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First fact-finding mission to Spain

Fact-finding mission report July 6th,2004

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Committee on Petitions

6 July 2004

REPORT

on the Fact-finding mission to Valencia, Spain, May 25-28 2004, pursuant to Rule 192, paragraph 3.

Petition 609/2003 by Charles Svoboda, on behalf of "Abusos Urbanisticos - No" and petitions 107/2004, 985/2002, 1112/2002, 732/2003

Petition 32/2003 by WWF/Adena and others on the Jucar Vinalopo Water Transfer Scheme

Committee on Petitions

Members of the delegation:

Margot Kessler, MEP

Eurig Wyn, MEP

David Lowe, Head of Division, Committee on Petitions

Introduction:

The decision of the Committee on Petitions to send a fact-finding mission to the Valencia region was endorsed by the Bureau of the European Parliament on May 3rd 2004 "on account of the broad public interest in Petition 609/2003 which concerns the application by the Spanish authorities of a land law which appears to deny property rights..." The petition was tabled by Charles Svoboda on behalf of an association, based in the Valencian region, called Abusos Urbanisticos - No. More than ten thousand persons either signed the petition or sent in e-mails and additional letters of support, many describing their grievances in detail. Other petitions on the same subject were also recorded on behalf of a group of German citizens affected by the land laws in an association led by Mr & Mrs Klaus Schuckall, (985/2002) and and yet

another by Ms. Ulla-Britt Perret (1129/2003).

The Committee appointed Margot Kessler MEP and Eurig Wyn MEP to participate in the mission, accompanied by the head of the committee secretariat. Roy Perry MEP was also to have participated but was obliged to stand down due to other pressing commitments.

The objective of the visit was two-fold:

 To investigate with the petitioners and the authorities concerned, as well as with other interested parties, the application and alleged abuse of the Valencian Land Laws, in particular the LRAU legislation, and to seek remedies for the apparent abuse of this legislation, currently under review; (Petitions 609/2003, 107/2004, 985/2002, 1112/2002, 732/2003)

 To investigate with the petitioners and authorities concerned the situation regarding the water transfer projects linked to the Jucar-Vinalopo basin (Petition 32/2003) also in the Valencia region.

The Valencian Land Law or LRAU.

At the arrivals lounge in Alicante Airport, the visitor is immediately confronted with promotional stalls belonging to estate agents and property developers, all vaunting the merits of secondary residences, holiday homes and retirement villas. This sets the scene conveniently.

According to the European foreign residents association "Ciudadanos Europeos", more than 100,000 people a year have bought homes in Spain during the last six years, creating an annual investment of some 200.000 million. 1.5 million properties have been bought by families from other, mainly northern European, countries in the last 40 years. A very high proportion of these have been bought in the Valencia region. Most properties bought by foreign owners appear to be bought by persons who are approaching retirement age and 20% of properties become the principal residence of the owners in a short space of time. A very high proportion of owners divide their time between their Spanish home and their home in another European country. A growing number of people are investing in property abroad for all sorts of reasons, differential house prices, improved climate and living conditions, more free time and so on. 90% of these buy property in Spain.

This has become a social phenomenon of considerable significance, touching the lives of many thousands of European citizens who, contrary to the situation which prevailed beforehand, are usually from relatively modest financial means and varied social backgrounds. In such an environment as this proper legislation which governs land ownership, the building and the property market is essential. EU Directives on the environment, on consumer protection, on public procurement should be respected, as should treaty provisions regarding individual and collective rights.

The need for proper legislation is also evident of course for the significant number of Spanish citizens who have entered the property market and acquired homes in the coastal regions of Valencia in recent years. It is no less important for Spanish citizens who have owned land in the region for generations but who require a proper recognition of their rights, and not just their obligations and responsibilities.

At national level, Decree 515 was adopted in 1989 which gave rights to property buyers and placed regional and local authorities under an obligation to organise their land-use planning process. Prior to the adoption of this legislation there were many uncontrolled irregularities in the buying and selling of land. Houses were often built upon land which was not designated for building purposes, which was even unsuitable for building purposes, and people were able to take advantage of low-cost land without any intervention or regulation by the public authorities in a majority of cases. Amnesties were frequently granted by local authorities which regularised, post facto, illegal property development. Given the growth

in the market this situation could not have been allowed to continue.

