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Law & Economics Applied to Spanish Popular Action

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Abstract

In Spanish Criminal process and Forensic practices, there is a controversial element so-called popular action. This one has given rise to different positions and judgments have been handed down on this matter too. In this context and in order to understand the basis of the case, it is important to know that there are situations that depending on how they are treated, by whom it can be persecuted, or the people affected by them, they were called one way or another, in addition to many other considerations, and due to the very nature of the illicit act, it is possible that people outside it can position themselves as accusers. This article offers an analysis from Law & Economics applied the popular action, with special attention to its development in Spain, its current risk of deinstitutionalization process and its paradox of active legitimacy.

Keywords: Criminal Process; Forensic Practices; Popular Action Accusation Parties; Activate Legitimacy; New-Institutional Analysis

Introduction

Deglobalization has been experienced after the Great Recession of 2008 [1], which implies a hermeneutical turn Sánchez Bayón A [2]: a) economically, the triumph of the post-Keynesians (state interventionist school with a socialist and very critical of the market); b) politically and legally, the normativism of the woke current or awareness (it is a combination of cultural socialism and neopuritanism , with a propensity for the alternative use of law, author crimes, judicial activism, etc [3].

Such a combination has allowed the beginning of a revisionist process (reinterpretation) of institutional relations, if not directly of a system crisis. To understand its operation, the Spanish case is reviewed and, specifically, the institution of popular action Navarro MN, et al. [4]: this legal figure was designed to actively legitimize any citizen, so that he could launch the judicial system, if after the established deadlines For those other institutions with express jurisdiction, they did not act in the event of certain violations of the Ordinance. The problem arises with the risk of deinstitutionalization and the paradox of active legitimation. Serve as a preview: it is about the reinterpretation of the legal figure to end up invalidating it, due to lack of legal security, given its alternative use of the law, its judicial activism (and politicization of the Law), etc. In this way, the paradox of active legitimation occurs, as the habitual exercise of popular action is prevented, denying active legitimation for cases of politicization, while in other cases outside the aforementioned figure, its appeal is induced (as in issues of gender and sexual assault, as has been seen in media cases in Spain, such as that of the "la manada" or Rubiales cases, both considered sexual aggression, but one was gang rape and the other was just a public kiss) [5].

That is why, first, a positive legal-institutional study of popular action is offered (according to subjective legal theory, on legal relations, taking into account subject, object, content), to complete with a brief opinion on the risks of normativism woke up.

Positive Legal-Institutional Study of Popular Action

Within the criminal field, we find the three pillars that support it, so that on the one hand, when an act that appears to be a crime is committed, there must be a regulation that establishes the different nomenclatures and penalties associated with the multiple crimes that are committed. Contemplate, on the other hand there would be the regulation that includes the processing procedures and everything that this entails to clarify responsibilities, and lastly there would be the regulation for the execution of the resulting sentences [6].

In this legal and judicial context, the right to effective judicial protection underlies so that no one can find themselves defenseless in Spain, this being a social and democratic State of law, more and more, without the possibility of creating ad hoc courts , at the same time guaranteeing the impartiality of the judges , and providing these contents with constitutional coverage [7].

The Spanish jurisdiction is the power of the courts and tribunals acting by rule of law, which gives them that independent character. And the Spanish criminal process is provided with a series of guarantees, not only by the acting courts but also by framing a whole network of rights and obligations that translate into inspiring principles for its spatio-temporal evolution, such as:

- That judges, prosecutors and lawyers of the Administration of Justice must be technical legal officials.
- That in Spain what we could call a mixed system of organization of criminal procedure governs - a mixture of inquisitorial process and accusatory process -, since in the first phase of investigation or investigation the written procedure is predominant, and yet in the third phase of prosecution The verbal form is determining in its entirety.
- It is mandatory to comply, since otherwise there would be no room for the initiation of a process or it would be dismissed, is that there are two procedural parties, which are one that carries out the accusation and another that is the object of the accusation.
- There must be scrupulous respect for the deadlines for the celebration of the different procedural acts, since otherwise; there would be no preclusion for their execution.
- It is mandatory to add that your honor will not only be in person in the practice of the evidence but that the evaluation you make of them will be in accordance with sound criticism through a free concept of evaluation of the same.
- The principle of presumption of innocence also operates and therefore no one can have a conviction without first being heard. A reservation must be made to this, since evidence to the contrary is admitted, and therefore it is a iuris tantum presumption . In parallel with the above, in general terms, all parties in a trial, accusers or defendants, have the right to oppose their positions, defending them as best they can.

Typologies of Crimes Included

In the Spanish criminal process, there is no uniformity in the types of crimes that are considered, so that depending on the involved participants in it, the affected victims, their own nature or, what is the same, the property legal one that it affects, they will be called one way or another. But it will not only be the name they have, but also everything that this entails, in terms of the procedure that is followed, in terms of the penalties to be imposed, in terms of the competent Court or Tribunal or the persons - physical or legal - who can exercise the right. Accusatory action. Currently in our penal system there are no misdemeanors, and these are subsumed in the so-called trials for minor crimes [8].

Public Crimes

They are characterized because the damaged property affects the victim, but also, in some way, society as a whole. In them, the Public Prosecutor's Office can act ex officio and promote the procedure without the need for the person offended by the crime to previously file a complaint or file a complaint, although this does not prevent said aggrieved person from being able to exercise a private accusation against the accused. In these crimes there is no place for forgiveness of the offended party as it would have no effect. These crimes can be, among others: 1: White collar crimes such as tax fraud; 2: Also drug trafficking crimes; 3: Crimes against industrial and intellectual property [9-12].

Semi-Public Crimes

These semi-public crimes, or also called semi-private crimes, are those crimes that are in an intermediate sphere between public and private, so in addition to having repercussions at a social level, the privacy of the person offended by the crime is also affected.

In them, there is obviously the possibility of being persecuted by the victim, although it is also legal for the Public Prosecutor's Office to act by accusing, but it could no longer act without taking into account whether the victim reports or not, since it requires that first action by the aggrieved party. to later take an active role in the open process.

Notwithstanding the above, there are circumstances that allow the Public Prosecutor's Office to act ex officio,

such as when the victim is a minor or someone disabled, and therefore when in general we are dealing with people who require special protection [12-18].

Some of these crimes that denote what was explained are: 1: The crime of aggression; 2: Crime of coercion; 3: Crime of harassment; 4: Crime of sexual abuse and others.

Private Crimes

For these types of crimes to be substantiated in the criminal process, they require a complaint or complaint by the person aggrieved by them ; The Public Prosecutor's Office has no place in them since they cannot be prosecuted ex officio. Yes, forgiveness of the offended party is acceptable, unlike in the previous two. These include crimes that threaten the honor of individuals: 1.- Crime of libel. 2.- Crime of slander [18-20].

Procedural Parts

As noted ab initio, for a criminal process to have a minimum length, one of the necessary premises is that there are two procedural parties, and within each of them a multiplicity or not of accused and accusing subjects may be found. And as we are going to explain below, the accusing party presents a variety of possibilities regarding the exercise of accusing and maintaining the accusation; and as for the accused party, if it ceased to exist, there would be no room to continue with the procedure [20-22].

In our Legal System, in the matter that we are dealing with, so that the accusers can exercise their right to accuse, it must be stated that the so-called principle of personality is institutionalized, by which criminal action cannot continue and in turn it will cease. of criminal liability if the accused party dies . And yes, depending on the procedural moment in which the procedure is found [22,23].

Accusing Parties

According to what has already been mentioned, depending on the crime we are faced with and therefore the role it plays, the subject who accuses, in order to exercise the claim he wants to achieve, in the first phase, such as the instruction phase, breaks down a certain number of procedures. to formulate the accusation in order to prepare the third phase or oral trial [24].

