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#### V. Anuncios

# B. Otros anuncios oficiales MINISTERIO DE POLÍTICA TERRITORIAL

48849 Resolución de 23 de noviembre de 2021, de la Subdelegación del Gobierno en Santa Cruz de Tenerife, sobre Revocación de Actos Administrativos de Gravamen o Desfavorables al Interesado.

Vistos los procedimientos sancionadores que figuran relacionados en el Anexo de la presente resolución y analizados los siguientes

#### ANTECEDENTES DE HECHO

PRIMERO.- Esta Subdelegación del Gobierno dictó en su momento resolución sancionadora respecto de los procedimientos objeto de la presente resolución y relacionados en el Anexo, por incumplimiento de los apartados 1, 3 o 5 del artículo 7 del Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19, de conformidad con las instrucciones cursadas por el Ministro del Interior a las Delegaciones del Gobierno, en las que se consideraba que el incumplimiento de tales preceptos constituía desobediencia a las órdenes del Gobierno y su inobservancia subsumida dentro de la infracción grave del artículo 36.6 de la Ley Orgánica 4/2015, de 30 de marzo, de Protección de la Seguridad Ciudadana.

SEGUNDO.- En las mencionadas resoluciones se imponían sanciones de multa, no constando que se haya procedido al pago de las mismas.

Y teniendo en cuenta los siguientes

#### **FUNDAMENTOS DE DERECHO**

PRIMERO.- El artículo 57 de la Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas, dispone que "El órgano administrativo que inicie o tramite un procedimiento, cualquier que haya sido la forma de su iniciación, podrá disponer, de oficio o a instancia de parte, su acumulación a otros con los que guarde identidad sustancial o íntima conexión, siempre que sea el mismo órgano que deba tramitar y resolver el procedimiento. Contra el acuerdo de acumulación no procederá recurso alguno".

SEGUNDO.- La Sentencia del Tribunal Constitucional, Pleno, número 148/2021, de 14 de julio, estimó parcialmente el recurso de inconstitucionalidad n.º 2054-2020 interpuesto contra el Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19, y declaró inconstitucionales y nulos los apartados 1, 3 y 5 de su artículo 7, con el alcance y efectos señalados por la propia sentencia.

TERCERO.- El artículo 40.1 de la Ley Orgánica 2/1979, de 3 de octubre, del Tribunal Constitucional establece que "Las sentencias declaratorias de la inconstitucionalidad de Leyes, disposiciones o actos con fuerza de Ley no permitirán revisar procesos fenecidos mediante sentencia con fuerza de cosa juzgada en los que se haya hecho aplicación de las Leyes, disposiciones o actos inconstitucionales, salvo en el caso de los procesos penales o contencioso-administrativos referentes a un procedimiento sancionador en que, como consecuencia de la nulidad de la norma aplicada, resulte una reducción de la pena o de la sanción o una exclusión, exención o limitación de la responsabilidad".

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CUARTO.- De acuerdo con el artículo 109.1 de la Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas "Las Administraciones Públicas podrán revocar, mientras no haya transcurrido el plazo de prescripción, sus actos de gravamen o desfavorables, siempre que tal revocación no constituya dispensa o exención no permitida por las leyes, ni sea contraria al principio de igualdad, al interés público o al ordenamiento jurídico".

QUINTO.- La competencia para dictar la presente resolución sobre revocación corresponde a este órgano, toda vez que la competencia para la resolución de procedimientos administrativos sancionadores por infracciones graves corresponde al Delegado del Gobierno en la Comunidad Autónoma de Canarias, de conformidad con el artículo 32.1.c) de la Ley Orgánica 4/2015, de 30 de marzo, de Protección de la Seguridad Ciudadana.

En consecuencia con todo lo anterior, vistos los antecedentes y fundamentos mencionados y en uso de las facultades conferidas,

#### **RESUELVO**

PRIMERO.- Acordar la acumulación y la revocación de los procedimientos que figuran relacionados en el Anexo de la presente resolución, anulando las resoluciones sancionadoras emitidas.

SEGUNDO.- Disponer la publicación de la presente resolución en el Boletín Oficial del Estado de conformidad con el artículo 45 de la Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas, al apreciar razones de interés público.

La presente resolución no pone fin a la vía administrativa por lo que, de acuerdo con el artículo 121 de la Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas, contra la misma cabe interponer recurso de Alzada ante el Ministro del Interior, en el plazo máximo de UN MES contado desde el día siguiente a aquél en que se publique la presente resolución.

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9227/2020	54044594E

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Santa Cruz de Tenerife, 23 de noviembre de 2021.- El Delegado del Gobierno en Canarias, Anselmo Francisco Pestana Padrón.

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