

## EXTENDED ABSTRACT

# BASES FOR THE INTERPRETATION OF TOURIST ACTIVITIES IN THE EUROPEAN UNION: RESOLUTIONS CONCERNING REGIONAL WATERS OF INTERNATIONAL CHARACTER

*Ignacio Sotelo Pérez*

Instituto Universitario de Ciencias Ambientales. Universidad Complutense de Madrid

[ignaciosoteloperez@ucm.es](mailto:ignaciosoteloperez@ucm.es)

<http://orcid.org/0000-0003-0619-7732>

*María Sotelo Pérez*

Universidad Rey Juan Carlos. Madrid.

[maria.sotelo.perez@urjc.es](mailto:maria.sotelo.perez@urjc.es)

<https://orcid.org/0000-0002-5541-7941>

### 1. INTROUCTION

In this article, in addition to showing the field of environmental policies in relation to tourism policies as an ethical space, we must take into account that the tasks of ethics are quite complex, especially in their application to the water resource. Value judgments affect, with axiological categories, all stages of the design of water policies and those related to tourism activities: specification of objectives, translation of these objectives, selection of means and instruments, etc.

Individual rights are negative freedoms connected with the autonomy of individuals that require the abstention of public powers in civil society; although this term ceased to be used with the transition from the Liberal State to the Social State of Law, over the last few years it has been widely used in its Anglo-Saxon version of “Individual Rights”, in the context of various legal theories of a neoliberal nature (Dworkin, Nozick, Posner,...). *Subjective Public Rights* are carried out according to Jellinek’s classic thesis, through four stages, perfectly distinguishable; namely: *the status subjectionis* in which no rights arise for individuals who are passive recipients of state norms; *the status libertatis* in which a sphere of negative freedom of individuals is recognized as a corollary of the State’s abstention from intervening in certain areas; *the status civitatis* in which authentic subjective public rights already appear, such as powers of action of citizens in the form of civil rights; and *the status activae civitatis* in which the citizen can exercise his political rights by participating in the formation of the will of the State. This issue is of considerable importance in the reality of tourism in general and in the countries of the European Union in particular.

## 2. OBJETIVES

Throughout this work we wish to highlight how water and its Policies, in our country, in the absence of a basis or specific legal support for the “right to wáter” means that practically the entire body of our Law is translated into responses given in the field of International Law (an aspect of considerable interest when dealing with the complex reality of tourism). All this, despite the fact that our Constitution grants a very relevant role to the Environment, without mentioning, however, the elements and processes that comprise it. Likewise, great importance is given to the maritime-terrestrial public domain, and the demanialization of water is foreseen. In this sense, the leading role in our Internal Law is assumed by Law 29/1985, of August 2, on Water, in which the problems related to quality are equated to those of quantity (supply policies and demand policies are equated). All waters are declared to be in the public domain, as a result of the principle of the hydrological cycle; it resolves the issues related to the distribution of powers set out in the Constitution (art. 149.1.22. CE), based on the criterion of the Hydrographic Basin and places hydrological planning as the Gordian knot of water management. As a complement, it regulates the Hydrographic Confederations, understood as Basin Organizations, confers a leading role to users in various bodies of the Basin Organizations, regulates the economic-financial regime, as well as the National Water Council. As we pointed out previously, despite everything, together with what has been described up to now, Community Law takes on great importance, the impact of which on Spanish Law is felt even before our incorporation into the European Communities and which culminates with the discussed and studied Water “Framework” Directive. And that was fully assumed through the reform of the Revised Text of the Water Law, carried out by art. 129 of Law 62/2003.

In the geography of tourism activities, we find water policies that have been based on the supply and demand of the resource; however, at the present time, in Spain we must tend to “renaturalize” the liquid element; that is, ensuring that access to water becomes not only an individual right, a subjective public right, and a social right, but that water returns to or reaches the entire nature of our country. This is what is currently known as “Rewilding”, restoring ecosystems on a large scale, replacing the elements that are currently missing -and water is one of the most important-, helping ecological processes to resume in natural ecosystems (some of the essential bases for the interpretation of tourist activities are thus established, based on the regional waters of the European Union).

Applied to the above to water and its policies, it means that the principles of freedom and equality (water rights, etc.) must be respected in a lexicographical order; we find something similar with the so-called water markets, to which the principles of efficiency and security are applied, organized in a serial order, always giving priority to the former, although not in absolute terms. Something similar happens when dealing with the legal economy of water, in which the virtues of a fair water economy have value, but are priceless because they are not equivalent to any other economic good, of notable importance in the territorial implications of tourist activities, since we must not forget that the defence of marine ocean waters within the scope of the European Union is guided and supported by the structural configuration aimed at ensuring that the various member countries of the

Union cooperate at the international level with the rest of the States with which they share maritime borders, mainly through what are called “regional agreements” on marine waters.

### **3. RESEARCH METHODOLOGY**

The methodology followed in our study is based on presenting, from a scientific perspective, the elements of knowledge that make up and integrate the bases of interpretation of policies in general, and those related to water and tourism activities in particular, in the field of study of the European Union and Spain, seeking to establish an explanation for a phenomenon based on what was previously known, resulting in an explanation that is fully consistent with the observation data. All this from an interdisciplinary perspective, which takes as a point of reference the interrelation between Law, Geography, Economics, and Politics, a phenomenon that is complemented by what we know as the “ethical factor”, which is especially important in governance (although there are many specialists who separate, or try to do so, the normative and positive aspects, for example, in the practice of economic policy). It is therefore essential to include “ethical values” when designing and implementing “Water Policies”, since the choice, the selection of values, their study and application is a task of ethics. And it is here that Rawls’ theory of justice reappears; a question of notable relevance when dealing with Water Policies, since the overcoming of the utilitarian principle of well-being, replacing it with that of primary social goods, fits perfectly into the treatment of the water resource, as does the idea of maximizing well-being through distributive consideration, without ceasing to protect individual autonomy. We must apply the Liberty Principle when dealing with access to water: “every person shall have an equal right to the fullest range of basic freedoms compatible with a similar range of freedoms for all”. This is complemented by the ideas of Amartya Sen, who sees a total interrelationship between freedom, development and well-being; issues that must be the starting and ending point in the design, development and implementation of any policy, including water policies. These must be generated from at least five freedoms: policies, economic services, social opportunities, guarantees of transparency and protective security, all of them combined based on the reality of the physical, human and economic environment of the territory in question -in our case, Spain-. All of this without forgetting the “public freedoms”, understood when dealing with Water Policies, in the double sense of omission and action, in relation to public powers, because on the one hand they limit their action in the sphere of autonomy of freedom, and on the other hand they require their positive action to facilitate a free and effective exercise of the same.

### **4. RESULTS, DISCUSSIONS AND CONCLUSIONS**

A general approach to the bases for the interpretation and development of tourism activities from the directed protection of marine waters, firstly leads us to deal with international Conventions. Among the existing conventions, and following the structural configuration that we could call classic, differentiating, from the original OSPAR Convention (1992), to the Rhine Protection Convention (1999), the regulatory bases for the protection

and conservation of marine waters have been developed. As regards river waters in the European Union, which are issues of considerable interest in the development of tourism activities, it is essential to dwell on the analysis of two protection figures; namely: the Danube Protection Convention of 1996 and the Rhine Protection Convention of 12 April 1999, together with the European Union Strategies, make up the Water Policy, the basis of the Union's tourism activities in this area.