Constitutional Court Judgment No. 214/1991, of November 11 (Unofficial translation)

The Plenum of the Constitutional Court comprising the Senior Judges Francisco Tomás y Valiente, President, Fernando García-Mon y González-Regueral, Carlos de la Vega Benayas, Jesús Leguina Villa, Luis López Guerra and Vicente Gimeno Sendra, have declared

IN THE NAME OF THE KING

the following

J U D G M E N T

In appeal number 101/90 lodged by Violeta Friedman, represented by the Court Agent (Procurador) José Luis Ortiz-Cañavate y Puig-Maurí and assisted by Legal Counsel Jorge Trias Sagnier, against the Judgment of 5 December 1989 of the First Chamber of the Supreme Court issued in the cassation appeal no 771/88 arising from the case of civil protection of the right to honour held at the Court of First Instance no. 6 of Madrid In the appeal proceedings the Public Prosecutor Leon Degrelle entered an appearance and the Court Agent Francisco de las Alas Pumariño y Miranda acted as representative assisted by Legal Counsel assisted by Legal Counsel Juan Servando Balagar Pareño. The Rapporteur was <Senior Judge Vicente Gimeno Sendra who expressed the opinion of the Chamber

CONCLUSIONS OF LAW

1. Despite the fact that this appeal was formally lodged exclusively against the Judgement of the Civil Chamber of the Supreme Court on 5 December 1989, with that judgment having dismissed the cassation appeal filed, and having confirmed the Judgment of the former Territorial Court of Madrid of 9 February 1988 which in turn, dismissed the appeal against the Judgment of 16 June 1986 issued by the Court of First Instance, pursuant to reiterated case law of this Court (JCC 211/1989, 213/1989, 216/1989 y 218/1989, to name just a few) the appeal should be deemed to have been lodged against all the aforementioned judgments insofar as, according to the appellant, her fundamental right which was violated, has not been re-established Those judgments, in the appellant's opinion, led to infringement of Arts.18.1, 24.1 and 10.2 of the Constitution as well as arts 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and 7, 8, and 12 of the Universal Declaration of Human Rights of 1948.
In view of this invocation and in order to define the precise question under review, it is first necessary to establish some criteria regarding the object of these proceedings. It is thus appropriate to point out at the start that it is not the task of this Court, when hearing a review appeal, to examine compliance or non-compliance per se with international texts, but to ascertain whether or not there has been any infringement of constitutional precepts which recognise fundamental rights and public freedoms susceptible to protection (arts. 53.2 E.C and 49.1 OLCC) without prejudice to the fact that, according to the mandate of art. 10.2 S.C., such precepts should be interpreted "in conformance with the Universal Declaration of Human Rights and the international treaties and agreements on the same issues which have been ratified by Spain". Secondly, the constitutional judgment should refer to the conflict arising between individuals involving the freedom of expression of art. 20.1 a) and to the right to honour contained in art. 18.1 both of the S.C, and in respect of which the ordinary Courts have not noted any infringement of the latter constitutional right. Therefore, given that the right to

honour and other rights recognised in art 18. S.C appear as fundamental rights linked to one's personality, evidently deriving from the "personal dignity 10 .S.C, any analysis to be made in this case needs to take into account, apart from the right to honour of the current appeal, other constitutional principles and rights linked directly or indirectly to the right to honour (art 18.1 S.C.) as only thus will it be possible to determine whether or not the alleged constitutional infringement has occurred.

2. Secondly, and with respect to the purpose of these proceedings, there are three questions raised by this review appeal; firstly it is necessary to determine whether or not the appellant has active legal standing to lodge this appeal; secondly, and deriving from the previous question, whether in the formally contested judgement the right of protection has been infringed; and finally, whether or not the respondent's statements exceeded the constitutional limits of the right to freedom of expression.

Of all these questions, naturally the first of these in a logical order is accorded preferential nature since, if, as has occurred in each of the instances heard by the ordinary courts, there was deemed to be absence of the appropriate legal standing, this appeal would need to be dismissed.

