

**THE NEED TO PROVE THE EXISTENCE
OF SUFFICIENT WATER RESOURCES AS
A PREREQUISITE FOR THE
AUTHORIZATION OF NEW URBAN
DEVELOPMENTS: THE SPANISH MODEL**

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XVI World Water Congress

Cancún, México, May 29 – June 2

INTRODUCTION

- **Goal:** To introduce the Spanish legal developments regarding water resources and urban planning over the last few decades.
- As a consequence of these developments, it is mandatory nowadays that the competent public authorities report on the existence of sufficient water resources to fulfil projected needs from the expected urban developments.
- An understanding of the Spanish experience, its legislative and judicial evolution and its difficulties may be helpful for other States.

BACKGROUND

- For decades Spain suffered and unsustainable economic growth based on the building industry and property speculation. That unsustainable economic growth, together with climate change, led to the overexploitation of aquifers and problems of water supply in some geographic areas.
- As a result, in 1999 the legislator introduced the need for the competent territorial authority to provide a report on the existence of sufficient water resources during the process of elaboration of the urban plans.
- Ever since, the combination of the will of the legislator – although with a poor legislative technique - and judicial criteria have been gradually reinforcing the requirement for the report, and now it is mandatory and binding.


ORIGIN AND LEGAL EVOLUTION OF THE REPORT ON THE EXISTENCE OF SUFFICIENT WATER RESOURCES

1978 Spanish Constitution: **Decentralised legal and political model**



1985 Water Act



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- ❖ **State:** Basins shared by two or more autonomous regions – transboundary basin bodies “*confederaciones hidrográficas*”
 - ❖ **Autonomous Regions:**
 - ❖ Basins completely located within its territory
 - ❖ Related fields (territorial planning, urban planning and housing, public works of interest to the autonomous region, forests and forest uses, etc)
 - ❖ **Local Authorities**

ORIGIN AND LEGAL EVOLUTION OF THE REPORT ON THE EXISTENCE OF SUFFICIENT WATER RESOURCES

❖ **1985 Water Act**
(art. 23)

❖ **2008 Soil Act**
(art. 15.3)

❖ **13/2003 Act, on the
concession of
contracts of public
works**
(Second Additional
Disposition)



**SPANISH
HIGH COURT
Case-Law**



**MANDATORY
AND BINDING
REPORT**

CASE-LAW REQUIREMENTS OF THE REPORT

- Spanish High Court (third chamber)
- Urban and territorial planning instruments

SUMMARY OF THE CASE LAW:

A) Character of the report:

- The report is mandatory in any case, without being subject to the need to prove an impact of the plan on water utilisation.
- The report is mandatory only with regard to the scope of competences of the *conferenciones hidrográficas* (sufficient water resources and protection of the public water domain)
- The final adoption of a legal instrument adopting or implementing urban or territorial planning without that report or against its binding content will be null

CASE-LAW REQUIREMENTS OF THE REPORT

B) Content of the report:

- The report must analyse the use and availability of the water resources, including both scientific and legal aspects.
- It is not only the future possibility of adequate water resources that matters. It is even more important that sufficiency of the resource is guaranteed at the moment of the adoption of the planning.
- In order to be favourable, the report needs to be precise and clear.

C) Legislation of the Spanish Autonomous Regions:

- Within the field of competence of the State, the regional legislation cannot replace the report by the *Confederaciones Hidrográficas* with the report of other public or private bodies.
- Within the field of competence of the Spanish autonomous regions, the Spanish High Court has understood that a report from the public water administration concerned is also needed. However, the autonomous region cannot eliminate the requirement for the report or render it meaningless.

D) Administrative interim judicial protection

- If an instrument of urban or territorial planning that does not have a favourable report from the *Confederation Hidrografica* is involved in a contentious matter in the administrative courts, a provisional measure that suspends the enforceability of the contested planning measure may be adopted

CONCLUSIONS

- A. Today no urban plan can be lawfully passed in Spain without an official report that ensures the existence of sufficient water resources.
- B. Qualified technical staff must participate in the elaboration of those reports together with legal staff.
- C. There is still some reluctance among some operators, public authorities included, to consider that report as binding and mandatory. However, the Spanish Supreme Court has firmly supported the binding and mandatory nature of the report.
- D. The joint confluence of several factors is needed to try to prevent violation of the legal protection of the water:
 - a) Social awareness and education on sustainable development.
 - b) Public authorities that serve objectively the general interest and provide a high level of technical preparation through highly-skilled engineers and scientists who can transmit that knowledge to other people (e.g. judges) lacking that technical preparation.
 - c) Independent judicial bodies that take into account the constitutional principle of sustainable development when interpreting and applying the law.
 - d) The existence of a popular action, so that anyone can access judicial processes.
 - e) Clear and precise legislation.