



INFORMATIVE NOTE No. 49/2016

THE TC UNANIMOUSLY ENDORSES THE CONSTITUTIONALITY OF THE FINANCING OF THE VALENCIA REGION FORESEEN IN THE 2016 ACT ON GENERAL STATE BUDGETS

The Plenary Meeting of the Constitutional Court (TC) has unanimously dismissed the unconstitutionality appeal filed by the Government of the Valencia *Generalitat* against the Global Sufficiency Fund included in the 2016 Act on General State Budgets [Ley de Presupuestos Generales del Estado (LPGE)]. The judgment, where Pedro González-Trevijano has acted as Reporting Judge, does not agree that it infringes the principle of legal certainty gathered in Art. 9.3 Spanish Constitution (CE) and the guarantee to provide essential public services, foreseen in Art. 158.1 CE, as well as Arts. 2.One f) and g) and Art. 15 of the Public General Act on the Financing of Autonomous Communities [Ley Orgánica de Financiación de las Comunidades Autónomas (LOFCA)].

The 2016 Act on General State Budgets gathers the transfers made from the Global Sufficiency Fund to Autonomous Communities. In its appeal, the Governing Council of the *Generalitat* has requested a cancellation of the amount representing the negative Global Sufficiency Fund of the Region of Valencia, i.e. a transfer from the Region to the State, of 1,329,533,560 euros, included in the 2016 Act on General State Budgets, and that the financing assigned to said Autonomous Community be accordingly increased.

First of all, according to the plaintiff, the challenged LPGE unduly extends the five-year term foreseen for the autonomous financing system, which would result in a breach of Art. 9.3 CE and 2.One g) LOFCA. The judgment does not agree that the financing system configured in LOFCA is no longer in force, “*simply*”, it affirms, “*because there is no rule whatsoever providing otherwise*”. Consequently, the Court concludes that it will remain valid until it is repealed “*by the regulations governing a new system*”.

What the LOFCA foresees, explains the Court, upon expiry of the five-year period, is that an appraisal be made of the system’s effects in order to raise the possibility of its review which, in any case, must be previously submitted “*to the consideration of the Tax and Financial Policy Council (...)*”.

The Plenary Meeting does not agree that Art. 9.3 CE has been breached. First of all, because “*by fulfilling regulations governing the autonomous financing system, which is fully in force, the 2016 LPGE does not infringe the principle of legal certainty*”; and, secondly, because “*the Valencia Government’s own recognition of the fact that the 2016 LPGE conforms to the current financing system, voids the alleged arbitrariness of the budgetary legislator*”.

The second issue raised in the claim is regarding a breach of Art. 158.1 CE and Arts. 2.One f) and 15 LOFCA. The appellant considers that the budgetary forecast challenged

endangers the provision, in the territory of the Region of Valencia, of essential public services (education, health and basic social services), meeting constitutional standards.

In this regard, the judgment recalls that Art. 158.1 CE foresees, on an extraordinary basis, that assignments may be made in favour of Autonomous Communities in order to guarantee a minimum level in the provision of essential public services. The current autonomous financing model has fulfilled this constitutional mandate by creating the Guarantee Fund for Essential Public Services (Art. 15 LOFCA), which will be distributed amongst the Autonomous Communities according to “*available resources*”, not based on the “*real expense*”. In other words, explains the judgment, the system does not guarantee in favour of any Autonomous Community “*a volume of resources that enables it to reach the average actual expense incurred in public services*” given that, as indicated by the Court in prior judgments, “*Autonomous Communities do not enjoy a constitutionally enshrined right to a certain financing, but only a right that the global sum of existing resources (...) be distributed amongst them upholding the principles of solidarity and coordination*”.

To conclude, a breach of Art. 158.1 CE and Art. 15 LOFCA would only have arisen had the plaintiff proven that the participation of the Region of Valencia in the Guarantee Fund for Essential Public Services is not the one derived from the rules regulating the autonomous financing system. On the other hand, the Government of the Valencia *Generalitat* has not disputed how its participation in the Fund has been calculated.

Finally, the appeal considers that the negative balance in the Global Sufficiency Fund will render the appellant autonomous Government unable to finance a minimum level of essential public services. This is why it considers that the Fund is also contrary to Art. 2. One f) LOFCA, which enshrines “*the sufficiency of resources in order to exercise the competences entrusted to Autonomous Communities*”.

The judgment adds that, pursuant to the current autonomous financing system, the income of Autonomous Communities are generated by three specific instruments: Tax Capacity, Transfer from the Guarantee Fund for Essential Public Services and the Global Sufficiency Fund. In 2009, as a novelty, Convergence Funds were added (Competitiveness Fund and Cooperation Fund) in order to achieve “*a territorial economic balance*”.

As regards the Global Sufficiency Fund, the State and Region of Valencia agreed on both its initial amount (for 2007) and on the rules for its subsequent “*adjustment, review and performance*”. As provided in the LOFCA, this Fund may only be reviewed if new services are transferred, new taxes are effectively assigned or “*in the other circumstances*” foreseen by law. One of these circumstances involves “*fluctuations in state tax rates for Special Manufacturing Taxes and VAT*”.

The 2010 LPGE, as well as Royal Decree-Law 20/2012, explains the judgment, foresaw increases in VAT tax rates, the tax return of which is 50% assigned to Autonomous Communities. This increase in VAT entailed an increase in the income obtained by all Autonomous Communities and, at the same time, a proportional decrease in Global Sufficiency Fund amounts. Consequently, as a result of adjusting the Global Sufficiency Fund, “*all Autonomous Communities*”- including Valencia- “*still receive in the relevant financial year the same resources they would have received had the tax rates not changed, consequently only generating a transfer from the “Global Sufficiency Fund” assets in favour of “Tax Capacity”, consequently preserving financial sufficiency in the financial years in question*”.

In this case, ends the judgment, the negative balance of the Global Sufficiency Fund of the Region of Valencia “*is nothing but the outcome of applying the performance rules to which the Generalitat expressly adhered*”. To conclude, the Plenary Meeting dismisses the attempt of the Government of the Valencia *Generalitat* to obtain greater financing by cancelling the negative Global Sufficiency Fund, as consigned in the 2016 Act on General State Budgets.

Madrid, 18 May 2016.