

# **The Principles of Generality and Equality in Municipal Tax Regulations and Their Infringement of Tax Ordinances**

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*The constitutional principles of Financial and Taxation Law provide the framework and legal structure in which the different tax regulations must coexist. The principles of generality and equality are a clear example of the principles set out in Article 31.1 of the Spanish Constitution or Constitución Española (EC) which a fair tax system must be built. The Tax Ordinances issued by the municipalities must respect these principles and must not give rise to any kind of unequal treatment that might result in a declaration of non-conformity with the law by the Administrative Courts.*

*Keywords: generality, equality, municipality, tax ordinance*

## **INTRODUCTION**

We will begin this introduction with Sainz de Bujanda's correct phrase in which, making reference to the idea of justice and rationality of Financial Law, he stated that "a tax system is only rational if it is fair, and it can only be fair if it is in accordance with the fundamental and primary rules of the Legal order, contained in the constitutional text, and with the general principles of Law"<sup>1</sup>. And this is precisely where we can find the validity of the higher principle of tax law in the coherent and coordinated manifestation of the group of general principles of tax justice contained in the Constitution. We are obviously referring to the principles of generality, economic capacity, equality, progressiveness and non-confiscatory nature, all of which are established in Article 31.1 of the Spanish Constitution which states: "Everyone shall contribute to the support of public expenditure in accordance with his/her economic capacity by means of a fair taxation system based on the principles of equality and progressiveness which shall in no case be confiscatory".

These principles, as Martín Queralt states, "are basic elements of the Financial Order and the foundations on which the different financial institutions are based".<sup>2</sup> Furthermore, "the Constitutional Court has pointed out, in numerous judgments, that the constitutional principles are not watertight compartments, but that each one of them is valuable in relation to the others and, insofar as it supports the higher values of art. 1 EC (inter alia STC 104/2000)"<sup>3</sup>. Therefore, it must be considered that as well as the infringement of the principle regarding tax laws creation (legal reservation), the non-compliance with these principles by laws or normative provisions with force of law, will allow the filing of the corresponding appeal or question of unconstitutionality before the Constitutional Court (art. 161.1.a and 163 of the EC).

Certainly the constitutional precept refers to the principle of justice as "a fair tax system", and without prejudice to the fact that justice is also a higher value of the legal system, tax justice must attend to the

system on which taxes are articulated. Furthermore, the principle of tax justice is not independent or exclusive of one or several taxes, it is a mandate to the legislator in order to respect his/her role every time he/she articulates a Tax Law institution<sup>4</sup>, whether this is tax or of any other nature.

In fact, tax justice is constitutionalized as a guarantee of the system; of a fair system<sup>5</sup>, establishing itself as an omnipresent principle in every regulation of tax obligations, whether economic or not. That is to say, it underlines all normative action of the Public Authorities, among which are the Local Tax Offices. Using the terms of Article 3 of the General Tax Law, it will be involved in the organization and application of the tax system. And this aspiration in organizing the tax system towards a fair system is what we are going to study next, focusing on the specific application by the Municipalities of the principles of generality and tax equality in the design of their Tax Ordinances.

## **THE PRINCIPLES OF TAX JUSTICE**

The principles of tax justice established by the Constitution are, as we have seen: generality, economic capacity, equality, progressiveness and non-confiscatory<sup>6</sup>. However, the principle of tax justice itself has not been unilaterally defined and applied by the Constitutional Court. On the contrary, we can find judgments where tax justice is called upon due to the presentation or relation with a serious legislative infringement of any of the aforementioned principles, but not specifically because of the infringement of tax justice itself.

In fact, the STC 236/2012, dated December 13 (RTC 2012, 236), analyzed the possible infringement of the principle of equality and, therefore, tax justice in the face of the coexistence of two different civil systems of asset protection for people with disabilities (one state and one autonomous). STC 108/2004, dated June 30 (RTC 2004, 108), states that economic capacity is a principle of material justice and relates it to the tax system as a whole. The STC 194/2000, dated July 19 (RTC 2000, 194), declared void the Fourth Additional Provision of Law 8/1989, dated April 13, on Public Fees and Prices and its replication in article 14.7 of the Consolidated Text of Tax on Property Conveyances and Documented Legal Acts, approved by Royal Legislative Decree 1/1993, dated September 24, because it taxed non-existent wealth and, consequently, it did not take into account economic capacity<sup>7</sup>. The STC 164/1995 dated November 13 (RTC 1995, 164) analyzed the possible unconstitutionality of Article 61.2 GLT dated 1963, which established an interest on arrears for out-of-date incomes not lower than 10%, on the infringement of the principle of equality and the principle of distributive justice. Finally, STC 14/1998, dated January 22 (RTC 1998, 14), referred to the link between the principle of non-confiscatory nature, among others, with tax justice.

