SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATION NOTE No. 42/2015

THE TC DECLARES THE UNCONSTITUTIONALITY OF TWO CATALONIAN RULES ON CREDIT ENTITY DEPOSITS TAX

The Plenary Meeting of the Constitutional Court (TC) has unanimously upheld two unconstitutionality appeals brought by the Government against Catalonian Decree-Law 5/2012, of 18 December, and against Catalonian Parliament Act 4/2014, of 4 April, both on credit entity deposits tax. In both judgments, where the Reporting Judges have respectively been Andrés Ollero and Santiago Martínez-Vares, the Plenary Meeting of the Court has declared the unconstitutionality and nullity of both autonomous rules.

The first judgment resolves an appeal brought by the Government against the Catalonian decree-law that established the credit entity deposits tax and rules in favour of the appellant, which claimed that the decree-law exceeded both the formal and material limits that the Statute of Autonomy imposes on legislation passed as a matter of urgency. The Catalonian Statute of Autonomy, explains the judgment, establishes "*very specifically*" in Art. 203.5 that all individual taxes will be established by the Generalidad "*by means of a Parliamentary act*". In other words, the Statute "*imposes an unequivocal material limit on the Catalonian decree-law, which constitutes the impossibility of creating individual taxes through this regulatory instrument". "There is no doubt"*, adds the Court, "*that when establishing this "individual tax" ex novo, Decree-Law 5/2012 has infringed the statutory requirement that the Generalidad create "individual taxes" through a Parliamentary Act".*

The second judgment resolves an appeal brought by the Government against the Catalonian Parliament Act, which established a credit entity deposits tax; this law was passed two years after autonomous Decree-Law 5/2012 (repealed by the first judgment).

The appellant claims that the tax created by the autonomous law infringes the Constitution and the Act on the Financing of Autonomous Communities [Ley de Financiación de las Comunidades Autónomas] (LOFCA), insofar as it is identical to the state tax regulated in Art. 19 of Act 16/2012, of 27 December (the constitutionality of which has been endorsed by the Plenary Meeting in another resolution). After analysing the characteristics of both the state and autonomous tax, the judgment concludes that the second one "*coincides, in all material respects, with its equivalent state tax, consequently incurring the incompatibility foreseen in Art. 6.2 LOFCA*". In fact, adds the judgment, "*there is a coincidence between the taxable event, the taxable base and the taxpayers, and the only differences rest in the tax rate and deductions established by the Autonomous Community for branch offices located in its territory".*

Consequently, there is a breach of Articles 133.2 and 157.2 CE, which is why the Court has declared the unconstitutionality and nullity of the challenged rule.

Madrid, 1 June 2015.