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Case law review

CASE LAW REVIEW 2ND CHAMBER OF THE SUPREME COURT

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REVIEW OF JURISPRUDENCE, SECOND CHAMBER OF THE SUPREME COURT

Summary: STS 621/2025, 2 July. Determination of the moment of police custody in a judicially authorised entry and search. 2. STS 814/2025, 8 October. Requirements of unlawfulness in environmental matters, in order to distinguish between sanctioning regulations of an administrative nature and criminal types. 3. STS 837/2025, 15 October. Validity of the police inspection of warehouses and other places that do not constitute a home, even when there were areas for private life that were not subject to search. 4. STS 797/2025, 2 October. Occasional capture by the police of images in a semi-private area, through the use of a drone, as an adjuvant element to the request for a home search. 5. STS 854/2025, 16 October. Analysis of the validity of the evidence obtained in France through the Encrochat application, a closed network of communication through encrypted messages. 6. STS 861/2025, 22 October. Undercover agents. Provision in their entirety of the recorded conversations. 7. STS 849/2025, 16 October. Disclosure of secrets by a public official. Fraudulently obtaining access codes to a computer. 8. STS 866/2025, 22 October. Self-consumption or trafficking of GBL. Questionable minimum doses.

1.- STS 621/2025, 2 July. Determination of the moment of police arrest in a judicially authorised search and seizure .[1]

Factual background.

In this STS, we study the cassation appeal lodged against the judgement handed down by the TSJ of Catalonia on 21 May 2024. Dismissal.

Juzgado de Instrucción n.º 5 de Barcelona, instructed preliminary proceedings n.º 682/2021, for a continuous offence of burglary of an inhabited house by a criminal group and the offence of receiving stolen goods, against Edemiro, Jaime, Ezequiel and Florian. The case was sent for trial to the 21st Section of the Barcelona Provincial Court, , and sentence 325/2023, 30 November, was handed down, containing, among others, the following proven facts, "...On 14 July 2021, at around 00:06 hours, the defendants entered the house of the accused on 14 July 2021, at around 00:00.06 hours the accused gained access to the flat located at address XX in Barcelona, manipulating the lock and causing damage to the door, in the absence of its inhabitant Luciano, who had left the flat on 12 July 2021 leaving the door properly locked, and seized the following items: a Hamilton watch, a gold Dupont lighter, two gold chains, a gold plate with the telephone number and blood group, a gold wedding ring, a gold Longines watch, a pearl necklace..." and so on up to thirty thefts which he details chronologically.

And he ends this account of proven facts by saying, "...in the entries and searches carried out in the homes of the accused, a Hamilton watch, two Breitling watches, two bracelets, a chain and a Panerai watch were found, property of Paulina and which came

[1] STS 621/2025, of 02 July 2025, published on the website of the Judicial Documentation Centre, CENDOJ, ROJ: STS 3347/2025 - ECLI:ES:TS:2025:3347), appeal: 10529/2024. Speaker: Mr Andrés Martínez Arrieta.

from the robbery which took place in her home at XX between the 18th of March and 20th of June 2021; and also found...".

Legal grounds

Sole plea in law. In the second of the grounds of appeal, he alleges violation of the fundamental right to a defence, to legal counsel and to a trial with all the guarantees enshrined in Article 24 of the Constitution, referring, as grounds for nullity, to the following, all evidence directly or indirectly obtained from the entry and search carried out on 30 February 2017 at the home attributed to the appellant, urging the nullity of the entry and search warrant ordered by Barcelona Examining Court number 5 on 27 August 2021 due to the non-attendance of the accused's lawyer. The issue raised in the appeal was questioned at the beginning of the oral trial and resolved by the Provincial Court, as a preliminary issue, in the first ground of the judgment and also on appeal, arguing in both judgments that legal assistance is not mandatory in the practice of the entry and search procedure.

The appellant argues that in the present case, the detention of Mr. Ezequiel was deliberately postponed until the end of the search and entry procedure, thereby unjustifiably delaying the provision of information and the exercise of his fundamental rights to a defence and to legal assistance.

The dismissal is appropriate. The timing of the arrest of a person who is accused of acts with criminal relevance by the police is a matter for the police officers themselves, observing the requirements of the concurrence of the precise indications of the commission of a serious criminal act that allows it, and the opportunity for its practice in suitable conditions to ensure its implementation and in the manner that least damages the honour of the person against whom it is adopted. Under the terms of art. 17 of the Constitution, no one may be detained except in the cases and in the manner provided for by law, which, in this case, has been observed. There is no objection to the choice of the moment of arrest by the police and if it was carried out after the judicially authorised entry and search, it was a consequence of the intervention of effects that made it possible to establish the suspicions that led to the house search.

In any case, not even if the accused had been arrested when the appellant suggests it should have been carried out, prior to the house search, his presence at the search does not require the presence of a lawyer, except to give authorisation when required, as the search and entry procedure is not a personal procedure that requires the assistance of a lawyer, (art. 520 of the Criminal Procedure Act, 6, section b) and it was ordered by judicial decision of the competent court.

Conclusions

The determination of the moment of arrest is a police competence, always weighing up the concurrent circumstances. In any case, the purpose of the search and entry procedure is to obtain material evidence of the crime, so it is very difficult to begin the procedure with the immediate arrest of the person under investigation, so the most logical and prudent thing to do is to proceed with the arrest at the end of the search, with the new evidence and material evidence that has been gathered in the framework of this action.

A different question, which has been raised in minor case law, is what happens in those cases in which the search lasts for several hours and when the 72-hour period begins to run out. Generally, the proportionality of the measure will require that even if the search lasts longer than normal, let us imagine a search lasting more than 12 hours, the most cautious and prudent thing to do will be not to use up the 72 hours of detention for bringing the person before a judge.

Once again, it is indisputable that the presence of the person under investigation in the search does not imply the presence of a lawyer, as the entry and search procedure is not a personal procedure that requires the assistance of a lawyer.

2.- STS 814/2025, 8th October. Requirements of unlawfulness in environmental matters, in order to distinguish between sanctioning regulations of an administrative nature and criminal offences .[2]

Factual background

Appeal brought against the judgment of the Lugo Provincial Court of 22 November 2022. Upheld

The Juzgado de Instrucción núm. 2 of Viveiro opened preliminary proceedings 174/2020 for an offence against the protection of fauna, poaching in shellfishing against Juan Manuel and once concluded referred it to Criminal Court no. 2 of Lugo, which issued a judgement on 6 April 2022 containing, among others, the following proven facts: "...it is accredited that Juan Manuel, without criminal record, as well as Ángel Jesús, without criminal record, and a third unknown person, put in common agreement in the distribution of papers and knowing of their illegality and unlawfulness, contravening the proper exploitation of the different species of living maritime resources, on 18/05/2020 around 22:30 hours, illegally extracted 12 of the kilos of barnacles, which they illegally collected that same day, in Punta Socastro Fuciño Do Porco in the locality of O Vicedo.

Agents of the Guardia Civil were deployed to the scene of the incident and observed two people walking with loads, one with a dark backpack and the other with a white sack, both dressed in neoprene, proceeding to stop them, both fled, starting their pursuit, they caught up first..." and adds, "...those mentioned did not respect the calendar of action of the perishers in the area that usually covers some days of the months of April to August and December. During these months, the barnacles are rotated in the sub-areas of exploitation, so as not to exhaust the resource in the area. During the month of May, specifically on the 18th, the area where the events occurred was closed to shellfishing. No work was carried out in that area during the previous year 2019. None of those mentioned is in possession of any exploitation permit for the extraction of goose barnacles, in any of its modalities in that area, nor are they included in or any type of management plan for the resource in the area of competence. The barnacles seized were handed over to the Inmaculada Niña charity centre...".

[2] STS 814/2025, 8 October 2025, published on the website of the Judicial Documentation Centre, CENDOJ, ROJ: STS 4234/2025 - ECLI:ES:TS:2025:4234, appeal 1636/2023. Speaker: Mr Javier Hernández García.

