



## INFORMATIVE NOTE No. 33/2016

### THE TC ANNULS THE REFORM OF THE GENERAL SUBSIDY ACT, APPROVED BY DECREE, BECAUSE THE GOVERNMENT DID NOT SUFFICIENTLY JUSTIFY ITS URGENCY

The Plenary Meeting of the Constitutional Court (TC) has unanimously upheld the unconstitutionality appeal lodged by the Government of the Canary Islands and, consequently, has declared as unconstitutional and null and void the reform that Royal Decree-Law 7/2013, of 28 June, on urgent measures related to taxation, budgets and the promotion of research, development and innovation, made in Art. 7.1.a) of General Subsidy Act 38/2003. The judgment considers that, in this case, the Government has not sufficiently justified the “*extraordinary and urgent need*” required by Art. 86.1 of the Spanish Constitution (CE) to legislate through a decree-law, which is why it could have passed the measures contained in the challenged rule through ordinary parliamentary proceedings. Ricardo Enríquez acted as the Reporting Judge.

The disputed provision amends the General Subsidiary Act, as regards financial liability for the management of European Union (EU) funds, in order to adapt the devices foreseen to what is established in the Budgetary Stability and Financial Sustainability Act (Public General Act 2/2012, of 27 April), in situations where the Public Administration breaches EU obligations. Public General Act 2/2012 provides that if a breach of EU laws by the Public Administration entails a sanction being ordered against the Kingdom of Spain, the Administration will be liable “*to the extent accountable, for any responsibilities arising from such breach*”. Furthermore, it states that the Council of Ministers will accordingly order “*compensation or a withholding*”.

The claim considers that the challenged act infringes Art. 86.1 CE because, in the appellants’ opinion, there was no “*extraordinary and urgent need*” justifying the passing of a reform by means of a decree. According to constitutional case-law, this required “*extraordinary and urgent need*” is two-fold: i) the Government should “*explicitly describe in a reasoned manner*” why the measures approved through urgent proceedings are a consequence of an “*extraordinary and urgent need*”; ii) verification of “*adequate meaningfulness*” between the situation of need and these measures.

The judgment indicates that, in this case, the Government has not met the first requirement because “*it has not sufficiently explained, in the preamble or in the parliamentary endorsement step of the Royal Decree-Law, its reasons for the required urgency of the measure*”. In either case, the Executive merely “*reiterates the need and suitability of adapting Art. 7 of the General Subsidy Act to the provisions of Public General Act 2/2012*”, in order to be able trigger procedures “*to assign liability*” to the competent Administrations in each case and thus undertake responsibility for sanctions already ordered against Spain.

*“This said”, states the judgment, “it was certainly already possible to transfer liability under the legal framework in force at the enactment date” of the challenged Royal Decree. This was possible both under the second additional provision of Public General Act 2/2012 and its implementing Royal Decree 515/2013; both rules were challenged by the Government of the Canary Islands and declared unconstitutional by the Court (Constitutional Court Judgments (STC) 215/2014 and 31/2016).*

*Consequently, concludes the Court, “the entitling presumption has not been met as, first, the measure adopted lacks the extraordinary nature required under this exceptional device; and, two, the urgent need to make a technical improvement in Art. 7.1.a) of the General Subsidy Act has not been ascertained”. “In short, the reasons for deciding in favour of a shorter timeframe than that required for the parliamentary legislative process, for this specific measure, have not been explicitly explained”.*

Madrid, 19 April 2016.