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Third Fact-finding mission to Spain

Fact-finding mission report on march, 28th 2007

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REPORT

on the Fact-finding visit to Madrid, Valencia, Andalucía

February 27 - March 3, 2007.

Committee on Petitions

Rapporteur: Marcin Libicki, Michael Cashman

Introduction.

The Petitions Committee remains concerned and deeply troubled as a result of the persistent and long-standing denial of the legitimate rights of many European citizens in Spain, most notably in the Valencian Region, to their land and their homes. They have become the collateral victims of many rampant urbanisation programmes founded upon legislation which provides privilege and wealth for the urbaniser and which denies individuals their very integrity.

In a large number of documented cases town councils have concocted urban development plans less because of their real requirements related to population growth and tourism, more because of what often appears as their greed and avarice. Hardly a day goes by without news of another mayor, or town councillor, who is investigated or charged concerning allegations of corruption related to urbanisation programmes. How many urbanising agents are related in one way or another to those controlling the municipalities which in turn bring them massive profit from land conversion deals and the transformation of rustic land to urban land; the transformation of property owners' arbitrarily imposed costs into the urbaniser's benefit?

What is spreading along the Spanish coastal region of the Mediterranean is not so much the programmed sustainable development of local communities – although such developments do exist; it is too often the spoliation of community and culture, the concretisation of the coastline, the destruction of the fragile flora and fauna and the massive enrichment of a small minority at the expense of the majority. Hillsides are invaded by a cancer of identikit dwellings not because they are needed but because they provide a profit for the urbaniser and the builder, for the architect and the lawyer.

During the last twenty years or so there has been a growing tendency for people to acquire property in the welcoming climate of the Spanish Mediterranean either to begin new lives or to spend their retirement years. Spanish people have also been leaving the cities to set up their homes in the beautiful rural areas. New land laws accompanied this trend purporting to provide for a rational development process. There has been an unprecedented economic bonanza in the building industry as rural property has been urbanised. How many owners of Spanish building companies are now to be found in the Forbes top one hundred or on the list of the world's wealthiest people?

Many chose to buy property in smaller village communities; buying older rural dwellings left vacant and sold by former farming families in order to restore them, dwellings which were acquired perfectly legally and legitimately. Property rights once legally acquired should normally remain, except perhaps in cases of justified and properly defined public interest when proper compensation should be provided. However buildings constructed and renovated on rural land are precisely those which are the most vulnerable to the sort of housing developments generated by Spain's new housing laws which have created situations where a family home may be no more solid than a castle made of sand.

As has been reported before, legitimate property owners have become the victims of the land grab, of laws such as the LRAU and now the LUV in Valencia, which oblige them to give up 10% of their land without compensation, ostensibly for very ill defined social purposes, and then make an arbitrary financial charge to be paid in cash or kind which can amount to tens of thousands of euros or over 50 per ecnt of the land for the new infrastructure decided upon by the property developer without consultation of those who own the land.

The local authority in some cases even claim to be unaware of the detail of the proposed developments which are to be built on land the councils have designated for urbanisation and which will drive roads through peoples' rural homes or build new homes in peoples back garden. They may in some cases do no more than provide the proverbial rubber stamp. Moreover, many victims may not even be aware that their homes are jeopardised until the earth movers arrive. Victims of the land grab are counted in tens of thousands.

Village residents suddenly find that the size and population of their rural community is suddenly to be multiplied out of all proportion as a result of the ambitions of small-time mayors attracted by the siren calls of property developers. But they will not be receiving any real compensation for their troubles, or their investment. The developers will. The impact upon the environment, the availability of water and energy supply, the requirements of the building programme itself in terms of long-term disruption are often no more than secondary considerations to those who stand to reap the rewards and who will never have to live in the urban developments they create, whether or not a golf course is added as the biggest of marketing attractions.

