SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATION NOTE No. 46/2015

THE TC UPHOLDS THE JUDGMENTS DELIVERED BY THE HIGH COURT OF JUSTICE OF CATALONIA AND THE SUPREME COURT, ORDERING A RETRIAL OF THE "TOUS CASE" BY A NEW JURY PANEL

Chamber Two of the Constitutional Court (TC) has dismissed the appeal for constitutional protection filed by Lluís Corominas against two judgments delivered in the proceedings brought against him for a homicide crime. The Court disagrees that such resolutions have infringed the right to effective judicial protection and defence, and the right to a presumption of innocence (Arts. 24.1 and 2 Spanish Constitution (CE)). The Reporting Judge was Ricardo Enríquez.

The plaintiff, a security guard who worked for the Tous family, was acquitted of a homicide crime by a Jury Panel of the Provincial Appellate Court of Barcelona, who judged him at first instance. The High Court of Justice of Catalonia overruled this acquittal and ordered a retrial by a Jury Panel with different members; this decision was subsequently confirmed in a motion to vacate by the Supreme Court. This retrial was provisionally suspended until a decision was reached in this appeal for constitutional protection.

First of all, the Chamber has explained the case-law applicable to the case. In relation to the "non bis in idem" principle (prohibition to judge a person twice for the same crime), constitutional case-law allows the possibility of overruling an acquittal delivered in a criminal resolution and to order all proceedings to apply retroactively, if "*an essential procedural rule is breached, to the detriment of the accused party*". In other words, it is possible to overrule an acquittal and order a retrial without infringing the "non bis in idem" principle if the former was delivered "*further to criminal proceedings based on steps that are detrimental to the parties' essential procedural guarantees*".

Secondly, the judgment recalls that the case-law requires sufficient motivation- in acquittals too- if the decision has been delivered by a Jury Panel: "*The absence of such succinct explanations affects the content of Art. 120.3 CE, in relation to the Jury, and definitively entails a lack of one of the procedural guarantees which (…) constitutes the right to effective judicial protection*". This is why the law requires that all juries "*explain in the official verdict the reasons why they have upheld or dismissed certain facts as proven*". Such "*rationality and reasonableness*" should also be evident in the judgment delivered by the Judge presiding the Jury Panel, in support of the verdict.

In this case, states the Chamber, the challenged resolution of the High Court of Justice (as well as the Supreme Court's decision) ordered a retrial because the judgment delivered by the President-Judge of the Jury ascertained a complete exculpatory circumstance of legitimate defence when on the other hand, the Jury had decided not to include in the official verdict any definition of the accused's *mens rea* when he fired the shots. In other words, the Judge completed "*the terms of the verdict*" and directed them *"to a reformulation of the accused's mens rea*", inconsistently within the facts declared as proven by the Jury; what she should have done, as foreseen by law, was to return the official verdict to the Jury in order to complete it.

Consequently, by ordering the retrospective application of the proceedings and a retrial by a new Jury, the Catalonian High Court of Justice remedied "*the right to effective judicial protection to which the accused is also entitled*", which is why the right of defence of the applicant for constitutional protection was not infringed. This remedy consisted of ordering a new Jury to remedy the error in the official verdict that the Judge-President had rectified, "*invaliding competences exclusively reserved to the Jury, as expressly decided by the legislator*".

The Court also disagrees that any infringement took place of the right to be presumed innocent (Art. 24.2 CE), as claimed by the plaintiff in the second ground of its appeal. The judgment explains that this right "*is configured, in constitutional terms, as the right to not be convicted without valid accusatory evidence which is why, in order to deploy its effects, it requires a pronounced conviction, which is absent in this case". "Neither on appeal nor in the motion to vacate*", states the Chamber, "*have the intervening Courts pronounced themselves on the culpability of non-culpability of the accused. Nor were the facts altered to his detriment*". The Judgments of the High Court of Justice and supreme court "*limited their judicial review*", it adds, "*to external control over what had been decided in the immediately lower instance, reaching the conclusion that there was no rationality, without examining the merits of the case for the purposes of a conviction*".

Finally, the Court disagrees that the High Court of Justice decision was arbitrary, due to introducing, as claimed by the plaintiff, new proven facts that were not included in the verdict. The Chamber explains that the judgment delivered on appeal by the High Court of Justice "*does not contain its own description of the proven facts, which is why it may hardly be affirmed that it introduces new and different facts (…)"*. What the Catalonian High Court of Justice did was to ascertain the error incurred by the first instance judgment and repair "*effective damage to the right to judicial protection held by the appellant accused, which does not constitute arbitrariness*".

What the Constitutional Court has declared contrary to a due process with all guarantees is that, on appeal, a court "*convicts someone who was acquitted by the instance court or whose situation is worsened further to a new appraisal of personal evidence (…)*", without holding a public hearing. However, this situation has not arisen here, as the High Court of Justice merely reforwarded the case to the original instance court "*without in any way prejudging the outcome of the retrial, for which the new Court will have full sovereignty and freedom of judgment*".

Madrid, 16 June 2015.