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BULLFIGHTING: AMID PUBLIC ENTERTAINMENT, CULTURAL HERITAGE AND ANIMAL PROTECTION*

A commentary on Constitutional Court Judgment (CCJ) 177/2016 of 20 October concerning the ban on bullfighting

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A toro manso, mayor castigo (The meeker the bull, the greater the punishment). A bullfighting proverb

Abstract

The judgment of the Spanish Constitutional Court (CCJ) 177/2016 overturned the ban on bullfighting in Catalonia that had been established under Catalan Law 28/2010 of 23 August. This prohibition, implemented within the framework of the autonomous community's competences in the areas of animal protection and public entertainment events, was declared unconstitutional in a rather hasty manner and without the decision being thoroughly reasoned by the Spanish Constitutional Court (SCC). The Court does not analyse the aforementioned competences but rather places them under the domain of the State law on shared competence for cultural heritage. This situation is a consequence of bullfighting having been included in this category on the basis of two state laws that were enacted subsequent to the Catalan norm. In this regard, the SCC ruling interprets jurisdictional concurrence within the area of cultural heritage in an unprecedented manner, granting Article 149.2 of the Spanish Constitution (SC) full functional content, a controversial aspect in the doctrine until now. This means that state legislation enacted under its umbrella takes precedence over any autonomous-community regulation where it has an impact. This is related to both the specific matter in question and to any other competences that fall exclusively within the domain of the autonomous community, some of which, including public entertainment events and public order, are of major relevance. The fact that the Court limits its reasoning to this apodictic approach excludes any reference in the judgment to other issues of substance that were also raised by the petitioners. These include the charge that the autonomous community's banning of a cultural activity also has an economic dimension that affects individual free enterprise and freedom of movement, as well as artistic creation. Finally, the SCC judgment fails to make a doctrinal analysis of issues such as the regulation of animal protection, which despite being new, also have a strong social dimension.

Keywords: intangible cultural heritage; animal protection; shared competences; public spectacles; bullfighting.

TOROS: ENTRE L'ESPECTACLE PÚBLIC, EL PATRIMONI CULTURAL I LA PROTECCIÓ ANIMAL

Resum

La sentència del Tribunal Constitucional (STC) 177/2016 anul·là la prohibició de les curses de toros a Catalunya establerta en la Llei catalana 28/2010, de 23 d'agost. Aquesta interdicció, emmarcada en les competències autonòmiques sobre protecció dels animals i d'espectacles públics, ha estat reputada d'inconstitucional en una expeditiva i poc aprofundida argumentació del Tribunal Constitucional (TC), que, sense discutir les esmentades competències, les sotmet a la prevalença de la normativa estatal en la competència compartida sobre patrimoni cultural, a partir que la tauromàquia va ser inclosa en aquesta categoria mitjançant dues lleis estatals posteriors a la norma catalana. En aquest sentit, el pronunciament del TC interpreta d'una forma inaudita la concurrència competencial en la matèria de patrimoni cultural, conferint a l'article 149.2 de la Constitució espanyola (CE) un contingut funcional ple, quelcom fins ara controvertit en la doctrina, amb la qual cosa la legislació estatal feta a la seva empara desplaçaria qualsevol norma autonòmica sobre la qual es projectés, relativa tant a la matèria específica com a d'altres competències de titularitat exclusivament autonòmiques, algunes de gran rellevància, com la d'espectacles públics en relació amb la d'ordre públic. El fet que l'argumentació del Tribunal es limiti a aquest plantejament apodíctic exclou qualsevol referència en la sentència a altres temes de fons, també plantejats pels recurrents, això és, l'afectació que la prohibició autonòmica d'una activitat cultural que gaudeix d'una dimensió igualment econòmica incideix sobre la llibertat empresarial individual o la llibertat de circulació, a més de sobre la de creació artística. Finalment, el pronunciament del TC negligeix l'anàlisi doctrinal de la incardinació de matèries noves però d'implantació social dinàmica, com ara la normació de la protecció dels animals.

Paraules clau: Patrimoni cultural immaterial; protecció dels animals; competències compartides; espectacles públics; tauromàquia.

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Summary

1 Introduction

In an particularly polemical judgment, the Constitutional Court sitting in plenary session upheld the appeal of unconstitutionality brought by the PP Parliamentary Group in the Senate, declaring Article 1 of Catalan Law 28/2010 of 3 August, which amended the recast text of the Animal Protection Act passed by legislative Decree 2/2008 banning the celebration of bullfights and other events involving bulls in Catalonia, to be unconstitutional and void. As we know, the challenged precept introduced a new section, *f*, to Article 6.1 of the Catalan Animal Protection Act, extending the pre-existing ban on the use of animals in certain activities that might cause them to suffer to include bullfighting. Even though the argument of CCJ 177/2016 cannot be classified as anything other than superficial, and notwithstanding its almost apodictic nature in many points as highlighted by the two dissenting votes included therein, the truth is that both its *ratio decidendi* and the actual subject matter under consideration, as well as the myriad of grounds for objection raised by the petitioners, involve legal elements that are of substantive interest.

Before entering into an analysis of the reasoning behind the Court's ruling, which is the main focus of our study, we must first examine some of the peculiar circumstances related to the debate on the matter that were considered in the resolution examined as well as the actual process that led to the ruling of the SCC, some of which are of an extrajudicial nature. Indeed, right from the start, the debate on the prohibition of bullfights ventured beyond the material limits in which it was formally presented, i.e. the scope of competences in areas such as animal protection (Article 116.1.d EAC - Statute of Autonomy of Catalonia) and public entertainment events (Article 141.3 EAC), and it has become a symbol of a possible clash between two cultural identities: that of Spain and that of Catalonia. Despite not finding any footing in either the preamble or the precepts of Law 28/2010, this alleged conflict was decisive in the reasoning of the SCC. In this regard, it is nonetheless surprising, first and foremost to see that CCJ 177/2016 mentions '*the guiding principles in matters of 'education, culture and research' and 'the environment, sustainable development and territorial balance*' (FJ 3) among the jurisdictional areas invoked by Law 28/2010, when, in fact, the only one really referred to, at the end of its preamble, is the second (Article 46 EAC). We should also remember that in the debates held in the Catalan legislative chamber during the proceedings on the regulation, the parliamentary groups that supported it repeatedly and explicitly rejected the cultural base.[1] Some commentators have accused these political groups of a certain hypocrisy in their approach,[2] even though this hypocrisy is no greater than that evidenced by the parliamentary groups that supported Law 18/2013 of 12 November in the Spanish Congress of Deputies (the lower chamber of Parliament), when they ruled bullfighting to be part of the cultural heritage.[3]

