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BILL THAT SYSTEMATIZES ECONOMIC CRIMES OVERCOMES PREVENTIVE CONSTITUTIONALITY CONTROL

As part of the preventive constitutionality control, the Constitutional Court (" **TC** ") resolved that the provisions of the Bill that systematizes Economic Crimes and Attempts against the Environment (the " **Bill** "), that have the character of constitutional organic law, conform to the Constitution. Thus, for the Bill to become law, it only remains for the President of the Republic to promulgate it, and then proceed with its publication in the Official Gazette.

The analysis of the ruling shows that the TC did not fully agree with the Chamber of Deputies with respect to the classification of the norms that should be submitted to its control, thus discarding some of them and incorporating others to the control of constitutionality. Ultimately, the norms of the Bill that were controlled by the TC were limited to four.

The dissenting minority votes of the Constitutional Court's decision are specially interesting. In particular, it can be observed that the minority votes were in favor of broadening the catalog of legal provisions with constitutional organic character, and therefore subject to prior control of constitutionality. Thus, some ministers of the minority vote were in favor of declaring certain norms unconstitutional, even though they were not subject to the aforementioned control. For instance, the arguments for declaring the following norms unconstitutional can be highlighted:

• Article 16 No. 1 of the Bill, which contemplates the questioned "highly qualified aggravating circumstance" (agravante muy calificada) of active participation of the convicted person in a higher hierarchical position in the organization; and
• The new Article 134 bis of Law 18,046, which incorporates into Chilean law the criminal offense of abuse of a majority position on the board of directors.

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While in the first case, the minority vote focused on the fact that the provision would violate the prohibition to presume criminal liability by law, in the second case, the minority vote highlighted the infringement that the new criminal offense would entail to the principle of specificity.

It should be noted that the TC did not refer directly to the different arguments presented during the proceeding of the preventive control of constitutionality.

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