



## INFORMATION NOTE No. 89/2015

### THE TC PARTLY UPHOLDS THE APPEAL BROUGHT BY THE SOCIALIST PARLIAMENTARY GROUP AGAINST A REFORM OF THE COASTLINE ACT

The Plenary Meeting of the Spanish Constitutional Court (TC) has partly upheld the unconstitutionality appeal filed by the Socialist Parliamentary Group in Congress against several provisions of Act 2/2013, of 19 May, on the protection and sustainable use of the coastline and amending Coastline Act 22/1988, of 28 July. The judgment, in which Fernando Valdés Dal-Ré acted as Reporting Judge, has upheld the unconstitutionality and nullity of three of the precepts and provisions challenged, and provides an interpretation pursuant to the 7<sup>th</sup> additional provision, dismissing the other challenges.

In general, the appeal claims a breach of three articles of the Constitution: Art. 132.2, which incorporates into the State's public domain natural resources such as, amongst others, the sea-land area and beaches; Article 45 establishes the obligation of public powers to guarantee "*the rational use of natural resources, in order to protect and improve the quality of life and to defend and restore the environment (...)*"; and Article 9.3 establishes the principles of non-retroactivity, legal certainty and the prohibition of arbitrariness.

The judgment analyses the precepts challenged, one by one, dismissing most of the alleged infringements claimed by the appellant. Specifically, it endorses the constitutionality of the new 2013 Coastline Act, in relation to: I) resorting to the regulations in order to specify the criteria determining the boundaries of the sea-land area; II) excluding from said area any land that is artificially flooded under supervision, as long as the land did not belong to the public domain prior to the flooding; III) determining a width of 20 metres for easements of protection in certain sections; IV) distinguishing, in beach areas, between natural and urban sections, granting greater protection to the former; V) renewing concessions over the public domain; and VI) excluding from the public domain any areas in sea-land developments used as "*marinas*".

The TC's pronouncement, on the other hand, concludes by affirming the unconstitutionality and nullity of the following provisions:

1) Excluding any private areas which, as part of the public sea-land domain, have been artificially flooded under supervision, "*even if there is a possibility of natural flooding*".

2) The boundaries of the island of Formentera, by establishing specific criteria that differ from those generally applied, to define the sea-land area and the beaches of the island of Formentera. The judgment states that neither the challenged Act nor the pleadings of the State Attorney provide any "*rational justification*" for the need to establish specific criteria; there are no "*scientific, objective and contrasted components to distinguish this territory from the rest of the Balearic Islands, or from the rest of the Spanish coast*".

3) Regulation of the provisional purification plants that are guaranteed, which need to relocate due to a court resolution. The Plenary Meeting considers that this specific legal provision *“infringes the right of judges and tribunals to enforce judgments (Art. 117.3 and 118 CE) by transferring this decision to the Administration, consequently also breaching the right to have final judicial resolutions enforced (Art. 24.1 CE), by disproportionately hindering performance of a judicial ruling”*. This is because the challenged provision conditions the commencement of a relocation of facilities affected by a judicial judgment to *“this being possible in the economic situation, sustainability criteria and the guaranteed fulfilment of other related investments”*.

4) Finally, the judgment provides an interpretation in line with excluding certain populated areas from the public sea-land domain, indicated in the annexes to the challenged Act, pointing out that a *“strict application”* thereof does not exclude the application of the entire legal system foreseen by law for the severance of public domain assets that have *“lost the natural characteristics that led to their inclusion in the public sea-land domain by virtue of former boundaries”*. The Act, states the judgment, merely identifies these populated areas but does not exclude *“a verification, in each case, of such loss also meaning that the areas are no longer necessary for protection or use of the public domain”*; these activities *“require the adoption of administrative resolutions”* which are also always subject to judicial review.

Madrid, 13 November 2015.