



CONSTITUTIONAL COURT OF SPAIN
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THE CONSTITUTIONAL COURT CONFIRMS THAT THE REMOVAL, LIMITATION OR DISTRIBUTION OF REGULATORY POWERS WITHIN THE AUTONOMOUS COMMUNITIES MAY ONLY BE DONE THROUGH STATUTES OF AUTONOMY

The Plenary Session of the Constitutional Court has ruled that the Statutes of autonomy of each autonomous community are the only legal instrument which may conduct to remove, limit or distribute the regulatory powers within such regional entities. Therefore, it is unconstitutional to declare that the Departments (“*consejerías*”) of the Government of Catalonia may be empowered, even though only on an exceptional basis, to adopt regulatory norms.

Thus, the Constitutional Court has partially upheld the appeal of unconstitutionality brought by the Government of Catalonia against several provisions of Law 39/2015, dated October 1st, on the Common Administrative Procedure of the Public Administrations. The Catalan Government considered that the said State Law invaded the autonomous competences relating to the organisation, the legal framework and the procedure of Public Administrations.

The Court considered that several of the provisions of this State Law did not comply with the powers granted by the Statutes to the Autonomous Communities within the framework of the Constitution. Magistrate Andrés Ollero acted as Rapporteur to this ruling.

The preamble of Law 39/2015 establishes that the common administrative procedure is one of the “*cornerstones that underpin Spanish administrative law*”. However, the judgment of the Court rules out the possibility of regulating the exercise of the legislative initiative of the Autonomous Communities by means of State regulations. In its opinion, the provisions of the law relating to the elaboration of regional law proposals are deemed incompatible with the distribution of powers established by the Constitution. Such elaboration of regulations can be subject to basic limitations, but the requirement of an annual planning exceeds this scope.

The Plenary also rejected the attribution to the Ministry of Finance and Public Administrations of the design of the models of powers of representation to be included in the corresponding electronic registers. The Court holds that the preparation and approval of standardised administrative documents are a constitutive part of the implementation or management powers that belong to the Autonomous Communities.

The ruling considers that even if the automated flow or sharing of information were to lead to the convenience of standardisation techniques, the State cannot act unilaterally. Instead, it should use cooperation mechanisms in collaboration with the Autonomous Communities. In the same vein, the Court excluded the interpretation whereby the Autonomous Communities and local authorities would be entitled to organise their own electronic platforms if the Ministry did not approve the justifications provided by the Autonomous Communities in terms of efficiency.

Finally, the court decision notes that the Organisation for Economic Co-operation and Development (OECD) has been encouraging significant improvements in the law-making process. The law proposals, strongly influenced by the experiences of Anglo-Saxon countries (the so-called "Better Regulation"), are likely to promote recommendations rather than binding measures, in the line of "soft law" systems, although they still influence the States. In Spain, several laws echoing such law proposals have already been enacted, even if for the time being, the OECD considers this attempt to be insufficient.

The Court decision is accompanied by a dissenting opinion formulated by Magistrate María Luisa Balaguer Callejón. She disagrees with the majority supporting the declaration of unconstitutionality of articles 1.2 and 9.3, as well as the second additional provision of Law 39/2015. Concerning the first of them, she considers that the constitutional case-law referred to in this decision precludes to impose to the Autonomous Communities certain obligations within their areas of competence: for example, it should not be possible to set the regulatory instruments through which they may establish additional or separate procedures to those contemplated in the Law.

With regard to Article 9.3, she believes that imposing electronic identification systems approved by the General State Administration to every Public Administration, without envisaging the reverse situation, should be considered contrary to the self-organization powers enjoyed by the Autonomous Communities. With respect to the second additional provision, Magistrate Balaguer Callejón explains that it establishes a mechanism of control by the State Administration over the autonomous and local Administrations deciding to implement their own registers and platforms instead of adhering to those established by the General State Administration.

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