

FIGHTING AGAINST CLIMATE CHANGE AN OVERVIEW FROM THE EUROPEAN UNION AND SPANISH LAW

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INTRODUCTION

Introduction – Climate change is considered these days as the greatest challenge to achieve the environmental sustainability that humanity has faced. A consequence of this is that some countries have already declared a climate emergency, which implies the adoption of dramatic measures that seek to redirect the situation.

The aim of research – The research aims to analyze the extension of the regulatory measures that have been adopted in Spain, which must be understood within the scope of the actions adopted in the European Union as the Green Deal and other concordant documents and regulations.

Objectives – Fundamentally, the aim pursued with this analysis is to determine the effectiveness of the measures adopted in the fight against climate change.

The methods of the research – The methods of the research are the scientific methodology of legal disciplines, mainly regulatory analysis and other legal instruments, as well as case law.

Theoretical background

Concern about climate change began decades ago, but it has been very recently that a more generalized and consistent awareness of the dimensions regarding the danger it poses to the planet has been achieved. Initially, the trend towards global warming due to greenhouse gases emissions was pointed out early in the mid-nineteenth century by Eunice Newton Foote and John Tyndall. This phenomenon was confirmed by the Nobel Prize winner Svante Arrhenius in 1896, and although at that time there was scientific interest in it, the World Wars of the 20th century diverted the global attention to armed conflicts. Subsequently, it was in the 1970s when the rise in temperatures began to be detected more clearly throughout the world, and it was appreciated that an increasing in the concentration of carbon dioxide in the atmosphere would generate an anomalous warming that would reverse the historical cooling corresponding to the stage interglacial (Ruiz De Elvira, 2016: 35). Currently the situation is already worrying enough to the point to declare the climate emergency as it has occurred in some countries and in the European Union through the European Parliament resolution of 28 November 2019 on the climate and environment emergency -2019/2930(RSP)-. The lack of consistent action may lead us to a situation in which extreme weather events increase, entailing serious economic and social risks, and which will accelerate the loss of the environmental conditions that are necessary for the continuity of life on Earth. It would cause an imbalance in social and cultural conditions, produced due to the severe droughts in certain places, migrations that are absolutely disruptive to social patterns, as well as the destruction of the livelihoods of billions of people who live on the coasts, as a consequence of the rise of tens of meters of the sea level after the sliding of the polar glaciers (Ruiz De Elvira, 2016: 38). Figure 1 below shows the evident decrease in the size of the Arctic ice in each month between 1979 and 2021.

