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CITIZEN SECURITY UNDER DEBATE: THE PARTICULAR CASE OF PORTS AND AIRPORTS OF GENERAL INTEREST

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Resumen: Este trabajo pretende alcanzar conclusiones sobre el concepto y contenido del bien jurídico seguridad ciudadana y su proyección sobre los puertos y aeropuertos de interés general. Partiendo del análisis hecho por las diversas posturas doctrinales sobre el bien jurídico y continuando con las interpretaciones jurisprudenciales sobre el contenido material de seguridad pública y seguridad ciudadana, nos sumergiremos en el modelo de seguridad del Estado autonómico. Para ello partiremos de un enfoque cualitativo, haciendo uso de una metodología descriptiva y deductiva para presentar una realidad social como son las necesarias condiciones de seguridad en el libre desarrollo del individuo en la sociedad, así como su introducción y evolución en nuestro ordenamiento jurídico. Para finalizar con una metodología inductiva en donde sentadas las bases de la necesaria tutela de la seguridad ciudadana, poder afirmar que ésta también se proyecta de un modo especial sobre la custodia de espacios concretos como son los puertos y aeropuertos. Instalaciones estas cuya custodia corresponde en exclusiva a la Guardia Civil en el ámbito de la seguridad pública, pero que requieren del recurso a las potestades generales de la policía de seguridad para realizar también funciones de seguridad ciudadana en un aspecto específico o singular como es la protección de estos puertos y aeropuertos.

Abstract: This work aims to reach conclusions on the concept and content of the legal right citizen security and its projection on ports and airports of general interest. Starting from the analysis made by the various doctrinal positions on the legal right and continuing with the jurisprudential interpretations on the material content of public security and citizen security, we will immerse ourselves in the security model of the autonomous State. To this end, we will start from a qualitative approach, making use of a descriptive and deductive methodology to present a social reality such as the necessary conditions of security in the free development of the individual in society, as well as its introduction and evolution in our legal system. To conclude with an inductive methodology where the foundations of the necessary protection of citizen security are laid, it can be stated that this is also projected in a special way on the custody of specific spaces such as ports and airports. These facilities are the exclusive custody of the Civil Guard in the field of public security, but which require recourse to the general powers of the security police to also carry out public security functions in a specific or singular aspect such as the protection of these ports and airports.

Palabras clave: Seguridad pública, seguridad ciudadana, bien jurídico, custodia policial de puertos y aeropuertos.

Keywords: Public security, citizen security, legal right, police custody of ports and airports.

ABBREVIATIONS

Art.: Article

CE: Spanish Constitution

EAPV: Basque Statute of Autonomy

SF: Security Forces

FCSE: State Law Enforcement Forces and Agencies

LOFCS: Organic Law on State Law Enforcement Forces and Agencies

LOPSC: Organic Law on the Protection of Public Security

STC: Judgement of the Constitutional Court (*Tribunal Constitucional*)

1. INTRODUCTION

The aim of this study is to critically address a controversial issue in the field of public security and more specifically in the field of citizen security, with multiple divisions and distributions of powers within the framework of a complex police model as in the case of the Spanish model.

The need to safeguard social coexistence and to create a space of tranquillity and stability that allows all citizens to rationally exercise their constitutionally recognised rights and freedoms requires the State to assume the obligation to guarantee this sphere of peaceful coexistence by preventing and repressing all acts of violence, making use of the power of *ius puniendi* in both the criminal and administrative spheres.

Based on logic and evidence, as a scientific method, our aim is to draw conclusions on the different options adopted in the field of citizen security policies, in relation to which we must first start by determining the object of protection, the protected legal right, the basis that supports the whole framework that aims to protect social relations, making use of different scientific publications and court rulings, among others.

In this paper we will focus on the current Spanish constitutional period in which two Organic Laws have been enacted, the first in 1992 and the one currently in force, adopted in 2015, both not without controversy in their parliamentary procedures. The first law, also known as the “Corcuera Law” or the “Kick down the door law", was enacted during a Socialist government and the second, known as the "Gag Law", was enacted during a Conservative legislature.

Another of the challenges that the Spanish State has had to face has been to make the competencies in matters of citizen security compatible between the State Security Forces and Corps (FCSE) and the different Autonomous Police Corps, within the framework of both the Spanish Constitution (EC) and the corresponding Statutes of Autonomy, leading us to the situation in which various police models exist depending on the regional regulations developed by each autonomous government.

In particular, one of the most intense and current points of conflict is the distribution of functions in matters of public security inside port and airport premises. We will focus the final part of this paper on this matter, presenting the reader with a number of conclusions based on both the regulatory development of the constitutional mandates and the relevant case law.