In addition, another worrying phenomenon has emerged as more and more European citizens are buying property in good faith only to learn that, having paid their lawyers, their estate agents and their builders, not to mention their taxes, their homes are branded as illegal and that they have become the victims of the ruthless town halls which knowingly approve new construction on land which was not officially certified for that purpose. The citizen becomes the culprit; the municipal authority a passive go-between, the regional government has no responsibility and the national authorities claim they cannot interfere in spite

of EU law and Treaty obligations. This is the Europe of freedom of movement, freedom of goods and services, freedom to exploit with impunity.

Petitions.

The first petitions arrived early in 2003, and the most widely supported with over 15,000 signatures, was presented by a Valencian citizens action group composed of land-grab victims, called Abusos Urbanisticos-No! (AUN). Many other petitions were also submitted by local community associations sometimes representing a group of expatriates from Germany, the Benelux, the UK and so on. Many were submitted by Spanish people. As new petitions continued to arrive it became an impossible task to register each one individually and they were merely recorded as supporting the AUN petition. With hindsight one can say that this was no doubt an error, but it was made necessary by the sheer volume of complaints received.

Petitions have not stopped since. But, although the original focus was, and indeed remains on the Valencian region, more petitions have been reaching the Committee from other parts of Spain including Cantabria, Andalucía, Madrid, and Murcia. Persistent reports in the press about land rights abuse have also, throughout this period, added to the volume of information available. In no other EU country are citizens rights to their property abused in this way or to this extent, and no petitions from any other EU country on such matters have been received. The closest issue of concern in other EU countries of the former Eastern bloc is related to the restitution of property confiscated under former political regimes prior to EU membership.

The Petitions Committee has approached this matter on the understanding that its own responsibilities were relatively limited under the Treaty, and that the autonomous regions of Spain, and the Spanish national authorities themselves had the real responsibility and the political and legal duty to correct this widely perceived abuse, if necessary through the courts. However, regrettably, more than three years after the first petitions were received it has to be admitted that despite promises and the introduction of new complex laws, very little change has taken place for the better, and many thousands of people who have bought property in good faith in many parts of Spain are living with the sword of Damocles suspended over their homes and their rights.

Following the first fact-finding visit in 2004 a report was prepared and approved by the Petitions Committee which included a number of recommendations. After a second visit in 2005 a report was prepared by the Committee and presented by its rapporteur, Mme Janelly Fourtou, to plenary where, in December 2005 the attached resolution was approved by 550 members against 45, with 25 abstentions. It had been hoped that this would have a positive impact on the decision makers in Spain particularly as in Valencia a set of new land laws, notably the LUV, was replacing the discredited LRAU. A change of government in Madrid led to a review of the national framework land law and this at least looked to be an encouraging sign although the draft law still contains several anomalies in relation to EU law.

The Petitions Committee has nevertheless persisted on the basis that the fundamental rights of European citizens to their legitimately acquired property continued to be violated. In addition, the Committee had serious grounds to believe that specific European legislation for which the European Parliament, the Commission and Council have competence was not being respected by the Valencian government and the Spanish authorities. The European Commission agreed with this assessment as regards the EU Directive on Public Procurement for which an Article 226 infringement proceeding has been launched.

It seems highly probable, following the Committee's investigations, that other Directives are also not respected when large urbanisation projects are decided upon. They include the Environmental Impact Directives, the Water Framework Directive, the Waste Water Directive, the Habitats Directive, and the Birds Directive and in many cases also the Money Laundering Directive. All this is in addition to the provisions of the Charter of Fundamental Rights and the EU Treaty itself insofar as it incorporates into EU

law the provisions of the European Charter of Human Rights for which redress may be sought at the European Court of Human Rights in Strasbourg.

Last but not least, elected members of the European Parliament have a direct responsibility towards the European citizens who elected them to ensure that their rights are upheld within the EU wherever they may choose to live. When they are contacted specifically on the basis of petitions they have an additional duty under Article 194 of the treaty to act, and in doing so, they work with the national or regional authorities to try to find a solution to the serious concerns of citizens.

Parliament's recommendations until now.