On the other hand, the abovementioned State Law 18/2013 is a substantive element in the itinerary that has seen the question raised by Catalan Law 28/2010 transmuted into a cultural matter in constitutional terms. This, as we will recall, came about as the result of a popular legislative initiative spearheaded by the 'Federation of Bullfighting Associations'. Among other aspects, it establishes that 'bullfighting [...] is part of a cultural heritage that is worthy of protection throughout the national territory in accordance with applicable regulations and international treaties on the matter' (Article 2). Moreover, this regulation was followed by Law 10/2015 of 26 May on the safeguarding of the intangible cultural heritage, which, in addition to treating its subject matter extensively, takes on Law 18/2013 (sixth final provision) with all its specialities.[4] Precisely, the use of these two laws, which were enacted after the Catalan law that was the subject of the SCC ruling,

1 *See Diari de Sessions del Parlament de Catalunya* (DSPC), VIII Legislatura, Series P, No. 131, 28 July 2010, p. 3-16.

2 *See* de Carreras, Francesc. «A toro pasado». *La Vanguardia*, 5 August 2010.

3 *See* the debate on the consideration of the draft bill: *Diario de Sesiones del Congreso de los Diputados* (DSCD), X Legislatura, No. 88, 12 February 2013, p. 4-18; as well as the debate on all aspects: DSCD, X Legislatura, No. 142, 26 September 2013, p. 3-21.

4 As we will recall, Law 10/2015 stirred up a considerable level of controversy among the sectoral public institutions as well as within the doctrinal field. In its Opinion 673/2014, on the draft bill (IV.*e*), the Council of State issued an opinion in favour of unitary legislation for intangible and historical heritage rather than the differentiated regulation presented in the draft bill. This opinion was shared by Castro and Ávila (2015: p. 111-113), who also came out in favour of incorporating items onto the list of the intangible cultural heritage catalogue by mutual accord between the State and several autonomous communities (p. 102-103). This proposal would tie in with the opinion of Carrera Díaz (2015: p. 23), based on Article 15 of the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003), which stated that '*the State should not oblige any group to conserve an expression of culture that it does not identify with, or which it does not want to practice*'.

invokes settled case-law on the question (for all, see SCC judgments 87/1985, FJ 8; 27/1987; FJ 4; 48/1988, FJ 3; and 154/1988, FJ 3). Accordingly, the aspect that draws our attention most is the significant temporary delay in reaching a decision on the Catalan law in relation to the date that appeal was presented. The appeal was registered with the SCC on 28 October 2010 although the judgment was not delivered until 20 October 2016. If we compare this, for example, with CCJ 122/2014 on the Historical Heritage Law of the Assembly of Madrid, we see that appeal being lodged with the Court on 16 September 2013 and the ruling being issued on 17 July 2014, and as we will see later, that ruling has several points in common with CCJ 177/2016.

To conclude these brief contextual notes, we obviously need to mention the current situation of relations between the legislative institutions, as well as those between the governments of Catalonia and Spain. Boix Palop (2016) predicted that the SCC ruling would see an increase in the tension of these relations and a widening of the emotional cleavage separating the majority of Catalan society - more inclined to pro-animal welfare - from society in the rest of the State, even though he does see the specific approach of the SCC as part of a general centralising tendency by state institutions - within the area of culture in this case - and this is something that could also affect the Autonomous Community of Madrid and the aforementioned CCJ 122/2014. However, other assessments of a more emotional nature, such as that of Tomás-Ramón Fernández, consider it inevitable that the SCC declared '*the unconstitutionality and annulment of such an arbitrary ban', because it was inspired 'not by a Franciscan love of animals, but rather by the goal of tearing Catalonia away from Spain'*.[5] And as bullfighting aficionados say it's all bull right down to the tail (*hasta el rabo todo es toro*). An excess of complacency and believing that the fight ends once the bull has passed its head before the muleta (the matador's stick with the red cloth attached) can prove costly, even for autonomous community lawmakers.

Our analysis of the content of CCJ 177/2016 will focus on the central thesis that there are several inconsistencies in the *ratio decidendi* on which it is based, and even some contradictions in relation to some of the Court's previous rulings. We start with a summary of the grounds on which the petitioners base their challenge, and as we will see, these cover a much broader spectrum of matters than those actually analysed in the judgment. We then go on to outline the core argument of the Court, which bases the unconstitutionality of the ban contained in Law 28/2010 on its jurisdictional conflict with State regulations on cultural heritage, which are deemed to take precedence. Our analysis concludes with a look at how the CCJ deals with the subject matter at the heart of the challenged Catalan law, i.e. animal protection and public entertainment events.

2 The grounds for the challenge

2.1 A public spectacle within the jurisdiction of the state

The petitioners start by stating that as an historical, cultural, social, economic and business phenomenon, bullfighting is a complex activity, and that for this reason it lies within the framework of various jurisdictional rules just like other artistic manifestations (e.g. cinema or the theatre). However, since the challenged Law does not regulate an activity but rather forbids it outright, the proposal is not so much an examination to decide which jurisdictional regulation is predominant as the fact that this prohibition invades a competence of the State. Furthermore, they declare that bullfighting is a "national" concern and part of Spain's cultural heritage and that this aspect should not be overlooked. In this regard, they recall that Protocol number 10 of the annex to the Treaty establishing the European Community on protection and welfare of animals, excludes "cultural traditions" from its scope, just as Directive 93/119/EC does.

The petitioners then separate the grounds of unconstitutionality into three major blocks of reasons, which are defined by grouping the violated constitutional precepts attributed to the Catalan law. The first of these refers to the violation of Articles 149.1.28 and 29 and 149.2 of the Spanish Constitution (SC). The petitioners agree that bullfighting is a public spectacle, which is not, however, enshrined within the rules of the system that distributes powers between the State and the autonomous communities *ex Articles 148 and 149 EC*.[6]

5 Fernández, Tomás-Ramón. «Sobre la prohibición de los toros». *El Mundo*, 4 October 2016. [Consulted: 20 December 2016].