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Legal basis

Sole - By means of a solid argument, the appellant, Juan Manuel, contests the judgement of the Provincial Court which upheld that handed down by the Criminal Court which convicted him as the author of an aggravated offence of poaching shellfish under article 335.2 and 4 of the Criminal Code.

In essence, the appellant questions the subsumption judgement because, in the appellant's opinion, it is not possible to identify the element of relevance required by the offence and on which the criminal incrimination of the conduct of poaching is based, allowing, at the same time, the necessary borderline to be drawn with the administrative sanctioning rule.

The appellant insists that neither the quantity of barnacles seized, twelve kilos in total, nor the damage caused, as mentioned in the judgment, which does not even specify the size of the specimens extracted, makes it possible to classify the appellant's conduct as criminally relevant. The shortcomings of the rule in terms of its taxonomy cannot favour an expansive interpretation in its application.

The interesting objection of criminality raised by the appellant is in line with the requirements of strict interpretation of criminal offences.

In particular, those such as offences against flora and fauna, in respect of which tangential and sometimes secant relationships can be drawn with the administrative rules on penalties. These neighbouring relationships between criminal and administrative rules require, as we are reminded by the very important STC101/2012 which declared the unconstitutionality of article 335 CP - 1995 text - for violation of the principle of criminal legality, to always identify "the plus of material antijurisdiction which helps to specify the corresponding typical criminal conduct", precisely in order to be able to delimit the specific scope of application of the criminal rule from the administrative sanctioning rule, hence the criminal rule must satisfy demanding conditions of clarity and precision in the typical formulation of the normative and descriptive concepts to ensure the identification of the essential nucleus of the wrongful act. As stated in STC 105/1988, criminal offences cannot be formulated in such an open form that their application or non-application depends on a practically free and arbitrary decision in the strict sense of the word by judges and courts.

In this case, the relevance of the conduct is precisely what makes it possible to cross the boundary from administrative to criminal punishability. It intensifies the unlawfulness of conduct that infringes the legal regime for shellfishing provided for in sectoral laws, in this case, the Ley 11/2008, de 3 de diciembre, de pesca de Galicia. The greater unlawfulness of the conduct justifies, from the point of view of the need to protect legal assets, also intensifying the reproach through the imposition of penalties.

But having said this, the decisive question that arises is to determine the meaning to be attributed to the concept of "relevant shellfishing activities" contained in article 335.2 PC.

And the answer is far from simple, as the rule does not specify any specific parameter that would allow it to be measured in reasonably foreseeable terms, neutralising any risk of excess and arbitrariness.

The notable indeterminacy of the meaning of the expression "relevant" in the rule of article 335.2 PC, contrasts with the greater level of precision of the other criminal offences in which this expression is also used in the configuration of their typical structure. Therefore, if a relevant result in quantitative and qualitative terms is required for the punishment of some destructive conducts of protected species of flora, it also seems to be in line with the requirements of restrictive interpretation and exclusive protection of legal assets that a similar rate of harm is also required for the criminal punishment of poaching. Obtaining a small quantity of shellfish that has not significantly endangered the legal good to be protected cannot be criminally punished as an aggravated offence.

Conclusions

Once again, in the field of offences against flora and fauna, the SC ends up complaining about the lack of legislative rigour to integrate and interpret criminal offences without any room for doubt, when the unlawfulness of the action can sometimes be satisfied with an administrative sanction.

In this case, the basic offence is applied but not the aggravated offence, which would require a more precise definition of the relevant nature of the poaching activity. The legislator has left the term "relevant" devoid of evaluative elements, which makes it difficult to apply.

3.- STS 837/2025, 15 October. Validity of the police inspection of warehouses and other places that do not constitute a home, even when there were areas destined for private life that were not subject to search .[3]

Factual background

Appeal brought against the judgment of the Supreme Court of Castilla y León of 6 March 2023. Dismissal.

The Juzgado de Instrucción no. 1 de León opened preliminary proceedings 364/2017, for money laundering and robbery against Saturnino, Mr José Carlos, Ms Trinidad, Mr Tomás and Mr Victoriano, and once concluded, referred the case for trial to the Audiencia Provincial de León, whose 3rd Section issued, in the abbreviated proceedings no. 31/2021, a conviction and sentence. 31/2021, conviction on 7 November of 2022, which contains, among others, the following proven facts: "...That in the development of the investigations that the UOPJ of the Command of Guardia Civil of León, carried out in relation to various crimes of theft of vehicles in various parts of the

[3] STS 837/2025, of 15 October 2925, published on the website of the Judicial Documentation Centre, Cendoj, ROJ: STS 4648/2025 - ECLI:ES:TS:2025:4648, appeal 2577/2023. Speaker Honourable Carmen Lamela Díaz.

provincial geography, during the years 2016 and early 2017, on 13 February 2017, agents of these organic units, carried out three inspections in the following farms or warehouses:

A) In a meadow or farm located in paraje XX in the locality of XX (León). In said place and at the time of the inspection, the accused, Saturnino, together with two of his children and also accused, José Carlos and Trinidad, were present. The following items were seized at the aforementioned farm: 1°) A light grey trailer of the Núñez brand, ...; 2°) A Yamaha moped chassis, model Aerox, with registration plate XX ...; 3°) A Husqvarna brand chainsaw, model 455, with serial number XX,,,; 4°) A Polaris brand quad, model Sportsman 500 E...; 5°) A Kawasaki brand quad ....

B) The second inspection took place on the same day 13 February 2017 in two warehouses, one covered and the other uncovered, located at kilometre point XX, on the XX, in the municipality of XX (León), which warehouses were occupied by the accused Victoriano and his son Tomás. In one of the sheds (the covered one), there were three caravans used by the persons occupying the shed, among them the two accused Victoriano and his son Tomás. In the other shed, the uncovered one, the following objects were seized: 1°) Scania truck rear wings with Portuguese registration plates...; 2°) Sthill cutting tool...; 3°) The Nissan Patrol GR vehicle, which was inside the shed, "under repair", and bearing registration plate XX.

C) The third of the inspections took place in the urban property located in the area "XX" -polígono XX, parcela XX, with specific location at kilometre point 9.500 of the LE-311 road, León.

In this property occupied by the accused Victoriano and his son Tomás, the following objects were seized...".

Legal grounds

The first ground of appeal is for infringement of constitutional precepts, under articles 5.4 LOPJ and 852 Lecrim, for violation of the fundamental rights and freedoms enshrined in articles 18.2 and 24.2 CE, in relation to articles 545, 546 and 554 LECrim.

They argue that two of the four places where the searches were carried out and where the effects that led to their conviction were seized constituted a home, and therefore constitutionally protected spaces.

The first is the property located at number XX, León. It is an enclosed area with a fence which houses, among other facilities, the two caravans in which the five people, members of the same family, spent the night. It also houses all the facilities that serve the family, such as the kitchen, the washing machine, the chests, the tables, the chairs, the toilet and the other household items for common family use, all located within the fenced enclosure but around and as facilities clearly differentiated from the caravans, the use of which is therefore limited to the strict night's rest of the five members of the family unit. This place is also recorded in the affidavit as the domicile of the whole family.

The second is the covered shed located at kilometre point XX in León, which housed, with a closed door, three caravans used by the persons occupying the shed, plus another room, with its bed, in which Mr Victoriano and his two sons, Mr Tomás and the

then minor, Mr Higinio, slept, as well as the kitchens, with their kitchenware, cupboards, toilet, armchair, tables and chairs, shelves, toilet and other facilities. This shed, which was completely enclosed, included both the physical place where the occupants spent the night and the services and facilities used by all of them, located outside the caravans but inside the shed itself, whose access has a door and lock, even though the rest of the free space of the shed was also used as a place for parking vehicles and storing the belongings of the occupants.

Therefore, they consider that, having carried out the searches without an authorising judicial resolution, criminal flagrancy or consent of the owner, ex art. 18.2 CE and case law interpreting it, they should be declared null and void and without evidential effects, as well as any other evidence which, having been obtained legally, is based on, supported by or derived from them, in accordance with the provisions of art. 11.1 LOPJ, and which are all those in evidence in the proceedings.

