



SPANISH CONSTITUTIONAL COURT  
Cabinet of the President  
Press Office

## INFORMATION NOTE No. 51/2015

### THE TC DECLARES THE UNCONSTITUTIONALITY OF THE DECREE DELIVERED BY THE GOVERNMENT OF THE CANARY ISLANDS TO CALL A CONSULTATION ON OIL DRILLING

The Plenary Meeting of the Constitutional Court (TC) has unanimously declared unconstitutional and, consequently, null and void, Decree 107/2014, of 2 October, whereby the Government of the Canary Islands called a citizen consultation related to gas or oil drilling. The judgment, where the President of the Court, Francisco Pérez de los Cobos, acted as Reporting Judge, considers that the citizen consultation called is, in fact a referendum, which is why the Decree infringes the Constitution and the Statute of Autonomy by invading competences exclusively attributed to the State.

When resolving this appeal, the Court has applied the foundations of recent Constitutional Court Judgment (STC) 137/2015, which declared unconstitutional and null and void Chapter III of the Regulations of the Canary Islands, regulating citizen consultations; this rule, in the same way as the Decree now under dispute, had also been challenged by the State Attorney. In fact, the legal foundations of the Decree are precisely constituted by the precepts of the Regulation declared unconstitutional.

*“Based on what this Court has already decided”, indicates the Plenary Meeting, “it should be stated that the calling decided by means of Decree 107/2014, which is hereby challenged, as regards participation in consultations by the individuals referred to in section 3.1, evidences the same and unequivocal referendum condition ascertained in the STC, with respect to Articles 9 to 26 of the Regulations”; it is this rule “again, on which the challenged resolution is based”.*

In other words, the calling is addressed to *“an electoral body which, not extraordinary or irregular, does not act as such and which is certainly integrated by the electoral body of the Autonomous Community, through which a pronouncement would be made in a vote (what the “issue of replies” clearly refers to), to be processed and ascertained through the materially electoral procedures and guarantees established in the Regulations, all of which led to the declaration of unconstitutionality and nullity of Chapter III (...)”.*

The declaration of unconstitutionality of section 3.1 of the Decree also covers section 3.2, which foresees a possible participation in a consultation by certain citizen entities. The calling of citizen entities to a consultation is not, *per se*, unconstitutional; however, it is also affected by a declaration of unconstitutionality given that it is *“difficult, and even impossible, to segregate the rules directly affected by the invalidity from those exclusively referring to these citizen entities”.*

Even if such distinction were feasible, nor would the Court be able to make a *“selective”* pronouncement in a measure which, explains the judgment, is not being examined as a rule but as a *“unique resolution that constitutes an inseparable whole, in all regards”.* Furthermore, it adds, the legal continuation of a *“direct question”*, contained in the decree, albeit only in relation to associations, *“would seriously distort constitutional*

*principles, given that any opinion that may hypothetically have been given by such associations would have been examined objectively as an “overall citizenship” issue, when this is totally irrelevant”.*

Consequently, the Plenary Meeting has declared the unconstitutionality and nullity of the Decree “*as a whole*”.

Madrid, 30 June 2015.