In short, the tax justice of article 31.1 of the EC refers to the system, that is to say, to the "set of rules or principles on a particular matter that are rationally linked to each other", and therefore<sup>8</sup>, its potential infringement must be noted in the full application or not of the remaining constitutionalized principles that, by presentation, and in the last instance, will end up affecting the higher principle of justice in the tax field.

An example of tax where the general principles of tax law or principios generales del derecho (PGD) are articulated in a global, proportionate and harmonious way, is represented by the Personal Income Tax. In this sense, STC 19/2012 dated February 15 defined it when it stated regarding this tax that: "the distribution of the tax burden in the tax system is personalized according to the criteria of economic capacity, equality and progressiveness, which makes it a primary tax figure to ensure that our tax system fulfills the principles of tax justice imposed by article. 31.1 EC (Constitutional Court Rulings or Sentencias de Tribunal Constitucional (SSTC) 134/1996 dated July 22, Legal Basis or Fundamento Juridico (FJ) 6; 182/1997 dated October 28, FJ 9; 46/2000 dated February 14, FJ 6; and 137/2003 dated July 3, FJ 7) and "the objectives of income redistribution (article 131.1 EC) and joint tax liability (article 138.1 EC)" (SSTC 19/1987 dated February 17, FJ 4; 134/1996 dated July 22, FJ 6; 182/1997 dated October 28, FJ 9; 46/2000 dated February 14, FJ 6; 47/2001 dated February 15, FJ 9; 137/2003 dated July 3, FJ 7; 189/2005 dated July 7, FJ 7; and 7/2010 dated April 27, FJ 7)

According to the Constitutional Court, Personal Income Tax is a tax figure that embraces the full and comprehensive application of all the principles of the fair tax system, namely: the distribution of the tax burden is personalized (generality); according to certain criteria (principles of economic capacity, equality and progressiveness); and, more importantly, it complies with the objective of income redistribution and joint tax liability.

That is why we will conclude that the principle of tax justice has a transversal character<sup>9</sup>, deploying its effectiveness and effects both in the organization of taxes and in their application, but with all this "it is not a constitutional principle from which rights or obligations are derived for citizens, but an end of the tax system, which will only be achieved to the extent that the remaining constitutional principles are respected (legal certainty, equality, economic capacity, progressiveness and non-confiscatory)"<sup>10</sup>.

Having said that, we shall now analyze the material principles of tax justice contained in the Spanish Constitution that refer to *who* and *how* taxes should be levied and, specifically, those corresponding to Local Tax Offices.

## THE PRINCIPLE OF GENERALITY

Article 31.1 of the EC begins by saying that "everyone shall contribute to the maintenance of public expenditures". Regarding the "everyone" it refers to the generality of the taxpayers; natural or legal person; resident or non-resident, national or foreign.

This principle of generality is a constitutional mandate to the legislator to classify as a taxable event the budget that determines the tax in relation to the manifestation of economic capacity so that, from the beginning, everyone is called upon to contribute. This does not mean that in this context the legislator cannot include tax benefits in the form of exemptions, reductions or bonuses<sup>11</sup>; nor does it mean that generality should be established without any consideration or assessment of other tax principles, since as has been said before, the fair tax system will provided us through a weighted and harmonious application of the set of principles that concern the tax institution in question<sup>12</sup>; and much less will it imply that all citizens should pay the same tax liability, treating the unequal ones as equal<sup>13</sup>.

In accordance with the words of our High Court:<sup>14</sup> "generality, as a principle of the organization of taxes ... does not mean that each tax figure must involve all citizens. Such a generality, also a characteristic of Law concept, is compatible with the regulation of a sector or groups composed by people in identical situations. Its notes are abstraction and impersonality: its opposite, the allusion *intuitu personae*, the acceptance of people. The generality is therefore closer to the principle of equality and consequently rejects any discrimination".

In addition to the constitutional provision, the GLT also calls this principle in Article 3.1 when it states that: "the organization of the tax system is based on the economic capacity of the people obliged to pay taxes and on the principles of justice, generality, equality, progressiveness, equitable distribution of the tax burden and non-confiscatory". This precept reorganizes the appearance of the legal principles involved in the tax system but it respects, as it could not be otherwise, the spirit of the tax system established in the Magna Carta. For this reason, there have been no comments or doctrinal criticisms regarding the preference or priority given by the GLT to these tax principles.

