



SPANISH CONSTITUTIONAL COURT  
Cabinet of the President  
Press Office

## INFORMATION NOTE No. 17/2015

### THE TC ANNULS TWO ARTICLES OF THE DECREE ON URGENT MEASURES TO PROTECT PART-TIME WORKERS

The Plenary Meeting of the Spanish Constitutional Court has unanimously upheld the unconstitutionality appeal lodged by the Government of Catalonia against two articles of Royal Decree-Law 11/2013, of 2 August, to protect part-time workers and other urgent economic and social measures. The Court considers that, in this case, the “*extraordinary and urgent need*” requirement was not met in order for the Government to rely on Art 86.1 of the Spanish Constitution and use a royal decree to legislate, and therefore declares these provisions unconstitutional and void. Judge Antonio Narváez acted as Reporting Judge.

The challenged rule reforms the Employment Act and the Social Infractions and Sanctions Act and assigns to the State Public Employment Service (SEPES) competence to sanction certain infractions related to unemployment benefits and subsidies.

After performing a “*joint evaluation of the grounds on which the Government enacted this exceptional legal provision*”, i.e. “*those reflected in the preamble of the act, throughout the Parliamentary validation debate and in the decree’s preparatory report*”, the Plenary meeting concludes that in this case there is no evidence of “*extraordinary and urgent need*”, required for the challenged provisions.

The judgment declares that from the preamble, parliamentary debate and preparatory report of the decree there is one general ground and another specific ground. The first refers to “*the current economic crisis which requires the introduction of reforms in order to encourage economic growth and employment*”; the second relates to the specific measures included in the Royal Decree, which is “*the need to provide what is known as enhanced legal security to the recipients of unemployment benefits and subsidies, determining that sustained registration as a job-seeker is a necessary requirement in order to receive and maintain the right to a benefit*”.

The general ground mentioned above, the judgment declares, “*makes total sense in a context such as Royal Decree-Law 11/2013 which, due to its heterogeneity*”, covers several matters “*affecting various initiatives in other fields other than the amendments made in the field of social protection of part-time employment, employment and unemployment benefits and labour matters*”. However, this general ground “*is insufficient*” regarding the challenged provisions, “*since Court doctrine has repeatedly required that it must also be sufficient regarding the specific provisions challenged*”.

The Plenary Meeting concludes that, in this case, the Government “*has not sufficiently explained, in the preamble or parliamentary validation process of the Royal Decree-Law, any argument in favour of the necessary promptness, which demanded from SEPE the assignment of competences to sanction certain types of infractions committed by the recipient of unemployment benefits and subsidies, apart from stating that those measures were aimed at improving legal certainty in that area*”. “*In this case – the judgment*

*adds- there is nothing that proves that the new regulation aims to cover an exceptional situation or constitutes an urgent need, to the point that its effectiveness must not be delayed for the time involved in its legislative processing (...)*

On the other hand, the judgment advises that both conducts, now sanctioned by SEPE, *“seem similar to existing ones or others being replaced. This similarity, if it acquires true regulatory identity, may suggest that the change made is limited to the competent administration to file the necessary proceedings and order a sanction”*. Therefore, the Court declares that *“the apparent similarity of the conducts sanctioned is inconsistent with an urgent need to enhance legal certainty”* mentioned in the preamble *“as an enabling factual circumstance”*.

Madrid, 27 February 2015