According to what the Criminal Procedure Law stipulates, even though any Spanish citizen can bring an action in the criminal field, however, there are a series of exceptions to this statement.

Private Accuser

It is one of the parties that actively participate in these processes, and specifically it must necessarily exercise criminal action so that they begin, continue and end, being the offended party in the private crimes of insults and slander, so that a complaint will be filed against the offender and therefore will become part of the process. To all this it is acceptable to add that in the event that a private prosecutor cannot fully exercise his civil rights due to them being restricted, a third party could act in his place [25-30].

In relation to how these processes could end, differently from a criminal conviction sentence:

- It could simply happen that the affected person had no intention of wanting to continue with the exercise of the criminal action , and bearing in mind that in this context it is not possible to pursue ex officio responsibilities, the result would be its extinction.
- It would also be feasible that there would be no criminal process, if the claim is the search for civil liability for the events that occurred through the exercise of a civil action, as contemplated in the Criminal Procedure Law.
- In fine, it is possible in these private crimes to accept forgiveness, that is, if the victim forgives the cause of the damage there would be no room to continue with the process.

Private Accuser

It is another of the figures within the active party in a criminal procedure entitled to litigate, and can be:

- A physical or legal victim, and in the latter there would be the possibility that the State, the Autonomous Communities, or the Local Corporations themselves, appear through the State Lawyer or Lawyer of the CCA or the Municipal Corporations.
- A national or foreign victim.
- The victim's family members could even be included.

There are doctrinal positions that, from my point of view, erroneously interpret that the private accuser is somehow invested in a certain revenge because he seeks to get the accused punished.

Regarding his consideration of being harmed by the crime, we have to understand that the damage received does not only have to be physical in nature but it is also possible to extend it to the ethical sphere [31].

On a similar level to what happened with the private accuser, in this case, the private accuser may not continue with the proceedings, and at this point we must emphasize

his position with respect to private crimes, because in these It is required that the private accuser take an active position in initiating the criminal process through the subsequent complaint so that there can be a process; however, in semi-public crimes, even if he subsequently resigns from continuing, he has already opened the door for the Public Prosecutor's Office to enter it [32].

Another issue that is becoming relevant and with an important predicament is that victims have access to what has been called restorative justice, in such a way that:

- On the one hand, we want to achieve compensation for the aggrieved person.
- On the other hand, and not in contrast to the previous goal, this should be carried out without the need to stigmatize the offender, that is, verbi gratia could be achieved by returning the stolen material but without the person responsible for the theft being identified.

Fiscal Ministery

The Fiscal Ministry, also called the Public Ministry, is regulated by its Organic Statute approved by Law 50/1981, of December 30; We could say that it is that body that acts with autonomy in its functions in the Judicial Branch, since even though it collaborates with it, it is not part of it. Its actions are subject to several principles:

- Principle of legality, that is, with full respect for the Legal System with the Constitution at the top.
- Principle of impartiality, since your decisions must be made in defense of the truth, so that you may request the conviction of an accused if you understand that he is guilty, but you may also request that an accused be acquitted if you understand that he is innocent.
- Principle of opportunity, by which the Public Prosecutor's Office, with its actions, allows the Administration of Justice to be lightly exercised, since in crimes considered minor, it may, at its discretion, not exercise the action of justice .
- Principle of unity of action, here we must bring up, differentiating it from impartiality, the term independence, since the prosecutors depend on the Attorney General of the State, since from this point of view it is a pyramidal body.
- Defense of victims, and in this sense it must be clarified that prosecutors look after the public interest and not particular interests, however, if the interest of a specific person coincides with that public interest then they would look after it. That said, the Prosecutor's Office defends the victims in the broad sense of the word, and proposes to the Judge that the ius punish and dictate sentences in a certain sense.

Within the Public Prosecutor's Office, we can find prosecutors who specialize throughout their professional career in certainly complex matters, such as, among others, crimes of an economic nature or urban planning matters [33,34].

Regarding the work orders of the Public Prosecutor's Office, the following can act:

- In the work order.
- But they can also do so in the civil order when the litigants are individuals and verbi gratia , it is necessary to protect helpless and helpless people such as the incapable or minors in that search for favor filii .
- In the contentious administrative order, defending the fundamental rights of citizens, if they are violated by the different administrations, whether state, regional or local.
- In the criminal order and within the criminal procedure, the Public Prosecutor's Office, acting as guarantor of the truth and in this search for certainties that decide the final result, can carry out investigations of facts that appear to be crimes.

Taking into account that under the configuration of our criminal system, it is not possible to understand that the Prosecutor's Office refrains from pursuing certain crimes, and in this state of affairs, prosecutors in their role as public accusers are an essential part in those processes that they know. of public crimes, as well as if they are semi-public crimes in the case of victims who are minors or disabled . However, in these last semi-public crimes, in the rest of the cases, in order for the Public Prosecutor's Office to intervene, a prior complaint from the victim is required even if the offended party later withdraws from the process [35].

When we are faced with criminal acts of a public nature, it has already become clear that due to this nature, they are crimes that can be prosecuted ex officio, in which not only criminal actions can be initiated but also civil actions [36].

And continuing with this order of things and to finish off, as has been noted, the Public Prosecutor's Office cannot intervene in private crimes since they can only be prosecuted at the request of a party.

Popular Accuser

Popular action ab initio , if we look at Ancient Rome, politicians needed to monopolize justice for the survival of the social order. And already in Athens before the Christian Era, the origin of popular performance seems to be. The philosopher Aristotle had this figure in mind when the idea

of the right of any person to be able to defend the interests of another person and do so through a process or trial was in his thoughts. The quivis ex is recognized in ancient Rome populu , which is nothing other than allowing any subject due to their membership in a community to exercise actions, whether or not they are the victim of a crime. Therefore, in this aspect, our current criminal procedure draws its basis from the Roman system [37].

As we have been confirming in the Spanish criminal procedure, it is not only the Public Ministry that is responsible for the exercise of criminal action, since it does not seem acceptable that citizens can be prevented from exercising it or not, and not only the victims of crimes. crimes but to third parties unrelated to them [38].

But we enter here into a sometimes complicated terrain, in fact there are conflicting positions in the doctrine with respect to the exercise of popular action, we have on one side of the scale AGUILERA DE PAZ who defends this figure, and on the other side of the balance we have GÓMEZ ORBANEJA . In another order of things, based on what is stipulated by the Criminal Procedure Law, the people who are going to carry out the accusation must not only be fully trained in the exercise of their civil rights but at the same time must be actively legitimized, and in this figure of popular accusation this right is recognized both in the constitutional text and in the Criminal Procedure Law, but it is not born because it is included in said precepts but rather it is born from the very nature of the crime, which is none other than its character public.

The popular accuser is that figure recognized in our Legal System who can act in crimes that are prosecutable ex officio without mediating a request from a party and therefore those criminal acts that are strictly sensu in the public sphere, but the question that some ask is And in semi-public crimes? On this issue there are opinions that differ in their approaches, but although it is true and understandable that a priori private crimes do not generate controversy, semi-public crimes are susceptible, at least, to being able to open a debate around it and about Whether the interpretation of the rules that include it or not should be made more flexible .

Another melon opens in that the exercise of popular action can be by natural persons and by legal entities, and in favor of this we can emphasize what the Constitutional Court includes in some ruling, putting this fully current reality in value since The practice is stubborn and shows that there are many occasions in which organizations and others appear as popular accusations in certain lawsuits.

