Constitutional Court Judgment No. 11/1981, of April 8 (Unofficial translation)

The Plenum of the Constitutional Court, comprising the Senior Judges Manuel García-Pelayo y Alonso, Chairman, Jerónimo Arozamena Sierra, Angel Latorre Segura, Manuel Díez de Velasco Vallejo, Francisco Rubio Llorente, Gloria Begué Cantón, Luis Díez-Picazo y Ponce de León, Francisco Tomás y Valiente, Rafael Gómez-Ferrer Morant, Angel Escudero del Corral, Antonio Truyol Serra and Placido Fernández Viagas, has ruled

IN THE NAME OF THE KING

the following

JUDGMENT

In the appeal of unconstitutionality lodged by Mr. N.R.U. and fifty one deputies represented by the Commissioner Mr J.V.S. against various precepts of the Royal Decree - Law 17/77 of 4 March of said year, regulating the right to strike and of work collectives, in which the Government participated represented by the State Attorney with the Senior Judge Luis Díez-Picazo y Ponce de León as Rapporteur.

Conclusions of law

1. For reasons of logical order, firstly it is necessary to analyse the allegations of inadmissibility of the appeal made by the State Attorney and among them the legal defect consisting of the fact that in this case in the same person has undertaken the condition of Commissioner for the appellant deputies, as well as acting as legal counsel thereof. This case of inadmissibility is based on violation of art. 81 of the Organic Law of this Court, which establishes the rule of the need for a Court Agent (Procurador in Spanish) and legal counsel a regulation which -according to the State Attorney - is only excepted by an express norm to the contrary, as occurs with art. 33 of the Law regulating the Contentious Administrative Jurisdiction, or when institutionally the same person is allowed to be both agent and defence counsel. In the light of this, it is important to emphasise that art. 81 of the Law of this Court, which effectively imposes on all classes of persons acting before this Court the need to be represented by the Court Agent and directed by Defence Counsel, is a general regulation which should give way to any possible special regulations. A special regulation is evidently contained in art. 82 of the actual Organic Law of the Court, which, in the case of deputies or senators lodging actions of unconstitutionality establishes that they shall act represented by the member of members of the group who they specifically designate or by a Commissioner appointed to that effect. In addition to the relation of special law to general law which is the case of arts. 82 and 81, the regulation of art. 81 imposes the representation by the Court Agent and the direction of the Legal Counsel on natural and legal persons, whereas art. 82 considers a different case, namely that of state bodies or parts of State bodies. In this last case, a Commissioner is authorised to intervene which, due to this sole fact, is a representative and excludes, as is obvious, the representation of Court Agent. If the Commissioner is at the same time a practising lawyer, there is no impediment to him assuming the legal direction of the case. The fact that this is the regulation deduced from a correct interpretation of the aforementioned precepts, is corroborated in section 2 of art. 82, when, in referring to the executive bodies of the State and the Autonomous Communities, it states they shall be represented and defended by their Lawyers which illustrates that the confluence of both functions, excluded in art. 81, is conversely, present in art. 82.
Furthermore, this is an issue which has been amply discussed in the initial Judgments of this

Court, which should be referred to in the interests of brevity. The same may be said of the allegation of lack of documented proof of the power of attorney which was also examined in those judgments.

2. The following reason of inadmissibility outlined by the State Attorney consists of considering that in the appeal Mr Vida Soria really raises a question of validity, or derogation of norms which precede the Constitution, through that body, and that this is a totally inadequate matter for discussion in an appeal of unconstitutionality.

The argument which the State Attorney uses on this point is that, since our Constitution is a directly applicable norm which contains a provision for repealing all the previous legislation which contradicts it, the problem raised by the adjustment between preceding legislation and the Constitution is a question of validity or derogation. Therefore, according to the State Attorney, there is no point in a question relating to whether a repealed law is or is not in conformance with the Constitution.

Nevertheless, contrary to this argument, which at first sight appears to possess a convincing logical force, it should be pointed out that there is no authentic contradiction between the problem of validity- derogation and the problem of constitutionality-unconstitutionality. The opinion that the issue of validity or derogation precedes that of constitutionality is not entirely accurate, because in respect of the repealed norms the theme of constitutionality cannot even be raised. In fact, exactly the opposite occurs. Insofar as the derogation is a result of a contradiction with the Constitution, that constitutional contradiction is a premise of the derogation. We consider unconstitutionality to be no more than a judgement of two contrasting regulations which has a legal consequence. Furthermore, unconstitutionality is not a consequence but rather the premise of that consequence. Therefore, it may be said that unconstitutionality of earlier laws leads to further consequences such as derogation and invalidity.

The above conclusion, which is quite clear, becomes less succinct when the issue in question is clouded by two other points, namely the possibility of a direct action of unconstitutionality against legislation which preceded the Constitution, and the problem of the jurisdictional monopoly in this matter.

With respect to the first problem described herein, it should be considered that the unconstitutionality of laws preceding the Constitution may only be questioned before this court when they result from a proposal from ordinary court judges, however not, conversely, through direct action of minority groups belonging to legislative bodies. Contrary to this view it should be pointed out that there is no precept in Spanish law which prevents current parliamentary minority groups from taking action against earlier legislation. It is also true that in future the issue will not arise, as the term for exercising direct action and the ensuing proceedings will have expired. At the present time, the question arises and cannot be resolved in a negative manner because, as has been mentioned, there is no prohibition, and nor is there any reason for considering the authority of parliamentary groups to be excluded. The opposite conclusion would seem to be more appropriate if it is considered that all those legitimised to appeal to this Court, in addition to defending their strict personal or political interests, are carrying out a public function which is that of setting up mechanisms for streamlining and improving the legal system. Furthermore it might also be considered that if those authorised by law to appeal to this Court lodge an unconstitutionality action, and the Court does not address their claim this would be a denial of justice. If a question is put before the Court, it is required to issue an judgment thereon.

Despite this fact, under no circumstances can the Court claim to assume a monopoly in order to decide on the derogation of positive earlier law through the normative force of the Constitution. This is a question which obviously may be resolved by ordinary judges themselves. It is also clear that they may submit it to this Court pursuant to arts. 35 and subsequent articles of the

Organic Law thereof, and if the question is submitted to the Court, it should resolve it, because it is still, from either perspective, a question of unconstitutionality, since art. 35 is based on the premise that the solution to the problem is submitted to the judge as questionable.

The difference between a declaration by this Court and that which ordinary judges may make in issues of repeal or derogation is obviously that once this Court has issued a statement on a matter, all the state authorities are required to defer to its decision, whereas judgments of the ordinary courts shall only have effect in that particular case and in respect of the parties involved therein.

3. The State Attorney in his brief of allegations against the appeal refers to what he calls total lack of consistency between the contested issue and the arguments submitted in support thereof. Basically, Titles I and II are contested in their entirety and also Additional Provisions 1 to 4 of the Royal Decree Law 17/77, however, subsequently this claim is supported with a few arguments in respect of very specific articles and generally very little detail is provided in most cases. The arguments outlined in the case of Chapter Two of Title I and against Title II are not, according to the State Attorney, precise, as they do not mention specific regulations and are restricted to merely generic indications. According to the State Attorney, the claim, in many of its stages appears to have dispensed with proper arguments as if the appellant merely wished to fulfil the minimum formal requirements for ensuring that the Court would issue, if appropriate, a decision.

From these evident characteristics of the brief of appeal the State Attorney deduces that the claim is inadmissible as it does not merit the court's consideration. The violation of the requirement to make a consistent allegation prevents the court from making up for the lack of allegations.

Some of the State Attorney's observations are certainly pertinent. Challenging a significant and serious regulation such as that of the right to strike should be duly accompanied by a consistent analysis and arguments. When the issue at stake is the improvement or change in the legal system, it is the appellants' task, not only to provide a means for the Court to issue a ruling, but also to collaborate with the Court by providing a detailed analysis of the serious questions raised. It is therefore reasonable to mention, as the State Attorney effectively does, the appellant's requirement and in cases where this is not noted, a lack of the diligence required in procedural terms, namely that of providing the supportive arguments which may reasonably be expected.

However, the Court does not share the view that, due to the appellant's lack of diligence, the Court should not make any ruling on the issue at hand. The action of unconstitutionality, as in any action, is based on its subject matter and its causa petendi. This has been configured for what is requested and for the issue on which the petition is based. The cause is a formal title but so are the arguments on which the appellant bases the case. Therefore, the Court may reject the action insofar as the legal basis is manifestly insufficient. However, it is important to recall that the Court's duty is to improve and streamline the legal system and that for this reason, the Court is not fully governed by the principle of the initiative of the parties. Thus, in cases of insufficient basis, the Court is free to reject any action which is not sufficiently founded or to examine the main body of the issue if it finds reason to do so.

4. Counsel for the Government has insisted on various occasions that currently it is not possible to hear the Royal Decree-Law contested in this isolated appeal alone, but that it should be placed within a wider legislative framework which includes the subsequent Royal Decree-Law on Union Action and the agreements of the ILO which, following introduction or incorporation have become part of Spanish domestic law. Understood as such, Spanish law in strike matters is perfectly constitutional and there is no point in attacking it in such a manner. In witness of the fact that the legal system of strikes in Spain is not what the appeal supposes, but in fact a very different one, as many Judgments of the Central Employment Tribunal have indicated which

reach practical consequences differing considerably from those which would be attained if all that were employed in their appraisal were a simple and brief application of the Royal Decree-Law mentioned (for example : in the admission of union strikes, in the exclusion for the need to declare a strike "centre by centre" and in some other similar issues).

