Publication | 15.10.2007

Second fact-finding mission to Spain

Fourtou report - December 5th,2005

P6_TA(2005)0510

Application of development legislation

European Parliament resolution on the alleged abuse of the Valencian Land Law or Ley Reguladora de la Actividad Urbanistica (LRAU - law on development activities) and its effect on European citizens (Petitions 609/2003, 732/2003, 985/2002, 1112/2002, 107/2004 and others) (2004/2208(INI))

The European Parliament,

 having regard to Article 6 of the Treaty on European Union which transposes the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and Article 7 of that Treaty, which provides for a procedure to determine serious and persistent breaches of the principles mentioned in Article 6,

 having regard to Directives 92/50/EEC and 93/37/EEC on public procurement, Directives 85/337/EEC , 97/11/EC and 2001/42/EC on environmental impact assessment, and Directive 2000/60/EC on water policy,

 having regard to the right of petition provided for in Articles 21 and 194 of the EC Treaty,

 having regard to Petitions 609/2003, 732/2003, 985/2002, 1112/2002, 107/2004 and others,

 having regard to Rule 192(1) of its Rules of Procedure,

 having regard to the report of the Committee on Petitions (A6-0382/2005),

A. whereas it has received a considerable number of petitions (around 15 000) from individuals and associations representing several thousand EU citizens and residents settled in the Valencian Autonomous Region (Comunidad Valenciana); complaining about various aspects of development activities, including the destruction of the environment and overdevelopment and in many cases protesting about the infringement of their legitimate property rights as a result of the improper application of the Valencian Land Law (Ley Reguladora de la Actividad Urbanística (LRAU),

B. whereas a report was drawn up on this subject by the Committee on Petitions in May 2004 setting out specific cases illustrating serious violations of human rights and Community law,

C. whereas a new delegation appointed for a follow-up mission to that of May 2004 by the Committee on Petitions continued the investigations in Madrid and in the Valencian Autonomous Region in June 2005, in order to gather information and conduct interviews with the interested parties and key players,

D. whereas the members of the delegation thus had an opportunity to hear representations from the parties concerned, including:

 the European citizens and residents who have petitioned Parliament alleging systematic violation of their rights as a result of the application of the LRAU,

 the president of the Valencian Regional Government (Generalitat Valenciana) and the responsible ministers, the president of the Valencian parliament (Cortes Valencianas) and the leaders of the political groups, the Valencian Ombudsman (Síndic de Greuges) and the National Ombudsman (Defensor del Pueblo), senior government officials from Madrid and Valencia, the Valencian Federation of Local Authorities and Provinces, representatives of the construction industry and property developers, the ambassadors of the Member States and many other interested parties,

 and, lastly, representatives of the Constitutional Court and the President of the High Court of Justice of the Valencian Autonomous Region who without exception cooperated with openness and goodwill, thus showing a spirit of constructive cooperation which is greatly appreciated by Parliament,

E. whereas the competence and responsibility of the autonomous regional authorities and of the Spanish national authorities are clear and recognised in this matter and that they are enshrined in the provisions of the Spanish Constitution of 1978 and, more particularly, with respect to the issue at stake, in Articles 10, 18, 33, 45, 47, 54, 93 and 105 thereof,

F. whereas the European institutions have a duty to enforce the provisions of the Treaties and of the legislation adopted thereunder, having particular regard to the rights and obligations of EU citizenship, and accordingly have a responsibility, in cooperation with the Member States, for resolving the problems affecting the EU's citizens,

G. whereas the land law in force in Spain grants land owners 90 % of the building rights and the specific nature of the LRAU requires owners, in the event of the approval of an integrated development plan (plan de actuación integrada PAI) by a local authority, to surrender not only 10 % of their building rights to the municipality without compensation as patrimonio municipal de suelo' (municipal land), but also the land for any paths, roads, car parks, public spaces and public facilities, or to pay the development costs decided by the developer of the new infrastructure, a procedure over which the owner has no control whatsoever,

H. whereas it is plain that some owners have clearly been harmed by this land development process, which is obvious both from the petitions and from the on-site inspections, and whereas these facts are acknowledged by all the local authorities, which is why the Valencian Regional Government is preparing a new law in order to avoid the abuses in the application of the previous one,

I. whereas the main complaints concern the methods of expropriation, which are sometimes oppressive and based on valuations which are, in the opinion of the interested parties extremely low, with subsequent onward sales at a high market prices and in circumstances where the information available does not allow interested parties to react, all adding up to material damage and mental suffering in many cases,

