SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATION NOTE No. 72/2015

THE TC ENDORSES MOST OF THE DECREE-LAW ON ECONOMIC MEASURES FOR GROWTH, COMPETITIVENESS AND EFFICIENCY, APPROVED IN JULY 2014

The Plenary Meeting of the Constitutional Court has endorsed the use of a decree-law as a means to approve certain economic measures that the Government started up in July 2014 (Royal Decree-Law 8/2014, of 4 July, approving urgent measures for growth, competitiveness and efficiency). The Court considers that the urgency and justification of most of these measures meet the constitutional requirements for legislation through these channels (Art. 86.1 Constitutional Court (CE)). The Plenary Meeting has only partly upheld the unconstitutionality appeal filed by the Socialist Parliamentary Group and, consequently, has annulled Art. 116 of the challenged Decree-Law (in relation to part-time employment and placement agencies) and several additional provisions (nos. 20 to 24, reforming the Registry Office). The judgment, where Pedro González-Trevijano has acted as reporting judge, includes a particular dissenting vote from the Vice President, Adela Asúa, and the Judges Fernando Valdés Dal-Ré and Juan Antonio Xiol.

Contrary to the appellants' allegations, the Court has clarified that decisions on hybrid laws ("*omnibus laws*") also apply to decree-laws which, like the one disputed, contain heterogeneous regulatory measures, without prejudice to any technical defects. Consequently, the limits applicable to said decree-laws are those contained in Art. 86.1, enabling the Executive to legislate through these channels "*if use of this exceptional legislative power (…) is justified on the grounds of extraordinary and urgent need*".

In turn, the judgment does not believe that the appellants' right of political participation has been infringed, as deputies. According to constant case-law, the fundamental right enshrined in Art. 23.2 CE "*is a legally configured right*", meaning that "*parliamentary Regulations*" should be used to regulate and arrange deputy rights and attributions. In this specific case, concludes the Court, during the processing of the challenged decree-law, no "*infraction of parliamentary law has occurred, in breach of Art. 23.2 CE*".

The Plenary Meeting has analysed how the various measures approved in Art. 86.1 (justified urgent need and a meaningful connection between the measure and purpose sought) apply as a whole:

1. Retail trade and market unity (Chapter II, Title I). This set of measures includes the liberalization of shop opening hours which, as indicated in the preamble of the challenged decree-law, are aimed at promoting employment and sales and, consequently, "*helping improve the country's general economy*". The urgency, explains the Judgment, is justified on "*the need to maximize the effects of an economic situation referred to by the Government as positive, following a previous crisis*". Furthermore, "*a registered increase in visiting tourists*" also constitutes an opportunity. This is why, contrary to what the appellants claim, the

Court has stated that both the urgency of the measures and their meaningful connection with the purpose sought are justified.

2. Drones (Art. 50). The decree-law establishes a series of measures that will apply until the effective date of the relevant regulations. According to the appellants, the fact that the decree-law refers to subsequent regulations "*implicitly confirms that the decree-law is unnecessary*". The Plenary Meeting has dismissed this argument. First of all, because the Executive has adequately justified the "*urgency and need*" to develop a specific legal framework enabling "*the development of this cutting-edge technological sector with huge potential for growth*", particularly in the current economic scenario. Furthermore, due to the need to immediately establish "*minimum conditions to guarantee the safety of drone operations*", i.e. guaranteed "*air security*". Finally, the judgment explains that the case-law allows the regulatory rank of de-legalized matters to be "*raised*" and, as is the case here, "*to handle the urgent need for regulations with the text of the decree-law*". This urgent regulation is "*transitional*" and will only apply until final regulations are passed.

3. Energy measures (Title III). These measures are aimed at liberalizing the liquefied petroleum gas market. The appellants consider that the Government has not sufficiently explained the reasons for using decree-law channels to approve this. In turn, the judgment recalls that reiterated constitutional case-law has stated that "*the importance of the energy sector for the general economy*" is decisive in order for its regulation to constitute "*a need*". From this point of view, it adds "*it is reasonable to presume that regulation of the liquefied petroleum gas market (…) may use this type of rule (…)"*. According to the Government, the urgency of the measure obeys to the need to correct an "*incipient tariff deficit*" that currently exists in the sector in order to "*avoid situations such as the one existing in the electricity sector*". This is why the Court believes that including said measures in the challenged decree-law conforms to the constitutional requirement of Art. 86.1.

4. Measures related to the mining sector (Art. 68 and final provisions 2 and 4). The Court considers that the urgency and need to approve a series of measures, through a decree-law, have been sufficiently justified (rather than using a regulatory rule). The Judgment explains that, as a result, the mining sector was informed of certain reforms before the effective date (1 January 2015), such as the mapping system, which need "*technical adjustments*" for their effective application.

5. Energy efficiency measures (Chapter IV, Title III). The preamble of the challenged rule justifies these measures on the need to contribute economic resources to the National Efficiency Fund, in order to start up "*energy efficiency measures, as soon as possible and at the least possible cost*". In order for this to be feasible, it adds, a system of "*obligations*" should be implemented in order to endow the Fund with the necessary resources. The "*economic savings*" generated by the measures justify use of a decree-law, according to the Court.

6. Part-time employment and placement agencies (Art. 116). The appellants are questioning the urgency in amending the regulations applicable to this type of company; the preamble of the rule has justified this on the grounds that it is necessary to adapt said regulations "*right away*" to the principles established in Act 20/2013, of 9 December, to

guarantee market unity. However, the Court considers that "*there is no justification whatsoever in this regard, in the preamble or in the annual report, or in the parliamentary intervention of the Government's Vice President*", which is why this reform could have been implemented through legislative proceedings. Consequently, the Plenary Meeting has declared Article 166 of the challenged Decree-Law both unconstitutional and null and void.

7. Reform of the Registry Office (additional provisions 19 to 24). These additional provisions refer to the extended effective date of Act 20/2011, of 21 July, on the Registry Office (19) and a reform allowing land and commercial registrars to manage the Registry Office (20 to 24). The Plenary Meeting has thus upheld the constitutionality of additional provision 19, which extends from three to four years the extended effective date of the Registry Office Act, given the need to "*ensure an adequate operation of the system*". Instead, the other additional. provisions (20 to 24), on Registry Office management, have been declared unconstitutional and null and void. There is no "*justification whatsoever as to the urgency and need to partly amend the content*" of a rule, whose effective date has been postponed for a further year, states the Judgment.

In their particular dissenting vote, Asúa, Valdés and Xiol affirm that the challenged decree-law "*has caused a constitutional floodgate*", as the measures it contains are so heterogeneous that they lack "*a common nexus, precisely consisting of this need that they are presumably overcoming*"; in their opinion, nor have the characteristic urgency and extraordinary nature of this need been sufficiently justified. Furthermore, they consider that the Court has not taken into account that the Constitution conceived Art. 86 as an "*exceptional*" power in favour of the Government. Consequently, they affirm, this "*relegates the Legislative to a passive, secondary and limited role, to the detriment of the principle of representation/democracy or, to quote the preamble of the Constitution, a Rule of Law to guarantee that the law prevails as an expression of the people's will*".

Madrid, 2 October 2015.