The observatory of environmental policies 1978-2006. General assesment

FERNANDO LÓPEZ RAMÓN

Sumario

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1. INTRODUCTION: PRESENTATION, ENVIRONMENTAL POLICI AND LAW

The Observatory of Environmental Policies is a research initiative organised by the Ecology and Development Foundation created to periodically assess the environmental policies of both the national and the Autonomous Communities governments in an international, European Union and comparative context. It is endorsed by the Ministry of Environment, which has collaborated with Thomson-Aranzadi publishers in the publication of the first analysis containing a total of 31 papers ordered in three sections: «International and European Union environmental policies» "National environmental policies» and «Autonomous Communities environmental policies» (Observatorio de Políticas Ambientales 1978-2006, Pamplona, 2006).

The Observatory of Environmental Policies is divided into two separate units: the Advisory Committee and the Working Group. The Advisory Committee comprises representatives of the sponsors, creating an environment for the exchange of ideas and experiences and for setting forth research priorities and criteria. The Working Group currently comprises 40 professors specialised in Environmental Law at 25 universities who draft and discuss their various studies(*).

(*). The idea for this project arose at the beginning of 2005 over the course of some extremely enjoyable workshops in Cadiz. The team of organisers were: José Francisco Alenza García, Francisco Delgado Piqueras, Agustín García Ureta, Jesús Jordano Fraga, Demetrio Loperena Rota, Fernando López Ramón, Blanca Lozano Cutanda, Alba Nogueira López, Luis Ortega Álvarez, Juan Rosa Moreno, Íñigo Sanz Rubiales and Germán Valencia Martín.
At the present time the Working Group of the Environmental Policy Watchdog Committee comprises the following:
Alastuey Dobón, Carme: Professor of Criminal Law, University of Zaragoza.
Alli Turrillas, Juan Cruz: Professor of Administrative Law, National University of Distance Education.
Alenza García, José Francisco: Professor of Administrative Law, Public University of Navarre.
Alonso García, Consuelo: Professor of Administrative Law, University of Castilla-La Mancha, Toledo Campus.
Alonso Ibáñez, Rosario: Professor of Administrative Law, University of Oviedo.
Bermejo Latre, José Luis: Professor of Administrative Law, University of Zaragoza.
Bouazza ariño, Omar: Assistant Professor of Administrative Department, Complutense University of Madrid.
Caro-Patón Carmona, Isabel: Professor of Administrative Law, University de Valladolid.
Comella Dorda, Rosa: Fellowship of the Jean Monnet Centre at the University of New York.
Delgado Piqueras, Francisco: Professor of Administrative Law, University of Castilla-La Mancha, Albacete Campus.
Esteve Pardo, José: Professor of Administrative Law, University of Barcelona.
Fernández de Gatta Sánchez, Dionisio: Professor of Administrative Law, University of Salamanca.
Fernández Ramos, Severiano: Professor of Administrative Law, University of Cadiz.
Fernández Salmerón, Manuel: Professor of Administrative Law, University of Murcia.
García Álvarez, Gerardo: Professor of Administrative Law, University of Zaragoza.
García Ureta, Agustín: Professor of Administrative Law, University of the Basque Country, Bilbao Campus.
Gómez Puente, Marcos: Professor of Administrative Law, University of Cantabria.
Gutiérrez Llamas, Antonio: Professor of Administrative Law, University of Murcia.
Herráiz Serrano, Olga: Associate Professor of Administrative Law, University of Zaragoza.
Jiménez Jaén, Adolfo: Professor of Administrative Law, University of Las Palmas de Gran Canaria.

The first research of the Observatory has addressed environmental policies developed in Spain from 1978 to the present. The initial date was determined by the approval of the Constitution which addresses sustainable development in the three main clauses of article 45: the right of all citizens to an adequate environment for the development of their personality, the corresponding guarantee role of the authorities and the establishment of criminal, administrative and civil liabilities. From this starting point, many and different elements have been incorporated into different environmental policies and have defined their content as it shall be successively explained: international commitments, EU environmental policy, basic State legislation, complementary and additional legislation of the Autonomous Communities, public authorities specialising in the protection of the environment, various enforcement mechanisms –particularly those relating to planning and finance–, the influence of jurisprudence of the various Spanish Courts in the matter and the environmental issues requiring suitable responses provided by the public policies.

Environmental policies are public policies created and applied throughout that period. Prior to the Constitution of 1978 there only were a short series of partially protectionist policies, such as those of national parks, which were introduced in 1916 in accordance with the predominantly aesthetic criteria. The contemporary Spanish State has now genuine environmental policies in place, with those of the Autonomous Communities being more general in nature, combining international, European Union and national elements and from where the environmental policies of Local Authorities are coordinated. The efforts made in this respect have been extremely important, despite the need for external stimulus and models

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Jordano Fraga, Jesús: Professor of Administrative Law, University de Sevilla.
Loperena Rota, Demetrio: Senior Professor of Administrative Law, University of the Basque Country, San Sebastian Campus.
López Ramón, Fernando: Senior Professor of Administrative Law, University of Zaragoza.
Lozano Cutanda, Blanca: Senior Professor of Administrative Law, University of the Basque Country.
Marraco Espinos, José Manuel: Environmental Lawyer, Zaragoza.
Martín Fernández, Jacobo: Deputy General Director, General Technical Office Ministry of the Environment.
Nogueira López, Alba: Professor of Administrative Law, University of Santiago de Compostela.
Ortega Álvarez, Luis: Senior Professor of Administrative Law University of Castilla-La Mancha, Toledo Campus.
Parra Lucán, María Ángeles: Senior Professor of Civil Law, University of Zaragoza.
Plaza Martín, Carmen: Assistant Professor of Administrative Law, Complutense University Madrid.
Rosa Moreno, Juan: Professor of Administrative Law, University of Alicante.
Santamaría Arinas, René Javier: Professor of Administrative Law, University of La Rioja.
Sanz Larruga, Francisco Javier: Professor of Administrative Law, University of La Coruña.
Sanz Rubiales, Iñigo: Professor of Administrative Law, University of Valladolid.
Socias Camacho, Joana M.: Professor of Administrative Law, University of the Balearic Islands.
Tarrés Vives, Marc: Assistant Professor of Administrative Law, University of Girona.
Trias Prats, Bartomeu: Assistant Professor of Administrative Law, University of the Balearic Islands
Vadrí i Fortuny, María Teresa: Professor of Administrative Law, University of Barcelona.
Valencia Martín, Germán: Professor of Administrative Law, University of Alicante.
Vera Jurado, Diego: Professor of Administrative Law, Universidad of Malaga.

