

LEGAL PROTECTION OF SURFACE WATERS IN SPAIN

Protección jurídica de las aguas superficiales en España

JAROSŁAW DOBKOWSKI

Full professor administrative law. University of Warmińsko (Poland)

E-mail: j.dobkowski@uwm.edu.pl

MARIA JOSÉ CAZORLA GONZÁLEZ

Full professor. Civil law. University of Almería (Spain)

E-mail: mcazorla@ual.es

Summary: A systematic study of water regulations in Spain within the legislative framework of the EU and the use and management of this resource in agriculture is carried out. In this context, the aim is to analyse whether the most recent regulations increase the confidence of consumers and farmers in this circular approach to water use, guaranteeing water security and reducing pressures on increasingly scarce water resources, under EU and national policies that promote the safe use of reclaimed water in agriculture and guarantee the protection of human and animal health and the environment, as well as being a tool that contributes to protecting biodiversity.

Keywords: reclaimed water; agriculture; circular water use; water security.

Resumen: Se realiza un estudio sistemático de la normativa sobre agua en España dentro del marco legislativo de la UE y el uso y gestión de este recurso en la agricultura. En este contexto la finalidad es analizar si la normativa más reciente aumenta la confianza de consumidores y agricultores en este enfoque circular del uso del agua, garantizando la seguridad hídrica y reduciendo las presiones sobre unos recursos hídricos cada vez más escasos, bajo las políticas comunitaria y nacionales que promueven el uso seguro del agua regenerada en la agricultura y garantice la protección de la salud humana y animal y del medio ambiente y sea una herramienta que contribuya a proteger la biodiversidad.

Palabras clave: aguas regeneradas; agricultura; uso del agua circular; seguridad hídrica.

SUMMARY: I. INTRODUCTION. II. RULES AND INSTRUMENTS OF SURFACE WATER MANAGEMENT AND PROTECTION. III. WATER AUTHORITY: RESPONSIBILITIES AND COMPETENCES. IV. WATER POLICE AS A CONTROL ORGAN IN SURFACE WATER MANAGEMENT. V. FINAL CONSIDERATIONS. VI. BIBLIOGRAPHY.

I. INTRODUCTION

Water has been the subject of European regulation since the 1970s, but the Union's legislative process itself shows changes in the way this natural resource is managed and protected. Specifically, water policy and the legal provisions for the conservation of water resources have been reinforced as environmental policy has been strengthened in European law, covering more and more realities (rivers, seas, lagoons,

Información del artículo:

Fecha de recepción: 16/05/2024
Fecha de aceptación: 29/05/2024

Cómo citar este artículo:

Dobkowski, Jarosław y Cazorla González, M^a. J. (2024). Legal Protection of Surface Waters on Spain. *Revista Internacional de Doctrina y Jurisprudencia*, (31), julio, 121-141. <https://doi.org/10.25115/ridj.vi31.9892>

agriculture, urban supply, etc.); the water policy has been strengthened as a result of the increasing number of water-related issues (rivers, seas, lagoons, agriculture, urban supply, etc.).

One can claim with respect to the hydrological picture of Spain that water shortage has always been felt there. Certain legal institutions –some of them even of Arab origin– were developed there¹. The first laws concerning water were passed as far back as 1866 (*Ley de Aguas, de 3 de Agosto de 1866*) and 1879 (*Ley de Aguas, de 13 de junio de 1879. Gaceta del 19 de Junio de 1879*)². The landmark was the Water Act No. 29/1985 of 2 August 1985³. Because of the drought of recent years, some extraordinary measures have been implemented, which –after subsequent renewals– are becoming permanent. The WFD was implemented in Spain by the royal law decree 1/2001 of 20 July 2001 containing the Water Law (Real Decreto Legislativo 1/2001, de 20 de julio, por el que se aprueba el texto refundido de la Ley de Aguas, BOE-A-2001-14276), as well as a later act 62/2003 of 30 December 2003 on fiscal, administrative and social measures (Ley 62/2003, de 30 de diciembre, de medidas fiscales, administrativas y del orden social, BOE-A-2003-23936), whose article 129 introduced quite important changes in the said Water Law. The amended act 10/2001 of 5 June 2001 of the National Water Plan is also important (Ley 10/2001, de 5 de julio, del Plan Hidrológico Nacional (BOE-A-2001-13042); Ley 11/2005, de 22 de junio, por la que se modifica la ley 10/2001 del Plan Hidrológico Nacional, BOE-A-2005-10622). These acts have established the domestic legal framework for water policy for the competent bodies and institutions.

The water law, in its formal and legal sense, denotes the royal decree law 1/2001 of 20 July 2001 (Real Decreto Legislativo 1/2001, de 20 de julio, por el que se aprueba el texto refundido de la Ley de Aguas, BOE-A-2001-14276), which was based on the existing act on water No. 29/1985 of 2 August 1985. Given the position of royal law decrees in the Spanish legal system, what took place was not so much a technical incorporation of the valid regulations but the issuing of a new normative act⁴, as well as the acts referred to above.

The national body of the Spanish law concerning water policy also comprises other normative acts, in particular, the royal law decree 11/1995 of 28 December 1995, which establishes the rules applicable in urban wastewater treatment (Real Decreto-ley 11/1995, de 28 de diciembre, por el que se establecen las normas aplicables al tratamiento de las aguas residuales urbana, BOE-A-1995-27963) together with the royal decree 509/1996 of 15 March of 1996, which expands on it (Real decreto 509/1996, de 15 de marzo, de

- 1 Martín-Retortillo Baquer S., (1960), *La elaboración de la Ley de aguas de 1866*, “Revista de Administración Pública” 1960, Núm 32, pp. 11-54. Organización de las Naciones Unidas para la Agricultura y la Alimentación, (1976), *El derecho de aguas en algunos países europeos. Vol. 1 (Bélgica, España, Francia, Inglaterra y País de Gales, Israel, Italia, Turquía)*, Roma. Schwarz E., (1966), *Das spanische Wasserrecht: geschichtliche Gundzüge, Eigentumsverhältnisse an den Gewässern, Nutzungsverhältnisse, Dienstbarkeiten*, Tübingen. Vergara Blanco A., (1991), *Contribución a la historia del Derecho de Aguas, II: Fuentes y principios del Derecho de Aguas español medieval y moderno*, «Revista de minas y aguas», Vol. II, Nr 2, pp. 137-161.
- 2 Gallego Anabitarte A., Menéndez Rexach Al, Díaz Lema J. M., (1986), *El derecho de aguas en España*, Madrid, p.752. González Pérez J., Toledo Jáudenes J., Arrieta Álvarez C., (1987), *Comentarios a la Ley de aguas*, Madrid, p.1300. Guaita Martorell A., (1982), *Derecho administrativoaguas, montes, minas*, Madrid, p. 400. Menéndez Rexach Á., (2010), *El derecho al agua en la legislación española* (in:) *El derecho de aguas en clave europea*, ed. Jorge Agudo González, Madrid, pp.23-67.
- 3 Embid Irujo A., (2003), *Water Law in Spain After 1985*, “Water International”, Nr 28 (3).
- 4 Sánchez Camacho R., (2007), *Las competencias sobre el agua en las reformas estatutarias*, “Aletheia: Cuadernos Críticos Del Derecho”, Núm 2, pp. . 58-78.

