

EUROPEAN PARLIAMENT

2004



2009

Committee on Petitions

2008/2248(INI)

10.12.2008

DRAFT REPORT

on the impact of extensive urbanization in Spain on individual rights of European citizens, on the environment and on the application of EU law, based upon petitions received (Petitions 00/00 and 00/00)
(2008/2248(INI))

Committee on Petitions

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the impact of extensive urbanization in Spain on individual rights of European citizens, on the environment and on the application of EU law, based upon petitions received (Petitions 00/00 and 001/00) (2008/2248(INI))

The European Parliament,

- having regard to Petition 00/00,
 - having regard to Petition 001/00,
 - having regard to the right of petition enshrined in Article 194 of the EC Treaty,
 - having regard to Rule 192(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Petitions and the opinion of the Committee on Legal Affairs (A6-0000/2008),
- A. whereas the petitions process provides European citizens and residents with a means of obtaining non-judicial redress for their grievances when these concern issues arising from the fields of activity of the European Union,
- B. whereas Article 6(1) of the Treaty on European Union states that “the Union is founded on the principles of liberty, democracy, respect for human rights and the rule of law, principles which are common to the Member States”,
- C. whereas in Article 6(2) of the EU Treaty the Union commits itself to respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR),
- D. whereas Article 7 of the EU Treaty provides for procedures whereby the Union can respond to breaches of the principles mentioned in Article 6(1) and seek solutions,
- E. whereas Article 7 also gives Parliament the right to make a reasoned proposal to the Council for determination of the question whether there is a clear risk of a serious breach by a Member State of the values on which the Union is founded,
- F. whereas Article 7 of the Charter of Fundamental Rights of the European Union guarantees the protection of privacy and family life, including the private home of citizens, and whereas Article 8 of the ECHR confers the same rights and clarifies that “there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”; whereas Parliament, the Council and the Commission have committed themselves to respecting the Charter in all their activities,

- G. whereas the right to private property is recognised as a fundamental right of European citizens in Article 17 of the Charter of Fundamental Rights, which provides that “everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions”, that “no one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss”, and that “the use of property may be regulated by law in so far as is necessary for the general interest”,
- H. whereas Article 18 of the EC Treaty provides that “every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and the measures adopted to give it effect”,
- I. whereas according to Article 295, the EC Treaty “shall in no way prejudice the rules in Member States governing the system of property ownership” and whereas the case-law of the Court of Justice has confirmed that the competence of Member States in this respect must always be applied in conjunction with the fundamental principles of Community law, such as the free of movement of goods, persons, services and capital (see the judgment of 22 June 1976 in Case C-119/75 *Terrapin v Terranova* [1976] ECR 1039),
- J. whereas Article 1 of the first Additional Protocol to the ECHR declares that “every natural or legal person is entitled to the peaceful enjoyment of his possessions”, that “no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law” and that “the right of a State to enforce such laws as it deems necessary” may only be exercised in order “to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”,
- K. whereas Parliament considers that the obligation to cede legitimately acquired private property without due process and proper compensation and the obligation to pay arbitrary costs for unrequested and often unnecessary infrastructure development constitute a violation of an individual's fundamental rights under the ECHR and in the light of the case-law of the European Court of Human Rights (see, for instance, *Aka v. Turkey*¹),
- L. whereas in the course of the current parliamentary term the Committee on Petitions, acting in response to the very large number of petitions received, has conducted detailed investigations, has reported three times on the extent of the abuse of the legitimate rights of European citizens to their legally acquired property in Spain, and has also detailed its concerns in relation to the undermining of sustainable development, environmental protection, water quality and provision, procedures concerning public procurement with regard to urbanisation contracts and insufficient control of urbanisation procedures by many local and regional authorities in Spain²,

¹ Judgment of 23 September 1998; see also Parliament's resolution of 21 June 2007 on the results of the fact-finding mission to the regions of Andalucía, Valencia and Madrid conducted on behalf of the Committee on Petitions (OJ C 146 E, 12.6.2008, p. 340).

² See the above-mentioned resolution of 21 June 2007 and the resolution of 13 December 2005 on the alleged abuse of the Valencian Land Law or Ley Reguladora de la Actividad Urbanística (LRAU – law on development activities) and its effect on European citizens (Petitions 609/2003, 732/2003, 985/2002, 111272002, 107/2004

