2 The complex legal framework for social services across Spain

The focus of this chapter is the current constitutional regulation of the public social services system in Spain and the possibility of strengthening central government co-ordination of the system within this framework. The first section describes the constitutional obligation to provide a public system of social services and the scope of the competence of Autonomous Communities in this area. The second part elaborates the possibilities of central government intervention in general terms, and the third part the concrete co-ordination options through a harmonisation law or a law guaranteeing the basic conditions of social rights.

2.1. Introduction

The current configuration of the public social services system arose from the 1978 Spanish Constitution, which grants competences on this matter to the regions or so-called autonomous communities. As a result, the regions have stipulated the extent of such competences in their Statutes of autonomy and enacted regional legislation of social services. There is currently no national legislation on this matter and no minimum standards, which may grant equality of services across the regions. This chapter discusses how, in spite of the competences being attributed to the regions and the limited scope to regulate social services at the national level, some constitutional options exist. Such options stem from the lack of clarity of the division between social assistance, which is the responsibility of regions, and social security, which is the responsibility of the central government. Case law has evolved towards permitting the central government to incorporate certain services as social security and generating limits to the exclusive competences of regions. The central government can also shape social services by creating and funding certain benefits at the central level, as recently done for minimum income. Finally, the chapter concludes by discussing options to regulate social services through a national legislation.

2.2. Insufficient constitutional regulation for social services

2.2.1. The Constitution imposes obligations that require a public social services system

The explicit reference made to "social services" in the 1978 Spanish Constitution is limited to social assistance. There is only a vague concept of social assistance referring to some national benefits for vulnerable or disadvantaged groups, and these benefits are always based more on charity than on a commitment to real equality. Social assistance is only mentioned once in the Constitution – in Article 148(1)(20), cited as one of the matters in which the autonomous communities may assume competences.

However, the 1978 Constitution does impose certain obligations on the public authorities that can only be fulfilled with a system of social services. The declaration in Article 1 (1) that Spain is a social state is essentially embodied in a generic mandate contained in Article 9 (2) and in various specific obligations grouped together in chapter III of Part I. Article 9 (2) sets out that it is the responsibility of the public authorities to promote the conditions required for the real and effective freedom and equality of individuals and the groups to which they belong, to remove obstacles that prevent or hinder their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life. The central government action[1] to remove obstacles to real equality is the constitutional basis for all social interventions, therefore justifying the granting of generic responsibility to the central state to establish and maintain a minimum standard in this respect for the whole of Spain.

In addition to this generic mandate, the chapter of the Constitution on the principles governing social and economic policy imposes much more specific obligations. As such, the Spanish public authorities must ensure the social protection of the family (Article 39 (1)); the protection of children (Article 39 (4)); more equitable distribution of regional and personal income (Article 40); the enjoyment by all of decent and adequate housing (Article 47); the protection of young people (Article 48); a policy for the welfare, treatment, rehabilitation and integration of people with physical, sensory and mental disabilities (Article 49); and the welfare of older citizens (Article 50).

In short, without mentioning it explicitly, the Constitution requires the existence of a social services system capable of covering these constitutional mandates at a minimum. The Constitution clearly prescribes sufficient social services to facilitate both the specific obligations of Chapter III of Part I and the generic mandate of Article 9 (2). These central government obligations can only be adequately fulfilled by what Article 50 of the Constitution calls "a system of social services."

2.2.2. Social assistance is the responsibility of the autonomous communities, limiting central state legislation

The competences of public authorities (central state, autonomous communities and municipal entities) in the configuration and administration of the public action are not interlinked as clearly as one might expect. The Constitution provides for a split system: Article 149 (1) lists the powers that correspond to the central state, while Article 148 (1) lists 22 specific matters that may be assumed by the autonomous communities in their respective Statutes of Autonomy, although they may also assume any matter that the Constitution does not assign to the central state. Matters not assumed by the autonomous communities will be the responsibility of the central state, whose regulations are supplementary to those of the autonomous communities. In addition, the central state has transferred some of its competences to the autonomous communities, giving rise to an extraordinarily complex system.