6 Article 149.1.28 of the Spanish Constitution (SC) grants the State exclusive competence over the defence of Spain's cultural and artistic heritage and national monuments against exportation and pillaging, as well as powers over museums, libraries and archives

In accordance with this scheme, the Statute of Autonomy of Catalonia (EAC) of 1979 recognised that the Catalan Government (Generalitat) had exclusive powers within the realm of culture. On this basis, Royal Decree 1771/1985 of 1 August, transferred functions and services in the area of public entertainment events from the State to the Government of Catalonia (Generalitat) pursuant to the provisions of Article 9.31 of the Statute of Autonomy of Catalonia of 1979. The aforementioned decree established (in letter *B*.3 of its annex) that bullfighting would be governed by specific regulations at a State level, without prejudice to the powers of the Generalitat in accordance with the transfer of competences mentioned above. Therefore, the appellants infer that what was transferred to the Generalitat was the power to police spectacles (citing CCJ 148/2000, which delimited the jurisdictional perimeter of the Generalitat in the matter: the measures and provisions allow an ordered development of the event, aimed at protecting persons and goods through ordinary administrative intervention).

From here, the petitioners assert that the power to lay down regulatory standards on bullfighting events corresponds exclusively to the State (*ex* Article 149.1.29 and 149.2 EC), and to exercise this power, Law 10/1991 of 4 April was passed reserving the promulgation of the laws regulating bullfighting with regard to public order and public safety for the State Administration, in view of the 'national' nature of bullfighting and the need to adopt a regulation that would be uniform throughout the State. In particular, they refer to the Judgment of 20 October 1998, in which the Supreme Court rules on Catalan Law 3/1988 (precedent of the legislation under scrutiny), which limited bullfighting to already-existing bullrings, understanding that this determination did not encroach on the exclusive competence of the State as it does not regulate the technical and artistic aspects of bullfighting. Therefore, they argue the unconstitutionality in the opposite sense of the ban on bullfighting insofar as it constitutes a material encroachment of state competences regulating the essential part. In their opinion, this is not altered by the new Statute of 2006, which limits itself to granting the Catalan government exclusive competence within the area of shows and recreational activities including, in any case, the structuring of the sector, the system of administrative intervention and the control of all types of shows in public spaces and premises (Article 141.3 EAC).

2.2 A multi-faceted cultural manifestation

In a second section of arguments, the unconstitutionality of the challenged precept is defended on the grounds that it violates Articles 20, 27, 44, 46 and 149.1.1 of the Spanish Constitution insofar as bullfighting is a 'historical, artistic and cultural phenomenon', and accordingly an integral part of popular and traditional culture. The text of the appeal cites examples from poets and writers including Federico García Lorca, Jacinto Benavente and Ramón María del Valle-Inclán. It also mentions the fact that the Explanatory Memorandum of Law 10/1991 already included the relationship between bullfighting shows and the promotion of culture, pursuant to the provisions of Article 149.2 EC (which classifies culture as an essential duty and attribute), and in view of its '*tradition and cultural validity*' (Article 4 Law 10/1991). For this reason, they believe that this activity is envisaged in the Constitution from various perspectives: a) as an activity directly related to the exercise of the fundamental rights recognised under Article 20 SC (artistic creation, freedom of expression, etc.) and even to the rights recognised under Article 27 SC; b) as a jurisdictional matter in which the State and the autonomous communities coalesce; and c) as an activity of the public authorities who must promote and watch over access to culture (Article 44 SC), in addition to guaranteeing the preservation of the cultural heritage of the peoples of Spain and the property that it consists of, and promoting its enrichment (Article 46 SC). In the opinion of the petitioners, these principles are gathered in CCJ 49/1984 of 5 April, which sets out the aforementioned jurisdictional concurrence legalising the State's right to preserve the common cultural heritage.

Bearing in mind what we have already stated, the petitioners argue that the prohibition included in Article 1 of Law 28/2010 restricts the fundamental rights recognised under Article 20, and therefore this determination should correspond to the State under the provisions of Article 149.1.1 SC. The Constitutional Court argued along the same lines in CCJ 153/1985 in its response to a Catalan law restricting access to certain events

owned by the state, the management of which could be entrusted to the autonomous communities. And that, for its part, Article 148.1.17 SC authorises the autonomous communities to assume competences in matters related to the promotion of culture, and Article 148.1.15 SC empowers them to assume competences in the area of museums, libraries and music conservatories of interest for each autonomous community.

on age grounds. Furthermore, the law would violate the competence of the State to preserve the common cultural heritage *ex* Article 149.2.

On the other hand, they say that Articles 44 and 46 of the Constitution call for public action to promote, guarantee and preserve cultural heritage, which are characteristics that classify bullfighting as a value to be protected (along the same lines, it is pointed out that the guiding principle of Article 42.7 EAC, entrusts the public authorities with the task of 'ensuring social, cultural and religious coexistence among all persons in Catalonia and guaranteeing respect for the diversity of ethical and philosophical beliefs and convictions of persons'). In short, these values and rights cannot be opposed on the grounds of protecting animals, in particular the fighting bull, because: a) in this conflict of interests and according to Protocol number 10 of the Treaty of the European Union, cultural values and the basic freedom of artistic creation prevail; b) without bullfighting (*la fiesta*), the animal that the Catalan law is trying to protect (the fighting bull) would not exist; and c) there is no coherence and proportionality with the fact that *correbous* are exempted from the ban under Law 37/2010[7] (*correbous* is a tradition in which flaming sticks are attached to the bull's horns and the bull is then allowed to charge people).

Finally, in the final block of arguments, the petitioners base their opposition to the autonomous-community law on Articles 9, 38, 40, 128 and 149.1.13 of the Constitution. According to these guiding and jurisdictional principles, which make up the so-called *economic constitution*, the general planning of the economy corresponds to the State, while the execution of state economic policy is left to the autonomous communities, for example, fostering the development of their own regional economies. In any event, they add that the exercise of these competences must respect the principle of market unity that stems from Article 139.2 SC, in order to avoid any dysfunctional effects on the Spanish economy as a whole. In reference to this, they say that this principle fails when an autonomous-community measure generates '*objective consequences that result in the emergence of obstacles that bear no relation, and which are disproportionate in terms of the constitutionally licit aim that the adopted measure aspires to*' (CCJ 64/1990 of 5 April, FJ 5). From here, they conclude that the prohibition included in Article 1 of Law 28/2010 is unconstitutional as it violates Article 149.1.13 of the Constitution: bullfighting is also a market for the production of goods and services in which several interests and subjects of economic activity converge, and it is an economic sector of the highest order. Moreover, they believe that the measure restricts individual free enterprise, which is recognised under Article 38 of the Constitution, in such a way that it also affects freedom of movement. In this context, the petitioners invoke CCJ 84/1993 of 8 March, in which the Court stated that '*the generic and absolute exclusion of such free enterprise in an entire area of economic activity would be incompatible with the institutional guarantee of free enterprise, as such an exclusion is not determined by the provisions of the second subsection of Article 128.2 SC*'.

