

THE NATURAL ENVIRONMENT IN SPAIN: A STUDY OF ENVIRONMENTAL HISTORY, LEGISLATION, AND ATTITUDES

I. INTRODUCTION

Contrary to the outdated Western European perception that Spain should not be considered part of the community of more advanced capitalist nations to its north, Spain is now industrialized, and is currently considered a "modern" nation by world standards. Since joining the European Community (EC, or the Community) in 1986, its people have become healthier and more robust, its economy has grown more vigorous and dynamic, and its politics have stabilized under the Socialist Party of Felipe Gonzales. It now draws both tourists and immigrants. Since becoming a member of the EC, however, not all of the progress in Spain has been praiseworthy. As a result of rapid economic development, Spain is the Community's worst environmental polluter, with fifty-seven instances of noncompliance with EC environmental standards in 1989 alone.¹

It is curious that a country with such a short industrial history would have fifty-seven infractions, while West Germany, a far more industrialized nation, has only twenty-nine.² Such puzzling statistics are better understood, however, when placed in the proper context. This comment will examine the effects of Spain's history and politics on the development of its national environmental law. The Spanish Constitution and the intricate legal foundation upon which Spanish legislation is based will also be explained. Finally, this comment will shed light on the strengths and weaknesses of modern Spanish environmental law.

II. HISTORY

To understand environmental law in Spain today, we must delve into the country's past. Spain is an ancient country and one of Europe's most isolated. Separated from the rest of Europe by the Pyrenees, Spain has always been an entity unto

1. *Alleged Environmental Infractions, Among European Community Members*, 13 Int'l Envtl. Rep. (BNA) No. 3, at 133 (Mar. 14, 1990).

2. *Id.* at 133-34.

itself. Although the world gradually came to be dominated by Western thought and progress, Spain was the dominant force in the late fifteenth century. With little influence or competition from less-developed European and Mediterranean neighbors, Spain controlled the seas and thus, controlled world trade and commerce. During this "Golden Era" which existed between the sixteenth and seventeenth centuries, Spain accumulated vast reserves of wealth from colonies that spanned the earth. Relying on this tremendous colonial wealth, Spain never felt the necessity to develop a broad-based economy at home. As a result, no finished goods were ever produced and marketed in Spain. Rather, basic goods and minerals were exported, and foodstuffs, raw materials and manufactured goods were then imported at a much higher cost. Due to its substantial wealth, Spain was content to perpetuate this system and made few attempts to advance itself.³

As a result of the fundamental flaw in this economic system, Spain began to incur tremendous foreign debt by the nineteenth century. Unfortunately, Spain continued to rely heavily on the outmoded traditions developed in the sixteenth century and, in the end, Spain was forced to export its only remaining commodity: precious metals from its American colonies.⁴ In this weakened state, Spain's colonial empire soon collapsed, ending centuries of wealth and hegemony.

Furthermore, Spain's outmoded economic structure could not keep pace with sweeping change occurring to its north. England, Germany, and France had undergone tremendous industrialization and economic growth by World War I, while Spain was still primarily an agrarian, underdeveloped nation. Deprived of technological and political influx across the Pyrenees, Spain was completely left out of the industrial revolution. It had relied on an agrarian economy for many hundreds of years and continued to do so well into the twentieth century.⁵

An early twentieth century critic of Spanish economic policy, Manuel Puges, once noted that development of a "home market" was the best hope for industrialization of Spain.⁶ He

3. COLUMBIA HISTORY OF THE WORLD 546 (John A. Garraty & Peter Gay eds., 1987).

4. JOSEPH HARRISON, *THE SPANISH ECONOMY IN THE TWENTIETH CENTURY* 15 (1985).

5. *Id.* at 7.

6. *Id.* at 22.

noted that if the national market is weak and the average worker impoverished, consumption will remain low and it will be impossible to industrialize.⁷ This observation perfectly described Spain in the first half of the twentieth century. According to some estimates, more than sixty percent of the Spanish labor force worked the land for a living.⁸ Small pockets of industrialization dotted the far northern regions but the majority of Spain was parceled into ancient and inefficient *latifundios*, vast plantations dealing primarily in wheat, grapes and olives, and *minifundios*, or micro-plots of land that supported basic subsistence farming.⁹

Emilio Riu, an economic commentator in the early twentieth century, described Spain's manifest industrial backwardness in detail. He suggested that the fundamental causes of Spain's industrial retardation were:

Low population density, a recent history of political disturbances, lack of technical education, the extremely defective organization of the Bank of Spain, scarcity and poor organization of railways and local roads and, not least, an almost complete ignorance of economic science, together with a disdain for practical occupations on the part of both the government and the governed.¹⁰

The backward nature of Spain created economic and political stagnation as well. This was characterized by the rise and fall of two dictatorships and a parliamentary republic, and finally a civil war.¹¹

From 1939 to 1975, Spain was ruled by the semifascist authoritarian regime of General Francisco Franco.¹² Under an autocratic economic policy, Spain experienced negative growth rates with disastrous results.¹³ Franco adopted isolationist policies that led Spain to the brink of economic chaos. It was not until the 1950s that Spain began its slow climb toward economic stability and a broad-based economy.¹⁴

In 1952, Spain received a 62.5 million dollar loan from the

7. *Id.*

8. *Id.* at 15.

9. *Id.* at 16-17.

10. *Id.* at 35.

11. *Id.* at 11.

12. *Id.* at 120, 168.

13. *Id.* at 121.

14. *Id.* at 124-25.

United States through the Export-Import Bank.¹⁵ This loan marked the beginning of significant American investment designed to help boost Spain's economy and national income during the 1950s. Overall, Spain received 625 million dollars from the United States during this time in return for allowing U.S. military bases on Spanish soil.¹⁶ As a result, the country began to show some signs of industrialization. Approximately two million Spaniards migrated to urban centers, the active labor force employed on the land fell to 42.5 percent in 1959, and inflation slowed.¹⁷ Revenue derived from industrialization soon became the cornerstone of Spanish economic expansion and stability.

Money, however, was not, by itself, the key to economic success. Inexperience led to mismanagement and ultimately, to another economic crisis in 1956-57.¹⁸ In 1958, on the verge of national bankruptcy, Spain joined the Organization for European Economic Cooperation (now the Organization for Economic Cooperation and Development, or OECD), the International Monetary Fund, and the World Bank. With the help of these organizations, Spain finally reached beyond the Pyrenees for an economic model.

Adopting the French "Stabilization Plan" in 1959, the "Spanish Economic Miracle" was born.¹⁹ The Stabilization Plan acted as a stimulus to economic growth, brought Spain closer to a market system, and began to expose Spain to foreign competition. During the 1960s, the Spanish national income rose by 156 percent and Spain was second only to Japan in sustained economic growth among OECD nations.²⁰ As a result, two million more Spaniards left farming for the promise of higher wages in industrialized urban centers and the active labor force employed on the land fell to 25.3 percent of the total population.²¹

The two greatest sources of Spanish income during the 1960s were foreign investment and tourism.²² Spain began to depend greatly on earnings from foreign tourism and these earn-

15. *Id.* at 126.

16. *Id.* at 133.

17. *Id.* at 134, 145.

18. *Id.* at 137-38.

19. *Id.* at 140.

20. *Id.* at 144.

21. *Id.* at 145.

22. *Id.* at 146.

ings had, by the early 1970s, erased Spain's huge budget deficit.²³ Almost thirteen percent of all new construction came in response to the requirements of the tourism industry. The demands of foreign tourists, primarily from France, England, and West Germany, compelled the development of an elaborate infrastructure, which included roads, airports, railways, water facilities, and public works.²⁴ Foreign investment was responsible for furthering the development of industrialized regions around Madrid, Barcelona, and Bilbao, while the more needy and under-industrialized outlying regions, such as Extremadura, Galicia and Andalusia, received little foreign capital.²⁵

III. CONSEQUENCES OF INDUSTRIALIZATION

Because of its peculiar history, Spain had waited almost one hundred years after the rest of Europe to industrialize. At the same time, a certain amount of pressure was also building as a result of repeated Spanish failures to develop a healthy economy. When industrialization finally took hold in the early 1960s, economic momentum began to build. The Spanish thought nothing would stop them from achieving their economic ideals, not even the very land which had sustained them for centuries. Within a matter of years, the natural environment had become a forgotten friend.

