



## INFORMATIVE NOTE No. 73/2016

### THE TC REPEALS THE DECREE THAT REFORMED THE ACT ON THE RESTITUTION OF ASSETS SEIZED FROM TRADE UNIONS AND SIMILAR ASSOCIATIONS

#### THE JUDGMENT DOES NOT AFFECT THE RESTITUTION PROCEEDINGS ALREADY RESOLVED IN A FINAL JUDICIAL OR ADMINISTRATIVE RESOLUTION

The Plenary Meeting of the Constitutional Court (TC) has unanimously declared the unconstitutionality and nullity of Royal Decree-Law 13/2005, of 28 October, amending the 1986 Act that regulated the restitution to trade unions of any assets and rights seized during the Civil War (Act 4/1986, of 8 January, on the assignment of trade union assets in aggregate). The Plenary Meeting has upheld an unconstitutionality appeal lodged by Grupo Popular in the Congress of Deputies and considers that a reform of this act does not meet the requirement of extraordinary and urgent need foreseen in Art. 86.1 Spanish Constitution (CE) and, consequently, should have been passed following parliamentary proceedings, not by decree. Andrés Ollero acted as Reporting Judge.

Art. 86.1 CE foresees the possibility of the Executive being able to pass decree-laws in the event of extraordinary and urgent need. In general terms, constant constitutional doctrine has deemed legitimate the use of a decree-law if, in difficult circumstances or which are impossible to foresee, immediate regulatory action is required to reach objectives that are necessary for the country's governance. In any case, the Government is obliged to explain which are the causes of extraordinary and urgent need that justify use of a decree-law.

Both in the preamble of the challenged rule and in the hearing before parliament of the then Minister of Employment and Labour Matters, the Government considered that the 1986 Act needed to be urgently reformed for reasons both of justice (difficulties in verifying title of the assets was hindering fulfilment of the purpose sought by the act and affected the compensation amount) and of legal certainty (a prolonged restitution process caused uncertainty that was affecting both the beneficiaries and the State).

The judgment explains that the reform of the laws on the restitution of assets was "*legitimate in constitutional terms*"; and that the reasons of justice and legal certainty submitted by the Government in parliament could have been used "*to justify the specific measures adopted, but not their urgency or need or, in other words, not the fact that the process overlooked ordinary parliamentary proceedings, generally used for the passing of laws*".

The adequacy of amending former regulations (the 1986 Act) did not constitute "*an exceptional, serious, relevant and unforeseeable situation determining the need for immediate regulatory action in a shorter period of time than that foreseen for the processing of laws by Parliament*".

In short, the reasons were not justified to explain use of emergency legislation, or to what extent the purpose sought would have been "*harm*" had the reform been included in a "*draft bill, subject to parliamentary processing*".

The declaration of unconstitutionality and nullity of the challenged decree-law will not allow a review of proceedings already settled with final judgments or administrative resolution, by virtue of the constitutional principle of legal certainty (Art. 9.3 CE).

Madrid, 27 July 2016