Publication | 16.10.2007

Notice to members October 20th,2005

EUROPEAN PARLIAMENT

2004 2009

Committee on Petitions

20 October 2005

NOTICE TO MEMBERS

 Petition 609/2003 by Charles Svoboda (Canadian) on behalf of the Valencian Association for the Defence of Human Rights and the Environment against Irregularities in the field of Property Development', on the abuse of Spanish building legislation

 Petition 985/2002 by Bärbel and Uwe Kubitz (German) concerning dual taxation for his house and property in Javea (Spain)

 Petition 1112/2002 by Roger Ranger (British), on behalf of 'Grupo Accion de Pinomar', on the questionable action of the local Town Council of Javea, Alicante, regarding the urbanisation of Pinomar

 Petition 732/2003 by Sonia Gale (British) on behalf of Abusos Urbanisticos No', on the abuse of Spanish building legislation

 Petition 1129/2003 by Ulla-Britta Perret Lundberg (Swedish) on behalf of the 'Los Almendros' citizens' action group, concerning irregularities in connection with the urban planning laws (LRAU) of the Valencian Autonomous Community in Spain

 Pétition no 107/2004, présentée par M. Klaus Schuckall, de nationalité allemande, au nom du "Grupo Alemán - die deutsche 'Stop LRAU'-Bewegung", sur la loi de la région autonome de Valence sur la réglementation des activités de construction

 Petition 0926/2004 by Valerie Stoddart (British nationality) concerning the use of EU funds in Spain, in connection with the Valencian Urban Development Law (LRAU)

 Petition 926/2004 by Clare and Ivan Brightmore (British) concerning the loss of part of their property in Benidorm under the Valencian Urban Development Law (LRAU))

 Petition 250/2005 by Josefa and José Sanmartín García (Spanish) on abuse of Spanish building legislation (LRAU) in the region of Valencia in the Lagunas de La Mata y Torrevieja' wildlife park

 Petition 0445/2005 by Manfred Mallener (German), on infringement of building regulations in Spain

 Petition 0535/2005 by Ann Oltra (British), on a large private property development in Spain

 Petition 0566/2005 by Friedbert Schiener (German), on the loss of plots of land as a result of a Spanish Urban Development Act (LRAU)

1. Summary of petition 609/2003

The petitioner objects to the way in which property development legislation is being implemented in the autonomous community of Valencia. He maintains that the law is being abused by both the authorities and by contractors, so that numerous property owners have had to comply with compulsory purchase orders for minimum compensation and furthermore to pay for infrastructures which, in many cases, they did not want. The petitioner asks the European Parliament to have the matter thoroughly investigated by a committee of inquiry.

Summary of petition 985/2002

The petitioners object to the fact that they are being required to pay taxes and rates twice simply because of a change in the municipal party political situation. Following the purchase of their house and property, all taxes and fees were paid and all statutory formalities completed and duly documented. Objections and protests have been made by other home and property owners but none of them have yet received a reply. The petitioner wishes to know how EU funds earmarked for sewage disposal and other municipal projects have been spent, given that local residents have not been informed of any further projects or consulted in any meeting convened to discuss the matter.

Summary of petition 1112/2002

The petitioner writes that approximately 60 houses were built and were inhabited for years in the urbanisation Pinomar in Javea, Spain. For these houses all relevant licenses were paid, permissions granted and an infrastructure had been created. The petitioner says that the Grupo Accion de Pinomar had recently been informed by the Town Council that the area, where the houses had been built, was not for construction. He is asking the advice of the European Parliament, as to whether this action was legal. Also they were told that a contract to "urbanise" the area where their houses were had been given to a local firm, which was charging for the service according to square meters per plot and not according to running metre street front, as it should be, in the opinion of the petitioner.

Summary of petition 732/2003

The petitioner protests at the way in which building legislation is being implemented in the self-governing region of Valencia, maintaining that the law in question ' ley reguladora de actividad urbanistica' is being abused by both the authorities and the contractors involved and that numerous property owners have been forced to sell their property for a minimum amount and pay for infrastructures they frequently do not want. She argues that the authorities are committing human rights violations.

Summary of petition 1129/2003

The petitioners allege that Valencian urban planning laws (LRAU) infringe the right to the protection of private property and statutory public procurement procedures embodied in the treaties and major European agreements, of which Spain is a signatory. Individuals are being forced by the authorities and private businesses to give up much of their property without compensation and, in addition, pay for the provision of infrastructures which they already have. She asks the European Parliament to call on the

Spanish Government to remedy the situation arising from this law.

Summary of petition 107/2004

The petitioner complains at the way in which the Autonomous Community of Valencia's "Ley reguladora de actividad urbanística" (LRAU) is being applied. Under that law, many property owners are being obliged to relinquish their property and pay for infrastructures which, in many cases, they do not want.

Summary of petition 926/2004 (V. Stoddart)

The petitioner, who has taken up residence in Alicante, protests at the actions of the Valencian Government in authorising developers to expropriate property owners without any form of compensation, as well as charging them for infrastructures such as roads, pavements, and street lighting then provided. The petitioner is also seeking information regarding the use of EU funds in Spain in this connection.

