

FOREST REGULATION IN THE LAW OF SPAIN AND THE EUROPEAN UNION

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ABSTRACT

This study analyzes the normative forestry discipline in the Spanish legal system, which is marked by the constitutional provisions of environmental protection and by the Forestry Law of 2003, whose regulation of forests focuses on their environmental value. The standard adopts a broad concept of forest as a land that primarily fulfills environmental and protective functions; it also incorporates the various functions of the forest territory and includes Autonomous Communities on the fringes of regulation on abandoned agricultural land, urban and developable land, and the determination of the size of the minimum unit that will be considered as forest for law purposes. The main actions of the European Union regarding forestry are also analyzed, highlighting how it lacks a comprehensive forest policy.

Keywords: environment; European Union; forest ecosystem; forests; forestry competencies.

REGULAMENTAÇÃO FLORESTAL NO DIREITO DA UNIÃO ESPANHOLA E EUROPEIA

RESUMO

Neste artigo, analisa-se a disciplina normativa florestal no sistema jurídico espanhol, marcada pelas disposições constitucionais de proteção ambiental e pela Lei Florestal de 2003, cuja regulamentação das florestas se concentra em seu valor ambiental. A norma adota um conceito amplo de floresta como uma terra que cumpre principalmente funções ambientais e de proteção; ele também incorpora as várias funções do território florestal e inclui as comunidades autônomas à margem da regulamentação sobre terras agrícolas abandonadas, terras urbanas e desenvolvíveis e a

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determinação do tamanho da unidade mínima que será considerada uma floresta para os fins da lei. Também são analisadas as principais ações da União Europeia em relação à silvicultura, destacando como carece de uma política florestal abrangente.

Palavras-chave: *competências florestais; ecossistema florestal; florestas; meio ambiente; União Europeia.*

INTRODUCTION

The normative discipline of forestry has been marked throughout history in Spanish law by the various functions that the forest plays, as an economic or productive asset, as an instrument of hydrogeological defense of the territory, as an environmental value in a broad sense (protection of fauna, flora, atmosphere, water, climate, ecosystem), susceptible to recreational or tourist use or for its social functions. In effect, the different rules that have been adopted on the subject since the last century have imposed obligations on forests to protect the different public interests that were most concerned at each moment or historical period².

Only after the Spanish Constitution of 1978 has the protection of forests been marked by their ecological or regulatory functions in the biosphere dynamics, so that regulations take into account that they are a natural resource whose contribution is decisive in maintaining the life cycle and conserving the environment.

In Spain, one of the most important environmental functions of forests is soil protection against erosion, mainly in its water modality. This erosion causes not only significant losses in soil fertility, but also other unwanted effects that hinder the effectiveness of certain infrastructures, especially those for road and hydraulic communication. The existence of forest areas is essential, especially on sloping land, to mitigate the negative effects of the erosion phenomenon, in addition to containing floods and regulating runoff.

But it is also necessary to highlight the role of forests as an asylum and refuge for fauna and flora, improving water quality, regulating the hydrological regime and influencing the climate and atmosphere. At a time like the present, when the Kyoto Protocol on the reduction of greenhouse gases, in addition to the United Nations Framework Convention on Climate Change is in force (approved in the European Union by the Council Decision of April 25, 2002), the role of forests is essential as carbon dioxide sinks, deposits of greenhouse gases and also for the production of biomass and its potential in renewable energy³.

2 In addition, the first forest laws can be found in our order in the late Middle Ages. However, until the 19th century, it is not possible to speak of a true forest system. Guaita (1956; 1986) and Parada Vazquez can be seen in the historical evolution of legal protection of forests in Spain.

3 In this sense, the study by Sarasibar Iriarte (2007) is essential.

1 FORECASTS IN THE SPANISH CONSTITUTION

The 1978 Spanish Constitution marked the turning point in the legal regulation of forests and introduced an important change in approach to address all forest regulations (LAZARO BENITO, 1993). In fact, if, on the one hand, the powers of legislative and executive development are to be recognized in the regions or autonomous communities in this area, on the other, they reach the level of guiding principles of economic and social policy, for both the right to enjoy an appropriate environment for the development of the individual and the duty to preserve it.

The pre-constitutional legislation on forests lacked a consideration of the forest in its entirety as an object of protection. The Forest Law of 1957 protected only certain forests that, due to their location or characteristics, fulfill a relevant function, mainly in relation to hydrological processes (ESTEVE PARDO, 1995). The privately owned forests (2/3 of the total) were practically considered only protective and, therefore, the forests located at the head of the hydrographic basins were subject to public regulation.⁴

But together with this constitutional consecration of the law to the environment, the second section of art. 45 of the constitutional text contains a decisive mandate for public authorities, establishing that they “will guarantee the rational use of all natural resources, in order to protect and improve the quality of life, defend and restore the environment, based on the indispensable collective solidarity.”

