

# ECONOMIC MECHANISMS IN THE SPANISH WATER LAW. INSTRUMENTS FOR SUSTAINABILITY?\*

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## I. FIRST APPROXIMATION

Human development, knowledge, progress, overcoming social barriers, health, education, infrastructure,..., are linked to water. In Spain, for more than a century, its management is marked by bad habits, that, although, until a few years ago, they were relatively sustainable, nowadays they are not. It would not be, therefore, only a matter of scarcity –as has usually been written– of real water, like of unsustainability of different bad habits. All this without forgetting that in Spain, the tax collection efficiency of the levies stipulated in the Law of Water 29/1985 is very low, as a direct consequence of the economic-financial regime and by the scarce effectiveness of the levying of taxes system. In the same way, the distribution of these collections in Spanish territory is diverse, complex and inequitable at the present time, since it is the Autonomous Communities themselves that mark the water prices taking into account the bioclimatic conditions and territorial waters of the basin itself or watersheds within which it is framed. This is a fact that takes great importance in the point and time in which in some areas of Spain water is wasted or not given the value that this well requires, by the very abundance of the water resource, while in other Communities the price exceeds the national average as a direct result of lack of water.

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With all that, we must take into account that, when dealing with the complex management of water resources in Spain, there is a great variety of legislation that regulates and manages water supply. For this we can make a distinction between the International Legal Framework, the National Legal Framework of Spain, through the Hydrographic Confederations and Basin Organizations, Although what concerns us in the present study is, only, the National Legal Framework of Spain, in which the Spanish Water Law of 1985, which has been progressively modified in recent years, with great interest in the various economic instruments linked, fundamentally, to the protection of the Environment. Thanks to this Water Law and its corresponding amendments, it has been possible to verify both the existence of various practical problems in water management at the national level, such as the absence of effective instruments to deal with the new demands in relation to that resource, both in quantity, since their consumption increases exponentially, as in quality, and, more specifically, in terms of environmental protection.

## **II. JUSTIFICATION**

In our study we marked as main purpose, to differentiate, define and analyze the different economic mechanisms that make up the Spanish Water Law, in addition to describing the direct or indirect repercussions they have on the protection, preservation, conservation and restoration of our country's water resources. Throughout our scientific dissertation one can observe a certainly complex evolution, Modification of the Economic Instruments contained in the first Law of Water 29/1985, of 2 August and the progressive affection to this Law that never repeats materially but whose fundamental lines are losing consistency given the continuous modification that is going to be described, superposing the texts of the different laws that modify or repeal the Water Law of 1985.

In the initial Law of Water 29/1985 there is a predominance of fiscal and parafiscal instruments, but the tendency is increasingly for them to be applied in conjunction with other market mechanisms (mainly, from the Consolidated Text of the Water Law 1/2001), and, self-regulation systems, such as the Voluntary Agreements, mainly in Law 62/2003, Law 11/2005, Law 11/2012, and Law 15/2012.

In Spain, in the specific case of the Law of Waters of 29/1985, the scarce application of economic and fiscal instruments is due, among other things, to certain structural rigidities of the Spanish tax system that do not allow for the rapid incorporation of certain advanced tax figures with an environmental purpose and extra-fiscal character. In general, the use of economic and fiscal instruments, has been oriented mainly to the water sector using specific figures usually called «canons». Likewise, we can say that according to the autonomous competences in the matter of the environment, incorporating successive figures established at the state level; like of the Law of Waters of 29/1985 in which there are several canons at state level, such as the Canons of Spills or the Canon for works of regulation of surface or groundwater and the Canon of utilization of the public hydraulic domain.