J. whereas the lack of transparency and of clear pre-set criteria makes it apparent that the methods for awarding contracts are not in conformity with European law, which has led the Commission to send a Letter of Formal Notice to Spain, and whereas the number of cases in which corruption has been found or

is currently alleged highlight the deficiencies of the law and its application,

K. whereas the main problems arising from the application of the LRAU concern the role of the 'development agent' (urbanizador), the inadequate means of determination and publication of the contracts to be awarded, insufficient notification to the owners of the land and the lack of clear definitions of the concepts of 'public interest' and 'adequate compensation', issues as to which the law needs to conform, inter alia, with the requirements laid down by the case-law of the Court of Justice of the European Communities (ECJ) and the European Court of Human Rights (ECHR),

L. whereas the solemn proclamation of the Charter of Fundamental Rights of the European Union and the declarations by the Presidents of the European institutions that those institutions will respect the Charter mean, in the light of the case-law of the ECJ, that citizens may legitimately expect to enjoy the rights enshrined in the Charter,

M. whereas Member States are obliged to respect the Charter when they apply, or are obliged to apply, Community law in situations in which the provisions of the Charter become relevant; whereas there is a close link between, on the one hand, the method for awarding contracts and, on the other hand, the modalities for expropriation of property and for determining the relevant compensation,

N. whereas some land development plans seem to have a disastrous impact on the environment and the ecology of many coastal zones and, more particularly, on the future conditions for the supply of water, which is a subject of concern to the European Union,

O. whereas Directive 2001/42/EC requires a strategic environmental impact assessment to be carried out for all plans and programmes which are prepared, inter alia, for 'tourism, town and country planning or land use' and are likely to have significant environmental effects and which set the framework for future development consents of projects listed in Annex I and II to Directive 85/337/EEC,

P. whereas Directive 2000/60/EC laying down a framework for water policy requires the Member States, inter alia, to prevent the deterioration of 'inland surface waters, transitional waters, coastal waters and groundwater' and obliges them to ensure a coordinated policy with respect to the 'whole of the river basin district',

Q. whereas the Confederación Hidrográfica del Júcar has objected to at least 30 new land developments in the Valencian Autonomous Region and the Commission has sent a reasoned opinion to Spain in respect of the inadequate transposition of the Water Framework Directive,

R. whereas the fact that all these issues and all these events have become the subject of political debate at all levels further emphasises the need for prudent and objective consideration of all of the key areas of disagreement,

1. Notes that tens of thousands of European citizens have for decades lived in the Valencian Autonomous Region and are for the most part satisfied with their life there, while there is a growing demand from Community citizens wishing to settle permanently in this European region; also notes, however, that during the last three years there has been a substantial increase in the number of complaints regarding development abuses;

2. Considers that the main problems raised by citizens have focused on the improper application of the LRAU by those involved in the development process and on the administration by competent public authorities, in particular certain local authorities and the Valencian Regional Government;

3. Welcomes, in the light of the foregoing, the decision of the Valencian Regional Government to frame

and pass a new law designed to replace the LRAU in order to avoid the acknowledged abuses in its application of the latter, and, in particular, the invitation by the President of the Region to Parliament to submit recommendations;

4. Encourages the Valencian Autonomous Region in its efforts to resolve the problem more expeditiously than has so far been the case, thus demonstrating its concern for the public;

5. Considers that it is not its responsibility to amend the draft version of this new law, but urges that future expropriation 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;

6. Invites the competent authorities to take account of the following suggestions, to remedy the problems that have arisen under the present legislation with respect to those aspects of the protection of property rights which raise questions of human and fundamental rights, and with respect to Community law on public procurement:

— the inclusion in the new law of a clear definition of 'public interest' which unambiguously prevents the possibility that the 'public interest' justification for expropriation — which is a precondition for any expropriation under European human and fundamental rights legislation — 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 expropriation on the basis of the standards and principles recognised by the case-law of the ECJ and ECHR,

— fundamental review of the bases for selecting the 'development agent', and of the procedure for awarding public contracts to the 'development agent' selected, to ensure that such a function is compatible with European law, given the existence of serious doubts on this subject as evidenced by the current infringement proceedings, so as to enhance the transparency of the procedure for awarding public contracts and to safeguard the property rights of European citizens,

