

Auken Report

European Parliament resolution of 26 March 2009 on the impact of extensive urbanisation in Spain on individual rights of European citizens, on the environment and on the application of EU law, based upon petitions received

The European Parliament,

- having regard to the petitions received in connection with the subject-matter of this resolution, notably Petition 0609/03,
- 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 and the opinion of the Committee on Legal Affairs (**A6-0082/2009**),

A. whereas the petitions process provides European citizens and residents with a means of obtaining non-judicial redress for their grievances when these concern issues arising from the fields of activity of the European Union,

B. whereas Article 6(1) of the Treaty on European Union states that "[t]he 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) of the EU Treaty the Union commits itself to respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR),

D. whereas any citizen or resident of a state signatory to the ECHR who considers that his/her human rights have been violated should approach the European Court of Human Rights in Strasbourg, bearing in mind that before bringing any proceedings before that Court he/she must exhaust all domestic remedies, as is laid down in Article 35 of the ECHR,

E. whereas Article 7 of the EU Treaty provides for procedures whereby the Union can respond to breaches of the principles mentioned in Article 6(1) and seek solutions,

F. whereas Article 7 of the EU Treaty also gives Parliament the right to make a reasoned proposal to the Council for determination of the question whether there is a clear risk of a serious breach by a Member State of the values on which the Union is founded,

G. whereas Article 7 of the Charter of Fundamental Rights of the European Union guarantees the protection of privacy and family life, including the private home of citizens, and whereas Article 8 of the ECHR confers the same rights and clarifies that "[t]here 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 Parliament, the Council and the Commission have committed themselves to respecting the Charter in all their activities,

H. whereas the right to private property is recognised as a fundamental right of European citizens in

Article 17 of the Charter of Fundamental Rights, which provides that "[e]veryone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions", that "[n]o 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 "[t]he use of property may be regulated by law in so far as is necessary for the general interest",

I. whereas Article 18 of the EC Treaty provides that "[e]very 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",

J. whereas according to Article 295, the EC Treaty "shall in no way prejudice the rules in Member States governing the system of property ownership"; whereas, according to the case-law of the Court of Justice, that provision merely recognises the power of Member States to define the rules governing the system of property ownership; and whereas the case-law 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 movement of goods, persons, services and capital (see the judgment of 22 June 1976 in Case C-119/75 *Terrapin v Terranova* [1976] ECR 1039),

K. whereas, however, the Court of Justice has consistently held that, whilst the right to property forms part of the general principles of Community law, it is not an absolute right and must be viewed in relation to its social function and whereas, consequently, its exercise may be restricted, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed (see the judgment of 10 December 2002 in Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453),

L. whereas, notwithstanding that case-law, the Court of Justice has consistently held that, where national provisions fall outside the scope of Community law, there is no Community jurisdiction to assess the compatibility of those provisions with the fundamental rights whose observance the Court ensures (see, for instance, the order of 6 October 2005 in Case C-328/04 *Vajnai* [2005] ECR I-8577, paragraphs 12 and 13),

M. whereas the first paragraph of Article 1 of the first Additional Protocol to the ECHR declares that "[e]very natural or legal person is entitled to the peaceful enjoyment of his possessions" and that "[n]o 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"; whereas the second paragraph of that article states that "[t]he preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties"; and whereas, at the time of ratification of the said Protocol, Spain expressed a reservation in respect of Article 1 in the light of Article 33 of the Spanish Constitution, which provides as follows: "The right to private property and inheritance is recognised. 2. The social function of these rights shall determine the limits of their content in accordance with the law. 3. No one may be deprived of his or her property and rights, except on justified grounds of public utility or social interest and with a proper compensation in accordance with the law.",

N. whereas 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 ECHR and in the light of the case-law of the European Court of Human Rights (see, for instance, *Aka v. Turkey* ⁽¹⁾),

O. whereas in 2008 the Spanish authorities issued instructions regarding the application of the 1988 Coastal Law, which had been neglected for many years during which time extensive environmental

damage was done to coastal areas in Spain; whereas even the current instructions do not provide for clear implementing measures to be followed by the local and regional authorities involved, and whereas many new petitions received bear witness to the retroactive contents of the instructions and the arbitrary destruction and demolition of individuals' legitimately acquired property, their rights to such property and their ability to transfer their rights by means of inheritance,

