Climate change, energy transition and territorial decentralisation in Spain

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ABSTRACT The article provides an overview of the Spanish legal system in terms of climate change legislation and the regulatory framework of the so-called energy transition. The configuration of the Spanish State as decentralised makes it necessary to allow the Autonomous Communities, as infra-state entities, to develop their own policy to fight climate change. The article thus explores the opportunity and advisability of adopting a multilevel model of relations between the State and the Autonomous Communities, in accordance with the European Union's climate neutrality requirements, and one that goes beyond the usual model of limited inter-administrative relations, based on the principle of coordination. First, the article deals with the basic State legislation on climate change and energy transition, with the aim of evidencing that the Autonomous Communities are necessary actors for the development and implementation of this framework. Second, it aims to provide an overview of what has been done so far by the Autonomous Communities. The article concludes with various reflections on the effectiveness of this decentralised model, insisting that its application is undeniable given that mitigation and adaptation actions have a territorial component that legitimises the intervention of infra-state entities.[1]

KEYWORDS decentralisation; basic legislation; competencies; climate change; territorial solutions; energy transition.

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1. Key elements of regional actors in the fight against climate change

1.1. Existence of a regulatory framework that favours infra-state intervention in the fight against climate change

The determination or analysis of the regulatory model for dealing with climate change that is gradually taking shape in Spanish law must necessarily be based on acknowledging the influence of international bodies and, above all, of the European Union. All of this should be done with a view to making it clear that the fight against climate change is not an exclusive matter for the States, but one that requires the involvement of infra-state entities, both regional and local.[2]

In this sense, legal climate action is at a point where it is necessary to reinforce the intervention of domestic rights, as a complementary measure to what has been done at the international level,[3] favouring, in turn, the adoption of standards and strategies by regional authorities at the first level and local authorities at the second level.[4] It should not be ignored that climate change, as an essentially environmental problem, presents a complexity that also requires complex solutions or alternatives[5] to establish measures designed to mitigate greenhouse gas (hereinafter GHG) emissions and adaptive measures. The climate crisis declared at the institutional level by a high percentage of governments of any given level and the vulnerability of environmental, social, and economic systems[6] provide evidence that climate change requires a different formulation of the legislation that must be articulated to address the problem and in which the multiplicity of subjects involved in its formulation and development constitutes an essential part.

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2. This is a common claim in the abundant literature that has emerged in the last two years on the measures adopted by states. Among others, see Nogueira López, "O Rólex o Setas", 3.

3. See Embid Irujo, "El Derecho del Cambio Climático", 16, 18. Following the so-called Urgenda Case of the Dutch Supreme Court, the author considers that domestic law must include a certain "regulatory intensity", on which the success or failure of international law depends.

4. As a reference book about local climate action, see Simou, *Derecho Local del Cambio Climático.*

5. See Moreno Molina, *El Derecho del Cambio Climático,* 53.

6. For further consideration of these issues, see Mora Ruiz, "Comunidades Autónomas, Cambio Climático y Energía", 655, 656.

From this perspective, it should be noted that, since both the Paris Agreement and the European Union Adaptation Strategy for Climate Change Mitigation and Adaptation,[7] special interest has been shown in achieving the active involvement of infra-state entities in the attainment of greenhouse gas reduction goals, which makes it possible to articulate a form of climate governance characterised by the plurality of actors.[8] In my view, this is not a theoretical construct, but rather the practical scope of the idea of multilevel governance demanded by supranational bodies that must be recognised in that, as has already been defined,[9] we are dealing with "a method of organising strategies to combat climate change and transform the energy model" with the ultimate effect of justifying and supporting, in the case of Spain, the involvement of the Autonomous Communities to achieve the international objectives of GHG reduction and climate neutrality while also incorporating the specific characteristics of the territory.

The immediate consequence of this approach is that the legal system must provide regional entities, the Autonomous Communities in this case, with their own space for the adoption of measures to combat climate change, given the territorial component of this phenomenon, which is made particularly evident in the adaptation strategy and which has an impact on the effectiveness of the implemented measures.[10] However, at the same time, it cannot be ignored that international decisions provide the essential reference for the national formulation of environmental policies which, in the case of a decentralised state such as Spain, means that this policy must be carried out with

7. In this respect, it is worth noting the European law's development in the framework of the so-called European Green Deal, which is considered as the EU's strategy for reaching the 2050 goal of climate neutrality. Regarding this strategy, the first part of the *Fit for 55 package* has been already formally adopted, apart from the main regulations as the European Climate Law (Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999).

8. See De la Varga Pastor, "Estudio comparativo de las Leyes Autonómicas de Catalunya, Andalucía, Illes Balears y Navarra para lograr la mitigación y la adaptación al Cambio Climático", 113.

9. Translated from Mora Ruiz, "Comunidades Autónomas, Cambio Climático y Energía", 656, 657.

10. Concerning the importance of the territory in order to involve infra-state entities in the protection of the environment and the need to "transform the intergovernmental dynamics" in the Anthropocene, consider Alberton, *Governance ambientale negli ordinamenti composti: Traiettorie,* 393, 412.

the participation of infra-state entities, so that the State and the Autonomous Communities jointly articulate the energy transition objectives set at the international level.[11] The change in the energy model paradigm thus requires the concurrence and participation of all the administrations, as well as of private subjects, meaning that a real transformation of the energy production and consumption model is not possible if the process is exclusively promoted by the State, in a centralised way.[12] In short, and this needs to be emphasised, we have an international-European context that favours the presence of the Autonomous Communities in the articulation of a climate change law[13] and in the configuration of a decentralised policy to combat this phenomenon.

However, together with this external impetus, the recognition of the Autonomous Communities' own space in the transformation of the energy model, as an essential formula in the fight against climate change, has also been favoured by the evolution of Spanish law. In this regard, a distinction must be made between the situation prior to the passing of Act 7/2021, of 20 May 2021, on Climate Change and Energy Transition,[14] as the basic State Act, and the current scenario in which some Autonomous Communities have already passed their own climate change laws under the umbrella of the State Act.

From the national perspective, in the first place, the regional initiative to regulate the fight against climate change prior to the State initiative should be recognised, materialising the foundations set out in the previous paragraphs on the suitability and effectiveness of regional climate action to achi-

11. As Galera Rodrigo points out in "La política de adaptación al Cambio Climático en la Ley 7/2021", 452, one of the characteristics of European legislation is the integration of "institutional dialogue", in this case in all decision-making phases in matters of adaptation.