With the leap into industrialization, the Spanish government was more interested in revenue than in environmental protection. Weighed against the financial gains of the developing Spanish economy, the natural environment was not viewed as a precious commodity. Spain's environment had always served the Spanish without consequence and, it was thought, it would continue to do so indefinitely.²⁶ So, as industry grew, the environment in Spain suffered.²⁷ Millions of people continued to

23. *Id.* at 155.

24. *Id.*

25. *Id.* at 157. Spain will experience a major increase in tourism in 1992 in preparation for the Olympic games hosted by Barcelona, the 1992 World Exposition hosted by Seville, and the designation of Madrid as the Cultural Capital of the European Community. Preparation for these events has stimulated Spain's industry significantly.

26. Maria del Carmen de Andre Conde, *Spain's Accession to the European Community*, 1 EUR. ENVTL. REV. 13, 13 (1986).

27. The chemical industry grew at 14.4% per year, the automobile industry by 21.7%, and there was a 24-fold rise in income from the tourist industry and the development of mineral exports. ERIC BAKLANOFF, *THE ECONOMIC TRANSFORMATION OF SPAIN AND PORTUGAL* 55-76 (1978).

migrate to the major cities. This resulted in choking pollution and severe soil erosion in the abandoned agricultural and mountainous regions. Obsolete laws intended to protect the environment from the inefficient agrarian economy of years past had little effect.²⁸ Still, however, no effort was made to improve or change the laws.

Spain's attitude toward the environment and consciousness of its finite character lagged behind that of its European counterparts as well. Due to General Franco's authoritarian regime, Spain was kept out of the EC during the late 1960s and early 1970s and was unable to participate in the initial environmental movement of the 1970s. While the National Environmental Policy Act of 1969 (NEPA)²⁹ and related laws were being developed in the United States and the industrialized nations of the EC, Spain continued its destructive ways. Not until 1972 did Spain adopt Law 38/72, the Environmental Protection Act,³⁰ which reflected the country's attitude of the day. On paper, it was an impressive body of law, which was intended to establish tolerable limits of pollution and set up a network of air pollution vigilance. However, in reality, the Act was riddled with loopholes and it was soon taken advantage of by eager and hungry capitalists.³¹

Throughout the 1970s, Spain's growth continued, but at much slower rates, due in part to the world recession which occurred between 1972 and 1974. The death of General Franco in 1975 was perhaps the most important event in recent Spanish history, bringing about a complete change of government, and a new constitution in 1978 that had far-reaching political, economic, social, and environmental changes.³²

IV. THE NEW CONSTITUTION AND THE EC

Almost a direct reaction to decades of centralized authority, the Spanish Constitution of 1978³³ divided the nation into seventeen Autonomous Communities and fifty-two provinces, each with a certain degree of constitutional power. With an eye

28. *Id.*

29. National Environmental Policy Act, 42 U.S.C. §§ 4321-4370 (1988).

30. B.O.E., No. 309, Dec. 26, 1972, noted in Conde, *supra* note 26, at 14.

31. *Special Report: Spanish Environment*, THE FIN. TIMES LTD. (London), Mar. 23, 1990, at 21.

32. *Spain*, 13 Int'l Env'tl. Rep. (BNA) No. 289, at 51 (July 11, 1990).

33. CONSTITUCION [C.E.]; see also *Spain*, *supra* note 32, at 29.

toward membership in the EC and realizing the tremendous environmental changes that would be necessary, the new Constitution was written to reflect the need for environmental protection and preservation. Article 45 of the Constitution was written to address these environmental concerns by guaranteeing the citizens of Spain the right to enjoy a suitable environment and charging them with the duty of preserving it.³⁴ This Article provides that the government shall ensure a rational use of natural resources, the protection and improvement of the quality of life, and the preservation and restoration of the environment with the aid of the public.³⁵ Article 45 also sets forth criminal and administrative penalties, and the obligation to repair any damage that may be done to the environment.³⁶

While Article 45 of the Spanish Constitution lays a legal foundation for environmental legislation and protection within Spain, Articles 148 and 149 explain the different levels of environmental responsibility granted to the state and the Autonomous Communities.³⁷ Unfortunately, the Spanish Constitution

34. Article 45 of the Spanish Constitution of 1978 states that:

1. Everyone has the right to enjoy an environment suitable for personal development, as well as the duty to preserve it. 2. The public authorities shall safeguard a rational use of all the natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment, by relying on essential public co-operation. 3. Criminal or, where applicable, administrative sanctions, as well as the obligation to make good the damage, shall be imposed, under the terms to be laid down by the law, against those who violate the provisions contained in the foregoing clause.

CONSTITUCION [C.E.] art. 45.

35. Kepa Larunde Biurrun, *Competencias de la Comunidad Autonoma y de los Territorios Historicos Sobre El Medio Ambiente*, ORDENANCION DEL TERRITORIO Y MEDIO AMBIENTE 168 (1988).

36. *Spain*, *supra* note 32, at 51.

37. Article 148 states in relevant part that:

1. The Autonomous Communities may assume jurisdiction in respect to the following matters: . . .

vii) woodlands and forestry; . . .

ix) environmental protection and management; [and]

x) planning, construction and exploitation of hydraulic projects, canals and irrigation of benefit to the Autonomous Community; mineral and thermal waters

. . . .

Article 149 states in relevant part that:

1. The State holds exclusive jurisdiction over the following matters: . . .

xxiii) basic legislation on environmental protection, without prejudice to the powers of the Autonomous Communities to establish additional protective measures; basic legislation on woodlands, forestry, and cattle trails; [and] . . .

xxv) bases of the organization of mining and energy;

3. Matters not expressly assigned to the State by virtue of the present Constitution may fall under the jurisdiction of the Autonomous Communities by virtue of

has avoided any explicit reference to the sharing of authority between Madrid and the regional governments.³⁸ As a result, even though Articles 148 and 149 state which legislative and executive powers exist, the division of power between the central government and the regional governments has been a source of both conflict and ambiguity. The word "federalism" alone has caused more than one civil war in Spain.³⁹

Some autonomous regions feel that Article 148 confers on them more power than they are currently being permitted to exercise. They insist that the central government in Madrid must respect the grant of substantial constitutional power to the regional governments. The attempts of the central government to develop a coherent national environmental policy are seen as being in conflict with this autonomy. This delicate balance between central and local power is perhaps best reflected by the Third General Assembly of the Spanish Federation of Municipalities and Provinces which concluded that, "[a]lthough broad environmental protection authority, is generally vested in the central government of a nation, it is important not to forget the importance of the environmental problems that affect man where he resides."⁴⁰

According to Article 149 of the Spanish Constitution, the state has power to create basic environmental protection legislation, authority over environmental issues concerning more than one Autonomous Community, and authority over territorial waters.⁴¹ For example, Portman Golf S.A., a Spanish mining company, has been dumping 7,500 metric tons of metal residues into the Mediterranean Sea for thirty years. This action violated the new Spanish Coastal Law 22 of July 28, 1988.⁴² Two years ago, the Spanish government stepped up the pressure against the company, in an attempt to put a stop to the polluting. Portman,

their respective Statutes. Matters for which jurisdiction has not been assumed by the Statutes of Autonomy shall fall within the jurisdiction of the State, whose laws shall prevail, in case of conflict, over those of the Autonomous Communities regarding all matters over which exclusive jurisdiction has not been conferred upon the latter. State law shall, in all cases, be supplementary to that of the Autonomous Communities.

CONSTITUCION [C.E.] arts. 148, 149; see also Conde, *supra* note 26, at 14.

