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Judgment of the Court of Justice in Joined Cases C-428/06 to C-434/06

UGT-La Rioja, Comunidad Autónoma de La Rioja and Comunidad Autónoma de Castilla y León v Juntas Generales del Territorio Histórico de Vizcaya, Diputación Foral de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao and Confebask (C-428/06, C-429/06 and C-434/06), Comunidad Autónoma de La Rioja and Comunidad Autónoma de Castilla y León v Diputación Foral de Álava, Juntas Generales de Álava and Confebask (C-430/06 and C-433/06), Comunidad Autónoma de La Rioja and Comunidad Autónoma de Castilla y León v Diputación Foral de Guipúzcoa, Juntas Generales de Guipúzcoa and Confebask (C-431/06 and C-432/06)

THE COURT OF JUSTICE SPECIFIES THE CRITERIA TO BE USED IN ORDER TO DETERMINE WHETHER, IN THE CONTEXT OF STATE AID, A REGIONAL BODY IS INSTITUTIONALLY, PROCEDURALLY AND ECONOMICALLY AUTONOMOUS IN RELATION TO CENTRAL GOVERNMENT

It is, inter alia, necessary to determine whether the calculation and procedure fixing the amount of financial transfers between administrations may have the effect of compensating for the cost of the regional measure and to examine whether such a measure may result in hidden compensation.

The Autonomous Community of the Basque Country is made up of three Historical Territories which constitute regional administrative bodies: Álava, Vizcaya and Guipúzcoa. The political and institutional structure of that Autonomous Community has two different levels, namely, that of institutions common to the whole territory of the Basque Country and that of ‘foral’ institutions and bodies, the competence of which is restricted to the Historical Territories.

In 2005, each of the three Basque foral authorities adopted a tax measure which sets the rate of corporation tax generally at 32.5% and introduces a series of fiscal deductions in connection with that tax. Legislation common to the Spanish State in this respect sets the basic rate of corporation tax at 35% and does not provide for such deductions. In view of the adoption of those foral measures, a trade union (UGT-La Rioja, General Union of Workers of La Rioja) and two neighbouring Autonomous Communities (La Rioja and Castilla y León) brought proceedings before the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (Supreme Court of Justice of the Autonomous Community of the Basque Country) (Spain) for annulment of those foral tax measures.

The Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco asks the Court whether the foral tax measures are to be considered to be selective measures conferring an

advantage on certain undertakings or on the production of certain goods and, accordingly, to be State aid incompatible with the Common Market on the sole ground that they do not apply to the whole territory of the Member State concerned.

First, the Court indicates that it is both to the Historical Territories and to the Autonomous Community of the Basque Country that reference must be made for the purpose of determining whether the infra-State body made up of those Historical Territories and that Community enjoys sufficient autonomy to constitute the reference framework in the light of which the selectivity of a measure adopted by one of those Historical Territories should be assessed.

Next, the Court declares that, in order to determine whether laws adopted by an infra-State body constitute selective State aid, it is necessary to establish whether that body has sufficient institutional, procedural and economic autonomy for a law which it adopts within the limits of the powers conferred on it to be considered as being of general application within that infra-State body and as being non-selective. **However, it is for the national court to determine, on the basis of the elements which the court examines and all other elements which it considers relevant, whether the Historical Territories and the Autonomous Community of the Basque Country have such autonomy, which would have the result that the laws adopted within the limits of the areas of competence granted to those infra-State bodies are not of a selective nature within the meaning of the EC Treaty provision which prohibits State aid.** Moreover, the Court specifies that that verification may be carried out only after prior review in order to ensure that the Historical Territories and the Autonomous Community of the Basque Country respect the limits of their areas of competence since the rules on, in particular, financial transfers have been drawn up on the basis of those areas of competence.

With regard to the question whether infra-State bodies such as the Historical Territories and the Autonomous Community of the Basque Country satisfy the institutional autonomy criterion, the Court finds that they do, since they have a political and administrative status which is distinct from that of central government.

As to procedural autonomy, the Court points out that that criterion is fulfilled provided that the decision taken by the infra-State body is adopted without the central government being able directly to intervene as regards its content. The Court adds a number of details in that regard. First, it states that that criterion does not preclude the establishment of a conciliation procedure, such as that provided for by Spanish law through the Coordination and Legislative Evaluation Committee, in order to avoid potential legislative conflicts, provided that, as in this case, the final decision taken at the conclusion of that procedure is adopted by the infra-State body and not by the central government. Second, the Court states that it does not appear that the Spanish central government is able directly to intervene in the process of adopting a foral law in order to ensure compliance with principles such as the principle of solidarity, that of fiscal harmonisation or the other principles which the infra-State bodies at issue must take into account when adopting a tax measure. It is, however, for the national court to make the necessary verifications.

As to the economic and financial autonomy criterion, this requires that the financial consequences of a reduction of the national tax rate for undertakings in the region is not to be offset by aid or subsidies from other regions or central government. Thus, in examining the system for calculating the quota that the Basque Autonomous Community pays to the Spanish State in order to cover the burdens met by the State in respect of the areas of competence which are not assumed by the Autonomous Community, the Court holds that one of the essential data for the calculation of that quota is the attribution rate. In that regard, the Court finds that, although that attribution rate must reflect generally the relative weight of the Basque

economy within the Kingdom of Spain as a whole, it is, however, set during what are essentially political negotiations. It follows that a decision to reduce the tax rate thus does not necessarily have an impact on the level of that rate. In addition, the Court points out that an undervaluation of that rate is capable of constituting merely an indicator that the Historical Territories lack economic autonomy. In order for that lack of autonomy actually to be confirmed, there must be compensation, in other words, a causal relationship between a tax measure adopted by the foral authorities and the amounts assumed by the Spanish State.

In any event, the Court points out that it is for the national court to determine whether such a process of setting the attribution rate has the aim of permitting the central government to compensate the cost of a tax measure adopted by the Historical Territories which is of benefit to undertakings. Likewise, it is for that court to verify whether, by reason of the methodology adopted and the economic data taken into account, the calculation of the quota may have the effect of causing the Spanish State to compensate the consequences of a tax measure adopted by the foral authorities.

In addition, the Court does not exclude the possibility that a decision to reduce tax adopted by the infra-State body may result in larger financial transfers in its favour because of the calculation methods used to determine the amounts to be transferred. It is, thus, for the national court to examine whether foral laws adopted by the Historical Territories may result in hidden compensation in sectors such as social security, the guarantee of minimum public services by the Spanish State, or even in the functioning of the Inter-territorial Compensation Fund.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: DE, EN, ES, FR, IT, NL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-428/06>

It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731

*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
a service provided by the European Commission, Directorate-General Press and
Communications,*

L-2920 Luxembourg, Tel: (00352) 4301 35177 Fax: (00352) 4301 35249

or B-1049 Brussels, Tel: (0032) 2 2964106 Fax: (0032) 2 2965956