3 The disputed legal basis of the judgment: the primacy of State regulations in the area of cultural heritage based on shared competences

As we have already stated, the approach of Catalan Law 28/2010 consciously steered clear of the cultural basis, but from the early discussions on the draft legislation, those contrary to the prohibitionist law tried to move the centre of gravity of the debate towards cultural matters, because they purposefully understood that this would offer both a more comfortable refuge for their pro-bullfighting discourse and more viable constitutional protection than the thorny issue of competences within the areas of public entertainment events and animal protection. In an early reflection, Tomás-Ramón Fernández (2010: p. 731) mapped out the legal criterion of those against the constitutionality of the Catalan regulation in a way that coincided greatly with the one that was finally adopted by the SCC: '*Culture, just like language, belongs to the people. It is they, and they alone, who create it, who change it or who transform it. Nobody can impose it upon them against their will, nobody can take it away from them either. In this regard, culture is beyond the Law, beyond the reach of the Law. This is precisely the reason why the Constitution has not authorised anybody to eliminate any*

7 The conclusions to the petitioner's arguments insist on this possible incoherence citing Law 34/2010, the preamble of which states the economic flows that this tradition involves as the reasons why it considers it is necessary to protect *correbous*, apart from their historical status and their uniqueness in heritage terms.

cultural manifestation. For this reason, when it refers to culture, neither does it grant any power or authority exclusive competence over it'.

The actual procedure adopted by the Court is consistent with this view when it substantiates its decision as one of jurisdictionally classifying the law being challenged within the powers of the autonomous communities on animal protection (Article 116.1.*d* EAC) and entertainment (Article 141.3 EAC), before apodictically introducing an obligation whereby these competences must be compatible with State competences outlined in Articles 149.1.28 SC (the defence of the cultural heritage), 149.1.29 SC (public safety) and 149.2 SC (culture). In this regard and despite stating that Article 149.1.29 SC is not violated, it holds that Article 149.2 SC is undermined, and says that it is closely entwined with Article 149.1.28 SC. Indeed, for the Court there is a non-excluding concurrence of state and regional (autonomous community) competences in cultural matters which, in order to preserve the common cultural heritage (*ex* Article 46 SC), empowers the State to take over the competences of the Generalitat, not only in cultural matters but also in the aforementioned areas of entertainment and animal protection. It is for this reason that the somewhat superficial and speedy nature of CCJ 177/2016 has been reproached, given that after affirming the unconstitutionality of the regulation on a one-off basis, the Court strangely declines to examine the remaining elements under consideration.[8] The core of the reasoning of the pronouncement of CCJ 177/2016 is expressed in the following manner in FJ 7 of the judgment:

> '*From the logic of the jurisdictional concurrence that exists within the area of culture, the ideas that the various public authorities who are responsible for fulfilling the mandate of Article 46 SC can have of what is understood as a cultural expression susceptible to protection, can be common and also heterogeneous, or even opposing ideas. In other words, that assessment also falls within the freedom of configuration that corresponds to the legislature of the autonomous community when interpreting the wishes or opinions that exist on this matter in Catalan society, whenever it is legislating and exercising its competences over public entertainment events. That said, these differences must be expressed in a manner that is in line with the constitutional order for the distribution of competences in which autonomous-community decisions find their base, in such a way that they cannot impede, disturb or undermine the legitimate exercise of the competences of the State within the area of culture, pursuant to Article 149.2 SC. [...] For that reason, insofar as it includes a measure banning bullfights and other similar events adopted in the exercise of the competence in matters of public entertainment events, the law of the autonomous community undermines the powers of the State in cultural matters, since it affects a common manifestation and impedes the exercise in Catalonia of the state competence to preserve that cultural tradition, as it directly makes this preservation impossible, when it has been considered worthy of protection by the state legislature under the terms that have already been described*.'

Both Law 18/2013 and the subsequent Law 10/2015 are based on the concurrent nature of the competence over cultural heritage from a particular reading of the interaction between Article 149.1.28 SC and Article 149.2 SC. As we have seen, CCJ 177/2016 not only ratifies this vision, but in its reasoning, it also ascribes it an additional hierarchical status, as indicated in the previous citation, and accordingly, despite being adopted in relation to other jurisdictional powers that are exclusive to them apart from the area of culture, the decisions of the autonomous communities must give way to what is established by the State.

This position is certainly not a new one in the case law of the Court (see CCJ 49/1984, FJ 6; CCJ 17/1991, FJ 3; and CCJ 122/2014, FJ 3.*b*), but one cannot argue that it is a totally pacific one in doctrinal terms. In particular, the invocation of Article 149.2 SC as a basis with total functionality, i.e. legislative and executive content, is explicitly rejected, amongst others, by the two dissenting votes in CCJ 177/2016.[9] Indeed, the reading that supports the Constitutional Court's doctrine on the aforementioned article seems to point, at least in its original wording,[10] to the initial recognition of the competences of the autonomous communities

8 Boix Palop (2016) goes as far as to say that '*the Constitutional Court has ended up creating a "legally listless" judgment, or one usually referred to in bullfighting terms as a "faena de aliño"* or doing no more than what is needed.

9 Boix Palop (2016) has expressed similar views. However, we should remember that the appeal to these two constitutional precepts has been repeated by the state legislature in several legal texts; *See* Carrasco Nualart (2010: p. 320-322).

10 Certainly, the reading received by the set of Articles 149.1.28 and 149.2 SC, in relation to Article 46 SC, referred to the constitutional line of a 'State of Culture', in which the active involvement of all the public authorities is sought '*to ensure that all citizens have access to cultural assets*' (Tajadura, 2001: p. 93).

in cultural matters, because the state action in the latter becomes impossible without the shared desire of the former:

> '*It would be superficial to attempt to build on the idea of competence in culture matters, as specified in Article 148.1.17, as an all-embracing and excluding competence. The reading of other texts of the SC (especially Article 149.2, and those from the list of this title referring to cultural matters) and a reflection on cultural life, leads to the conclusion that culture is something within the institutional competence of both the State and the Autonomous Communities, and we could still add other communities, because wherever there is a community, there is a cultural manifestation about which representative public structures can hold competences, and in a sense that is not necessarily technical-administrative, this can be imagined as part of the "promotion of culture". This is the reason behind Article 149.2 of the SC which, after recognising the competence of the autonomous community, declares it a state competence, placing the emphasis on culture's status as an essential duty and an essential function. In a nutshell, there is both a state competence and a competence of the autonomous communities in the sense that rather than a vertical distribution of powers, there is a concurrence of competences aimed at preserving and stimulating the cultural values that are typical of the social fabric' from the corresponding public body* (CCJ 49/1984, FJ 6).