3. The respondent considers that the appellant lacks the requisite legal standing in that article 12.1.º of the Law 62/1978, on Jurisdictional Protection of Fundamental Human Rights attributes that capacity to "natural persons < or legal entities holding a SUBJECTIVE (sic) right which entitles them to obtain the judgment sought". Therefore, neither Ms Friedman, nor any collective, ethnic group or race were offended, and whose official representation the appellant cannot assume, and the legal standing of an individual allegedly belonging to that race (sic) cannot be admitted

This Court cannot share the foregoing argument. If the allegedly illegal act did or did not infringe the right to honour is something which shall be examined later in the appropriate sections (legal findings 6 and 7)and here it should only be appropriate to ascertain whether or not the claimant complies with the requisites which through constitutional formalities require any appellant in a review appeal to observe for the purposes of the case, so that this Court may begin to ascertain the nature of the infringement of the fundamental right.

Furthermore, in the Spanish constitutional system, the regulation determining that relation, or in other words , active capacity or standing is not constituted in the aforementioned precept of the Law 62/1978 but rather art 162.1 b) of the Constitution, in virtue of which "legal standing to lodge a review appeal is accorded to any natural or legal person expressing a legitimate interest". In contrast therefore to other systems, such as the German Constitution or an individual appeal before the European Human Rights Commission [art. 25.1 a) EHRC] our fundamental Law does not grant active legal standing exclusively to the "victim" or holder of the infringed fundamental right, but to any person expressing a "legitimate interest" so that for the purpose of determining whether or not the appellant complies with the constitutionally required standing to sue, all that needs to be proven in this appeal is whether or not the appellant has legitimate interest in order to request the re-establishment of the fundamental right which she claims has been infringed.

In this respect, this Court has had occasion to declare that, although the aforementioned constitutional regulation does not enable any phenomenon of the type known as "popular action thus ATC 399/1982, nor is it possible to confuse that legitimate interest with the "direct" interest (JCC 62/1982, 62/1983, 257/1988, 123/1989 and 47/1990), since for the purposes of the appeal it is not always necessary for the ulterior material effects of the matter judged to have an effect on the appellant's sphere of heritage with it being sufficient, in respect of the fundamental right infringed, that the claimant is in a specific legal-material situation which authorises her to request the protection of this Court.

Obviously, this legal- material situation required by the Constitution and the OLCC [art.46.1 b)]

cannot be considered in abstract but rather as this Court has declared (JCC (STC 7/1981, ATC 942/1985), it is also based on the fundamental right infringed. In this case it is an extremely personal case, namely that of honour, and said active legal standing will, in principle, correspond to the holder of said fundamental right.

However this original legal standing would not exclude either the existence of other types of legal standing (such as the legal capacity of descendents as a result of succession, established in arts 4 and 5 of the Organic Law 1/1982 on protection of the right to honour) nor the legal standing having its origin in membership of a specific ethnic or social group, when the offence was directed against the whole of that group, so that by deriding said socially differentiated group there is a tendency to provoke from the rest of the social community hostile sentiments or at the very least those which are contrary to dignity, self esteem or respect to which all citizens are entitled irrespective of birth race or personal or social circumstances (arts. 10.1 and 14 SC)

In this case and given that such ethnic social and even religious groups are in general entities without a legal personality, and as such they lack representative bodies to which the system could attribute the exercise of civil and criminal actions in defence of their collective honour, if art. 162.1 b) S.C were to fail to admit the active legal standing of all its members, who are residents in our country, in order to react in the courts against infringements of the honour of said groups, not only would such infringements of this fundamental right suffered equally by all their members go unpunished, but that also the Spanish State of Law would be allowing the possibility of campaigns of a discriminatory, racist or xenophobic nature, contrary to equality, which is one of the higher values of the legal system proclaimed by our Constitution (art.1,1 S.C.) and that art. 20.2 of the International Covenant on Civil and Political Rights expressly proscribes ("any apology for national, racial or religious hatred which constitutes incitement to discrimination, hostility or violence shall be prohibited by law")

4. In the case in question, as established in the brief of allegations of the Public Prosecutor, and as is deduced from the findings of fact in the Judgment issued in the first instance, the fact that the claimant is Jewish has been attested and that following the German occupation of her native city (Marghita, Transylvania), she was obliged to wear a Star of David, and was taken from her home with all her family and along with other Jewish citizens deported to Auschwitz, where, on the same night of her arrival, her entire family except for her and her sister were sent to the gas chambers.

