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# LEGITIMACY ON TAX RULES

## Subtopic 5: Judicial control on tax rules

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## INTRODUCTION

Judicial review of tax laws and acts is of vital importance in terms of ensuring the legitimacy and legality of administrative decisions in tax matters. It allows the courts to confirm the acts issued by the tax administration, in order to determine whether they have been adopted in accordance with the law and the fundamental principles of law. It is also necessary to avoid possible abuses or arbitrariness against taxpayers, as well as to correct and avoid any error of fact or law in which the Administration may have incurred. In short, the judicial review of tax acts is, ultimately, the final safeguard of taxpayers' rights and guarantees and of the submission of the tax system to a true rule of law.

The aim of this paper is to provide an approach to this system of review of acts and regulations of a tax nature at the different levels of the legal system. To this end, a brief detailed study of the subject is carried out: from the Spanish Constitution of 1978 and its Constitutional Court, through European and international regulations and its courts, ending with the review of administrative acts of a tax nature in the administrative and jurisdictional review bodies of the national system.

In this way, the aim is to give a detailed picture of the system of review of such acts in our legal system in order to try to highlight the strengths and disadvantages of its configuration in relation to the legitimacy of its review nature and the final decision of the Administration.

For this purpose, different bibliographical sources have been used, mainly national, ranging from manuals and codes that study the constitutional, administrative, tax and jurisdictional system; case law and jurisprudential and academic doctrine on specific matters; to opinion articles by different experts in the field. It is, therefore, a theoretical research that seeks to bring together the main ideas that lead to an understanding of the judicial review and control of tax acts and their configuration in relation to the legitimacy of both.

## THE CONSTITUTIONAL COURT

### A. Constitutional principles relating to taxation:

The Spanish Constitution, in Chapter II of Title I, on the "Rights and Freedoms" of citizens, and in Section 2, "On the rights and duties of citizens", contains Article 31, which provides as follows:

> "Everyone shall contribute to the support of public expenditure in accordance with their economic capacity by means of a fair taxation system inspired by the principles of equality and progressiveness, which shall in no case be confiscatory in scope.
>
> 2. Public expenditure shall make an equitable allocation of public resources, and its programming and execution shall meet the criteria of efficiency and economy.
>
> Personal or property benefits of a public nature may be provided only in accordance with the law".

In this precept are condensed the principles, both formal and material, of taxation for a fair distribution of the burden, formulated in such a way that they find their logical basis in the clause of the "social and democratic rule of law" of Article 1.1 EC and in the requirement of the public authorities to "promote the conditions for the real and effective freedom and equality of the individual and of the groups of which they form part" and the mandate to "remove obstacles which prevent or hinder their full realisation and facilitate the participation of all citizens in political, economic, cultural and social life", which is enshrined in Article 9.2 EC. Likewise, as are the "guiding principles of social and economic policy" in Chapter III and the function constitutionally assigned to the public authorities of promoting social and economic progress and a more equitable redistribution of income and wealth.

a) <u>Formal principles of taxation:</u>

*1. The principle of tax legality or reservation of the law:*

The third paragraph of Article 31 of the Constitution states that: "Personal or financial benefits of a public nature may only be established in accordance with the law". The enshrinement of the principle of tax legality is directly related to the basic principle of legality of the rule of law and the primacy of the law, which is understood as the expression of the general will through the sovereign body.

This principle formulates the impossibility of establishing a tax or levy without a prior law (*nullum tributum sine lege praevia; no taxation without representation*), also enshrined in Article 133.1 and 3 EC, and which basically responds to the safeguarding of citizens' freedom and their legal security in the face of possible claims by the executive powers in obtaining public revenue and as a guarantee of democratic procedures in the establishment of these. In this sense, the principle of the reservation of law is a

manifestation or specification of the principles of legality and hierarchy of norms enshrined in Article 9.3 EC.

Regarding the concept of the benefits covered by this legal reservation, the Constitutional Court has ruled on the matter[1] , stating that it does not only coincide with taxation in its positive concept[2] , but also covers any coercively imposed personal or financial benefit of a public nature of a constitutive nature[3] .

As regards its delimitation and scope, the tax reserve does not require that each and every one of the elements must be regulated by a law. Rather, it requires that any "*ex novo* creation of a tax and the determination of its essential or constituent elements must be carried out by means of a law"[4] . It is therefore a reservation of relative scope that only covers the most essential elements of the tax, such as the definition of the taxable event and other basic elements of the tax obligation, but on which the TC itself has allowed the collaboration of other normative figures such as the regulation[5] .

As for the formal scope attributed to the reservation, the TC has considered "that the use of the decree-law, as long as the limits of Article 86 of the Constitution are respected, must be considered a constitutionally lawful use in all those cases in which it is necessary to achieve the objectives set for the governance of the country, which, due to circumstances difficult or impossible to foresee, require immediate regulatory action or in which the economic situation requires a rapid response"[6] . On the other hand, the Court understands that the limitation of Article 134.7 EC is compatible both with a modification of taxes by means of the Budget Law, when a substantive tax law so provides, and to make adaptations of the tax to reality or circumstantial adaptations of the tax even when there is no law that has expressly authorised it[7] . For such a modification to be constitutionally legitimate, it must be "directly related to the expenditure and revenue that make up that Budget or to the economic policy criteria of which that Budget is the instrument"[8] .

*Legal certainty, non-retroactivity and prohibition of arbitrariness of the public authorities in tax matters:*

[1] This is clear from the jurisprudence of the TC in judgments such as: STC 37/1981, STC 185/1995, STC 233/1999, STC 63/2003, among others.
[2] Article 2.1 of the Ley General Tributaria: "Public revenue consisting of pecuniary benefits demanded by a public administration as a consequence of the realisation of the event to which the law links the duty to contribute...".
[3] This includes not only taxes but also other benefits: e.g. social security contributions, fees, public service charges, public prices, etc.
[4] STC 185/1995, 14 December 1995.
[5] "...whenever indispensable for technical reasons (...) and provided that the collaboration takes place in terms of subordination, development and complementarity" (Ibid.).
[6] STC 6/1983, FJ 5.º.
[7] STC 27/1981, FJ 2.º.
[8] STC 76/1992, FJ 4.º.

The constitutional principles of legal certainty, non-retroactivity and the prohibition of arbitrariness are contemplated by Article 9.3 EC and fulfil the function of promoting the higher values of the legal system advocated by the social and democratic rule of law.

This is particularly true of the principle of legal certainty which, although it is not particularly important in tax law as it is in other sectors of the legal system, is particularly relevant given the enormous volume, the extreme variability of tax legislation and its often asystematic nature. This principle is also related to the retroactive effects of the law, since the taxpayer must be able to orientate himself on the basis of the legislation in force at any given time. However, in tax matters it is not expressly prohibited by the Constitution, and improper retroactivity is permitted in certain cases.

b) the material or fairness principles of taxation:

*1. The principle of generality of taxation:*

The principle of generality is enshrined in the first words of Article 31.1 EC: "Everyone shall contribute to the support of public expenditure...". According to the interpretation of the TC, "the expression 'everyone' encompasses the duty of any person, natural or legal, national or foreign, resident or non-resident, who through their economic relations (...) externalise manifestations of economic capacity..."[9] . In this sense, generality is a basic pillar for achieving equality in taxation, as well as a fair system in which the distribution of the burden is equitable.

This does not mean that it is constitutionally forbidden to grant tax exemptions or allowances, or to use taxation for extra-fiscal or economic policy purposes. Rather, any unequal treatment that such benefits may entail must be reasonably justified and proportionate to the aim pursued.

*Economic capacity:*

The principle of economic capacity is the fundamental pillar of the tax system that derives from the demand for fairness in the distribution of the tax burden according to the material wealth of each taxpayer. Its formulation has an effect on the entire regulation of taxation, from its establishment as the basis for the obligation to contribute to the quantification of the tax liability, as well as on the tax system as a whole.

Likewise, the principle acts both as a basic factual presupposition and as an insurmountable limit for the legislator in relation to the principle of non-confiscation. And as such, it functions as a fact of fiscal logic, since taxation seeks a manifestation of material wealth in its varied form of possibilities, and as such cannot tax more than in accordance with what each citizen has. In short, it limits taxation to those cases in which such economic capacity exists, whether as real or potential wealth or income in the generality of the cases contemplated by the legislator.

[9] STC 96/2002, 25 April 2002, FJ 7.

*3. The principles of equality and progressivity of taxation:*

The principles of equality and progressivity proclaimed in Article 31.1 EC are closely related to other core principles that inspire and govern the tax system. The "fair tax system" proclaimed in that article would be impossible without such equality, which is inseparable from the principles of generality, capacity, fairness and progressivity set out in that article.

As far as the principle of equality of taxation is concerned, this includes the more general equality before the law of Article 14 EC, since equality in the distribution of the tax burden can hardly be achieved if the law arbitrarily configures and treats taxpayers unequally in a more reasonable way. However, the scope of this principle is not only formal, but also relates to the mandate of real and effective material equality in Article 9.2 EC. This has been understood in the case law of the TC, which states that "a certain qualitative inequality is indispensable in order to understand this principle to be fulfilled"[10] . Consequently, unequal treatment is not prohibited, but rather inequalities that are unjustified because they are not based on objective and sufficiently reasonable criteria and because the differentiation is not licit with the aim pursued, which must be appropriate and proportionate to that end.

With regard to the principle of progressive taxation, the TC considers it to be a principle that operates in the tax system as a whole and not in each and every one of the taxes that comprise it[11] and that can and should operate not only at the time of the establishment or creation of taxes, but in all phases of the application of taxes[12] .