Nonetheless, we cannot ignore the fact that this approach does not exclude the cited pronouncement from setting a clear precedent for more expansive and intense state involvement in cultural matters, especially when it declares that '*the State will also have a power, which will enjoy, first and foremost, an area of preferential attention for the preservation of the common cultural heritage, but also in whatever may require general treatment, or make public action necessary, when the cultural assets cannot be accomplished through other sources*' (CCJ 49/1984, FJ 6).[11]

However, as we have already seen, the novelty in the approach of the legal argument of CCJ 177/2016 is the primacy or predominance that it grants to the state law for the protection of cultural heritage. As the magistrate Juan Antonio Xiol Ríos mentions in his dissenting vote in the judgement (point 12), this primacy '*is typical of jurisdictional conflicts that arise when the exercise of development competences by the autonomous communities clashes with the exercise of basic competences by the State*'. However, it is necessary to bear in mind that in a previous ruling, the Court had already set out criteria that pointed in this direction. Specifically, CCJ 124/2014 declared certain articles of the Law of the Assembly of Madrid 3/2013 of 18 June on the historical heritage of the Madrid Autonomous Region to be unconstitutional because they clashed with concordant precepts of the Spanish Historical Heritage Act 16/1985 of 25 June. On that occasion, after explicitly and repeatedly ruling out the fundamental character of state legislation, the Court decision established a *ratio decidendi* whereby it was the role of the SCC to delimit the sub-matters contained in the constitutional principle of the text (Article 149.1.28 SC), because of their own meaning and functionality, and it argued that it was not constitutionally legal for autonomous-community legislation to decide on these matters (*See* FJ 8, 9, 10, 11 and 12).

However, next to this approach, which cannot be seen as something essential to the fundamental character of the State law but rather essential to its prevalent nature at least as far as certain sub-matters are concerned, CCJ 122/2014 in turn sets out some relevant doctrinal criteria, which may not have been adequately considered in CCJ 177/2016. The first of these criteria is that which states '*that the Administration that is competent to formally declare an 'asset to be of cultural interest' [...] is the Autonomous Community where the asset is located*' (CCJ 122/2014, FJ 5); and the second is that which grants the autonomous communities the legal capacity to establish the description of the specific notes that must define 'assets of cultural interest', in the following terms:

> '*The State is attributed the role of generically and essentially defining the ideas that decide whether an*

11 Among the elements that the doctrine of the SCC has validated as a basis for extending state competences in the specific sub-matter of cultural heritage, the extension of the scope of the concept of 'pillaging', included in Article 149.1.28 SC, deserves special mention beyond the strict meaning of a physical attack that destroys or deteriorates heritage, employed in CCJ 17/1991: '*The use of the concept of a defence against pillaging should be understood as the definition of additional protection for assets with some special characteristics. By the same token, it concludes that there is a series of defence measures which, in addition to referring to their deterioration or destruction, seek the arbitrary or irrational deprivation of the normal fulfilment of the essential purpose of the asset in accordance with its nature, as the carrier of values of general interest; if these values are also preserved*, they cannot, however, underlie '*the possible use of this concept to grant cover to specific measures that go beyond what the protection of those assets should rationally encompass in the finalist sense*' (FJ 7).

> *asset should be declared to be of cultural interest by the competent Administration, because in this way it is guaranteed that it will be treated in the same way throughout Spain (Article 149.2 SC) and this prevents assets that merit protection from being excluded from the maximum protection that this category offers (Article 149.1.28 SC). A subsequent clarification of these characterising notes no longer forms part of these limited jurisdictional headings, with each autonomous community being able to address the matter by virtue of its general competence within the area of historical heritage*' (CCJ 122/2014, FJ 6).

Certainly, the state legislature could have dispensed with the words 'throughout the national territory' in Article 2 of Law 18/2013. Even so, the SCC could have interpreted it in a manner that was more in accordance with its own doctrine, as expressed in the two previous citations of the CCJ 122/2014, in other words, that the classification of bullfighting as a national heritage is not incompatible with the fact that not all the legislatures of the autonomous communities share this cultural view of the asset. Instead and rather surprisingly, the Court claims the right to impose the declaration of bullfighting as a part of national cultural heritage above '*the existence of any rejection, disaffection or disinterest on the part of the population with regard to this spectacle*' (CCJ 177/2016, FJ 7). The dissenting vote cast by the magistrate Adela Asúa Batarrita and the magistrate Fernando Valdés Dal-Ré is expressed in an ultimate meaning that coincides with our reasoning, when it states the following in relation to bullfighting being declared part of the national heritage:

> '*At no time does it require bullfights to be held throughout the state territory, nor for there to be a minimum number of bullfights, nor for them to be held with a certain frequency: neither does it impose that the public administrations should ensure that they take place. Without doubt, the prohibitive nature of the Catalan regulation prevents individuals from carrying out certain types of activities related to bullfighting within the territorial area of Catalonia. However, the Law of the autonomous community does not question the cultural-asset status that the state Law assigns to bullfighting: neither does it impede the implementation and development of the rest of the very broad range of knowledge and artistic, creative and productive activities that make up bullfighting, nor does it prohibit the breeding of fighting bulls nor the creation of schools or associations of any kind related to bullfighting in its territory'*.

Furthermore, when Law 18/2013 was passed, it so happened that several autonomous communities (Madrid, Castile and León, Castile-La Mancha and Murcia) had already voluntarily declared bullfighting as an asset of cultural interest, and therefore the constitutional goal *ex* Article 46 SC, in other words, the survival of the cultural asset covered by Law 18/2013, was guaranteed and would not be affected by the banning of a specific manifestation of tauromachy - bullfighting in this case - by the jurisdictionally empowered legislature of some autonomous communities (the Canary Islands and Catalonia, in this case). For its part, in its opinion (DCGE) 12/2010 on the draft legislation that would later become Law 28/2010, the Council for Statutory Guarantees (CGE) states that the right to culture is a right that is also recognised in the Statute, but both here and in the Constitution it represents a general principle of non-discrimination in accessing cultural assets, as it does not involve a right to provide (such as education or health) that obliges the public authorities to carry out a particular and specific action. Consequently, the measure banning bullfighting, adopted in the exercise of an exclusive competence, does not in any case imply an infringement of 'citizens' rights within the area of culture' (DCGE 12/2010, FJ 4).