Continuing with this question, another obstacle appears, such as the issue of bail, and regarding this we have:

- On the one hand, there is what is included in article two hundred and eighty of the Criminal Procedure Law regarding the complaint where this provision clearly states that bail must be provided by the individual complainant, and this is with the purpose of responding to damages that could be derived.
- On the other hand, there is what is included in article twenty, section three of the Organic Law of the Judiciary, which establishes that in order to exercise popular action there cannot be bonds that, being inadequate, could become an impediment, which is not very clarifying, although Next, this provision adds that this popular action must be free. Continuing with this legal text, in the fifteenth additional provision, section one, when it addresses the question of the deposit to appeal, it makes it crystal clear that the popular accusation will be required.
- And there is also the position adopted by the Constitutional Court in this matter, where it is positioned in favor of the provision of bail, which is evident in some of its pronouncements .
- In the popular accusation of people who have not been passive subjects of the crime and who act quivis ex populo , two sentences are at least surprising:
- One of them is a Supreme Court ruling from the year 2007 that led to the so-called Botín Doctrine , it is STS 1045/2007 . In this ruling, the High Court rules in the ruling concluding that there is no grounds for appeal, although with individual votes of members of the Court, and therefore it is determined that in an abbreviated process if the accusing parties, the Public Prosecutor's Office and the private prosecutor, request the dismissal, even if the popular prosecution wants to continue with the procedure by requesting the opening of the oral trial, its request will not be taken into account.

In the factual background, Initiative establishes the cassation on two reasons, one is that art. 24-1 CE put in relation to art. 125 CE, and the Defense Association sets the cassation on the following reasons, one is that art. 24-1 CE (refers to the right to effective judicial protection), the other is that art. 125 CE (refers to the fact that citizens can exercise popular action), as well as arts. 19 LOPJ (refers to the fact that Spanish citizens can exercise popular action) and the current arts. 761 LECrim (refers to the fact that individuals can bring criminal and civil action whether or not they are aggrieved by the crime) and 783-1 LECrim (refers to the fact that if the Public Prosecutor's Office or private prosecution requests that an oral trial be opened, the judge must do so, with some exceptions; and if this opening is only decreed at the request of those two accusers, it is communicated to whoever had requested the dismissal of the case so that they can adhere to it within a certain period and file an accusation if necessary. who does not want to give up that possibility)

and the last is that the arts are not respected. 305 (this article is within the title that referred to crimes against the Public Treasury and Social Security) and 390-2º CP (refers to the penalties imposed on public officials or authorities who, while carrying out their work, simulate a document….).

Taking a brief look at the legal foundations that serve as the basis for the ruling, the Court estimates that justice is not administered differently depending on who the accused is and therefore there are no people in a privileged situation. It also establishes that although the Spanish Constitution includes as a constitutional right the exercise of criminal action with that public character that the Criminal Procedure Law confers on it, it does not assign it the character of a fundamental right [39,40].

And the High Court also establishes that the right to popular action is of legal configuration and that therefore it is subject to the law saying when and how it can be exercised, and therefore "the legislator is not obliged to recognize it in all species." of processes, and to establish the form of exercise where the popular action is legitimized", as it is written in the sentence itself.

The other is a Supreme Court ruling from 2008 that led to the so-called Atutxa Case , whose resolution takes a different path than the Botín doctrine. In this case it is about disobedience in the Basque Chamber of its president at that historical moment, whose name was Juan Maria. Atutxa . After Herri Batasuna was banned some time ago, there is a refusal to dissolve the parliamentary political group Socialist Patriots - Sozialista Abertzaleak In response to this, the Clean Hands Association appears as a popular accusation against the resolution that absolves them and after some comings and goings, this association appeals again in cassation before the High Court that admits said appeal, and in this way it distances itself from the previous Botín doctrine requested its application by the Public Prosecutor's Office. Here the Supreme Court understands that the exercise of popular action cannot be restricted since in this case the provision included in article 782-1 LECrim does not apply [41].

It happens that this change of course in the Jurisprudence gives rise to thinking whether the principle of equality may not have been violated , but the Constitutional Court pronounces on it and is in the same line as the Supreme Court did with the sentence handed down in the so-called Atutxa Doctrine , and it does so by resolving the appeals for protection promoted by Gorka Knörr Borrás , Juan Mª Atutxa Mendiola and Mª Concepción Bilbao Cuevas in relation to the Supreme Court ruling that convicted them of the crime of disobedience, since they allege that the principle of equality was violated, among others.

We must mention a third case, such as the Noos Case , in which the Manos Cleans Union acted as a popular accusation, the Botín doctrine was not applied to Infanta Cristina, the matter was not dismissed and the Infanta had to sit in court. dock. There are opinions that understand that since a general interest is affected, the case should not be dismissed and other opinions maintain the opposite position.

Special mention and therefore it is worth making a stop at those who cannot make use of the exercise of popular accusation, and here we find ourselves v. gr.:

- To judges and magistrates, since it does not seem that this exercise could be compatible with their role in the performance of their profession. And the question arises as to whether this prohibition could be reasonably extended to justice officials in general.
- There is also the issue of foreigners, who would be excluded from the exercise of popular action, since the law expressly refers to the fact that Spanish citizens can exercise it and therefore foreign citizens are tacitly excluded. But what is possible is that foreigners can take criminal action if they are victims of a crime and in which case their position would be that of private accusers.

The case of legal persons deserves a separate chapter, since they can exercise popular action, but they cannot in the case of legal-public persons, because although there is no express exclusion , however, let us say that the figure of the Public Prosecutor's Office is to exercise public criminal action, one may think that this function is in some way fulfilled. Notwithstanding the above, we must keep in mind what is included in the Organic Law on Comprehensive Protection Measures against Gender Violence, legitimizing the Government's Special Delegation against Violence against Women.

From my point of view and despite the chiaroscuros that can undoubtedly be attributed to this figure of popular accusation, based on everything contributed, it has sufficient reasons to remain in the criminal judicial panorama.

Costs for Carrying Out this Action

A controversial issue regarding the much-vaunted popular accusation is the costs that its exercise entails, and without going into alphanumeric or econometric issues, handling statistics or mathematical analysis, or whether it entails any type of lost or sunk cost. cost nor the opportunity costs that the choice of this alternative service to justice could entail, but rather it is about giving an answer applying deductive logic.

The costs or procedural expenses are a consequence of initiating a judicial procedure and involve several items, such

as the minutes of lawyers and attorneys ,... , and priori this must be paid by the parties in the process and sometimes also ex officio, being the Judge or Court who rule on this matter.

With the Law and Jurisprudence in hand, it seems plausible to determine that in general the expenses derived from a process are imposed on the person who is going to answer for the criminal act, although not the costs that correspond to the popular accusation, which does not coincide with what happens with respect to the private accuser, keeping in mind that the latter is someone offended or who has been harmed by the criminalis actum directly.

With respect to the above, however, the same does not happen in those crimes that are related to diffuse interests and that consequently affect the community or undetermined persons , for which the popular accusation can be exempted from the payment of said costs.

Another very different case is when the popular accusation acts in bad faith or recklessly, in which cases it may be ordered to pay costs in accordance with what is contemplated in some ruling of the High Court where, following this line of argument, the popular actor is equated. with the civil actor and with the private accuser despite there being no legal provision for this figure.

In any case, and based on what is mentioned in this section, I understand that the criticism of this popular action cannot come in any way from the question of economic costs and/or loss of opportunity for the choice of other options or alternatives towards the to direct public investments, even in cases in which they are not assumed by the procedural parties but rather by the State, since the cost-benefit in reference to the interests that are being defended is considered a priority.

