There, Braulio, with whom he had spoken on the phone shortly before, handed him a bag containing cocaine. Cecilio took the bag and immediately left, heading toward where Enrique was waiting. He then handed the bag to Enrique. Enrique placed the bag in his vehicle and drove to the residence of x. Specialised agents were following him and intended to arrest him. However, before they could do so, Enrique entered the building, carrying the bag, and went up to the residence. Shortly after, he returned to the street without the bag, at which point he was arrested.

Some of the agents then went up to the same residence, presented themselves to the occupants, and briefly explained Enrique's arrest, requesting the bag. The occupants handed it over..."

The Provincial Court's judgement was condemnatory, affirmed by the TSJ, and the TS dismissed the cassation appeal.

Legal grounds

The appellant argued that consent for what he characterised as a search of the residence—in one of whose rooms the bag containing cocaine was located—should have been granted by the interested party and not by the regular occupant of the home.

He concluded that the search was unlawful under Art. 11.1 LOPJ, not merely irregular, which should result in the nullification of the discovery and his consequent acquittal. The appellant further contended that the belongings were handed over to the police by the occupants of the house, but the officers failed to disclose the true reason for requesting the delivery of the luggage and the contents of the yellow bag. They did not explain the reasons for the detention and merely stated that Enrique was detained, leading the occupants to believe they were handing over items Enrique might need. Thus, they were unaware of the possible presence of drugs.

[5] STS No. 800/2024, Criminal Chamber, Section 1 of 25 September 2024, published on the website of the Judicial Documentation Centre, CENDOJ. (ROJ: STS 4538/2024 – ECLI:ES: TS: 2024:4538). Appeal: 2598/2022. Rapporteur H. E. Ms Ana María Ferrer García.

Once again, the TS praised the defence's efforts but ultimately dismissed the appeal, based on the facts declared proven.

The argument cannot succeed because the reality of what the court considered proven was entirely different. The appealed judgement states that the luggage was handed over to the agents without them entering the residence or conducting any form of a search. It was sufficient for the agents to explain their official status and Enrique's detention to the occupants of the house. The occupants, Cosme and Eloisa, were neither detained nor coerced into participating in the investigation. No reference was made to any possible involvement in the alleged crime, and the delivery of the luggage was entirely voluntary. Nothing about the facts was concealed from them. The alleged ambient intimidation is dismissed, as it seems credible—as per the appealed judgement—that the delivery was motivated by a desire to cooperate with law enforcement, as one might reasonably expect from citizens uninvolved in the alleged crime.

The defence also questioned the regularity of the package's acquisition, which contained the drugs. It is alleged that the inhabitants were intimidated by the officers. It noted that the exact location of the luggage within the house was not specified, suggesting it might have been in a private area, such as a room allocated to Enrique. If so, the occupants would lack the authority to access or consent to its handover. The defence argues that this was not a flagrant offence and further asserts that the luggage should not have been opened without the presence of the accused and their lawyer, given that they were under detention. From this, the defence claims that the seized substances cannot be evaluated.

As previously noted, no search was conducted in the residence where the accused was staying, nor in the specific area where the luggage was located or where the accused might have been sleeping. It remains unclear whether the accused had been assigned a room exclusively for personal use or if a common area in the residence had been repurposed for their stay. Similarly, the exact location of the luggage handed over to the police is unknown, as are the specific contents of that luggage—whether it included only the bag containing drugs or other items.

The appealed judgement emphasises that the luggage was handed over voluntarily by the occupants of the residence, without the agents entering the premises or conducting any form of search. It was sufficient for the agents to inform the habitual occupants, Cosme and Eloisa, of their official roles and Enrique's detention. The occupants were not detained, they were not pressured or implicated in the alleged crime, and the delivery of the luggage was entirely voluntary, and no relevant details were withheld from them. The court does not rule out, as the judgement highlights, that the occupants acted out of a desire to cooperate with law enforcement, which is typical behaviour for law-abiding citizens uninvolved in criminal activities. The accused was being accommodated in their home out of tolerance, which further supports their willingness to collaborate.

Since the exact location of the luggage remains unknown, there is no basis to presume that it was stored in a private area inaccessible to the occupants. For instance, if the accused were allowed to sleep on a sofa in the living room, could it be argued that the occupants could not use that space during the accused's stay? Such hypothetical restrictions cannot be imposed on such vague premises. Nor is it necessary because, as

we have already pointed out, no search was conducted, but rather the mere handing over of luggage.

Furthermore, the opening of the luggage by the officers to extract the package concealing the drugs does not result in the annulment effect being sought.

The conduct of such an investigation without the involvement of the interested party or a person acting as a judicial officer deprives the finding of the value of pre-constituted evidence, which means its authenticity must be proven through evidence presented at trial, in this case, the testimony of the officers. However, no fundamental rights were affected.

It was an urgent police action, justified in part because a person was detained, and the need arose to verify the reality of what, until that point, was a well-founded suspicion, thereby ensuring the seizure of the illicit substance and successfully completing the investigation.

Conclusions

This TS judgement analyses two matters of great interest. First, the involvement of residents in handing over an object to the police that belonged to another resident. Second, the validity of opening that luggage without the presence of the interested party or a judicial officer.

Since there was no entry into the residence by the officers, the situation falls into a very delicate, fragile, and tenuous factual domain: the active involvement of one resident, who, at the officers' request, retrieved an object belonging to another occupant of the property and handed it to the police outside the residence. This act could be equated with the need for consent, which might arguably have had to come from the actual owner, also a resident. However, for reasons of urgency, the police requested assistance from those present. The proven facts confirm that the residents voluntarily handed over the luggage, as no other altruistic participation could be attributed to these good and Samaritan witnesses. Had they refused, they might have been treated as detainees, facing a different outcome. Additionally, the officers would have had to request judicial authorisation to search the bag or any other items.

