



CONSTITUTIONAL COURT OF SPAIN
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THE CONSTITUTIONAL COURT PARTIALLY ANNULS A REGIONAL LAW THAT CREATES A TAX ON THE INCREASE IN VALUE OF THE URBAN LAND

The Plenum of the Constitutional Court has unanimously upheld the question of unconstitutionality submitted by the court of contentious administrative proceedings no. 3 of Donostia-San Sebastián regarding several articles of the Regional Law 16//1989, 5 July, on the tax on the increase of value of the urban land of the Historic Territory of Guipuzkoa. The Court deems the aforementioned tax is contrary to the principle of economic capacity, foreseen in Article 31.1 of the Spanish Constitution. The Vice-president of the Court, Adela Asua, was the rapporteur of the decision.

The challenged law establishes a tax on value-added of urban land. This tax is accrued when the sale of the good takes place and it is objectively calculated based on the cadastral value and the number of the years (minimum one and maximum twenty) that the good belonged to its owner.

The Judgment reminds the Constitutional Court's doctrine on the principles of Article 31.1 and insists, "*by no means is the legislator able to establish a tax taking into consideration actions or facts that do not stand for the real or potential wealth*". The principle of economic capacity does not only applies to the "*tributary system as a whole*", it also applies "*to every specific tax as a condition of taxation*". "*There is no place in our system for taxes that are not applied on a source of economic capacity*".

The Judgment analyses the challenged articles and concludes that they establish a fiction of value increase that deters the individual from producing proof of the contrary. This happens because the value increase of the land is determined through the automatic application of the law-foreseen coefficients to the cadastral value of the land when the sale takes place. Therefore, the mere ownership of the land during a certain period automatically produces the increase in its value.

The formula that calculates the tax provokes its payment even in those cases where there has not been a value increase or in the ones where it has even been reduced. This situation was quite common during the economic crisis. The Judgment considers that this consequence "*lacks of a reasonable justification as long as it imposes the taxable persons the obligation to bear the same tax burden to the one that corresponds to the situations where there has been a value increase due to the passage of time. They are being subject to situations that do not stand for the economic capacity, which frontally contradicts the principle guaranteed in Article 31.1 of the Constitution*".

The Court states that the challenged articles are null and unconstitutional. That is to say, *“those articles that tax situations that do not stand for the economic capacity and that deter the possible evidence of a non-increase in the value”*.

The legislator is the one responsible for, once this Judgement is officially published, carrying out any necessary modifications of the legal regulation of the tax in order to prevent the taxation of situations where there has not been a value increase.

Madrid, 10 February 2017.