Based on the generic concept of rational use of natural resources established by art. 45 of the Constitution, in which it is worth mentioning the forest and forest areas for their important contribution to the maintenance of an adequate environment, the main state standard for the development of this constitutional provision, Law 4/1989, on the Conservation of Natural Spaces and Wild Flora and Fauna (which was later repealed by Law 42/2007, of December 13, on Natural Heritage and Biodiversity), will mark an important turning point in the forestry sector. The standard, in accordance with art. 45.2, and according to the provisions of art. 149.1.23

⁴ In Spain, a hydrological forest regulation can be found since the end of the 19th century: in the Water Law of 1879 (art. 59); in the Royal Decree of February 3, 1988, which establishes the systematic plan for restocking the headwaters of the hydrographic basins; in the Royal Decree of June 7, 1901, by which the National Hydrological Forest Service was created; the Law of October 18, 1941, on reforestation of banks and rivers; and, above all, in the Forest Law of 1957 (art. 25) and in its regulations of 1962 (art. 341.1), and in the Water Law of 1985. On this historical relationship between forests and water in our country, see Vicente Domingo (1995, p. 67 y ss).

of the Constitution, had the objective of establishing standards of protection, conservation, restoration and improvement of natural resources and, in particular, those related to natural areas and wild flora and fauna.

Based on the Law's inspiring principles (maintenance of essential ecological processes and basic vital systems; orderly use of resources and preservation of genetic diversity, variety, uniqueness and beauty of natural ecosystems and the landscape), it is Article 9 of Law 4/89 that constitutes, since its approval, a mandatory forestry directive. In fact, this precept established in its first section that "the use of land for agricultural, forestry and livestock purposes must be guided so that it maintains its biological potential and productive capacity, with respect to the surrounding ecosystems."

But the precept went further by expressly establishing the directive by which the actions of public administrations in forestry matters should be carried out. In fact, in the second section, art. 9 established that this Public Administration action "will be aimed at achieving protection, restoration, improvement and orderly use of forests, whatever their ownership, and their technical management must be in accordance with their legal, ecological, forestry and socioeconomic characteristics, prevailing, in any case, the public over the private interest."

Thus, Law 4/89 enshrined the new direction of forest policy and action to be developed by our public administrations, in which the environmental component has become a priority.

The aforementioned provision proposed as a basic objective the orderly use of forests, regardless of their properties. Among other relevant aspects of Law 4/89, the planning of natural resources must also be highlighted very significantly. In effect, the Law created, as a new instrument in our legal system, the Natural Resource Management Plans and the Guidelines for the Management of Natural Resources (arts. 4 et seq.)

2 THE DISTRIBUTION OF FOREST COMPETENCIES BETWEEN THE STATE AND AUTONOMOUS COMMUNITIES

Under the terms of article 149.1.23 of the Spanish Constitution, the central state reserves itself jurisdiction over basic legislation on forests, forest uses and livestock routes, corresponding to the Autonomous Communities, in general, the rest of the normative and executive functions of the topic.

But on forests, a natural resource of fundamental importance for environmental conservation, the normative regulations, as highlighted by the Constitutional Court (Sentences 64/1982, of November 4). RTC 1982, 64, 102/1985, of June 26 TC (Sala Plena) – RTC 1995, 102 – and 32/2006, of February 1 – RTC 2006/32), also have a decisive impact based on competition in environmental matters, provided for in articles 148.1.9 and 149.1.23 CE, which allows autonomous communities to assume management powers in the field of environmental protection, granting the State exclusive competence to enact basic legislation, without prejudice to the autonomous powers to issue additional protection rules.

In addition to these competencies, both Autonomous Communities and the State have other competencies that affect forestry matters (the explanatory statements of State Law 43/2003 and the Castilla Law – La Mancha 3/2008 can be seen in this regard), such as those maintained in relation to territorial planning and territorial policy, urban planning, housing, agriculture, public domain and heritage property whose property corresponds to them, agriculture and livestock, promotion and coordination of research, promotion of sport and adequate use of leisure, statistics and pastures, protected natural areas, mountainous areas, legal regime of public administrations, civil legislation and coordination and planning of economic activity (LAZARO BENITO, 1993).

In judgment 71/1983, of July 29 (RTC 1983/71), the Constitutional Court stated that it is the fact of influencing legally defined spaces, such as forests, that determines its characterization as a forest issue and, consequently, that it is regulated by forestry law.

State Law 43/2003, of November 21, of Forests, modified in this point by Law 10/2006, of April 28, clarifies in its article 7 the functions of the matter of the General Administration of the State, based on its competence in the basic legislation about forests, forest uses and the environment. Thus, the precept includes the State's competency for Spain's international representation in forestry matters; the definition of the general objectives of the Spanish forestry policy (approval of documents such as the Spanish Forestry Strategy, the Spanish Forestry Plan, the National Action Program against desertification and the National Plan of priority actions for hydrological-forest restoration); the compilation, development and systematization of forest information to maintain and update Spanish forest statistics; the establishment of common guidelines for the standardization of material resources and personnel equipment for fighting forest fires throughout the

Spanish territory, as well as the implementation of State means of support to the Autonomous Communities, to cover forests against fires; the exercise of the functions necessary for the adoption of urgent phytosanitary measures, in addition to ensuring their correct execution, coordination and monitoring, in exceptional situations where there is a serious risk of spreading forest pests, under the terms of article 16 of Law 43/2002, November 20, on plant health; promote training and employment plans in the forestry sector; the development of programs for genetic improvement and conservation of forest genetic resources at the national level, as well as the establishment of basic rules on the origin, production, use and commercialization of forest reproductive materials and, in particular, the determination of their regions of origin and the maintenance of the Registry and the National Catalog of Basic Materials; the preparation and approval of the Basic Instructions for the management and use of forests; promote scientific research and technological innovation in forestry; the coordination of the maintenance of the Public Utility Forests Catalog, as well as the registration of protective forests and forests with other special protection and collaboration figures in the design of networks, in the collection and communication with community bodies of the data obtained by the autonomous communities in their territorial area, based on the webs of European networks for monitoring forest interactions with the environment.