Second, it is unnecessary for the detained individual's lawyer to be present for the opening of the luggage, though the interested party themselves, or at least the opportunity for them to be present, should be provided. In any event, this would not constitute pre-constituted evidence, but rather evidence that must be subjected to challenge during the trial through the interrogation of the officers.

6. STS No. 794/2024 of 19 September. Police search of a vehicle[6].

Factual background

Court of 1st Instance and Investigation No. 3 in Teruel opened abbreviated proceedings 179/20, and once concluded, referred them to Provincial Court of Teruel (Proceedings 229/22), which on 30 December 2022, issued a judgement that contains in part the following proven facts: "On the same day as the aforementioned house searches, the vehicles used indistinctly by the defendants were also seized: Opel Astra number plate x, Honda CRV number plate x and Ford Transit number plate x, owned by defendant Genaro, Kia Picanto number plate x and BMW 525 number plate x, used by defendant Marcial, Cupra Formentor number plate x owned by defendant Ismael, as well as the Renault Kangoo van number plate x, used by defendants Victor Manuel and Constantino to travel to Madrid.

On 3 November 2021, police officers, identified by their professional credentials, conducted a thorough search of the seized vehicles. During the inspection of the Renault Kangoo van with licence plate X, they discovered a compartment specifically created for concealing drugs ("caleta"), containing eleven slabs of cocaine weighing approximately 11 kilograms. Simultaneously, in the Opel Astra vehicle with license plate X, owned by the accused Genaro, empty hidden compartments were found in the rear seat area".

The Provincial Court issued a conviction (SAP) for drug trafficking and participation in a criminal group. This decision was largely upheld by the TSJ and only slightly modified by the TS when resolving the cassation appeal.

Legal grounds

The defence for some of the convicted individuals argued that, unlike other accused parties, their client was not in the Renault Kangoo van when arrested. They found it unusual that the drugs inside the van were not discovered until several days after the vehicle had been placed in storage.

They questioned the discovery, noting that a police officer testified the drugs were deeply hidden and challenging to extract. The defence highlighted that the inspection occurred in police facilities without judicial authorisation, the presence of any public official, or the drafting of a report. The only documentation was a photograph included in an official report seeking search and entry authorisations. The defence asserted that the discovery should be considered null and void because the accused and his defence were not allowed to be present, invoking Art. 333 Lecrim.

In response to this challenge, it is sufficient to recall that the discovery of the cocaine shipment was incorporated into the evidentiary record through the contradictory testimony of the investigating officers who found the drugs. Such evidence is permitted under constitutional jurisprudence and the rulings of this Chamber. The trial court found these testimonies credible and reliable. The appeal failed to provide any substantial basis

[6] STS No. 794/2024, Criminal Chamber, Section 1, of 19 September 2024 published on the website of the Judicial Documentation Centre, CENDOJ (ROJ: STS 4446/2024 – ECLI:ES: TS:2024:4446), appeal: 10825/2023. Rapporteur H. E. Ms Ana Ferrer García.

to suggest that the court's assessment was erroneous or arbitrary. The argument relied on a presumption of illegality in the officers' actions, implied without any factual foundation, beyond the mere delay in the discovery. Even this delay, as admitted in the appeal, was explained by the officers as due to the difficulty of locating the hidden compartment ("caleta"). That is to say, part of a presumption of illegality in the police action, which this Chamber has firmly rejected in the absence of a minimal basis on which to base such a presumption (among many others, STS 753/2024 of 22 July), a situation that does not exist in this case.

A vehicle that is used solely as a means of transportation does not enclose an area in which the private sphere of the individual is exercised or developed (SSTS 143/2013 of 28 February or 856/2007 of 25 October, among many others). Consequently, its search by law enforcement officers during the investigation of suspected criminal activities to discover and, if applicable, seize the effects and/or instruments of a crime does not require judicial authorisation, as no constitutional right is affected in such a case, unlike with the home, correspondence, or communications (SSTS 619/2007 of 29 June, 856/2007 of 25 October, 861/2011 of 30 June, 571/2011 of 7 June, 143/2013 of 28 February, 737/2021 of 30 September and 246/2023 of 31 March, among many others).

STS 183/2005 of 18 February, cited by many of the previous ones, explained that as a general rule, police actions, being simple investigative actions, lack evidential value in themselves, even when they are reflected in documents in an official report. The evidence that may derive from them must be incorporated into the oral trial through an acceptable legal means, typically through the testimony of the officers who carried out the action, duly conducted in the oral trial with all procedural guarantees, particularly under the principles of audi alteram partem and immediacy (in the same sense, SSTS 63/2000 and 756/2000). And the STS 479/2014 of 3 June recalled in response to an allegation similar to the one we are dealing with here that, "even if the practice of the search of the vehicle, as we indicated in the aforementioned ATS (TS Order) 2469/2013 referred to, without judicial intervention and without the presence of the accused does not violate any fundamental right that determines the radical nullity of the procedure, this does not mean that the police officers who carry it out do not try to ensure that the accused are present when they are in the police premises and there are no well-founded obstacles for them to attend the search. It is indisputable that the right of defence and the principle of audi alteram partem must be fulfilled to the extent possible, even in the pre-procedural phase of the investigation. This is required by a guarantor reading of ordinary law, Art. 333 of the Lecrim, not only because it increases the guarantees for the accused but also because it provides greater authenticity and reliability to the police intervention and facilitates the legitimisation of the search when it is subjected to contradiction during the oral trial, resolving and mitigating possible deficiencies and opacity arising in the plenary session due to the testimony of the police officers who carried out the action.

