



CONSTITUTIONAL COURT OF SPAIN
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THE CONSTITUTIONAL COURT GREENLIGHTS GRANTING THE STAFF OF TRANSPORT COMPANIES THE EXERCISE OF ADMINISTRATIVE CONTROL FUNCTIONS

The Plenary Session of the Constitutional Court has resolved to dismiss a question of unconstitutionality raised by Section no. 9 of the Provincial court of Barcelona. This question referred to additional provision no. 3 of Catalan Law 12/1987, dated May 28th, on the regulation of transport through motor vehicles. This provision conferred to the employees of road transport companies the capacity to act as law enforcement agents when they exercise their professional functions. The judgement unanimously considers that the content of this provision does not invade the competences of the central Government neither in the area of criminal affairs (article 149.1.6 of the Spanish Constitution [CE]) nor concerning matters of public safety (article 149.1.29 CE).

The ruling, drafted by Rapporteur Magistrate Andrés Ollero, points out that the challenged Catalan regulation attributes to the concerned staff the prerogatives to act as law enforcement agents only for certain purposes: namely, to justify their intervention over the users of the public service of regular road transport of persons, *“so that [the staff] may exercise administrative control powers over them”*. Therefore, *“the concerned employees must report any detected infraction to the relevant administrative authority, which shall eventually impose the [administrative] sanctions that may be applicable according to the Law of the Autonomous Community”*.

The Judgement further adds that this attribution does not imply that the concerned personnel may be entitled to assume *“any functions concerning the direct or indirect participation in the exercise of public prerogatives or the safeguard of the public interest of the public administration”*.

The Constitutional Court dismisses all the constitutionality issues raised by the provincial Court of Barcelona concerning eventual violations of articles 17, 25.1, 149.1.6 and 149.1.29 CE. The Court holds that the challenged provision is contained in a Law of an Autonomous Community whose purpose is to regulate a given economic sector. *“Thus, it neither expands nor modifies the criminal definition of the offence under article 550 of the Criminal Code. Likewise, it neither defines the passive subject of the criminal action, nor does it impose on the criminal judge a certain operation to qualify the offence; [the challenged provision] restricts its scope of application to purely administrative matters”*.

In the same vein, the Court makes it clear that the situation at issue is not analogous to that of article 38.4 of Catalan Law 4/2006, on Rail, which attributed the condition of law enforcement agents to train controllers, but for the purposes of the determination of responsibility according to the Criminal Code. This provision was declared unconstitutional and invalid by judgement 50/2018 of the Constitutional Court. In the case of the provision now

challenged no such situation exists, since the relevant provision does not attribute to the employees of road transport companies powers of public authorities for the purposes of the protection granted to them by article 550 of the Criminal Code.

Therefore, once the Court has reached the conclusion that the challenged provision does not constitute a rule on criminal law, it correspondingly dismisses the claim of the “*alleged violation of the proportionality principle grounded in article 25.1 CE*”.

Finally, the Court also dismisses another issue of constitutionality raised by the Provincial Court, which concerned an eventual breach of the State’s competence concerning public safety. The judgement holds that “*the acknowledgment of the staff of road transport companies as law enforcement agents does not cover the functions of police, but is rather limited to the supervision of the users’ observance of the applicable rules. In particular, it covers the control of the possession of a valid transport ticket by users*”.

Madrid, 14 September 2018