In any case, Law 43/2003 clearly opts for collaboration and cooperation between administrations for the benefit of a forest environment that does not understand administrative boundaries.

Indeed, the complex Spanish scheme for the distribution of competencies in matters of forests, forest utilization and environmental protection, on which STC 21/1999, of February 25, 1999 (RTC 1999/21), rules as an indispensable path for close collaboration and inter-administrative cooperation. As pointed out by the abundant jurisprudence of the Constitutional Court (SSTC 80/1985 – RTC 1985/80 –, 18/1982 – RTC 1982/18 – and 96/1986 – RTC 1986/96 –, among others), there is a general duty of collaboration between the State and the Autonomous Communities that is not necessary to justify by means of concrete precepts, as it is essential for the model of territorial organization of the State implemented by the Constitution. Forestry matters are a favorable field for the conclusion of Agreements or Covenants between our different public administrations (State, Autonomous Communities and Local Entities), as a way of structuring the necessary principle of cooperation that is present in the substance

of the Autonomous State, as it has repeatedly proclaimed the highest constitutional interpreter (STC 146/1992 –RTC 1992/146).

In this sense, in the use of their competencies in the subject, there is already an important autonomous forestry legislation, among which the following rules are highlighted: Law 6/1988, of March 13, Forests of Catalonia; Law 13/1990, of December 31, on Protection and Development of the Forest Heritage of Navarra; Law 2/1992, of June 15, on forest management in Andalusia; Law 3/1993, of 9 December, Forest of Valencia; Law 5/1994, of 16 May, on the Promotion of Forestry Forests in Castilla-León; Law of February 10, 1995, on the protection and development of the forest heritage of Madrid, and Law 16/1995, of May 4, Protection of the nature of Madrid; Law 15/2006, of December 28, on Forests of Aragon; Law 3/2004, of 23 November, on Forests and Forest Management in the Principality of Asturias; Law No. 3/2008, of 12 June, on Forests and Sustainable Management in Castilla – La Mancha; Law 3/2009, of April 6, on Forests of Castile and Leon, and Law 7/2012, of June 28, on the forests of Galicia. Along with these provisions, all regional regulations on protected natural areas could also be highlighted.

On the other hand, local authorities also have decisive powers that affect the forestry field. Specifically, these entities are empowered to organize, explore and improve their assets, as provided for in article 84 of the Royal Legislative Decree 781/1986, of April 18, which approves the consolidated text of the provisions in force on Local Regime and in articles 38 to 40 of Royal Decree 1372/1986, of June 13, which approves the Property Regulations for Local Entities.

Forest Law 43/2003 revitalized the role of local administrations in forest policy, giving them greater participation in decision-making that directly affects their own forests, recognizing their role as the main public owners of forests in Spain and their contribution to conservation of natural resources that benefit the whole society.

Article 9 of Law 43/2003 specifies, therefore, that local entities, within the scope of the basic legislation of the State and the legislation of the Autonomous Communities, exercise the following powers in forestry matters:

- a) The management of property forests not included in the Public Utility Forest Catalog.
- b) The management of the cataloged forests of their ownership, when provided for in the forestry legislation of the autonomous community.

- c) The provision of economic income from forest exploitation of all forests of their ownership, without prejudice to the provisions of article 38 of the Forest Law in relation to the improvement fund for listed forests or, where appropriate, the provisions in regional regulations.
- d) The issuance of a mandatory report in the procedure for preparing management instruments related to the forests of their ownership, included in the Public Utility Forest Catalog.
- e) The issuance of other mandatory reports provided for in this law, concerning the forests of their ownership.
- f) Those others that, in the object of this law, expressly attribute them, the forestry legislation of the autonomous community or other applicable laws.

3 MAIN REGULATORY STANDARD FOR FORESTS: STATE LAW 43/2003, OF NOVEMBER 21 FOR FORESTS

After several preliminary projects, projects and proposals for reforming the Forest Law of 1957 left on the way in the last few years, it was not until the approval of Law 43/2003, of November 21, that the pre-constitutional legislation on the subject was finally repealed. It was inevitable that the State had an obligation, by virtue of its competency to enact basic legislation on the environment, forests and forest utilization, to pass a new forest law that would unite the issue in a unitary manner and allow comprehensive protection of the forest. The numerous and systematic forest regulations in force in our country so far have not responded in any way to these profiles.