12. A different question is how the targets for reducing emissions and generalising the production of energy from renewable sources can be set, given that this seems to rest with the State, as the Judgment of the Constitutional Court 87/2019, of 20 June 2019, clearly states. In this sense, the Court declared the partial unconstitutionality of Law 16/2017, of 1 August 2017, on Climate Change in Catalonia, considering that "binding, concrete, measurable, and time-bound targets are set for the reduction of polluting emissions" that are incompatible with the possibility and the right to emit GHGs recognised by the State (F.J.7). Therefore, in the Court's view, only the generic objectives, in the form of guidelines, set by the autonomous communities can be considered constitutional.

13. See, as early work in this matter, De la Varga Pastor and Rodríguez Beas, "El desarrollo de las acciones de la Unión Europea frente al cambio climático por parte de las Comunidades Autónomas en el Estado Español", 244, 245.

14. BOE number 121 of 21 May.

eve international objectives.[15] The Autonomous Communities of Catalonia, Andalusia, and the Balearic Islands passed their respective climate change laws,[16] providing a model of autonomous regulation which, in my view, has eventually been reflected in the most recent regulations.[17] Therefore, the configuration of a decentralised model for tackling the fight against climate change within the Spanish legal system is at the root of the climate law that is being articulated in Spain, on the basis of the space granted by Art. 149.1.23 of the Spanish Constitution (SC) and the corresponding statutes of the Autonomous Communities.[18] However, the extent to which this decentralisation will materialise will be a different matter.

Secondly, any approach to the current formulation of Spanish climate legislation must include reference to the approval of Act 7/2021, of 20 May 2021, on Climate Change and Energy Transition (hereinafter, CCETA), as a turning point in the design of climate regulation, as it provides the basic framework from which the Autonomous Communities that had not yet adopted climate change legislation will be able to do so, insofar as the State regulation is based on the involvement of the regions in achieving the objectives set for the fight against climate change. In this sense, the regional regulations that existed prior to the CCETA constituted a partial response to the phenomenon

15. See Giles Carnero, *El régimen jurídico internacional en materia de cambio climático*, 24. The author sees as a special feature of the international climate change legal regime the diverse interaction between different levels, including infra-state levels, "in an attempt to account for the aggregate set of efforts, and to promote climate governance that encompasses a large complexity".

16. In particular, Laws 16/2017, of 1 August 2017, on climate change in Catalonia (DOGC number 7426 of 3 August); 8/2018, of 8 October 2018, on measures against climate change and for the transition to a new energy model in Andalusia (BOJA number 199 of 15 October); and 10/2019, of 22 February 2019, on climate change and energy transition in the Balearic Islands (BOIB number 27 of 2 March).

17. Law 6/2022, of 5 December 2022, on Climate Change and Ecological Transition of the Valencian Community (DOGV number 9486 of 9 December) is particularly illustrative of this, insofar as it includes provisions and specific characteristics of the previous laws.

18. Art. 149.1.23ª attributes to the State the exclusive competence to enact basic environmental legislation, but, at the same time, recognises the autonomous communities' powers to pass "additional protection regulations". For its part, and by way of example, Art. 144.1.i) of the Statute of Catalonia (Organic Law 6/2006, of 19 July 2006) recognises the autonomous community's competence over "the regulation of the system of authorisation and monitoring of greenhouse gas emissions", while Art. 133.1.d) grants power over the promotion and management of renewable energies and energy efficiency.

of climate change, in contrast to the global or general response of the State, represented by Act 7/2021.

In this way, the State Act can be considered an expected regulation, as it implies a general legalisation of the objectives of climate neutrality and change in the production model, as stated in Art. 1 of the Act, as well as a necessary regulation from an ordinary perspective, in that it is situated at the apex of the Spanish regulatory system to tackle climate change.[19] Its nature as a basic act is of particular interest, in full harmony with previous State regulations such as the Integrated National Energy and Climate Plan and the National Climate Change Adaptation Plan.[20]

In this sense, the CCETA did not start from scratch when configuring a specific instrument for the fight against climate change, in view of the previous regional regulations. Nevertheless, the provisions relating to the Autonomous Communities hardly allow the influence of the existing regulations to be felt, leading to a heterogeneous and complex regulation regarding the autonomous scope of action recognised for the implementation of the basic State Act and the eventual articulation of a specific regional policy for the fight against climate change and for energy transition. In this sense, as will be pointed out below, the Autonomous Communities are present in Act 7/2021, but perhaps insufficiently so for the implementation of the multilevel governance demanded by international bodies, since the provisions on the need for coordination and inter-administrative cooperation do not represent a qualitative leap in the legal configuration of a multilevel government when faced with climate change.

19. For further considerations on the impact of Act 7/2021 on the Spanish law, see. among the most recent: Alenza García, "Avances en el desarrollo de la Ley de Cambio Climático y transición energética", 89-112; Lozano Cutanda, "Legislación básica", 229-252; Sarasíbar Iriarte, "Reflexiones sobre la nueva Ley española de cambio climático", 853-868; Soro Mateo, "Cambio Climático y transformaciones del Derecho Local", 123-138; Simou, "La Ley 7/2021, de 20 de mayo, de cambio climático y transición energética en el contexto de intensificación de los esfuerzos público-privados para afrontar la emergencia climática", 217-250.

20. Spain's Integrated National Energy and Climate Plan 2021-2030 was passed in January 2020 and aims at "making progress with decarbonisation, laying down a firm foundation for consolidating a climate-neutral path for the economy and society by 2050" (p. 8). For its part, the National Climate Change Adaptation Plan 2021-2030, also passed in 2020, is configured as an instrument of a basic nature and aims "to respond to the growing need to adapt to climate change in Spain, as well as to the international commitments in this field, laying the foundations to promote a more climate change-resilient development…" (p. 11).

It can be affirmed that there exists a legal framework that favours the involvement of infra-state entities in the articulation of strategies and instruments to combat climate change, whether at an external, international, or domestic level. In the latter, the cornerstone of the decentralised Spanish model for managing climate change is Act 7/2021, of 20 May 2021, on Climate Change and Energy Transition, as necessary regulation for the management of this phenomenon. However, the Act provides somewhat limited space for the participation of the Autonomous Communities since, as will be seen, there is no real general transformation of the mechanisms governing the relationship between the State and the Autonomous Communities, but rather the sum of initiatives aimed at a certain degree of State coordination.[21]

1.2. Delimitation of powers between the State and the Autonomous Communities in Act 7/2021, of 20 May 2021, on Climate Change and Energy Transition: key points[22]

As has been pointed out, the regulatory model for climate change and energy transition in Spain is a decentralised one, articulated on the basis of the basic nature of the CCETA, in accordance with Final Provision 13. In this sense, the Act uses several enabling provisions to justify its basic nature, notably Article 149.1.13 of the Constitution regarding the coordination of the general planning of economic activity; Article 149.1.23 on basic legislation on environmental protection, without prejudice to the powers of the Autonomous Communities to establish additional protection rules; and Article 149.1.25 on the bases of the mining and energy regime.

