Constitutional Court Judgment No. 48/2005, of March 3 (Unofficial translation)

CONCLUSIONS OF LAW

1. The present request for a ruling of constitutionality was referred to this Court by the Administrative Division of the Superior Court of Justice of the Canary Islands with regard to la Canary Islands Parliamentary Law 2/1992, of 26 June concerning the declaration of public utility and the compulsory expropriation of buildings number 5 at XXX Street and numbers 44 and 46 at XXX Street in Santa Cruz de Tenerife, in order to proceed with an enlargement of the seat of the Parliament of the Canary Islands, and that law's possible violation of Article 33.3 of the Spanish Constitution.

The questioned law comprises two articles. The first provides that "for the purpose of enlarging the seat of the Parliament of the Canary Islands, the compulsory expropriation in the public interest is hereby declared with respect to buildings number 5 at XXX Street and numbers 44 and 46 at XXX Street in Santa Cruz de Tenerife, as shown on the block map attached as an appendix". For its part, the second article provides the following: "The Government of the Canary Islands is hereby empowered, at the request of the Officers of the Parliament of the Canary Islands, and after having considered the opinion of the political parties spokepersons' committee, to declare in the public interest of other buildings adjacent to the seat of Parliament, to be used for its enlargement".

In implementation of this law the Government of the Canary Islands issued Decree 142/1993, of April 30, declaring urgent the occupation of the property and rights affected by the compulsory expropriation initiated by the Department of Economy and the Treasury of the Government of the Canary Islands with regard to the enlargement of the seat of that autonomous community's parliament. The property and rights to which that declaration of urgent occupation refers are exclusively those listed in the first article of Canary Islands Parliamentary Law 2/1992.

Within the framework of both of the consolidated administrative proceedings filed against that Decree, the court decided to refer this question for a ruling of constitutionality, since it considers that the Decree is a direct consequence of the aforementioned Canary Islands Parliamentary Law 2/1992, "to the extent that if it were declared unconstitutional, the Decree in question would have to be annulled".

The doubts concerning the constitutionality of the questioned law are limited to its compatibility with Article 33.3 of the Constitution considered expressly in the judge's request for a ruling on its constitutionality, since he deems that the legal dispute as to whether expropriation laws contravene Article 24.1 of the Constitution "has already been decided by the Constitutional Court, although with dissenting votes". In that regard, the unconstitutional points would be the following 1) Canary Islands Parliamentary Law 2/1992 is a specific expropriation law passed not to address "a specific situation", but rather a "general or common situation" (the enlargement of the seat of the Autonomous Community Parliament into buildings concerning which an amicable agreement was not reached with their owners), which would justify, if warranted, using the Administration's ordinary powers of expropriation. For that reason, resorting to legislative expropriation in the specific case analyzed "constitutes a contravention of the so-called 'guarantee in expropriation proceedings' set forth in Article 33.3 of the Constitution, when it orders that expropriations be carried out 'in conformance with the provisions of the laws'". 2) The use of expropriation laws is only constitutionally admissible in exceptional cases "which for their extraordinary significance and complexity" cannot be remedied by using the Administration's normal expropriation procedures. In that regard, the questioned Canary Islands Parliamentary Law addresses "a situation that is not out of the ordinary", ignoring the general expropriation procedures provided for in the Law on Compulsory Expropriation, thus constituting an attack "against Article 33.3 of the Constitution, since the appellants have been

expropriated, depriving them in a normal and unexceptional case, of the guarantees that in the expropriation of their property they would have been provided in the procedure regulating ordinary administrative expropriations. 3) Canary Island Parliamentary Law 2/1992, having been passed to address a situation that is in no way exceptional, "lacks any reasonably basis, or at least, is disproportionate with regard to the grounds for expropriation, which must be to serve a public purpose or be in the public interest, and the necessity of occupying a given property, thus resulting in a violation of Article 33.3 of the Constitution by having arbitrarily created a situation in which the measures adopted were neither reasonable nor proportionate with respect to the intended objective or the circumstances in question".

After the court a quo articulated the terms of the debate as to whether Canary Islands Parliamentary Law 2/1992 is constitutional, both the State Attorney and the Legal Advisors for the Parliament and Government of the Canary Islands have petitioned this court to rule that it is constitutional, while the Chief Public Prosecutor requests that it be deemed unconstitutional.