Summary of petition 926/2004 (C. & I. Brightmore)

The petitioner, a British pensioner, who has purchased a house in Benidorm, objects to the Valencian Urban Development Law (LRAU), under which he has lost half of his garden and is being forced to pay ? 32.000 in order to keep the rest of his property. The petitioner is seeking the assistance of the European Parliament on this matter.

Summary of Petition 250/2005

For years, the petitioners who are farmers and own land near the Lagunas de La Mata y Torrevieja wildlife park and within the wildlife park protected area have been coming under pressure to sell their property. However, they are not willing to do so and have submitted to the regional authorities a comprehensive environmental protection programme including full reforestation under the supervision of the authorities at their own expense. Since 1998, the Rojales local authorities have been seeking to carry out development projects in the protected area along the perimeter of the wildlife park. The petitioners have for years been unsuccessfully writing to the authorities to protest against the development project which is being continued. The petitioners argue that ostensibly harmless sounding projects such as the creation of a botanical garden, etc. are in fact serving as a pretext to destroy the wildlife park's protective outer perimeter. In this connection, in October 2004 a land reapportionment project was adopted, with implications for the petitioners' property. They are accordingly seeking the assistance of the European Union.

Summary of Petition 445/2005

The petitioner, together with four others, owns property with a sea view in Benissa in the province of Alicante situated above a designated ?green area' where building was not authorised until it was purchased by a 'property developer' and redesignated a ?commercial zone'. Three-storey apartment blocks are now being planned there (sea view from third floor only), most of which have already been sold despite the fact that Benissa building regulations authorise a maximum height of 7 metres (2 storey) together with the ?sótano' (basement). When the petitioner registered a complaint the building activities were stopped. A further application for a permit was submitted and, however. The height of the building was then artificially increased by raising basement level so as to guarantee a sea view from the top floor. The petitioner once more registered a complaint but received no reply. Instead the building inspector announced that all the relevant provisions had been complied with. The petitioner however maintains that in fact the building regulations were subsequently adjusted to the de facto situation.

Summary of Petition 535/2005

The petitioner is opposed to a development project near the village of Benasau in the province of Alicante. She says that the village, which counts only 196 inhabitants, is situated in a mountainous region of great beauty, where the EU has financed reforestation projects in order to prevent desertification. The development plan involves the construction of 841 luxury villas for an estimated 2691 inhabitants and the construction of large supply roads, for which ancient olive trees would have to be uprooted. According to the petitioner, it is not clear how the water demand of 250 litres per person per day will be met. Furthermore, she complains that local inhabitants are faced with compulsory purchase of their land at derisory prices. The petitioner asks Parliament to investigate whether the project meets EU legislation on water use and environmental impact.

Summary of Petition 566/2005

The petitioner owns a plot of land in Playa Almenara, north of Valencia (Spain), more than half of which has been taken away from him, without compensation, by the local authority. He is also required to pay EUR 31 640.82 in urban development charges for the installation of sewerage for the plot and re-surfacing the road. He also state that several blocks of flats with swimming pool and golf course are being built, and suspects that this is being done without EU-wide tendering for contracts. There are also rumours that the local authority of Almenara is receiving EU funds for these urban development measures.

2. Admissibility

Petition 609/2003 declared admissible on 12 December 2003.

Petition 985/2002 declared admissible on 5 May 2003.

Petition 1112/2002 declared admissible on 15 May 2003.

Petition 732/2003 declared admissible on 19 February 2004.

Petition 1129/2003 declared admissible on 7 May 2004.

Petition 107/2004 declared admissible on 16 February 2004.

Information for above petitions requested from Commission under Rule 175(4).

Petition 926/2004 declared admissible on 18 April 2005.

Petition 250/2005 declared admissible on 15 July 2005.

Petition 445/2005 declared admissible on 21 September 2005.

Petition 535/2005 declared admissible on 07 October 2005.

Petition 566/2005 declared admissible on 14 October 2005.

Information for above petitions requested from Commission under Rule 192(4).

3. Commission reply , received on 20 October 2005The Commission services have received a number of complaints alleging the incompatibility of the LRAU with the EU Public Procurement Directives. After analysing these complaints, and the issues raised by the petitioners, the Commission sent a Letter of Formal Notice on 21 March 2005. The grounds of infringement regard the incompatibility of the LRAU with Directives 93/37/EEC and 92/50/EEC, on public works contracts and public service contracts

respectively, and certain general principles of EU law. The Spanish authorities replied by letter dated 30 May 2005. They disagreed with the Commission's position on the existence of a public contract and, consequently, on the applicability of the EU Procurement Directives to contracts awarded under the LRAU. Nonetheless, they informed the service that the LRAU was being amended. A new draft law on urbanisation activities (Ley Urbanística Valenciana – LUV) had been approved by the Government of Valencia and would soon be submitted to the Regional Parliament. Notwithstanding their disagreement with the Commission's position, the Spanish and Valencian authorities have stated their willingness to cooperate with the Commission, to ensure that the LUV is in line with the EU procurement rules.

