Case law review

CASE LAW REVIEW, SECOND CHAMBER OF THE SUPREME COURT

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Summary: 1. STS 195/2025, 5 March. Determination of the aggravating circumstance of an establishment open to the public in a case of robbery with force. 2. STS 185/2026, 3 March. Validity for prosecution of a witness statement given at police headquarters by a witness who subsequently dies. Murder. 3. STS 216/2026, 12 March. On the validity of a videoconference with the complainant during the oral hearing, via an unofficial application. 4. STS 241/2026, 27 March. Requirements for ambient audio recording. Determination of the starting point for calculating the duration of this technological measure. 5. STS 264/2026, 6 April. Validity of police imagery captured by a drone on a property used almost exclusively for an extensive and vast cannabis plantation. 6. STS 156/2026, 24 February. Grounds for the order authorising telephone tapping where the police merely request a change of telephone number for the person under investigation. 7. STCO 15/2026, 23 February. Pre-trial secrecy and the guarantee of access to the essential elements of the arrest. 8. STS 41/2026, 26 January. Reopening of proceedings provisionally dismissed due to the emergence of new facts and new lines of investigation, even if of a technical nature.

1. STS 195/2025, 5 March. Determination of the aggravating circumstance of an establishment open to the public in a case of robbery with force against property[1] .

Factual background.

In this Supreme Court ruling, we examine the appeal lodged against the judgment handed down on appeal by the High Court of Justice of Galicia, confirming the conviction for the offence of burglary in an establishment open to the public. Appeal upheld.

Investigating Court No. 1 of Santiago de Compostela instituted summary proceedings No. 339/2020 against Pablo and others for the offence of burglary. Once concluded, it referred the case to the Provincial Court of La Coruña, Section 6, which handed down a judgment on 29 April 2022, setting out the following proven facts: "On 23 December 2019, at around 11.00 pm, two unidentified individuals, acting in concert with Guillermo and Clemencia, gained access to the premises of the Caballo Blanco Self-Service Laundrette, situated at Avenida da Liberdade No. 5 in Santiago de Compostela. Once there, after Guillermo and Clemencia had checked the premises and whilst they were keeping watch, the two unidentified individuals broke through the plasterboard wall where the coin change box was located, taking approximately €500, causing damage to the machine amounting to €674.30 and to the wall amounting to €423.50. The injured party did not claim compensation for the damages suffered.

Legal grounds.

The appellant does not dispute the offence of robbery with force, but rather the scope of the aggravating circumstance of a premises open to the public.

The judgment of the court of first instance, which was subsequently upheld by the High Court of Justice, maintains that the entry of the two accused, Guillermo and

[1] Supreme Court Judgment 195/2026 of 5 March 2026, published on the website of the Judicial Documentation Centre (CENDOJ) (ROJ: STS 940/2026 - ECLI:ES:TS:2026:940), appeal no. 4766/2023. Presiding Judge: His Honour Mr Antonio del Moral García.

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Clemencia, into the premises took place before 11.00 pm, as did the departure of a customer who was there to collect her laundry, which occurred a few minutes later, after 11.00 pm, when the two unidentified men who smashed the wall and stole the cash box appeared, whilst the two suspects, later convicted, Guillermo and Clemencia, remained outside the premises and kept watch. It so happens, however, that the theft did not begin at that moment, but had already commenced before 11.00 pm with that initial act of entering and surveying the premises by the two convicted individuals, which was only possible precisely because the premises were not yet closed to the public and, moreover, remained open throughout the entire course of the unlawful incident. It is therefore beyond doubt that the Court has correctly applied the relevant offence.

Those two identified individuals were initially convicted as perpetrators of a crime of robbery with force in an establishment open to the public during opening hours.

In upholding the appeal and following an analysis of the footage recorded by the CCTV cameras, with reference to the relevant time period, the Supreme Court notes that, "…the burglary did not begin before 11.00 pm – the premises' closing time. Until that moment, preparatory acts were carried out to verify, precisely, that no one remained on the premises, which is exactly what the legislator intended to reduce the penalty in such cases: there is no risk to persons. The actual acts of the robbery began after closing time had passed, regardless of whether the premises had actually closed, a fact of which they may not have been aware. At that point, the principal perpetrators arrived, whilst the two accomplices remained outside keeping watch. The burglary cannot be aggravated simply because it was preceded by preparatory acts during opening hours. What is punishable is the commission of the burglary, which begins after 11 pm in an establishment open to the public during opening hours. It is in this situation that the risk of incidents involving people is inherent to the act, which the legislator takes into account in order to impose a more severe penalty due to the greater intensity of the criminal act…"

Conclusions.

I do not entirely agree with the reasoning set out in this Supreme Court ruling to reduce the sentence for those it classifies as perpetrators of preparatory acts for a property offence and classifies the offence as robbery committed in an establishment open to the public, but outside opening hours, which entails a reduction in the sentence.

This solution is questionable given that the two convicted individuals objectively arrived at the premises before closing time with a very specific intention—to steal—and with a pre-agreed division of tasks; for if it had indeed been closed to the public, what purpose would their intervention have served? Furthermore, they remained there on the lookout whilst two other unidentified individuals arrived, entered the premises, broke through the wall, carried out the theft and left with the loot without being arrested.

In my view, and despite the scarcity of proven facts, the fact that some individuals' involvement did not last as long as others' this does not mean that the aggravated sub-type could not be applied not only to the two who were ultimately convicted and who arrived at before closing time, but also to those who, in agreement with them, had they been identified, actually carried out the robbery by force after closing time.

2. Supreme Court Judgment 185/2026, 3 March. Validity for the purposes of prosecution of a witness statement given at a police station by a witness who subsequently dies. Murder[2] .

Factual background

The Supreme Court rules on the appeal lodged against the judgment of the High Court of Justice of Madrid, which upheld the judgment of the Provincial Court. Dismissed.