In the specific case, the officer who conducted the search testified during the oral trial, thus validly incorporating the results of the findings, and in the same sense, a repeated constitutional jurisprudence asserts that the fact that the practice of such an action, the vehicle search, without judicial intervention and without hearing the parties, could affect the right to a process with all guarantees, does not automatically mean that the result thereof cannot be incorporated into the process through means other than the act itself (specifically, STC 303/1993, legal ground 5, in relation to other pre-constituted evidence, SSTC 36/1995, 2nd legal ground, 200/1996, legal ground 2, 40/1997, legal

ground 2, 153/1997, legal ground 5, 115/1998, legal ground 3). Thus, to the extent that it was incorporated into the process through the statements of the police officers who carried out the search during the oral trial with all guarantees, including the contradiction guarantee, as evidenced by the reading of the trial minutes, it must be understood that the improper conduct of the vehicle search did not result in material defencelessness, and therefore, does not violate the right to a process with all guarantees (STC 171/1999 of 27 September, legal ground 12)which is fully applicable in our case.

STS 794/2024 concludes by stating that, ideally, the inspection of the vehicle should have been carried out with the intervention of the parties, or at least by giving them the opportunity, but daily reality teaches us that in most cases this is not possible on pain of slowing down and obstructing the investigators' investigations and their goals aimed at clarifying the facts in such a way that they are frustrated. The way the result of the police action was incorporated into the plenary session in this case clears any doubts about the evidentiary validity of the findings.

Conclusions

This STS maintains the consistent line of previous rulings regarding the scope of the right to inviolability of the home, which does not apply to a routine vehicle search because, as is obvious, it does not have that constitutional protection, although it subtly includes some expressions about a guarantor interpretation that, in my opinion, are not very convincing, especially when it also adds references to ideal actions that are practically impossible to materialise in everyday reality. The presence of the detainee or the interested party will be necessary, but not that of their lawyer.

Criminal and criminal procedural rules should not be so broad as to allow interpretations that are either overly guarantor or not guarantor; the term itself is already questionable. The scope of interpretive modulation should be restricted to avoid making police investigations almost illusory by colliding with an overgrown guarantorism in favour of the accused. The right balance is where success lies, as long as the rule is not only certain but exists, and its regulation does not allow the existence of existential doubts.

7. STS No. 910/2024 of 30 October. Theory of functional command of the fact and foreseeable deviations[7].

Factual background

Court of Investigation No. 6 in La Coruña handled Summary Proceedings No. 656/2022 for the offences of attempted homicide and violent robbery in an inhabited house against Carlos Manuel and another individual. Once the oral trial was initiated, the case was referred to the Provincial Court of La Coruña, Section 2, which, after reviewing the case, issued judgement No. 423/2023 on 24 November 2023, as part of Summary Proceedings 6/2023. The judgement contains, in part, the following proven facts: The accused, Juan Miguel and Carlos Manuel, planned to obtain money and any other valuable objects that might be present in the home of a mutual acquaintance named Bienvenido, especially

[7] STS No. 910/024. Criminal Chamber, Section 1, of 30 October 2024 published on the website of the Judicial Documentation Centre, CENDOJ. (ROJ: STS 5336/2024 – ECLI:ES: TS: 2024:5336). Appeal: 10221/2024. Rapporteur H. E. Mr Andrés Palomo del Arco.

with the encouragement of Carlos Manuel, who knew Bienvenido's residence located in A Coruña. Both accused were aware that Bienvenido was a person of pronounced physical vulnerability, with an officially recognised disability of 85% and severe mobility problems that typically required him to use a wheelchair and rely on the assistance of others for many daily activities. These circumstances were intentionally exploited by Juan Miguel and Carlos Manuel to ensure the success of their plan, fully knowing that their victim would not be able to resist. After midnight, between 1:30 am and 2:00 am on 23 May 2022, both accused went to Bienvenido's residence, whose layout Carlos Manuel was familiar with from prior visits. After throwing a large cobblestone (27x26x16 cm) at one of the windows, which shattered, they managed to open the door and break into the house. The homeowner was sitting on a sofa and, unable to react due to the surprise of the attack and his physical condition, struggled to rise but was immediately thrown to the ground by the accused. Juan Miguel seized a type of katana displayed on the wall, with a blade about 45 cm long, and, after placing a foot on Bienvenido's neck, began brutally striking him with the weapon's blade, which eventually broke near the handle. The blows were inflicted repeatedly on various parts of the body, including the right leg, head, and left forearm. At all times, Juan Miguel was fully aware of his actions and accepted the potential lethal consequences thereof. While his accomplice assaulted the victim and demanded to know the location of money and drugs, the other accused, Carlos Manuel, alternated between guarding the entrance and other parts of the house, equally accepting that the attack on Bienvenido could result in his death.

The TSJ upheld, on appeal, the sentence imposed by the Provincial Court for the crimes of attempted murder and robbery with violence and intimidation. The TS also dismissed the cassation appeal.

Legal grounds

The appellant argues that his client was unable to foresee the harmful outcome that ultimately occurred, attributing the greater culpability for the action to the functional control of the other participant.