In practice, all regions have assumed competence for social assistance in their respective Statutes of Autonomy and have enacted legislation in this area that supersedes that of the central state. The autonomous communities have thus exclusive powers in social assistance, but the competence of the autonomous communities extends only to *some* of this assistance, since Article 41 of the Constitution also integrates assistance in case of need into the social security system.

The characterisation of a competence related to social affairs as "exclusive" to the autonomous communities, does not absolutely exclude the possibility of central state intervention in this area, although with certain limitations when deciding on the constitutionally legitimate contents of such legislation. In fact, the Constitutional Court notes that "It is a consolidated doctrine of this Court, expressed in CCR 31/2010 of 28 June, legal basis 104, that the autonomous communities having exclusive competence over social assistance 'does not prevent the exercise of the competences of the state under Article 149 (1) of the Constitution when these coincide with the regional competences, whether regarding the same physical space or the same legal object'."

2.2.3. Constitutional case law has established limits to the exclusive competences

The case law of the Constitutional Court has essentially defined the operational concept and competences of social assistance by contrasting them with those of social security. While social assistance is defined as regional, social security is fundamentally a matter for the central government. When it comes to positively defining how social assistance is identified, the Constitutional Court defines it as measures intended to reduce social disadvantages and the material inequality of certain sectors of the population.

Until the last decade of the previous century, in Spain, social assistance has been seen as having a temporary vocation, since it is not so much a matter of permanently assisting in situations of deprivation, but of intervening to solve an effective difference between citizens in an attempt to achieve material equality. In contrast, social security policies are part of the standard system, which is characterised by universality, often linked to social contributions or prior personal situations of an objective nature, and must respond to personal situations of need or deprivation.

Since 2002, case law has been blurring the lines between social assistance and social security, which initially seemed to be based on whether or not benefits were contributory. This is because of the evidence that social security in its current configuration is, *de facto,* not limited to contributory benefits. On the contrary, "Article 41 of the Constitution, by linking the social security system to 'situations or states of need', seeks to overcome this 'legal perspective where the notion of risk or contingency was a priority' (CCR 103/1983 of 22 November, legal basis 4). This confirms the idea that social security is configured as a state function to address situations of need that may go beyond the contributory coverage from which the system itself started" (CCR 239/2002 of 11 December, legal basis 3). This notion has enabled the Court to assert "the social security system, being configured as a central state function, allows us to include

in its scope not only contributory benefits, but also non-contributory ones" (CCR 239/2002 of 11 December, legal basis 3).

The Constitutional Court has been tending towards using the state's legislative decision to include certain policies or benefits within the scope of social security as a way of removing them from social assistance, using a "by exclusion" definition: social services are those not included in social security.[2] In doing so, by legally defining the ordinary benefits included in the general social security system, the central state also determines the contents of the social assistance provided by the autonomous communities. The Constitutional Court does not establish any absolute limitation as to which benefits may be integrated into social security. In fact, as mentioned above, although it initially leaned towards establishing a distinguishing criterion that the benefits must be contributory, it soon corrected itself and noted that this distinction is unnecessary. The benefits included in social assistance must indeed be non-contributory, but those that are part of the social security system may be contributory or non-contributory.

Apart from the cases referred to in Chapter III of Part I of the Constitution (older people, people with disabilities, minors and youth), it is not possible to go much further in the constitutional definition of a specific type of benefits or beneficiaries that must be included in the social services system. Specifying the minimum content of the social services system is largely the responsibility of each autonomous community as it exercises its competence. The central government, however, can influence this content; for example, by including some benefits in social security provisions (as recently happened with the Minimum Living Income, *Ingreso Mínimo Vital* or IMV). Conversely, the competence of the autonomous communities, although defined as exclusive, does not exclude very diverse forms of state intervention, either directly through the creation of state social benefits, or through policies and instruments of co-ordination.

2.3. The central government can intervene directly by means of social benefits

In general terms, it can be understood that in the area of social services, the central government may address general social issues that require a comprehensive approach in cases of inequality by creating social programmes or benefits.