The Court of First Instance and Preliminary Investigation No. 2 of Parla initiated Jury Trial proceedings (PTJ) No. 814/2021 and, once concluded, referred the case to the Provincial Court of Madrid, Section 16, which, on 15 July 2024, handed down a judgment containing, amongst others, the following proven facts: "…On 27 December 2021, at around 7.00 pm, the defendant, Imanol, went to the bar La Espuela, situated at 21 Calle Guadalajara in the town of Parla, where he was playing on an arcade machine. The premises were run by Carlos Jesús and, in addition to him, Severino was also present. At some point after 01:30 on 28 December 2021, the defendant, with the intention of causing death or being aware of the high probability that such a result would occur, approached Severino, struck him repeatedly – particularly on the skull, face and neck – with one of the establishment's stools and inflicted several cuts to his abdomen and chest with a sharp object, which he also plunged into his neck; this, by partially severing the jugular vein, caused his death within a few minutes…"

Legal grounds

The subject of the appeal is the scope of a witness's statement made at the police station and subsequently during the preliminary investigation, but who later died.

Indeed, Article 46.5 in fine of the Organic Law on the Judiciary ( ) states that statements made during the preliminary investigation, except those resulting from early evidence, shall have no probative value regarding the facts stated therein, which, on an initial reading, suggests that in any event juries must disregard as an element of conviction the information obtained from personal proceedings during the preliminary investigation phase, through the statements of the persons under investigation, witnesses or experts. However, this apparent exclusivity is more apparent than real, as has been clarified by the now unanimous case law of this Chamber, within the framework of constitutional doctrine and inspired by the idea that different rules of evidence cannot coexist in our criminal justice system depending on the type of proceedings in question, be it a jury trial, ordinary proceedings or summary proceedings.

It goes on to state that, "…in this case, the statement made by the witness Mr César during the preliminary investigation was read out at the trial, as he was unable to appear having passed away. It was a statement given in the presence of the court and the other parties, and therefore we can raise no objection to such evidence. It is true that his police statement was also read out…"

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[2] STS 185/2026, 3 March 2026, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STS 925/2026 - ECLI:ES:TS:2026:925), appeal: 10309/2025. Presiding Judge: Her Honour Ms Ana María Ferrer García.

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As we are well aware, the case law of this Chamber generally does not recognise the probative value of statements given at police headquarters. However, in this case, the matter involves significant nuances. That police statement was read out, as explained by the Presiding Judge of the Jury, as a supplement to the statement given in court, insofar as the witness expressly referred to it.

In any event, this is evidence whose exclusion in no way affects the body of evidence. The only relevant information it provides is that the defendant was at Bar la Espuela at around 7 pm on the evening of 27 December, and that he was there at the same time as both victims.

Conclusions.

A reminder of the professional diligence with which we must act in the early stages of an investigation, and all the more so in crimes of this gravity, which may be resolved years later and where some direct or indirect witness, whether principal or secondary, may have passed away.

The importance of that testimony in police and court proceedings, together with other evidence, was at least taken into account by the Jury Court, although it did not play a decisive or determining role in the subsequent judgment.

3. Supreme Court Ruling 216/2026, 12 March, on the validity of a video conference with the complainant during the oral hearing, via an unofficial application[3] .

Factual background

The Supreme Court ruled on the appeal lodged against the judgment of the High Court of Justice of Aragon, which upheld the judgment of the Provincial Court of Zaragoza, Section 6. Dismissed.

The Court of First Instance and Preliminary Investigation No. 2 of Calatayud initiated ordinary proceedings No. 155/2018 against Benigno for an offence against sexual freedom, and once the case was referred to the Provincial Court, he was sentenced to a lengthy term of imprisonment.

The statements of the parties leave no room for doubt, with the exception of the complainant’s testimony given via videoconference.

Legal grounds

The first and second grounds of the appeal reproduce the reasons set out at the hearing, regarding the appellant’s objection to the complainant’s testimony being taken at trial via teleconference, on the basis that this left him defenceless, arising, in particular, from the fact that the witness was placed in a privileged position, her identity was not verified, nor

[3] Supreme Court Judgment 216/2026, 12 March 2026, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STS 1142/2026 , ECLI:ES:TS:2026:1142), appeal: 5149/2023. Presiding Judge: His Honour Mr Antonio Del Moral García.

was the impartiality of her statement, and, furthermore, that it was not documented in the case file that this method of taking the statement would be used, and that it did not appear necessary to do so on the grounds that the witness was pregnant.

Given that it has been established that the witness resided in Ceuta and was approximately eight months pregnant, we fully agree with the conclusion set out in the judgment under appeal that her personal appearance would have been particularly burdensome. Undoubtedly, unless strictly necessary, it does not seem advisable to transport a mother in an advanced stage of pregnancy, given the inconveniences, discomfort and potential risks that travel—whether by air or land—may entail for both her and the child. And in this case, it is not apparent that it was truly necessary for the statement to be given in person before the Court, since the means used to take the statement, although it gave rise, for technical reasons, to interruptions and shortcomings in the hearing of the witness, it nevertheless ultimately allowed, with a direct video feed of the witness, for her entire statement to be heard and for her to answer the questions that all parties were able to ask without any restrictions whatsoever.

The decision to use the telematic means being justified, no error can be identified in the specific conduct of the testimony that would render it invalid. Admittedly, the manner in which the testimony was taken was neither orthodox nor the most appropriate, as it took place at a private residence, without the presence of a public official to ensure *on-site* that the testimony was given correctly, and with the technical deficiencies observed during the hearing of the testimony.

However, such considerations should not lead, in this specific case, to upholding the alleged nullity, as the effects that the manner and circumstances in which the statement was given might have produced do not have the invalidating significance claimed. This is because the identity of the declarant is considered to be well-known, without the need to request a document to prove it and without any objection from the parties or any questioning of the fact that the declarant was the complainant. Nor is there any indication throughout the actual giving of the statement that the appellant's suspicion that the witness might have been coached whilst testifying is well-founded, since her gestures, demeanour, and the rapid and spontaneous manner of her responses demonstrate that she is answering in accordance with what she knows and understands, not because she is being told, directly or indirectly, what to say.