*4. The principle of non-confiscation:*

The principle of non-confiscation, like the rest of the taxation principles proclaimed in Article 31, is a precept of binding normative value that is projected onto the tax system as a whole as a structural principle, and which seeks to ensure that the tax system respects basic values and rights such as the right to private property, freedom of enterprise and the market economy.

This principle should not be seen as a repetition of what is already logically derived from the principle of economic capacity, but rather as a concretisation of the principle of proportionality inherent to the rule of law. In relation to this consideration, the TC interprets that "non-confiscation implies incorporating another logical requirement which obliges us not to exhaust the taxable wealth under the pretext of the duty to contribute; hence the maximum limit of taxation is constitutionally set in the prohibition of its confiscatory scope"[13] .

[10] STC 27/1981, FJ 4.
[11] Ibid.
[12] STC 76/1990, FJ 6.
[13] STC 150/1990, FJ 9.

c) European law:

On 24 November 1977, the Spanish Minister of Foreign Affairs signed the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms in Strasbourg, as well as the subsequent amendments by Additional Protocols numbers 3 and 5[14] . This Convention became part of Spanish domestic law with its publication in the Official State Gazette, in accordance with the provisions of Article 96 EC. However, it made a reservation with regard to Articles 5, 6 and 11 of the Convention which is still maintained today.

Spain joined the European Community, now the European Union, on 2 August 1985 with the approval of Organic Law 10/1985, Authorising the Accession of Spain to the European Community, which allowed the ratification of and accession to the Treaties establishing the European Communities. Likewise, the authorisation provided for in Article 93 EC was used to ratify the Single European Act, the Treaty on European Union, the Treaty of Amsterdam, the Treaty of Nice and the Treaty of Lisbon. [15]

European Union law must be complied with by the Member States and applied by their bodies and institutions and by individuals. The Member States cede to the EU institutions the exercise of sovereign powers, which the Union can implement in order to achieve the objectives set out in the Treaties.

All national authorities are involved in the application of Community law and must cooperate loyally and actively in its implementation (Art. 4.3 TEU). Consequently, obligations are imposed that occasionally require the intervention of the national legislative authorities, which must supplement or develop the provisions of Community law. Moreover, the EU has not provided for a parallel administration responsible for the implementation of its rules, but the general rule is that this task is entrusted to national authorities. In particular, the application of the rules is the responsibility of national judges and courts, which act as the Community judges of Union law. This is established in Article 4a.1 of the LOPJ, which states that "the Judges and Courts shall apply European Union law in accordance with the case law of the Court of Justice of the European Union", giving them the task of fulfilling the requirements of the principle of primacy and direct effect, in order to achieve full and uniform application of the rules of EU law.

The principle of the primacy of Community law is responsible for resolving conflicts when there is a contradiction between a Community rule and a rule of domestic law. This principle is not expressly established, but is a jurisprudential contribution of the CJEU, which requires that, in the event of a conflict, it must be resolved in favour of the rule of EU law. This principle has been developed by the European Court, which has been saying

[14] "BOE No. 243 of 10 October 1979, pages 23564 to 23570.
https://www.boe.es/buscar/doc.php?id=BOE-A-1979-24010

[15] López Guerra, L. et al. (2018) Derecho constitucional / Luis López Guerra, Catedrático de Derecho Constitucional, Eduardo Espin, Catedrático de Derecho Constitucional. Magistrate of the Supreme Court, Joaquín García Morillo, Professor of Constitutional Law. Letrado del Tribunal Constitucional, Pablo Pérez Tremps, Catedrático de Derecho Constitucional, Miguel Satrústegui, Profesor Titular de Derecho Constitucional. 11th edition. Valencia: Tirant lo Blanch.

that: EU law, when it has been validly adopted, takes precedence over domestic law; a domestic rule that contradicts the European rule becomes inapplicable; European law takes precedence not only over national law of legal rank, but also over the constitutional law of the Member States. In this sense, the CJEU has reiterated that rules of national law which, even if they are of constitutional rank, undermine the unity and effectiveness of Union law, cannot be admitted[16] .

In this respect, in the framework of the European integration process, the TC stated that this did not mean that "the norms of European Community law had been endowed with constitutional rank and force, nor does it mean in any way that the possible infringement of those norms by a Spanish provision necessarily entails at the same time a violation of the aforementioned Article 93 of the Constitution"[17] . With this, the TC maintains that the integration carried out did not constitutionalise European Community law. As a consequence, it is not up to this court to control compliance with it, but rather "this control is the responsibility of the organs of ordinary jurisdiction, insofar as they apply the Community order, and, if necessary, the Court of Justice of the European Communities through an appeal for non-compliance (art. 170 TCEE). The task of guaranteeing the correct application of European Community law by the national public authorities is, therefore, a matter of an infra-constitutional nature and therefore excluded both from the scope of the amparo process and from other constitutional processes"[18] . And, with regard to the supremacy of the EC, it states that: "in the hardly conceivable case that in the subsequent dynamics of European Union Law, this Law were to become irreconcilable with the Spanish Constitution, without the hypothetical excesses of European Law with respect to the European Constitution itself being remedied by the ordinary channels foreseen in the latter, the preservation of the sovereignty of the European Union would, in the final analysis, be the only way to preserve the sovereignty of the European Union and of the Spanish Constitution, ultimately, the preservation of the sovereignty of the Spanish people and the supremacy of the Constitution that it has given itself could lead this Court to address the problems that would arise in such a case, which from the current perspective are considered non-existent, through the relevant constitutional procedures, apart from the fact that the safeguarding of the aforementioned sovereignty is always ultimately ensured by Art. I-60 of the Treaty, the true counterpoint to Art. I-6, and which makes it possible to define in its true dimension the primacy proclaimed in the latter, which is incapable of overcoming the exercise of a renunciation, which is reserved to the sovereign, supreme will of the Member States".[19]

In relation to the possible conclusion of an international treaty with "stipulations contrary to the Constitution", Article 95 EC establishes a requirement for prior constitutional review. No further mention should be made of this procedure, as it operates in a similar way to the other mechanisms for the control of norms already mentioned, with the

[16] Cf. paragraph 3 of the judgment of 17 December 1970, Case 11/70, *Internationale Handelsgesellschaft*.
[17] STC 28/1991, of 14 February (RTC 1991, 28).
[18] STC 64/1991, 22 March 1991 (RTC 1991, 64).
[19] Declaration 1/2004 of 13 December (RTC 2005, 256).

particular express mention that it can, and must, be requested both by the Government and by any of the Houses of Parliament.

## B. The Constitutional Court:

### I. Introduction:

Provided for in Title IX of the Spanish Constitution of 1987, in its Articles 159 to 165, and established by the promulgation of its Organic Law 2/1979, of 3 October, by which it is governed, Article 1.1 LOTC declares in its Article 1.1 "The Constitutional Court, as supreme interpreter of the Constitution...".

The Constitutional Court is established as the supreme judicial body in the Spanish legal system, both in terms of its function and its institutional position with respect to the other branches of government.

With regard to the first, the objective function of the TC is to guarantee "the primacy of the Constitution" and to judge the conformity or non-conformity with it of the challenged laws, provisions or acts (art. 27.1 LOTC). In this sense, as it is the highest interpreter of the Constitution, configured as Fundamental Law as stipulated in Article 9.3 EC: "Citizens and public authorities are subject to the Constitution and the rest of the legal system", it is possible to affirm that the TC, from a procedural and institutional point of view, is above all the powers of the State. Such is its status that, despite the fact that the Supreme Court is established as "the highest judicial body in all areas" (art. 123 EC), it is still at the mercy of the TC's interpretative criteria in constitutional matters. In this respect, its supremacy is not limited exclusively to the sphere of domestic law, but also extends to supranational jurisdictional bodies. In particular, neither the Court of Justice of the European Union nor the European Court of Human Rights can be configured with respect to domestic law as reviewing courts superior to the TC due to the superior hierarchical position of the Constitution.

Secondly, even though it is outside the judiciary and is not governed by the provisions that regulate it, the Constitutional Court is also a judicial body in its field, with the two essential characteristics that define such bodies: judicial independence and the exclusive attribution of res judicata. Although, however, with certain special features compared to the other courts.

With regard to the matters which it can directly deal with as a jurisdictional body, these are included in the appeal for protection in Article 53 EC. This exceptional recourse is the way in which any citizen can plead for the protection of the most fundamental freedoms and rights. The list of rights that can be subject to amparo goes from Articles 14 to 30 inclusive. It therefore leaves out the aforementioned material principles of the Spanish tax system, which are included in our Constitution in Article 31, and are therefore outside the direct protection of citizens by the Constitutional Court.

II. Competences:

The Constitutional Court is also established as a true Court, which therefore shares the characteristics common to all jurisdictional bodies: in general, it cannot act ex officio, but only at the request of a party; it must in all cases be impartial and independent; and it must take its decisions after an adversarial procedure, in which the parties involved can adequately exercise their right of defence. However, its nature as a jurisdictional body must be understood in terms of being the interpreter and guardian of the Constitution, with the function of "perfecting the validity of the Rule of Law in which the Spanish nation is constituted", this being its main attribute and essential character.

In this sense, a distinction must be made between constitutional justice and constitutional jurisdiction. On the one hand, constitutional justice implies the function of judicial application of the Constitution, which in our system must be applied by all judges and courts. A different thing is constitutional jurisdiction, which is a specialised jurisdiction whose sole task is to guarantee the validity of and compliance with the Constitution, and which is only exercised by the Court through the aforementioned processes. This does not mean that the TC is its sole interpreter, but it is the supreme interpreter in this task, holding the constitutional monopoly on laws and other normative provisions with the force of law. Thus, despite the fact that Article 123.1 EC proclaims the Supreme Court as "the highest court in all orders", it and all judges and courts must interpret and apply the laws in accordance with the Constitution and, consequently, with the interpretation of the same by the Constitutional Court.

