



INFORMATIVE NOTE No. 35/2016

THE TC PARTLY LIFTS THE INTERIM SUSPENSION OF THE ACT REFORMING THE CATALONIAN CONSUMER CODE

The Plenary Meeting of the Constitutional Court (TC) has decided to lift the interim suspension ordered against several provisions of Act 20/2014, of 29 December, amending the Catalan Consumer Code, which were challenged by the Spanish President. The decision includes a particular vote issued by Judge Juan Antonio Xiol.

The rules included in the challenged law are partly based on preceding Catalan Decree-Law 6/2013, of 23 December, covered by recent Constitutional Court Judgment (STC) 62/2016, of 17 March, which has been determining in the Plenary Meeting's decision to maintain or lift the interim measure ordered against Act 20/2014.

Thus, the Plenary Meeting has agreed to lift the interim suspension ordered against Art. 3 (defining situations of "energy poverty" and economic vulnerability), and with respect to that part of Art. 17 establishing the duty of all vulnerable users to submit a social services report confirming their situation, in order to avoid a cut-off in supply. However, it has maintained the interim measure on that part of Art. 17 that prohibits a suspension of gas and electricity supply. The decision has also maintained the interim order against Art. 18.2 (establishing requirements to cut off electricity and gas due to non-payment of continuously supplied services), due to its link to what was decided in said STC 62/2016.

The Court has also lifted the measure ordered against the first additional provision, creating the Welfare Fund for Basic Supplies. Based on demand, the Fund- which is nurtured, amongst others, by contributions from suppliers and competent administrations- has "*an immediate and direct impact on the economic regime applicable to the electricity and gas system as a whole (...)*". The decision considers that the "*provision does not set quantitative criteria to enable an analysis of the extent to which the electrical and gas systems as a whole are affected in economic terms*", nor is there "*an inescapable and mandatory connection with funds assigned in State Budgets*".

The appeal also affects various provisions that regulate the granting of facilities and mortgage loans. This category includes Art. 8, which the Plenary Meeting has agreed to relieve of the interim suspension order. According to this article, in the event of foreclosure of a first home, before filing claims in administrative or judicial channels, the parties should resort to mediation or arbitration. The Court considers that any harm "*is a mere hypothesis*", which is why it is insufficient in order to claim that suspension continue.

The Court has also lifted the interim suspension ordered against Art. 13, establishing which clauses should be considered abusive in facility and mortgage loan agreements. The Plenary Meeting recalls that "*the principle of res iudicata cannot be treated as detrimental per se, as it is linked to the core principle of legal certainty*". Likewise, the Court has agreed to lift

the suspension in relation to several sections of Art. 20, also related to facility and mortgage loan agreements.

Finally, the Court has upheld the suspension of another section of Art. 20, providing that a lender may not grant a facility or mortgage loan in the case of a negative solvency appraisal. In this case, the Court considers that application of this provision could entail “*a direct and immediate restriction on credit access*”, and this restriction could be detrimental, as claimed by the plaintiff, “*to the individual interests of both lending banks and their clients*”.

In his particular vote, Judge Xiol is manifestly against continued suspension of some sections of both Art. 17 and Art. 18.2. An extension of the interim measure agreed by the Plenary Meeting is a consequence of the prevailing declaration of unconstitutionality and nullity established in the ruling of STC 62/2016, on the presumed constitutionality of the challenged rule, a decision with which Xiol disagreed at the time.

Madrid, 27 April 2016.