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THE CONSTITUTIONAL COURT DECLARES THAT AUTONOMOUS COMMUNITIES ARE THE LEGALLY ENTITLED ORGANS TO PROVIDE TO NURSES THE PROFESSIONAL QUALIFICATIONS REQUIRED TO PRESCRIBE MEDICINES AND MEDICAL DEVICES

The Plenary Session of the Constitutional Court has declared unconstitutional and invalid the reference contained in article 79.1, fifth paragraph, of the Consolidated Version of the Law on Guarantees and Rational Use of Medicines and Medical Products. This provision establishes that "*the Ministry of Health, Social Services and Equality*" shall be the competent authority to "*issue professional accreditations*" with state-wide effectiveness to nurses and physiotherapists regarding public or private medical prescriptions and Hospital pharmacy management.

Likewise, articles 2.2, 3.2, 8.1 and 10 of the said Law, as well as the Final Provision Four, paragraphs two and four, and the Annex II of Royal Decree 954/2015, which regulates the specification, use and authorisation of the dispensing of medicines and medical products for human use by nurses, were also declared unconstitutional and invalid by the Court.

The Court's ruling, whose rapporteur was Magistrate Alfredo Montoya Melgar, considers that "*the granting of a professional accreditation is an action of an executive nature whose scope is limited to certify that the requirements set out in the legal norm are met by each of the interested parties*". Consequently, this power is part of the "*autonomous competence established in Article 55 of the Statute of Autonomy of Andalusia*".

Therefore, the Court has partially upheld the positive conflict of jurisdiction raised by the Governing Council of the Autonomous Community of Andalusia against several provisions of Royal Decree 954/2015.

The Government of Andalusia claimed that this Royal Decree does not fully respect the constitutional rules governing the distribution of powers as provided under Article 149.1.16 of the Spanish Constitution. On the other hand, the State Attorney pointed out that this regulation holds the nature of a basic regulation to be enacted by the State.

The judgment explains that the determination of the necessary qualifications, competences and training required to obtain this professional certification is part of the basic State powers in the area of health, inasmuch as such conditions must treat all the professionals throughout the Spanish national territory on an equal footing. However, "*the same does not apply when it comes to the act of verifying the fulfilment of such conditions, which is an executive measure and therefore falls within the competence of the autonomous communities in the area of health*".

On the basis of the preceding arguments, the Court concludes that the powers of the Autonomous Communities have also been infringed by the provisions of Royal Decree 954/2015

with regard to the *“General Directorate of Professional Organisation of the Ministry of Health, Social Services and Equality”*.

Madrid, 12 July 2018