2.3.1. Direct central government intervention is possible through social benefits that are not classified as social assistance

Constitutional case law distinguishes between social action in the broad sense, which all public authorities may exercise by virtue of the mandate of Article 9 (2) of the Constitution, and "genuine" social assistance, which is subject to jurisdictional restrictions. As such, there appears to be some room for state interventions that protect disadvantaged groups but do not properly constitute "social assistance" in the constitutional sense and, therefore, are not reserved exclusively for the autonomous communities (CCR 18/2017 of 2 February, legal basis 3).[3]

The central government may intervene, in as much as there are social problems, which require a global outlook and exist in more than one region, but respecting the competences of the autonomous communities concerned. This has been accepted since CCR 146/1986 of 25 November, legal basis 5 in which the Constitutional Court accepts the possibility of central government directly addressing situations of inequality. Then, the option for central government to directly plan and execute development actions is constitutional, whether it involves granting assistance to national-level entities or whether it is based on national programmes.

According to case law, direct central government intervention in managing the granting of assistance would be legitimate only if the national-based nature of the corresponding programmes means that they could not be managed regionally. If, for example, national programmes are decentralised, regionalised or provincialised, centralised management can no longer be considered "essential", which is the requirement

set out in CCR 95/1986 of 10 July to exceptionally allow the centralised management of aid, since "the central government's authority for management in the area of social assistance must be considered marginal and residual."

In summary, there is some room for having social programmes aimed at assisting a population group in a situation of inequality, and financed with central government funds, without this encroaching on the exclusive competence of the autonomous community, but there is almost no room for the central government to manage or directly provide these benefits.

2.3.2. The central state may also fund its own assistance

Another important aspect of direct central government intervention relates to the national budget law and the resulting financial transfers to regions. According to a now classic case law dating back to 1992, when the autonomous community has exclusive competence, the central government may still decide to allocate some of its budget to those matters or sectors. However, the destination of the corresponding budget items can only be determined in general or as a whole by entire sectors or subsectors of activity. These funds must be integrated as a resource that feeds the regional treasuries, and recorded in the general central state budgets as current or capital transfers to the autonomous communities, so that the allocation of funds is territorial-based.

According to the most recent case law, when the central government establishes a subsidy in a social assistance-related field for which it is not responsible, it may regulate key aspects of the subsidy scheme: the object and purpose of the assistance, the technical modality of the assistance, the beneficiaries, and the key requirements for access. In such cases, only the management – that is, the processing, resolution and payment of subsidies – and the regulation of the procedure corresponding to all these aspects is within the competence of the autonomous community (CCR 178/2011 of 8 November, http://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/22622; CCR 33/2014 of 27 February; and CCR 134/2020 of 23 September). With respect to funds that are earmarked for subsidies that must, in principle, be managed by the autonomous communities, the central government has several options: include these funds in the central state's own general budgets as current or capital transfers to the autonomous communities in the corresponding budget sections, services and programmes; or include them directly as transfers to the end recipients (such as families, non-profit organisations, companies, charities), with subsequent regulations governing the distribution of funds among the autonomous communities with the jurisdiction to manage them.

2.4. What are the options for central government co-ordination of social services?

The Spanish experience of the last few decades has revealed a variety of possibilities for central intervention. The Constitutional Court has indicated that the autonomous communities' competence to draw up their own social assistance policies must be exercised "without prejudice to the competences of the central state by virtue of articles 149 (3), 150 (3) and, if applicable, 149 (1)" (for all rulings, CCR 146/1986 of 25 November, legal basis 5).The competence of the central state to create the social state clause through direct social measures has been recognised, as has the possibility of the state addressing issues whose importance goes beyond the autonomous community level. Finally, the central government has the competence to harmonise and to establish the basic or minimum conditions that guarantee the equality of all Spaniards in terms of the social services they receive. The analysis presented in these sections suggests that the second alternative (establish basic conditions) appears as the most feasible in the current circumstances.