Therefore, from her dual condition as member of the Jewish people who suffered an authentic genocide due to national socialism, and as the descendant of her parents, maternal grandparents and great grandmother (all of whom were murdered in the aforementioned concentration camp) it must be concluded that, without any need to appeal here to the aforementioned legal standing through procedural "succession" of the subjective right to the honour of her deceased relatives (pursuant to articles 4.2 and 5 of Organic Law 11/1982, on defence of the right to honour), which the appellant would also fulfil, the invocation of the interest that the claimant has made in her brief of complaint in respect of the defendant's statements, denying the aforementioned extermination and attributing it to an invention of the Jewish people, should be qualified as "legitimate" for the purposes of ensuring that the right to honour of the Jewish collective should be re-established in Spain, of which the appellant party is a member, and therefore also in conformance with our case law on the right to protection, the question warrants this Court's examination of the merits of the case.

5. Nevertheless, this conclusion is opposed by an allegation of the Public Prosecution for whom acceptance by the Ordinary Courts of the "exception" of lack of legal standing to sue prevents entering into the basis of the claimant's claim in respect of everything relating to the right to honour. The Public Prosecutor considers that the granting of protection should be restricted on one hand, to declaring the invalidity of the contested Supreme Court Judgment, on grounds of infringement of the right to protection contained in article 24.1, and to return the other hand the

substantive decision to said Court so that it may issue a judgment on the infringement of the right to honour.

Said petition cannot be accepted, as the legal standing, in its purest terms, does not contain any exception or procedural proposal which would condition the admissibility of the claim or the validity of the procedure. It is more a requirement of the basis for the claim, and, as such it belongs to the substance of the case; this is the reason why case law of the First Chamber of the Supreme Court, prior to the reform of the cassation appeal following the entry into force of the Law 34/1984, declared on numerous occasions that the lack of legal standing should not be invoked as ground for cassation due to infringement of legal requirements (specifically pursuant to former art. 1.693.2.º), but as grounds of infringement of the law (that is, allowability of the appeal pursuant to repealed art. 1.692). And the fact is that legal standing, insofar as it is the legal-material relation which links the parties with the procedural purpose, belongs to the merits of the case, and therefore it should not surprise anyone that even when all the contested judgments have noted the existence of the «exception» of lack of legal standing to sue, at the same time they have entered into the hearing of the legal-material relation debated and confirmed a Judgment of the Court of Instance which, in principle enjoys all the material effects of res judicata.

In effect, a simple reading of the contested Supreme Court Judgment clearly shows that the Cassation Court has taken into consideration both the statements of the respondent and his hypothetical violation of the appellant's right to honour, in order to conclude, pursuant to its own case law regarding the personal nature of that right, that there is no offence or attack on honour.

Therefore, if both the Supreme Court Judgment and those issued in appeal and in first instance appear to be broadly motivated, without however their meriting an acquittal, in the instance (because they have all heard the conflict between freedom of expression and the right to honour), no accusation of unconstitutionality may be formulated from the perspective of the right to protection, of such judgments which are duly motivated and substantiated.

6. According to reiterated case law of this Court, in the conflict between the freedoms recognised in art. 20 S.C., of expression and information, on one hand and other legally protected rights, it cannot be considered that the rights and freedoms contained in the Constitution are absolute, however nor can this absolute character be attributed to the restrictions to which those rights and freedoms must be subject (for all see, JCC 179/1986). Furthermore, it should be considered that the freedoms of art. 20 of the Constitution are not only fundamental rights of every citizen, but also a condition of the existence of free public opinion which is indissolubly linked to political pluralism, which is a fundamental value and a requirement of the functioning of the democratic State, which for this reason transcend the common and proper meaning of the remaining fundamental rights.

