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The Supreme Court recognises the power of the administration to impose emission limit values in an IEA even though they are not covered by a previous standard

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Regarding the High Court's judgment of 3rd November 2020

The Supreme Court has declared that the Administration is empowered to set emission limit values (ELVs) in an Integrated Environmental Authorisation (IEA) without the need for a regulation that predefines these ELVs for the pollutant substance and the specific production process. The recent **Ruling of the High Court of 3 November 2020** (Rec. 2727/2019) has established that ELVs must be set in accordance with the criteria established in Article 7 of Royal Legislative Decree 1/2016, of 16 December, which approved the revised text of the Integrated Pollution Prevention and Control Act, paying special attention to the best available techniques ("**RDL 1/2016**").

The act challenged in the proceedings was a decision of the Generalitat de Catalunya agreeing to the non-substantial modification of the environmental authorisation of a facility dedicated to the manufacture of urea and melanin moulding compounds. Although the mere presentation and the expiry of the one-month period covered the execution of the non-substantial modification, the Generalitat de Catalunya issued a decision accepting that modification; although, in addition, it imposed - without any relation to the modification communicated - some ELVs for formaldehyde, total organic carbon and volatile organic compounds (VOCs).

The Generalitat de Catalunya recognised that the ELVs imposed were not a matter of national or Community law and that they derived from German legislation and from Royal Decree 117/2003 of 31st January 2003 on the limitation of emissions of volatile organic compounds due to the use of solvents in certain activities, which did not cover the appellant's activity.

The Superior Court of Justice of Catalonia upheld the company's contentious-administrative appeal and annulled the new ELVs because they lacked express regulatory backing. The Supreme Court departs from the ruling of the Court of First Instance and upholds the imposition of the ELVs in accordance with the criteria of Article 7 of RDL 1/2016, without the need for a rule to predetermine them.

However, the High Court dismisses the appeal. In the analysis of the specific case, the Chamber declares that the administration cannot impose emission limit values not laid down in the permit on the occasion of a non-substantial change which has no connection with it. The Supreme Court points out that the VOC ELV cannot be imposed *'because the reasons and the reports which will serve as reasons are not known'* and, regarding the ELVs for other substances based on German legislation, that their *'effectiveness is neither appropriate because they are not effective*

The imposition of ELVs not provided for in the legislation is a widespread practice among the environmental administrations which, to a certain extent, had been curtailed by the pronouncement of the judge in this judgment.

The Supreme Court ruling recognizes this possibility in accordance with Article 7 of RDL 1/2016 but obliges the Administration to give reasons for its decision when appealing against ELVs not expressly provided for in the regulations. In our opinion, this doctrine encourages technical debate between the operator and the Administration. The application of the rule would be projected, once again, as concentric circles from greater to lesser intensity: *(i)* the automatic application of the limit values provided for in the internal rule for the activity regulated by it; *(ii)* the ELVs linked to the BATs that may be applicable; and *(iii)* other criteria established in the scientific literature or in the regulatory rules of other fields, or even of other states. The requirement for a more detailed and extensive statement of reasons would be directly proportional to the distance from the case *(i)* referred to.

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