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THE CONSTITUTIONAL COURT UPHOLDS THE CONSTITUTIONALITY OF THE LAW ADOPTED BY CASTILLA-LA MANCHA ON MEASURES FOR THE PROTECTION OF HEALTH AND THE ENVIRONMENT CONCERNING HYDRAULIC FRACTURING

The Plenary Session of the Constitutional Court has resolved to endorse the constitutionality of final provision no. 1 of Law 1/2017, by the Parliament of Castilla-La Mancha, dated March 9th. The purpose of this law was to establish additional measures for the protection of public health and the environment, concerning exploration, investigation or exploitation of hydrocarbons through the technique of hydraulic fracturing (i.e. “fracking”). Final provision no. 1 of the law had introduced a new paragraph, “c)”, in article 54.1.3 of legislative decree 1/2010, dated May 18^h, which regulates the so-called “rural reserve land”.

The challenged provision indicates that, in this specific type of land, *“projects that require the use of hydraulic fracturing methods may be undertaken, (...) provided that they obtain the compulsory urban classification required in this law and that they comply with all urban and territorial regulations”*. The Constitutional Court considers that *“the purpose of the reform is to grant to local authorities responsible for land and urban regulations”* the power to forbid fracking activities in all “rural reserve lands”.

In January 2018, the Constitutional Court had admitted to process the action of unconstitutionality brought by the central Government against several provisions of the mentioned law. Accordingly, the Court suspended the applicability of those provisions. The central Government considered that the law violated State competences concerning the protection of the environment, the bases of the mining and energy regulations and the general coordination of economic planning. In this vein, the appeal contended that the State regulation regarding *fracking* activities, i.e. the use of hydraulic fracture techniques, is already contained in Law 21/2013, dated December 9th, on Environmental Assessment. This law holds that the potential risks arising out of this activity must be appraised on a case-by-case basis by the organ of each administration in charge of environmental issues (either national or regional).

The judgement further explains that the attribution established in article 54.1.3 c) *“must be integrated with and exercised through the strategic plan for the use of hydraulic fracturing”*. In any case, *“the constitutionality of this attribution does not preclude the control that any competent jurisdiction may realize over the exercise of such power by the local or regional administration”*.

Moreover, the Court has also upheld the constitutionality of article 3 of the same regional Law 1/2017. This provision regulates the strategic plan regarding the use of hydraulic fracturing methods. The judgement holds that this provision contains a new rule that has not been reviewed until now. Indeed, the provision grants to the government of the Autonomous Community the power to establish a zoning of the regional territory, and thereby determine

specific areas where the technique of *fracking* may be prohibited, restrained or authorized in accordance with the legal requirements laid down by the law.

The judgement considers that, at this juncture, *“It may not be appropriate to anticipate or make assumptions about the results of the zoning entrusted to the administration”*. Indeed, according to constitutional case law, *“this Court must not issue an opinion about the hypothetical interpretation of the challenged rules that the parties raise at the proceedings”*. Magistrate Ricardo Enríquez was the rapporteur of this ruling.

Madrid, 20 June 2018