- M. whereas there is growing evidence that the judicial authorities in Spain have begun to respond to the challenge resulting from excessive urbanisation in many coastal areas, in particular by investigating and bringing charges to bear against corrupt local officials who, by their actions, have facilitated unprecedented and unregulated urban developments to the detriment of the rights of European citizens, thereby damaging irretrievably the biodiversity and environmental integrity of many regions of Spain; whereas Parliament has observed, however, that procedures remain outrageously slow and that the sentences handed down in many of these cases are incapable of being enforced in a way which provides any satisfaction to the victims of such abuse,
- N. whereas such widespread activity, supported by irresponsible local and regional authorities through inadequate and sometimes unjustified legislation which in many cases runs counter to the objectives of several European legislative acts, has been most damaging to the image of Spain and to its broader economic and political interests in Europe,
- O. whereas regional ombudsmen have frequently acted, in very difficult circumstances, to defend the interests of European citizens in cases related to urbanisation abuses, albeit that their efforts have generally not been heeded by regional governments,
- P. whereas Article 33 of the Spanish Constitution makes reference to the rights of individuals to their property, and whereas no comprehensive interpretation of that article has ever been provided by the Constitutional Court, notably as regards the provision of property for social use as opposed to the rights of individuals to their legally acquired homes and dwellings,
- Q. whereas the national government in Spain has a duty to apply the EC Treaty and to defend and ensure the full application of European law on its territory, irrespective of the internal organisation of the political authorities as established by the Constitution of the Kingdom of Spain,
- R. whereas the Commission, acting pursuant to the powers conferred on it by Article 226 of the EC Treaty, has brought proceedings against Spain before the Court of Justice in a case involving the excessive urbanisation abuses which have occurred in Spain which directly concerns the implementation by the Valencian authorities of the Directive on Public Procurement¹,
- S. whereas the Commission, at the request of the Committee on Petitions, has launched an investigation into more than 250 urbanisation projects which have received a negative opinion from the competent water authorities and river basin authorities and approval of which is pending in Andalucía, Castilla-la-Mancha, Murcia and Valencia,
- T. whereas, however, in many documented cases of urbanisation abuse in Spain the Commission has failed to act sufficiently forcefully, not only as regards enforcement of the precautionary principle of environmental law but also because of its lax interpretation

and others) (OJ C 286 E, 23.11.2006, p.225).

¹ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

of acts by competent local or regional authorities which have binding legal effect, such as the “provisional approval” of an integrated urban development plan by a local authority,

- U. whereas the objective of the Strategic Environmental Impact Assessment Directive¹, Article 3 of which explicitly covers tourism and urbanisation, is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development; and whereas the Water Framework Directive² requires Member States to prevent the deterioration of their waters and to promote the sustainable use of their fresh water resources,
- V. whereas successive fact-finding visits by the Committee on Petitions have shown that these objectives are frequently grossly misunderstood by many local and regional authorities (not just in the coastal regions) when proposing or agreeing to extensive urbanisation programmes; whereas most urbanisation plans contested by petitions involve the reclassification of rural land into land zoned for urbanisation – to the considerable economic benefit of the urbanisation agent and the developer; and whereas there are also many instances of protected land, or land which should be protected because of its sensitive biodiversity, being de-listed and reclassified, or not being listed at all, precisely to allow for urbanisation of the area concerned,
- W. whereas such considerations compound the abuse which is felt by thousands of European citizens who, as a result of the plans of the urbanisation agents, have not only lost their legitimately acquired property but have been forced to pay the arbitrary cost of unwanted, often unnecessary and unwarranted infrastructure projects directly affecting their property rights, the end result of which has been financial and emotional catastrophe for many families,
- X. whereas many thousands of European citizens have, in different circumstances, bought property in Spain in good faith acting with local lawyers, town planners and architects, only to find later that they have become victims of urbanisation abuse by unscrupulous local authorities and that, as a result, their property faces demolition because their homes have been found to be illegally built and therefore worthless and unsaleable,
- Y. whereas the natural Mediterranean island and coastal areas of Spain have suffered extensive destruction in the last decade as cement and concrete have saturated these regions in a way which has affected not only the fragile coastal environment – much of which is nominally protected under the Habitats³/Natura 2000 and Birds⁴ Directives – but also the social and cultural activity of many areas, which constitutes a tragic and irretrievable loss to their cultural identity and heritage as well as to their environmental integrity, and all this primarily because of the greed and speculative behaviour of certain local authorities and members of the construction industry who have succeeded in

¹ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

² Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

³ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

⁴ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ L 103, 25.4.1979, p. 1).

deriving massive benefits from their activities in this regard, most of which have been exported¹,