desarrollo del Real decreto ley 11/1995, de 28 de diciembre, por el cual se establecen las normas aplicables al tratamiento de las aguas residuales urbanas, BOE-A-1996-7159), as well as other royal decrees: royal decree 849/1986 of 11 April 1986 on the public water domain (Real Decreto 849/1986, de 11 de abril, por el que se aprueba el Reglamento del Dominio Público Hidráulico, que desarrolla los títulos preliminar I, IV, V, VI y VII de la Ley 29/1985, de 2 de agosto, de Aguas, BOE-A-1986-10638- amended Royal Decree 655/2023, 18 July), amended royal decree 907/2007 of 6 July 2007, approving the royal decree on water planning (Real Decreto 907/2007, de 6 de julio, por el que se aprueba el Reglamento de la Planificación Hidrológica, BOE-A-2007-13182; Real Decreto 1159/2021, de 28 de diciembre, por el que se modifica el Real Decreto 907/2007, de 6 de julio, por el que se aprueba el Reglamento de la Planificación Hidrológica, BOE-A-2021-21664), royal decree 1620/2007 of 7 December 2007, which establishes the legal regime for reuse of treated water (Real Decreto 1620/2007, de 7 de diciembre, por el que se establece el régimen jurídico de la reutilización de las aguas depuradas, BOE-A-2007-21092)⁵, royal decree 60/2011 of 21 January 2011 on the environment quality standards with respect to water policy (Real Decreto 60/2011, de 21 de enero, sobre las normas de calidad ambiental en el ámbito de la política de aguas, BOE-A-2011-1139) and the royal decree 817/2015 of 11 September 2015, establishing the criteria for monitoring and evaluation of surface waters and the environmental quality standards (Real Decreto 817/2015, de 11 de septiembre, por el que se establecen los criterios de seguimiento y evaluación del estado de las aguas superficiales y las normas de calidad ambiental, BOE-A-2015-9806). To a certain extent, the royal law decree 1/2016 of 16 December 2016, approving the consolidated text of the law on integrated pollution prevention and control also applies (Real Decreto Legislativo 1/2016, de 16 de diciembre, por el que se aprueba el texto refundido de la Ley de prevención y control integrados de la contaminación, BOE-A-2016-12601).

Pursuant to Art. 1, the aim of the Water Law is to regulate the public water domain, normalising the rules of water use and exercising the rights granted to the state in matters related to that domain as part of the state competence laid down in Art. 149 of the Constitution of Spain of 27 December 1978. The water law also establishes the basic rules of inland, coastal, and transitional water protection without detriment to their legal classification and specific regulations applicable to them. In this regard, inland surface waters, including renewable groundwater integrated with the hydrological cycle, constitute a uniform resource subordinate to the general interest, which is part of the national, general social domain as a public water domain. The state is responsible for water planning, covering all the actions on public waters in each case and on conditions laid down in these regulations⁶.

However, the Spanish legislation is applied under the interpretation criteria and guidelines established by the European Union, which influence the application of all these regulations: the European Green Deal, both the Circular Economy Action Plan and the new EU Climate Change Adaptation Strategy refer to a wider use of as a way of increas-

5 Spain must adapt its agricultural irrigation legislation because currently only RD 1620/2007 of 7 December 2007 is in force, which regulates five permitted uses in the agricultural, environmental, urban recreational (residential and services) and industrial fields. All these uses will remain under the regulation of the aforementioned Royal Decree of 2007, except for agricultural uses, because from now on, under the 2020 regulation, they will have to adapt to European regulations.

6 Chiu V., (2014), *La protection de l'eau en droit public : Étude comparée des droits espagnol, français et italien*, Toulon.

ing the EU's capacity to respond to the growing pressures on water resources⁷. The Spanish legal regime is currently being revised to bring it in line with regulation 2020/721, the intention of our ministry is to extend the requirements of the European regulation, which only refers to the use of reclaimed water in agricultural irrigation, to all uses permitted under Spanish law.

Under the Regulation (EU) 2020/741 of the European Parliament and of the Council on minimum requirements for the reuse of water, the urban wastewater treated in accordance with the requirements of Directive 91/271/EEC on urban wastewater treatment (Urban Wastewater Treatment Directive) must undergo additional treatment to meet new minimum quality parameters and be suitable for use in agriculture⁸. However, the Regulation foresees the possibility for Member States to decide not to introduce this practice, or to do so only at a later stage, based on specific criteria. Such decisions should be reviewed periodically to consider climate change projections and national strategies, as well as river basin management plans established under the Water Framework Directive. So, France, Italy and Spain have adopted the use of reclaimed water in their state regulations, as have Greece, Romania, Hungary, and other countries; but Germany, generally allows the reuse of reclaimed water, with the exception of certain parts of the country. And Austria, Poland, the Czech Republic and Finland are among the countries where water reuse for agricultural irrigation is currently not allowed. Finally, Ireland and Denmark have not yet taken a final decision.

In the context of the European Green Deal, both the Circular Economy Action Plan and the new EU Climate Change Adaptation Strategy refer to a wider use of reclaimed water as a way to increase the EU's capacity to respond to growing pressures on water resources.

The proposed revision of the Urban Wastewater Treatment Directive strengthens the existing provision encouraging water reuse by requiring Member States to systematically promote the reuse of reclaimed water from all urban wastewater treatment plants. A swift adoption of the proposal, with its requirements for improved surveillance, monitoring and reduction of pollution at source, will improve the quality of reclaimed water, which will further facilitate its reuse.

Water reuse also contributes to the Farm to Fork strategy's objective of reducing the environmental footprint of the EU food system and strengthening its resilience by providing an alternative and more reliable source of water for irrigation. Under the Common Agricultural Policy there are funding opportunities for irrigation investments with reclaimed water as an alternative water supply. This new regulation is also in line with the Water Action Agenda adopted at the UN Water Conference held a few months ago in New York, with a particular focus on access to sufficient and good quality water and adaptation to climate change.

The proposed revision of the Urban Water Treatment Directive strengthens the existing provision encouraging water reuse by requiring Member States to systematically promote the reuse of reclaimed water from all urban wastewater treatment plants. A swift adoption of the proposal, with its requirements for improved surveillance, monitoring,

7 Molina Giménez, A.D., (2022), *La evaluación y gestión del riesgo que conlleva la actividad de reutilización*, Observatorio del ciclo del agua, ISSN 2660-4477, págs. 311-343.

8 Molina Giménez, A., (2021), *Análisis jurídico del Reglamento (UE) 2020/741, de 25 de mayo de 2020, sobre reutilización de aguas regeneradas, y estudio de su repercusión en España*, Revista Aranzadi de derecho ambiental, ISSN 1695-2588, Nº 48, págs. 147-202.

and reduction of pollution at source, will improve the quality of reclaimed water, which will further facilitate its reuse⁹.

Water reuse also contributes to the Farm to Fork strategy's objective of reducing the environmental footprint of the EU food system and strengthening its resilience by providing an alternative and more reliable water source for irrigation. Under the Common Agricultural Policy there are funding opportunities for irrigation investments with reclaimed water as an alternative water supply.

This new regulation is also in line with the Water Action Agenda adopted at the UN Water Conference held a few months ago in New York, with a particular focus on access to sufficient and good quality water and adaptation to climate change.

The aim is that this new regulation will increase consumer and farmer confidence in this circular approach to water use, ensuring water security and reducing pressures on increasingly scarce water resources, promote the safe use of reclaimed water in agriculture and ensure the protection of human and animal health and the environment and will be a tool to help protect biodiversity.

It's necessary increase consumer and farmer confidence in this circular approach to water use, because, although the consumer is left out as an agent in the food chain, if he does not consume what the primary sector produces, neither the investment, nor the development nor the technology for reusing water resources becomes sustainable; and most importantly, because we are talking about an increasingly scarce resource, which currently increases the cost of production but which, in the long term, its scarcity may mean that it will be impossible to produce food for the population.

Hence, the general objective of the Regulation is to address water scarcity throughout the European Union through the use of reclaimed water for the agricultural river. While the ultimate aim of the 2020 Regulation is to increase consumer and farmer confidence in this circular approach to water use, ensuring water security and reducing pressures on increasingly scarce water resources, this Regulation promotes the safe use of reclaimed water in agriculture and ensures the protection of human and animal health and the environment and will be a tool to help protect biodiversity.

The Regulation has two generations of previous Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy:

- The first was based on directives regulating both water quality standards according to the use or destination (drinking water, bathing, fish...); and those directives that set emission limitations for discharges into water. These are Directives with a sectorial approach and the scarce results achieved, where no European regulation required a licence or authorisation for discharges of used water, on the contrary, Spanish legislation has always subject the discharge of polluting wastewater. Therefore, a second generation of directives was introduced.