The explanation provided in the legal reasoning of the STS (TS judgement) to dismiss the cassation appeal is highly instructive, stating that: "…regarding the appellant's lack of intent to harm the victim's life, as extensively explained by the Public Prosecutor in opposing the appeal, this claim is rejected by the appellate court based on the jurisprudential doctrine it cites. This doctrine addresses the theory of foreseeable deviations and supports the communicability of responsibility for the death or injuries caused to the victim of the event by one of the members involved in the robbery…"

This doctrine is grounded in the prior agreement among those responsible to commit the robbery, which does not exclude any risk to life or physical integrity, even if only one of the participants carries out those personal attacks. It assumes that during the course of a crime against property, more serious actions may occur. That is, the non-executing participant foresees and accepts such a possibility, positioning themselves at least within the framework of eventual intent (dolo eventual), as it is foreseeable that the unfolding of events could lead to such a criminal culmination. A bond of solidarity is formed, such that all those participating in the execution of the act are bound by it, thereby

making them jointly responsible for the final outcome, regardless of the individual actions each of them performed.

In conclusion, the appealed judgement, in addition to citing this consistent body of jurisprudence, narrates Juan Miguel's awareness of the potentially lethal outcome associated with the repeated and brutal blows delivered with the blade weapon. Regarding Carlos Manuel, it upholds the trial court's assessment when addressing the communicability of responsibility to the other participant, arising from their joint agreement. This includes the assumption that bodily attacks might occur during the course of the predatory act. The judgement establishes that the assaults occurred immediately and from the very beginning of Carlos Manuel's presence, while he continued performing the role assigned to him in the agreed-upon plan, with no exclusion of harmful violence as anticipated in their joint predatory action. The judgement further states: "…it suffices to recall that the jurisprudence of the Second Chamber (see, among others, STS 232/2024 of 8 March), consistently affirms that a participant who is not the material executor of the homicidal act, but foresees and more or less implicitly accepts that the progression of the illicit act might lead to bodily attacks, is at the very least operating within the framework of eventual intent (dolo eventual). Their responsibility for the homicidal action is justified both in terms of causality and culpability. Therefore, they are not excluded from being considered co-authors in cases where some participants deviate from the initial plan, provided such deviations occur within the usual framework of the actions undertaken. That is, based on the specific circumstances of the case, these deviations must not be considered unforeseeable for the participants (SSTS 132012011 of 9 December; 311/2014 of 16 April; 563/2015 of 24 September; 141/2016 of 25 February; of 604/2017 of 5 September; 265/2018 of 31 May; 687/2018 of 20 December). In this case, there is no unforeseeability, as the proven facts describe how both participants threw the victim to the ground. While in that position, Juan Miguel, in the presence of Carlos Manuel, continued to step on the victim's head and strike him with the 45 cm blade weapon, while the appellant alternated between guarding the entrance and maintaining surveillance…"

Conclusions

Once again, the judgement takes as its starting point a highly accurate and descriptive factual situation to construct a legal theory closely linked to the concept of functional control of the act, which applies when multiple participants carry out an action based on a preconceived plan, requiring them to assess, at least in part, the foreseeability of the final outcome.

8. STS 1051/2024 of 20 November. Unlawful arrest, false report and false testimony[8].

Factual background

Court of Investigation No. 2 in Jérez de la Frontera opened Preliminary Proceedings No. 977/2018, for an alleged offence of false report, false testimony and illegal detention against Jesús Manuel and for an offence of false testimony against Amador. Once the proceedings were concluded, they were referred for trial to the 8th Section of the Provincial Court of Cádiz, which opened Abbreviated Proceedings (hereinafter PA) 9/2021 and, on 16 April 2021, delivered a judgement that contains in part the following proven facts: "...On 10 November 2017, Benjamin was leaving a bar next to his home after having breakfast, observing how Jesus Manuel, a local police officer, was proceeding to remove a vehicle with a tow truck, driven by Amador. When Benjamín noticed the tow truck damaging the vehicle's bumper, he informed the officer, who denied it. After Benjamín insisted, the officer told him to leave and used a profane insult. Benjamín, in disbelief, raised his arms in surprise and said, "I'm trying to help you, but you just insult me." The officer then subdued Benjamín, who voluntarily lowered himself to the ground. The officer pressed his knees into Benjamín's back and called for police backup.

Shortly afterwards, the local police officer took Benjamín to the police station and reported him for an offence of assault, falsely stating in the police report that after the incident with the tow truck, Benjamín put a hand behind him, pushed him and tried to attack him, avoiding the assault. For this reason, Benjamín was arrested and taken to the police station, before being presented to the court.

The false report, arrest and detention in the cells resulted in Benjamín being involved in criminal proceedings before the Court of Investigation No. 1 in Jérez (Urgent Proceedings 123/2017) and later in a Summary Trial before Criminal Court No. 2 of Jérez de la Frontera. In this trial, the Public Prosecutor charged him with the offence of assaulting a law enforcement officer, requesting a sentence of nine months' imprisonment. The accused individuals participated in that trial as witnesses. The local police officer, consistent with the false report he had filed, testified under oath falsely, claiming that Benjamín had insulted him and attempted to assault him. Specifically, he alleged that Benjamín had placed an arm behind him, pushed him, and attempted to slap and punch him, exhibiting highly violent behaviour with raised fists as if preparing to hit him. The officer claimed he had to subdue Benjamín by grabbing him by the neck, after which Benjamín allegedly said, "Don't worry, I'll lie down myself"; that a third party had threatened him, lying about what really happened, despite declaring under oath. The other accused, Amador, testified under oath (sic) that Benjamín was alone, denying that a third party had made threats. He further claimed that, although he was outside the tow truck, he did not see what Benjamín did to the police officer and denied that Benjamín voluntarily lay down on the ground, stating instead that the police officer had thrown him down, this testimony not constituting a false statement. The judge presiding over that oral trial, faced with contradictions between the local police officer, the tow truck operator,