Having said this, we share with Calvo Ortega that "the fair tax system is always inspired by the principles of generality in taxation and economic capacity and can do them in those of equality and progressiveness"<sup>15</sup>, and this is like this, because, as the author states "generality and capacity are demanded and will always be demanded in any system because they are inherent to any tax. This is not the case with equality and progressiveness, which may or may not play a role in a specific tax figure"<sup>16</sup>.

In short, the principle of generality in taxation is central to the establishment of taxes. Together with the economic capacity, which supports the economic and patrimonial fund subject to levy, both give coverage to all the taxes of the tax system<sup>17</sup>. Unreasonable, capricious or arbitrary exemptions are prohibited. In the words of Martin Queralt "the constitutional principle of generality constitutes a requirement directly addressed to the legislator to fulfill a demand: to classify as a taxable event any act,

fact or legal business that is indicative of economic capacity ... prohibiting the granting of exemptions and tax relief that may be considered discriminatory"<sup>18</sup>.

All of the above is aimed at all Public Authorities with tax regulatory capacity. For this reason, the constitutional mandate to call *everyone* to the support of public expenditures, is also directed to the tax authority of the Municipalities. In our case, when these entities issue their corresponding Tax Ordinances.

In conclusion, the municipal standard must point out those obliged parties to pay the tax in an abstract and impersonal way. It must also avoid the establishment of tax benefits that can be considered privileges and, finally, it must guarantee that there is no unjustified discriminatory treatment of the tax payers. These circumstances will be included in the file by which the corresponding Ordinance is drawn up and approved, and will have a primary importance given that the justification of the tax liability and the criteria for its distribution are essential requirements for the justification of the local rule that must be specified in the tax agreements which, in the specific case of municipal taxes, will be aided by the corresponding technical-economic report<sup>19</sup>, as Martín Fernández rightly states it is "the mandatory document, issued before the establishment or modification of the fees, by virtue of which the relationship between the costs of the service or activity and the expected income is calculated, in order to justify the degree of financial coverage of the service or activity in question, avoiding arbitrariness and serving as an instrument of control of the Public Authorities' actions"<sup>20</sup>.

## **THE EXEMPTION OR BONUS AS AN INFRINGEMENT OF THE PRINCIPLE OF GENERALITY**

We have seen how generality requires that everyone be called upon to support public burdens. This represents a mandate to the regulatory powers to consider as a taxable event any budget that shows a certain economic capacity and, once this has been determined, to subject to the main tax obligation in general all the taxpayers who carry out this taxable event.

This general call for contributions will, however, have some exemptions. In fact, there are legal situations where several general principles may converge and it is the task of the legislator to determine which should take precedence in that particular situation. Following Alexy's formula<sup>21</sup>, through the judgment of proportionality and assessing the suitability, necessity and weighting, exemptions or infringements of principle may be established by applying, in that specific case, another principle that better fits the higher value and principle of justice.

A clear example of this situation is provided by the Constitutional Court's Judgment 96/2002, dated April 25 (RTC 2002, 96), which states that "the exemption or bonus - a privilege of its holder - as an infringement of the principle of generality that rules tax matters (art. 31.1 EC), inasmuch as it neutralizes the tax obligation deriving from the occurrence of an event giving rise to economic capacity, will only be constitutionally valid when it serves purposes of general interest which justify it (for example, for reasons of economic or social policy, in order to meet the minimum subsistence requirement, for reasons of tax methodology, etc.). Otherwise, it is outlawed, since it must not be forgotten that the principles of equality and generality are damaged when "a criterion for the distribution of public burdens is used without any reasonable justification and, therefore, incompatible with a fair tax system such as the one established by our Constitution in article 31" (STC 134/1996, July 22 (RTC 1996, 134), FJ 8)"<sup>22</sup>.

That is to say, the supreme interpreter of the Constitution recognizes that, in certain tax cases, it may be that a legal principle gives way to another that better considers tax justice. The legislator may establish cases of exemptions and bonuses that derogate from the mechanical application of the principle of generality<sup>23</sup>. Although, the Constitutional Court states, it must satisfy "purposes of general interest that justify it", otherwise it would be totally contrary to the above-mentioned principle and therefore unconstitutional.

Well, this possible infringement of the principle of generality was, precisely, the one that occurred in the aforementioned Judgment where the Court concluded by declaring the unconstitutionality and resulting nullity of the Eighth Additional Provision of Law 42/1994, dated December 30, on fiscal, administrative and social order measures, among other reasons because "the list of benefits set out above

shows that the State aid granted to non-residents operating in the Basque Country and Navarre places a group of taxpayers - consisting of certain non-residents in Spain - in a situation of absolute tax privilege, since it even goes so far as, on occasion, to completely neutralize the constitutional duty - of everyone - to contribute to the expenditure of the State in accordance with their capacity, not only without a plausible justification that legitimizes it from the point of view of the constitutional principles of article 31.1 EC (generality, capacity and equality), but in such a disproportionate way as to make it harmful and contrary to that duty of everyone to contribute through a fair tax system".