9 Hernández López, S.M. y González Martínez, J.C., (2023), *Reutilización de aguas regeneradas en la cuenca del Segura. Adaptación al Reglamento (UE) 2020/741: retos y oportunidades*; V Congreso Nacional del Agua - Libro de Actas / coord. por Joaquín Melgarejo M^a Inmaculada. López Ortiz, Patricia Fernández Aracil, ISBN 9788413022345, págs. 231-248.

- The second generation of Directives (wastewater, nitrates and integrated pollution control of large installations) deals with specific pollution problems, urban industrial wastewater, diffuse pollution, nitrate pollution, etc.

The Water Framework Directive and the other directives do not imply a total harmonisation of the Member States' regulations in the field of water, as the conditions regarding the naturalness of water bodies are different in the various European river basins and good water status will have its own characteristics and will differ according to the type of reference water body in the geographical area concerned. While improvement in water quality is noticeable, recovery will take time.

II. RULES AND INSTRUMENTS OF SURFACE WATER MANAGEMENT AND PROTECTION

In Spain, as in most of the surrounding countries, when talking about water management, a fundamental distinction is made between groundwater and surface water. The use of groundwater is a very old practice in our country and its development has been linked to the evolution of technical, social and economic factors, and is mainly linked to the private and family sphere with little participation of the public sector. So the benefits and the negative effects, there is a need for specific groundwater regulation and controlled and optimal groundwater management. In this respect, it should be remembered that art. 45 of the current Constitution states that the public authorities must ensure the conservation of natural resources, but also that everyone has the duty to conserve them. Therefore, the legislator (national and regional) must provide incentives with the appropriate measures for a rational use of natural resources, for example, by ordering the exploitation of natural resources in a sustainable way¹⁰.

The following comprise the public water domain: a) inland waters, both surface and groundwater, renewable, regardless of the time of their renewal, b) beds of natural watercourses, permanent or temporary, c) bottoms of lakes and lagoons and the bottoms of surface water bodies in public watercourses, d) aquifers, for the purposes associated with development of water resources, e) water obtained by desalination of sea water (art. 2)¹¹.

This does not apply to temporary water courses or water bodies within private real estate, and their course or water quality changes must not be subject to the owner's actions (Art. 5). This also does not apply to the ponds on private land, which is regarded as its integral part unless it is intended for the exclusive use of the owner of such land and it is without detriment to the environmental protection (art. 9).

This is important because – as a rule – individuals and other entities cannot become water owners, but they can only acquire the right to use them, except for the rights acquired under previous regulations, which regarded groundwaters as the property of the owner of the real estate where it was situated. Currently, the use of a water resource requires a previous concession as part of the state monopoly or a permit issued by the

10 Flores García, A.I.; Molina García, Mónica, (2017), *Tratamiento legal de las aguas subterráneas en España: ¿Se garantiza un uso sostenible de este recurso natural?*, Diario La Ley, N.º 8971, 3 de mayo.

11 Döpp L., (2000), *Das spanische Wasserrecht: die Verteilung von Wasser als Regelungsproblem*, Volume 74 of Münsteraner Studien zur Rechtsvergleichung, Münster. Wawer R., (2021) *Agricultural water management in changing climate – a call for a reform in Poland. Case analysis of reference – a 1200 years of irrigation communities in Spain*, (in:) *13th International Conference on Agrophysics: Agriculture in changing climate*, Lublin, p. 202.

competent administrative authority. There are also water registers (art. 80), obligatory irrigation communities, and gathering water users (art. 81)¹².

Spain did not take over strict and exclusive water rationing, but – while observing the traditional rules of joint use of such resources by individual farmers – it created the legal framework for irrigation communities within the public law while respecting the classic forms of private law and mainly the local customs. A system of irrigation communities has been operating effectively for centuries. However, nowadays, groundwater has been exploited uncontrollably¹³, which has resulted in a situation in which more water is collected illegally than from legal sources, which results in a crisis of the existing system solutions.

Nevertheless, Art. 54 of the Water Law provides for the private use of public waters directly under the legal provision, whose beneficiaries include farm owners who can benefit from the rainfall flowing through their farms and standing in them without limitations other than specified in the act and arising from respecting the third-party rights, but with the general prohibition of abusing one's rights, and the owners of other real estates within the scope of using water from the sources situated in their area and groundwater, if the annual volume does not exceed 7,000 m³ unless the aquifers are officially regarded as exploited excessively or threatened with excessive exploitation¹⁴.

So, the recognition of the public water domain in Spain is the basis for the status of individuals in their legal relationship with water. Therefore, it is on this basis that the legal regime of their rights and obligations is established. However, we are far from having a current and effective legal configuration of the right to use surface and groundwater, because even in the 21st century there are still doctrinal and jurisprudential discussions about the rights that individuals have with respect to water, its content and its protection. It may be necessary, from a doctrinal and legal point of view, to configure the right to use water, regardless of the title that individuals provide for its exercise. In this way, all the uses made of water would be unified, regardless of when the right was acquired¹⁵.

This is so in Spain because, as the Constitutional Court recognised¹⁶, “it is necessary to note that, without prejudice to their legal classification as waters “of private domain”, the legislation prior to the new Water Law did not establish a right of ownership over them that could be traced back to the general regime defined in art. 348 of the Civil Code and in the concordant precepts. Private ownership of certain land waters was already in that legislation a “special property” (Title IV of Book Two of the Civil Code),

12 Bunclark L., Carter R., Casey V., Day St J., Guthrie D., (2011), *Managing water locally: An essential dimension of community water development*, Westminster, pp. 48-75. Embid Irujo A., (2017), *Organizaciones de usuarios y participación en la gestión del agua en el Derecho español* (in:) *Perfiles de la ordenación jurídica del agua en Italia, España y América Latina*, ed. Gabriella Crepaldi, Valencia, pp. 45-62. Fanlo Loras A., (2005), *Le modèle espagnol de participation du public à la gestion de l'eau : mythe, réalité et défis immédiats*, «Environnement», nr 7, pp.77-82.

13 Flores García, A.I.; Molina García, Mónica, (2017), *Tratamiento legal de las aguas subterráneas en España: ¿Se garantiza un uso sostenible de este recurso natural?*, Diario La Ley, N.º 8971, 3 de mayo.

14 Supreme Court, Third Chamber for Contentious-Administrative Proceedings, 5th Section, Judgment of 26 Oct. 2011, Rec. 2810/2008. ECLI: ES:TS:2011:7182. Penalty of a fine for exploiting groundwater abstractions for irrigation without authorisation from the Basin Authority. Vid. Maestre Rosa J., (1969), *Comunidades de regantes. Concepto, naturaleza jurídica y regulación positiva*, Barcelona, p. 272.

15 Alcaín Martínez, E., (2010), *La protección jurídico-privada del derecho de aprovechamiento de aguas*, Diario La Ley, N.º 7366, Año XXXI, 22 de Marzo, Ref. D-92, Editorial LA LEY.

16 Tribunal Constitucional, Pleno, Sentencia 227/1988 de 29 Nov. 1988, Rec. 824/1985

subject to strict limits as regards the powers of the owner (...), its content being limited to the use of the waters”.

The other hand, there are civil legal institutions: waterway easement (art. 47 ff), private and general water use, and common and specific (art. 50 ff). Interesting features in this regard include the assignment of the right to use water (art. 69) or accounting for the right to use water (art. 71).