Under the Spanish political system the authorities which are responsible for details and the application of this type of legislation are the autonomous governments. The Valencian parliament was the first to approve such legislation in 1994 when the LRAU "La Ley Reguladora de la Actividad Urbanistica" was voted to regulate the orderly acquisition and development of land, and to prevent excessive land speculation. Other laws governing land and property rights include the "Leyes de Suelo" and the "Ley de Expropriacion Forzosa".

Whatever the original intentions of the Valencian parliament were when the LRAU was adopted in 1994, there is no doubt that the application of the law has led to a serious abuse of the most elementary rights of many thousands of European citizens either by design or by deceit. Their consumer rights, and especially their property rights, have been grossly neglected as well in many well-documented cases. They have had their homes and their land expropriated and had to pay for the experience, finding themselves in a surrealistic legal environment without any proper recourse to real justice, though many have also paid lawyers for the privilege of being told directly that what has happened to them was perfectly legal. Even attempts to judge the constitutionality of the LRAU have failed under the pretext of procedural anomalies.

On the other hand, the property developer - the "urbanizator" - has been a major and often unscrupulous beneficiary of the law's application, as have many off-shore banking havens. There are also rumours of political corruption and links between the urbanizator on the one hand, and the local authorities on the other. Few such rumours have been properly investigated by competent authorities. In the course of the visit the members of the delegation heard first-hand accounts of attempts at bribery and corruption in local councils. Many Spanish citizens expressed their shame and their vigorous protests at the level of corruption this law is perceived as having generated. Other Spanish citizens complained of being intimidated by local politicians and several had received clear threats; some were afraid to meet with the delegation as a result.

The petitioners have expressed great faith in the capacity of the European Parliament to work actively in conjunction with the Valencian parliament and authorities in order to resolve the political and personal problems related to the abuse of the land laws. As European citizens the petitioners have a right to expect the European Parliament's intervention and active support when it is clear that abuses have taken place. There is no doubt in the mind of the delegation which visited the region that many, many persons have suffered considerable severe personal, financial and psychological hardship as a result of this legislation.

In the course of the visit, the delegation was able to meet several hundred persons who have been directly affected by the abuse of the Valencian land laws. They travelled from all around the surrounding areas to meet with the delegation at the EU Office in Alicante and others met in a hotel in Benissa, yet more in Valencia. In addition, on-site visits were made by the delegation to investigate individual properties which had either been already affected by new urbanisation projects or were included on the new urban development plans. In no single case had any reasonable notice been given, nor had any public announcement been made about impending decisions, except on occasion in possibly obscure local newspapers.

Even where local residents had been made aware of certain plans being under consideration affecting their area, many non-residents had no chance of being informed before the property developer struck.

In many examples, development plans appeared to be far in excess of any realistic local requirements either in relation to social needs, infrastructure or other local amenities. (Included in one local development project, for which local property owners were obliged to make a substantial contribution, was the construction of an ?850,000 public convenience: even taking account of inflation this is taking the term 'to spend a penny' a little too far!)

What does the Valencian land law authorise?

Essentially, the law provides for land to be classified as rural, and therefore not liable for development, or 'urbanisable' where the building of new housing, infrastructure and amenities is authorised. Local authorities, on a proposal by the Mayor, are responsible for such planning decisions. Owners of land and existing properties which are newly classified as 'urbanisable' are forced to cede 10% of their land without any compensation as a contribution to the provision of utilities and open space in any development project. They are also under an obligation to contribute either in land or in cash up to 65% of the value which is assessed as being the cost of building the entire infrastructure for the whole of the development area. (They have no control over which infrastructure is required nor over its costing.) Their contribution must be paid in advance or their property will be 'embargoed' and the development will proceed in any event. (Many people in such a situation are no longer eligible for remortgaging their property, to acquire funds, nor can they sell it at a reasonable price because of the impending development.)

