



## INFORMATION NOTE No. 23/2015

### THE TC UPHOLDS THE APPEAL LODGED BY THE OMBUDSMAN AND ANNULS SEVERAL ARTICLES OF THE *SÍNDIC DE GREUGES* ACT

The Plenary Meeting of the Spanish Constitutional Court (TC) has unanimously and partly upheld the appeal lodged by the Ombudsman against the Catalanian Parliament Act, regulating the "*Síndic de Greuges*", insofar as it is rendered competent in international relations, a matter that Art. 149.1.3 exclusively reserves to the State. The reporting judge of the judgment has been Judge Santiago Martínez-Vares.

On the one hand, the appeal refers to certain articles that entrust the *Síndic de Greuges* with "*exclusive*" supervision of autonomous administrative activity, as well as "*full*" supervision of the local administration and related bodies. This matter was settled in judgments that decided on appeals brought against the Catalanian Statute of Autonomy, which the Plenary Meeting refers to.

At the time, the Court affirmed that the exclusivity granted to the *Síndic de Greuges* within the territory of this Autonomous Community is contrary to the Constitution, as it prevents the Ombudsman from taking action in relation to the Catalanian Administration. Furthermore, "*the scope of the non-judicial guarantee held by the Ombudsman cannot be limited to supervising the Central State Administration, but should include any Public Administrations*". However, the *Síndic de Greuges*'s supervision of the local Administration of Catalonia and dependent bodies is in fact constitutional, provided that such supervision is not "*exclusive or excludes the Ombudsman's supervision*".

Art. 78 of the Act that is now being challenged regulates collaboration between the *Síndic de Greuges* and the Ombudsman; according to the appellant, this infringes the competence of Parliament to regulate relations between the Ombudsman and autonomous Parliamentary Commissioners. This issue was also settled in judgments delivered on the Statute of Catalonia, which stated that the cooperation provision "*does not impose anything on the State, which is therefore entirely free to act*".

Consequently, the judgment declares the constitutionality of the first set of provisions challenged- Art. 3.1, Art. 26.b) "*Local Administration*", and c) "*Or to the Local Administration*" and Art. 78 of the *Síndic de Greuges* Act- if interpreted in the aforementioned terms.

The appeal affects a second set of provisions, granting the *Síndic de Greuges* status as a Catalanian Authority to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which are regulated therein. The Court has declared these unconstitutional on the grounds the competence in international relations, a matter exclusively entrusted by the Constitution to the State (Art. 149.1.3 CE), has been breached.

The judgment explains that not all international activities constitute "*international relations*"; there are activities which, in any case "*should be excluded from the international activity of Autonomous Communities*". Constitutional case-law has established that

*“international activities that may be executed by Autonomous Communities should be deemed as limited to those that do not involve a ius contrahendi (execution of treaties), immediate and actual obligations vis-à-vis foreign public powers, do not affect a State’s foreign policy and do not make it liable to foreign States or inter or supranational organizations”.* Furthermore, it has pointed out that the State *“may establish measures that regulate and coordinate the internal activities of Autonomous Communities”.*

In this case, the Voluntary Protocol of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Spain in 2006, *“creates international obligations and foresees international liability of the State, the only one responsible for compliance with the Protocol”.* As a Protocol signatory, amongst other duties, Spain has undertaken an *“obligation”* to designate a body acting as a National Device to Prevent Torture, which is the Ombudsman.

Consequently, creating a Catalonian Authority to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment *“is incompatible”* with the Constitution, as it invades an exclusive competence of the State. *“It is not an unclear matter- states the judgment- (..) rather, it covers the core of this exclusive competence, perfectly defined, consisting of characteristic matters of international law, for which Autonomous Communities are not competent. Only the State is competent to designate the national prevention devices foreseen in the Protocol”.*

The Court has dismissed the idea of competence being held by an Autonomous Community further to Art. 196.4 of the State, as the provision *“does not enshrine any competence title whatsoever entailing the fragmentation of the State’s exclusive competence”;* rather, the provision contains a mandate for the Generalitat, the Institution in charge of *“adopting the necessary measures” in order to execute the obligations derived from any international treaties and conventions ratified by Spain or that bind the State as part of its competences”.*

Madrid, 6 March 2015.