



CONSTITUTIONAL COURT OF SPAIN
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THE CONSTITUTIONAL COURT UPHOLDS THE CONSTITUTIONALITY OF THE CASSATION APPEAL GROUNDED ON THE VIOLATION OF REGULATIONS OF THE AUTONOMOUS COMMUNITIES

The Plenary Session of the Constitutional Court has decided by a majority vote to dismiss the question of unconstitutionality brought by the Administrative Chamber of the High Court of Justice of Castilla-La Mancha against the second and third paragraphs of article 86.3 of Law 29/1988, dated 13 July on the Administrative Jurisdiction (“LJCA”). This law contains the regulation of the cassation appeal on the grounds of infringements of the regulations of the autonomous communities. The second paragraph of article 86.3 provides that the jurisdiction to hear such appeal belongs to a Section of the Administrative Chamber of the High Court of Justice of each Autonomous Community. If the court in question is composed by more than one Section, the cases will be distributed by the Governing Chamber on a rota basis.

According to the court that raised the question of unconstitutionality, this law may violate the Spanish Constitution (“CE”) on the following four legal bases: article 122.1 CE (due to the obligation to regulate judiciary matters through an organic law); article 9.3 CE (principle of legal certainty); article 14 CE (equality before the law) and article 24 CE (effective judicial protection).

The judgement – which was drafted by Magistrate Cándido Conde-Pumpido – points out, with respect to the first issue of unconstitutionality raised by the High Court of Justice of Castilla-La Mancha concerning the fact that LJCA is not an organic but an ordinary law, that *“the mandatory requirements of the Organic Law prescribed by Article 122 of the Constitution do not include features such as the existing modalities of appeals, the resolutions that might be appealed, the competent bodies to render them or the proceedings that must be pursued for that purpose, regardless of whether the provisions of the Organic Law of the Judiciary did on occasion proceed to specify some of these matters to a greater or lesser extent”*.

Above and beyond the essential core content assigned to an organic law, *“the constitutional case-law has always recognized the possibility for the lawmaker to specify the basic design of the judicial organization”*.

As for the violation of the principle of equality, the judgement explains that no inequality or discrimination prohibited under article 14 is caused by the fact that different judicial bodies may interpret or apply the same rule differently. Finally, the Constitutional Court does not find that the principle of effective judicial protection has been infringed either, since the unification of regulations of the autonomous communities is part of the competences attributed to the High Courts of Justice by means of an appeal for annulment similar to the one lodged before the Supreme Court concerning State law or European Union law. The design of the latter serves as a reference to the regulation of autonomous cassation appeal.

Two dissenting opinions were formulated concerning this judgment. The first one is by Magistrate Juan Antonio Xiol Ríos who disagrees with both the legal basis and the final decision. In his opinion, the Sections referred to in Article 86.3 of the LJCA represent not only functional divisions of the Administrative Chambers, but also new judicial organs. For this reason, he considers that, since the creation of the judicial organs is reserved to the Organic Law of the Judicial Power by article 122.1 CE, the second and third paragraphs of the cited article 86.3 LJCA would infringe the referred constitutional provision by regulating a matter that is reserved to the Organic Law of the Judicial Power by the Constitution.

The second dissenting opinion is by Magistrate Ricardo Enríquez. In his view, the question of unconstitutionality should have been upheld because the second and third paragraphs of article 86.3 of the LJCA may violate the reservation of competences of the organic law established by article 122.1 of the Constitution. This precept, with regard to the organic aspect, indicates that "*definitive configuration of the courts of justice*" of all the jurisdictional orders must necessarily be contained in the Organic Law of the Judicial Branch ("*LOPJ*") and not in any other organic law, nor in an ordinary law. In the Magistrate's view, the creation of a new Section, to which exclusive jurisdiction is attributed, is contrary to the system established in the Constitution and in the LOPJ. This is due to the fact that the denomination of "Section" creates a genuine jurisdictional organ distinct from the already established Administrative Chambers.

Madrid, 07 December 2018