The new standard, in line with European and international forestry law, takes into account the multiple uses that our society demands from forests today, but, most of all, it is based on prioritizing environmental protection of the forest, on safeguarding the biological dimension of the forest. This is how the Magna Carta and the jurisprudence of the highest constitutional interpreter defend it and, in this sense, the Law on the Conservation of Natural Areas and the subsequent autonomous forestry legislation moved. Nowadays, any forest policy, not framed or supported by an environmental policy, is bound to lose all its meaning⁵.

Modern environmental law does not require maximum protection of forests, and turns them into museum pieces, but advocates sustainable management of forests, for their utilization through silvicultural techniques,

⁵ As stated in the declaration of the United Nations Assembly, at its extraordinary session in June 1997, "the management, conservation and sustainable development of all types of forests are essential to economic and social development, the protection of the environment and the life-support systems of the planet. Forests are part of sustainable development."

with the utmost respect for the laws of nature. Only by promoting this orderly management of our forests can their conservation and expansion be guaranteed and, therefore, the fulfillment of their decisive social and environmental functions.

Law 42/2007, of December 13, on Natural Heritage and Biodiversity, which repealed Law 4/1989, also focuses on the prevalence of environmental protection over soil and urban planning, and establishes that the competent administrations will ensure that management of natural resources occurs with the greatest benefits for current generations, without diminishing their potential to satisfy the needs and aspirations of future generations, guarantee the maintenance and conservation of the heritage, biodiversity and natural resources existing throughout the national territory, regardless of their ownership or legal regime, taking into account their orderly use and the restoration of their renewable resources. The principles that inspire Law 42/2007 are based on the perspective of considering the natural heritage itself, on the maintenance of essential ecological processes and basic vital systems, on the preservation of biological, genetic, population and species diversity, and on the preservation of the variety, uniqueness and beauty of natural ecosystems, geological diversity and landscape.

In this sense, the explanatory statement of Law 43/2003 itself warns that the standard is inspired by principles that are framed in the first and fundamental concept of sustainable forest management. The rest are derived from it: multifunctionality, integration of forest planning in spatial planning, territorial cohesion and subsidiarity, promotion of forest production and rural development, conservation of forest biodiversity, integration of forest policy in international environmental objectives, cooperation between administrations and mandatory participation of all social and economic agents interested in making decisions about the forest environment.

In the drafting of Law 43/2003, the Spanish Forestry Strategy played a decisive role, promoted by the work of the General Directorate for Nature Conservation and approved on March 17, 1999 by the Sectorial Conference on the Environment, as well as by the Spanish Forestry Plan, application in the time and space of the Forestry Strategy and approved by the Council of Ministers in July 2002.

4 THE EUROPEAN UNION'S ACTIONS ON FORESTRY

The European Union does not yet have a common general forestry policy, so this issue remains essentially a matter for the Member States. In

accordance with the principle of subsidiarity and the principle of complementarity⁶, Member States are responsible for planning and implementing national forest programs or equivalent instruments in the context of sustainable forest management.

However, the forestry sector is affected by certain community policies, such as rural development, fire protection and air pollution, biodiversity conservation (Natura 2000), application of the Convention on climate change, research and even silvicultural competitiveness. Currently, the management, conservation and sustainable development of forests are essential topics in other common policies in force, such as the environment and the common agricultural policy (CAP)⁷.

On the other hand, forest landmarks are co-financed under the European Regional Development Fund's cohesion policy (especially fire prevention, renewable energy production and preparedness for climate change). For its part, the Solidarity Fund aims to help Member States deal with serious natural disasters such as storms and fires⁸.

There is also the European Union Civil Protection Mechanism⁹, which can be activated in the event of a crisis that exceeds the response capacity of Member States, such as some forest fires.

It becomes increasingly necessary as a coordinated action at European level on forestry issues. Most of the European Union's regulatory provisions approved to date in forests are linked to the CAP and regulated mainly fostering actions through the granting of subsidies and aid. In the European Union, the forestry sector has been viewed with great concern since the 1980s due to its degradation, but at the same time as a sector for the future, since the increase in the forest area has been considered a solution for certain lands, taken in the past for agricultural use and with little prospect of the surplus situation of many agricultural products. This has been the main objective of community forestry legislation, which has always been secondary to the dominant common agricultural policy.

In fact, although especially since the European Single Act, many

6 Communication from the Commission COM 1999, 218 y Council Resolution 8080/99.

7 About 90% of the European Union's forest funds come from the European Agricultural Fund for Rural Development (EAFRD). During the 2007-2013 programming period, around €5.4 billion of the EAFRD budget was allocated to co-finance specific measures for forests. Within the scope of rural development programs, public expenditures of around 8.2 billion euros were programmed for the period 2015-2020 (27% for reforestation, 18% for improving adaptation capacity, and 18% for damage prevention). It can be consulted at <http://www.europarl.europa.eu/factsheets/en/sheet/105/la-union-europea-y-los-bosques>. Access on January 31, 2020.

8 Regulation (EC) No. 2012/2002 of the Council of the European Union.

9 Decision No. 1313/2013/EU.

provisions on forestry have been approved in the European Union, there is no autonomous forestry policy, with its own objectives and legal bases, that provides a global response to problems and needs in the sector, that is, that takes into account the environmental, economic and social importance of the community's forest heritage.

