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

Committee on Petitions

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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

The European Parliament,

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

citizens in Article 17 of the Charter of Fundamental Rights of the European Union, which provides that "everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions", that "no one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss", and that "the use of property may be regulated by law in so far as is necessary for the general interest";

- H. whereas Article 18 of the EC Treaty provides that "every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and the measures adopted to give it effect";
- I. whereas according to Article 295 EC the Treaty shall be without prejudice to "the rules in Member States governing the system of property ownership" and whereas the jurisprudence of the Court of Justice has confirmed that the competence of member states in this respect must always be applied in conjunction with the fundamental principles of Community law, such as, the free of movement of goods, persons, services and capital (see Case C-119/75);
- J. whereas Article 1 of the 1st Additional Protocol to the European Convention on Human rights and Fundamental Freedoms declares that "every natural or legal person is entitled to the peaceful enjoyment of his possessions" wherefore "no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law" and that "the right of a State to enforce such laws as it deems necessary" is limited to the pursuit of the objectives "to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties";
- K. whereas the European Parliament considers that the obligation to cede legitimately acquired private property without due process and proper compensation, and the obligation to pay arbitrary costs for unrequested and often unnecessary infrastructure development, constitute a violation of an individual's fundamental rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the light of the case law of the European Court of Human Rights (see *Aka v. Turkey*);¹
- L. whereas in the course of this legislature the Petitions Committee has, based upon the vary large number of petitions received, conducted detailed investigations and has reported three times on the extent of the abuse of the legitimate rights of European citizens to their legally acquired property in Spain and also detailed its concerns in relation to the undermining of sustainable development, environmental protection, water quality and provision, procedures concerning public procurement of urbanisation contracts and insufficient control of the urbanisation procedures by many local and regional authorities in Spain;²
- M. Whereas there is growing evidence that the judicial authorities in Spain have begun to respond to the challenge resulting from excessive urbanisation in many coastal areas in particular by investigating and bringing charges to bear against corrupt local officials who

¹ Text P6_TA(2007)0281 of June 21, 2007.

² Infra. OJ C 286 E, 23.11.2006, p.225 and text cited above;

have facilitated, by their actions, unprecedented and unregulated urban developments to the detriment of the rights of European citizens, and damaging irretrievably the biodiversity and environmental integrity of many regions of Spain; observes however that procedures remain outrageously slow and that sentences passed in many of these cases are unable to be enforced in a way which provides any satisfaction to the victims of such abuse;

- N. Whereas such widespread activity, supported by irresponsible local and regional authorities through inadequate and sometimes unjustified legislation which in many cases is contrary to the objectives of several European legislative acts, has been most damaging to the image of Spain and to its broader economic and political interests in Europe;
- O. Whereas regional ombudsmen, in very difficult circumstances, have frequently acted to defend the interests of European citizens in cases related to urbanisation abuses, even if their efforts have been generally unheeded by regional governments;
- P. Whereas the Spanish Constitution in Article 33 makes reference to the rights of individuals to their property, and whereas a full interpretation of this article has never been provided by the Constitutional Court, notably as regards the provision for the social use of property in relation to the rights of individuals to their legally acquired homes and dwellings;
- Q. whereas the national government in Spain has a duty to apply the EC Treaty and to defend and ensure the full application of European law on its territory irrespectively of the internal organisation of the political authorities as established by the Constitution of the Kingdom of Spain;
- R. Observes that the European Commission, acting upon the powers conferred upon it by the EC Treaty in Article 226, has taken Spain to the European Court of Justice in a case which is related to the excessive urbanisation abuses which have occurred in Spain and which concerns directly the implementation of the Directive on Public Procurement by the Valencian authorities;
- S. Notes that the European Commission has, at the request of the Petitions Committee, launched an investigation into more than 250 urbanisation projects which have received a negative opinion from the competent water authorities and river basin authorities and whose approval is pending in Andalucía, Castilla-la-Mancha, Murcia and Valencia;
- T. Notes however, that in many documented cases of urbanisation abuse in Spain the European Commission has failed to act forcefully enough not only as regards the enforcement of the precautionary principle of environmental law, but also because of its weak interpretation of acts by competent local or regional authorities which have a binding legal effect such as the 'provisional approval' of an integrated urban development plan by a local authority;
- U. Whereas the objectives of Directive 2001/42/EC - Strategic Impact Assessment, which in Article 3 explicitly covers tourism and urbanisation, are to provide a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting a sustainable development; and whereas the objectives of Directive 2000/60/EC - the Water Framework Directive, commits member states to prevent the deterioration of their waters and to promote the sustainable use of their fresh water resources;