This exception outlined against the claim of unconstitutionality, although intelligently articulated, cannot prosper. The petition of unconstitutionality is not established by the Constitution and the Organic Law of the Constitutional Court (OLCC) as an appeal against a block or a part of the regulatory system or the legal system, so that in order to decide on constitutional legitimacy it is necessary to assess the application criteria of the law. The purpose of the appeal is more modest yet clearer. It is a question of exclusively judging the legal texts and the legislative formulas which have not been expressly repealed.

If the distinction is admitted between norm as mandate and legal text as a sensitive sign through which the mandate is manifested or the means of communication used to make it known, the conclusion reached is that the object of the constitutional proceeding is basically the latter rather than the former.

The foregoing does not mean that the Court is required to waive its right to create what has rightly been called an interpretive judgment, through which it may be declared that a specific text is not unconstitutional if it is considered in a specific manner. It will be seen that this interpretive task is designed to establish the meaning of the text, however, on the contrary, not what could be said to be an interpretation in its broadest sense, which would be the deduction or reconstruction of the normative mandate, by placing it in connection with texts. What the Court can do is establish the meaning of a text and decide that it conforms to the Constitution. Conversely, it cannot try to reconstruct a norm which is not duly explicit in a text and thus conclude that the resulting version is a constitutional norm.

It is not the task of this Court, as an institution entrusted with the task of deciding on unconstitutionality appeals, to judge the degree of success with which judges are applying the rule in question. This Court is only able to judge the issue when it has decided on the specific subjective right of a citizen, which is included in those which are subject of a review appeal if that interpretation or modus operandi were to lead to a violation of that right.

The ideas expressed above, applied to the case in question here, mean that the Court cannot, and nor should it, decide whether or not the Spanish strike regulations are constitutional, considering as such the system or group of determining criteria and norms in such a way that the Spanish Authorities and Courts are applying and understanding the right to strike, but should confine itself exclusively whether or not the texts of the Royal Decree -Law 17/77 are constitutional.

5. A rigorous analysis of the issue proposed to the Court in this matter- whether or not Royal Decree -Law 17/77 is constitutional, requires that as a preliminary question prior to those which may be termed substantive or basic, it is necessary to ask whether, now that the Constitution has entered into force, the right to strike, which is a right enshrined in art. 28, may be validly regulated by a Royal Decree-Law or put in another way, whether normative discipline of that right, insofar as it is constitutional, may be included and contained in a Royal Decree -Law. It is lawful to raise this issue even although it had not been directly raised by the appellants, since art. 28.2 of the Constitution contains a reference to the law ("the law which regulates this right....") To the extent that in addition to the implementation of fundamental rights and public freedoms according to art. 81 of the Constitution, it has to be made by organic law, it would be a matter reserved for Organic Law. It might also be considered that the Royal Decree-Law does not comply with the reserve clause of art. 28 and less so that of art. 81.

It has been alleged against this argument that it is not possible to require the legal reserve in a retroactive manner in order to cancel provisions regulating matters and situations in respect of which that reserve did not exist in accordance with the previous Law, especially when the source

of law in question was produced respecting the system of legal creation in force at the time of its promulgation. The foregoing means that there are no grounds for considering that Royal Decree. Law 17/77 is unconstitutional on the grounds of its form of production. This does not, on the contrary, mean that the Royal Decree -Law can henceforth be considered fully assimilated in an organic law or invested with nature of an organic law, nor may it fulfil the role of norm of integration to which the Constitution refers, as this will always have to be an organic law and legislature, in order to successfully implement the development of the Constitution, shall be required to create that Organic Law.

With the previous proviso it may be said that the legal regulation of the right to strike in Spain is contained in the aforementioned Royal Decree-Law, in that it is not contrary to the Constitution, and does not issue any new regulation by means of Organic Law.

6. This proceeding has discussed the effect that the approval and promulgation of the Workers' Statute (Law 8/80) has had on the Royal Decree -Law 17/77 and it has been maintained that that part of the Royal Decree -Law 17/77 which the Workers' Statute left in force, may be considered to be assumed by that Statute. This assumption has been made firstly, because the initial plans contained a regulation on collective work conflicts, which was supposed to totally replace the Royal Decree-Law and this regulation disappeared during the parliamentary discussion in virtue of what may be termed a "transactional" amendment of the major parties; and secondly because the aforementioned Statute contains a final provision which repeals only one part of that Decree -Law. In virtue of the double play of the transactional amendment excluding part of the bill and the provision repealing part of the Royal Decree-Law, it may be deduced that post constitutional legislation and the Parliament of 1980 assumed and granted post constitutional legislative value to the Royal Decree-Law in such a way that the originally pre-constitutional norms would have become post constitutional; and in addition, rules normally contained in a Royal Decree-Law would have become part of a norm with the same rank as the Statute.

This argument cannot be wholly accepted. It is true, as the State Attorney points out, that the express repeal by the Workers' Statute of 1980 of only part of the Decree-Law of 1977, was made "under the unequivocal presupposition of post constitutional continuity of the duration of the entire Decree-Law". And although despite it being obvious, it should also be pointed out that the pre-suppositions which may have been created by legislature are one thing and its mandates are quite another. The two facts in which the assumption by the 1980 legislature of the Decree -Law of 1977 are sought are two purely negative facts, namely, exclusion from the draft bill of some chapters and exclusion from express derogation of others. More negative facts cannot provide positive consequences. It is only possible to speak of assumption by subsequent legislation of previous legislation in those cases in which the action of legislature is positive. For example, it amends the draft of some articles and not of others. This is not the case when the premises of the argument are negative. The fact that a text on collective conflicts is excluded from the draft bill, does not in any way mean that the previous lawfulness is assumed. It simply means that at that time parliamentary debate on new regulations in the draft bill was not considered desirable. And the express repeal of part of the previous legislation does not mean in any way a legislative mandate of the validity of the remainder of that legal body. When the legislator states that "all legal bodies opposing the present and expressly a and b are repealed" it cannot be assumed that what is not in the express repeal formula is contained in a declaration of a desire for validity. It may be included in the general derogatory clause. Therefore, the fact of expressly repealing some titles or chapters of the Decree-Law of 1977, does not entail a positive mandate of the duration of the remainder. The remainder may be perfectly repealed by contradiction. From all the foregoing there is no intention here to reach a conclusion other than that legislature has not assumed the earlier regulatory text and the consequences sought by those who sustain such a thesis cannot thus be deduced

7. Having established the foregoing premises of this Judgment, the issue of whether or not the

precepts of the present regulation on the right to strike are constitutional should be placed in direct relation to art. 53 of the Constitution, which permits regulation of the exercise of the rights recognised in Chapter Two of Title I- which includes that which concerns us here, provided that in that legal regulation the essential content is respected and not exceeded. That the question centres on this point, is abundantly clear from the fact that the appellant and the State Attorney have addressed it, having expressly alleged art. 53 and its idea of the "essential content", in support of their respective theses. This point of view is furthermore corroborated by the fact that the other basic reasons on which the appellants wish to rest their arguments either return to this or cannot determine a clear qualification of unconstitutionality. Prior to continuing, it would be appropriate to note once again, that on one level it is necessary to situate political decisions and the political judgment that such decisions merit and on another different level lies the qualification of unconstitutionality, which should be made in the light of extremely rigorous legal criteria. The Constitution is a framework of coincidences sufficiently broad to provide room for political options of extremely different kinds. The work of interpreting the Constitution does not necessarily consist of closing the door on options or variants imposing one of them in an authoritarian manner. This conclusion should only be reached when the unanimous nature of the interpretation is imposed by the play of interpretive criteria. We wish to state that the political and government options are not previously programmed once and for all, so that all that remains to be done in future is implement that previous programme.

The foregoing should be made clear in order to provide a response to some of the substantial arguments attacking the constitutionality of the Royal Decree-Law. To summarise, these are that the regulation of Royal Decree is clearly restrictive in relation to the regulation of the Constitution; and that the concept of the right to strike contained in the Royal Decree-Law does not coincide with the concept in the Constitution.

Even were we to admit that Royal Decree-Law 17/77 could be considered as restrictive this qualification would derive from a political judgment. It is not possible to legally qualify art. 28 of the Constitution as more liberal or more advanced or more generous. What the Constitution does is recognise the right to strike, establish it as such a right, grant it constitutional rank and attribute to it the requisite guarantees. It therefore corresponds to ordinary legislature which is the representative at any given time of popular sovereignty, to create a regulation of the conditions of exercise of the right, which will be more restrictive or open, in accordance with the political guidelines which have motivated it, provided it does not go beyond the limits imposed by specific constitutional norms and the generic restriction of art. 53. In this manner, the appellant's statement on the restrictive nature is a very respectable political value and possibly one that could be shared. From the legal -constitutional perspective all that can be questioned is whether or not it exceeds the essential content of the right.

The same comment is also applied to the second argument employed by the appellant. To state that what opposes the Constitution, rather than a specific norm, is ordinary legislature's global concept of the right, it is also a political judgment and not a legal-constitutional one. Effectively, it is possible to understand that, having introduced the right to strike in the Constitution, as an instrument of the embodiment of social democracy and the principle of equality, politically a wider and more generous concept should be sustained. Nevertheless, the pendulum movement between breadth and generosity or restriction becomes once more a political decision to be adopted by ordinary legislation without any limit other than those of the fundamental right, as no right, not even those of a constitutional nature can be considered as unlimited. In this way, recognition of the right to strike does not necessarily need to entail that of all types and modes, that of all possible purposes and even less so that of all classes of direct action of workers.

Nor is the appeal's thesis acceptable where it claims that the rights recognised or enshrined in the Constitution may be defined by limits of the Constitution itself or by the necessary accommodation to the exercise of other rights also recognised and declared by the Fundamental

Right. A conclusion such as this is too strict and lacks basis in its systematic interpretation in the Constitution and in constitutional law, especially if, when speaking of limits deriving from the Constitution, this expression is considered as direct derivation. The Constitution itself establishes the limits of fundamental rights on some occasions. On other occasions the limitation of the right derives from the Constitution only in a mediatory or indirect way, in that it has to be justified by the need to protect or preserve, not only other constitutional rights, but also other constitutionally protected rights.