From a formal perspective, the basic regulation is endorsed by both the Council of State and the Constitutional Court, insofar as it recognises the need for State intervention in matters of climate change and energy transition. The

21. In fact, this is the characteristic feature of relations between the State and the autonomous communities in environmental matters, in the sense of giving priority to bilateral relations of a vertical nature, instead of considering multilateral cooperation in such a complex matter as the environment in general, and climate change in particular. In this regard, on the limited nature of inter-administrative relations in Spain, see Alberton, *Governance ambientale negli ordinamenti composti,* 391 et seq.

22. Text follows here: Mora Ruiz, "Comunidades Autónomas, Cambio Climático y Energía", 658-660.

immediate consequence of this approach is that the Spanish model rests on the interplay between State bases and Autonomous Community development, leaving the State with the capacity to define the basics, with the associated risk of limiting the regulatory options that the Autonomous Communities may have. The Act thus reflects the most recent constitutional jurisprudence and, in particular, Constitutional Court Judgment 87/2019, of 20 June 2019, which restricts the possibilities for the autonomous regions to establish their own GHG reduction and/or climate neutrality targets.

From a material point of view, we are dealing with an essentially environmental rule,[23] but there is no doubt about its economic implications, closely linked to the transformation of the energy production and consumption model, which is an additional argument for the more restrictive approach to establishing the aforementioned GHG emission reduction targets and transformation of the energy model by the Autonomous Communities.[24] The regional laws on climate change passed after Act 7/2021 echo these limitations and include the reduction targets in a way that is fully aligned with the basic State Act and the European reference framework.[25]

On the other hand, the environment, from the perspective of enabling provisions, constitutes a complex domain to be embraced by the State in determining the basics and in setting complex environmental objectives such as those established by Act 7/2021, of 20 May 2021, discussed in the following

23. This is the core of the regulation, as highlighted by De la Varga Pastor, "Estudio comparativo de las Leyes Autonómicas de Catalunya, Andalucía, Illes Balears y Navarra para lograr la mitigación y la adaptación al Cambio Climático", 115.

24. Ibid., 115, 116.

25. See, by way of example, Art. 1.2 of Foral Law 4/2022, of 22 March 2022, on Climate Change and Energy Transition of Navarre (*BON* number 66 of 1ST April), which provides for the achievement of the objectives imposed by Europe, stating that "in order to achieve climate neutrality by 2050, the Community of Navarre assumes and will work to achieve the objectives set out in Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021, which establishes as a binding objective the reduction of net greenhouse gas emissions by at least 55% in 2030 compared to 1990 levels". Art. 1.a) of Law 6/2022, of 5 December 2022, on Climate Change and Ecological Transition of the Valencian Community, establishes the aim of the regulation as "reducing greenhouse gas emissions and increasing the capacity of carbon dioxide (CO_2) sinks, taking into account the objectives set by the European Union and the Spanish Government on this issue". For regional action on climate change, see Moreno Molina, *El Derecho del Cambio Climático*, 152.

lines: environmental profiles to be protected are diffuse[26] and their determination is more difficult when combined with other enabling provisions that recognise the regulatory competence of the State, also of a basic nature, as occurs with sections 13 and 25 of Art. 149.1 EC, favouring the unilateral determination of the basics.

In my opinion, an excessively conservative regulation that favours a tendency towards centralisation is not feasible as regards climate change legislation, and there is a need to achieve a certain balance between the determination of the basics not only from an environmental point of view, but also from a social and economic perspective, and the opportunity and convenience of providing solutions adapted to the needs of the territories.[27] This would bring into effect the competence of Autonomous Communities to develop the State basic legislation by raising the level of protection, as the preamble to the Act expressly states. The text thus invokes the environmental principle of non-regression and links it to the interplay between basic legislation and development, "so that the Autonomous Communities can set higher levels of protection than those established in the State basic legislation", given the recognised existence of an "interconnection between legal orders", i.e., between the State and the Autonomous Communities. In this sense, Act 7/2021 should be positively assessed, since it is based on a starting point that guarantees a certain autonomous space in the fight against climate change and in the transformation of the energy model,[28] although this is reflected differently in the wording of the regulation, as will be seen below.

The underside of this attribution of competences may lie in the possibility for the Autonomous Communities to articulate their policy to combat climate change, in the exercise of their granted enabling provisions, understood as a substantive implementation that can be limited, for example, to the mere adaptation of organisational structures. In my view, the power to raise the level of protection exercised by the Autonomous Communities, as set out

26. In graphic terms, Alberton, *Governance ambientale negli ordinamenti composti,* 385, points out that we are facing a "complex, multidimensional and transversal" reality that requires a balance between conflicting values and interests.

27. Ibid., 385, 386.

28. In the context of adaptation, there is no objection to involving the regional and local authorities in decision-making from an early stage, as stated by Galera Rodrigo, "La política de adaptación al Cambio Climático en la Ley 7/2021", 452.

in the Constitution and expressly indicated in the Act, is a real competence which transcends the programmatic, allowing them, within the framework of the limitations derived from STC 87/2019, to design their strategies for combating climate change. The counterpart of this approach is, as has already been pointed out, "the construction of a true multilevel connection between the State and the Autonomous Communities, by reviewing and updating the instruments of cooperation and coordination".[29]

1.3. Examples of the basic State legislation on the role of the Autonomous Communities in the fight against climate change and in energy transition

In general terms, it can be stated that the CCETA ensures the participation of the Autonomous Communities in the fight against climate change throughout its articles, but it does so in an irregular way when considering their regulatory and implementation competences. In this sense, few precepts are exclusively devoted to such participation or attempt to establish guidelines for the relationship between the State and the Autonomous Communities. On the contrary, the articles of the State regulation do not succeed in strengthening the position of the regions in the articulation of a multilevel model for combating the phenomenon under discussion, not even in precepts such as Article 38 which, although it refers to "inter-administrative cooperation on climate change", focuses on the obligation of the Autonomous Communities to provide information on the existence of autonomous energy and climate plans in force and the measures adopted or envisaged, but which are connected with the objectives of the Act. In a "diluted" way,[30] the precept aims to include the so-called "Nationally Determined Contributions" of the

29. Translated from Mora Ruiz, "Comunidades Autónomas, Cambio Climático y Energía", 660.

30. In my opinion, the article seems to allow for some inter-administrative cooperation, albeit very limited and even ambiguous, as a result of the lack of detail on the information to be provided by the Autonomous Communities. However, this same lack of precision favours a proactive attitude on the part of the Autonomous Communities with regard to the information they must provide in compliance with the aforementioned Art. 38, since it may include the different approved climate strategies, even if they are documents of a programmatic nature or are of an indicative planning nature.

