



PRESS RELEASE No. 102/2018

THE CONSTITUTIONAL COURT CONSIDERS THAT THE REGULATION OF “ADMINISTRATIVE SILENCE” IN THE ARAGONESE TRANSPARENCY LAW INVADES STATE COMPETENCES

The Plenary Session of the Constitutional Court has resolved to uphold the question of unconstitutionality (*“cuestión de inconstitucionalidad”*) raised by the First Section of the Administrative Chamber of the High Court of Aragon, concerning article 31.2 of Aragonese Law 8/2015 - dated March 25th - on Public Transparency and Citizen Participation. The Constitutional Court has accordingly declared the invalidity of its content and of the reference to *“the purpose of [administrative] silence”* included in its title.

The judicial body that submitted the question considered that the provision at issue (article 31.2 of Aragonese Law 8/2015), by regulating the effects of the inactivity of the Administration and by providing a positive meaning to that silence, incurred in mediate unconstitutionality, due to the incompatibility of such regulation with article 20.4 of national Law 19/2013, dated December 9^h, on Transparency, Access to Public Information and Good Governance.

Indeed, both provisions accord different legal effects to the situation in which, once the Administration’s period to resolve has expired, there is still not any resolution notified to the parties to the administrative proceedings concerning their request or application. The Aragonese law establishes that, in the case of absence of any express decision, requests to access public information must be considered accepted, whereas the national regulation configures such absence of express decision as a negative response to the request. Thus, the Constitutional Court considers that the provision of the Autonomous Community incurs an *“actual and insurmountable”* contradiction with the national provision established in Law 19/2013.

The judgement of the Court considers that *“article 20.4 of Law 19/2013, by establishing a negative effect to the silence or inactivity of the Administration, has been legitimately adopted on the basis of the principles and rules that belong to the exclusive competence of the State regarding the common administrative procedure (article 149.1.18 of the Spanish Constitution)”*. Thereby, this provision has not contravened any competence enjoyed by Autonomous Communities.

The judgement has been accompanied by a dissenting opinion drafted by Magistrate Cándido Conde-Pumpido. He considers that the legal base of article 149.1.18 of the Constitution, invoked by national Law 19/2013, is insufficient not only to cover the wide-ranging and detailed regulation contained in that Law, but also, in particular, to establish a negative sense of administrative silence in a procedure of public information.

Madrid, 18 October 2018