2. THE PROTECTED LEGAL INTEREST

The mandatory determination of the object of protection is presented as a basic element when establishing the limitation of the *ius puniendi* of the State, thus serving to remove merely formal crimes lacking material illegality from the sphere of criminal law.

Determination of the legal interest which will in turn allow criminal law to be applied in cases where the protected legal interest is seriously attacked, thus legitimising its intervention. Therefore, it is left to administrative sanctioning law to deal with minor attacks that do not justify a criminal response due to the limited lack of value of the action, and the extent of the aggression suffered by the protected legal interest must be graded

on the basis of the principle of subsidiarity, thus reserving recourse to criminal law as the *ultima ratio*.

2.1. CONCEPT AND CONTENT OF THE PROTECTED LEGAL INTEREST

Without going into the matter in depth, as this is not the subject of this paper, we must establish the content of the concept of protected legal interest, which will act as a reference point for legislative activity, legitimising and limiting the punitive intervention of the state.

As part of the development of the concept of the protected legal asset, we can find two tendencies that aim to provide it with material content and where the majority of the theories in this respect could be grouped together: the legal-constitutional tendencies and the functionalist or sociological tendencies. The former find their reference in the Constitution and the latter in the social or sociological character in relation to the harm or social relevance of the object to be protected (Bianchi, 2009; García, 2022).

Constitutionalist theories are based on the fact that it is societies themselves that provide themselves with a supreme framework that includes the most relevant values for their survival, and that it is in this Fundamental Law where the rights, principles and values that will determine the particularly valuable assets that deserve protection will be established. These foundations and values will be included in each Constitution depending on the specific time, thus serving as a limit to the freedom of lawmakers and the punitive power of the State[1].

Silva Sánchez affirms that the harm to the protected legal interest cannot be limited to the fact that it affects individuals and is socially harmful in order to be considered as a legal-criminal interest. In the words of this author, the proposal to take the Constitution as a point of reference for the specification of the protected legal interest has, of course, guaranteeing pretensions and reinforces the limiting effectiveness of the concept of protected legal interest" (Silva, 1992, p. 273).

However, in spite of this constitutional protection, the author herself recognises that it is necessary to continue with the specification of other elements that ultimately identify the object of protection, and it is here where it is necessary to resort to another delimiting criterion of what must be legally protected, affirming that *social harm* is also a necessary requirement (Silva, 1992).

Sociological theories, on the other hand, seek to free the protected legal interest from the ballast and limits imposed by constitutional texts, which would prevent the recognition of new objects in need of protection arising from social reality, thus impeding the development of society.

The important thing will be the survival of the social system and overcoming the problems that prevent the goals proposed by society, in such a way that the legal good

[1] Silva (1992), "the Constitution, which embodies the existing value consensus in our society, is, logically enough, a qualified reflection of the dominant cultural ideas of our time, which offers a broad framework in which any of the legitimising conceptions of criminal law from contemporary philosophical-legal ideas can find perfect accommodation" (p.195).

will individualise the object affected by the socially harmful act, an object that will be conceived as having full value for society and therefore deserving protection. Some defenders of this theory justify that the legal goods thus protected contribute to the cohesion and maintenance of the social structure, with *social harm* serving as a filter to determine whether a specific conduct is worthy of criminal reproach (Hormazabal, 1991).

In modern Spanish doctrine, although with a clear inclination towards constitutionalist theories (Restrepo, 2013), it can be asserted that both tendencies are present (Hormazabal, 1991), requiring an explicit or implicit recognition in the constitutional framework of which interests are worthy of protection, together with the social damage that any aggression towards them would produce.

On the other hand, there has also been a long-standing debate between the configuration of two types of legal interest, individual legal interests (life, health, freedom, property, etc.) and collective legal interests, also known as supra-individual or universal (road safety, economic order, administration of justice, etc.), with two theories being distinguished here too: the monist theory and the dualist theory (Hassemer and Muñoz, 1989).

Monist theories assume the existence of one legal interest with two possibilities of conceiving it, either from the point of view of the state or from the point of view of the individual, whereas dualist theories maintain the existence of two kinds of legal interests. Both theories have been the subject of fierce debate, mainly between the defenders of the two monist propositions, with most of the doctrine opting for the personalist positions on the legal interest[2].

Definitions of legal good can ultimately be achieved as follows: “the characteristics of persons, things and institutions that serve for the free development of the individual in a democratic and social state under the rule of law” (Kindhäuser, 2009, p.15); “objects that are endowed with valuable content for the personal development of man in society” (Silva, 1992, p.271); “the vital interest for the development of individuals in a given society, which acquires legal recognition” (Kierszenbaum, 2009, p.188); or, “those presuppositions that the person needs for self-realisation in social life” (Muñoz, 2001, pp. 90-91).

