



TRIBUNAL CONSTITUCIONAL

Gabinete del Presidente

Oficina de Prensa

NOTA INFORMATIVA Nº 47/2013

THE CONSTITUTIONAL COURT VOIDS THE APPOINTMENT OF THE MAYOR OF CUDILLERO

The Constitutional Court has decided in favour of the appeal for constitutional electoral protection filed by Foro Asturias against the judgment of the High Court of Justice of Asturias (TSJA), which upheld the appointment of Luis Fernández Garay as the mayor of the city council of Cudillero after the Plenary Meeting held on 24 July. The ruling by the Constitutional Court voids both the judgment and the appointment of Fernández Garay by the Plenary Meeting of the Municipal Government. The Constitutional Court had fifteen days to issue a judgment on the basis of the filing of this appeal.

Today, the First Chamber issued a judgment in which it analyses, amongst other matters, whether the waiver of the mayorship candidate performed by Fernández Garay could or could not be revoked. And the conclusion which the Constitutional Court has reached is that it may not, and therefore the appointment of Fernández Garay at the Plenary Meeting on 24 July, an appointment later confirmed by the TSJA, violated the appellants' right of constitutional protection to gain access to public functions and positions under conditions of equality (Art. 23.2 of the Constitution).

The judgment, for which Magistrate Juan Antonio Xiol wrote the majority opinion, concludes that "the Plenary Meeting of the City Council of Cudillero, by electing and proclaiming to be mayor a person who had waived his position as the first person on his party's electoral list, a waiver which was fully effective at that time, violated the appellants' right of access to constitutional protection to public positions under conditions of equality in accordance with the requirements established by law, which is laid down in Art. 23.2 CE; and this violation of a right was upheld in the judgment by the Contentious-Administrative Chamber of the High Court of Justice of Asturias, which rejected the contentious-electoral appeal against the decision by the Plenary Meeting, when it confirmed this ruling."

Madrid, 6 August 2013