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THE CONSTITUTIONAL COURT RULES AGAINST THE CONFLICT TO DEFEND LOCAL AUTONOMY FILED BY THE CANARY ISLANDS AGAINST THE GOVERNMENT's CREATION OF A LIST OF PROTECTED AND ENDANGERED SPECIES

The Plenary Meeting of the Constitutional Court has decided to rule against the positive competence question filed by the Government of the Canary Islands against Royal Decree 139/2011, of 4 February 2011, to issue a List of Specially Protected Wildlife Species and a Spanish Catalogue of Endangered Species. The Islands' Government argues that the Spanish Government has infringed autonomous regional competences of legislative and executive power involving protection of the environment, because both the Catalogue and List include *"species endemic to the Canary Islands, or which have their sole point of distribution in the national territory inside of the archipelago."*

The Canary Government's counsel believes that the State has exceeded the limit established by Article 149.1.23 of the CE *("The State holds exclusive competence over the following subjects: basic legislation on protection of the environment, without prejudice to the Autonomous Regions' power to establish additional regulations for protection")*and by Article 32.12 of the Canary Islands Statute of Autonomy *("It is the power of the Canary Islands Autonomous Region to develop legislation and perform its execution in the following subjects: protecting the environment, including dumping within the territorial area of the Autonomous Region")*.In other words, the State has the power to issue basic regulations on various matters, including environmental protection, and the Autonomous Regions have the power to implement them. The infringement of autonomous regional competence took place, according to the Islands' Government, upon including species endemic to the Canary Islands in the List and Catalogue.

The judgment, for which Magistrate Fernando Valdés-Dal Ré wrote the majority opinion, reiterates Court case-law in the sense that *"it is possible, from the perspective of the constitutional order of competences, for the General Administration of the State to establish a single registry for all Spanish territory to centralise the information regarding the sector, with the complementary dual function of having its own information and making it public to others."*And it does so without exceeding the limit established by the Constitution, when it attributes the competence to issue "basic legislation" on the environment.

The inclusion in this single registry of species belonging to a specific Autonomous Region *"is justified, amongst other circumstances, precisely by the species' uniqueness or rarity, which is nothing other than a corollary of the definition of*

biological diversity, supported by the variability of living organisms and the dynamic evolution of habitats and populations."

According to the judgment, *"all of this makes manifest that the uniqueness of certain species identified only in the Canary archipelago at the time of their inclusion in the List or Catalogue does not constitute grounds for excluding exercise of the State competence pursuant to Art.149.1.23 CE, also bearing in mind that said uniqueness is subject to variation due to natural causes or the very means adopted for their protection."*

In conclusion, the Court indicates, the appealed Royal Decree, *"which meets the formal requirements to be considered a basic regulation, performs 'within the subject of protection of the environment, a function of organisation by minimums, which may allow the Autonomous Regions to establish higher levels of protection, but never to reduce them'." "The system for conservation of species included in the List and Catalogue regulated therein, in conclusion, seeks to achieve the objective sought by the basic legislation, that of preserving biological diversity,* "it adds.

Finally, the judgment reminds that, according to reiterated Constitutional Court doctrine, when this basic State regulation is in contradiction of prior autonomous regional provisions, it is the latter which must be adapted to the former. *"It cannot be claimed that the prior exercise of an autonomous regional competence on a specific matter shared by the State and the Autonomous Region impedes or limits the State's full exercise of its competences*."In other words, it cannot be claimed that the State loses the ability to *"modify basic regulation."*

Madrid, 19 July 2013