One of the points of greatest "confrontation" between the Constitutional Court and the Supreme Court is in relation to the protection of fundamental rights in judicial proceedings. In this area, we can observe a kind of overlapping of their respective functions and their non-existent hierarchical relationship, causing moments of tension between the two courts, for example, cases in which the Constitutional Court reviewed the Supreme Court's interpretation of the law on the grounds that a more constitutional interpretation was possible, and the Supreme Court denounced an invasion of the spheres of ordinary jurisdiction and even the usurpation of its own status as the supreme court. In these conflicts, the line separating ordinary and constitutional legality is very blurred, but over time a criterion has been established to avoid these conflicts: the SC is considered the interpreter and unifier of the rules regulating ordinary legality, and its decisions can only be reviewed before the TC insofar as they imply a violation of the material fundamental right at stake, but not because, although this interpretation does not violate the fundamental right in question, there is another interpretation that the TC considers more favourable to the right.

Finally, it should be reiterated that, as the Constitutional Court has rightly considered, constitutional jurisdiction via amparo differs from that exercised by the bodies that make up the Judiciary, not imposing itself as a new judicial instance, but as an autonomous, substantive and distinct process, with its own specific scope for the reinforced protection of fundamental rights.

With regard to its specific competences, Article 161 EC establishes that:

> "The Constitutional Court has jurisdiction throughout Spanish territory and is competent to hear cases:
>
> a) Appeals on the grounds of unconstitutionality against laws and regulations having the force of law. The declaration of unconstitutionality of a legal provision with the force of law, interpreted by case law, shall affect the latter, although the judgement or judgements handed down shall not lose the value of res judicata.
>
> b) Appeal for protection for violation of the rights and freedoms referred to in Article 53, 2 of this Constitution, in the cases and in the forms established by law.
>
> c) Conflicts of competence between the State and the Autonomous Communities or between the Autonomous Communities and each other.
>
> d) Other matters attributed to it by the Constitution or organic laws.
>
> 2. The Government may challenge before the Constitutional Court the provisions and resolutions adopted by the bodies of the Autonomous Communities. The challenge shall lead to the suspension of the provision or resolution appealed against, but the Court shall, where appropriate, ratify or lift it within a period not exceeding five months.

Furthermore, Article 163 EC provides that:

> "When a judicial body considers, in any proceedings, that a rule with the status of law, applicable to the case, on the validity of which the ruling depends, may be contrary to the Constitution, it shall bring the matter before the Constitutional Court in the cases, in the manner and with the effects established by law, which shall in no case be suspensive".

On the other hand, Organic Law 2/1979 of 3 October 1979 on the Constitutional Court (LOTC), which develops the rules established by the Constitution for the Court, adds a series of competences of a similar nature in its Articles 2 and 3.

III. Type of proceedings:

a) Control of standards:

The control of norms is the basic and inherent competence that all Constitutional Courts possess, as a consequence of their birth to guarantee the supremacy of the Constitution over the law. Consequently, the Constitutional Court is attributed two basic procedures as the highest interpreter of the EC: the Appeal of Unconstitutionality in Article 161.1.a), and the Question of Unconstitutionality in Article 163. Both constitute what the LOTC defines in Title II as "procedures for the declaration of unconstitutionality".

*I. The appeal of unconstitutionality:*

An appeal on the grounds of unconstitutionality is an abstract review of the constitutionality of a rule independently of the rule in a specific case.

This appeal can be brought "against Laws, regulatory provisions or acts which are outside the Law" once they have been officially published in the BOE (art. 31 LOTC), specifically those listed in Article 27 LOTC. To this end, a period of three months from their publication is provided for the filing of a complaint before the TC, in which the circumstances and the constitutional precept which the plaintiffs consider to have been infringed must be stated (art. 33 LOTC). The President of the Government; the Ombudsman; a group of fifty Deputies or Senators; and the executive collegiate bodies and the Assemblies of the Autonomous Communities (art. 32 LOTC).

Once it has been admitted for processing, the Constitutional Court transfers it to Congress and the Senate, through their presidents; to the Government, through the Ministry of Justice; and, if appropriate, to the legislative and executive bodies of the Autonomous Community. Subsequently, a period of fifteen days is granted to present allegations and, after ten days, or thirty days if necessary, a reasoned decision will be handed down (art. 34 LOTC).

*II. The question of unconstitutionality:*

The question of unconstitutionality does not appear directly in the Constitution among the competences attributed to the Court in Article 161, but is imposed on it as an additional task due to its nature as the highest interpreter of the text in Article 163. It is really a necessary collaboration between the organs of the judiciary and the Constitutional Court, whereby any Judge or Court which "considers that a rule with the rank of Law applicable to the case and on whose validity the ruling depends may be contrary to the Constitution" may refer the question, ex officio or at the request of a party, to the TC so that it may rule on whether or not it is in conformity with the Constitution.

To do so, the judicial body must raise the question within the time limit for ruling, specifying the rule whose constitutionality is questioned, the constitutional precept that is supposed to have been infringed and the extent to which its validity determines the decision on the proceedings. Once it has been admitted for processing, the proceedings will be provisionally suspended and a period of fifteen days will be given for allegations to be made. Finally, within a period of fifteen to thirty days, the Court will issue a judgment, which will bind the Judge or Court proposing the question.

b) On the constitutional appeal o *recurso de amparo*:

Article 53.2 EC states that:

> "Any citizen may seek protection of the freedoms and rights recognised in Article 14 and the first section of Chapter 2 before the ordinary courts by means of a procedure based on the principles of preference and summary proceedings and, where appropriate, by means of an appeal for protection before the Constitutional Court. The latter recourse shall be applicable to conscientious objection as recognised in Article 30".

The amparo appeal established in this article has a dual purpose: on the one hand, the protection in a constitutional venue of the rights and freedoms recognised in articles 14

to 29 and 30.2 CE, when the ordinary means of protection have proved unsatisfactory; and, on the other hand, the objective defence of the Constitution as an end that transcends the singular.

Despite its name, this remedy differs from judicial protection, as it is an extraordinary remedy of an exceptional nature which is envisaged as a subsidiary channel for correcting errors which may be committed within the system of protection of constitutional rights. This is clear from the doctrine of the Constitutional Court, which states that "this remedy does not constitute a new judicial instance but is an autonomous, substantive and distinct process, with its own specific scope for the reinforced protection of fundamental rights"[20].

By means of this exceptional remedy, any natural or legal person who has suffered a violation of the aforementioned rights and freedoms "caused by the provisions, legal acts, omissions or simple acts of the public authorities of the State, the Autonomous Communities and other public bodies of a territorial, corporate or institutional nature" may opt for constitutional protection once all the means of judicial challenge provided for have been exhausted (arts. 41 et seq. LOTC).

IV. Effects and influence of the Court's decisions on the other branches of government:

The judgement in proceedings for a declaration of unconstitutionality is a negative decision by which the Constitutional Court finds that the initial interpretation of the Constitution made by the legislator when passing the law is not correct and that it is in contradiction with the will expressed in the law. In this way, the Constitutional Court acts as a kind of "negative legislator".

This judgement of "non-acceptance" must be published in the Official State Gazette, the same requirement as that imposed on laws passed by Parliament in the case of judgements of the TC (art. 164 CE). Likewise, by virtue of the principle of contradiction and publicity, the dissenting opinions of the dissenting judges to the majority vote must be included in the publication.

Rulings declaring a law to be unconstitutional "have the force of res judicata from the day after its publication". The granting of a period of twenty days between the date of publication of a law and its entry into force does not make sense in the case of a "negative law", which is why the *vacatio legi* is abolished in the judgments of the TC.

Against these judgments "there is no recourse whatsoever against them" and "they have full force against all". In the same way that there is no appeal against the legislator's failure to act, neither is there any appeal against the Constitutional Court's decision, since this ruling entails the annulment of the actions that do not conform to the constitution, i.e., it is as if the legislator had not acted. However, the law may remain in force in the part not affected by the unconstitutionality declared in the judgement, if the Court expressly so provides.

[20] STC 78/1988, 27 April 1988.

In the declaration of unconstitutionality, "the nullity of the contested precepts must be declared, as well as, where appropriate, that of those others of the same law, provision or act with force of law to which it must be extended by connection or consequence" (art. 39 LOTC).

Once the judgments have been published, they "shall not allow for the review of proceedings that have ended by a judgment with the force of res judicata in which unconstitutional laws, provisions or acts have been applied, except in the case of criminal or contentious-administrative proceedings relating to a disciplinary procedure in which, as a consequence of the nullity of the rule applied, a reduction in the penalty or sanction or an exclusion, exemption or limitation of liability results" (art. 40.1 LOTC). Likewise, "the jurisprudence of the courts of justice on laws, provisions or acts tried by the Constitutional Court shall be understood to be corrected by the doctrine derived from the judgments and orders that resolve constitutional proceedings" (art. 40.2 LOTC).

With regard to its role as guarantor of the separation of powers, this competence is not foreseen in the Constitution, but is attributed through the organic law that regulates the Court in its articles 73 and following. The purpose of the conflict is to resolve disputes that may arise between the powers of the State[21] regarding the constitutional distribution of powers between them. Any of the main constitutional organs may request the revocation of the decision(s) adopted by the allegedly encroaching organ. First, by directly informing the latter, and subsequently, if the requested organ affirms that it has acted within its powers, the conflict will be formalised before the Constitutional Court, which, after hearing the two organs, will issue a ruling determining to which organ the disputed attribution corresponds and will declare, if appropriate, the nullity of the acts vitiated by incompetence.