Therefore, it is necessary to return, as the focal point of the question, to the idea of "essential content" of art. 53 of the Constitution.

8. In order to approach the idea of “essential content” which in art. 53 of the Constitution refers to all the fundamental rights and which may refer to any subjective rights, irrespective of whether or not they are constitutional, there are two possible courses of action. The first is to attempt to make use of what is generally called legal nature or the means of perceiving or configuring each right. According to this idea it will be necessary to establish a relation between the language used by normative provisions and what some authors term meta-language, or generalised ideas and convictions usually admitted among legal professionals, judges and in general, specialists in law. Often the nomen and scope of a subjective right exist prior to the moment when that right is regulated by a specific legislation. The abstract classification of the law conceptually pre-dates the legislative moment and in this respect it is possible to speak of a recognisability of this abstract type in the specific regulation. Law specialists may respond if what legislature has regulated is or is not adjusted to what is generally understood by a right of this type. The essential content of a subjective right constitutes those faculties or possibilities of action necessary for the right to be recognisable as pertinent to the type described and without which it would no longer belong to this type, and it has to be included in another, thus denaturalising it, in a manner of speaking. All this refers to the historic moment in time when each case is addressed and the conditions inherent in democratic societies, in the case of constitutional rights.

The second possible path for defining the essential content of a right consists in attempting to seek what a significant tradition has called legally protected interests as a nucleus and core of subjective rights. It is therefore possible to speak of the essential nature of the content of the right in order to refer to that part of the content of the right which is absolutely necessary for the legally protectable interests, which give rise to the right, to be real, concrete and effectively protected. In this way, the essential content is exceeded or is unknown, when the right is subject to restrictions which make it impracticable, and which hinder it beyond reasonable bounds or deprive it of the requisite protection.

The two paths proposed in order to attempt to define what may be understood by “essential content” of a subjective right are not alternative, nor yet unethical, in fact on the contrary they may be considered as complementary, so that when required to determine the essential content of each specific right they may be used together to contrast the results achieved by either means. Thus, in our case what we need to decide is the extent to which the normative content of the Royal Decree -Law 17/77 permits situations of law regulated therein to be recognised as a right to strike in the sense currently generally accorded to this expression, deciding at the same time whether the norms in question sufficiently guarantee the due protection of interests which, by granting a right to strike it is attempted to satisfy.

9. Art. 28.2 of the Constitution when it states that " the right is recognised of workers to strike in defence of their interests”, introduced in the Spanish legal system an important innovation, namely the proclamation of a strike as a subjective right and as a fundamental right. The formula used by the text (“is recognised”) is the same as that used by the Constitution to refer to the right to assembly or the right to association. Some important consequences may be derived from this. First of all, that it is not merely a question of establishing in the light of earlier

prohibitive norms, a framework for freedom to strike, avoiding moreover, possible prohibitions, which could only be carried out in another legal constitutional order. Freedom to strike means removing specific prohibitions, but it also means that in a system of freedom to strike, the State remains neutral and leaves the consequences of the phenomenon to the application of rules of the legal system on contractual infringements in general and on the violation of the work contract in particular.

It is however, important to underline that the system arising from art. 28 of the Constitution is a system of “right to strike”. This means that some means of pressure used by workers against employers are a right of those. The right of workers to place the work contract in a phase of suspension and thus restrict the employer's freedom, prohibiting him from contracting other workers and from arbitrarily closing the company, as we shall see later.

In addition to being a subjective right to strike it is enshrined as a constitutional right, which is consistent with the idea of a social and democratic state of law established in article 1.1 of the Constitution which among other meanings has that of legitimising means of defence for the interests of groups and strata of the population who are socially dependent, and which includes that of granting constitutional recognition to an instrument of pressure which secular experience has shown to be necessary for the affirmation of the interests of workers in social and financial conflicts, which the social state cannot exclude, but for which it can and should provide the adequate institutional sources; this is also the case of the right recognised for unions in art. 7 of the Constitution, as a union without right to strike would in a democratic society be practically void of content, and it is ultimately with the promotion of conditions to ensure that freedom and equality of individuals and social groups is real and effective. 9.2 of the Constitution). No constitutional right is however, an unlimited right. As all rights, that of the ability to strike must have its own which derive as mentioned above not only from possible connection with other constitutional rights but also with other constitutionally protected rights. Legislature may introduce restrictions or conditions for exercising the right provided that in doing so it does not exceed its essential content.

10. Art. 28 states the right to strike as a fundamental right however it does not define, nor does it describe it, leaving this matter to existing concepts in the community and inherent to the legal system. The Royal Decree-Law 17/77 does not include its definition either. An initial approach might be though the meanings of the word attributed by spontaneous language, such as those contained in the Dictionary of the Royal Academy of Spain (see 19 edition Madrid 1970 page 722) where it states that strike (from the Spanish verb "holgar" to be unused, idle or superfluous) is the "space in time during which one is without work" and also the cessation or stoppage of work of personnel employed in the same job, made by common agreement in order to compose a series of conditions on employers". Aside from this concept it is possible to detect another wider one, which to some extent is included now in legal texts (eg. when so called work to rule is prohibited) and spontaneous language (eg when speaking of hunger strike). In this wider context, strike is a disturbance which occurs during the normal course of social life and in particular in the process of production of rights and services, carried out in a peaceful and non violent manner, by means of a group of workers and others intervening in the process. In this wider sense strike may be designed to claim improvements in the financial or general conditions of work and may presuppose a protest with repercussions in other spheres or areas.

Having thus defined the issue, the question raised consists of ascertaining whether or not the reduction made in art. 7.1 of Royal Decree -Law 17/77 is constitutional in that it establishes that the right to strike should be implemented precisely by ceasing services and considering as illegal or abusive acts the practice of working to rule, and the forms of collective alteration of the work regime which differ from strike itself.

The response to the open question of the previous paragraph depends on how we understand the essential right to strike, by applying to this special subjective right generic notions, which we

established above, in respect of the essential content of any right. In order to enter into the matter it would be helpful to reiterate that by “essential content” we mean that part of the content of a right without which it would lose its peculiarity or, in other words, what makes it recognisable as a right belonging to a specific type. It is also that part of the content which is indisputably required to ensure that the right will enable its owner to satisfy those interests for which the right is granted.

From these two points of view which are mutually complementary, it would not be misleading to establish that the essential content of the right to strike consists of cessation of work in any of its manifestations or modes. And this is not due to the fact that this is one of the earliest modes of striking and because it is generally recognised immediately when alluding to a right of this type, but also because this is a means which has permitted pressure in order to achieve workers' claims.

The statement that the essential content of the right consists in the cessation of work in any of its manifestations, does not in itself preclude the fact that legislation, when regulating conditions for exercising the right to strike, may consider that some particular modes of cessation of work may be abusive, thus it is possible that judgment in certain cases may be referred to the courts of justice without prejudice to the fact that as is obvious, the exercise of legislative power remains in such cases subject to the control of this Court through the channels of unconstitutionality and the decisions of courts of justice are subject to review appeal by virtue of the fact that it is a fundamental right.

We have already stated in the previous paragraph that art. 7.2 of Royal Decree-Law 17/77 establishes that “staggered strikes, those carried out by workers in strategic sectors in order to disrupt the production process, working to rule and in general any form of collective alteration of the work regime differing from that of strike" shall be considered illegal or abusive acts.

The appellant contests this text, albeit very briefly, stating that it should be considered radically unconstitutional and in particular in that it considers staggered strikes or working to rule as illicit or abusive acts. In the appellant’s opinion, the scope of art. 28 of the Constitution respects the essential autonomy of workers when deciding whether to strike and the manner in which to do so, whereas the contested text does not, according to the appellant, respect the essential content of the right, since it does not include the power of strikers to unilaterally decide the type of strike.

This reasoning and the conclusions reached as a result in the appeal are not convincing. It is clear that the right to strike includes the power to declare a strike establishing the cause or the reasons and the final purpose pursued, and the power to choose the type of strike. Furthermore, it is also clear that the power of choice may only be made in respect of the types or modes admitted under law, and we have already stated that legislature may consider some types as illegal or abusive, provided that it does so in a justifiable manner, that the legislative decision does not exceed the essential content of the right, and that the types and modes admitted by legislation are sufficient alone to recognise that the right exists as such and is effective for obtaining the purposes of the right to strike.

The foregoing premises permit the problem of art. 7.2 to be addressed in respect of staggered strikes, strikes in strategic services, and working to rule. Firstly, it would be appropriate here to make some comments dispelling possible errors in this respect. These strikes are not included in the list of illegal strikes contained in art. 11. Art. 7.2 is confined to stating that “they shall be considered illegal or abusive acts”. The literal expression used in the legislation makes it clear that what is present in the precept is an as assumption iuris tantum of abuse of the right to strike. This means that anyone wishing to deduce the consequences of unlawfulness or the abusive nature could make use of this assumption, however it also means that the assumption, like all those of this type, admits proof to the contrary. Therefore, the strikers who used that mode or type, could prove that in their case the use was not abusive. This is a question which,

obviously, shall be a decision of the courts of justice and where appropriate, one to be heard by this Court through the channels of review appeal.

