



INFORMATION NOTE No. 18/2014

THE SPANISH CONSTITUTIONAL COURT REJECTS THE APPEAL LODGED BY PSOE AGAINST THE REFORM OF THE REMUNERATION SYSTEM FOR REPRESENTATIVES OF CASTILLA-LA MANCHA

The Plenary Meeting of the Spanish Constitutional Court (TC) has dismissed the unconstitutionality appeal lodged by sixty senators of the Socialist Parliamentary Group (PSOE) against the reform of the Regulations of the Parliament of Castilla-La Mancha which, in force since 1 January 2013, amends the remuneration system for Members of Parliament of this Autonomous Community. The Plenary Meeting has unanimously agreed that the new wording of Articles 11 and 12 of the Regulations, as well as its Final Provision, did not affect the “*core of the fundamental right to access on equal terms to public office, protected by Article 23.2 of the Spanish Constitution (CE)*”, as pleaded by the appellants.

After the reform of the Regulations, the Members of Parliament of Castilla-La Mancha had to change from a system that allowed full-time dedication (and the corresponding salary), to another system where only those holding positions previously determined by the Parliamentary Board can carry out their duties full-time (with a right to salary); all other Members will receive indemnification for the expenses incurred in exercising their representative duties and their effective attendance at applicable association meetings.

According to the appellants, the reform is unconstitutional since it “*substantially and unexpectedly amends the payment system for members of Regional Parliaments*”. In their opinion, the remuneration paid to regional representatives is part of the “*fundamental core*” of the right of citizens to be eligible for public office in equal terms.

The judgment, where Juan José González Rivas acted as the Reporting Judge, restates that, according to existing TC case-law, the fundamental right included in Article 23.2 CE “*is limited to the right to hold and remain in public office, but does not include the right to receive any amounts foreseen by applicable laws and regulations*”. In other words, the payment of remuneration specified for a post remains “*outside the scope*” of said fundamental right “*and cannot therefore be the object of an appeal for the protection of constitutional rights*”. The judgment adds that “*only those rights or duties attributed to a representative, belonging to the core of their parliamentary representative duties, are constitutionally relevant, e.g. the exercise of legislative tasks or control of the Executive*”.

Therefore, the Court explains, the type of remuneration scheme for Members of Parliament is “*part of the legislative freedom held by the Courts*”.

Regarding the fact that the reform was applied half-way through the legislature, the Plenary Meeting points out that “*this is a legitimate regulatory change of the remuneration system for regional representatives, without the latter being entitled to demand, further to Article 9.3 CE (*), some kind of acquired right that the legislator*

should consider intangible throughout the legislature, given that the regional legislator is free to design whichever remuneration system it deems appropriate, as well as the effective date of such regulatory change". Furthermore, "unaccrued rights over future monthly payments are not part of a Member of Parliament's assets", the judgment adds.

The right to access in equal terms to duties or public office has likewise not been breached given that the same remunerative scheme is "*equally*" applied to all Members of Parliament of Castilla-La Mancha. Any different treatment is justified by an objective circumstance depending on whether the Member works full-time, "*without this constituting a limitation on the rights inherent to representative duties*".

In any event, the judgment states, "*the appellants have not made clear that, as a result of reforming the law, the Regional Courts have not been able to perform the duties assigned thereto by the constitution and internal regulations; nor has it been proven that any Member of Parliament has been prevented from performing the duties and rights inherent to his position*". The judgment adds that, should any of these circumstances ever arise, the Members of Parliament should lodge an appeal for constitutional protection.

(*) Article 9.3 CE: "The Constitution guarantees [...] the non-retroactivity of punitive measures that are unfavourable to or restrict individual rights [...]."

Madrid, 5 March 2014.