



PARLAMENT DE CATALUNYA

Annex 1

TERCERA PROVA

Anglès

Traducció oral i dissertació

Concurs oposició lliure per a proveir dues places de lletrat o lletrada del Cos de Lletrats del Parlament de Catalunya (501-00003/13)

Torn: lliure

13 de gener de 2023



PARLAMENT DE CATALUNYA

INSTRUCCIONS DEL TRIBUNAL

El tribunal posa a disposició de l'aspirant les conclusions del llibre d'Albertí, E., Fossas, E., i Cabellos, M.A. (2005). *El principi de subsidiarietat a la Unió Europea* (1a ed.). Barcelona: Parlament de Catalunya, en llengua anglesa, per tal que tradueixi una part d'aquestes i disserti sobre la seva totalitat, d'acord amb el següent:

TRADUCCIÓ:

Durant un màxim de quinze minuts, l'aspirant ha de traduir oralment només la part del text marcada amb una línia vertical. Es farà la meitat de la traducció en català i l'altra meitat en castellà, tal i com s'indica en el propi text.

DISSERTACIÓ:

L'aspirant disposa de quinze minuts per llegir totes les conclusions, sobre les quals ha de dissertar.

Durant un màxim de 15 minuts, l'aspirant ha de dissertar sobre les conclusions del llibre. Ho farà en català i castellà, canviant d'una llengua a l'altra seguint les indicacions del tribunal.

The principle of subsidiarity in the European Union

Its sanctioning in the Treaty for a European constitution
and the perspectives for regions with legislative powers
and particularly for their parliaments

ENOCH ALBERTÍ

*Professor of constitutional law
at the Universitat de Barcelona*

ENRIC FOSSAS

*Head of Research at the Institut
d'Estudis Autonòmics*

MIQUEL ÀNGEL CABELLOS

*Research area at the Institut
d'Estudis Autonòmics*

Conclusions

1. The principle of subsidiarity has been present in the European integration process since the founding Treaties of the Communities, but it did not become a fundamental principle for defining the powers among the member states and Communities until the Maastricht Treaty of 1992.

In the Maastricht Treaty, and in the successive revisions of the Amsterdam and Nice Treaties, the principle of subsidiarity appears at two levels: as a political criterion or rule of reason to attribute powers to the Communities, in particular specified in the range of powers assigned to the Community by the Treaties; and as a juridical principle governing the exercising of powers not exclusive to the Community, establishing a criterion to assess whether and to what extent the Community must exercise the powers it holds. This principle is legal in nature and its compliance can be monitored by the European Court of Justice or ECJ.

2. Fundamentally, it is the responsibility of the Commission to apply the principle of subsidiarity and it must examine its legislative proposals in the light of this principle, these being promoted from this perspective. The criteria for its application have been established by various community acts and regulations, the most important of which being the Conclusions of the Councils of Birmingham (October 1992) and Edinburgh (December 1992) and the respective Inter-Institutional Agreement between the European Parliament, Council and Commission of October 1993. Finally, the Protocol on applying the principles of subsidiarity and proportionality, attached to the Treaty of Amsterdam, included the previously established criteria and provided a *manual of operations* for applying the principle of subsidiarity.

The principle of subsidiarity has basically been applied by means of a self-administered monitoring test on the part of the Commission. This monitoring is therefore political and internal, by means of which the Commission tests its initiatives in terms of need (assessing the need for the Community's action in order to achieve the objectives of the Treaties) and effectiveness (assessing the scope and effects of the planned action to see whether its objectives may be better achieved at a community level). Following the same criteria, this monitoring may be reviewed later by the Council and by the European Parliament.

3. The European Court of Justice can review community acts in the light of the principle of subsidiarity, given their legal nature and status as part of the originating law. In reviewing compliance with this principle, the work of the ECJ has shown great deference towards the community legislator and has tended to accept the reasons given by the Commission to justify its actions. In general, the principle of subsidiarity has served to justify the need and effectiveness of the community action undertaken and not to apply limits in favour of member state powers.

4. As a result of the generalised dissatisfaction with the effectiveness of the application of the principle of subsidiarity, this issue became one of the focuses of debate in the process of reforming the Union, initiated after the failure of the Nice Treaty. The Convention proposed a preliminary system to monitor the Union's legislative proposals politically by means of the member state parliaments, with subsequent jurisdictional monitoring by means of the ECJ after the approval of the legislative acts, essentially passed later by the Inter-Governmental Conference and which has now been included in the proposed Constitutional Treaty by means of a specific Protocol.

The principle of subsidiarity thereby becomes a fundamental principle in exercising the joint powers of the Union, being applied on three occasions: firstly, in preparing the Union's legislative proposals and especially those of the Commission, creating a *subsidiarity statement* that justifies the proposals in this respect and by carrying out wide-ranging consultation; secondly, by an early warning system consisting of an external monitoring procedure that is political in nature and precedes the Union's legislative proposals, by means of the member state parliaments, this procedure having the power to suspend proposals; and, thirdly, once the legislative acts have been approved by means of the ECJ's jurisdictional control, on the request of member states or the Committee of the Regions.

