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### THE CONSTITUTIONAL COURT ANNULS SOME SECTIONS OF CATALAN LAW 15/2017, ON THE CYBERSECURITY AGENCY OF CATALONIA, BECAUSE IT INVADES STATE PREROGATIVES

The Plenary Session of the Constitutional Court has partially upheld the action of unconstitutionality (*“recurso de inconstitucionalidad”*) brought by the central Government against Law 15/2017, dated July 25<sup>th</sup>, on the Cybersecurity Agency of Catalonia and, by way of consequence, has declared the invalidity of the following paragraphs of article 2 of the said Law: paragraph 1 on its entirety; the sentence *“in relation to natural or legal persons located in Catalonia”* of paragraph 3; the sentence *“to plan, to administrate, to coordinate and to supervise cybersecurity in Catalonia, establishing the preventive and reactive capacity to mitigate the effects of cybersecurity incidents that may affect the territory of Catalonia, as well as any cybersecurity and continuity tests that might be organized in these matters”* of paragraph 4 section b).

The Court considers that the wording of these paragraphs exceeds the prerogative of the Parliament of Catalonia, since article 149.1.29 of the Spanish Constitution attributes exclusive prerogatives to the State in matters of public security, which must be understood to also include cybersecurity.

Article 2.1 of Catalan Law 15/2017 holds that *“the Cybersecurity Agency of Catalonia aims to guarantee cybersecurity in the territory of Catalonia; cybersecurity must be understood as the security of the electronic networks of communication and of the information systems”*.

The judgement points out that *“the definition of the object carried out by this provision has a very broad scope, since cybersecurity is included in the State prerogatives concerning public security and telecommunications”*. Thereby, this *“unqualified attribution”* to the Agency as regards the territory of Catalonia exceeds, with such a wording, the limits set to the regulation of cybersecurity through the prerogatives of Autonomous Communities.

In turn, article 2.3 establishes that the Agency may fulfil its functions *“in relation to the natural or legal persons located in Catalonia”*. The Court grounds the declaration of unconstitutionality and invalidity of this provision on the fact that *“it does not limit itself to objectives related to the need to protect the Administration’s own information networks and systems, and those of individuals and other administrations that have electronic relations with it”*.

In relation to section b) of article 2.4, as transcribed above, the judgement indicates that *“the function of this section presupposes the design of a strategical and institutional framework concerning this matter that exceeds the prerogatives of the Government of Catalonia, since it does not explicitly refer to the administration and neither may this attribution be related to the regional prerogatives derived from the creation of a regional security police force”*.

By contrast, paragraph 2 of article 2 of the Law is not contrary to the Constitution as long as it is interpreted that *“the objective pursued by the Agency is related to the need to protect the information networks and systems that belong to the Administration of the Government of Catalonia, to its public sector, and to the individuals and other administrations that have electronic relations with them”*.

Likewise, the Court considers sections a), b) and d) of article 5, which were also challenged by the central Government, to be in conformity with the Constitution. These refer to the functions of the Cybersecurity Agency of Catalonia that are circumscribed to *“the realm of the Government and the Administration of Catalonia and its public sector”*.

Lastly, section f) of article 2.4 is also in conformity with the Constitution. It attributes to the Agency the function to *“investigate and analyse by technological means the cyberincidents and cyberattacks against technological infrastructures, information systems, services of information and communication technologies, or information that the Agency shall manage in the framework of its prerogatives”*.

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