Civil Prosecutor

Involved in a criminal process, in addition to seeking a criminal conviction of the guilty party, there is the possibility of requesting a pecuniary or material claim demanding civil liability for the perpetration of the criminal act, which is manifested in:

- Restore the thing.
- Compensation for the damages caused.
- The repair of the damage caused.

In the interest of applying procedural economy, it is understood that when a person accuses criminally, they also do so civilly, with two reservations:

- The first is that the victim expressly and unequivocally renounces the exercise of that civil action. Now, although the victim has waived this civil compensation, if the consequences as a result of the criminal act are ultimately more burdensome than had been thought, the judge may annul that waiver if the person aggrieved by the crime previously requests it. and this must be done at the appropriate procedural time .
- And the second is that the victim reserves the exercise of civil action for a subsequent civil process, once the criminal procedure has ended.

In cases where the Public Prosecutor's Office is obliged to intervene, it must sustain this civil action in addition to the criminal one and will do so regardless of the existence or not of a private accuser if he or she has preferred to withdraw from the procedure, which happens in semi-public crimes. because in public crimes the Public Ministry has the ability to initiate criminal proceedings without the need for the offended party to do so. But with respect to civil action, if the victim renounces that right, the Prosecutor's Office will only file criminal action.

Accused Party

Depending on the procedural phase in which the procedure is, this passive part will receive various names:

- Investigated, when a person is attributed a crime and is immersed in the investigation phase.
- Defendant, when in the abbreviated procedure there is already an order to transform previous proceedings against the investigated party.
- Prosecuted, when in an ordinary or summary procedure there is already an indictment against the person investigated.
- Accused, when the third phase or oral trial has already been opened.
- Convicted, when a conviction has already been issued.

Some also speak of encartado to refer to that person who has to respond to a complaint.

The accused is therefore the subject who is charged with an apparently criminal act that entails the limitation and/or restriction of rights, and without this passive party a criminal process cannot be sustained. Within it, not only natural persons occupy a position, but also legal entities that appear as criminally responsible in the different reforms of the Penal Code and also at a procedural level in the rules on expediting measures, this figure is recognized as part of the process as an accused [42].

Obviously, the action during the process of a legal entity will be through a legal representative, independently of the attorney who represents it and the lawyer who defends it judicially.

With respect to natural persons, they must be able to intervene in a process, so there are subjects who, for certain reasons that affect their cognitive capacity or other causes, will not be able to do so, that is, the information provided must be adapted to their age and your understanding, but for these reasons the following may happen:

- In the case of minors, the judge who is hearing the case will usually recuse himself in favor of the corresponding Juvenile Court.
- In the event that the person is not aware of what is happening to him or that he suffers from a mental disorder, he will be considered not responsible , with the exception that a mental disorder was temporarily caused for the sole purpose of committing the crime.

For greater depth in this matter, there is the issue of those subjects exempt from submitting to the action of justice, and some of them can be referred to at the international and national level. In the first case there are foreign Heads of State and diplomatic agents. And in the second case there are:

- The figure of the King who enjoys inviolability.
- The Deputies and Senators as long as they hold that position or perform that function. And also the members of the Parliaments of the Autonomous Communities .
- The Magistrates of the Constitutional Court .
- The Ombudsman according to the letter of the Law that regulates this figure.

In another order of things, we must make a point about the rights that assist the passive party in a criminal procedure, and that could be said to be under the umbrella of the right of any person to be able to defend themselves against the accusations made against them. , and which materialize in the following:

- It is necessary to inform this party of the allegedly criminal act attributed to them; This is not something static because if any changes occur as the investigation progresses, it would have to be updated.
- Although obvious, we must not forget that by being a party to a process you will be able to exercise your defense, which includes having legal advice from a lawyer of your choice or appointing one ex officio if you do not have resources as well as representation through the attorney general's office. . Special mention deserves the issue of incommunicado provisional detention, at which point this right can be rescinded.
- When it comes to a foreigner, you also have the right to a translator at no cost.
- Another one is the right not to testify against yourself, which includes not pleading guilty. And add your right not to answer some or all of the questions posed to you.
- Another right is to the last word, not very illustrative because even though it is included in this way, although it is true that on a significant number of occasions it may be preferable not to use it when it does not contribute anything to the defense and this is made known. the lawyer to his client.
- In the case of an arrest without due guarantees and that the subject has been involved in a probably illegal arrest, he has the right to the so-called habeas corpus procedure against illegal arrests ut supra.
- The accused party, as happens to the opposing party, has the right to a process where procedural deadlines are met and a procedure is not delayed excessively.
- And there is also the possibility, for both procedural parties, of appealing the resolution issued without the appellant being able to see that his situation worsens due to the issuance of a ruling ruling on the appeal that is more burdensome than the one he already had as a consequence of the resolution that is the subject of the resource. And this has its reason for being due to a principle that is generally present in the Spanish Legal System and is that of reformatio in peius .

Civil Responsible

In a criminal process, in addition to seeking a sentence that imposes a penalty on the criminal perpetrator, there is the other side of the coin, which is seeking civil compensation for the damage caused to the victim, since the desire for reparation arises from the crime. As has already been said, this initiative is the responsibility of the Public Prosecutor's Office except in private crimes, and it is also the responsibility of the person offended by the crime unless he renounces to assert it or unless he wants to assert it in a subsequent civil proceeding [43].

The civil action is exercised together with the criminal action so that it is resolved at the same time in the sentence . And the appropriate procedural moment for this is before the classification of the criminal act.

The other part of civil liability is the subject who must be held accountable for the crime, the cause of the damage and who, in accordance with the provisions of the Civil Code and the Penal Code , must either compensate for moral and material damages. either proceed to repair the damage caused or restore the thing, although if the perpetration of a criminal act is finally sentenced, then civil regulations will establish what type of responsibility can be considered.

The civil party responsible, just as he can defend himself from the crime he is accused of, may defend himself against the civil claim attributed to him, since in order to respond to this it is common practice to ask for bail in the event that he is finally declared guilty [44].

It may happen that the civil party responsible is not the same person as the criminal party, but rather a third person. And based on this, two general models of civil liability can be established, one direct (and within it several peculiarities), and another subsidiary.

Direct Civil Responsible

The first, that of the direct civil liability, refers to that person who must respond criminally for having been declared guilty.

In direct responsibility there are variations of it, and some of them as stipulated in the Penal Code , v. gr. If it is a person who is criminally unimpeachable as the cause of the damage, however, civil liability would be answered, but in this case it would be the person who has legal or de facto control of it if this person had acted negligently or through fault. He will also be responsible for the acts of another person, the one who was prevented from doing harm when it was done in a state of necessity. And also if damage is caused as a result of an insurmountable fear, the person causing that fear will respond civilly [45].

Subsidiary Civil Liability

In subsidiary liability when there are two responsible parties, from now on it will be the justice system that determines the quota that will correspond to each one. And in this section is what could be called stricto sensu civil liability in different circumstances:

- It would be the parents or guardians for the acts of the adult subjects subject to their parental authority or guardianship, when there is fault or negligence on the part of the former.
- In general, so are those subjects or organizations that hold ownership of media for criminal acts perpetrated through these media.
- Another would also be the subjects or legal entities that hold the ownership of a certain establishment in which crimes have been perpetrated by the workers or staff and this has been carried out through violation of the rules of the authority in general.
- So are natural or legal persons engaged in industrial or commercial work due to criminal acts perpetrated by employed personnel while they are carrying out their work.

Crimes are perpetrated by dependent or authorized personnel through their use .

Another variant of subsidiary civil liability is that in which it is the Public Administration that is responsible for acts of the civil servants and the public service . Both the Magna Carta and other laws state that citizens will have the right to be compensated for damages caused to their rights and interests by those acts carried out in the course of the functioning of the Administration, including Justice [4].