Paris Agreement,[31] insofar as the information transmitted to the Climate Change Policy Coordination Commission will allow the State to justify the fulfilment of more general objectives to other bodies.

In this sense, the implementation of the multilevel governance required for an effective strategy to combat climate change is achieved in the CCETA in a somewhat narrow way, when it is redirected to demands for coordination and cooperation between the State and the Autonomous Communities throughout the articles of the regulation. In this respect, the provisions of the Preliminary Title, Title I, regarding the objectives and planning of energy transition, and Title IX, regarding governance and participation, should be highlighted.[32]

Notwithstanding this last statement, there are also provisions in the CCETA that contemplate the intervention of the Autonomous Communities in sectoral areas in which it is "natural" to accommodate the territorial element that justifies, in my opinion, the desirability of a decentralised model for combating climate change. This is the case, for example, in the field of emission-free mobility, insofar as Art. 14.1 of the Act imposes on all administrations an obligation to "promote emission-free mobility",[33] as these, within the framework of their respective competences, will have to adopt the appropriate measures to achieve, by 2050, "a fleet of passenger cars and

31. On this concept, see Giles Carnero, "Las contribuciones determinadas a nivel nacional en materia de cambio climático", 152, 157. The author describes these contributions "as new spaces in which states can cooperate towards the achievement of low-carbon climate development", so that their function is to establish "a normative process in which international engagement is shaped by input and dialogue between national systems".

32. In this sense, Article 1 of the Law, which refers to its "purpose", states that "the General State Administration, the Autonomous Communities, and the local entities, within the scope of their respective competences, shall comply with the purpose of this law, and shall cooperate and collaborate in achieving it", without advancing in inter-administrative relationship models; and Art. 3, on "greenhouse gas emission reduction targets, renewable energies, and energy efficiency", in its paragraph 2 requires, in order to achieve the commitments of climate neutrality in 2050, that the electricity system be based exclusively on renewable sources of power generation, "without prejudice to regional competences". In my opinion, this is a plain or merely descriptive reference to the current constitutional model of distribution of competences, in which a minimum approximation to the idea of multilevel governance is lacking. For a critical view of the Constitution in the face of the phenomenon of climate change, see Cocciolo, "Cambio Climático en tiempos de emergencia", 6, 8.

33. For the scope of this concept and its legal framework in the CCETA, see Fortes Martín, "La promoción de la movilidad limpia o sin emisiones", 370 et seq.

light commercial vehicles without direct CO2 emissions, in compliance with Community legislation". The characteristics of each administration and its current situation with respect to this objective will determine the specific actions that can be taken.

In the same vein, we find provisions that allow for participation in the decision-making process of other administrations, conferring the status of what may be considered a multilevel administrative action, albeit within the framework of the cooperation techniques of our administrative law. In this regard, Art. 14.3 of the CCETA is noteworthy, as it allows for a review of the declaration of low-emission zones, in such a way that, if this entails a regression of the existing zones, it must have the prior report of the competent regional body in matters of environmental protection. Similarly, through the Commission for the Coordination of Climate Change Policies, there are options for the participation of the Autonomous Communities in the drafting of general management instruments such as the National Adaptation Plan (Art. 17.4) or the Just Transition Strategy (Art. 27.1 in fine). There is also the possibility for them to be active subjects in the preparation and publication of the reports that the Ministry for Ecological Transition and the Demographic Challenge has to produce on the evolution of the impacts and risks derived from climate change, and on the policies and measures aimed at increasing resilience and reducing vulnerability to climate change in Spain (Art. 18). To a certain extent, these provisions are evidence of a certain multilevel network of actions taken by public administrations, although there is a lack of systematisation in this respect.

The immediate consequence of this basic framework affecting the Autonomous Communities is that they must be considered active subjects in the fight against climate change in our legal system, as this is guaranteed by the CCETA itself. Objection to the decentralised model ensured by the basic regulation lies in the degree of consolidation that the provisions examined offer with respect to a multilevel governance model, as opposed to and surpassing the traditional scheme of inter-administrative relations based on the principles of coordination and cooperation. In this regard, it should be noted that the guiding principles of Art. 2 of the CCETA include social and territorial cohesion together with the principle of resilience (sections d) and e), respectively), but the list of principles ends with the express reference to "cooperation, collaboration, and coordination between public administrations",

without any further elaboration in this respect.[34] The CCETA is a complex regulation, and its provisions are heterogeneous, which is directly projected onto the State-Autonomous Communities relations in the different articles. As a consequence, the resulting model is also unequal and complex and does not allow direct recognition of a vertical multilevel governance model, adapted to the complexity of the strategies for combating climate change.

2. Specific regulatory solutions by the Autonomous Communities: The apparent disparity in models

As indicated in the previous sections, the Autonomous Communities have been taking regulatory decisions regarding the fight against climate change and energy transition, and this implies the configuration of a certain Autonomous Community policy in the face of climate change.

In this sense, it can be affirmed that no Autonomous Community has been left out of the process of articulating the aforementioned Climate Act,[35] with specific instruments to deal with the unique character of the global phenomenon we are facing.[36] Thus, nearly all the Autonomous Communities have approved strategies to combat climate change or have organised their adaptation potential through plans and/or programmes, with which they have been able to establish a "road map" on this matter and in relation to emission reduction targets, thus creating a global regulatory framework, although not free of difficulties as regards its binding nature. Accordingly, it is possible to identify Autonomous Communities that already have had these general strategic frameworks in place for a relatively long time and whose time horizon was set at 2020, thereby requiring their current revision: this

34. See Mora Ruiz, "La perspectiva autonómica y local sobre el Cambio Climático", 205.

35. See Mora Ruiz, "Comunidades Autónomas, Cambio Climático y Energía", 668.

36. Moreno Molina, in *El Derecho del Cambio Climático*, 167, 168, defines climate change law as "a new legal phenomenon" that integrates "the set of rules, techniques, instruments, strategies, policies, and mechanisms adopted towards the same objective: to combat climate change, to adapt to it, and to avoid further negative consequences".

is the case of the Community of Madrid,[37] or Valencia.[38] In addition, there are Autonomous Communities whose strategic documents have proposed a longer time horizon, up to 2030 or 2050, as in the case of Aragon,[39] the Basque Country,[40] Navarre,[41] or more recently, Galicia.[42] The dimensions of this work prevent a more detailed consideration of the content of these regulatory frameworks, but there is no doubt that they constitute an essential reference for recognising a certain capacity of the Autonomous Communities to configure their own climate policy, thus consolidating the suitability of a decentralised model which, despite this, is not carried out with the same intensity in all territories, in the sense that the intensity and speed of autonomous regulatory action is not homogeneous.