P. whereas, in view of the actual course of the demarcation line, those affected have formed the strong impression that it has been defined arbitrarily at the expense of foreign owners, for example on the island of Formentera,

Q. whereas the Coastal Law impacts disproportionately on individual property owners who should have their rights fully respected, and at the same time insufficiently on the real perpetrators of coastal destruction, who have in many instances been responsible for excessive urban developments along the coasts, including holiday resorts, and who had good grounds for knowing that they were invariably acting contrary to the provisions of the law in question,

R. whereas in the course of the current parliamentary term the Committee on Petitions, acting in response to the very large number of petitions received, has conducted detailed investigations, has reported three times on the extent of the abuse of the legitimate rights of EU citizens to their legally acquired property in Spain, and has also detailed its concerns in relation to the undermining of sustainable development, environmental protection, water quality and provision, procedures concerning public procurement with regard to urbanisation contracts and insufficient control of urbanisation procedures by many local and regional authorities in Spain⁽²⁾, which matters are currently the subject of legal proceedings both in Spain and before the Court of Justice,

S. whereas there are many examples of cases where every level of authority, from central to autonomous and local, has been responsible for setting in motion a model for unsustainable development that has had extremely serious environmental consequences, as well as economic and social repercussions,

T. whereas Parliament has received many petitions from private individuals and from various organisations representing EU citizens, complaining about different aspects of urbanisation, and whereas it has noted that many of the issues raised in the petitions submitted in relation to urban expansion do not constitute infringements of Community law, as is evidenced by the communications to the Member States, and should be settled by exhausting the legal remedies available in the Member States concerned,

U. 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 certain corrupt local officials who, by their actions, have facilitated unprecedented and unregulated urban developments to the detriment of the rights of EU citizens, thereby damaging irretrievably the biodiversity and environmental integrity of many regions of Spain; whereas Parliament has observed, however, in response to such charges, that procedures remain outrageously slow and that the sentences handed down in many of these cases are incapable of being enforced in a way which provides any satisfaction to the victims of such abuse, and whereas this has strengthened the impression shared by many non-Spanish EU citizens affected regarding the inactivity and/or partiality of Spanish justice; whereas it is noteworthy, however, that there is also an avenue of appeal to the European Court of Human Rights, once domestic remedies have been exhausted,

V. whereas such widespread activity, supported by irresponsible local and regional authorities through inadequate and sometimes unjustified legislation which in many cases runs counter 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, as has the lax application of the urban planning and

environmental laws in force in the Spanish autonomous communities to certain urban development operations, as well as the emergence of major cases of corruption stemming from such abuse,

W. whereas regional ombudsmen have frequently acted, in very difficult circumstances, to defend the interests of EU citizens in cases related to urbanisation abuses, although in some autonomous communities regional governments have on occasion been able to pay no heed to their efforts,

X. whereas Article 33 of the Spanish Constitution makes reference to the rights of individuals to their property, and whereas there have been different interpretations of that article, notably as regards the provision of property for social use as opposed to the rights of individuals to their legally acquired homes and dwellings; whereas no ruling on the application of the land laws in the Valencian region has been given,

Y. whereas Article 47 of the Spanish Constitution provides that all Spaniards have the right to enjoy decent and adequate housing, and tasks the public authorities with promoting the requisite conditions and establishing the relevant rules to make that right effective, and with regulating land use in the general interest in order to prevent speculation,

Z. 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, irrespective of the internal organisation of the political authorities as established by the Constitution of the Kingdom of Spain,

AA. whereas the Commission, acting pursuant to the powers conferred on it by Article 226 of the EC Treaty, has brought proceedings against Spain before the Court of Justice in a case involving the excessive urbanisation abuses which have occurred in Spain which directly concerns the implementation by the Valencian authorities of the Directive on Public Procurement⁽³⁾,

