SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATION NOTE No. 2/2015

THE TC ENDORSES THE CONSTITUTIONALITY OF THE BUDGETARY STABILITY ACT AND DISMISSES THE APPEAL FILED BY THE GOVERNMENT OF THE CANARY ISLANDS

The Plenary Meeting of the Spanish Constitutional Court (TC) has dismissed the unconstitutionality appeal lodged by the Government of the Canary Islands against various provisions of General Public Act 2/2012, of 27 April, on Budgetary Stability and Financial Sustainability (LOEP). The judgment, where the Magistrate Juan José González Rivas gave the opinion of the Court, does not believe that the reservation of matters to public general acts, foreseen in the Constitution, with respect to the matter governed by the rule, has been infringed; nor does it consider that the State has acted *ultra vires* when exercising its powers. The Vice President, Adela Asúa, and the Magistrates Luis Ignacio Ortega, Encarnación Roca, Fernando Valdés Dal-Ré and Juan Antonio Xiol presented their particular votes.

The challenged law, the judgment explains, "*implements and specifies the application of the constitutional budgetary stability mandate*", contained in Art. 135 of the Constitution; this precept, it adds, is fruit of the Treaty whereby the majority of European Union (EU) Member States undertook to maintain their administrations in a "*balanced or surplus*" position in their budgets, and to include deficit limits in their constitutions. The Plenary Meeting has also clarified that Spain, as a EU member, was obliged to fulfil Union laws by virtue of the "*principle of loyal cooperation between the EU and Member States*", and that the Spanish Constitution (CE) (Art. 149.1) entitles the State to ensure that EU mandates are fulfilled with respect to a reduction in the deficit.

Further to the foregoing, the judgment analyses the various grounds of the appeal, which it has dismissed in their entirety. The most relevant ones refer to Arts. 11, 25 and 26 LOEP.

Regarding the first (Art. 11 LOEP)- to apply the European Commission's methodology to calculate structural deficit-, the TC indicates that, although it is true that further to Art. 135.5 CE "*public general acts are reserved the specification of a "methodology and procedure to calculate structural deficit""*, it is equally true that Art. 93 CE allows "*an international institution to be entrusted with "the exercise of competences derived from the Constitution"".* Furthermore, with Spain's ratification of the Maastricht (1992) and Lisbon (2007) Treaties, the EU is now competent to "*regulate the form (methodology and procedure) in which to calculate the deficit of Member States; therefore, not only is it constitutionally necessary to follow the maximum structural deficit determined by the EU, but also to apply the calculation provisions determined at all times*".

In compliance with the obligation undertaken by Spain to adopt the necessary measures to ensure compliance of "*the obligations derived from EU law*", Art. 11.2 and 6 LOEP "*not only contain the essential integrating components of a reservation in favour of public general acts, but also, by virtue of assigning to the EU the way in which to calculate the structural deficit of Member States, these are necessarily bound by the procedure and methodology for calculation used by the European Commission*".

The TC also disagrees with the claim that the provision contained in Art. 25 LOEP- authorising the Government to send an expert committee to an Autonomous Community in order to "*appraise*" its economic/budgetary situation and, if necessary, propose the adoption of "*mandatory*" measures- constitutes an unconstitutional interference. On the one hand, Art. 135 CE "*enshrines new limits on the financial independence of Autonomous Communities*"; and, on the other, the challenged law leaves in the hands of Autonomous Communities the adoption of "*the necessary "budgetary decisions" for effective application of the principle of stability*". Only when these decisions do not exist or are insufficient may the State "*propose measures*" of a "*mandatory*" nature.

The Plenary Meeting has advised that Art. 25 LOPE should be interpreted jointly with Art. 26, which refers to "*use of the coercion foreseen in Art. 155 of the Constitution*". Thus, if a breach of stability objectives by an Autonomous Community places the State "*in a position of potential liability vis-à-vis Europe*", Art. LOEP foresees, "*prior to the adoption of mandatory measures*" (those established in Art. 26), that the Government may propose measures which, "*albeit defined as coercive*", intend to "*bend the intent or conduct of the Autonomous Community in breach*".

The reference contained in Art. 25.2 to "*mandatory measures*", stresses the Plenary Meeting, does not mean that "*through authority of the expert committee alone, acting on behalf of the Government, these measures may be enforced*". Otherwise, Art. 26 would be illogical, given that, in order for the Executive to be able to apply said measures, previously "*the Government must call upon the President of the Autonomous Community in question, said request not be heeded, and the favourable vote of the Senate obtained*".

Consequently, explains the judgment, the key is to determine whether it is constitutionally legitimate for the Government to propose to the Administration in breach the adoption of a series of measures. The response, concludes the TC, "*is inevitably "yes"*", given that the achievement of deficit and indebtedness objectives "*constitutes a matter of general interest and of extraordinary importance, the achievement of which is ultimately guaranteed by the State*". The judgment concludes that the case entails "*a legitimate and due interference, which is necessary and proportionate*".

With respect to Art. 26 LOPE, the constitutionality of which is also endorsed by the Plenary Meeting, the judgment explains that "*it serves as a last resort for the State in the event of a breach, that is manifest and blatant, deliberate or negligent, by a certain Autonomous Community, which has initially failed to adopt, at its own initiative, and later at the State's initiative, the necessary measures to correct the departure incurred, thereby endangering collective compliance and involving the State in potential liability vis-à-vis Europe*". Use of the channels foreseen in Art. 155 CE "*is a clear interference*" in the financial independence of Autonomous Communities; however, this interference is "*authorised by the Constitution itself, as a last reaction to a blatant infringement of constitutionally imposed obligations*".

The five Magistrates signing the particular dissenting vote consider that the judgment should have declared the unconstitutionality of Arts. 25.2 and 26.1 LOEP. The first, because "*the provision of executory mandatory measures means that the Autonomous Community in question is subject to the State's control, in all respects, configuring a device that is equivalent to the one foreseen in Art. 155.2 CE*", without fulfilling "*the basic requirement that it be approved by an absolute majority in the Senate*". The second, because "*it forces*" the Executive to resort to the procedure foreseen in Art.

155 CE, "*overlooking the margin of political discretion that the Government has been constitutionally granted in order to resort to this instrument*".

The Magistrates also believe that Art. 11.6 LOEP should have been declared unconstitutional because it infringes the reservation in favour of public general acts, foreseen in Art. 135 CE. In their opinion, "*the matter basically affects the sources of law, irrespective of the greater or lesser margin of decision held by the State under mandatory European regulations*". Furthermore, they stated that "*the method to calculate structural deficit is not regulated in any European rule*", which is why "*this constitutional mandate cannot be overridden by a directly applicable Community rule, further to the primacy of European law*".

The disagreement reflected in this particular vote was extended to Arts. 11.6, 16, 25.2 and 26.1 and the second and third additional provisions.

Madrid, 19 January 2015.