38. Biurrun, *supra* note 35, at 168.

39. Tom Burns, *Greater Central Control Established by Madrid*, FIN. TIMES LTD., Jan. 20, 1986, § III, at 3.

40. CRISTINA ALVAREZ, DERECHO AMBIENTAL MANUAL PRACTICO 57 (1990).

41. CONSTITUCION [C.E.] art. 149.

42. *Spain*, *supra* note 32, at 53; see B.O.E., No. 181, Jul. 29, 1988.

facing maximum fines of 900,000 American dollars from the central government and of 1.8 million American dollars at the regional level, agreed to stop dumping by March 31, 1990. As a result of government pressure and incentives, Portman built an eighteen million dollar, government-approved mineral cleaning and sterile storage system that began operation in April of 1990.⁴³

Perhaps the most important provision in this power struggle between the central government and the regional governments is that which is implied in Article 82 of the Constitution.⁴⁴ Article 82 provides that when the *Ley de Base*, or Fundamental Law, is passed by the central government, it is directly applicable to the Autonomous Communities even if it has not been officially adopted by a regional government. However, once an autonomous region has adopted and codified this law under its particular regional code of laws, the national law loses its validity and the enforcement of that law becomes the province of that particular autonomous region.⁴⁵

The Environmental Impact Evaluations (EIEs), required by European Community Directive 85/337, are an illustration of how these laws operate.⁴⁶ In an effort to comply with the Directive, Spain first adopted Legislative Royal Decree 1302/1986 on June 28, 1986, and then adopted Royal Decree 1131/1988 on September 30, 1988.⁴⁷ To date, only eight Autonomous Communities, have adopted regional versions of the Royal Decree: Andalucia, Aragon, Baleares, Catalonia, Marcia, Navarra, Valoncia,⁴⁸ and Pais Vasra.⁴⁹ Those communities that have adopted the law are responsible for its enforcement and for the addition of stricter standards. Those communities that have not adopted the Royal Decrees are subject to the unrestricted authority of the central government in that particular area.⁵⁰

43. *Current Report, Mining Firm Stops Dumping Metal Wastes Into Mediterranean; Land Burial Planned*, 13 Int'l Env'tl. Rep. (BNA) No. 4, at 157 (Apr. 11, 1990) [hereinafter, *Mining Firm*].

44. See CONSTITUCION [C.E.] art. 82.

45. Biurrun, *supra* note 35, at 168.

46. UNDERSTANDING U.S. AND EUROPEAN ENVIRONMENTAL LAW 137 (Turner T. Smith, Jr. & Pascale Kromark eds., 1989); see 1985 O.J. (L 175) 40.

47. B.O.E., No. 155, June 30, 1986; B.O.E., No. 239, Oct. 5, 1988, *noted in Spain*, *supra* note 32, at 26.

48. *Mining Firm*, *supra* note 43, at 157.

49. Article 82 allows the Central Government to issue laws on matters for which they are not given specific jurisdiction. CONSTITUCION [C.E.] art. 82.

50. Biurrun, *supra* note 35, at 168.

In Andalucia, where a local EIE law has been adopted, a developer is planning to build 32,000 hotel and housing units near Donnana National Park. Critics fear that the project will drain an aquifer, which is a major water resource for the 123,000 acre wetlands park fronting the Atlantic Ocean. Not only is the park considered to be the jewel of Spain's national park system, but it is also a principal stop for European migratory birds.⁵¹ Because Andalucia has adopted the national EIE law and because the park lies solely in Andalucia, the EIE will be submitted to the regional government. Andalucia will be responsible for making the final decision, regardless of any objections expressed by the central government. If, on the other hand, the development were to affect another Autonomous Community or if the national EIE law had not been adopted regionally, the EIE would be submitted to the central government.⁵²

If the development proposal is approved, Royal Decree 1131/1988 provides that the appropriate central government agencies may still ensure that the project follows the conditions of the EIE.⁵³ Furthermore, the EIE standards set forth by Andalucia must be the same as those set forth in Legislative Royal Decree 1302/1986.⁵⁴ Therefore, the central government does continue to exert an indirect influence, although the ultimate control rests with the regional governments.

If an Autonomous Community refuses to either adopt or comply with national legislation, Article 150 implies that a majority vote in the national Senate can compel it to do so.⁵⁵ Very often, if such recalcitrance on the part of an Autonomous Community occurs, a constitutional suit will be filed against the community in the Constitutional Court of Spain.⁵⁶ This court has authority over all conflicts of jurisdiction between the central government and the Autonomous Communities, all disputes between or among autonomous regions, and jurisdiction over most constitutional issues.⁵⁷ For example, the regional government of Catalonia currently is planning to remove 14,000 acres of protected land from a 60,000 acre national park to build a ski

51. *Spain*, *supra* note 32, at 52.

52. *Plan For Hotel Housing Project Near National Park Stirs Controversy*, 13 Int'l Envtl. Rep. (BNA) No. 5, at 204-05 (May 9, 1990).

53. B.O.E., No. 239, Oct. 5, 1988, *noted in Spain*, *supra* note 32, at 52.

54. *See Biurrun*, *supra* note 35, at 168.

55. *Id.*

56. *See* CONSTITUCION [C.E.] art. 161.

57. *Id.*

resort. Both Spanish environmental groups and the national government oppose the plan because precious acres of national park land will be lost. The central government also feels that if Catalonia is allowed to implement this plan in defiance of national law, the precedent would be a dangerous challenge to its constitutional superiority in future cases. So, to avoid these potential implications, the national government intends to file suit in the Constitutional Court to prevent Catalonia from carrying out its plan.⁵⁸

According to Article 148 of the Spanish Constitution, each Autonomous Community is given the authority to manage environmental laws within its borders.⁵⁹ For example, the Superior Court of the Autonomous Community of Catalonia, filed suit on December 1, 1989, against six companies accused of dumping untreated wastes into rivers in the Barcelona area.⁶⁰ This dumping violated Catalonia's version of Water Law 29/1985,⁶¹ which requires federal authorization for potentially contaminating activities.⁶² Each of the companies faced fines of up to 67,000 dollars and the company directors faced jail terms of up to six years, though the Catalonia Superior Court prosecutor indicated that jail sentences were unlikely.⁶³

While Article 148 attempts to delineate regional jurisdiction, the Autonomous Communities derive their power from important statutes called *Leyes Organicas*, or Organic Laws. The Organic Laws are derived directly from the power that is given to the autonomous regions by Article 150 of the Constitution, not from the *Ley de Base*, or Fundamental National Laws.⁶⁴ In other words, the Autonomous Communities and the central government have separate sources of constitutional power. According to traditional interpretation, the Organic Laws give each region the power to adopt national legislation and to enact legislation for themselves within a framework of principles and guidelines established by the national govern-

58. *Criticism Leveled At Plan to Remove 14,000 Acres From National Park in Catalonia*, 13 Int'l Env'tl. Rep. (BNA) No. 6, at 240 (June 13, 1990).

59. CONSTITUCION [C.E.] art. 148.

60. *Alleged Dumping of Untreated Wastes Causes Enforcement Actions in Provinces*, 13 Int'l Env'tl. Rep. (BNA) No. 1, at 13-14 (Jan. 10, 1990) [hereinafter *Alleged Dumping*].

61. B.O.E., No. 189, Aug. 18, 1985.

62. *Spain*, *supra* note 32, at 53.

63. *Alleged Dumping*, *supra* note 60, at 14.

64. CONSTITUCION [C.E.] art. 144.

ment.⁶⁵ Because Article 148 of the Constitution is somewhat ambiguous in the description of the powers granted to the Autonomous Communities, a broad spectrum of constitutional interpretations now exists.

When considering the effectiveness of Spanish environmental policy, one must understand the conflict between traditional and regional interpretations of the Constitution. As noted above, the traditionalists support the "indissoluble unity of the Spanish nation"⁶⁶ and feel that all regional governments have been given an equal amount of constitutional power, allowing them to adopt legislation and to make additional laws within certain parameters set forth by the central government.⁶⁷

The regionalists have a different interpretation of their constitutional power, with greater weight given to the seventeen Organic Laws (the statutes) that give power to each Autonomous Community. Based on this interpretation of these powerful statutes, the regionalists feel that the communities are divided into two levels of regional existence.⁶⁸ The communities of the first level, or *primer grado*, include El Pais Vasco, Catalonia, Galicia, Andalucia, Navarra, and El Pais Valenciano, each of which have requested special legislative powers in their *Leyes Organicas*. If the regionalist's constitutional interpretation is accepted, only these regions would have the authority to create their own environmental legislation beyond the *legislación basica* or basic national environmental laws. The legislation that is adopted by a region is called *Ley Territorial* and the enforcement and enactment of these laws would be left to the discretion of each autonomous region.⁶⁹

For example, four of the five Autonomous Communities that have adopted the national EIE law are communities of the first level. It is the feeling of these communities that because they have adopted the law regionally, their autonomy will increase and the central government's authority over them will decrease. It should be noted that these regions have traditionally been separatist in nature, possessing their own languages, dialects, and distinct cultures.⁷⁰

65. CONSTITUCION [C.E.] arts. 148, 149.

66. CONSTITUCION [C.E.] art. 2.

67. *Spain*, *supra* note 32, at 51.

