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THE CONSTITUTIONAL COURT GREENLIGHTS THE LIMITATION OF UNIVERSAL JURISDICTION BY THE LAW

The Plenary Session of the Constitutional Court has dismissed the appeal of unconstitutionality (*“recurso de inconstitucionalidad”*) brought by more than 50 members of the Socialist Parliamentary Group in the Congress of Deputies against Organic Law 1/2014 – dated 13 March – amending the Organic Law of the Judiciary (*“Ley Orgánica del Poder Judicial”* or *“LOPJ”*) of 1985 regarding universal justice.

The judgement confirmed that the right of access to universal jurisdiction may be altered by the lawmaker. In this vein, the Court held that *“since [universal jurisdiction] does not have an absolute nature, as construed by the European Court of Human Rights, it may be subject to implicitly admitted limitations, especially with regard to the requirements for the admissibility of an appeal”*. Therefore, it would correspond to the legislative body to determine the scope of the jurisdiction in criminal matters and to set out the points of connection in the case of criminal offences with transnational elements.

The appellants had challenged Organic Law 1/2014 in its entirety on the grounds that, by limiting the scope of universal jurisdiction as previously established in the *LOPJ*, it produced a regressive effect which contravenes the principles of legal certainty and the prohibition of arbitrary actions (Article 9.3 of the Spanish Constitution). Further, it allegedly infringed the rights to an effective legal protection (Article 24.1) and that such access to the Courts and Judges is guaranteed on equal terms to all Spanish citizens. Likewise, Articles 10.2 and 96 of the fundamental law, among others, were also considered to have been violated.

This judgment, which provides a detailed analysis of the European treaties and case-law, concluded that *“ the pronouncements of the United Nations General Assembly, the International Court of Justice or the European Court of Human Rights do not allow to deduce a configuration of an absolute and general principle of universal jurisdiction that is binding on the signatory States of the treaties included in those systems”*.

In other words, Organic Law 1/2014 should not be considered – as a whole – contrary to Article 10.2 of the Spanish Constitution in relation to Article 24.1 because it defines the principle of universal jurisdiction in a restrictive manner. The reason for this is that *“it cannot be deduced from international human rights law, which is a mandatory interpretation parameter for this Court, an absolute and obligatory concept of universality of jurisdiction such as the one defended by the appellants”*.

On the other hand, the Constitutional Court also validated the constitutionality of the regulation whereby only the victim or the Public Prosecutor are entitled to file a lawsuit before the Spanish courts, thus excluding the ordinary criminal complaints and popular action in the prosecution of this type of crimes. The judgment finally explains that *“the exclusion of popular actions in cases in which it is intended to establish the jurisdiction of Spanish courts in*

application of any of the principles of extraterritorial scope provided for in Article 23 LOPJ does not, in itself, violate Article 125 of the Spanish Constitution”.

This judgement was accompanied by a concurring opinion formulated by Magistrate Antonio Narváez.

Madrid, 21 December 2018