I. FOREWORD

The Spanish Act 25/1964, as modified by Act 25/1968, regulates nuclear energy in Spain. This Act and its successive amendments rules the subject including certain new amendments on civil liability. In fact, also very recently, concerning environmental civil liability. Nowadays, the Act 12/2011 on civil liability derived from nuclear accidents has been enacted (Spanish Oficial Gazette, 28-5-2011). This new regime is trying to give an answer to some of the legal problems underlined during this article, also within the scope of reflection opened after the events of Fukushima plant in Japan or in Southern France.

In the case of the 1964 Act in force, we have to underline that we are dealing with a preconstitutional legislation which requires of certain amendments, in particular considering article 45 of the Spanish Constitution on the protection of the right to an adequate environment, public and civil liability.

The legal approach is important but also the political one if we take into consideration that we have very different views on the matter along the European Union. Therefore, the UK Government stands in its “Energy Review Report 2006” as follows: “nuclear has a role to play in the future UK generating mix alongside other low carbon generating options”.

In similar terms, the position of the European Commission advocates for a transparent debate on the future of nuclear energy along the EU, according to its Green Book 2006 on Energy Policy. Meanwhile, Sweden and Italy voted in referendum their position against new nuclear plants. Finland has a different strategy with a new plant working since 2009. Concerning Spain, the National Energy Plan established a moratorium in 1983, while the government is still debating on the closure of a nuclear plant like Garoña for instance.
Authors like CAMERON, underline that questions concerning the economic viability of nuclear energy must be analysed within the context of liberalisation of the energy market (1).

Furthermore, alongside the problem without technological solution of the management of nuclear wastes, accidents like Chernobyl in 1986, had terrible international impacts in countries like Scandinaavia, Germany, France, Belgium, The Netherlands, UK and Ireland, even 20 years after the event (2).

Moreover of the different international treaties on the issue, the matter has also a European Union level analysis through the EURATOM Treaty and the different obligations of information of the EU members towards the European Commission with interesting jurisprudence and comments on those obligations (3).

In any case, the main issues concerning civil liability are the objective or strict liability regime and its limits and the terms to exercise actions, because these may be produced or being perceived many years after the closure of a plant, including in this case environmental damages. At the same time there are two main principles of environmental law to be taken into account. One has been underlined by LOPERENA (4), at the general level, and by CAMERON (5): we are talking about the rights of future generations and the precautionary principle.

II. ENVIRONMENTAL LIABILITY AND CIVIL LAW

The effective jurisdictional control of the right to an adequate environment derived from articles 24 (6) and 45 of the Spanish Constitution, is a key issue in order to comply with those rights towards a general and new concept like the environment or the right to an adequate environment according to the Spanish Constitution.

Nevertheless, the jurisdictional control of this right so as for the case of the rules involved in the protection of the environment were historically assumed by Roman Law (7), applying the techniques of easements. There are resolutions in favour of those peoples affected by spills coming from different farms and craftsmen. Closer to our days, also the Spanish and French Civil Codes contains within its rules on civil general liability, a basic environmental law system to respond for damages (8).

Among the main issues, the nuclear risk is a key aspect which is regulated by special rules establishing its objective (strict) and limited liability, but
regardless of the eventual criminal offences which may arise even a bigger amount of liability with no legal economic boundaries.

As stood for public domain goods, we all the citizens are entitled to claim for our legitim environmental rights and, in particular, towards the public administration, according to article 45 of the Spanish Constitution. This article in its third paragraph does not include any economic limits for environmental civil liability in general.

In this context, the proceedings are widely open for claiming in the case of eventual damages and impacts. This is in particular very clear when we are dealing with environmental impacts on public domain goods, whose property is common. Therefore, we have a wide right to claim for their protection and eventual liability. These theories, sometimes have not been assumed by legislation and case-law, even though the advances are clear towards the recognition of collective rights of groups entitled to claim for environmental rights (9).

1. THE CIVIL JURISDICTION

In this general context, we have in force a new Act 26/2007, on environmental liability to repair environmental damages in general. Therefore the claiming proceedings are open according to the Spanish Supreme Court Judgment of 3-12-1987 within the context of public neighbours (10) or even within the context of civil liability (11).

According to LOPERENA (12), following the path of article 45 of the Spanish Constitution an exercise of rights against common sense or in abuse of rules may also open the doors to claims through article 7.2 of the Civil Code. In fact, according to the aforementioned article 45 there should not be any limits for the amount of liability, as standed by Act 26/2007. Meanwhile, in a very different sense, the 1964 Act on nuclear energy and also the international treaties in force established limits to that objective or strict liability. It is enough therefore the mere relation between the source and the damage, so there is no need to prove any form of negligence within this context of strict liability (13).