68. Biurrun, *supra* note 35, at 172-73.

69. *Id.*

70. *Id.*

The autonomous regions of the *segundo grado* or second level, include Asturias, Cantabrica, La Rioja, Murcia, Aragon, Castilla-La Mancha, Las Canarias, Extremadura, Los Baleares, Madrid, and Castilla-Leon.⁷¹ These autonomous regions do not have the broad legislative powers that the first level regions have. They cannot create their own environmental laws and must adopt the basic national environmental law. While their legislative powers have been limited, their executive authority remains the same.⁷² Viewed by the regionalists' interpretation as being more traditionally "Spanish" than the Autonomous Communities of the *primer grado*, these *segundo grado* regions have not sought to gain special legislative powers, by means of their Organic Laws, as have those regions of the first level.⁷³ The regions of the *primer grado* have made a distinction between different levels of autonomy that is not made in the Spanish Constitution. In short, these *primer grado* regions see themselves as more powerful by "interpreting out" certain second level powers that, in reality, were given to all Autonomous Communities.

V. ENVIRONMENTAL LAW IN SPAIN

Maria Luisa Toribio of Spanish Greenpeace noted that Spain's entry into the European Community created a great impetus in Spain to adopt the legislation and norms of the Community.⁷⁴ Spain has almost completely complied with the 1077 requisite European Community environmental directives.⁷⁵ However, of the 235 directives that are awaiting legal transfer into Spanish law, 134 have already passed the time limit set for adoption by European authorities; the European Community has the ability to now consider sanctions against Spain in an effort to speed up compliance.⁷⁶ Even where EC directives have been adopted, there has been little enforcement or concrete implementation of the legislation.⁷⁷ The reason Spain has failed

71. *Id.* at 172-73.

72. *Id.* at 173.

73. Biurrun, *supra* note 35, at 172-73.

74. Letter from Maria Luisa Toribio, Spanish Greenpeace, to G. Matthew Silvers (June 27, 1990) (on file with *Tulane Environmental Law Journal*).

75. *Relations with the EC: Environmental Developments*, EIU Country Report, Spain (Economist Publications Ltd.) No. 2, at 14 (Apr. 23, 1990) [hereinafter *Relations with the EC*].

76. *Id.*

77. Letter from Toribio, *supra* note 74.

to put teeth in its environmental policy may be brought to light by investigating the structure of that policy.

There are four key elements to Spain's environmental policy: the *Ley*, the *Real Decreto*, the *Real Decreto Legislativo*, and the *Orden Ministerial*.⁷⁸ The first and most powerful, the *Ley*, is the law that has been approved either by the Spanish Parliament or the Common Courts. There are two classes of *Leyes*: first and most important, the Organic Laws which develop constitutional principles; and second, the "ordinary" *Ley*, which includes all remaining *Leyes*. This second classification of *Ley* is subject only to *Leyes Organicas*. The second element of environmental policy, the *Real Decreto*, is a Royal Decree which the executive branch issues to set mechanisms for implementing a law. The third, the *Real Decreto Legislativo*, is a legislative Royal Decree, issued by the executive branch and sent to parliament for approval in order to give it the weight of the law. This instrument of policy is used, for example, when the executive branch wants to incorporate an EC environmental directive into the Spanish legal code. Finally, the *Orden Ministerial* is a Ministerial Order, issued to set mechanisms for implementing a law or a Royal Decree. Except for the *Ley*, all of the above are composed of *Reglamentos*, or regulations. They are the gears intended to make the legislative machine function.⁷⁹

Administrative responsibility for environmental protection is divided among several departments within various ministries. The two most important are the Secretariat General for the Environment, which is within the Ministry of Public Works and Urban Development (MOPU), and the National Institute for Nature Conservation, which is within the Ministry of Agriculture, Fisheries, and Food (ICONA). The Department of the Environment handles all environmental matters not specifically delegated to other central government departments or Autonomous Communities. It also coordinates cooperative efforts among all of the different environmental agencies nationwide.⁸⁰ The National Institute for Nature Conservation is responsible for the operation of Spain's nine national parks, protection and restoration of flora and fauna, prevention of erosion and desertification, and monitoring of acid rain. Recently, it gave the Autonomous Communities control of Spain's *monte* (open

78. *Spain*, *supra* note 32, at 51.

79. *Id.*

80. *Id.*

wooded, scrub or rough grazing terrain). Only 300,000 hectares out of more than 10 million are now under central government control.⁸¹

Of the more than 1,000 EC environmental laws that Spain has adopted, there is a core of national legislation that represents both the heart of environmental law in Spain and a significant advancement from pre-EC laws. Whether or not an Autonomous Community decides to adopt this legislation depends on the politics of the region and the nature and importance of the legislation. If the law is not codified regionally, it will be implemented by the central government and directly applied to the region in question.⁸²

A. *Environmental Impact Evaluation*

Perhaps the most essential environmental law currently enacted is Legislative Royal Decree 1302 on Environmental Impact Evaluation.⁸³ This general environmental law has been incorporated into much of Spain's modern environmental legislation. Because of its broad impact, this law is essential to Spain's future as a member of the European Community. It brings Spain into line with EC Directive 85/337,⁸⁴ and updates both a 1961 statute on environmental health and a 1976 statute concerning proposed industrial projects. Legislative Royal Decree 1302 guarantees that both public and private interests can participate in the environmental impact evaluation process, that all results will be made public, and that industrial and trade secrets remain confidential; theoretically, this commitment to industry confidentiality balances with the public interest.⁸⁵

Article One of Royal Decree 1302 states that all proposed public or private projects dealing with installation, or any other activity listed in Annex I, must undergo an Environmental Impact Assessment before approval can be granted to proceed.⁸⁶ Twelve types of projects are listed in Annex I: oil refineries; thermal centers; steel foundries; asbestos production or treatment plants; chemical plants; highway, railroad and airport construction; commercial ports and yacht harbors; toxic waste

81. *Id.* at 51-52.

82. Biurrun, *supra* note 35, at 172-73.

83. B.O.E., No. 155, June 30, 1986, *noted in Spain, supra* note 32, at 52.

84. 1985 O.J. (L 175) 40.

85. B.O.E., No. 155, June 30, 1986; *Spain, supra* note 32, at 52, n.28.

86. B.O.E., No. 155, June 30, 1986, *noted in ALVAREZ, supra* note 40, at 141.

treatment or storage sites; large dams; first replanting of natural areas (when there is a threat of serious ecological transformation); and open pit mining.⁸⁷ Autonomous Communities are permitted to supplement this list with their own list of activities requiring an EIE.⁸⁸

Royal Decree 1131/1988 was created to provide a mechanism for the implementation of Legislative Royal Decree 1302/1986.⁸⁹ This second decree requires that both a description of the project and a study of technically feasible alternatives to a proposed project be included in the EIE. Under this decree, the developer is also required to justify the necessity of the project. Expected impacts on the environment also must be identified and prioritized, for both the proposed project and its alternatives, and the developer must establish monitoring and corrective measures. The Royal Decree also attempts to clarify the complicated issue of jurisdiction.⁹⁰

B. Natural Spaces

Law 4/1989⁹¹ for Conservation of Natural Spaces and Wild Flora and Fauna, goes far beyond the 1975 law it replaces. This new law extends protection to lands that have not been classified as protected natural spaces. It also brings Spain into line with EC Directive 79/409, as it relates to the conservation of wild birds.⁹² In accordance with the Constitution, Law 4/1989 delegates a certain amount of authority to the Autonomous Communities over matters that can be effectively dealt with regionally. This far reaching law includes, in part: the management of forestry, cattle, and hydrological activities; the classification and establishment of fourteen categories of protected spaces including national parks, natural reserves, natural monuments, and protected landscapes; the control of endangered species; and the granting of various regulatory, planning and coordinating powers to the National Commission for Nature Protection, chaired by the National Institute for Nature Conser-

87. ALVAREZ, *supra* note 40, at 141-42.

88. *Id.*

89. Compare B.O.E., No., 239, Oct. 5, 1988 with B.O.E., No. 155, June 30, 1986.

90. ALVAREZ, *supra* note 40, at 143-49.

91. B.O.E., Mar. 28, 1989 (on file with the Library of Congress, Harvard Law Library, and University of Texas Law Library).