The appellants start from the false premise that the property and the registered building constitute a domicile.

As described both in the judgment handed down by the Audiencia and in that handed down by the Tribunal Superior de Justicia, the searches took place in a meadow or farm located in paraje XX in the locality of XX, where a light trailer, a Yamaha moped chassis, a chainsaw and two quads were seized; and in two warehouses, one covered and the other uncovered, located at kilometre point XX, in XX in the municipality of XX (León). In the uncovered warehouse, the following were seized: front and rear wings of a Scania lorry with Portuguese number plates and rear mudguards of the tractor unit, a STI-111 model TS 400 cutting tool, a Nissan Patrol GR vehicle, which was inside the warehouse, under repair, and in which the engine was being fitted with parts from other vehicles that had been stolen.

For this reason, the protection provided by art. 18.2 CE did not apply to them.

Reiterated case law of this Chamber excludes this type of construction from the consideration of domicile. Such is the case of garages, garages and warehouses (SSTS 399/2015, of 18 June, or 912/2016, of 1 December); private garages without internal communication to the dwelling (STS 468/2015, of 16 July); industrial warehouses (STS 560/2010, of 7 June); or even dwellings that do not constitute the dwelling of any person (SSTS 157/2015, of 9 March, or 122/2018, of 14 March).

In the same sense, we expressed in judgement no. 1219/2005, of 17 October that the registration of these properties (warehouse or warehouse) does not have to be subject to the provisions of art. 569 Lecrim does not constitute a domicile (SSTS. 6.10.94 and 11.11.93) and therefore a warehouse, office or commercial premises lack the protection granted by sections 1 and 2 of art. 18 CE, as they do not constitute a domicile (SSTS. 6.10.94 and 11.11.93). 18 CE as they do not clearly constitute a space of privacy necessary for the free development of the personality, hence they cannot be considered to be included within the scope of protection of the inviolability of the home (SSTS. 27.7.2001, 3.10.95, 27.10.93), being particularly explicit the SSTS. 8.7.94, stating that they do not fall within the scope of protection of the inviolability of the home. 8.7.94, stating that not every entry and search in a closed place requires judicial authorisation, nor do commercial premises or warehouses that do not constitute a person's home enjoy

the constitutional protection of the aforementioned art. 18.2, without requiring, consequently, the same procedural formalities for entry and search as are imposed on home searches.

Likewise, in judgement no. 85/2021, of 3 February, we stated that garages and workshops do not have the constitutional protection afforded to homes by art. 18.2 CE....

And specifying this concept, this Court has pointed out that the term "domicile" includes, grammatically and administratively, the place where people normally carry out their social activities and where their home or dwelling is located, or as art. 554.2 Lecrim states "the building or enclosed place or part of it destined principally for the habitation of any Spaniard or foreigner resident in Spain or their family".

In the present case, the searches were carried out by the UOPJ of León in a farm or meadow and in two warehouses, one of them uncovered, which due to their characteristics could not constitute the domicile of any person.

Even if in some of the premises there could have been a reserved room where the private life of the accused was carried out, there is no record that this was the object of a search, which is also confirmed by the characteristics of the objects seized, which were not found inside any home or space intended for a home, but in a meadow and in an uncovered premises. Likewise, it does not appear that the interior of the caravans used by some of the accused were searched.

On the other hand, the practice of the searches was legitimised by the appellants, since, as highlighted in the contested judgement, the Guardia Civil acted with the consent of those under investigation, to which they have raised no objection, neither throughout the proceedings nor in the oral proceedings, having also been present during the searches, which is one of the legally recognised means of access to another person's home, in accordance with art. 18.2 CE.

Conclusions

Not every enclosed space deserves to be considered a home for constitutional purposes, and we must exclude from this concept and its corresponding constitutional guarantee, those enclosed places which, due to their use, have a purpose or are used for purposes incompatible with the idea of privacy - such as warehouses, factories, offices and commercial premises.

It is not a trivial fact, and we cannot ignore it, the expertise with which the intervention of the Guardia Civil is described, inspection and not search, and furthermore, how well documented this police action had to be, possibly with a very descriptive graphic testimony in the attestation, so that there would be no doubt as to what the premises were like, their size, structure, what was the private area that constituted the dwellings, motorhomes, and the type of object seized, which due to its size and nature could not be kept inside the houses.

4.- STS 797/2025, 2 October. Occasional capture by the police of images in a semi-private area, through the use of a drone, as an aid to the request for a house search.[4]

Factual background

Appeal against the judgement handed down by the Supreme Court of the Autonomous Community of Valencia on 10 December 2024. Dismissal.

The Juzgado de Instrucción nº 4 of Alicante opened abbreviated proceedings 1670/2023 against Cornelio and others, and, once concluded, referred it to the Provincial Court of Alicante, 10th Section, which on 27 September 2024 handed down a guilty verdict, which contains, in part, the following proven facts: "...By agents of the National Police Force, a series of surveillance operations were carried out and by order of 8.8.2023 an entry and search was ordered at XX, in Alicante, of Cornelio; and at XX in Playa de San Juan, of Higinio and Eugenia. In the search of XX in Alicante, the following were seized: 5 packages, with weights of 520, 293, 109, 108, 18 gr. of white rocky substance that tested positive for cocaine in a cocaine test; a Samsung computer screen, another LG, a CPU unit, an HP printer, a Sony camera, 7 notes of 20 euros, 3 of 10 euros, 2 of 5 euros, a precision scale, a vacuum packing machine. The substance seized in Ocean Street was found to be 979.0 grams of cocaine, with a purity of 87.9%. The substance was valued at 64,514 euros. The substance was intended for trafficking by Cornelio...".

Legal grounds

Firstly, the first of the grounds of challenge is the inadequacy of the judicial decision, which is based on fragile evidence provided in the police reports, which the SC denies by saying that, "...the analysis of the inadequacy of this evidence is carried out by the defence counsel by means of a meticulous examination of the police reports. However, this methodological strategy is as legitimate as it is unfeasible. We have said in previous precedents that the criticism of the inadequacy of the police file cannot be made by fragmenting the evidence offered for the consideration of the investigating judge. This information forms part of a single, global, indicative picture. It must be analysed as such. The self-interested decomposition of each of these indications, to then proceed to a partial gloss, in which its incriminating suitability is concluded without connection with the rest, leads to an assessment outcome that will always be weighed down by an erroneous method, which has obtained its conclusions by decontextualising the information made available to the jurisdictional body (cfr. SSTS 718/2020,28 December; 143/2020, 13 May; 698/2014,28 October; 250/2014,14 March).

Secondly, this is where the nullity requested by the defence for the use of a drone without judicial authorisation to capture images in a semi-public area is answered.

Art. 588 quinquies a) of the Lecrim, is the provision that provides regulatory coverage for the use of drones for criminal investigation. The administrative aspects are regulated in Royal Decree 517/2024, of 4 June, which develops the legal regime for the

[4] STS 797/2025, of 2 October 2025, published on the website of the Judicial Documentation Centre, Cendoj, ROJ: STS 4225/2025 - ECLI:ES:TS:2025:4225, appeal 10005/2025. Speaker, Mr. Manuel Marchena Gómez.

civilian use of unmanned aerial vehicles (UAS), which includes the use of these devices when carrying out police activities or services.

Focusing on what is the subject of the present plea, what we are dealing with now is the legal regime for the capture of images when they are obtained in a public space. According to art. 588 quinquies a), the capacity of the Judicial Police to capture, on its own initiative, these images is exclusively restricted to what the text itself calls "public places or spaces". The determination of the scope of this locution has to be obtained by contrasting it with the "home or closed place" referred to in art. 588 quater a), in which, always and in any case, judicial authorisation will be indispensable for the taking of images.

