SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATIVE NOTE No. 15/2016

THE TC APPROVES THE ACCEPTED INTERPRETATION OF TWO ARTICLES OF THE ELECTRICITY SECTOR ACT AND ENDORSES THE CONSTITUTIONALITY OF ITS OTHER PROVISIONS

The Plenary Meeting of the Constitutional Court (TC) has endorsed Electricity Sector Act 24/2013, of 26 December [Ley del Sector Eléctrico] (LSE), of which several articles were challenged by the Catalonian *Generalitat* due to invading autonomous competences. According to the judgment, most of the precepts challenged respect the distribution of competences in the matter and, in relation to another two (Arts. 3.13.a and 43.5), it approves their accepted interpretation in order to conform to the Spanish Constitution (CE) and the Statute of Autonomy. A particular vote was issued by the Vice President of the Court and Reporting Judge, Adela Asúa, and by the Judge Juan Antonio Xiol, which was subscribed by the Judges Encarnación Roca and Fernando Valdés Dal-Ré.

Before analysing each challenged precept, the judgment explains which case-law issues are considered "*basic*" in energy matters and, consequently, are entrusted to the State. In material terms, the Court has declared that basic issues will "*include any determinations that guarantee a minimum common regulatory content (…), a single approach with certain stability in any issue that the legislator deems essential at the time in relation to this material sector*". In formal terms, constitutional case-law has considered that "grounds" as such not only include legal basic rules but also, *"exceptionally (…) regulatory rules and executive acts, to particularly include the economic regime, without limitation*".

Further to the foregoing, the Court has determined which is the accepted interpretation of Arts. 3.13.a) and 43.5 of the challenged rule, in order to be deemed constitutional.

The first (Art. 3.13.a LSE) entrusts the State with competence to authorise electricity facilities according to the power installed and nominal line voltage, not according to the territorial principle foreseen in the Constitution. The Plenary Meeting has declared that this precept is constitutional as long as said legal criteria (power and voltage) *"do not alter the outcome pursued by the constituent power*", as already stated in a previous judgment (Constitutional Court Judgment (STC) 181/2013).

The second provision (Art. 43.5 LSE) entrusts the State with regulating a procedure to resolve conflicts between the end users of electricity and supplier companies. Specifically, the precept regulates a "*specific procedure*", the aim of which is to settle any disputes between end consumers of electricity who are natural persons (citizens purchasing electricity for personal use) and supplier companies, as long as the dispute affects specific user rights and is regulated by electricity user protection laws. "*Consequently, it is a reinforced*

device available to end users that are natural persons to uphold the specific rights they are entitled to in sectoral regulations", states the judgment. There is no doubt, it adds, that "*the State, further to its basic competences ex Art. 149.1.25 CE, should design an administrative device to resolve disputes, being examined here*".

However, the attribution to a state body of executive duties, as is the case of the challenged precept, will be constitutional insofar as the State does not undertake "*the executive task related to the resolution of all disputes raised by natural persons who are end consumers of electricity*", but only those disputes "*exceeding the scope of an autonomous community*", consequently affecting "*the sector's economic regime".* Furthermore, the judgment explains that the challenged precept does not exclude autonomous competences "*in those cases not linked to basic issues that the State needs to guarantee*"; in fact, it recognises that Autonomous Communities, "*within their own scope of competence, may also regulate this conflict resolution procedure* (…)".

Consequently, the Plenary Meeting has upheld the constitutionality of the precept, as long as it is interpreted in the foregoing terms.

The judgment has upheld the constitutionality of the other LSE articles challenged, on creating a single consumer registry for the entire State; the need for a prior and binding report from the National Markets and Competition Commission in relation to the settlement of certain differences arising in the granting or dismissal of permits to distributor companies; regulation of the rights and obligations of distributor and sales companies; or regulation of electricity supply.

In her particular vote, the Vice President and Reporting Judge, Adela Asúa, disagrees with the acceptable interpretation of Art. 43.5 LSE in the judgment. In her opinion, the precept invades autonomous competences as it entrusts the State with "*executive powers it is not entitled to*". She affirms that in a shared matter, such as electricity, the State may only undertake executive duties if this is necessary to guarantee "*state grounds*", which "*is not the case here*". What is being regulated, she adds, is a specific procedure to settle disputes between users and supplier companies without these disputes "*questioning the maintenance and effectiveness of the sector's economic regime*".

Judges Xiol, Roca and Valdés also disagree with this acceptable interpretation of Art. 43.5 LSE, whereby the competence to settle disputes is entrusted to a state body. In their opinion, each Autonomous Community should resolve these disputes, as it is an executive competence. They claim that this right consists of "*examining*" whether "*rights have or have not been upheld*", in favour of a certain group of consumers, which is why its performance by an autonomous body "*will not risk the effectiveness of basic state regulations*". Furthermore, they consider that the judgment breaches Community law by hindering the resolution of disputes, as now there is doubt on whether users should address a state or autonomous body, in each case.

Madrid, 3 March 2016.