In order to clarify the question proposed, it would be helpful to specify the extent to which the aforementioned types of strike may on occasion be considered abusive. In an endeavour to properly understand this we should not lose sight of the fact that in the present Spanish legal system the strike is a subjective right, which means that the legal working relation is maintained and is suspended, with suspension of the right to salary. It also has further meanings, such as the fact that the employer cannot replace strikers with other workers (see art. 6.5) and it also means that the employer has limited power of closure, as may be assumed from art. 12 and from our comments below. The right of strikers is a right to transitory non-compliance with the contract, however it is also a right to restrict the employer's freedom. It therefore requires proportionality and mutual sacrifices, and therefore when such requirements are not complied with, strikes may be considered as abusive. Aside from the restrictions which the strike may cause to the personal freedom of the employer, there is also the influence it may have on workers who do not wish to join the strike (see art. 6.4) and the effect on third parties, users of business services, and the public in general who should not be subjected to any more inconvenience than is necessary. In this respect it may be considered that there is abuse in those strikes which unavoidably lead to participation in the strike plan of non striking workers, so that the decisions of a few extend the strike to all. A singular case occurs in what art. 7.2 calls strikes of workers who provide services in strategic sectors, as the Law clarifies that an element of this type of strike is the aim of disrupting the process or imposing cessation on all, on the decision of just a few.

The abuse may also be committed when the disruption of production caused by the strike has a multiplier effect, so that the strike causes disorganisation of areas of the company and its productive capacity is affected, and these can only be recovered long after the strike has ended Thus a strike with a short formal duration is able to prolong its effects over time, and thus it has a far greater duration and entails additional costs of reorganisation to the employer. Abuse of the right to strike may finally consist of diminishing formally and notably the number of persons on strike, reducing the number of persons without a right to payment or to salary, that is, real strikers pretend that they are not in fact striking. This element of simulation is contrary to the mutual duty of loyalty and honesty which should not be affected by the strike.

11. The right to strike is defined as a right attributed to workers uti singuli although it has to be exercised collectively by agreement between said workers. In order to clarify what is meant by collective exercise it should be clarified that they are the faculties of the right to strike, the call to strike, establishment of claims, publicity or external dissemination, negotiation and finally, the decision to end the strike. It is therefore possible to state that, although all workers hold the right to strike and each one has the right to take part or to abstain from striking, the powers implicated in the right to strike, in respect of collective and concerted action correspond both to workers and their representatives and union organisations.

It cannot be said that the Royal Decree-Law 17/77 is preventing union strikes. This conclusion cannot be possible from the moment that art. 7 of the Constitution recognised workers' unions, the nature of basic bodies of the political system. As a result, at the present time, organised strikes, directed and controlled by workers' unions and so called spontaneous strikes, known as wild cat strikes, without union intervention or approval are perfectly possible.

Therefore art. 3 of Royal Decree-Law 17/77 should of necessity be understood in the sense that although it is the workers who have the right to strike, the right may be exercised by union organisations involved in the employment sector in which the strike action takes place.

12. Section 2 of art. 28 of the Constitution, in recognising the right to strike as a fundamental right, does so in favour of workers and for the defence of their interests. It should be understood therefore, that the constitutionally protected right is that attributed to persons who

provide remunerated work in the service of others when that right is exercised against patrons or employers, in order to renegotiate work contracts with them and introducing in them specific modifiable novations.
The text of art. 28- the right of workers for the defence of their interests, makes a very clear connection between constitutional establishment and the idea of obtaining financial and social equality. The conclusion reached is that we are not faced with the phenomenon of strike as protected by art. 28 of the Constitution when there are disruptions to the production of goods and services or in the normal operation of these last, introduced for the purpose of pressurising the Public Authorities or state bodes to ensure that they adopt governmental measures or introduce new, more favourable measures for the interests of a category (for example, employers, services concessionaries etc).
A strike is characterised by the deliberate wish of strikers to place themselves provisionally outside the framework of the work contract. The constitutional right to strike is granted so that the holders of the right may temporarily disassociate themselves from their legal and contractual obligations. Here there is an important difference which separates the strike constitutionally protected by art. 28 and that which at some point may be termed independent workers' strike, of self-employed or professionals who although in the broad sense are workers, are not employed workers bound by a salaried work contract. Cessation of this type of persons' activities,, if the business or professional activity is free may take place without the need for any norm to grant them any right, although without prejudice to the consequences entailed by the disruptions this may produce. It is clear that if a concession had been expressly obtained for implementing a public service or if it were a question of activities of public interest subject to a special legal administrative regime, the activity of cessation may determine that they are violating the requirements of the concession or legal administrative regime in question.
13. The appellant maintains the unconstitutionality of Royal Decree-Law 17/77 insofar as it is understood, it excludes the right of public servants to strike. In order to respond to this question, it should be noted that the unconstitutionality claimed does not result in a direct manner, as the Royal Decree - Law 17/77 does not contain any express norm of exclusion or prohibition. It would have to be an indirect unconstitutionality, through derivation or deduction without a text to declare that it is unconstitutional. In addition, it is important to recall that persons linked to the State, with Autonomous State Entities or with the Institutional Authorities, in virtue of work contracts are not strictly public or civil servants and are therefore subject to the Royal Decree-Law 17/77. By civil or public servant it should be taken to mean those persons who receive this appointment in application of the general laws of Administrative Law.
Royal Decree-Law 17/77, as clearly results from art. 1, regulates the right to strike in the sector of employment relations and this type of relation is currently defined by rules of the Workers' Statute, which expressly exclude (see Art. 1.3 a) "the service relation of public servants" and that of personnel in the service of the State, local corporations and autonomous public entities when, according to the Law, said regulation is regulated by administrative or statutory norms.
The foregoing means that the possible right to strike of civil servants is not regulated- and therefore, nor is it prohibited by the Royal Decree-Law 17/77. If there is no regulation, and no prohibition- it is for this reason difficult to speak of unconstitutionality
14. The appellant considers that legislation of 1977 within the extensive field of possibilities or modes permitted by the strike phenomenon, has selected just one of these known as "contractual strike" making it an exclusive model of legal regulation which contrasts in his opinion with the scope of the Constitution text which does not impose any model. Contractual strike is understood to be that which occurs when collective agreements negotiate in order to pressurise in favour thereof, so that the strike is an instrument of agreement. That it is to some degree possible that the authors of Royal Decree-Law 17/77 could have had this model in mind is something that would appear to be clear from section c) of art. 11, in accordance with which a

strike is illegal when it aims to alter the results of a collective agreement during the duration of that agreement, a precept which coincides with art. 20 which does not permit a collective conflict to be initiated in order to alter the decisions made in a collective agreement, and with art 8 which permits waiver of the right to strike provided that the waiver is made in a collective agreement. Finally, art. 8 may be cited as it grants to the negotiations held to end a strike the same rank and the same value as the agreement. The strike is an instrument placed in the service of collective bargaining which may only be exercised when following the loss of force of an agreement, or if in the period immediately preceding it, it is necessary to negotiate a new agreement. This idea is complemented by that in which the period of duration of a collective agreement is a period of employment peace and stability with the practical result that the period of negotiation of agreements is one of upheaval. However, it is not possible to understand the norms of the Royal Decree-Law 17/77 in such a strict manner. The Royal Decree-Law does not establish a necessary link with strike and collective agreements, nor between conflictive phase-negotiation of the agreement and phase of the duration of the agreement -employment peace. It is true that art. 11 does not permit striking to alter what has been agreed in a pact while it remains in force. However, there is nothing to prevent striking during the period of the collective agreement when the purpose of the strike is not strictly that of altering the agreement, as for example, claiming against its interpretation or making demands which do not impose changes on the agreement. Furthermore, it is possible to claim a change in the agreement in those cases where the employer has not complied with the terms, or if there has been a total and radical change in circumstances, which would permit application of the clause rebus sic stantibus.

Section 1 of art. 8 permits a collective agreement to be established in which the right to strike is waived while it is in force. This precept should be clarified and, having made this clarification, it cannot, as will be seen, be considered that it is unconstitutional.

The appeal does not claim unconstitutionality of the aforementioned norm on the basis that constitutional rights cannot be relinquished - an indisputable legal proposition-. The appeal claims the unconstitutionality of art. 8.1 on the basis that, as the waiver is made in an agreement, those relinquishing it are the legal representatives of the workers and not the workers themselves. And this- as the appeal laconically states without further detail- is contrary to what is known as “personal subjectivity” which “is deduced from the Constitution in relation to it”. The appellant appears to wish to allude in this respect to an extremely personal nature of the act of renunciation and the inadmissibility of a waiver through the representative. This argument is simply not sustainable as, in general, it is possible to have done by a representative what it is not possible to do for oneself. If the rights may be waived, the difficulty lies not in the representation but in the special or extremely particular nature that this representation may have.

The foregoing disquisition is however, unnecessary. However much section 1 of art. 8 may speak of “waiver” it is clear that this is not a question of a genuine renunciation. There are two reasons which illustrate this fact, namely, because the waiver is always a definitive and irrevocable act and the so called “waiver” of section 1 of art. 8 is only temporary and transitory (during the period the agreement is in force), and does not affect the right in itself, but only its exercise, so that there is no removal of the right, but rather an undertaking not to exercise it, which entails pure obligation, which may not be fulfilled and bringing with it the consequences of non compliance. When the undertaking not to exercise the right is established, obtaining in exchange certain compensations, it cannot be said that a pact such as this, which is one of employment peace and stability, is illegal, and even less so may it be said to be contrary to the Constitution.

15. The exercise of the right to strike may be subject in virtue of the law to procedures or to some type of formalisms or formality because art. 53 of the Constitution permits legislature to regulate the "conditions of exercise" of fundamental rights. It is more likely that the procedure

and formalities are not arbitrary, and that they are designed as mentioned above, to protect other rights and interests which are constitutionally protected and which are not so rigid and difficult to fulfil that in practice they make exercise of the right impossible.

Royal Decree-Law 17/77 subjects exercise of the right to strike to a series of formal and procedural requirements, the meaning and scope of which it would be appropriate to study in order to analyse the extent to which it may enter the scope of art. 53 of the Constitution.