The law creates an obligation, unevenly enforced by local authorities, to develop any land which has been classified as urbanisable. If, in principle if not always in practice, after one year classified land has not been the subject of a specific development plan the law allows the local authority to approve an application from any person to develop specific portions of urbanisable land whether or not such a person actually owns any of the land in the designated area at all. Thus, the law as it stands does not require the development company to actually acquire the land they wish to develop; they merely put forward a plan, build and reap the profits.

In such circumstances, it is common practice for property developers - Agentes Urbanizadores or the 'urbanisators' - to prepare their plans unknown to any of the local population, but usually with the knowledge and tacit assent of the mayor and town planning officials, not only before the land is reclassified but also during the first year of its designation as urbanisable land. The urbanisator can be no more than a frontman for a much larger construction firm. Existing property owners are not usually informed directly at all of such proceedings, unlike the situation in other countries where they would be directly involvd if a compulsory purchase order were to be served. When they are informed, for example, through an announcement in the local press, they have only three weeks at the most to provide an alternative plan. This is impossible for local residents, even more impossible for those who own holiday homes or who rent their property.

The local authority will often hide behind the spurious notion of 'public benefit' or 'social interest' which places any development far out of reach of any legal challenge, without there being any requirement to define what such terms mean. In Benissa, a very small proportion of social housing for example, has served as justification for a massive development plan which the delegation discussed with the mayor. The main interest would appear to be entirely financial.

All the cards are in the hands of the mayor, his technical office, the territorial Commission on Urbanism and the Urbanisator. Those persons who are the legal owners of property in a newly urbanisable area, who have carried out improvements over the years, who have cared for their gardens, who have already paid for their water, electricity and other amenities, including for the evacuation of household waste, who have in many ways through taxes, and by other means, contributed to the local community are not dealt any cards at all.

Some case summaries:

The delegation was inundated with individual case studies and examples of expropriation during its short visit. Several local associations have formed to better organise the defence of individual cases. The following examples therefore only constitute a sample of a very large number of grievances. Behind every grievance there are real people, many of whom have been traumatised by their experience.2

Mrs C. is a widow. In 1974 she and her husband legally bought 2,600 sq.meters of land, the deeds of which were formally registered. Housing permits were obtained, taxes paid and a house built in 1974. In 1997 she learned from neighbours that the area on which her property was situated was to be urbanised. In 1999, she paid all death duties on her husband's estate, including the house and land; he had died several years earlier. In May 1999 she was informed that 40 meters of her land had been given to a neighbour and a roundabout was to be built over the site of her kitchen and garden. With her daughter she tried to fight the case but was obstructed at every move. It was only in July 2002 that she received the legal papers from her husband's estate showing that instead of 2,600 sq. meters she know legally owned 1,505 sq. meters. She had never been informed by the land registry, nor the local authority nor anybody else. She has effectively lost 43% of her land to property developers.

Mrs K-W bought a 150-year-old farmhouse in 1996 which was equipped with all amenities. All permits and taxes were paid and the deeds registered. She writes: "It is not written in this deed that half of our property would be taken away from us...even part of our terrace will be demolished and the drive to our garage, or that we would have to pay €43,869,89 to the developer...There is foreseen to build a set of private three story houses and a carpark inside our garden...The diggers are already standing in front of our house...I do not have more words to write because we are so sad and defenceless against this LRAU." A series of photos are attached showing her three young daughters in their 'dreamland', not knowing why they will lose all their trees and garden.

In Denia, El Pobletz, Mr and Mrs M. had 38% of their property expropriated and paid €52,000 towards the cost of local infrastructure projects consisting of a new road and sewer. On their expropriated land, which was in fact a large part of their garden, two luxury villas have been built by the 'urbanisator' and sold for more than €300,000 each.

Mr and Mrs B. bought a small bungalow on 2,625 sq. meters of land in Benissa in 2001. They have now been given an ultimatum by the 'urbanisator' and the town council to cede 1000 sq. meters of land and pay €42,500 to pay for new infrastructure which they do not need but which will benefit a new development adjacent to their property. They were given no information directly concerning the plan itself.

"My husband and I spent all our savings on what we considered to be our home in paradise. We have spent eleven years making an old empty house and overgrown area of land into a home and garden. We could lose it all soon to greedy developers" writes Mrs S, also from Benissa. Writing on behalf of six affected homeowners in the same street she says that they are expected to give up 70% of their land and pay towards the infrastructure costs of the new development. The only notification given for the development was through a web-site about which owners of land learned by chance.