Discussion and Conclusions: Woke Normativism, Risk of Deinstitutionalization and Paradox of Active Legitimation

Once the descriptive analysis of the legal institution has been carried out, it is transferred to its real development, to warn of its budding risks (which would turn everything studied into mere Legal History), given the influence of normativism. woke and the contradiction that has been taking place in this regard: at the same time that access to justice is being discouraged due to lack of active legitimation, a new type of law is being promoted, based on author crimes, judicial activism (and politicization of the Law), the alternative use of the law, etc [3,5,6], so that anyone offended can come forward. That is, on the one hand there is the doctrine established since 2021 by the Contentious-Administrative Chamber of the Supreme Court, by rejecting the lack of active standing of any subject of law other than the one directly affected, while on the other hand, under new approaches, such as the gender perspective [5-7], popular reporting of cases of sexual assault is being promoted (a controversial issue, since until now, as a general rule, the victim had to appear and only exceptionally could other cases be admitted). interested).

It is necessary to review the new legal framework, apparently contradictory, with the entry into force (on October 7, 2022) of the Organic Law of comprehensive guarantee of sexual freedom, which will lead to the modification of Title VIII of Book II of the Penal Code of 1995, relating to crimes against sexual freedom. The issue worsened on April 29, 2023, with the entry into force of Organic Law 4/2023, relating to the responsibility of minors. According to the current legal framework, there is a lack of legal certainty, in addition to opening up doctrinal discrepancies and exploring legal disquisitions in line with the alternative use of the law, without forgetting the criticism about a possible beginning of a period of judicial activism in the matter [3].

Given this situation of institutional denaturalization, it is urgent to use the resources of neo-institutionalism [5-7], such as the economic analysis of law (value, incentives, efficiency and institutional quality), the analysis of legality (legitimacy, validity and effectiveness), etc All these resources of the aforementioned approach allow us to analyze Politics and Law from the principle of reality and without emotions or romanticism.

In the popular action studied, it was provided for in the Spanish Constitution of 1978 to cover those cases in

which subjects with express direct legitimacy did not act in a timely manner. However, with the successive changes in the current legal framework, it seems that the traditional deinstitutionalization of the figure is being carried out, to begin to focus it on assumptions not previously contemplated and that could well introduce a certain legal uncertainty in the system, by responding to criteria alternative use of law, copyright crimes, etc.

In future works it is hoped to delve deeper into the matter, carrying out a better systematization of legal sources, in addition to collecting sentences that better illustrate the development of the issue.

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17. Organic Law 2 (1979) of October 3 of the Constitutional Court.

18. Organic Law 3 (1981) of April 6 of the Ombudsman.

19. Organic Law 6 (1984) of May 24, regulating the habeas corpus procedure against illegal detentions.

20. Organic Law 6 (1985) of July 1, regulating the Judicial Branch.

21. Organic Law 10 (1995) of November 23, regulating the Penal Code.

22. Organic Law 1 (2004) of December 28, on Comprehensive Protection Measures against Gender Violence.

23. Organic Law 5 (2010) of June 22, modifying the Penal Code.

24. Law 37/2011, of October 10, on procedural streamlining measures.

25. Organic Law 7/2012, of December 27, modifying the Penal Code.

26. Organic Law 1/2015, of March 30, modifying the Penal Code.

27. Organic Law 16/2015, of October 27 on privileges and immunities of Foreign States, International Organizations with Headquarters or Office in Spain and International Conferences and Meetings held in Spain

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32. (1966) International Covenant on Civil and Political Rights, made in New York.

33. (1882) Royal Decree September 14, which approves the Criminal Procedure Law.

34. (1889) Royal Decree of July 24, by which the Civil Code is published.

35. (2015) Royal Decree 1109/2015, of December 11, which develops Law 4/2015, of April 27, on the Statute of the Victim of Crime, and also regulates the Victim Assistance Offices.

36. STC 62/1983, of July 11, with His Excellency Mr. Rafael Gómez-Ferrer Morant as speaker.

37. STC 241/1992, of December 21, with the speaker being the Hon. Mr. Luis López Guerra.

38. STC (Plenary) No. 205/2013, of December 5, third foundation.

39. STS 682/2006 (Second Chamber) of June 25, 2006 (ES:TS:2006:4043), rapporteur: His Excellency. Mr. Joaquín Delgado García.

40. STS 1045/2007, of December 17 (Criminal Chamber-First Section) RJ\2007\8844, with the Hon. Mr. Enrique Bacigalupo Zapater.

41. STS 54/2008, of April 8 (Criminal Chamber) RJ\408\2007, with the speaker being the Hon. Mr. Manuel Marchena Gómez.

42. STS 64/2014, of February 11, (Criminal Chamber), ECLI ES:TS:2014:477, with the speaker being the Hon. Mr. Juan Ramón Verdugo Gómez de la Torre.

43. STS 414/2016, of May 17 (Criminal Chamber), with the speaker being the Hon. Mr. Andrés Palomo del Arco.

44. STS 279/2017, of April 19 (Criminal Chamber), (Roj: 279/2017), with the speaker being the Hon. Mr. Juan Saavedra Ruiz.

45. STS 705/2017, of October 25, (Criminal Chamber), ECLI ES:TS:2017:3867, with the speaker being the Hon. Mr. Alberto Gumersindo Jorge Barreiro.

46. VV AA (1997) Comments on the Criminal Procedure Law of September 14, 1882 with the complementary organic and procedural legislation, Volume I and II, Edit Bosch, Barcelona.

47. Article 24 CE: 1.- "(...) right to obtain effective protection from judges and courts (...). 2.- (...) everyone has the right to the ordinary Judge predetermined by law (...)".

48. ECtHR Jurisprudence, Judgment January 17, 2012, Matter of Alony Kate v. Spain (Demand No. 5612/08): establishes that art. 6 ECHR on the right to an impartial judge. This ruling states that the Spanish State violates the right to have an impartial court due to the lack of impartiality of the National Court, insofar as the speaker was a Magistrate who had also been a Judge in the resolution by which the Chamber agreed as a measure prevent the provisional detention of the plaintiff. https://www.mjusticia.gob.es Consulted 04-04-2023.

49. Art. 117-1 CE: "Justice (...) is administered by independent judges and magistrates (...)". Art. 2-1 LOPJ 6/1985, of July 1: "The exercise of jurisdictional power (...) corresponds exclusively to the courts and tribunals determined in the laws."

50. Organic Law 6/1984, of May 24, regulating the habeas corpus procedure against illegal detentions. STS 279/2017, of April 19 (Criminal Chamber), (Roj : 279/2017), with His Excellency Mr. Juan Saavedra Ruiz as speaker , in its sixteenth legal basis, contemplating the existence of fraud and commission of an illegal detention made by an official or authority and keeping all this related to this issue of the presumption of innocence, it includes the following: "What happens is that once the reason for presumption of innocence has been dismissed and the existence of sufficient evidence of the charge is admitted related to the knowledge of the illegality of the detention by the accused, this leads to the concurrence of the fraud typical of the crime of illegal detention, especially taking into account that a police officer who has jurisdiction to detain people cannot ignore the illegality of what was done in the case. Regarding the crime applied, we refer to the preceding fourth legal basis 2 . We also insist that in the " factum " of the sentence the lack of specificity regarding the moment of adhesion to the plan resulting from the prior agreement

of the accused is more apparent than real since we have previously indicated that the Court certainly places it as a limit moments before of the arrest, then if this is the case, when it occurs, he had the conscience and will to deprive a person of his freedom without justifiable cause, which he also later corroborates at the police station and in the Investigating Court. In the present case, the evidence or proven facts that have served to construct the indictment evidence operate doubly to also conclude in the concurrence of the author's intent."

