



INFORMATIVE NOTE No. 45/2016

THE TC ANNULS A SECTION OF THE *GENERALITAT*'s BUDGET ACT, ALLOWING AN INCREASE IN PUBLIC EXPENSE RELATED TO STAFF, WHICH IS FORBIDDEN BY THE STATE

The Plenary Meeting of the Constitutional Court (TC) has unanimously decided to declare the unconstitutionality and nullity of a section of Art. 34 of Act 2/2015, of 11 March, on Budgets of the Catalanian *Generalitat*, allowing to increase staff expenses, “*subject to prior authorisation from the Government*”, if the purpose is to “*start up new services*”. The judgment, which upholds the appeal filed by the Government, establishes that this provision conflicts with the 2015 State Act on General Budgets [Ley de Presupuestos Generales del Estado (LPGE)], which expressly forbids “*any staff expense entailing a global increase in the remuneration assets authorised for 2015*”; consequently, it infringes the State’s exclusive competence to establish the grounds and general coordination of the economy (Art. 149.1.13 Spanish Constitution (CE)) and the principle of coordination with the State Tax Authorities, governing the financial autonomy of Autonomous Communities (Art. 156.1 CE). The Reporting Judge in the judgment has been Juan Antonio Xiol.

First of all, the judgment recalls constitutional doctrine in the matter, whereby the State “*may establish measures to contain public expenses*”, even if such measures affect the budgetary autonomy of Autonomous Communities. This is because “*the financial autonomy acknowledged by the Constitution in favour of Autonomous Communities must be exercised further to principles of coordination with the State Tax Authorities*”, as established in Art. 156.1 CE” and the “*competences attributed to the State under Art. 149.1.13 CE*”, adjusting to “*the necessary measures adopted by the State in order to ensure internal and external economic stability, given that the State is entrusted with guaranteeing a general equilibrium in the economy*”.

This competence, in this case, is not subject to discussion, as both the Catalanian *Generalitat* and the autonomous Parliament have acknowledged in their writs of pleadings that it is entrusted to the State. The object of this suit is to determine whether the challenged section infringes the 2015 State Act on General Budgets, specifically Arts. 20.Two [“*all remuneration paid to staff at the service of the public sector may not be increased (...)*”] and 21.One [“*no new staff (...) may be hired (...)*”].

The Catalanian *Generalitat* and Parliament claimed that the challenged section was subject to interpretation, in the sense that “*it would only allow the creation of new public services if this does not globally increase the staff working for the Catalanian public sector*”. In other words, in their opinion, the challenged rule follows the public expense limitations set by the State because “*the creation of new services is only possible if staff expense in other services has been previously reduced*”.

The Court concludes that the disputed section is contrary to the provisions of the LPGE, whereby “*in general, all remuneration paid to staff at the service of the public sector may not be increased*” and “*no new staff may be hired in the public sector*”, subject to some exceptions, “*which do not include*”, states the judgment, “*the creation of new public services*”, foreseen in the challenged Act. By establishing these limitations, the LPGE is “*preventing any staff expense entailing a global increase in the remuneration assets authorised for 2015*”.

The Plenary Meeting has also dismissed the interpretation proposed by the *Generalitat* and the autonomous Parliament, as it contradicts the literal wording of the challenged section. In fact, the judgment recalls that Art. 34 of the Budget Act of the Catalanian *Generalitat* generally forbids a staff increase or restructuring of organic units, if this entails a global increase in staff expense. As exceptions to this rule, it foresees “*the case of units derived from a transferred service*” (a section not challenged) or “*subject to the Government’s prior authorisation, the start-up of new public services*” (challenged section).

The disputed section cannot be interpreted in the manner proposed by the *Generalitat* and the Catalanian Parliament because, according to the judgment, it contains “*an exception to the general rule that prevents a staff increase if it entails an increase in costs*”. Otherwise, “*the exception foreseen would be rendered useless, as the creation of new services not entailing a global increase in staff expenses is not forbidden by the expense increase limitation (...)*”.

Furthermore, adds the Plenary Meeting, the interpretation proposed cannot be considered necessary to safeguard the competences that the Catalanian Statute entrusts to the *Generalitat* as regards the organisation of its own Administration; nor can it be used to interpret the State’s competence to establish measures to contain public expenses, which limit the financial autonomy of Autonomous Communities. This is because Art. 34 does not forbid any staff increase proceedings or organic unit restructuring, but only those entailing an increase in expenses. Consequently, the unconstitutional declared of the challenged section does not prevent the *Generalitat* from “*starting up new public services if the establishment of these new services does not entail an increase in staff expenses*”.

Consequently, the Plenary Meeting has declared as unconstitutional and null and void the challenged section of Art. 34 of the Budget Act of the Catalanian *Generalitat*.

Madrid, 6 May 2016.