Mr and Mrs D. only bought their home in El Charco Villajoyosa in 2003. They have been given a choice by the town council and local developer (depending on which plan is finally chosen) that they can either demolish their home in favour of a green area and a road, with minimal compensation, or keep their home and half their land and pay €50,000 to infrastructure development costs. They have been told they will be informed when a decision is taken.

Mr and Mrs W-S left Germany four years ago to live in a house they had bought on 3000 sq. meters of land on the outskirts of Denia. They invested everything in the property and its improvement. They learned by chance that an urbanisation project to build 18000 dwellings had been agreed , that 60% of their land would be expropriated, a road would be built between their small house and their pool, and a roundabout would be built where the end of their garden now lies, but not on waste land a little further away. To add insult to injury the property developer is claiming €150,000 for infrastructure costs in advance. They fear that instead of being able to live out their retirement they will be obliged to return to Germany and live off social security.

In Mestrets - Borriolenc local people who own modest properties have formed an association to defend their rights having been faced with an urbanisation plan that rides roughshod over all of their homes, and will deprive them with up to 75% of their land, all of which is owned legally. They have been offered only minimal compensation, far below the real value of their properties where they have, for the most part, lived all their lives. They name the beneficiaries of this land-grab who are the same persons as had taken the decision to develop the land in the first place, though they own none of it. Proposals made by the association to change the plan to protect their existing properties was refused.

Ms B. & Mr S. own a property in El Aljibe, near Tibi which they bought in 1996. By chance, they heard in March 2003 that the area in which they lived was the subject of a new development plan although the town hall at that time repeatedly refused to confirm any details. Some time later a consortium, whose membership included the municipality's legal adviser, published a plan. New roads and a 1,696 house estate were proposed which carved up existing properties and destroyed much of the natural environment. No consideration was given directly to water supplies which are already scarce in the region and which would be required by the new development. The mayor was subsequently defeated in the municipal elections, yet two days before the official hand-over of authority he signed two development projects, including the one for El Aljibe. The new mayor suspended the projects and sacked the municipal architect and the lawyer. The new mayor is now facing legal action from the developers of the project.

The salt flats 'Las Salinas' at Calpe was visited by the delegation and was also the subject of a previous petition 964/2001 by Mrs S. The European Commission washed its hands of the matter on the basis of a response from the Spanish authorities which must now be considered extremely misleading regarding the environmental impact of what is not just a 'reparcelisation' but a huge urban development project which manifestly will destroy a natural habitat of 173 species of wild birds including the greater flamingo and the black-winged stilt and other fauna and flore, and desecrate an area of some historical interest. The coastal area had been protected by law since 1988, yet it was omitted from the EU Natura 2000 site because of the impending urban development, not because of any objective assessment of its ecological structure. The delegation saw the demolition of several small houses that had been part of the scenery for more than a hundred years and stood in the shadows of the huge residential blocks, already built on the other side of the road. Speaking to local residents we were also informed about the dramatic rise in crime locally as many dwellings, houses and apartments alike, have been burgled while their owners are away. Severe water shortages are common, and once again, no consideration seems to have been given to anything except providing benefits for the property developers at the expense of local citizens and their individual rights.

Mr & Mrs W. bought their land in Teulada in 1993 and established their family home there. However, unknown to them at the time, in 1999 a development plan was submitted and approved. The project, as often happens for public procurement reasons, was divided into two phases and without warning phase one started and a slice of their land was shaved off without notice. No response was received from the town hall for the complaint which was lodged and no compensation even mentioned. The second phase of the project envisages the following: 1.600 sq. meters of their land is designated for a green zone, 600 sq. meters for a new road in front of the house, the remaining land is designated for building and 10% is to be given up for nothing. In addition €225,000 is required by the urbanisator from the land owners for infrastructure costs. The owners were presented with an alternative; that they sell their land for €20 per sq. meter which is less that 10% of the objective market value. The whole area which was visited by the delegation is to become a huge building site where once there were farms and forests and a clear view to the sea. An invalid neighbour had half her house bulldozed and a road now runs ajacent to the rear wall of the building. A road, a pavement and street lights have been built which nobody asked for and nobody needs in such a rural setting.

