SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATIVE NOTE No. 67/2016

THE TC DECLARES UNCONSTITUTIONAL SEVERAL PROVISIONS OF THE CATALONIAN ACT ON FISCAL, FINANCIAL AND ADMINISTRATIVE MEASURES, DUE TO INVADING STATE COMPETENCES

The Plenary Meeting of the Constitutional Court (TC) has unanimously and partly upheld the unconstitutionality appeal lodged by the Government against various precepts and provisions of Catalonian Act 3/2015, of 11 March, on fiscal, financial and administrative measures. The Court has declared the unconstitutionality of the precepts and provisions challenged, except for those related to creating a Catalonian Agency for Social Protection and the drawing up of an inventory of the equity held by the Catalonian public administrations, the constitutional interpretation of which it has upheld.

The main body of the claim is addressed against the twenty-second to twenty-sixth additional provisions. In these, the Parliament imposes certain obligations on the *Generalitat* affecting matters such as the tax administration, strategic infrastructures, social protection, energy, communication and railway transportation, amongst others.

Before analysing this part of the claim, the judgment clarifies that, when resolving an unconstitutionality appeal, the Court's examination of the challenged rule should always be "*in abstract*" and "*objective*"; consequently, this control is "*unrelated to any specific consideration about its applicability to a specific factual situation*" and is indifferent to "*the legislator's intentions, its political strategy or ultimate purpose*".

The 22nd Additional Provision orders the *Generalitat* to approve a "*master plan for the Catalonian Tax Administration*" which, it states, "*will constitute the strategic planning instrument of a tax administration prepared for a future assumption of new tax functions and competences*". First of all, the judgment points out that the obligation in the challenged rule imposed on the Catalonian Government exceeds its exclusive competence to "*arrange, pursuant to the Constitution and the Catalonian Statute of Autonomy, its own Administration and Tax Administration*". In effect, this mandate "*or, specifically, the already verified act of a provision*" is a result of tax functions and competences "*which today are beyond the competences of an Autonomous Community"*, and are therefore "*entrusted to the State*". Consequently, the rule "*questions how public powers are distributed amongst the State and the Autonomous Communities and hinder the State's constitutional position".* This is because "*an Autonomous Community cannot take on more competences (…) than those already gathered in its current Statute, unless it completes a regulatory amendment, which exceeds its decision-making capacity*"; nor may it "*anticipate in its rules, as is the case here, the outcome of a hypothetical change of competences*".

Further to the foregoing, the Court considers that the words "*prepared for a future assumption of new tax functions and competences*" are "*manifestly contrary*" to the Constitution. Given the "*inescapable single meaning*" of the provision as a whole, the

unconstitutionality of these words are made extensive to the 22nd Additional Provision in its entirety.

The 22nd Additional Provision states that the *Generalitat* should draw up "*an inventory of the equity, assets and liabilities of the Catalonian public administrations, including a valuation*". The judgment provides a constitutional interpretation. Thus, it considers that this mandate is constitutional, following the interpretation that the reference to "*Catalonian public administrations*" does not refer to bodies, entities or services of the General State Administration and does not entrust the *Generalitat* with the drawing up of said inventory- as this attribution would be contrary to the constitutional principle of local autonomy- but, rather, demands that "*the local bodies in Catalonia forward it an updated inventory of their equity for information purposes (…)*". Finally, it should be interpreted that when the challenged rule refers to "*assets and liabilities*" it does so without exceeding the limits of the legal definition of equity foreseen in basic state legislation, i.e. it refers to the overall "*goods and rights*" of the administrations without including "*money, securities, credits and other financial resources in its treasury*".