Finally, it should be noted that the principle of generality is related to the principle of equality, as expressed by Cerdón Ezquerro and Gutiérrez Franco, when they state that "the principle of generality is closely linked to the principle of equality, given that, in order for a tax system to be equitable, it is essential that it should cover all forms of economic capacity"<sup>24</sup>, while at the same time it is "a duty for each citizen to support public expenditures; it also implies an obligation for the Tax Administration to ensure that the tax system is as general as possible"<sup>25</sup>, for which it will have its Tax Management and Inspection bodies.

Due to the close relationship between generality and equality, and because its application as a general principle in the design of the taxable event and those obliged to pay is determined by law, the Tax Ordinance leaves little room for regulation. In this sense, when the Ordinance contains elements that are not provided for by Law and that could damage this PGD, we will have cases of infringement of legal reservation provided for in article 31.3 EC and, where it introduces non-general treatment, the allegation of an infringement of equal tax treatment will be more appropriate, as will be discussed in the following paragraph. Therefore, the effectiveness of this principle is more in the sphere of constitutional control than in the contentious-administrative jurisdiction. This is without prejudice to the fact that any judicial body may assess and mention this principle of generality when deciding whether or not a tax ordinance is in accordance with the law, when it has not fulfilled the legal structure of the tax in terms of its generality (legal reservation) or when it finds unequal treatment in municipal legislation (equal taxation), given the connection between the aforementioned principles.

## **PRINCIPLE OF EQUALITY**

The general principle of tax equality is one of the constitutive and essential principles of the Spanish tax system. This importance is given, among other reasons, because equality is part of the higher values of the Spanish legal order (art. 1.1 EC). In addition, article 9.2 of the Constitution imposes a duty on the Public Authorities to promote the conditions for the freedom and equality of the person and of the groups to which it belongs to be real and effective. Furthermore, article 14 EC recognizes the equality of Spanish citizens before the law. For all these reasons, it is not surprising that, to a greater or lesser extent, when determining taxes, the legislator must consider this principle given its broad presence and reference in the constitutional text<sup>26</sup>.

This essential role of the PGD is also evident in the very wording of Article 31.1 EC when it establishes the obligation to contribute "through a fair tax system inspired by the principles of equality and progressiveness which shall in no case be confiscatory in scope".

In order to consider and study the content of the principle of equality, it is necessary to start from the two aspects of the principle; on the one hand, equality before the law, and on the other hand, equality in the application of the law. In the words of the Constitutional Court or Tribunal Constitucional (TC): "the general rule of equality before the law contained in article 14 of the Constitution provides, in the first place, for equality in the treatment given by the law or equality in the law and it constitutes, from this point of view, a limit imposed on the exercise of legislative power, but it is also equality in the application of the law, which means that the same body cannot arbitrarily change the meaning of its decisions in substantially the same cases and that when the body in question considers that it must diverge from its precedents it must provide sufficient and reasonable grounds for doing so".<sup>27</sup>

Therefore, equality before the Law ensures that the legislator gives equal treatment to equal parties, and the principle of equality in application of the Law will pursue the implementation of the Law without

discrimination. This prohibition of discrimination means that, as Checa González states, "neither the Administration nor the Courts can introduce, in the interpretation and application of the Tax Laws, unjustified discrimination that is not found in the legal texts themselves"<sup>28</sup>.

Another example of equality in taxation is provided by Rodríguez Bereijo<sup>29</sup> when he explains his three interpretations:

- On the one hand, there is equality *before* taxes, which is the indication that everyone must bear the same tax burdens for the support of public expenditures, regardless of people or class privileges<sup>30</sup>.
- On the other hand, there is equality *in* taxes, this equality starts from the common levy as a tax obligation, but it is also necessary that this equality meets or is set according to the economic capacity of each one, so that those who have the same incomes or assets contribute in an equal way.
- Finally, this author describes the tax equality *through taxes*, this equality being the one destined to correct the social inequalities by means of a greater taxation to those who have more wealth<sup>31</sup>. It is the so called unequal right to achieve equality.