Consequently, when the exercise of freedom of expression and information contained in art. 20.1 of the S.C. affects anyone's right to honour, the court is required to make a decision weighing up the concurrent circumstances of the specific case, in order to determine whether the agent's conduct is justified, since it remains within the scope of freedom of expression and information, and therefore in a preferential position, so that if that weighting errs or is manifestly lacking in basis, the aforementioned constitutional precept should be deemed to be infringed (JCC 104/1986, 107/1988 and 51/1989, among others). Notwithstanding the foregoing, the preponderant value of the freedoms contained in art. 20 of the Constitution may only be appreciated and protected when they are exercised in connection with matters that are of general interest, for the matters to which they refer and by those involved, and as a result contributing to the formation of a free and plural public opinion, thus reaching a maximum level of efficacy justified in respect of the personal rights guaranteed by art. 18.1 SC in which this dimension of guarantee of free public opinion and of the principle of democratic legitimacy is

not present (thus for example JCC 107/1988, 51/1989 and 172/19990).
Although this type of weighting needs to be made in principle by the court hearing the alleged infringements or violations of the right to honour, it corresponds to this Constitutional Court to review the appropriateness of the weighting made by the ordinary Courts and Tribunals, in order to determine whether the exercise of the freedom recognised in art. 20 fulfils the requirements of the principle of proportionality, and whether or not it is manifested as constitutionally legitimate (for all see JCC 107/1988 mentioned above and 105/1990). To this end various criteria have been defined in constitutional case law in order to carry out this weighting. With respect to the case law pertinent to this appeal, we wish to highlight the following criteria:
a) The court has differentiated between the scope of exercise of the rights acknowledged in art. 20 SC according to whether it is addressing freedom of expression (in the sense of issuing a judgment and opinions) and freedom of information (in terms of stating facts). In respect of the former, since this is the formulation of personal beliefs and opinions, with no claim to establish facts or affirm objective data, the field of action available is restricted only by the absence of undoubtedly harmful terms expressed and which are not necessary in voicing those opinions, a field which extends even further in the event that the exercise of freedom of expression affects the scope of ideological freedom enshrined in art. 16.1 SC as we point out in our JCC 20/1990. In this respect, thoughts, ideas, opinions or value judgments, in contrast to the case of facts, do not, due to their abstract nature, lend themselves to a demonstration of accuracy and as a result, the person exercising the freedom of expression is not required to provide proof of the truth, or any requirement to provide evidence of such, and therefore with respect to the exercise of freedom of expression, the internal limit of veracity does not operate (for all see JCC 107/1988). Conversely, in a question of informative communication of facts and not opinions, constitutional protection extends only to truthful information, a requirement of truth which cannot, obviously, be demanded of personal and subjective judgments or evaluations. This does not mean however, that erroneous or unproven information is exempt from any protection, as the constitutional requirement of veracity means proven information according to the canons of informative professionalism, excluding inventions, rumours or mere insinuations. (for all see JCC 105/1990).
b) In our constitution, the right to honour has a personal significance in the sense that honour is the value referable to people considered as individuals, which makes it inadequate to speak of the honour of public institutions or specific classes of the State, in respect of which and without denying that in some cases they may be holders of the right to honour (as recognised by the ECHR for example in respect of the Council for the Judiciary in the case of Barfod. S. 22 February 1989) it is more correct from the constitutional perspective to use the terms of dignity, prestige and moral authority which are values that merit penal protection as accorded by legislation, however in their weighting with regard to freedom of expression, a weaker level of protection should be assigned to them than that which it corresponds to attribute to the right to honour of physical persons (JCC 107/1988, 51/1989 and 121/1989).
Nevertheless, the foregoing should not be understood in such a radical sense that it only admits the existence of infringement of the constitutionally recognised right to honour when this is a question of attacks on a specifically identified person or persons, as it is also possible in the case of attacks on a particular group of persons of a fairly wide nature which transcend their members or components, provided that these may be identified as individuals within the group. In other words, the personalised meaning given to the right to honour in the Constitution does not impose that attacks on or infringements of the aforementioned fundamental right, in order to enjoy constitutional protection, should of necessity be perfect and duly individualised ad personam, as, were this so, it would also assume both radical exclusion from protection of honour of all legal persons including those of the personalised substrate, and to admit in all cases, the constitutional legitimacy of attacks on or infringement of the honour of individually

considered persons, due to the mere fact that they are made in a manner which does not name, or which is generic or imprecise.