2.4.1. A social services harmonisation law: advantages and disadvantages

Article 150 of the Constitution provides for the possibility of the central state approving rules with the status of ordinary law, issued by Parliament, which establish the principles necessary to harmonise autonomous community provisions issued in the exercise of their exclusive competences. This harmonisation must be in the general interest. The harmonisation law does not alter the competences the autonomous communities have, but does change how they are exercised: it is a functional alteration, insofar as once the law has been approved, the autonomous communities are bound by it and must respect its principles (Aja and Carreras, 1983, p. 63[1]).

In accordance with Article 150 (2) of the Constitution, the harmonisation law requires that an absolute majority of both the Congress and the Senate believe that without it, the general interest is damaged. There are, therefore, two phases: a prior institutional agreement, and a subsequent processing of the law itself through the ordinary legislative procedure. According to congressional regulations, the need for a harmonisation law must be assessed in a debate that may be introduced by the government, by two parliamentary groups or by one-fifth of members. It requires an absolute majority to be approved, and in the subsequent processing of the harmonisation bill or proposal, amendments contrary to the agreement shall not be admitted. The Senate regulations establish that the initiative must be introduced by the government or by 25 senators and be accompanied by an explanatory report and a specific indication of the subject matter of the harmonisation law. It must also be approved by absolute majority. After the approval of the prior agreement, the law itself does not require any qualified majority.

Legitimacy of the harmonisation law

It is not unconstitutional for harmonisation laws to be used when, in the case of shared competences, it is found that the competence attribution system is insufficient to prevent the diversity of the autonomous communities' regulatory provisions from creating disharmony that is detrimental to the general national interest. However, it should be used only if the central government has no other mechanism to intervene and, in this sense, to use harmonisation law as a tool to intervene in the area of social services, the central state should.

1. Argue that the central government has insufficient competence to dictate basic conditions for the exercise of rights in accordance with Article 149 (1) (i) of the Constitution.
2. Argue that the absence of the harmonisation law constitutes a damage for citizens. In the absence of a consolidated practice on this type of law and the consequent case law of the Constitutional Court, scientific doctrine[4] indicates that the damage to the general interest must derive from the relationship between the different regional legal norms. In essence, to prevent situations of duplication or, even worse, a lack of co-ordination in cases of citizen's mobility, it could be argued that co-ordination among the different territories is not guaranteed. By providing sufficient data with detailed references to the existing regional regulations, it would be possible to prove the damage to the general interest caused by the existing co-ordination problems among autonomous communities, especially for those who move from one region to another. This point is questionable in view of the existing regulation, which tends towards homogenisation (see Chapter 3).
3. Explain convincingly why the absence of a common catalogue of social benefits to establish a minimum set of common benefits is detrimental to the general interest. This prejudice should be illustrated with real cases. This is not straightforward as are significant differences in the guaranteed provisions, but there seems to be a minimum that is common to most of the autonomous communities (see Chapters 4 and 5).

The harmonisation law is an exceptional rule that can only be used in a very restrictive manner, so much so that it has not ever been used yet. The restrictions attributed by CCR 76/1983 (relating to the Organic Law for Harmonisation of the Autonomy Process) are likely the cause of its lack of use, as it sets

extraordinary limits for both the cases in which it can be used and the scope of its content. Looking at the existing regulations, it does not appear that this is currently the most appropriate way for the central government to intervene in social services, although if its competence in this area is denied in accordance with Article 149 (1) (i) of the Constitution (discussed below), it would be the only constitutionally possible way forward.

Possible content of a harmonisation law

The harmonisation law must be a "principles" law. This implies a less intense central government intervention than in framework laws. The principles must be understood as mandates that are intended to inform all legislation, must be incorporated by the autonomous communities into their own legislation and cannot be contradicted. In other words, harmonisation laws do not establish their own rules that immediately govern the autonomous communities' social services systems; instead, they set out general principles to be applied by regional laws, which will have to be adapted after the harmonisation law in question has been enacted.

It is therefore conceivable that a harmonisation law would establish a series of basic principles that must govern all autonomous community social services systems, in terms of guaranteeing both a minimum level of benefits and adequate co-ordination mechanisms to ensure that if citizens move between regions they are not harmed and do not suffer a reduction in the benefits they receive beyond the minimum imposed by law due to a lack of communication between the autonomous communities.

