



SPANISH CONSTITUTIONAL COURT

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THE CONSTITUTIONAL COURT UPHOLDS THE LAW ON NATIONAL SECURITY. THE NEW REGULATION DOES NOT INFRINGE REGIONAL JURISDICTION

The Constitutional Court has rendered a Judgment on the action of unconstitutionality lodged by the Government of Catalonia had lodged against the Law 36/2015, 28th September, on National Security. Judge Juan Antonio Xiol acted as Rapporteur.

The Judgment states that the Law does not invade the Generalitat of Catalonia competences and endorses that Articles 4.3 and 15 c), which regulate the participation of Autonomous Communities in the elaboration of the National Security Strategy (NSS) and the Interested Situation for National Security (ISNS) declaration. On the other hand, the Court considers Art. 24.2 of the Law —that foresees regional contribution to the preservation of national securities— complies with the Constitution provided that the regional duty to contribute with human and material resources to crisis situations established in this legal provision refers exclusively to those resources strictly necessary to tackle a specific emergency.

Firstly, the action of unconstitutionality claimed that Art. 4.3 of the Law infringed regional powers because it does not recognize any participation of the Autonomous Communities on drawing up the “National Security Strategy (NSS)”, though Catalonia has its own police force and security functions. The Court states that the Law “establishes enforcement mechanisms” to ensure the regional participation “in the national security policy” and, particularly, in “the NSS elaboration when it concerns their jurisdiction”. In fact, the Autonomous Communities will take part in the National Security Council, that approves the planning and strategy directions, as well as in the Sectorial Conference. Although the LNS does not include the level of participation in state decisions that the Autonomous Community considers desirable, this fact does not make the regulation unconstitutional, the Judgment concludes.

Secondly, the Generalitat of Catalonia contests the constitutionality of Art. 15 c) of the Law which establishes that it is the Prime Minister who decides to declare the Interested Situation for National Security (ISNS). The Generalitat argues that this provision contravenes regional self-government because it does not include the possibility declaring an ISNS at the request of a regional president. The Judgment holds that the analysis of the regulation allows to conclude that “the Autonomous Communities can call on the declaration” because the Law expressly includes their participation in the crisis management from the early stages to its detection, as well as their intervention in the National Security Council even before the declaration is made. Finally, the Generalitat reports the infringement of the autonomous competences by Art. 24.2 LNS, which establishes the regional authorities obligation to contribute with human and material resources under their control when there is a declaration of Interested Situation

for National Security. The Generalitat does not question the State power to declare the ISNS, but reproaches that the legal regulation does not include collaboration and cooperation actions by the Generalitat concerning the necessary resources.

According to the Judgment, the ISNS is a mechanism to confront critical situations that requires the intervention of different Public Administrations, defined by a “reinforced coordination of the competent authorities” whose direction is undertaken by the Government.

The Judgment indicates that, as the Law predicts, the ISNS does not alter the powers distribution because each Administration exercises their own, “while the context of further coordination, justified by the importance and relevance of the crisis that must be tackled, demands a unitary mobilization of the available resources.” The obligation of resources provision does not prevent the exercise of the regional competences in this field, like for instance Mossos d’Esquadra’s (Catalonia’s regional police force) functions or the organization of the Generalitat of Catalonia own police services. In fact, the ISNS involves “the enhanced cooperation between Administrations”, which “presupposes, logically, the existence of autonomous competences that must be coordinated, competences that the State must respect...”. Additionally, the duty to contribute with resources does not mean either an “organic and permanent assignment” of those resources to the State. This would be incompatible with the regional competence. It is a coordination mechanism and, as such, “involves the setting of means and systems that allow the reciprocal information, the technical uniformity in specific aspects and the authorities’ joint action in the exercise of their powers ...”

It would be different, the Judgment adds, if Art. 24.2 referred to any Autonomous Communities resources and not only to the directly involved in the management of c situations. To prevent this risk, the Court declares the constitutionality of the challenged provision “provided that the rule concerns only to human and material resources ... necessary to address the Interested Situation for National Security with the powers and the ordinary means of the administrations contributors, in the exercise of their respective competences.

Madrid, 12th December 2016.