7. In the light of the above theory, it is necessary to examine the problem raised in the present case in order to ascertain,on one hand whether or not the requisite weight of conflicting fundamental rights was considered by the courts, and on the other if this were indeed the case, whether or not that weighting adapts to the criteria defined by constitutional case law. However, firstly it is sufficient to read the Judgments contested herein to see that these comply with the requirement of weighting since, as previously stated (legal finding 4), even when each one of the judgments contested took note of the "exception "of lack of legal standing to sue, they have done so in the knowledge of the merits of the case. In this respect both the present judgment of the court of instance and that of cassation, among other arguments, base their opinion on the consideration that the statements made by the respondent were protected by the right to freedom of expression of thoughts ideas and opinions contained in art. .20.1 a) of the S.C., in order to conclude that the declarations in question did not imply any offence to the honour of the claimant or her family. This leads, furthermore, as has been explained previously, to dismiss the grounds of protection based on the infringement of the right to obtain effective judicial protection pursuant to art. 24.1 C.E.

Secondly, with respect to the constitutional correction of the weighting carried out explicitly or implicitly, it is pertinent to specify that the statements made at the time by the defendant Mr. Degrelle, should be framed, rather than in freedom of information, within the scope of freedom of expression (art. 20.1 C.E.), in relation to ideological freedom (art. 16.1 C.E.), since, although in those statements the defendant refers to historic fact (specifically with respect to Nazi behaviour towards the Jews during the Second World War and the concentration camps) he restricts his comments to expressing his opinion and doubts on these concrete historical events. And in this respect, even when information is provided on facts which are claimed to be true, as constitutional protection only extends to true information, this requirement of veracity, cannot, obviously, be required in respect of personal and subjective opinions or assessments of historical facts, however mistaken or ill-intentioned they may be.

Therefore it is clear, that our analysis, having rejected the prerequisite of veracity as it cannot be required, in order to pronounce on whether the judicial weighting made on the conflict of fundamental rights was correct or not, it will be necessary to concentrate on ascertaining whether the defendant's statements were covered by the right to freedom of expression or whether, conversely, they infringe other constitutional rights, as in this case and in conformance with the aforementioned case law, freedom of expression would not enter into play as grounds for justification.

8. Therefore, from the examination of all the statements of the defendant published, not only those partially transcribed in the brief of complaint, it is clear that the statements, doubts and opinions on the Nazi's actions towards Jews and the concentration camps, however reprehensible or distorted they may be - and indeed they are by denying the evidence of history- are protected by the right of freedom of expression (art. 20.1 SC..), in relation to the right to ideological freedom (art. 16 SC.), as irrespective of the evaluation made of these, something which is not the task of this Court, they can only be understood as being what they are, which is subjective and interested opinions on historical events.

However, there is also no doubt that in the declarations published the defendant did not confine himself to stating his doubts on the existence of gas chambers in the Nazi concentration camps, but that in his declarations which need to be assessed overall, he expressed offensive opinions on the Jewish people («... if there are so many of them now it is hard to believe that they came out so alive from the crematorium ovens...»; «... they always want to be the victims, the eternally persecuted, if they have no enemies they invent them ...»),expressly stating furthermore his wish for a new Führer to appear (with all that this implies for the Jewish people in the light of

historical experience). There is clear evidence that these statements are manifestly racist and anti-Semitic in connotation and can only be interpreted as an incitement against Jews, irrespective of the fact that any opinion judgment on the existence of historical facts, this racist incitement is an assault on the claimant's honour and on the honour of all those who like her and her family were interned in the Nazi concentration camps, since the opinion on the unfortunate and abhorrent historical events of which she was a victim with the heartrending manner in which they are expressed in the claim, does not exclusively entail personal corrections of history on the persecution of Jews conferring a historical or moral dimension, but rather the contrary and they essentially carry imputations which are made to discredit and despise the victims, that is, those belonging to the Jewish people who suffered the horrors of national socialism and among those members the appellant in this case, for which reason they exceed the scope within which the right to freely express ideas and opinions contained in art. 20.1 SC should be deemed to prevail

