



SPANISH CONSTITUTIONAL COURT

Cabinet of the President

Press Office

INFORMATIVE NOTE No. 69/2016

THE TC DECLARES UNCONSTITUTIONAL THE SYSTEMATIC USE OF A DECREE-LAW TO APPROVE EXTRAORDINARY CREDITS USED TO FINANCE SPECIAL ARMAMENT PROGRAMMES

The Plenary Meeting of the Constitutional Court (TC) has unanimously upheld the unconstitutionality appeal filed by members of parliament belonging to Grupo Parlamentario Socialista; IU, ICV-EUIA, CHA (La Izquierda Plural); and Unión Progreso y Democracia, against Royal Decree-Law 10/2014, of 1 August, granting extraordinary credits and credit supplements in the budget assigned to the Ministries of Foreign Affairs and Cooperation, Defence and Agriculture, Food & the Environment. The judgment considers that systematically using a Decree-Law as a way to approve extraordinary credits to finance special armament programmes is contrary to the requirements established in Art. 86.1 of the Spanish Constitution (CE). The Reporting Judge was the President of the Court, Francisco Pérez de los Cobos.

According to repeated constitutional case-law, the Government should explain the “*extraordinary and urgent need*” justifying the approval of legislative measures through a Decree-Law; furthermore, these measures should be related to the emergency situation they intend to overcome.

In this case, the reasons used by the Government to justify approval of the challenged Royal Decree-Law are the following: 1) unawareness, at the time the General State Budgets were drawn up, of the exact amount payable in this type of special armament programmes, and 2) the need to pay suppliers and consequently avoid the “*disastrous consequences that delayed payment would entail for Spain*”.

The judgment affirms that these arguments are insufficient and do not meet the requirements established by Art. 86.1 CE to legislate through a Decree-Law. “*A mere reference is made to the importance of paying suppliers in order to avoid Spain’s international discredit and any potential damage that may arise from delayed payment*”. “*These negative consequences*”, adds the Court, “*could arise in any delayed payment of any contractual obligation of the State, without the particular seriousness of such damage having been justified in this case*”.

“*The special financing of the defence programmes analysed here*”, it adds, “*could justify the use of extraordinary credit outside ordinary budgetary planning*”; but “*could be articulated through an Act, not inevitably through a Royal Decree-Law, the use of which is constitutionally restricted*”. Consequently, “*systematically resorting to a Decree-Law as the legal form to articulate extraordinary credits in order to finance special armament programmes does not conform to the constitutional provisions foreseen in Art. 86.1 CE*”.

Given that the budgetary year has ended in which the extraordinary credit was granted, the judgment explains that a declaration of unconstitutionality and nullity of the Royal Decree

challenged will not entail a review of any situations settled in a judgment with *res iudicata* effects, or any established in final administrative measures.

Madrid, 15 July 2016