With regard to collective interests, we also agree with “Silva (1992) in affirming that the requirements demanded for the consideration of a legal interest as deserving of protection require the combination of both an individual impact and a harmful social repercussion, and that this does not exclude the criminal protection of what has come to be called collective interests, given that these new objects of protection also constitute necessary means for the self-realisation of the individual in society”.

[2] “Amongst the doctrine, there is a certain consensus that collective interests would have criminal relevance, to the extent that their protection constitutes an indispensable condition to safeguard individual interests" (Carnevali, 2000, p. 142); also "García (2022) for whom the personalist conception of the legal interest entails a criminal law policy firmly linked to constitutional principles and which justifies the intervention of criminal law only when there are human interests worthy of protection" (p. 36); For "Hassemer and Muñoz (1989), criminal law should reflect on whether the interests of the individual should not be favoured over those of Society and the State (p.108); In the same sense "Silva (1992) considers that only those objects that human beings need for their free self-realisation can be legal interests” (p.271).

Finally, it remains in this section to try to differentiate between what are considered individual legal interests and collective legal interests , and, without wishing to go deeper into the debate, we will resort to a concept that seems to us to be correct, that of "*non-distributivity*", by which it is not possible to divide the collective legal interest into different parts or portions in such a way that each of them could be assigned or enjoyed by each of the members of society, each of them therefore being able to enjoy the same legal interest without excluding the rest, without appreciating rivalry in its enjoyment, in such a way that any other member of society could enjoy that legal interest at the same time without any impediment or prejudice whatsoever (Villegas, 2010, p. 7).

Therefore, collective legal interests cannot be considered as a sum of the different individual legal interests, but rather as a state that affects the generality of a given group, each of them being entitled to the protected object under equal conditions on the basis of the protection needs arising from the collective social realities. All members of society share an equal interest in the preservation and enjoyment of a particular situation or state, which is to be valued positively for individual and thus social development.

2.2. THE LEGAL RIGHT TO PUBLIC SAFETY

The guarantee of security has been a human need since the earliest societies and has been pursued through different systems of social control, some examples of which can be seen in ancient Greek cities.

Later, constitutionalism would be responsible for setting down a series of fundamental rights that would permeate the entire legal system, binding the public authorities and the forces in charge of guaranteeing this security. Thus, the preamble of the 1978 Spanish Constitution includes a generic reference to security as one of the values to be established alongside freedom and justice.

2.2.1. Public safety and citizen security in the legal system

We must start this section by outlining the existing differentiation between the concept of public security, as a competence attributed exclusively to the State by Art. 149.1.29 of the Spanish Constitution, and the concept of citizen security, the guarantee of which is attributed to the Security Forces and Corps (FFCCS) in Art. 104.1 of the Spanish Constitution.

Public security has been considered by doctrine as a concept that is not limited to the actions of the Security Forces and Corps, rather it encompasses other threats to society such as public health or the environment, leaving the police forces only to exercise certain powers with a view to guaranteeing public security. Therefore, when we speak of public security, we are referring to a broader material scope that encompasses police activity, the interventions of the security police.

Based on a number of Constitutional Court rulings (STC), this police activity itself, although it constitutes an important part of public security, does not exhaust its material scope, as other aspects and functions other than police work will also form part of the material scope of public security (STC 148/2000). This constitutional case law confirms that "the notion of citizen security is presented to us as a material sphere that

forms part of public security, but in no way equivalent or synonymous" (STC 172/2020, FJ 3).

Focussing on the concept of citizen security, it is supported in Article 104.1 of the 1978 Constitution, which assigns the Security Forces the mission of protecting the free exercise of rights and freedoms and guaranteeing citizen security.

In this new approach, the term "public order" is definitively abandoned in favour of "public security", a term that had been used in previous constitutions since 1812 and which had given rise to the appropriate implementing legislation, from the first Public Order Law of 20 March 1867[3], with a very limited scope in the case of certain circumstances considered serious, to Law 45/1959, of 30 July, on Public Order, which extended its application to a significant number of cases considered to be contrary to it.

The extensive interpretations that had been made of the concept of public order and the authoritarian and repressive actions on occasions by the security forces made it advisable to abandon this concept in favour of a more appropriate one: citizen security.

Returning to the Constitutional Court, in its Ruling 55/1990, it states that the meaning of Art. 104.1 of the Spanish Constitution is the provision of the Police Forces to guarantee the free and peaceful exercise of citizens' rights, as a public service specialising in the maintenance of order and security, thus trying to identify the content of the legal right to public safety.

