



CONSTITUTIONAL COURT OF SPAIN  
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### THE CONSTITUTIONAL COURT DISMISSES THE APPEAL OF UNCONSTITUTIONALITY OF UNIDOS PODEMOS AGAINST LAW 2/2016 OF ARAGON, WHICH REGULATES THE TAX ON WATER POLLUTION

The Plenary Session of the Constitutional Court has resolved to dismiss the appeal of unconstitutionality (*“recurso de inconstitucionalidad”*) filed by more than 50 members of the Parliamentary Group Unidos *Podemos-En Comú Podem-En Marea* and by members of the Mixed Group from the Congress of Deputies. The said appeal was directed against several provisions of Law 2/2016 (namely Articles 5.3, 5.4, 5.6 and 5.8), dated January 28<sup>th</sup>, on Tax and Administrative Measures of the Autonomous Community of Aragon. This challenged Law was aimed at amending several precepts previously applicable under Law 10/2014 in relation to the tax on water pollution in the Autonomous Community of Aragon (namely Articles 82.5 and 82.6, the 7<sup>th</sup> Additional Provision and the 6<sup>th</sup> Transitional Disposition), dated November 27<sup>h</sup>, on Waters and Rivers of Aragon. The judgement of the Court has considered that *“the regional lawmaker complies with the provisions of Article 6.3 of the Organic Law on Financing of the Autonomous Communities regarding the local purification rate or price for the provision of services linked to the purification of Zaragoza’s waters”*.

According to the appellants, the challenged regulation contravened local autonomy prerogatives by establishing a new regime to govern the Aragon Water Pollution Tax (*“Impuesto sobre la Contaminación de Aguas”* or *“ICA”*) which disregards the right of local entities to participate in matters of their interest. In addition, they considered that it violated the principle of financial sufficiency enshrined in Article 142 of the Constitution. They further added that the system of bonuses established by this Law (in favour of small municipalities with less than 200 residents and municipalities with a population of 200 or more) was contrary to Articles 45 (environment) and 9.3 of the Constitution (prohibition of arbitrariness) due to the infringement of the principles of European Union environmental law. On the contrary, the Parliament and the Government of Aragon classified the ICA as a specific tax of the autonomous community and argued that the system of bonuses established by this Law cannot be considered arbitrary and contrary to Article 9.3 or 45 of the Constitution since it is reasonable and justified by economic and environmental reasons.

The Court's ruling, drafted by Magistrate Juan Antonio Xiol Ríos, explains that the ICA measure was created and regulated in the exercise of the tax powers conferred to autonomous regions by Article 133.2 of the Constitution. This precept was complemented with Article 156.1 of the Constitution, which grants them financial autonomy for the management of their respective interests and allows them to use the corresponding taxation instrument in the implementation and enforcement of all their powers. In this case, the Community of Aragon has jurisdiction to regulate, among other matters, the environment, water, local regime and territorial planning.

In this sense, the Court reasoned that *"there is no identity between the local tax for water treatment and purification services and the ICA, since there are differences between them in terms of their tax nature and the taxable event they are subject to"*. Hence, *"the introduction of this tax does not, in the end, constitute an undue limitation of the local taxing powers in relation to the determination of the elements of the tax for sanitation and purification services"*.

The appellants also argued that the ICA was intended to discourage the pollution of water by those users who make use of this natural element, but in no way benefit from measures that have nothing to do with that purpose. The Court judgement states that *"the system of bonuses challenged by the appellants must be placed both in the context of the process of implementing water purification and cleaning installations in the Autonomous Community of Aragon, as well as in the context of the different factors that the legislator may take into consideration when articulating and modulating a tax such as the one analysed here"*. For example, by establishing by law higher bonuses in the smallest municipalities of less than 200 inhabitants.

*"The autonomic lawmaker has chosen to take into account various economic, social and demographic considerations when establishing the system of bonuses, which cannot be considered as lacking any reasonable justification"*.

The last point of contestation referred to the violation of the principle of legal certainty and legitimate expectations contained in Article 9.3 of the Constitution. The judgement emphasizes that the appellants *"do not specify what legitimate expectations of the taxpayers affected could be deemed safeguarded by the regulations now modified"*. Furthermore, in the Court's view, *"it would not be consistent with the evolving nature of the legal system and constitutional case-law to consider the change in legislation as contrary to the principle of legal certainty"*. In conclusion, *"the contested regulation is framed within the scope of the lawmaker's attribution; it has a complete freedom to choose between the different possible options offered by the Constitution"*.

Madrid, 02 October 2018