It cannot therefore be considered that the imperfections observed in the giving of the statement lead to the conclusion that the appellant was in any way deprived of a fair hearing, as they allowed the content of the statement to be fully understood and the evidence to be examined with the required immediacy and cross-examination, and, despite regrettable technical shortcomings, the provisions of Article 229.3 of the Organic Law on the Judiciary ( ) were respected in practice, with the appellant's right to a defence being safeguarded at all times. In short, as stated by the Supreme Court, Second Chamber, in judgment 161/2015 of 17 March: "the pioneering regulation adopted at the time by Article 10 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, adopted in Brussels on 29 May 2000, has inspired other rules at European level which have only served to reinforce the advantages offered by that technical solution to bridge, with the necessary safeguards, the geographical distance between the witness and the court which is to assess the probative value of that testimony".

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Conclusions.

The new Article 258 bis of the Criminal Procedure Act ( ) is a provision rich in nuances, rules and exceptions. It establishes that videoconferencing is to be the preferred method for all procedural proceedings in general, subject to one exception—where the judge or court, having regard to the circumstances, decides otherwise—and one condition—that the courts or public prosecutors' offices have the necessary technical facilities at their disposal.

Video conferencing has, and did at the time of the hearing, legal backing, not only for use during the investigation and pre-trial evidence-gathering phase, but also during the oral trial phase. The general rule under Articles 268.1 and 229.2 of the LOPJ is that proceedings must take place in the presence of the judicial body. However, in this case there were ample grounds for resorting to this method, as videoconferencing is merely a technical tool that allows evidence to be introduced into the proceedings—a method of taking evidence—so that it is the evidence in question, and in accordance with its own rules, which must be analysed in terms of the safeguards that must be in place for its use.

It can be asserted that the use of videoconferencing and the other technical means established by Article 230 of the LOPJ is not an optional or discretionary possibility at the disposal of the judge or court, but a means that is enforceable before the Court and constitutionally worthy of protection, although, as we well know, many courts continue to require the physical presence, primarily of members of the law enforcement agencies. Let us hope that this Supreme Court ruling, despite analysing an exceptional case, serves as a turning point for modernising the justice system with tools that are now conventional.

4. Supreme Court Judgment 241/2026, 27 March. Requirements for ambient audio monitoring. Determination of the starting point for calculating the duration of this technological measure[4] .

Factual background.

The Supreme Court rules on the appeal lodged against the judgment of the High Court of Justice of Galicia, which upheld the conviction of almost all the defendants handed down by the Provincial Court. Dismissed.

The Court of First Instance and Preliminary Investigation No. 4 of Vigo initiated preliminary proceedings under No. 520/2017, for an offence against public health, against Mr Abilio, Mr Alfonso, Mr Melchor, Mr Eugenio, Ms Belen, Mr Felix, Mr Abelardo, Ms Elisa and others, and once concluded, referred it for trial to the Provincial Court of Pontevedra, whose Section 5 handed down, in case no. 54/2019, a conviction on 11 July 2022.

[4] Supreme Court Judgment 241/2026, 27 March, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STS 1369/2026 - ECLI:ES:TS:2026:1369), appeal 8231/2023. Presiding Judge: Her Honour Ms Carmen Lamela Díaz.

The technological tools used to identify those responsible for the offence during the preliminary investigation were telephone tapping and bugging.

Legal grounds.

The appellant seeks the annulment of the evidence obtained through the bugging of the Renault Express xx vehicle, authorised by order of 14 September 2016, on the grounds that it infringed fundamental rights (, Article 18.3 of the Spanish Constitution, and , Article 8 of the ECHR), as it failed to comply with the requirements of , Articles 588 ter g and , 588 quater c) of the Criminal Procedure Act (Lecrim) and the applicable case law, as well as exceeding the time limit set out in the court order.

The appellant argues that the order of 14 September 2016 authorising the installation of audio recording devices in the van fails to meet the requirements set out in Article 588 quater b) of the Criminal Procedure Code ( ), as it does not link its adoption to specific meetings the subject of the investigation may have with third parties, based on the evidence revealed during the investigation, but rather proceeded to indiscriminately record the conversations that took place, as the devices installed remained in a state of permanent recording and in generic mode, a fact which renders the order null and void as of right, as well as the entirety of the proceedings, since it allowed those involved to become aware of the operation itself.

In response to this challenge, the Supreme Court reasons that the order of 14 September 2016 authorises, in a reasoned and proportionate manner, the installation of audio recording devices inside the vehicle habitually used by the suspect, expressly limiting their use to meetings taking place between the suspect and other suspects, within the framework of an investigation into serious offences related to drug trafficking.

Indeed, whilst the initial judicial interpretations of Article 588 quater b) of the Criminal Procedure Act ( ) advocated a strict application, requiring that the measure be limited to specific meetings and that the devices be switched off after each one, this position has been qualified by more recent case law. Thus, Constitutional Court Ruling No. 99/2021 of 10 May ( ), in line with Supreme Court Ruling No. 718/2020 of 28 December ( ), has expressly recognised the possibility of setting a time limit for the audio surveillance measure, so that it need not cease after each individual meeting, but rather at the end of the series of meetings for which it was authorised.

This interpretation allows the devices to remain installed and operational during the authorised period, without this implying indiscriminate recording, provided that the principles of proportionality, necessity and appropriateness are respected, and that the court order precisely defines the locational element (the vehicle), the subjective element (the persons under investigation), and the temporal scope of the interference, in accordance with the legitimate aims of the investigation and the seriousness of the offences under investigation, without an exact determination of the encounters being required, given the factual difficulty of predicting them with precision. Case law accepts, in this regard, the criterion of foreseeability as sufficient to justify the measure.

In the present case, the court order meets all these requirements: it defines the space (the interior of the vehicle), identifies the individuals concerned (Alfonso and the others under investigation), establishes a specific duration and makes the activation of the device

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conditional upon the verification of relevant meetings, in coordination with operational surveillance.

The allegation that indiscriminate and continuous recording took place lacks factual and legal basis. As the Provincial Court set out in detail and rigorously, the proceedings show that the recording was not carried out continuously, but selectively. The device was activated only in coordination with operational surveillance, when the presence of the suspects inside the vehicle was detected.

The appellant's second ground of appeal is that the device was installed after the deadline and without any extension.