[8] STS No. 1051/2024. Criminal Chamber, Section 1, of 20 November 2024 published on the website of the Judicial Documentation Centre, CENDOJ (ROJ: STS 5790/2024 -ECLI: ES:TS:2024:5790). Appeal: 3523/2022. Rapporteur H. E. Mr Leopoldo Puente Segura.

and the testimonies of four students who witnessed the events, unanimously testifying that Benjamín had at no point attempted to strike the officer, determined that it was entirely false that Benjamín insulted, pushed, or raised his fists in a defensive stance, and it is even more false that Benjamín displayed any aggressive behaviour. The judge issued an acquittal, emphasising that the witnesses testified that the person displaying aggressive and disproportionate behaviour was the local police officer. This corroborated Benjamín's version, which stated that he had merely pointed out the damage being caused to the vehicle, raised his arms in surprise when the officer insulted him, and that it was the officer who subdued and detained him without justification..."

The Provincial Court ruled as follows: 1) it convicted the Local Police Officer Jesús Manuel as criminally responsible for an offence of false testimony and falsely reporting of Articles 456.1, 1 and 2 and 458.2 of the CP, without the concurrence of a circumstance modifying criminal responsibility, to a sentence of one year and six months in prison and a fine of 9 months at the rate of €6 per day and 2) as criminally responsible for an offence of illegal detention of Art. 163 and 167 of the CP, without the concurrence of a circumstance modifying criminal responsibility, to a sentence of three years in prison and the penalty of absolute disqualification from holding any public office, for a period of eight years. The other defendant, Amador, the crane driver, was acquitted of the offence of false testimony.

The TSJ upheld the conviction of the AP, which the TS partially modified, by reducing the sentence because of the type of illegal detention.

Legal grounds

The appellant raises several grounds for challenge, specifically contesting the improper application of the offence of illegal detention under the interpretation of "with cause related to a crime" and disputing the impossibility of applying the offences of false reporting and false testimony concurrently.

Regarding the offence of illegal detention, the first ground of the appeal argues that the provisions of Art. 163, in conjunction with Art. 167, both of the CP, should not have been applied, but rather Art. 530 of the same legal text or even Art. 532, insofar as the detention took place in the course of a criminal offence.

The appellant explains, citing case law precedents, that the distinctive feature that determines the application of Art. 530 CP is the presence of "cause related to a crime." It should be noted that Art. 530 of the CP only imposes a penalty of special disqualification.

In other words, the presence of "cause related to a crime" legitimises an initial deprivation of liberty, in contrast to Art. 167, which explicitly states "without cause related to a crime". It considers that, in this case, "it is clear that there was a discussion between the two, and that the police officer did not decide to arrest in a totally arbitrary manner but acted by interpreting the angry protests of a citizen as a crime of assault". In support of this argument, the appellant recalls that a criminal proceeding was initiated against the detainee, attributing to him the possible commission of the aforementioned offence of assault, as per the classification upheld at the time by the State Prosecution Service, even though the detainee was ultimately acquitted. The appellant further explains that "if there had been no evidence or facts that could be interpreted as the offence of

assault, no proceedings would have been initiated, nor would the Public Prosecutor have filed charges". The appellant admits that the decision to deprive the detainee of liberty was later revealed to be erroneous. However, they insist that the accused "interpreted the heated protests and discussion with a citizen as an act constituting the offence of assault", which, they argue, could even warrant the conviction for illegal detention being considered as one of negligence.

The Defence's argument is commendable but does not convince the TS.

Certainly, the normative relationship between Arts. 167 and 530 of the CP, in the context of illegal detentions carried out by public officials, has not been overlooked by this TS. Our recent Judgement No. 602/2022 of 16 June summarises the issue: "We stated in Judgement 694/2016 of 27 July, that in the field of case law, the difference between the offences provided for in Arts. 167 and 530of the CP, has already been addressed by this Chamber. In effect, STS 231/2009 of 9 March, analyses the necessary requirements for the existence of the offence described in Art. 530 of the CP. These are the following:
a) The perpetrator must be an authority or public official, as defined in Art. 24 of the CP, acting in the exercise of their duties, making this a specific special offence.
b) The actions of the perpetrator must occur within the context of a criminal case, as stated in the legal text, "with cause related to a crime."
c) The action must involve ordering, carrying out, or prolonging a deprivation of liberty.
d) This conduct must pertain to a detainee, prisoner, or sentenced individual.
e) The deprivation of liberty must violate constitutional or legal time limits or other safeguards.
f) The perpetrator must act intentionally, with full awareness that the deprivation of liberty they order, carry out, or prolong is illegal. In cases of gross negligence, Art. 532 of the CP applies.

It is also pointed out as a distinctive feature that Art. 530 requires a cause related to a crime, allowing for an initially lawful deprivation of liberty, which is not the case in Art. 167, which expressly states "without cause related to a crime". This Chamber, in STS 1371/2001 of 11 July, refers to this distinction, stating that while illegal detention for lack of a legitimate cause that justifies it belongs to the criminal type of Art. 167, thus referring to deprivations of liberty that are irregular in substance, that of Art. 530 requires a criminal cause, its unlawfulness being determined by the fact that the institutional guarantees of a constitutional and legal nature have not been complied with. Guarantees from which, in turn, the case of non-compliance with the duty to inform detainees of their rights must be excluded, as it is specifically criminalised in Art. 537 of the CP.