The aforementioned procedural requirements consist basically of the need for prior notification, that of an advance and obligatory referendum, the formation of a committee, the formalisation of claims and the communication or notification of these to the employer. Leaving aside these two last points, which are strictly linked to the concept of strike and without which the strike does not exist, it would be appropriate to examine the prior notification, obligatory referendum and the formation of the committee.

a) The need for prior notification is established by Royal Decree-Law 17/77 in art. 3 and reinforces it in the event of strikes affecting public services. It is a consequence of the nature of the strike's negotiating instrument. Before the strike begins, the other party should have the opportunity to attend to the demands of the strikers or to establish a transaction in order to avoid a strike. In the case of public service strikes, the prior notification is also designed to warn users and permit them to take the necessary measures to ensure that they may address their own needs. Surprise strikes without prior warning, may on occasion be abusive, and the requirement of prior notification does not deprive exercise of the right of its essential content, provided that the terms imposed by legislation are reasonable and not excessive. Finally, it should be noted that cases in which there is obvious force majeure, or a state of necessity, shall be exempt from the requirement of prior notification which shall need to be proved by those who for that reason did not comply with their prior obligation. That the prior notification in itself does not exceed the essential content of the right is clear from the fact that some forms of exercise of the right to assembly in public places requires that the governing authority be notified in advance, without this enabling it to be said that the right is void of content or that it exceeds its essential content.

b) Another different theme is that of the requirement for a prior compulsory referendum among the possible strikers, which every work centre is required to adopt. The requirement of the Royal Decree-Law is a dual one.

Firstly, it locates each strike in each work centre, so that the resulting system is strike per work centre. One way of putting it is that inter-centre strikes would only be the sum of partial strikes of each centre. The requirement of declaration of a strike, centre by centre, has no real justification and has no more sense than that of seeking means of restriction insofar as is possible, of the conflicts, especially in those cases in which it is assumed - and in these cases they shall not be infrequent - that the decision to strike may be easier in some centres than in others.

However, the requirement of prime importance on this point, is the compulsory referendum. Some have maintained that the justification of this requirement is based on the fact that it is the only means of deciding on a strike in a genuinely democratic manner, without leaving it to the influence of a few specific participants. It would also be a means of safeguarding freedom. However, in contrast it has been noted that the requirement of a referendum, especially in those cases in which the quorum is reinforced, is a means of quelling the start of a strike and constitutes an important restriction to this right. Furthermore, it seems quite clear that the referendum will only have significance if the wishes of the majority were necessarily imposed on the minority of non strikers, in accordance with democratic principles. This conclusion is not however, consistent with the freedom and right to work recognised by the Constitution and legislation, because if the strike is, as has been said, a right of an individual nature (although one of collective exercise) it is clear that it cannot be an obligation at the same time.

Therefore, it should be deemed that prior referendum lacks justification since it operates as a purely preventive measure of the right which goes beyond the essential content and should therefore be considered unconstitutional.

Art. 3 of Royal Decree-Law of 1977 should be considered to contravene the essential content of the right to strike contained in art. 28 of the Constitution. Said article establishes two channels for exercising the right to strike or, which is the same thing, for the "right to strike" the exercise through representative and direct exercise. In either case the regulation violates the essential content of the right. In the former case-exercise by means of representation-because it requires that the meeting should include all representatives, a meeting attended by at least 75% and with a majority decision. It would appear at once that by reinforcing the quorums, the exercise of the right becomes extraordinarily difficult and that, in addition, it favours the contrary minority or those who simply abstain. The same occurs in the case of direct exercise since this requires as a prior formality that 25% of the staff components of a work centre decide to put the option to strike to the vote, and this should be the case in every work centre. An individual right cannot be compromised or prevented by contrary minorities or by those abstaining. The nature of the right to strike which is defined in art. 28 as a right belonging to workers, makes it necessary, in order to comply with art. 28, for it to be exercised directly by the workers themselves, without the need for recourse to the representatives. Direct exercise presupposes only the concurrence of a plurality of acts of exercise and collective participation required to ensure that the act may be recognisable as exercise of the strike. The Government representation reaches a similar conclusion in this appeal, considering that art. 3.2 of the Royal Decree-Law has to be understood as added or completed by what has resulted from agreements 88 and 89 of the ILO of the International Agreement on economic, social and cultural rights, of the European Social Charter and the Law on Union Association.

16. The appeal attacks the rules of the Royal Decree- Law 17/77 relating to "strike committee". These rules render the formation of the committee compulsory; they order the composition thereof to be communicated to the employer at the start of the conflict, they establish that the committee will participate in all kinds of activities carried out in order to resolve the conflict, and require that only workers of the affected centre may take part in the committee while numerically restricting its composition.

The existence of the strike committee is fully justified and does not denaturalise the phenomenon of the strike. As art. 28 of the Constitution states, the strike is an instrument for defending interests. It aims to open up negotiations, force them if desired, and reach a compromise or agreement. It is clear therefore, that there is a need to decide who is required to carry out the negotiations. Furthermore, the strike finalisation agreement achieves the same value as the collective agreement. There should therefore be a negotiating instrument and the requirement of formation of the committee responds clearly to this need.

The duty to communicate to the employer that a committee has been formed cannot be considered unconstitutional, nor can the authority attributed it in order to participate in the activities.

The numerical restriction is a sensible criterion insofar as extensive committees hinder agreements.

The necessary appointment of strike committee members from among workers of the centre affected by the conflict, correspond to the nature and the functions of the committee and is not unaware, in our interpretation, of the major role accorded to unions in the strike process. The committee is, on one hand, the body which defends and negotiates with a view to reaching a solution to the conflict. The strike committee is responsible for ensuring throughout the strike duration that the necessary safety and maintenance services are provided. From the perspective of both tasks, it is clear that workers affected by the conflict may be appointed as members of the strike committee. The participation of unions should be obtained through union

representation in the company, or from sectors affected by the conflict, all of which is contained in the framework of the union presence within the companies.

17. Art. 7 of the Royal Decree –Law 17/77 prohibits striking workers from occupying work centres or any other premises of the company. This rule has been contested in the appeal, although really without any proper arguments. The lack of arguments will enable the Court, as mentioned, to reject the allegation as totally gratuitous. Nevertheless, it would be appropriate to analyse the issue. First and foremost, it should be stated that the prohibition on occupying company premises cannot be interpreted as a norm prohibiting workers from the right to assembly which is necessary for implementing the right to strike, and also for resolving such conflicts. It is this right which should be clearly preserved, and its exercise should be carried out in accordance with the corresponding norms of the Workers' Statute It should also be mentioned that the occupation of premises becomes illegal when it infringes the right to freedom of other persons (for example, non striking workers) or the right to installations and assets. In all cases in which there is a serious danger of violation of other rights or disruption and disorder, the prohibition on remaining in premises may be decreed as a public order measure.

It is therefore appropriate to draw attention to the meaning in which art. 7 may be subject to a restrictive interpretation. Occupation should be considered to be an illegal entry to the premises or an illegal refusal to vacate the premises in the event of a legitimate order to do so, however not conversely, simply remaining at the work station.

The prohibition on occupation of premises is not in itself based on the right of property, however it is clear that this right is not in any way unknown. Nor does it modify the previous possessive situation, as the possession exercised by the immediate possessor is not modified in any way.

All the foregoing means that outside the cases in which the decision is advisable in order to preserve public order, the prohibition on occupation of premises is not a clear justification. Nevertheless, it remains within the framework of free action of legislature and it cannot be said that, insofar as it does not prevent the legally chosen mode of striking or the exercise of another right such as that of assembly, it is unconstitutional.

18. Art. 18 of the Constitution is very clear in the sense that the law should establish accurate guarantees for ensuring, in the event of strikes, maintenance of services which are essential to the community. This idea is reiterated in art. 37, when said precept alludes to the right to adopt measures of collective conflict. Precise guarantees are mentioned for ensuring the operation of essential community services with a formula which is literally identical to that of art. 28.2. Both precepts mean that the right of workers to defend their interests through use of an instrument of pressure in the process of production of goods or services, gives way when a more serious event occurs or may occur which the strikers may experience if their claim were not successful. It is clear that this occurs when the operation of what the Constitution calls “essential community services” are prevented or seriously hindered. Since those for whom such services are provided amount to the whole community, and the services are at the same time essential for this, the strike cannot impose the sacrifice of the interests of those for whom the essential services are destined. The right of the community to benefit from these vital services has priority over the right to strike. The restriction of this last right is fully justified, and by establishing this restriction the essential right of the content is not violated.

Art. 19, paragraph 2 of the Royal Decree-Law 17/77 states that when a strike is declared in companies involved in the provision of any public services, or those for which there is a recognised and pressing need, and there are circumstances of particular gravity, the government authorities may agree to take the requisite measures to ensure functioning of the services. This final regulation clearly correlates to the constitutional norm and therefore cannot be deemed to be unconstitutional. In some respects, art. 10 of Royal Decree- Law 17/77 is stricter than art. 28 of the Constitution, as it does not solely refer to essential services but also to services for which

there is a recognised and pressing need when, furthermore there are specially serious circumstances, a formula which it is not hard to include in the first premise. The final part of the precept (ensuring the operation of services and taking adequate measures for intervention) although at first sight it may appear somewhat broader than that of art. 28, is returned without too much difficulty to the constitutional text, in the sense that the services to be maintained are essential.

It is not necessary to define in a detailed manner here what should be understood by essential services. In an initial approach, such as that which this Judgment makes art. 28 of the Constitution, the interpretation of this formula would of necessity need to be non specific. It is therefore more appropriate for the Court to be making the corresponding declarations with respect to each one of the special cases which may arise in future through the corresponding review appeals.

