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THE CONSTITUTIONAL COURT RESOLVES TO LIFT THE PRECAUTIONARY SUSPENSION OF THE LAW REGULATING BULLFIGHTS IN THE BALEARIC ISLANDS

The Plenary Session of the Constitutional Court has unanimously resolved to lift the precautionary suspension ordered on the provisions of Law 9/2017, dated August 3rd, on the regulation of bullfights and the protection of animals in the Balearic Islands. Such articles were previously challenged by the Government of Spain and automatically suspended as a result of the application of article 161.2 of the Spanish Constitution.

The Court considers that the State Attorney has not argued as thoroughly as the constitutional case-law provides, the reasons why in its view, the aforementioned Law should remain suspended. In order to decide whether or not it is necessary to maintain the suspension measure, the Court must consider in the first place both the public and private interests at stake. In the same vein, it shall take a close look at the potential occurrence of any harm that would be *"impossible or difficult to repair"* which may be caused either by the lifting or by the maintenance of the precautionary measure. All of this must be considered without ruling on the object of the appeal.

The State Attorney's Office argued that lifting the suspension might cause serious and irreparable damage to the general interest. On the one hand, because the challenged regulation prohibits bullfights in the Balearic Islands *"as they are understood in the rest of the national territory"*. On the other hand, because such prohibition refers to the modality of bullfighting that State laws protect considering them part of the cultural heritage.

The Plenary explains that, in order to maintain the suspension, it must be *"demonstrated or at least consistently justified"* that the application of the regulation would cause serious damage to the general interest. In the present case, the appellant's argument is *"generic"*. It also relates to matters which affect the substance of the action and on which, by extension, the Court cannot rule until it has rendered its judgement.

Another allegation concerns the potential harm that the enforcement of the Law would cause to private interests. At hearing, the appellant provided a report quantifying the economic losses to be incurred at €4,080,000.

The Court also rejects this argument on the grounds that, according to the information contained in such report, the occurrence of bullfighting celebrations in this Autonomous Community is *"rather low"*. For this reason, *"the overall impact of the activity would be limited"*.

The Plenary explained that the economic damage calculated by the State Attorney is based on an incorrect assumption, which is that the application of the Law would imply *"the complete elimination of bullfighting spectacles"*. The Court explains that the new regulation does not lead to the extinction of these events since *"there are events of bloodless bullfighting (without death or blood) that would be substitutable to the previous ones"*. Nor does the Court accept, since it constitutes a

hypothetical assumption, the argument that bullfighting promoters would not organize these other events in speculation that the public would not attend or enjoy them.

In short, according to the Court, the reasoning on the potential damage to be incurred by private interests is “*unsatisfactory*”.

Finally, the Plenary rejects the contention that, in this case, the criterion of the probability of the alleged claim (*fumus boni iuris*, i.e. *the evident or superficial merit of a legal argument*) can be applied to maintain such suspension. In order for this to be possible, constitutional case-law requires the regulation contained in the Law under discussion to be “*closely similar or literally identical*” to other laws already declared unconstitutional and invalid. According to the State Attorney, there exists such a similarity between the Balearic law at issue and the Catalan law that was declared unconstitutional in Judgment 177/2016.

The Court ruling explains that the regulation of the Balearic Law “*is not identical*” to the one previously declared unconstitutional. The articles now being invoked “*do not prohibit, in general, bullfighting events*” but rather those in which the animal is injured or killed. Moreover, such regulation also contains provisions aimed at ensuring the well-being of cattle animals.

Madrid, 23 March 2018.