In its Resolution of 15 December 1998 on a forestry strategy for the European Union, the Council invited the Commission to assess and continue to improve the effectiveness of the European forest state monitoring system, in addition to taking into account all possible effects on forest ecosystems. The sixth Community action program on the environment 2001-2012¹⁰ recognizes the need for the development, implementation and evaluation of environmental policies to be supported by a knowledge-based approach, as well as, in particular, the need to control the multiple functions of forests, in accordance with the recommendations of the Ministerial Conference on Forest Protection in Europe, the United Nations Forum on Forests and the Convention on Biodiversity.

Forest fires and air pollution are the main factors that endanger the sustainable development of forests in the European Union and were subject to regulatory development by Council Regulation (EEC) No. 3528/86 of November 17, 1986, on protection of Community forests against atmospheric pollution and Regulation (EEC) No. 2158/92 of July 23, 1992, on the protection of Community forests against fire. Both regulations expired on December 31, 2002.

The Union wished to continue monitoring forests, integrating the Regulation for the protection of forests against forest fires, as well as the Regulation for the protection of forests against atmospheric pollution in a new measure called Forest Axis: this is Regulation (EC) n. 2152/2003 of the European Parliament and of the Council, of November 17, 2003, on the monitoring of forests and environmental interactions in the Community (Forest Focus) and Regulation (EC) No. 1737/2006 of November 7, 2006, which established provisions for the application of Regulation 2152/2003.

But Forest Focus was applied from January 1, 2003 to December 31, 2006 (with an annual budget of €61 million, of which €9 million was for fire prevention).

In the European Commission's communication entitled "A new EU strategy for forests and the forest sector"¹¹, the new Union strategy stands

¹⁰ Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, of January 24, 2001, COM 2001 31 final.

¹¹ Document COM (2013) 0659.

out, as well as a European frame of reference for the development of Sectorial policies with an impact on forests. This strategy has two main objectives: 1) to guarantee the sustainable management of European forests and 2) to strengthen the Union's contribution to promoting sustainable forest management and combating deforestation at a global level.

The Standing Forestry Committee (SFC) is the coordinating body between the Commission and the Member States in implementing the action plan. Created in 1989, the SFC represents the forest administrations of EU Member States. It has 27 members (appointed by the governments of the EU Member States) and is chaired by the European Commission. Its role is threefold: consultation and management of specific forestry measures, ad hoc consultation forum that helps with its technical knowledge in the design of measures on forestry issues in the different Community policies and at the point of information exchange between Member States and the Commission.

5 PROTECTED NATURAL SPACES

Among forests and forest areas in a broad sense, those that have been declared as protected natural spaces enjoy much more intense legal protection. The declaration of protected space implies the granting to certain specific territories of a privileged legal regime, taking into account their special natural qualities.

At the State level, Law 42/2007, of December 13, on Natural Heritage and Biodiversity, which revoked Law 4/1989, of March 27, on Conservation of Natural Areas and Wild Flora and Fauna, constitutes the basic norm of the subject (second final provision of Law 42/2007).

Law 4/1989 consolidated the protection regimes that created the old Law of May 2, 1975 in the four categories of Parks, Natural Reserves, Natural Monuments and Protected Landscapes. The declaration and management of these protected natural spaces corresponded, in any case, to the Autonomous Communities in whose territorial area they are located. The only reservation that the Law established in favor of the State was the administration of the so-called National Parks, integrated into the Network of National Parks, due to their condition as representative spaces for some of the main Spanish natural systems. However, Law 41/1997, of November 5, modified Law 4/89 to adapt it to the decision of Constitutional Court 102/1995, of June 26, which annulled several of its precepts, attributing

the administration of National Parks exclusively to the State. The standard modified several articles of Law 4/89 to adapt its content to constitutional doctrine and also incorporated new rules to regulate the management and administration bodies of National Parks.

Subsequently, judgment 194/2004 of the Constitutional Court, of November 10, 2004 – RTC 2004 / 194-, confirmed the exclusive competence of the autonomous communities in the management of National Parks.

Currently, the second chapter of Title II of Law 42/2007 establishes the special regime for the protection of natural spaces, based on the definition of Law 4/1989, of March 27, with the specific incorporation of Marine Protected Areas and the creation of the network of marine protected areas, in accordance with European Union guidelines, as well as the possibility of creating transboundary protected natural spaces. The law maintains the figure, definition and protection regimes of the Parks and Natural Reserves of Law 4/1989, adapting the definition of Protected Landscapes to the Landscape Convention of the Council of Europe. The declaration and management of protected natural spaces will correspond, in any case, to the Autonomous Communities in whose territorial scope they are located.

For these spaces, Law 42/2007 maintains the possibility of creating peripheral protection zones, the declaration of public utility, for the purpose of expropriating the affected assets and rights, as well as the authority of the competent Administration to exercise the preemptive and revocation rights.