Another problem is that relating to specifying what should be understood by guarantees of operation. The appeal responds by claiming that the need for measures or guarantees which ensure essential services should be at the discretion of the strikers on the basis of the alleged principle of self government. This thesis does not appear to have real support as it is difficult for the interested parties to be judge and party at the same time. It is indisputable that in many cases the moral solvency of the strikers leads to a serious offer of sufficient and effective guarantees especially in a mature trade unionism. Furthermore, to establish as a single rule the strikers' arbitration is an unsustainable thesis, as evidently this does not cover cases of insufficient offers or ineffectiveness of the offer of guarantees, nor those other cases in which there is a temptation to increase the strike pressure adding to the effects on the employer, the effects the strike has on users of public services. From here it may be deduced that the decision on adoption of guarantees of operation of the services cannot be placed in the hands of any of the parties involved, but it should be subjected to an impartial third party. In this way, to attribute to the governmental authority the power to establish the necessary measures for ensuring that minimum services will be maintained, is not unconstitutional in that it is well within the provisions of art. 28.2 of the Constitution and in addition, it is the most logical means of complying with the constitutional precept. The government authority is -this is obvious- restricted in the exercise of this power. It comes up against various constraints. Primarily, the impossibility that the guarantees in question remove the content of the right to strike or exceed the idea of essential content; and, subsequently, in formal terms, the possibility of establishing the action of jurisdictional protection of public rights and freedoms and review appeal before this Court against decisions.

Finally, the constitutionality of the attribution of the power to specify measures to the government authority is not arguable, if it is taken into account that the subject of the attribution is not generically the Public Authority but those State bodies which exercise, directly or through delegation, government powers.

19. Thus as the power which is attributed to the government authority for taking the requisite measures for guarantee of essential community services is based on art. 28 of the Constitution provided that the corresponding decisions are subject to the control of the courts o,f justice and to this Court by means of the appropriate review appeal, the same is not the case with the extraordinary power that the contested Royal Decree-Law grants to the Government to impose the resumption of work (see art. 10). It is true that art. 10 requires very specific cases for this power to be exercised such as the prolonged duration of the strike, excessively distant or irreconcilable positions of the parties, and a serious harm to the national economy.

In order to curb the use of a constitutional right in such a severe manner, the greater or lesser duration of the conflict and the comparison of the respective positions of the parties (more or less remote, more or less distanced from any possible reconciliation) are not useful parameters. Under no circumstances may what has been declared fundamental and basic by the Constitution

serve as an obstacle to the subsistence of the exercise of a right.
Nor may the formula “serious damage to the national economy” obstruct the right under analysis. It is an indeterminate concept which does not specify the interests of those who are to sacrifice their right. Their premise is totally unspecified and provides a clear margin of arbitrariness. If the strike is a social instrument elevated to the rank of fundamental right, its exercise in itself is never the sole cause for serious harm, but rather other concomitant actions or omissions.
The same cannot be said of the recognised faculty of the government to institute compulsory arbitration as a means of ending the strike. The mere fact that it is compulsory does not prevent from being genuine arbitration provided that the condition of impartiality of the arbitrator is guaranteed and that it is the ideal means for settlement in exceptional cases such as those described in the precept.
20. Section 7 of art. 6 of Royal Decree-Law 17/77 states literally that "... the strike committee should guarantee during the strike the provision of services required to ensure the safety of persons and assets, maintenance of premises, machinery, installations, raw materials and any other requirement needed for the subsequent resumption of corporate activity". The precept adds that "it is the employer's duty to appoint the workers who will carry out such services".
The appeal attacks this precept considering that it is a question of “functional restriction” which cannot be considered implicit in the constitutional formulation of the right, and which contradicts the letter and spirit of our primary regulatory text. These lightweight arguments do nothing to convince. The fact that despite the strike, security measures must be taken to ensure the safety of persons in cases in which such measures are necessary, and measures for maintenance and preservation of premises, machinery installations and raw materials, in order for the work to resume without difficulties as soon as the strike ends, is something which cannot be seriously questioned. The strike is a right to pressurise the employer, placing the workers outside the employment contract, however it is not, nor should it be at any time, a means of producing damage or deterioration to capital assets. The safety measures correspond to the employer’s authority, not so much in terms of his role as owner of the assets, rather in terms of his condition of employer and in virtue of which, as a consequence of the powers of administration granted to him within the company. The enforcement of safety measures is the task of the workers and this is one of the sacrifices imposed by the exercise of the right to strike, since it is clear that the right to strike is not without some compromise as counterweight. If the surveillance of the installations and material is the task of workers, it remains to decide whether the power to appoint specific workers to carry out those duties should or should not be granted to the employer. Section 7 of art. 6 of Royal Decree-Law conflicts with authority by requiring that the strike committee guarantees services and then imputes the power to specifically appoint workers to the employer.
Nevertheless, a possible contradiction is not in itself unconstitutional. What is, however, unconstitutional is the manner in which the appointment unilaterally made by the employer deprives appointed workers of a right, which is fundamental in nature. Therefore, section 7 of art. 6 is not wholly unconstitutional, however its final paragraph is. The adoption of safety measures is not the exclusive competence of the employer but also of the strike committee since it is involved in ensuring them with the inevitable result that the strike in which the committee fails to provide this participation could be considered illegal and abusive.
21. Section b) of art. 11 of the Royal Decree-Law 17/77 considers strikes of solidarity or support to be illegal and the appeal claims that this norm is unconstitutional. The illegal nature of a solidarity strike may be sustained in abstract terms based on the idea that the infringement of the work contract which is always the result of a strike, and the subsequent non-compliance with obligations, are only justified when the non compliant striker does so to defend claims affecting his own work relation with the employer and which the employer is able to address.

The admission of strikes of solidarity permits the indefinite extension of conflicts and the intervention therein of an increasing number of persons who are not the effective subjects of the conflict. In Spain's Constitution a similar position could be literally supported by art. 28.2 when it is stated that it recognises the workers' right to strike in defence of their interests. The precept permits the conclusion that the interests defended by means of a strike should be the interests of the strikers.

However, a broader interpretation is also possible. When art. 28 mentions a workers' strike, it does so to exclude from constitutional protection strikes of other types of persons such as small business entrepreneurs, self employed workers and other similar types of person, in addition the interests defended through the strike do not necessarily have to be the strikers' interests, but the interests of the category of the workers. Furthermore, the fact that striking workers may have an interest which makes them act in solidarity with other works cannot be denied. The fact of unionised strike requires recognition of the strike convened by a union in the defence of claims which the union considers as decisive in a given moment, which includes solidarity between union members.

As a result of the foregoing premises, it is possible to examine the question raised by section b) of art. 11 of the Royal Decree-Law 17/77. Despite the grammatical draft, this norm permits strikes of solidarity when the solidarity is founded directly on professional interests of those promoting or sustaining it. The requirement that the influence of professional interest should be direct, restricts the essential content of the right and imposes the qualification of unconstitutional on this adverbial expression.

Finally, it is necessary to specify that the adjective professional, which the text under analysis uses, should be understood to refer to the interests which affect workers as such not, naturally, as members of a specific employment category.

22. The appeal proposes - and there is no other option but to confront it - the problem of relations between art. 28 and art. 37 of the Constitution. According to art. 28.2 "The right of workers to strike in defence of their interests is recognised" adding that "the law which regulates the exercise of this right shall establish precise guarantees to insure the maintenance of essential services of the community." In turn, art. 37.2 states that "the right of the workers and employers to adopt measures concerning collective conflict is recognised" and it goes on to state that the law regulating the exercise of this right, without prejudice to the limitations it may establish, shall include precise guarantees to insure the functioning of the essential services of the community It would appear prima facie that strikes are one of the possible measures of collective conflict. It is therefore necessary to establish relations between the two articles and the field of application of each. In order to resolve this difficult issue some commentators consider that there is an unnecessary partial reiteration occurring in both precepts. Nevertheless, the thesis that art. 37 is partially reiterative of art. 28 is not, in our view, correct. From an extensive discussion of both precepts, when creating the constitutional text it may be indisputably assumed that the constitutional legislators wished to separate the right to strike from the other possible conflict measures. Apart from this, it has always been recalled that, when commenting on the two precepts that the first of these is part of section 1 of chapter Two which addresses rights and freedoms, whereas the second, which is in section 2 of Chapter Two, simply mentions citizens' rights. This systematic placement has obvious consequences in respect of the future legal system of each right, that of strike in art. 28 and the adoption of measures of collective conflict in art. 37. Thus it is clear that the former, in respect of the content of section 1 of chapter Two, is guaranteed with the legal reserve of the organic law, admits jurisdiction of the ordinary courts through preferential and summary procedure as indicated in art. 53 and the review appeal before this Court. Furthermore, constitutional legislature considered strikes to be a fundamental right whereas the right to take measures of collective conflict was seen as a right which is not accorded that category. From the foregoing it is clear that the thesis of partial

reiteration should be rejected and that it is necessary to advocate a separation between the precepts, which clearly occurs from the perspective of the workers and basically consists of a) art. 37 which authorises them to undertake other measures of conflict other than strikes, so that striking is not the only measure of collective conflict and b) art. 28 does not necessarily link strike with collective conflict. It is true that all strikes are extremely closely related to collective conflict, however, in the configuration of art. 28 the strike is not a right deriving from collective conflict, but rather a right of an autonomous nature. Furthermore, the restrictions which art. 37 permits are greater than those permitted by art. 28, as it literally mentions the limitations which may be established by the law.