The establishment of such principles could be guaranteed by imposing in the law itself a mechanism for co-ordination among the autonomous communities to review and approve the benefits included in a catalogue of minimum requirements, as well as the mechanisms for co-ordination among communities and with the central government, for example. It would certainly also be possible to roughly define, at the level of principles, a minimum catalogue of common benefits. However, it would be difficult to go into detail on the required benefits included in it and to create the bodies or instruments for co-ordination between regions.

If a harmonisation law were to be approved, the regional parliaments would have to review their relevant social services laws, amending them to include the principles established in the law and eliminate elements that are contrary to them. There is no specific constitutional deadline for such adaptation, but scientific doctrine reasonably understands that, even so, the harmonisation law, insofar as it is directly applicable, is enforceable and applicable from the moment it enters into force.

2.4.2. A law guaranteeing the basic conditions of social rights: A more feasible alternative

Article 149 of the Constitution grants the central state the power to regulate the basic conditions guaranteeing equality for all in the exercise of their rights. This attribution of powers may support a national law that seeks to establish certain minimum conditions for the social assistance services of all the autonomous communities. However, this competence cannot be used as an overarching mechanism that allows all types of central government intervention: it only covers conditions closely, directly and immediately related to the rights that the Constitution recognises for Spaniards and only when strictly required ensuring equality throughout the country.

The Constitutional Court has recognised the possibility of justifying the central state's subsidising action in social rights when it confirmed that state subsidies may help to ensure the basic conditions of equality, which the central state is responsible for regulating by virtue of Article 149 (1) (i) of the Constitution. It has therefore placed central state financing at the service of a social equilibrium policy in sectors that need it, in execution of generic constitutional mandates or clauses (Article 1 (1) or Article 9 (2) of the Constitution) which, although binding for all public powers, correspond primarily to those with the greatest spending

capacity.[5] CCR 13/1992 of 6 February opens the door to central government interventions to ensure a social minimum throughout Spain. In terms of recognition of the central government's competence to dictate the minimum conditions for the exercise of social rights, CCR 33/2014 of 27 February regarding the modification of the Act on Long-term care for Dependent People goes a step further and recognises the possibility of national rules that establish basic principles on the matter.[6]

The Court distinguishes between the "spending power" of the state, which can be exercised even without any attribution of competence, and the creation of social programmes, which requires a specific competence, for example over promoting conditions of equality. As such, the authorisation contained in Article 149 (1) (i) of the Constitution has been used to create social programmes through financing actions, but there are no *a priori* obstacles to it also being invoked for what the Court calls "establishing regulations on the basic principles that guarantee equality in the fundamental legal positions of Spaniards" (CCRs 13/1992 and CCR 33/2014) without using its spending power.

In this sense, it seems possible to enact a national law that establishes the minimum principles that ensure the equality of all Spaniards in terms of assistance for older people (Article 50 of the Constitution), aid for people with disabilities (Article 49) and a minimum welfare benefit (Article 40 (1)). Similarly, it should not be difficult to invoke Article 39 of the Constitution to justify the need to enforce minimum conditions for the equal exercise of basic legal positions in social matters involving minors or women who have survived abuse throughout Spain. In addition, assistance for people experiencing homelessness may be related to the right to decent and adequate housing contained in Article 47 of the Constitution. Likewise, in general, policies related to severe poverty or even energy poverty are justified by the social equilibrium policies imposed by Article 9 (2) of the Constitution. As such, in accordance with constitutional case law, the central government may regulate the basic conditions of most of the services included in any basic portfolio of social services.[7]

Scope of possible central government regulation for a law on basic conditions

There are case law decisions that interpret the fact that the central government holds some generic or specific competence in the matter as justifying a certain degree of centralised management (recent CCR 134/220 of 23 September, legal basis 6, interpreting the fourth case of CCR 13/1992, legal basis 8 (d)). By virtue of this, when the central government calls upon the competence contained in Article 149 (1) (i) of the Constitution, a certain margin of centralised management may be allowed, but only in relation to assistance and actions directly financed by the central state. As to what "management" means, the Constitutional Court has held, for example, that rules establishing the time in which a subsidy must be paid affect management. Regulation of the requirements for applying for assistance may also affect the autonomous community's competence over management insofar as it is a question of establishing the award procedure.

