



INFORMATIVE NOTE No. 20/2016

THE TC ENDORSES THE MEASURES APPROVED BY THE GOVERNMENT OF THE BALEARIC ISLANDS TO IMPLEMENT ITS INTEGRATED LINGUISTIC EDUCATION MODEL IN THE 2013-2014 SCHOOL YEAR

The Plenary Meeting of the Constitutional Court (Tribunal Constitucional) has unanimously dismissed practically the entire appeal lodged by the Socialist Parliamentary Group in the Senate against Decree Law 5/2013, of 6 September, whereby the Government of the Balearic Islands adopted a series of urgent measures to implement, in the 2013-2014 school year, an integrated language system at non-university teaching centres. The judgment, for which Juan Antonio Xiol acted as Reporting Judge, considers that most of the provisions challenged (except for Arts. 4 and 5, the single additional provision and the single repealing provision, which have been declared unconstitutional and void) do not surpass the constitutional limits imposed on emergency legislation (Art. 86.1 Spanish Constitution (CE)); furthermore, it disagrees with the claim that the disputed rule regulates “*essential matters of the right to education*”, which would be forbidden, or that it infringes the right to effective judicial protection due to breaching a judicial mandate (Art. 24.1 CE).

The limits established by the Constitution in Art. 86.1 on emergency state legislation are also applicable to decree-laws issued by the governments of Autonomous Communities. In addition to these limits are the ones foreseen in Art. 49.1 of the Statute of Autonomy of the Balearic Islands. According to the case-law, in order to meet the mandate of Art. 86.1, the governing body should explicitly and justifiably explain the “*extraordinary and urgent need*” justifying use of a decree; furthermore, connectedness should exist between this urgent situation and the measures approved to handle it.

As affirmed in the preamble, Decree-Law 5/2013 was a response to the need for schools in the Balearic Islands to be able to immediately start up an integrated language project in the 2013-2014 academic year, which the Government had approved a few years back. The High Court of Justice of the Balearic Islands (TSJIB) had suspended the project’s application calendar and this make it difficult for the new school year to commence. This suspension only affected the Annex of Decree 15/2013, of 19 April, and consequently only the application calendar, not the other articles or the very content of the integrated language project.

The judgment considers that the Government of the Balearic Islands has met the first requirement foreseen in the Constitution (to explain the extraordinary and urgent need claimed), as it is “*reasonably acceptable*” for the suspension of an application calendar for the linguistic educational project “*just seven days prior to commencement of the school year to require immediate regulatory action*”. At the time, “*schools had already approved their respective integrated language projects and the necessary planning had already been completed in all fields: assignment of teachers, school schedules, timetable and purchase of schoolbooks by the*

students' families". In short, *"the paradox arose of schools having teaching projects already approved by a valid and effective Decree (...) but lacking an implementation calendar"*.

In turn, the Court considers that the second requirement is met (connectedness between the emergency situation and the measures adopted) by all the challenged provisions, except for Arts. 4 and 5, as their purpose is not to cover the urgent need justifying the approval of a Decree Law, but to change some of the provisions not suspended by the TSJIB.

Said Art. 4 replaces Art. 20 of Decree 15/2013, of 19 April, on the requirements to be met by schools in order to approve *"other projects"* apart from linguistic education. Consequently, Art. 4 is unconstitutional and null and void, as it is not connected to the emergency situation caused by the absence of a calendar; this declared nullity also covers the single repealing provision of the challenged rule, when it repeals said Art. 20 of Decree 15/2013.

Art. 5, on *"transitional projects"*, has also been declared unconstitutional and null and void, as its content did not require immediate regulatory action. In fact, as specified in the preamble of the challenged decree, *"all the schools (state, semi-private and private), except for one, have submitted a project for the integrated treatment of languages within the timeframe established"*. *"It may be easily inferred"*, states the Court, *"that it is neither urgent nor necessary to approve a precept responding to individual situations that may arise in the project approval process"*. The Court has also declared the unconstitutionality and nullity of the final additional provision, due to a lack of connectedness.

Finally, the judgment does not consider that the challenged decree infringes Arts. 86.1 CE and 49.1 of the Statute because it regulates a matter- education- to which it is not entitled as it is a fundamental right. Approval of a calendar merely involves affirming which pre-school, primary and mandatory secondary school years should apply integrated language projects, *"whose constitutionality is not disputed"*, *"as a mere procedural issue, as it does not affect the material content of the educational project"*. Consequently, *"the challenged provisions do not affect the general rules applicable to the right to education or the content or basic components of said right"*.

In order to determine whether the right to effective judicial protection has been infringed, the judgment examines whether the challenged law has entailed *"a disproportionate sacrifice of the interests upheld in court"*, i.e. whether the measures challenged pass the *"proportionality test"*. In this case, Art. 24.1 CE has not been breached because the challenged decree is *"reasonably justified"* and is a *"suitable"* measure, making it possible for students to begin the school year on 13 September 2013; it is also *"proportional"* because it enabled the application of regulations *"in force at the time, which were necessary in order to be able to teach at non-university schools in this Autonomous Community"* (Decree 15/2013, of 19 April).

Madrid, 11 March 2016