Water management has been planned and directed in Spain for many years. The general objectives of water planning include achieving good public water status and proper protection, which also includes other waters covered by the Water Law, satisfying demand for water, sustainability and harmonisation of regional and sectoral development, improving the resource availability, protecting their quality, frugality and rationalisation in their use in harmony with the environment and other natural resources. The water policy helps to implement sectoral strategies and specific plans developed by the public administration without detriment to the rational and sustainable resource management, which must be applied by the Ministry of Environment or by competent water administration authorities, which is a condition for further permits, concessions and material assets which can be applied for. Plans are developed with the use of the National Water Plan and water plans for drainage basins (as per art. 16: an area of land whose surface runoff flows through a number of streams, rivers and/or lakes to the sea through a single estuary or delta) based on the Water Law, whose territorial range coincides with that of the respective drainage basin organisation (art. 40). A drainage basin organisation is a resource management unit, in particular, an entity responsible for water planning and management and it is appointed when a drainage basin exceeds the territorial range of an autonomous community, or it is appointed as an intra-community organ of water administration, which is also specialised, decentralised and participative. The scope of activities of a drainage basin organisation of each type is specified in the Water Law (art. 21). This is important because the procedure for preparation and review of water management plans in drainage basins is regulated by law and schedules, work programmes, elements that require consideration and preliminary projects are announced each time to inform the public and ensure consultations from the beginning of the preparatory process. Certain limitations arise from the Spanish-Portuguese convention of Albufeira of 1998, which defines the framework of bilateral relations concerning water resources. Programmes related to coastal and transitional waters are developed by the state administration or by autonomous communities which have a coastal line on their territory and take part in the work of a relevant committee. Water plans are developed in coordination with various sectoral plans, both with respect to water and land use, especially to the regulations concerning plans for irrigation and other agricultural use. Water plans are approved by state administration bodies (art. 41).

According to Art. 45, the National Water Plan provides in each case the necessary measures for coordination of various hydrological plans for a drainage basin, alternative solutions, a forecast and conditions for water resources transfer between territories covered by various water management in a drainage basin, modification provided for in planning regarding the resource use for water supply to the population or irrigation. The valid National Water Plan was approved by the act 10/2001 of 5 June 2001 on the National Water Plan. Specific conditions of water planning are laid down in the amended royal decree 907/2007 of 6 July 2007.

Water planning makes it possible to sort out water management. The plans are not just simple programmes of work but normative instruments which adapt general regula-

tions of the law to specific local conditions. Although water plans are key solutions of the Water Law, their development process is time-consuming, and there were delays in their approval process. Water plans must be taken into consideration in local plans, and with desertification considers¹⁷.

The Water Law also regulates the issues related to public water protection and water quality. The statutory objectives of water protection, including public waters, as per Art. 92, are as follows: a) preventing deterioration, protection and improvement of the status of aquatic ecosystems, as well as land ecosystems and wetland, which are directly dependent on aquatic ecosystems with respect to their water needs, b) promoting sustainable use of water by protecting the available water resources and ensuring their sufficient supply in good status, c) protection and improvement of the status of the aquatic environment by implementing specific measures in order to reduce gradually the discharges, emissions and loss of priority hazardous substances, d) gradual reduction of groundwater pollution and preventing its further pollution, e) alleviating the effects of floods and droughts, f) achieving, through implementation of the relevant regulations, of the objectives set in international treaties on preventing and eliminating marine environment pollution, g) avoiding accumulation of toxic or hazardous compounds in the subsoil or other accumulations which could bring about degradation of public waters, h) guaranteeing allocation of the best quality waters in an area or region for supply to the population.

The Water Law, in its Art. 92 *bis* also lays down the environmental objectives which serve water protection, including surface waters (preventing deterioration of the status of surface water bodies, protection, improvement and restoring all water bodies in order to achieve a good status of surface waters, gradual reduction of pollution with priority substances and elimination or gradual elimination of discharges, emissions or loss of priority hazardous substances) for groundwaters (prevention or reduction of polluting groundwaters or preventing deterioration of the quality of all groundwater bodies, protection, improvement and restoration of groundwater bodies and ensuring a balance between water intake and supply in order to achieve a good status of groundwater, reversing any considerable and permanent trends of growth of pollutant concentrations caused by human activity in order to gradually reduce the groundwater pollution), for protected areas (meeting the requirements for protection standards valid in an area and achieving the environmental objectives specified in them) and for artificial and heavily modified water bodies (protection and improvement of the status of artificial and heavily modified water bodies in order to achieve a good ecological potential and good chemical status of surface waters)¹⁸. If water bodies are heavily modified because of human activities or if these objectives are unattainable or attaining them would entail high costs due to their

17 Sánchez Hernández, A., (2008), *Agua y desertización: aspectos jurídicos del uso del agua*, Nuevas perspectivas de la normativa agraria en España / coord. por Ángel Sánchez Hernández, ISBN 978-84-8125-318-4, pp. 125-140

18 As required by EU water legislation, and in line with the European Green Deal's zero pollution ambition, on 26 October 2022 the European Commission tabled a proposal to revise the lists of surface water and groundwater pollutants that need to be monitored and controlled for the purpose of protection of EU freshwater bodies, and the associated environmental quality standards. The proposal also seeks to remedy shortcomings identified in the current framework as regards chemical pollution in waters, and notably to enable swifter adaptation to scientific knowledge. Stakeholders' views on the proposed text are mixed. Non-governmental organisations are pushing for more ambition, for instance on chemical mixtures, pesticides, deadlines, and producers' responsibility for covering monitoring costs. Industry representatives have meanwhile expressed some concerns, notably about the achievability and scientific grounding of certain new standards. During its September 2023 plenary session, the European Parliament is expected to vote on the report adopted in June by the Committee on the Environment, Public Health and Food Safety (ENVI). This will then form Parliament's position for future negotiations with the Council.

natural conditions, less strict environmental objectives are set on conditions which will be defined in each case in water management plans.

Apart from water plans, water protection measures include various states and potentials, and the defined ones include surface waters, groundwaters and artificial and heavily modified water bodies and the technical conditions and criteria of their classification laid down in the royal decree. Moreover, there are water status monitoring programmes in each drainage basin in order to ensure its comprehensive and consistent assessment. The action programmes should aim at achieving environmental objectives. Such actions can be basic and supplementary, with the basic measures being the minimum requirements that must be met in each separation, and they are established by means of a regulation, and the supplementary measures being those which must be applied additionally to achieve the environmental objectives or additional water protection (art. 92. ter – art. 92 quáter). The specific rules in this regard arise from the royal decree 60/2011 of 21 January 2011 and the royal decree 817/2015 of 11 September 2015.

The Water Law also defines the concept of pollution in art. 93. This is understood to denote the action and effect of introducing materials or forms of energy or inducing conditions in water, which directly or indirectly imply a harmful change of its quality with respect to later applications, human health or aquatic ecosystems or land ecosystems directly linked to aquatic ones, cause damage to property or deteriorate or hinder the use of the environment. Degradation of public waters covers adverse changes in the environment that affect water quality.

Art. 97 of the Water Law forbids actions that can cause pollution but also degradation of public waters, in particular: a) accumulation of solid waste, rubble or substances, regardless of their character or places of storage, which pose or may pose a threat of polluting waters or degradation of their environment, b) performing actions on the physical or biological environment which is affected by water, which results or may result in its degradation, c) performing actions within the scope of protection, established within the hydrological plans, if they can pose a threat of pollution or degradation of public waters.

Moreover, according to art. 98, drainage basin organisations take the necessary measures in the concessions and permits to make the use respect the environment and ensure the ecological flow or ecological requirements set in hydrological plans. When concessions and permits with an impact on public water areas which can entail a risk to the environment are considered, a report should be submitted on possible adverse impact on the environment, which will be forwarded to the authorities competent on the matters of the environment, so that they can make a decision to implement corrective measures, which should be implemented as a result of such a report. If a drainage basin organisation assumes the existence of a serious threat to the environment, it also submits its position concerning the initiation of a procedure aimed at assessing the environmental impact for consideration by a competent environmental protection authority.