The law also regulates the European Ecological Network Natura 2000, composed of Places of Community Importance, Special Conservation Areas and Special Protection Areas for Birds. These spaces are considered protected spaces, with the specific name of protected spaces Red Natura 2000, with coverage for the limitations that the Autonomous Communities may establish in their legislation and in the corresponding planning instruments. It is the responsibility of the Autonomous Communities to define these spaces and report them to the Ministry of the Environment for the purpose of their communication to the European Commission, as well as to establish the necessary conservation measures, which will imply appropriate regulatory, administrative or contractual measures, and guarantee their inclusion in appropriate plans or instruments, which respond to the ecological requirements of the types of habitats and natural species present in these areas, monitoring the conservation status and sending the

corresponding information to the Ministry of Environment, which will submit the mandatory report every six years to the European Commission. The definition of these spaces will be carried out in any case, according to the criteria established in Council Directive 92/43/EEC of May 21, 1992 on the conservation of natural habitats and of wild fauna and flora.

To guarantee the preservation of the values that gave rise to the definition of these areas, the corresponding precautions are established by Law 42/2007, so that any plan, program or project that, without being directly related to the management of a Natura 2000 network space, or without its necessity, may considerably affect the mentioned places, individually or in combination with other plans, programs or projects, will be subject to an adequate evaluation of its repercussions in the place, so that the corresponding autonomous communities only express their conformity with the referred plan, program or project after ensuring that it will not harm the integrity of the site in question and, if appropriate, after sending it to public information. In this sense, the Law accepts that the plan, program or project can be executed, despite causing damage, if there are overriding reasons of public interest of the first order that, for each specific case, have been declared by law or by reasoned and public agreement, from the Council of Ministers or the governing body of the Autonomous Community. Finally, it is established that the partial or total discontinuation of a space included in Red Natura 2000 can only be proposed when justified by the changes caused by natural evolution and after the processing of public information.

However, protected areas are also affected by international instruments, according to and in accordance with the provisions of the corresponding international conventions and agreements (wetlands of international importance, natural sites on the World Heritage List, marine protected areas of the Northeast Atlantic, Specially Protected Areas of Mediterranean Importance – SPAMI, Geoparks, Biogenic Reserves of the Council of Europe, etc.) for which the Ministry of Environment, with the participation of the Autonomous Communities, will prepare, within the scope of the State Strategic Plan for Natural Heritage and Biodiversity, conservation guidelines, which must be approved by agreement of the Sectorial Conference on the Environment, in parallel with those corresponding to the Natura 2000 Network, as a guiding framework for the planning and management of these spaces.

6 THE FOREST CONCEPT AS A FOREST ECOSYSTEM IN LAW 43/2003

In view of the limited concept of forest foreseen in the first article of the State Forest Law of June 8, 1957, which understood it as a rustic non-agricultural land, whether or not populated by forest species (ESTEVE PARDO, 1995), Law 43/2003 started to enshrine in the basic State legislation the broad concept of forest that had already been included in the autonomous forest legislation, as land that fulfills or can fulfill environmental and protection functions.

Indeed, the concept of forest in Article 5 of State Law 43/2003 incorporates the various functions of the forest territory and gives Autonomous Communities access to the regulation of abandoned agricultural land, urban and urbanizable areas and the determination of the size of the minimum unit that will be considered as forests for law purposes.

The State Forest Law defines forest in a very broad way in its article 5, understanding it as follows:

1) [...] any land where arboreous, shrubby, or herbaceous species vegetate, spontaneously or from sowing or planting, which fulfill or may fulfill environmental, protective, productive, cultural, landscape or recreational functions. They also consider as forests:

Wasteland, rocky and sandy areas.

- a) Buildings and infrastructures for the service of the forests in which it is located.
- b) Abandoned agricultural lands that meet the conditions and deadlines determined by the autonomous community and provided that they acquire unequivocal signs of their forest status.
- c) All lands that, without complying with the characteristics described above, are assigned for the purpose of being repopulated or transformed for forestry use, in accordance with the applicable regulations.

The definition is specified in section 2 of the same provision with a negative delimitation:

They do not consider forests:

- a) Land dedicated to agricultural cultivation.
- b) Urban land and others that the autonomous community excludes in its forestry and urban planning regulations.

Law 3/2008 thus establishes a positive conception when it comes to cataloging forests or forest land, insofar as it is based on the intrinsic characteristics of the different territorial areas, avoiding the residual conception that would result from the mere exclusion of areas intended for other uses; at the same time, the concept of forests has also been added to those

lands that fulfill or may fulfill environmental, protective, productive and cultural, landscape or recreational functions, which not only improve the concept, but also make it more aligned with the provisions of article 45 of the Constitution, taking into account, in addition to productivity, environmental aspects. Finally, a fundamental idea for forest management is established, which consists of forests as ecosystems that must be treated in an integrated manner.

Before the approval of state law 43/2003, several regional laws had endowed the concept of forest with a more open and positive sense, also expressly recognizing the multiple functions of a social nature that it performs. These rules, therefore, emphasized the functional and final aspects, which were integrated into the concept.

