

Public budget and fiscal impact of convictions against the state

Presupuesto público e impacto fiscal de las condenas contra el estado

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ABSTRACT: The administration of justice has the essential task of ensuring the proper functioning of the State, and its role is fundamental to its maintenance, permanence, and credibility. This has a direct impact on the consolidation of its development, mainly through efficient markets. Furthermore, this article explores some preliminary legal-economic considerations when studying the interactions between the public budget, fiscal impact, and convictions against the State.

KEYWORDS: public budget, fiscal impact, state management, public policy, Law and Economics.

RESUMEN: La administración de justicia tiene la tarea esencial de garantizar el buen funcionamiento del Estado, y su papel es fundamental para su mantenimiento, permanencia y credibilidad. Esto tiene un impacto directo en la consolidación de su desarrollo, principalmente a través de mercados eficientes. Además, este artículo explora algunas consideraciones jurídico-económicas preliminares al estudiar

las interacciones entre el presupuesto público, el impacto fiscal y las condenas contra el Estado.

PALABRAS CLAVE: presupuesto público, impacto fiscal, gestión del Estado, política pública, derecho y economía.

JEL CODE: G31, G38.

INTRODUCTION

It is evident that the administration of justice has the essential task of ensuring the proper functioning of the State, and its role is fundamental in its maintenance, permanence, and credibility, which, of course, has a direct impact on the consolidation of its development, mainly through efficient markets (Yamada, 1997); and precisely for this reason, this activity can and should be studied as a market, within which the plaintiffs or consumers are all those who seek the protection of a right under the legitimacy of the State through the delivery of the dispute to a third party who must be impartial and settle it following the legal provisions in force, and the providers are the judges, who are part of the structure of the State as a basic pillar for its functioning as they are responsible for safeguarding the legal order and protecting the rights of citizens with their binding, executive and enforceable power. Of course, then, it becomes necessary that this market of the administration of justice has a direct and vital impact on the economic organization of a State.

As the failure to protect and guarantee the rights legally and constitutionally enshrined as part of the legal system, as well as the rules themselves, have an economically devastating effect, it is clear that if the judicial system does not work or does so incorrectly, and the judges do not enforce the Constitution,

laws, regulations, administrative acts and contracts as required, uncertainty and anarchy will be generated, preventing the State and society from flourishing. Therefore, its role in the attribution of responsibility to all agents and the respect for the allocation of property and markets, as well as in the protection of the most fundamental aspects of people, all as an essential and fundamental part of the economy of a country, is indispensable. It is clear, then, that without the real and efficient protection of human and property rights under the provisions of the legal system, and a sufficiently comprehensive legal framework, no equitable development will be possible. Thus, this introductory article presents some preliminary legal-economic considerations to be considered by social planners, academia, and civil society.

1. JUDGES, JUDICIAL DECISIONS, AND STATE ACTION

In this order of ideas, it becomes evident that within the agents covered by the decision of the judges is the State itself, in all its orders and levels, as a subject responsible for its actions and omissions that must repair the ant juridical damages caused to all persons, natural and legal, in a comprehensive manner, but, above all, timely, and only up to the limit of the damages that have been caused, or at least demonstrated by the victims, since it is so enshrined in Article 90 of our Political Charter; but for this it must be borne in mind that all state action involves the use of monetary resources, so that this issue, for state entities as entities condemned to give, do or not do something, is subsumed in the rules and principles of public spending, whose one of its main pillars is the efficient distribution of resources, which by default are scarce, in order to better meet and prioritize the needs generated by the objectives derived from the constitutional and legal functions of the State, all of them framed in the development of the Social State of Law

model, that is, the search for the satisfaction of minimum needs of citizens in conditions of equality, freedom and security, and in favor of the general interest.

2. INTERACTIONS BETWEEN ANTIJURIDICAL DAMAGE AND THE STATE'S BUDGET

The problem underlying this premise comprises two interdependent variants: the first one, that the concept of ant juridical damage, that is, that which the victim is not obliged to bear, implies that not only the tortfeasor, which is the State in this context, is obliged to carry out actions or refrain from conduct, under the classic conception of tort law in which reparation *in natura* must be sought, and in its absence the pecuniary subrogation; and the second, that under the scheme of judicial orders that frame the recognition and protection of rights in specific situations, and which of course also oblige the development of concrete material actions by the State, present and future, a budget for their development and materialization is inevitably required. Thus, between repairing damages caused by the common actions of the State and protecting rights by judicial order, a large part of the public resources, initially destined to materialize the projects that allow the development of the plans and programs of the governments within the framework of the Social State of Law, is not available for the achievement of the coverage of the basic needs of all the associates in conditions of equality, paradoxically because it is required to correct inequalities through the recognition of an individual or minority situations, especially if it is taken into account that under this model of State, material justice and solutions for concrete cases prevail over the importance of legal norms (Constitutional Court, 1992).