92. 1979 O.J. (L 103) 1. These newly protected spaces include the following national parks: Donana, Daimiel, Taburiente, Teide, Timanfaya, Ordesa, Garajonay, Aigues Tortes and Covadonga. ALVAREZ, *supra* note 40, at 127-34.

vation (ICONA).⁹³

C. The Coastal Zone

Law 22/1988, which pertains to coastal regions, was passed on July 28, 1988, and brings Spain into line with the EC's Coastal Letter of 1981. This law is very progressive and completely redefines both the designation of, and protection of Spain's coastal zone in an attempt to combat overdevelopment from tourism. It establishes strict protection of a marine-terrestrial domain, which includes territorial waters, beaches, and adjacent land. Formerly, Spain maintained a marine zone and a somewhat ambiguous complementary terrestrial area. This new law sets protective measures for Spain's roughly 7,800 kilometers of coastline, establishing a 100 to 200 meter protected zone from the interior limit of the coastline.⁹⁴ Autonomous Communities and municipal governments are permitted to increase this zone by another 100 meters.⁹⁵ The protected zone can be narrowed to twenty meters, however, in areas that are either "urban" or "urbanisable" with construction already approved.⁹⁶ Residences, hotels, motels, roads exceeding regulated construction limits, high tension wires, dump sites, billboard advertising, loudspeakers, and giant screens are all prohibited by law.

Perhaps one of the most unique qualities of Law 22/1988 is found in Article 30, which establishes a zone of influence that extends a *minimum* of 500 meters from the coastline. Structures built within this zone of influence are strictly regulated and must meet stringent specifications. The law also provides that the central government may impose stiff fines of up to one million dollars for violations and that the Autonomous Communities can impose fines of up to two million dollars for industrial dumping and contamination.⁹⁷ For example in Aldea, on the Costa del Sol in the South of Spain, a developer built and sold 150 luxury townhouses to unsuspecting Britons. He received worthless building permits, which were issued by the local town council after Law 22/1988 was promulgated. A certain number of townhouses built close to the sea violated Law 22/1988, because they crossed into the 500 meter zone of influence with-

93. Spain, *supra* note 32, at 52-53.

94. *Id.*

95. *Id.*

96. ALVAREZ, *supra* note 40, at 124.

97. See, B.O.E., No. 181, July 29, 1988.

out being built according to exact specifications. As a result, the autonomous and central governments, acting together, closed the development and are now planning to bulldoze those condominiums built inside the zone of influence.⁹⁸

D. Water Quality

Law 29/1985⁹⁹ is Spain's water quality law. It represents a synthesis of five EC directives that link surface and underground water together as part of the public domain. Law 29/1985 requires that Spain have proper planning to maintain water quality and quantity. Such proper planning includes the application of fourteen physical and chemical water quality parameters to ensure the survival of fish, the establishment of three water quality standards for both surface and subsurface drinking water as a means of ensuring adequate treatment and a minimum quality level, the use of seven parameters to define the maximum allowable concentration of chemicals and minerals in potable water, and a limitation on the use and sale of detergents that are not at least ninety percent biodegradable. Finally, the Spanish government issued seven Royal Decrees that identify and protect each of the seven main river basins in Spain.¹⁰⁰

Law 29/1985 also allows projects that use underground water to be undertaken, as long as these projects are not detrimental to the public interest. Under this law, all water management is done at the regional level so long as the hydrology basins do not cross into other Autonomous Communities. The National Water Council was also created by Law 29/1985. This council functions as a consulting organ of the central government whose job it is to balance regional authority with the interests of the central government. Under Law 29/1985, authorization by the government is required for navigation, construction of docks, and any potentially contaminating activity. Fines of up to 500,000 dollars can be levied on those who have either damaged the water supply or have not complied with the provisions of the law.¹⁰¹ Other laws have recently been passed to

98. *Bulldozer Nightmare of Spanish Dream Homes*, DAILY TELEGRAPH (London), Sept. 27, 1989, at 32.

99. B.O.E., No. 189, Aug. 18, 1985.

100. The seven river basins are the Ebro (R.D. 931/89), the Duero (R.D. 927/89), the Guadiana (R.D. 928/89), the Tajo (R.D. 927/89), the Guadalquivir (R.D. 926/89), the Segura (R.D. 925/89), and the Jucar (R.D. 824/89).

101. ALVAREZ, *supra* note 40, at 76-78.

supplement Law 29/1985.¹⁰²

Royal Decree 927/1988,¹⁰³ attempts to make concerns for environmental protection, conservation, and restoration of nature compatible with the handling of public water supplies. Annexes I through IV of Royal Decree 927/1988 detail the quality standards required for drinking and swimming water, as well as water used in habitats for fish and shellfish.¹⁰⁴ This decree brings Spain into line with EC Directives 79/923 and 78/659.¹⁰⁵ Royal Decree 734/1988, passed on July 1, 1988,¹⁰⁶ was created to establish unified quality norms for both inland and sea swimming water. This decree brings Spain into line with EC Directive 76/160.¹⁰⁷

E. Air Quality and Noise

Decree 833/1975,¹⁰⁸ was created so that Law 38/1972,¹⁰⁹ created for the protection of the atmospheric environment, could be implemented. Law 38/1972 established a general policy for the central government to regulate, monitor, and correct air pollution. Decree 833/1975 set limits for acceptable emissions and created a national network for the purpose of preventing and monitoring atmospheric contamination. This decree also included a list of activities that may potentially cause air pollution and specified that emission limits for industrial activities could be revised as necessary. The central government was also given broad authority in emergency situations. For example, if a contamination or emergency zone is established, the government may invoke stricter emission levels and higher penalties for violations.¹¹⁰

On October 18, 1976, an Order for the Prevention and Correction of Industrial Contamination of the Atmosphere was passed to further develop Decree 833/1975. In an effort to control contamination, the Ministry of Industry and Energy was granted a large enforcement role and was permitted to reduce

102. *Spain*, *supra* note 32, at 53.

103. B.O.E., No. 209, Aug. 31, 1988, *noted in Spain*, *supra* note 32, at 54.

104. *Id.*

105. See 1979 O.J. (L 281) 47; 1978 O.J. (L 222) 1.

106. B.O.E. No. 167, July 13, 1988, *noted in Spain*, *supra* note 32, at 54.

107. See 1976 O.J. (L 31) 1.

108. B.O.E., No. 96, Apr. 22, 1975.

109. Enacted Dec. 22, 1972. B.O.E., No. 96, Apr. 22, 1972, *noted in Spain*, *supra* note 32, at 54.

110. *Spain*, *supra* note 32, at 54.

the production capacity and use of raw materials by industry. Under this order, plants are to be inspected at least once every two years and those industries with the greatest pollution potential are to take samples at least once every fifteen days. Finally, Royal Decree 2028/1986¹¹¹ brings Spain into compliance with EC Directives regarding the necessary technical standards to control pollution and noise emissions from automobiles and other vehicles.¹¹²

F. Wastes

Royal Decree 833/1988,¹¹³ develops regulations to implement Law 20/86 on Toxic and Dangerous Wastes.¹¹⁴ This Royal Decree establishes enforcement mechanisms and regulates the production, use, treatment, and control of toxic wastes. It also brings Spain into line with EC Directive 78/319.¹¹⁵ Royal Decree 833/1988 balances the interests of confidential industrial and trade secrets with civil protection law. If there is an emergency, civil protection always takes precedence. Autonomous Communities in which toxic waste plants or storage facilities are located are given full jurisdiction under the law¹¹⁶ and can enforce penalties of up to one million dollars as well as other sanctions against violators.¹¹⁷

Royal Decree 833/1988 was further enhanced by the Spanish government with the development of the *Plan Nacional de Residuos Toxicos*, or the National Toxic Waste Plan. It concentrates primarily on the management and control of Polychlorobiphenols (PCBs) and Titanium dioxide (PCT) residuals.¹¹⁸ The Autonomous Communities have taken it upon themselves to further develop the National Toxic Waste Plan by creating a dangerous toxic wastes list that identifies twenty-seven other dangerous metals, chemicals and their compounds.¹¹⁹

Legislative Royal Decree 1163/1986,¹²⁰ on Urban Solid Wastes and Garbage not only brings Spain into compliance with

111. B.O.E., No. 236, Oct. 2, 1986, noted in *Spain*, *supra* note 32, at 54.

112. *Spain*, *supra* note 32, at 54.

