SPANISH CONSTITUTIONAL COURT
Cabinet of the President
Press Office

INFORMATIVE NOTE No. 28/2016

THE TC PARTLY ANNULS THE REFORM OF THE CATALONIAN CONSUMER CODE

The Plenary Meeting of the Spanish Constitutional Court (TC) has partly upheld the appeal brought by the Spanish Government against Catalonian Decree-Law 6/2013, of 23 December, amending Act 22/2010, of 20 July, on the Catalonian Consumer Code. The challenged rule prevents supplier companies from cutting off electricity and gas supply received by persons in financial difficulties, due to non-payment of the bills. The judgment, in which Santiago Martínez-Vares has acted as Reporting Judge, considers that this provision invades basic state competences on the energy regime (Art. 149.1.25 Spanish Constitution (CE)), and infringes state legislation, which has applied another system to protect vulnerable consumers, financing part of the supply price. The Vice President of the Court, Adela Asua, issued a particular dissenting vote, adhered to by the Judge Fernando Valdés Dal-Ré; Judge Juan Antonio Xiol also issued a particular vote.

The constitutional dispute on competences refers to the system governing the obligations and rights of electricity and gas distributors. Following its reform by the challenged Decree-Law, the Catalonian Consumer Code provides that, if bills are not paid, companies may not cut off supply received by persons in financial difficulties and certain family units; furthermore, the outstanding debt should be deferred and/or divided into instalments. The issue raised in the appeal is whether said legal provision is compatible with "*basic state regulations on the cut-off of supply, foreseen in electrical and hydrocarbons sector laws".* According to the State Attorney, the challenged rule has invaded a State competence; in the *Generalitat*'s opinion, this competence is shared, by virtue of Art. 133.1 of the Statute of Autonomy.

Existing laws in the matter are affected by European regulations (Directives 2009/72/EC and 2009/73/EC), which require that Member States take measures to protect vulnerable consumers and, in order to meet this objective, it also imposes obligations on electricity and gas distributors.

The judgment explains that, since both directives have been implemented into Spanish law-specifically Electricity Sector Act (LSE) and the Hydrocarbons Sector Act (LSH)-, the State has decided to "*protect vulnerable consumers through a discount system, by financing part of the price of electricity and gas supply, not by establishing prohibitions on disconnected supply with respect to those clients in a critical situation, or others*". These regulations are above all of a national scope and "*clearly indicate*" that a different type of protection has been implemented for vulnerable consumers, which differs from other models, which "*albeit equally legitimate- such as a forbidden disconnection- may also guarantee supply to this social group*".

The Court also explains that the purpose underlying "*treating a social discount as a public service obligation (Art. 45 LSE)"* is, precisely, to "*guarantee supply"*. Furthermore, this solution is in line with European regulations, whereby "*Member States may impose public service obligations on electricity companies, in the general economic interest, which may affect (…) supply prices*".

Consequently, State laws provide a system of "*obligations and charges on the agents participating in the electricity system*", further to the competence that the Constitution reserves to the State in Art. 149.1.25. This conclusion is also reached insofar as the regulations affect sectors that are determining "*for the overall economy and for all other economic sectors and daily life*".

After determining that the competence is entrusted to the State, the judgment points out that the challenged reform breaches state laws (LSE and LSH), by "*forcing distributors to supply electricity and gas despite non-payment*", which entails a prohibition that is "*incompatible with basic laws, which are in favour of protecting vulnerable consumers through a reduction in the supply price*". "*No objection would be admissible*", explains the Plenary Meeting, if the Catalonian legislator had decided to regulate "*social assistance measures involving economic benefits to avoid a cut-off in electricity and gas supply for vulnerable consumers receiving a disconnection notice pursuant to Art. 166.1.a) of the Statute of Autonomy*".

However, by establishing that supply must continue despite non-payment, the challenged rule is proposing "*protection of guaranteed supply to vulnerable consumers in breach of basic regulations, which have decided in favour of protection based on an acknowledged right to a mandatory reduced tariff on the part of distributors* (…)".

To conclude, the challenged provisions (paragraph two of sections 6 and 7 of Art. 242-2 of the Catalonian Consumer Code Act, introduced by Art. 2 of the challenged Decree-Law), are unconstitutional and null and void.

In their particular vote, Judges Asua and Valdés affirm that the Court should have dismissed the appeal in its entirety because, in their opinion, the challenged rules do not contradict the state rules contained in the LSE and LSH. On the one hand, they claim that these state rules do not specifically regulate the protection of vulnerable clients in "energy poverty" situations, in the terms requited by the EU, which is why they leave the door open to Autonomous Community regulations. On the other hand, they consider that the state law, by regulating a reduction in electricity prices, is not pronouncing itself on the wish to exclude any form of suspension of disconnected supply to vulnerable consumers in critical situations. In short, given the State legislator's failure to adopt the necessary measures to implement European regulations, an Autonomous Community may issue the measures it deems appropriate, within the scope of its own competences, in order to fulfil EU law.

In turn, Judge Xiol considers, first of all, that the matter regulated by the challenged Decree-Law is not the energy regime but the protection of vulnerable consumers, which is why the case deals with a social rule. Secondly, he affirms that, although the regulated matter was the energy regime, the Catalonian rule regulated measures on which the State did not enjoy exclusive competence, but shared competence with the *Generalitat*, as they refer to "*the quality of energy supply services*". Finally, he considers that the challenged rule does not breach state legislation because neither the LSE nor the LSH contain the regulations required by EU directives to protect vulnerable consumers, i.e. "*the State has expressly waived this regulatory implementation*", which is why "*autonomous regulations may establish individual rules to fill in the regulatory vacuum left by the State*".

Madrid, 8 April 2016