From this last perspective, compared to the group examined, the concurrence of Autonomous Communities that have carried out a process of codification in the face of climate change through the passing of their respective climate change laws should be highlighted. Moreover, as was made clear at the beginning of this work, a distinction must be made between the Autonomous Communities of Catalonia, Andalusia, and the Balearic Islands, which, between 2017 and 2019, passed their laws prior to the basic State regulation

37. This autonomous community currently has an Air Quality and Climate Change Strategy 2013-2020. Blue+ Plan, under review as of 2019: see https://adaptecca.es/administracion-local/comunidades-autonomas/ccaa?field_ccaa_value=13, last accessed on 5 February 2023.

38. In this autonomous community there is the Valencian Climate Change Strategy 2008-2012 and 2013-2020 and, lastly, the Valencian Climate Change and Energy Strategy, which incorporates the energy component as an essential element in the fight against climate change: accessible at https://adaptecca.es/administracion-local/comunidades-autonomas/ccaa?field_ccaa_value=10, last accessed on 5 February 2023.

39. Note the Agreement of the Council of Government of 12 February 2019, approving the Aragonese Climate Change Strategy. Horizon 2030 (BOA of 19 March), accessible at https://www.aragon.es/-/estrategia-aragonesa-de-cambio-climatico-eacc-.-horizonte-2030, last accessed on 5 February 2023.

40. The Basque Country has the Climate Change Strategy 2050, approved by the Council of Government on 2 June 2015, accessible at https://bideoak2.euskadi.eus/debates/debate_1310/Estrategia_cambio_climatico_clima_2050_es.pdf, last accessed on 5 February 2023.

41. See the Agreement of the Government of Navarre of 24 February 2018, approving the Climate Change Strategy of Navarre (*BO No. 34 of 15 February*), available at https://gobiernoabierto.navarra.es/sites/default/files/klina_hoja_de_ruta_de_cambio_climatico_de_navarra.pdf, last accessed on 5 February 2023.

42. This autonomous community has the Galician Climate Change and Energy Strategy 2050, approved on 3 October 2019, and accessible at https://cambioclimatico.xunta.gal/estratexia-cambio-climatico, last accessed on 5 February 2023.

carried out by Act 7/2021, of 20 May 2021, on Climate Change and Energy Transition. Meanwhile, other Communities have been passing their climate laws in the last year, under the protection of the aforementioned basic framework. In particular, as of this moment, the Autonomous Communities of Navarre, Valencia, and the Canary Islands can be cited. Undoubtedly, these laws and those that may be passed in the future are in a situation of legal certainty with regard to the content of the regulations, which may be as broad as required in the development of the powers to establish additional standards of protection. This would be the line followed by the laws passed by Navarre, Valencia, and the Canary Islands,[43] in which the meticulousness and intensity of the regulation provided stand out, partly because they replicate and increase the provisions of the first regional laws in terms of governance, mitigation-adaptation measures, integration of climate change in the planning of the administrations, participation of society, and even infringements and penalties.

Undoubtedly, this situation of regulatory stability contrasts with that of the Autonomous Communities of Andalusia, Catalonia, and the Balearic Islands, insofar as they may find themselves in a situation of eventuality. This is so given the possibility of conflict of their provisions with the basic regulation of the CCETA, which would require a revision of their respective climate laws.[44]

In any case, the approval of regional climate laws implies a process of consolidation in the articulation of specific mechanisms and instruments to fight

43. These are Foral Law 4/2022, of 22 March 2022, on Climate Change and Energy Transition; Law 6/2022, of 5 December 2022, on Climate Change and Ecological Transition of the Valencian Community; and Law 6/2022, of 27 December, on Climate Change and Energy Transition of the Canary Islands (BOC number 257 of 31ST December), already cited in this work.

44. To a certain extent, this is what happened with the initial GHG reduction targets of Law 16/2017, of 1 August 2017, on Climate Change in Catalonia, which were declared unconstitutional and have led to the partial modification of the regulation, now in line with Act 7/2021, of 20 May 2021, on Climate Change and Energy Transition. On the contrary, the conflict has been avoided in the case of the Andalusian law, insofar as the Bilateral Cooperation Commission General Administration of the State-Autonomous Community of Andalusia's agreement exists, so that the scope of application of the regional law is limited to the matters that correspond to Andalusia through its Statute, leaving aside the competences of the State that must be developed in the territory of this Autonomous Community (see Agreement of the Subcommittee for Regulatory Monitoring published by the Resolution of 23 July 2019, of the General Secretariat for Territorial Coordination, BOE number 180 of 29 July).

climate change and enable a change in the production model from the energy point of view,[45] which must be considered irreversible. It is now time to analyse those elements and general features common to this decentralised organisation so as to demonstrate the soundness of the laws created by the Autonomous Communities in the face of climate change and towards energy transition.

According to the same perspective, consideration should be given, firstly, to the organising elements provided by the laws governing Catalonia, Andalusia, and the Balearic Islands, since they are at the basis of the most recent regulations, given that each of these provisions offers a characterising element, associated with their respective territory. Thus, as De la Varga[46] points out, it is striking how Law 16/2017, of 1 August 2017, on Climate Change in Catalonia deals with environmental taxation in the face of climate change,[47] or the interest shown by Law 8/2018, of 8 October 2018, on measures against climate change and for the transition towards a new energy model in Andalusia, in the cross-cutting nature of the Law in terms of public and private action in all sectors of activity, as well as the incorporation of the concept of just energy transition,[48] or the main objective of Law 10/2019, of 22 February 2019, on climate change and energy transition of the Balearic Islands[49] to achieve energy self-sufficiency, as an ideal model for dealing with the special nature of the island situation.

However, in addition to this, certain aspects of the examined regulations can be considered as shared and form part of what could, therefore, be described

45. Embid Irujo, in "El Derecho del Cambio Climático", 19, considers that we are witnessing a "phenomenon of deepening into regulatory instruments", which is evidence of the unstoppable process of approval of these regulations at the Autonomous Community level.

46. De la Varga Pastor, "Estudio comparativo de las Leyes Autonómicas de Catalunya, Andalucía, Illes Balears y Navarra para lograr la mitigación y la adaptación al Cambio Climático", 116, 117.

47. On this regulation, see De la Varga Pastor, "Estudio de la Ley catalana 16/2017, de 1 de agosto, del Cambio Climático y comparativa con otras iniciativas legislativas subestatales", 1-56.

48. For a detailed study of this regulation, see Mora Ruiz, "La respuesta legal de la Comunidad Autónoma de Andalucía al Cambio Climático", 1-44.

49. For this Act, see Jaria Manzano and Cocciolo, "Cambio Climático, energía y Comunidades Autónomas", 1-26.

as the very core of regional climate planning and the objective of climate neutrality.