As has been mentioned a number of recommendations were made by the Petitions Committee in July 2004 after the first fact-finding visit. Following a highly critical assessment of the situation the Committee wanted to explore more serious means of redress and possible compensation for victims of the Valencian land laws and their abuse by regional and municipal authorities, acting with the property developers. It also sought a moratorium on all new developments which did not meet EU norms or meet the criteria of sustainability.

It was however the European Parliament[1], "having regard for the rights and obligations of EU citizenship", which voted the only recommendations which have been so far established on the basis of an institutional mandate and among these recommendations are to be found the following:

Future regulations respect both in substance and in form the rights of property owners and that development projects carefully reflect the concerns for sustainable development, the environment and ecology that constitute fundamental policies of the Union;

The inclusion in the new law of a clear definition of public interest which unambiguously prevents the possibility that the "public interest" justification .could be used for the promotion of private, rather than public interests;

The establishment of binding criteria for the calculation of compensation in cases of damages or losses on the basis of standards and principles recognised by the case-law of the ECJ and the ECHR;

Fundamental review of the bases for selecting the development agent and of the procedure for awarding public contracts ;

Measures to ensure that each land owner concerned by any development plan is informed individually, effectively and in good time of any plan and any aspect thereof which might affect his or her property and fundamental rights..;

Claims offices should be set up under the responsibility of the local authorities and the Valencian Regional Government involving the regional ombudsman to provide assistance ;

Meanwhile, urbanisation has continued unabated and in Valencia many new urbanisation projects were rushed through in haste to take advantage of the old law before the new law became operational in February 2006. And, petitions continued to reach the Parliament from a growing number of municipalities in the Valencian region and beyond. Several cases began to reach the courts including the case brought by Veins de Parcent, who also petitioned the Committee. Over one thousand cases remain unopened according to "Valencian news" a regional on-line publication.

Having considered the matter on a number of occasions in 2006, and in particular following the meeting of the Committee on November 21st 2006 where petitioners and Valencian authorities were present, a new

fact-finding visit was proposed. A letter to the President of the European seeking authorisation for the visit was sent on December 22nd following further consultation with the political group secretariats.

The 2007 fact-finding visit.

In the face of obstruction, attempts to delay the visit and attacks on the integrity of the members of the delegation which took place from within the Parliament and from outside, the Bureau took a decision to authorise the mission to visit Valencia, Madrid and Andalucía on February 12th. The dates from February 27th until March 3rd were also agreed.

Having also received petitions from Madrid and Andalucía, these autonomous regions were also included in the mission in order to provide, in addition to an assessment of petitions themselves, an alternative perspective of land law application in comparison with the Valencian Region.[2]

Having met with some of the EU Member State diplomatic representatives in Madrid, but not with representatives of the national Ministry for Housing as planned, the delegation travelled to Almeria, in Andalucía.

The delegation sincerely regrets that a meeting at national level was not agreed as an official request was sent well in advance through the Spanish Permanent Representation in Brussels. The reasons given for the refusal do not appear too credible given the circumstances of the visit and the objectives of the fact-finding team. It had been hoped that a discussion of the new national framework legislation and its impact on the regions and their responsibilities could have been organised.

Andalucía.

Although the day of the visit coincided with the Andalucian feast day and public holiday, representatives of the regional government in the Province of Almeria held a two hour meeting with the delegation to discuss the Andalucian land laws and their application in a number of municipalities.[3]

The authorities informed the delegation about their objectives for the orderly, sustainable and planned development of their region which allows the local authorities to provide proper services for local communities. They admitted and recognised that a number of municipal authorities had acted wrongly and in some cases, such as in Marbella in the Province of Malaga, they had acted illegally, and for this the Mayor and several town councillors were under arrest. They stated that illegal building, in other words the building of homes in unauthorised areas, made it impossible for local authorities to provide water and electricity as they should, and provide for waste disposal. They recognised that in some cases considerable sums of money were made from such illegal practices.