51. Art 10 LO 10/1995, of November 23 of the Penal Code: " Wilful or reckless actions and omissions punishable by law are crimes."

52. LO 1/2015, of March 30, modifying the Penal Code, eliminates the offenses.

53. DOCTRINE OF THE STATE ATTORNEY GENERAL Circular 1/2006, of May 5, on crimes against intellectual and industrial property after the reform of Organic Law 15/2003. Reference: FIS-C-2006-00001, reinforces their consideration as public crimes.

54. Doctrine of the State Attorney General's Office establishes that in the new Penal Code, when the insult or slander is directed towards a public official or authority about something that is related to the exercise of their position, it would be a semi-public crime. https://www.boe.es Consulted 04-05-2023.

55. Organic Law 10/1995, of November 23, of the Penal Code regulates in articles 205 to 210 the crimes of insults and slander.

56. Art 130-1 CP, includes as one of the causes of extinction of criminal responsibility, the death of the person under investigation (...). RD September 14, 1882, which approves the Criminal Procedure Law, contemplates in its art. 115, that even if the guilty person dies, the civil action against heirs and assigns subsists, and can be brought via civil means.

57. The Criminal Procedure Law in its art. 102, includes which people cannot make use of this criminal action, and in this sense it contemplates those who do not have all of their civil rights, or those convicted by a final judgment on two occasions for the crime of slanderous denunciation or complaint, as well as to the figure of the Judge or Magistrate. Notwithstanding the above, there are two exceptions to what is established, since all of them may make use of this criminal action when we are talking about a crime against their person and property or against the person and property of their spouses or ascendants or descendants or siblings and related. And it is even more, because in the aforementioned case of those convicted by a final sentence and in the case of judges and magistrates, they may also exercise this criminal action when a crime has been committed against the person or property of those who are under their legal custody.The Criminal Procedure Law also makes mention in its articles, specifically in art. 103, to those subjects who cannot bring criminal action but in this case between themselves, what are they, between spouses and ascendants or descendants or siblings, and in both cases, with some exceptions, such as in the former for the crime of bigamy or for committing a crime against each other or against their children, and in the second also for a crime by one/s against the person of the other/s.

58. The Penal Code in its art. 25, refers to disability, whether physical, mental, intellectual or sensory, as a limiting cause for a human being to be able to participate in society like other people.

59. The Penal Code in its art. 215-1, recognizes that the legal representative in this type of private crimes may act by filing a complaint just like the offended party. Also in another paragraph of this article, the forgiveness of the person offended for the crime is recorded. Art 106 LECrim contemplates that criminal action can be extinguished because the party affected by this type of crime renounces its exercise.

60. Royal Decree 1109/2015, of December 11, which develops Law 4/2015, of April 27, on the Statute of the Victim of Crime, and also regulates the Assistance Offices for Victims of Crime. Regarding assistance to victims of crime, in its art. 37, considers as typical functions of these offices in matters of restorative justice, not only that of informing the victim but also that of proposing to the judicial body the use of criminal mediation if this is good for the victim or being able to support emergency services. extrajudicial mediation.

61. This principle is reflected in art. 963-1 LECrim , which establishes how the Judge may determine that the case be dismissed if requested by the Public Prosecutor's Office, in the event that the crime is not serious, and also in the event that there is no important public interest.

62. In the abbreviated procedure, the Public Prosecutor's Office, to a certain extent, is provided with more investigative actions, and this is stated in art. 773-2 of the aforementioned legal text of the LECrim , so that it establishes the power it has to carry out or order the Judicial Police to carry out the appropriate procedures in order to clarify the facts and who is responsible for them, being able In addition, decree that the proceedings be archived when there is no crime or request that the

procedure be initiated if there is a possible crime.

63. As stipulated in art. 105-2 of the Criminal Procedure Law, in those crimes that have to be prosecuted first at the request of the person offended by them, it is feasible for the Prosecutor's Office to report if the victims are not of legal age or suffer from disabilities. And it also establishes that even if there was no complaint, this would not prevent the necessary preventive measures from being carried out.

64. FERNÁNDEZ DE BUJÁN, A., "Roman popular action, actio popular , as an instrument for the defense of general interests, and its projection in current law", General Law Review Roman , No. 31, 2018.

65. AGUILERA DE PAZ, E., Comments on the Criminal Procedure Law , volumes I to VI. Reus Publishing House, Madrid, 1923.

66. GÓMEZ ORBANEJA, E. and HERCE QUEMADA, V., Criminal Procedure Law , 10th edition, Artes Gráficas y Ediciones, Madrid., 1987. Comments on the Criminal Procedure Law of September 14, 1882 with the legislation complementary organic and procedural , Vol. I and II, Edit. Bosch, Barcelona, 1947.

67. Civil rights, whose regulation is in articles 14 to 29 CE and in Spain's ratification of the International Covenant on Civil and Political Rights, made in New York on December 19, 1966.

68. LEBANON BERISTAIN, A., "The popular accusation. The existing controversy over the exercise of popular action in semi-public crime proceedings", V/ Lex Intelligent Legal Information , pp 452-456, https://vlex.es/vid/acusacion-existe-accion-semipublico-343362978 Consulted 04-06-2023 . It says the following: "(...) we can highlight the lack of express reference or any prohibition in this regard. In this sense, we consider that the legal precepts frequently alleged in order to justify a negative position on the admission of the quivis ex populo action are not definitive. in cases of semi-public criminal infractions (...) these precepts do not seem to us to settle the issue, given the terminological imprecision that is detected (...) it would also be possible to turn the letter of the law around, and understand that the precept in question had to be interpreted by also admitting the figure of the popular accuser, although nothing was expressly said about it (...) Taking into account the above, and recognizing that we harbor some doubts about it, from our point of view the option of permissive interpretation is preferable. of popular action in processes for semi-public crime (...) it seems that the exegesis most in line with said recognition must promote, to the maximum, the impulse of the exercise (not torticero) of the actio quivis ex populo This line could include, among others, the interpretations made by the Constitutional Court in the area of the proportionality of the bail, or (...) Furthermore, the procedural obstacle foreseen in the sphere of semi-public crimes - which will mean the existence of certain formal and, above all, subjective limitations - is limited to the moment of initiation of the process (...) when the processing of processes for semi-public criminal offense almost coincides (…) with that foreseen for those prosecutable ex officio, the intervention of the Public Prosecutor's Office becomes necessary, and we understand that the popular accusation (through a complaint) will be contingent. Perhaps the clearest example where the intervention of the popular prosecution in semi-public crimes is proposed is found in (...) crimes of aggression, abuse, sexual harassment, where there may be private legal persons interested in becoming the accusing party in a criminal process for rape (e.g. an association that works for women's rights and the eradication of all types of violence that this group may suffer)."

69. STC 241/1992, of December 21, with His Excellency Mr. Luis López Guerra as speaker. This ruling deals with the issue of the popular accusation in the hands of legal entities having initially been rejected, to which the appellant association in the exposition of the factual antecedents says: "(...) the Order now challenged has incurred infringement of arts. 14 and 24.1 of the Constitution. The violation of the principle of equality would result from the fact that the restrictive criterion maintained in the contested Order regarding the denial of the exercise of popular action by legal entities "contrasts with what has been common practice in the Courts of this Autonomous Community" that in similar cases have not hesitated to admit it. This introduces a discriminatory change (...) and a breach of the principle of equality, since the same right that has previously been recognized by the Courts of this Autonomous Community, disappears for (the appellant Association), preventing access to jurisdiction to defend their legitimate interests (...)". Said ruling, in the fourth legal basis, says the following: "Even though art. 53.2 of the Constitution uses, like art. 125, the term "citizens", this Court has been maintaining that it refers to both natural and legal persons (thus, STC 53/1983), not because art also refers to both. 162.1 b) of the Constitution, but, even earlier, because "if all people have the right to jurisdiction and process and the personifications that for the achievement of a common purpose are jointly called legal entities are legitimately recognized, it can affirm that Article 24.1 includes in the reference to 'all persons' both physical and legal persons (STC 53/1983 , legal basis 1)." And based on

the above, and others, the ruling of The sentence is pronounced as follows: Grant the protection requested by the "Association of Women of the National Police of Guipúzcoa" and, consequently, recognize the appellant's right to effective judicial protection.

