SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATIVE NOTE No. 14/2016

THE TC ENDORSES THE USE OF A DECREE-LAW TO APPROVE VARIOUS MEASURES TO CUT DOWN ON PUBLIC EXPENSE IN EDUCATIONAL MATTERS

The Plenary Meeting of the Spanish Constitutional Court (TC) has dismissed nearly in its entirety the unconstitutionality appeal lodged by the Regional Government of Andalusia against Royal Decree-Law 14/2012, of 20 April, on urgent measures to cut back on public expense in educational matters. The Court has only declared unconstitutional and void three sections of Art. 6 due to not meeting the "*extraordinary and urgent need"* requirement foreseen by Art. 86.1 of the Spanish Constitution (CE) in order to be able to legislate by means of a decree-law. The judgment, where Francisco Pérez de los Cobos, the President of the Court, has acted as Reporting Judge, endorses the constitutionality of the other precepts challenged and does not consider that they invade autonomous competences. A particular vote was issued by the Vice President, Adela Asúa, and the Judge Fernando Valdés Dal-Ré.

According to the case-law, in order to meet the Art. 86.1 CE requirement the Government should "*expressly and justifiably*" explain the extraordinary and urgent need deserving of measures approved as a decree-law; furthermore, said measures should be connected to this underlying exceptional circumstance. In this case, the Plenary Meeting has affirmed that the Government "*sufficiently*" justified the urgent need: to control expense in order to "*reduce the public deficit in an extraordinary economic crisis*", thereby meeting the requirements of the Eurozone.

Next, the TC has analysed whether the challenged precepts meet the connectedness requirement. Art. 2 does meet it, as it allows the student/classroom ratio to be increased in both state and semi-private schools, whilst recruitment by the Administration is frozen. The judgment explains that this measure, affecting teaching needs at these schools, could have been passed in a parliamentary act; however, had this been the case, the act would not have met its objective as "*it would have been likely to complete its processing too close to the 2012-2013 academic year of application".*

The measures foreseen in Arts. 5 and 6 Four are also connected. The first allows up to two academic years to be postponed until the new system for professional training is implemented, thereby deferring a "*large disbursement of public expense*". Although application of this measure depends on the Autonomous Communities, according to the judgment the urgency is justified by the State's need to immediately generate a legal effect enabling autonomous administrations to make their own decisions. Art 6 Four, in turn, foresees a system whereby university teachers (civil servants) evidencing greater dedication to research will be assigned less teaching hours, and vice versa. The connectedness in this case is due to the new system "*increasing the total teaching capacity of university staff*" and,

consequently, reducing expenses.

On the other hand, the Court has declared unconstitutional and void sections One, Two and Three of Art. 6. The first two (One and Two) refer to "*centres and structures*" of public universities and delegate their ultimate approval, by the Government, to regulations establishing the basic requirements needed to create, maintain and remove the same. According to the Plenary Meeting, the necessary conditions foreseen by the Constitution are not met for this emergency legislation because the Government's entitlement to issue the regulations does not entail immediate legal effects, as these "*depend on a subsequent step*" taken by the Executive. Thus, the financial savings would in any case be achieved, "*not with the entitlement itself, but with specific regulatory provisions which, moreover, the Government could amend without having to resort to emergency legislation*".

The provision contained in Art. 6 Three could have also been passed by ordinary law, whereby Universities may sign cooperation agreements with other Spanish and foreign entities in order to arrange courses leading to official qualifications. There is no connectedness insofar as the provision "*does not instantaneously change the existing legal situation*", nor may it be inferred that the measure "*will lead to a reduction in expense*".

Finally, the judgment dismisses the infringement of autonomous competences alleged by the appellant. It affirms that regulating the staff's dedication to teaching in quantitative terms, according to Art. 3, is aimed at guaranteeing that this educational service is provided at state and semi-private schools; in other words, it aims to "*guarantee the fulfilment of obligations binding the public powers in the matter*", a State competence by virtue of Art. 149.1.30 CE.

According to the case-law, in education matters the State is entrusted with "*establishing basic regulations*" on the scope of this public service and to set measures to ensure its effectiveness. Consequently, a quantitative determination of the lecturing hours taught by teaching staff is, according to the judgment, one of the "*basic*" provisions used to "*define and provide an effective standard*" in provision of an educational service. "*The educational system*", it adds, "*is the same for all of Spain, which may demand a slight homogenous treatment for publicly funded schools, in a matter such as teaching within the staff's working schedule*".

The judgment affirms that this same constitutional precept (149.1.30 CE) protects the State's competence to regulate the substitution system applied to state and semi-private schools, questioned by the appellants.

The Plenary Meeting also disagrees that the principle of financial autonomy has been infringed. Art. 7.1 of the challenged act allows Autonomous Communities to increase the price of university degrees; however, at the same time, it establishes joint scholarship payment, whereby the minimum mandatory price for enrolment is financed by the State and the difference between this price and the final public price is debited to each region's budget. The Court has dismissed any infringement of financial autonomy because "*the obligation to cover the additional cost of scholarships due to an increased enrolment price is a consequence of a prior decision taken by each Autonomous Community to increase public university prices*" within the ranges established by law.

Finally, the judgment does not consider that regulation of the teaching hours of

university professors contained in Art. 6 Four (depending on their dedication to research) breaches the fundamental right to university autonomy. The object of the rule, affirms the judgment, is to "*standardize the entire workload assigned to the staff, not its content, which is protected by the freedom of tenure and freedom of science".*

In their particular vote, Asúa and Valdés consider that Art. 3 invades autonomous competences when it establishes the minimum number of teaching hours taught by teachers at state and semi-private schools. In their opinion, it is not covered by the State's competence to enact basic legislation (Art. 149.1.30 CE) because it is not an "*issue directly related to the "quality of teaching""*; nor is it covered by the state competence to regulate the statute of civil servants (Art. 149.1.18 CE), as "*a working schedule is not established, but the teaching dedication of the staff*" dependent on each Autonomous Community. They also believe that Art. 6 Four infringes university autonomy by linking the teaching schedule of university professors who are civil servants to their research activity; they claim that each University should be the one to decide "*which professors should be assigned more hours and which ones should teach less".*

Madrid, 3 March 2016.