



## INFORMATION NOTE No. 24/2014

### THE SPANISH CONSTITUTIONAL COURT MAINTAINS THE SUSPENSION OF THE “ANTI-EVICTION” ACT PASSED BY NAVARRA

The Plenary Meeting of the Spanish Constitutional Court (TC) has decided to maintain the suspension of Act 24/2013, of 2 July, on urgent measures to safeguard the right to housing in Navarra, until it resolves the unconstitutionality appeal lodged by the Government on 14 October against said autonomous Act. The TC’s decision, which does not prejudge the merits of the case, includes the particular dissenting vote of judges Adela Asúa, Luis Ignacio Ortega, Encarnación Roca, Fernando Valdés and Juan Antonio Xiol.

The Court takes into account reports from 2013 and 2014 jointly drawn up by the European Commission, the European Central Bank and the International Monetary Fund. Said documents advise that “*certain regional initiatives to protect mortgage debtors are generating legal and economic uncertainties about Spanish banks, with a possible negative impact on financial stability*”. Activities of Spanish financial institutions, they add, “*are closely connected to Spain’s compliance with international commitments acquired on the subject of State Aid*”. The foregoing is highly relevant in light of TC case-law. In fact, in 2011, the Court had already stated that “*Spain’s credibility during an economic situation of mistrust such as the present one is a matter of public interest justifying sustained suspension of an autonomous act*” (in this case, Regional Act 12/2010, of 11 June, implementing extraordinary in the Regional Community of Navarra to reduce the public deficit).

In addition to those reports, the Decision cites Bank of Spain Report dated 29 November 2013, stating that application of the measures included in the challenged rule “*generates uncertainty regarding the extent to which credit entities and SAREB [\*] will be able to manage their real estate assets. This generates concern for the Bank, further to its supervisory and financial stability duties, to the extent that it may affect margin performance and company results in such a difficult financial scenario as the present one*”.

“*The Bank of Spain*”, the judgment continues, “*considers that the rule has already raised undesirable uncertainty as regards the management by credit entities and SAREB of their real estate assets and has added legal uncertainty linked on the security of mortgage loans granted by Spanish banks, which may affect their financing conditions and, therefore, credit flow to the real economy*”.

Taking all the prior reasons into consideration, the Plenary Meeting states that “*the application of the precepts included in Regional Act 24/2013 may determine an increase in restructuring costs borne by the Government; this, in the current context, means that further effort and careful surveillance are fundamental in order to protect the ultimate stabilization of Spain’s financial sector these still adverse economic scenario*”.

The lawyers acting on behalf of the Regional Community and the Parliament of Navarra affirm that sustaining the suspension of the Act harms the public interest as regards guaranteed access to housing and the private interest of those who strive to be eligible for housing. They argue that the reports from the Bank of Spain and other international organizations contain “*mere*

*assumptions*”, and provide official data from the General Council of the Judiciary indicating that Navarra only executed 419 of the 58,604 evictions registered nationally.

According to the TC, these data “*do not affect the opposite analysis stated in said documents from the European Commission and the Bank of Spain*” since they refer exclusively to “*one of the aspects of a set of measures which overall, according to these institutions, may affect the stability of the financial system*”.

The Court concludes that the global implementation of the measures included in the challenged Act “*affect the financial system as a whole, hindering the public interest in the current situation of exceptional mistrust in the global credit system, where this public interest constitutes the stability of said system*”. Furthermore it states that, “*to the extent that it may compromise the adequate implementation of a bank restructuring process backed up with public funds under a special State aid regime, it also equally affects Spain’s compliance of its international commitments*”.

Judges Asúa, Ortega, Roca, Valdés and Xiol, who sign the particular dissenting vote, agree that the TC should have lifted the suspension of the challenged Act since it had not been accredited that its application “*may cause irreparable damage or damage that is very difficult to repair*”. In their opinion, the reports provided by the State Attorney only manifest that “*it is possible that such measures may unduly influence the financial system (...), but in no way do they justify that, as a consequence, a serious disruption will be caused in the financial system as a whole*”. “*The damage they refer to is purely hypothetical and it is based on general and abstract considerations*” which, they continue, are not backed up by “*specific details*”.

On the other hand, they agree that the figure provided by the Parliament of Navarra on the number of evictions registered in the Regional Community is indicative of “*the scarce impact that the measures foreseen in Regional Act 24/2013 may have on the financial system as a whole*”.

The judges conclude that the Decision has departed from the “*case-law of the Court on the presumption of unconstitutionality of autonomous acts*”, which is the “*starting point*” of any analysis regarding the suitability of sustaining or lifting suspension of the rule in dispute.

Madrid, 19 March 2014

[\*] SAREB (Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria): The entity in charge of managing real estate assets resulting from the bank restructuring process in Spain.