



## Unconstitutionality appeal against the incompatibility of Mayors and Regional MPs

- This affects the Andalusian electoral law which makes the posts of mayor and regional MP incompatible.
- While the appeal is being processed the incompatibility rule provided for in the amendment to the electoral law will be suspended for five months. Before the end of this five month period, the Constitutional Court must reach a decision on the suspension of this contested precept.

**2 March 2012.** The Council of Ministers has approved an Agreement asking the President of the Government to file an unconstitutionality appeal against the last amendment to the Andalusian electoral law, approved at the end of November, to establish the incompatibility of mayors and regional MPs.

Once the appeal is accepted for hearing by the Constitutional Court, a decision that will be known in a few days' time, this Andalusian electoral law rule, which makes the posts of mayor and MP of the regional parliament incompatible, will be suspended for a period of five months. Before the end of this five month period, the Constitutional Court must reach a decision on the suspension of this contested precept.

### Electoral Law of Andalusia

On 23 November last year, the plenary session of the Andalusian parliament, through an amendment to the Electoral Law of Andalusia, established the incompatibility of the posts of regional MP and mayor.

The main aim of the reform of the Andalusian electoral law is to include mayors, chairs of provincial councils and chairs of commonwealths of municipalities in the list of offices incompatible with the post of regional MP of Andalusia.

These incompatibilities do not exist in the basic state electoral legislation, the Organic Law on the General Electoral System, and are considered to be disproportionate and arbitrary, in so far as the regulation under which they are included does not justify the different treatment of mayors, chairs of provincial councils or of commonwealths of municipalities, in relation to other senior posts in the different public administrations (as it was understood under the Andalusian electoral system up until this reform), and they consequently lead to a restriction on the right to stand for election to public office recognised in article 23.2 of the Constitution.

### **Council of State report**

The Council of State has issued a report in which it sets out the "legal grounds" for filing an appeal of unconstitutionality against the article that establishes incompatibility between the posts of regional MP and mayor or council chair.

The Council upholds that the incompatibility between the posts of mayor and regional MP "constitutes a breach of the constitutional right to stand for election to public office and the right to access public posts held by those affected and constitutes discrimination in relation to holders of senior posts, impediment and discrimination without reasonable justification, making it unconstitutional".