Some sectors of the doctrine have been particularly critical of the idea that art. 588 quinquies a) of the Lecrim endorses the idea that privacy is never compromised in public spaces, so that outside the home there is no expectation of privacy and, consequently, police officers lack any constitutional limitation to obtain images. Privacy can be affected, it is argued, when the investigator obtains personal information from a third party. This is the negative dimension of privacy. But it can also be compromised when the recording of images of someone who knows that they may be under surveillance conditions their free capacity to develop the ordinary facets of their lives. Be that as it may, the Spanish legislator has not considered the taking of images by police officers in public spaces to be worthy of the enhanced protection granted by judicial authorisation. It is therefore a question of a local concept of privacy which, in order to define the content of the constitutional right guaranteed by Art. 18.1 and 2 of the EC, requires a priority analysis of the domestic or public space in which the interference has taken place.

The taking of images of the person under investigation in public places or spaces - including here, in general, all those outside the constitutional protection afforded by Art. 18.2 of the EC to inviolability of the home or by Art. 18.1 to privacy - may be decided on the police officers' own initiative.

It is not easy to obtain precise rules, with a vocation for generality and susceptible to rigid application, which would take into account the singularities of each specific case. Judicial authorisation has been deemed unnecessary for the incorporation into the process of images obtained by the security cameras of El Corte Inglés (STS 124/2014, 3 February) or installed in an industrial building, close to the road (STS 129/2014, 26 February); nor has judicial authorisation been considered indispensable when it comes to sequences recorded by the cameras installed in the home of the residents themselves (STS 67/2014, 28 January).

The jurisprudential doctrine of this Chamber, (judgments of 6 May 1993, 7 February, 6 April and 21 May 1994, 18 December 1995, 27 February 1996, 5 May 1997, 968/1998 of 17 July, 188/1999, of 15 February, 1207/1999, of 23 July, 387/2001 of 13 March 2001, 27 September 2002, and 180/2012 of 14 March 2012, among many others) has considered the filming of allegedly criminal scenes taking place in public spaces or on public roads to be legitimate and not an infringement of fundamental rights, considering that the recording of images of activities that may constitute criminal acts is authorised by law in the course of a criminal investigation, provided that they are limited to the recording of what occurs in public spaces outside the inviolable precincts of the home or specific places where the exercise of privacy takes place.

Therefore, when the installation of filming or listening devices invades the restricted space reserved for the privacy of persons (the home), it can only be authorised by virtue of a court order, which constitutes an authorising instrument for the intrusion into a fundamental right. Those means of image or sound recording that film scenes inside the home, taking advantage of the technical advances and possibilities of these recording devices, would not be authorised without the appropriate judicial authorisation, even if the recording took place from locations far away from the home.

Let us now come down to the specific case, which is that in the case at hand, there was no clandestine installation of television cameras over a prolonged period of time.

The images captured by the drone were not even essential to know the appellant's address because this information was already known beforehand by the police. What the drone did allow was to know exactly, in order to make the entry and search operation possible, the location of bungalow number XX in Alicante, in the urbanisation of which it formed part.

This is explained in detail in FJ 3 of the judgment under appeal: "... the surveillance carried out with a drone on 28 July was not one of those used by the investigator to agree the agreed measure, because it is not among those listed in the resolution. The appellant was already identified from the beginning of the investigation by virtue of anonymous information from neighbours, which, by way of example, in the surveillance of 22 July, the police officers already saw him contacting the other accused Higinio at the convicted person's home, observing that when he left he was keeping an object, a person related to previous investigations into drug trafficking; In the surveillance of 2 July, Higinio is again seen coming to the appellant's house and then driving to the point opposite the XX point, where numerous people with a drug addict's appearance are observed; in the surveillance of 3 August, the police see Higinio entering the appellant's house with his own keys.

In the first surveillance, without the use of the drone, the house is already marked. It is clear that the order was not based on this surveillance with the drone and therefore it was not essential for the investigations, i.e. without it, the investigations could not have been continued with . In short, the investigator did not take them into account for the authorisation to enter the home. There had been surveillance before and after that, with the appellant and his home being identified.

On the day of the oral trial, the police officers appeared as witnesses, whose witness statements were correctly assessed by the court, they described that the drone only captured images of the exterior, never of the interior of the home, as stated in the statement; they described the place, ratifying the statement where the images appear, there is a street common to all the bungalows, the urbanisation has a low fence with railings that allow visibility of the interior from the outside, and that there was only one area that they could not see. And one thing is that the use of the drone is convenient to determine physically where bungalow number XX was located, as it is not visible from the street, they stated that there was a long corridor and then there was a bend that they could no longer see, and another is that as a result of the surveillance with the drone their address was found, which did not happen because it turns out that from the beginning of the investigation they were identified".

Conclusions

Important dissertation on the use of technological tools for capturing images or sounds, in public, private or semi-public or semi-private spaces, which takes as its starting point the first STS on the use of drones to capture images inside a home, no. 329/2016 of 20 April and ends in STCO 92/2023 of 11 September, which analyses the use of police cameras to capture images in a semi-private space, a community garage.

The description of the factual situation is extremely important in order to avoid theoretical pronouncements that are out of touch with reality. A declaration of nullity of this measure and the domino effect on the remaining investigative measures could not be ruled out.

The expectation of privacy is reinforced even in the case of a gated community with common areas for the meeting or transit of neighbours. However, in this case, the limits imposed by the principles of proportionality and necessity, art. 588 bis a.1 of the Lecrim, were respected by the police. As the ruling of the court of first instance makes clear, the drone and image capture only took place on a single occasion, specifically on the afternoon of 28 July 2023, when other previous surveillance had already been carried out. Consequently, there was no interference of significant intensity. It was not a static surveillance, prolonged in time and capable of undermining the privacy of any of the neighbours. Furthermore, the use of the drone was necessary - and its contribution to the proceedings was limited to this - in order to know the precise and exact location of the bungalow, already fully identified, which days later was to be the object of a judicially authorised entry and search.

The urbanisation, as explained in the lower court ruling, was delimited by a small wall and a trellis that allowed a view from the outside. What the drone allowed was only to photograph the section of the corridor of the housing estate that could not be seen from the outside, with the sole purpose of making the subsequent access of the agents, duly authorised by the examining magistrate, to the home being searched viable.

In short, even though the specific capture of this image was valid, the examining magistrate did not incorporate it into the judicial decision authorising the entry and search, possibly due to the suspicion of a possible nullity, but used the remaining police actions as an independent line of investigation.

5.- STS 854/2025, 16 October. Analysis of the validity of the evidence obtained in France through the Encrochat application, a closed network of communication through encrypted messages .[5]

Factual background

We analyse the cassation appeal lodged against the judgement handed down by the

[5] STS 854/2025 of 16 October 2025, published on the website of the Judicial Documentation Centre, CENDOJ, Roj: STS 4526/2025 - ECLI:ES:TS:2025:4526, appeal 10025/2025, Speaker, Honourable Ana María Ferrer García.

Appeal Chamber of the National High Court on 11 December 2024. Dismissal.

The Central Investigating Court no. 1 of the National High Court opened an appeal against the judgment of the Appeal Chamber of the National High Court on 11 December 2024. 1 of the Audiencia Nacional opened summary proceedings 5/22 and once concluded, referred it to the Criminal Division, Section 2 of the Audiencia Nacional (Rollo PO 9/22), which on 9 May 2024, handed down a conviction containing, among others, the following proven facts: "...As a result of neighbourhood information received by the EDOA-Barcelona unit about a single-family house located in the town of Sigues i Riells (Barcelona), owned by Artemio and Elsa, about the presence of vehicles outside the house and the presence of people at different times and unknown to the neighbourhood, a series of surveillance operations were carried out on the house, on different dates and times, detecting the entry and exit of people at unusual times, with a very short stay....surveillance which was followed by surveillance of people and vehicles, telephone tapping, arrests and requests for house searches and entries...

And it continues, "...The subsequent contribution of the Encrochat messages (April-June 2020) reaffirmed their dedication to the activity described, as the force acting identified the users of the nicknames investigated, Palillo, Rubia, Flaca, Pelirojo and Perico corresponding to Carlos Daniel, Antonieta, Maite, Juan Alberto and Luis Alberto...". The conviction for the accused reaches, in some cases, prison sentences of ten years for crimes against public health in the modality of substances that cause serious damage to health in the framework of a criminal organisation.