2. Prior to examining the merits of the case it is necessary to offer a few observations with respect to the impact on this case of European Court of Human Rights case law established in its Judgment of June 23, 1993 in Ruiz Mateos v. Spain. On previous occasions we have rejected that this case law should imply "a radical change in our criteria with respect to the literal meaning of Article 37.2 of the Organic Law of the Constitutional Court (Constitutional Court Decision 378/1993, Conclusion of Law No. 2)" (Constitutional Court Decision 174/1995, of 6 June, Conclusion of Law No. 3), since the European Court, based on accepting the regulation set forth in that precept, merely required that persons affected by a law passed for a specific case be heard, and since then laws of that nature have not been questioned before this Court, although attempts to do so have been made by parties in proceedings against laws that may have affected their rights and interests more or less directly, although never individually and exclusively, which is the definition of "individualized laws" passed to address a specific case.

In this case the questioned law is a law passed for a specific case and, pursuant to European Court case law, those affected by this law should have been made a party to these proceedings. However, it is true that the literal content of Article 37 of our Organic Law is today still the same as when the European Court rendered its judgment. This does not imply —but rather confirms the acts of this Constitutional Court in cases such as Constitutional Court Judgment No. 245/1991, of 16 December— that it is not possible to interpret our governing Law when warranted by non-postponable considerations in defense of fundamental rights, particularly when the contravention of such has been formally recognized by the European Court of Human Rights. In that regard, we are bound by our Organic Law to the extent that until a specific claim is brought before us that requires applying the European Court's case law, only if the interested parties had sought to enter an appearance in this proceeding, could we have established the necessary procedural means for their doing so.

3. Prior to an examination of the merits it is likewise necessary to define the object of this case, both with respect to the legal provisions questioned herein, as well as the constitutional provisions to apply in determining whether they are constitutional or unconstitutional.

a) The Administrative Division of the Superior Court of Justice of the Canary Islands questions Canary Islands Parliamentary Law 2/1992 as a whole. However, that Law contains two articles that are not equally relevant for the resolution of the consolidated administrative proceedings on which the present constitutional proceeding is based. Thus, although the first of the articles declaring the necessity of occupying three specific buildings satisfies the relevancy requirements of Article 35.2 Organic Law of the Constitutional Court, the same cannot be said of the second article, which empowers the Government of the Canary Islands to declare in the public interest and order the occupation of other adjacent buildings.

It is this Court's established case law that relevancy "is one of the essential requisites of any request for a ruling of constitutionality, since it guarantees concrete review of the

constitutionality of the law, preventing the court from converting that review into abstract judicial review, for which it is not empowered. The decision concerning relevancy 'has been defined by this Court as the means for ensuring that the judgment in the legal proceeding depends on the validity of the questioned norm (representative of many others, Constitutional Court Decision 93/1999, of 13 April, Conclusion of Law No. 3, and the decisions cited therein)' (Constitutional Court Decision 21/2001, of 31 January, Conclusion of Law No. 1) and constitutes one of the essential conditions for admitting a judge's request for a ruling, since to the extent that it guarantees a necessary interrelationship (Constitutional Court Judgment No. 28/1997, of February 13, Conclusion of Law No. 3) between the judgment rendered in the proceeding a quo and the validity of the questioned provision, it ensues the effective implementation of the aforementioned concrete judicial review of the constitutionality of the Law" (Constitutional Court Judgment No. 64/2003, of 27 March, Conclusion of Law No. 5).

