

CONFLICTS OVER COMPETENCES AND THE NEED TO REDRESS THE SITUATION. THE CONFLICTS BETWEEN THE STATE AND THE GOVERNMENT OF CATALONIA REGARDING THE REGIONAL LAWS ON THE FIGHT AGAINST ENERGY POVERTY AND IN THE FIELD OF HOUSING

In the last seven years, the Spanish Government has challenged up to 34 laws and initiatives of the Parliament and the Government of Catalonia and has resorted to Article 161.2 of the Constitution, which automatically suspends the entire law or initiative, or part of it, at issue.

A large number of these conflicts are sovereign-related such as the challenge to Law 10/2014 on popular consultations different to referendums, the Decree 16/2015 on the setup of a National Transition Commissioner and the Resolution 1/XI of the Parliament on the process towards independence.

However, the challenges to laws addressing problems arising from the economic crisis in the fields of housing and energy poverty have also had a major impact. This was the case of the challenge to the Decree-law 6/2013, of 23 December, partially modifying the Law 22/2010 on the Catalan Consumer Code that included a series of measures against energy poverty. The law defined what economically vulnerable citizens are concerning electricity and gas supplies and set up a system to provide direct aid for energy consumption or debt repayment. The State alleged his competence of setting the basis of the economic system and the energy system. The Government of Catalonia alleged exclusive competence in the field of consumption. The Constitutional Court, in its arguable Judgment 62/2015, declared unconstitutional the most important articles of the Decree-law since it understood that the competence of the State prevailed over the Catalan one in terms of energy system regulation. Judges Adela Asúa, Fernando Valdés Dal-Re and Juan Antonio Xiol Ríos wrote strong dissenting opinions.

The Spanish Government also challenged Law 20/2014, of 27 December, modifying the Catalan Consumer Code, which reaffirms the protection measures against energy poverty while introducing new measures in the field of housing so as to protect mortgagors from eviction. The Government added to the previous arguments the competences on procedural law and on the right to property with relation to the protection measures for mortgagors. In the Order of 12 April 2016, the Constitutional Court partially lifted the suspension of the Catalan law based on the previous Judgment 62/2015 and on the damages the suspension would cause to economically vulnerable citizens. On the other hand, the Court confirmed the suspension of Articles 17 and 18.2 relating to electricity and gas supply cuts and to the support measures addressed to economically vulnerable consumers, as well as the suspension of the long Article 20 regulating the relations between provider and client in the field of mortgage credits and loans.

Finally, the central Government challenged Law 24/2015, of 29 July, on urgent measures in the fields of housing and energy poverty. This Law was particularly significant inasmuch as it originated from a popular legislative initiative that received broad parliamentary support. In order to tackle the problem of housing, the Law established measures to solve overindebtedness (an out-of-court procedure and a simplified court procedure), as well as measures on social housing, as amongst others it forced legal persons to handover their unoccupied dwellings. This time, however, the Government only requested the suspension of the articles setting forth conflict resolution measures in the field of housing and of those imposing the handover of empty dwellings.

The conflict between the central Government and Catalonia has a high media and popular impact. While many families are still suffering the effects of the economic crisis, the challenged laws try to embrace the rights of economically vulnerable citizens. These, however, cannot but perplexedly witness an exchange of reproaches where the confronted parties allege different competences: the central Government alleges the economic system, the energy system, procedural law and regulation of the right to property, while the Catalan Government invokes consumption rights and the development of the basic national laws. Meanwhile, the State makes use of the privilege of suspending the regional law according to Article 161.2 of the Constitution.

The large amount of conflicts regarding such relevant matters as energy poverty and the right to decent housing (which of course condition the necessary intervention of the public authorities) lead us to put forward two reflections.

To start with, challenging regional laws does not imply that they cannot be enforced, as in one case the suspension has been partially lifted and in the other case the central Government has only alleged Article 161.2 of the Constitution with respect to some articles of the challenged law. This means that the Catalan Government can still implement the regional laws and articles that have not been challenged as well as the national laws in order to tackle the serious problems mentioned.

One could criticize the excessive amount of conflicts and some judgments of the Constitutional Court. However, this is compatible with demanding that the Catalan Government act efficiently and diligently in the fight against the severe effects that the crisis has had upon the most disadvantaged citizens.

In addition, this conflictive environment should be reduced through a series of mechanisms. Firstly, a territorial Senate where the national laws with an impact on the regions should be agreed upon by all parties. Secondly, the accurate determination of the scope of horizontal competences (such as the economic system). Thirdly, the recognition of an actual self-government capacity of the autonomous communities in the defense of the citizens' interests. Conflicts should be avoided, as well as the resort to the Constitutional Court: its judgments will hardly ever have a satisfactory solution for both parties as the interpretation of legal competences usually has very different readings.