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THE CONSTITUTIONAL COURT MAINTAINS THE SUSPENSION OF ARTICLE 20.6, CONTAINED IN CATALAN LAW 18/2017 ON TRADE, SERVICES AND FAIRS, CONCERNING SALES

The Plenary Session of the Constitutional Court has, by unanimity, resolved to maintain the suspension of article 20.6 regulating sales of Catalan Law 18/2017 on trade, services and fairs, dated August 1st. The judgement makes an exceptional application of the standard of respect for the principle of *fumus boni iuris* (the presumption of sufficient legal basis).

The Court is now ruling on the issue because the Government of Catalonia had not been able to submit its own arguments due to the application of direct rule by the central Government as provided in article 155 of the Constitution. However, after having received those arguments and considering that the automatic suspension period of five months established in article 161.2 of the Constitution was about to be reached, the Plenary has decided to maintain the suspension of the validity of the challenged regulation.

The sixth paragraph of Article 20 of the challenged Law states: *"The standard periods to hold sales are winter and summer, and before September 30th of each year, the advisory council on trade of the Regional Government must indicate the opening and closing dates of the sales seasons for the following year, taking into account the demands of the commercial sector"*.

The decision, drafted by Magistrate María Luisa Balaguer, explains that the Court already had the opportunity to rule on comparable cases which presented a strong enough similarity to the contested article (see previous Judgments *STC 211/2016* and *STC 25/2017*). Therefore, the Court has considered that the aforementioned presumption of sufficient legal basis as an exceptional measure was applicable in this particular case.

In this respect, the resolution states that *"although Article 20.6 does not [by itself] limit, nor provide any specific dates on the seasons of sales, it does establish the existence of annual standard periods and foresees that the regional authority shall recommend the opening and closing dates of such periods of seasonal sales, including the possibility to impose restrictions on the merchant's ability to freely take decisions regarding discounts"*. Therefore, *"they have no place in the liberalizing regime that configures the state legislator with a basic role in this field"*.

The judgement concludes by reminding that *"while the use of the presumption of sufficient legal basis must be exceptional, this does not imply that it should be absolutely abandoned"* by the Court.

Madrid, 27 September 2018