However, pursuant to Art 96, a drainage basin organisation can provide for a service area around a surface water body, which is necessary for its use, provided that, in each case, coastal areas of lakes, lagoons and water bodies are subject to easements and protected zones. Therefore, there is a special area of an ecological nature in the form of a protected zone. Apart from protected zones, there are protected areas that are subject to protection under specific regulations concerning the protection of surface water or groundwater or the protection of habitats and water-dependent species. According to art. 99 bis, for each drainage basin there is at least one register of areas, which must contain:

a) areas in which water is taken for human consumption, provided it ensures at least 10 m³ daily or supplies more than 50 people, as well as outlined boundaries of protection, b) areas which – according to the relevant water plan are to be used for intake of water for human consumption, c) areas notified for protection of aquatic species of economic importance, d) water bodies intended for leisure, including those designated as bathing grounds, e) areas defined as sensitive in accordance with standards of water protection against pollution caused by nitrates from agriculture, f) areas defined as sensitive according to urban wastewater treatment, g) areas designated for protection of habitats or species, in which maintaining or improving the water quality is an important factor of their protection, h) boundaries of mineral and thermal water protection, approved in accordance with specific.

We must remember that a quarter of a century ago, Royal Decree 261/1996 of 16 February 1996 on the protection of water against pollution caused by nitrates from agricultural sources was approved (now amended by Real Decreto 47/2022, de 18 de enero, sobre protección de las aguas contra la contaminación difusa producida por los nitratos procedentes de fuentes agrarias). The essence of this regulation was the transposition into Spanish domestic law of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, and to ensure compliance with its objectives.

This royal decree 47/2022 aims to improve the results obtained by the aforementioned regulations, which have not achieved their intended purpose. In order to strengthen Spain's commitments, along the lines indicated in the European Biodiversity Strategy 2030 and other related strategies, it is necessary to review the current forms of intervention in order to make them more efficient and effective. To this end, it is of interest to consider the experience acquired in recent years, the work and technical studies carried out and the jurisprudence established by the Court of Justice of the European Union. With all this in mind, the drafting of this regulation was undertaken, which replaces and broadens the ambition and scope of Royal Decree 261/1996 of 16 February 1996, the original regulation transposing Council Directive 91/676/EEC of 12 December 1991, which is repealed with this new regulatory instrument.

The royal law decree 11/1995 of 28 December 1995, which establishes the rules applicable in urban wastewater treatment, should be treated separately. Its aim is to supplement the legal system established by the Water Law and to protect the quality of continental and marine waters against adverse effects of urban wastewater discharge (art. 1). This article also defines key terms, such as urban wastewater (household wastewater or its mixture with industrial wastewater or with rainwater runoff), household wastewater (wastewater from residential and service establishment area, generated mainly by human metabolism and household activities), industrial wastewater (all wastewater removed from facilities used for any commercial or industrial activities, other than household wastewater and rainwater runoff), sensitive area (water area distinctly defined in accordance with the criteria to be defined by a royal decree), or a less sensitive area (part of marine waters or an area of marine waters delineated in accordance with the criteria to be defined by a royal decree).

The issue of integrated permits concerning wastewater discharge to waters is regulated by the royal law decree 1/2016 of 16 December 2016, approving the consolidated text of the law of integrated pollution prevention and control.

Finally, in Spain, there are currently Guidelines of July 2020 (they are not a standard and are not binding) that constitute the first state-level test to regulate groundwater pollution; all of this, without prejudice to the initiatives of some water authorities to also define, by means of technical guides, groundwater quality values. In addition to Law 7/2022 of 8 April on waste and contaminated soils for a circular economy (*Ley 7/2022, de 8 de abril, de residuos y suelos contaminados para una economía circular*), where it provides for the integration of the measures contained in this Title in the programmes to be established for the protection of the marine environment and water and safeguards compliance with EU food legislation to ensure food hygiene and food safety¹⁹.

III. WATER AUTHORITY: RESPONSIBILITIES AND COMPETENCES

The water authority is divided between the state and autonomous communities. Notably, according to Art. 2 of the Constitution of Spain, this Act is based on the unbreakable unity of the Spanish nation, the common and indivisible homeland of all Spaniards, and it acknowledges and ensures the right to autonomy of the nationalities and regions that comprise it, and solidarity of all. Art. 143 section 1 of the Constitution of Spain states that –when exercising the right to autonomy, recognised in Art. 2 of the Constitution– bordering provinces of common historical, cultural and economic features, as well as insular territories and provinces that constitute regional historical unity, can join the local government and make autonomous communities, in accordance with the provisions of this title and the respective statutes. Provisions of art. 148-150 define the borders and rules of the legislative activity of autonomous communities.

It must be understood that the rights of private use of water in perpetuity are not compatible, in terms of the non-purely formal effectiveness of the legal rules, with the principles of inalienability and imprescriptibility of the public domain property enshrined in art. 132.1 of the Constitution. Therefore, the temporary limitation of such private use is not a deprivation of rights, but a new regulation of the same which does not affect their essential content. The freezing of the material substratum of the rights consolidated prior to the enactment of the Water Law in no way implies a partial expropriation of the same, as this only eliminates the simple expectations of exploitation of higher flows that could eventually be obtained due, on the one hand, to the ownership of the real property right, but also, and in necessary concurrence with this, to the character of “*res nullius*” that the waters not flowing or illuminated had according to the previous legislation and to the non-existence or preference of third party rights. In short, what the Law excludes from now on is the possibility of the appropriation of property from possible increases in the flows used without a concessionary title²⁰.

However, since all renewable surface waters and groundwaters are transformed “*ex lege*” into public domain waters, it is lawful that, while strictly respecting existing

19 Companys Alet, A.; Loste Madoz, J.A., (2020), *Contribución al nuevo régimen de suelos y aguas subterráneas contaminadas. Problemática derivada de la aplicación conjunta del régimen de suelos contaminados y de residuos*, Diario La Ley, N.º 9699, 18 de Septiembre.

20 Judgement of Constitutional Court - STC 227/1988, 29 de Noviembre de 1988. Resolution number: 227/1988. Art. 132.2, while directly excluding the private ownership of some types of property, allows the legislator to declare the demaniality of others. In accordance with this constitutional provision, the option of including inland waters in the public domain is legitimate in any case.

rights, increases in the appropriated flows can only be obtained by means of an administrative concession. The State has all the competences which, in accordance with the Constitution, have not been or have not been able to be assumed by the Autonomous Communities in their respective Statutes, and as long as they do not assume them or they are transferred to them, given that the statutory provisions on a future extension of the scope of autonomous competences do not constitute in themselves. So, the Spanish Constitution sanctions a guarantee of the property, goods and patrimonial rights of individuals (art. 33). But this guarantee is not absolute, since art. 128.1 establishes that “all the wealth of the country in its different forms is subordinated to the general interest”, and, as far as is relevant here, art. 45.2 imposes on the public authorities the duty to ensure “the rational use of all natural resources, with the aim of protecting and improving the quality of life and defending and restoring the environment, based on the indispensable collective solidarity”.

According to art. 1, the aim of the Water Law is to provide legal regulations within the state competence specified in art. 149 of the Constitution of Spain of 27 December 1978. Section 1 contains provisions concerning issues being within the exclusive competence of the state, and section 3 contains a norm of competence and states that issues not specifically reserved for the state by the Constitution can be passed on to the competence of autonomous communities under their statutes. The competence in matters which would not be taken over under statutes on autonomy lies with the state, whose law –in cases of collision²¹– takes precedence over the laws of autonomous communities in everything which is not their exclusive competence, and the state law supports and complements the law of autonomous communities. For example, The Statute of Andalusia adopted by the organic law 2/2007 of 19 March 2007 (*Ley Orgánica 2/2007, de 19 de marzo, de reforma del Estatuto de Autonomía para Andalucía*, BOE-A-2007-5825), in its art. 50, grants to this autonomous community the competence concerning some cases related to waters.