So, in the first place, all the regional laws passed to date, as does the CCETA, internalise the climate-energy binomial as the cornerstone of any strategy to combat climate change and achieve climate neutrality, in such a way that one and the other constitute two inseparable and complementary objectives for the achievement of the aforementioned binomial. In this way, the comprehensive planning envisaged in these laws echoes this symbiotic relationship between mitigation and adaptation,[50] in clear connection with existing planning at the State level, i.e., the Integrated National Energy and Climate Plan 2021-2030, and the National Climate Change Adaptation Plan 2021-2030. Secondly, it is possible to identify a certain tendency for regional laws to be cross-cutting, in the sense of wanting to have an impact on all administrative actions and to affect all possible sectors of activity. This translates into a holistic approach regarding these sectors of activity and their link to the aforementioned mitigation-adaptation binomial, as the two sides of the fight against climate change. In this sense, reference can be made to the joint consideration of the economic, social, and environmental systems implemented by Law 16/2017, of 1 August 2017, on Climate Change in Catalonia (Art. 11 in relation to arts. 13 et seq. of the Law, relating to sectoral policies), or the inclusion of Art. 11.2 of the Andalusian Law of a total of 13 strategic areas ranging from water resources, energy, urban and regional planning, tourism, or migration associated with climate change, so that Art. 19.1 deems that the regional and local plans approved in these areas will be considered as plans with an impact on climate change.

As a result, these laws make climate change planning a key part of their management,[51] offering a strategic framework for the development of actions by the Autonomous Communities that must be prevailing, even over other planning. In this sense, the Andalusian, Balearic, and Catalan laws establish

50. The Andalusian Climate Action Plan, passed by Decree 234/2021 of 13 October, can be highlighted in this regard. This Plan must ensure, ex Art. 9 of Act 8/2018 of 8 October, "the effective integration of climate change mitigation, adaptation, and communication actions into regional and local planning, and that synergies between these actions are exploited".

51. In this respect, Moreno Molina, *El Derecho del Cambio Climático,* 154, 155. The author insists that climate change planning is not an occasional or programmatic activity of administrations, but an activity that must be permanently renewed and revised.

a cascade planning model, based on a programme whose focus of attention is the top of the planning that is subject to programming, as it is a structuring element of the autonomous regional planning.[52] This is the case of the Energy Transition and Climate Change Plan in Art. 11 of the Balearic Law, or the Andalusian Climate Action Plan regulated in arts. 8 et seq. of Law 8/2018. The main point, however, will be how to fit this well-structured planning with that derived from the Integrated National Energy and Climate Plan and the National Adaptation Plan, given that there is no express provision in the basic State regulation.[53]

In addition, these laws introduce a process of definition of the vulnerabilities of the territories, providing for instruments such as the climate scenarios of the Andalusian Law, or the climate projections of the Catalan Law.[54] This is done in such a way that the administrations are equipped with specific mechanisms with which to obtain information for decision-making while incorporating the specificity of each territory.

Finally, the broad scope of application of these laws should be highlighted, in the sense that both public and private subjects are involved and obliged to achieve the objectives of GHG reduction and the generalisation of energy from renewable sources, thereby transforming the energy production and consumption model. Representative of this public-private involvement is the express provision of the principle of shared responsibility in the Andalusian Law, together with the participation and education-awareness strategies, which are contemplated as added components to the strategic planning. This involvement is the basis, in my opinion, of the references made to cooperation and collaboration with other administrations, especially the local administration,[55] the implementation of an administrative organisation for climate

52. De la Varga Pastor, "Estudio comparativo de las Leyes Autonómicas de Catalunya, Andalucía, Illes Balears y Navarra para lograr la mitigación y la adaptación al Cambio Climático", 120.

53. See *supra* Footnote no. 44, with regard to the already mentioned Agreement of the Subcommittee for Regulatory Monitoring published by the Resolution of 23 July 2019, of the General Secretariat for Territorial Coordination.

54. Respectively, Art. 17 and Art. 12.

55. Article 5 of the Andalusian Law on measures to combat climate change is particularly exemplary in this respect, insofar as it requires that all administrations with powers to combat climate change cooperate and collaborate "with the aim of providing each other with the mutual support necessary for the effective performance of their functions".

change in which society is involved, and the provisions relating to green public procurement and the creation of fiscal instruments.

On this solid basis, the laws of Navarre, Valencia, and the Canary Islands consolidate the decentralisation options set out above and extend environmental regulation from the framework created by basic State legislation and European law. This is done in such a way that these Autonomous Communities manage to raise the level of protection by providing some interesting provisions to recognise an autonomous model for the fight against climate change and, where appropriate, a certain multilevel governance.

In this sense, these laws passed in 2022, make explicit, firstly, the existence of the Autonomous Communities' own space for establishing an "institutional regulatory framework" (as stated in Art. 1 of Foral Law 4/2022, of 22 March 2022, on Climate Change and Energy Transition) with which to materialise in legal form the political commitments relating to the fight against climate change in terms of mitigation and adaptation, and the transition towards a "resilient and carbon-neutral" social, economic, and environmental model (as stated in Art. 1 of Law 6/2022, of 5 December 2022, of Valencia), but within the regulatory framework provided by Regulation (EU) 2021/1119 of the European Parliament and of the Council, of 30 June 2021, establishing the framework for achieving climate neutrality, and amending Regulations (EC) No 401/2019 and (EU) 2018/1999 (European Climate Law), and the CCETA. In this sense, as the Explanatory Memorandum of the Canary Islands Law 6/2022, of 27 December 2022, on Climate Change and Energy Transition (§ I in fine) expressly states, climate change laws are considered tools for the energy transition and, on the other hand, they are understood as instruments to achieve the objectives to be reached by the State, in accordance with the principle of national contributions of the Paris Agreement but, above all, introducing the establishment of a multilevel governance framework as one of the aims of these laws. In this sense, Law 6/2022, of 5 December 2022, for Climate Change and Ecological Transition of the Valencian Community, whose Preamble (§IV) considers as a basis for the autonomous measures the fact that "(…) they assist the central State bodies in the fulfilment of the objectives of the fight against climate change, (and) materialise their own environmental and energy policies", is illustrative of what we mean. At the same time, the specific purpose of the Law is to "define a framework of multilevel climate governance aimed at guaranteeing the effectiveness of the Valencian Climate Change Strategy…" (Art. 1.d).