In turn, this mechanism has often led state entities to prefer to wait for a court order to give, do or refrain from doing, and based on such coercive mandate to start redirecting the budget for spending, even at the expense of duly planned projects whose execution was requested and authorized through the approval of resources for that purpose.

These situations have generated in our country, to date, a very critical problem in terms of both the delay in the compliance with the sentences condemning the State to material and monetary obligations. Also, as the defunding in general terms of the State expenses destined to investment and operation projected in the plans, programs, and projects devised by the governments to comply with the primary objectives of each one of the entities. It is a vicious circle, and it seems never-ending, because the correct application of the law to a specific case without consideration of the costs and time involved in macro terms and of the general interest, very relevant in the public sphere, constitutes, in the end, and inadequate management of resources that in turn harms development, because the degree of socially optimal certainty that the administration of justice must provide in all areas, including the state, should depend on the exchange between social cost and social value resulting in the best cost-benefit ratio, which means being the most efficient, so that, past a certain point, the marginal gain given by certainty is less than the costs involved in obtaining it, i.e., individual recognition may be irrelevant to the social benefit in terms of income redistribution as an essential objective for the reduction of real inequality.

Thus, we will study in this paper, first, the existing budgetary regulations in the Colombian legal system regarding compliance with court judgments, to determine whether this

is sufficient to enforce in the present and avoid the future the delay in its materialization, now to analyze, secondly, the existing disincentives for the compliance of judicial decisions by the State caused in its agents based on the rules of property, responsibility, and inalienability, thirdly, propose based on them some measures optimize this behavior in relief of public finances and, finally, to draw some conclusions and recommendations.

3. CONSIDERATIONS ON CURRENT REGULATIONS

The first thing to remember is that the Code of Administrative Procedure and Administrative Disputes establishes specific rules for the enforcement of court rulings that involve sentences to state entities that are not found in the General Code of Procedure, which leads to a major drawback, since by mandate of Article 105 of the CPACA some matters and state entities are excluded from the scope of the jurisdiction of administrative disputes, and therefore these provisions do not apply to them.

In effect, the first thing that should be noted is that article 192 of the CPACA expressly establishes, for the enforcement of judgments or conciliations (which, it is recalled, require judicial approval), that “When the judgment imposes a sentence that does not involve the payment or return of a liquid amount of money, the authority responsible for its execution within a term of thirty (30) days from its communication, shall adopt the necessary measures for its compliance”, that “The sentences imposed on public entities consisting in the payment or return of a sum of money shall be complied with within a maximum term of ten (10) months, counted from the date of execution of the sentence”, that “The liquid amounts recognized

in orders imposing or settling a sentence or approving a conciliation shall accrue moratory interest as from the date of execution of the respective sentence or order”, that “Three (3) months after the execution of the order imposing or settling a sentence or approving a conciliation, without the beneficiaries having gone to the responsible entity to enforce it, In labor matters, when the reinstatement is ordered, if within three (3) months following the execution of the ruling so ordering, the reinstatement cannot be carried out due to causes attributable to the interested party, from then on the accrual of all kinds of emoluments shall cease”.

Thus, the rules set forth herein establish a difference between the enforcement of monetary and non-monetary obligations, but it must be remembered that the latter may also involve expenses, although the creditor will not receive a monetary amount.

CONCLUSIONS

Whenever a society chooses an initial allocation of rights, it must also determine whether to protect them by rules of ownership, liability, or inalienability. In our context, much of what we commonly call private property can be seen as a right that is protected by a property rule. No one can appropriate a private property right unless the owner voluntarily sells it at the price at which he values that property. However, a *nuisance* activity, from which sufficient public utility is derived so as not to be prohibited, involves, in practice, the power to take property with due compensation. Under such a circumstance, the property right is only protected by what we call the liability rule: an external and objective parameter of value is used to facilitate the transfer of the right from its holder to those who

carry out the nuisance activity. Finally, in some instances we will not allow the sale of the property at all, i.e., sometimes we will make the right inalienable.

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