In this regard, regional norms in the form of the amended Act 7/2007 of Andalusia of 9 July 2007 on integrated environmental quality management apply (*Ley 7/2007, de 9 de julio, de Gestión Integrada de la Calidad Ambiental*, BOE-A-2007-15158; *Ley 1/2008, de 27 de noviembre, de medidas tributarias y financieras de impulso a la actividad económica de Andalucía, y de agilización de procedimientos administrativos*, BOE-A-2008-20752; *Ley 4/2010, de 8 de junio, de aguas de la Comunidad Autónoma de Andalucía*, BOE-A-2010-11490; *Decreto 356/2010, de 3 de agosto, por el que se regula la autorización ambiental unificada, se establece el régimen de organización y funcionamiento del registro de autorizaciones de actuaciones sometidas a los instrumentos de prevención y control ambiental, de las actividades potencialmente contaminadoras de la atmósfera y de las instalaciones que emiten compuestos orgánicos volátiles, y se modifica el contenido del Anexo I de la Ley 7/2007, de 9 de julio, de Gestión Integrada de la Calidad Ambiental*, Boletín número 157 de 11/08/2010; *Ley 9/2010, de 30 de julio, de Aguas para Andalucía*, BOE-A-2010-13465; *Decreto 239/2011, de 12 de julio, por el que se regula la calidad del medio ambiente atmosférico y se crea el Registro de Sistemas de Evaluación de la Calidad del Aire en Andalucía*, Boletín número 152 de 04/08/2011) and the act on water 9/2010 in Andalusia of 30 July 2010 (*Ley 9/2010, de 30 de julio, de Aguas para Andalucía*, BOE-A-2010-13465). Because of the drought of recent years, a

21 Judgement Spanish Constitutional Court. STC 227/1988 (LA LEY 2428/1988), it is stated that the State has competence only with regard to intercommunity basins to draw up the corresponding Hydrological Plan (arts. 100 and 101 of the Regulation of the Public Administration of Water and Hydrological Planning 927/1988, of 29 July).

special law decree 3/2023 of 25 April is in force (Decreto-ley 3/2023, de 25 de abril, por el que se aprueban medidas adicionales para paliar los efectos producidos por la situación de excepcional sequía a los usuarios de las demarcaciones hidrográficas intracomunitarias de Andalucía y se adoptan medidas urgentes, administrativas y fiscales, de apoyo al sector agrario, Boletín Extraordinario número 13 de 27/04/2023)²².

However, when establishing the applicable water law, the Spanish legislators made an *a priori* assumption on the functioning of various autonomous communities, dividing the water authority into the state functions and tasks of other entities.

In terms of the state functions, the Water Law contains various references to the general state administration (*Administración General del Estado*) or directly to the minister (*Ministro de Medio Ambiente*) or the ministry (*Ministerio de Medio Ambiente, Ministerio de Agricultura, Alimentación y Medio Ambiente*).

Organisation of the general state administration is defined in the Act 40/2015 of 1 October 2015 on the public sector legal system (Ley 40/2015 de Régimen Jurídico del Sector Público, BOE-A-2015-10566). It identifies central administration, which is divided into authorities (ministers and secretaries of state) and governing organs (under-secretaries of state and general secretaries, provisional general secretaries, general directors and deputy general directors). There is also territorial administration, but only with governing organs: government delegates in autonomous communities and government subdelegates in provinces.

Minister of Ecological Transformations and Demographic Challenges (*Ministerio para la Transición Ecológica y el Reto Demográfico*) should be regarded as the supreme state water authority.

Functions of the National Water Management Board, which is the supreme consulting and participative body in this regard, are also provided for. The National Water Management Board comprises representatives of the general state administration, autonomous communities, all local governments through the agency of a representative of the most common association at the state level, organs of a drainage basin organisation, representatives of the most representative professional and economic organisations at the state level, related to various uses of water, representatives of the most representative trade unions and business organisations at the state level, representatives of the most representative non-profit organisations at the state level, whose aim is to protect the environmental interests. Its composition and the organisational structure are set out in the royal decree, and the National Water Management Board is chaired by the minister under the relevant law.

Drainage basin organisations, whose functions and responsibilities are regulated by the Water Law, are created in functionally described drainage basins, exceeding the territorial range of an autonomous community. According to art. 22, drainage basin organisations are autonomous with respect to managing and administering the matters entrusted to them in their own name. And they have jurisdiction over administrative proceedings. The territorial range of a drainage basin organisation covers one or more indivisible, functionally understood drainage basins, with limitations arising from international borders. The local jurisdiction of a specific unit of this type is set out by the royal decree.

22 Marcos Fernández, A. de, (2010), *Las demarcaciones hidrográficas en la Directiva Marco de Aguas y su desarrollo en el Derecho español, this paper is into the book „El Derecho de aguas en clave europea”*, edición n.º 1, Editorial LA LEY, Madrid, Noviembre.

Drainage basin organisations have the following functions: a) developing a water management plan for a drainage basin, as well as monitoring and reviewing it, b) administering and controlling public water areas, c) administration and control of water use in the common interest or ones which have an impact on more than one autonomous community, d) designing, construction and exploitation of work done with the organ's own resources and those entrusted by the state, e) arising from agreements concluded with autonomous communities, local communities and other public or private entities or agreements concluded with individuals.

In order to perform the functions from the last two items, drainage basins can acquire, by subscription or purchase, divest and perform any administrative activities with respect to stock representing capital of state-owned companies, which were created in order to construct, exploit or carry out public water work, or commercial companies, whose corporate goal is to manage concession agreements for construction and exploitation of water structures, on condition of obtaining a prior consent from the Ministry of Finance and concluding cooperation agreements or membership of groups of companies and participation in temporary joint enterprises, whose objective is any one of the above, as well as granting loans and credits to the entities mentioned above (art. 23).

In order to perform their functions, drainage basin organisations have the following rights and obligations: a) to grant permits and concessions related to public waters, except those related to work and actions in the state's general interest, which will satisfy the Ministry of Ecological Transformations and Demographic Challenges, b) to control and monitor compliance with conditions of concessions and permits concerning public waters, c) to conduct measurements, hydrological tests, information on floods and water quality control, d) to test, design, execute, maintain, exploit and improve work included in their own plans, and any other that may be entrusted to them, e) to determine goals and quality programmes in accordance with water planning, f) to implement, within their competence, plans, programmes and actions aimed at proper demand management, in order to promote saving and economic and environmental efficiency in various water uses through global and integrated use of surface and ground water, in accordance with the provisions of the relevant sectoral planning, as applicable, g) providing all kinds of technical services associated with pursuing specific goals and, on request, giving advice to the general state administration, autonomous communities, local communities and other public or private entities, as well as to individuals.

Drainage basin organisations are affiliated with Hydrographic Confederacies, which are autonomous organisations.

Pursuant to art. 25 of the Water Law, drainage basin organisations can establish cooperation in exercising their competences, in particular by including representatives of autonomous communities in the Governing Boards of these organisations. Drainage basin organisations can conclude cooperation agreements with autonomous communities, local communities and water cooperatives to exercise their respective competences as per the applicable laws.

If acts or plans of autonomous communities or local governments include new demand for water resources, a Hydrographic Confederacy report clearly specifies whether sufficient resources exist to satisfy such demand.

Pursuant to art. 26, the Governing Board and the Chairperson are the governing bodies of drainage basin organisations. On the participation principle, the following are

the governing bodies for exercising the functions clearly assigned to them by the law: Users' Assembly, Discharge Committee, Exploitation Boards and Site Boards. In turn, the Demarcation Water Board is a participation and planning body. On the other hand, the Committee of Relevant Authorities is a cooperation body with respect to the obligations arising from the Water Law in terms of water protection.

The Governing Board is responsible for: a) approving action plans of organisations, budget proposals and informing about their liquidation, b) agreeing, as applicable, the necessary credit operations for specific objectives associated with management, as well as financing actions included in action plans, within the boundaries specified by law, c) passing resolution concerning the disposal of the property of drainage basin organisation, d) preparing matters submitted to the Drainage Basin Board, e) approving, based on a report of the Demarcation Water Board, of changes of the width of easement belts and the protection zones, f) notifying ground water bodies threatened with failing to achieve a good quantitative or chemical status and measures aimed at correcting the tendencies threatening a good status by approving the action plan for improvement, without detriment to those which satisfy other public administration organs, g) accepting decisions concerning water cooperatives, h) promoting initiatives concerning wetlands, i) proposing, at the Chairperson's initiative, penalties for serious or very serious violations, when the facts are of particular importance for proper management of resources in a drainage basin, j) approving, as applicable, the general criteria of establishing compensation for damage to public waters, k) putting forward proposals to the Demarcation Water Board to revise the relevant water plan, l) considering issues submitted for consideration by the Chairperson of the Board or any of its members (art. 28).

