



INFORMATION NOTE No. 95/2015

THE TC ANNULS TWO PROVISIONS OF THE EMPLOYMENT ACT DUE TO INFRINGING COMPETENCES OF THE AUTONOMOUS COMMUNITIES

The Plenary Meeting of the Spanish Constitutional Court has upheld the unconstitutionality appeal filed by the Government of the Basque Country against two articles of Act 1/2014, of 28 February, to protect part-time workers and other urgent measures in economic and social matters, which it has declared null and void. The judgment, in which Andrés Ollero has acted as reporting judge, states that both provisions infringe the sanctioning powers of Autonomous Communities in Social Security matters.

The challenged provisions, which reform the Employment Act and the Act on Infractions and Sanctions in Social matters, empowers state bodies- Servicio Público de Empleo Estatal (SEPE) or Instituto Social de la Marina (ISM), as applicable- to impose sanctions on the beneficiaries of unemployment benefits that do not meet the requirement of being registered as job applicants. The appeal raises a conflict on the competence to impose said sanctions.

First of all, the Court explains that Art. 149.1.17 CE entrusts the State with exclusive competence in “*basic legislation and Social Security economic rules, without prejudice to the execution of its services by Autonomous Communities*”. The Statute of Autonomy of the Basque Country, in turn, points out that “*legislative implementation and the enforcement of basic State legislation*” constitute an autonomous competence.

Secondly, it points out that, according to constant case-law, the attribution of “*executive competences*” to Autonomous Communities “*includes the power to sanction in the relevant matter*”. In Social Security matters, it adds, the Autonomous Community “*is entitled to exercise sanctioning powers that guarantee compliance with basic state legislation and autonomous regulations implementing the same*”; the State is reserved “*both the provision of infractions by law and the imposition of sanctions in those cases where the Social Security regime is affected*”.

In this case, the infringements to which the challenged provisions refer apply to the applicants or beneficiaries of unemployment benefits who do not provide the necessary information to guarantee that notifications and communications are received, and who are not registered as job applicants. A breach of these obligations should be notified by public employment services in each autonomous community to SEPE or the Social Security authorities. This last issue is the one questioned by the Government of the Basque Country.

“*It should be noted*”, states the judgment, “*That according to the system designed by the State legislator, the public employment services in each autonomous community must control registration records; this is conducted with a periodic renewal of the initial registration*”. In this way, it adds, an illegality will arise “*if a job application has not been renewed, which needs to be done before the public employment services in each autonomous community, not before the entity managing unemployment*”.

benefits (SEPE or ISM, as the case may be). “Consequently, there is no direct link between maintaining one’s registration as a job applicant and payment of unemployment benefits or subsidies; it is a formal obligation that rests on the recipient of these benefits and a breach thereof will not affect his eligibility to be paid the relevant benefits (...).”

Furthermore, affirms the Court, a definition of the infraction in the challenged rule “*does not constitute any novelty over the one already foreseen (...) but is a result of entrusting to a state body- SEPE or SIM, if applicable- sanctioning powers in matters*” that constitutional case-law has already “*pointed out as entrusted to the autonomous communities, as they involve instrumental measures with respect to Social Security benefits or subsidies that are not directly related to the economic management of Social Security payments*”.

Consequently, concludes the judgment, competence to impose sanctions in light of the conduct described “*is entrusted to the Autonomous Community of the Basque Country*”, which means that the challenged provisions are contrary “*to the constitutional order for the distribution of competences*” and, consequently, are null and void.

Finally, the Plenary Meeting has pointed out that in order to guarantee the principle of legal certainty, a declaration of unconstitutionality of the challenged provisions will only affect “*any administrative proceedings and lawsuits in which a final resolution has not yet been delivered*”.

Madrid, 22 December 2015.