Furthermore and in respect of the foregoing, neither ideological freedom (art. 16 SC) nor freedom of expression (art.20.1 SC) includes the right to makes statements, expressions or campaigns of a racist or xenophobic nature, since as art. 20.4 states, there are no unlimited rights and this is contrary, not only to the right to honour of the person or persons directly affected, but to other constitutional rights, such as that of human dignity (art. 10 SC), which both public authorities and citizens themselves are required to respect in accordance with the terms of arts. 9 and 10 of the Constitution. Dignity as a rank of category of the person as such from which the right to honour derives and is promulgated (art. 18.1 SC.), does not admit any discrimination on grounds of birth, race or sex, opinions or beliefs. Hatred and disrespect of a whole people or ethnic group (of any people or any ethnic group) are incompatible with respect for human dignity, which can only be fulfilled it is attributed equally to all mankind, to all ethnic groups and people. Therefore, the right to honour of members of a people or ethnic group in so far as it protects and expresses the feeling of dignity itself, is unquestionably infringed when a whole people or race are generically offended and derided, irrespective of who they are. Thus the expressions and claims made by the respondent also ignore the effective validity of the higher values of the system, specifically that of the value of equality contained in art.1.1 de la Constitution, in relation to art. 14 of the same, and so they cannot be considered to be constitutionally legitimate. In this respect, and even when, as has been reiterated, the constitutional requirement of objective veracity does not operate as a restriction to the scope of ideological freedoms and freedom of expression, such rights do not in any case, guarantee the right to express and disseminate a specific comprehension of history or perception of the world with the deliberate intention, in doing so of despising and discriminating persons or groups of people on the basis of any personal, ethnic or social condition or circumstance, as this would be tantamount to admitting that due to the mere fact of making an argument in a more or less historical discourse, the Constitution permits the violation of one of the higher values of the legal system, namely equality (art. 1.1 S.C.) and one of the foundations of the political order and of social peace, that is, the dignity of persons (art. 10.1 SC.).Therefore, from the conjunction of both constitutional values, dignity and equality of all persons it is necessary to state that neither the exercise of ideological freedom or expression can protect or cover statements or expressions designed to despise or to generate feelings of hostility against specific ethic groups, of foreigners or immigrants, either religious or social, as in a country such as the Spanish social democratic state of law the members of those groups have the right to peaceful coexistence and to be fully respected by other members of their social community.

As a result of the foregoing, it must therefore be concluded that although part of the statements in question made by Mr. Degrelle were included within the scope of freedom of expression, another part of his comments - the aforementioned- are not justified by art. 20.1 SC and therefore the existence in this case of legitimate infringement of the honour and dignity of the

appellant at the present time, in conformance with arts. 1.1, 10.1 and 18.1 SC. Therefore, and in accordance with the request contained in the petition of the claim, this appeal shall be upheld, overruling the Judgments of the courts in respect of their non-recognition of that fundamental right.

JUDGMENT

In the light of the foregoing, the Constitutional Court, the Constitutional Court GIVEN THE AUTHORITY CONFERRED BY THE CONSTITUTION OF THE SPANISH NATION has ruled to uphold the appeal lodged by Violeta Friedman, and in virtue of which:
1.º The Judgments of the 5 December 1988, of the First Chamber of the Supreme Court; of 9 February 1988, of the former First Civil Chamber of the Territorial Court of Madrid, and of 16 June 1986, of the Court of First Instance number 6 of this capital city, all of which derived from proceedings no. 1284/85, on the civil protection of honour shall be declared void.
2.º The appellant's right to honour is recognised.
This Judgment shall be published in the Official State Gazette.
Given in Madrid, on the eleventh of November of nineteen hundred and ninety one.

Dissenting vote lodged by Senior Judge Fernando García-Mon y Gónzalez-Regueral in respect of the Judgment delivered in review appeal no. 101/90.