Responding to questions about the regular application of land laws in the context of urbanisation programmes they insisted that municipal authorities enjoyed a considerable level of autonomy but were under an obligation to act within certain guidelines regarding the size and extent of developments. Sustainable development they reiterated was the first priority of land use planning. They also indicated that not all local authorities used the urbanising agent and that the Valencian rules were not applicable to Andalucía. A group of local landowners could combine their resources to jointly develop their own land rather than invite an urbaniser in to do the job, the delegation was told. When the local authority decides that development is necessary in the public interest then an urbaniser is normally used and he is chosen following a public invitation to tender, published in the Official Journal of the EU, according to Andalucian law. An urbaniser was not a person who was imposed upon owners of land.

Information regarding urbanisation projects were publicised and land owners affected were informed they said. Also notaries public and registrars must be recorded and registered with the Regional authorities in

order to legitimately practice.

Reclassification of land from rural to building land (urbanisable) entails the owner in a cession of 10% of his land to the local authority for public use and the landowner must pay a proportion of the cost of new amenities. Again in response to questioning, it was claimed that the public interest must be defined according to the specific needs of each development bearing in mind environmental, economic and social constraints of each community involved.

The delegation was informed that all plans must be notified to the Regional Government for final approval and plans can be challenged if they are not in conformity with the principles of the regional law. Citizens are able to appeal against planning decisions to the regional authority and a corps of inspectors has been established to investigate the implementation of urbanisation projects. The head of the Investigation Service was present for the discussion on this. Injunctions have been imposed on urbanisation plans which have not met with conservation criteria and heavy fines have been imposed upon property developers responsible for illegal developments; five major disciplinary cases are ongoing against local authorities for illegal housing activities.

Nevertheless, it was apparent that in spite of the safeguards, abuses have occurred and a number of urbanisation programmes were, as has been said, under investigation. Two in particular were addressed by the delegation: the situation in Ronda, and in Albox and the Alamanzera valley. In the latter situation a tacit agreement between builders and the local authority led to the construction of several hundred illegal homes which were bought mostly by expatriates, through registered estate agents and lawyers, in good faith. Many of them are now under the threat of demolition. The Mayor is under investigation.

The delegation was informed by the regional authorities that the illegal status applies to the building and not to the land on which it is built. An illegally built house may be subject to demolition and the land restored to its original state. (An unfortunate comparison was attempted comparing the purchase of an illegal house with the purchase of an illegal car which the law confiscates.) Anyone who buys an illegal home in good faith can, it was said, take out a civil action in the courts against the seller or could try to obtain a criminal action for fraud. This can, it was admitted, take many years and be a very costly exercise.

However, it appears clear that those who have bought houses which are found to be illegal in good faith are, according to the regional government, not so much victims as equally responsible for what has happened.

There does not seem to be a proper recognition at the moment which is clear to the delegation of the extent of blame and responsibility which must be attached to the local authority, the builders who have made the profit, and the regional authority who was either ignorant of what was happening or which chose not to act to prevent such an occurrence. There is, in short, no sense of proper proportionality of guilt and no apparent procedure, outside of the courts, for resolving the problem in spite of the potential provided by the regional inspectorate to intervene.

It is of course true that no two cases of illegal building are identical and that there is also a difference between buildings which are illegally constructed in areas which are expressly and objectively forbidden because they are situated in special conservation areas, or designated flood-plains, and those built merely in non-designated areas but which do not constitute any other sort of obstruction. Whereas demolition is more likely for the former, retroactive authorisation and accommodation may be possible for the latter within a revised development plan. This may entail additional costs for the land owner but at least a rectification of the status of land or the building permits may be a possibility which will preserve his property.

Either way, given the scale of the problem which is developing, some sort of functioning administrative

tribunal should be established to resolve such matters bearing in mind the true responsibilities of all parties. At the very least, the innocent victims of illegal housing should not have to shoulder all the consequences. It seems apparent in Albox, that residents in what are now identified as illegal housing there did not receive proper advice from the local authority, from surveyors or from local lawyers.

The Valencia Region.

It is with some considerable justification that a delegation from the Petitions Committee returned to Valencia for the third time. Not only is there an infringement procedure still under way concerning the Directive on Public Procurement, but also a series of new petitions have demonstrated that the authorities have failed to respect the assurances which were given to the previous delegations that the recommendations made then would be carefully considered particularly as regards individual rights, water and the environment. During the visit itself the delegation was given documents concerning almost sixty new allegations of land law abuse.