AB. whereas the Commission, at the request of the Committee on Petitions, has 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 which may therefore place the projects in contravention of the Water Framework Directive⁽⁴⁾, notably in Andalucía, Castilla-la-Mancha, Murcia and Valencia,

AC. whereas many of those urbanisation projects are detached from consolidated urban areas and require substantial expenditure in respect of basic services such as electricity and water supplies and road infrastructure; whereas investment in those projects often includes an element of EU funding,

AD. whereas in many documented cases of urbanisation problems in Spain the Commission has failed to act sufficiently forcefully, not only as regards enforcement of the precautionary principle underlying environmental law but also because of its lax interpretation of acts by competent local or regional authorities which have binding legal effect, such as the "provisional approval" of an integrated urban development plan by a local authority,

AE. whereas the objective of the Strategic Environmental Impact Assessment Directive⁽⁵⁾, Article 3 of which explicitly covers tourism and urbanisation, is to provide for 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 sustainable development; and whereas the Water Framework Directive requires Member States to prevent the deterioration of their waters and to promote the sustainable use of their fresh water resources,

AF. whereas successive fact-finding visits by the Committee on Petitions have shown that these objectives seem to be frequently misunderstood by some local and regional authorities (not just in the coastal regions) when proposing or agreeing to extensive urbanisation programmes; whereas most

urbanisation plans contested by petitions involve the reclassification of rural land into land zoned for urbanisation – to the considerable economic benefit of the urbanisation agent and the 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 reclassified, or not being listed at all, precisely to allow for urbanisation of the area concerned,

AG. whereas such considerations compound the abuse which is felt by thousands of EU citizens who, as a result of the plans of the urbanisation 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,

AH. 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 unsaleable,

AI. whereas real estate agents in Member States such as the UK, and other providers of services related to the real estate market in Spain, continue to market property in new urbanisations even when they are necessarily aware that there is a clear possibility that the project in question will not be completed or built,

AJ. whereas the natural Mediterranean island and coastal areas of Spain have suffered extensive destruction in the last decade as cement and concrete have saturated these regions in a way which has affected not only the fragile coastal environment – much of which is nominally protected under the Habitats⁽⁶⁾ /Natura 2000 and Birds⁽⁷⁾ Directives, such as urbanisations in Cabo de Gata (Almería) and in Murcia – but also 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 absence of supra-municipal planning or regional planning guidelines placing reasonable limits on urban growth and development, set on the basis of explicit criteria of environmental sustainability, and because of the greed and speculative behaviour of certain local and regional authorities and members of the construction industry who have succeeded in deriving massive benefits – most of which have been exported⁽⁸⁾ – from their activities in this regard,

AK. whereas this model of growth also has negative consequences for the tourism sector, since it has a devastating impact on quality tourism given that it destroys local values and encourages excessive urban expansion,

AL. whereas this is a model that pillages cultural goods and ruins the values and distinct features of identity that are fundamental to Spain's cultural diversity, destroying archaeological sites, buildings and places of cultural interest, as well as the natural environment and landscape surrounding them,

AM. whereas the building industry, having made considerable profits 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 affects not only the companies themselves, who are now confronted with 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 of which they now have also become victims,

1. Calls on the Government of Spain and of the regions concerned to carry out a thorough review and to revise all legislation affecting the rights of individual property owners as a result of massive urbanisation, in order to bring an end to the abuse of rights and obligations enshrined in the EC Treaty, in the Charter

of Fundamental Rights, in the ECHR and in the relevant EU Directives, as well as in other conventions to which the EU is a party;

2. Calls on the Spanish authorities to abolish all legal forms that encourage speculation, such as urbanisation agents;

3. Considers that the competent regional authorities should suspend and review all new urbanisation plans which do not respect the strict criteria of environmental sustainability and social responsibility and which do not guarantee respect for the rightful ownership of legitimately acquired property, and should halt and cancel all existing developments where criteria laid down in EU law, notably as regards the award of urbanisation contracts and compliance with provisions relating to water and the environment, have not been respected or applied;