On this basis, the first of the common elements that can be recognised in these 2022 laws is the importance given to the principle of shared responsibility, associated with the concept of governance and the idea that the fight against climate change requires comprehensive action by all administrations and by society as a whole. Thus, the Canary Islands Law 6/2022, of 27 December 2022, defines governance in Art. 4.20 as "the model of government action based on interaction and coordination between different institutional, economic, and social sectors that seeks to reach agreements and co-responsibility for the achievement of agreed goals of public interest through formulas of open government, transparency, participation, and collaboration". Along the same lines, the preamble to Foral Law 4/2022 proposes an active role for the Autonomous Community of Navarre through an integral action that "requires a dynamic driving force on the part of the Government of Navarre to adopt coherent and productive sectoral policies in a coordinated and collaborative manner between all its departments, local administrations, and public and private agents and groups", and Art. 1.3 expressly includes the "shared responsibility" of the Government, local bodies, productive sectors, political, social and economic agents, and the general public in achieving the aims of the Law.[56]

In addition, these laws consolidate the identification of climate governance with the existence of an own administrative organisation, which includes both decision-making bodies in the strict sense of the word and expert participation and collaboration, thus providing a different and complementary way of carrying out the aforementioned shared responsibility. For example, Title I of the Valencian Law regulates "Climate Governance and Ecological Transition", establishing what can be considered to be the administrative organisation of the climate, in such a way that it includes the Council Commission to coordinate climate change policies (Art. 5), the Advisory and Participation Council for the Environment (Art. 6), and the Committee of Experts on Climate Change of the Valencian Community (Art. 8 in relation to the second Additional Provision).

56. In this same vein, Art. 5 of Law 6/2022, of 27 December 2022, on Climate Change and Energy Transition of the Canary Islands regulates the "responsibility and collaboration in climate action", insisting on the involvement of all territorial administrations and social and economic entities.

On the other hand, these laws consolidate the centrality of planning as a tool for administrative decision-making and reinforce the idea of a cascade planning that is gaining in concreteness, based on the envisaged climate change strategies that are configured as the generic framework from which to approve the respective plans. In this sense, both the Valencian Law and the Canary Islands Law embrace this model: the first law contemplates a Climate Change and Energy Strategy, followed by the Valencian Integrated Energy and Climate Change Plan, which is implemented through the programmes for adaptation to climate change, mitigation of GHG emissions, and social awareness and socio-economic training for ecological transition.[57] For its part, the Canary Islands Law provides for the Climate Action Strategy together with the Just Transition and Climate Justice Strategy, which will be projected in the Canary Islands Climate Action Plan and the Canary Islands Energy Transition Plan.[58]

In addition, all these laws seek to boost the role of local administrations, which is reflected in the specific programmes of municipal climate action plans that complete the planning scenario described above.[59]

On the other hand, planning is complemented by the provision of various instruments that demonstrate the existence of specific climate change law mechanisms through which the administrations play an important role. This is the case of the Carbon Budgets and the Climate Fund provided for in both Foral Law 4/2022 and Law 6/2022 of Valencia:[60] both norms carry out an exhaustive regulation of these instruments, and this reinforces the progressive articulation of a climate law, which relies on different nature instruments.

All these regulations are structured around the binomial of mitigation and adaptation and seek to ensure the transversality of the measures envisaged, in line with the first regional climate laws. However, it can be said that they

57. Note arts. 10 to 17 of the Law.

58. See arts. 14 to 19 of the Canary Islands Law.

59. In this way, Art. 19 of Foral Law 4/2022 regulates these plans in detail, making their approval obligatory for municipalities with more than 5,000 inhabitants, and envisaging the possibility for municipalities with a smaller population to do so in a joint or regional manner, and even individually.

60. Arts. 12 and 13, and Arts. 15 and 145, respectively.

go a step further in the field of mitigation by promoting renewable energies and energy efficiency, as well as mobility policies. In this sense, it is worth highlighting the eagerness of the laws of Navarre and Valencia to promote a change in the energy production and consumption model, as well as the generalisation of energy from renewable sources, paying special attention to the participation of local entities in the production of energy from these sources and to the empowerment of citizens through self-consumption. Thus, Foral Law 4/2022 aims to promote "energy cooperatives", linking them to the idea of "local energy communities";[61] Law 6/2022, of 5 December 2022, of Valencia, insists on local participation in energy generation facilities from renewable sources, as well as in self-consumption (Arts. 51 and 54, respectively), and Law 6/2022, of 27 December 2022, of the Canary Islands, imposes on all public administrations of this Community the promotion of "all legal figures that promote energy self-consumption, demand aggregators, energy communities, and renewable communities…" (Art. 41.1).

Compared to the first regional laws, these laws pay greater attention to two issues that may be key to the joint action mentioned above. On the one hand, there is a greater concern about introducing regulatory measures for what can be considered climate taxation, although each of these laws does so with different intensity. On the other hand, they all incorporate a developed sanctioning regime with which to complete the system of obligations derived from the laws, thus generalising this part of the regulation as an integral part of the essential core of the autonomous regulations.

In addition, it is important that these laws define regional and local administrations, in the sense of attributing them a qualified role in the adoption of mitigation and adaptation measures, by virtue of which it is possible to explicitly recognise their exemplary role, insofar as they will be the first subjects obliged to generalise the use of energy from renewable sources, to renew their vehicle fleet, or to refurbish public buildings in terms of energy efficiency. Of particular significance for this function is the regulation of Foral Law 4/2022, in the sense that the Autonomous Administration and local entities and their public bodies, "as consumers of goods and services, will lead the change of energy model and the mitigation and adaptation to climate change,

61. In this sense, Art. 1.4 of the Law includes as its purpose the "promotion of the democratisation of energy" and Art. 36 stipulates the renewable energy projects with local participation.

for which they will adopt measures for their own consumption of goods and products with a lower carbon footprint" (Art. 71).[62] Likewise, Law 6/2022, of 5 December 2022, of Valencia regulates in its Title VI the "[a]wareness, education, and exemplification policies within the Administration", in such a way that, on the one hand, it reinforces the importance of the so-called green public procurement (Arts. 90 to 96) and, on the other, it orders the "energy management of the public sector", subjecting administrations to the obligation to carry out energy audits and implementing the figure of the energy manager (Art. 97.1 and 2, respectively).

All of the above allows concluding that, despite the special features of each regional climate change law, there is no diametrically opposed approach to that of the basic State Act, which, in my opinion, results in the permanence of these regulations over time, and this is without prejudice to the adjustments that should be made in essential aspects such as planning, so as to be seen as an integrated whole and in connection with the national plans referred to above. Catalonia, Andalusia, and the Balearic Islands can be considered pioneers in the general regulation of climate change and in the particular regulation of each Autonomous Community, offering essential axes which, as has been pointed out, have been projected onto the most recent regulations. Navarre, Valencia, and the Canary Islands have taken a step further in the articulation of a legal framework for the decentralised fight against climate change, insofar as their regulations are substantively endowing these Autonomous Communities with the capacity to raise the level of protection, given the exhaustive nature of their regulations. The challenge lies in the perfect fit of these regulations with the basic provisions from the relational perspective, given that the construction of a multilevel climate change governance model requires a bidirectional involvement of each administrative level, with the result that the analysed regional laws offer more transformative provisions from this perspective than the inter-administrative relations guidelines of the basic State Act.