70. STC 62/1983, of July 11, with His Excellency Mr. Rafael Gómez-Ferrer Morant as speaker . In this ruling, it is affirmed by the plaintiffs who exercised the popular action and who subsequently do so through an appeal for protection, that their right to equality under Article 14 EC is violated – due to the discrimination to which they are subjected with respect to to the private plaintiffs given the significant amount of the bail - and their right to effective judicial protection under Article 24-1 CE is also violated by imposing that bail of one hundred thousand pesetas on them, and what's more, it is not admissible for this high bail to be want to justify saying that it is to avoid lawsuits filed recklessly, since these litigants understand that this recklessness can be avoided in other ways. The Court, on the legal bases, deals with both issues in the following way, since in the case of whether or not the principle of equality has been infringed due to this lack of means to meet that bond, it considers that it will not assess this matter because This was not raised in court previously; and regarding effective judicial protection, it is ruled that the actors have been able to exercise it since they had exercised a legitimate and personal interest. And for all this, and something more, the Constitutional Court decides to reject the appeal for protection filed.

71. ORTEGO PÉREZ, F., "Jurisprudential" restriction on the exercise of popular criminal action (A critical note on the controversial "Botín doctrine")", Diario La Ley no. 6911-6913, 2008.

72. STS 1045/2007, of December 17 (Criminal Chamber) RJ\2007\8844, with His Excellency Mr. Enrique Bacigalupo Zapater as speaker. This is an appeal against an order of the Criminal Chamber of the National Court, which is filed by the popular accusations Initiative per Catalunya Verds and the Association for the Defense of Investors and Clients.

73. STS 54/2008, of April 8 (Criminal Chamber) RJ\408\2007, with His Excellency Mr. Manuel Marchena Gómez as speaker.

74. Art. 14 CE: " Spanish people are equal before the law, without any discrimination based on birth, race, sex, religion, opinion or any other personal or social condition or circumstance. "

75. STC (Plenary) No. 205/2013, of December 5, in legal basis 3 says the following: "Following the logical order in the prosecution of the complaints of the appellants under protection, it is appropriate to next examine the reported violation of the right to equality (art. 14 CE), in relation to the right to a trial with all guarantees (art. . 24-2 CE), from the perspective of the accusatory principle, since its eventual estimation would affect the origin of the opening of the oral trial itself. As has already been explained, the appellants have alleged the violation of the right to equality in which the legitimation of the popular action has been admitted to urge, by itself, the opening of the oral trial in an abbreviated procedure, contrary to what was decided. by the Plenary Session of the Second Chamber of the Supreme Court in Sentence 1045/2007, of December 17, in which the dismissal was agreed upon due to the existence of a joint request from the Public Prosecutor's Office and the popular accusation in that regard, despite the fact that popular action urged its opening, understanding that this, in accordance with art. 782-1 of the Criminal Procedure Law, does not have its own autonomy to do so. Regarding the right to equality in the application of the law, which is the specific perspective of art. 14 EC alleged by the appellants, this Court has reiterated that the recognition of the violation of the aforementioned fundamental right requires, first of all, the accreditation of a tertium comparationis , since the judgment of equality can only be made on the comparison between the contested Judgment and the previous resolutions of the same judicial body that, in substantially the same cases, have been resolved in a contradictory manner. Secondly, the identity of the judicial body is also specified, meaning not only the identity of the Chamber, but also that of the Section, as each of these is considered a jurisdictional body with a differentiated entity sufficient to distort an alleged inequality in law enforcement. Likewise, the existence of otherness in the contrasted cases is necessary, that is, of "the reference to another" required in any allegation of discrimination in application of the law, excluding comparison with oneself. Finally, in addition, it is required that the unequal treatment be materialized in the unjustified failure of the application criterion consolidated and maintained until then by the jurisdictional body or of an immediate antecedent in time and exactly the same from the legal perspective with which it was judged, thus responding to a ratio decidendi only valid for the specific case decided, without a vocation for permanence or generality, and this in order to exclude arbitrariness or inadvertence; concluding that what the principle of equality in the application of the law prohibits is thoughtless or arbitrary change, which is equivalent to maintaining that change is legitimate when it is reasoned, reasonable and forward-looking, that is, intended to be maintained. with a certain continuity based on objective legal reasons that

exclude any meaning of ad personam resolution , being illegitimate if it constitutes only an occasional break in a line that has been maintained with normal uniformity before the divergent decision or is continued afterwards.

76. https://elderecho.com/accion-popular-doctrina-botin-y-caso-noos Accessed 04-12-2023.

77. JAÉN VALLEJO, M., Popular Action, Botín Doctrine and Noos Case , "The Law. com " Legal News and Current Affairs, Lefebvre , 04-22-2016, https://elderecho.com/accion-popular-doctrina-botin-y-caso-noos Accessed 04-12-2022.

78. Art. 270 Law of Criminal Procedure: "All Spanish citizens, whether or not they have been offended by the crime, may file a complaint, exercising the popular action established in article 101 of this Law.

79. Foreigners may also file a complaint for crimes committed against their persons or property or the persons or property of those they represent, after compliance with the provisions of Article 280, if they are not included in the last paragraph of Article 281.

80. LO 1/2004, of December 28, Comprehensive Protection Measures against Gender Violence, art. 29-2: "2. The head of the Government Delegation against Gender Violence will be entitled before the jurisdictional bodies to intervene in defense of the rights and interests protected in this law in collaboration and coordination with the administrations with powers in the matter.

81. CHOZAS ALONSO, JM, coordinator, "The sentence on costs and the popular accusation", V/ lex Intelligent legal information , pp 306-312, https://vlex.es/vid/condena-costas-acusacion-popular-638184509.

82. STS 682/2006 (Second Chamber) of June 25, 2006 (ES :TS:2006:4043), rapporteur: His Excellency Mr. Joaquín Delgado García.

83. Art. 239 LECrim where the role of procedural costs is collected.

84. Art. 240 LECrim where it is established regarding the costs will be condemned to be paid by the defendants but not if they are acquitted, or will be condemned to be paid by the private complainant or the civil plaintiff when they have acted with bad faith or recklessness.

85. The Criminal Procedure Law in art. 112 establishes: " Once only the criminal action has been exercised, the civil action will also be deemed to have been used, unless the injured party renounces it or expressly reserves it to be exercised after the criminal trial has ended, if applicable."

86. Article 112 LECrim is modified by LO 10/2022, of September 6, on the Comprehensive Guarantee of Sexual Freedom, which through Final Provision First-2 includes: "However, even if civil action had previously been waived , if the consequences of the crime are more serious than those anticipated at the time of the resignation, or if the resignation could have been conditioned by the relationship of the victim with any of the persons responsible for the crime, the resignation from the exercise may be revoked. of the civil action by judicial resolution, at the request of the injured or harmed person and after hearing the parties, as long as it is formulated before the procedure for classifying the crime.