113. B.O.E., No. 182, July 30, 1988, noted in *Spain*, *supra* note 32, at 54.

114. B.O.E., No. 120, May 23, 1986, noted in *Spain*, *supra* note 32, at 54.

115. See 1978 O.J. (L 84) 43.

116. ALVAREZ, *supra* note 40, at 178.

117. *Id.* at 177-78; see also *Spain*, *supra* note 32, at 55.

118. ALVAREZ, *supra* note 40, at 178.

119. *Id.* at 178-79.

120. B.O.E., No. 149, June 23, 1986, noted in *Spain*, *supra* note 32, at 55.

EC Directive 75/442¹²¹ on waste treatment, but also requires authorities to establish unified treatment plans as well as the necessary infrastructure to implement these plans. Under this legislative Royal Decree, the central government is ordered to make a national plan for waste treatment, which is to consider human health, natural resources, and the environment.¹²²

VI. THE "SPANISH SITUATION"

The environmental legislation discussed above represents only the core of Spanish environmental law. Given the breadth of this core legislation, one cannot help but imagine the wealth of environmental law that exists in Spain. Indeed, one source claims that Spain's environmental legislation is "fairly extensive" compared to other nations of the EC.¹²³ Despite this proliferation of law, however, Spain still faces widespread environmental problems that penetrate deep into the society, economy and bureaucracy of Spain. One might ask why Spain lags so far behind its EC neighbors if its legislation is so pervasive. A synthesis of many different variables is required to answer this question.

Many of Spain's problems today can be attributed to its geographic location. Isolated by the Pyrenees mountains, Spain pursued its own political and economic development with little outside interference or influence, and found itself far behind its European neighbors by the twentieth century. With little or no experience in developing and managing an efficient economy, it failed miserably throughout the first half of the twentieth century to develop any coherent form of industry on which to build even a narrowly based economy. Finally, borrowing from the French, Spain initiated an economic plan that propelled it at breakneck speed into the modern age. Such a dramatic change, however, was not without consequence to the environment.

With the onset of the energy crisis in the early 1970s, Spain's industrial revolution and all of its consequences came to a head. Faced with dire environmental problems, but little ability to understand them, Spain made attempts to establish some form of environmental legislation. Spain was again alone in this matter. Spain was not permitted to join the then EC, as General

121. 1975 O.J. (L 194) 39.

122. *Spain*, *supra* note 32, at 55.

123. *Changing Environmental Rules and Regulations at a Glance: Western Hemisphere*, BUS. INT'L, Aug. 10, 1987, at 252.

Franco was still in power. As a result, while the rest of Europe was beginning to understand the full implications of environmental degradation, Spain was once again left behind.

The early 1970s were formative years for Spain's environmental policies. Since it was not a member of the European Community, Spain did not receive the "parental" guidance that was so essential in its development as a modern nation. The political and societal attitudes that developed as a result allowed only for inadequate environmental legislation and for the continued deterioration of the Spanish environment for a profit. Furthermore, the 1978 Constitution developed as a reflection of Spain's new decentralization policy, one that is still the foundation of all legislation. These forces created the Spain that was accepted into the Community. Accordingly, the EC must take into consideration the uniqueness of the "Spanish situation."

Spain is a far more industrialized nation than either Portugal or Greece, the two other underdeveloped nations that were admitted to the EC at approximately the same time as Spain. Due to their less industrialized nature, neither of these nations is now faced with the burdens facing Spain. By 1992, Spain must bring the rest of its environmental standards up "to the qualitative level of the EC."¹²⁴ Not only must this revision be implemented in a shorter time frame than other member States, but this conversion must also be accomplished while Spain attempts to cope with an up and coming economy, which is characterized by continual industrial development, minimal central coordination of policy, overlapping authority between central governmental ministries, and uncaring attitudes toward the environment.

VII. THE ENVIRONMENT IN SPAIN TODAY

When the EC published its list of alleged environmental infractions by EC member states in February 1990, Spain was the primary culprit with fifty-seven infractions.¹²⁵ Spain responded quickly, stating that its alleged noncompliance was exaggerated. It claimed that of the fifty-seven infractions, it knew of only sixteen infractions overall, three of which were headed for the European Court of Justice. An EC compliance

124. Conde, *supra* note 26, at 15.

125. *EC Exaggerated Spain's Alleged Violations of Community Law, Government Officials Say* 13 Int'l Env'tl. Rep. (BNA) No. 3, at 96 (Mar. 14, 1990) [hereinafter *Spain's Alleged Violations*].

administrator confirmed that only three cases were headed for litigation but further noted that the EC Commission made a decision in all fifty-seven cases to open infraction proceedings.

To discover the weakness in Spanish environmental legislation, the specific problems faced by Spain's central government must be understood. The most serious problem in Spain's environmental development is lack of money. Because Spain has been asked to make so many changes so rapidly, billions of dollars will be needed, over the next four or five years alone, to implement the changes. Fortunately, the Spanish economy is strong and will be able to provide significant amounts of capital in future national budgets to continue its environmental evolution. Some of the more costly projects include: a proposed National Environmental Plan worth nine billion dollars over the next four years,¹²⁶ 1.6 billion dollars set aside over the next five years to meet EC standards,¹²⁷ and a comprehensive Industrial Waste Plan requiring funding of 620 million dollars over the next four years.¹²⁸ At the same time, private industry in Spain must spend approximately 109 billion dollars to bring itself up to EC standards by 1993.¹²⁹

While Spain may be able to internally finance a significant portion of its implementation of EC standards, the EC will have to continue to provide Spain with more capital to meet all of the funding demands of the revision. The largest contributors in 1989 were: the European Agricultural Guidance and Guarantee Fund (2.2 billion dollars), the European Regional Development Fund (690 million dollars), and the European Social Fund (240 million dollars).¹³⁰ This may seem like a substantial sum of money, but the actual cost of compliance with EC standards is staggering. One report indicates that private industry will spend 6.5 percent of its annual revenue for EC environmental standard compliance over the next four years. Additionally, the energy and chemical industries will spend over ten and thirteen percent of their annual incomes, respectively, over the next four years. Beyond the financial problems lies an even more funda-

126. *Public Spending Expectations for 1990 Include Environmental Expenditure*, EUI Country Report, Spain (Economists Publications Ltd.) No. 2, at 10-11 (Apr. 23, 1990).

127. *Government Aid for Flood Affected Areas and Increased Expenditure on Environmental Issues Which are Receiving Greater Attention*, EUI Country Report, Spain (Economists Publications Ltd.) No. 1, at 16 (Jan. 18, 1990) [hereinafter *Government Aid*].

128. *Spain Still Lags Behind*, BUS. EUR., Apr. 6, 1990, at 17.

