

Recent developments of environmental law

Spain

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1.- LEGISLATION/RULEMAKING.

There no noticeable developments since the last Avosetta meeting in Bremen (May 2015), at least at the State level. The main reasons are that: (a) the present cabinet has not been very keen on environmental protection and has not launched any significant mayor legislative initiative in the field lately; (b) The parliamentary term expired in November 2015, and already in the Summer the Government stopped sending new bills to Parliament. However, the last general elections (held in December 2015) produced a split result and no political party was able to form a governing coalition until now. The Parliament has been dissolved in May and new general elections have been called for June the 26th, 2016. In the meantime, the Cabinet has remained as an “acting government”.

At regional level there have been different new laws on diverse matters such as hunting (Extremadura), Country Planning and Landscape protection (Valencia), nature protection, waste, etc.

2.- NOTICEABLE CASE-LAW

Since the Bremen meeting, three important cases deserve to be underlined:

- The first one concerns the constitutionality appeal lodged in 2013 against the Act amending the Coastal Management Act of 1988, which for many experts did downgrade the level of protection for the coastline environment. The Constitutional Court, by unanimous decision of 5 November 2015 (decision Nr 233/2015) upheld the constitutionality of the major part of the 2013 Act, and only declared the unconstitutionality of certain minor provisions of the reform.
- Still at the Constitutional court level, this court reached a very recent decision (25 April 2016, not yet reported) on the constitutionality of a 2014 Act of the regional Parliament of Catalonia that prohibited the practice of “fracking” projects for exploring, researching and exploiting hydrocarbon resources in the territory of the said region. The court declared that such provision is unconstitutional, because the authorisation of such practices and permits belongs to the State administration. Therefore, the regional statute encroaches on the State powers in the matter. Although (as explained at the beginning of this contribution) Autonomous Communities have legislative powers to

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introduce more stringent environmental standards than the national ones, the court understands that the State competences on economic planning, mining & energy, and environment, do prevail over the regional ones. This understanding is not new because it has been implemented by the court in an identical way in previous cases, when the constitutionality of similar regional statutes (approved in Navarra, La Rioja, and Cantabria) was challenged by the central Cabinet. A fifth, similar regional statute (approved by the Basque Country) was approved by the Basque Country legislature, and it was also challenged by the central cabinet. In the light of this case-law of the Constitutional Court, it is expectable that this regional law will be declared unconstitutional, too.

- The third judicial ruling concerns the *Prestige* accident litigation. The “Prestige” was a big oil tanker that sank down in Spanish territorial waters in 2002, close to Galicia’s shoreline, and produced a massive oil spill, the worst environmental disaster in the history of the country. By its decision of 16 January 2016, the Supreme Court (Criminal Chamber) has closed the criminal Law aspects of the case, declaring at the same time the liabilities and compensations to be paid to the persons and firms affected by the disaster. The length and duration of the proceedings do not deserve further comments....