

Easements and Stewardship Agreements in Catalonia

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Summary

- The context: Catalonia and the Civil Code of Catalonia.
- The private law tools: *in rem* rights of partial use and Land Stewardship contracts.
- The existing and foreseen incentives to Land Stewardship.

Context: the Civil Code of Catalonia

- Spain is a plurinational State.
- According to Article 149.1.8 of Spanish Constitution 1978, Regional Parliaments can develop their own Private Law “wherever it exists”.
- Catalan historical Private law compilation had 344 articles.
- In the 90s, Catalan Parliament passed multiple laws to develop this historical Private Law.
- In the first decade of the 2000s started the project of a complete Catalan civil Code.
- Land Stewardship movement took this chance to propose regulation of interest for Land Stewardship.

The *in rem* rights of partial use (I)

Arts. 563-1 to 563-4

“The rights of partial use established with in rem nature in favour of a person on an alien property regardless of any relationship between estates, including to manage and to obtain forestry in exchange for restoration and conservation of natural and landscape resources, or to conserve its wildlife and ecosystem, to graze livestock and herds, to prune trees and cut mates, (...) and similar, are governed by the rules of this section and, in what is not opposed to them, by their constitution title, by the custom and by the rules that regulate the right of usufruct, whenever compatible.”

Llei 5/2006, de 10 de maig, del llibre cinquè del Codi civil de Catalunya, relatiu als drets reals

The *in rem* rights of partial use (II)

- Regulated in 2005, in Book V on property rights.
- Personal servitude (not regulated so far in Catalonia).
- They are not specific tools for land Stewardship.
- 11 such rights signed in Catalonia so far and registered in the Land Registry.
- Synallagmatic relationship: management for *not to do* obligations.
- Duration up to 99 years / but signed for 20-30 years.

The Land Stewardship contract (I)

Art. 623-34

*“1. In the Land Stewardship contract, which is temporary and whose purpose is land property, the grantor partially or totally allows **the use or management of the land** to the holder, which must be a legal entity having Land Stewardship among its purposes, **in exchange** for carrying out advisory, outreach, planning or management and improvement activities, in order to conserve biodiversity, natural and cultural heritage and landscape or to make sustainable management of its natural resources.*

*2. The rights constituted in favour of the holder **may be in personam or in rem**, whenever they satisfy, in this case, the requirements stated by law.*

*3. The legal framework of the Land Stewardship contract, as to the determination of the obligations of the parties and their failure to comply, the duration or guarantees, is the one **freely determined by the contractual parties.**”*

Llei 3/2017, del 15 de febrer, del llibre sisè del Codi civil de Catalunya, relatiu a les obligacions i els contractes

The Land Stewardship contract (II)

- Regulated in 2017, in Book VI on obligations and contract Law.
- Synallagmatic relationship: management for *not to do* obligations.
- Can have erga-omnes effects whenever parties agree so.

Catalan conservation civil law tools review

- The implicit idea of transfer of use, not always necessary.
- The **regulation of Land Stewardship agreements must include** matters such as content, formalities needed to grant the rights of the holder, interim duration, eligibility of agreements and public registration in order to effectively build a legal framework giving legal certainty to the Land Stewardship contract's parties.
- Both ***in personam* and *in rem* effects** are interesting for conservation purposes. A joint regulation makes sense as certain content can be set for different effects depending on the will and capacity of parts.
- Obstacles envisaged when thinking about the implementation of LSC with *erga omnes* effects.
- Duration: maximum 99 years.

Incentives to Land Stewardship in Catalonia (I)

- In Catalonia there are no specific tax incentives for private conservation.
- Specific subsidiaries for Land Stewardship organisations staff on Land Stewardship projects.
- 25% of the value of donations in cash to environmental and Land Stewardship organisations can be reduced in the Income Tax in Catalonia.
- Spanish Law 49/2002:
 - Up to 75% of donations in cash to non profits can be reduced from Income Tax (natural persons en legal entities)
 - Donations of properties of *in rem* rights over properties to non profit organisations can be reduced from the base of the Income Tax.
- In rem rights of partial use are onerous transations, and therefore not “donations”!

Incentives to Land Stewardship in Catalonia (II)

Registration for tax incentives (previous step)

- Registration of LSA is a **means for public administration** to clarify which LSA merit tax incentives.
- The **criteria** by which some LSA can be registered are multiple: duration, form, *erga omnes* effects, concret limitations.
- A complete civil law regulation is useful for these purposes (art. 623-34 CcC not useful).

Incentives to Land Stewardship in Catalonia (III)

Taxes proposed for incentives (2014):

- Tax deduction:
 - Personal income tax
 - Corporation tax
- Tax base reduction:
 - Property transmission tax
 - Inheritance tax
 - Tax on the increase in value of urban land

Conclusions

- Specific **regulation of Land Stewardship agreements** is necessary either in the civil code or in some *ad hoc* civil law (idea of granting public interest by private law tools is completely dysfunctional with the existing private law tools; legal incentives).
- A regulation should be **coherent and complete** to give legal certainty.
- The **onerous / gratuitous** nature of Land Stewardship agreements is a “better think twice” question.
- Specific **registration of agreements** is a first step for tax incentives to be considered as public administrations may feel comfortable with it.
- The **criteria** by which LSA merit tax incentive have to be always born in mind.

Thank you very much!

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