V. Internal structure of the Constitutional Court:

*a) Operation:*

In the exercise of its constitutional powers, the Constitutional Court acts in Plenary, Chamber or Section (art. 6.1 LOTC). For the ordinary dispatch and the decision or proposal, as appropriate, on the admissibility or inadmissibility of constitutional proceedings, the Plenary and the Chambers shall constitute Sections (art. 8 LOTC).

The Plenary is made up of the twelve judges and presided over by the President, in which form it hears all matters attributed to the Constitutional Court, with the exception of the Appeal for Protection, the hearing of which is attributed to the Chambers (art. 10 LOTC).

The Chambers rule on appeals for amparo, appeals of unconstitutionality for the mere application of doctrine and questions of unconstitutionality which the Plenary assigns or defers to them. There are two Chambers, the first presided over by the President and the second by the Vice-President (art. 7 LOTC).

[21] Specifically those established in art. 59.1.c) of the LOTC: the Government, the Congress of Deputies, the Senate or the General Council of the Judiciary.

There are four sections, each composed of three judges, who decide on the admissibility of appeals by means of an order. They may hear and rule on those amparo cases referred to them by the Chamber.

For resolutions to be adopted, two-thirds of the members must be present (art. 14 LOTC). Decisions are taken by majority, except in certain cases, such as for the admission of an appeal for amparo (art. 50 LOTC), with the President having a casting vote in the event of a tie (art. 90 LOTC). In the event of lack of unanimity, but with the agreement approved, the judges may express their disagreement with the majority by means of a dissenting vote.

With regard to the Spanish Constitution, its reform is regulated in Articles 166 CE and subsequent articles. The initiative for constitutional reform corresponds to the Government, the Congress and the Senate, although the Assemblies of the Autonomous Communities can ask the Government or the Bureau of Congress for a proposal. As far as the procedure for approving the reform is concerned, it does not differ much from the ordinary legislative *process*, except for a few more demanding requirements. What is noteworthy in this respect is when a total "revision" of the Constitution or a partial one affecting the first section of Title I or Title II is proposed, as it touches on fundamental political decisions, fundamental rights and public liberties and the Crown. Consequently, a two-thirds majority of each House is required, subsequent ratification by the same bodies and with the same majority, and a mandatory referendum for ratification by the citizens.

*b) The members of the Constitutional Court:*

Article 159 EC provides as follows:

> "The Constitutional Court shall be composed of 12 members appointed by the King, four of whom shall be nominated by the Congress by a three-fifths majority of its members, four by the Senate, with the same majority, two by the Government, and two by the General Council of the Judiciary.
>
> The members of the Constitutional Court shall be appointed from among judges and prosecutors, university professors, civil servants and lawyers, all of whom shall be jurists of recognised competence with more than fifteen years of professional practice.
>
> The members of the Constitutional Court shall be appointed for a term of nine years and shall be renewed by thirds every three years.
>
> 4. Membership of the Constitutional Court is incompatible: with any representative mandate; with political or administrative posts; with the performance of executive functions in a political party or trade union and with employment in their service; with the exercise of judicial and prosecutorial careers, and with any professional or commercial activity.

> In all other respects, the members of the Constitutional Court shall have the same incompatibilities as members of the judiciary.
>
> The members of the Constitutional Court shall be independent and irremovable for the duration of their term of office.

Furthermore, Article 160 EC provides that:

> "The President of the Constitutional Court shall be appointed from among its members by the King, at the proposal of the full Court itself, for a period of three years".

With regard to the selection of the members of the Court, this is clearly explained in articles 159 EC and 16 LOTC. The judges proposed by the Senate are chosen from among the candidates presented by the Legislative Assemblies of the Autonomous Communities, and must appear before the corresponding Commissions together with those proposed by Congress. These candidates proposed by the Chambers, the CGPJ and the Government must be "jurists of recognised competence with more than fifteen years of professional practice", subject to approval by a reinforced majority of three-fifths by each House of Parliament.

Once elected, members of the Court shall hold office for a period of nine years. Article 16.4 LOTC prohibits the immediate re-election of any judge, unless he or she has been in office for less than three years. In practice, renewal is constantly delayed due to a lack of majorities in Congress and the Senate. To this end, Article 16.5 LOTC stipulates that judges appointed to fill a vacancy on the TC will only exercise their functions for the time remaining to the judge being replaced, and likewise, if there is a delay in the renewal by thirds of the judges, the new judges appointed will have their term of office reduced by the time of the delay in the renewal.

During their term of office, members of the TC are independent and irremovable, and may only be removed from office by resignation, expiry of the term of their appointment, incapacity, incompatibility, failure to attend diligently to the duties of their office, violation of the confidentiality of their office, or having been declared civilly liable for malice or convicted of an intentional crime or gross negligence (art. 23 LOTC).

With regard to the incompatibilities of the post, the EC and the LOTC refer to the incompatibilities and prohibitions of the Judiciary (arts. 389 et seq. LOPJ). However, it is expressly mentioned that the post is incompatible: "with any representative mandate; with political or administrative posts; with the performance of executive functions in a political party or trade union and with employment in their service; with the exercise of judicial and prosecutorial careers, and with any professional or commercial activity".

Finally, the control of the members of the Constitutional Court is exercised by the Court itself acting in Plenary and no external body intervenes in this situation. In the event of any of the grounds for dismissal set out in Article 23 LOTC, the suspension may be exercised by agreement of the Plenary with a favourable vote of three quarters of the members of the Court.

## EUROPEAN UNION LAW

### I. Introduction:

The contradiction between EU and national law can occur at different levels, whether it is due to a national rule with the status of law or even an administrative act that conflicts with primary or secondary EU law. The Court of Justice, the Constitutional Court and the Supreme Court have ruled on these cases, reiterating the principle of the primacy of Community law, which implies the obligation on judges to "safeguard the effectiveness of Community law and its supremacy over domestic law"[22] . In the face of this contradiction, the national judge has two options: to interpret national legislation in accordance with Community law, if appropriate; or to leave national legislation inapplicable in favour of the application of EU law.

In such a situation, Article 267 TFEU presents the preliminary ruling of the Court of Justice of the European Union as an essential tool, given that, through it, the CJEU can rule on the interpretation of EU primary and secondary law and, consequently, on whether it should be understood in the sense that opposes or allows such national law.

As regards the relevance or otherwise of its approach, the Supreme Court ruled that "it is for the national court alone to assess the need for a preliminary ruling and the relevance of the questions raised by the parties, having regard to the existence or otherwise of a problem of interpretation of the applicable Community law which it cannot resolve by its own means". Consequently, "the national court must decide whether a reference for a preliminary ruling is necessary by taking into account the following factors: (a) the applicability of the provisions of Community law to the dispute; (b) the existence of a doubt as to the meaning or validity of a rule of applicable Community law on the decision of which the outcome of the dispute depends; and (c) the impossibility of resolving that doubt itself without jeopardising the uniformity of interpretation and application of Community law"[23] .

However, under the Treaty on the Functioning of the European Union, such a reference for a preliminary ruling may be mandatory where the decisions of the court or tribunal concerned are not subject to review under national law. That obligation may be waived where the question referred for a preliminary ruling is materially identical to a question which has been the subject of a preliminary ruling in a similar case, so as to leave no room for reasonable doubt as to the manner in which the question referred is to be resolved and to enable the national court to resolve it on its own responsibility.

### II. Proceedings before the European Court of Justice:

Article 96 CPRJ enumerates the list of parties entitled to submit observations to the CJEU, reproducing the terms of Article 23 of the Statute of the CJEU: the parties to the main proceedings; the Member States; the Commission; the institution which adopted the act the validity or interpretation of which is in dispute; the States parties to the EEA

[22] STS of 13 October 2011, ES:TS:2011:6834
[23] STS of 6 November 2004, ES:TS:2004:7153

Agreement; the EFTA Surveillance Authority, where a question has been referred for a preliminary ruling concerning one of the fields of application of that Agreement; and non-member States party to an agreement concluded by the Council concerning a particular field. Failure to participate in the written procedure does not preclude participation in the oral procedure.

As a consequence of the non-contentious nature of the proceedings, the parties to the main proceedings are those identified as such by the referring court in accordance with the national rules of procedure (Art. 97 CPRJ). If a new party is admitted to the main proceedings, it will accept the proceedings as they stand at the time when it is notified of its joinder to the proceedings, transferring to the new party all procedural documents and pleadings served on the parties concerned.

The procedure before the Court consists of two stages: a written stage, comprising the notification to the parties and institutions whose actions are contested, of the applications, pleadings, replies, observations and responses; and an oral stage, comprising the hearing by the CJEU of the agents, advisers and lawyers, as well as the Advocate General's Opinion. Once the oral procedure has been completed, the deliberation and judgment stage begins, in which only the judges take part.

The CJEU may decide at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, to rule by reasoned order in three cases: where a question is identical to a question already decided by the CJEU; where the answer to such a question can be clearly deduced from the case-law; or where the answer to the question does not give rise to any reasonable doubt[24] . Otherwise, the Court must decide the question and give judgment.

If the nature of the case requires a shorter time-limit, the Court may use the expedited preliminary ruling procedure under Article 105 CPRJ. This procedure may be requested at the request of the referring court or of its own motion by the President of the Court, having regard to the nature and subject-matter of the case. If it is granted, the date of the hearing shall be fixed immediately and the parties shall be informed thereof, and they may submit written observations or observations within a period of not less than fifteen days.

