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L'AFFECTATION ET LA PROTECTION DU TERRITOIRE RURAL – USE AND PROTECTION OF LAND IN THE COUNTRYSIDE – NUTZUNG UND SCHUTZ DES BODENS IM LÄNDLICHEN RAUM

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The use and preservation of rural land in Spain

I

The first rulings over the use of land (and it's eventual physical conversion -"transformación"-: development -"urbanización"- and construction), were set up in 1956 in Spain, that is to say, more than 50 years ago. The socioeconomic context was, of course, very important: large scale migration in the Spanish interior from the countryside (especially both Castillas and Andalucía) to the main urban centres, that were growing rapidly in size (in particular Madrid, Barcelona and Bilbao). Thus, it was necessary to lay down a legal ruling on the expansion "urban growth" -"ensanche"- of the cities.

In the stated year of 1956, the (first) Ground Law -"Ley del Suelo"- was announced in force, which principle judgements were:

1) The initial content of the right of the real property includes its agricultural use, not the ability to convert it –development and construction, as mentioned-, that is something qualitatively different in use.

2) The stated possibility of conversion is, legally, so to speak, a sort of gift or "donation" that from an external legal instrument: Planning, and in particular , the so called "General Planning" of each one of the approximately 8,000 existing municipalities in Spain, to draw up and to validate for 8 years.

The technique that the authors of each one of these plans employs is the so called "classification" of the land. The land of every municipality must be distributed between the three following classes:

A) Urban (an already existing city).

B) For development ("developable"), or reserved for urbanization (where, according to predicted demand for housing, the urban expansion will occur.)

C) The third and last of the classes has a residual nature: land which is non developable or rustic (or rural). It is land excluded from conversion or, if you will, "protected" from it and that must continue in agricultural use. In essence, which could and can obey to two motives:

- Due to purely demographic or chronological reasons: the city wouldn't grow into this area, at least in the near future. However nothing prevents things being different in the future.

- Due to structural reasons, on dealing with terrain that because of its natural characteristics, is destined to be preserved indefinitely. The extreme example are the "natural protected spaces" (normally, National Parks), according to other regulations: special legislation in the matter.

So to understand the solid system of the use and level of preservation in everywhere, it was necessary to go to two blocks of laws: town planning (Ground Law and General Planning, that didn't solely regulate the city, present and future, but was regulating the countryside too, although in a purely negative and prohibitory form) and the one that regulates the protected spaces. The former was conditioned by the latter.

Of course that in a rural setting there were always houses and people occupying them, the hamlets ("caseríos") of the Basque country or the cottages ("cortijos") of Andalucía. However the key point is their isolation. The farmers did not constitute Aristotle's "zoon politikon."

II

In 1978, already a third of a century ago, the Constitution approved that, in essence, it would continue with the same conceptual schemes, even though, as per usual, things have got increasing complicated. As the master MAX WEBER

explained in 1917, complexity must be considered (in theory) as one of the methods of progress. Increasingly, there is greater variety and heterogeneity in legal instruments to consider. For the following reasons:

1) To start with, in terms of territorial distribution of power, the former centralized state has morphed into a structure with a certain degree of decentralization, in favour of the 17 "autonomous communities" (nationalities and regions), who were granted legislative power.

At the heart of the matter that now concerns us (the use and preservation of land, including, of course, rural land), the legislative powers are divided. The bulk have been passed on to the Parliaments of the aforementioned autonomous communities (CCAA). The state has only reserved the right to pass base rules (today, the 2008 Ground Law).

The 17 laws of the CCAA naturally have similarities, but their content isn't exactly the same. As a result of which, in terms of the material we are focusing on (use and preservation of land, in general, and rural, in particular) distinguishing elements have been introduced due to the region of Spain they are in.

By saying "differentiation", "loosening" is meant as well, or to explain it more clearly, "flexibility": in the past absolute preventions there are ever more nuances.

2) A second factor of the pluralism and complexity has to do not only with the existence of 17 legislatures, but also with their content: of the instruments of approach, and apart from the proper town planning (and above all of them in the hierarchy), conforming with the model of other European countries, the "macro" structure of territorial regulation has been introduced.