in so far they have served largely to create goals and even means for the Spanish authorities. In any case, the fact that there has been such progress is not to be taken as a satisfactory observation since there is still an alarming workload to undertake in this area.

The implementation of environmental policies has led to the development of corresponding areas of knowledge one of which, Environmental Law, has attained remarkable importance. From the pioneering studies of Professor Martín Mateo, numerous doctoral theses addressing different developments of environmental policy mean that today there are many research groups dedicated to Environmental Law. There is a large number handbooks and treatises published and regularly updated, several specialised scientific and professional journals, which regularly inform on innovations and initiate debate, scientific conferences where different opinions are exchanged etc. The logical consequence of formation of such a scientific community should be the recognition of a specific area of knowledge which might address the needs of research and teaching of this matter in a stable manner.

The Spanish legal environmental doctrine shows singular links with the constitutional undertakings in the matter. This highlights the fact that interpretations of article 45 of the Constitution produced over time tend towards a continuous extension of its meaning. Initially, the normative value of this provision stood out, included as part of the governing principles of social and economic policy. This has led to a remarkable doctrinal work, as in other comparative experiences, attempting to deduce further consequences in an effort to create collective and subjective rights to the environment and even leading to linking the constitutional protection of the environment with a characterisation of the so-called «Ecological State». Nevertheless the Spanish State cannot be characterised now as one fully aware of the need to protect the Environment, although within the State itself there are circles of authorities, ways of thinking and trends attempting to give priority to achieving such objectives.

2. THE INTERNATIONAL ENVIRONMENTAL COMMITMENTS: GENERAL DEVELOPMENT, NATIONAL POSITION, INTERNATIONAL JURISPRUDENCE

The creation and consolidation of environmental policies accord a relevant role to International Law, a fact that enlights the idea that the environment constitutes the heritage and common task of mankind. The three main World Conferences on the environment (Stockholm, 1972; Rio de Janeiro, 1992; Johannesburg, 2002), despite the lack of any binding nature in the approved documents resulting from these events, have served to strengthen and to develop environmental policies all over the planet. At the same time, they have provided cover for the signing of a relevant group of international multilateral treaties, the sources of the International Environmental Law. These define world standards of protection for diverse

natural resources, providing various mechanisms designated to ensure national enforcement of the corresponding undertakings.

Achievements begin to appear significant, although there are some glaring gaps in specific sectors. Thus the failure to induce the USA and other developed countries to reduce carbon dioxide emissions as established by the Kyoto Protocol (1997), whose entry into force was delayed until 2005, assuming the first undertakings of countries to reduce emissions for the period 2008-1012. The disappointment at the absence of a general global measure for protecting forests is also noteworthy, despite the important renewal of the Forestry Law issued from the Conference on Environment and Development (Rio de Janeiro, 1992), which spread the awareness of the need to take effective action against deforestation.

However, it is clear that, at present, the international environmental commitments assume a predominant position in democratic States. International treaties are key elements for the interpretation of the legal sources of different environmental sectors. The International Environmental Law has thus been incorporated into national environmental policies, including those from arising from countries themselves and those established by other territorial entities.

Spain has shown a somewhat more passive attitude albeit never overtly hostile to the processes of the creation and application of international environmental treaties. Some elements may highlight this lukewarm attitude. For example, Spain has barely been used for hosting environmental events and treaties, with only a few examples such as the Barcelona Convention for protection of the Mediterranean Sea against pollution (1976), and the Madrid Protocol on Environmental Protection to the Antarctic Treaty (1991). Furthermore, there has been remarkable delay in ratifying some environmental treaties: 20 years for the Antarctic Treaty (Washington, 1959) and 7 years for its subsequent Protocol (Madrid, 1991); 11 for the Convention on International wetlands (Ramsar, 1971); again, eleven for the CITES (Bern, 1975); 6 for the Convention on the conservation of migratory species (Bonn, 1979); 15 for the Convention on the Law of the Sea (Montego Bay, 1982), or 9 for the Agreement on the conservation and planning of specific fish stocks (New York, 1995). An unusual case is the European Landscape Convention (Florence, 2000), which has not yet been ratified by Spain whereas the findings of the convention have been assumed by the legislation of the Community of Valencia (2004) and in Catalonia (2005).

Nevertheless, there have been cases of Spain's rapid ratification of environmental treaties such as the Biodiversity Treaty (Rio, 1992) or the Desertification Treaty (Paris, 1994), both of which were ratified in the same year they entered into force (1993 and 1996, respectively). In addition, in recent times the growing international role played by the European Community has led to Member States following suit in any action the Community takes, as may be seen from the Convention on participation rights in environmental matters (Aarhus, 1998), ratified almost simultaneously by the European Community and Spain in 2005.