Citizen security is thus shaped as a constitutionally recognised collective legal good, the object or content of which is constituted by the series of measures in relation to prevention, protection, guarantee and reparation that need to be adopted, with the aim that citizens can participate freely and with guarantees in the different situations that social relations require (Fernández, 2015).

2.2.2. Citizen security in Organic Law 4/2015

The first law that addressed the issue of Citizen Security under Articles 149.1. 29 and 104.1 of the 1978 Constitution was Organic Law 1/1992 of 21 February 1992, known as the "Corcuera Law" or "Kick down the door law". It sought to regularise the protection of public security in a new democratic system, departing from the previous approach that was structured around the concept of public order.

This first Citizen Security Law sought to systematically regulate the constitutional values and principles, the powers of action of both authorities and agents, and ultimately a sanctioning regime. However, the need to update it to the new social realities, as well as the requirement to include in its articles some of the conducts considered misdemeanours in the repealed Book III of the Criminal Code by Organic Law 1/2015, made a review thereof advisable.

[3] This was a draft law on public order that came into force before it had even been finally approved by Parliament and governed a series of suspensions of constitutional guarantees in three specific situations: in normal circumstances, in a state of alarm and in a state of war. This Act was followed by three others: The Public Order Act of 23 April 1870, its successor of 28 July 1933 and its successor of 30 July 1959.

Others believe that the 1992 Law for the Protection of Citizen Security was a poorly structured and technically deficient law, constituting more of a catch-all that sought to provide legal cover for certain actions of both the Administration and its officials, who had been acting in a way that was not entirely in line with the law (Fernández, 2015).

All of the above recommended preparing a new legal text, rather than reforming or modifying practically all the articles of the 1992 Law for the Protection of Citizen Security (Puigserver, 2015).

After this first legal text, the new Organic Law 4/2015 on the Protection of Public Safety (LOPSC) was partly driven by the draft bill of the Criminal Code that was being debated at the time and which decriminalised the offences included in Book III, following the same line as the latter and placing itself in what has been called the Criminal Law of Dangerousness. Some of those conducts would be considered as minor offences and others would be definitively removed from the Criminal Code and would now fall under the scope of administrative law.

Both Organic Law 4/2015 and Organic Law 1/2015, reforming the Criminal Code, would complement one another in terms of citizen security. Recourse to criminal law was therefore reserved only for conduct considered to be the most serious in line with the principle of the *last resort.*

It is the very preamble of Organic Law 4/2015 that also justifies the need to undertake the replacement of the 1992 legal text, based on the shortcomings of the previous regulation, the social changes that have occurred, the new ways of endangering public safety and tranquillity, the new social demands and the imperative need to incorporate constitutional case law.

Although the new Organic Law does not offer a clear definition of what should be understood by citizen security, it does state in Article 1 that it is “an indispensable requirement for the full exercise of fundamental rights and public freedoms, and its safeguarding, as a collective legal good, is a function of the State, subject to the Constitution and the laws.”

It is clear that the legal interest of public safety constitutes a valuable object for society as a whole, valuable content that requires legal protection as it represents a vital interest for the free development of each of the components of society. Any attack or endangerment would have serious harmful social repercussions, directly affecting the individuals that form part of society and their social interactions.

Citizen security constitutes an indispensable situation or state that would allow all or a specific part of society to interact freely, under conditions of tranquillity that allow the self-realisation of the individual, safe from any type of aggression. Citizen security thus becomes an asset that the state and the public authorities have the obligation to preserve, using all the means at their disposal to do so.

Finally, the Constitutional Court has defined citizen security as “the state in which citizens as a whole enjoy a situation of tranquillity and stability in coexistence that allows them to freely and peacefully exercise the rights and freedoms recognised by the

Constitution and the law, which can be achieved through preventive and repressive actions" (STC 172/2020, FJ 3)[4].

3. THE AUTONOMOUS MODEL OF PUBLIC SECURITY

The Statute of Autonomies is recognised in the 1978 Constitution in Articles 2 and 143, giving rise to the start of an autonomous process that became generalised from 1981 onwards, except in the case of some regions that acceded by other routes also recognised in the Constitutional text, as is the case of the communities of the Basque Country, Catalonia and Galicia, which did so by the fast track route and without assuming the requirements demanded by Article 151 of the Spanish Constitution, on the basis of its second Transitional Provision. This constitutional text also establishes the distribution of powers between the State and the Autonomous Communities in Articles 148 and 149.

As stated above, Article 149.1. 29 of the Spanish Constitution mentions public security as one of the competences reserved to the State, "notwithstanding the possibility of the creation of police forces by the Autonomous Communities in the manner established in the respective Statutes within the framework of the provisions of an organic law", thus constituting one of the areas of competence to be divided between the State and the Communities. However, this article reserves the material aspect of public security for the State, rather than the organic aspect, i.e. the service available to guarantee public security (the Police), for which the Autonomous Communities are empowered (STC 117/1984).

