SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATIVE NOTE No. 64/2016

THE TC PARTLY UPHOLDS THE APPEAL BROUGHT THE ANDALUSIAN ASSEMBLY AGAINST THE ACT TO RATIONALISE AND SUSTAIN THE LOCAL ADMINISTRATION

The Plenary Meeting of the Constitutional Court (TC) has partly upheld the unconstitutionality appeal brought the Governing Council of the Autonomous Community of Andalusia against Act 27/2013, of 27 December, to rationalise and sustain the Local Administration (LRSAL). The judgment has declared contrary to the principle of democracy (Art. 1.1 Spanish Constitution (CE)) the fact that the challenged act allows, in certain circumstances, the Local Governing Assembly, rather than the Plenary Meeting, to take decisions on relevant matters for municipal life, such as budgets, economic-financial plans, re-balancing and adjustment or write-off plans, to include some exclusively entrusted to the Plenary Meeting. In turn, the judgment allows the possibility of the state legislator regulating the participation of provincial deputations in the provision of municipal services. The Reporting Judge of the judgment was Antonio Narváez, including the particular vote of Judge Ricardo Enríquez.

The challenged act has made amendments to two state rules: Act 7/1985, of 2 April, regulating the Grounds of the Local Regime (LBRL) and the consolidated version of the Act regulating Local Finance (TRLHL). The appeal brought by the Andalusian Governing Council was addressed to some of these amendments; some of its pleadings were the same as the ones filed by the Extremadura Assembly, already settled by the Court in Constitutional Court Judgment (STC) 41/2016, of 3 March. In order to respond to this set of pleadings, the Plenary Meeting has referred to some arguments included in said resolution. The other grounds of challenge, filed before the Court for the first time, have been resolved in this judgment and may be divided into two groups:

Included in the first group is the petition to declare null and void the reform of the 16th additional provision LBRL, as the Andalusian Government claims that it infringes the principle of democracy enshrined in Art. 1.1 CE. Following this reform, said additional provision established that, in certain conditions, the municipal plenary meeting (representative body) had to assign to the local governing assembly (executive body) its decision-making competence as regards the corporation's income and expenses (budgets and economic plans). The challenged provision established that a first vote would be held in the municipal plenary meeting, and if it was unsuccessful, competence would be assigned to the governing assembly.

The TC considers that the regulation contained in the challenged act "*has imposed a sacrifice on a core principle, defining local autonomy itself (Arts. 137, 140 and 141 CE)"* and "*constitutionally proclaimed as a higher value of law (Art. 1.1 CE)"*. "*It is not a matter*", clarifies the Plenary Meeting, "*of negating democratic legitimacy or the representative capacity also*

naturally inherent to the local governing assembly". It is a case of ascertaining that the new 16th additional provision LBRL "*specifically*" affects both dimensions of the principle of democracy: 1) the need for "*any decisions linked to the community's future to be taken according to the majority principle by representative collegiate bodies*"; and 2) to guarantee that "*further to discussion proceedings, the minority may make proposals and give its opinion on the proposals of the majority (…)"*.

Although the sacrifice to the principle of democracy is "*unequivocal*", this, explains the judgment, cannot alone restrict the broad margin entrusted by the Constitution to the basic legislator to regulate local governing bodies and to distribute tasks amongst them. This is why the Court's Plenary Meeting has analysed and outweighed the assets at play, i.e. democracy on the one hand, manifested in the representativeness of all citizens held by the Plenary Meeting of the Town Council (Art. 1.1 CE) and, on the other, budgetary stability (Art. 135 CE), the constitutional principle also covered by the challenged act. Although both assets are gathered in the Constitution, they are not assigned the same weight: "*Democracy is a fundamental principle of the constitutional State itself, "a higher value in Spanish law""* and, consequently, is the foundation of both local autonomy and state competence to regulate local governing bodies and distribute tasks amongst them.

The disputed provision, adds the judgment, did not only apply to institutional impasse situations, but could also be applied by mayors or municipal governing assemblies not governing as a minority; secondly, its scope of application was not necessarily limited to mitigate budgetary deficit situations, given that the assembly (to the detriment of the plenary meeting) could also be entrusted with decisions in financial surplus situations, applied to certain financing plans in transitional illiquidity situations. Furthermore, the judgment highlights that the general electoral regime act already foresees devices to overcome impasse situations in decision-making.

