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### THE CONSTITUTIONAL COURT ENDORSES THE RIGHT OF LOCAL AUTHORITIES TO RECEIVE ADVANCE PAYMENTS FROM THE TREASURY OF THE AUTONOMOUS COMMUNITIES

The Plenary Session of the Constitutional Court has ruled in favour of Local Corporations in order to entitle them to receive advances from the treasury of their respective autonomous communities. The Court judgment, which was drafted by Magistrate Fernando Valdés Dal-Ré, explains that *"the purpose of payment advances is to provide an amount of credit for a limited period of time, with the aim of meeting specific and extraordinary cash-flow needs. It is not aimed at financing them. Therefore, under no circumstances may these advances be considered as definitive payments."*

On that basis, the Court has dismissed the appeal of unconstitutionality brought by the Spanish Government against Article 36 of Law 10/2016, dated December 27<sup>th</sup>, on the Budget of the Autonomous Community of Andalusia for 2017. This provision contains the right to authorize local authorities to receive advance payments *"to be allocated to them from the Budget as an anticipation of their share of State revenue or taxes of the Autonomous Community of Andalusia"*. Such advance payments must be made in accordance with the limits and requirements set out in the challenged provision.

The judgment concludes that the advances contemplated under Regional Law 10/2016 do not alter nor affect the criteria for the distribution of funds corresponding to the participation of local entities out of the State's revenue. *"These are advance payments which, by virtue of their legal status, do not interfere with the powers of the State, since they are not aimed at altering the system of participation in State revenue"*.

In its ruling, the Court points out that *"the existence of a national system of advance payments for local authorities established by the Central Government does not interfere with the preceding conclusions"* for two main reasons. On the first hand, because the possibility of benefiting from both Regional and State advance payments is legally incompatible. On the other hand, because the regulation on State advances as a financial instrument is limited to the State Budget itself.

For this reason, State advances have no impact on the ones that the Autonomous Communities may wish to allocate, in accordance with their competences in budgetary matters, as provided for in Articles 17 and 21 of the Organic Law on the Funding for the Autonomous Communities and Article 190 of the Statute of Autonomy of Andalusia.

In addition, the Court has declared unconstitutional and invalid the second paragraph of Article 13.2 of Law 10/2016, dated December 27<sup>th</sup>, on the Budget of the Autonomous Community of Andalusia for the year 2017. This provision regulates public employment offers for 2017 or any other similar instrument to manage the recruitment of public employees.

The ruling further clarifies that this special rule is *"a consequence of"* the establishment of an ordinary 35-hour workweek that was carried out by the Decree-Law 5/2016 taken by the Government of Andalucía, dated October 11<sup>th</sup>, which was later declared unconstitutional by Judgment 142/2017 of December 12<sup>h</sup>. Therefore, *"the second paragraph of Article 13.2 of Law 10/2016 must now also be considered unconstitutional, as its substance would supplement the said regulation"*.

The decision is accompanied by an individual opinion formulated by Magistrate Juan Antonio Xiol Ríos who disagrees with some aspects of the legal grounds of this ruling. In its view, the unconstitutionality of the second paragraph of Article 13.2 of Law 10/2016 should also have been dismissed. The Magistrate reiterates the statements made in two previous individual opinions from Judgment 99/2016, dated May 25<sup>th</sup>, and Judgment 158/2016, dated September 22<sup>nd</sup>, concerning the regulation on working time of regional public employees.

Madrid, 13 July 2018