In order to conclude this point, it is important to point out that not all inequality will be constitutionally punishable, since "what the principle of equality prohibits are, in short, inequalities that are artificial or unjustified because they are not based on objective and reasonable criteria, according to generally accepted criteria or value judgments. It is also necessary, in order to make the difference in treatment constitutionally lawful, that the legal consequences arising from such a distinction be proportionate to the intended purpose, so as to avoid excessively burdensome or unreasonable results. In short, the principle of equality requires not only that the difference in treatment be objectively justified, but also that it go beyond a ruling of proportionality in constitutional terms on the relationship between the measure taken, the result produced and the intended purpose"<sup>32</sup>, and when those premises are not respected "the principle of equality in taxation is infringed and a criterion of distribution of public burdens is used which lacks any reasonable justification and is therefore incompatible with a fair tax system such as that provided for in article 31 of our Constitution".<sup>33</sup>

### **Infringement of Equal Treatment in the Tax Ordinance**

We have previously seen how, as we expand the function of a legal principle, we find other PGDs applicable in tax matters, sometimes converging with several in the same situation and even confusing their call to the specific case. This is a consistent feature of certain general principles that provide a framework for specific areas of law and which, as in the case of equal taxation, the Constitutional Court itself recognizes as inseparable from other principles<sup>34</sup>.

It should also be noted that the principle of equal taxation in Article 31.1 EC is a specification of the same principle mentioned in article 14 EC<sup>35</sup>. And, in accordance with the aforementioned, "the principle of equality before the Tax Law implies that the distribution of the tax burden is made equally among the taxpayers, bearing in mind their economic capacity, using the progressive technique"<sup>36</sup>. Or as the Constitutional Court briefly and rightly proposes, inequality itself requires equal treatment for those who are equal and unequal for those who are unequal<sup>37</sup>. In the following, we will analyze each of the judgments that address this issue.

#### *Unequal Treatment for Equal Parties*

The judicial resolution that we are going to study deals with the application of this PGD from the perspective of equality in taxes, as proposed by Rodríguez Bereijo, or equal treatment in the Law as it is also known. The Judgment of March 21, 1997, of the Superior Court of Justice of Catalonia, appeal 780/1996, where the Honorable Mr. Francisco José Navarro Sanchís, was the lecturer, and he stated on this unequal treatment: "The difference in treatment between some towns is unjustified, given that for the other towns in the municipality a different quota is established according to whether or not special contributions have been paid, while for Renedo, the taxable events located in it will give rise to the imposition of a single quota which dispenses with the previous distinction, so that those who had

previously paid the cost of establishing the service by means of special contributions, not seeing this circumstance recognized, will have to bear a quota which is quantitatively higher than those located in the other towns". This was a consequence of the municipal tax requirement which, in application of the Tax Ordinance, established a difference in treatment that "does not respond at all to criteria of contributory capacity sufficiently explained in the economic-financial report or in the Tax Ordinance and, furthermore, constitutes discrimination contrary to article 14 of the Constitution, in relation to article 31.1 of the Magna Carta, which recognizes the principle of tax equality".

As we can see, the Court sanctions the unequal treatment of the local rule between some populations and others. The result of this situation was that the inhabitants of Renedo were taxed unequally (a quantitatively higher quota, the judgment states) to their neighbors and, therefore, the rule clearly violated the principle of equality, that is, its equal treatment aspect.

The High Court of Justice of Valencia, in its Judgment of January 19, 1991<sup>38</sup>, also considered that the principle of equality was violated by the discrimination of the users of the water service according to the physical location within the municipality "*because what is equitable is the distribution of the costs among all the users without distinction of their geographical location*".

#### *Equal Treatment for Unequal Parties*

The same fate will befall the Ordinance giving equal treatment to the unequal parties, since this principle has this double aspect active. This was the case of Tax Ordinance number 120 of the Oviedo City Council, which regulates the fees for the private occupation or special use of the land, air or subsoil of the local public domain. The Supreme Court in its Judgment of June 19, 2008, appeal number 1841/2006, where the Honorable Mr. Emilio Frías Ponce, who was the lecturer, stated about the fee that established a single average market price for the whole City of Oviedo, despite the fact that the economic-financial study contemplated different values and profitability of the occupation depending on the category of the street where it takes place. He therefore stated that "the issue discussed does not concern the value from which the City Council calculates the profit derived from the use but rather the demand for a single price for the whole City, despite recognizing the existence of different values and profitability of occupation depending on the category of street in which it takes place, and on the application of unusual coefficients to the calculation of the profit value".

That is why the decision in the aforementioned judgment ended up overturning the contested decision and annulling the rule of the aforementioned City Council, insofar as the municipality itself recognized that there were different values and returns on occupation depending on the category of street in which it took place and, nevertheless, it established an equal price for the entire city.

