SPANISH CONSTITUTIONAL COURT
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THE SPANISH CONSTITUTIONAL COURT (TC) ENDORSES THE USE BY THE GOVERNMENT OF A ROYAL DECREE-LAW FOR LABOUR LAW REFORM PURPOSES

The Plenary Meeting of the Spanish Constitutional Court (TC) has endorsed the constitutionality of two aspects of the labour law reform–included in Royal Decree-Law 3/2012 of 10 February, on urgent measures to reform the labour market- which were questioned by Labour Court Number 34 in Madrid. In an decision approved by the majority, the Plenary Meeting of the TC states that "*the constitutionality issues described are seriously unjustified*"; it confirms that the wording given by this decree-law to the questioned provisions "*responds to a legislative option which, from a strict constitutional standpoint (…),does not breach or harm the constitutional rights claimed*"; furthermore, "*a mere political difference is insufficient*" to write off a rule as "*arbitrary*". Moreover, it considers that the Government has met the necessary legal requirements to legislate through decree-law channels. The decision, where Enrique López acted as the Reporting Judge, includes the particular dissenting votes of judges Fernando Valdés Dal-Ré, Luis Ignacio Ortega, Adela Asua and Juan Antonio Xiol.

The TC focuses its analysis on the only two precepts giving rise to the constitutionality issues raised by the court:

1) **Section 2 of Transitional Provision Five of Royal Decree-Law 3/2012**, establishing indemnification for unfair dismissal underemployment contracts signed prior to the effective date of the reform. This section establishes a dual calculation method, whereby the time during which services were provided prior to that date will be indemnified based on 45 days' salary per year of service– the indemnification already foreseen in Article 56.1 of the Workers Statute (LET) for unfair dismissals, prior to Royal Decree-Law 3/2012-; and the time during which services were provided after the effective date of the reform, calculated as 33 days' salary per year of service– which is the new indemnification established for unfair dismissals in the new wording of Article 56.1 LET further to Royal Decree-Law 3/2012.

2) **Article 18.Eight of Royal Decree-Law 3/2012.** This precept, which rewords Article 56.2 LET, states that, if reinstatement applies in an unfair dismissal case, the worker will be entitled to receive salary during the processing of his claim ["*procedural salary"*]; this is not the case when indemnification applies, in which case the worker shall not be entitled to "*procedural salary*".

First of all, the Plenary Meeting endorses the use by the Government of a decree-law to implement a labour reform. The decision presumes that "*ascertaining the existence of extraordinary circumstances and urgent needs* [required for legislation by decree] *constitutes a political or timely judgment*" taken, initially, by the Government, and, secondly, by Congress.This said, it concludes that the decision was neither "*abusive*" nor "*arbitrary*", given that in the Preamble of the questioned rule the Government justifies use of a royal decree-law based on "*certifiable information related to the economic crisis and unemployment*".

Without judging the "*timeliness*" of the reform, a task not entrusted to the TC, the Plenary Meeting considers that the choice of a royal decree-law also meets the requirement whereby the measures approved must be "*linked*" to their justifying emergency situation.

The TC also rejects the Court's pleading as to an infringement of Article 86.1 of the Spanish Constitution, which forbids any reform carried out via decree affecting fundamental rights (included in Title I of the Spanish Constitution (CE)).

Regarding the first of the precepts questioned (section 2 of Transitional Provision Five of Royal Decree-Law 3/2012), the TC does denies that it establishes arbitrary measures causing discrimination "*by class*", as alleged by the judicial body. To back up this statement, the Court compares the civil and employment indemnification systems; the TC considers this comparison invalid since they are separate realities regulated in different legal terms. Instead, the reform "*does not contemplate any differences amongst the workers covered by the legal situation*". The decision also denies the fact that the questioned precept lacks a rational explanation and recalls that the Spanish Constitution entitles the legislator to design a dismissal system, including the possibility of establishing indemnification amounts.

In relation to the second questioned precept (Article 18.Eight of Royal Decree-Law 3/2012), the TC again denies that the decision is arbitrary, given that the Preamble "*states the reasons why the legislator justifies a removal of "procedural salary"*" if indemnification applies rather than the worker's reinstatement.

The decision recalls that the Court has had the opportunity to give its opinion on the "*constitutional adequacy*" of limits on the payment of "*procedural salary*", foreseen at the time by Royal Decree-Law 5/2002. As foreseen at the time, reinstatement in the company and indemnified contractual termination "*are not, in any way, homogeneous but, rather, drastically different*", given that in one case the employment relationship between company and worker is sustained, whereas in the other case said employment relationship is "*definitively extinguished*". As the situations are different, the recognition of "*procedural salary*" if reinstatement applies and its non-recognition if indemnification is paid does not result, according to the Court, in "*different treatment that is disproportionate or unreasonable*" and does not breach "*the requirements of the principle of equal treatment*".

Finally the TC rejects the Court's allegation that the rule breaches the right to work (Article 35.1 (CE)) by encouraging indemnified contractual termination. The decision states that this alleged encouragement effect is a mere "*presumption*" on the part of the applicant court.

In his particular dissenting vote, judge Valdés (upheld by Ortega and Asua) considers that the reform does not involve "*extraordinary circumstances and urgent needs*" required by the Constitution for legislation through decree-law; moreover, in his opinion, the royal decree-law passed by the Government breaches Article 86.1 of the CE, since the measures adopted affect the rights included in the Title I of the Constitution.

The three judges also consider that the unconstitutionality motion should not have been resolved until the Plenary Meeting has delivered judgment on the appeal of unconstitutionality filed against Act 3/2012 of 6 July, on urgent measures to reform the labour market. This last specific point is raised by judge Xiol in his particular vote.

Madrid, 13 February 2014