

Constitutional Court Judgment No. 155/2009, of June 25 (Unofficial translation)

The Plenary Session of the Constitutional Court comprising María Emilia Casas Baamonde, President, Guillermo Jiménez Sánchez, Vicente Conde Martín de Hijas, Javier Delgado Barrio, Elisa Pérez Vera, Roberto García-Calvo y Montiel, Eugeni Gay Montalvo, Jorge Rodríguez-Zapata Pérez, Ramón Rodríguez Arribas, Pascal Sala Sánchez, Manuel Aragón Reyes and Pablo Pérez Tremps, Magistrados, has declared
IN THE NAME OF THE KING

the following

JUDGMENT

In the appeal for protection of fundamental rights heard by Plenary session number 7329-2008 lodged by Dolores Vallejo Marchal, represented by the Court Agent (Procuradora) Rosalva Yanes Pérez and assisted by Legal Counsel César Sánchez Sánchez, against the Judgment of the Court of Enquiry number 2 of Fuenlabrada, of 25 July 2007, delivered in the summary proceedings number 66/2007, partially revoked by Judgment of the Second Section of the Provincial Court of Madrid number 297/2008, of 17 September, issued in appeal case number 169/2008. The Public Prosecution Service has entered an appearance and formulated allegations. The opinion of the Court was expressed by Vicente Conde Martín de Hijas acting as Rapporteur.
(...)

The claim was lodged following the entry into force of the Organic Law 6/2007 of 24 May amending the Organic Law 2/1979 of 3 October, of the Constitutional Court (OLCC) and as a result its filing, admission to proceedings, processing and judgment are governed by the new regulation on the appeal for protection of human rights implemented by the aforementioned Organic Law 6/2007 of 24 May. The most innovative element or the "most distinctive characterisation" (OCC 188/2008, of 21 July, LF 3) of this regulation on protection appeals is the substantive requirement of the "special constitutional relevance" imposed by art. 50.1.b) OLCC for admission of the appeal. This gives expression to the possibility of legislation exercising the qualification constitutionally conferred on it, pursuant to art. 161.1.b) SC, in relation to art. 53.2 by a new configuration of the appeal for protection, as in principle, following the reform carried out, the mere infringement of a fundamental right or public freedom which is protected in appeal, will no longer be sufficient for admission of the appeal, it is essential in addition to have "special constitutional relevance" as opposed to the configuration which primarily characterised the previous regulation, in that it was an appeal aimed principally at remedying violations of fundamental rights and public freedoms of the claimant seeking appeal. Thus, in order to admit an appeal for protection, it is not sufficient to merely infringe a fundamental right or public freedom of the appellant, which is subject to protection (arts. 53.2 and 161.b) SC and 41 OLCC) but rather it is also now indispensable, for the present purposes, to ensure special constitutional relevance of the appeal (art. 50.1.b) OLCC]. The appeal for protection, in all cases, nevertheless continues to be an appeal for protection of fundamental rights. In this way legislation configures the system of guarantees of fundamental rights presided over by Judges and Courts as the natural and primary custodians of said rights (JCC 227/1999 of 13 December LF1) to which greater prominence is given in its protection (amplification of motion for invalidity of the proceedings) and culminating in the Constitutional Court which, in addition to being the ultimate guarantor, is its prime interpreter (arts. 53.2 and 123 SC and 1.1 OLCC). Although the appellant is required to satisfy, in accordance with the terms of art. 49.1 in fine OLCC, the burden of justifying in the claim the special constitutional relevance of the appeal (OCC 188/2008 of 21 July; 289 and 290/2008 of 22 September) it is this Court which is

responsible for perceiving in each case the existence or non existence of that “special constitutional relevance”, that is, when, according to the terms of art. 50.1 b) OLCC, “the content justifies a substantive decision by the Constitutional Court, due to its special constitutional relevance” addressing for these purposes the three criteria which are described in the precept: “for its importance for the interpretation of the Constitution, for its application or for its general effectiveness, and for determining the content and scope of fundamental rights”. The clearly open and indeterminate nature, both of the notion of “special constitutional relevance” and the criteria legally established for its consideration, confers on this Court a wide margin of decision for estimating when the content of an appeal for protection “justifies a decision on the substance or merits [...] given its special constitutional relevance. As is clear, the initial decision for admitting to appeal, having observed compliance with the aforementioned requirement, does not restrict the Court’s powers in respect of the final decision regarding the merits of the case. The Court has considered that the case in question does have the requisite special constitutional relevance (art. 50.1.b) OLCC) because, as will be stated below, it permits clarification and also profiling, as the result of a process of internal consideration, of constitutional case law and theory on the requirement of congruence between the accusation and the judgment, on the point referring to the penalty to be imposed, as manifestation of the accusatory principle, in this case which, together with others, to which we shall refer below, is one of the cases in which it is possible to perceive the special constitutional relevance of the appeal for protection of fundamental rights. (art. 50.1.b) OLCC].

On previous occasions we have already identified as another of the cases in which it is appropriate to note that the appeal for protection of fundamental rights is pertinent to a “special constitutional relevance” as that referred to in art. 50.1 b) OLCC when the case raises a “question on which this Court has not laid down case law or doctrine” (JCC 70/2009 of 23 March LF 1). This Court considers it appropriate, given the time which has elapsed since the reform of the appeal for protection, to put forward an interpretation of the requirement of art. 50.1.b) OLCC]. In this sense it considers that it is appropriate to note that the content of the appeal for protection justifies a decision on the substance, based on its special constitutional relevance in cases referred to below, without that relation being understood as a definitively closed range of cases in which an appeal for protection of fundamental rights has special constitutional relevance, since that understanding is logically opposed to the dynamic nature of the exercise of our jurisdiction, the performance of which, on the basis of casuistry presented, cannot rule out the need to describe or distil concepts, redefine cases considered, and add other new ones, or exclude any which had been initially excluded.

Such cases would be the following; a) that of an appeal which raises a problem or facet of a fundamental right subject to protection on which there is no case law of the Constitutional court, a case already declared in JCC 70/2009 of 23 March; b) or that the occasion requires that the Constitutional Court clarify or change its doctrine, as a consequence of a process of internal reflection, as occurs in the case in question, or due to the new social realities which have arisen, or regulatory changes relevant for the configuration of the content of the fundamental right, or a change in the doctrine and theory of the guarantee bodies entrusted with the interpretation of the international treaties and agreements referred to in art. 10.2 SC; c) or when infringement of the fundamental rights claimed originates from the law or another provision of a general nature; d) or if the violation of the fundamental right derives from reiterated case law interpretation of the law that the Constitutional court deems to be damaging to the fundamental right, and on which it believes it necessary to declare another interpretation pursuant to the Constitution; e) or when the Constitutional Court case law on the fundamental right alleged in the appeal is not being complied with in a general and reiterated manner by ordinary Jurisdiction, or there are

contradictory judgments on the fundamental right, either by interpreting the constitutional doctrine in a different manner, or by applying it in some cases and not recognising it in others; f) or in the event that a court clearly declines its duty to respect the case law of the Constitutional Court (art. 5 OJ); or, in short when the matter raised, despite the fact that it is not included in any of the aforementioned cases, transcends the case in question because it raises a legal issue which has general and relevant, social or economic repercussions, or has general political consequences, effects which above all could lead in particular, although not exclusively, to specific electoral or parliamentary protection of rights.