#### **Infringement of Equality by Omission in the Tax Ordinance**

After checking the two active ways of infringing the principle of equality by the local standard, it now remains to be seen whether the Tax Ordinance can violate this PGD by omission. In this respect, and apart from the differences, it is usual to find the concept of "infringement by omission" in the *ius puniendi* of the State, not in vain, in the sanctioning tax law we have this provision in article 183.1 LGT. It is peaceful that the nature of this infraction is due to the prior existence of a duty or obligation that has been disregarded by the offending subject and therefore it deserves the social reproach assigned to it by the sanctioning law<sup>39</sup>.

In our case, the principle of equality, instead of transferring an obligation or duty to the person, it grants a right - which is also one of those qualified as fundamental by our Constitution - and therefore, what emerges is a legal situation in the subject. If this right is frustrated, even by a rule of a general nature, he/she may request judicial assistance to re-establish or make effective this principle. Therefore, we understand that the provision contained in a Tax Ordinance of a tax relationship that does not consider one or more circumstances that attend to the full application of the principle of equality, may be alleged in a possible challenge to the local rule on the grounds of its infringement by omission.

An example of the above is shown by the High Court of Justice of Catalonia, in its Judgment dated January 15, 1997<sup>40</sup>, which found that it was contrary to the principle of equality to establish water service

tariffs that were discriminatory against normal over-consumption without providing for any corrective rules for large families. This doctrine coincides with that upheld by the Supreme Court in its Judgment dated December 28, 2007, case number 3332/2005, where the Honorable Mr. José Díaz Delgado, the lecturer, upheld the appeal filed by the Association of Large Families of Zaragoza against the Tax Ordinance of that municipality regulating the tariff of the public water supply service.

The High Court's judgment acknowledges the infringement of this principle by omission. The judgment is based on the following reasoning: "focusing however on the possible infringement of the principle of equality before the law, it is clear that the tariff in question, by containing a fixed and a variable part, becomes a levy with, on the one hand, an obvious collection purpose and, on the other hand, a non-tax purpose, aimed at reducing water consumption, given the fact that it is a scarce good, so that in principle the variable part of it would be justified, which raises the price of water to the extent that it begins to be excessive in relation to that considered as normal. But this different tax treatment, which is not to be criticized, does infringe the principle of equality, by omission, when it places a greater burden on those who do not incur in over-consumption. It is clear that within the tax system there are objective levies, which do not take into account the personal circumstances of those who carry out the taxable event, but only its performance, which may lead to situations of material inequality, since it will mean a greater tax effort for some in relation to others and which, however, do not necessarily have to be qualified as unconstitutional since this option may be justified for several reasons. However, we are not dealing with this situation, but rather with a tariff that in part has a non-fiscal purpose, aimed at discouraging, by means of increasing the price of water, those who exceed their ordinary expected consumption; And it is precisely at this point, where the Administration, by not taking into account for its calculation, in the variable part, the number of people who live in each home, (for whose application it would be sufficient to take into account the municipal register), treats differently those who live in the same home, having the right to water consumption, in the same terms as any citizen who lives only in one home, charging them more for a possible excess consumption".

It should be noted that this process was conducted under the procedure regarding the protection of the fundamental human rights regulated in Chapter I, Title V, of the LJCA, and it concluded with the recognition that "the principle of equality has been infringed, insofar as it is separated from the tax treatment given to citizens of the Zaragoza municipality who live alone, declaring Tax Ordinance 24-25 to be contrary to law by omission". Therefore, the application of the omission of this tax law was endorsed by the Supreme Court without any detail.

## CONCLUSIONS

Equality is one of the higher values of our Constitution as established in article 1 and, in this sense, it appears in its different statements. In this way, article 9.2 of the EC establishes the following mandate: "it is the duty of the Public Authorities to promote the conditions that ensure that the freedom and equality of the individual and of the groups to which he/she belongs are real and effective" and, in article 14, it recognizes a true subjective right when it states that "the Spanish citizens are equal before the Law, and no discrimination may prevail for reasons of birth, race, sex, religion, opinion or any other personal or social condition or circumstance". For this reason, the TC will say about this PGD that it is also "an important value in the Spanish legal system, which should be placed in a central range"<sup>41</sup>.

Based on the constitutional provision of generality and tax equality in article 31.1 CE, the analyzed doctrine and the reviewed judgments, we can conclude that these principles in the Tax Ordinances are given in an active positive character: all equal citizens must pay the same; and in a negative character, unequal citizens must not pay the same. On the other hand, the omission of this principle will be of subtle and delicate appreciation since it will have as a cause a special municipal tax or contribution that, from the start, fulfills the parameters of its formal and material establishment, and nevertheless, it will be subject to some or several considerations by virtue of which, a normally excessive quota results unfair. And it is precisely this omission that will determine the infringement of the equality principle.