The contrast between the meeting which was finally agreed with the Valencian Government minister responsible, Esteban Gonzalez Pons, and the meetings which took place in several towns and villages with the locally affected population was enlightening.

There has also been an increase in the number of cases which have been initiated by investigating magistrates against corruption based upon urbanisation programmes implemented by town halls. The delegation visited, in that respect, Orihuela, Catral and the Torrevieja district. The mayor of Catral came out from the Town Hall to provide the delegation with some explanatory documents while its members were listening to petitioners' complaints.

In October 2006 the Regional Authorities stripped Catral town council of its urbanisation powers because of the building of 1270 illegal homes next to the el Hondo natural parkland. The crackdown appears to have been short-lived however as partially built properties in the area were still being completed in spite of the ban. The developers continue to build, and the houses are advertised for sale in the UK according to the local people, many of whom were themselves victims of this practice and who were faced with the loss of their houses as though they were at fault.

The delegation visited the Rojales district, south of Alicante with one of the petitioners (250/2005) and observed extensive housing developments in El Rason and El Limonar where areas of Mediterranean pine forest had been cleared and only the roots were remaining as housing encroached all the way down to the lagoon area by the shore. The specially protected area known as the Parque Natural de las Lagunas de la Mata y Torrevieja was under intensive construction.

In San Miguel de Salinas the delegation was met by about one hundred local villagers who handed in another petition complaining about the destruction of their local environment, the lack of basic services and the contamination of their water supply about which they said the local and regional authorities had done nothing since they first complained two years ago. A German resident complained about old and broken asbestos piping which was still in use, and copper sulphate contamination in drinking water and a water treatment plant which was rat-infested and broken.

In Orihuela, the delegation was given presents of local oranges, lemons and grapefruit which, it was told were the last to be produced in the area around Los Almendros (1129/2003) before the developers moved in. Each owner in this district is being obliged to cede 60% of his land, according to the petitioners, and building will proceed in an area which has been designated a natural park. There was no public tender for the urbanisation work according to other residents in this area.

Also in this area, a new citizens' group called Claro, introduced itself to the delegation and submitted a new

petition alleging that the rights of European citizens to vote in the local elections had been violated by the authorities. Of 18,000 voter applications sent out to non Spanish EU residents in September, 11,000 had been returned in December. They claimed that two-thirds of voter application forms had just not been delivered because of inadequate postal services.

The meeting which was organised with the local ombudsman, the Sindic de Greuges Sra Emilia Caballero, allowed members of the delegation to receive confirmation about many of the problems faced by local communities as they faced up to unwanted urbanisation schemes. She expressed particular concerns about the lack of social housing in the vast majority of urbanisation developments which led her to question the way in which authorities are able to define for themselves what is in the public interest. She was also critical of the lack of public involvement in the decisions taken by local town halls in many areas.

Travelling north from Alicante the delegation was unable to respect its agreement to meet with residents of Tibi and el Aljibe, and it recognises how sad and infuriating this was for the village which had prepared to receive the delegation in order to lend added weight to their claims against the massive urbanisation which threatens to destroy their local community. The delegation did receive the extensive documentation which they provided and which updates the Committee on the situation compared to when the village was visited in 2005.

In Parcent, the delegation was welcomed by what seemed like the whole town and an impromptu procession followed the members to the place where a public meeting was organised, and people were able to express their fears for their neighbourhood which faced a fourfold increase in its population and the urbanisation of its hillsides and rural spaces. The President of the local residents association of la Repla where 1500 new houses are planned, described ?the catastrophic effect of building thousands of unwanted holiday homes, devastating millions of square metres of precious and environmentally sensitive countryside. All this had been planned without even the most basic social or environmental impact study and without a proper scientific report on the adequacy of water resources.? The residents complained that no-one affected had yet received a single official letter or notice from the town hall to explain the impact of the plans. The plans were rushed through in the final days of the former LRAU on 30 January 2006.