- V. Whereas successive fact-finding visits by the Petitions Committee have shown that these objectives are frequently grossly misunderstood by many local and regional authorities (not just in the coastal regions) when proposing or agreeing to extensive urbanisation programmes; and whereas most urbanisation plans contested by petitions received involves the reclassification of rural or rustic land into urbanisable land - to the considerable economic benefit of the urbanising agent and developer; and whereas there are also many instances of protected land, or land which should be protected because of its sensitive biodiversity, being de-listed and re-classified, or not being listed at all, precisely to allow an urbanisation of the area concerned;
- W. Whereas such considerations compound the abuse which is felt by thousands of European citizens who, as a result of the plans of the urbanising agents, have not only lost their legitimately acquired property but have been forced to pay the arbitrary cost of unwanted, often unnecessary and unwarranted infrastructure projects directly affecting their property rights, the end result of which has been financial and emotional catastrophe for many families;
- X. Whereas many thousands of European citizens have, in different circumstances, bought property in Spain in good faith acting with local lawyers, town planners and architects, only to find later that they have become victims of urbanisation abuse by unscrupulous local authorities and that as a result, their property faces demolition because their homes have been found to be illegally built and therefore worthless and un-saleable;
- Y. Whereas the natural Mediterranean island and coastal areas of Spain have suffered extensive destruction in the last decade as cement and concrete has saturated these regions in a way which has impacted not only the fragile coastal environment - much of which is nominally protected under the Habitats/Natura 2000 and Birds Directives - but also on the social and cultural activity of many areas which constitutes a tragic and irretrievable loss to their cultural identity and heritage as well as to their environmental integrity, and all this primarily because of the greed and speculative behaviour of some local authorities and members of the construction industry who have succeeded in deriving massive benefits, most of which has been exported;¹
- Z. Whereas the building industry, having profited excessively during the years of rapid economic expansion has become a primary casualty of the current collapse of the financial markets itself partly provoked by speculative ventures in the housing sector, and whereas this not only affects the companies themselves who now face bankruptcy but also the tens of thousands of workers in the building industry who now face unemployment because of the unsustainable urbanisation policies which were pursued and from which they now have also become victims;
1. Calls upon the Government of Spain and of the Regions concerned to thoroughly review and revise all legislation affecting the rights of individual property owners in order to bring an end to the abuse of rights and obligations contained in the EC Treaty, in the Charter of Fundamental Rights, in the European Convention of Human Rights and in the relevant EU Directives as well as in other conventions to which the EU is a party;