In summary, we can say that the principle of generality imposes on local regulations the obligation to call on *everyone* to support municipal public expenditure and not to establish exemptions or bonuses without justification. In addition, the principle of equality will also imply that all citizens are equal *before* and *in* local taxes, as well as being an instrument through which the State also promotes equality (article 40.1 EC). And the combination of both principles in the field of Local Administration can be summarized as follows: everyone must contribute to the support of municipal expenditures and there must be no unjustified inequalities of treatment or privileges in the Tax Ordinance.

## ENDNOTES

1. Sainz de Bujanda, F.: La contribución territorial urbana. Trayectoria histórica y problemas actuales, Valencia (1987): Consejo General de Cámaras de la Propiedad Urbana de la Comunidad Valenciana, p. 6.
2. Martín queralt, J.; Lozano Serrano, C.; Casado Ollero, G.; Tejerizo López, J.M.: Curso de Derecho Financiero y Tributario. Madrid (2000): Tecnos, pp. 105-106.
3. *Ibidem*.
4. The STC dated February 15, 2012 (RTC 2012, 19), states that "the 1978 Constitution does not provide a specific model of tax system that is applicable at any given time, having left it up to the state legislator for determination".
5. Such a system must be in line with reality, it must be proportionate and reasonable. This is the understanding of the SSTC dated May 12, 1994 (RTC 1994, 146) and December 22, 2004 (RTC 2004, 255).
6. The GLT, in its article 3.1, will relate these principles and will also include the equitable distribution of the tax burden, as well as the principle of justice itself. Based on this last reference, we can conclude that the tax field is the one with the most references to justice as a value and a principle: therefore, according to article 1.1 EC, which makes it a higher value in the Legal System, and Tax Law is part of that system, including the provisions of article 31.1 EC establishing a fair taxation system; up to the principle of justice in the organization of taxation in article 3.1 GLT, our higher standards reiterate the need for justice in our branch of law.
7. The Court states in the Judgment that "far from imposing a levy on the true wealth of the parties involved in the legal business, it makes them pay taxes on non-existent wealth, a consequence which, while ignoring the requirements of tax justice arising from article 31.1 EC, is also clearly contradictory to the principle of economic capacity recognized in the same provision". However, it must be understood that the requirement to tax non-existent wealth directly infringes the principle of economic capacity and, consequently, tax justice. Not being right, in our opinion, the reverse proposal.
8. First definition of the term "system" according to the Dictionary of the Real Academy of the Spanish Language. Madrid (2001): Spain.
9. Calvo Ortega, R.: ¿Hay un Principio de Justicia Tributaria?. Pamplona (2012): Aranzadi, p. 123.
10. AATC 10 de mayo 2005 (RTC 2005, 207 AUTO), FJ 6; y 24 de mayo 2005 (2005, 222 AUTO), FJ 7.
11. The Constitutional Court has recognized on several instances that taxes, in addition to being a means of collecting public revenues, serve as instruments of general economic policy and ensure a better distribution of national income (SSTC 276/2000 dated November 16 (RTC 2000, 276), 289/2000 dated November 30 (RTC 2000, 289), 3/2003 dated January 16 (RTC 2003, 3) and 10/2005 dated January 20 (RTC 2005, 10)). However, the legislator will not be able to establish tax privileges.
12. The Judgment of the Constitutional Court 46/2000, dated February 17 (RTC 2000, 46), stated that "the generality of the rule, even with a legitimate purpose, cannot prevail over the specific malfunctions that it generates in this case, since these violate the requirements derived from the principle of economic capacity".
13. The Supreme Court, in its Judgment 2968/1986, dated June 2, stated that "the generality, in fact, is closer to the principle of equality and therefore rejects any discrimination", so the principle of generality will not admit discrimination of treating the unequal parties as equal, or treating the equal parties as unequal.
14. STS June 2 1986 (Judgement 10524/1986).
15. Calvo Ortega, R.: ¿Hay un Principio de Justicia Tributaria?, cit., p. 23.
16. *Ibidem*.
17. The relationship between the principle of generality and the principle of economic capacity is set out in an exemplary manner in the STC 96/2002, dated April 25 (RTC 2002,96), "the expression 'everyone'

incorporates the duty of any person, natural or legal, national or foreign, resident or non-resident, who by virtue of their economic relations with or from our territory (principle of territoriality) exteriorizes manifestations of economic capacity, which also makes them, in principle, holders of the obligation to contribute in accordance with the tax system".