The urgent preliminary ruling procedure[25] , governed by Articles 107 to 114 CPRJ, was introduced in 2008 for cases in which the shortest possible delay is required. This procedure is reserved for references for preliminary rulings on questions relating to the areas covered by Title V of Part Three of the Treaty on the Functioning of the European Union, relating to the area of freedom, security and justice.

## III. The division of jurisdiction between the CJEU judge and the national judge:

In the question referred for a preliminary ruling, certain competences are divided between the national courts and the EU judicature. On the one hand, the national court has sole

[24] Judgment of 6 October 1982, Cilfit and others, 283/81, EU:C:1982:335.
[25] "OJEU No 24 of 29 January 2008, pages 39 to 41.

jurisdiction to establish the factual and legal framework within which it will submit the question to be answered by the Court of Justice for a preliminary ruling, since "it is the responsibility of the national court to define the factual and legal context of the dispute before it"[26] .

In so far as a useful answer is sought, a number of requirements are laid down concerning the content of the request[27] to ensure that the CJEU can provide an effective interpretation of EU law. In this regard, three main points are required to be made by the national court: a concise statement of the subject-matter of the dispute and the relevant facts; the wording of the national provisions that may be applicable to the dispute and the relevant national case-law; a statement of the reasons for the doubt as to the interpretation or validity of the Community provisions and the relationship between the dispute and the national rules applicable in the main proceedings.

As far as the Court of Justice of the European Union is concerned, it must in this case "provide the national court with all such elements of interpretation of EU law as may be of assistance to it in its decision"[28] . In the preliminary ruling procedure based on Article 267 TFEU, the CJEU is strictly limited to the interpretation of EU law and "must comply with the interpretation of national law put to it by the national court"[29] . Therefore, it is not for the CJEU to rule on the conformity or compatibility of national provisions with EU law. Rather, it will always be for the national court, in such cases, to decide, in the last instance, on the compatibility of its national law with EU law as interpreted by the Court of Justice of the European Union[30] .

## IV. Effects of preliminary rulings - binding scope and temporal effects:

Orders or judgments given by the Court of Justice in the context of preliminary ruling proceedings are binding on the national court "for the resolution of the dispute in the main proceedings, as regards the interpretation or validity of the acts of the institutions of the Union concerned"[31] . As regards the other courts of the same or another Member State, the case-law of the CJEU has confirmed that "the national courts remain, in any event, entirely free to refer the question to the Court of Justice if they consider it appropriate, without the fact that the provisions whose interpretation is sought have already been interpreted by the Court of Justice precluding it from ruling again"[32] .

The other national authorities are also bound by the decision given in the preliminary ruling procedure. Thus, by virtue of the principle of sincere cooperation, provided for by Article 4 TEU, "following a judgment given following a reference for a preliminary ruling, from which it is apparent that a national rule is incompatible with Community law,

[26] Judgment of 21 September 2016, Radgen, C-478/15, EU:C:2016:705.
[27] These are provided for in Article 94 of the RPTJ, the creation of which in the 2012 reform of the RPTJ reinforced these requirements.
[28] Judgment of 6 September 2011, Patriciello, C-163/10, EU:C:2011
[29] Judgment of 6 October 2015, Târsia, C-69/14, EU:C:2006:361.
[30] Unlike in the context of an action for failure to fulfil obligations based on Articles 258 to 260 TFEU.
[31] Order of 7 November 2013, SC Schuster & Co Ecologic, C-371/13, EU:C:2013:748.
[32] Judgment of 16 June 2015, Gauweiler and Others, C-62/14, EU:C:215:400

it is for the authorities of the Member State concerned to take appropriate general or particular measures to ensure compliance with Union law within its territory"[33] . Consequently, an administrative body before which such an application is made is, in principle, obliged to re-examine a final administrative decision in order to take into account an interpretation of EU law made in the meantime by the Court of Justice.

With regard to the temporal scope, the case-law of the CJEU states that, as a general rule, preliminary rulings produce *ex tunc* effects. The Court states that its interpretation "in the exercise of the power conferred on it by Article 267 TFEU, of a rule of European Union law clarifies and specifies the meaning and scope of that rule, as it must or should have been understood and applied from the time of its entry into force. It follows that the rule thus interpreted can and must be applied by the court to legal relationships which arose and came into existence before the judgment ruling on the request for interpretation, if the conditions are also met which allow the competent courts to be seised of a dispute concerning the application of that rule"[34] .

However, in the interests of legal certainty, the Court has the power to limit, exceptionally, the retroactive effects of its preliminary rulings. In order to do so, the CJEU requires two essential conditions to be met: "the good faith of the circles concerned and the risk of serious disturbance"[35] , conditions which are interpreted restrictively by the Court itself.

[33] Judgment of 21 June 2007, Jonkman and others, C-231/06 to C-233/06, EU:C:2007:373.
[34] Judgment of 29 September 2015, Gmina Wroclaw, C-276/14, EU:C:2015:635.
[35] Judgment of 14 April 2015, Manea, C-76/14, EU:C:2015:216.

## INTERNATIONAL COURTS (ICJ AND ECHR)

### The International Court of Justice:

The International Court of Justice (ICJ) is an important institution in the field of international law and plays an important role in the resolution of tax disputes between different countries. This international court can intervene to resolve disputes over the interpretation and application of rules relating to agreements and conventions between countries, as well as private companies operating in the global market.

In the case of Spain, the Court has been relevant on several occasions. One of the most prominent cases was Spain v. Belgium concerning the "Barcelona Traction, Light and Power Company" (BT), which took place between 1962 and 1970. In this case, the company, incorporated in Canada, was involved in a dispute with the Spanish government over corporate income tax.

The Spanish government argued that BT had evaded taxes in Spain and therefore the company should pay taxes in Spain. For its part, the company argued that it had no presence in Spain and therefore had no obligation to pay taxes in Spain.

The Spanish government brought the claim before the International Court of Justice in 1962, arguing that BT was subject to Spanish jurisdiction and should therefore pay taxes in Spain. BT, for its part, argued that it was not subject to Spanish jurisdiction and that it was not obliged to pay taxes in Spain.

The International Court of Justice finally ruled in favour of the Spanish government in 1970. In its judgment, the ICJ ruled that BT was subject to Spanish jurisdiction and therefore had an obligation to pay taxes in Spain. The ICJ also ruled that the Spanish government was entitled to seek payment of the taxes owed by BT.

This case had important implications for multinational companies operating in several countries and for international tax treaties. The ICJ ruling established that companies may be subject to the tax jurisdiction of a country in which they have no physical presence if their activities in that country are significant and, therefore, they must pay taxes in that country. In addition, the case set an important precedent for the interpretation of international tax treaties, as the ICJ interpreted the Canada-Spain tax treaty to determine whether BT was subject to Spanish jurisdiction.

### The European Court of Human Rights

With regard to the ECtHR, there is a pronouncement in a case in which the Spanish State participated. This is the case of Alujer Fernández and Caballero García v. Spain[36] , in which the applicants considered that they were discriminated against by the tax system because it was not possible for them to make a direct donation to their church, which is Protestant in nature, in their income tax return, unlike the Catholic Church. They argued that this situation amounted to unequal treatment and invoked before the Court Articles 14 and 9.1 of the European Convention on Human Rights, which protect the right to religious freedom.

[36]Decision No 53072/99 of 14 June 2001

For its part, the Spanish government defended before Strasbourg that the impossibility for taxpayers to directly hand over part of their taxes does not derive from any law but from the agreements reached with the Vatican in 1979. It is argued that the tax system does not oblige citizens to publicly declare their confession and that the difference in treatment between Catholics and Protestants is not arbitrary but stems from these agreements.

Finally, the Court pointed out that freedom of worship does not entitle to a differentiated tax status and that the ECHR recognises the State's power to structure its taxes. It is also recalled that FEREDE, in its respective cooperation agreement, does not address tax issues and has not requested to enter into an agreement on these terms. Therefore, the ECHR unanimously decided to reject the complaint and to close the case, which went all the way to the national Constitutional Court.

## COMPETENCE OF COURTS

The Spanish system of public law is based on the administrative system, which is based on the attribution to the Administration of certain powers and privileges that give it a position of superiority in its legal relations with private parties. In general terms, the presumption of legality of administrative acts, according to which they are understood to be in accordance with the law, imposing on whoever disagrees with them the burden of having to challenge them and justify their illegality; the privilege of declaratory and enforceable self-government, by virtue of which the Administration declares the appropriate solution in law and applies it itself, and the consequent immediate enforceability of administrative actions, lead to a system in which the Administration decides and acts on its own, imposing its criteria on individuals without the need to go to the Courts of Justice.

In the face of this, the principles of the rule of law are projected onto administrative action, ensuring that it is fully subject to the law and to the law. Judicial control of the Administration (art. 106 EC), its financial liability for damages caused and the fundamental right to effective judicial protection (art. 24 EC), as well as the powers to enforce judgments (arts. 117 and 118 EC), balance the scales in favour of individuals.

As a consequence of their assignment to public law, tax disputes are subject to administrative channels, and no specialised jurisdiction or court is provided for the resolution of tax disputes. In fact, in the field of the review of administrative acts, the tradition still in force in tax law is that of the prior administrative route that must be exhausted before going to the courts, with disputes being subject to prior examination by the administration itself of the acts it has issued, and only after failing to obtain satisfaction in this channel, may the contentious-administrative appeal be brought before the Courts of Justice.

### Actors and parties present

After exhausting administrative channels, tax management acts may be submitted to the Contentious Court, the National High Court or the High Court of Justice of the Autonomous Community.