- Z. whereas the building industry, having profited excessively during the years of rapid economic expansion, has become a primary casualty of the current collapse of the financial markets, itself partly provoked by speculative ventures in the housing sector, and whereas this affects not only the companies themselves, who are now confronted with bankruptcy, but also the tens of thousands of workers in the building industry who now face unemployment because of the unsustainable urbanisation policies which were pursued and of which they now have also become victims,
1. Calls on the Government of Spain and of the regions concerned to carry out a thorough review and to revise all legislation affecting the rights of individual property owners, in order to bring an end to the abuse of rights and obligations enshrined in the EC Treaty, in the Charter of Fundamental Rights, in the ECHR and in the relevant EU Directives, as well as in other conventions to which the EU is a party;
 2. Calls on the competent regional authorities to declare a moratorium on all new urbanisation plans which do not respect the strict criteria of environmental sustainability and social responsibility and which do not guarantee respect for the rightful ownership of legitimately acquired property, and to halt and cancel all existing developments where criteria laid down in EU law, notably as regards the award of urbanisation contracts and compliance with provisions relating to water and the environment, have not been respected or applied;
 3. Urges the competent national and regional authorities to establish functioning judicial and administrative mechanisms, involving the regional ombudsmen, which are given the authority to provide means of redress and of compensation for victims of urbanisation abuse who have suffered under the provisions of existing legislation such as the Ley Reguladora de la Actividad Urbanística and the Ley Urbanística Valenciana;
 4. Requests the competent financial and commercial bodies concerned with the construction and urbanisation industry to participate actively with the political authorities in the search for solutions to the existing problems, resulting from massive and unsustainable urbanisation, which have affected hundreds of thousands of European citizens who have chosen to take advantage of the provisions of the EU Treaty and who have taken up their rights of establishment under Article 44 in an EU Member State which is not their country of origin;
 5. Calls on the EU institutions to provide advice and support, if requested so to do by the Spanish authorities, in order to provide them with the means to surmount effectively the disastrous impact of massive urbanisation on citizens' lives within a duly short yet reasonable time-frame;
 6. Calls on the Commission, at the same time, to ensure strict respect for the application of Community law and of the objectives laid down in the Directives covered by this resolution, and to be more exigent vis-à-vis the Spanish authorities when it appears that many local authorities are failing to fulfil their obligations in relation to EU citizens;

¹ Note the recent reports issued by the Bank of Spain, Greenpeace, and Transparency International.

7. Expresses its concern and dismay that the legal and judicial authorities in Spain have shown themselves to be largely ill-prepared and inadequate in dealing with the impact of massive urbanisation on peoples' lives, as evidenced by the thousands of representations received by Parliament and its responsible committee on this issue;
8. Believes, nevertheless, that absence of clarity, precision and certainty with regard to individual property rights contained in existing legislation, and the lack of any proper and consistent application of environmental law, are the root cause of many problems related to urbanisation and that this, combined with a certain laxity in the judicial process, has not only compounded the problem but has also generated an endemic form of corruption of which, once again, the European citizen is the primary victim, but which has also caused the Spanish state to suffer significant loss;
9. Pays tribute to, and fully supports the activities of, the regional ombudsmen (“síndics de greuges”) and their staff, as well as to the more assiduous public prosecutors (“fiscals”) who have recently done an enormous amount to restore the integrity of some of the institutions affected by this issue;
10. Also praises the activity of the petitioners, their associations and the local community associations, involving tens of thousands of Spanish and non-Spanish citizens, who have brought these issues to Parliament's attention and who have been instrumental in safeguarding the fundamental rights of their neighbours and of all those affected by this enormous and complex problem;
11. Recalls that the Environmental Impact Assessment Directive¹ and the Strategic Environmental Impact Assessment Directive impose an obligation to consult the public concerned at a stage when plans are being established and drawn up, not – as so often has happened in cases brought to the attention of the Committee on Petitions – after the plans have been *de facto* agreed by the local authority; recalls, in the same context, that any substantial modification to existing plans must also respect this procedure and that plans must also be current and not statistically inaccurate or out of date;
12. Recalls also that the Commission is empowered by Article 91 of Regulation (EC) No 1083/2006² to interrupt the payment of structural funding, and by Article 92 to suspend such funding to a Member State or region concerned, and to establish corrections in relation to projects in receipt of funding which are subsequently deemed not to have fully complied with the rules governing the application of relevant EU legislative acts;
13. Recalls also that Parliament, as the budgetary authority, may also decide to place funding set aside for cohesion policies in the reserve if it considers this necessary in order to persuade a Member State to end serious breaches of the rules and principles which it is obliged to respect either under the Treaty or as a result of the application of EU law, until such times as the problem is resolved;

¹ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40).

² Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund (OJ L 210, 31.7.2006, p. 25).

14. Reiterates the conclusions contained in its previous resolutions by calling in question the methods of designation of urbanisation agents and the frequently excessive powers often given to town planners and property developers by certain local authorities at the expense of communities and the citizens who have their homes in the area;
15. Urges local authorities, once again, to consult their citizens and involve them in urban development projects in order to encourage more acceptable and sustainable urban development where this is necessary, in the interest of local communities and not in the sole interest of property developers, estate agents and other vested interests;
16. Strongly condemns the illicit practice whereby certain property developers undermine by subterfuge the legitimate ownership of property by European citizens by interfering with land registration and cadastral notifications, and calls on local authorities to establish proper legal safeguards to counter this practice;
17. Reaffirms that, where compensation is payable for loss of property, it should be awarded at a suitable rate and in conformity with the case-law of the Court of Justice and of the European Court of Human Rights;
18. Once again calls on the Commission to initiate an information campaign directed at European citizens buying real estate in a Member State other than their own;
19. Instructs its President to forward this resolution to the Commission and the Council, to the Government and Parliament of the Kingdom of Spain and the Autonomous Regional Assemblies, to the national and regional ombudsmen of Spain and to the petitioners.