The appellant points out that the device was installed five months after the authorising order was issued. The order authorised the measure for an initial period of 30 days, extendable, but it was not installed until 15 February 2017. Nor was a new judicial authorisation sought, nor were any technical grounds put forward to justify the delay. The appellant therefore considers that the judge was deprived of control over the appropriate time to assess the necessity and proportionality of the measure. The authorisation would have lapsed, and the subsequent installation without a new order would be null and void.

He therefore considers that the measure must be declared null and void for infringing fundamental rights, that all information obtained from said bugging must be expunged, and that the entire subsequent investigation must be set aside on the grounds of illegality, given that it was the primary means by which it was initiated and sustained.

The Supreme Court points out that in order to determine when the period of a judicial authorisation for the bugging of a vehicle begins to run, we must refer to the rules governing investigative measures, specifically in the context of Organic Law 13/2015 of 5 October, which amended the Criminal Procedure Act.

The law provides that the investigating judge authorises the measure and must specify its duration. According to Article 588 bis of the Criminal Procedure Act ( ), 'the measures regulated in this chapter shall have the duration specified for each of them and may not exceed the time strictly necessary for the clarification of the facts'. It therefore appears that the law assumes that the period is calculated from the date of judicial authorisation and not from the implementation of the measure, unless otherwise provided for in the judicial decision authorising the measure. The measure shall have the duration specified by the judge in the authorising order.

Furthermore, Article 588 bis (f) provides, in paragraph 1, that the application for an extension shall be addressed to the competent judge sufficiently in advance of the expiry of the period granted; and, in paragraph 3, that the calculation of the extension shall commence from the date of expiry of the period of the agreed measure. This aspect reinforces the idea that the period is calculated from the date of the court order authorising the measure, since the extension is based on the duration previously established by the judge.

In our case, the appellant fails to mention that, as the Provincial Court explains, in the order dated 14 September 2016 authorising the measure limited to specific encounters taking place inside the vehicle between Alfonso and the other persons under investigation,

which were to occur within a period of thirty days, extendable under the terms set out in the order, expressly stating that 'said period shall commence on the day the device is effectively installed, and the judicial authority must be notified of the moment the system is activated, with the appropriate record being drawn up'. This decision was duly substantiated by the Investigating Judge, taking into account that the installation of the device was contingent upon access to the interior of the vehicle, which posed difficulties due to the vehicle's continuous use and the necessity for police officers to be present in order to gain access to it, also taking into account the need to enter the vehicle and the fact that the keys were required, for which he also agreed to issue an official letter to the manufacturer requesting that they provide Greco Galicia officials with a duplicate set of keys.

And, as the appellant also acknowledges, it is recorded in the relevant file that the device was installed on 15 February 2017, and that it was installed by the specialist officer attached to the Special Systems Headquarters, holding the rank of police officer and professional ID number NUM087.

No infringement of any fundamental right is therefore observed, as the authorisation and implementation of the measure comply with the legal requirements set out in Article 588 quater of the Criminal Procedure Act ( ).

The ground is dismissed.

Conclusions.

This Supreme Court ruling is particularly interesting in relation to the flagship measure of many judicial investigations into organised crime, namely the use of audio recording.

It is true that the Supreme Court initially adopted such a strict position that each new wiretapping operation gave rise to a new application, followed by a new judicial decision for each specific meeting, Supreme Court Judgment 718/2020, although that criterion was subsequently qualified by the Criminal Chamber in Judgment 99/2021, allowing such recordings to be made on a continuous basis and in a manner appropriate to the circumstances of the case for specific meetings taking place within a given period. It was striking how little sensitivity and sound judgement the legislator showed in drafting a rule that lacked practical sense and, on many occasions, was technically impossible to implement due to the urgency of the match.

Case law has made it possible to clarify the lack of a fixed duration for the measure in the provisions cited above, Article 588 quater a) of the Criminal Procedure Act and subsequent articles, a duration which will be similar to that established for telephone tapping in terms of its adoption and extensions.

If the above is important, it is even more so that, for the first time, the Supreme Court has set the dies a quo, the starting point, for calculating the duration of a technological measure, when the only previous judicial ruling was the very distant Supreme Court Order 205/2005 concerning an investigation from the late 1990s, well prior to the reform of Organic Law 13/2015, which set this as the date of the order authorising the measure; and that case which reached the Constitutional Court concerned a telephone interception; the factual scenario involved a judicial authorisation for a

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telephone tap for three months, which began two and a half months after authorisation because the officers had not forwarded the warrants to the relevant telephone operator.

Now, however, the Supreme Court reasons that, thanks to the specification in the judicial order addressing the potential difficulties in implementing the wiretap—as it was not so straightforward for the police to install the device without being seen, given that the vehicle in question was frequently in use and the officers could be exposed to counter-surveillance by those under investigation— there is no objection to the time limit commencing at the time reasonably set by the Investigating Judge, having regard to the circumstances of the case.

5. Supreme Court Ruling 264/2026, 6 April. Validity of police image capture by a drone on a property used almost exclusively for an extensive and vast cannabis plantation[5] .

Factual background

The Supreme Court rules on the appeal lodged against the judgment of the High Court of Justice of Castile-La Mancha, which upheld the conviction of almost all the defendants handed down by the Provincial Court. Dismissed.

The Provincial Court of Guadalajara, First Chamber, handed down judgment no. 6/2025, 10 March, case file PO 2/2024, originating from Investigating Court no. 3 of Guadalajara, case file 1/23, concerning offences against public health, criminal organisation, bribery, disclosure of secrets and possession of weapons.

One of the investigative measures used by the Judicial Police was the use of drones to capture images of the premises used by the criminal organisation.

Legal grounds

The defence argues in the appeal that the obtaining of images and videos by means of drones or other aerial means over the rural property in xxx (Guadalajara) without judicial authorisation constituted a violation of the residents' right to privacy. During the investigation phase, the National Police used drones or aerial cameras to fly over and record the interior of the said property – the residence of some of the defendants, as stated in the proven facts, in point three – capturing images, apparently, of cannabis plants and the movement of plants within the property.

