The Spanish Supreme Court has annulled some of the rules regarding the system of financing fair compensation for private copying through the General State Budget on the grounds that they are incompatible with EU law. The system that had been in place up until now was approved by the SGAE through a Royal Decree that was annulled by the Court of Justice of the European Union (CJEU) in 2012.

The judgment can be considered as the culmination of a whole series of warnings and findings that, even before it came about, presaged the incompatibility of the Spanish scheme for financing the compensation for private copying with Directive 2001/29/EC.

The Spanish Supreme Court has left a legal vacuum that will have to be filled by the Spanish Government in the coming months and will likely involve a return to the former levy system.

Two months later, in February 2013, this Royal Decree was challenged by all the Spanish copyright collecting societies to the Constitutional Court, which decided that the copying exception laid down in Directive 2001/29/EC was not cumulative with the exception for reproduction. The Court decided that the levy system was contrary to the provisions of Article 5.2(b) of Directive 2001/29/EC. As regards this second issue, the respondents argued that the principle enshrined in Directive 2001/29/EC that fair compensation should ultimately be borne by the persons who make private copies, is not respected in a system such as the Spanish scheme, under which the compensation is paid by all taxpayers without drawing any distinction.

The judgment is therefore the final step in the process that began with the annulment of the Royal Decree of 6 May 2013 by the Supreme Court. The judgment can be considered as the culmination of a whole series of warnings and findings that, even before it came about, presaged the incompatibility of the Spanish scheme for financing the compensation for private copying with Directive 2001/29/EC.

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