

THE JUDGMENTS OF THE CONSTITUTIONAL COURT ON THE 2013 LAW ON THE RATIONALIZATION AND SUSTAINABILITY OF THE LOCAL ADMINISTRATION

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Without making too much noise, the Spanish Constitutional Court has already rendered judgment on four of the several constitutional procedures related to the 2013 Law on the Rationalization and Sustainability of the Local Administration (LRSAL). Some relevant aspects have been deemed unconstitutional or interpreted according to the Constitution.

The first Judgment, STC 41/2016, was issued at the request of the Parliament of Extremadura. In it, the Court accepts the State's action in the definition of the local organization (creation, suppression and merger of municipalities, entities with lower territorial scope than a municipality, association of municipalities or consortia). However, the principle of self-organization of the autonomous communities prevails in some specific cases where the Law expressly determines the competent regional institution. The Court also deems constitutional those regulations directly affecting budget stability so as to restrict those competences executed by the local governments without being their own competences (competencias impropias) or lay down specific requirements for the adoption of the economic and financial plan.

However, the Judgment questions two matters of the Law that are particularly relevant in order to guarantee the competences of the autonomous communities as regards organization and functioning of local governments. Firstly, the Court deems unconstitutional those provisions of the LRSAL attributing to regional governments, in a unilateral and coercive manner, the competences for health and social services executed by the local governments to that date. The reason is that the State is exceeding its competence for the establishment of the legal basis in these two fields. The Court also rejects the controversial idea that local governments can only execute those own competences (competencias propias) related to matters that are specifically determined by the State Law 7/1985 regulating the basis of local governments (LBRL). In this case the Court does not deem unconstitutional some of the provisions but rather questions the "spirit" of the Law. Consequently, regional laws can assign to local governments the execution of own competences in matters not included in the provision at issue.

It is also worth mentioning, given its significance, that the Court has also deemed unconstitutional the guarantee of payment in delegated competences. This guarantee allowed the State to withhold part of the regional transfers corresponding to the funding system in the event that local governments fail to comply with their payment obligations. The Court, however, does not analyze the content of this measure. On the contrary, it declares the formal

unconstitutionality of the measure due to the violation of the constitutional provision laying down that financial relations between the State and the autonomous communities shall be established by organic law.

Three months later, Judgment STC 111/2016 (issued at the request of the Government of Andalusia) continued dismantling the LRSAL by deeming unconstitutional two relevant provisions that affected the local self-government rather than regional competences. The first one refers to the restrictions derived from dispossessing local governments of the provision of services linked to the effective cost of such provision. The second one, to the fact that the plenary session (pleno) of city and town councils cannot adopt the budget, economic and financial plans, restructuring plans and debt reduction plans anymore.

Concerning the first matter, the Judgment deems unconstitutional the provision giving the Ministry of Finance, at the request of the provincial council, the power to decide how local services have to be provided so as to reduce effective costs. In addition, the decision annuls the provision giving provincial councils the power to include in their strategic plans the unified or supramunicipal provision of specific services in order to reduce costs, although the interpretation according to the Constitution is quite debatable. As regards the second matter, the Law stated that the plenary session (pleno) of the city or town council could delegate relevant decisions to the governing body (junta de gobierno). Now, the Judgment deems this provision unconstitutional because it violates the democratic principle in the local sphere.

Last but not least, Judgment STC 168/2016 (issued at the request of the Government of Asturias) points out that a statute of autonomy cannot replace the bases of the local organization and functioning. Furthermore, it construes according to the Constitution that the organization of comarcas (legal entities between provinces and municipalities), regardless of whether it is included in the statute of autonomy or not, can be subject to regional legislation. Judgment 180/2016 (issued at the request of the Parliament of Navarra) reaffirms the interpretation as regards the provincial councils' coordination capacities through cooperation plans.

Altogether, all these Court's decisions deeming unconstitutional specific aspects of the Law and those interpreting according to the Constitution lead us to confirm the deactivation of most of the objectives of the LRSAL concerning the redrafting of the regional competences for local organization and functioning, as well as the restrictions to local self-government. The most striking constitutional procedures are, however, still pending: the defense of local self-government (as laid down by Organic Law 7/1999) lodged by almost 3.000 municipalities, and the appeal on the grounds of unconstitutionality lodged by deputies of all parliamentary groups but the one in Government. Nevertheless, the subject of these procedures has practically disappeared.