To determine whether the court requesting this ruling has correctly judged the case's relevance, it is necessary to examine the underlying consolidated judicial proceedings: The lawyers for the appellant individuals and entity appealed the Government of the Canary Islands' Decree 142/1993, of 30 April, which provided for the urgent occupation of the property and rights set forth in an appendix thereto, and which referred exclusively to the buildings identified in the first article of Canary Islands Parliamentary Law 2/1992, without there being any connection between the decree under appeal and "other buildings adjacent to the seat of Parliament" referred to in the second article of the Canary Island Parliamentary Law, with respect to which a possible declaration of urgent occupation has been differed to a future resolution of the Government of the Canary Islands. In summary, the request for a review of constitutionality with respect to the first article of the Canary Islands Parliamentary Law meets the relevance criteria, since there is undoubtedly a relation of dependence or a "logical and direct" causal link (Constitutional Court Decision 26/2002, of 26 February, Conclusion of Law No. 2) between a judgment with respect to the validity of the indicated legal precept and the one that the court must render in the administrative proceedings. If the legal precept in question is deemed unconstitutional, in principle judgment would have to be rendered in the administrative proceedings in favor of the appellants, thus declaring the Decree under appeal null and void. However, the second article of the questioned Law does not meet the relevance criteria, since it is in no way applicable to the decision concerning the administrative appeals, in the sense that there is no logical legal connection between it and the Canary Government decree under appeal, so that any future declaration of constitutionality or unconstitutionality of that legal precept would have no legal effect on the validity or invalidity of the Decree.

b) The parties that filed the administrative appeal petitioned that a ruling be requested with respect to the constitutionality of Canary Islands Parliamentary Law 2/1992 for its possible violation of Article 14 and, particularly, Article 24.1 of the Constitution. The court likewise heard the parties with respect to Article 35.2 Organic Law of the Constitutional Court so that they could express their opinions concerning its possible infringement of Articles 24.1 and 33.3 of the Constitution. In addition, the request for a ruling of constitutionality was admitted to prosecution for the Canary Island Parliamentary Law's possible contravention "of Articles 24.1 and 33.3 of the Constitution" (Order of 18 February 1998). However, the fact is that the administrative court finally decided to request a ruling of constitutionality for Canary Island Parliamentary Law 2/1992's possible conflict exclusively with respect to Article 33.3 of the Constitution, rejecting any possible violation of the right to the protection of the courts. Thus, in principle the constitutional precept to be considered in this proceeding shall be limited to Article 33.3 of the Constitution. Naturally, this is without prejudice to the fact that, when necessary, we can base our judgment of constitutionality on any other constitutional precept, a possibility which, being expressly provided for in Article 39.2 of the Organic Law of the Constitutional Court, is a manifestation of the principle iura novit curia and a necessary instrument to better

facilitate the task of refining the legal system vested in the jurisdiction of the Court in order to adequately guarantee the primacy of the Constitution (Constitutional Court Judgments Nos. 113/1989, of 22 June, Conclusion of Law No. 2; 46/2000, of 14 February, Conclusion of Law No. 3; Constitutional Court Decision 1393/1987, of 9 December, Conclusion of Law No. 2).

4. Having focused the debate in these terms, before analyzing the specific grounds of unconstitutionality alleged by the court it is advisable to examine the constitutional provisions concerning expropriation. Compulsory expropriation, as an exceptional limitation on the right to own private property, has evolved radically, and its essential features were described in our Constitutional Court Judgment No. 166/1986, of 19 December: "Compulsory expropriation is conceived in the origins of the liberal State as the ultimate limit on the natural, sacred and inviolable right to private property and was initially confined to property to be used for the purpose of building public works. The transformation that the idea of a social State introduced in the concept of private property by assigning it a social function with the effect of limiting its content and the increasing complexity of modern life, especially in the economic sector, prompted an essential review of the institution of compulsory expropriation, which evolved from a passive limit placed on the absolute right of property to an active instrument at the disposal of the public authorities in the fulfillment of their objectives of organizing and regulating society with respect to growing demands for social justice, against which the right to private property only guarantees its owner, vis-à-vis the public interest, the economic content of ownership, resulting at the same time in a process of extending compulsory expropriation to all categories of rights and interests in property and to all types of public and social objectives. Thus conceived, powers of expropriation were and are considered as an administrative function consequently vested in public agencies, although this is no longer an obstacle for admitting that for the reasons already explained, the legislature can exercise those powers in specific cases when warranted under exceptional circumstances, and this is perfectly constitutional, although this does not mean that specific powers of expropriation are reserved for the public authorities and, thus, there can be no doubt that, from a formal perspective, expropriations ope legis are, as laws intended for a specific case, constitutionally legitimate, although as expropriation laws they must respect the guarantees contained in Article 33.3 of the Constitution" (Conclusion of Law No. 13).