In El Balco, Oropesa del Mar, residents are opposing a development which like all the others will destroy their environment without any environmental impact assessment. Near Benidorm, Mr L. a retired Belgian, had his land expropriated in 1997 to build an entertainment park by Sociedad Parque Tematico de Alicante

SA. He was given less than ?3 per sq. meter and the land was then valued at nearly ?20 per sq. meter by the property developer who had benefitted from the deal. In la Nucia, near Alicante local homeowners have formed an association to fight the impending expropriation of their land under the LRAU. In San Miguel de Salinas near Alicante, another association protests at expropriation and an unprecedented number of developments. Mr & Mrs C in Javea are having to find an urbanisation fee of ?43,000 and give up part of their land to the property developers 'Desarrollo Comercial Cansalades SA'. The association SOS Moraira has catalogued the planned destruction of the coastal environment and the expropriation of small landowners near Teulada.There are many many more examples of such systematic abuse of natural justice, not to mention European law and national legislation.

Observations.

What is so striking about all of these examples is that none of the people concerned have managed to obtain any satisfaction through the courts, or through lawyers because what has happened to them is considered as being quite legal. In practice, the incredible loopholes in the law (which was originally drafted to confront a specific problem of urban development) have enabled unscrupulous politicians and businessmen to obtain huge financial profit on the backs of many vulnerable and unsuspecting persons.

The Valencian response.

The response of the Valencian Government to this situation has been very slow to materialise although of late they have demonstrated their intentions of reforming the legislation and, in the course of the meeting held with members of the delegation, they indicated that would take account of any suggestions which the European Parliament might recommend. In spite of our request, unfortunately only one member of the Cortes Valenciana, Sr Dr Rafael Ferraro Sebastia, was able to be present for the discussion. Faced with the possibility that the LRAU could in any event be declared unconstitutional the new draft legislation was prepared and a copy was given to the delegation by Da. Christina Santamarina. Discussions in the Valencian Parliament could begin in October, members were informed, as the Cabinet had already approved the new draft.

The main draft changes to the law according to the authorities cover eight elements. They highlight, yet fail to adequately address, the enormity of the problem facing so many European citizens:

? The urbanisator must notify persons affected by a development project individually in clear terms concerning the effect of the project on their land

? The length of time given to property owners to decide whether they wish to pay in cash or cede their land in kind passes from 10 days to two months (!)

? Improved opportunities for landowners to become involved in projects (?)

? Urbanisation fees should be more proportional to the actual services provided and there should be full transparency

? A new procedure for the adjudication of development programmes is envisaged to make the selection of the urbanisator more transparent and objective

? When the programme is approved the urbanisator must invite tenders which comply with rules on publicity, free competition and competence

? If the cost of urbanisation turns out to be less than foreseen, landowners can be reimbursed some of their contribution and final costs will not be able to exceed intitial forecasts

 Owners of land would only have to pay for the costs in the improvement of the infrastructure from which they would benefit.

Some of these points were recommended by the local ombudsman, (the Sindic de Greuges) Mr Bernardo del Rosal Blanco in a special report published on March 24, 2004. When the delegation met with him, he explained that he took the unusual step of drafting such a report, which contains thirteen clear recommendations, because of the high number of complaints he had received. He was particularly concerned because the rights of small property owners were undermined; the more wealthy ones could always defend themselves he said. He too is to consider the new draft law and in particular the parts which concerns citizens rights.

He was particularly bothered by the fact that a third party could submit a development plan without having any stake in it, and could do so without the knowledge and consent of property owners. He expressed his concern about the poor evaluation of property values and the extraordinary high urbanisation fees which were charged to homeowners. A system designed to prevent speculation has undermined individual rights, he exclaimed. Property owners directly affected by a development were left out of the process completely, and very few local councils had information channels operating to inform citizens about such things, he noted.

