



SPANISH CONSTITUTIONAL COURT
Cabinet of the President
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THE CONSTITUTIONAL COURT (TC) DECLARES THE UNCONSTITUTIONALITY OF CERTAIN MEASURES APPROVED BY THE ANDALUSIAN GOVERNMENT IN HOUSING MATTERS

The Plenary Meeting of the Constitutional Court has partly upheld the Government's appeal against Decree-Law 6/2013, of 9 April, on measures to ensure compliance with the Social Housing Function approved by the Government Council of the Autonomous Community of Andalusia. The judgment, where Judge Juan José González Rivas acted as reporting judge, considers, on the one hand, that the rule regulates certain issues related to the right to property, a matter that is excluded from the scope of decree-laws; and, on the other hand, that ordering the expropriation of certain vacant houses invades the competences that the Constitution exclusively attributes to the State. The judgment includes particular votes issued by the Vice President, Adela Asúa, and the Judges Juan Antonio Xiol and Encarnación Roca. The Judge Fernando Valdés Dal-Ré has adhered to the latter's opinion.

The State Attorney first of all raises the possibility of Article 1 of the Andalusian Decree-Law (amending various precepts of autonomous act 1/2010, of 8 March, regulating the right to housing in Andalusia) meeting the "*extraordinary and urgent need*" requirement imposed by the Constitution to legislate through these channels. These grounds of the appeal have been dismissed by the Court.

After analysing the preamble of the challenged decree-law, the Plenary Meeting considers that "*the Andalusian Government has met the requirement to explicitly and justifiably explain the extraordinary situation*" entitling it to legislate through urgent channels. And it adds that this situation would not have been covered with the passing of a law by the Andalusian Parliament, given that as the right to dignified and adequate housing (art. 47 CE) is in play, "*a totally immediate regulatory action*" was necessary.

The Court has also dismissed the appellants' argument that the purpose sought with the challenged decree-law could be achieved through devices foreseen in current state laws: "*If an extraordinary and urgent need were to arise, as in this case, all the public powers assigned powers of provisional enactment [...] may react with regulations to cover the situation, as long as they do so within their remit*".

In turn, the judgment upholds the claim made by the State Attorney as to Articles 1.3 and 53.1.a) of autonomous act 1/2010 (as amended by art. 1 of the challenged decree-law) and, consequently, declares them unconstitutional and null and void. Article 1.3, which requires that a homeowner "*effectively use the asset for housing purposes, as foreseen by law*", affects the very core of the right to ownership of a home and, consequently, affects a topic that is "*excluded*" from decree-laws and "*reserved to formal laws*", in accordance with the limits established in art. 86.1 CE. Due to a breach of these same limits, the Court has also declared the unconstitutionality and nullity of art. 53.1.a) and, by reference thereto, of sections 5 and 6 of art. 25.

Finally, the Court considers that the challenged rule invades the state competences foreseen in art. 149.1.13 of the Constitution (“coordination of general planning of economic activity”) and declares its second additional provision unconstitutional and null and void.

The judgment explains that, further to these competences, the Government has enacted regulations which, on the one hand, include the possibility of eviction being suspended; and, on the other, promotes the existence of a social housing fund, owned by credit institutions, to facilitate the leasing of homes for evicted persons.

With this two-fold measure, explains the judgment, the State is determining “*the scope of public intervention*” in the protection of mortgage debtors, in such a way as to be compatible “*with adequate operation of the mortgage market*”. At the same time, “*it prevents*” Autonomous Communities from “*adopting provisions which, seeking this same protection, have a much greater effect on the market*” because, although competence in housing matters is entrusted to the Autonomous Communities, the Court considers it “*constitutionally legitimate*” for the State to provide “*certain guidelines to arrange this segment of the economy*”.

After analysing the State regulations, the judgment points out that the second additional provision of the challenged decree-law has the same purpose as the state law (to protect mortgage debtors), but “*establishes a device that is totally compatible, i.e. expropriation of use of the house being foreclosed for a maximum of three year as of the eviction date*”. “*The fact that the autonomous rule adds a new device to cover this same need*”, explains the Court, “*breaks up the consistent nature of public action in this matter*”. Consequently, the autonomous decree-law “*significantly hinders the efficacy of the economic policy measure*” implemented by the State.

The Vice President of the Court, Adela Asúa, in her particular vote, considers that the second additional provision of the autonomous rule does not breach the Constitution because it does not conflict with state legislation; the measures it contains (expropriation of housing awarded to a third party following eviction) would, in any case, be inapplicable further to the rules of regulatory succession “*at the end of the suspension period of foreclosure proceedings established by the State*”. Furthermore, in her opinion, the judgment clearly departs from the criteria laid down in the Court’s case-law, thereby eroding the distribution of competences enshrined by the Constitution.

Along these lines, Juan Antonio Xiol, in his particular vote, considers that the second additional provision does not invade State competences or interfere with state regulations. With respect to the latter, he explains that state laws contemplate the suspension of certain evictions for a four-year term, which is why the enforced expropriation of a home “*would be merely deferred*”. In his opinion, furthermore, the interpretation made by the judgment of art. 149.1.13 CE produces a “*blockage*” in autonomous competences.

In her particular vote, adhered to by Fernando Valdés, Encarnación Roca explains that in those cases where expropriation foreseen in the second additional provision prevents the eviction of a home ordered by a judge (due to said expropriation taking place before the court order is enforced), the autonomous rule is not regulating the right to property but “*the way in which final resolutions should be enforced or, better yet, not enforced*”. In other words, it touches procedural matters, which is why this additional provision should be declared unconstitutional due to infringing art. 149.1.6 CE (not art. 149.13, as referred to in the judgment). In her opinion, furthermore, the judgment should have specified that the Constitution is not breached if expropriation is subsequent to eviction, i.e. once the court order is enforced and once the home has been awarded to a third party. In this case, “*a*

causa expropiandi is being regulated, established by the Autonomous Community further to its competence in housing matters”.

Madrid, 26 May 2015.