129. *Id.*

130. *Relations with the EC*, *supra* note 75, at 3.

mental problem. The constitutional division of Spain into central and Autonomous Community governments is not conducive to environmental protection and policy making. Because of the dual enforcement responsibilities that the Autonomous Communities and the central government share under the Constitution, and because of the national government's emphasis on decentralization, there is minimal central coordination of national policy. Two separate regions may enforce a national law in completely different ways. As a result, the central government lacks control over Spanish industry, which, in turn, is left with no coherent guidelines to follow in adopting EC standards. In effect, nationwide industries are essentially left to comply with EC standards on their own by 1993.¹³¹ Recognizing some of the problems inherent in decentralization, the central government and all seventeen regional governments agreed on May 7, 1990, to seek closer cooperation on environmental issues. The parties agreed to meet twice a year and to form nine working groups centered on air, water, urban and industrial waste, spent oil management, environmental impact evaluation, economic issues, legislation, statistical information, and environmental education. The main goal of these meetings will be to establish common objectives, subject to approval in semi-annual meetings.¹³²

Another significant problem exists within the central government itself. Because so many different Spanish ministries are responsible for different aspects of environmental protection, an overlapping of authority exists.¹³³ Contributing to the lack of centralized organization is Spain's recent failure to elevate the environment to ministry status.¹³⁴ Spain is the only country in the EC without a Ministry of Environmental Affairs. While a Secretariat-General of the Environment was created within MOPU, its coordinating function within the central government is unclear.¹³⁵ Furthermore, the Secretariat faces a political power struggle with both the Ministry of Industry and Energy and the Agricultural Ministry.¹³⁶ Many people in Spain, and in the rest of the EC, feel that the country's inability to give the environment ministerial status confirms suspicions that the cen-

131. *Spain Still Lags Behind*, *supra* note 128, at 17.

132. *See id.*

133. *Federal Regional Governments Agree to Closer Cooperation on Environment*, 13 Int'l Env'tl. Rep. (BNA) No. 6, at 255 (June 13, 1990).

134. *Special Report: Spanish Environment*, *supra* note 31, at 21.

135. *Id.*

136. *See Spain Still Lags Behind*, *supra* note 128, at 7.

tral government is not interested in solving environmental problems.¹³⁷

Spain is also hampered by a lack of industries that have developed "clean" technology. Spanish industry does not have the technology, capital, or engineering capability to design and manufacture environmental protection equipment. However, it is of great concern to the government that industry has not been able to develop such an environmental protection industry on its own. As a result, both the Spanish government and the EC plan to invest about 750 million dollars between 1990 and 1994 to help such developments along.¹³⁸

Another challenge facing the Spanish government is the adoption of EC standards which require catalytic converters.¹³⁹ Few resources are available for the mass development of the converters. Spain will have to rush the development of its fledgling "eco-industry" which includes mass subsidization of environmental research and development. It is estimated that the cost of financing the introduction of catalytic converters alone will cost the transportation industry nine percent of its total investment between 1990 and 1993. According to the Chairman of Ford Motor Company of Spain, these costs will be directly reflected in automobile prices, adding between one and two thousand dollars to the price of every new car.¹⁴⁰

The slow pace of Spanish industry to move toward clean technology is indicative of the general attitude that exists in Spain. In 1990, the fledgling Spanish Green Party planned to increase its formal organizational structure from twenty-seven to all fifty-two Spanish provinces. The Spanish Green Party is affiliated with the European Greens who have seats in the European Parliament in Strasbourg, France. Spanish Greenpeace is rapidly gaining influence in Spain even though it is only five years old.¹⁴¹ Despite the claim of Spanish Greenpeace President, Xavier Pastor, that Spaniards have a long way to go "before they reach the awareness levels of their neighbors to the north," there are at last some encouraging signs which reveal greater environ-

137. See *id.*

138. See *id.*

139. *Special Report: Spanish Environment*, *supra* note 31, at 21.

140. *Id.*

141. *Id.*

mental awareness.¹⁴²

Showered by 40,000 metric tons per year (t/yr) of sulphur dioxide, 10,500 t/yr of suspended particles, 3,000 t/yr of sedimentary particles, 200,000 t/yr of carbon monoxide, 20,000 t/yr of nitrous oxide, and 200 t/yr of lead,¹⁴³ Madrid has finally realized the gravity of the Spanish environmental crisis. In recent years, Spain had begun to feel pressure from both the EC and the environmental movement at home. However, it appears that the desire to foster its burgeoning industry and its strong new economy easily outweighed any serious environmental protection efforts. But now that Spain faces massive water shortages in coastal areas, widespread deforestation, erosion over 25 percent of its surface area,¹⁴⁴ improper disposal of almost 40 percent of its toxic waste,¹⁴⁵ not to mention a perpetual yellow-grey haze hanging over most of its major cities,¹⁴⁶ the Spanish government has little choice but to prevent digging itself into an environmental graveyard.

To make sure Spain has left its notorious past behind, the EC has decided to implement a six month pollution monitoring program in Madrid to ensure that Madrid's twenty-one monitoring stations are accurately recording air emissions and that the emissions are in fact at or below EC standards.¹⁴⁷ The EC has even brought the Spanish government to the European Court of Justice in an attempt to emphasize its authority over Spain. For example, the European Commission actually followed up on local complaints about chlorinated benzene or lindane pollution discharged by the Inquinosa Chemical Company into the Gallego River. Because the Spanish government did not respond to the EC's initial letter which questioned both the regional government of Aragon and the central government, the Commission delivered a reasoned opinion.¹⁴⁸ Again, the Spanish government did not respond within the required two month period, forcing the Commission to initiate proceedings in the European Court of

142. *Green Parties Agenda for 1990 Includes Ecotaxes, Organizational Changes*, 13 Int'l Env'tl. Rep. (BNA) No. 1, at 4 (Jan. 10, 1990).

143. *Spain Still Lags Behind*, *supra* note 128, at 7.

144. *Special Report: Spanish Environment*, *supra* note 31, at 21.

145. Conde, *supra* note 26, at 15.

146. *Spain Still Lags Behind*, *supra* note 128, at 7.

147. *Special Report: Spanish Environment*, *supra* note 31, at 21.

148. *City Complains to European Community About Dumping of Industrial Toxic Wastes*, 11 Int'l Env'tl. Rep. (BNA) No. 9, at 442-43 (Sept. 13, 1989).

Justice.¹⁴⁹ According to Isabel Alvarex, an administrator in the compliance section of the EC's Directorate General for the Environment, this suit is now very close to being decided.¹⁵⁰ A decision affirming the EC's power over both the national and regional governments would have great precedential value and could shape future Spanish environmental policy and attitudes.

In another case, the EC has not been as quick in taking action. The city of Totana in southeastern Spain has fought a six year battle with leather tanneries in the town of Lorca in an attempt to keep them from discharging toxic waste into the Guadalentin River, on which Totana is located. The city sent a complaint to the European Parliament citing the tanneries' violation of EC Directive 76/464 on dangerous substances. Totana explained that because the tanneries are the only industry in the city of Lorca, they have great economic power and have not been required to reactivate a treatment plant, which is currently idle. Because nothing has been done, city officials appealed to the EC for a ruling. Thus far, the EC has not acted and it remains to be seen whether Brussels can influence a regional authority directly.¹⁵¹

While the European Commission has had some success in enforcing the implementation of environmental directives on the community level,¹⁵² the probability of extending its jurisdiction to the regional level in a federalized and decentralized state like Spain is questionable. The Inquinosa case emphasizes the gap in the Commission's power to enforce. Because the principle of institutional autonomy, within the laws of the EC, states that each member state is free to distribute legislative powers within its territory as it thinks best, the Commission is at a disadvantage when it attempts to attach liability to regional governments.¹⁵³ According to the ruling of the European Court of

149. *European Community, Spain Urged by European Commission to Deal with Water-Pollution Problems*, 11 Int'l Envtl. Rep. (BNA) No. 5, at 283-84 (May 11, 1988) [hereinafter *Spain Urged by European Commission*]; see also Debora MacKenzie, *Spanish Eyes Turn to Poison Dump*, NEW SCIENTIST, Apr. 1, 1989, at 20.

150. See *Spain Urged by European Commission*, *supra* note 150, at 283; see also *Spain's Alleged Violations*, *supra* note 126, at 96 (as of yet, however, there has been no disposition in this case).

151. *EC to Monitor Madrid Pollution*, 13 Int'l Envtl. Rep. (BNA) No. 6, at 272 (June 13, 1990); see also Council Directive 76/464, 1976 O.J. (L 129) 23.

152. *Spain's Alleged Violations*, *supra* note 126, at 96.

153. See, e.g., Case 96/81, *Commission v. Netherlands*, 1982 E.C.R. 1791, [1981-1983 Transfer Binder] Common Mkt. Rep. (CCH) ¶ 8841 (1982).

