



TRIBUNAL CONSTITUCIONAL

Gabinete del Presidente

Oficina de Prensa

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THE CONSTITUTIONAL COURT SUPPORTS THE BANK OF SPAIN'S ACTION IN THE CASE OF CREDIT ENTITIES' INSOLVENCY

The Constitutional Court Plenary Meeting has rejected almost in their entirety the unconstitutionality appeals filed by the governments of several Autonomous Regions (Catalonia, Extremadura, Galicia and Madrid) against Royal Decree-Act 9/2009 on the restructuring of banking and the strengthening of credit entities' equity, a regulation which the Government promoted in order to deal with *"the potential systemic risk"* of the financial crisis and which foresees intervention by the Bank of Spain in the case of said entities' insolvency. The judgment, for which Magistrate Fernando Valdés Dal-Ré wrote the majority opinion, was unanimously approved.

The Plenary Meeting rules out, as alleged by Catalonia and Madrid, that the Royal Decree affects the *"Autonomous Regional system"* and, as a result, that it violates Article 86.1 CE due to entailing a *"direct delimitation"* of their competences. On the contrary, the judgment states, the questioned rule of Law falls within the scope of the exclusive competences which the Constitution attributes to the State *"on the subject of mercantile legislation, the bases for organisation of credit, banking and insurance, and the bases and coordination of the general planning of economic activity."* Regarding the aforementioned Royal Decree, the Court highlights that it is an Act of an *"extraordinary or exceptional"* nature that was enacted in order to *"articulate the strategy necessary on the subject of banking sector restructuring, within the context of the international financial crisis, by establishing a process aimed at increasing the strength and solvency of the Spanish banking system."*

The judgment also rejects *"as a whole"* the claims of unconstitutionality based on the violation of autonomous regional legislation, because, in accordance with reiterated Constitutional Court doctrine *"one cannot claim that the prior exercise of an autonomous regional competence in one matter shared by the State and the Autonomous Regions impedes or limits the State from fully exercising its competences."* In other words the State may modify the basic legislation on matters in which competence is shared *"with the corresponding consequences on the regulations of all Autonomous Regions in terms of their necessary adaptation to the new basic legislation."*

Likewise, the Constitutional Court supports the constitutionality of the article which foresees intervention by the Bank of Spain, to which the Royal Decree attributes the exclusive competence for approving the restructuring plan, as the body which *"guarantees the proper functioning and stability of the financial system as a whole."*

The only flaw of unconstitutionality found by the Court in the challenged Royal Decree is that denounced by Galicia and Catalonia in Article 8.2. This precept confers upon the Autonomous Regions the power to issue a prior report (not binding) on the approval of the restructuring plan by the Bank of Spain. However, not in all

cases, but rather only in those involving savings banks and credit unions. All other credit entities are excluded.

According to the Constitutional Court, *“the existing duality of competences may not be translated into a denial of all autonomous regional competences over all finance or credit entities which are not savings banks or credit unions. The Law, we specify, may not reserve for the State all of the competences regarding the subject of credit entities other than savings banks and credit unions, regardless of their structural and operative characteristics, their fields of action and the risks which they entail for the stability of and confidence in the financial system.”*

From this perspective, the judgment concludes, *“there is no constitutional justification for the procedure of producing a required but not binding report like that which is regulated under Art. 8.2 to be restricted to savings banks or credit unions, insofar as this does nothing but remove all of the content of the previously acknowledged autonomous regional competence assumed in the Statutes of Autonomy regarding the organisation of credit, because it completely ignores any potential participation by Autonomous Regions with respect to other credit entity types.”*

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