



INFORMATION NOTE No. 19/2015

THE TC DISMISSES THE IDEA THAT MANY DEMONSTRATIONS ON THE SAME MATTER EXHAUSTS THE RIGHT OF DEMONSTRATION AND JUSTIFIES ITS PROHIBITION

Chamber Two of the Spanish Constitutional Court has overruled a resolution issued by the Sub-Delegation of the Government in Jaén, on the grounds that it infringes “*the essential content*” of the right to hold a meeting. For the first time in this judgment, the Court has analysed whether the objective of the right of demonstration may be exhausted and if this possible exhaustion justifies the prohibition of a citizen concentration. The Judgment, where Ricardo Enríquez acted as Reporting Judge, has granted constitutional protection to Confederación Sindical de Comisiones Obreras in Andalusia.

The facts giving rise to the appeal took place on 27 February 2014, when the Sub-Delegation of the Government in Jaén agreed to forbid the holding of marches and concentrations called by the applicant of constitutional protection, on the grounds that a large number of concentrations had already been called, all with the same objective, and that, consequently, it had already expressed and disseminated its claims; and that “*its insistence on still occupying public spaces will be ostensibly detrimental to “public peace and citizen safety”, requiring a deployment of means that was “disproportionate in relation to the right upheld”. “The holding of additional demonstrations”- the resolution added- “entails an excessive and illegal exercise of said constitutional right”*”.

As in the case of other fundamental rights, the right to hold a meeting and to demonstrate, foreseen in Art. 21 of the Spanish Constitution (CE) is not “*absolute and unlimited*” but is limited, for instance, by any alteration in the public order that may be personally or materially dangerous (as indicated in Art. 21.2 CE) or if it potential collides with “*other constitutional values*”).

Constitutional case-law has already laid down that, if reiterated demonstrations are held and the right to hold a meeting collides with “*other constitutional values*”, other than an alteration in the public order that may be personally or materially dangerous, the adoption of “*adjective limits*” may be justified, for instance, “*when forbidding a road block or exceeding the limits established in municipal regulations on noise levels*”.

Furthermore, the case-law is against the fact that “*the mere exercise of a right of demonstration, in a reiterated manner, may entail and abuse or excess*”, and also that such repetition may “*per se, entail an alternation of the public order*”.

Essentially, “*a reiterated exercise of the right to hold a meeting does not mean it may be forbidden without other justifying reasons; nor is it admissible for a governmental authority to claim regularity to deem as achieved the intended awareness of any the protests pursued by the demonstrators, depriving the right of demonstration of its use or need (...) as otherwise the basic content of the right to hold a meeting would, in fact, be affected*”. “*Notwithstanding the foregoing, the repetition or regularity in exercising the right may in fact constitute a variable which, depending on the specific circumstances of the case, helps*

justify the ordering of conditioning factors or limits on the right of demonstration, as advanced above", says the Chamber.

In this case, states the judgment, the Sub-Delegation of the Government is not basing its prohibition on "*an alteration of the public order, entailing personal or material danger*"; nor may it be deduced from the proceedings that there are "*founded reasons*" to think that this danger may arise. Furthermore, the Town Council of Úbeda did not challenge the holding of the demonstrations called, but just declared that they were "*unbearably*" noisy, which is why it would have sufficed, says the judgment, to adopt "*restrictive measures adjusted and proportional to this excess noise (the "adjective" limitations indicated above)*".

The competent Administration "*generically upheld the idea of "public peace" to link his "public peace" to the freedom of movement of any citizens not participating in the called marches, forbidding, on these grounds alone, the demonstrations announced*". This restriction on the freedom of movement of citizens, an ordinary result of the right of meeting being exercised in places where there is traffic, "*does not allow the authority, per se, to prohibit the holding of peaceful meetings*"; it is necessary for the meeting "*to alter the public order and to constitute a personal or material danger*". Consequently, the grounds used in the challenged resolution to justify its prohibition "*do not conform to Art. 21 CE*".

The Chamber then analyses a novelty: the claim in the challenged resolution that reiterated concentrations deprive any new demonstrations held of their usefulness "*given that*"- it states- "*nothing is added to the message and claim of the demonstrators, which was already distributed and publicized due to earlier marches held with the same objective*".

The Court dismisses the foregoing, indicating first of all that the "*required neutrality of the public powers*" when exercising fundamental rights is incompatible with "*control over the content of the message broadcast, unless it is illegal*"; nor it is possible "*once the message is launched, for the right of demonstration to uphold this message be consumed or exhausted*", as the demonstration is not only used to publicize a message but is also a "*channel for democratic participation of citizens in public affairs, linking this right to the principle of democracy and the higher value of "political pluralism" proclaimed in Art. 1.1 CE*".

As a result, the Court declares that the grounds of the prohibition ordered by the Sub-Delegation of the Government in Jaén "*has not upheld the essential content of the right guaranteed in Article 21 CE, or the limits expressly foreseen therein, or any others derived from any constitutional principles and values*".

Madrid, 2 March 2015.