It is emphasised that this aerial surveillance was carried out without any court order authorising it. Subsequently, only individual still images taken from those flights were submitted to the proceedings, without the full video footage, precise geolocation data, or formal documentation of who captured the images and how. At the time, the defence argued that the date on which the defendants began occupying the property had not even been established, nor when the images were taken, raising serious doubts as to the

[5] Supreme Court Judgment 264/2026, 6 April 2026, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STS 1661/2026 - ECLI:ES:TS:2026:1661), appeal 10648/2025. Presiding Judge: His Honour Mr Manuel Marchena Gómez.

legitimacy of the measure and the reliability of these unauthenticated photographs, which could have been of that property or any other.

The Chamber refutes the appellant's arguments and states that, in accordance with Article 588 quinquies (a), the Judicial Police's authority to capture such images on its own initiative is exclusively restricted to what the text itself refers to as *'public places or spaces'*. The scope of this term must be determined by contrast with the *'dwelling or enclosed premises'* referred to in Article 588 quater a), where, in all cases, judicial authorisation is essential for the taking of images.

In the aforementioned STS 797/2025, 2 October, we echoed the criticisms from certain sectors of legal doctrine regarding the notion that Article 588 quinquies (a) of the Criminal Procedure Act ( ) supports the idea that privacy is never at stake in spaces classified as public, such that outside the home there is no expectation of privacy whatsoever and, consequently, police officers face no constitutional restrictions on obtaining images. Privacy may be affected – it is argued – when the investigator obtains personal information from a third party. This is referred to as the negative dimension of privacy. But it may also be compromised when the recording of images of a person who knows they may be under surveillance restricts their freedom to go about the ordinary aspects of their life. Be that as it may, the Spanish legislature has not deemed the collection of images by police officers in public spaces worthy of the enhanced protection afforded by judicial authorisation. It is, therefore, a locational concept of privacy which, in order to define the content of the constitutional right guaranteed by Article 18.1 and Article 18. 2 of the Spanish Constitution (CE), requires a primary analysis of the domestic or public space in which the intrusion has taken place.

As we noted in the previous precedent, the case law that addresses the question of which places enjoy the constitutional protection afforded by sections 1 and 2 of Article 18.2 of the Spanish Constitution takes on full significance. It is these places that will require, for the capture of images, the authorisation contained in a reasoned judicial decision. The constitutional protection of the inviolability of the home – as case law consistently emphasises – applies exclusively to the home, that is, to the dwelling in which the person under investigation carries out their daily life and which, precisely for that reason, gives rise to an expectation of privacy that is protected by the Constitution. Consequently, the taking of images of the person under investigation in public places or spaces – including here, in general terms, all those outside the constitutional protection afforded by Article 18.2 of the Spanish Constitution ( ) to the inviolability of the home or by Article 18.1 to privacy – may be decided on the police officers' own initiative.

It is not easy to establish precise rules that are general in nature and capable of strict application, setting aside the particularities of each specific case.

In the present case, the judgment under appeal endorses the reasoning set out by the Court of First Instance, based on the lack of evidence that, on the dates on which those photographs were taken, the area captured by the aerial images infringed the privacy of the residents. In fact, there is no evidence that Inmaculada and Abelardo – or any other person – resided on that property.

"…The photographs taken by aerial means, specifically drones, contained on pages 52 to 55 of the official letter of 12 May 2021, and taken in December 2020, 19 January,

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18 February, and 2 April 2021, show only the greenhouses built on the property, which is situated in an isolated hollow, far from population centres, and is difficult to access. It would be virtually impossible to conduct any investigation without the risk of being discovered from the outset, without the use of these means, given that, as is well known, security measures are at their highest in trafficking activities, with collaborators who are in many cases impossible to identify and who are exclusively dedicated to surveillance...”

And to rule out the alleged violation of the right to the inviolability of the home, the contested judgment adds:

“...Regarding the lack of knowledge of the means used to capture the photographs, it should be noted that, although some of the officers who testified as witnesses stated that they were unaware of them, it was clarified by other police officers who testified that the assistance of the IT department of the National Police Force was requested for the capture of said images. As noted in the preceding paragraph of the Provincial Court’s judgment, pages 52 to 55 of the official letter of 12 May 2021 include the photographs in question and the dates: December 2020, 19 January, 18 February, and 2 April 2021. It is noted that these were preceded by an on-site investigation carried out on 14 December 2020, during which the construction of a large greenhouse (the size of a football pitch) was observed, with several workers operating cranes at heights of 70 to 80 metres. It is also noted in the said report or initial official document that some 70 metres away there was a large detached house and that the property had a riding school. And whilst it is true that there is such a reference to a detached house, the aerial photographs were taken from a height – not from a very low altitude – and the subsequent ones, also taken from a height, focus on the greenhouses. The aerial photographs, even if taken by drones, lack any substance that infringes upon any fundamental right, specifically the protection of privacy or personal integrity. They contain no images or data that could lead to a finding of such a violation. The defence seeks to cast doubt on the possibility of images being captured of the defendants’ alleged residence, due to the failure to produce the ‘complete recording’, as well as the content of the police report and the statements made by the officers who testified as witnesses; there is no objective basis whatsoever for concluding that images were captured beyond the photographs provided, let alone that they constituted a recording or that they reached the dwelling…”

Conclusions.

I have borrowed some excerpts from Supreme Court Ruling 264/2026 to better understand the doubts raised by the capture of images using drones in public, private or semi-public spaces, and we highlight the correct explanation of the proven facts in detail, given that in our case we are dealing with a property that does not constitute a dwelling and as it does not affect the rights of the alleged occupants, because there are none, the capture of police images is deemed acceptable given the seriousness of the conduct and the difficulty of acting otherwise.

And it reads as follows: “…when the placement of filming or listening devices encroaches upon the restricted space reserved for personal privacy (the home), this may only be authorised by virtue of a court order, which constitutes an instrument enabling the intrusion upon a fundamental right. Without the appropriate judicial authorisation, those means of capturing images or sound that film scenes inside the home by taking

advantage of the technical advances and capabilities of these recording devices would not be authorised, even if the recording took place from locations distant from the premises.

