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### THE CONSTITUTIONAL COURT DECLARES THAT LAW 5/2018, WHICH SETS OUT IMMEDIATE MEASURES TO RECOVER ILLEGALLY OCCUPIED PROPERTIES, DOES NOT INFRINGE THE RIGHT TO THE INVIOABILITY OF THE HOME OR TO DECENT HOUSING

The Plenary Session of the Constitutional Court has dismissed the appeal of unconstitutionality (*"recurso de inconstitucionalidad"*) filed by more than 50 members of the Confederal Parliamentary Group of *Unidos Podemos-En Comú Podem-En Marea* in the Congress of Deputies. This appeal was directed against Law 5/2018 (dated June 11<sup>th</sup>) amending Law 1/2000 on Civil Procedure, of January 7<sup>th</sup>, in relation to the illegal occupation of properties.

The appellants considered that the challenged Law violated, among others, the right to the inviolability of the home and to enjoy decent and adequate housing, given that it permitted a forced eviction from the property without a housing alternative and without allowing the judicial authorities to assess the specific circumstances of each case.

The judgement of the Court, which was drafted by Magistrate Andrés Ollero, states that *"the judicial resolution to proceed with the eviction of the occupants that may be adopted during the preliminary steps of the procedure for the recovery of the possession of the property established by Law 5/2018 does not constitute a violation of the right to the constitutionally guaranteed inviolability of the home"*. Indeed, *"the judge is the competent authority to order and remedy situations contrary to the substantive law and its adaptation to it. In this sense, no factual circumstances shall be opposed to him in order to enable that an illicit situation such as the illegal occupation of a dwelling may remain in place and continue"*.

The Court explains that the freedom to choose a residence is not an absolute right to occupy any dwelling or place, but rather a right limited by law that must be exercised in accordance with it. Therefore, *"in order to lawfully occupy a dwelling it is necessary to enjoy some right that enables the subject to make such use of the property in which he intends to establish himself"*.

On the other hand, the judicial order for the eviction of occupants of the dwelling does not in any way preclude the public authorities from addressing cases of residential exclusion that may arise, in particular when they affect particularly vulnerable individuals. The judgement further provides that *"the judicial decision ordering the eviction of the illegal occupants of the dwelling must be communicated by the judicial authority to the public services competent in the field of social policy, so that within seven days they may adopt the appropriate protective measures, in accordance with the situation of vulnerability to which those affected by the eviction may be subject, provided that they have expressed their consent"*.

In the same vein, the right to decent and adequate housing is not violated inasmuch as this provision *"does not guarantee a fundamental right but enshrines a guiding principle of social*

*and economic policy*". Hence, the controversial regulation cannot, in any case, contravene the mandate of Article 10.2 of the Constitution to interpret the norms relating to rights and freedoms in accordance with the Universal Declaration of Human Rights and the international agreements and treaties on the same matters ratified by Spain.

On this point, the Court observes that *"the prohibition of forced evictions referred to in the United Nations instruments cited by the appellants does not apply to evictions carried out in a lawful manner and in conformity with international human rights standards, in particular those relating to the right to a fair trial"*. The judgement concludes that Law 5/2018 is, despite being a procedural norm, not unconnected with the legislator's concern to deal with situations of special social vulnerability that may occur as a consequence of the judicially decreed eviction of housing. In addition, *"the legislator enjoys a wide margin of appreciation for adopting social and economic provisions"*.

The concurring opinion formulated by Magistrate María Luisa Balaguer is based on the consideration that the recognition, the observance and the protection of the guiding principles must inspire positive legislation and, therefore, influence the freedom of the legislator. Equally, they must also shape judicial practice, which must also encompass constitutional jurisdiction. The control parameter used by the Constitutional Court is the Constitution itself. Therefore, it also includes Article 47 of the Constitution. It is from that perspective of the full effectiveness of the entirety of the constitutional text, as well as the guiding principles it contains, that the abstract constitutionality judgment must be formulated in the case of the challenged norm.

The fact that Article 47 is not regarded as a fundamental right under the Constitution does not empty it of its effects. Rather, this provision possesses a binding legal force. However, its level of enforceability does not lead to immediate direct application but requires the judicial authority to define a parameter of constitutionality with regard to the rule whose constitutionality it seeks to examine. This process must be carried out in compliance with the requirements of a social and democratic State governed by the rule of law, as provided for in the Spanish Constitution.

Madrid, 5 March 2019