5. In the preparatory phase of community actions, and in a particularly formalised way with legislative proposals, the application of the principle of subsidiarity involves taking into account the regional level of government and assessing the possible effects of the planned actions. The justification of the proposals, which must be contained in the *subsidiarity statement*, must also take into account the regional level of government and the proposal's impact on this.

6. Both the draft Constitutional Treaty (article 47.3) and the Protocol on the application of the principle of subsidiarity (article 2) are based on the Commission's obligation to carry out wide-ranging consultations on the proposals it wishes to initiate, which must also include those regions with legislative powers that are affected.

The minimum principles and rules for these consultations have been established by two Commission Communications, of the 11th December 2002 and the 19th December 2003, in accordance with the philosophy contained in the White Paper on the governance of Europe. These consultations take the form of periodic audiences with the associations of regional bodies on the Commission's annual work

programme and on the main initiatives with an effect on the area in question, before the start of the formal processes of decision-making and at the highest level of representation.

The fact that this dialogue is structured around the associations of regional groups means that regions with legislative powers, and the other bodies, cannot express their interests individually. Notwithstanding the fact that, in the future, efforts will continue to ensure that the regions with legislative powers in question may be listened to directly and individually by the Commission, the current challenge lies in creating those associations and groups that can appropriately and collectively represent their interests: on the one hand, with respect to the regions with legislative powers and, on the other hand, with respect to bodies with material interests in financial, social or cultural terms, which may be diverse in nature and which must result in a grouping that allows them to be involved in the community decision-making process.

7. Within the framework of the early warning system, the regional parliaments must be consulted by the respective member state parliaments when appropriate. The events, the procedure and the effects of this consultation must be handled internally by each state, which must adopt the corresponding decisions. In spite of the fact that the decision in question must be taken according to the rules and traditions of each state, we believe that some general criteria may be drawn up to guide these decisions:

- i The establishment of the consultation procedure and method must be agreed basically between the state and regional Parliaments.
- ii Those legislative proposals which concern or affect the legislative powers of the regions or which must be applied or exercised by the regions or which impose some obligation on them must be consulted with the regional Parliaments.
- iii The consultation must allow regional Parliaments to establish their position and express this to the state Parliament.
- iv The position of the regional Parliaments in question must be taken into account by the state Parliament when preparing their decision and must be decisive whenever the regions have exclusive internal authority for the legislative proposal.

8. With respect to the subsequent jurisdictional monitoring of legislative acts, the traditional demand of regions with legislative powers has not been included in the proposed Constitutional Treaty, namely their active entitlement to access the ECJ. In this respect, the regions are still treated as individuals in terms of bringing actions for cancellation, so that they may only bring an action against those non-legislative acts which are aimed at them or affect them directly or individually.

Notwithstanding this, the proposed Constitutional Treaty has introduced two new provisions which may give regions with legislative powers the possibility to act before the ECJ in order to defend their interests:

- i The recognised authority of the Committee of the Regions to bring appeals against European legislative acts in breach of the principle of subsidiarity and for which consultation with the Committee itself is required, which could allow the regions to bring before the ECJ those infringements of the principle of subsidiarity which are considered collectively.
- ii The possibility, implicit in the Protocol, that via the respective state Government and in accordance with the internal regulations of each state, objections may be made to European legislative acts that state Parliaments or one of their chambers aim to draw up.

Insofar as a consultative mechanism has been established for regional parliaments, it seems reasonable to believe that these Parliaments must also be able to put forward, to the state parliament, their objections to the legislative act that may have ultimately been approved by the Union, if this act has been passed against the judgement issued by the parliament. Naturally, this mechanism's effectiveness lies in an agreement between three agents (regional parliaments, state parliament and the state government), which should be appropriately formalised by means of the suitable legal instrument.

9. The Committee of the Regions has increased its importance in the Union's institutional system as it has increased the scope of its consultative actions and has achieved active authority to access the ECJ, both to defend its prerogatives and to oppose legislative acts that are, as far as it is concerned, in breach of the principle of subsidiarity.

Notwithstanding this, the demand of the regions with legislative powers to have their own position on the Committee was not successful and this body therefore continues to suffer from the same essential problem it has suffered from since its creation, namely the heterogeneous nature of its composition, making it difficult to represent regions with legislative powers satisfactorily. But there is still the possibility that, in the future and in virtue of the regulatory autonomy it enjoys, it might reach agreements to grant a specific role to the legislative regions and that the Committee may become a platform to provide these with a place in the Union.

10. Two basic conditions need to be met in order to involve the regional Parliaments in European decision-making processes effectively:

- i Information to the regional parliaments needs to be processed adequately, in sufficient time to allow their involvement in accordance with the modality chosen.
- ii The regional parliaments need an appropriate internal structure and particularly need the appropriate relational mechanisms with respect to their governments.