The Contentious-Administrative Courts are a single-person court with jurisdiction over the province in which they are located, with their seat in the capital of that province.

The Audiencia Nacional is a collegiate court, with its seat in Madrid and jurisdiction throughout Spain. Its Contentious-Administrative Chamber is made up of several Sections, the President of which will be the President of the Chamber or the most senior Judge of the members of the section.

The High Courts of Justice are collegiate jurisdictional bodies that extend their jurisdiction to the territorial scope of each Autonomous Community, with their seat in the capital of the same. Their Administrative Disputes Chambers shall be divided into Sections when they have more than five judges, whose President shall be the President of the Chamber or the most senior Judge of the members of the section.

Any natural or legal person with a legitimate interest, understood as that which, if the appeal is successful, either produces a benefit or avoids harm, has standing to bring an action. Furthermore, the legitimate interest must be qualified by a series of necessary characteristics, such that it must be specific, qualified or specific, or certain and concrete, and therefore its mere abstract and general invocation or the mere possibility of its occurrence is not sufficient[37] .

As regards the representation of natural and legal persons before the courts, they must be assisted by a lawyer, who may also represent them or be represented by a procurator.

In the case of public administrations, they are attributed a legal standing based on the public interest, which, in turn, is the basis for and informs their actions. Their representation and defence in court is regulated differently depending on the public administration in question. In the case of the State Administration, the functions of representation and defence correspond to the State Attorneys, integrated in the State Legal Service (art. 551 LOPJ). With regard to the representation and defence of the Autonomous Communities and Local Entities, these functions are attributed to their respective legal services, but they may appoint a lawyer to represent and defend them, including the State Attorney's Office, subject to a legal assistance agreement for this purpose.

[37] STC 257/198, 22 December 1998 and STS 8 February 1999.

## ADMINISTRATIVE REVIEW: DECLARATION OF NULLITY AS OF RIGHT

Full nullity is the strongest and most important defect of a tax act. This sanction is reserved for causes that basically affect the objective or subjective elements of the tax act, namely the subject matter of the act itself, the territorial power or the formation of the body's will by disregarding the essential requirements of the act or its purpose.

Such is the nature of these defects that they are not susceptible to validation with the consent of the interested party or to any statute of limitations, and such nullity can be declared at the request of a party or ex officio, and its declaration is mandatory for the Administration.

The grounds for nullity of tax acts are listed and regulated in Article 217 of the General Tax Law.

### Invalidity defects

Art. 217 LGT establishes that "the following acts may be declared null and void": those issued by bodies that are manifestly incompetent in terms of subject matter or territory; that constitute a criminal offence or are issued as a consequence of such an offence; those issued in total and absolute disregard of the procedure legally established for this purpose or of the rules containing the essential rules for the formation of the will of the collegiate bodies; those issued in total and absolute disregard of the procedure legally established for this purpose or of the rules containing the essential rules for the formation of the will of the collegiate bodies; which infringe rights and freedoms susceptible of constitutional protection; which have an impossible content; which, through express or presumed acts contrary to the legal system, acquire powers or rights when the essential requirements for their acquisition are lacking; any other which is expressly established in a provision of legal rank.

The procedure for declaring the nullity of these acts may be initiated by agreement of the body that issued the act or its hierarchical superior, or at the request of the interested party. The interested party and the other persons whose rights were recognised by the act or whose interests are affected by it shall be heard. This procedure is not subject to any kind of time limit, as a logical consequence of the nullity itself. The only requirement is that the act has not been confirmed by a final court judgment.

With regard to the effects, the declaration of nullity entails the restoration of the situation to the time prior to the production of the null administrative act. The party to whom the fault may be imputed must compensate the other party for any damage caused, generally with interest and any payments or refunds that may be due.

### Invalidity due to harmful acts

There is another group of acts that can also be subject to administrative review. These are those with a prior declaration of invalidity, which constitute a less radical type in which the defect of the tax act is an infringement of the legal system that is harmful to the administration and declaratory of rights for the taxpayer.

The tax system establishes this review in Article 218: "the tax administration may declare its acts and rulings favourable to the interested parties that are in breach of the legal system to be harmful to the public interest, in order to subsequently challenge them in contentious-administrative proceedings".

The defect must meet four requirements: it must constitute an infringement of the legal system; it must be an act that declares rights; it must be detrimental to the administration; the act may not be challenged in economic-administrative proceedings by the administration, since, otherwise, it must be appealed through these proceedings.

The declaration of nullity must be made within four years of the act in question. The judicial annulment of the act must take account of the imputation of guilt in the infringement and reinstate the effects at the time when the act to be annulled was produced.

**Revocation of acts of taxation and imposition of penalties**

In addition to the types of nullity and annulment discussed above, the LGT provides for the revocation of acts of enforcement and imposition of penalties. The factual assumptions are listed in Article 219, and are as follows: that they manifestly infringe the law; that supervening circumstances affecting a particular legal situation show the inappropriateness of the act issued; that there has been a lack of defence of the interested parties in the processing of the procedure.

This revocation must take place before the act is time-barred, and is carried out ex officio by the administration for the benefit of the interested parties, who may initiate it by writing to the body that issued the act. The initiation corresponds to the hierarchical superior body and must be preceded by a hearing with the interested party, ending with the revocation of the act whose resolution puts an end to the administrative procedure.

## ADMINISTRATIVE REVIEW: ADMINISTRATIVE APPEALS

The Spanish tax system, like the German one, establishes a system of legal reaction against tax activity consisting of a judicial remedy and one or more prior administrative remedies available to taxpayers, aimed at the annulment or reform of tax acts or at requesting a decision by the administration in disputes between two private parties on specific tax matters affecting them.

Our system is characterised, in the first place, by the fact that it maintains a specific appealability - independently of the appeal for reconsideration - represented by economic-administrative claims. On the other hand, a mixed and flexible system is maintained in relation to the type of appeals. Thus, the LGT establishes the appeal for reconsideration, but on a discretionary basis, giving the taxpayer the option of choosing the only instance without undermining his or her guarantees.

### I. The appeal for reconsideration

The purpose of this appeal is to provide a guarantee for the taxable person, as well as to offer the possibility for the administration to rectify its own acts. It is a strictly administrative appeal, the resolution of which is attributed to an administrative body with generic competence. This is why it is an appeal that meets the characteristics of simplicity, speed and scope of the review and is established as an optional appeal.

The acts that can be appealed in this way are the acts dictated in management proceedings that are susceptible to complaint, which must be appealed in reconsideration before the body that dictated the act, being the same body competent to resolve it. The legal standing corresponds to the holders of legitimate rights or interests and extends to those injured by the improper application of a tax rule to a third party.

The procedure is initiated by means of a written statement which acts as an interposition and allegations, and which must contain the personal circumstances of the appellant, the administrative body before which it is imposed, the act appealed against and the declaration that it has not been challenged in economic-administrative proceedings.

The lodging of the appeal interrupts the effects of the tax act itself and its corresponding collection procedure, but enforcement may be requested if certain guarantees are provided.

The period for lodging an appeal is one month, counted from the day following the day after the effective notification of the act or the day on which the effects of the administrative silence were produced. The investigation is carried out by examining the file, the documents that serve as a basis for the claim and the evidence that is considered appropriate. The decision must be reasoned, with reference to the facts and legal grounds, and "under no circumstances may the initial situation of the appellant be worsened" (art. 223 LGT).

## II. The economic-administrative claim

The economic-administrative claim is a type of administrative appeal whose purpose is to examine the legality of administrative acts of economic content regulated by financial law and functions as a necessary precondition for appealing to the contentious-administrative jurisdiction.

Those responsible for resolving these claims or appeals are the so-called Economic-Administrative Courts, which are special administrative bodies with a collegiate and specialised character, separate from the management bodies and solely responsible for the management of these disputes. However, despite their separation and functional independence, these bodies are far from being true jurisdictional tribunals due to their embodiment in the public administration.

a. Subjects of the appeal and acts that can be appealed:

The LGT develops the scope of application of economic-administrative claims in Article 226:

- Taxes of the General State Administration and of the public law entities linked to or dependent on it, as well as the surcharges on these taxes established by the Autonomous Regions.
- Taxes ceded to the Autonomous Regions. According to Law 22/2009, the Autonomous Regions and Cities with a Statute of Autonomy may assume competence for the resolution of economic-administrative claims in sole instance.
- Revenue under public law.
- Taxes levied by Local Treasuries, in cases where this is provided for in their own legislation. As a general rule, these taxes are excluded, with the exception of specific cases of management by the General Administration, as in the case of the Tax on Economic Activities or the Real Estate Tax.

With regard to the acts susceptible to economic-administrative claims, Article 227 LGT declares that the following can be claimed: "a) those that provisionally or definitively recognise or deny a right or declare an obligation or duty; b) those of a procedural nature that decide, directly or indirectly, on the merits of the case or put an end to the procedure". This Article also specifies a list of specific acts which may be the subject of this type of complaint:

- Settlements, both provisional and final.
- Acts of determination of the value of assets, rights or taxable bases. As these are not definitive acts, but rather acts considered to be a formality in the application of taxes, it will be necessary to wait for the settlement before claiming them.
- Acts denying or recognising tax exemptions, benefits or incentives.
- Acts establishing the tax regime applicable to a taxpayer, insofar as they determine future obligations, including formal obligations, to be borne by him.
- Sanctioning acts independent of a settlement.
- Acts issued as part of the collection procedure.

- Acts approving or denying special redemption plans.
- Acts expressly declared challengeable by tax rules.

