

COMPULSORY SOCIAL RENT AND REHOUSING: THE CONSTITUTIONAL COURT PARTIALLY UPHOLDS THE APPEAL OF UNCONSTITUTIONALITY AGAINST THE DECREE-LAW OF THE GENERALITAT DE CATALUNYA 17/2019

Following the appeal of unconstitutionality with number 2577-2020 filed by the Popular Party Parliamentary Group against the Decree-law of the Government of the Generalitat de Catalunya 17/2019, of 23 December (“**DL 17/2019**”), on 28 January 2021 the Constitutional Court issued a judgment (the “**Judgment**”) in which it declared several articles of DL 17/2019 to be unconstitutional and null and void. DL 17/2019, among other aspects (e.g. amendments to the revised text of the Catalan Urban Planning Law), modified part of the Catalan regulations on housing, compulsory social rent and rehousing. In the Judgment, the Constitutional Court considered that DL 17/2019 regulated matters that were outside its scope, as they affected the right to property.

This information briefing analyses the impact of the Judgment in relation to compulsory social rent and rehousing. The main consequences of the Judgment are the following:

- (i) The obligation for the landlord to renew compulsory social rent contracts at the end of their term is declared null and void.
- (ii) The obligation to prove that a social rent proposal has been made prior to filing legal claims in any enforcement action derived from claiming a mortgage debt and eviction claims (i) due to the expiry of the duration of the legal title for occupation of the dwelling and (ii) due to a lack of legal title for occupation is declared null and void.
- (iii) The obligation to offer social rent in the cases described in paragraphs (i) and (ii) above is declared null and void in the event that the corresponding legal proceedings had been initiated prior to the entry into force of DL 17/2019 and are in progress.
- (iv) The minimum duration of social rent contracts under the terms of DL 17/2019 is declared null and void.
- (v) Furthermore, the following articles of DL 17/2019 are declared unconstitutional and null and void:
 - Articles 2.2, 2.3, 2.4, 2.5 and 4.2, that amended Law 18/2007, of 28 December, on the right to housing in Catalonia, in relation to fulfilment of the social function (“**Law 18/2007 on the Right to Housing**”);
 - Articles 2.7 and 2.10, which amended Law 18/2007 on the Right to Housing, in terms of detecting anomalous uses and situations of dwellings, as well as actions to prevent the permanent vacancy of dwellings. In the latter case, the assumption by the new owner of the consequences of non-fulfilment of the social function of the property by the previous owner is declared null and void;

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- Article 2.11, in order to declare null and void a section of Article 113.2 of Law 18/2007 on the Right to Housing, which regulates periodic non-penalty fines;
- Article 2.12, which amended Article 123.1 h) of Law 18/2007 on the Right to Housing, which regulates very serious infringements for failing to comply with requests to occupy a dwelling for the purpose of it constituting a residence of persons;
- Article 4.5, in order to declare null and void a section of Article 124.2 j) of Law 18/2007 on the Right to Housing, which regulates serious infringements in the area of protection of consumers and users of housing in the real estate market;
- Article 5.5, which amended Law 24/2015, of 29 July, on urgent measures to tackle the housing emergency and energy poverty, with regard to measures to guarantee the social function of property ownership and increase the stock of affordable housing for rent; and
- Article 6.3, which amended Law 4/2016 of 23 December on measures to protect the right to housing of persons at risk of exclusion from housing, with regard to the forced expropriation of dwellings.

In short, the Constitutional Court has declared certain articles of the Catalan legislation to be unconstitutional and null and void (thus limiting its scope) because the amendments introduced by DL 17/2019 violated certain material limits by regulating by decree-law matters that should be excluded from such legislation, as they affect the right to property recognised in the Spanish Constitution.

Notwithstanding the above, from a practical point of view, the Catalan regulations applicable in respect of compulsory social rent and rehousing will remain in force in the terms in which they were already regulating this matter to date, except for the articles declared unconstitutional and null and void under the Judgment, which limited its scope and content.

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The information contained in this Briefing is of a general nature and does not constitute legal advice. This document was prepared on 17 February 2021 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.

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