



SPANISH CONSTITUTIONAL COURT

Cabinet of the President

Press Office

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THE TC DECLARES CONSTITUTIONAL THE DECREE-LAW ON MEASURES TO PROTECT THE HOLDERS OF PREFERENTIAL SHARES

The Plenary Meeting of the Spanish Constitutional Court has dismissed the unconstitutionality appeal lodged by the Socialist Parliamentary Group against Royal Decree-Law 6/2013, of 22 March, on the protection of holders of certain savings and investment products and other financial measures. Art. 1 of said rule, the only one analysed by the Court, creates a Commission which, among other functions, has to analyse the reasons which brought thousands of “*holders of preferential shares*” to file claims against credit institutions. The Judgment, where Judge Pedro González-Trevijano acted as Reporting Judge, includes the particular dissenting votes of Judges Luis Ortega and Fernando Valdés Dal-Ré.

The appellants claim that Art. 86.1 of the Spanish Constitution has been breached, since, in their opinion, the challenged rule does not comply with the “*extraordinary and urgent need*” requirement which allows the Government to legislate with a decree-law. In cases such as this one, the judgment explains, the Constitutional Court must merely perform an “*external control*”; i.e. verify that there is reasonable justification for using a decree-law, since “*the appreciation of extraordinary and urgent need constitutes a political judgment, entrusted to the Government and Parliament*”.

In that “*external control*”, the Court must make sure, on the one hand, that the definition of the situation as extraordinary and urgent is “*explicit and reasoned*”, and, on the other hand, that there is a connection between that situation and the measures approved. According to existing case-law of the Court, the “*justifying need of decree-laws*” must not only apply in situations that entail “*a serious danger to the constitutional system or public order*”, but also “*in a wider interpretation as a relative need in specific situations (...) which demand immediate regulatory action (...)*”. Regarding the first point (explicit and reasoned definition of extraordinary and urgent need), and after analysing the Preamble of the challenged rule and the arguments submitted by the Minister of Economy and Competitiveness to Parliament, the Plenary Meeting concludes that the political bodies have offered a “*reasoned and founded explanation of the arguments to back up their use of*” a royal decree-law.

The judgment points out that the situation of emergency which the rule intends to solve is that of “*minority investors, most of them in a particularly vulnerable situation, who have negatively suffered from an inadequate placement*” of preferential shares and, as a consequence, “*have been doomed to particular economic hardship in order to be able to recover their investment*”. The challenged rule intends, furthermore, to make compatible “*the compensation of those affected with plans to restructure financial institutions*” approved by the European Commission. And suggests arbitration as a “*faster and less expensive channel than traditional court procedures*” to respond to the claims brought by affected parties.

The Court analyses, secondly, whether there is “*a logical connection*” between the measures projected in the challenged rule, specifically the creation of a Monitoring Commission, and the situation of need justifying use of a decree-law. The Commission, the judgment declares, which is presided by the President of the Spanish Stock Exchange

Commission and whose vice-president is the Deputy Governor of the Bank of Spain, must supervise “*relationships between investors and traders of these financial products and the process aimed at guaranteeing the protection of minority investors, paying particular attention to affected parties in a specially vulnerable situation*”. It must also “*propose alternative measures or criteria which speed up procedures aimed at obtaining an adequate refund*”. The rule, the Court adds, puts in place “*instruments which effectively contribute to ‘regulatory improvements’ in the devices to protect those affected*” by preferential shares.

As a consequence, “*the nature of its governing bodies, the importance of the functions conferred on the Commission and the immediacy of the measures adopted (...) justify, in this case, the use of an extraordinary rule such as a decree-law*”.

In his particular dissenting vote, Judge Fernando Valdés, considers that the appeal should have been granted upheld. In his opinion, the arguments extracted by the judgment from the Preamble do not justify an “*extraordinary and urgent need*” because they are not limited to Art. 1 of the challenged rule (the only one analysed by the Court), but generically refer to all articles; and the Minister’s explanations do not meet “*constitutional requirements*” either, because his only purpose was to “*provide political justification for the regulatory decision adopted*”.

Judge Luis Ortega also believes that the appeal should have been upheld. In his opinion, the creation of a Monitoring Commission by decree-law does not only not meet the extraordinary and urgent need requirement enabling use of that figure, but also constitutes a matter which could have been regulated through a royal decree further to the Government’s regulatory powers.

Madrid, 16 February 2015