



SPANISH CONSTITUTIONAL COURT

Cabinet of the President
Press Office

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THE TC DECLARES AS UNCONSTITUTIONAL THE REGIONAL ACT FROM CANTABRIA WHICH PROHIBITS “FRACKING”, AS IT INVADES EXCLUSIVE COMPETENCES OF THE STATE

The Plenary Meeting of the Spanish Constitutional Court has granted leave to proceed to the appeal lodged by the Government against the Regional Act from the Parliament of Cantabria 1/2013, of 15 April, regulating the prohibition of hydraulic fracking (“*fracking*”) as an investigation and non-conventional gas extraction technique. The Judgment, where Judge Andrés Ollero acted as Reporting Judge, does not examine the adequacy of using this technique, but declares the Act unconstitutional because it invades the exclusive competence of the State “*to regulate the configuration of the energy sector, and its related gas subsector*”. The judgment, which was unanimously backed up by the Plenary Meeting, includes the particular dissenting votes of Judges Fernando Valdés Dal Ré and Juan Antonio Xiol, and of Vice President Adela Asua.

According to the judgment, the challenged regulation collides with Act 17/2013 which is “*fundamental*” in its nature and which authorises the use of “*hydraulic fracking*” in the “*hydrocarbon exploration, investigation and exploitation activities*”. The State Act requires, furthermore, “*the previous favourable declaration of environmental impact in order to authorise*” projects which require the use of hydraulic fracking techniques. Act 17/2013, explains the judgment, is “*constitutionally justified, given that it is necessary in order to preserve basics conditions in energy matters, as well as its importance for the development of Spain’s economic activity and therefore, for the general configuration of the economy*”. As a consequence of that “*fundamental*” character of State laws, the Autonomous Communities may regulate on the subject to uphold their interests and within the competences set out by their Statutes, “*always abiding by the fundamentals established by the State (...)*”.

The Plenary Meeting states that the challenged Act “*invades*” the State’s competence in as much as the “*absolute and unconditional*” prohibition required in relation to the use of “*fracking*” in the Region of Cantabria “*totally and inescapably*” contradicts the provisions of Act 17/2013. In fact, the State rule “*authorises the use of hydraulic fracking in the exploration, investigation and exploitation of non-conventional hydrocarbons*”.

“*The autonomous legislator*”, says the Court “*Does not only establish any particular conditions considered necessary within the competences entrusted to it in the Statute*”, but “*Breaches State competence by colliding with the effectiveness of fundamental laws (...)*”.

The Plenary Meeting does not agree that the autonomous act may be considered as an additional rule issued by the Autonomous Community of Cantabria within its competences for the protection of the environment, mainly because fundamental State laws “*have tried to solve the environmental issues arising from the use of this industrial technique*” establishing “*the need for a prior favourable*”

environmental impact declaration in order to authorise any project involving the use of hydraulic fracking techniques”.

The judgment concludes that, according to constitutional case-law and in order to protect the environment, *“an Autonomous Community may impose requirements and charges in order to grant authorizations and concessions not foreseen by State laws, without altering basic regulations in mining and energy matters”*. In this regard, the Plenary Meeting declared that forbidden *“fracking” “does not constitute another rule of protection in addition to that included in fundamental State laws, since it does not include a higher level of protection”*.

In their particular dissenting vote, Judges Valdés, Xiol, and Asua *“partly”* disagree with the legal foundations of the judgment, not the ruling itself, which they share. They consider that the resolution adopts an approach which, if generally applied, *“would entail huge consequences, of which the most relevant would be to omit regional competence in this situation and in practically any other”*. In their opinion, the judgment does not *“accurately measure the incidence of fracking risks in such a hugely relevant constitutional matter as is the protection of human health”*.

Madrid, 25 June, 2014.