4. Requests the Spanish authorities to ensure that no administrative act that would oblige a citizen to cede legitimately acquired private property finds its legal base in a law which has been adopted after the date of construction of the property in question, since this would infringe the principle of non-retroactivity of administrative acts which is a general principle of Community law (see the judgment of the Court of Justice of 29 January 1985 in Case 234/83 *Gesamthochschule Duisburg* [1985] ECR 327) and would undermine guarantees affording citizens legal certainty, confidence and legitimate expectations of protection under EU law;

5. Calls on the Spanish authorities to develop a culture of transparency geared to informing citizens about soil management and fostering effective mechanisms for public information and participation;

6. Urges the Spanish Government to hold a public debate, with the participation of all administrative bodies, that would involve a rigorous study through the setting-up of a working committee on urban development in Spain and that would make it possible to take legislative measures against speculation and unsustainable development;

7. 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 ways of speeding up redress and compensation for victims of urbanisation abuse who have suffered as a result of the application of the provisions of existing legislation;

8. Requests the competent financial and commercial bodies concerned with the construction and urbanisation industry to work together with the political authorities in seeking solutions to the problems resulting from large-scale urbanisation, which has affected numerous EU citizens who have chosen to take advantage of the provisions of the EC Treaty and who have exercised their rights of establishment under Article 44 in a Member State which is not their country of origin;

9. Urges the competent national, regional and local authorities to guarantee a fair settlement for the many ongoing cases of EU citizens affected by non-completion of their houses as a result of the poor planning and coordination between institutions and construction companies;

10. Points out that, if aggrieved parties fail to obtain satisfaction in the Spanish courts, they will have to appeal to the European Court of Human Rights, given that the alleged violations of the fundamental right to property do not come within the jurisdiction of the Court of Justice;

11. Calls on the EU institutions to provide advice and support, if requested so to do by the Spanish authorities, in order to provide them with the means to surmount effectively the disastrous impact of massive urbanisation on citizens' lives within a duly short yet reasonable time-frame;

12. Calls on the Commission, at the same time, to ensure strict respect for the application of Community

law and of the objectives laid down in the Directives covered by this resolution, so that compliance therewith can be assured;

13. Expresses its deep concern and dismay that the legal and judicial authorities in Spain have encountered difficulties in dealing with the impact of massive urbanisation on peoples' lives, as evidenced by the thousands of representations received by Parliament and its responsible committee on this issue;

14. Considers it alarming that there appears to be a widespread lack of confidence among the petitioners in the Spanish judicial system as an effective means of obtaining redress and justice;

15. Expresses concern over the lack of correct transposition of the Directives on money laundering⁽⁹⁾, which is currently the subject of Treaty infringement proceedings and which has limited the transparency and legal pursuit of the illicit circulation of financial capital including investments in certain large-scale urbanisation projects;

16. Takes the view that persons who have bought property in Spain in good faith, only to find that the transaction has been declared illegal, should have the right to appropriate compensation through the Spanish courts;

17. Considers that if private individuals who have bought property in Spain in the knowledge of the likely illegality of the transaction concerned can be obliged to bear the costs of their risk-taking, this must apply by analogy *a fortiori* to professionals in the field; considers therefore that developers who have entered into contracts the unlawfulness of which they should have known about ought not to be entitled to compensation for plans that are abandoned due to non-compliance with national and European law, and should not have any automatic right of to recover payments already made to municipalities when these have been made in the knowledge of the likely illegality of the contract entered into;

18. Believes, nevertheless, that the absence of clarity, precision and certainty with regard to individual property rights contained in existing legislation, and the lack of any proper and consistent application of environmental law, are the root cause of many problems related to urbanisation and that this, combined with a certain laxity in the judicial process, has not only compounded the problem but has also generated an endemic form of corruption of which, once again, the EU citizen is the primary victim, but which has also caused the Spanish State to suffer significant loss;

19. Supports the conclusions reached by the Valencian Community's Ombudswoman (Sindica de Greuges) – an institution justly famed for its defence of citizens' fundamental rights – which state that owners' rights may have been affected, whether as a result of being undervalued by the developer, or by such owners having to shoulder sometimes excessive development charges unilaterally imposed by the developer;

