



INFORMATION NOTE No. 77/2015

THE TC AGREES TO CONTINUE WITH AN INTERIM SUSPENSION OF THE NAVARRE ACT REGULATING THE JOINT USE OF CANNABIS

The Plenary Meeting of the Spanish Constitutional Court (TC) has agreed to continue with an interim suspension of Regional Act 24/2014, of 2 December, regulating cannabis user associations in Navarre, until judgment is delivered in the appeal lodged last March by the Government against this rule.

In order to decide whether to lift or continue with the interim suspension of a challenged rule, the Court initially presumes that all laws approved by a parliament are legitimate. After which it will ascertain whether there is a risk of damaging the interests at stake, both public and private; and whether this potential damage is irreparable or very difficult to remedy. This analysis will in any case not analyse the merits as to the rule's constitutionality, which the Court is only entitled to do in the judgment settling the appeal.

In this case, the State Attorney claims that a lifting of this interim suspension could damage public health, insofar as it "*allows conducts contemplated by law as criminal or administrative infringements by state legislation*", specifically referring to Art. 368 of the Criminal Code, which sanctions anyone "*who grows, manufactures or trades with toxic drugs, narcotics or psychotropic substances, or otherwise promotes, encourages or enables their illegal consumption, or holds them for this purpose (...)*". The Attorney acting on behalf of the Navarre Parliament, in turn, states that the act regulates the incorporation, arrangement and operation of clubs, set up to enable this consumption to take place in closed areas, in small amounts, and only by persons who are already consumers.

When conducting its analysis, the Plenary Meeting has considered that although cannabis consumer associations have arisen pursuant to Supreme Court case-law, a recent decision delivered by Chamber Two (Supreme Court Judgment (STS) 484/2015, of 7 September), has found several club members guilty. The judgment states that joint drug use may constitute a criminal offence if it is not limited to a "*small group of drug addicts*", and if these persons are not "*identifiable and determined*". In this regard, the Supreme Court has advised that "*the policy underlying case-law on the non-criminal nature of joint use may not be extrapolated*" to all situations.

Further to the foregoing, the Constitutional Court considers that this interim suspension should continue. "*With the interim effects of this incident*", the order indicates that the regulation of cannabis consumer clubs contained in the challenged rule does not exclude the possibility of "*conducts arising, able to be covered by the criminal offence foreseen in Art. 368 of the Criminal Code (CP)*", "*as a consequence thereof*". Thus, legal uncertainty could arise for association users.

The order explains that the Navarre Act does not foresee "*any limit as to the number of persons that may belong to these clubs, as only consumer status is necessary*"; nor is it guaranteed that "*the decision to use drugs has been taken and executed [by drug users] before they joined the association*"; association members are

allowed to remove a certain drug amount per person/day for private consumption outside the club, *“without guaranteeing that any amounts removed in this way become eventually accessible to third persons acquiring and trading with the drugs for illegal consumption”*.

According to said Supreme Court Judgment, all of these reasons mean that, in certain cases, joint use in cannabis associations may constitute a criminal offence. *“Basically”, concludes the Plenary Meeting, “the regulation of cannabis consumer clubs foreseen in the Navarre Act protects conducts that do not overrule the possibility of constituting criminal offences, foreseen in Art. 368 CP as a public health”*.

Madrid, 14 October 2015.