### III. REPERCUSSIONS IN THE LAW OF WATERS OF ECONOMIC INSTRUMENTS IN THE ENVIRONMENT

To understand the repercussion that has had and has the Spanish Water Law, we have treated the different instruments with which the Law has counted to regulate the different uses of the water; for that reason, we disaggregate all the economic instruments of said Law, attending to the basic tributary concepts and, subsequently, comparing the evolution of these in the Water Act 29/1985, the Water Law 46/1999 and the Revised Text of the Water Law, Royal Decree 1/2001. In general terms, the Water Law entrusts the economic regime regarding the availability of water to the rates called regulation fees and water use rates. Thus, we are faced with a canon, which regulates the occupation or use of the public hydraulic domain. Since the text aims at protecting and improving this domain, we clearly have an economic instrument, which we could call «extra-fiscal». The Law establishes the importance of the occupation or authorized use of the public hydraulic domain, of natural stream channels and the beds of lakes, lagoons and surface reservoirs in public channels. In fact, as stated in Article 104 of the Water Law itself; *the tax base of this levy will be the value of the good used, taking into account the performance it reports*. Taxable persons shall be all those who hold the concessions or authorizations of occupation or use, while the annual tax rate shall be 4% of the value of the taxable amount, with a tax rate that in our case, the result of applying to the tax base the type of tax previously discussed. We must take into account that this tax quota will be determined by each Basin Organization, taking into account various intrinsic conditions of the territory in which the «canon» is applied. On the other hand, the criterion of temporary attribution of said canon, will be determined by the exact moment in which the concession of the use of the public hydraulic domain is proceeded, In accordance with the specific conditions set out in those authorizations.

The Law of Water 46/1999, on the other hand, practically, does not alter the existing legislation of the Law of Water 29/1985, Although if it makes certain modifications, with the desire to perfect it and to renew it for, in that way, as it collects the own legislation, «to respond to their inadequacies, to the new challenges that water management demands at the gates of the 21st century, in accordance with our full integration in the European Union and the need to grant maximum protection to this natural resource as a first-class environmental good». Introduce a Canon that regulates the occupation or use of the hydraulic public domain. Since the text aims to protect and improve this domain, clearly we are faced with an economic instrument that we could call extra-fiscal. It is not modified, the taxable event continues to be the occupation or authorized use of the hydraulic public domain, only, of natural stream channels and the beds of lakes, lagoons and surface reservoirs in public channels; highlighting two taxes, which are the «canon of regulation» and, on the other hand, what we can call «special contributions», which is «water use charges». The use or enjoyment, directly or indirectly, of works of regulation of surface or groundwater carried out totally or partially, by the State and the use and enjoyment of other specific hydraulic works carried out entirely by the State. The estimated amount of the costs of operation, conservation and administration by the organizer of the works carried out. The taxpayer assumes that all those who benefit directly or indirectly from works of regulation of surface or groundwater carried out in whole or in part, at the expense of the State and, the use and enjoyment of other specific hydraulic works carried out entirely by the State, with a

rate of 4% of the value of the investments made by the State, duly updated, taking into account the technical amortization of the works and installations and the depreciation of the currency, in the form that is determined by regulation, and, A tax rate that will be the result of applying the tax rate to the tax base, *ie* applying the tax rate to the amount of the operating expenses, conservation and administration by the organizer, of the works carried out, all taking into account the regulations of the Basin Hydrographic Plans. At the same time, we must take into account that the legislator sets the maximum and minimum limits of this factor, but the rules for its calculation are referred to the regulation. The criterion of temporary imputation of said canon, will be determined by the exact moment in which the use or enjoyment of said hydraulic works takes place.

It is of important importance to update and change the changes in economic instruments in the Spanish Water Law, through the approval of the Consolidated Text of the Law of Waters, Royal Decree 1/2001 has been practically null and the impact of these on the environment is relatively limited. This assertion is based on the idea that, although it is true that said Consolidated Text of the Water Law includes the charging and payment for damages that may be caused to the environment, affecting directly or indirectly the own water resource or the rest of the biotic, abiotic and anthropogenic factors that make up a landscape or an ecosystem contemplates the prevention and conservation of the environment; as much, the possibility of restoring, regenerating or recovering what has already been damaged is emphasized, although the «how» is not clear. Likewise, it should be noted that the types of charges collected in this legislation differ quantitatively from the actual costs and the lack of equity that emanates from the very principle of territoriality to which reference is made continuously, at the time of delegating administrative competences in collections vs. Sanctioning, with a tax rate to be applied excessively low, with which it is cheaper to cause the damage, to contaminate or to degrade the public hydraulic domain itself, than to prevent and to preserve the deterioration of the same.

