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THE CONSTITUTIONAL COURT DECLARES THE UNCONSTITUTIONALITY OF THE STATE CONTROL EXERCISED OVER CATALONIA'S SUBSIDIES THROUGH THE NATIONAL SUBSIDIES DATABASE

The Plenary Session of the Constitutional Court has partially upheld the appeal brought by the Government of Catalonia against article 30.1 of the Spanish National Subsidies Database (BDNS) [article 17.3 b) of Law 38/2003, dated November 17th, on General Subsidies]. In particular, the judgement declared the invalidity of the word "*through*". In its appeal, the "*Generalitat*" questioned the potential interference of a state body, such as the BDNS, in the processing of public calls for subsidies to be allocated made by the Catalan government. That is to say, the Government of Catalonia contested the necessary intermediation of this body: indeed, an extract of the call for subsidy applications must be sent "*through*" this body to the corresponding official gazette for publication. Thus, the subsidies cannot be allocated in the event this requirement is omitted. Magistrate Ricardo Enríquez Sancho acted as Rapporteur for this ruling.

The judgment explains that "*although the State's interest in the publicity and transparency of subsidies justifies the BDNS' duty to communicate, which is not required is the necessary intermediation of the State body: indeed, it is not necessary that said State organ becomes responsible of sending the extract of the call for its publication in the official gazette*". Therefore, the ruling argues that "*from an autonomic perspective, this necessary intermediation of a State body can cause certain disturbances in the functioning of its administration*", such as, for example, the inevitable delay in the publication of the call as required by the General Law on Subsidies.

The Court declares the unconstitutionality of the following paragraph: "*the BDNS shall communicate to the official gazette the extract of the call for publication, which shall be free of charge*", provided in Article 30.3 [article 20.8 a) of Law 38/2003, dated November 17th, on General Subsidies}.

The appeal also challenged the constitutionality of articles 30.7 and 9 of Law 15/2014, dated September 16th, on the rationalization of the Public Sector and other administrative reform measures. In particular, the appeal referred to the section on the consequences of non-compliance with an obligation imposed on the autonomous communities, which had to communicate certain information on the subsidies managed by them to the BDNS. For example, one of such consequences was the invalidity of the call for applications and the possibility granted to the State to impose periodic penalty payments on regional autonomous bodies.

The judgment states that "*in this particular case, the power to impose periodic penalty payments on regional authorities is not a hierarchical control mechanism, nor does it constitute a generic and indeterminate method of control. However, it does clearly exceed the limits set out in the case law of the Constitutional Court, and therefore places the Autonomous Communities in a situation of subordination which is incompatible with their constitutionally guaranteed autonomy and their attributions*".

The Court further concludes that article 30.7 and 30.9 of Law 15/2014 *"are not unconstitutional, provided that it is interpreted that the periodic penalty payments to which they refer cannot be imposed on the Autonomous Communities"*.

Another provision challenged by the Government of Catalonia was article 23, which modified article 32.4 of Law 10/1990 on Sports, dated October 15^h. It contested the establishment of a single sportive licence required for the participation in any official sports competition, whether regional or nationwide. The Court holds that the article *"is not unconstitutional, provided that it is interpreted in the sense that it is applicable only to nationwide competitions"*. Therefore, *"the challenged provision shall be in accordance with the distribution of competences set by the constitutional order"*.

The Government of Catalonia had also contested articles 25 and 26 of Law 15/2014, which modified, respectively, Law 30/1992 dated November 26th and the General Tax Law 58/2003, dated December 17th. Both articles required that the publication of calls were made through the Official State Gazette, this being *"the single electronic notice board"*. The judgement dismissed the appeal on the grounds that, concerning *"article 68.5 of the Statute of Autonomy of Catalonia, its applicability extends to administrative acts only when their compulsory publication is due to the fact that they refer to an indeterminate plurality of addressees"*.

By contrast, the specific scope of this reform only concerns the *"electronic notice board notification"*. This modality of notification affects *"at the interested parties to an administrative procedure, when a certain administrative act adopted during that procedure must be notified to them, but either the place of notification is ignored or the notification has been impossible to carry out. In these cases, the challenged provisions establish that said notification shall be made through a statement published in the Official State Gazette"*.

Madrid, 24 April 2018