The inclusion of Spanish sites in the various lists of protected places is also remarkable with regard to the process of national enforcement of international convention requirements. For example, over 50 sites have been included in the List of International Wetlands (Ramsar Convention, 1971), as well as being subject to a strategic national plan for their conservation and use; almost 40 sites are included in the World Heritage List issuing from the Paris Convention (1972); and 9 of 14 specially protected zones of Mediterranean importance issuing from one of the protocols of the Barcelona Convention (1976) are located in Spain.

Finally, jurisprudence of the European Court of Human Rights has a remarkable influence on the process of affirmation of Spanish environmental policies, specifically in the *López Ostra Case* (Decision of 9 December 1994), which required an effective confirmation of the principle which ensures that protection of the environment is linked to the fundamental rights. Specially it was considered that a home which was persistently subjected to an invasion of smell, noise and smoke over some years without the authorities taking any remedy action, was deemed to be an infringement of the right to privacy granted by article 8 of the European Convention on Human Rights. The spectacular nature of this argument has led to its establishment in Spanish doctrine and jurisprudence: a fine example is the Decision of the Constitutional Court 119/2001, of 24 May, which admits noise levels as a fundamental right of physical and moral integrity and the inviolability of the home, so that when the damage is caused by public authorities, an administrative claim may be lodged before the municipality. In this case, however, the Constitutional Court did not appreciate the relation between the noise and the damages alleged by the claimant, and the matter was ultimately assessed by the European Court of Human Rights which deemed the damage to the human right to privacy to be sufficiently proven as a result of municipal breach of duty of care of the lowest nightly noise levels (Moreno Gómez case, Decision of 16th November 2004).

3. ENVIRONMENTAL POLICY OF THE EUROPEAN UNION: ORIGIN AND DEVELOPMENT, INFLUENCE, EU JURISPRUDENCE

Since 1971, the European Commission, despite the silence of the constitutional treaties on the matter, has maintained the need to implement an EU environmental policy in order to avoid distortions in the common market. Not less than three environmental action programmes were approved before 1986 as well as approximately a hundred Directives in the matter, all of them approved in accordance with those principles. The presence of this body of regulations in the Spanish Law was extremely important at the beginning, although it did not receive any special attention in negotiations prior to or during the Act of Accession. Thus when Spain signed up to the Treaties, it needed to undergo important regulatory reforms: the regulation on the water system was brought forward in time with the approval of the Water Act of 1985 which amended former proposals on the authorisation of water disposal, protection of subterranean waters, the water disposal tax, or the requirements of waste treatment; in 1986, there were remarkable innovations regar-

ding air protection (new Regulations of the former Act of 1972) and waste (Toxic and Hazardous Waste Act). However, the most significant of these was the approval of the Legislative Decree of Environmental Impact Assessment (1986), regulating an institution called to occupy a central role in the matter.

The foregoing was just the beginning of a policy which was to grow considerably in the following years. The accession of Spain to the European Economic Community coincided with the inclusion of the chapter on environmental policy in the Rome Treaty, pursuant to the terms of the Single European Act (1986). Since then, the processes for adapting Spanish environmental legislation to the EU Law requirements are constant; in so far the European environmental policies may be identified as the first regulatory framework in the matter. A solid body of regulations has brought a breath of fresh air to the stagnant attitude towards the environment assumed by traditional Spanish Law requiring action of the Spanish public authorities in much more effective terms. With successive environmental action programmes it has been necessary to acquire a body of regulations which have been gradually approved affecting various sectors of the environment. With regard to general instruments for environmental protection, some of them may be quoted: the regulation of the right to access environmental information (1995), the regulation on ecological labelling (1994), a system of environmental auditing and management (1996) or the important reform of assessment of environmental impact (2001). The defence of water quality has imposed the regulation of solid waste dumping in the sea (1989) and of urban waste water (1995). With regard to various types of pollution, it can be underlined the new Waste Act (1998), the system for prevention of serious accidents caused by hazardous substances (1999), the Integrated Pollution Prevention and Control Act (2002) and the Noise Act (2003). The protection of natural areas set out in the Natural Protected Areas Act (1989), which did not comply with the EU regulations in the matter, has led to the recent reform established by the Forestry Act (2003), in order to facilitate the implementation of the ecological network Natura 2000. The list of special conservation areas, although not exhaustive, is sufficient to understand the deep significance that the EU environmental policy has had on the set up and scope of environmental rights and duties in the Spanish legal system.

It should nevertheless be pointed out that the Spanish authorities have not always been very enthusiastic in implementing EU requirements in this matter. Spanish delays in incorporating EU environmental Law are frequent. Currently there are significant questions pending approval such as the reform of the right to access environmental information (Directive 2003/4) or environmental liability (Directive 2004/35).

Also on several occasions the Kingdom of Spain has been penalised by the European Court of Justice for failure to comply with the EU environmental Law requirements. A particular case in point is that of the Directive on Wild Birds (Directive 79/409), which imposes on countries the need for conservation of specific habitats, especially wetlands, constituting areas for special protection which

should be managed according to ecological requirements and should form a «coherent network». In general, the most prevalent criterion among countries was that identification of the affected zones was discretionary. This idea was discredited in the case of Spain in the Decision of 2nd August 1993 in the case of the Santoña Marshes, where the duty of Member States to protect areas with the characteristics set forth in the Directive was identified, and to this effect conservation measures were ordered and the effects of the protective declaration were not be prevented except in the case of general interests of an exceptional nature. These jurisprudential proposals serve to provide an idea of the effects issuing from the European Ecological Network Natura 2000, comprising special conservation areas which are regulated by the Habitats Directive (Directive 92/43).

Spain was the second Member State ordered to pay a coercive fine, for failure to comply with Directive 76/160 on the quality of indoor bathing water, as was made possible by the Maastricht Treaty (Decision of 25th November 2003). Nevertheless, in 2005 the European Commission decided not to charge the fine, recognising that compliance with this water-quality regulation had improved.