And this is the case of some Statutes of Autonomy that include the creation of regional police forces to which they attribute generic public security functions, thus contributing to public security but always within the framework of state regulation and notwithstanding the competence of the FCSE in all police services that have an extra or supracommunity nature (STC 175/1999)[5].

However, Article 104 of the Spanish Constitution also establishes the need for an Organic Law to determine the functions, basic principles of action and statutes of the Security Forces, a constitutional mandate that materialised with the enactment of Organic Law 2/1986, of 13 March, on Security Forces and Corps (LOFCS). This defines the different functions and competencies that the different Security Forces and Corps are going to require in the area of citizen security.

Thus, in the case of the Autonomous Communities that have their own police forces, the distribution of powers will be determined by the provisions of the constitutional blocks, made up of the Spanish Constitution and the Statutes of Autonomy themselves, in addition to the provisions of Organic Law 2/1986. Here, it is necessary to refer to the singular features contained in the first, second and third Final Provisions of

[4] Here, the Highest Court takes up the concept of citizen security already provided by the Plenary of the General Council of the Judiciary in the mandatory report issued on 27 March 2014, on the occasion of the Preliminary Draft of the Organic Law on the Protection of Citizen Security, which was approved in 2015.
[5] In this sense, see Articles 17 of the Statute of Autonomy of the Basque Country (EAPV) and Article 164 of the Statute of Autonomy of Catalonia.

this Law for the cases of the autonomous territories of the Basque Country, Catalonia and Navarre.

Accordingly, in the case of the Autonomous Community of the Basque Country, only the provisions of its Statute of Autonomy (EAPV) will be applicable for the protection of persons and property and the maintenance of public order within the autonomous territory, with Organic Law 2/1986 being applicable only with regard to the basic principles of action, as well as the common statutory provisions.

However, in the case of the autonomous territories of Catalonia and Navarre, in addition to being governed by the provisions of their own Statutes of Autonomy and their implementing regulations, Organic Law 2/1986 is considered as supplementary.

This provides a somewhat broader legal framework for the distribution, coordination and collaboration of powers between the State Security Forces and Corps (FCSE) and the autonomous police forces of the territories of Catalonia and Navarre, by allowing the application, albeit on a supplementary basis, of the LOFCS for everything that is not expressly included in their Statutes of Autonomy and the implementing regulations.

However, this is not the case in the Basque Country, as Final Provision One closes off this possibility by determining that the LOFCS will not apply to the competences that Article 17 of the Statute of Autonomy attributes to the institutions of the Basque Country in matters of public security, in such a way that everything that is not included in the aforementioned article will involve a conflict of competences that will be difficult to resolve and will require the participation of other bodies of a political nature.

This is also contemplated in the three final provisions of the aforementioned LOFCS, with the establishment for each of the autonomous territories of Security Councils, with equal representation of the State and the Autonomous Communities, tasked with coordinating the actions of the State Security Forces and Corps and the different autonomous police forces. Identical prescriptions can be found in the corresponding Statutes of Autonomy of each of these regions[6].

The permanent and asymmetrical development of autonomous regional competences in matters of citizen security and the habitual disagreements even between the two police forces dependent on the State seem to point to an exhaustion of the current police model. The territorial and material distribution of functions and competences established by the LOFCS, which previously seemed peaceful and was naturally assumed by all police forces, is now a source of conflict.

And it is precisely in ports and airports where the discrepancies in jurisdiction between the different police forces have intensified even more in recent years, thus

[6] The Security Councils, as bodies for the coordination of security policies and the activity of the State and regional police forces, are also included in Art. 17.4 of the Statute of Autonomy of the Basque Country, Art. 164.4 of the Statute of Autonomy of Catalonia and Art. 51 of the Organic Law on the reintegration and improvement of the Foral Regime of Navarre.

breaking a *status quo* that has long been respected and assumed on the basis of new interpretations.

4. PUBLIC SECURITY IN PORT AND AIRPORT AREAS

Continuing with the above, we will start here with the definitions that our legal system makes with respect to these two infrastructures, as well as their consideration from the point of view of the LOPSC.

The Law on State Ports and the Merchant Navy defines seaports as the "series of land spaces, maritime waters and installations which, located on the coast or on estuaries, meet the physical, natural or artificial and organisational conditions that allow port traffic operations to be performed, and are authorised for the development of these activities by the competent Administration"[7]. To be considered as such, it must have a determined water surface; anchorage areas, docks or mooring facilities; spaces for warehousing and storage; land infrastructures and accesses suitable for its traffic; as well as the means and organisation that allow port traffic operations to be carried out.