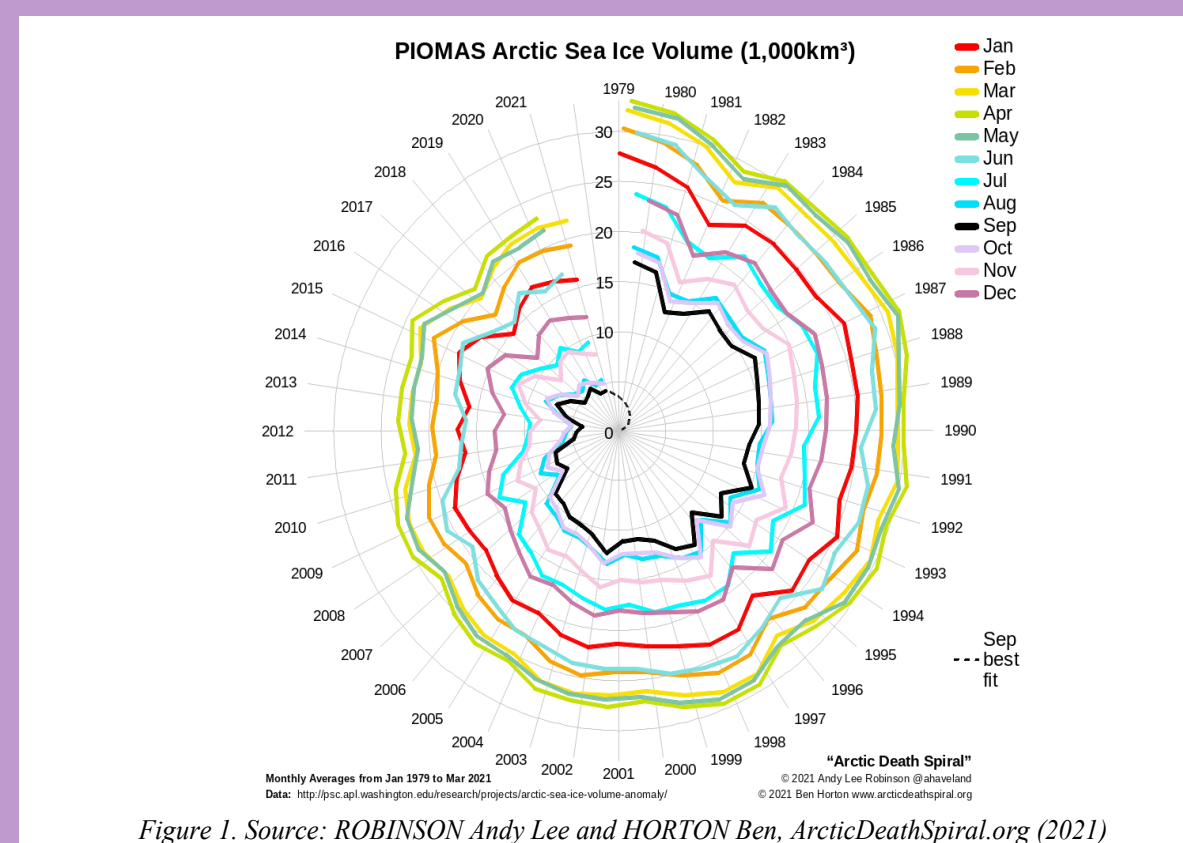


Figure 1. Source: ROBINSON Andy Lee and HORTON Ben, ArcticDeathSpiral.org (2021)

Since the end of the 1980s the interest of the international community in sustainability has been progressively increasing, but one of the biggest problems in achieving effective results has been the difficulties to implement legal measures accompanied by enforcement, mainly due to the existing conflicts of interest of economic nature that have given rise to actions of soft law (Nava Escudero, 2018: 709-710). At the international level, starting in the last decades of the 20th century, there have been constant negotiations to try to reach an agreement or compromise that would allow reducing greenhouse gases emissions levels all over the world. This is the key, due to the fact that carbon dioxide accumulation in the atmosphere is considered the main cause of global warming and the trend in recent decades in relation to its accumulation is upward, as can be seen in the following graph (figure 2).

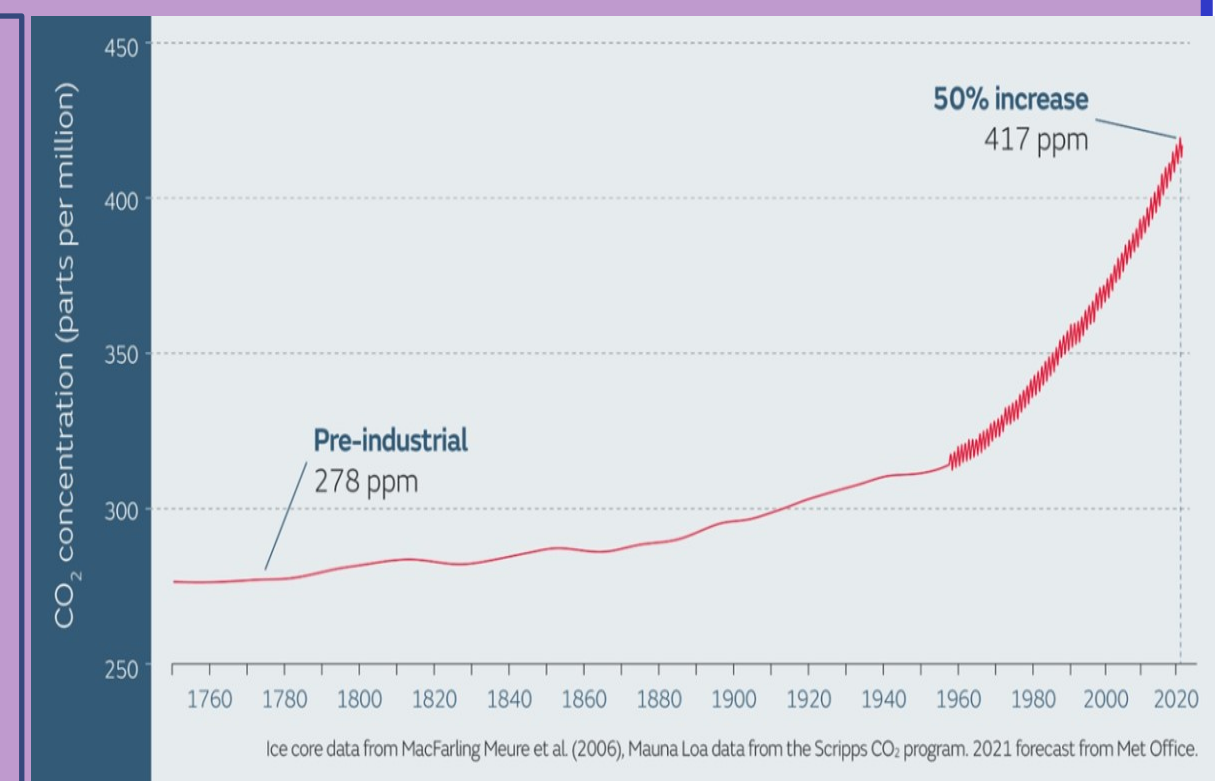


Figure 2. Source: BETTS Richard and KEELING Ralph (2021), Met Office.