The Supreme Court ruling under consideration goes on to state that we are certainly not advocating a criterion that legitimises the covert capture of images on a property where the observation is captured in frames that are projected onto the interior of a building or that reveal spaces intended for the performance of acts that define the daily routine of any person.

Nor does the Chamber suggest that anything situated outside the strict confines of the home should be left unprotected. In fact, Article 241.3 of the Criminal Code ( ), when defining the concept of an 'inhabited dwelling' for the purposes of classifying the aggravated offence of burglary, considers 'premises of an inhabited dwelling or of a building or premises open to the public, their courtyards, garages and other enclosed areas or sites adjacent to the building and in internal communication with it, and with which they form a physical unit'.

In short, the aim is to assess, in each case, whether the law enforcement authorities have complied with the principles of proportionality and necessity (, Article 588 bis a.1 of the Criminal Procedure Act). And in the present case, in view of the seriousness of the facts under investigation and the unique terrain on which the property was situated, we do not identify a breach of those legitimising principles.

6. Supreme Court Ruling 156/2026, 24 February. Grounds for the order authorising telephone interception where the police merely request a change of telephone number for the person under investigation[6] .

Factual background

Investigating Court No. 1 of Denia instituted summary proceedings No. 24/2014 for the offences of administrative malfeasance, bribery, embezzlement of public funds, fraud against the administration and money laundering against Luciano, Lázaro, Genaro, Rafael, Alexander and SIREM S.L., amongst others. Once concluded, the case was referred for trial to the Second Chamber of the Provincial Court of Alicante, which handed down a guilty verdict against some of the defendants and acquitted others. (Brugal case).

The Public Prosecutor's Office put forward a single ground of appeal, arguing that the right to effective judicial protection, enshrined in Article 24.1 of the Spanish Constitution ( ), had been infringed. The basis for the disagreement with the contested judgment lies in the declaration of nullity of the wiretap on telephone number NUM002, held by Emiliano, authorised by order of 15 January 2008. Appeal upheld.

Legal grounds.

It so happens that this Chamber has already examined the possible nullity of the order of 15 January 2018 in the proceedings from which this evidence derives, Supreme Court

[6] Supreme Court Judgment 156/2026, 24 February 2026, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STS 885/2026 - ECLI:ES:TS:2026:885), appeal: 1549/2023. Presiding Judge: His Honour Mr Eduardo de Porres Ortiz de Urbina.

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Judgment 753/2024 of 22 July, declaring that, as this is an order directing the extension of a previous telephone interception because the person under investigation has changed their telephone number or is using another number, no specific grounds are required, as the grounds provided when authorising the first interception are sufficient, noting, furthermore, that in this case the order in question was sufficiently reasoned.

It stated as follows: "…When a person is subject to a well-founded investigation and the interception of one of their telephone lines has been authorised, the interception of a new line discovered to be used by that person requires no further reasoning beyond that finding. It is not necessary to reproduce each time the evidence justifying the initial interception or which has led to the extensions…".

In this case, we are dealing with the extension and/or application of a measure previously authorised and justified to the new telephone number used by the person under investigation, in respect of whom evidence of involvement in the scheme under investigation had already been established.

In particular, because the police report of 28 December 2007 (pages 1591 to 1625 of the proceedings – pages 1691 to 1725 of the digitised file –), which set out the specific evidence of this suspect's involvement and served as the basis for authorising the interception of Argimiro's communications (number NUM005), authorised by order of 28 December 2007, the termination of which had to be ordered as it was no longer operational, by order of 8 January 2008, and the grounds for which must also be taken into account for the purpose of supporting the new interception measure ordered by the order now under examination of 15 January 2008.

Consequently, no defect is apparent that could affect the constitutionality of the measure for the purposes of determining its nullity. This conclusion extends to the orders that authorised its extension; therefore, the ground under consideration is upheld.

Conclusions.

The criterion applied by the Supreme Court for telephone interception—simply changing the telephone number—must be applied with caution to other technological measures; consider, for example, a change of vehicle in a court-authorised geolocation, as such a modification of the object—the car—would not be so straightforward, since it would be necessary to detail the new police surveillance measures taken in relation to the suspect and that new vehicle, even though, in essence, we would be dealing with the same case.

7. STCO 15/2026, 23 February. Pre-trial secrecy and the guarantee of access to the essential elements of the arrest[7] .

Factual background

Constitutional appeal no. 2153-2025, brought by Mr R. G. against the orders for pre-trial detention of 2 and 14 February 2025, issued by the Central Investigating Court no. 3 in preliminary proceedings No. 62/2023 and against the order of 11 March 2025, issued by the Fourth Section of the Criminal Chamber of the National High Court in appeal No. 117-2025. Granted.

Legal grounds

It is necessary to set out the facts of the case in detail in order to rigorously apply the constitutional doctrine on access to the essential elements of detention in a case declared secret and thus avoid any lack of defence.

Prior to the hearing on 2 February 2025, the court provided the suspect with a document of the same date entitled: "Summary of the charges attributed to the suspect R.G., detained in the course of preliminary proceedings 62-2023, conducted in this Central Investigating Court No. 3, whereby the essential elements of the proceedings are communicated to him so that he may properly exercise his right of defence and, where appropriate, challenge the detention, given that at this time they are still classified as secret". According to this document, the applicant for constitutional protection was under investigation as the alleged perpetrator of the offences of membership of a criminal organisation, an offence against public health and bribery. The content of the document is as follows: "By this Central Investigating Court No. 3 of the National High Court, within the framework of preliminary proceedings No. 62-2023, initiated by virtue of a complaint filed by the Anti-Drug Prosecutor's Office, an investigation has been underway into the illegal activities of a criminal organisation allegedly engaged in drug trafficking by smuggling hashish from Ceuta to the mainland via the ports of Ceuta and Algeciras for subsequent distribution to various provinces across the country. As a result of the investigations, evidence was found revealing that we were dealing with criminal networks that enjoyed a high degree of impunity in the conduct of their alleged criminal activities thanks to the collusion of a 'security structure', composed mainly of members of the Civil Guard stationed at the Port of Ceuta who, acting in perfect coordination through a series of acts, whether by action or omission, facilitated the illegal activity in exchange for a benefit, generally financial. During the course of the investigation, reasonable grounds for suspicion of criminal activity have been established, pointing to the existence of a criminal organisation based in the city of Ceuta, whose aim is to obtain financial gain through drug trafficking [...]. Similarly, a series of indications have been obtained which have confirmed the existence of a network of officers allegedly responsible for ensuring the goods' passage through the Port of Ceuta, namely Civil Guard officer R., assigned to the Vehicle Inspection Section of the th Tax and Border Company of Ceuta, and Civil Guard officer A., a member of the Ceuta Tax and Border Analysis and Investigation Unit (UDAIFF). Furthermore, based on the results of the activities carried out by the detainee

