



INFORMATION NOTE No. 65/2015

THE TC DISAGREES WITH THE FACT THAT THE ANDALUSIAN SUBSIDISED HOUSING ACT INFRINGES THE RIGHT TO PROPERTY AND PRINCIPLE OF NON-RETROACTIVITY OF RULES RESTRICTING INDIVIDUAL RIGHTS

The Plenary Meeting of the Constitutional Court (TC) has unanimously and partly upheld the unconstitutionality appeal filed by Grupo Parlamentario Popular against Act 13/2005, of 11 November, of the Autonomous Community of Andalusia, on subsidised housing measures and land. The Court has dismissed the plaintiffs' claim that the autonomous rule infringes the right to property (Art. 33 Spanish Constitution (CE)) and the constitutional prohibition to retrospectively apply measures that restrict individual rights (Art. 9.3 CE); however, it has declared several provisions unconstitutional because they change the level of autonomy of town councils and, consequently, invade the State's competence in relation to the foundations of local government (Art. 149.1.18 CE). Mr. Andrés Ollero was the Reporting Judge.

On the one hand, the appeal was brought against a set of provisions that amend the Andalusian Urban Arrangement Act (LOUA), on the grounds that the Autonomous Government was granted greater competences in urban development and greater control over municipal activity in this field. On the other hand, the plaintiffs claim that Arts. 12 and 13 of the challenged law infringe the right to property and the principle of legal non-retroactivity. In their opinion, both provisions entitle the Andalusian Administration to exercise its rights of pre-emption (purchase of housing with preference over others) and redemption (possibility of purchasing a house transferred to a third party in breach of already established conditions) over subsidised housing purchased before the challenged rule came into force.

In relation to this latter pleading (referring to Arts. 12 and 13), the Court has dismissed the plaintiff's claim. There is no breach of the right to property because, it states, *"the need to abide by a right of pre-emption and redemption does not affect the right to transfer a house per se"*, but *"only affects the right to choose a purchaser"*. The judgment explains that when the Administration exercises its *"preferential acquisition"* rights it does so in order to *"avoid fraud"* (such as the payment of higher prices *"under the table"* when selling subsidised housing); consequently, it is a *"device to control the legality of conveyances, which is why a non-complying owner should suffer any consequent damage"*.

Furthermore, states the Plenary Meeting, it cannot be said that these new measures are unexpected or unforeseen when covered by the subsidised housing sector, which *"is exposed to huge public intervention and regulatory changes"*. *"This sector"*, it adds, *"in fact enabled the conveyer at the time to purchase a house in more beneficial terms (than those of the market) in exchange for rules of use and disposal (which are stricter than those of ordinary private law), which already then was very specific and highly controlled by the state"*.

In turn, the need for the owner of subsidised housing to abide by the Administration's preferential acquisition rights *"clearly responds to a general interest purpose: access to adequate housing for persons in need"*. Consequently, measures such as the ones introduced by the challenged law are justified by grounds *"that are particularly strong,*

inherent to a constitutional cornerstone: the commitment of public powers to encourage conditions that ensure an effective integration into social life (Art. 9.2 CE), in general, and access to adequate housing (Art. 47 CE) in particular". It is also justified by the *"the constitutional mandate of social and economic protection for families (Art. 39.1 CE), young citizens (Art. 48), senior citizens (Art. 50 CE), disabled persons (Art. 49 CE) and returning emigrants (Art. 42 CE)"*.

The judgment also disagrees with the fact that a constitutional principle is infringed, forbidding the retroactivity of measures that restrict individual rights. This principle forbids retroactivity *"understood as the effects of a new law on legal effects already produced"*, and does not affect conveyances of houses *"executed prior to the effective date of the Act"*.

The claim is also addressed against a set of precepts containing amendments to the LOUA and entrusting the Regional Government with greater competences in urban development matters. Specifically, the plaintiffs claim that this reform of the LOUA infringes the provisions of Art. 60 of the Local Government Foundations Act (LBRL) by limiting to ten and fifteen days (whilst the period must be at least one month according to the LBRL) the timeframe granted to local bodies to reply to requests made by the Autonomous Community. In this case, the judgment states that *"by establishing shorter timeframes, [the challenged precepts] change the level of local autonomy guaranteed by Article 60 LBRL and, consequently, invade the State's competence in local government foundation matters (Art. 149.1.8 CE)"*.

In addition to the timeframes, the Andalusian legislator has increased the level of autonomous intervention replacing that of local bodies, depending on the seriousness of the urban development infringement committed, not, as foreseen by the LBRL, according to *"how the competences are affected"*. The Court recalls that the Administration of the Regional Government of Andalusia may *"eventually be entitled to protect supra-municipal interests by exercising the control regulated in Art. 60 LBRL"*. *"However"*, it adds, *"the Andalusian legislator has departed from a relevant item in this basic determination by defining the situations entitling replacement autonomous intervention according to a principle other than its effect on competences (...)"*. Consequently, the reform of the LOUA is also unconstitutional on this point.

Madrid, 28 July 2015