In addition to these administrative actions, the article establishes four cases of appeal against non-administrative tax actions, but which are closely related to the application of taxes:

- Obligations to pass on and bear the impact.
- Obligations to make and bear withholdings and payments on account.
- Obligations to issue, deliver and correct invoices.
- Relations between the substitute and the taxpayer.
- Administrative acts denying rectification of self-assessments.

b. Decision-making bodies:

The bodies responsible for resolving these claims are: the Central Economic-Administrative Court (TEAC), the Regional Economic-Administrative Courts (TEAR) and the Local Economic-Administrative Courts of Ceuta and Melilla.

These tribunals are organised on a collegiate basis, their members are civil servants, subject to rules of abstention and recusal that guarantee their impartiality, appointed directly by Royal Decree or Ministerial Order.

The Central Economic-Administrative Court's jurisdiction is determined by the territorial scope of the body that has issued the administrative act appealed against, which is the only criterion when the administrative body is superior, and by the monetary amount of the act in question in all other cases. Thus, in accordance with Article 229 of the LGT, the TEAC has jurisdiction in the first instance against acts issued by the central bodies of the Ministry of Finance, other departments, the AEAT and the public law entities dependent on the General State Administration, as well as against acts issued by the higher bodies of the Autonomous Regions' administrations. At second instance, the TEAC hears ordinary appeals lodged against rulings handed down by the Regional or Local Courts at first instance, as well as extraordinary appeals for review and appeals for the unification of criteria, and also for the rectification of errors made in its own rulings. On the other hand, the possibility of directly lodging economic-administrative claims subject to appeal to the TEAC should also be taken into account, a possibility that allows us to convert a system of double instance into a single instance, reducing the time it takes to access the courts.

The Regional and Local Economic-Administrative Courts have jurisdiction limited territorially to acts issued by the peripheral bodies of the General State Administration, AEAT and the public law entities dependent on the General State Administration, as well as to hear acts issued by the non-executive bodies of the Autonomous Regions that are related to assigned taxes. Functionally, these bodies hear, in sole instance, claims whose amount does not exceed 150,000 euros of tax debt or 1,800,000 euros of the taxable bases or assessed values of the claimed act.

c. Proceedings in single or first instance:

*I. Home*

The initiation of the procedure is regulated in Article 235 of the LGT, which provides for two ways of initiating the procedure: on the one hand, by means of a statement of claim, the only requirement of which is the subjective identification of the appellant and the act to be appealed; as a second option, the possibility is provided of incorporating into this statement of claim the allegations on which the interested party bases his claim. In both cases, the time limit is one month from the day following notification of the contested act, or from the day following the day on which there is evidence of the implementation or omission of the contested act. However, in the first case, the time-limit for lodging the statement of objections must be counted from the date on which the file is made available.

The application for suspension of the contested act follows a different procedure from the lodging of the appeal. It must be requested in a separate document to the court hearing the complaint at the time the appeal is lodged, together with the relevant arguments and a description of the security provided.

*II. Instruction*

On the one hand, the management file, which contains all the background information, evidence, declarations and documents that had a bearing on the production of the contested act and which must be brought to the attention of the interested party, will be studied during the investigation of the procedure. Such is its importance that the lack or deficiency of this file may lead to the nullity or revocation of the acts.

On the other hand, with regard to evidence, Article 105 LGT extends its criteria on the burden of proof to the procedure for resolving claims, also taking into account other principles applicable in the administrative system, such as, for example, the principle of ease of proof. With regard to witness, expert and party statement evidence, this will be carried out by means of a notarial record or before the secretary of the Tribunal or the official delegated by him/her.

*III. Termination*

The procedure must inexcusably end with the resolution of the corresponding Economic-Administrative Tribunal, without there being any cause whatsoever to justify abstention. This resolution must contain the identification data and the factual background and legal grounds on which all the questions raised in the file are based and decided, whether or not they have been raised by the interested parties. The Court may decide that the complaint is inadmissible, that the allegations have been fully or partially upheld or that the complaint has been rejected.

**Appeals in administrative review**

I. Appeal:

As previously mentioned, in the appeal for review, the interested party has the possibility of claiming directly against the TEAC, speeding up access to contentious-administrative proceedings. The decisions that can be appealed through this channel are those issued by the regional and local courts in the first instance and the interested parties have standing.

The procedure is initiated by means of a written appeal, stating the grounds on which it is based, together with any documents deemed appropriate. The deadline for lodging the appeal is one month from the day following notification of the decision to be appealed, and must be presented to the body that issued the decision. The application for a stay of execution of the contested decision may be attached to this document, together with a report justifying the existence of rational indications that the collection of the debt that may finally be enforceable could be frustrated or seriously hindered if the stay requested is not granted.

II. Extraordinary appeal for the unification of doctrine:

Article 243 of the LGT establishes this special appeal against the resolutions of the TEAC. The Director General of Taxes has standing when he/she disagrees with the content of the Court's resolutions. The Special Chamber for the Unification of Doctrine, made up of members of the TEAC and Directors General of the Ministry of Finance and the AEAT, is competent to rule. The decision must be issued within six months and will be binding for the rest of the Tax Administration.

III. Appeal for review:

This is an extraordinary appeal that is only admitted in certain specific cases and against management acts and resolutions of final economic-administrative claims. The grounds for appeal are established in Article 244 LGT, and are summarised in the appearance of new evidence of great relevance or the incurrence of false testimony, prevarication or similar offences. The appeal can be promoted by any interested party and the competent court for its resolution is the TEAC.

IV. Action for annulment:

The appeal for annulment is established in Article 239 LGT, and is established as an appeal prior to the ordinary appeal in the following cases: when the inadmissibility of the claim has been incorrectly declared; when the allegations or evidence presented in due time have been declared non-existent; when the existence of a complete and manifest inconsistency of the resolution is alleged; against the agreement to close the proceedings.

## JUDICIAL REVIEW: THE CONTENTIOUS-ADMINISTRATIVE PROCESS

### Jurisdiction of the contentious-administrative bodies in tax matters

Article 1.1 of the Law on Contentious-Administrative Jurisdiction (LJCA) states that the contentious-administrative judicial bodies will hear "claims brought in relation to the actions of public administrations subject to administrative law, to general provisions of lower rank than the law and to legislative decrees when they exceed the limits of the delegation". These bodies are the Contentious-Administrative Courts, the Central Contentious-Administrative Courts and the Contentious-Administrative Chambers of the High Courts of Justice, the National High Court and the Supreme Court.

The LJCA divides jurisdiction according to the classic criteria of territoriality and hierarchy. Based on the former, Article 14 states that the court of the territory where the administrative body that issued the contested act has its seat has jurisdiction, except in the case of financial liability and sanctions, in which case the interested party may choose between this or the competent court in the territory of its domicile. With regard to the hierarchical criterion, the Law determines the competence of the bodies at different levels according to the nature of the contested act and, principally, the administrative body that issued it. Finally, as a general rule, the functional competence attributes to higher bodies appeals against decisions of lower bodies, taking into account not only the nature of the contested act but also its amount. This is why the enumeration of competences between the different bodies cannot be clearly set out, but it is possible to establish some general guidelines:

| Administrative body of the contested act | Competent court |
|---|---|
| Local entities and peripheral administration of the State and Autonomous Communities | Contentious Courts |
| Autonomous central bodies | Chamber for Contentious-Administrative Proceedings of the High Courts of Justice |
| Public bodies with legal personality and national competence | Central Courts for Contentious Matters |
| Ministers and Secretaries of State | Contentious-Administrative Chamber of the Audiencia Nacional (National High Court) |
| Council of Ministers and delegated Government Commissions | Chamber for Contentious-Administrative Proceedings of the Supreme Court of Justice |

I. Jurisdiction over local taxation:

When it comes to the actions of local entities, we can distinguish between the approval and promulgation of Ordinances or administrative acts for the application and effectiveness of local taxes.

In the first case, there is no prior administrative remedy against the Ordinances and they may be challenged before the High Court of Justice of the respective Autonomous Community (art. 10 LJCA), and the judgement may be appealed in cassation before the Supreme Court (art. 88 LJCA).

On the other hand, in the case of acts of management, inspection and collection of taxes and other public law revenues of the local Treasury, these require a prior administrative appeal for reconsideration before the Entity itself, except in the case of a large municipality, in which case the prior appeal is heard by the local economic-administrative body. This decision may be appealed before the local Contentious-Administrative Court (art. 8 LJCA). If the case does not exceed 30,000 euros, it will be in sole instance and, if it exceeds 30,000 euros, it will be in first instance, with the possibility of appeal to the High Court of Justice of the Autonomous Community (art. 10 LJCA).

II. Competence in matters of regional finance:

Similarly, in the case of general provisions enacted by the Devolved Regions, they may be directly challenged in sole instance before the corresponding High Court of Justice. Likewise, an appeal in cassation may be lodged before the Supreme Court if the judgement is based on infringement of state or European Community rules, or before the special Chamber of the same High Court of Justice if it is based on infringement of regional rules (art. 86.3 LJCA).

In the case of tax acts of the Autonomous Community, a distinction must be made between those relating to its own taxes and those relating to transferred taxes. In the case of the Autonomous Community's own taxes, administrative review is the responsibility of the Autonomous Community itself, and its decision may be appealed to the Administrative Court of the territory, with subsequent appeal to the Supreme Court of Justice if the amount exceeds 30,000 euros. In the event that the acts were issued by central bodies, litigation will be brought directly before the Supreme Court of Justice, with the possibility of appeal in cassation before the Court itself.

