



SPANISH CONSTITUTIONAL COURT

Cabinet of the President

Press Office

NOTA INFORMATIVA Nº 85 /2016

THE CONSTITUTIONAL COURT ASSERTS THE GENERALITAT COMPETENCE IN PUBLIC SHOWS DOES NOT INCLUDE PROHIBITING BULLFIGHTS, DECLARED INTANGIBLE CULTURAL HERITAGE

The Plenum of the Constitutional Court upholds the action of unconstitutionality submitted by the Parliamentary Group of the Popular Party in the Senate declaring unconstitutional Art. 1 of the Law 28/2010 that prohibits bullfights and other bull shows in Catalonia. The Court considers that the Generalitat “has undermined” the State competence in “*preserving common cultural heritage*”, given that bullfights are part of the Spanish cultural heritage. The Judgment has two dissenting opinions: the former signed by the Vice-President, Adela Asua Batarrita, also adhered by the Judges Fernando Valdés Dal-Ré and the latter by the Judge Juan Antonio Xiol Ríos.

The Court explains that Article 1 of the regional Law affects animal protection and public shows regulation competences that correspond to the *Generalitat*. In any case, the exercise of these competences by the Autonomous Community must respect the powers allocated by the Constitution in the State. For this reason, the challenged law should be analysed from the point of view of the State powers on cultural heritage and public safety.

First, the Judgment analyses, whether the regional regulation affects the State power on public safety.

In this regard, it points out that this power refers to “administrative regulation about requirements and conditions that should comply public shows to ensure its free development and security of participants”.

“It is obvious”, states the Constitutional Court, “that Autonomous Communities have jurisdiction to survey public shows. Consequently, the exercise of the competence should include ‘public employees’. However, the exercise of this power “should cover up with the issues reserved to the State, which cannot be undermined”. Noted the inexistence of violation of the aforementioned State power, the Court analyses if the challenged Law affects State competences on culture.

In culture, explains the Judgment, there are competing spheres of powers between the State and Autonomous Communities. These competences “should always pursue the preservation of cultural values”. The constitutional case law has established that the State has the power “to preserve the common cultural heritage”. The Court stresses that it is “uncontroversial” that “bullfighting is really

present in our country's social reality". Moreover, bullfighting "involve different aspects that explain the competing spheres of competences" given "its complex character as a historical, social, cultural, artistic, economic phenomenon". Bullfighting "may be part of the common cultural heritage and that allows the intervention of the State". The State, in exercise of its powers on culture has passed regulations "that declare bullfighting as cultural heritage". The Judgment reminds that cultural dimension, established in the Law since 1991 and mentioned by the Supreme Court in 1998, has been promoted after passing Law 18/2013, on the regulation of bullfighting and Law 10/2015 that protects intangible cultural heritage. The validity of these two Laws has not been challenged and they were passed after the present action of unconstitutionality.

The Regional Parliament has freedom "to interpret the Catalonian society wishes and opinions about this matter when it legislates about public shows". However, differences in interpretation "should be expressed in accordance with the Constitution and competence distribution ...) so that they do not deter or undermine the legitimate State competences in culture as declared in Art. 149.2" of the Spanish Constitution.

The challenged Law "undermines State competences in culture and hinders their exercise in Catalonia" because it bans bullfighting.

An Autonomous Community may "regulate the development of bullfighting" and "establish requirements for care and attention of fighting bulls". Furthermore, Autonomous Communities have the duty "to adopt concrete measures to promote bullfighting".

"The respect and protection of Spanish cultural diversity (Art. 46 of the Constitution) is an expression of its own diversity which implies the impossibility of banning a show or celebration of deep-rooted tradition if its content is not illegal nor violates fundamental rights". The Judgment states that the objective is "to ensure that those national traditions are enriched and complemented with regional culture and traditions".

Due to all this, the Court nullifies Art. 1 of the Catalan Law 28/2010 because "its mandates overstep Autonomous Communities competences undermining State competences foreseen in Art. 149.2 of the Constitution". The three Judges that present dissenting opinions do not agree with the Judgment reasoning about the distribution of powers on culture. They consider that the powers of Autonomous Communities were not sufficiently taken into account.

Judges Asua and Valdés, in their dissenting opinion, sustain the validity of the challenged Catalan Law. Firstly, they state that Art. 149.2 of the Constitution "does not include a legislative power" of the State. Hence, it "is not entitled to shift" exclusive regional powers, such as the ones regarding public shows and animal protection. "If the State does not have the power according to Art. 149.1 of the Constitution, it cannot turn to Art. 149.2 as second best...". Secondly, these Judges consider that the obligation to protect bullfighting is not enough "to annul" a "specific prohibition" covered by the exercise of two regional competences. The

regional regulation does not prevent from protecting other bullfighting exhibitions as “cultural heritage”.

In his dissenting opinion, Judge Xiol, points out that regional powers on public shows and animal protection are “the most specific and directly concerned with the matter”. Against these, the State competence in preserving bullfighting cannot be imposed throughout the country absolutely, since it exists a conflict between bullfighting and animal protection culture, as we have seen in the challenged Law. The State duty of preserving bullfighting depends on the implementation of bullfighting in different areas of the country (as acknowledge by French and Colombian Courts). In some of the areas, bullfighting has even been prohibited for years already in the face of indifference from the State. The Judgment should have taken into account a decline of interest in bullfighting in Catalonia during the last years. Neither forget that the Constitution does not establish a unique Spanish culture, but various cultures, “the cultures” of “the peoples” of Spain.

Madrid, 8th November 2016.