Likewise, the centralised allocation of funds for social provisions in an agency under central government administration must be reasonably justified in each case or be clear given the nature and content of the promotion measure in question. If these conditions are not met, this technique of budgeting the funds to be managed by the autonomous communities threatens the order of competences and the principles of autonomy and administrative effectiveness, as it may lead to central state bodies trying to gain or recover regulatory or implementing powers in the areas being financed, despite them being fully decentralised to the autonomous communities. This would mean that competences exclusively granted to the autonomous communities would be redefined or in practice shared with the central government, inevitably restricting the political autonomy of the autonomous communities.

Possible content of a national law on basic conditions

With respect to the possible content of a national social services law, the question of the constitutionality of establishing a minimum catalogue or portfolio of social services arises first and foremost. The aim would

be to establish minimum conditions to ensure the universality, quality and guarantee of the rights linked to the social state clause of articles 1 (1) and 9 (2) of the Constitution throughout the country. From the analysis of the constitutional case law relating to Article 149 (1) (i) of the Constitution, it is clear that the central government is empowered to impose "basic provisions" of social assistance that are the same across all autonomous communities (CCR 61/1997, legal basis 8, and CCR 173/1998, legal basis 9). These benefits must be determined based on the common social services framework that currently exists in the various autonomous communities.

The main problem with a clause of this type is related to the possibility of regional spending being influenced. The Constitutional Court seems to lean towards declaring as unconstitutional any central government regulation that obligates the autonomous communities to spend specifically on social services. This means that, in any case, setting specific amounts for any benefit would not be included in the initial scope of a possible law on minimum measures in the area of social services. This does not necessarily mean that the determination of a minimum portfolio of social services is unconstitutional, but it may affect the terms in which it is carried out.

As regards co-ordination, the Dependency Act – protected by Article 149 (1) (1) of the Constitution – created the Territorial Council and the Autonomy and Long-term Care System for Dependent People. This council is attached to the Secretary of State for Social Services and is made up of all social services ministers from the autonomous communities and a central government representative. The issue at hand is related to the competences that, through a law on minimum conditions for social services, may be added to the Territorial Council. The evolution of the Act on Long-term Care for Dependent People shows that it is possible to attribute regulatory status to the decisions of this council. However, this is done by establishing that they must be published in the form of a government decree. In any case, the legitimacy of these decisions must be largely based on the mandate of co-operation among regional administrations derived from the need to ensure compatibility between the principles of unity and autonomy on which the constitutionally established territorial organisation of the state is founded (CCR 76/1983 of 5 August).[8]

References

Aja, E. and F. Carreras (1983), "Carácter de las leyes de armonización", *Revista de Derecho Político* 18-19, https://doi.org/10.5944/rdp.18-19.1983.8236. [1]

Notes

[1] Or "central state action". Since in Spain regions are called "autonomous regions", the word 'state' will in general refer to the central government. To refer, for example, to actions or institutions run by regional governments we will use "regional action" or "autonomic institutions" respectively.

[2] "The recognition of a specific right or benefit [...] for specific people [...], with a protective purpose [...], and not originating from the organic social security framework, can be considered a type of benefit included in the generic block of social assistance. In principle, therefore, it must be the autonomous communities that regulate the system for these authorisations, as was in fact happening until the approval of the Royal Decree in question" (CCR 18/2017 of 2 February, legal basis 3).

[3] Not every public social measure or measure that protects disadvantaged groups constitutes social assistance in itself. In other words, it is not just public authorities with formal social assistance powers that can adopt social or beneficial measures for disadvantaged groups, given that the social state clause and its corollary in Article 9 (2) are transversal and must be projected in all spheres of society and the legal system by the intent of the Constitution. As a result, the autonomous communities, which hold the formal powers of social assistance in Spain as provided for by Article 148 (1) (20) of the Constitution and expressed in the various Statutes of Autonomy, do not have exclusive ownership over actions of a social nature, but rather all public authorities must exercise their different functions with a sense of social responsibility, being receptive to the needs of the groups most in need of support due to their situation of vulnerability (CCR 18/2017 of 2 February, legal basis 3).

