INFORMATION NOTE No. 26/2015

THE TC ENDORSES THE USE OF AMENDMENTS IN THE PARLIAMENTARY PROCESSING OF THE ACT TAXING CREDIT ENTITY DEPOSITS

The Plenary Meeting of the Spanish Constitutional Court (TC) has dismissed the appeal lodged by the Catalonian Government against taxing credit entity deposits (Art. 19 of Act 16/2012, of 27 December). The appeal partly coincides with the one brought against the same Act by the Catalonian Parliament, which is why the Court has reiterated the arguments given in the judgment delivered last 19 February. In reply to another of the pleadings brought by the appellant, it also determines in this case that the requirement for "*connection and homogeneity*" amongst amendments is met, giving rise to the new tax rule and legislative text where the amendments were introduced during its parliamentary processing in the Senate. The reporting judge of the judgment has been the Judge Fernando Valdés Dal-Ré. The Judge Juan Antonio Xiol has presented a particular vote, which was adhered to by the Judges Luis Ortega and Encarnación Roca.

The judgment summarises the basic case-law on the right of amendment. First of all, there is a need for a "*minimum homogeneity link*" between the change intended and the amended texts, in order to guarantee the "*right of the initiative applicant (Art. 87 of the Spanish Constitution (CE))*", "*the instrumental nature of the legislative procedure (Art. 66.2 CE)*" and, consequently, the "*function and purposes inherent to the legislative power exerted by Parliament*". Secondly, it grants "*a broad margin of appreciatio*n" to the body assigned by law to examine whether or not this minimum homogeneity link exists. An amendment will be rejected "*only if it is clear and manifest*" that this connection does not exist. And, finally, in the case of heterogeneous rules, the case-law points out that the homogeneity link "*will be interpreted in a flexible manner according to its functionality*".

The judgment points out that, in this case, the Court should take into account that "*consistency or homogeneity is presumed*" between the amendment and the articles of the law in question. This is because "*there is no evidence that the amendment was dismissed, or that any senator or parliamentary group raised the issue of its material inconsistency*". The decision to allow the amendment was adopted by the Board of the Senate, which was the body competent to do so.

Without prejudice to the foregoing, the Plenary Meeting has examined whether the consistency or homogeneity required between the amendment and the amended text exists, and reaches the conclusion that there is no breach of the Constitution. The case, explains the judgment, involves a tax rule of a "*transversal nature, aimed at changing the main taxes foreseen by the system*", such as "*Personal Income Tax, Corporations Tax, Wealth Tax, Non-Resident Income Tax, Value Added Tax, Capital Transfer Tax and Stamp Duty, in local taxes and the real estate cadastre and, ultimately, in the Economic and Fiscal Regime applicable in the Canary Islands*".

"*Given that the rule has a clear tax content, despite including various taxes*- the Plenary Meeting concludes- *it cannot be claimed that there is a total lack of homogeneity or a*

disconnection, in the terms alleged by the claim, according to constant case-law of this Court, which requires a balance between a possible constitutional breach and a necessary flexibility in legislative procedures and the controlling role entrusted to the government bodies, of which the constitutional process is always subsidiary. Thus, as no material change has been evidenced in the process to deliver an opinion within Parliament, these grounds of unconstitutionality should be dismissed".

Judges Xiol, Ortega and Roca reiterated the arguments they presented in their particular vote with respect to the judgment delivered last 19 February, which resolved an appeal brought by the Catalonian Parliament against the same legal provision that is now being challenged.

Madrid, 26 March 2015.