The fact of situating measures of collective conflict on different planes (art. 37) and the right to strike (art. 28) which is set apart and accorded autonomy in respect of these, lads to the conclusion that the Spanish Constitution and therefore, the legal system in Spain, is not based on the principle that in German is referred to as Waffengleichheit, also known as Kampfparität, that is, equality of arms, parity in combat, equal treatment or the parallel between the measures of conflict arising in the field of employees and those which originate in the business sector In view of this comparison it has been correctly pointed out that there are very slight differences between the types of cessation or disruption of work originating in either sector. In particular, this question is raised - and in the appeal it is directly brought up -with respect to what is currently known as "lock-out". An attempt has been made to establish a parallel between both practices by seeing the lockout as a strike of employers. Nevertheless, as we have mentioned, the differences between these practices are important, and from these it may be deduced that the legal system is different in each case. This has undoubtedly been the basic idea of the constitutional legislators who have recognised strike as an autonomous fundamental right in art. 28 whereas they included lockout in the general conflict measures in art. 37.

The foundation of this line of thought, as we have stated, is based on the fact that the differences between each practice are considerable and remove any possibility of parallelism. The first difference refers to freedom of work. Strikers are salaried individuals who have freely decided to take part in a protest movement or, if it is preferred, what may be termed a situation of conflict. Opposed to this, the decision to carry out a lockout affects not only conflictive personnel but also peaceful personnel whose rights and freedoms are seriously infringed.

Against the comparison between strike and employer's lockout it may be said that the parallel corresponds to the era in which these practices were prohibited. It is true that both are forms of coercion; however, there is no functional identification of both terms. Lockout is not an "employer's strike". Its practice only has collective significance in terms of the plurality of the workers affected. There is no protest in a lockout, simply defence.

The differences are also very marked in respect of the basis of each practice. As has correctly been stated, strikes are a counterweight designed to permit persons in a situation of wage dependency to establish a new relation of forces in a manner which is more favourable to them. It tends to re-establish the balance between parties with unequal economic power. In contrast, lockout is a greater complement of power granted to a person who already held power beforehand. For this reason the legal system cannot be identical. In addition, it should be indicated that, on occasion, lockout is a distortion which is used as a sanction of the strike once it is over. For example, if after a strike of ten days, the employers were to close for five days. In this case, to the extent that it is financially penalised (with the loss of salaries) the fact of having called a strike or having taken part in one, the result is legally inadmissible, because the use of a constitutional right can never be the object of sanction. The same occurs when lockout is used as a measure by virtue of which the employer attempts to render ineffective the decision of the strikers to end the strike and return to work. From this point it may be concluded that in all cases in which lockout or closure by the employer removes the content of the constitutional right to strike or is raised as a barrier which prevents striking, the lockout cannot be considered

as legal, because a simple civic right is denying a fundamental right.
The same cannot be said in those cases in which the power of closure is granted to the employer in the guise of a power of law and order. It is considered that the employer has the power of order and administration and a duty to ensure order within the company when it a situation endangering life, physical integrity, installations or assets could be created due to the disorganisation arising alongside the measures of conflict adopted by workers. From this it is possible to conclude that it is not contrary to our Constitution to accord power of employer's lockout as an administrative power in order to ensure the integrity of persons and assets, provided that there is a definite willingness to open the premises once the risk is over and that any type of closure which detracts from the right or prevents the right to strike is contrary to the Constitution. Taking the argument a stage further, it is possible to conclude that the power of employers to close down the company acknowledged in art. 12 of Royal Decree-Law 17/77 is not unconstitutional if it is understood as the exercise of a power of an employer aimed exclusively at conserving the dignity of persons, and the assets and installations, and if it is restricted to the necessary time required to remove such causes and to ensure the resumption of the activity as stated in art. 13.
23. The claim against Title II of the Royal Decree-Law which includes arts. 17 to 26 thereof, enumerated as a block and with extremely scant support or foundation. It is simply considered that the aforementioned regulation contradicts the essential content of the right recognised in art. 37.2 of the Constitution, arguing that this right is enshrined in recognition of the principle of employment self governance which excludes all intervention of the Administration in this matter. On this basis, the procedure described in arts. 21 and subsequent articles of the Royal Decree-Law is attacked in a particular manner in that it "presumes a regulation based on heteronomic principles opposing the autonomic principle" and in a particular way binding decisions for the same reason.
In order to decide on this point, it is appropriate to emphasise that the unconstitutionality of these precepts is supposedly based -as we have mentioned - on section 2 of art. 37 of the Constitution and the idea that there is a principle of self governance in that precept. In contrast to the previous observation it may be said that even when it was admitted that the Constitution fully acknowledged the principle of self governance, this does not mean that said principle may not contain some exceptions. The autonomic principle does not compare, as the appeal states, to a heteronomic principle, as two contradictory principles cannot exist as principles. The autonomic principle may have some exceptions based on heteronomic criteria. Something like this occurs in fact in general litigation matters, where matters are channelled through antonomasia. Its regulation is subject to private autonomy and in this respect it is possible to speak of self governance, which obviously presents exceptions considering self governance as self regulation and in no case as a necessary appeal or as vigilante justice, as a similar conclusion is not sustainable given that the regulation of self governance should be assumed precisely from regulations on agreement or negotiation.
Apart from the foregoing it should be noted that the possibility of using the option of collective conflict procedure, far from being an imperative is considered as an optional channel under law. Workers may use the collective conflict procedure. If the option is discretionary it cannot be considered to restrict any right, insofar as the only thing it does is extend the possibilities of action of the interested parties.
The question raised by the appeal is thus reduced to defining the possible unconstitutionality of the so called “binding decisions”.
24. The binding decision, which is one of the chief points of attack of unconstitutionality in this appeal, is a concept with rather vague profiles and thus it would perhaps be helpful to attempt to clarify it by establishing the development ofour system in terms of this question and by defining the present regulatory system in this respect.

An examination of the historic background leads to our conviction that there have been two groups of norms in Spanish employment law which have given rise to two different –or at least unequal– lines of development. One of these has been the regulations on collective agreements and the means of resolving failed collective bargaining; the other is what was formerly known in our law as collective work conflicts and the procedures for resolving those conflicts.

Collective agreements were first regulated by the law of 24 April 1958. This law contained what were known as specific binding provisions and specific norms of regulation, which usually came to be known at a later date as "binding regulations". These norms were issued on the initiative of the Authorities in cases in which one of the parties did not agree in negotiations, or when any of the parties considered it impossible to reach a settlement.

The possibility of issuing regulations or provisions was also included in the Decree of 20 September 1962, in which the Authorities' arbitration faculties were regulated in respect of conflicts in both bargaining agreements and outside them. Said Decree contained for the first time in Spanish law the idea of binding decision, although in truth it should be stated that in the Decree of 1962 this rather superfluous expression was not used (hypothetically a decision will be binding if it is a true arbitration decision). The Decree of 1962 spoke simply of issuing the "corresponding decision" which it stated, as is obvious, would be binding.

Later, the Decree of 22 May 1970 which also addressed employment conflicts, once more regulated so-called arbitration powers of the Authorities, distinguishing between the types of conflict according to their origin and purpose. Pursuant to art. 7, if the questions arose from discrepancies on the application of legal or conventional norms, the employment authority could opt either to refer the action to the Employment Tribunal or to issue a binding decision. This was a decision on the interpretation of the collective agreement. A different hypothesis was that of the conflict between companies and workers who were not bound by a collective agreement or by binding regulations. For this case, according to art. 8 of the Decree 1970, the employment authority could opt between issuing a decision or requesting that the union organisation create a deliberation committee in order to arrange a agreement.

The next stage was developed in the Law on Collective Agreements of 19 December 1973. This law specifically regulated the case of failure in collective bargaining agreements, with the possibility of voluntary arbitration (see art. 15.1) and finally attributing, to the employment authority, the faculty of issuing a "compulsory arbitration decision" aimed at all those bound by the agreement, if one has in fact been made.

The decision as a means of resolving conflicts was regulated in Decree-Law 4/75 of 22 May. A basic distinction was made between conflicts addressing their origin and their purpose. According to art. 15 a), if the conflict derived from discrepancies in the application of an agreement, the employment authority could choose to issue a decision or to submit the case to the Employment Tribunal. Paragraph b) of the same precept stated that if the conflict involved establishing or amending a collective agreement, the employment authority would issue a binding decision resolving all the questions raised.

We arrived in this manner at Royal Decree-Law 17/77. In this text, binding decisions appear in both Title II which addressed conflicts, and Title III which addressed agreements. In the first line, that of conflicts, art. 25 distinguished between "conflict deriving from discrepancies relating to the interpretation of a pre-existing norm", in which case the conflict would be submitted to the Employment Tribunal and "conflict in the modification of work conditions" in which the employment authority issued the binding decision. Secondly, Title III of the Royal Decree-Law 17/77 once more regulated specific precepts of the Law on conventions of 1973. The wording of art. 15. is significant in this respect. According to this text, if the parties did not reach an agreement in negotiating a collective agreement, they could appoint one or several arbitrators to act jointly in the event that no agreement or decision was settled through voluntary arbitration, they could use the collective conflict procedure (unless the right to strike was exercised) and