In light of the foregoing, the Court concludes that "*any future or indirect advantages for budgetary stability, triggered in some cases by the 16th additional provision LBRL do not exceed by far*- or provide minimum compensation- *for any relevant damage caused to the principle of democracy*". Consequently, it has annulled this provision. This nullity, explains the judgment, will not affect the budgets, plans and applications already approved by local government assemblies or any successive acts adopted further to the foregoing.

The second group of challenges refer to provisions that arrange competences within each province and which, according to the preamble of the challenged act, are used to "*reinforce the role*" of deputations, town halls, island councils or equivalent entities.

According to constitutional case-law, the State is empowered (Art. 149.1.18 CE) to increase or reduce the competences of provincial deputations; however, this competence redefinition should in any case uphold and render compatible the principles of municipal autonomy, which the Constitution guarantees in Arts. 137 and 140, and of provincial autonomy, foreseen in Arts. 137 and 141 CE.

Consequently, the assignment to a province of competence to coordinate municipal activities is subject to meeting a series of conditions: to protect supra-municipal interests; it must involve a specific attribution, determined by law; and it should ensure that the level of decision-making capacity kept by the Town Council in any decisions affecting it is proportionally correlative to the intensity of the municipal interest involved.

This general doctrine is applied by the Court to establish the interpretation required of Art. 36.2 LBRL (amended by the challenged act) in order to not breach the principle of municipal autonomy and comply with the Constitution. The challenge refers to section two of the provision, enabling the deputation to establish municipal coordination systems to provide certain services when the costs exceed those involved by the same service if jointly provided by the deputation or directly by the same. The judgment concludes that the provision is constitutional if interpreted in the sense that "*it requires regulatory complements which, in any case, should provide a margin of participation to all municipalities*", in reference to the need to allow said municipal participation before issuing and approving provincial plans of action.

The judgment has also endorsed, practically in its entirety, the reform of Art. 26.2 LBRL. This provision contemplates the intervention of a provincial deputation in the management of essential services (waste collection and treatment, drinking water supply, wastewater treatment, clearing of the roads, paving of urban roads and public lighting) by municipalities with a population of at least 20,000. The deputation's involvement will be specified through "*coordination*" tasks previously agreed with the affected municipality. These coordination systems will be foreseen in a plan drawn up by the deputation, with the approval of the affected municipalities, to be approved by the Ministry of Finance and Public Administrations, following a mandatory report from the Autonomous Communities.

The appeal claims that the regulations foreseen infringe municipal autonomy and that the involvement of the Ministry of Finance invades competences of the Autonomous Communities. The Court has dismissed the first pleading because the rule enables the town council to bring a challenge, which is why the application of coordination techniques will in any case depend on "*municipal will*". However, it has ascertained a breach of autonomous competences because the State, by virtue of the competence entrusted by Art. 149.1.18 CE, may establish "*the grounds*" but lacks executive competence. Consequently, said provision has been declared null and void.

Art. 36.1.g) LBRL, amended by the challenged rule and accordingly interpreted by the Court, does not breach municipal autonomy or autonomous competence. The provision empowers a provincial deputation to "*provide electronic administration services and to complete centralised procurement*" in municipalities with a population of less than 20,000. The judgment explains that this provision should be interpreted in the sense that it intends to "*render effective*" the provision of services that small municipalities "*may be unable to take on*". It is therefore a matter of the deputation "*meeting its most characteristic institutional function by supporting these municipalities (…)".*

In his particular vote, Judge Ricardo Enríquez shares the view that the 16th additional provision LBRL infringes the principle of democracy, excepts as regards economic-financial and re-balancing plans. In his opinion, by entrusting the local governing assembly with the approval of these instruments, the disputed provision does not incur this infringement because, as a result, "*coercive and mandatory measures*" are avoided, which are even "*more intrusive in the principle of local autonomy*". Said measures (contained in the Public General Act of budgetary stability and financial sustainability) may be imposed on Administrations that fail to meet the objective of budgetary stability, public debt or expense rule, which have not applied measures to present economic-financial or re-balancing plans and which may even dissolve the bodies of the local corporation in breach.

Madrid, 29 June 2016