SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATIVE NOTE No. 46/2016

THE TC REPEALS THE ACT REGULATING THE ECONOMIC MARITAL REGIME OF VALENCIA, AS IT INVADES STATE COMPETENCE IN CIVIL LEGISLATION MATTERS

The Plenary Meeting of the Constitutional Court (TC) has upheld the appeal filed by the Government against Act 10/2007, of 20 March, issued by the Autonomous Community of Valencia, on the Economic Marital Regime of Valencia [Ley de Régimen Económico Matrimonial Valenciano (LREMV)], which it has declared unconstitutional and null and void. The judgment concludes that the challenged rule has exceeded the legislative competences in civil law matters entrusted to the Autonomous Community of Valencia (Art. 149.1.8 Spanish Constitution (CE)). In this case, there is no evidence of legal or common-law rules in economic marital regime matters, in force before the Constitution was passed. The Reporting Judge has been Encarnación Roca. A particular vote was issued by the Judge Juan Antonio Xiol.

The judgment explains that the State is generally entrusted with exclusive competence in civil legislation matters. This is foreseen in Art. 149.1.8 CE, which also sets, as a limit to this exclusive State competence, "respect" for the right of Autonomous Communities to "*preserve, amend and implement*" civil, regional or special rights, "*wherever these may exist*". In turn, the Valencia *Generalitat* (Art. 49.1.2 of the Statute of Autonomy of the Autonomous Community of Valencia) holds exclusive competence in relation to the "*preservation, implementation and amendment of regional civil law in Valencia*".

The Autonomous Community of Valencia consequently, holds legislative competence in civil law matters in Valencia, but this competence, as in the case of other Autonomous Communities with their own civil law, "*should be exercised in accordance with Art. 149.1.8 CE, i.e. in order to preserve, amend or implement legal or common-law rules that belonged to its legal heritage when the CE came into force".*

The expression "*wherever these may exist*" of Art. 149.1.8 CE, in relation to regional or special civil rights, refers to the "*prior existence of individual civil law*". However, the judgment recalls "*it not only includes special civil rights compiled when the Constitution came into force, but also any regional or local and case-law civil rules that existed before the Constitution*". In other words, said expression includes written rules, but also use and custom.

The Autonomous Community of Valencia, states the judgment, "*is undoubtedly competent*" to legislate its own customs, which is why what has to be determined is "whether the legal institutions that [the challenged law] seeks to turn into a legal rule, *i.e. positive legislated rights, are or not a part of its common law*". In other words, explains the Court, "*the LREMV's validity depends on the Autonomous Community being able to ascertain the existence of common-law rules in economic marital matters that were in force*" when the Constitution was passed. Art. 149.1.8 CE, consequently, allows Autonomous Communities

with their own regional or special civil law, prior to the Constitution, to consolidate common-law rules in legal rules, but does not acknowledge in their favour "*. unlimited civil legislative competence* (…)".

At today's date, Art. 149.1.8 CE recognises in favour of the Autonomous Community of Valencia "legislative competence over any civil matters that belonged to its regulatory or common-law heritage before the Constitution came into force". This competence may only cover "*any regional customs, proven and in existence, observed in certain areas of the autonomous community*"; it will be forbidden to "*create brand new civil law*".

Consequently, in order to endorse the competence of the Valencia Autonomous Community in this case, "*it is insufficient*" to have a "*possible connection between former and repealed "Furs del Reino de Valencia" and the economic-marital institutions regulated in the LREMV".* What needed to be proven, which was not the case, was the "*survival of customs*" used as a "*connection point*" to "*legislate an individual economic marital regime, further to its competence to preserve, implement or amend the same*". The judgment highlights that "*when common-law rules are alleged, the legal order requires that their existence be proven, unless they are well-known, precisely to distinguish them from mere social use* (…)".

As the requirements established in Art. 149.1.8 CE have not been met to acknowledge competence in favour of the Autonomous Community, the Plenary Meeting has declared the unconstitutionality of the precepts challenged (Arts. 15, 17.2, 27.2, 30, 33, 37, 39, 42, 46, 47 and 48 LREMV) and, by connection (Art. 39 of the Public General Act of the Constitutional Court), has extended it to the other rules included in the marital economic rules in Valencia foreseen in the LREMV. All of these form an "*inseparable whole*" and "*incur the same and identical cause of unconstitutionality*", explains the judgment.

As to the effects of the ruling, the Court has stated that "*it will not affect any consolidated legal situations*". Following publication of the judgment, Valencia residents "*will still be governed by the same economic marital regime that would have applied to their relations, unless otherwise agreed in a pre-nuptial deed"*; furthermore, the relations of spouses with third parties will remain unchanged.

In his particular vote, Judge Xiol considers that the appeal should have been dismissed. In his opinion, Art. 149.1.8 CE is not infringed by the fact that a Statute of Autonomy recognises its own regional civil law, "*even if it were not in force at the effective date of the Constitution, as long as it may be classified as a civil law system effectively in force in historic, geographical and material terms with respect to regional rights* (…)". It would make no sense, he affirms, to recognise the possibility of updating historic rights as part of civil law "*if this cannot refer to systems not in force*" in 1978; those that were in force cannot be referred to as "*updated or recovered*" but merely as "*preserved*". Furthermore, he claims that constitutional doctrine does not require the existence of "a hypothetical common-law background" but, rather, a "*possible link*" between the challenged law and recognised regional institutions.

Madrid, 6 May 2016.