SPANISH CONSTITUTIONAL COURT
Cabinet of the President
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THE TC ENDORSES THE CONSTITUTIONALITY OF THE LAND ACT

The Plenary Meeting of the Spanish Constitutional Court has endorsed practically all of Land Act 8/2007, of 28 May, which was challenged by the governments of the Community of Madrid, La Rioja and the Canary Islands, as well as by the "Popular" Parliamentary Group of Congress. The judgment, where Judge Fernando Valdés Dal-Ré acted as reporting judge, declares as contrary to the Constitution just one section of Art 22 of the challenged Act, related to the appraisal of the land for indemnified expropriation cases. The judgment includes the particular dissenting votes of Judges Juan José González Rivas and Pedro González Trevijano (to which Andrés Ollero and Encarnación Roca have adhered).

The Court explained that, according to its own case-law, "*autonomous competence in urban development matters must coexist with the State's competence under Art. 149.1. section 1 of the Spanish Constitution (CE), whereby the competence of Autonomous Communities in this matter may be legally conditioned.* Said precept of the CE "*acknowledges that the State will be exclusively competent as regards the basic conditions to exercise constitutional rights, or legislation on mandatory expropriation, or on liability, or the common administrative procedure".* The judgment therefore examines whether the provisions of the challenged Act fall within the competence assigned to the State by the Constitution both in Art. 149.1. section 1, and in Art. 149.1. sections 13, 18, and 23.

Based on a definition of urban development as "*the determination of how, when, and where urban sites will be built or developed",* the TC states that the State "*cannot impose a certain territorial or town planning model on Autonomous Communities, but it can in fact influence or channel it through guidelines and basic ground rules that the latter must accept".* Thus, the challenged rule is totally constitutional when it states that the use of economic and natural resources (such as land) must uphold "*the general interest"* and be guided by "*the principle of sustainable development".*

The Court also considers constitutional another provision enshrined as a basic principle and therefore, equally valid throughout the State: "*the public nature of urban development activity".* This regulation sets limits on the rights of ownership and free enterprise regarding land, but allows the State to regulate it under Art. 149.1. section 1. Following this basic outline, each Autonomous Community shall "*in its own legislation, specify cases where the Administration must or may directly undertake urban development, and cases where private initiative is applicable, irrespective of whether or not the land is privately owned".*

The TC also endorses the provision whereby only land which is "*necessary to satisfy its justifying needs, in the absence of speculation"* may be the object of urban development. The preservation of rural land development as "a *common rule or guideline of in territorial and town planning policy"* is justified, according to the judgment, by the State's competence in environmental matters (Art. 149.1. section 23 CE). Furthermore, it adds, even when "*it conditions or limits the territorial arrangement*

and urban development policy of Autonomous Communities, it does not deprive them of content", since they continue to enjoy *"room in which to configure a specific model for land and city arrangements".*

The same happens with the 30% reserve of "*residential buildability foreseen in urban development regulations"* for state-subsidized housing. According to the TC, competence in housing matters allocated to Autonomous Communities is limited "*by rules established by the State in the sector, for general economic management purposes".* Allocating a minimum 30% of land for residential use to state-subsidized housing "*does not exceed the legal scope of the grounds of Art. 149.1. section 13 CE, nor does it breach or render void the competences of Autonomous Communities in housing and urban development matters".*

The TC has also upheld the constitutional of the provision of the rule that requires an environmental impact report and another sustainability report related to urban development activities. In relation to the former, the TC points out that this requirement is basic given that "a minimum level of environmental protection is established with potential development and specification in autonomous laws, which partly albeit legitimately conditions (…) the exercise of urban development competences". As to the latter, the Plenary Meeting has affirmed that the rule "merely establishes a guarantee with a clear economic objective".

Finally, the TC endorses the procedure established in the challenged rule to calculate the value of rural land for the purposes of indemnifying mandatory expropriation. In the hopes of avoiding "*speculative tensions"* and determining the "*real"* or "*objective"* value of the land, the challenged rule pursues an appraisal method that departs from market value. In other words, the challenged Act states that "*the appraisal should be carried out according to 'what there is' and not what 'the plan envisages in the unpredictable future'".* Therefore, the Act distinguishes between rural land ("*not functionally included in urban plans"),* and residential land ("*effectively and appropriately transformed by urban development")*. This means that urban development expectations are not taken into account for appraisals, unless a set of conditions established by law are met.

In relation to the method used to calculate the value of the land, the Act applies an "*income capitalization*" approach. The TC declares this method as constitutional, except for the section entitling the State to change "*up to twice"* the ordinary capitalization rate of actual or potential annual operating income in cases where "*appraisal results significantly depart from the market prices of rural land without urban development potential".* According to the TC, the cap established in the Act "*is not justified"* and "*may result inappropriate to obtain, in these cases, asset appraisal in line with its actual value".* The Plenary Meeting states that, according to its case-law, when appraising an asset "*the existence of a proportional balance between the value of the asset or expropriated right, and the amount of indemnification offered"* must be taken into account, and the capitalization method meets this requirement.

In his particular vote, Juan José González Rivas considers that the precepts eliminating the urban development expectations of appraisals "*interfere with the essential guarantee of the right of ownership (Art. 33 CE), are arbitrary (Art. 9.3 CE) in the absence of unreasonable grounds, and entail unequal treatment (Art. 14 CE) since they do not enable indemnification that is proportional to actual values, by using an unfamiliar capitalization method, which entails an uneven configuration of ownership by demanding extreme sacrifice from holders of the same ownership right, which is waived in relation to those entitled to continue with urban development activities".*

In turn, Judges González Trevijano, Ollero and Roca consider that Art. 33.3 of the Constitution guarantees to individuals the right to "*indemnity"* in the event of expropriation. In the case of rural land suitable for development, this guarantee requires that the owner be placed in the same situation it would enjoy had it been allowed to take part in development activities. However, the disputed precepts establish an appraisal method of rural land– merely based on income capitalization- which does not take into consideration the economic return on the asset, according to the purpose assigned by urban development plans and, consequently, does not guarantee the indemnity of expropriated citizens, thereby infringing said constitutional precept.

Madrid, 25 September 2014.