Whereas an aerodrome shall mean "a designated area on land or water, in a fixed, offshore or floating structure, including its buildings, facilities and equipment, intended to be used wholly or in part for the arrival, departure or surface movement of aircraft. This includes the apron which is a defined area of the aerodrome intended to accommodate aircraft for the embarkation or disembarkation of passengers, baggage, mail or cargo, or for refuelling, parking or maintenance"[8].

From the perspective of public safety, these two infrastructures are in turn considered as facilities at which basic services are provided for the community, which is why certain conducts related to them are classified as very serious or serious infringements pursuant to the provisions of Articles 35.1 and 36.9 in relation to Additional Provision Six of the LOPSC. Likewise, pursuant to the aims pursued by this Law and included in Article 3, the scope of citizen security would include "guaranteeing normal conditions in the provision of basic services for the community", as well as preventing the commission of crimes and administrative offences directly related thereto[9].

The first conclusion to be drawn from this is that the police functions that can be carried out at ports and airports, in order to guarantee their normal functioning, fall within the series of police actions aimed at protecting the legal right to public safety, as we have defined this concept. In other words, any preventive police action carried out inside these premises, aimed at avoiding illegal conduct that could alter their usual operations in any way, especially if this alteration is serious or jeopardises life or integrity of people at risk,

[7] Article 2 of Royal Legislative Decree 2/2011, approving the Law on State Ports and the Merchant Navy.
[8] Definitions included in Article 3 of Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing the European Union Aviation Safety Agency; and, Article 2 of Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down administrative requirements and procedures with regard to aerodromes, pursuant to Regulation (EC) No 216/2008 of the Parliament and of the Council.
[9] The Proposals to reform Organic Law 4/2015, presented at the Congress of Deputies and published in the Official Gazette of the Cortes Generales on 17 and 31 May 2024, in no way modify Additional Provision Six of the LOPSC and maintain the guarantee of normal conditions in the provision of basic services for the community as one of the purposes of the Law.

must be understood as aimed at guaranteeing public safety, and therefore forms part of the general security police powers that the Law recognises for the Armed Forces.

This is because, according to constitutional case law, "the interpretation of the concept of citizen security must be carried out taking into consideration the aims pursued therein (Art. 3 LOPSC). The aims, insofar as they specify or configure the legal interest (that is, the aspect of public safety whose legal protection is sought) allow us to affirm that there is a principal legal good (public safety) together with secondary or specific legal interests that vary in each of the administrative offences defined. Actions or omissions that violate these specific protected legal interests are an attack on public safety" (STC 172/2020, FJ 3).

The guarantee of normal conditions in the provision of basic services for the community serves to configure the principal legal good of public safety, with this guarantee of normal conditions constituting one of the specific features, or one of the singular legal interests, of the main object protected and towards the protection of which all police actions are directed.

At the same time, however, these same spaces are subject to another, broader sphere of protection in the sphere of public security, as "citizen security is an integral part of the broader notion of public security; a part of great importance and endowed with its own profiles, but which does not, however, encompass all the aspects that define the material sphere of public security. And this seems to be recognised by lawmakers themselves, by expressly excluding aspects from the scope of application of the Organic Law at issue here which, on the contrary, form part of public safety (air, maritime, railway, road safety...)" (STC 172/2020, FJ 3).

Thus, within the field of public security, there are sectoral security regulations applicable to each of these specific port and airport establishments. In the case of maritime security, we must refer to the International Ship and Port Facility Security Code (ISPS Code)[10], and for airport security the base document will be the National Civil Aviation Security Programme (NSP)[11].

It is these sectorial regulations that contemplate the existence of restricted areas in which a series of control measures must be applied to accesses and specific protection measures for people, infrastructures, vehicles, goods, equipment, etc. In short, the protection of people and goods in these delimited areas must be subject to additional protection measures to those required in the other spaces comprising port and airport establishments[12].

[10] Resolution 2 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974. Adopted on 12 December 2002.
[11] Resolution of 17 January 2024, of the General Secretariat for Air and Maritime Transport, approving the update of the public part of the National Civil Aviation Security Programme (Official State Gazette no. 25).
[12] The security restricted area at airports (also known as airside) is the area to which access is subject to access control and security screening. This area comprises the airport area to which passengers awaiting boarding and who have passed through security screening have access, as well as the area of the airport used to park aircraft for loading or boarding operations.

Based on the foregoing and taking into consideration the material distribution of competences in in Article 12.1.B) of LOFCS, Guardia Civil Corps maintains units deployed in the restricted areas of ports and airports serving both custody and fiscal protection duties on behalf of the State.

