



## INFORMATIVE NOTE No. 68/2016

### THE TC LIFTS THE INTERIM SUSPENSION OF SEVERAL ARTICLES OF THE CATALONIAN ACT ON PROFESSIONAL SPORTS

The Plenary Meeting of the Constitutional Court (TC) has agreed to partly lift the interim suspension ordered last 1 March over six articles of Catalanian Act 7/2015, of 14 May, reforming Act 3/2008, on the practice of professional sports. The Court has lifted its interim measure over Arts. 6, 8, 9, 10 and 11 but has left it in relation to Art. 4. The validity of said precepts was provisionally suspended as a result of granting leave to proceed to an unconstitutionality appeal, whereby the Government had applied for this interim measure by upholding Art. 161.2 Spanish Constitution (CE).

In order to decide whether or not to lift the interim suspension, the Court has considered, on the one hand, the interests at play- both the general and public interest and any individual or private interest- and, on the other, any damage that is difficult to repair or is irreparable that may arise from its decision, i.e. to continue with or lift the interim measure. This appraisal should be made by the Court without examining the merits of the issues raised in the claim.

Arts. 6, 8, 9, 10 and 11 refer to the registration of professionals in the multi-sports promotion sector, sports coaches, physical education teachers, trainers, sports managers and lifeguards, etc. at the Official Registry of Sports Professionals in Catalonia. In turn, Art. 4 entitles the Catalanian *Generalitat* to execute arrangements and agreements with other sports professionals registries in EU member states, in order to establish the terms in which to practice this activity, both in Catalonia and in EU member states.

With respect to the first set of precepts, the Plenary Meeting disagrees that a lifting of the suspension may distort, as claimed by the State Attorney, the principle of market unity, consequently causing “*serious damage to the public interest which it serves*”. It also disagrees with the fact that it affects the freedom of establishment and movement of sports professional and their equality when accessing the job market. The Court states that the plaintiff has not met the requirement of providing specific data to justify this potential damage. Consequently, it has agreed to lift the interim suspension with respect to Arts. 6, 8, 9, 10 and 11 of the challenged act.

On the other hand, the Court has decided to continue with its interim suspension with respect to Art. 4, as it allows the *Generalitat* to exercise a “*ius contrahendi*”, a competence exclusively entrusted to the State, as it is “*able to acknowledge rights and generate obligations vis-à-vis foreign public powers*”. Any agreements that the *Generalitat* could execute would have, further to this article, “*unequivocal legal effects*”. Moreover, the precept assigns this right to the *Generalitat* “*unilaterally, i.e. overlooking the State’s coordination, specified as the Autonomous Community’s obligation to forward any draft agreements to the Ministry of Foreign Affairs and Cooperation, before signature*”.

Further to the foregoing, explains the Plenary Meeting, the lifting of this suspension “would cause damage that is difficult to repair or irreparable for the general interest of international relations and Spain’s foreign policy”, as it would entail “obligations vis-à-vis foreign public powers”. The precept exceeds the Generalitat’s remit, which “in no event includes establishing links with other States (even if part of the European Union), exceeding the scope of non-regulatory agreements that are able to acknowledge rights and establish obligations in public law, to include the practice of professional sports, as is the case here”.

Madrid, 15 July 2016