Main findings

- The European Union is promoting regulatory action on climate change based on the shared powers conferred on article 4.2.e) of the Treaty on the Functioning of the European Union in relation with environmental matters. In this sense, it has been underlined in the Opinion of the European Committee of the Regions *The impact of climate change on the regions: evaluation of the European Green Deal* (2021/C 37/07), of February 2, 2021, that the Green Deal is a key instrument for the EU to achieve the goals of the Paris Agreement, to fully implement the United Nations 2030 Agenda and the Sustainable Development Goals (hereinafter, SDGs), and to make an ambitious contribution from the European Union to the Global Framework for Biological Diversity after 2020. In fact, the same document expressly states that the “Green Deal is an integral part of this Commission strategy to apply the 2030 Agenda and the United Nations Sustainable Development Goals” (European Committee on the Regions, 2021). All this demonstrates the firm commitment assumed by the European Union on the fight against climate change and highlights the importance of adopting renewed but achievable objectives for 2030, in order to keep the increasing of global temperature below 2°C with respect to pre-industrial levels. In fact, the European Union projects to further limit temperature rise to 1.5°C, as required by the Paris Agreement. This is foreseen as the medium term objective on the Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021, establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’).

- In Spain the climatic and environmental emergency was declared on January 21, 2020, with the aim of achieving climate neutrality in the year 2050, this initiative being consistent with the commitment assumed and ratified by Spain as a party of the 2015 Paris Agreement on climate change (Linares, 2018: 21). The immediate consequence of this declaration has been the 7/2021 Act of May 20, on climate change and energetic transition (hereinafter, CCETA) that considers the so-called Just Transition Strategy as a "state-level instrument directed (...) towards an economy low in greenhouse gas emissions", and in which the implementation of industrial, research and development, and innovation policies, favoring such a transition, are included as a necessary content of the process. The regional Spanish objectives determined on article 3 of the CCETA in relation to the reduction of CO₂ emissions for the year 2030 are at least 20% with respect to the year 1990. Furthermore, the implementation of energies of renewable origin in relation to the final energy consumption is pretended to be at least 35% of the whole. In addition, other target is achieving in 2030 an electrical system with at least 70% of generation from renewable energy sources. The CCETA also aims to improve energy efficiency by reducing primary energy consumption by at least 35% with respect to the baseline in accordance with European Union regulations. The year 2050 is also set as the horizon for Spain to achieve climate neutrality, in order to comply with internationally assumed commitments. In that year, an electrical system based exclusively on renewable sources must have been established in Spain. In Spain, the CCETA includes the basic lines of the National Adaptation to Climate Change Plan and the Just Transition Strategy respectively on articles 15 and 25. The National Adaptation to Climate Change Plan (hereinafter, NACCP) constitutes the basic planning instrument to promote coordinated and coherent action against the effects of climate change in Spain. The NACCP defines the objectives, criteria, areas of application and actions to promote resilience and adaptation to climate change to face the impacts that occur in Spain as a result of this phenomenon. The effectiveness of the specific actions included in the NACCP and the Just Transition Strategy depends on having access to means of control over them.

- Fundamentally, within this framework, the administrative control must be able to be carried out by the same Administration itself and also in a Court. Thus, in relation to the possibility that citizens can enforce the law, it is an issue linked to the recognition of their standing to sue, at least, regarding in what is provided in the law, in plans and in public programs. In the European Union scope, the Commission are considering a revision of this standing to sue for environmental reasons with the purpose of remove the biggest obstacles, but currently only the removal of the cost of the procedure has been considered (European Commission, 2020). So, an improvement of this standing to sue for environmental reasons requires some other modifications to eliminate undue restrictions on procedural capacity (European Commission, 2020), in favor of effective protection of environmental rights such as water, nature and air quality, that affect the fight against climate change, as deduced from the jurisprudence of the Court of Justice of the European Union (Case C-240/09, in the Lesoochranárske zoskupenie case).

CONCLUSIONS

From the analysis of the formal and informal normative instruments exposed in this work, we can state that the specific actions that are adopted by the competent Public Administrations are more extensive and concrete when they are carried out by informal means, such as planning or administrative programs. It also true that, with the current regulation, albeit with limitations, it is in this informal sphere where it will be possible to demand compliance with the goals set in the action against climate change through administrative resources or through judicial control. However, much more could still be done in this regard, expanding the standing to sue to demand the adoption and compliance of the informal instruments, since the possibilities of control them are weak at present. One of the keys for amplifying the possibilities to enforce much more drastic measures in the fight against climate change is to grant citizenry with a huger standing to sue for environmental reasons.