Therefore, general legislation under the interpretation of article 45 of the Constitution on environmental issues is suitable to open proceedings and legitimation of any citizen towards claims on environmental liability, also within the context of the Act on Civil Jurisdiction.
This civil jurisdiction has not been used very often in Spain for environmental protection. The reason, therefore, is the usual idea of making the public administrations responsible of environmental damages and impacts. This, indeed, is a difficult deal, because normally the Administrative jurisdiction has not enough scope to deal with restoring and repairing actions concerning the environment to its previous status. In this sense, it is important to underline here the role to be played by the civil jurisdiction through quick and efficient public actions open to every citizen and group.

2. THE ACT 26/2007, ON ENVIRONMENTAL LIABILITY

This important Act on environmental liability is the implementation of the EC Directive 2004/35 of the European Parliament and the Council, of 21-4-2004, on environmental liability.

This Act contains some important and new provisions as the strict nature and the unlimited regime of this liability. Nevertheless, the regulation is basically administrative and always ready for a jurisdictional appeal afterwards. Meanwhile, its article 3 excludes from this regime nuclear risks, nowadays contained within the new Act 12/2011 on nuclear liability.

The Act 26/2007 opens the field for claims of any citizen or group to request the restoration of the environmental damages caused. For the case of legal or corporate persons there is a complex game of requirements therefore to limit the different scopes and possibilities for their claims according to article 42.

3. THE 1964 ACT ON NUCLEAR ENERGY AND ITS AMENDMENTS

Article 45 of this preconstitutional Act establishes the strict but limited regime of this civil liability in contrast with the constitutional regime in force via article 45 of the Constitution on environmental liability. This Act, amended as well through the Act 12/2011, establishes a general regime and a particular one on environmental liability within the additional provision introduced by the Act 17/2007.

According to the new article 45 amended in 2011, there is an obligation of financial guarantees in order to respond for eventual liabilities. This liability is strict, limited and covered by the relevant insurance and
financial guarantees. According to the new regime approved there is a whole framework of insurance and financial obligations together with the complete disappearance of the previous article 64 which assumed the freedom of the State to contract and fulfill with certain insurance obligations.

The Act 17/2007 introduced this new chapter on the risk insurance and fortunately the new Act 12/2011 is giving a higher guarantee up to 1200 million euros nowadays in force.

Concerning environmental liability arising from nuclear activities, this plants and transport companies are responsible for the environmental damages produced in the national territory of Spain coming from plants or transport. Therefore these plants or transport companies must assume a covered insurance contract up to 700 million euros.

The damages and impacts established in that sense are as follows:

a. The cost of the measures to recover the environmental damages.

b. The impact in the predictable absence of economic profit due the impact or damages in the environment.

c. The cost of any preventive measures, loss or damage caused by those measures.

These claims against the companies or managers of plants and transport activities are to be presented before the civil jurisdiction in general, notwithstanding, in my view, the suitable actions under Administrative Law in Spain.

Terms of actions and claims are fixed within different conditions in article 15 of the Act 12/2011 going from 3 up to 10 years from the spill or accident or damage. It is important to remind here that the most clear concept to count in this sense would be, in my view, “from the moment when the damages had finished to be recognised”, because once the impact or damage is produced it can last for a long time without those damages and impacts to be seen in persons, goods and, specially, within the environment.

III. SOME CONCLUSIONS
- In Spain, we are facing a liability regime recently updated to most of the constitucional provisions, in particular arising from article 45 of the Spanish Constitution.

- Spanish legislation has been adapting its rules to the singular nature of the nuclear risk in general, but separating this regime from the one enacted in order to define the environmental liability.

- Within a complex context of different sources and regimes, including internacional treaties, the environmental liability arising from nuclear activities is mainly strict, limited and subject to compulsory insurance in Spain. This regulation seems to be in contrast with the unlimited nature of the environmental civil liability in general. Therefore, it should be recommended to adequate those rules to article 45 of the Spanish Constitution and to the regime established also through Act 26/2007, on Environmental liability.

- The main issues pending in all this general consideration should focus on the necessity of a strict and unlimited regime of liability. There is also a need for fixing the terms to count claims and impacts or damages, mainly because these last ones can be produced or noticed many years after the closure of a plant or the date of an accident, including environmental damages. Two principles are also remarkable in this sense: the rights of future generations and the precautionary principle.

IV. NOTES


(2) Ibid., page. 72.


(6) “Todas las personas tienen derecho a obtener la tutela efectiva de los jueces y tribunales en el ejercicio de sus derechos e intereses legítimos, sin que, en ningún caso, pueda producirse indefensión”.
“Every person is entitled to claim for effective jurisdiccional remedy on behalf of their rights and legitim interests, avoiding any sort of non defence procedural situation”.

(7) Digesto 85, 85.

(8) See article 1908 of the Spanish Civil Code.


(13) Mainly the following conventions ratified by Spain:
- París Convention, 29-7-1960 and complementary Brussels Convention of 31-1-1963.
- Viena Convention, 21-5-1963.
- Brussels Convention of 17-12-1971.
V. BIBLIOGRAPHY