In Parcent, three sectors have become subject of urbanisation projects and they all contain serious flaws and discrepancies, sufficient in fact for the courts to have stepped in to halt the development of the largest one, El Repla, for the time being. But beyond this lies the fact that a small town, whose 900 population is willing to accept and understand the need for a sustainable development plan for the area is totally unwilling to be submerged by an urbanisation project which foresees an increase of up to 10,000 population in the next decade.

Indeed, at the meeting in the town hall which the delegation had with the mayor who presented the plans, it was the developers themselves, one of whom is the brother of the Councillor for urban planning, who answered the detailed questions about the projected expansion of the town based upon a calculation of about four persons per projected household. During the past several years, much of the rural land in the valley had been bought up by the developers who stand to make a large profit from the reclassification, although it will be the fifty or so families who live on the hillsides who will shoulder a disproportionate amount of the costs should the project materialize.

In the village, emotions were very high as older men who had lived all their lives spoke about their fear for their community and the delegation was escorted under a throng of umbrellas along the narrow streets and back to the waiting bus.

At a public meeting organised in Benissa, in a packed hall the delegation heard from people from several towns and villages who were opposed to urbanisation projects. They included Tormos, Altea, Villajoiosa, Mutxamel, Alfaz, Val de Lagaurt, Monóvar, Tibi, Rabassa, Denia, Javea, Orxeta, Liber ? el Collado, Orba,

andGata de Gorgos. The nature of the complaints were similar and related to lack of water, no environmental impact assessment, problems related to the choice of the urbaniser and allegations of corruption, excessive contributions and arbitrary costs for new infrastructure, lack of information, problems with declarations of public utility but no subsequent social housing, little or no compensation and loss of legitimately bought land. The Mayor of Benissa spoke to say he was a victim, not of the land laws, but of allegations that he had misused his authority in approving the construction of his own country home which did not comply with planning law.

The meeting with the Valencian minister for Urbanisation, Esteban Gonzalez Pons proved difficult to organise, it was only finalised following a visit by his Chef de Cabinet to Brussels on February 26th. Statements made at press conferences organised before the meeting by the minister, by two MEPs and by representatives of the business community all attacking the delegation as well as its members individually.

At the last minute the meeting scenario was changed so that the business community, with whom arrangements had been made for a separate meeting, were finally included in the same meeting with the minister. This portrayed the minister, flanked on each side and supported by the presidents of the Valencia Tourist Board, Building promoters, Urbanisers, Estate Agents and Travel agents, all criticised the visit and defended the Valencian land laws and the activities of the construction industry. The meeting was therefore confrontat

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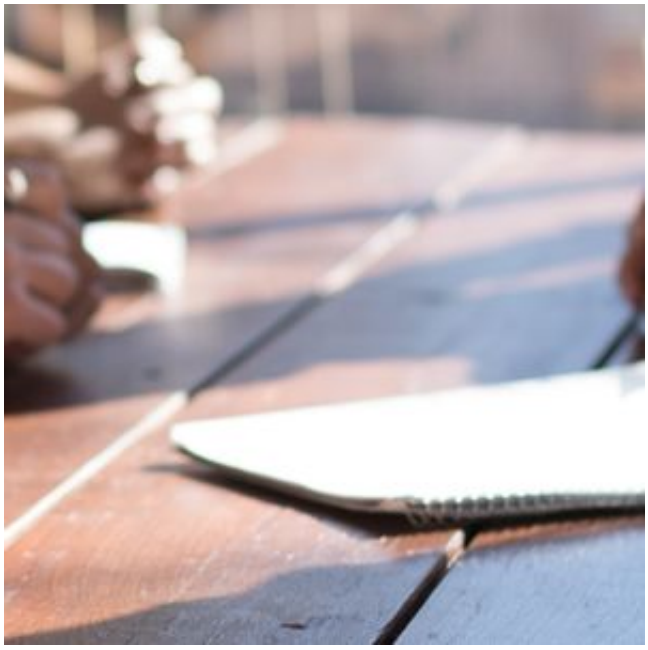

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