



INFORMATIVE NOTE No. 36/2017

THE CONSTITUTIONAL COURT PARTLY UPHOLDS THE COMPETENCE CONFLICT BROUGHT BY THE GOVERNMENT AGAINST THE *GENERALITAT* DECREE CHANGING THE DEMARCATION OF CATALONIAN REGISTRIES

The Plenary Meeting of the Constitutional Court has unanimously agreed to declare the unconstitutionality and nullity of various provisions of Catalanian *Generalitat* Decree 69/2015, of 5 May, changing the demarcation of land, commercial and movable asset registries in Catalonia. The Court considers that the provisions annulled exceed the “*executive*” competence of this Autonomous Community, consequently infringing state competence on the arrangement of registries, to include “*comprehensive regulation*” of the matter. The Vice President of the Court, Encarnación Roca, acted as Reporting Judge.

The content of this dispute is strictly related to competences. Consequently, the judgment recalls that Art. 149.1.8 Spanish Constitution (*Constitución Española* –“*CE*”) entrusts the State with exclusive competence in “*the arrangement of registries*” and public instruments; the term “registries” basically refers to those covering private law matters, not others. As for the functions undertaken by Autonomous Communities, it explains that these should be covered by the scope of “*execution of state rules*”.

According to constant constitutional doctrine, state competence on the “*arrangement*” of public registries includes “*comprehensive regulation of the matter*”, to also include “*any rules, of legislative or regulatory rank*” as well as “*any execution measures directed at achieving mortgage consistency in real estate transactions*”. Furthermore, the State is entrusted with the “*configuration of registries*” and regulations on the staff regime.

In turn, an Autonomous Community holds “*executive*” competences, entailing “*the adoption of the necessary execution measures to guarantee the materialisation or effective application of state rules on registry demarcation within its territorial scope*”. This excludes from autonomous competence “*the possibility of enacting own regulations or establishing a separate legal regime in the matter*”.

The judgment recalls that the Government has recently passed Royal Decree 195/2017, of 3 March, changing the demarcation of Land, Commercial and Movable Asset Registries. This rule should not apply as an examination parameter in the present case (as only constitutional rules and statutory rules on competences carry out this function, as well as how they are interpreted by constitutional doctrine) but, however, should be taken into account insofar as “*it expresses the terms in which the State has interpreted its own competence and, consequently, also any autonomous competences related thereto*”.

Royal Decree 195/2017 consolidates the criteria that the General Directorate of Registries and Notaries Public established in a Resolution dated 7 November 2013, providing that the Catalanian *Generalitat*, further to its executive competences, is entitled to “*specifically determine any registries to be regrouped or grouped*”; “*determining any registries that should not be excluded, in exceptional situations, for territorial organisation reasons*”; “*making alterations in mortgage districts further to the general principle*”; “*increasing the number of official commercial registrar positions in each territorial scope according to state criteria*”; and “*appointing provisional registrars in the cases foreseen in this Royal Decree*”.

In its appeal, the *Generalitat* is claiming that the challenged rule is legitimate, insofar as it conforms both to Royal Decree 172/2007 (in force at the time the challenged autonomous decree was passed) and to the provisions of said Royal Decree 195/2017. This argument, however, is unacceptable; what is determining, explains the Court, is not that some provisions of the challenged autonomous rule coincide with the provisions of the 2017 Royal Decree, but specifically “*whether the Autonomous Community is or not competent to issue these regulations*”.

Further to the foregoing reasoning, the judgment analyses the challenged precepts and reaches the conclusion that the provisions contained in Arts. 1, 2, 3, 1st and 2nd additional provisions, a paragraph of the 3rd additional provision, the 1st final provision, the transitional provision, the first final provision and section two of the second final provision are unconstitutional and null and void, due to invading the exclusive competence that Art. 149.1.8 Spanish Constitution entrusts to the State in registry arrangement matters.

Madrid, 1 June 2017.