



SPANISH CONSTITUTIONAL COURT  
Cabinet of the President  
Press Office

## INFORMATION NOTE No. 56/2015

### THE TC UPHOLDS THE CONSTITUTIONALITY OF THE REFORM AFFECTING CIVIL SERVANTS' LEAVE AND VACATION

The Plenary Meeting of the Constitutional Court (TC) has dismissed the unconstitutionality appeal lodged by the Andalusian Government against Royal Decree-Law 20/2012, of 13 July, on measures to guarantee budgetary stability and to encourage competitiveness; the challenge affects three precepts (Arts. 8, 27 and 28) that amend the leave and vacation rules applicable to civil servants, shopping schedules and opening hours on Sundays and holidays and sales promotion through discounts, reduced prices or clearance sales. The judgment includes the particular vote of the reporting judge, Mr. Antonio Narváez, which was subscribed by the Vice President, Adela Asúa, and the Judges Encarnación Roca, Fernando Valdés Dal-Ré and Juan Antonio Xiol.

First of all, the plaintiff considers that the challenged precepts are contrary to Art. 86.1 of the Spanish Constitution (CE) because, in his opinion, the measures contained in the rule subject to appeal are not related to the “*extraordinary and urgent need*” required by the Government. This requirement, in the present case, refers to an economic crisis scenario and the “*need to reduce the public deficit without hindering the provision of essential public services*”.

As regards the amendment of the rules on leave and vacation of civil servants (Art. 8), the claim bases this lack of connection on the fact that the challenged ruled delayed until 1 January 2013 the entry into force of provisions related to days taken off from work for personal matters, extra days of free disposal (which are removed) and vacation. It did not do the same with the other cases of leave (sick leave or injured relatives, death, move, etc.) which came into force upon the effective date of the Decree-Law.

The Court has dismissed this pleading. The judgment affirms that the fact that the entry into force of part of the new regulations on leave and vacation enjoyed by civil servants was deferred does not entail a disconnection between the reform and its justifying emergency situation; the judgment adds that its application mid-year (the Royal Decree-Law was approved on 13 July) “*could have materially affected the interests of the Public Administrations to which the new rules were addressed, which necessarily required a certain margin of time (...) to arrange their structures and services and adjust them to the new leave and vacation system given, also, the interests of their dependent civil servants*”. Consequently, as alleged by the appellant, it is not possible to distribute the reform “*between a Government rule and a subsequently parliamentary rule*”.

The foregoing also applies to the change in shopping schedules and opening hours on Sundays and holidays (Art. 27). Deferral of its entry into force until 1 January 2013 “*responds to the need for Autonomous Communities to have a specific margin of time in which to start up the necessary procedures to adapt their Sunday and holiday calendars for 2013*”. Consequently, concludes the judgment, the measure contained in this precept likewise meets the requirements of Art. 86.1 CE.

The appellants also consider that Arts. 8 and 27 of the challenged Decree-Law infringes competences of the Andalusian Autonomous Community.

As regards the first precept, the judgment points out that a change in the rules on leave and vacation enjoyed by civil servants falls within the scope of competences, in public service matters, entrusted by the Spanish Constitution to the State in Art. 149.1.18. The State is entrusted with “*exclusive competence to determine the statutory grounds*” applicable to civil servants in all Public Administration; whereas Andalusia is competent in “*legislative implementation and execution matters, in accordance with basic laws on autonomous and local public services*”.

The State, consequently, is the one to determine “*the various situations in which leave or absence may be granted to public sector staff, irrespective of the Administration to which they belong*”, states the Plenary Meeting. However, in any case, it cannot exhaust the regulation of this leave to the point of “*not allowing Autonomous Communities to exercise their legislative implementation competences*”.

In this specific case, the Court considers that “*the state rule, albeit determining the length of the various types of leave, does not end the possibility of implementation and application on behalf of Autonomous Communities of basic regulations on the matter*”. Consequently, the judgment states that the questioned rule does not invade autonomous competences.

Finally, the plaintiff considers that the State has invaded its competences by changing shopping schedules and opening hours on Sundays and holidays (Art. 27). In this case, internal trade is a competence covered by coordination of the general planning of economic activity, entrusted to the State by the Constitution (Art. 149.1.13).

The judgment claims that the regulations contained in the challenged precept (in relation to opening hours on Sundays and holidays and criteria to determine popular tourist areas) “*merely establishes certain global guidelines or criteria which, as minimum and common conditions, meet the constitutional parameters*” in order to constitute basic rules. As such, the state rule “*only intends to establish a system in which it is legitimately possible for Autonomous Communities to regulate the matter*”. “*In fact*”, adds the Court, “*said criteria uphold autonomous competences in internal trade matters*” as they “*do not exhaust*” the competences of the autonomous legislator.

In their particular vote, Judges Narváez, Asúa, Roca, Valdés and Xiol affirm that the Court should have partly upheld the appeal and declared the unconstitutionality and nullity of certain paragraphs in Art. 8 of the challenged Decree-Law that set, on specific days, the length of leave and vacation enjoyed by autonomous and local civil servants (not those of the General State Administration). In their opinion, the new regulations invade autonomous competences because “*there is no margin of independence for the Autonomous Community of Andalusia*”; in this regard, they explain that the rule would have been constitutional if a range had been established, between a minimum and maximum length of time, enabling the Autonomous Community “*to specify enjoyment of different forms of leave in working days or hours*”.

Madrid, 17 July 2015.