Justice in *Commission v. Netherlands*,¹⁵⁴ the contact that the Commission has with a member state should be limited to its central authority, notwithstanding the national law question of which authority within the member state is competent to implement the directive.¹⁵⁵

As discussed earlier regarding state and Autonomous Community powers,¹⁵⁶ Article 93 of the Spanish Constitution guarantees the fulfillment of community obligations. Under the Constitution, the Autonomous Communities are obligated to fulfill constitutional commitments derived from EC directives, and they must also collaborate with the organs of the Spanish state. If an Autonomous Community does not fulfill its obligations, and thus violates Article 93 of the Constitution, it is the duty of the central government and the courts, if necessary, to ensure the community's compliance with the directive. In the end, the state guarantees compliance with EC directives and is held responsible for any potential defects in implementation by the Autonomous Communities. In this manner, the Spanish Constitution limits, as well as enhances, the Commission's power.¹⁵⁷

On the matter of state liability, however, it is clear that the Commission may take enforcement action only if a member state has failed to implement a directive.¹⁵⁸ The problem inherent in enforcement actions lies in the directive itself. While the regulation has "direct effect" (by granting direct rights to, and imposing charges on, private parties without interference from national law), the directive does not, but instead requires implementation by a member state into national law.¹⁵⁹ Because almost all EC environmental protection law is promulgated in the form of directives, they cannot be directly enforced.

If a member state fails to fulfill an obligation under Article 169 of the Treaty of Rome,¹⁶⁰ the Commission can deliver a rea-

154. Ignacio Aurrecoechea, *The Role of the Autonomous Communities in the Implementation of European Community Law in Spain*, 38 INT'L & COMP. L.Q. 74, 98 (Jan. 1989).

155. Case 97/81 *Commission v. Netherlands*, 1982 E.C.R. at 1804, [1981-1983 Transfer Binder] Common Mkt. Rep. (CCH) ¶ 8842 (1982).

156. Rolf Wagenbau, *The European Policy on Implementation of Environmental Directives*, 14 FORDHAM INT'L L.J. 455, 458 (1990-1991).

157. CONSTITUCION [C.E.] art 148 (see discussion, *supra* note 37).

158. Aurrecoechea, *supra* note 154, at 96-97.

159. Wagenbau, *supra* note 156, at 461.

160. *Id.*

soned opinion, as it did in the *Inquinosa* case. If the member state still does not comply, the Commission can bring the matter before the Court of Justice.¹⁶¹ Commission actions, however, are generally limited to infringements such as nonimplementation, incorrect implementation, or incorrect application of a directive as a result of the lack of enforcement of Court of Justice judgments. Article 171 of the Treaty of Rome¹⁶² merely states that member nations shall be required to take the necessary measures to comply with the judgment of the Court. Because there is no effective enforcement mechanism of these judgments, the Commission is not able to take legal action against a member state for failure to enforce a directive.¹⁶³ As a result, the European Community as a whole has experienced unsatisfactory implementation of EC environmental directives and execution of Court judgments.

Regarding the *Inquinosa* case, the Spanish government has not failed to implement, but has failed to enforce, a directive. Because neither political intervention nor legal proceedings have helped the implementation process, it has been recognized by many, including the Commissioner in charge of environmental protection, that it is now necessary to improve implementation and enforcement of EC environmental law.¹⁶⁴

While a detailed discussion of improved enforcement mechanisms is beyond the scope of this study, some of the more favorable alternatives that have been proposed include: the granting of standing to individuals or environmental protection associations before both the Court of Justice and national courts in environmental protection matters; the use of "self-executing" regulations rather than directives as the legal instruments to carry out environmental policy (this has met with success in other areas of EC law such as harmonization of customs law); constant dialogue between member states and the Commission in the implementation of a directive in order to avoid misinterpretations; the creation of a Community Environment Fund that would assist member states in reducing pollution or in implementing costly directives; the development of a European Environment Agency that would aid the Commission in the enforcement of community law; the automatic enforceability of

161. Mar. 25, 1957, 298 U.N.T.S. 3 [hereinafter EEC Treaty].

162. EEC Treaty, *supra* note 161, art. 171.

163. *Wagenbau*, *supra* note 156, at 463.

164. *Id.* at 464.

Court of Justice judgments, including sanctions for failure to fulfill obligations;¹⁶⁵ and finally, the use of the highly controversial "ecotax".¹⁶⁶ The ecotax could be implemented at the community, national, or local level, and would most likely constitute an increase of taxes on goods, emissions, or substances that are considered to be harmful to the environment.¹⁶⁷

VIII. TOWARD A NEW UNDERSTANDING

Reassuringly, attitudes have slowly begun to change in Spain. National and local environmental movements have been responsible for delaying or canceling projects such as the General Electric plant in Cartagena for the production of plastics,¹⁶⁸ and paper pulp mills in Galicia and Extremadura.¹⁶⁹

With a growing environmental movement, increased individual awareness, the threat of "green" groups winning seats in Parliament, and pressure from the EC, the Spanish government has been gradually sensitized to the gravity of Spain's environmental problems. Over the last two years, Spain has worked to tighten the extensive legislative machinery already in place. According to one source, few large-scale investments in Spain now escape the "watchful eyes" of national and local governments.¹⁷⁰ Environmental concerns are even represented in the ideological statement of the ruling socialist party, the Partido Socialista Obrero Espanol (PSOE), for the next decade.¹⁷¹

Within the government, the Ministry of Industry is attempting to persuade the business world to view newfound awareness in environmental matters as something positive in all sectors of industry.¹⁷² Clean technology, presently underdeveloped in Spain, will grow rapidly in the future, providing endless business opportunities. Recognizing this inevitability, the government has created a detailed incentive plan that will include attractive fiscal and financial incentives, including thirty percent of all new equipment costs and fifty percent of any research and

165. *Id.* at 466.

166. *Id.* at 467-75.

167. *Various Environmental Taxes May be Introduced by the End of 1990*, 13 Int'l Envtl. Rep. (BNA) No. 6, at 226 (June 13, 1990).

168. *Id.*

169. *Spain Still Lags Behind*, *supra* note 128, at 7.

170. *Environmental Law: Building and Related Permits*, Bus. Int'l-Spain, Feb. 1, 1990, available in LEXIS, World Library, Allwld File.

171. *See Spain Still Lags Behind*, *supra* note 128, at 7.

172. *Government Aid*, *supra* note 127 at 17.

development costs, for building Spanish toxic waste treatment facilities and developing clean technologies.¹⁷³ This plan would create local demand and require the implementation of a government plan to build incineration and treatment plants nationwide.¹⁷⁴

Perhaps most significant, however, is the criminalization of environmental infractions in Spain. In a radical departure from the ideology of the previous decade, the government recently decided to enforce ecological infractions that were half-heartedly listed in the Penal Code in 1983. As of 1988, any company or industry caught dumping or emitting substances dangerous to human or animal life can be closed and its directors jailed and fined.¹⁷⁵ Recently, the Attorney General of Spain, Leopoldo Torres Boursault, called for even stricter prosecution of environmental crimes, calling it an "urgent" priority. Currently, he is proposing to change the Penal Code again in order to institute even stiffer penalties and more rigorous application. He also sent notice to all provincial Attorney General offices requesting a heightened level of prosecution of cities that are violating regional or national law.¹⁷⁶

IX. CONCLUSION

Spain is an ancient nation that is now being reborn. While Spanish Greenpeace may not be overly optimistic about the future of the natural environment in Spain, the country's entrance into the modern age must be kept in perspective, considering the historical and geographical foundation on which today's Spanish environmental policy is built. Spain did not industrialize until the 1960s and was not faced with the environmental consequences of its developing economy until the 1980s. In contrast, most of the economically advanced members of the EC have been industrialized for at least seventy-five years and have had ample time to undo some of their industrial sins, by developing and working toward high environmental standards. The environment may still be a secondary consideration in Spain, but it is encouraging that there have been favorable

173. *Id.* at 16.

174. *Environmental Workplace Issues*, [1988] Bus. Int'l (Bus. Forecasting Service), 50,361, May 1988, available in LEXIS, World Library, Allwld File.

175. *Id.*

176. *Attorney General Urges Provinces to Strike Against Environmental Crimes*, 13 Int'l Env'tl. Rep. (BNA) No. 12, at 439 (Oct. 24, 1990).

changes recently in both legislation and attitude — there is hope for tomorrow.

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