The Commission has examined the draft LUV and sent the Spanish authorities a letter on 28 June 2005, asking for further information and/or clarifications on some of the draft's provisions. A meeting between the services of the Commission and the Spanish and Valencian authorities took place on 19 July 2005, to discuss the national authorities' answer. A further meeting was held on 28 July 2005. At this last meeting, the competent authorities presented a number of alternatives to improve the current draft LUV, particularly in regard to the procedure for selecting the urbanisation agent. These alternatives were discussed with the Commission's services and the competent authorities are now considering their feasibility in the context of urbanisation activities, as regulated by the LUV. The service now awaits further official submissions from the Spanish authorities. Once these are received, the Commission's services will carry out a second analysis of the draft LUV, including any amendments, to assess whether or not the infringement has been remedied.

The Commission would like to stress that this infringement procedure concerns exclusively the Public Procurement aspects of the LRAU and the draft LUV. It does not include the issue of expropriation of land for the benefit of a development, or the compensation to be paid for an expropriation. These aspects are outside the scope of the Public Procurement rules or any other EU legislation, and are in fact of the exclusive competence of the Member States. According to the petitioners, it is the expropriations and the lack of fair compensation that has caused them most grievances. Hence, the outcome of the infringement procedure is unlikely to provide satisfaction to the petitioners.

2. As regards possible financing, Community Structural or Cohesion Funds offer the possibility to partly finance basic infrastructures associated with urban developments such as roads or water supply. However, it is a condition sine qua non that the public authorities ensure that works co-financed by such funds respect all applicable Community legislation including that relating to the environment. In cases where there is any confirmed breach of Community rules the financing in question would be withdrawn and any payments already made recovered.

3. As far as environmental questions are concerned, Council Directive 85/337/EEC , as amended by Directive 97/11/EC , on the assessment of the effects of certain public and private projects on the environment, requires that projects of the classes listed in Annex II, such as urban development projects, be made subject to an assessment, in accordance with Articles 5 to 10, where Member States consider that their characteristics so require. To this end, Member States may inter alia specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed in Annex II are to be subject to an assessment in accordance with Articles 5 to 10.

The Commission has undertaken a thorough analysis of the Law of the Valencian Community 6/1994 (LRAU) and can confirm that it requires that all General Plans of Urbanism are submitted to an impact assessment procedure (Article 27.1, b). According to the Law, this requirement also applies to the Partial Plans which involve a modification of General Plans and which reclassify "non urbanisable" land (Article 28.1, d).

Consequently, the Law 6/1994 of the Valencian Community (LRAU) appears to be in conformity with

Council Directive 85/337/EEC.

4. Under the terms of the Treaty establishing the European Community and the Treaty on the European Union, the Commission does not have general competence as regards fundamental rights. It may intervene only in the event of violation of fundamental rights in the field of application of Community legislation, which is not the case in the situation described in the petitions.

However, if a person considers that his or her fundamental rights have been violated by such expropriations, he/she may apply to the Court of Human Rights for redress once all domestic remedies have been exhausted.

Notwithstanding this position, following a series of parliamentary questions and complaints on the alleged discriminatory and arbitrary expropriations in the Valencian region, the Commission services sent a letter to the Spanish authorities on 29 July 2003 which the Spanish authorities replied to on 3 February 2004.

The Spanish authorities explained the legal framework applicable to such expropriations and assured the Commission services that the legislation in question applied without distinction to Spaniards and foreigners and that any person may contest an administrative decision regarding expropriation before the national courts with a view to demonstrating the administrations' financial responsibility for any damage to such person's property or rights.

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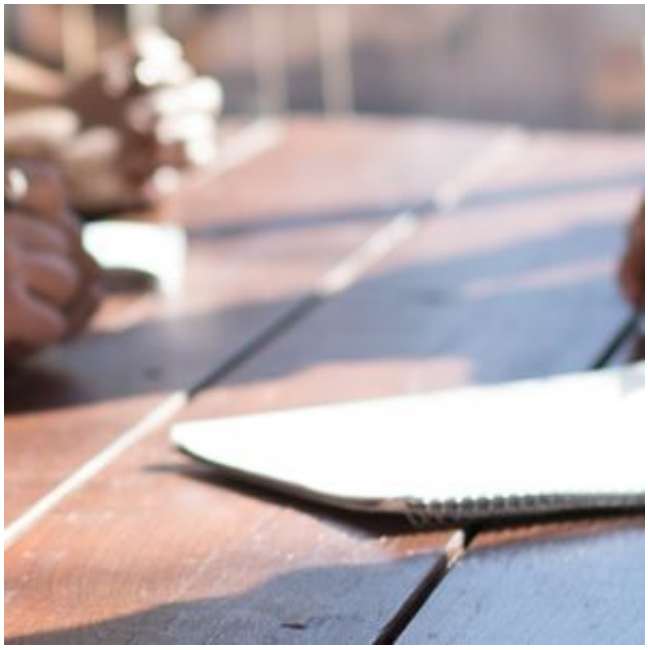

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