Legal basis

Previous: We will try to summarise the almost one hundred pages of this extremely important STS 854/2025, in the most didactic way possible, focusing on the subject of the appeal, the investigation in France, the transfer of data to Spain and the repercussions on other criminal proceedings in progress or to be initiated.

First, the purpose of the appeal in cassation.

The purpose of the cassation appeal is to expressly challenge before the SC the evidential value of the conversations that the French judicial authorities obtained from the EncroChat platform, which reached Spain through the European Investigation Order (EIO) issued by the Anti-Drugs Prosecutor's Office in order to transfer it to Spain, The appellants' complaints focused on the infringement of the right to secrecy of communications because the seized material came from a prospective action, not judicially authorised in Spain, and they also questioned the process of assigning identities to the platform's users.

The appeal in cassation lodged by the Public Prosecutor's Office before the SC provides some illustrative details about this type of encrypted communication system and its proliferation, which are important for framing the transcendence of the issue under our consideration.

And he points out that, "...although information is available on the current use by criminal organisations of more than 50 new encrypted messaging platforms, at the moment EncroChat, SKY-ECC, ANOM and EXCLU are the ones which, already tapped,

are the source of the communications being used as evidence in the different proceedings. These are systems that allow private communication of written messages, photos, videos, audios, which seek to avoid interception by the judicial authorities. Once the app for encrypting communications has been installed, the rest of the mobile phone's functions are closed. Each one has different technical characteristics from which some particularities will surely also derive in their procedural treatment. As a common feature, the terminals lack SIM user identification, in EncroChat, user identification was done by nicknames and in SKY-ECC through an alphanumeric code..." and adds, "...about 90% of the intercepted communications refer to drug trafficking, mainly cocaine; the rest have to do with some cases of murder or kidnappings related in general to drug trafficking. Users of these systems have not been found to have made use of them to deal with legal matters. The prices of the encrypted system are high, with EncroChat talking about €1,000 per terminal and about €1,500 per quarter. The distribution channels of the application were restricted, through private internet circuits in most cases. Security and privacy is conceived as paramount and EncroChat allowed for self-destruction of messages, deletion of passwords and panic deletion which was used when they became aware of EncroChat's intervention. At the time of EncroChat's exploitation, users who received a message alerting them of the tapping were switched to SKY but, in any case, access to the data was not prevented as the conversations were already tapped...".

Second - Characteristics of Encrochat.

With regard to the particular characteristics, operation and vicissitudes of EncroChat, as an introduction, we would like to take up the information contained in the STJUE (Grand Chamber) of 30 April 2024, case M.N. (C-670/22) - paragraphs 19 and 20.

In the context of an investigation carried out by the French authorities, it emerged that certain persons under investigation were using encrypted mobile telephones, operating under a licence called EncroChat, to commit offences relating mainly to drug trafficking.

Thanks to special software and modified equipment, these mobile phones made it possible to establish, via a server installed in Roubaix (France), an end-to-end encrypted communication, which could not be intercepted by traditional investigative methods. Communication was only possible between EncroChat customers. These phones were not available through official sales channels, but were offered by the sellers on the eBay platform. It was not possible to identify who was responsible for EncroChat, nor the official headquarters of the company.

The French police managed, with the authorisation of a judge, to retain data from this server in 2018 and 2019. This data allowed a joint investigation team, including Dutch experts, to develop a "Trojan horse" type software application. This application was installed in the spring of 2020, with the authorisation of the Tribunal Correctionnel de Lille (Lille Criminal Court, France), on the aforementioned server and, from there, on the aforementioned mobile phones by means of a simulated update.

Regarding the information obtained, some sources speak of more than 100 million messages, Eurojust informed those countries whose nationals operated through EncroChat of their existence.

In the case of Spain, following the processing of a European Investigation Order, the information was received in November 2020 and incorporated into various judicial proceedings.

Third: The transmission of the data to Spain.

The Prosecutor's Office explains that the Lille Prosecutor's Office transmitted spontaneous information to the Computer Crime Unit of the State Attorney General's Office, which forwarded this general information on the operation in which data on Spanish users involved in drug trafficking offences in Spain had been seized to the Special Anti-Drug Prosecutor's Office (FEAD) which, at first, incorporated it into the investigation proceedings, DI 16/20, followed for a laundering offence against the resellers of EncroChat terminals.

They were incorporated by the mere mention of EncroChat, but once the French document was translated, the Chief Prosecutor of the FEAD broke down this report from the 16/20 and opened DI 20/20, on 23 July 2020, issuing the OEI on the same day to obtain the information that the French offered in the spontaneous information and the OEI stated, ".....the French Judicial Authority is requested to provide the data stored on the EncroChat servers intercepted by virtue of the judicial measure authorised in its ongoing proceedings for the investigation of the EncroChat Organisation, due to the fact that they may contain relevant information on different aspects related to the money laundering activity investigated by the Spanish authority, allegedly carried out by the aforementioned Organisation in Spain, as well as by the network of distributors and resellers of said technology in that territory.

Specifically, all data associated with the users of this EncroChat encrypted communication system registered in the national territory of Spain are requested, from the date of the beginning of the intervention of the EncroChat server until the date of completion of said measure..." and most importantly, "...authorisation is requested for the use of this data as valid evidence in a Spanish judicial procedure...".

With this background, we must now move on to the issue at the centre of our attention, which is the possibility of using the data extracted from the communications obtained by the French authorities from the EncroChat server, which were finally incorporated into the case in Spain.

It seems clear that there is no irregularity whatsoever in the fact that the Public Prosecutor's Office obtained through an OEI the data obtained by the French authorities in the EncroChat investigation and furthermore, it is not an OEI to proceed with an interception, but a request to acquire the documentary results of investigative activities that the foreign authority has already carried out, with full autonomy, in compliance with its legislation, because the Spanish issuing authority should not make the issuing of the OEI subject to compliance with the provisions of arts. 588 ter a and subsequent articles. Lecrim, for the interception of telephone and telematic communications, or in art. 588 septies a and ff. for the remote search of a mass information storage device; rather, the canon of the examination should be extracted from the provisions of art. 588 bis i) Lecrim, which in turn refers to art. 579 bis Lecrim, which refers to the use of information obtained in a different procedure and casual discoveries.

The aforementioned 588 bis i) Lecrim expressly permits the incorporation as a means of investigation or evidence of information obtained through telephone tapping in a different procedure.

The OEI was issued for the investigation of a drug trafficking offence, laundering of drug trafficking proceeds, committed by an international criminal organisation, all of which are typified in articles 301, 302 and 303, laundering, 368, 369, 369 bis drug trafficking, 570 bis, criminal organisation, all of them of the Spanish Penal Code.

The Public Prosecutor's Office included special precautions in the delivery of the data, since by Decree of 10 November 2020 it authorised a Lieutenant from the Central Operational Unit (UCO) of Guardia Civil to travel to France for the effective transmission of the data subject to the aforementioned OEI, under the following terms: 1) The hard disk shall be securely deposited in the premises of the Central Operational Unit of the Guardia Civil, or wherever determined by the Judicial Police Headquarters of the Guardia Civil; 2) Authorise the Technical Unit of the Judicial Police, in conjunction with the Computer Forensics Group of the Information Headquarters of the Guardia Civil, to make a forensic copy of the original evidence, maintaining its unalterability, with the aim of processing the data to allow its correct visualisation; 3) Authorise the units with Judicial Police functions of the Guardia Civil to analyse the information contained on the aforementioned hard disk, in order to determine: i) if they contain sufficient elements to initiate an investigation; and ii) if they are related to an investigation already initiated and, if so, if the evidence analysed provides any relevant data; and 4) Authorise the units with Judicial Police functions of the Guardia Civil, either to initiate an investigation, in the first case; or to provide the process with the complementary information obtained, in the second case, so that it can be assessed by the Examining Magistrate and the Public Prosecutor's Office. In both cases, in order for the information to be included in criminal proceedings, it must be accompanied by an official letter of referral issued by the UTPJ of the Guardia Civil, providing the specific data extracted from the forensic copy, with the guarantee of its unalterability.

