AVOSETTA QUESTIONNAIRE: THE SEA DIRECTIVE
Cork, 28-29 May 2021

Questionnaire on Spain (Climate Litigation)

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[1] State of play at national level:

In Spain, we have not had any significant case decided by the national courts, and / or are there cases pending before the courts, that aim to deliver better climate protection.

In the past (2017) there was an attempt by the national association of producers or renewable energy ("Anpier") to trigger such litigation. The idea was to introduce a legal claim in the Supreme Court, asking this court to condemn the Government to modify its strategies and programs on greenhouse emissions, and to adopt more ambitious ones. However, this project was abandoned due to a governmental change and the announcement of a new legislative package on energy transition and climate change.

Climate change litigation, in our view, is difficult to be successful in Spain. Apart from the substantive matter, there are important procedural barriers that would even make the legal recourse inadmissible. On the one hand, energy and climate policies embodied in parliamentary legislation cannot be directly challenged by individuals or NGOs, and can only be quashed by the constitutional court. On the other hand, it is theoretically possible to litigate in the administrative courts against the policies or plans of the government, but courts usually consider that these instruments possess a large amount of political discretion. Moreover, the courts may annul an administrative regulation, but they cannot decide how the regulation should be amended.

Apart from that, the legal framework on judicial control of Public Administration (Act 29/1998, on the jurisdiction of administrative courts) is very restrictive and formalistic in the matter of challenging a mere governmental "omission" to act. In fact, the grounds for the failure to act refers only to (a) rules or covenants (signed between a governmental agency and an individual) which do not require further action and granting a right to that person, and (b) the failure to execute a specific administrative decision (for instance, an agency does not pay a fellowship that was actually granted to an individual by that agency) . Both cases do not fit well with any current situation on climate change, where the plaintiffs usually want to change a national policy. Finally, there are strong problems in the domain of execution of judicial rulings. In practice, there are no meaningful mechanisms to oblige the government to adopt a certain regulation, plan, program or policy, and the courts cannot substitute the Government in doing this.

A development such as the "Urgenda" case would be impossible to happen in Spain.

[2] Interconnections between developments at national and supranational level:

Nothing relevant to mention here.