— measures to ensure that each land owner concerned by any development plans 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, so as to guarantee an adequate possibility to consider appropriate action;

7. Calls upon the competent Valencian and Spanish authorities to ensure that general development plans which are likely to have significant environmental effects and which set the framework for future development consents are made subject to a strategic environmental impact assessment pursuant to Directive 2001/42/EC;

8. Recalls that national competent authorities are obliged to carry out an environmental impact assessment in respect of planned activities belonging to a category listed in Annex I to Directive 85/337/EEC, as amended by Directive 97/11/EC, and that the selection of projects listed in Annex II to Directive 85/337/EEC must be made on the basis of transparent selection procedures and criteria;

9. Urges the competent Valencian and Spanish authorities to ensure that any decisions on future developments are compatible with the requirements of Directive 2000/60/EC as regards the prudent use and protection of water resources, and in particular to ensure the coordination of the measures taken in connection with the Júcar River basin district for the achievement of the environmental objectives established under Article 4 of that Directive;

10. Insists that claims offices be set up, under the responsibility of the local authorities and the Valencian

Regional Government, to provide assistance for people affected by the LRAU in administrative terms, supplying them with all the information required to enable them to consider the advisability of any legal action;

11. Is concerned about the risks associated with the development of projects that have already been decided although not yet started and about their possible consequences (it does appear that there is some haste to enter into new projects before promulgation of the new law which will necessarily seem more restrictive) and insists, as a matter of urgency on the need to suspend the processing and approval of integrated development plans (PAI) which incorporate non-development land into the development process, regardless of whether they are newly formulated or currently being processed, pending the entry into force of the revised legislation;

12. Recalls that the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States, and that Article 7 of the Treaty on European Union provides for a right of initiative of the European Parliament as regards the procedure for determination, by the Council, of a clear risk of a serious breach of those principles and that the Commission or one third of the Member States can initiate the procedure for sanctioning a Member State, in the event that the violation persists;

13. Urges the Commission to continue careful monitoring and investigation to ensure the conformity of the new Valencian Development Law (LUV - Ley Urbanística Valenciana) legislation and its application with Community law in the area of public procurement and related fields and keep Parliament and its competent Committee fully informed as to developments in this regard;

14. Calls on the Commission to continue to exercise vigilance in terms of monitoring compliance with tendering procedures;

15. Wishes to see information about the content of its investigations and its recommendations broadly disseminated in view of the large number of European citizens concerned (British, German, French, Belgian, Dutch) as are Spanish citizens themselves;

16. Asks the Commission to draw on the experiences of this episode and, in view of the large number of EU citizens now buying land in EU countries other than their own, to consider what safeguards – legislative, non-legislative or merely advisory – might be appropriate so as to protect and assist citizens undertaking such important transactions and investments outside their home jurisdictions, and to report the outcome of such deliberations to Parliament;

17. Instructs its President to forward this resolution to the Council and the Commission, the Government, Parliament and Ombudsman of the Valencian Autonomous Region, the Spanish Government and the petitioners.

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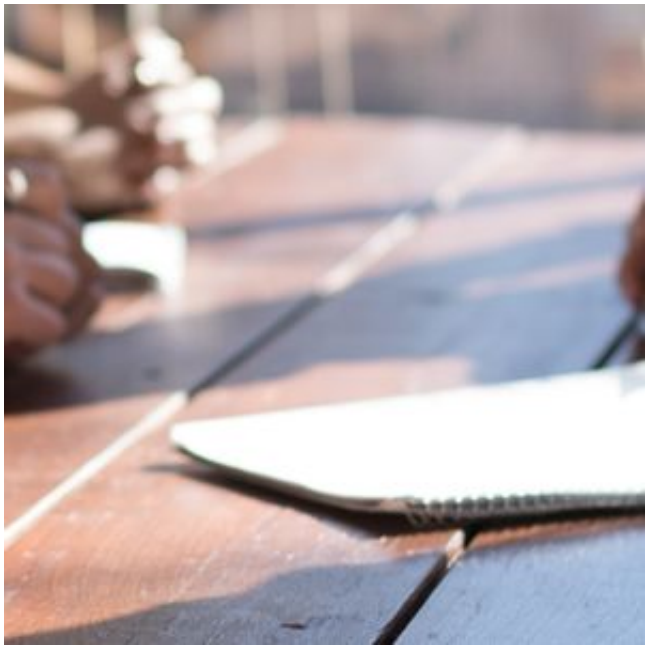

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