20. Considers that access to information and citizens' involvement in the development process need to be guaranteed from the outset of the process, and that environmental information should be made available to citizens in a clear, simple and comprehensible form;

21. Believes that no properly delimited definition of "general interest" has been given either in existing development legislation or by the appropriate authorities, and that this term is used to approve projects which are environmentally unsustainable, and in certain cases to circumvent negative environmental impact assessments and reports by the respective Hydrographic Confederations;

22. Recognises and supports the efforts of the Spanish authorities to protect the coastal environment and, where possible, to restore it in a way which allows bio-diversity and the regeneration of indigenous species of flora and fauna; in this specific context appeals to them to review the Coastal Law as a matter of urgency and if necessary to revise it in order to protect the rights of legitimate home-owners and those

who own small plots of land in coastal areas which do not impact negatively on the coastal environment; emphasises that such protection should not be afforded to those developments which are planned as speculative ventures and do not respect the applicable EU environmental Directives; undertakes to review such petitions as have been received on this subject in the light of responses received from the competent Spanish authorities;

23. Expresses concern over the urban planning situation of the municipality of Marbella in Andalucía, where tens of thousands of homes built illegally, probably in contravention of EU legislation on environmental protection and public participation, water policy and public procurement, are about to be legalised by a new general plan for the town, resulting in an absence of legal certainty and safeguards for home buyers, property owners and citizens in general;

24. Pays tribute to, and fully supports the activities of, the regional ombudsmen ("síndics de greuges") and their staff, as well as the more assiduous public prosecutors ("fiscales") who have done a considerable amount to restore the application by the institutions affected of the correct procedures concerning these issues;

25. Also praises 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 Parliament's attention and who have been instrumental in safeguarding the fundamental rights of their neighbours and of all those affected by this complex problem;

26. Recalls that the Environmental Impact Assessment Directive⁽¹⁰⁾ and the Strategic Environmental Impact Assessment Directive⁽¹¹⁾ impose 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 attention of Parliament's Committee on Petitions – 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 and that plans must also be current and not statistically inaccurate or out of date;

27. Recalls also that the Commission is empowered by Article 91 of Regulation (EC) No 1083/2006⁽¹²⁾ to interrupt the payment of structural funding, and by 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 are subsequently deemed not to have fully complied with the rules governing the application of relevant EU legislative acts;

28. Recalls also that Parliament, as the budgetary authority, may also decide to place funding set aside for cohesion policies in the reserve if it considers this necessary in order to persuade a Member State to end serious breaches of the rules and principles which it is obliged to respect either under the Treaty or as a result of the application of EU law, until such time as the problem is resolved;

29. Reiterates the conclusions contained in its previous resolutions by calling in question the methods of designation of urbanisation 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;

30. Calls once again on local authorities to consult their citizens and involve them in urban development projects in order to encourage fair, transparent 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;

31. Calls on the authorities responsible for urban development to extend development consultation processes to property-owners, with acknowledgement of receipt, whenever there are changes to the classification of their properties, and to propose to local authorities that they issue direct, personal

invitations during the zoning plan or reclassification appeal proceedings;

32. Strongly condemns the illicit practice whereby certain property developers undermine by subterfuge the legitimate ownership of property by EU citizens by interfering with land registration and cadastral notifications, and calls on local authorities to establish proper legal safeguards to counter this practice;

33. Reaffirms that, where compensation is payable for loss of property, it should be awarded at a suitable rate and in conformity with the law and the case-law of the Court of Justice and of the European Court of Human Rights;

34. Recalls that the Unfair Commercial Practices Directive⁽¹⁹⁾ obliges all Member States to provide appropriate means of obtaining legal redress and remedies for consumers who have been victims of such practices and to ensure that adequate sanctions are in place to counter such practices;

35. Once again calls on the Commission to initiate an information campaign directed at EU citizens buying real estate in a Member State other than their own;

36. Instructs its President to forward this resolution to the Commission and the Council, to the Government and Parliament of the Kingdom of Spain and the Autonomous Regional Governments and Assemblies, to the national and regional ombudsmen of Spain and to the petitioners.