[4] Scientific doctrine is the doctrine set out by authors in their works. It is not a source of law nor case law; it is merely a means of getting to know the law or of studying it in depth. Scientific doctrine has the value conferred on it by the scientific authority of the author who defends it or that which is provided by the arguments used.

[5] This was initially covered in CCR 13/1992 of 6 February, in which the Constitutional Court stated that:

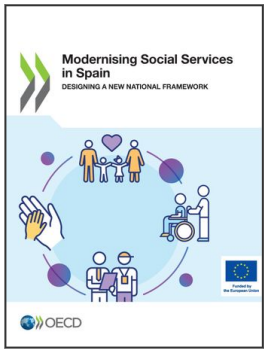
> The absence of competence based on “spending power” does not prevent the state from financing any social or economic action. This would involve the state using its financial resources to support general programmes or one-off actions for which it is constitutionally legitimatised by virtue of other competences resulting from the functions of the state – and other public authorities – as described in Article 9 (2) of the Constitution on the promotion of the substantial equality of individuals and of the groups to which they belong, reaffirming equality as a key value of the Spanish legal system (Article 1 (1) of the Constitution). This is especially relevant when, as is the case here, it is a question of benefit measures aimed at ensuring a minimum living wage for citizens that guarantees uniform living conditions. This is naturally included in the basic conditions of equality for all Spaniards in the exercise of constitutional rights, over which the state was granted exclusive competence by Article 149 (1) (i). Examining the current situation from the perspective of this doctrine, it can be concluded that, as noted by the Public Prosecutor, the regulatory powers over welfare pensions challenged here are supported by Article 149 (1) (i) of the Constitution, in connection with Article 50 of the same text. Both articles empower the state to establish the basic principles that guarantee equality in the fundamental legal positions of Spaniards, in this case, ensuring, in general, a minimum and identical welfare benefit for all. This is also justified by the economic limitations that, given the principle of solidarity, would make it unviable to have different age conditions for beneficiaries and different welfare amounts in place throughout the country.

[6] It is, therefore, possible to promote, through the competence granted to the state in Article 149 (1) (i) of the Constitution, specific, not generic, mandates included in the Constitution, such as those established in Article 50 in relation to older people or Article 49 in relation to people with disabilities, since it must be understood that the guiding principles of the social and economic policy of Chapter III of Part I of the Constitution (including those contained in articles 49 and 50 mentioned above) may be directly connected with the rule of competence pursuant to Article 149 (1) (i) of said Constitution. That was our understanding when we stated that ‘as noted by the Public Prosecutor, the regulatory powers over welfare benefits challenged here are supported by Article 149 (1) (i), in connection with Article 50 of the same text. Both articles empower the state to establish the basic principles that guarantee equality in the fundamental legal positions of Spaniards, in this case, ensuring, in general, a minimum and identical welfare benefit for all.’ (CCR 13/1992, legal basis 14.)

[7] However, this constitutional case law has expressly excluded assistance for immigrants from the matters on which a state law may be enacted by virtue of Article 149 (1) (i) of the Constitution. The Court argues

that this article expressly refers to the condition relating to the "equality of all Spaniards", which excludes social assistance measures aimed at foreign nationals (CCR 227/2012 of 29 November). With respect to foreign nationals, the state has the competence to control the legal regime that makes the foreigner an immigrant, but it is up to the autonomous communities to directly manage foreigners classified as such, especially with regard to their social status (CCR 31/2010 of 28 June, legal basis 83).

[8] Although in principle the co-operation bodies cannot replace the decision-making power of the autonomous communities within the scope of their competence, the Constitutional Court has recognised that "it should be noted that the state competences explicitly include co-ordination in various precepts of the Constitution (such as Article 149 (1) (i)), with the scope provided for in each of them, and, in those cases where the Constitution expressly attributes such powers, the scope of the agreements of the co- ordinating bodies will derive from the exercise of the corresponding competence" (CCR 137/2013 of 6 June, legal basis 5).



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