[7] STC 15/2026, 23 February 2026, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: STC 15/2026 - ECLI:ES:TC:2026:15), appeal 2153/2025. Presiding Judge: His Excellency Mr Ricardo Enríquez Sancho.

and other members of the criminal network under investigation, a significant quantity of narcotic substances, presumably hashish, has been seized; all of this is linked to the line of inquiry established. An operation in which the suspect participated, as indicated, as a member of a criminal organisation dedicated to this type of illicit activity, specifically carrying out the logistical tasks necessary for the illegal transport. During the investigation, evidence was obtained of the payment of certain sums of money by the criminal organisation under investigation as compensation for his collaboration with the criminal organisation in relation to the security tasks assigned to him. Specifically, evidence was obtained from intercepted and recorded conversations in which the detainee had already received 5,000 euros for the operation carried out on 8 December 2024. Furthermore, evidence has been obtained of the price agreed between the security unit and the criminal organisation under investigation for the security tasks…"

Against this background, it is worth reviewing the constitutional doctrine on the right of access to the essential elements of proceedings declared secret for the purpose of challenging the deprivation of liberty (a) There is established case law of this Court regarding the right of access to the essential elements of proceedings to challenge the measure of deprivation of liberty, (i) both in situations of police custody (SSTC 13/2017, of 30 January; 21/2018, of 5 March; 181/2020, of 14 December; 86/2025, of 7 April, and 188/2025, of 15 December); (ii) in relation to the holding of a court hearing under Article 505 of the Criminal Procedure Act ( ) for the adoption of the precautionary measure of pre-trial detention. In the latter case, and specifically in cases declared secret by the investigating judicial authority (SSTC 83/2019, of 17 June; 94/2019 and 95/2019, of 15 July; 180/2020, of 14 December; 80/2021, of 19 April; 4/2023, of 20 February; 30/2023, of 17 April; 68/2023, of 19 June, and 152/2023, of 20 November). Constitutional doctrine on the guarantee of access to judicial proceedings held in secret, as summarised in the STC 152/2023, FJ 2 b), establishes that respect for the rights to personal liberty and to a defence requires recognition that the secrecy of proceedings does not preclude the right of access to challenge, in factual and legal terms, the lawfulness of the preventive deprivation of liberty. This right of access – together with the right to information, of which it is an inseparable complement and for which it serves as an instrumental guarantee – ensures equality of arms in the exercise of the right to a defence.

The guarantee of access does not operate ex officio, unlike the right to information, but requires a request by the person concerned or their defence counsel.

The request for access to secret judicial proceedings may be made before or at the time of the decision on the appropriateness of the precautionary measure of deprivation of liberty, or subsequently, either through the system of appeals against the order for provisional detention or through applications for its review. The guarantee of access is limited to the essential elements of the proceedings necessary to challenge the legality of the deprivation of liberty; the definition of these elements is necessarily case-by-case, and their specification falls to the competent judicial body responsible for deciding on pre-trial detention.

In stating that the person under investigation has the right to know the sources of evidence that could form the basis for their incrimination in criminal proceedings, this Court's case law was not merely requiring that the person be informed solely of the 'type' or 'nature' of the sources of evidence linking them to the facts, but rather that this necessarily implies the competent authority identifying the 'content' of such sources in

the specific case. Informing the person concerned that they are under investigation, or that their arrest or remand in custody is justified on the basis of a document without specifying which one; or on the basis of statements made by unidentified witnesses, unless they have been declared protected witnesses by the judge, or without specifying what facts they claim to know; or on the basis of the findings of an expert report without knowing which person or entity has signed it and the data it contains; or on the basis of a telephone or other recording but without detailing its content, cannot in any way be considered to satisfy the right of access to essential proceedings, which has been recognised by this court as a guarantee of the fundamental rights to personal liberty and legal defence. (iv) With regard to technological investigative methods, the determination of the 'essential elements' shall be conditioned by the information obtained from the technological system, insofar as it is relevant to the decision on pre-trial detention: (i) in the case of telephone or electronic communications that have been intercepted, their transcript and the devices or terminals concerned (, Articles 588 ter of the Criminal Procedure Act); (ii) data held in automated files by service providers [Art. 588 ter j)]; (iii) data necessary for the identification of users, terminals and connectivity devices [Art. 588 ter k), l) and m)]; (iv) the transcript or recording of oral communications intercepted and recorded using electronic devices (Articles 588 quater); (v) the report setting out the results of the use of technical tracking and location devices (Articles 588 quinquies), and (vi) the content of specific files stored on computer equipment and other external storage systems (Articles 588 sexies), including in cases where the search of computer equipment is carried out remotely (Articles 588 septies).

Conclusions

Having read this Supreme Court ruling carefully, I wonder what purpose secrecy of proceedings serves in criminal proceedings and whether it should continue to be regarded as a mechanism essential to the success of the investigation.

A clear distinction is drawn between the guarantee of access to essential evidence—which does not operate ex officio but requires a request from the person concerned or their defence counsel—and the right to be informed of the facts with which they are charged, which the judge is obliged to provide to any person under investigation, ex officio.

I can only express my perplexity at statements such as those set out in the final paragraphs extracted from the legal reasoning of the aforementioned judgment, insofar as if case-by-case analysis is what should determine which elements may be made public upon request by the person under investigation, despite the secrecy, how can I disclose the content of a conversation with a third party who has not yet been arrested and who appears on the other end of the intercepted call without undermining the secrecy of the investigation? Could it not be that I do not wish to reveal their identity because there are other targets within that criminal organisation, known or unknown, who may still be operating?