18. Martín queralt, J.; Lozano Serrano, C.; Casado Ollero, G.; Tejerizo López, J.M.: *Curso de Derecho Financiero*, cit., p. 108.
19. This document is expressly provided for in article 25 of Royal Legislative Decree 2/2004, dated March 5, approving the consolidated text of the Law Regulating Local Tax Offices (TRLHL).
20. Martín Fernández, J.: *Tasas y precios en la Hacienda Local. La experiencia española*. Madrid (2013): Marial Pons, p. 132 y 133.
21. Alexy, R.: *Teoría de los Derechos Fundamentales*. Madrid (2012); Centro de Estudios Políticos y Constitucionales, p. 91 y ss.
22. This principle has been used in several court judgments of the ordinary jurisdiction. To that effect, SSAN dated February 21, 2007 (Rec. No. 591/2005) and March 30, 2006. As well as the one of the SSTSJ of Madrid December 19, 2007 (Rec. No. 1368/2004), and January 23, 2008 (Rec. No. 1395/2004).
23. Certainly the exemption or infringement of the principle of generality in the case of tax benefits has a partial nature and it applies to a small area or population. In this sense, the principle of generality will continue to be essential in the design of any tax but, as the TC admits, the legislator may establish areas where it does not apply without affecting its general effectiveness and constitutional validity.
24. Cordón Ezquerro, T. y Gutiérrez Franco, Y.: "Los principios constitucionales de generalidad y capacidad económica en nuestra realidad tributaria", *Gaceta Fiscal* (1996), núm. 141, pp. 183-185.
25. *Ibidem*.
26. This need to consider the principle of equality "imposes on the legislator the duty to give equal treatment to those in equal legal situations, with a prohibition of any inequality which, from the point of view regarding the purpose of the rule in question, lacks objective and reasonable justification or is disproportionate to that justification" (SSTC 212/2001, dated October 19 (RTC 2001, 212) and 134/1996, dated July 22 (RTC 1996, 134), among others).
27. STC 49/1982 dated July 14 (RTC 1982, 49).
28. Checa González, C.: *Reclamaciones y Recursos Tributarios*. Pamplona (1997): Aranzadi, p. 959.
29. Rodríguez Bereijo, A.: *Igualdad tributaria y tutela constitucional. Un estudio de jurisprudencia*. Madrid (2011): Marcial Pons, p. 46.
30. This equality has similar characteristics in relation to the principle of generality set out above. This overlap between general principles of tax law is simply a manifestation of their interrelationship and connection which sometimes, as is the case with the principle of generality and equality, leaves little room for differentiation.
31. This application of the equality principle is related to Article 40.1 EC, which states that "Public Authorities shall promote ... a more balanced distribution of regional and personal income" and, moreover, can also be easily related to the principle of progressiveness.
32. STC 39/2002 dated February 14 (RTC 2002, 39).
33. STC 134/1996 dated July 22 (RTC 1996, 134).
34. A clear example of this connection between the principle of equality and other PGD is presented in STC 209/1988, dated November 10 (RTC 1988, 209), which states that "equality before the Law - before the Tax Law, in that case - is therefore inseparable from the principles (generality, capacity, justice and progressiveness, in what is now important) that are set forth in the last constitutional principle referred to".
35. Chico de la Cámara, P.: "Aplicaciones prácticas de los principios constitucionales tributarios", *Tribuna Fiscal*, (1994) núm. 40, p. 58.
36. Bonell Colmenero, R.: *Principio de igualdad y deber de contribuir*, *Anuario Jurídico y Económico Escorialense*, 2005, XXXVIII, p. 203.
37. STC 76/1990, de 26 de abril (RTC 1990, 76). (PLEASE TRANSLATE THIS)
38. En *Revista General del Derecho* (1991), núm. 558, p. 1948.
39. This failure to fulfill the tax obligation also requires the conduct to have been fraudulent or guilty under any degree of negligence, since this type of regulation does not accept strict liability as shown in article 179 LGT and has been reiterated by the Constitutional Court -STC 79/1990, of April 26 (RTC 1990, 79), for all of them.
40. Sentencia citada en: Pedregal Mateos, B.: *Población y Panificación Hidrológica*. Sevilla (2005): Universidad de Sevilla-Junta de Andalucía, p. 114.

41. STC 8/1986, de 21 de enero (RTC 1986, 8). En idéntico sentido, SSTC 103 y 104/1983, de 22 y 23 de noviembre (RTC 1983, 103 y 104).

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