87. STS 64/2014, of February 11 (Criminal Chamber), with His Excellency Mr. Juan Ramón Verdugo Gómez de la Torre as rapporteur, establishes the following: " Consequently, the exercise of criminal action is not extinguished by the resignation of the offended party. In the area of so-called public crimes, criminal proceedings can be initiated, even without the will of the injured party, at the urging of the Public Prosecutor's Office which, in accordance with art. 105, is obliged to exercise criminal action. In the so-called semi-public or semi-private crimes, however, the criminal procedure depends on the presentation of the corresponding complaint by the aggrieved person who, to this extent, may or may not decide whether the criminal procedure is initiated. However, also in these cases, semi-public crimes, once the criminal procedure is opened, a complaint is filed by the offended party, his/her waiver of the exercise of criminal actions will not prevent the continuation of the procedure. Only in the scope of so-called private crimes, the renunciation of the offended party to exercise criminal action extinguishes the possibility of exercising it."

88. Art. 108 LECrim : " The civil action must be brought together with the criminal action by the Public Prosecutor's Office, whether or not there is a private prosecutor in the process; But if the offended party expressly renounces his or her right to restitution, reparation or compensation, the Public Prosecutor's Office will limit itself to requesting the punishment of the guilty parties."

89. STS 414/2016, of May 17 (Criminal Chamber), with His Excellency Mr. Andrés Palomo del Arco as rapporteur, establishes the following: " On the contrary, in criminal proceedings civil action can also be exercised and decided aimed at satisfying the civil liability derived from the illicit act that constitutes a crime or misdemeanor. Furthermore, the legislator, for reasons

of economy or opportunity, considers that the exercise of criminal action entails the exercise of civil action, so that unless the person harmed by the criminal act has waived civil action or has expressly reserved this action to be exercised after the criminal process has ended in the corresponding civil trial (art. 112 LECr), the sentence that puts an end to the criminal process, in the event that it is a conviction (and exceptionally, when it is an acquittal in the cases of art. 118 CP) must also rule on civil liability ex delicto . To this end, the Public Prosecutor's Office is obliged, whether there is a private accuser or not, to exercise civil action, unless the injured party has waived or reserved civil actions (art. 108). LECr)".

90. The art. 31 bis CP, which is added by the sole article 4 of LO 5/2010, of June 22, and the first paragraph of section 5 is modified by the sole article of LO 7/2012, of December 27, and It is also modified by sole article 20 of LO 1/2015, of March 30.

91. Law 37/2011, of October 10, in section 1 says: " When in accordance with the provisions of article 118 of this Law, a legal person must be charged, the appearance will be carried out with it… ."

92. Art. 779-1,3º LECrim : " ……..If all those investigated were minors of criminal age, the proceedings will be transferred to the Juvenile Prosecutor to initiate the procedures of the Law of Criminal Responsibility of Minors"

93. Art. 19 CP: " Minors under eighteen years of age will not be criminally responsible under this Code. When a minor of said age commits a criminal act, he or she may be held responsible in accordance with the provisions of the law that regulates the criminal responsibility of minors.

94. Art. 20- 1 and 3 CP: "The following are exempt from criminal liability:

95. He who at the time of committing the criminal offense, due to any anomaly or psychological alteration, cannot understand the illegality of the act... .. ..

96. The transitory mental disorder will not exempt from punishment when it has been provoked by the subject with the purpose of committing the crime or he has foreseen or should have foreseen its commission.

97. He who, due to suffering alterations in perception since birth or childhood, has seriously altered awareness of reality."

98. STS 705/2017, of October 25, (Criminal Chamber), ECLI ES :TS:2017:3867 , with His Excellency Mr. Alberto Gumersindo Jorge Barreiro as speaker. In this, a security measure is imposed on the perpetrator of the events (breach of precautionary measure and murder), who is none other than a subject with schizophrenic illness.

99. Vienna Convention on Diplomatic Relations of April 18, 1961, Art. 31-1: "The diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State"

100. LO 16/2015, of October 27 on privileges and immunities of Foreign States, International Organizations with Headquarters or Office in Spain and International Conferences and Meetings held in Spain, in its Preamble says: "Currently, as a consequence of The phenomena of international cooperation, international immunities also cover other areas, among which those of international organizations and international conferences and meetings stand out, without forgetting those relating to Heads of State, ….." And in its Art. 1 it says: "The purpose of this Organic Law is to regulate the immunities before the Spanish jurisdictional bodies and, where appropriate, the privileges applicable to: b) The Heads of State (...)".

101. Art. 56-3 CE: " The person of the King is inviolable and is not subject to liability (…) "

102. Art. 71-1 CE: " Deputies and Senators will enjoy inviolability for the opinions expressed in the exercise of their functions."

103. Art. 22 LOTC: "The Magistrates of the Constitutional Court may not be persecuted for the opinions expressed in the exercise of their functions (…) ".

104. LO 3/1981, of April 6 of the Ombudsman: "Art. 6-2 The Ombudsman will enjoy inviolability. He may not be arrested, prosecuted, fined, persecuted or judged based on the opinions he formulates or the acts he performs in the exercise of the powers inherent to his position."

105. Art. 118-1 LECrim : " Any person to whom a punishable act is attributed may exercise the right of defense, intervening in the proceedings, as long as they are informed of its existence, have been subject to arrest or any other precautionary measure or have been has agreed to its processing, for which purpose you will be instructed, without undue delay, of the following rights (…) ".

106. Art. 527 LECrim , states that in the cases of article 509, the detainee or prisoner may be deprived of the following rights if justified by the circumstances of the case:

107. Appoint a lawyer you trust.

108. Communicate with all or any of the people with whom you have the right to do so, except with the judicial authority, the Public Prosecutor's Office and the Forensic Doctor.

109. Meet privately with your lawyer.

110. He or his lawyer have access to the proceedings, except for the essential elements to be able to challenge the legality of the detention.

111. Art. 24 CE: "Everyone has the right (...) to a public trial without undue delay (...)" op . cit.

112. The LECrim in its Art. 112 establishes: "(...) Once only the criminal action is exercised, the civil action will also be understood to be used (...)" op . cit.

113. The LECrim in its Art. 110-1 establishes: "(...) Persons harmed by a crime who have not waived their right may appear to be a party to the case if they did so before the procedure for classifying the crime (...)" .

114. Royal Decree of July 24, 1889 by which the Civil Code is published, in its Art. 1092: "Civil obligations arising from crimes or misdemeanors will be governed by the provisions of the Penal Code."

115. Art. 1093 CC: "Those arising from acts or omissions involving fault or negligence not punishable by law, will be subject to the provisions of Chapter II of Book XVI of this book."

116. Collected in Art. 118 CP.

117. Articles 116 and 120 of the Penal Code, modified by Sole Articles 57 and 58 1/2015, of March 30.

118. LRJAPyPAC 30/1992 , of November 26, in its Article 139-1 establishes: "Individuals will have the right to be compensated by the corresponding Public Administrations for any injury they suffer to any of their property and rights, except in cases of force majeure, provided that the injury is a consequence of the normal or abnormal functioning of public services." The LOPJ 6/1985, of July 1, in its Art 292-1 establishes: "Damage caused to any property or rights by judicial error, as well as those that are a consequence of the abnormal functioning of the Administration of Justice, will give everyone "the injured parties have the right to compensation from the State, except in cases of force majeure, in accordance with the provisions of this Title." Art. 106-2CE establishes: " Individuals, in the terms established by law, will have the right to be compensated for any injury they suffer to any of their property and rights, except in cases of force majeure, provided that the injury is consequence of the operation of public services." Art. 121CE : " Damage caused by judicial error, as well as damage resulting from the abnormal functioning of the Administration of Justice, will give rise to compensation from the State, in accordance with the law."