This line is clearly noticeable in regional laws such as the following: 13/1990, of December 31, on the Protection and Development of Navarra's Forest Heritage; 3/1993, of 9 December, Forest of Valencia; 8/1998, of June 26, Conservation of nature and natural areas in Extremadura; 5/1994, of May 16, Promotion of the wooded forests of Castile and León; 16/1995, of May 4, Forest and natural protection of the Community of Madrid and 2/1992, of June 15, Forest of Andalusia. A comprehensive definition of forest is also offered by Laws 3/2004, of November 23, on Forests and Forest Management in the Principality of Asturias; 15/2006, of December 28, of Forests of Aragon and 3/2008, of June 12, of Forests and Sustainable Management of Castilla La Mancha.

7 CLASSIFICATION AND LEGAL REGIME OF FORESTS: PUBLIC AND PRIVATE FORESTS

If there is a characteristic feature of Spanish forests from the point of view of ownership, it is the enormous fragmentation it presents. There are about 30 million forest parcels, in which those of public property have about five hectares of average area per parcel, while those of private property have an average of three quarters of a hectare. In total, the average parcel area in Spain slightly exceeds one hectare, making it very difficult to manage them as forestry units.

With regard to property, approximately one third of the Spanish forest area is public property, of which a small part is owned by the State. In fact, only 5% of our public forests belong to the State; about 30% belong to CCAA and 65% to local entities. The majority of our forests, about 65%,

belong to private properties. In the European Union, the statistics are similar, 2/3 of the forests belong to private properties.

Well, the main forest classification in our law is that which distinguishes according to ownership between public forests and private forests.

Public forests are those belonging to the State, Autonomous Communities, local entities and other entities governed by public law; while private forests are those belonging to natural or legal persons under private law, individually or jointly owned.

Now, as the important article 4 of Law 43/2003 specifies, forests, regardless of their ownership, play a relevant social role, both as a source of natural resources and as providers of various environmental services, including soil protection and hydrological cycle; atmospheric carbon fixation; deposit of biological diversity and as fundamental elements of the landscape. The recognition of these resources and externalities, from which the whole society benefits, obliges public administrations to guarantee in all cases their conservation, protection, restoration, improvement and orderly utilization.

In this sense, it must be remembered that Article 33 of the Constitution establishes the right to private property as a right that should not be understood as unlimited. The very social function of the law defines it, insofar as Article 128 recognizes that all the wealth of the country, in its different forms and regardless of its ownership, is subordinated to the general interest.

As De Vicente Domingo (1995) pointed out, the legal regime of the forest is no longer explicable only from the property function characteristic of the pre-constitutional forest legislation. Today, functional diversity overcomes property and seeks a balanced result in protection, regardless of the subject, public or private, to which the forest belongs.

Well, in the definition and regulation of public and private forests, the Forest Law of 2003 introduced remarkable clarity. So, the standard opted for the declaration of forests classified as public utility and public domain, constituting the public forest domain with these forests together with communal forests and other forests affected by a public use or service.

For all these forests, the Law contemplates the same legal regime, establishing above all the use regime (utilization, authorizations or concessions) in article 15 (provision modified by Law 25/2009, of December 22, on the modification of several laws for their adaptation to the Law of free access to service activities and their exercise, which added a section 5 to

the aforementioned article 15 to provide “in the procedures of concession and authorization of service activities to be carried out in public forests, without prejudice to the provisions in the regulation of community forests, the principles of publicity, objectivity, impartiality and transparency must be respected.”). Thus, the Administration that manages public forests can give public character to those uses that respect the natural environment, as long as they are carried out on a non-profit basis and in accordance with current rules, in particular with the provisions of the applicable planning and management instruments and when they are compatible with the use, authorizations or concessions legally established. Likewise, activities that, according to regional regulations, require it due to its intensity, danger or profitability, will be subject to authorization. In cataloged forests, a favorable report from the forestry body of the autonomous community will be mandatory. The competent Administration must submit to the concession granting all activities that imply a private use of the public forest domain. In cataloged forests, this concession will require a favorable report of compatibility with the persistence of the natural values of the forest by the forestry body of the autonomous community.

The law maintains the importance of establishing the Public Utility Forest Catalog¹², with a great historical tradition in the legal regulation of public forests in Spain – the Catalog was born as a list of properties that the Administration could keep, that is, of goods excluded from confiscation (GUAITA, 1986). In this sense, the reasons for cataloging were expanded in Law 43/2003, adding those that most contribute to the conservation of biological diversity and, in particular, those that constitute or are part of protected natural spaces or spaces of the European Natura 2000 network.

The inclusion and exclusion of forests in the Public Utility Forest Catalog and their management correspond to the Autonomous Communities in their respective territories. The Autonomous Communities will transfer to the Ministry of Environment the records they practice, as well as the administrative resolutions and final judicial decisions that imply changes in the catalog, including those related to exchanges, prevalence and resolutions that, in general, suppose the revision and updating of the cataloged forests. In turn, the exclusion of a forest from the Public Utility Forest

12 Both Law 43/2003 and its reform operated by Law 10/2006 maintained the Ministerial Order of May 31, 1966 (RCL/1966/1085), in which the necessary regulations were issued to update the relations of Public Utility Forests, correcting deficiencies that may have been observed and introducing all modifications or incidents produced since 1901, in order to improve their physical identification and, where appropriate, registration entries.