When the challenged act relates to taxes transferred to the Autonomous Regions, its administrative review is the responsibility of the State Economic-Administrative Courts. In the case of an act issued by a peripheral body, the TEAR will have jurisdiction, and an appeal must be lodged with the TEAC if the amount exceeds 150,253 euros. In the case of an act issued by a central body of the Autonomous Community, direct access to the TEAC will be possible. In any case, against the decision that puts an end to administrative proceedings, a contentious appeal may be lodged before the Supreme Court of the Autonomous Community and a subsequent cassation appeal before the Supreme Court or the Supreme Court of Justice, depending on the regulations in question.

III. Jurisdiction over the State Treasury:

If we are dealing with general provisions, the LJCA distributes the jurisdiction for appeals against them according to the body that issues them: if it is a public body with its own

legal personality and jurisdiction throughout the national territory, the Central Courts for Contentious Matters will have jurisdiction, with the possibility of appealing to the National High Court; if they are issued by Ministers and Secretaries of State, they fall under the jurisdiction of the National High Court in sole instance. In both cases, it is possible to appeal in cassation before the Supreme Court. Finally, against general provisions issued by the Council of Ministers and the Delegated Commissions of the Government, the direct contentious appeal will be to the Supreme Court.

With regard to tax acts issued by the State, whether they relate to State or local taxes, their administrative review is the responsibility of the Economic-Administrative Courts. If the TEAC is responsible, its decisions may be reviewed before the National High Court, with the possibility of appeal to the Supreme Court. If it corresponds to the TEAR, an appeal may be lodged with the High Court of Justice and, if appropriate, an appeal in cassation before the Supreme Court.

**Subject matter and amount of the contentious proceedings**

I. Subject matter:

Despite the fact that it is a review and control jurisdiction for administrative action, the object of the process is not the mere action, act, disposition, inactivity or de facto action, as interpreted by the doctrine and case law of the previous Law on Jurisdiction[38] . Rather, these constitute the premises of the process, but its true object is defined by the limit of the claims included in the complaint, which may also include others that have not been alleged before the Administration (art. 56.1 LJCA)[39] , as well as those proposed ex officio by the Court, after hearing, allegations and consent of the parties, if the Court appreciates new or uncontemplated motives or grounds.

It is a consolidated doctrine of the Supreme Court that the contentious process is a dispositive process, with the appellant's claim being the one that delimits its object by formulating its claims in relation to the contested act, as proclaimed in Article 33.2 of the Law of Jurisdiction. However, Article 237.1 of the LGT submits to administrative review all questions of fact and law that the file offers, whether or not they have been raised. Furthermore, we must take into account the constitutional mandate of Article 106 EC to control the legality of administrative action. For this reason, the aforementioned ex officio proposal by the Court is envisaged. However, despite this regulatory framework, case law reiterates that questions not raised by the appellant in previous proceedings should not be introduced, even when the claim may be based on grounds not raised, and even goes so far as to reject grounds or grounds and arguments on the grounds that they are new questions not raised in administrative proceedings[40] .

[38] STS of 11 October 2004.
[39] SSTS of 10 September 2018 and 21 February 2019.
[40] SSTS of 16 November 2015, 9 June 2014, 16 May 2013, and 24 April 2014, etc.

II. Amount of the process:

The determination of the amount of the contested act is essential, as it is one of the fundamental criteria that establishes its termination in one instance or another. Until 2016, the amount even determined the admissibility of the cassation, but this criterion was replaced by the appeal interest of Article 88 LJCA.

The Jurisdiction Act deals with this question in Articles 40 to 42. The first of these entrusts the judicial body with the task of fixing the amount of the appeal by non-appealable order, on the basis of what is stated by the parties in their statements of claim and opposition. Article 41 establishes the valuation criterion, which states that the amount shall be determined by the economic value of the claim at issue, taking each claim individually and adding the amount of the claims in the event of joinder or extension. Finally, Article 42 specifies this last rule, referring to the rules of the LEC with regard to the meaning of the economic value of the claim.

III. The objective interest of the court of appeal:

The reform of the 2015 Law on Jurisdiction substantially altered the cassation appeal, leaving aside the previously mentioned criterion of the amount and eliminating the cases of extraordinary cassation in favour of the so-called "objective cassation interest".

Therefore, at present, the basic requirement for an appeal in cassation is that the infringement of a rule of law or case law by the judgment or order being appealed against is alleged and that the case has an objective appeal interest to be assessed by the competent court itself. The interest of the appeal is an indeterminate legal concept that is considered in terms of the need for the formation of case law in order to unify the existing contradictory case law on the matter to be dealt with or to correct erroneous normative interpretations. The fact that the appeal in cassation is an additional means of review does not mean that it is a new ordinary instance to resolve the matter, but rather that it is regulated as an exceptional means with the function of establishing the correct doctrine on the rule, jurisprudence or doctrine that is considered to be infringed due to serious error, contradiction, harmful doctrine or determining element of the ruling, or a challenge to a general provision.

In any case, in accordance with Article 87 bis LJCA, cassation is limited to questions of law and the claims will be for total or partial annulment of the contested judgment or order and, where appropriate, its return to the corresponding court or its resolution by the Supreme Court itself within the limits of cassation.

The Supreme Court has jurisdiction to rule on these cases, with the exception of cases in which the contested judgment has been handed down by a High Court of Justice and when the rule alleged to have been infringed is a regional one, in which case the High Courts of Justice themselves will have jurisdiction in a special Chamber.

The notice of appeal must be filed within thirty days of notification of the contested decision to the Chamber of first instance, clearly identifying the rule or case law infringed and justifying the objective interest of the appeal as a ground of appeal. After its examination and subsequent admission by the Chamber, it will be sent to the Supreme Court with the case file, summoning the parties, with the possibility of holding a prior hearing before them, and granting a new period of thirty days to the appellant for the presentation of the appeal (art. 89 LJCA).

The judgment must establish the correct interpretation of the rule, jurisprudence or doctrine that is considered to have been infringed, resolving the matter and confirming or totally or partially annulling the judgment or order appealed against or ordering, as the case may be, the reinstatement of the proceedings and their return to the corresponding court so that they may continue to be processed in accordance with the law until their completion.

**Suspension of the contested act**

The suspension of the contested act has been the most debated issue in recent years with regard to the judicial review of tax acts. The 1998 Law of Jurisdiction changed the previous regulation of the 1956 Law, ceasing to refer expressly to suspension in favour of a general allusion to precautionary measures. Thus, in its Explanatory Memorandum, it is argued that such measures are part of the right to effective judicial protection and that, instead of being considered exceptional, the judge must weigh up the need for them in each case.

According to Article 130, "the interim measure may be granted only when the enforcement of the act or the application of the provision could cause the appeal to lose its legitimate purpose". It differs, therefore, from the requirement of irreparable damage by the enforcement of the act of the 1956 LJ in favour of *periculum in mora*, insofar as the risk of the eventual upholding of the judgment might become irrelevant after the enforcement of the act.

On the other hand, a surety or guarantee may be required when damages of any nature are derived from the precautionary measure, this guarantee being configured as an exceptional requirement. However, the case law of the Supreme Court has continued to maintain the doctrine established with the 1956 LJ, admitting that the general rule is suspension with security. In any case, the means of guarantee may consist of any of those admitted in Law, and not only the deposit and bank guarantee contemplated in the previous law.

## CONCLUSIONS

Throughout this work we have been able to observe the configuration of the judicial and administrative review of tax acts and laws in the Spanish system. We have shown the constitutional configuration that structures the tax system, as well as the taxpayer's rights and their defence before the Constitutional Court. An approximation has also been made to the procedure before the Court of Justice of the European Union, when Community Law is involved, together with some brief mentions of the relevance of the European Court of Human Rights and international law in tax matters and its defence before the International Court of Justice. Finally, the workings of the administrative complaint and review procedure and its subsequent review in contentious-administrative proceedings are described in detail, ending with a review of the composition and status of the judges and magistrates who make up these jurisdictional bodies.

From the study of this subject, we can draw several conclusions on the functioning and structure of the review of regulations and acts of the tax administration in relation to the standing of the judicial review and of the acts themselves.

Firstly, there is excessive bureaucracy in the review of tax acts that complicates the claim and resolution of disputes that may arise throughout the tax application procedure. Too many "instances" are foreseen that hinder and delay the taxpayer's access to a correct and final review of his dispute. In my opinion, it is absurd to give the Administration opportunities to amend its own decision, which should be motivated in the first instance on the basis of common ordinances and laws for the whole Administration, following a correct and harmonised common interpretation for the bodies that compose it. The imposition of up to two mandatory administrative instances not only delays the resolution of conflicts in time, but also implies indirect coercion towards the taxpayer who seeks its resolution. A clear example of this can be seen in the judicial abstention from extending knowledge to all issues arising from the case file when they are not raised in administrative proceedings, this possibility being provided for by substantive law.

On the other hand, with regard to judicial appeal, access to ordinary appeals is difficult and there is little or no second instance in the contentious-administrative process. These limitations that complicate access are multiple and range from the requirement of bonds to the limits on the amount of the appeal or the "objective appeal interest", which represent an excessive obstacle on the way to the second instance.

Also of great relevance is the debate on whether to keep tax matters within the contentious-administrative order or to create a specialised tax jurisdiction that can grant rulings with greater legitimacy. Its creation, in my opinion, could benefit the system at different levels, although it remains to be seen whether this would be truly beneficial in terms of procedural economy.

Finally, although it is beyond the object and scope of this paper, I must mention the great harm caused by the institutional blockage of the General Council of the Judiciary. The configuration of the appointment of the governing body of the judiciary leaves room for

excessive political influence that oversees justice in compliance with the respective ideological agendas of each political party within diffuse legal limits.

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