CONSTITUTIONAL COURT OF SPAIN
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THE PLENARY OF THE CONSTITUTIONAL COURT DECLARES THE UNCONSTITUTIONALITY AND INVALIDITY OF A PROVISION OF THE LOCAL REGULATION OF NAVARRE ("FORAL LAW") THAT ORDERED THE CLOSURE OF THE LAWSUITS CONCERNING THE TAX ON THE INCREASE OF THE VALUE OF REAL ESTATE

The Plenary of the Constitutional Court has upheld the question of unconstitutionality *("cuestión de inconstitucionalidad")* raised by the Administrative Court nº 2 of Pamplona and has declared the unconstitutionality and invalidity of article 4.2 of the single transitory provision of Foral Law 19/2017, dated 27 December. In particular, the declaration of invalidity concerns the provisions of its first and second paragraphs where it ordered *"the jurisdictional organs"* to close the lawsuits that were pending at the time of the entry into force and that were related to challenges against a local tax on the increase of the value of real estate. These disputes addressed appeals against administrative decisions that applied a municipal tax relating to the increase in the value of urban lands, under the previous Foral Law 2/1995, of 10 March, on Local Tax Agencies of Navarre. Some of the articles of the latter had been declared invalid by the Judgment of the Court 72/2017, of 5 June, which led the legislator to approve a new regulation by way of said Foral Law 19/2017.

The judgement now rendered, which has been drafted by Magistrate Ricardo Enríquez, considers that the paragraph of the single transitory provision is contrary to the distribution of powers laid down in Article 149.1.6 of the Spanish Constitution. In the opinion of the Court, it encroaches on the prerogative attributed exclusively to the State in matters of procedural legislation, since the applicability of the exception allowing the Autonomous Community to pass this kind of laws – namely, when the issue deals with the particular need of *"a provincial regulation governing local tax matters"* – is not justified in this case.

Indeed, paragraph 4.2 of the contested single transitory provision – which has no equivalent in the procedural rules of the State (art. 76 of the Law regulating Administrative Jurisdiction as well as art. 22 of the Law on Civil Procedure) – required the courts to close the cases brought to them regarding these matters and to send the records back to the town councils from which they originated so that new administrative decisions were issued.

The judgment states that neither the Preamble of Law 19/2017 nor the regional institutions that have supported the constitutional validity of the law at issue in this jurisdictional procedure have explained *"why the application of the new legal framework cannot be entrusted to the administrative tribunals in proceedings that have not yet been resolved (...) at the time of the issuance of this judgment; in the context of those proceedings, the administrative courts shall rule not only on the invalidity of the administrative decisions of the tax authorities, but also on the negative economic consequences that the relevant taxpayers have endured as a result of those decisions".*

In addition, the Court observes that there is no guarantee that *"the new decision of the tax authorities will be favourable to the interests of the taxpayer (and, in addition, as long as the new decision is not issued, the original one – which has been excluded from judicial review – will continue to produce its effects)"*. As a consequence, this means that there is no guarantee that there will be an extra-judicial settlement of the claim. In this sense, paragraph 4.2 of the single transitional provision added that, in the event of a disagreement with the first administrative decision, the party involved would have to initiate a new legal action, thus enduring both a waste of time and money. These are the rules which are now annulled by this judgement.

Madrid, 5 April 2019