This Court has underscored the double nature of expropriation as a technique for achieving objectives in the public interest on the one hand, while guaranteeing private economic interests on the other. In that double sense we have noted that compulsory expropriation, in addition to being an indeclinable measure that the public authorities can and should use to achieve their objectives (Constitutional Court Judgments Nos. 166/1986, Conclusion of Law No. 13; 149/1991, of 4 June, Conclusion of Law No. 4; 180/2000, of 29 June, Conclusion of Law No. 11), it is also a constitutional guarantee of the right to private property, in the sense that it ensures fair compensation to those who, for reasons of public utility or social interest have been deprived of their property or property rights" (Constitutional Court Judgment No. 37/1987, of 26 March, Conclusion of Law No. 6). Thus, the institution of compulsory expropriation constitutes "a system of (legal, procedural and economic) guarantees seeking to protect private property from interference from the public authorities (particularly, the Administration) based on considerations of public convenience or necessity, the Constitution requiring that expropriation of property or rights be made solely for 'reasons of public utility or social purposes, with the corresponding compensation and pursuant to the provisions of the laws'" (Constitutional Court Judgment No. 301/1993, of 21 October, Conclusion of Law No. 3).

From this second dimension of expropriation as a means of ensuring the right to private property vis-à-vis the powers of expropriation of the public authorities, Article 33.3 of the Constitution contains a triple guarantee: 1) all expropriations must be based on a causa expropriandi, that is, on grounds of public utility or social interest; 2) the expropriated parties

have the right to receive compensation; and, 3) expropriations must be carried out in accordance with the provisions of the laws.

In that regard it should be noted that on November 27, 1990 Spain ratified the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms of March 20, 1952, expressing a reservation with respect to its first article, which must be applied in the light of Article 33 of our Constitution, and which does not apply to the present case of expropriation for reasons of public utility subsequent to the date of submitting the instrument for ratification. The first paragraph of that first article recognizes the right of every natural or legal person to respect for his property and provides that "no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law", adding in its second paragraph that "the preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties". The European Court of Human Rights further defined the objective of this article, underscoring (in its judgment in the case of James and Others v. the United Kingdom of 21 February 1986, § 37): the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognizes that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules are concerned with specific instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule" (among others, European Court of Human Rights Judgments in the cases of Iatridis v. Greece of 5 March 1999, § 55; Malama v. Greece of 1 March 2001, § 41; Satka and Others v. Greece of 27 March 2003, § 44; and Pincova and Pinc v. the Czech Republic of 5 November 2002, § 43), and all of thee precepts conforming to the principle of proportionality, which we shall address hereinbelow.

5. The doubts concerning constitutionality posed by the court requesting this ruling focus on the possible violation of the third of these guarantees. The court believes that this is an expropriating law passed for a specific case, a "legislative expropriation", which since it was not passed to address exceptional circumstances, "constitutes a contravention of the so-called 'guarantee in expropriation proceedings' pursuant to Article 33.3 of the Constitution, which provides that expropriations must be carried out 'in accordance with the law'".

An analysis of this constitutional complaint first requires determining the legal status of legislative expropriations, differentiating them from applicable legal provisions of general expropriation legislation.

This Court has already underscored that the ad hoc legal regime of expropriation laws passed to address specific cases must respect the guarantees contained in Article 33.3 of the Constitution (Constitutional Court Judgment No. 166/1986, of 19 December, Conclusion of Law No. 13), that is, legislative expropriations must be made for reasons of public utility or social interest (causa expropriandi), must guarantee the corresponding compensation and, lastly, must respect the provisions of the laws. With regard to this last guarantee, which we have characterized as the "guarantee of the expropriation procedure" and which this Court has deduced from the expression "in accordance with the provision of the laws" contained in Article 33.3 of the Constitution, we have said that "it is intended for the benefit of citizens and its objective is to protect the rights of equality and legal certainty, ensuring respect for and submission to the legally pre-established general rules of procedure, whose observance precludes discriminatory or arbitrary expropriations". We have likewise affirmed that "given that this guarantee is a specific application of the legality principle in the area of compulsory expropriation, it is

principally directed against the Administration and, based thereon, it can be maintained that formal laws, including those passed for a specific case, do themselves cover this guarantee no matter what expropriation procedure they establish, to which the Administration will obviously have to conform". And we have underscored that the "singular and exceptional nature" inherent in expropriation laws passed for a specific case "does not authorize the legislature to ignore the expropriation procedure guarantee set forth in general expropriation laws, to which it must likewise submit. But that does not prevent the specific circumstances warranting legislative expropriation from authorizing the legislature to introduce modifications in the general procedure that those specific circumstances require, providing that they are reasonable and do not dispense with the observance of the other rules of procedure contained in general legislation" [Constitutional Court Judgment No. 166/1986, Conclusion of Law No. 13 c)].

