SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATIVE NOTE No. 47/2016

THE TC DISMISSES THE APPEAL BROUGHT BY THE GOVERNMENT OF THE CANARY ISLANDS AGAINST THE ACT ON STATE ACTION AND FOREIGN SERVICE

The Plenary Meeting of the Constitutional Court (TC) has dismissed the appeal brought by the Government of the Autonomous Community of the Canary Islands against various precepts of Act 2/2014, of 25 March, on State Action and Foreign Service. The Court has declared that the challenged articles are not unconstitutional because they regulate issues pertaining to the scope of international relations and the Government's right to coordinate and direct foreign policy, competences that the Constitution exclusively reserves to the State. Pedro González-Trevijano has been the Reporting Judge. The particular concurring vote (upholding the ruling, but not the legal grounds), issued by the Judge Juan Antonio Xiol, was subscribed by the Judge Fernando Valdés Dal-Ré.

The Government of the Canary Islands considers, in general terms, that the challenged precepts go beyond the required coordination of foreign policy, which may condition the exercise of autonomous competences.

Constitutional doctrine provides that Autonomous Communities, further to their competences, may carry out activities with effects abroad, albeit subject to the limit of exclusive State competences, to include competence over international relations, established in Art. 149.1.2 CE, i.e. those held between "*international subjects*" and governed by international law. As an example without limitation, some essential components thereof are: the execution of international treaties (ius contrahendi); foreign representation of the State (ius legationis); creating international obligations; and the State's international liability. Consequently, any activities with foreign effects carried out by Autonomous Communities should be necessarily limited to those not generating international relations. According to the doctrine, the State is also competent to establish measures "*regulating and coordinating activities with foreign effects carried out by Autonomous Communities*", in order to avoid or remedy potential damage to the management and commissioning of foreign policy.

According to the judgment, contrary to what is claimed by the appellant, the need for any actions covered by the legal terms "*foreign State activity*" (executed, amongst other players, by the Autonomous Communities) to conform "*to the guidelines, purposes and objectives established by the Government*" does not mean that the State should intervene beyond its scope of competences. Rather, it explains, the precepts challenged conform to Art. 149.1.3 "*and also to Art. 97 CE and the idea of foreign State activity as a political action of the Government abroad*". Thus, based on constitutional doctrine, "*Art. 149.1.3 CE includes not only the traditional powers held by States under International Law, as legal parties, but also a broader power "to manage and commission foreign policy", as the State's strategy, positioning and action abroad to defend Spain's interests and values, expressly established*

in the precept being analysed". Furthermore, adds the Judgment, it is determining that the Act recognise the action of Autonomous Communities abroad, further to their respective competences, albeit subject to the guidelines, purposes and objectives established by the Government when exercising its competence to manage foreign policy, exclusively entrusted under Art. 149.1.3 CE.

Further to the principle of "*unity of action abroad*", the Court starts off with the premise that Autonomous Communities, and other parties other than the State, may act abroad, but in a coordinated manner, due to "*the very nature of foreign policy and international relations, where action must not be fragmented, and must be shared and coordinated, directed by the State as the holder of Spain's international representation*". The State should exercise its power of coordination and arrangement "*based on governing principles, such as the ones gathered in Art. 3 of the Act, which have not been questioned by the appellant Autonomous Community (loyalty, cooperation, efficiency)"* and "*without crossing the line of autonomous competences*". Thus, "*the State's establishment of guidelines, purposes and objectives in Foreign Policy is compatible with the competences undertaken by Autonomous Communities in their respective territories, even if a future international projection is presumed*".

The judgment also agrees that there should be a duty to inform the Ministry of Foreign Affairs and Cooperation of any trips, visits, exchanges and activities with an international perspective that Presidents and members of Governing Councils in each Autonomous Community intend to carry out outside the scope of the European Union, in order for the Ministry to, in turn, be able to inform and issue reasoned recommendations, if necessary, on the proposal's adequacy to foreign policy guidelines, purposes and objectives. This duty to inform, affirms the judgment, is justified as "*it involves a collaboration instrument, further to the principle of institutional loyalty amongst various Administrations and public bodies, in a compound State, entailing the duty to uphold mutual competences"*; to receive prior information is "*essential*" in order for the State to be able to exercise its power of coordination. As regards the possibility of the Ministry of Foreign Affairs being able to issue reports or recommendations, "*it logically materialises the effectiveness of the coordination sought*"; in any case, these reports "*have a specific content that is limited to state competences*", in line with constitutional doctrine against any "*generic and undetermined checks that entail a hierarchical dependence of Autonomous Communities on the State Administration*".

Likewise, the Plenary Meeting has upheld the constitutionality of any creation of autonomous offices abroad requiring a prior report from the State Administration. It considers that "*it once again manifests the coordination powers held by the State Administration as the manager of foreign policy, which is necessary for the effectiveness of the guidelines, purposes and objectives designed and, ultimately, for unified action in this field*". In many pronouncements, the Court has acknowledged the "issue of prior reports, within each scope of competence, as an adequate cooperation technique in the autonomous system", particularly when this involves the competence that Art. 149.1.3 CE exclusively reserves to the State. In addition, in this case, the reports are necessary but not binding.

The Judgment has also dismissed the appeal against other articles of the Act which, it considers, also manifest the State's powers of coordination in this field, such as the need for related or dependent entities of the Public Administration to follow the guidelines, purposes and objectives of the Government's foreign policy, including the fact that the Government will ensure that the State's Foreign Action is preferably addressed to priority areas.

Finally, the Judgment dismissed the appeal against articles in the Act regulating planning instruments, such as Foreign Action Strategy. It declares that the State's power of coordination "*should necessarily entail a decision-making margin for the Government when defining the guidelines of a certain foreign policy over another".* Consequently, the Government should set "*the priorities and objectives of Foreign Action*"; this should not prevent, "*based on a potential foreign projection of the activity of Autonomous Communities, further to their competences, said Strategy including said proposals and taking them into account".* In any case, specifies the Court, "*the failure to integrate into the Foreign Action Strategy proposals for action from constitutional bodies and other Public Administrations, such as Autonomous Communities, should be reasoned*".

In their particular vote, Xiol and Valdés agree with the dismissal of the appeal, but not with the judgment's legal grounds; they disagree because, in their opinion, it offers an "*archaic*" view that the Court had already departed from, conceiving international relations as "*an absolute power of the State*". This identification "*is established as a right to coordinate*" State and Autonomous Community competences which, they add, "*may be necessary*" but cannot be presumed as "*subject to management*".

Madrid, 9 May 2016.