In general, there is a disparity between Spanish authorities and EU environmental regulations. Administrative bodies adapt only in an incomplete manner to their requirements, despite the fact that clear obligations to provide results are frequently stated.

Also, the Spanish judiciary shows substantial distancing from EU, with remarkable failure to address preliminary questions to the Luxembourg Court concerning environmental issues, despite the complexity of some EU regulations on this matter. Sometimes it seems to be forgotten that such regulations must be applied even if they have not been invoked by the parties, or that the Decisions which declare non-compliance of the State with the EU Law have *ex tunc* effect, i.e. they take effect from the date on which the regulation should have been applied.

4. COMPARATIVE ENVIRONMENTAL POLICIES: UNITED KINGDOM, ITALY AND FRANCE

The recent introduction of environmental policies in different countries and their strong links to multilateral international treaties explains the importance that Comparative Law has had in their formation and development. With regard to the environment, countries have been required to exchange information in order to ensure the enforcement of common international commitments or to provide solutions to similar problems. In all elements of the environmental policies there are significant common trends, from legislation to organisation, planning, programming and enforcement. Therefore, it is appropriate to consider expressly some of the relevant comparative polices in the European arena.

The development of environmental policy in the United Kingdom was initially linked to the influence of international conferences on the subject, and is now

particularly linked to the environmental policy of the European Union. This fact should be noted since the high level of British compliance with the European Community obligations coincides with its history of criticising the invasive effects of EU Law. However, the most important measures were adopted after 1990, when the first general reports on the matter were submitted, the Environmental Protection Act was approved and the Environmental Agency was set up. Some remarkable elements in this experience are the measures to strive pollution and, within this sphere, action relating to climate change, the emphasis on voluntary agreements to adopt new environmental protection requirements, public participation linked to a strong trend towards the creation of associations, municipal environmental polices expressed in Local Agenda XXI and the action of expert committees which provide reasoned opinions on environmental problems.

A noteworthy characteristic of environmental policy in Italy appears to be the permanent contrast between proposing and enforcing legislation. It is one of the European States with the highest levels of association activism in defence of the environment, yet at the same time has one of the greatest numbers of complaints due to infringement of EU environmental requirements. One of the peculiarities of Italy is the distinction it makes between the concepts of landscape and environment, which are subject to different regulations and organisations. This differentiation initially arose due to the predominance of aesthetic criteria in the protection of the countryside as opposed to the cleanliness-centred basis of the first environmental regulations. Since 1977 the Italian Regions have developed complex environmental policies, particularly active in matters of the protection of natural areas. On a national level, the recent creation of the ecological tax on the consumption of fossil fuels (1999) should be noted, as should the approval of the Strategy for Sustainable Development, which aims to integrate care of the environment into economic and sector policies (2002). In any case, the proliferation of regulations produced at various levels of public authority has led to the approval of consolidated texts in the various environmental sectors (2004) in order to integrate an Environmental Code incorporating the EU legislation and systemising the current provisions, putting into order the various types of environmental permits and general discipline of the assessment procedures for environmental impact.

France has attempted to make protection of the environment one of its political priorities. An example of this concern was the early creation of the Ministry for the Protection of Nature and the Environment (1971), which was established to coordinate authorities concerning the environment with other ministries, and the approval of a general Law on the matter incorporating the procedure for environmental impact studies (1976). It was therefore one of the first countries to consider protection of the environment a public interest comparable to economic and social development, adopting an active international policy for sustaining these values. This conceptual trend seem to have inspired the Law on guidelines on planning and sustainable development of land (1999), the Environmental Code (2000-2003)

and the recent constitutional reform carried out for the purpose of approving the Environment Charter (2005).

5. THE ROLE OF THE SPANISH STATE IN ENVIRONMENTAL MATTERS: BASIC LEGISLACION, CONSTITUTIONAL JURISPRUDENCE, CIVIL AND CRIMINAL REGULATION

Environmental Law in Spain was created throughout the period considered. There are still some earlier regulations in force, such as the Regulation on Disagreeable, Unhealthy, Harmful and Hazardous Activities (1961) or the Atmospheric Environment Protection Law (1972) which provide the basic elements for protecting the quality of the environment. However, most environmental legislation is recent.

The scope of this recent national environmental legislation was determined by its authority in the matter, which is restricted to «basic legislation on protection of the environment notwithstanding the competences of the Autonomous Communities to establish additional protective regulations» (article 149.1.23 of the Constitution). In reality, until equal powers were accorded in this matter to all Autonomous Communities (Organic Law 9/1992), the State held full legislative power, except in the case of the «first-degree» Autonomous Communities, given that the «second-degree» ones were granted competences only in «management in matters of environmental protection» (article 148.1.9 of the Constitution).

In any case, the definition of the State's role in environmental matters has meant a laborious task of conceptual refining carried out by constitutional jurisprudence. Some important cases concern the Water Act (JCC 227/1988), the Coastal Act (JCC 149/1991), polluted atmosphere areas (JCC 329/1993), the Conservation of Natural Areas Act (JCC 102/1995), assessment of environmental impact (JCC 13/1998) and national parks (JCC 194/2004 and 101/2005).

The Constitutional Court has differentiated between proper environmental legislation and legislation of other sectors of public intervention which have some environmental relevance. In this respect the same principle of the Treaty of the European Community (article 6) has been incorporated into the Spanish legal system, in that environmental protection becomes an objective which cuts across other public policies. Thus environmental features play an important role in mining, urban, agricultural, fishing, energy, industrial and public works legislation, among other regulatory sectors.