He referred to Article 33 of the Spanish Constitution which protects property rights, inheritance rights and so on, but makes them subject to constraints of 'public interest'. This notion had been particularly abused by local authorities he felt, and due process had been denied to individuals in such matters. Article 6 of the EU Treaty obliges Member States to respect the provisions of the European Convention on Human Rights, which also includes reference to property rights.

Certain central criticisms contained in the report fo the Syndic de Greuges were unfortunately rejected from the outset by the responsible Valencian Minister, Sr. Rafael Blasco. The first two recommendations dealing with expropriation and compensation, as well as elements dealing with the urbanisator, have been ignored by the authorities.

Outstanding issues.

In the meantime there are still a lot of outstanding issues which require clarification, and one of these issues concerns the way in which the authorities have applied EU law on public procurement. Article 72 of the Spanish law on Public Contracts, which is supposed to be the transposition of the EU Directive on Public Procurement, has already been the subject of investigation by the Petitions Committee and the Commission as it increasingly appears that the law does not reflect the directive as it should3. According to many affected citizens the award of development contracts is hardly ever done through a public tender as the initiative for development projects come from the promoter himself. In Sant Joan d'Alicant for example there are nine individual projects agreed for the urban development plan. The value of these projects is over 100 million, though no tenders have been published in an Official Journal of the European Union. A formal complaint is to be lodged with the European Commission on this issue by local citizens who are victims of the effects of the LRAU.

Formally, it is possible, according to the LRAU, for more than 50% of property owners in a given development area to submit an alternative plan but the time allocated is so ridiculously short, merely three weeks, that even if all concerned were properly informed, which is rarely the case, they have no real chance of submitting a credible alternative within the time granted. The developer has after all been working on his proposals for years, backed up by lawyers, architects, accountants and so on.

There is also the question regarding the extent to which EU directives which are designed to protect consumers have been applied by the property companies, developers and real estate agents. This will need

to be investigated further by the European Commission, as will the use of Cohesion funds in such developments. The delegation has photographs and saw examples where EU money was clearly being used in support of urban developments, in effect, subsidising the urbanisator. EU 'rules' are invoked completely spuriously as an argument for the fact that roads are to be twelve meters wide and the streets properly lit at night ! Smaller roads would be quite sufficient in any event, but profits would be much smaller.

The impact on the Mediterranean coastal environment of so many urbanisation projects has been disastrous. Leaving to one side the whole question about the provision of water to this region, which we shall consider in the second part of this report, vast areas of land which was before covered by pine forests and many smaller water courses and vegetation have been covered by asphalt and concrete. Whole vistas have been removed as apartment buildings have been built along the coast. Detached and semi-detached villas are unfurling like waves over the coastal hillsides as municipalities expand.

There is no doubt that demand for the development of new housing is strong. At the same time it is surprising that so little is done b

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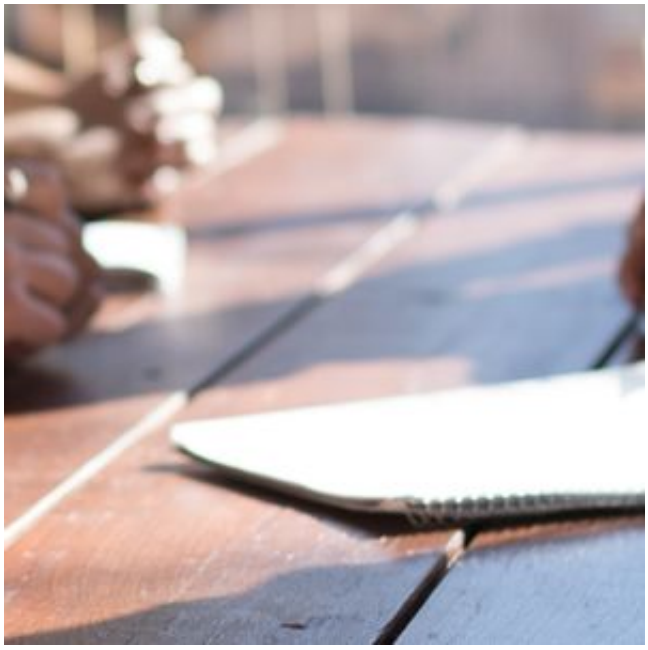

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