In other words, the translative effect provided for in an expropriation law cannot be valid from a constitutional perspective unless there is a causa expropriandi, compensation for the expropriated parties, and the expropriation procedures have been followed, which may, however, contain special procedural elements with respect to general procedure that may be deemed necessary to address special circumstances in the context of an expropriation law enacted for a specific case.

Expropriation laws enacted for specific cases are to be limited to exceptional circumstances that cannot be addressed using the general expropriation system contained in the general laws. In effect, in contrast to these exceptional legislative expropriations, ordinary expropriation operations made in the public interest are carried out by applying general expropriation law to each individual case.

6. We have said that the court requesting this ruling limits the question to the guarantees set forth in Article 33.3 of the Constitution, which ensures an inexcusable minimum: all expropriations must conform to, among others, the requisite that they be undertaken "in accordance with the laws". Thus, in principle, it says nothing about the legal nature of the act through which each individual expropriation is carried out, which may be either an administrative decision or a law or norm having the rank of law. The requisite is, strictly, that the content of the means used be in accordance with the laws. As the European Court of Human Rights maintains, Article 1 del of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms requires first and above all that interference of the public authorities in the enjoyment of and respect for property must be legal, that is, carried out by law or in application of a law (representative of all of them, European Court of Human Rights Judgment in the case of Pincova and Pinc v. the Czech Republic of 5 November 2002, § 45).

Despite the limited scope of the court's requested ruling, the reference that we must also make to Article 24.1 of the Constitution is due to the fact that, as we indicated in Constitutional Court Judgment No. 166/1986, Conclusion of Law No. 12, expropriation laws intended for specific cases affect the "right to the protection of the courts with respect to one's property, which Article 24.1 of the Constitution guarantees property owners". Thus it is mandatory to question whether in a legally-implemented expropriation proceeding the expropriated party has the right to demand that each stage of the proceeding to be carried out acts subject to judicial review to the fullest extent and scope. In other words, the question is whether the guarantees protecting expropriation include the right to seek protection for the affected interests in the ordinary courts and only those courts, with the exclusion of other non-judicial jurisdictions. This would exclude a possibility that Article 33.3 of the Constitution does not itself preclude: That some stages of expropriation proceedings may be implemented by norms having the rank of law, given that this type of norms are subject to limited judicial review, in the sense that if an ordinary court judge deems a law unconstitutional, he can only request the Constitutional Court for a ruling in that regard, a proceeding in which the individual affected has no (direct) intervention.

From an overall perspective, it is evident that the affected party would in that case have fewer

possibilities to legally challenge a decision formalized in a law, since against a law he cannot react in the same terms and to the same extent that he could against an administrative act. More specifically, and with respect to the case examined herein, he could not invoke before the court the existence of other property capable of satisfying the needs of the expropriator to the same or to a greater extent than those that the legislature cited as the object of the expropriation, even if the law admitted the existence of that other property. That being the case, it must be concluded that legislative intervention in expropriation proceedings is only acceptable to the extent that the judicial protection of the interests and rights affected thereby is not substantially diminished –material protection being what matters and, this, independently of whether it is administered by the ordinary courts or the Constitutional Court.

This means that the problem should be approached not so much from the perspective of the legal form of the provision, as from the scope of the possible judicial review of the provision adopted. In other words, an expropriatory legislative act will only be constitutionally admissible if judicial review with respect to norms having the rank of law (direct appeals, courts' requests for a ruling of constitutionality, or the Constitutional Court's review of constitutionality in the context of an individual appeal for protection) is sufficient, and in each case, provides remedies materially equivalent to those that are available from an administrative court judge against administrative acts. Thus, the use of legislation will only be admissible if all possible injuries that it may cause can be corrected in the normal exercise of constitutional review, without stretching or misconstruing it in order to likewise extend that review to areas of the provision that are only within the scope of the jurisdiction of the ordinary courts. This necessary correspondence between the possibility of defending legitimate rights and interests on the one hand, and the remedies that may be sought to ensure their effective exercise in constitutional review procedures on the other, defines the threshold of exceptional circumstances that justify expropriation laws passed for specific cases. Circumstances that only exist if the suitability of the property to be expropriated is undisputed with regard to the legitimately-sought objective and if the very nature of that property, its identity, diversity or location render resorting to a simple administrative action insufficient, and therefore impossible.