Within the environmental sector itself, constitutional jurisprudence has undergone acknowledged development. At first it considered that the State had authority to regulate in detail all environmental questions, without any input from Autonomous Communities, since it assumed that their competences did not include the constitutionally-recognised possibility of approving environmental protection regulations (JCC 149/1991). However, such a broad interpretation of the State autho-

rity was explicitly corrected four years later by the Court itself, which stated that the «State duty to leave a margin of development of basic legislation to the regulations of Autonomous Communities, although smaller than in other matters, may not become so small as not to permit any legislative development by the Autonomous Communities, contrary to Decision 149/1991, of which we hereby dissent» (JCC 102/1995).

At the margins of this approach there remain environmental issues relating to state competence in criminal and civil legislation.

Environmental Criminal Law has developed considerably during this phase, from the introduction of an extremely restricted definition of an environmental felony (1983) to the inclusion of a chapter of offences against natural resources and the environment in the new Criminal Code (1995: articles 325 to 331). It should be noted, for example, that modern criminal jurisprudence seems to strengthen the environment-protecting element, viewing the basic type of offence of pollution as an infringement of abstract danger, the legal nature of its protection being the balance of natural systems, without any need for damage to result or a hazard to be specified (Decision of the Supreme Court of 25th October 2002).

Environmental Civil Law has also developed considerably, based on laborious interpretations of doctrine and jurisprudence of civil liability actions for damages, and for halting or reversing polluting activities. In both cases, the Autonomous specialised Law on the matter issuing from some competent Communities must be mentioned (Navarre and Catalonia).

6. THE ENVIRONMENTAL LEGISLATION OF THE AUTONOMOUS COMMUNITIES: GENERAL LAWS, PROTECTED NATURAL AREAS, WATER QUALITY, WASTE, ENVIRONMENTAL TAXATION

Environmental legislation in the Autonomous Communities had a rather shy start. Even today some Autonomous Communities appear to have very little interest in setting up their own regulations in this area. However, at the beginning of the 1990s there was rapid growth in most Autonomous legislation. The fact that this coincided with extensive environmental competence being granted to Autonomous governments (1992) may have contributed to this, with the formulation of remarkable constitutional jurisprudence when the scope of these powers established (1995).

The objects of the Autonomous Communities legislation coincide in terms of subject matter. Firstly, in general legislation approved with the prime objective of regulating various public interventions in the sector, both from territorial bodies and those attributed to other administrative sectors. Special regulations have remarkable importance in some matters such as protected natural areas, water quality, waste and environmental taxes. Finally, on some occasions, the Laws of the Autonomous Communities merely transcribe the content of the basic national Law, wit-

hout quoting it as such and without differentiating it from their own regulatory developments, a practice which has been frowned upon by the constitutional jurisprudence, due to the difficulties this raises from the perspective of the certainty of legal regulations.

The creation of a general Law on environmental matters has now been achieved by the Andalusia (1994), Galicia (1995), Murcia (1995), the Basque Country (1998), Catalonia (1998), La Rioja (2002) and Navarre (2005). Nevertheless, none of these Communitys have established a proper environmental code, neither a Law governing all of the environmental sectors. The main function of general Laws has been to govern the administrative intervention in the environment based on the degree of relevance of the various projects, activities, plans and programmes considered. Autonomous Communities authorisations, municipal licences and mere instances of notification to the authorities are therefore issued. In view of this fact, the Laws on procedures for assessing environmental impact and other environmental interventions perform a similar function to the general Laws in the Valentian Community (1989), the Canary Islands (1990), Castille-La Manche (1999), Madrid (2002), Castille and Leon (2003) and Navarre (2005).

The most recent systems of the Environment Protection Act of Castille and Leon (2003) and the Intervention for Protection of the Environment Act of Navarre (2005) clearly show the attempts to articulate the various official actions on the environment. As a preventive measure, environmental authorisations of the Autonomous Government, assessments and reports of the Autonomous Government and municipal permits for classified activities are regulated, establishing different systems for each category and their interrelation. In order to ensure the efficacy of the system, detailed environmental inspection systems have been devised, along with restoration to comply with the Law, repairs to damages and administrative sanctions and penalties.

One sector governed by a large amount of Autonomous legislation is that of protected natural areas, pursuant to the basic national Laws (1989). These Autonomous Laws aim to support complex conservationist policies: Catalonia (1985), the Valentian Community (1988; replaced in 1994), Andalusia (1989), Asturias (1991), the Balearic Islands (1991 and 2005), Castille and Leon (1991), the Basque Country (1994), the Canary Islands (1994; substituted in 2000), Navarre (1996), Aragon (1998), Extremadura (1998), Castille-La Manche (1999), Galicia (2001) and La Rioja (2003). Spain therefore has detailed regulations for national parks and other protected natural areas, which lay down the purpose and type, declaration procedures, regulatory and planning systems for activities and organisational elements with their corresponding participatory channels. However, there is a lack of a complete legal system for setting up the European Ecological Network Natura 2000 (Directive 92/43), which is currently the subject of only extremely essential provisions. This lack of attention contrasts with the importance of this issue, since the European Network may eventually affect almost forty percent of the territory of some Autono-

mous Communities. One issue related to natural areas is the protection of landscape, which has been the subject of innovative regulation in Catalonia (2005).

Autonomous Communities have been particularly concerned with water quality, as opposed to traditional water policies, which have traditionally aimed at increasing available water resources. Madrid (1984), Valencia (1992), La Rioja (1994 and 2000), Asturias (1994), Navarre (1998), Aragon (2001), Galicia (2001) and Castille-La Manche (2002) and others have passed their own legislation on this matter. These regulations design complex measures for planning, funding, execution and exploitation of the public works of water supply and sanitation, paying special attention to the regulation of waste disposal. As a result taxes have been introduced, such as the sanitation tax, and organisational models such as the sanitation boards.