In any case, what is evident is that as far as the prevalence of state legislation in the area of cultural heritage is concerned, the doctrine of the Court has taken an important step forward in CCJ 177/2016.[12] In fact, when drawing up Law 10/2015, it had already significantly imbued State lawmakers with some of the precepts that the Council for Statutory Guarantees found questionable in constitutional and statutory terms (DCGE 12/2015). Indeed, Law 10/2015 introduces three principles that have played a relevant role in the substantiation of legislative initiatives of a centralising nature in recent years into the state regulation on

12 The dissenting vote of the magistrates Adela Asúa Batarrita and Fernando Valdés Dal-Ré states that CCJ 177/2016 is part of a '*disquieting line of jurisprudence that has been expanding recently*', in which the mere presumption of undermining the competences of the State is identified as a cause for declaring an autonomous-community regulation unconstitutional, despite being promulgated within the framework of clear and unambiguous competences of the autonomous community, a line that the magistrates exemplify in the Constitution Court judgment that concerns us here, CCJ 93/2015, FJ 18, and CCJ 8/2016, FJ 5. According to the opinion of the dissenting vote, in this legal reasoning '*it would no longer be necessary to accredit the existence of a state precept that contained a regulatory mandate incompatible with the principle of the autonomous-community law. The mere confirmation, without any further examination, that the content of an autonomous-community law undermines the competences of the State would be sufficient, either in the abstract or through its embodiment in certain state regulations, in order to declare it unconstitutional and null. This redefines the notion of unconstitutionality and sees the assessment of constitutionality beginning to slide down a very slippery slope*'.

intangible cultural heritage in a manner consistent with Law 18/2013. First of all, the state law invokes the principle of 'market unity' (Article 3.*j*);[13] DCGE 12/2015 on Law 10/2015 (FJ 3.1) explicitly links it to Law 18/2013, given that the application of this principle, as expressed in Law 18/2013, implies that the state legislation or that of another autonomous community might 'be susceptible to contradicting the legal assets protected by the sectoral legislation of the autonomous community of destination, which has been passed with a reasonable aim, and supported by competences that have been attributed legitimately and statutorily'.

Secondly, the principle of supraterritoriality appears as a hypothetical basis on the one hand, with the State directly assuming the power to declare an asset to be of cultural interest (Article 12.1.*a* Law 10/2015); and on the other hand, with the state making its declaration, after consulting the autonomous communities (Article 12.1.*c* Law 10/2015). The possibility of this occurring against the criteria of one or more autonomous communities and producing the effects envisaged in the state regulation, adds a corrosive effect of not inconsiderable transcendence because, as DCGE 12/2015 (FJ 3.5.*C*) outlines, 'it would place us in a situation whereby the State administration imposes a cultural manifestation that aspires to being declared as an integral and representative part of a "shared tradition" and which, on the other hand, might be considered as not sufficiently representative, or as strange, or even contrary to the very culture of the communities'.[14]

Finally, the state regulation invokes 'the special relevance and international transcendence' of the intangible cultural asset as a basis for state intervention (Article 12.1.*e* Law 10/2015). In this regard, we should remember the same constitutional doctrine opposing the use of this criterion to limit the competences of the autonomous community within the area of cultural heritage (CCJ 17/1991, FJ 6), even though it simultaneously recognises a certain level of protection under Article 149.2 SC. The DCGE 12/2015 (FJ 3.5.*D*) acknowledges the merits of this principle although it does warn of the power vacuum that an unlimited application could result in. Thus, the CGE remarked that 'the international relevance that an intangible asset might represent cannot become a point of connection that results *per se* in the displacement of the competence of the Generalitat on any activity of a cultural nature' (DCGE 12/2015, FJ 3.5.*D*). It would then be a case of the principle of international relevance not being sufficiently included within the constitutional and statutory order.

4 Judgment of constitutionality on competences within the areas of entertainment and animal protection

4.1 The competences of the autonomous community within the area of public entertainment events

The procedure behind the reasoning of the judgment adopted by the Court, set out at the beginning of the previous section, does not, however, exclude the principle under consideration being recognised as a legal asset protected under the Catalan regulation, in other words, '*the prohibition of a certain type of recreational activity because it is considered that the use that it makes of the animal, as indicated in its very title, is reprehensible and unacceptable*' (FJ 3); nor that it succinctly approaches the relationship between the content of the challenged law and what is, in fact, the jurisdictional authority in which it is enshrined.

Indeed, the Constitutional Court states that '*the ban on bullfighting contained in the contested legislation might find endorsement in the exercise of the powers granted to the Autonomous Community within the area of animal protection [Article 116.1.d) EAC] and matters related to public entertainment events (Article 141.3 EAC)*' (FJ 3), but only to add immediately afterwards, the need for these undisputed competencies of the autonomous communities to be in line with those of the state - in this case in matters relating to

13 As we know, the extensive use of this principle by the State took a major qualitative leap with the passing of Law 20/2013 of 9 December guaranteeing market unity, in terms of the problems that it raises for the exercise of the competences of the Generalitat, *See* DCGE 5/2014, especially FJ 2.4 on matters related to the issue dealt with there.

14 In relation to the same precept cited in the State regulation, the opinion of the CGE adds that "the manner in which the current text is worded could result in a tangible cultural asset being recognised as a shared asset, whereas in fact it neither forms part, nor is voluntarily integrated into the collective imagination of the various peoples and communities of the State. This possible consequence makes even less sense not just from the perspective of its constitutional suitability, but also due to the fact that it involves an extremely sensitive matter of origin, construction and conservation that is eminently customary and community-based, and one which connects with the most essential and configurative elements of the collective identity. Consequently, they must express a democratic culture that should not in any way evoke events from previous historical periods when culture was used as a means of imposition and standardisation' (DCGE 12/2015, FJ 3.5.*C*).

cultural heritage – and which the Court apodictically considers to take precedence (FJ 4). Nonetheless, the reaffirmation that the Constitutional Court makes of the regional nature of the two matters under which the contested Catalan law was protected, especially that concerning public entertainment events,[15] should not be interpreted as a possible route available to the Catalan legislature to try and redefine the ban on bullfighting in a new legal regulation. Thus, starting from the line of reasoning of CCJ 177/2016, and as long as the current protection granted by the Spanish legislature to bullfighting subsists through the corresponding declaration of cultural heritage, any regulatory evolution that leads, in law or in fact, to the prohibition of this type of events must be subject to the same reproach of unconstitutionality as Law 28/2010.[16] This is undoubtedly one of the "false paths" which the Constitutional Court occasionally seems to suggest in its rulings.