With regard to the proposals for action, we can say that an interesting trend in this sector of water is the reorientation of these classic tax figures, eminently tax collection, and partially representative of the application of the «polluter pays», To other more preventive figures applied on the use of the environment, taking into account the principle of «who uses the resources, pays». In this line, precisely, may be interesting the possibility of changing the traditional canons of discharge by a broad canon on the use of the public hydraulic domain, so that, instead of insisting on recording the pollutant capacity of the waste water, it would try to tax the water consumed which eventually becomes a contaminated waste. With this orientation, it aims at optimizing water as a scarce resource, introducing the price factor to rationalize the management throughout its cycle of use; so that, it could pose a new canon of protection of the public domain, which would greatly expand the existing one, and replaced the current canon of discharges that, due to certain circumstances, has proved insufficient, both because of its low collection capacity and because of its weak operation.

A new water resource legislation in which the economic-financial water regime is framed in the Water Framework Directive itself and, therefore, is referenced by the Watersheds themselves, but with certain modifications, since the intrinsic characteristics of the Watersheds can be used to study the general conditions of Spanish territory and, extrapolating throughout Spain, quantification can be established (a taxable amount) which is optimal in terms of collection and in environmental terms (protection, prevention and conservation).

For that, it becomes imperative to generate not only a new policy, if not to establish its bases through a set of plans, programs and projects that allow, not only to collect but also to evaluate and manage the consumption (supply, purification, extraction ...) of water, to be able to achieve optimal, equitable, efficient and, above all, sustainable planning (Economic, ecological and social), and in which the strategic environmental assessment (nowadays quite neglected) plays a fundamental role.

#### **IV. IN CONCLUSION**

After the above, to point out that the Spanish experience in terms of water resource legislation is especially interesting in this regard, because its three levels of government, central, regional and local, have competence in matters of environmental taxation on water. The measures put in place by the different administrations have traditionally been oriented, to supply policies based on the construction of large hydraulic engineering works, with the main purpose of storing and distributing water among the population. Regarding this, Since the establishment of the Water Act 29/1985 (and the application of various economic instruments such as canons), great importance was attached to the application of new water policies, based on demand, with the purpose of controlling consumption and misuse of water resources (example of this, we find it in the canons of concession of use, of discharges and in the regulation and tariff of the use and enjoyment of the water resource). All this, without forgetting that in Spain, the tax collection efficiency of the levies stipulated in the Law of Water 29/1985 is very low, as a direct consequence of the economic-financial regime and the low effectiveness of the collection system in line with the «White Paper» on Water (1998); «all this prevents the recovery of the financial resources needed for adequate monitoring, control, administration, maintenance of hydraulic infrastructures and protection of the public water domain. Secondly, it shows the scarce internalization of the costs generated in the process by the users».

Thus, The reform of the Water Law is justified by the need to undertake, through new, more effective instruments, the problem of water management in Spain and tackle, from a perspective not only quantitative, if not also qualitative, to the new demands that water management today demands. In the same way, we should incorporate a new perspective on water economics into water management, at the same time as promoting a policy of saving in consumption and responding to the environmental requirements of protection of water resources. If the Water Law of 1985 was a milestone in our «Water Law», among other aspects, due to the incorporation of new approaches that addressed the consideration of the ecological value of water resources, the «Modifications» of the Law of Waters of 46/1999 delves into this ecological dimension of inland waters, giving greater importance to their environmental values. Although we would have to distinguish between the different measures of environmental protection, to realize that it is not a complete Law in economic terms and not all the necessary modifications have been made in the text that we are undertaking (Law of Water 46/1999) to be it.

Finally, as we have pointed out, it would be essential to elaborate a new Water Law, to lay its foundations on the protection, conservation and repair of water resources in the public domain, where they are thought globally and act locally. Reasoned and structured in the real water problem of our country; in which rational use and protection of water is the fundamental axis of action And that, in the same way, take into account in its development

what is already stipulated in the Law of Water 29/1985 and the modification of its economic instruments, not so much in pro of collection as of conservation. The economic mechanisms and instruments of the current Water Law cover how can territorial-territorial problems, generated by an excessive atomization of competence assumed by various Ministries, Several Councils of the Autonomous Communities, Provincial Councils, Town Halls, Irrigation Associations,...., which leads to the lack of coordination and inefficiency, preventing real sustainable development (both territorially and economically and socially).