62. Title V of the Law regulates what is called "Sustainable Administration", to accommodate the aforementioned provision of Art. 71, together with obligations as diverse as the incorporation of the climate perspective in its territorial planning (Art. 72.4, aimed at the local administration) or the elaboration of an inventory of buildings and carbon footprint in Art. 76.

3. Final thoughts

In light of all the above, it is necessary to make some final considerations to demonstrate the effective degree of decentralisation achieved in the Spanish legal system with regard to climate change and energy transition. At the same time, the effectiveness of the model that the Autonomous Communities intend to implement by means of timely regulation needs to be discussed.

Thus, the first consideration to be made is linked to the special nature and complexity of the environmental problem at hand and the need to devise climate change legislation that, based on the tools or instruments of environmental law, is capable of articulating specific principles and techniques that respond to the demands of reducing GHG emissions and allow administrations and citizens to have the capacity to adapt to the extreme situations arising from the unstoppable advance of climate change. The incorporation of new principles into the laws that have been analysed, such as resilience, linked to the concept of vulnerability, entails the need to articulate new instruments and also the reformulation of classic instruments of administrative law, such as planning. In this sense, we can think of the cascade planning imposed by the CCETA, the emission records created in the regional regulations, and the articulation of a taxation system specific to climate change. In my view, what is needed is a flexible environmental law that offers legal certainty, with the capacity to plan, but which, at the same time, provides a certain capacity for anticipation and resilience, in order to provide the territories with appropriate responses to the consequences of the global phenomenon represented by climate change.

This climate change law requires, as an essential part of its articulation, an alternative form of relationship between public administrations, bearing in mind that the fight against climate change and the transition to a decarbonised energy model incorporate a territorial component that must be taken into account in order to achieve the objectives set at the international level. As mentioned earlier, the State is not the only entity responsible for adopting mitigation and adaptation measures, but under the umbrella of multilevel governance promoted by international bodies, a kind of subjective "depatrimonialisation" must take place,[63] for the sake of multilateral involvement of administrations and bidirectional collaboration between the public and private sectors.

63. Mora Ruiz, "La perspectiva autonómica y local sobre el Cambio Climático", 202.

In this context, there is no doubt that the approval and entry into force of the CCETA represented a turning point with respect to the legal regulation of climate change, providing the framework on which to base the approval of climate laws by the Autonomous Communities. The question is, as has been made clear throughout this work, to what extent these laws, with the basic State Act at the forefront, have transformed the need for participation and active involvement of infra-state entities in decision-making and in the implementation of regulations, establishing the basis for an alternative model of relationship in terms of multilevel governance, given that the presence of regional and local entities becomes part of the solution to climate change as a result of the relevance of the specific territory in the adoption of measures.[64] In my opinion, firstly, it is necessary to reconsider the constitutional bases-development binomial in an alternative way, in the sense that the CCETA should have constituted an opportunity to limit a certain tendency of the State to unilaterally determine the basics, and to promote, in contrast, a more dynamic process of specifying the scope of basic environmental legislation, with the participation of the Autonomous Communities. In this sense, the CCETA makes hardly any reference to regional climate laws that were passed prior to its entry into force, ignoring, to some extent, the path already taken by said regions in the exercise of their competence to raise the level of protection recognised by the EC.

However, it must be acknowledged that the CCETA offers a heterogeneous legal framework in terms of the presence of the Autonomous Communities with respect to measures to reduce GHG emissions, adaptation to climate change, or the change of energy model it seeks to achieve. From this perspective, the space guaranteed by the State Act for regional intervention in the area of climate change is unequal in its intensity and is not the result of a diverse approach to State-Autonomous Community relations. Yet, it can be considered a principle for articulating a kind of multilevel environmental regulation and management competences, as a manifestation of the aforementioned governance, thus allowing the State to effectively comply with its international commitments.

64. On the suitability of the lower level for the effective management of citizens' interests, see Contipelli, "Multi-level climate Governance", 12, 15.

Closely linked to this possibility, the approval of regional climate laws should be considered a means of implementing the multilevel governance model referred to above and of materialising a decentralised model for organising the fight against climate change. To a certain extent, these laws constitute a reference for the limited space initially offered by the CCETA to the Autonomous Communities to be broadened through the revision of its provisions. The laws passed in 2022 have not only consolidated the core elements of an Autonomous Community model for the fight against climate change and energy transition but also demonstrate the possibilities available to the Autonomous Communities to take up their own space in the area of climate change and under the protection of the basic State Act.

Nonetheless, it should be pointed out that the regional laws are only a first step in the shaping of an own climate and energy transition policy, which may face the risk of not progressing, insofar as the Autonomous Communities might not advance in the development of their plans. It is striking, in this sense, that the climate laws preceding the CCETA, despite the numerous references to regulatory developments, hardly contain any rules that specify their provisions, beyond the purely organisational aspects.[65] This "paralysis" may undermine a decentralisation model that must nevertheless be considered necessary to achieve real climate neutrality and energy transition objectives.[66]

In short, and to conclude, there is no doubt that multilevel governance is the ideal channel for the participation of infra-state entities in the fight against climate change, with the Autonomous Communities playing an essential role in the Spanish model.[67] However, this governance must also

65. To illustrate this, the Autonomous Community of Catalonia, in developing Law 16/2017, of 1 August 2017, includes Decree 31/2022, of 22 February 2022, which establishes the composition and operating regime of the Climate Change Social Action Committee (in relation to Art. 31 of the Law), and Decree 33/2020, of 18 February 2020, which establishes the composition and operating regime of the Interdepartmental Climate Change Commission.

66. Along the same lines, De la Varga Pastor, "Estudio comparativo de las Leyes Autonómicas de Catalunya, Andalucía, Illes Balears y Navarra para lograr la mitigación y la adaptación al Cambio Climático", 147.

67. From a critical perspective, Presicce, "Buscando instrumentos de coordinación para la gobernanza climática multinivel", 19, who points out the risk of reversal with regard to the coordination instruments of the Spanish system.

feed on coordination mechanisms in the narrowest sense of the term, which give a privileged position to the State in order to ensure compliance with the aforementioned international obligations of GHG reduction and climate neutrality. At the same time, though, they must go beyond and be combined with other, more elaborate cooperation techniques with which to review the State-Community relationship and to articulate, on the basis of decentralisation, a true joint action to react to the unstoppable situation of climate emergency.[68]

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68. Note the idea of "Constitutional Emergency" by Cocciolo, "Cambio Climático en tiempos de emergencia", 9.

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