Consequently, with this exception, the offence of Art. 530 is reserved for cases of justified detention but in which there is a failure to comply with the legal time limits, as expressly provided for in the offence, or a failure to comply with the other requirements, such as not being able to detain for longer than the time strictly necessary (Arts. 17.2 CE and 520 Lecrim), or the guarantees of Art. 520, with the exception of that relating to informing citizens of their rights, the breach of which gives rise to the offence of Art. 537 and not 530 of the CP (see Judgement 376/2003 of 10 March)".

The same judgement cited above, and many others, remind us that, when the chosen ground for appeal is the one set out in Art. 849.1 of the Criminal Procedure Act, it is obligatory to respect the account of the facts that the contested judgement declares to

be proven. This is imposed by the very wording of the provision: "given the facts that are declared proven", and this is also evident from both logical and methodological considerations.

Indeed, if the purpose of this ground of appeal is to challenge the legal classification applied, and if the declared proven facts constitute the only factual basis on which that classification operates, any attempt to modify the facts through this channel is inevitably doomed to fail. If the relationship of the facts that are declared proven is altered, the classification itself would be devoid of an object.

In this case, it is clear from the proven facts declared in the judgement under appeal that the detention occurred without legitimate cause and substantively irregular. No lawful detention occurred "with cause related to a crime," upon which anti-legal conditions could later operate (due to violations of constitutional and legal safeguards).

In a legitimate and commendable defence effort, the appellant argues that there was indeed "cause related to a crime"—the alleged assault—which even justified holding a trial on the matter. They also assert that, even if erroneously, the accused believed that, after a heated discussion between himself (while fulfilling his professional duties) and a third party, the latter's agitated gestures led him to perceive an attempted assault. Though this assault neither occurred nor was planned by the third party, the accused believed the detention was justified.

However, this defensive narrative diverges sharply from the facts declared proven in the case. The factual findings in the judgement under appeal state that the accused, while performing his duties as a local police officer, was supervising the towing of a vehicle driven by another officer. At that moment, Benjamín, who had just finished breakfast at a nearby establishment, warned the accused that the towing manoeuvre was damaging the car's bumper. The accused denied this, and Benjamín insisted. The accused then asked if Benjamín was the vehicle's owner, to which Benjamín replied that he was not. At that point, the accused told him to leave and insulted him with a vulgar phrase. In response to this offensive comment, Benjamín, with his arms raised in surprise, said, "I'm trying to help you, but you just insult me". Immediately after, the officer subdued him. Benjamín voluntarily went down to the ground, and the officer placed his knees on Benjamín's back and called for backup.

The account of proven facts provides no basis for concluding that the appellant, even erroneously, could have perceived Benjamín's behaviour—which was limited to raising his arms in surprise and objecting to the officer's insults—as posing any threat of attack or assault. This conclusion is supported not only by the fact that no such threat objectively existed and that Benjamín's conduct could not even be ambiguously interpreted as such. The proven facts indicate that the accused himself did not claim to have perceived any danger of assault. On the contrary, the accused made statements—clearly contrary to reality—claiming that Benjamín had placed a hand behind him, pushed him and attempted to assault him, with the accused supposedly evading the assault.

In truth, none of this occurred, nor could it have been perceived by the accused as having occurred. Instead, the account of the proven facts shows that the officer, likely not acting at his best, became annoyed when a bystander—who was neither the owner of the vehicle nor someone with any direct involvement—pointed out a perceived mistake in

the towing procedure. Regardless of whether this observation was accurate, the officer took offence. At this, the accused not only told him to leave the place but also insulted him. Offended and protesting the treatment he received, Benjamín was immobilised by the officer, who then called his colleagues to proceed with an arrest. This was not a case where there was legitimate cause for detention and the accused exceeded constitutional or legal limitations. Instead, this was a detention carried out without any objective cause, and the officer attempted to justify it afterwards by fabricating blatantly false allegations. These false allegations later formed the basis of a criminal case, solely sustained by the officer's contrived narrative.

Finally, regarding the criminal implications of the fabricated police report, an individual who files a false complaint that leads to the initiation of criminal proceedings, and who later testifies falsely as a witness during the trial, only exacerbates the harm or risk to legal rights initially infringed upon. This escalation completes or intensifies the severity of the attack. As such, the individual should only be penalised as the perpetrator of a single crime of false testimony in a criminal case against the defendant. However, when determining the specific penalty, the initial act of filing a false complaint may be considered as an aggravating factor. This criterion is taken up in the most recent case law of this Chamber: SSTS. 901/2016 of 30 November and 279/2017 of 19 April, which in cases of successive concurrence of a first offence of false accusation or false reporting and subsequently another of false testimony, considers that "in reality it is a case of criminal progression, presided over by the same malice of the subject that should give rise to the qualification according to the offence that most seriously punishes the conduct deployed by the same, which is the false testimony foreseen in Art. 458.2 CP, first paragraph, against the defendant in criminal proceedings for a criminal offence. The solution is equivalent to that of a convergence of provisions. Therefore, the appellant is also not right when he seeks the application of the more lenient offence, false accusation and denunciation".

Against this background, the TS partially upheld the appeal and sentenced the local police officer not for article 163 in relation to article 167 of the CP, but for article 163 but in section 4 of the CP in relation to Art. 167 of the same legal text, to a sentence of six months' fine of six euros per day and total disqualification for a period of eight years, upholding the rest of the sentences. It applies this attenuated subtype of Art. 163.4 due to a criterion of proportionality and the immediate bringing of the detainee before the judicial authority.