In the case that gave rise to the judicial proceedings that prompted the present request for a ruling of constitutionality, there are no circumstances of that nature. This is a perfectly ordinary situation in which, being unable to reach an agreement with the owners for the purchase of their buildings, the public authorities initiated compulsory expropriation proceedings set forth in a law passed for that specific case. It is customary and reasonable that the public authorities' acquisitions should be implemented in legal instruments that cause the least injury possible to individuals, seeking to enter into private transactions before resorting to imperative powers, which should be used only when reasonably warranted in the public interest. This is a fact that individuals must bear in mind when negotiating with the Administration, a possible resort to expropriation being an element that is present in all negotiations. Nevertheless, a minimum requisite of the principle of legitimate expectations is that the expectations defined in Article 33.3 of the Constitution in the sense that, if warranted, any compulsory expropriation will be carried out according to the provisions of the laws and, as is customary, by the Administration, should not be diminished by resorting to an exaggerated means such as a law, which is justifiable only when the property, given its nature or circumstances, cannot be acquired by the public authorities by any other means, and not simply when they cannot acquire it through negotiations, a circumstance in which proportionality would warrant using legal means, such as administrative proceedings, which are subject to judicial review that is greater in scope and extent than the recourses that the legal system offers individuals against norms having the rank of law.

7. In addition to not being justified by exceptional circumstances, the structure and content of the law under appeal do not permit the defense of the rights and interests of the expropriated

parties to be exercised before this Court without detriment to their material content and the nature of our jurisdiction. In that regard, there are two points that we should examine. On the one hand, the definition of the causa expropriandi expressed in the law, and on the other, the declaration of the necessity of occupying the three specific buildings included in Article 1, about whose constitutionality the court requesting this ruling harbors well-founded doubts, since in the law they are allegedly treated arbitrarily and disproportionately.

Undoubtedly, declaring in the public interest works to enlarge the seat of parliament is patently constitutional and that judgment can be applied in these proceedings without prejudice to the rights affected and without detriment to our powers of review by resorting to factual considerations that are not within our jurisdiction. In that regard, it is first evident that the causa expropriandi has been defined by this autonomous community legislature in a substantive matter that undoubtedly falls within the scope of its powers, such as those involving determining the need to enlarge the seat of the autonomous community parliament and to what extent to do so. And, secondly, the legislature justified in its preamble to Law 2/1992 the necessity of proceeding with that enlargement due to "serious limitations of space that make it insufficient to house the political and administrative offices of the Parliament".

However, in order to offer a well-founded judgment concerning the arbitrariness or disproportion of the necessity of occupying the buildings at number 5 of XXX Street and numbers 44 and 46 of XXX Street in Santa Cruz de Tenerife, set forth in the first article of Canary Island Parliamentary Law 2/1992, certain elements of evaluation are required that do not fall within the jurisdiction of this Constitutional Court. According to this Court's case law, to determine whether a given act of the public authorities violates the principle of proportionality it is necessary to determine whether it meets the following three conditions: a) whether the measure is suitable or adequate for achieving the intended constitutionally-legitimate objective (judgment of suitability); b) whether the suitable or adequate measure is also necessary in the sense that there is no other less-damaging but equally-efficient means for achieving that objective (judgment of necessity); and, c) whether the suitable less-damaging measure has been pondered or balanced, its application implying greater benefits or advantages in the public interest than prejudice to the other property or interests in conflict (judgment of proportionality in the strict sense) (representative of many others, Constitutional Court Judgment No. 70/2002, of 3 April, Conclusion of Law No. 10, concerning the review of administrative acts; and Constitutional Court Judgment No. 55/1996, of 28 March, Conclusions of Law Nos. 6, 7, 8 and 9, concerning the supervision of legislative activity). This case law is, moreover, consistent with the case law of the European Court of Human Rights, which with regard to the right to private property protected in Article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms underscores that a measure interfering with the right to respect for property must seek a fair balance between requirements in the general interest of the community and the protection of individual fundamental rights (representative of many others, the European Court of Human Rights Judgment in the case of Sporrong and Lönnroth v. Sweden of 23 September 1982, § 69). The concern for ensuring that balance is reflected in the structure of the entire Article 1 of the Additional Protocol (European Court of Human Rights Judgments in the cases of Pincova and Pinc v. the Czech Republic of 5 November 2002, § 52; Wittek v. Germany of 12 December 2002, § 53; and Forrer-Niedenthal v. Germany of 20 February 2003, § 42). Specifically, in any measure involving deprivation of property there must be a reasonable proportion between the means used and the objectives pursued (European Court of Human Rights Judgments in the cases of Pressos Compañía Naviera, SA and Others v. Belgium of 20 November 1995, § 38; and Yagzilar and Others v. Greece of 6 December 2001, § 40).