Catalog will only occur when it has lost the characteristics for which it has been listed. The partial exclusion or exchange of a non-significant part of a listed forest may be authorized by the autonomous community, on the proposal of its forestry agency, provided that it involves a better definition of the forest surface or an improvement for its management and conservation.

The removal of forests listed in the public forest domain will require their prior exclusion from the catalog.

In relation to patrimonial forests, article 19 of the Law establishes that the adverse possession or acquisitive prescription will only be given upon possession as a concept of owner, public, peaceful and uninterrupted for 30 years. Interrupted possession for prescription purposes is understood to be for forestry purposes, for the initiation of sanction files or for any possessory act performed by the Administration that owns the forest.

With regard to private forests, they are managed by their owners. Now, the owners of these forests can contract their administration with individuals or legal entities under public or private law or with the forestry bodies of the Autonomous Communities where the forest is located.

The management of these forests will be adjusted, when appropriate, to the corresponding forest management or planning instrument.

But Law 43/2003, as well as in listed forests, also reinforced the figure of protective forests and their registration, whose declaration was stimulated with economic incentives.

Autonomous Communities may qualify as protectors, at the request of the owner, those private forests that meet any of the conditions established in article 13 of Law 43/2003 for public forests. Autonomous communities can also create protective forest registries as administrative registries.

The classification and declassification of a protected forest, or part of it, and its subsequent inclusion or exclusion in the protection forest register will be made by the forestry body of the corresponding autonomous community, after a report by the owner.

8 FOREST RESOURCE MANAGEMENT PLANS

Along with the Forestry Strategy and Plan, among the forestry planning instruments included in the LMo, forest resource management plans undoubtedly stand out (PORF).

These plans are configured as integrated forest planning instruments in the land use planning framework, connecting forest planning and management to the decisive area of land use planning.

The Autonomous Communities are responsible for preparing these management plans, the content of which will be mandatory and executive in matters regulated by law. Likewise, they will be indicative in relation to any other actions, plans or sectorial programs. However, the law requires consultation with local entities and, through their representative bodies, private forest owners, other affected legitimate users and other interested social and institutional agents.

Section 6 of Article 31 of the LMo includes the elements that can be included in the PORF.

The territorial scope of PORF will be forest territories with homogeneous geographic, socioeconomic, ecological, cultural or landscape characteristics, of regional extension or equivalent.

The new forestry policy established by the 2003 LMo starts from the consideration that the correct use of the forest's natural resources (obtaining wood and resins, pine nuts and dried fruits, cork, aromatic and medicinal plants, etc.) is not incompatible with their conservation, but complement it. Hence the importance of the Autonomous Communities, in the exercise of their competencies, to practice forest organization and management based on Plans to ensure sustainability, both in Public Utility and privately owned forests.

Currently, the Spanish wood market is in deficit, because the uses made annually do not meet existing needs. Our timber forests are used below their resources, applying conservative standards to maintain forest capital at certain levels of security. For this reason, as highlighted by the Spanish Forestry Strategy, it is necessary to promote sustainable growth in the timber sector, focusing on increasing quality production.

CONCLUSIONS

In the evolution line of Spanish legislation on forest protection, whose first important link in Spanish law was the Forest Law of 1863, there is a concern with the economic function of the forest, with its rational exploitation, and only since very recently has its environmental importance been appreciated. In this sense, it must be remembered that, not only in Spain, but throughout the world, until very recently the forest was considered a practically unlimited asset. As Clawson (1975, p. 78) pointed out, the general opinion was that the forest had no end and, moreover, it was necessary to prepare the land for agriculture.

The Forest Law of 8 June 1957 could be defined as a forest property

law and not as a forest environment. The standard was approved at a historic time when environmental awareness was not deeply rooted in society. The philosophy underlying the law is of a productivist nature (GROOME, 1989).

With the approval of the Spanish Constitution of 1978, the forest as a whole is now considered an object of environmental protection (ESTEVE PARDO, 1995) and an important change of approach will take place from which all forest regulations are contemplated.

In addition, the decentralization of power must be taken into account, assuming the legislative and executive development powers of the autonomous Communities.

The Spanish Constitution contains an important recognition of the right to the environment and a decisive mandate for public authorities, forcing them to guarantee the rational use of all natural resources.

The Spanish Forestry Act of 2003 offers environmental regulation of forests and uses a broad concept of forest as land that primarily serves environmental and protection functions. The law incorporates the various functions of the forest territory.

With regard to European Union law, most of the regulatory provisions approved to date in forests are linked to the Agrarian Policy and mainly regulated development actions through the provision of subsidies and aid. Within the European Union, the forestry sector has been viewed with great concern since the 1980s, due to its degradation, but at the same time as a future sector, since the increase in forest areas was considered as a solution for certain lands, adopted in the past for agricultural use and with little prospect of the surplus situation of many agricultural products. This has been the main objective of European forestry regulations, which have always been secondary to the dominant common agricultural policy.

In fact, although especially since the European Single Act of 1986 many provisions on silviculture have been approved in the European Union, there is no autonomous forestry policy, with its own objectives and legal bases, that provides a global response to the sector's problems and needs, that is, taking into account the environmental, economic and social importance of the community's forest heritage.

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