



INFORMATIVE NOTE No. 62/2016

THE PLENARY MEETING UNANIMOUSLY ENDORSES THE REFORM ENTRUSTING THE TC WITH CONTROL OVER REGIONAL TAX RULES IN HISTORIC TERRITORIES OF THE BASQUE COUNTRY

The Plenary Meeting of the Constitutional Court (TC) has unanimously declared the constitutionality of Public General Act 1/2010, amending the laws regulating the Constitutional Court (LOTC), the Judiciary (LOPJ) and the Contentious-Administrative Jurisdiction (LJCA). The reform in dispute designed a new procedural device reserving to the Constitutional Court both the resolution of appeals brought against regional tax rules in the Historic Territories of Álava, Gipuzkoa and Bizcaia to the detriment of the ordinary courts, and the defence of regional autonomy. The Plenary Meeting considers that the constitutionality control model designed by the Constitution- specifically, unconstitutionality appeals and issues- is not damaged given that, although regional rules enjoy status as regulations, not as an act, their uniqueness is relevant for these purposes: they are protected by the first additional provision of the Constitution and replace state tax laws in all three Historic Territories. The Reporting Judge of the judgment was the Court's President, Francisco Pérez de los Cobos.

The judgment settles the unconstitutionality appeals brought against the Act by the Governing Council and Parliament of the Autonomous Community of La Rioja and by the Governing Council and Courts of Castilla y León. According to the plaintiffs, by entrusting the Constitutional Court with control over any regulatory provisions delivered by the General Assemblies of all three Historic Territories, to the detriment of the ordinary courts, the reform apparently infringed various precepts of the Constitution, Statute of Autonomy of the Basque Country and LOTC. In short, the new procedural regime would be contrary to the constitutionality control model existing until now.

According to general regulations, ensuring the constitutionality of rules with status as an act is a task entrusted to the Constitutional Court, through unconstitutionality appeals and issues; whereas control over "*regulatory*" rules is entrusted to contentious-administrative courts and tribunals.

The challenged rule, explains the Plenary Meeting, amends the fifth additional provision of the LOTC and, alongside the aforementioned general regulations, entrusts the Constitutional Court with examination of any unconstitutionality appeals and issues brought against regional tax rules in the three Historic Territories of the Basque Country. However, "*the object of the competence entrusted to the Constitutional Court to control regional rules is not exclusive thereto, nor does it exclude the involvement of the ordinary courts*". In fact, the reform foresees that the TC will only control regional tax rules, to include those passed to "*maintain, establish and regulate the tax regime, in the territory in question, based on the general taxation structure of the State*", as established in Art. 42.1.a) of the Basque Statute. All other regional tax rules, "*not used to replicate taxes belonging to the common taxation*

system, will be excluded from the competences of the Court” and will be controlled by the ordinary courts.

The Court disagrees that the rank of regional tax rules (below the status of an act) may distort the object of its jurisdiction. Consequently, it states that the Constitution has not designed a closed model of constitutional jurisdiction, as there is no closed and exhaustive list of the constitutional proceedings that the TC may examine, or of the parties entitled to bring an appeal. Rather, Arts. 161.1.d), 162.2 and 165 “entitle the organic legislator to define which other “matters”, what other persons and bodies are “entitled” and, ultimately, what “procedure” to follow before the Constitutional Court”.

This is why the Plenary Meeting has decided that the challenged precepts may be interpreted “in line with the Constitution”. As a result, it may be deduced that “given that regional tax rules have been replacing State tax laws in historic territories, fruit of the guaranteed regional competence enshrined in the Constitution (first additional provision) and given that the constituent has expressly entitled the organic legislator, within its freedom of configuration, to introduce new constitutional control processes with which to achieve any constitutional purposes, there is nothing to be said against the decision to submit said rules to the same jurisdictional control device in place in the Regional Community of Navarra, as one and the other rules (legal and regulatory) pursue the same constitutional purpose, updated further to the Constitution and the Statutes of Autonomy: the maintenance, establishment and regulation, within each territory, of an individual tax regime”.

The judgment concludes that the challenged act foresees a “shared” system to control regional tax rules, designed by the legislator further to the State’s competence in procedural legislation matters (Art. 149.1.6 CE), with “the constitutionally legitimate aim” of “upholding the uniqueness of an institution”, such as “regional competence in tax matters”. This decision “does not distort the general control of the regulatory powers of General Assemblies of Historic Territories by ordinary judges and tribunals, nor does it transform the constitutional jurisdictional model designed by the constituent, nor does it ultimately alter the regulation of constitutional procedures”.

The Plenary Meeting considers that it is also constitutional to create a procedure to uphold regional autonomy. The judgment explains that the challenged rule has endowed the historic rights referred to by the Constitution in its first additional provision (regional competence) with “suitable procedural instruments for their defence and protection”. The regulated process, in the same way as the process to uphold local autonomy, “bears sufficient distinctive features allowing its configuration as a constitutional process that is substantial in itself”, which is why the Court has dismissed its unconstitutionality.

Madrid, 28 June 2016