Conclusion

Once again, the path of the unlawfulness of certain arrests due to broad and extensive interpretations of the crime of attacking an officer in authority, resistance or serious disobedience, leads to very serious consequences for the officer involved.

The difference between an arrest with or without a criminal charge cannot be based on the invention of the crime by the acting officer to justify the arrest, and in this case, in addition to the police report, there are several witnesses who dismantle one by one the incriminating aspects reflected in the police report.

The legal reform that decriminalised disrespect for authority agents and turned minor assaults into administrative offences did a disservice to the principle of authority,

because the distance between this offence and the crime is abysmal, given that the latter always requires the qualification of seriousness from a material and objective point of view.

9. STS No. 1021/2024 of 14 November. Offence of sexual assault. Victim testimony and the progressive formation of the story[9].

Factual background

The Court of Violence against Women No. 1 of Almería opened summary proceedings No. 4/2021, for alleged crimes of harassment, continuous offence of threats in the context of gender violence and another of sexual aggression against Saturnino and, once the proceedings were concluded, sent them for trial to the Provincial Court of Almería, Section 3, which opened summary proceedings No. 27/2021 and, on 16 January 2023, issued Judgement No. 1/2023, which contains the following proven facts: "Saturnino was in a relationship with Jacinta, a resident of Almería, for three months, and the accused refused to leave the relationship, so Jacinta, in order to put some distance between them, went to Palencia for five months. During this time, despite the fact that Jacinta repeatedly told him that she did not want to continue being with him, the accused called her insistently, telling her through messages and audio messages that he loved her and that he was her boyfriend. Also in an attempt to frighten her, he told her that he was going to go up to Palencia with a gun, or that he was going to look for her, that he was going to kill her and then him, that she was a whore, a madwoman and that if she did not return to him, he would put a knife to her head; he also told her that he was going to spread sexual photos of her among his colleagues, friends and family, and although Jacinta blocked him, the accused called her on other telephone numbers.

After this time Jacinta returned to Almería, and at around 09:00 hours on 23 February 2021, the accused went to her home, opening the door, telling her that if she wanted to talk, they should do so at the entrance, but he pushed her and went inside, searching all the rooms to see if there was anyone with her, telling her again with the intention of intimidating her that if she was with a man he was going to ruin her. While searching the house, Jacinta texted a friend to call the police if she did not answer or send a message. The accused then proposed sex to Jacinta, who flatly refused, to which he told her that she was his wife and that if he wanted sex, she had to have sex. Jacinta refused at all times, while crying and feeling great fear that he would physically attack her. She did not resist, so the accused pulled down her trousers and panties, penetrated her and ejaculated inside her.

After a few minutes, the police arrived at the house, the accused hid under the bed, and they proceeded to arrest him...".

The AP convicted the accused of harassment, threats and sexual assault, which was confirmed on appeal by the TSJ and later by the TS, which dismissed the appeal in cassation.

[9] STS No. 1021/2024. Criminal Chamber, Section 1, of 14 November 2024 published on the website of the Judicial Documentation Centre, CENDOJ. (ROJ: STS 5610/2024 – ECLI:ES: TS: 2024:5610). Appeal: 10042/2024. Rapporteur, H. E. Mr Leopoldo Puente Segura.

Legal grounds

The judgement under appeal here recognises that the defendant's fundamental right to the presumption of innocence has been undermined, as far as the crime of sexual assault is concerned, on the basis of a single piece of evidence, the testimony of the person presenting himself as the victim, noting also that the Provincial Court, whose judges had the opportunity to personally attend the trial and, consequently, perceived, without any intermediary, the aforementioned testimony, described it as convincing and truthful.

The contested judgement explains that the appeal does not allege, nor does it of course prove, that the aforementioned testimony could have been motivated by any kind of spurious purpose or "malice". There is, in other words, no credible indication that the witness's account could contain any kind of conscious falsehood aimed at unfairly prejudicing the accused.

Likewise, the contested judgement notes that the incriminating testimony has been persistently maintained in all its essential aspects, in relation to the different statements given by its protagonist throughout the proceedings. And, in this regard, in response to the objections raised by the appellant, he notes that, although it is true that she did not first tell the police that she had been the victim of a sexual assault, the fact is that she did refer to it in her first statement, as can be seen on page 12, where she relates that when the accused asked her for sexual contact, she cried that she did not want to; that Saturnino forced her to have sexual relations with penetration and that he had no need to physically assault her as she felt intimidated and afraid, which was logical given the intimidating behaviour shown by the accused since he appeared and broke into her home, a story that she has maintained unchanged throughout the proceedings since then.

It is also perfectly understandable that a person who needs police assistance to get rid of her aggressor, who has unlawfully entered her home and proceeded to attack her in different ways, does not immediately provide a complete and exhaustive account of what happened, just as it is logical that she was seriously affected by the emotions of the moment. There is, however, no reason, as explained above, why this substantial aspect should have been added to the account unexpectedly afterwards and would not have been done from the outset if the purpose of the witness had been to prejudice the accused with mendacious descriptions of what actually happened.

Finally, the TSJ also emphasises, in the judgement under appeal, the existence of objective elements that the appellant continues to deny without any additional explanation, and thus it is noted, firstly, that the trial also included the testimony of Bernarda, Jacinta's friend, who confirmed that Jacinta had indeed sent her a message alerting her of the unwanted presence of the accused in the house, had entered by force, and asked her to call the police if she did not receive any further news from her, a call for help that she did in fact make. Likewise, the contested judgement considers the result of the testimony given at the trial by the National Police officers who went to the witness's home, explaining that they found the accused hiding under a bed, also reporting that the young woman was nervous and in an apparent state of panic. Finally, the contested judgement also notes that there was also an expert report attesting to the witness's symptoms of anxiety, depression and low self-esteem, compatible with the alleged events, although possibly also influenced by other experiences, according to the expert report referred to above.