Autonomous legislators have also been particularly concerned with waste, even prior to approval of the national basic regulation in the matter (1998). Thus the following Communities have passed their own Laws on waste: Catalonia (1993), Andalusia (1994), Navarre (1994, repealed in 2005), Galicia (1997), the Basque Country (1998), the Canary Islands (1999), the Valentian Community (2000) and Madrid (2003). This legislation establishes specific integral and area-specific planning mechanisms, generating particular systems for waste management.

Finally, environmental tax systems have been established in several Autonomous Communities (Andalusia, Castille-La Manche, Galicia, Murcia, Aragon). Their creation has been accelerated somewhat in recent years in an endeavour to create genuine Autonomous environmental policies although at times they appear to be used rather to raise extra financial resources. Taxable activities include polluting emissions, dumping of hazardous or radioactive wastes or the currently repealed Balearic «eco-tax» formerly levied on stays in hotel accommodation.

7. THE ORGANISATIONAL TRENDS OF THE AUTONOMOUS COMMUNITIES IN ENVIRONMENTAL MATTERS: AGENCIES, DEPARTMENTS AND PRIVATISATION

At first, the environmental organisation of the Autonomous Communities appeared to assume the US model, by creating several environmental agencies (Andalusia, 1984; Murcia, 1986; Cantabria, 1986; Madrid, 1988; the Valentian Community, 1989; Extremadura, 1989). However, while similar in name, their realities were very different, as some environmental agencies had legal character, some were representative or participatory in nature or held functional autonomy, while others were simply administrative bodies integrated into the hierarchy of a department.

Subsequently, coinciding, it would seem, with the creation of the Ministry of Environment (1996), the idea gained credence of including a councillor with administrative authority exclusive to this sector. This is the option chosen by the Governments of Andalusia, Aragon, Cantabria, Castille and Leon, Galicia and the Balearic

Islands. Some of these departments, which are specifically dedicated to the protection of the environment, have concentrated their efforts on fighting pollution, on the quality of natural resources and on biodiversity protection.

Nevertheless, organisational variants abound. Recently there has been a trend towards establishing departments which link the environment and land planning, as in Asturias, the Canary Islands, Madrid and the Basque Country, with additional variants such as the integration of these two sectors with that of housing in Valencia and Navarre or with tourism in La Rioja. Finally, the environment is placed in the same department as housing in Catalonia, with rural development in Castille-La Manche, with agriculture in Extremadura and with industry in Murcia.

All these organisational formulae may obey the requirements of political balance, which do not necessarily influence the activities of environmental management. However, at times they may cause tensions in certain administrative sectors which seek to dominate the main themes in order to more easily legitimise specific projects or activities. Therefore, it might be helpful in government of the Autonomous Communities to disassociate structures concerned with the creation and management of environmental infrastructures from those which have responsibility for controlling the former. It does, however, appear clear that organisational aspects of the environment should enter into the sphere of public and political debate, as public interests involved are unlikely to be indifferent to these.

Together with the environmental enforcement body, associated organisations have been created in all Autonomous Communities as representatives in environmental matters. With various names and predominantly in an advisory capacity, they generally play a discreet role in channelling social issues. With the coming into force of the Aarhus Convention, it would seem clear that participatory activities need to assume a greater role in public organisations relating to the environment. Mediatory tasks might even be taken on by the institutional elements of these organisations, thus ensuring coordination between various collective interests which frequently come into play in environmental conflicts.

Finally, it should be stated that environmental departments have a tremendously heavy workload. Public environmental intervention has increased manifold, including environmental impact assessment procedures, waste disposal programmes and management, with a growing amount of waste requiring special treatment, planning and execution of waste water treatment plants, declaration and management of protected areas, among others. In particular, there is a lack of investment in human and material resources for control and inspection functions relating to the enforcement of environmental Laws. In some Autonomous Communities, greater efficiency is sought by «fleeing Administrative Law», either by creating public companies or organisations which assume environmental management tasks (Andalusia, Aragon), or by transferring environmental control functions to private entities (Catalonia).

8. THE INPLEMENTATION OF THE ENVIRONMENTAL POLICIES BY THE AUTONOMOUS COMMUNITIES: STRATEGIES, FUNDING, PLANNING, MANAGEMENT AND ASSESSMENT

In compliance with the proposals laid down by the European Union, some Autonomous Communities have approved documents which define the main principles and guidelines of activity which makes up their sustainable development policies. Examples include Strategies for Sustainable Development of Castille and Leon (1999) and the Basque Country (2002), or the Institutional Declaration on Sustainable Development of Asturias (2002).

In general, slight increases have been noted in public spending on environmental programmes in the budgets of the Autonomous Communities, although there are still exceptions to this trend (Valentian Community). On occasion, more significant increases in environmental costs curiously coincide with the procedures avoiding the rule of Administrative Law referred hereinabove (Aragon). In addition little importance is attached to economic issues in attempts to seek new taxation sources linked to environmental protection. The sole exceptions are water sanitation taxes, which are widely spread among the Autonomous Communities for the purpose of the funding large-scale investments needed for waste water treatment.

One area which has required greater efforts by the Autonomous Communities is the creation of lists of sites to be included in the European Ecological Network Natura 2000. Despite the fact that all the authorities involved, whether of the EU, State or Autonomous Communities, have considerably exceeded the schedules, it should be acknowledged that documented studies conducted have enabled the selection of areas of ecological interest representing the various bio-geographic regions, chosen using scientific criteria. Thus the European Commission was able to approve the Lists of Sites of Community Importance for the Macaronesian (2001), Alpine (2003), Continental (2004), Atlantic (2004) Boreal (2005) areas, all of which –except the latter–, include places located in the various Autonomous Communities. The lists for the Mediterranean area, which includes territory in many Autonomous Communities, are pending approval, as are those corresponding to the Pannonian region. It is to be hoped that the experience generated in this field will be used to designate special conservation areas, which constitute the following phase of the process, and also to establish an adequate legal system and management for such sites. Therefore, it would be advisable to form the multidisciplinary teams from legal experts who will provide conservationist objectives with the appropriate legal framework.