Police custody of ports and airports has to be understood as part of the material concept of public security, while at the same time also as part of the more specific concept of citizen security. As a series of police actions aimed at the protection and prevention of aggressions against public safety, i.e. against a specific legal right that constitutes one of the aims pursued by the LOPSC.

Custody should be understood as referring to the protection, surveillance, care or defence of something or someone. And this task, referring to ports and airports, entails the establishment of different actions and security measures aimed at preventing crimes or infractions that pose a threat to these facilities and, therefore, to the people who are in them.

It can therefore be concluded that the functions carried out by Guardia Civil in port and airport areas are ultimately public security functions. If we do not want to affirm that they are generic, it cannot be denied that they are specific, oriented towards the singular legal goods that serve to configure the principal legal interest of public safety. These public security functions must also be combined with those of tax protection and border guarding, in such a way that the tax specialist units deployed in the restricted areas of ports and airports are thus multi-purpose police units with the capacity to act in different areas (public security, tax protection and border guarding).

This is also understood by the Secretariat of State and Security (SES) in its Instruction 8/2006, which defines the areas of responsibility for citizen security purposes between the Guardia Civil and the Mozos de Escuadra in Catalan airports, both in the restricted areas or “airside” and in the public areas or “landside”. Also, as part of the Agreement between the SES and the Port Authority of Valencia[13], where the scope and extent of the police functions that make up the concept of custody are established, as well as their purpose, which is none other than to fulfil the mission of protecting the exercise of rights and freedoms and guaranteeing public safety.

In spite of all this, it is not unusual to find two different police forces carrying out identical general security police powers in the same physical space, one in the field of citizen security in a generic sense, as it is attributed to them on the basis of the territorial distribution of powers, and the other in a more specific field, related to aggressions against a specific legal interest that it is required to protect.

Under these circumstances, the two bodies will overlap, producing a collision of powers that has so far been solved with a territorial distribution of the port and airport areas based on the distinction of a public area, the responsibility of the territorially

In the case of port facilities, the restricted area will be the one provided for in their own Port Facility Security Plan (PFSP), specifying for each of them its extension, the periods during which the restriction will be valid and the measures to be adopted to control access and activities carried out in them.

[13] Agreement published in Resolution of 5 September 2022 of the General Technical Secretariat of the Ministry of the Interior in Official State Gazette No. 219 of 12 September 2022.

competent police force in matters of public safety, and another restricted area, where Guardia Civil has been carrying out those specific public safety tasks generated under the LOPSC.

4.1. BRIEF REVIEW OF THE CASE OF THE BASQUE COUNTRY

In this last section, we will look at the particular situation of the Basque Country, setting out the applicable regulatory framework that determines the current distribution of powers in the field of public security between the State and the Community. Distribution or attribution of competences that must be adapted to the new agreements reached at the most recent Security Council meeting held in Madrid on 24 July 2024[14].

As mentioned above, in the particular case of the Basque Country, the LOFCS is not applicable except for certain articles and the provisions of Art. 17.1 EAPV are applicable in matters of public safety. What this article does is to partially recognise the competences that the LOFCS assigns to both the National Police and the Civil Guard, as these competences are attributed to the State.

Thus, Article 17.1 indicated above reserves the police services of an extra-Community and supracommunity nature for the FCSE, mentioning the surveillance of ports, airports, coasts and borders, customs, arms and explosives, State tax protection, smuggling and State tax fraud. These powers are attributed exclusively to Guardia Civil in application of the material distribution that the LOFCS makes between the two state police forces in Article 12.1.

This article 17.1 EAPV explicitly recognises that the surveillance, custody or protection of ports and airports declared to be of general interest or which are in any way affected by supracommunity traffic[15], falls outside the competences attributed to the Ertzaintza. Any police service carried out in port or airport areas where international commercial activities take place or with a commercial influence affecting other Autonomous Communities is exclusively entrusted to the FCSE.

It was ultimately the Security Council of the Basque Country, as the most senior body for coordination between the two Administrations in security matters, which agreed on 24 July to move forward with the development of the Ertzaintza's powers in the ports and airports of the Basque Country, where it will exercise, as an integral police force, the functions that correspond to it in the protection of people and goods and in the maintenance of public order throughout the territory. It also agrees that these ports and airports should have a “permanent operational coordination and information exchange point between Guardia Civil and Ertzaintza units”. All this is according to the press release issued by the Ministry of the Interior itself.

[14] It should be made clear at this point that one of the purposes entrusted to the Security Council is to determine the police services that are the exclusive responsibility of each Security Force.

[15] In this sense, see Supreme Court Ruling (Contentious Chamber) No. 6899/2009, of 13 November, which states that “the Autonomous Police of the Basque Country lacks competences in matters of public security in supracommunity airports such as Foronda (Álava)...an area in which security is exclusively entrusted to the State Security Forces and Corps”.

