



CONSTITUTIONAL COURT OF SPAIN
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THE CONSTITUTIONAL COURT DECLARES THE PARTIAL UNCONSTITUTIONALITY AND INVALIDITY OF THE LAW ON TERRITORIAL PLANNING FOR THE TOURISM SECTOR IN THE ISLANDS OF EL HIERRO, LA GOMERA AND LA PALMA, FOLLOWING AN APPEAL BY UNIDOS PODEMOS

The Plenary Session of the Constitutional Court has partially upheld the action of unconstitutionality lodged by the Parliamentary Group Unidos Podemos – En Comú Podem – En Marea in the Congress against Canarian Law 2/2016. This law had modified Law 6/2002, on territorial planning measures concerning tourism in the islands of El Hierro, La Gomera and La Palma.

The appellants considered that the challenged law had not properly justified the classification of 25 urban projects as particularly interesting projects to the island. Indeed, 11 of them were affected by a ruling rendered by the Supreme Court on May 18th, 2015. This ruling had declared the invalidity of Decree 12/2008, which had approved certain suspended parts of the Special Territorial Plan for the Tourism Sector in the island of La Palma. The appeal claimed that the law violated articles 9.3 and 24 of the Spanish Constitution (CE).

The ruling rendered by the Constitutional Court declares the unconstitutionality and invalidity of additional provision (DA) no. 2 of the Law, and holds that the challenged norm is not self-sufficient, since it needs subsequent acts of application which are foreseen by that provision. The preamble of Law 2/2016 does not provide any explanation on the reasons that led to the approval of DA no. 2. Therefore, the judgement considers that the legislature has not made an explicit statement on the reasonableness and the proportionality of that provision. This is particularly relevant in this case, as the regulation of this matter by a legislative act prevents the control exerted by administrative courts with regard to the declaration of interest of certain specific urban projects. No explanation was provided on the reasons to consider that only these projects are characterized by any peculiarity that could distinguish them from the others, which could also be approved through the so-called Specific Planning Instrument on Tourism (IPST). Based on these reasons, the judgement concludes that DA no. 2 has infringed article 24.1 CE and must be declared unconstitutional and invalid.

However, the Court considers that other articles challenged by the action of unconstitutionality are not contrary to the Constitution. In particular, article 3, which modified article 6.1 of Law 6/2002, dated June 12th, as well as additional provisions no. 1 and no. 3. According to the appellants, said DA no. 3 was contrary to State legislation, as it allowed the tourism classification to be applied on any category of rustic land, including those lands where a maximum level of protection and sustainability measures were implemented.

The judgement holds that there is no such contravention, since the Canarian urban planning legislation regulates the use of both ordinary rustic land and environmentally

protected rustic land but, in the case of the latter, the legislation expressly requires the compatibility of the use envisaged with the protection regime to which the land is subjected.

As regards DA no. 1, the judgement considers that in no way can this provision be construed as allowing, through the aforementioned IPST, the urbanization of rural lands. The reference included in paragraph 2, which holds that IPST are possible "*in any kind and category of land*", has to be properly construed. It may only mean that it is the previous categorization of land that determines the regime of utilization of each kind of land. Thus, the introduction of this kind of urban instruments may not ignore or circumvent that previous categorization of land and the regime of utilization of lands as regulated by the Canarian law-maker. Beyond that, the challenged norm incorporates certain environmental considerations, by requiring that the IPST shall contain provisions related to the "*impact on the physical territory, the environmental effects and the means to correct or mitigate them*".

Madrid, 10 May 2018