In addition to the above, the contested judgement adds that, with regard to the offences of harassment and threats, in the absence of reasonable doubts as to their veracity, the existence of a sexual assault having been accredited on the basis of a common source of evidence, the testimony of the person presenting himself as the victim, the facts appear in this case to be accredited by the screenshots of the WhatsApp messages provided and collated by the legal counsel of the judicial body, extremes to which the party does not even refer in its cassation appeal.

In short, in no way can we consider that the contested judgement lacks sufficient reasoning, leaving, on the contrary, the considerations that led to the dismissal of the appeal explained in a reasoned and reasonable manner. This is in no way an arbitrary act and in no way prejudicial to the party's fundamental right to effective judicial protection. Likewise, neither can we consider that the defendant's right to the presumption of innocence has been infringed, given that, with the scope determined here by our appeal function, the existence of evidence for the prosecution is fully acknowledged, validly obtained and carried out in an entirely regular manner, which is sufficient to nourish and support the conclusions reached by the court of first instance, duly audited by the TSJ, considerations which allow any other alternative hypothesis in terms of credible probability to be excluded with solvency.

Conclusions.

In this STS, what is most interesting is not only the wording of the proven facts, but how the Court reaches the conviction of what really happened based on the testimony of the victim and the witnesses. It was the injured party who progressively shaped her own testimony, it being understandable that due to the importance and seriousness of the facts, she did not initially explain everything that happened and the intensity of the actual events.

10. STS No. 1026/2024 of 14 November. Late confession[10].

Factual background.

Court of Investigation No. 1 in Benidorm opened abbreviated proceedings No. 1045/2017 for a drug-related offence, against several people and once concluded, referred it to the Provincial Court of Alicante, whose Section 10, (PA No. 35/2020) issued a sentence on 17 September 2021 which contains proven facts detailing a criminal activity consisting of drug trafficking and several defendants were convicted under Art. 368 of the CP.

The TSJ upheld the conviction on appeal and, as regards the part that concerns us here, the TS also upheld the conviction on cassation.

[10] STS 1026/2024, Criminal Chamber, Section 1 of 14 November 2024. Published on the website of the Judicial Documentation Centre, CENDOJ (ROJ: STS 5679/2024 - ECLI:ES:TS:2024:5679). Appeal: 4133/2022. Rapporteur H. E. Mr Javier Hernández García.

Legal grounds.

One of the appellants complains of improper non-application of the analogical attenuating circumstance of his client's confession, because he says that neither the appellant's active cooperation in locating some of the drugs seized which he was hiding in his workplace, nor the substantial admission of the facts in the trial proceedings, have been properly assessed.

The TS points out that it does not identify the alleged encumbrance in the appeal. It is true that Art. 21.7 CP allows for analogical constructions of typical causes of attenuation based not so much on the concurrence of similar or comparable normative conditions of application, but on the appreciation of objective data of reduction of the *ex post factum* liability of the perpetrator of the offence that acquire a relatively equivalent meaning to that which underlies them.

This minimum threshold of equivalence with the typical attenuating circumstance of reference in the case of so-called late confessions calls for significant traces of effectiveness. It is obvious that it can no longer be measured by its contribution to the rapid discovery of the offence before the proceedings are opened, as required by Art. 21.4 CP, but it must involve a qualified contribution on the part of the accused person to the effectiveness of the ongoing investigation.

Once again, we insist on the need to seek in the analogous application of attenuation the purpose of protection of the rule that includes the typical attenuating circumstance. Even if it is by analogy, the conditions for deserving mitigation for late confession require the accused person to compensate, in a broad sense, for the harm caused by collaborating unequivocally, even if it is at a less suitable procedural moment, with the ends of justice.

And in our case, the appellant did not fully or meaningfully confess to the facts of the indictment. The alleged act of cooperation and facilitation, which was to indicate where a quantity of drugs was located in his workplace, was part of the police action in the course of which the appellant's home was previously searched, where 26 grams of cocaine, 1434 grams of amphetamine and tools for handling them were found. Police action, preceded by significant investigations, made it inevitable that the drugs would be discovered in other premises used by the appellant, even without his assistance. As provided for in Art. 5 of Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, transposed in part into Art. 376 of the CP, the reduction of the offender's sentence may be deducted when he (b) provides the administrative or judicial authorities with information that they would not otherwise have been able to obtain, helping them to: (i) prevent or mitigate the effects of the offence; (ii) discover or prosecute other perpetrators of the offence; (iii) find evidence (iv); or prevent the commission of other offences referred to in Arts. 2 and 3.

None of these contributions is relevant enough in the case under analysis. Both the indication given to the officers as to where some of the substance was located and the appellant's subsequent statements, with a nuanced assumption of possession of the substances, can be explained as manifestations of a cooperative strategy, based on the

inevitable. However, such cooperation does not reach the level of relevance to merit, even by analogy, the attenuation provided for in Art. 21.4 CP.

Conclusions.

This is a hackneyed question that we see every day in the Courts of Investigation and which has a rather short and unfruitful outcome for those under investigation. It is wrong to speak of collaboration when the discovery or uncovering of the offence is inevitable, and this is what happens in the STS analysed, when the accused's help is simply unnecessary for that purpose.