SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATIVE NOTE No. 19/2016

THE TC PARTLY UPHOLDS THE APPEAL BROUGHT BY THE EXTREMADURA GOVERNMENT AGAINST THE ACT TO RATIONALISE AND SUSTAIN THE LOCAL ADMINISTRATION

The Plenary Meeting of the Constitutional Court (TC) has unanimously decided to partly uphold the unconstitutionality appeal brought by the Extremadura Government against Act 27/2013, of 27 December, to rationalise and sustain the Local Administration [Ley de Racionalización y Sostenibilidad de la Administración Local] (LRSAL); it has declared the unconstitutionality and nullity of some challenged provisions, on the grounds of either invading Autonomous Community competences or because they breach the reservation made to organic laws by Art. 157.3 of the Spanish Constitution (CE). Andrés Ollero was the Reporting Judge.

The purpose of LRSAL is to guarantee "*an efficient use of public local funds*" and to rationalise the Local Administration "*in order to guarantee its sustainability and fulfilment of budgetary stability requirements*". According to the Preamble, it seeks to adapt basic regulations in Local Administration matters to the requirements foreseen in Art. 135 CE and its implementing law [Organic Act 2/2012, of 27 April, on budgetary stability and financial sustainability [Ley Orgánica de estabilidad presupuestaria y sostenibilidad financiera (LOEPSF)]. And it does this by amending two state rules: Act 7/1985, of 2 April, regulating Grounds of the Local Regime [Ley reguladora de las Bases del Régimen Local (LBRL)] and the consolidated version of the Local Finance Act [texto refundido de la Ley Reguladora de las Haciendas Locales (TRLHL)].

The judgment explains that, according to constitutional case-law, Art. 149.1.18 CE (entrusting the State with competence to establish the grounds of the local regime) "*clearly protects any basic rules used to introduce economic rationality criteria in Spain's local model*", in order to fulfil the constitutional principles of efficiency (Art. 32.1 CE) and efficacy (Art. 103.1 CE), as well as "*budgetary stability as a rule of conduct binding local entities (Art. 135.2 CE)".* This doctrine, in general terms, is applied by the judgment to endorse the constitutionality of most of the provisions challenged by the Extremadura Government. Only some of the precepts and provisions challenged surpass the limits set by the case-law and have been declared unconstitutional and null and void by the Court.

The judgment divides the appeal into four large topics: 1) the first includes the precepts related to the local map: 2) the second, those related to local competences; 3) the third incorporates articles on the economic/financial plan to be executed by local bodies when they fail to meet budgetary stability or public debt objectives or the expense rule; 4) and the fourth and last set refer to the withholding of amounts due by Autonomous Communities and debited to the autonomous financing system.

1. The Plenary Meeting has declared that Art. 1.5 LRSAL is not unconstitutional, as the State is competent "*to design Spain's municipal model*" and to establish "*greater requirements in terms of population and territory*"; and to facilitate voluntary mergers. All of this, states the judgment, "*is aimed at reducing the municipal map*" and, consequently, fulfilling the principles of "*effective administrative activity (Art. 103.1 CE), efficient use of public resources (Art. 31.2 CE) and budgetary stability (Art. 135 CE)".* This same purpose underlies the State's competence to limit the creation of minor local entities.

The judgment, on the other hand, has declared unconstitutional and void the section entitled "*Decree of the governing body of*" in the 4th transitional provision. Said provision foresees the removal of minor local entities already established, if their accounts are not submitted to the Autonomous Community or to the State. In this case, the Autonomous Community is the one entrusted with ordering their dissolution. The Plenary Meeting considers that the State, pursuant to Art. 149.1.18 CE, may issue basic rules or provisions, such as the obligation to submit accounts, foreseen in the challenged provision. What "*clearly exceeds the limits of state competence*" is "*to predetermine the Autonomous Community body in charge of the dissolution and the form adopted by this decision*" given that, according to the judgment, these are "*administrative organization matters*" entrusted to each Autonomous Community.

Also unconstitutional and void is the section entitled "*the Governing Body of*" included in paragraph three of the 11th transitional provision; it infringes the Statute of Autonomy of Extremadura insofar as it "*precisely indicates the autonomous body in charge of filing and resolving the dissolution proceedings*" of municipal groupings.

2. Before analysing the precepts included in the second topic, the judgment systematises and defines constitutional doctrine on local competences, describing the master lines of new basic arrangements of municipal competences, clearing some interpretative doubts. On these grounds, it dismisses a large part of the challenges.

The Court, however, has upheld the challenge brought against the 1st, 2nd and 3rd transitional provisions and against the 11th additional provision. Said provisions forbid Autonomous Communities from entrusting local bodies with social assistance services and primary healthcare as "*individual local competences*"; at the same time, in order for local bodies to stop providing these services, they regulate the transfer process to Autonomous Communities.

Social assistance services and primary health care, explains the Court, are competences entrusted to the Autonomous Communities "*that were being provided by each municipality as this was decided (or allowed) by the Autonomous Communities (pursuant to their Statute) or the State*" (pursuant to Art. 149.1.18 CE), "*or, simply, because they were in fact implemented by the Town Councils".*

The judgment explains that the State "*may only assign specific local competences, or prevent these being developed locally, when it enjoys competence in the matter or sector in question. "In autonomous competence matters, only the Autonomous Communities may attribute local competences or prohibit their local development, in any case meeting the requirements derived from the Constitution*". Consequently, insofar as they prevent Autonomous Communities from decentralising services within their remit, both provisions "*have exceeded the scope assigned by the Constitution to basic regulations on*

local attributions (Art. 149.1.18 CE), thereby invading autonomous competences in social assistance and healthcare matters" gathered by each Statute of Autonomy.

In turn, the judgment includes an interpretation pursuant to the 15th additional provision LRSAL, which also foresees a transfer to Autonomous Communities of certain educational services. It is claimed that LRSAL is clearly antagonistic: it imposes obligations on Autonomous Communities of the opposite sign, when simultaneously fulfilment is impossible; with respect to these same services, each Autonomous Community is obliged, in turn, to decentralise (Art. 25.2n LBRL) and to centralise (the disputed additional provision). Nevertheless, further to a systematic interpretation, the judgment concludes that the provision does not require that Autonomous Communities not decentralise, in order not to breach the Constitution.

3. The third topic refers to the economic-financial plan to be executed by local bodies when they fail to meet budgetary stability or public debt objectives or the expense rule The Court, on this point, has declared that the challenged act complements the Organic Act on Financial Stability without infringing the reservation made to organic laws contained in Article 135 CE, given that the challenged provisions are linked to various basic issues related to the local regime.

4. Finally, the judgment analyses Art. 57 bis LBRL, introduced by Art. 1.17 of the disputed Act. This provision regulates a "*triangular*" financial compensation system whereby the State, without being the creditor, may conduct withholdings on Autonomous Communities if they do not fulfil their payment obligations vis-à-vis local bodies; these withholdings are debited to any transfers they may be entitled to under the autonomous financing system. The challenged regulations operate as a "*warranty clause*" which, on the one hand, authorises the State to apply deductions and, on the other "*to make the withheld amounts available to the creditor local body*". Moreover, said clause is "*mandatory*", as it applies "*irrespective of the parties' wish*".

The judgment declares the unconstitutionality and nullity of the challenged provision because it directly affects a matter- financial relations between the State and Autonomous Communities- not regulated in an organic act, as required by Art. 157.3 CE.

Madrid, 8 March 2016.