8. In applying the aforementioned criteria in order to verify whether the specific determination in Article 1 of the questioned Canary Islands Parliamentary Law of the necessity of occupying the buildings subject to expropriation respects the principle of proportionality, we must conclude

the following:
a) The property whose occupation is in dispute is undoubtedly suitable or adequate for achieving the purposes in the public interest pursued in the expropriation proceeding, consisting, we should remember, in enlarging the seat of parliament. And that is due to the fact that they are adjacent properties within the same block which, from an architectural perspective, could be spatially and functionally incorporated within the present seat of parliament.
b) However, the properties in question are not the only ones that could possibly facilitate the enlargement of that seat, as demonstrated by an examination of the property map of the block where the autonomous community parliament is located, and especially in view of the fact that the Canary Islands Legislature admits the existence of other likewise suitable buildings, since Article 2 of the law empowers the Administration to expropriate them. Based on this situation and on the circumstance that the Parliamentary Law analyzed contained a measure expropriating property intended for a specific case, to determine whether it is necessary a specific justification would be required that neither the Law offers nor this Court can determine in a judgment concerning those circumstances, which falls within the jurisdiction of the ordinary courts.
Neither the preamble to Canary Island Parliamentary Law 2/1992 nor its articles explain in any way the reasons why the properties whose occupation the autonomous community legislature provides for are more suitable or adequate for implementing the causa expropriandi than the other adjacent properties whose expropriation Article 2 of the questioned Canary Islands Parliamentary Law defers for a future moment, providing, moreover, that the Government of the Canary Islands and not the autonomous community legislature shall determine the necessity of occupying those buildings, thus broadening the range of possible means for appealing that administrative decision, from which the owners of the properties directly expropriated by the legislature cannot benefit.
Therefore, given on the one hand that the facts show that the autonomous community legislature had many buildings within the same block that would at least prima facie appear to be equally suitable for enlarging the parliamentary seat, and given on the other hand that it has chosen exclusively some of them and excluded others without offering any motive to reasonably justify that decision, nor can we deduce any from a comparison of their suitability for expropriation, since that would require an examination of the facts of the case better suited to the taking of evidence in a judicial proceeding, is must be concluded that the declaration of the necessity of occupying buildings number 5 on XXX Street and numbers 44 and 46 on XXX Street in Santa Cruz de Tenerife provided for in Article 1 of Canary Island Parliamentary Law 2/1992 does not conform within the framework of our jurisdiction to the principle of proportionality required in any judgment of such necessity.

JUDGMENT

In view of the foregoing, the Constitutional Court, BY THE AUTHORITY CONFERRED UPON IT BY THE CONSTITUTION OF THE SPANISH NATION,
Has ruled
That the present request for a ruling of constitutionality is warranted, and by virtue whereof we hereby declare unconstitutional and void Article 1 of Canary Island Parliamentary Law 2/1992, of June 26, that provides for the specific necessity of occupying buildings number 5 on XXX Street and numbers 44 and 46 on XXX Street in Santa Cruz de Tenerife.
This Judgment shall be published in the Official State Gazette.
Given in Madrid on March 3, 2005.