



PRESS RELEASE NO. 30/2018

THE CONSTITUTIONAL COURT RULES THAT THE BASQUE LAW ON ADDICTIONS DOES NOT INVADE STATE COMPETENCES IF IT IS LIMITED TO PROVIDE THAT THE PURPOSE OF CANNABIS ASSOCIATIONS IS TO COLLABORATE WITH THE HEALTH ADMINISTRATION

The Plenary Session of the Constitutional Court has unanimously dismissed the appeal lodged by the Government against Article 83 of the Basque Law 1/2016, on Integral Attention to Addictions and Drug Addictions. The Court declared that the challenged provision is in conformity with the Constitution as long as it does not establish the specific nature of the association referring to “*entities of cannabis-consuming persons*”. With regard to these associations, the Basque Law limits itself to provide that they shall collaborate with the health administration. Thus, the only competence affected was the one concerning national health, which is shared between the State and the Basque Autonomous Community. The President of the Court, Juan José González Rivas, acted as Rapporteur for the judgement.

In its appeal, the State Attorney’s Office held that Article 83 of the Basque Law on addictions regulates consumption, supply and distribution of cannabis and, thereby, it invades the State competences about legislation on pharmaceutical products, criminal legislation and public order. The Court has dismissed this claim.

According to the judgement, on the one hand, the challenged provision compels certain private associations to assume “*a range of collaborative tasks with the competent Administration in the realm of the protection of the health of those suffering from addiction to cannabis*”. Therefore, it falls within the autonomous or regional competence of healthcare.

On the other hand, the aforementioned provision allows those so-called entities of cannabis-consuming persons to establish themselves as associations. It also merely assign to them, with no further specifications, “*collaborative tasks with the Administration*”.

On no account does Article 83 “*explicitly*” affirm that associations are to supply their members with cannabis for their personal use, nor that their members may consume that drug within their premises. It may be submitted that the article “*does not predetermine the specific nature of association that those entities of cannabis-consuming persons actually are*”. Likewise, with regard to their activities and functions, it merely provides that they must work together “*with the health administration so that the objectives of health protection and mitigation of damages are reached*”.

On the basis of that interpretation, it may be concluded that the challenged Basque norm does not invade neither criminal legislation, nor legislation governing medication or the public order competence, which are all exclusively reserved to the State. Its content only affects the realm of health protection, in which the State is competent to lay the basis of healthcare (Article 149.1.16 of the Spanish Constitution) and the Autonomous Community is equally competent to develop that basis.

Madrid, 15 March 2018