

EURORAI SEMINAR IN INNSBRUCK
3rd WORKING SESSION: MISUSE OF SUBSIDIES

Lecture of Pedro Antonio Mas Cladera, President of the Audit Office of the Balearic Islands

Summary

1.- SUBSIDY: CONCEPT AND NATURE IN SPANISH LAW

- provision awarded by a subject in the public sector
- with no direct consideration
- intended for a specific and determinate purpose of public utility or social interest
- principles:
 - a) publicity, transparency, competition, objectivity, equality and non-discrimination
 - b) effectiveness in the fulfilment of the objectives
 - c) efficiency in the allocation and use of public resources.

2.- GENERAL RULES ON SUBSIDIES

- General Subsidies Act 38/2003, of 17 November 2003
- Royal Decree 887/2006, of 21 July, in Regulation of the Act
- General Budgetary Law 47/2003, of 26 November 2003
- Specific rules of each Autonomous Community

3.- REACTION IN LIGHT OF NON-FULFILMENT: ADMINISTRATIVE, ACCOUNTING AND PENAL

A.- ADMINISTRATIVE: THE REIMBURSEMENT OF SUBSIDIES

- a) · Annulment of the instrument granting the subsidy: whatever the cause
 - b) · Reimbursement agreement: causes, effects and procedure
 - Reimbursement agreement:
 - Causes:
 - Obtaining a subsidy by falsifying conditions or concealing data.
 - Certain non-fulfilments of the object of the subsidy, the conditions or the justification of the funds received.
 - Resistance or obstructions to verification and control.
 - Effects of reimbursement: refund of the sums received and penalty interest.
- Compatible with administrative/penal sanctions.

- Reimbursement procedure: administrative procedure after a hearing given to the interested party. An appeal for judicial review may be lodged against the ruling.

B.- ACCOUNTING LIABILITY

- Before the Jurisdictional Section of the Court of Audit (State).
- The lack of justification of the intended use of the subsidies entails the specific infringement of accounting liability.
- Obligation to provide compensation for damages
- It is a special jurisdictional procedure, which is not brought if reimbursement has been made, compatible with penal liability.

C.- PENAL INFRINGEMENT: ARTICLE 308 PENAL CODE

Suppositions: a) Fraudulent procurement.

b) Diverted employment.

- more than 80,000 euros

- Penalty:
- imprisonment of between 1 and 4 years and fine of up to six times the amount.
 - loss of the right to obtain other aid and tax or social security benefits or incentives for a period of between 3 and 6 years.

Exemption from liability:

- reimbursement, plus legal rate of interest increased by two percentage points.
- before the start of an inspection, audit or official complaint.

Jurisprudence: scant practical application.

4.- CASE STUDY OF A PUBLIC AGENCY IN MAJORCA

- criminal proceedings for subsidies awarded to certain associations by a public body over a number of budgetary years.
- charges: corruption, exercise of undue influence and subsidy fraud.
- approximate amount of the subsidies: 1,200,000 euro
- the Audit Office of the Balearic Islands issued reports
- the Court dismissed the case (except for certain subsidy justifications), and the decision of the Provincial Court is pending.