Environmental planning has developed considerably regarding some matters which require a combination of new infrastructures with adequate management which will guarantee continuity of the affected natural elements. All Autonomous Communities have had to draft plans for waste treatment, which have gradually assumed the objectives of clean production, re-use, recycling and safe treatment.

From initial plans relating to all waste or distinguishing solely between urban and industrial waste, programmes are now being devised for various particular types of waste which require specific treatments. In all cases, it is necessary to establish broad frameworks for collaborating with municipalities, as shown with the selective collection of paper, plastics, and glass. Another sector in which planning has developed is that concerning water sanitation, in accordance with the obligations imposed by the European environmental policy; to this end the Autonomous authorities have also had to collaborate with local authorities. Conversely, the remarkable work done by Autonomous Governments on the designation of protected natural areas has not always come along with the creation and approval of the necessary plans for use and management of the natural resources.

The environmental management of the Autonomous Communities has included some interesting experience. There are remarkable attempts at promoting alternative energy sources, particularly wind power (Galicia, Navarre, Castille and Leon, Castille-La Manche). However, at the same time, energy consumption has increased considerably, from which it may be deduced that little is being achieved in promoting changes in high energy demanding living habits. Other fields of activity worth noting are efforts being made to improve air quality (Cantabria, Asturias, Madrid), the restoration of areas spoilt by mining (Catalonia, Galicia, Asturias), the recovery of damaged coastline (Andalusia, Cantabria, Catalonia) and the conservation of endangered wildlife species (Aragon, Asturias, the Canary Islands, Cantabria, Castille-La Manche, Castille and Leon, Madrid, Navarre). There have also been some attempts to encourage environmental education, drafting plans and creating special centres for this purpose (Castille-La Manche, Castille and Leon, Navarre, Valencia).

Measures for assessing environmental impact have been gradually assumed into government of the Autonomous Communities, although there is a visible lack of means available. Anticipating even European regulations, some Autonomous Communities have a history of strategic environmental assessment, particularly concerning urban planning (the Balearic Islands, the Canary Islands, Cantabria, Castille-La Manche, Castille and Leon, Madrid). Nevertheless, there have been some setbacks in this respect, arguing the easement of the administrative procedures as an waiver.

9. THE ENVIRONMENTAL JURISPRUDENCE OF THE SUPREME COURT AND THE HIGH COURTS OF JUSTICE

Jurisprudence generated in the field of Contentious Administrative Jurisprudence has not had a deep influence in the creation of environmental public policies. Expectations were somewhat raised by the breadth of the arguments in a pioneering jurisprudential trend shown by the Supreme Court, led by Professor –and Justice– González Navarro, on the meaning of the right to the environment granted in article 45 of the Constitution. However, the practical effects have gone

no further than a few interpretations favourable to environmental interest in matters of active legitimacy and precautionary protection in environmental lawsuits. In general, declarations of the Supreme Court on the matter refer to questions related to the administrative competences and procedures, for example with regard to the competence to levy an environmental impact assessment, to the non-contestability of the environmental impact declaration procedure itself, or the reversal of the designation of protected natural areas due to failure to approve the necessary natural resources management plan.

However, the legal doctrine of the Supreme Court, although it is not particularly involved in the protection of environmental values, is sometimes useful for this purpose. One recalls the traditional classification of environmental permits as ongoing administrative acts, being their legal content likely to be updated according to technological progress. A more recent jurisprudence has excluded speculative compensation claimed for the prohibition of an urban use of the natural protected areas; also an environmental impact study has been judicially required for certain urban development plans; finally, the Supreme Court has also deemed the system of distances of classified activities still in force.

The requirement for guarantees concerning environmental sanctions has had remarkable importance in the work of the High Courts of Justice, although this is simply the manifestation in this area of the principles of modern administrative disciplinary Law. Some of the more significant lines of jurisprudence include, for example, the long and conscientious series of Decisions of the High Court of Cantabria on the natural resource planning systems, or the decision of the Andalusian and Valentian Courts in granting the right to compensation for damages caused by noise, which explicitly discredited the passive attitude of municipal authorities.

10. THE ENVIRONMENTAL ISSUES: INSTITUTIONAL CONFLICTS, SOCIAL CLAIMS AND ECOLOGICAL DISASTERS

The problem raised by environmental policies is a very extensive one, due necessarily to the varied elements they contain. Institutional conflicts, in particular those which have placed the State and the Autonomous Community in opposition, are noteworthy. In addition to these, important social claims and some ecological disasters must be included.

The most easily identifiable conflicts are those placed before the Constitutional Court. Particular importance should be attributed to those concerned with natural protected areas, which has made up the greater part of cases during the period examined. Nearly 20 Decisions have been delivered on the matter, and it would appear that this trend towards constitutional disputes is likely to continue, as an unequivocal proof of the importance of environmental protection in the planning of uses and activities in the territory.

Firstly, there are a number of early Decisions whereby a role of the Autonomous Communities was clearly recognised as opposed to the national standpoint in terms of designation, planning and management of several natural protected areas. This was the case of La Garrotxa and the area of Pedraforca in Catalonia (JCC 64 and 69/1982), of the regional park of Manzanares in Madrid (JCC 170/1989), the Mar Menor in Murcia (JCC 36/1994), the biosphere reserve at Urdaibai in the Basque Country (JCC 156/1995) or the natural area of Es Trenc-Salobrar on the Balearic Islands (JCC 28/1997).