We will mention two recent examples of these 'false paths in order to clarify what we are referring to. Both of these concern Catalonia, and specifically, the so-called 'Catalan process'. First of all, we will cite the popular non-referendum consultations, a legal instrument that stems from a particular reading of the extraordinarily precise and specific definition of the referendum principle adopted by CCJ 103/2008 (FJ 2), which seemed to open the door to political consultations being defined in the contrary sense to include the whole of the population not included in the nature of the referendum. As we know, this possibility was explicitly ruled out through a rectification of the original doctrine of the Court, far more substantive that that which it wished to recognise in CCJ 31/2015, following a pronouncement on the Law of the Parliament of Catalonia 10/2014 of 26 September, on popular non-referendum consultations and other forms of public participation. In this ruling, the Court extended the concept of referendum to include any act through which '*the public authorities call on all the citizens of a particular territorial area so that they can exercise the fundamental right of participation in public affairs issuing their opinion, whether binding or not, on a particular matter, through a vote and with the guarantees of an electoral process*' (FJ 6).[17] For its part, CCJ 42/2014, which ruled the declaration of sovereignty approved by Parliamentary Resolution 5/X to be unconstitutional, surprisingly developed some ambiguous bases of what was referred to as '*a constitutional interpretation of the references to the right to decide of the citizens of Catalonia*' (FJ 4).[18] However, this 'false route' was short-lived given that CCJ 259/2015, which established the unconstitutionality of Parliamentary Resolution 1/XI, on the start of the political process in Catalonia as a consequence of the election results of 27 September 2015 (FJ 5 and FJ 6), and subsequently ATC 141/2016 (FJ 6), made sure that it conclusively prevented any further developments to it.

In this respect, we must keep in mind that the DCGE 12/2010 (FJ 3) had already indicated that the basis in the general competence on public entertainment shows that Article 141.3 EAC reserves exclusively for the Generalitat, could be regarded as more specific than that of animal protection *ex* Article 116.1.*d* EAC. The Council for Statutory Guarantees understood that the controversy over jurisdiction focussed on the subject of regulating the system of public entertainment events, which covers the management of the sector, the system of administrative intervention and the control of all kinds of shows in public spaces and premises. Thus, the management of this sector means that the holder is assigned the capacity to decide the legal scheme for jurisdictional matters concerning entertainment events, which allows it to exercise regulatory powers in order to break new ground in pre-existing situations that affects subjective rights, or else to preserve and protect

15 The CCJ declares that its consideration of the primacy of State powers over cultural heritage 'does not mean that the autonomous community cannot regulate the organisation of bullfighting events while exercising its powers over public entertainment events, as the autonomous community has indeed already done [*sic*] in a previous Law limiting access to bullfights to persons over the age of 14 and restricting such events to already-constructed bullrings; neither does it mean that, in exercising its powers in matters related to animal protection, it may establish requirements for the special care and attention of the fighting bull' (CCJ 177/2016, FJ 7).

16 Furthermore, we must bear in mind the broad doctrinal opinion that considers that '*the competence over entertainment events, as it has been traditionally understood, only makes it possible to establish certain external conditions under which these should be developed for the sole purposes of safeguarding public morality and ensuring the lives and physical integrity of participants, the peace of mind of those affected by the spectacle and the comfort of spectators. There is no reason to think that the Statutes of Autonomy have wished to give this title a meaning different to that which it has always had'* (Doménech Pascual, 2010: p. 19).

17 On this matter, *See* Ridao Martín, Joan. «*La oscilante doctrina del Tribunal Constitucional sobre la definición de las consultas populares por la vía de referéndum. Una revisión crítica a través de cuatro sentencias*'. *Estudios de Deusto* [Bilbao: University of Deusto], Vol. 63, No. 1 (2015), p. 359-385.

18 Professor Fondevila believes that, through this content of the judgment, '*the SCC muddles and ultimately devalues its first and correct assertion*'. *See* Fondevila Maron, Manuel. «Derecho a decidir y soberanía. A propósito de la CCJ 42/2014, of 25 March'. *Teoría y Realidad Constitucional* [Madrid: UNED], No. 34 (2014), p. 587-606 [p. 605].

them. This includes adopting standards on legality as well as on timeliness, in order to guarantee legal assets that are subject to protection such as the protection of animals and, more specifically, the ban on bullfighting. Furthermore, it considered that this competence cannot be displaced by the special administrative supervisory activity that the State carries out in the specific regulation of bullfights.

4.2 The competencies of the autonomous community within the area of animal protection

Finally, we need to examine competence within the area of animal protection, which was neglected in the reasoning of the CCJ, despite being clearly established as the competence base of Law 28/2010. As we have already stated, the way the judgment of the Constitutional Court deals with the various issues raised is anything but a shining example of rigor and in-depth thinking. Here, the higher-ranking status granted to competences in the area of cultural heritage, on the one hand, may have had some influence, while on the other, there is a certain concomitance with the appraisal of the Council for Statutory Guarantees that we mentioned in the previous paragraph. However, the pronouncement of the Court does not refrain from explicitly and rather mischievously questioning the primordial desire to protect animals that is the inspiration behind the Catalan norm, when it says that '*in banning certain bullfighting activities, the regulation itself classifies bullfighting as bull shows and admits the existence of other such events, and so, it also shows that from this perspective the purpose of the regulation is not only to protect animals, but also to prohibit a certain type of spectacle'* (CCJ 177/2016, FJ 3; added highlighted fragment is ours). Or, further on, when it emphasises the differential treatment granted to *correbous* under Catalan law '*as a specific expression of the Catalan cultural heritage*' (CCJ 177/2016, FJ 7).[19] First of all, it seems that the Constitutional Court is adding its voice to the accusations of hypocrisy against the Catalan legislature that we referred to in the introduction, but beyond that, it points to some arguments of the doctrine that question the constitutionality of the ban on bullfighting in Catalonia from the inconsistency that it represents in relation to the differentiated treatment granted to other bull shows in which fighting bulls are used (Doménech Pascual, 2010: p. 25-26). However, we must completely reject the basis of this doctrinal interpretation. In 2010, before bullfighting was declared an element of cultural heritage, the Catalan legislature exercised its freedom to choose from the specific and legitimate options attributed to it without dispute by CCJ 177/2016 within its framework of competences, just as the Canary Islands legislature did when it banned bullfighting but not cock-fighting in a law enacted in 1991. In this interpretation, it is clear that the fact that these options may seem incoherent, objectionable or disappointing does not add any charge of unconstitutionality to the acts.