It is the task of the Exploitation Board to coordinate while respecting the rights arising from the relevant concessions and permits, the exploitation of hydrotechnical devices and water resources of a group of rivers, a river, a river section or a hydrogeological unit whose methods of use are particularly linked to each other. Proposals of the Exploitation Boards with respect to their competences are passed on to the chairperson of the drainage basin organisation. The Exploitation Board is comprised of the users (art. 32).

According to art. 33, the Discharge Committee is responsible for the meeting agenda and for putting forwards motions to the Chairperson of the body concerning the relevant system of filling and emptying the water bodies and aquifers, considering the concession rights of various users.

The Board of Directors, upon request from future users of the work already approved, can appoint a relevant Site Board, of which such users can be members so that they are directly informed about the developments associated with this work (art. 34).

A Water Drainage Basin Board is appointed to inform, promote, and carry out social consultation and active participation in the planning of water management in the drainage river areas with intercommunal drainage basins. Its obligation is to submit a water plan for the drainage basin and its subsequent modifications to the government through the ministry. Representatives of autonomous communities whose territories are partly or wholly a part of the drainage basin are included in the respective water boards so that they participate in preparing the water plan and executing other functions of the board. The composition is established by the royal decree in accordance with the following criteria: a) each ministerial department associated with the water management

and using water resources is represented by up to three members, b) technical services of the drainage basin organisation will be represented by up to three members; each peripheral coastal service of the ministry, whose territory coincides partly or wholly with the drainage basin will be represented by one member; each harbour master's office concerned with the drainage basin will be represented by one member, c) representation of autonomous communities – members of the Board – is established and distributed according to their number in the drainage basin and their area and the population size, with each of the participating autonomous community being represented by at least one member, and the total representation of the autonomous communities cannot be lower than that corresponding to various ministerial departments, d) local authorities, whose territory coincides fully or partly with the drainage basin will be represented according to the expansion or percentage of the territory, which is affected by the drainage basin, on conditions to be specified in the regulation. The maximum number of members cannot exceed three, e) a representation of users cannot be smaller than a third of the total number of the members, and it comprises representatives of various sectors with respect to their respective interests in using waters, f) representation of the associations and organisations acting in protection of environmental, economic and social interests related to water. The maximum number of members is six. For drainage basins in intra-community drainage basins, the respective autonomous community guarantees community participation in water planning while observing these minimum representations of users and organisations concerned in collegial organs created for this purpose and ensuring that all public administration bodies with authorisations in matters related to water protection, and in particular with respect to the general state administration authorisations related to public land marine areas, public utility harbours and merchant ships are equally represented in these bodies (art. 35-36).

Committees of Relevant Authorities of Drainage Basin Areas operate in order to ensure proper cooperation in implementing regulations on water protection for drainage basin areas covering inter-commune drainage basins. Their creation does not affect the exercising of competence corresponding to various public administration bodies in matters related to water management, which will still be performed in accordance with the applicable regulations in each case. The following are the basic functions of Committees of Relevant Authorities of Drainage Basin Area: a) promoting cooperation in exercising competences related to water protection held by various public administration bodies in a specific drainage basin area, b) promoting the adoption of measures required for compliance with the protective provisions of this act by the public administration bodies competent in each area, c) providing information on the drainage basin area, which may be required under applicable regulations, to the European Union through the Ministry of Environment. The Committee comprises: a) general state administration bodies with competence for use, protection and control of waters with the number of representatives not exceeding the number of representatives of autonomous communities, b) organs of autonomous communities whose territory is included in the drainage basin area in whole or in part, with authorisations in protection and control of waters covered by this act, one representative of each autonomous community, c) local authorities whose territory coincides in whole or in part with the drainage basin area, which has authorisations concerning protection and control of waters, which is represented in accordance with the size of the population in the area, through the respective territorial commune associations. For intra-community drainage basin areas, the respective autonomous communities guarantee

the uniformity of water management cooperation in exercising the competences held by various public administration bodies with respect to their protection, in particular of those corresponding to general state administration in matters related to marine, harbour and trade public domains. They also provide to the European Union, through the ministry, information concerning the drainage basin area in accordance with the applicable regulations (art. 36 bis).

IV. WATER POLICE AS A CONTROL ORGAN IN SURFACE WATER MANAGEMENT

Article 94 of the Water Law applies to water police. In this regard, supervision over waters and other elements of public waters, easement areas and protected areas is exercised by the competent water administration body. Water committees in drainage basin areas in drainage basins exceeding the territorial range of an autonomous community perform the following functions: a) inspect and control public water areas, b) inspect and monitor compliance with the conditions of concessions and permits related to public waters, c) perform measurements, inform about floods and control water quality, d) inspect and monitor work arising from concessions and permits related to public water areas, e) control and supervise exploitation of all public water structures, regardless of their ownership and legal regime to which they are subjected, f) manage river guard, g) apply regulations concerning water and watercourse protection. Environmental protection personnel assigned to river police stations in river basin organs hold the status of public authorities when performing their functions, and they are authorised to: a) enter freely and at any time, without giving advance notice, places to be inspected and to stay there, while respecting the inviolability of domestic peace. While conducting an inspection, the personnel inform the person being controlled or their representative about their presence unless they believe that such information may undermine the performance of their duty, b) perform any investigations, examinations and tests which they will regard as necessary to check whether legal regulations are followed correctly, c) collect samples of substances and materials used or owned by a site, perform measurements, take photographs, record video clips, record images, make sketches and drawings, provided the employer of his representative is informed. The facts established by environmental protection personnel, provided in the relevant reports, are regarded as accurate, without prejudice to evidence, which the parties concerned can submit in defence of their rights and interests. The River Guard performs tasks that involve supporting and providing help to environmental protection personnel in performing their functions related to water protection.

The system of sanctions provided for in the law also regulates the issues related to public water protection and water quality. According to art. 116 of the Water Law, actions that constitute a violation are understood broadly – as failure to comply with any of its provisions. They are punishable by administrative penalties under act 39/2015 on joint administrative proceedings in public administration (Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas, BOE-A-2015-10565). Interestingly, the Water Law regulates joint responsibility, and it is applied when several individuals are responsible, and it is impossible to determine each one's contribution to the violation. The following are regarded as administrative violations: a) actions that result in damage in the public water domain and hydrotechnical structures, b) water intake

from watercourses and groundwater intake without a proper concession or permit, if one is required, c) failure to meet the conditions laid down in concessions and administrative permits, without prejudice to their expiry, rescinding or suspension, d) executing, without a proper administrative permit, other work, sowing or planting in public water courses on in areas with limitations with respect to their intended use or use, e) interference, acquisition or excavating aggregate from water courses without a proper permit, f) performed without a proper permit, water discharges which can lower the quality of water or the conditions of the drainage of the water course to which it is discharged.

V. FINAL CONSIDERATIONS

At the European level, Spain is more focused on the organisation between basins and the management of water transfers, although it also faces its disagreements with Portugal, which in these years of drought has accused the Spanish government of not complying with the annual flows agreed for the Tagus and Douro rivers. However, it is forgetting European strategic lines such as the Danube, as the most international river basin in the world, with numerous important tributaries, lakes and groundwater bodies. It is essential to ensure good water quality, as required by the Water Framework Directive. It is also necessary to implement sustainable water management and to jointly reduce pollution from organic matter, nutrients or hazardous substances. The river basin management plan adopted by all Danube states in 2009 sets concrete objectives and measures that need to be worked on.