My discrepancy in respect of the Judgment approved by the majority is based essentially on the two following considerations:

1. I consider, as the State Attorney states in his allegations, that as the Judgment delivered by the Civil Chamber of Supreme Court does not enter into the substance of the problems raised in the proceedings prior to this appeal- as in the case of the Judgments it confirmed, in upholding the exception of lack of legal standing to lodge the case, our duty of constitutional protection should have confined itself from the perspective of art. 24.1 of the constitution invoked by the appellant, to examine whether or not that exception was appropriate and, if not, to re-establish the full rights of the claimant of that right, for which it would be necessary to refer the proceedings to the First Chamber of the Supreme Court so that this Court could decide with free criterion, having admitted the legal standing of the claimant, on the problems raised in the cassation appeal which was dismissed for formal reasons, although certainly some of them more or less directly affect the other fundamental rights complained about in the appeal, namely the rights recognised by arts. 18.1 and 20.4 of the Constitution. I agree therefore with the arguments of our Judgment in respect to the fact that Ms Violeta Friedman has legitimate interest which merited a detailed declaration. Someone who has personally suffered the horrors of a Nazi extermination camp and that of their family cannot be prevented from reacting before the Courts of Justice in the event of someone who disrespectfully denies the reality of such crimes. I therefore subscribe fully to the reasoning of the Judgment issued in this case in this particular regard. However, I consider that there the duty of constitutional protection ends. Its subsidiary nature which has on reiterated occasions been stated in our case law, did not permit in my opinion, the steps followed to the Judgement from which I diverge.
2.ª And this is precisely this second consideration which permitted me to oppose the criteria of the majority. The restriction of the appeal for protection is imposed by the jurisdictional powers attributed to the Courts and Tribunals by art. 117.3 of the Constitution and similar precepts. On the basis of Organic Law 1/1982, of 5 May on Civil Protection of the Right to Honour Ms Violeta Friedman filed a claim petitioning a Judgment which would declare: I. That the defendant had committed a wrongful assault on the claimant's honour and that said assault had been

seriously detrimental to her, for which he should be held liable. II. That he should be required to permanently abstain thereafter from making any further statements III. That the literal text of the Judgment delivered by the Court should be inserted in the journal «Tiempo», at the defendant's expense IV. That the text of the Judgment should also be reproduced on the first channel of the second edition of the Evening News broadcast by TVE, and V. That the defendant should compensate the claimant for the moral damages suffered and the amount of compensation be donated to the Association of Spanish Citizens who had suffered persecution in the Nazi concentration and extermination camps.

However, all these petitions lodged by the claimant in the proceedings prior to this appeal have not been duly heard in court and therefore lack a corresponding judgment from the Courts of Justice. The appeal judgment was unable to enter into the debate, and does not do so as these are issues which exceed the appeal's framework pursuant to art. 41.3 of our Organic Law: «In a constitutional appeal - this precept states- the only claims which can be brought to bear in this case are those designed to re-establish or preserve the rights or freedoms on which the appeal was based ». It is rather the Courts of Justice and in this specific case the First Chamber of the Supreme Court which would be qualified to resolve in one way or another all the claims of Ms Friedman. This should have been the meaning of our Judgment, having recognised her legal standing to formulate the claim governing the main proceedings, and in respect of which it should have been decided, to impose on it as such, among other norms of our legal system, the principle of effective judicial protection enshrined in art. 24.1 of the Constitution, which, in my opinion is the only constitutional precept which was infringed by the judgments contested in this appeal.

I therefore consider that the ruling in our Judgment which was restricted to recognising the appellant's right to honour, prior to declaring the contested judgments' invalidity, does not offer a jurisdictional decision- apart from its meaning in respect of all the other claims and petitions of the appellant.

In short, while naturally respecting the opinion of the majority, our ruling should have been confined as I have stated, to recognising the claimant's legal standing to sue in the judicial proceedings by taking into account exclusively the infringement contained in art. 24.1 of the Constitution, in order to determine the consequences inherent in that violation. This vote should be published in the "Official State Gazette"

Madrid, eleventh of November of nineteen hundred and ninety one.