Specifically on how they accessed the procedure that is the subject of this appeal, the data relating to the communications of the users "Palillo", "Rubia", "Flaca", "Pelirojo" and "Perico" was provided by means of a police official letter from the Guardia Civil dated 27 May 2022.

Fourth: Lack of notification established in art. 31 of Directive 2014/41.

Another of the controversial issues, which was introduced by the appellants, is the effect on the possibilities of using the EncroChat material from the EIO issued by the FEAD, projected by the omission by the French authorities of the notification mechanism established by art. 31 of Directive 2014/41.

The Directive distinguishes between two types of 'interception of telecommunications': 1) Interception of telecommunications with the technical assistance of another Member State (art. 30). For the execution of this intervention, an EIO must be issued for the telecommunications intervention in the Member State whose technical assistance is required and 2) Telecommunications intervention which does not require the technical assistance of the Member State in whose territory the target of the intervention is located.

The CJEU (Grand Chamber) of 30 April 2024, case M.N. (C-670/22) expressly states that this measure "is not the subject of a European Investigation Order" (para. 121), because it is not required for its execution. However, as this is a case in which a State "intrudes" into the territory of another State, albeit in its "telecommunications area", Article 31 of the Directive states that the first of the Member States, known as the "intercepting State", must notify the competent authority of the second of these Member States, known as the "notified State", of the interception.

The CJEU, in relation to Article 31 of the Directive, rules on the nature of the agreed measure, stating that it is a "telecommunications interception", affirms that it must be notified and indicates to which authority, and adds that the purpose of this provision is to protect the rights of the users affected by the measure.

However, we must not forget that, in this case, the State carrying out the interception does not know, beforehand, that the person affected by the measure is in the territory of another State, but that, during its execution, this circumstance occurs and comes to its knowledge (notification during the interception) or, even, this knowledge may be reached after obtaining and assessing the corresponding information, (notification after the interception).

France did not formally comply with the notification mechanism provided for in Article 31 of the Directive (notification using the appropriate form), either before, during or after the interception of the EncroChat server, and this requirement was not complied with, despite the fact that it was an interception of communications without technical assistance from another country. However, even if we consider this lack of notification of the interception to be valid, it does not seem to be a substantial requirement when the directive itself allows the corresponding Annex C to be made before, during or after the interception.

Even before this spontaneous exchange of information, the French authorities also notified the authorities of all the states concerned of this interception via Europol.

We did not detect any indication of possible defencelessness or other fundamental rights associated with the lack of communication that could undermine the evidentiary validity of the EncroChat server material, nor any compromise of our sovereignty as a State. The French authorities reliably communicated the intervention to the Spanish authorities as soon as they were able to know the geolocation of the persons affected by their measure.

Conclusions.

With the extensive legal grounds developed in this long STS 854/2025, of almost one hundred pages, no reasons can be detected that prevent the use in this specific procedure of the data from EncroChat introduced in the process by way of the OEI issued by the Anti-Drugs Prosecutor's Office, given the seriousness of the facts, drug trafficking that causes serious damage to health through a criminal organisation, which exceeds the proportionality canon.

This decision is essentially a decision, that is, regarding the possibility of using the material obtained from EncroChat, with different nuances that is shared by the courts in

other countries around us.

The data from the EncroChat server may raise questions of a procedural nature in each individual criminal proceeding, such as, among others: the way in which it was obtained from France, the fact that the technique specifically used for this data capture has not been disclosed because it is subject to national defence secrecy in accordance with French legislation (arts. 4139 and 413-10 of the French Criminal Code); the chain of custody of the material provided; the making of copies; the extraction of data relating to specific persons, facts and offences; their incorporation into each criminal procedure; or the police reports on the correspondence between nicknames and identities of specific persons.

Many of these issues must be looked at from the perspective of each proceeding and the evidence in each one of them, without prejudice to the fact that, in general, it can be stated, as already indicated, that:

- The data was obtained through the issuance of an EIO, by the Public Prosecutor's Office, in Investigation Diligences 20/2020. Formal request with the correct international cooperation tool.

- They were collected by the Spanish police force in police premises in France, on a hard disk, which was deposited in the possession of the Guardia Civil. It guarantees the chain of custody.

- The Public Prosecutor's Office authorised the Judicial Police to: i) make a copy of the original evidence, ii) analyse the information contained on the hard disk, and iii) initiate an investigation or contribute the information obtained to the ongoing process. Purpose of the IEO to incorporate it into the Spanish procedure.

As can be seen, the data provided by France are not the original data from the server, as they were obtained, but data that were analysed and selected by the French authorities in order to identify those that might be of interest to the Spanish authorities. In addition, the data that, where appropriate, are incorporated into each criminal procedure in Spain, are not the data received from France either, but, once again, are data that are subject to analysis and selection, in this case by the Judicial Police, in order to discriminate which could be of interest for each criminal procedure, depending on the persons, facts and crimes under investigation.

This "cascade" selection raises the problem of the possibilities for the defence to challenge the integrity and reliability of the data, because it has never been able to have the "raw data" at its disposal, although the SC, echoing the case law of the ECtHR, has considered the limited provision of such data valid, taking into account, "....the technical difficulties in accessing the data, in particular when they are encrypted, or the logistical disadvantages for their handling and analysis when they are very voluminous or of great importance both at the investigation and trial stages -vid. STEDH, Rook v. Germany, 25 October 2019; STSS 507/2020, 14 October; 86/2022, 31 January; 106/2023, 16 February, hence the need to activate specific safeguards in terms of collection and processing -vid. STS 425/2016, 4 February, Circular of the State Prosecutor General's Office 5/2019, but also to the proper assessment of their reliability. In particular, in those cases in which the digital data have been obtained without subsequent judicial control or are not

accompanied by other evidentiary information with corroborative potential -vid. on the evidentiary use of content sent via messaging services, STEDH Yüksel Yalçinkaya v. Turkey, 26 September 2023.

As a corollary, a general analysis of the probative value of data from EncroChat is not possible, far from the details of each specific case. Rejected as it has been, with extrapolable effect to similar cases, the nullity of the data obtained as a result of the OEI issued by the Special Anti-Drug Prosecutor's Office, the scope of the informative contribution provided by the same will vary in each case in accordance with the particular circumstances and the patterns we have pointed out.

6.- STS 861/2025, 22 October. Undercover agents. Provision in their entirety of the recorded conversations.[6]

Factual background

Appeal against the judgement handed down by the Appeals Chamber of the Audiencia Nacional on 22 January 2025. Dismissed.

The Central Examining Court no. 4 of the Audiencia Nacional, instructed the summary procedure no. 3/2023, for the crime of drug trafficking in quantity of notorious importance and criminal organisation, once concluded, it was sent to the 4th Section of the Criminal Chamber of the Audiencia Nacional, which issued sentence no. 18/2024, dated 15 July 2024, which contains, among others, the following proven facts:"...In a letter dated 30 September 2022 from Mr. Hayes, United States Attorney in Illinois (Chicago), addressed to the Chief Prosecutor of the Special Anti-Drug Prosecutor's Office of the Audiencia Nacional, a request was made for the opening of a judicial procedure for the ongoing investigation in a joint manner with the Chief Prosecutor of the Special Anti-Drug Prosecutor's Office of the Audiencia Nacional. Hayes, United States Attorney in Illinois (Chicago) addressed to the Chief Prosecutor of the Special Anti-Drug Prosecutor's Office of the Audiencia Nacional, a request was made to open judicial proceedings for the investigation underway jointly with the Spanish National Police (UDYCO CENTRAL-Section IV), informing of the investigation underway in coordination with the office of HSI (Homeland Security Investigations) in Bogotá and Madrid, and said Spanish police group, having given rise to case XX and dealing with the object of this, the drugs and money laundering organisation of Conrado.

