



SPANISH CONSTITUTIONAL COURT

Cabinet of the President
Press Office

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THE TC PARTLY UPHOLDS THE GOVERNMENT'S APPEAL AGAINST THE BASQUE COUNTRY PUBLIC SECURITY ACT

The Plenary Meeting of the Spanish Constitutional Court has partly upheld the appeal lodged by the Government against several provisions of Basque Country Act 15/2002, of 28 June, regulating the public security system in Euskadi, on the grounds that it partly invades the State's competence in public security matters. The judgment, where Judge Pedro González-Trevijano acted as Reporting Judge, establishes how Article 8.3.b) should be interpreted in order to conform to the Constitution; and declares two sections of Articles 49.1 and 55, and Article 50 of said Act, "*unconstitutional and void*". The remaining points of the appeal were overruled.

The Plenary Meeting makes a weighted analysis of the competences in question in order to reach an intermediate point between the position of wide attributions defended by the Autonomous Community, and the restrictive position of earlier case-law from the Court on the matter, which limits the scope of autonomous competences to functions related to the organisation of the police and the maintenance of public order. Given that "*the State holds all regulatory and executive powers*" in public security matters, "*except regarding the creation of autonomous security forces*", the Court agrees that autonomous competences may be extended to matters affecting personal and material protection if they are "*inherent or complementary*" thereto.

Regarding Article 8.3.b) of the challenged Act, which foresees the integration of a state representative in the Public Security Council of Euskadi, the Court establishes that its wording is constitutional provided that the State holds the "*final decision*" on membership of such body, and the terms of this participation. Co-operation between the various Public Administrations, adds the judgment, "*must necessarily be voluntary, as already mentioned, which is why this participation must be freely established by the State which, in any event, holds the final decision on whether to participate in the Public Security Council of Euskadi and the terms of this participation*".

The Court declares unconstitutional Article 49.1 of the challenged act, whereby any neighbouring towns with a population less than 20,000 or which do not exceed 50,000 overall, will be able to "*associate*" "*for the provision of security services when there are insufficient resources individually considered*". This provision exceeds autonomous competences, the judgment explains, because although an Autonomous Community may authorise this association, only the State "*may determine the conditions to be met by association agreements*".

After broadly recognising autonomous competences in private security matters, the judgment declared Article 50 unconstitutional, which entitles the Basque Government to develop "*the conditions and premises necessary in order for private persons and companies to provide security and investigation services in Euskadi*". The judgment points out that, in private security matters, all regulatory powers are held by the State.

The Court reaches the same conclusion on the same grounds with respect to the first paragraph of Article 55, entitling the Basque Government to execute “*State and Basque Autonomous Community laws on private security*”. The Plenary Meeting cancels the wording “*and of the Autonomous Community of Euskadi*” given that “*regulatory powers in private security matters are exclusively held by the State*”.

Finally, the Court declares constitutional two other sections of said Article 55. The Court considers that “*the inspection and sanctioning of private security activities*”, attributed to the Basque Government, are “*material steps related to personal and material security and, as such, are inherent or complementary to the powers derived from an autonomous police force*”. Autonomous competence to “*authorise private security training facilities*” also complies with the Constitution if the head office is located in the Autonomous Community, as the Court declared in 2010.

Madrid, 13June 2014.