through the conflict procedure obtain a binding decision from the Authorities.
As a result, the situation following Royal Decree-Law 17/77 was as follows: in conflicts deriving from disputes over interpretation, the procedure was dealt with through the Employment Tribunal; conflicts on the modification of working conditions were settled through conflict procedures and thus through the employment authority which issued a binding decision. Within the framework of conflicts on the modification of working conditions, one of these -perhaps the most significant- was determined by breakdown of negotiations of the collective agreement.
With the approval of the Workers' Statute, the previous legality was amended. As we stated above, the Workers' Statute has not repealed Title II (arts. 17-26) of Royal Decree-Law 17/77 however it has, in contrast, expressly repealed Title III (art. 27) of the Law 38/1973 which was newly worded pursuant to art. 27, and in particular art. 15 of that Law as drafted in 1977. The Workers' Statute, as has also been mentioned, did not regulate on collective conflicts. It has, on the contrary, regulated collective agreements although without referring to the possibility of breakdown in negotiations. Therefore, art. 25 of Royal decree-Law 17/77 subsists, and the norm contained therein on collective conflicts for modifying working conditions. A systematic interpretation permits the inclusion in this type of conflict of the special conflict of negotiation breakdown which may thus be included within the scope of art. 25.
In this way, the problem of constitutionality of art. 25 of Royal Decree-Law 17/77, and as a result that of 26, may be proposed in two possible ways: one, concerning the relation with the right to strike in order to ascertain whether it unfairly limits this right as a fundamental right recognised in art. 28 of the Constitution; and secondly in respect of the possible violation of art. 37 of the Constitution and the principle of collective autonomy in the framework of labour relations.
In the first case, there would not appear to be a contradiction, sine art. 17.2 of Royal Decree-Law 17/77 is clear in the sense that workers cannot exercise the right to strike when they have used the procedure leading to binding decision. In this case, the impossibility of exercising the right to strike arises from having set up the conflict procedure. In contrast, in those cases in which the conflict procedure is initiated by employment representatives , the strike would not be prevented. Art. 15 of the Law of 1973 stated this in the case of breakdown of collective bargaining, and thus it should be understood today. It is possible to use the conflict procedure if the right to strike is not exercised.
The second question is more difficult to resolve, that is, the extent to which articulation of compulsory public arbitration for resolving conflicts on the modification of working conditions and, in particular the conflict arising from breakdown of bargaining agreement, may contravene the right to negotiation pursuant to art. 37 of the Constitution.
In order to resolve this question, it is not sufficient, in our opinion, to reach the conclusion that this compulsory public arbitration is not genuine arbitration, because to a certain extent at the same time it is public and compulsory in nature. Beyond words, what actually exists is submission to a decision of an administrative body. It is true that this intervention and this decision are historically residual heirs, as we have attempted to highlight above, to a system of administrative intervention which clearly restricted the rights of those subject to the authorities. In the system of the Royal Decree-Law 17/77 in virtue of the actual development that the Spanish employment legal system had experienced, the process did not occur as it had done according to previous regulations: the Authorities do not act officially (see art.18) and use of collective conflict procedures is not necessary but rather optional (see art.17). In addition to the fact that there is no public initiative, the binding decisions, as may be seen from art. 26 need to decide the question between the positions of the parties in conflict respecting the principle of congruence (see art. 26) and are subject to claim through jurisdictional channels. This line of analysis leads us to the question of the constitutional legality that powers which, at first sight would appear to be jurisdictional since they are concerned with settling conflicts, are in fact

entrusted to the Administrative Authorities against the principle of division of powers. This line of reasoning would not appear to go any further, and does not respond to the appellants' claim, as they base their complaint on the violation of art. 37 of the Constitution and on the idea that said article establishes the right to collective bargaining in terms which no other instrument may replace in respect of employment regulations. This thesis cannot be sustained as it would be paradoxical if there were a section of absolute and total autonomy within an organisation as in the case of the State, which, by definition, determines a heteronomic factor for its subjects. What seems more likely is something similar to that which occurs with the principle of autonomy in the field of private law. It is a principle of law presiding over legal life, however, there is no disadvantage to there being occasional exceptions provided that the restriction they impose on individual freedom may be justified.

This justification may be the damage that the simple play of particular wishes and situations from which they derive may cause to general interests as occurs, for example, when the duration of a conflict entails consequences which justify compulsory arbitration pursuant to art. 10 of this same Decree-Law, as we have previously interpreted this precept. However, in the case of arts. 25 b) and 26 they do not actually address arbitration, and even if this were the case, nor do the elements justifying the restriction to the right to negotiate which may be established without affecting the constitutional content contained in art. 37 of the Constitution.

25. The appeal attempts to achieve a declaration of unconstitutionality for additional provision one of Royal Decree-Law 17/77 which states thus: "the terms of the present Royal Decree - Law in matters of strikes is not applicable to civil personnel dependent on military establishments". The first consideration suggested by the claim that this text is unconstitutional is the same as that made previously in respect of some other negative regulations, namely that a norm which is restricted to indicating cases to which a body of regulations is not applicable cannot in itself be unconstitutional, since the fact that some norms which should be considered special do not apply in a particular case, is not contrary to the Constitution. The question of constitutionality or unconstitutionality would only have any sense if this norm was related to another so that some normative conclusion could be derived from the interplay of both rules. Furthermore, it is something which necessarily requires deduction, and a deduction which should coincide with the context surrounding the text in question. In 1877 the only legal strikes were those to which the Royal Decree-Law was applicable It is therefore clear that additional provision one had a prohibitive value. Nevertheless, following promulgation of art. 28 of the Constitution, the exclusion of the application of a specific regulation to some extent has this meaning. Finally, it should be noted that military establishment cannot be confused with military administration.

It is an indisputable fact that personnel subject to employment relations linked to public businesses or the Administrative authorities have the right to strike. This right should be placed in connection with the various categories of workers in this branch which regulatory norms establish today in respect of their freedom of association and should, furthermore, as is logical, be considered without prejudice to the fact that in particular cases it may be understood that the services provided by this personnel are essential services, in such a way that in those cases the right to strike may be restricted in virtue of the measures for intervention for their maintenance.

26. The appeal attacks additional provision four of the Royal Decree-Law which reworded art. 222 of the Penal Code, in which civil servants entrusted to provide public services, as well as employers or workers who, in an attempt to act against State security, suspend or alter regularity in the work place, are considered to be acting criminally.

The type of offence described cannot be considered unconstitutional if it is recalled that what is penalised is an assault on State security that is, the purpose is to preserve the function of the constitutional order, free development of state bodies and the peaceful exercise of the rights and freedoms of citizens. Crimes against the State, which is attacked as sovereign state and as the structure of the legal and political life of society are, unquestionably crimes which, when

perpetrated require a specific mens rea, namely the desire to subvert security of the State or as has also been mentioned, offence of tendency, as has been constantly reiterated in case law of the courts. In these terms, the constitutionality of the type of crime cannot be questioned.

27. The appeal brief petitions the court to deliver a Judgment declaring a series of concrete provisions to be unconstitutional and invalid, although considered as a block, and it adds "those others that the Court considers appropriate through connection or consequence". This is the last of the issues raised in the appeal which we are required to address. What has occurred in practice up to now would permit the inference that in future a similar petition may become a style clause. In this case the Court could simply reply by stating that it finds no other norms to which it can extend its declaration. In the present case the issue requires some comments.

The State Attorney has noted, with considerable acuity, that art. 39.1 of the Organic Law of this Court, which defines the power to extend the declaration of the Court to other norms differing from those which are specifically contested, requires the concurrence of three requisites, namely, 1.- that the Judgment declare all or any of the contested precepts to be unconstitutional; 2.- that there should be a connection or consequence in respect of the precepts declared unconstitutional and those others to which unconstitutionality is extended or is propagated and 3.- that the latter belong or are included in the same law, provision or acts with the force of law.

The observance of art. 39.1 of the Organic Law of the Constitutional Court imposes a limitation to the Court's authority, which signifies that the only norms to which the declaration of unconstitutionality may be extended should be included in the Royal Decree-Law 17/77. However, said Royal Decree-Law has been expressly attacked in the appeal in terms of Titles I and II (arts. 1-26) and Additional Provisions 1 and 4. The Workers' Statute (Law 8/80) has expressly repealed in Royal Decree-Law 17/77 Titles III, IV, V and VI, final provisions 2,3, and 4, Additional Provision 3 and the transitory provisions. In this way, adding those which are expressly accused of being unconstitutional, and others which have been expressly repealed, only final provision 1 and additional provision 2 remain for the Court to exercise its power to extend the declaration. And it is clear that neither of the two merit a declaration of unconstitutionality. Final provision 1, because it contains a clause repealing the previous legal norms and additional provision 2 because it was restricted to maintaining the origin of the cassation appeal with respect to Judgments issued in proceedings involving dismissal of workers with elected appointments in trade unions, which under no circumstances may be considered unconstitutional.

RULING

In the light of the foregoing, the Constitutional Court WITH THE AUTHORITY CONFERRED BY THE CONSTITUTION OF THE SPANISH NATION

Has decided:

1- To dismiss the grounds of inadmissibility proposed by the State Attorney.

2. To partially accept the appeal, and in virtue of which the following declarations on Royal Decree-Law 17/77 are appropriate.

a) That art. 3 is not unconstitutional provided that the exercise of the workers' right to strike, may be exercised by them personally, by their representatives, and by union organisations established in employment sector to which the strike extends, and that the requirements established in said article that the agreement to strike be adopted in each work centre (section 1) are unconstitutional, as is the fact that in a meeting of representatives a specific number are required to attend (section 2 a) and that the initiative for declaring a strike should be supported by 25% of the workers.

b) That section 1 of art. 5 is not unconstitutional in respect of strikes which do not extend

beyond a single work centre, but it is, conversely, when the strikes include various work centres.
b) That section 7 of art. 6 is unconstitutional in that it attributes exclusively to the employer the power to appoint workers during the strike in order to maintain the premises, machinery and installations.
b) That paragraph 1 of art. 10 is unconstitutional in that it entitles the Government to impose the resumption of work, however, not when it entitles it to initiate compulsory arbitration, provided that the requirement of impartiality of the arbitrators is respected.
e) That paragraph 2 of art 10 is not unconstitutional in attributing to the government authority the power to issue the measures required for determining the maintenance of essential community services, in that the exercise of this power is subject to the jurisdiction of the courts of justice and to review appeal to be heard by this Court.
f) That the expression “directly” in section b) of art. 11 is unconstitutional.
g) That section b) of art. 25 and art. 26 is unconstitutional
3. To dismiss the remaining claims lodged by the appellants.
This judgment shall be published in the "Boletín Oficial del Estado" (Official State Gazette)
Given in Madrid on the eighth of April nineteen hundred and eighty one.