It was illustrated in that letter that in the month of February 2022, as a result of the steps taken in Colombia, Conrado was identified as the head of a drug trafficking organisation established in Bogotá (Colombia), with an undercover agent being introduced in the course of the undercover investigation by the American authority, when Conrado requested assistance with the transport of approximately two tonnes of cocaine from Colombia to Spain, The Colombian organisation intended to send it using a boat that would pick up the drugs in international waters, after which they would be transferred to this country where they would be delivered to the final recipients and distributors. It

[6] STS 861/2025 of 22 October 2025, published on the website of the Judicial Documentation Centre, Cendoj, ROJ: STS 4652/2025 - ECLI:ES:TS:2025:4652, appeal 10142/2025. Speaker Excma. Ms. Susana Polo García.

was detected that in mid-September 2022 Conrado had travelled to Spain to coordinate the reception and entry of the drugs with other members of a criminal organisation made up of Spaniards and Mexicans with whom he had previously met in this country.

Once the opening of the judicial proceedings in Spain had been authorised, with authorisation also for Spanish undercover agents to act, the drugs would be transported by cargo in the hold on a commercial flight (IBERIA airline) to Spain, from Luís Muñoz Marín International Airport in San Juan de Puerto Rico to Madrid-Barajas International Airport (Spain), the drugs being guarded at all times from the time they entered the airport until they were loaded into the hold of the plane by United States federal agents, which would be duly accredited in the chain of custody document of the drugs...."

Legal grounds

Sole legal basis. Regarding the reproach of the appellants relating to the non-compliance with the obligation to provide full details of the communications between the undercover agent Pelosblancos and those identified as "Eugenio" and "Felipe", given that article 282 bis 1. of the Lecrim in its third paragraph warns that the information obtained by the undercover agent must be made known as soon as possible to the person who authorised the investigation and, likewise, this information must be brought to the trial in its entirety and will be evaluated in conscience by the competent judicial body, the truth is that the legal mandate has not been faithfully complied with, Moreover, at the request of the appellant, the Aranjuez investigating court agreed to send a summons to the police to provide all of the conversations held between the undercover agents and the under investigation, but there is no evidence that this order has been complied with, as the telephones used had been cleaned for use in other activities.

However, as the Chamber rightly reasons, not every irregularity determines the nullity of the proceedings or the impossibility of assessing the evidence obtained and affected by this flaw, if, as in the present case, the data available to us allows us to arrive at a knowledge of objectively produced facts, with a logical and rational concatenation between them, especially if, in addition, the data included have been the object of the corresponding witness evidence, and the agents involved, especially the undercover agent Pelosblancos and the national police officer XX, Head of Group 50 and instructor of the police report, subjected to the contradictory debate, have ratified what is contained in the reports.

In this sense, STS 503/2021 of 10 June states that "with regard to the messages provided by the undercover agent and the accusation that they were not sent in their entirety, it is clear that they cannot be given constitutional relevance, or even ordinary legality, and will only have significance in terms of their evidential value. What is important is that the agent will hand over all the information obtained in the exercise of his function, insofar as it is relevant to the investigation of the crime. It is clear from the reading of the regulation contemplated in art. 282 bis Lecrim that it is not a question of transferring all the communications held, conversations, messages, calls - as if it were a kind of telephone tapping - but rather that which is transcendent for the investigation, which justifies the measure and can serve to clarify the facts and prevent the crime. It is not a question of the official "choosing" what is incriminating, but what is relevant to the investigation. This is what makes the difference, as it does not make sense to provide

everything, as it is not a wiretapping measure, but a face-to-face action over a prolonged period of time".

The officers had no personal interest in the outcome of the investigation, they were questioned about their conversations with the persons under investigation, and their testimony led to the court's conviction about the operation, and they could be questioned by the defence. It is not so much a question of the virtuality of the written content of a conversation or its contribution, but rather the reality of the conversations held and the statement of the agents about these conversations with the authorisation of the public prosecutor and the subsequent reporting to the judge. The court's conviction was reached by the statement of the police officers about the result of the investigation and the inexistence of any spurious interest on the part of the officers who acted with professional zeal, carrying out conversations with those under investigation about the operation.

What was important for the investigation was transcribed and, furthermore, what is reflected in the sentence is that the operative group made what they talked about cost when it was of interest for the investigation and they wrote it up directly in their reports to their superiors with the content of what they talked about. The characteristic feature of this figure is the duty of information required of the undercover agent, who must make the information he or she discovers available to the person who authorised the investigation as soon as possible. As can be seen, no specific deadline is set for the fulfilment of this duty, but the legislator limits himself to stipulating that "it must be made available as soon as possible". Nor is the specific form of the notification established, nor is the personal appearance of the officer required. All of this means that it is left to the competent jurisdiction to resolve these aspects and to determine the way in which this information will be made known, depending on each specific investigation, given that the officer may encounter serious difficulties on certain occasions in sending the information personally and immediately. (STS140/2019, of 13 March).

Conclusions

This STS, like so many others, fully endorses the intervention of undercover agents and gives total legality and credibility to their actions. The battery of arguments put forward by the defence lawyers is extremely varied, sometimes repetitive of many other criminal proceedings with the same result, ranging from the absence of content informing or documenting the infiltration process, as well as the operations carried out once the undercover agents had infiltrated, ending with the necessary argument of the crime provoked. There are pre-procedural activities that should not be revealed, on pain of compromising tools as useful as the one analysed and with future prospects for combating organised crime.

In this case, the information to be provided by the undercover agent is relevant to the case, as it could not be otherwise, ruling out doubts about possible police incitement and showing a totally passive attitude, diluting the suspicion of the existence of a provoked crime.

7.- STS 849/2025, 16 October. Disclosure of secrets by a public official. Fraudulently obtaining access codes to a computer.[7]

Factual background

Appeal brought against the judgement handed down by the Supreme Court of Extremadura on 21 February 2022, which partially upheld the appeal against the judgement handed down by the Provincial Court of Cáceres. Partial upholding.

The Examining Magistrate's Court no. 1 of Valencia de Alcántara opened preliminary proceedings no. 147/2018 for a crime of intrusion, against Mr. Constancio, with Ms. Soledad and the Cáceres College of Nursing as Private Prosecutor, which, once concluded, referred for trial to Section no. 2 of the Provincial Court of Cáceres, ruling, among others, the following proven facts, ".The complainant, Ms Soledad, worked as a qualified nursing technician from April 2012 until October 2018 at the "Buenos Aires" retirement home in Valencia de Alcántara. In said geriatric centre, which is publicly owned and managed by the Town Council of that town on a date not determined but close to the date initially indicated, two personal computers were installed, one in the nurses' office, Dell model XX, and the other in the office of the director of the aforementioned centre. From that moment on, the nurse Dña. Soledad, who worked there continuously, from Monday to Friday and from eight in the morning to three in the afternoon, began to use the computer alone and on a regular basis without the express prohibition of her hierarchical superiors, the mayor and the director, and the knowledge of the other workers, giving it a personal password (Dakota 76) and using it on a daily basis, both to draw up his own personal and individual models of "templates or spreadsheets" for users of the residence, and as his own personal computer with a personal password and not accessible to third parties without his permission, given the reserved content and sensitive data from his private life contained therein, as well as his personal e-mail.

In these circumstances and in this particular context, the accused Mr. Constancio, of legal age, with no criminal record and with the profession of "auxiliary nurse" (although he was released from the trade union) and at the same time a public employee of the Valencia de Alcántara Town Council in the role of director-manager of the "Buenos Aires" residence and consequently acting in all the absences (sick leave, leave, travel, illness, holidays, etc.) of the director of the residence, Mr. Raúl. In this capacity and with the aim of discovering general private information and sensitive personal data that he could use to the detriment of Ms. Soledad, he accessed the private content of the same without her knowledge and without her having at any time authorised him or given him or provided him with her personal password. Specifically, on 11/10/2018, Mr. Constancio, knowing perfectly well from his position that Ms. Soledad was not working that day at the residence, that he did not have her authorisation and with the aim of obtaining some kind of information in order to use it to her detriment, first entered the nursing office - the place where the computer was physically located - and then, using the password that he had previously obtained in June with the help of a pendrive that he inserted in the computer, managed to access all its contents...".

