



INFORMATION NOTE No. 86/2014

THE TC REPEALS THE REGIONAL ACT GRANTING TO NAVARRA LEGISLATIVE COMPETENCE IN RELATION TO ADMINISTRATION OF JUSTICE STAFF

The Plenary Meeting of the Spanish Constitutional Court has unanimously upheld the appeal lodged by the Government against several precepts of Regional Act 7/20112014, of 24 March, regulating various aspects of the legal regime applicable to the staff working for the Administration of Justice in Navarra. The Judgment, where Judge Ricardo Enríquez acted as Reporting Judge, considers that the challenged rule invades certain competences, which, according to Arts. 149.1.5) and 122.1 of the Spanish Constitution (CE), are exclusively entrusted to the State.

The Government and the Parliament of Navarra both claimed that, according to the Reinstatement and Improvement Act of the Government of Navarra (LORAFNA), in relation to the Spanish Constitution and the Public General Act of the Judiciary (LOPJ), the competences of the Government of Navarra regulating the statute applicable to the staff of its Administration of Justice are broader than those of other Autonomous Communities and, consequently, also include legislative powers.

Art 60.1 of the LORAFNA states that *“regarding the Administration of Justice, except for the Military Jurisdiction, Navarra will exercise any powers which the Public General Acts of the Judiciary and General Council of the Judiciary recognize or endow to the Government of the State”*. The Judgment explains that this allocation of competences must be based on a prior *“separation”* between the *“essence”* of the Administration of Justice and what is known as *“administration of the Administration of Justice”*, referring to all those human and material resources which are not part of the essence of the Administration of Justice but which *“serve”* the same.

This said, and according to existing case-law from the Court, the Plenary Meeting states that the competences undertaken by Autonomous Communities *“are not part of the essence of the Administration of Justice in strict terms, given their restricted nature as ordered by Art. 149.1.5) of the Spanish Constitution”*; nor are they related to the scope of the *“administration of the Administration of Justice” “in matters which the LOPJ reserves to bodies other than the Government or any of its departments”*. As a consequence, any assignment will involve *“simple and regulatory competences excluding, in any case, legislative competences”*, which is why *“the State will establish the rules on the statute and legal regime of the staff serving the Administration of Justice”*.

In turn, Art. 122.1 CE, states that the LOPJ *“shall determine the legal statute of the staff serving the Administration of Justice”*; as a result, said powers are granted to the state legislator.

To conclude, the judgment reads, *“by virtue of the subrogation clause included in Art. 60.1 of LORAFNA, the Regional Community of Navarra has taken on ordinary and regulatory competences related to the staff serving the Administration of Justice in its territory, but lacks legislative competences to regulate its statute and legal regime”*.

Secondly, the judgment analyses whether the 2003 reform of the LOPJ has acknowledged historical competences in favour of Navarra on civil servants serving the Administration of Justice. In order for Navarra to be entitled to such competences “based on historical rights under the first additional provision of the CE” three conditions must be met:

- 1) The competence in question has historically belonged to the regional law of Navarra. In this regard, and after a “*historical research*”, the TC declares that “*the institutions of Navarra have not historically exercised any competence in Administration of Justice matters but, in fact, regional laws appeared after judicial institutions in Navarra were removed, in the Late Middle Ages, such as the Royal Council and the Higher Court*”.
- 2) Legislative competences should have been included in LORAFNA. In this regard, the Court states that “*although the Region of Navarra holds historical competences in relation to regional and local civil servants it, however, only holds the powers granted by the subrogation clause of Art. 60.1 LORAFNA in relation to the staff serving the Administration of Justice*” (the clause is not part of regional law).
- 3) The competence entrusted must be compatible with the Spanish Constitution. The judgment states that, in this regard, the “*limit*” on Autonomous Communities does not only lie in Art. 149.1.5) CE, which grants the State competence in Administration of Justice matters, but also in Art. 122.1 CE, which states that the LOPJ “*shall determine the legal statute of the staff serving the Administration of Justice*”, therefore “*preventing Autonomous Communities from exercising legislative competences in the matter*”.

To conclude, the Plenary Meeting claims that “*the Autonomous State which arises from the 1978 Constitution is the legal framework which has allowed Navarra to exercise regulatory and executory competences over Administration of Justice staff that were absent in historical regional law*”. Therefore, “*the legal provisions challenged by the Government of Spain do not conform to the constitutional order for the distribution of competences, and are therefore unconstitutional and void*”.

Madrid, 12 November 2014.