In any case, the popular legislative initiative that gave rise to Law 28/2010 was essentially inspired by a current of opinion that considered bullfights to be a cruel spectacle in which animals are publicly tortured, and this would then be the main substantiation of the ban. This ties in with the reflection of the magistrate Xiol Rius, which he formulated in his dissenting vote in CCJ 177/2016 on the non-neutral nature of bullfighting as a cultural manifestation, saying that neither the values that it represents nor its uneven implementation throughout the State could allow it to be seen as such. The magistrate believes that the judgment should have taken aspects such as the decline in the interest in bullfighting in Catalonia in recent years into account, in such a way that the ban contained in the challenged law responds to '*a system of cultural values typical of the Catalan nation whose constitutional protection is guaranteed through the recognition of the plurality of the peoples of Spain and their cultures'*.[20] In short, given its non-neutral nature from the perspective of the various prevailing cultural value systems, bullfighting could only be regarded as a manifestation worthy of cultural protection within the whole of the State territory to the extent that it had been proven that there is a clear inclination and identification with the aforementioned system, something that is not the case in the autonomous community of Catalonia.

Therefore, in the conflict of constitutionality that it is ruling on, the doctrine of CCJ 177/2016 seems to be totally against attaching any importance to the animal-welfare positions that are gradually taking root in society, not just in Catalonia. Obviously, we are not referring here to a recognition of hypothetical 'animal

19 As we know, the SCC is referring here especially to Catalan Law 34/2010 of 1 October on the regulation of traditional events with bulls.

20 For a more in-depth analysis of the non-neutral nature of bullfighting and the incompatibilities of this fact with it being regarded as an element of cultural heritage, *See*. de Lora (2010a: p. 746-751).

rights', which would require an enormous doctrinal and regulatory development, but rather to the ultimate meaning of Rafael Sánchez Ferlosio's affirmation: '*My most ardent desire to see bulls disappear for once and for all is not based on a compassion for animals, but rather on a shame of Man';*[21] i.e. the articulation of the individual's right to the eradication, within any social environment, of the manifestation of cruelty related to certain forms of animal cruelty. The ruling of the Court takes refuge in the lack of references to this question in the constitution or the original statutes of autonomy.[22] However, we are concerned here with an issue that must surely be included in the constitution sooner rather than later, given the significant increase in social awareness that there has been on these aspects.

5 Conclusions

The reasoning behind CCJ 177/2016, which declared the bullfighting ban implemented through Catalan Law 28/2010 to be unconstitutional and void, introduces some unquestionable new features and it is rather apodictic in some instances, despite having had recourse to a consolidated doctrine in terms of jurisdictional concurrence on cultural heritage matters from a substantive point of view (*ex* Article 149.1.28 and 149.2 SC).

Indeed, the origins of the relationship between bullfighting and cultural heritage lie in two State laws (Law 18/2013 consolidated by the later Law 10/2015), both of which were enacted after the Catalan law, although prior to the ruling of the Constitutional Court, and which include bullfighting on the list of heritage items to be protected (CCJ 177/2016, FJ 6). However, one prominent new feature of the judgment that we are concerned with here and which is particularly conspicuous is its inconsistency with the precedent of the case law set by the same Court regarding both the scope and the manner of articulation of the specific concurrent competences of the State. To this end, we only need to see that the exhortation contained in Article 149.2 SC was not considered a specific state entitlement but rather an order addressed to all public authorities (CCJ 49/1984, FJ 6), and in specific terms, the domain of the State and autonomous-community legislature protecting heritage was implemented in the form of a cooperative formula rather than a vertical one (CCJ 122/2014, FJ 5 and FJ 6).

Secondly, the resolution that we have analysed here stands out due to the supra-hierarchical nature that the Court grants to state regulations in this area, and how it controversially invokes Article 149.2 SC in such a way that these norms are projected not only within the specific area of cultural heritage, but also within other jurisdictional areas that are the exclusive domain of the autonomous communities, in this case those regulating public entertainment events and those related to animal protection. Accordingly, the reaffirmation that the Constitutional Court makes of the regional nature (autonomous community) of both subjects, in which the contested Catalan law is protected, especially that concerning public entertainment events (CCJ 177/2016, FJ 3), should not, under any circumstances, be interpreted as a possible way to try reformulating the ban on bullfighting in a new legal regulation within the scope of the Catalan legislature.

On the other hand, the fact that the Court's reasoning is restricted to the cultural dimension of bullfighting means that the ruling highlights the expeditious and totally summary nature of many of the grounds of appeal, some of which have a notable legal projection. This may be due to the fact that the Constitutional Court may have considered that this area was the one that in dogmatic terms offered the most consolidated elements on which to build a verdict of constitutionality, but unfortunately, this is also coherent with many of the opinions, not only legal ones, raised during the proceedings and approval of the Catalan law, which placed the Parliament of Catalonia's decision within the framework of a cultural and political rivalry between two collective identities. Whatever the case, there is no doubt that the decision of the Court only deepens

21 *See* Sánchez Ferlosio, Rafael. «Patrimonio de la Humanidad». *El País*, 5 August 2012. [Consulted: 20 December 2016].

22 Even though this concept has occasionally been linked to that of 'environment protection' (Article 45.2 SC), the anthropocentric perspective adopted in the constitutional principle, which is manifested in the protectionist and conservationist orientations of the natural environment in order to favour the quality of life of human beings, does not precisely imbue it with the measures defended by 'animal rights' sectors. However, the absence of any reference in the original statutes of autonomy did not prove an obstacle to the development of a large quantity of autonomous-community legislation on animal protection matters. This legislative body came into being in a constitutionally pacific manner in a significant part of the second-generation statutes of autonomy, including the Catalan Statute, which explicitly included animal protection among its list of competences (Article 116.1.*d* EAC). At the same time, the State legislature has been extremely active in the matter, and its actions have included the criminalisation of animal cruelty and pet abandonment (Articles 337 and 631.2 of the Penal Code).

this rivalry, as the Council for Statutory Guarantees stated in this discordance (DCGE 12/2015, FJ 3.5.*C*), and all the more so when the legal grounds of the polemical ruling do not clearly establish the constitutional obligation that the cultural protection of a particular manifestation requires it to be celebrated throughout the territory of the State.

Finally, it goes without saying that the Court has missed an excellent opportunity to issue a decision on the incorporation of public action on animal protection into the constitution, especially in view of the increase in the number of cases - not only bullfighting cases - that have assumed a greater social relevance.

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