In this respect, Spain is a regional country, which has its consequences in the specificity of the sources of the law concerning water management. There are state laws implementing the WFD, and there are specific regulations passed by autonomous communities. In the national legal framework, the subject matter concerning water law is basically concentrated in one normative act and in executive regulations. The hydrological situation of Spain necessitated centralisation and, at the same time, deconcentration of the functional and institutional system. Planned and targeted water management has been conducted in this country for many years, and water plans are of a normative nature. Many public entities are involved in the process of adopting them, and the planning procedures contain participative and consultative mechanisms. Water plans are coordination measures and provide the basis for rational water management and water resource protection. Apart from public law instruments, there are traditional private law institutions, which make them comprehensive. They also constitute the basis for issuing permits and concessions and provide a point of reference for courts and tribunals. The institutional framework for water management is not only established by the functions of the state, including the adopting the national water law and tasks of autonomous communities, and the scope of activities of provinces (*provincias*) and municipalities (*municipios*) in matters related to water management is limited to tasks performed by cooperation. On the one hand, specialisation brought about the establishment of extremely professional and structurally complex drainage basin organisations, which carry the burden of water resources management and surface water protection. The entities have various administrative competences, but they also exercise their authority both in the sphere of *dominium*, and fiscal measures. On the other hand, traditional rules of joint use of such resources by individual users (farmers) and the operation of irrigation cooperatives, which are sometimes as old as 1200 years, are still valid in Spain. Irrigation cooperatives can operate under state and

regional regulations, but - as the case of Valencia shows - only based on common law. The legal system of surface water management and protection in Spain should be regarded in a multi-centre manner, and it comprises many elements of a diverse normative nature. The legal solutions concerning the water law are extremely stable. However, the drought of recent years has brought extraordinary legal solutions, which –through consecutive renewals– are becoming permanent. However, nowadays, groundwater has been exploited uncontrollably, which has resulted in more water being taken illegally than from legal sources, which results in a crisis of the existing system solutions. Community control through irrigation cooperatives and resolving disputes as part of the joint use of common resources (*common-pool resources*) has become ineffective. *De lege ferenda* proposes that the operation of drainage basin organisations should be nationalised further and its scope expanded to include control and IT measures.

VI. BIBLIOGRAPHY

- AGUDO GONZÁLEZ J., *El derecho de aguas en perspectiva europea: la trascendencia de la Directiva Marco de Aguas* (in:) *El derecho de aguas en clave europea*, ed. Jorge Agudo González, Madrid 2010.
- ALCAÍN MARTÍNEZ, E., *La protección jurídico-privada del derecho de aprovechamiento de aguas*, Diario La Ley, N.º 7366, Año XXXI, 22 de Marzo de 2010, Ref. D-92, Editorial LA LEY
- ANDRÉS MOLINA GIMÉNEZ, D., *La evaluación y gestión del riesgo que conlleva la actividad de reutilización*, Observatorio del ciclo del agua, ISSN 2660-4477, Año 2022, págs. 311-343.
- BUNCLARK L., CARTER R., CASEY V., DAY ST J. & GUTHRIE D., *Managing water locally: An essential dimension of community water development*, Westminster 2011.
- CHIU V., *La protection de l'eau en droit public : Étude comparée des droits espagnol, français et italien*, Toulon 2014.
- COMPANYS ALET, A. & LOSTE MADDOZ, J. A., *Contribución al nuevo régimen de suelos y aguas subterráneas contaminadas. Problemática derivada de la aplicación conjunta del régimen de suelos contaminados y de residuos*, Diario La Ley, N.º 9699, 18 de Septiembre de 2020,
- DÖPP, L., *Das spanische Wasserrecht: die Verteilung von Wasser als Regelungsproblem*, Volume 74 of Münsteraner Studien zur Rechtsvergleichung, Münster 2000.
- EMBIG IRUJO, A., *Organizaciones de usuarios y participación en la gestión del agua en el Derecho español* (in:) *Perfiles de la ordenación jurídica del agua en Italia, España y América Latina*, ed. Gabriella Crepaldi, Valencia 2017.
- EMBIG IRUJO, A., *Water Law in Spain After 1985*, "Water International", 2003, Nr 28 (3).
- FANLO LORAS, A., *Le modèle espagnol de participation du public à la gestion de l'eau : mythe, réalité et défis immédiats*, «Environnement» 2005, nr 7.
- FLORES GARCÍA, A. I. & MOLINA GARCÍA, MÓNICA, *Tratamiento legal de las aguas subterráneas en España: ¿Se garantiza un uso sostenible de este recurso natural?*, Diario La Ley, N.º 8971, 3 de Mayo de 2017, WOLTERS KLUWER
- GALLEGO ANABITARTE, A., MENÉNDEZ REXACH, AL & DÍAZ LEMA, J. M., *El derecho de aguas en España*, Madrid 1986.
- GONZÁLEZ PÉREZ J., TOLEDO JÁUDENES J. Y ARRIETA ÁLVAREZ C., *Comentarios a la Ley de aguas*, Madrid 1987.
- GUAITA MARTORELL, A., *Derecho administrativoaguas, montes, minas*, Madrid 1982.
- HERNÁNDEZ LÓPEZ, S. M. Y GONZÁLEZ MARTÍNEZ, J.C., *Reutilización de aguas regeneradas en la cuenca del Segura. Adaptación al reglamento (UE) 2020/741: retos y oportunidades*; V Congreso Nacional del Agua - Libro de Actas / coord. por Joaquín Melgarejo M^a Inmaculada López Ortiz, Patricia Fernández Aracil, 2023, ISBN 9788413022345, págs. 231-248.
- MAESTRE ROSA, J., *Comunidades de regantes. Concepto, naturaleza jurídica y regulación positiva*, Barcelona 1969.

- MARCOS FERNÁNDEZ, A. DE, *Las demarcaciones hidrográficas en la Directiva Marco de Aguas y su desarrollo en el Derecho español, this paper is into the book „El Derecho de aguas en clave europea”, edición n.º 1, Editorial LA LEY, Madrid, Noviembre 2010.*
- MARTÍN-RETORTILLO BAQUER, S., *La elaboración de la Ley de aguas de 1866*, “Revista de Administración Pública” 1960, Núm 32.
- MENÉNDEZ REXACH, Á., *El derecho al agua en la legislación española* (in:) *El derecho de aguas en clave europea*, ed. Jorge Agudo González, Madrid 2010.
- MOLINA GIMÉNEZ, A., *Análisis jurídico del Reglamento (UE) 2020/741, de 25 de mayo de 2020, sobre reutilización de aguas regeneradas, y estudio de su repercusión en España*, Revista Aranzadi de derecho ambiental, ISSN 1695-2588, N.º. 48, 2021, págs. 147-202.
- ORGANIZACIÓN DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACIÓN, *El derecho de aguas en algunos países europeos. Vol. 1 (Bélgica, España, Francia, Inglaterra y País de Gales, Israel, Italia, Turquía)*, Roma 1976.
- SÁNCHEZ CAMACHO, R., *Las competencias sobre el agua en las reformas estatutarias*, “Aletheia: Cuadernos Críticos Del Derecho” 2007, Núm 2.
- SÁNCHEZ HERNÁNDEZ, A., *Agua y desertización: aspectos jurídicos del uso del agua*, Nuevas perspectivas de la normativa agraria en España / coord. por Ángel Sánchez Hernández, 2008, ISBN 978-84-8125-318-4, pp. 125-140
- SCHWARZ, E., *Das spanische Wasserrecht: geschichtliche Grundzüge, Eigentumsverhältnisse an den Gewässern, Nutzungsverhältnisse, Dienstbarkeiten*, Tübingen 1966.
- VERGARA BLANCO, A., *Contribución a la historia del Derecho de Aguas, II: Fuentes y principios del Derecho de Aguas español medieval y moderno*, «Revista de minas y aguas», Vol. II, 1991, Nr 2.
- WAWER, R., *Agricultural water management in changing climate –a call for a reform in Poland. Case analysis of reference– a 1200 years of irrigation communities in Spain*, (in:) *13th International Conference on Agrophysics: Agriculture in changing climate*, Lublin 2021.