[7] STS 849/2025, of 16 October 2025, (ROJ: STS 4646/2025 - ECLI:ES:TS:2025:4646, appeal 2467/2022. Rapporteur: D. Eduardo de Porres Ortiz de Urbina.

Legal grounds

The fraudulent obtaining of the password to the computer is in itself a non-consensual access to the complainant's confidential personal data.

This password, which is an identifier of its owner, allows access to all the information that may exist on the computer, and therefore constitutes per se a confidential personal data protected by article 197.2 of the Criminal Code.

The password of a personal computer is the key, the access door to all the contents of that computer in which the owner's private information is usually stored, and in the same way that we have said that the improper obtaining of "an online identifier constitutes personal data susceptible of protection" because it allows the identification of its owner, it is also protectable and punishable under Article 197.2 of the Criminal Code, obtaining the password of another person's personal computer is also protectable and punishable under criminal law insofar as it gives access to all the personal information stored on the device, without the need for a detailed description of its content once it is established that the perpetrator did not limit himself to obtaining the password but accessed its different folders and content and that this generalised access to all the information on the computer.constitutes the damage required by the provision applied.

Indeed, according to the wording of article 197.2 PC, the seizure, use or modification of personal data of a personal nature requires it to be carried out "to the detriment of the owner or a third party" and we have declared, by means of an integrating interpretation, that this damage is also required in the conduct of simple access (SSTS 1328/2009, of 30 December and 40/2016, of 3 February).

To determine the existence of harm, we have been using two parameters. In the case of access to particularly sensitive data, which has an aggravated penalty (art. 197.5 CP), the relevance of the data itself determines the existence of the harm. Particularly sensitive data, according to the Data Protection Regulation, Art. 9 and Art. 195.5 cited, personal data revealing ethnic or racial origin, political opinions, religious or philosophical convictions, or trade union membership, and the processing of genetic data, biometric data aimed at uniquely identifying a natural person, data relating to health or data relating to the sex life or sexual orientations of a natural person, as well as data referring to underage victims or persons with disabilities in need of special protection.

In other cases, where the data are not particularly sensitive, the existence of a detriment must be proven.

In this case, there is no evidence that the personal data accessed was particularly sensitive, but we understand that indiscriminate access to the entire contents of a personal computer, which can and ordinarily does include very broad and varied personal information, constitutes the typical harm required by article 197.2 PC.

Therefore, the proven facts can be subsumed under article 197.2 PC, which determines the partial acceptance of the appeal and the imposition of the sentence established in the first instance ruling, without the need to reply to the third and last ground of appeal.

Conclusions

Once again, we see the rise of this criminal offence of discovery and revelation of secrets, which has so many and varied modalities in art. 197 of the Criminal Code.

This case involves the fraudulent obtaining by a public official of the password to a computer used by another public official with the intention of causing personal harm. There is no justification for this deliberate and unconscious access to the personal data of another, being a criminal modality that fits in with the basic type of section 2 of Article 197.

8.- STS 866/2025, 22nd October. Self-consumption or sale of GBL. Questionable minimum doses .[8]

Factual background

Appeal brought against the judgement of the TSJ of Madrid of 15 December 2022, which upheld the conviction handed down by the AP. Upheld.

The Madrid Examining Magistrate's Court no. 30, initiated abbreviated proceedings no. 1507/2021 against Federico for a crime against public health and once concluded, referred it to the 7th Section of the Provincial Court of Madrid, which handed down a sentence on 26 April 2022, which includes, among others, the following proven facts, "... It is declared proven that the accused Federico, of French nationality and without criminal record, at around 8.30 p.m. on 12 March 2021, was inside the establishment "El Ring" located at 78 Amparo Street in Madrid when National Police officers arrived, alerted by neighbours who alerted them to the fact that he was inside the establishment "El Ring" located in 78 Amparo Street in Madrid:30 hours on 12 March 2021, he was inside the establishment "El Ring" located at 78 Amparo Street in Madrid when National Police officers arrived, alerted by neighbours who alerted them that a large group of people were inside the establishment, without keeping a safe distance and without wearing masks. On entering the establishment and finding narcotic substances in many of the rooms, they proceeded to search the belongings of the customers, including the accused, who was found in one of the pockets of his jacket, which was inside one of the lockers that the establishment had available for customers to leave their clothes and belongings in: (a) a dropper bottle containing 30 millilitres of gamma butyrolactone (GBL), known as liquid ecstasy, which he intended to distribute to third parties; and (b) a blister pack containing 12 tablets of Cenforce 100, which contained the drug Sildenafil, a product not authorised as a medicine in Spain, which means that its marketing is clandestine, and which he also intended to distribute to third parties...".

[8] STS 866/2025, 22 October 2025, published on the website of the Judicial Documentation Centre, Cendoj, (ROJ: STS 4799/2025 - ECLI:ES:TS:2025:4799, appeal: 551/2023. Speaker: Mr. Antonio del Moral García.

Legal grounds

The Court of First Instance justifies its evidential conclusion on the finding, during a police control, of a bottle containing 30 millilitres of GBL, liquid ecstasy, in addition to 2 tablets of Cenforce 100. It had been declared proven that there were 12 and not 2.

Possession of the substance is established: it is a fact acknowledged by the accused.

Gamma butyrolactone (GBL) is a controlled substance that causes serious damage to Health, Agreement of the Non-jurisdictional Plenary of the SC held on 13 December 2004, and SSTS 197/2004, 16 February, 1224/2004, 15 December and 870/2008, 16 December: even though the substance GBL is not included in the Schedules, when it is introduced into the body it becomes GHB which is controlled - see STS 352/2019, 10 July).

As for its destination, the volume of the substance seized is the only evidence on which the Provincial Court based its conviction regarding the purpose of sale. It has been endorsed by the High Court of Justice in dismissing the appeal. That quantity, it is argued, could not be intended exclusively for the appellant's own consumption.

The appellant seeks to introduce doubt and to justify that, despite the volume of the liquid, a purpose other than self-consumption cannot be conclusively and indisputably deduced. He stresses the defendant's profession, which suggests that he does not need additional income to satisfy his consumption, and the way in which the drug is usually marketed (containers with such a capacity). The fact that all the liquid was in a single container makes the hypothesis of further distribution to third parties less plausible.

The Prosecutor in his documented report explains that these 30 millilitres exceed the amount of stockpiling that, according to case law, built on maxims of experience, would represent consumption between three and five days (vid STS 870/2008, of 16 February and ATS 890/2019, of 10 October).

This being true, the criterion of quantity cannot be automated.

We are dealing with an evidentiary issue: not with setting boundaries between permitted and non-permitted quantities. What is not permitted is distribution and what is punishable is possession for distribution to third parties.

Only if this element is conclusively proven can a conviction be legitimised.

Here it is true that the quantity could suggest a dedication that would go beyond self-consumption itself, but in view of the circumstances put forward by the appellant - his status as a consumer, the form in which the substance is presented and others - the opposite hypothesis cannot be ruled out outright, which must lead to the appeal being upheld. The alternative argument put forward by the appellant - that the total amount seized was intended for his own use - is sufficiently well suited to the standards of reasonableness for the doubt raised as to the reality of the charge to preclude a conviction.

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Conclusions

This à la carte variation of the criteria established since the non-jurisdictional agreement of 13 December 2004 is, to say the least, delicate. It is true that it is not clear from the proven facts that it was a quantity pre-ordered for trafficking, possibly some ancillary or peripheral information is missing in the seizure, but this exculpatory argument that seeks a basis in the fact that the bottles in which they are sold are 30 ml, seems perverse. And if they were 35 ml, would we reach the same conclusion? I honestly believe that this should not be the case and we could open an interpretative window that trivialises the protected legal right in crimes against public health.