SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATIVE NOTE No. 61/2016

THE TC PARTLY UPHOLDS THE GOVERNMENT's APPEAL AGAINST THE *DE FACTO* COUPLES ACT OF VALENCIA

The Plenary Meeting of the Constitutional Court (TC) has partly upheld the unconstitutionality appeal brought by the Government against Act 5/2012, of 15 October, on formalised *de facto* couples, of the Region of Valencia. The Court has declared the unconstitutionality of the civil law provisions of the act, on the grounds that they exceed the margin of competence entrusted by the Constitution to Autonomous Communities for "*the preservation, amendment and development*" of "*civil, regional or special rights, wherever these may exist*" (Art. 149.18 Spanish Constitution (CE)). On the other hand, it has dismissed the appeal as regards other non-civil precepts used by the Autonomous Community to regulate aspects of *de facto* couples affecting the exercise of its competences. The Reporting Judge of the judgment was Ricardo Enríquez, with the particular vote of the Judge Juan Antonio Xiol.

The constitutional debate raised by the appeal is competence-related, which is why the precepts taken by the Court as a reference to deliver judgment are "*the ones regulating the distribution of competences between the State and each Autonomous Community in civil law matters*". Thus, Art. 149.1 CE entrusts the State with "*exclusive competence*" as regards "*civil legislation, without prejudice to the preservation, amendment and development by Autonomous Communities of any civil, regional or special rights, wherever these may exist* (…)". And also Art. 49.1.2 of the Statute of Autonomy of the Region of Valencia, whereby the "*Generalitat is exclusively competent*" to "*preserve, develop and amend regional civil law in Valencia".*

Regarding the interpretation of these provisions, the Court already pronounced itself in Constitutional Court Judgment (STC) 82/2016, which resolved the appeal brought against the Valencia act regulating marital economic rules, whose criteria are applicable to this appeal. This resolution affirmed that neither the General Public Act transferring state-held competences to the Region of Valencia (LOTRAVA) nor the reformed Valencia Statute of 2006 enable an alteration of the competence ceiling established by the Constitution in civil legislation matters (Art. 149.1.8 CE).

In the same way as in said judgment, the Court now states that the competence of the Autonomous Community of Valencia to "*preserve, develop and amend regional civil law in Valencia*" requires the existence, prior to the effective date of the Constitution, of a common-law regime for the civil institution regulated by the challenged rule (in this case, formalised *de facto* couples). In other words, the validity of the challenged act depends on whether "*the Autonomous Community may identify a custom enshrined in its civil law that effectively exists in its territory (and in 1978), in force at the time the Act was approved*", or whether "*another common-law institution may be identified other than the one regulated but "linked" thereto, constituting a base to ascertain "development" of its regional or special civil law*". If at least

one of these requirements is not met, the challenged rule will be declared unconstitutional due to lack of competence of the Valencia *Generalitat*.

The existence in this case of the first of these two conditions, explains the Court, should be overruled. The preamble of the challenged act states that different forms of "*de facto*" co-existence have only appeared in "*the last few years*". "*Consequently, it would make no sense (…) to conduct a search in former forums, or related customs, to find an institution that legitimates this law*".

Nor is the second condition met, as the attorney of the Courts of Valencia in his pleadings inaccurately refers to the survival of "*some common-law rule claimed to be "linked""*, such as [in local Valencia dialect] "*la costumbre testamentaria de l'une per l'altre*" or "*a regional fiduciary relationship*". The existence and content of these customs has not been proven, nor has "*any evidence whatsoever of its validity*" been provided. On this point, the judgment recalls that "*in accordance with Art. 1.1 of the Civil Code, entitled "Sources of Law", customs will only apply if proven*".

A result of the foregoing is a declaration of nullity, due to lack of competence of the Autonomous Community of Valencia, of the civil provisions contained in the act; but only these, insofar as they regulate the "*civil consequences of formalised de facto couples".* This group includes Arts. 6, 7, 8, 9, 10, 11, 12, 13 and 14. Art. 2 is also declared null and void, which makes the scope of application of the act dependent on the "*civil residence*" of the parties; the foregoing infringes the principle of "*territorial competences*" which, according to constitutional case-law, is "*implicit in the very system of territorial autonomy*" and is expressly gathered in the Statute of the Autonomous Community of Valencia when it affirms that "*application of the Generalitat's rules should be limited to its own territorial scope*".

Art. 1 is declared partly unconstitutional, as the only civil content is the section regulating "*the rights and duties of members*" of formalised *de facto* couples. In turn, Arts. 3, 4 and 5 are "*neutral in competence terms*" and, consequently, conform to the Constitution.

Finally, the judgment also disagrees that Art. 15 infringes the principle of personal development, as claimed by the plaintiff. Under the heading "*Other effects of formalised de facto couples*", the precept contains rules that render *de facto* couples equivalent, in some respects, to married couples. In order to make this equivalence effective, a condition will always be "*for the individual to previously file a voluntary application*" for registration at the administrative registry of *de facto* couples, which is why there is no breach of the freedom of personal development.

In his particular vote, the Judge Juan Antonio Xiol reiterates the arguments that led him to differ from STC 82/2016, and states that the challenged act should have been declared constitutional. In his opinion, the judgment "*trivialises*" the reform made to the Statute in 2006 by not granting it any competence relevance whatsoever when, on the other hand, it "*unequivocally*" acknowledges the competence of the Region of Valencia over "*regional civil law in Valencia*". He also considers that constitutional doctrine has accepted "*an update of historic rights in private law matters, when it is incorporated into a Statute of Autonomy*", as the Constitution establishes territorial limits only in relation to public law.

Madrid, 23 June 2016.