



CONSTITUTIONAL COURT OF SPAIN

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### THE CONSTITUTIONAL COURT DECLARES THAT MANAGEMENT OF AID FOR THE UNEMPLOYED WHO HAVE EXHAUSTED THEIR UNEMPLOYMENT BENEFIT IS THE RESPONSIBILITY OF THE AUTONOMOUS REGIONS

The Plenary Session of the Constitutional Court has partially upheld the appeal on the grounds of unconstitutionality lodged by the Government of the Basque Country against Legislative Royal Decree 1/2013, of 25 January, extending the professional retraining programme for people who have exhausted unemployment benefit and for the adoption of urgent measures to find work for and afford social protection to the unemployed. On the one hand, the Court holds, in view of the urgency of the measures adopted, that the use of the Legislative Decree is justified, which was questioned by the appellants; on the other hand, it declares unconstitutional and void article 1 and the second additional provision, as, in view of the fact that they centralise, in the State Public Employment Service, the management of economic aid for the unemployed who have exhausted their unemployment benefit, they infringe the distribution of competencies with regards to employment. The judgment, wherein Magistrate Judge Cándido Conde-Pumpido acted as rapporteur, included the dissenting opinion of Magistrate Judge Alfredo Montoya, who was joined by the President of the Court, Juan José González Rivas.

The Basque Government denounces, first, a violation of article 86.1 of the Spanish Constitution. Here, it alleges that the use of the Legislative Royal Decree was unjustified because the measures approved lacked the extraordinary and urgent necessity that the Constitution demands for legislation via this channel. The Court dismisses this claim.

The Court holds that *“in an express, specific and reasoned manner, the Government has provided sufficient justification”* for the urgent adoption of the questioned measure. This justification is grounded *“on the situation of economic crisis and high levels of unemployment in our country”*, circumstances that were exacerbated by the approaching finalisation (15 February 2013) of the operative period of the programme for people who have exhausted unemployment benefit (*“Plan Prepara”*). These factors led the Government to deem necessary *“the passing and immediate implementation of a new extension”* to the aforementioned programme, with a view to safeguarding the minimum income of unemployed beneficiaries.

The requisite of demonstrating a link between the measures passed and the situation that justifies them is also fulfilled: *“It is clear that there is a direct connection between the defined situation of necessity (primarily the high unemployment rate and the approaching end date of the professional retraining programme for people who have exhausted unemployment benefit) and the questioned measure: namely, the extension of the aforementioned programme”*, which not only contemplates training for the unemployed to help them find jobs, but also the provision of accompanying economic aid.

Secondly, the appellants allege a violation of the distribution of competencies envisaged in the Constitution and in the Statute.

The Court specifies that the competence to which the appeal relates is the promotion of employment. More specifically, we are dealing with measures that have a bearing on the job market, adhering to the directive outlined in article 40.1 of the Spanish Constitution, and that are supported by article 149.1.13 of the Spanish Constitution, which affords the State exclusive competence for the fundamentals and coordination of the general planning of economic activity. Furthermore, article 10.25 of the Statute of Autonomy of the Basque Country assigns the Autonomous Region exclusive competence with regards to the *“promotion, economic development and planning of the economic activity of the Basque Country, in accordance with the general management of the economy”*.

The complaint of the appellants in relation to article 1 and the second additional provision of the challenged law focuses on the assignment of the management of economic aid to the State Public Employment Service. According to constitutional doctrine relating to public subsidies and aid, the State may undertake the general coordination of a sector, and it falls to the Autonomous Regions to develop and implement the State regulation. The doctrine also acknowledges that, under exceptional circumstances, the State may manage public subsidies and aid that are the exclusive competence of the Autonomous Regions. This occurs where centralised management proves essential to ensure the full efficacy of measures and to guarantee the same possibilities of provision and benefit throughout the national territory.

In this specific case, and by virtue of the competence assigned to the State in article 149.1.13 of the Spanish Constitution, the legislature has designed a system for the granting of economic aid wherein *“the functions of recognising, granting and paying require validation by and adherence to the terms and conditions established by the State regulation”*; whereby, it cannot be upheld that the assumption of these executive functions by the State Public Employment Service *“proves essential to guarantee the effectiveness of the measure and its universal provision”*.

Nor can justification for the centralisation of management be provided via arguments relating to the possible mobility of aid beneficiaries to other Autonomous Regions to secure employment. The State, by virtue of its competence for the fundamentals, may *“establish the points of connection that it deems appropriate to determine which Autonomous Region, in each case, is to be assigned the role of granting and paying aid”* and may also establish methods of coordination between the State and the Autonomous Regions and between the Autonomous Regions.

The same might be said in relation to variation of the amount of aid on the basis of economic circumstances. It is the State that, in each case, may *“adjust the economic aid scheme and accompanying payment amounts in accordance with the various circumstances that might arise”*.

As a result, the Court concludes that there are no grounds to justify the centralisation of the management of the accompanying economic aid, and declares void and unconstitutional article 1 and the second additional provision of the law as they contravene the constitutional regulation of competencies.

The judgment also declares void and unconstitutional the provision (contained in the fourth final provision) that empowers, at a general level, the head of the General Directorate of the State Public Employment Service to *“issue any resolutions that are required to enact this royal decree”*, as this function exceeds the regulatory competence that article 149.1.13 of the Spanish Constitution assigns to the State.

Finally, the Court explains that, due to the constitutional principle of legal certainty, the judgment will not affect consolidated legal situations nor the subsistence and continuation of the granting of economic aid to which the precepts declared unconstitutional refer.

In their dissenting opinion, Magistrate Judge Alfredo Montoya and the President of the Court, Juan José González Rivas, hold that the judgment interprets the competency affected by the purpose of the appeal in an erroneous manner. In their opinion, the State competence applicable to the case is the competence relating to the primary legislation and economic system governing Social Security (article 149.1.17 of the Spanish Constitution), as the economic benefits, the management of which is subject to dispute, are not subsidies, but rather *“social benefits similar to the subsidy for unemployment”* and the non-contributory job seekers allowance and, therefore, are integrated within the protective action of the Social Security system. According to constitutional doctrine relating to the economic system governing Social Security, they add, the State not only possesses regulatory authority: with a view to ensuring *“the uniformity of the Social Security system”*, it is also responsible for the economic system, and therefore, exercises powers to manage or disburse funds assigned to the services or benefits within Social Security. As a result, the granting and payment of the aid referred to in the challenged regulation fall to the State.

Madrid, 27 July 2017