Application of building legislation LRAU. Petition 609/2003

2004/2208(INI) - 13/12/2005 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution with 550 votes in favour, 45 against with 25 abstentions on the alleged abuse of the Valencian Land Law known as the LRAU and its effect on European citizens. The resolution was based on an own-initiative report drafted byJanelly **FOURTOU** (ALDE).

Parliament had received around 15 000 petitions from individuals and associations representing several thousand EU citizens and residents settled in the Valencian Autonomous Region, 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 Ley Reguladora de la Actividad Urbanística (LRAU).

The background to this matter is as follows: 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 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. Parliament felt that it was plain that some owners had been harmed by this land development process. The main complaints concern the methods of expropriation, which are sometimes oppressive and based on valuations which are extremely low, with subsequent onward sales at high market prices and in circumstances where the information available does not allow interested parties to react. The lack of transparency and of clear pre-set criteria made 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. 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 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). In addition, 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.

Parliament considered 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. It welcomed the decision of the Valencian Regional Government to pass a new law designed to replace the LRAU and, in particular, the invitation by the President of the Region to Parliament to submit recommendations. Parliament felt that it was not its responsibility to amend the draft version of this new law, invited the competent authorities to take account of the following suggestions:

- 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.

Parliament went on to call upon the competent Valencian and Spanish authorities to ensure that general development plans which are likely to have significant environmental effects are made subject to a strategic environmental impact assessment pursuant to Directive 2001/42/EC. Also, any decisions on future developments should be compatible with the requirements of Directive 2000/60/EC as regards the prudent use and protection of water resources. Claims offices should be set up 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. Parliament felt that there was a need for a moratorium as regards granting consent for new development projects and plans on non-development land, pending the entry into force of the revised legislation.

Finally, it asked the Commission to draw on the experiences of this episode and, in view of the large number of EU citizens now buying property 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 the European Parliament.