



CONSTITUTIONAL COURT OF SPAIN

Office of the President

Press Office

tc40
1980 - 2020

PRESS RELEASE NO. 108/2020

THE PLENARY OF THE CONSTITUTIONAL COURT ENDORSES THE CONSTITUTIONALITY OF THE 2015 LAW FOR THE PROTECTION OF CITIZENS' SAFETY, EXCEPT AS REGARDS "UNAUTHORISED" RECORDINGS OF THE POLICE

The Plenary of the Constitutional Court endorsed the constitutionality of Organic Law 4/2015, of 30 March, for the protection of citizens' safety (OLPCS), except regarding the need for authorisation to make "unauthorised use of images or data of authorities or members of the State Enforcement Bodies" provided for in article 36(23) of this Law.

Consequently, the judgment, whose judge rapporteur is the President of the Court Juan José González Rivas, dismisses most articles challenged (Arts. 19(2), 20(2), 36(2) and 23, 37(1) in conjunction with Articles 30(3), 37(3) and 7, as well as the first final provision of Organic Law 4/2015) in the appeal for unconstitutionality filed by 97 members of the Socialist Parliamentary Group (PSOE); 11 members from Izquierda Plural (United Left) and Chunta Aragonesista; 4 from the parliamentary group Union Progreso y Democracia and 2 from the Mixed Parliamentary Group of the Congress of Deputies.

The Court, having analysed the precepts by performing a careful study of the constitutional doctrine and case law from the European Court of Human Rights, decides to:

1. Declare the "not authorised" clause of Article 36(23) OLPCS, which considers the unauthorised use of personal or professional images or data of any authorities or members of the State Enforcement Bodies as a serious offence, to be unconstitutional and null and void.

The judgment explains that prior censorship would be prohibited by Article 20(2) of the Spanish Constitution (SC) when the dissemination of the images or data in question is subject to prior examination of their content by the public authority, so that such dissemination can only take place if the public authority "grants it".

Consequently, "*Article 36(23) OLPCS, given that the activity consisting of using images or data from authorities or members of the enforcement bodies is subject to obtaining prior administrative authorisation, is contrary to the prohibition of prior censorship under Article 20(2) SC*".

2. Declare that Articles 36(23), 37(3) and 37(7) OLPCS are not unconstitutional provided that they are interpreted in the terms set out as follows:

- **Art. 36(23).** The term "use" should be interpreted in the sense that a serious offence will only be found if the images or data have been illegally published or disseminated, but not if they have been merely captured and not published or disseminated afterwards; and the term "personal or professional images or data" also includes those relating to private life, which must be taken into account in determining whether or not the right to information prevails.

- **Art. 37(3)** qualifies as a minor offence the *“failure to comply with restrictions on pedestrian movement (...) when they cause minor disruption (...)”*. The Court finds that the term “when they cause minor disruption” refers to those that are truly relevant, in the sense of providing a certain entity and seriousness.

-**Art. 37(7)** defines as a minor offence *“occupying or remaining in any property, dwelling (...) against the will of its owner (...)”* when they do not constitute a criminal offence.

The Court considers that, given that the occupation takes place against the will of the owner or holder of another right *in rem*, its sanction as a minor infringement seems unlikely to be considered as a disproportionate limit. Therefore, nothing can be objected from the point of view of the principle of taxativity (Article 25(1) SC).

The second paragraph of Article 37(7) OLPCS provides that only “the occupation of public roads in violation of the law” will be punishable. The judgment considers that it is constitutional because, despite being a blank sanctioning rule, the essential core is contained in the prohibition and enhanced by reference to other legally binding rules, excluding the implementing regulations.

With regard to the rest of Article 37(7), *inter alia*, the paragraph *“the occupation of public roads for unauthorised street selling shall also be included”*, the Court dismisses the challenge and does not declare it unconstitutional, based on the principle of legality.

3. To declare that the first final provision of the OLPCS incorporating the tenth additional provision in Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, is in accordance with the Constitution, provided that it is interpreted as indicated in legal basis 8 (C), specified in the following points:

- 1. Application to individual entries.**
- 2. Full supervision by the courts.**
- 3. Compliance with international obligations**

The special regime of Ceuta and Melilla regarding the rejection at the border of foreigners who attempt to enter illegally (first final provision OLPCS) is in accordance with the doctrine of the European Court of Human Rights, and sets out that the *“rejection at the frontier is a substantive action of a coercive nature, the purpose of which is to immediately restore the legality transgressed by the attempt by foreigners to cross that particular land border in an unauthorised manner. A substantive action which will be so without prejudice to the court supervision which may be carried out by virtue of the actions and appeals which the foreign person may lodge in each specific case”*.

In addition, the action must be carried out with the guarantees granted to foreigners by the international rules, agreements and treaties entered into by Spain; thus, procedures for legal entry into Spanish territory must be genuine and effective.

In any case, the Enforcement Bodies should pay special attention to the categories of particularly vulnerable persons (children, pregnant women or the elderly).

4. Dismiss the appeal of unconstitutionality for the remainder.

In this section, the following challenged precepts may be indicated, among others:

- **Art. 36(2) LOPSC** defines as a serious infringement *“the serious disturbance of citizen safety that occurs on the occasion of meetings or demonstrations outside the Congress of Deputies, the Senate and the Assemblies of the Autonomous Communities, even if they are not sitting, when it does not constitute a criminal offence”*.

To the Court, this provision *“is aimed at preventing that serious disturbance of citizen safety on the occasion of meetings or demonstrations before parliamentary institutions could hinder the normal functioning of the parliamentary body in its different forms and formations or result in the disregard of the symbol embodied in the parliamentary seats”*.

Thus, the judgment endorses the protection of two legal assets. On the one hand, the special institutional significance of parliamentary institutions and, on the other, the normal functioning of these bodies. In addition, the second paragraph is constitutional in full, including the terms *“even if they are not sitting”*.

Article **20(2) LOPSC**, which sets out that the Enforcement Bodies may conduct external body searches, is also declared constitutional. The judgment explains that this practice *“does not infringe the right to bodily integrity when such searches, which may even involve partial strip search, are based on rational signs that the aforementioned objects are being carried and may be used with the aim of committing a crime or offence, or of altering public safety”*. The Court considers that this action should be based on the principle of proportionality, so that it will only take place when appropriate for the protection of the citizens' safety.

Judges Maria Luisa Balaguer Callejón and Cándido Conde-Pumpido Tourón voted against the judgment, but only Judge Maria Luisa Balaguer will draft a dissenting opinion.

The full content of the judgment and the dissenting opinion will be published in the coming days.

Madrid, 19 November 2020