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

2. Calls upon the competent regional authorities to declare a moratorium on all new urbanisation plans which do not respect the strict criteria of environmental sustainability and social responsibility and which do not guarantee the respect for the rightful ownership of legitimately acquired property; and to halt and cancel all existing developments where criteria contained in EU law, notably as regards the award of urbanisation contracts and respect for water and environmental provisions, have not been respected or applied;
3. Urges the competent national and regional authorities to establish functioning judicial and administrative mechanisms, involving the regional ombudsmen, which are given the authority to provide means of redress and of compensation for the victims of urbanisation abuse for citizens and residents who have suffered under the provisions of existing legislation such as the LRAU/LUV;
4. Requests the competent financial and commercial bodies concerned with the construction and urbanisation industry to actively participate with the political authorities in the search for solutions to the existing problems, resulting from massive and unsustainable urbanisation, which have affected hundreds of thousands of European citizens who have chosen to take advantage of the provisions of the EU Treaty and who have taken up their rights of establishment under Article 44, in an EU member state which is not their country of origin;
5. Calls upon the EU institutions to provide advice and support, if requested by the Spanish authorities, in order to provide them with the means to properly overcome the disastrous impact of massive urbanisation on citizens' lives within a duly short yet reasonable time-frame,;
6. Calls upon the Commission, at the same time, to ensure the strict respect for the application Community law and of the objectives contained in the Directives covered by this report and to be more exigent with the Spanish authorities when it appears that many local authorities are not fulfilling their obligations to EU citizens;
7. Expresses its concern and dismay that the legal and judicial authorities in Spain have shown themselves to be largely ill-prepared and inadequate in dealing with the impact of massive urbanisation on peoples' lives, as is witnessed by the thousands of representations received by the European Parliament and its responsible committee on this issue;
8. Believes, nevertheless, that lack of clarity, precision and certainty relating to individual property rights in existing legislation, and the lack of the proper and consistent application of environmental law is the root cause of many problems related to urbanisation and that this, related to a laxity in the judicial process, has not only compounded the problem but has also generated an endemic form of corruption where, once again, the European citizen is the primary victim, but where the Spanish state has also lost considerably;
9. Pays tribute to, and fully supports, the activities the regional ombudsman - 'sindic de greuges' - and their staff, as well as to more assiduous investigating magistrates - 'fiscal' - who have done an enormous amount in the recent period to restore the integrity of some of the institutions affected by this issue;
10. Praises also, the activity of the petitioners, their associations and the local community associations, involving tens of thousands of Spanish and non-Spanish citizens, who have brought these issues to the attention of the European Parliament and who have been

instrumental in safeguarding the fundamental rights of their neighbours and of all those affected by this enormous and complex problem;

11. Recalls that under the terms of the Environmental Impact Assessment Directive and the Strategic Environmental Impact Assessment Directive there is an obligation to consult the public concerned at a stage when plans are being established and drawn up, not as so often has happened in cases brought to the Committee, after the plans have been *de facto* agreed by the local authority; recalls, in the same context, that any substantial modification to existing plans must also respect this procedure; contents of plans must also be current and not statistically inaccurate or out-of-date;
12. Recalls also that Article 91 of Regulation 1083/2006 empowers the European Commission, to interrupt the payment of structural funding, and Article 92 to suspend such funding to a member state or region concerned, and to establish corrections in relation to projects in receipt of funding which subsequently may be deemed not to have fully respected the application of relevant EU legislative acts;
13. Recalls also that the European Parliament, as the budgetary authority, may also decide to place funding set aside for Cohesion Policies in the reserve chapter if it considers this necessary in order to persuade a member state to end serious breaches of the rules and principles which it obliged to respect either under the Treaty or as a result of the application of EU law, until such times as the problem is resolved;
14. Reiterates its conclusions of past resolutions by calling into question the methods of designation of urbanising agents, and the frequently excessive powers often given to town planners and property developers by certain local authorities at the expense of communities and the citizens who have their homes in the area;
15. Urges once again, local authorities to consult their citizens and involve them in urban development projects in order to encourage more acceptable and sustainable urban development where this is necessary, in the interest of local communities and not in the sole interest of property developers, estate agents and other vested interests;
16. Strongly condemns the illicit practice of certain property developers undermine by subterfuge the legitimate ownership of property by European citizens by interfering with land registration and cadastre notifications, and calls upon local authorities to establish proper legal safeguards against this practice;
17. Reaffirms that, where compensation is required for loss of property, it should be awarded at a suitable rate and in conformity with the case law of the European Court of Justice and the European Court of Human Rights;
18. Reiterates its call on the Commission to initiate an information campaign directed at European citizens buying real estate in a Member State other than their own;
19. Calls upon the President to forward this resolution to the Commission and Council, to the Government and Parliament of the Kingdom of Spain and the Autonomous Regional Assemblies, to the National and Regional Ombudsmen of Spain and to the petitioners.