3)The same regulations of protected natural spaces has been getting more sophisticated too, with the creation of a new geographic structure and its own instruments of approach.

In summary: what complexity means, among other things, is flexibility. However, in theory, rural land must deal with more regulation, and not merely negative (prohibitory) regulation from 50 or 60 years ago. In this sense, rural Spanish land would have had to have:

A) A better and more intense regulation of use.

B) Greater protection.

III

But the economic reality is more powerful than any legal order. In the 10 years of economic boom between 1997 and 2007 and the resulting wave of immigration, caused construction was to increase: with the effect of a decline of rural land.

IV

The legal situation is today, in summary, the following:

1) State, Bases

The Ground Law of 2008, Art. "Rural Land", Art. 12.2:

With the old distinctions. To start with, land that is "preserved by the local legislation and town planning from its conversion to urban use." From these grounds it is stated that "it will have to include, at the least" those which fall into one of the following four categories:

-"Lands excluded from said conversion by preservation legislation or police of public control, nature or cultural assets."

-The (land) that must stay subject to such protection conforms to local laws and town planning by attributes concurrent in them, including ecological, agricultural, pastoral, forestall or landscaping.

- The (land) with technological or natural risk, including the risk of flooding or other serious events.

- Any other (land) anticipate local or town planning control laws.

In agreement with the concepts of Parmenides and Aristotle, what we would call "ontological", all this –"rural" land in a "structural" sense- means, it is emphasised, only a minimum. To that, one could add land without the power to convert it, because, even without having these features, pure and simple, planning permission doesn't allow it.

2) CCAA

Of course it makes little sense to go through each and every one of the 17 laws. I am only going to focus on one of them, that of the Madrid region – with more than 100 municipalities-, characterized by it's special "liberalism." In fact, I anticipated the General Planning of each municipality, which of course remains vital in order to convert the use of land, they not only may, but should declare any land developable, except that due to its "attributes" –an undetermined legal concept where it has them: we are now in the realm of discretion- to protect. What happens is the formal cause of said protection can be brought before the proper General Planning or represent only an decision of the General Planning itself –heteronymous or autonomous-. So, Art. 16, *Land protected from development* (there is no other):

> "1.Land, in which one of the following situations occurs, will be considered non developable:
>
> a) Land must be included in this category, that is under a special form of protection incompatible with its conversion that conforms with the regional and local planning or specific legislation, due to its landscape, historical, archaeological, scientific, environmental or cultural attributes, due to natural risks acknowledged in the specific planning, or in effect of its subjection to limitations or obligation for the protection of public control.
>
> b) The regional and local planning and the town planning consider it necessary to preserve it due to the attributes alluded to in the preceding point, or due to its agricultural, forestal, pastoral attributes or because of its natural wealth."

The "attributes" are in both cases [–hypothetical a) and b)-] the same, and its interpretation equally full of discretion. The difference is purely formal: in the first case, the decision is imposed to the Planning instrument; and in the second, the Planning instrument adopts the decision with plenty autonomy.

It only remains to be said that it was included in Art.14 a single clause to "disincentive" economically the very Spanish (and Mediterranean) scourge of forest fires. The part to know:

> "3. If, as a consequence of fire or natural disaster, the ground, the vegetation, the fauna or its habitat are damaged , the land could lose the attributes that gave rise to its protection, the land will stay subject from the moment of the damage to environmental restitution. In any case, the said ground would not be able to be included in any other class, in the following 30 years of the damage being inflicted, except its previous authorization by law, approved by the Madrid Assembly, in which the impossibility of aforementioned environmental restitution remains justified.

Up to this point, the most important legislation – central and regional- concerning the use and preservation of rural land in Spain.

It is necessary to point out, in any case, that within non developable ground, increasingly there are more possibilities to build: rural tourisms establishments for example.

Synthesis: heteronomy, casuistic case. Or be it, complexity (progress).

V

Personal annotations of a jurist who is increasingly sceptical about his own office,

Since 2007/2008 a major property crisis has been in full swing in Spain (having previously been "the brick country"): There is no more demand for housing. The consequence is that, even if the planning instruments allow everything, no one is building nothing, or practically nothing.

The fact that in the last 4 or 5 years the Spanish countryside is better protected than ever is attributable to economic factors (and not due to the law).