The 24th Additional Provision orders the *Generalitat* Government to draw up a catalogue of strategic infrastructures in Catalonia. The rule affects its competence in "*public security*", a matter where Autonomous Communities "*cannot undertake by statute more competences than those foreseen to create their own police corps, further to Art. 149.1.29 Spanish Constitution (CE)*". The additional provision in question should be declared unconstitutional because, as the judgment explains, "*it indicates a scope that goes beyond that inherent to police activity*"; and, also, because only the State can issue "*specific laws to protect strategic infrastructures that contemplate a registry or catalogue thereof*"; these state regulations, applicable throughout Spain, may not be conditioned by Autonomous Communities.

Also unconstitutional is the mandate imposed on the *Generalitat* to start up an "*interdepartmental commission*" guaranteeing the service and operation of strategic infrastructures. The unconstitutionality resides in the functions assigned to this new body as, "*whilst the Critical Infrastructures Protection System is still in force*", created by state law, "*these functions may not be assigned or implemented, lest Art. 149.1.29 CE be breached, ultra vires or by overlooking said System, as is the case here*".

The 25th Additional Provision, whereby the Catalonian Parliament orders the *Generalitat* to create the Catalonian Agency for Social Protection, was declared constitutional insofar as sections 2 and 3 are interpreted as indicated in the judgment.

The final point of section 2 provides that the Agency's structure "*should foresee a future assumption of competences which, at the effective date of this act, are held by the State Administration*". According to the claim, this section is an "*affirmation of competences (…) related to matters where an Autonomous Community holds no power whatsoever*"; this is why "*it is detrimental to the State's current competences in Social Security matters*". However, explains the judgment, this is not the only possible interpretation of section 2 "*without forcing the terms of the provision*". In fact, it could be understood to refer to a future assumption of functions that the Autonomous Community "*would still not hold in full, but which would nevertheless reflect competences that the Generalitat does in fact hold in positive law pursuant to the Catalonian Statute of Autonomy (EAC)*". Section 2 may only be declared constitutional further to this interpretation.

Section three of this same additional provision requires that the *Generalitat* submit a master plan for social protection "*constituting a strategic planning instrument for a future management model of social benefits in Catalonia*". A constitutional interpretation is also possible in this case: the generic heading "*social benefits*" may refer "*both to social assistance and benefits inherent to the Social Security system*", the latter's management being exclusively entrusted to the State (Art. 149.1.17 CE). This "*vagueness in the words "social benefits"* indicates "*a strict and exclusive reference to benefits "aimed at providing assistance", for which the Generalitat it clearly competent (…)*". This competence, adds the judgment, also covers "*the planning and definition of its "management model"".* Consequently, if interpreted in this way, this section may be declared constitutional.

The 26th Additional Provision instructs the Government of the *Generalitat* to submit a master plan related to the energy, telecommunications and IT systems and railway transportation sectors. The matter referred to by the challenged provision is related to "*fair competition and its regulations*". According to the Court, it is a matter reserved to the State further to Art. 149.1.13 CE "*in order to issue general regulations providing equal guarantees and sanctions, throughout the State, for the freedom of competition amongst economic agents*". Consequently, the Catalonian Parliament has entrusted the *Generalitat* with a competence that is beyond its remit, which is why "*the rule is invalid*".

In turn, the Court has declared the unconstitutionality of creating a Catalonian Meteorological Service because it infringes the competence assigned exclusively to the State by the Constitution to control Spain's air space, traffic and air transport (Art. 149.1.20 CE). The judgment explains that the challenged rule not only affects "*meteorological services*", a matter that may be shared by the State and Autonomous Communities, but affects other matters, such as air navigation, which is regulated and controlled exclusively by the State. This is the case, for example, when meteorology is placed at the service of Defence and the Armed Forces.

Also unconstitutional is the prohibition imposed by the challenged rule on the implantation of large commercial establishments in public ports. The judgment explains that basic State legislation guarantees the freedom of establishment and demands that any restrictions on this freedom be justified and based on "*imperious general interest needs*". However, the reform introduced by the challenged act establishes a restriction that is not duly justified.

Madrid, 7 July 2016