In short, despite the commendable efforts of the investigating judge in that case at the National High Court to provide the parties with a document specifically drafted to set out the key factors underpinning the detention of a suspect at the time of their appearance before the court and to rule on their possible remand in custody, in my view, and having read that *ad hoc* document, I consider it to be more than reasonable, comprehensive and

detailed; and the TCO's clarifications regarding what cannot be kept under secrecy undermine the purpose of the previously agreed, proportionate and justified pre-trial secrecy in relation to the facts under investigation and in the face of such serious offences typical of organised crime.

Magister dixit and now, we must follow this interpretation of the TCO.

8. Supreme Court Ruling 41/2026, 26 January. Reopening of proceedings provisionally dismissed due to the emergence of new facts and new lines of investigation, even if of a technical nature[8] .

Factual background

Appeal lodged against the judgment dated 2 April 2025, handed down by the Appeals Chamber of the National High Court, in appeal case 9/2025, which dismissed the appeals lodged by the current appellants against the judgment dated 18 December 2024, handed down by the Criminal Chamber of the National High Court, Third Section, with the exception of the appeal lodged by Ángeles, which was partially upheld, the remainder of the contested judgment being upheld. Partial upholding.

Legal grounds

During the preliminary investigation of the case, a provisional order to dismiss the case was issued on the grounds that the commission of the offence was not duly substantiated, with insufficient evidence arising, firstly, from the fact that one of the tapped telephone lines had no traffic and another was not actually being used by the person under investigation who had ordered the interception, as well as the fact that vehicle tracking had proved untraceable or unsuccessful.

But it also stemmed, as the proceedings expressly reflect, from insurmountable technical difficulties encountered during that period of the investigation, as a third tapped telephone line could not be monitored, given that Orange, the owner of the line, had begun implementing a new communications protocol, known as RTP, which could not be decoded at that time.

The reopening challenged by the appeal was not due to a reconsideration of the existing material or to a belated rectification of a hypothetical investigative oversight——but rather to the concurrence of supervening circumstances that fall within the criteria of 'new evidence' required by this Chamber:

a) Firstly, new evidence had emerged suggesting a resumption of the criminal activity under investigation. Police surveillance had detected that the suspects might be preparing to receive a new consignment of precursor chemicals for drug synthesis, which opened up the possibility of a new surveillance operation that might prove more successful than the previous one. This objectively altered the factual basis on which the

[8] STS 41/2026, 26 January 2026, published on the website of the Judicial Documentation Centre, CENDOJ, (ROJ: **STS 158/2026** - ECLI:ES:TS:2026:158), appeal number 10294/2025. Presiding Judge: His Honour Mr Pablo Llarena Conde.

provisional closure rested, as it involved new circumstantial evidence pointing to new criminal activity and a renewed line of investigation, even though the legal classification of the conduct remained the same given that the commission of a general offence was suspected.

b) Secondly – and this is decisive in the face of the defence's argument that there was no genuine evidence regarding the receipt of a new consignment of precursor materials – the existence of a new line of inquiry is established, as the investigating officers considered that they were now in a position to overcome the technical difficulties initially encountered in decrypting the new RTP communications protocol introduced by the telephone company on one of the lines initially tapped. This circumstance, in itself, constituted a 'new element of evidence' in the jurisprudential sense, as it opened up the real and concrete possibility of exploiting the investigative source for the first time by overcoming a technical impossibility not attributable to the investigators and which now appeared to be surmountable.

In light of the Supreme Court's doctrine, this combination of factors amply satisfies the requirement that the reopening be based on new elements not on the record or not exploitable in the case at the time of the dismissal, thereby precisely avoiding the risk that case law prohibits: that proceedings be reopened merely due to a change in criteria, or due to an effort previously disregarded, or due to a belated correction of assessments that were previously possible.

The novelty here does not relate to incriminating evidence, but to the possibility of employing previously unfeasible forensic techniques, which, by definition, broadens the scope of investigation and procedurally justifies the reactivation of the preliminary investigation without infringing upon the suspect's rights.

From a constitutional and treaty-based perspective, preventing the reopening of proceedings in a scenario such as that described—where new evidence has emerged and, furthermore, the subsequent availability of potentially illuminating forensic techniques—would lead to a rigid closure incompatible with the idea of a reasonably effective criminal investigation, as it would amount to converting the provisional dismissal into a definitive closure despite the removal of the obstacles preventing further investigation into a crime not subject to the statute of limitations. The doctrine of the Constitutional Court, in line with the European Court of Human Rights, emphasises precisely that the investigation must not be closed prematurely when there are reasonable and useful possibilities for further inquiry.

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Conclusions

Technological investigative measures are subject to the common guiding principles of speciality, suitability, exceptionality, necessity and proportionality.

The standard of necessity does not amount to imposing on the judicial police or the investigating judge an obligation to exhaust all conceivable alternative investigative procedures in practice, nor to attempt – as a matter of principle – a catalogue of prior measures until they fail. The standard requires a reasoned comparative assessment of the actual availability of less intrusive alternatives that are equally suitable and effective for the legitimate aim pursued, or, where appropriate, to establish that without the intervention the investigation would be seriously hampered; furthermore, as this is a measure typically authorised in the initial stages, case law has emphasised that an exhaustive factual justification is not required, precisely because the measure is adopted to further an investigation that has not yet been completed, based on initial circumstantial evidence that must subsequently be verified.

The right to an effective remedy is infringed when the preliminary investigation is closed despite the existence of reasonable suspicions that could be dispelled through an effective investigation, which requires the prudent exhaustion of all useful investigative avenues to clarify the facts, emphasising that this doctrine is consistent with the case law of the European Court of Human Rights.

The Constitutional Court further emphasises that there is no rigid and exhaustive list of investigative steps required in every case, but there is an obligation to carry out those procedures which, given the circumstances, are reasonably suitable for advancing the clarification of what occurred; therefore, in the face of new facts and new avenues of investigation, even if they are of a technical nature and duly justified, it is appropriate to reopen the provisionally closed proceedings and resume the investigation.