

Judgment of the Supreme Court delivered on the matter of the legality of the extension of the concession over the maritime-terrestrial public domain owned by ENCE Energía y Celulosa, S.A. (ENCE) in Pontevedra

In the **Judgment of 6 March 2023 (Appeal on a point of law No. 7364/2021)**, **the Third Chamber of the Supreme Court (SC)** has established the doctrine on the possible use for industrial purposes - via a public domain concession - of the maritime-terrestrial public domain.

This cassational doctrine has been established on the occasion of the debate about the legality or otherwise of the extension of the concession granted to ENCE-Pontevedra in the maritime-terrestrial area located between Pontevedra and Marín.

Likewise, the Supreme Court has established cassational doctrine on the post acquiescence regime of the Lawyers of the Public Administrations in administrative-contentious litigation.

The office of **Escalona & De Fuentes Abogados** has defended the interests of ENCE in all litigation held on this matter since 2016, both before the National and the Supreme Courts.

The Judgment, favourable to the arguments put forward by ENCE establishes, in summary, the following:

- That the extension of the concession over the maritime-terrestrial public domain that was granted by the State to ENCE through Resolution of 01/20/2016 by the predecessor of the current Ministry for Ecological Transition and Demographic Challenge, is in accordance with constitutional doctrine and with coastal and environmental legislation.
- That industrial concessions granted previously, under the Coastal Law of 1988, can be extended under Law 2/2013 which amended it, and that they must fully respect environmental legislation.

Likewise, an extension of the concessions granted prior to the Coastal Law of 1988, is not subject to the requirement of article 32.1 of the aforesaid Law, which establishes the impossibility of occupying the maritime-terrestrial public domain with activities which, by their nature, may be located outside that domain.

- That the maximum term of duration of these extraordinary extensions of public domain concessions prior to the Coastal Law of 1988 is up to 75 years.

This maximum extension period will be counted from when the extension itself was requested by the concessionaire after the entry into force of Law 2/2023, and not from when the original concession was granted by the State.

- Finally, the Supreme Court has also established cassational doctrine on acquiescence (a procedural concept entailing acceptance of the thesis of the appellants and the disavowal of the thesis upheld by the Administration in the administrative action appealed), of the lawyers of the public sector in administrative contentious proceedings.

The Chamber has pointed out that, when a Public Administration that is the author of the act appealed against in a litigation process acquiesces, the acquiescence implies that the procedural representative of that Administration cannot intervene in any procedural step subsequent to acceptance of the acquiescence.

This implies that, once a Public Administration in administrative contentious proceedings has acquiesced, the lawyer representing and defending it must step aside and can no longer intervene in it.

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