Secondly, there are cases of natural areas affecting various Autonomous Communitys or their seas, in which Autonomous Communitys' competence has also been confirmed. Thus the Picos de Europa's Natural Resources Management Plan was reversed due to lack of State competence, notwithstanding an interesting formula for the interim maintenance of the protection of said site until the necessary plan is approved by the Autonomous Community concerned (JCC 306/2000). In addition, Autonomous Communities' competence has been recognised in declaring, regulating and managing natural areas which affect their seas regarding the Santoña and Noja marshes (JCC 195/1998), and the Salinas de Ibiza salt marshes (JCC 97/2002). Nevertheless, it is worth mentioning that the Autonomous Communities' authority must necessarily yield when it faces the national authority on marine fishing issues, as in the case of the marine reserve of Cabo de Gata-Níjar (JCC 38/2002). Conversely, it has also been admitted that the Autonomous Communities' authority on river fishing allows the introduction of some levels of protection for the corresponding ecosystems (JCC 243/1993, 15/1998 y 110/1998).

Thirdly, in general, basic State legislation on natural protected areas was subjected to meticulous scrutiny as to constitutionality as a result of a contention raised by several Autonomous Communities (JCC 102/1995). From the significant doctrine laid down at the time the Autonomous Communities are clearly recognised as authorised to manage national parks (JCC 194/2004 and 331/2005), without prejudice to the national competence for the designation and a wholesale regulation of the national parks network (JCC 101/2005).

Other institutional conflicts are more closely linked to political proposals, although sometimes jurisdictional influences are used. Undoubtedly, conflicts issuing from the use of water, and particularly from the diversion of different water basins, has been a major source of conflict. On one hand the Autonomous Mediterranean Communities, in particular Valencia and Murcia, gauge their possibilities of development on the availability of water from the large basins of the Tagus and Ebro rivers. In contrast to this, some inland Autonomous Communities, in particular Castille-La Manche and Aragon, also claim those same courses of water as belonging to their own territories. As is well known, the National Water Plan initially favoured diverting water (2001), and more recently, in accordance with the transposition into Spanish Law of the EU Water Framework Directive (2003), alternative water-saving measures, desalination, re-use and other means are fostered (2005). All of which is coloured by claims, protests, mutual disqualification of the various

political classes, mass demonstrations by the parties concerned and the use of legal channels of all kinds, in particular by the Autonomous Communities' governments, in order to defend the different interests of the conflicting parties. It seems quite clear that this kind of confrontation between Autonomous Communities does nothing to help achieve an appropriate solution to conflicts, even if environmental interests may prevail, since in the circumstances these are simply another weapon used by political players. In this context, neutral, plural and professional instances should be fostered to promote public debate, as to permitting the parties involved to reach partial agreements, where an immediate solution of all water problems was not possible.

Social claims play a significant role in environmental issues. Although we still do not have a strong civic associative movement like in other areas, in some Autonomous Communities there is constant action undertaken by some associations, using social pressure and sometimes legal measures to draw attention to their proposals or claims. This is the case of the Balearic Group for the Protection of Nature, the Canary Islands Ecology Federation or the Association for the Protection of Natural Resources in Cantabria.

At present, the greatest environmental conflict would appear to be linked to town-planning, in particular tourist developments or secondary residence, in the archipelagos (the Balearic and Canary Islands), coastal (Catalonia, Valentian Community, Murcia, Cantabria, Andalusia) and mountain areas (Sierra de Guadarrama in Madrid, the Pyrenees in Aragon). A disproportionate use of land, water and energy is especially remarkable, as well as the alteration of the natural environment caused by dispersed town-planning. Recently, a system for strategic environmental assessment has been implemented (2006), which will help to alleviate the problem since it affects urban planning, provided that the relevant authorities of the Autonomous Communities effectively take on the important challenge of introducing into planning decisions on land use the rationality of sustainable development. In order to contain directly the spread of building projects, minimum population densities have been established in new residential sectors of Castille and Leon (2004), instead of maximum densities as was customary in Spanish town-planning legislation.

Another important issue involving social claims concerning the environment is that of large-scale transport routes, such as the Madrid-Valencia high-speed railway line, or the so-called «Y» in the Basque Country. In connection with the conflictive nature of some cases, it seems wise to consider the need to perfect procedures for assessing environmental impact, so that the decision-making procedures in these sectors are more clearly in line.

Several episodes confirm the accuracy of promoting transparency in the creation of public policies of environmental relevance. In this respect there is a series of conflicts in cases such as the urban development of Barranco de Veneguera (the Canary Islands), the landfill of Gomecello (Castilla y León), the Itoiz dam (Nava-

rre) or the organisation of the Picos de Europa national park (Asturias, Castilla y León and Cantabria). Apart from the specific solutions to all these conflicts, the disadvantages of arbitrary environmental policies are made evident.

Finally, as examples of collective failure, mention must be made of the large-scale ecological disasters during the period analysed, which make in-depth examination necessary of every aspect of the design, enforcement and assessment of the public policies concerned. Disasters worth mentioning include forest fires, with the terrible remembrance of the tragedy of Riba de Saelices (2005), the appalling pollution of the Galician coastline and other areas by the disastrous Prestige accident (2002) or the extremely high chemical pollution levels in the sphere of influence of the damaged Doñana national park as a result of the Aznalcóllar spillage (1998). Some lessons must be learnt from these errors; Spain may not longer allow such and many failures in its internal administrative coordination. Together with the approval of new Laws aimed at improving the regulatory frameworks (forestry, mining and maritime), human resources and sufficient funding must also be allocated, to enable compliance with legal objectives, strengthening, in any case, the system of civil protection in the event of a catastrophe of any kind.