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NEWS REPORT

Country:	Spain
Title:	Part of the Catalan law for the effective equality between women and men has been annulled by the Constitutional Court
Date:	22 December 2016
Expert:	Maria Amparo Ballester-Pastor
<u>Context</u>	
Issue at stake:	Catalan law on effective equality between women and men has been partially annulled by the Constitutional Court because Catalanian Parliament has exceeded its competence to legislate
Ground of discrimination:	Sex
Source:	National court decision
Field:	Other
Applicable law:	Law of the Parliament of Catalonia 17/2015, of 21 July 2015, of effective equality between women and men

Content

Case/law development: On 21 July 2015, the Catalanian Parliament adopted Law 17/2015 for the effective equality between women and men. Catalonia is one of the seventeen autonomous communities of Spain and has competence to legislate on certain subjects. Articles 148 and 149 of the Spanish Constitution establish the division of powers between the central government and autonomous communities. According to Article 149 of the Constitution, the central government has exclusive competence to legislate in the area of labour law. Other autonomous communities in Spain had previously adopted their own laws of equality between women and men, and all of them had addressed issues related to the work of women¹. On 25 April 2016, the Spanish government requested the Constitutional Court to declare null some of the precepts of Catalan law of effective equality between women and men by considering that it invaded the exclusive competences of the central state in the field of labour legislation.

The Catalanian Law 17/2015 for equality between women and men apparently had the same structure and similar content as the rest of autonomous laws for equality between women and men. In general, these laws provide for the commitment of the governments of the autonomous communities in matters of equality in relation with a multitude of subjects, such as education, health, the media, the public service, labour relations, employment, etc.

¹ The other autonomous communities that have approved their laws on effective equality between women and men are Andalusia, Asturias, Canarias, Castilla-León, Castilla-La Mancha, Valencian Community, Extremadura, Galicia, Balearic Islands, Navarra, Vasc Country and Region of Murcia. These autonomic laws can be found at <http://www.poderjudicial.es/cqpi/es/Temas/Igualdad-de-Genero/Legislacion-y-jurisprudencia/Legislacion-de-las-CC-AA/>

Some of the reasons for which the Constitutional Court considered that the Catalan law should be declared partially unconstitutional were the following: (i) Article 33 of the Catalan law 17/2015 reproduced literally some of the precepts of Spanish law on effective equality between women and men (Law 3/2007, of 22 March) in the matter of sexual harassment. According to the Constitutional Court this provision was about labour law matters and could not be treated by the Catalan Parliament. The same happened with other articles of the Catalan law that, although simply reproduced what was already said in the Spanish legislation, did not have competence to do so (Article 48 of the Catalan law, also about sexual harassment; Article 36 about equality plans in the companies and Article 44 about risks prevention); (ii) Article 36.3 of the Catalan law was considered as against Article 149 of the Constitution because it established the obligation for the companies that equality plans had to have concrete measures to facilitate conciliation of responsibilities. The Constitutional Court considered that this obligation was a matter of labour law and that could not be established by the Catalan Parliament; (iii) Article 39 of the Catalan law ruled that the trade unions at company level had to have a specific person specialized in equality matters. This was considered as well by the Constitutional Court as a matter that exceeded the competences of the autonomous community.

After winning a parliamentary majority in a regional election in Catalonia in September 2015, the pro-independence parties vowed to implement an 18-month roadmap for independence from Spain by 2017. The plan called for the regional government to create basic laws in some matters. Many of these Catalan laws have been declared unconstitutional by the Spanish Constitutional Court in the recent months, and one of them has been the Catalan Law on Effective Equality between women and men.

Key points of analysis: Catalan law on effective equality between women and men has been partially annulled by the Constitutional Court because Catalan Parliament has exceeded its competence to legislate.

Internet link source:

Decision of the Constitutional Court of 22 September 2016,
http://www.tribunalconstitucional.es/es/salaPrensa/Documents/NP_2016_084/2016-02257STC.pdf, accessed 20 December 2016.