It can be deduced from the above that when the necessary regulatory changes are made to this end[16], the Ertzaintza will be able to carry out common public security functions in all port and airport areas, both in restricted areas and in public areas. Prior to this, it will be necessary to set up permanent operational coordination and information exchange points between Guardia Civil and Ertzaintza units to coordinate the functions assigned to the Guardia Civil, both in the field of public security and specific citizen security, with the generic citizen security functions that will be attributed to the Ertzaintza.

5. CONCLUSIONS

The legal right to public safety is a valuable protected interest for the free development of individuals in society. As necessary for the protection of persons and property, for the maintenance of tranquillity in the streets and for public order, as one of the competences attributed exclusively to the State.

And within this broad legal interest, we can identify another object of protection with a stricter material content and reserved for police forces, who through their specific activity will guarantee a state or situation of tranquillity and stability that allows citizens to freely and peacefully exercise their rights and freedoms. This legal right is citizen security, and the Spanish Constitution attributes its guarantee to the armed forces and security forces through police activity, as an integral part of the broader issue of public security.

In Spain, the autonomous model exclusively reserves the material aspect of public security for the State, while the organic aspect will allow the Autonomous Communities to create their own police forces, which will develop their competences within the framework established by their own Statutes of Autonomy.

Focussing on the particular case of ports and airports of general interest or those affected by supracommunity traffic, the material sphere of public security will be reserved exclusively to the State, which will not prevent the regional police forces from participating in guaranteeing public security. At the same time, these establishments will be affected by sectoral regulations aimed at their custody, surveillance or protection, in the broader field of public security.

This custody, surveillance or protection is also aimed at guaranteeing normal conditions in the provision of services that are considered basic for the community, such as those provided in ports and airports, and which constitute one of the aims pursued by the LOPSC, in such a way that the general security police powers that are developed in them are identified at the same time as police functions aimed at public safety. Specific citizen security, as a secondary legal right to the main legal right, which is combined with the concept of police custody assigned exclusively to Guardia Civil.

The final conclusion that can be reached is that Guardia Civil's custodial duties in port and airport areas should be considered as public security police functions, albeit

[16] See for example Art. 4a(4) of Law 21/2003 on Aviation Safety.

in a more specific or singular sphere, as they are aimed at protecting a specific infrastructure and the people who could be affected by it.

It is therefore possible to speak of competing police powers that will be associated with different areas of security, affecting both the legal right to public safety and the more strict legal right to public safety.

The currently established territorial distribution in the area of security around restricted areas and public areas in ports and airports has so far allowed for police coordination in the allocation of public security functions. As a result, Guardia Civil has been assuming the responsibility of guaranteeing it in the restricted areas of these spaces where it has been carrying out common public safety functions, due to the impossible definition with respect to the protected legal right, since the concept of custody is identified here with that of public safety in view of the aims pursued by the LOPSC itself.

This function of custody or public safety, although of a singular nature, has been carried out by Guardia Civil, making it compatible with the exclusive task of protecting the State Prosecutor's Office, thus leaving the public area under the responsibility of the police force with common functions in public safety, in accordance with the territorial distribution of police responsibility demarcations.

But this *status quo* has been broken following the new agreement reached between the Spanish and Basque governments after the Security Council meeting held on 24 July 2024. According to this agreement, the Ertzaintza will become an integral police force, carrying out the common policing functions of citizen security in the ports and airports of the autonomous region. It also adds that these infrastructures should have operational coordination and information exchange points between the two police forces.

The new scenario will place the two police forces in the same physical space and with identical powers in the protection of the same interest, a fact that will not be without conflict in the future.

This is why, based on all of the above, we consider that this express attribution of powers made by the Security Council to the Ertzaintza in matters of citizen security is still an implicit recognition that the jurisdiction currently exercised by the Civil Guard finds support in the legal system. On the other hand, and taking into account the literal interpretation of the LOFCS, the Civil Guard should from now on exercise its custody jurisdiction throughout these establishments, both in restricted and public areas, having abandoned the territorial criteria of delimiting areas. Finally, in the event that this new model is transferred to the rest of Spain, it would imply the need to create a coordination point in all ports and airports between the affected police forces, with a view to defining the specific and common functions in matters of citizen security.

It is clear that these and other issues will add complexity to existing police coordination tasks, meaning we can conclude this work by stating that coordination based on territorial distribution, as long as it involves the same or very similar police tasks, in the protection of the same protected legal interest and in the same physical space, is the most efficient approach.

The simultaneous exercise of the same general security police powers by several bodies in the same physical space, as well as duplicating and rendering the provision of the public police service inefficient, would generate confusion and unnecessary inconvenience to the public.

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