



INFORMATION NOTE No. 37/2014

THE TC DECLARES AS UNCONSTITUTIONAL CATALONIA'S "EURO PER PRESCRIPTION" AND ENDORSES JUDICIAL RATES INTRODUCED BY THE GENERALITAT

The Spanish Constitutional Court has partly upheld the appeal lodged by the Government against the implementation in Catalonia of the "*Euro per prescription*" system and judicial rates. In this judgment, in which judge Fernando Valdés Dal-Ré acted as the Reporting Judge, the Plenary Meeting of the Constitutional Court declared as unconstitutional the "*Euro per prescription*" system but, however, upheld the constitutionality of judicial rates.

JUDICIAL RATES. The judgment states that the Constitution entrusts the Spanish Government with exclusive competence in matters related to "*Administration of Justice*" (Art. 149. 1. 5 of the Spanish Constitution-CE), for which financing may be provided with rates; in turn, the Autonomic Statute of Catalonia (Arts. 101 to 109) establishes the attributions of the Generalitat in Administration of Justice matters and, among others, specifically includes the possibility of implementing rates as a source of financing.

The judgment issued by the TC in 2010 on the Statute of Catalonia (STC 31/2010, of 28 June), stated that the Judiciary and the government of the Judiciary are one. Further to the foregoing, and given that Administration of Justice (the exercise of jurisdiction, judging and enforcing what has been judged) is an exclusive competence of the State Government, the Plenary Meeting agreed that "*there is a set of personal and material resources*" "*at the service*" the Administration of Justice, but which are "*not specifically integrated*" therein, over which Autonomous Communities may claim attributions. Based on this principle, it is possible to impose autonomous rates over this "*administration of the Administration of Justice*".

The TC does not agree that the taxable event covered by the tax rate is the same as the one levied by the autonomous rate. "*The State's regulation of the rate is justifiable because the taxable event does not cover the Administration of Justice service, which can be assigned to Autonomous Communities, in charge of its provision and financing with personal and material resources, but, specifically, the 'exercise of the jurisdictional power which is typically and undeniably a competence of the state, as the manifestation of one of the State powers'*". On the other hand, autonomous rates refer to the material and personal resources at the service of the Administration of Justice, which is a competence of the Generalitat. "*If the exclusive competence of the State in relation to the Administration of Justice is compatible with autonomous competence in relation to personal and material resources at the service of the former, the introduction of a rate to finance this autonomous competence cannot be questioned*", stated the TC.

Furthermore, according to the judgment, "*as opposed to state rates, autonomic rates are not linked to the access to jurisdiction or resources, since its payment does not constitute a condition for the admissibility of proceedings, the administration of which is being financed. Whereas the connection of state rates to jurisdictional power is*

direct and clear, and non-payment inescapably entails the inadmittance of the related procedural act (Art. 8.2 Act 10/2012), as a condition sine qua non to exercise effective judicial protection, the payment of autonomous rates lacks, as cannot be constitutionally otherwise, any prevention or delay in access to the courts”.

EURO PER PRESCRIPTION. The TC pointed out that on the matter of public health, as opposed to other shared competences between the State and Autonomous Communities, *“the economic sustainability structure is part of basic State competences”*. The LOFCA (Public General Act on Economical Sustainability of Autonomous Communities) states, furthermore, that *“the State will guarantee throughout Spanish territory a minimum level of the fundamental public services under its competence”*, to include public health. The TC recalls that the National Health System is but one and that its financing depends on the Public Service Guarantee Fund, specific social funds used to *“ensure that each Autonomous Community receives the same resources per inhabitant necessary to finance fundamental public services essential to the Welfare State”*.

Therefore, the judgment states, given that public health is a basic competence of the State, there can be no *“imposition of a rate as the one being reviewed, which alters, at an extra cost for the beneficiaries, the cost participation system established”* in the Act. In fact, the *“Euro per prescription”* system directly encumbers the pharmaceutical service, making it more costly for Catalanian citizens to purchase prescription drugs, given that payment of the rate is a condition for dispensation.

Madrid, 6 May 2014.