

## **PROTECTING COLLECTIVE INTERESTS IN THE CONTENTIOUS-ADMINISTRATIVE JURISDICTION**

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One of the main current challenges of administrative justice is the protection of collective interests, as pointed out by Judge José Manuel Bandrés Sánchez-Cruzat of the Supreme Court.

There is widespread confusion in understanding what collective interests are, for a definition is necessary. In my opinion, they are the way national law integrates human rights that are characterized by: a) collective ownership, even involving society as a whole; b) collective legal goods as their subject (in particular, those born during the last 30 years of the 20th century) which cannot be taken individually and exclusively – environment is one of the most relevant cases, but also workers', consumers' or users' collective interests, and c) the protection claimed not being limited to a protection before the State (as in liberal rights) or to State provisions (as in most of the social rights), but demanding new forms of citizen participation.

It is important to make a difference between collective interests and individual interests whose collective exercise is necessary for their judicial protection. It is true that one action (i.e. the pollution of a river) can affect collective interests (the ecological quality of the river) as well as multiple individual interests (diseases or inconveniences to tens of thousands of people derived from the act of drinking polluted water). However, the legal goods affected are completely different, and so is their legal protection.

Collective interests are one of the major consequences of legal globalization inasmuch as they are subject to protection by international law –the Aarhus Convention on the protection of environmental collective rights is an example of that– and EU law –such as actions for an injunction aimed at the protection of collective interests of consumers and users–. Collective interests are also recognized by the Constitution and the statutes of autonomy. Two key ideas allow for the specification of the requirements laid down by international, EU and constitutional law. Firstly, ascribing collective interests to subjective rights (or legitimate interest) or to public interest (or general interest) entails modulating the traditional meaning of these two groups of legal categories, be it with the aim of going beyond the individual nature of subjective rights (or legitimate interests) or of embedding citizen participation and co-ownership in public interests. Consequently, collective interests can be recognized in both subjective legal situations (collective legal rights or interests) and objective legal situations (public interest with the participation of citizens through popular action or legal authorization). Secondly, giving the citizenship effective and real means to protect their collective interests is crucial, be it as collective rights or legitimate interests or as public interest.

Collective interests show the inadequacy between the international, European and constitutional requirements as regards access to justice and national legislation and jurisprudence, still too focused on the protection of individual rights. Overcoming this situation cannot be postponed and requires legislative reforms and a still more favorable jurisprudence in order to achieve a real and effective access to justice for the defense of collective interests. The several aspects of judicial protection need reformulating for a better adjustment to collective interest. Particular emphasis needs to be placed on the legal capacity of groups without legal personality, legitimacy, legal remedies (conviction, protective measures and specific performance) and economic constraints. A more accurate analysis of this situation and some proposals for overcoming it are included in my book Peñalver i Cabré, Alexandre, *La defensa de los intereses colectivos en el contencioso-administrativo: legitimación y limitaciones económicas*, Thomson Reuters Aranzadi, 2016.