

## Abusos Urbanísticos Almanzora No Campaigning to safeguard our homes

### Statement to EU Petitions Committee 14<sup>th</sup> April 2011<sup>1</sup>

- The issue of urban planning abuse in Spain is well known and has been the subject of various reports and resolutions in the European Parliament between 2006 and 2009<sup>2</sup>.
- And yet the problem persists and increases. I could break your hearts with stories of the misery and financial hardship and stress that situation has inflicted on thousands of EU citizens.<sup>3</sup>
- To put the scale of the problem in context - According to a report from the Andalusian Ombudsman in the year 2000 there are an estimated **300,000** illegal properties in the autonomous community of Andalucía<sup>4</sup>. But there are **17** autonomous communities in Spain. We could be speaking of 1 million people and a combined investment of billions of Euros.<sup>5</sup>
- This committee has been sympathetic to petitioners in the past but continues to assert that it can only intervene if the matter concerns the implementation of EU Law.
- But we believe that this issue IS an attack on the fundamental pillars of EU law<sup>6</sup> relating to the free movement of capital<sup>7</sup> and the free movement of people<sup>8</sup>.
- Citizens from other Members States have invested in many, many thousands of these properties. Their investment is at risk BUT they cannot **disinvest** or **leave** the country (by selling their properties) given that they have been told that their property is illegal.<sup>9</sup>
- The case of the Prior family is well known internationally<sup>10</sup>, but there are many Mr & Mrs Priors in Spain: people who invested in good faith, but now risk the loss of their investment without hope of compensation; or who live without water and electricity; or who face demolition; or who face having to pay their developer's debts; or who have no title to show for their investment; or indeed, a combination of these problems.
- This is clearly as disincentive for people to invest in Spain, as the massive slump in such investments show.<sup>11</sup>

- The Treaty protects the economic interests of consumers<sup>12</sup>. Citizens from other EU states have been sold illegal properties, often assisted by estate agents (who are mostly unregulated); or developers (who are not forced to comply with adequate safeguards); or lawyers (who were relied upon on the assumption that they provided the same level of service as in citizens home country).
- Furthermore, EU law protects citizens from discrimination<sup>13</sup>. This includes indirect discrimination<sup>14</sup>. And here are these investors come from countries which are well regulated and where adequate safeguards exist; they expect these standards to apply in Spain, and are sadly shocked to find that this is not the case; they are therefore at a comparative disadvantage.
- Sadly, we are also talking of possible direct discrimination; and here I refer to the remarks of the Minister with responsibility for Planning and Housing in Andalucía who, in discussing this problem, has recently referred to 'a group of people who have settled illegally in our territory'<sup>15</sup>.
- We also see a number of breaches of the Charter of Fundamental Rights of the European Union. The Charter comes into play when applying rules of EU law<sup>16</sup>, and is therefore clearly applicable when applying or interpreting the free movement of capital and persons. In this respect we see that the right to dignity<sup>17</sup>, to one's home<sup>18</sup> and to no expropriation without compensation<sup>19</sup> have been substantially breached<sup>20</sup>.
- Honourable Members, we have heard many sympathetic words on this issue but have seen little action. We do not want your sympathy. We want the laws of Europe to mean something more than words on a piece of paper.
- We want the laws of Europe to resolve a problem that at the very least is disrupting the function of the internal market<sup>21</sup> and at worst is destroying the hopes and dreams of many.
- I finish with the request that the Committee listens to the statements of Helen Prior whose home was demolished in 2008 and who currently lives in her garage.
- Thank you.

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NOTES:

<sup>1</sup>References are to the consolidated version of the Treaty on the Functioning of the EU and the EU Charter of Fundamental Rights, OJ C83 30.03.2010, pages 47-200 and pages 389-403.

<sup>2</sup> See 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 (2008/2248(INI)).

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3 At the time of this presentation a search on the Google search engine using the words “property scam Spain” throws up almost 39 million results.

<sup>4</sup> In accordance with press reports. This figure was also discussed in a public meeting with the Head of Inspection in Planning matters of the Andalusian government as reported on the 25.06.2010 in the digital edition of the newspaper El Diario de Cadiz, as well as various other publications – link: <http://www.diariodecadiz.es/article/provincia/732960/borron/y/cuenta/nueva/para/la/construccion/ilegal.html>

<sup>5</sup> In Andalucía alone.

<sup>6</sup> Treaty on Functioning of the EU, article 26 (page 59) states that “1. The Union shall adopt measures with the aim of ... ensuring the functioning of the internal market. 2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons services and capital is ensured ...”

<sup>7</sup> Treaty on the Functioning of the EU, article 63, (page 71) states that “1. ...all restrictions on the movement of capital between Members States ... shall be prohibited.”

<sup>8</sup> Treaty on the Functioning of the EU, article 20 (page 56) states that “2. Citizens of the Union ... shall have the right to move and reside freely within the territory of the Member States”. See also article 45 (page 65) guaranteeing the free movement of workers; and article 49 (page 67) guaranteeing the freedom of establishment.

<sup>9</sup> Creates a breach of EU Law: the case law of the ECJ shows that the concepts of “restrictions on the free movement of capital or persons” must be interpreted broadly. The prohibition does not apply just to absolute barriers to free movement, but also to those measures which hinder or dissuade people from exercising free movement rights. See entry of 17.12.2010 in the Spanish Property Insight blog “Holiday home sales down almost 90pc since 2006”

<http://www.spanishpropertyinsight.com/buff/page/17/>

<sup>10</sup> A search in Google with the words “prior demolition Vera” at the time of this presentation shows up almost half a million results.

<sup>11</sup> See Spanish property Insight blog mentioned in a previous note. In cases relating to restrictions on the free movement of capital, the ECJ uses terms such as “obstacles” or “liable to dissuade” in deciding whether such a restriction exists (see Trummer case C-222/97). In the “British Golden Shares Case”(C-98/01, para 47) the ECJ noted that even rules which apply without distinction to non-nationals and nationals alike can “deter investors from other Member States from making such investments and, consequently, affect access to the market”.

<sup>12</sup> Treaty on the Functioning of the EU, article 169 (page 124) states that “...to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers ...”

<sup>13</sup> Treaty on the Functioning of the EU, article 18 (page 56) states that “Within the scope of application of the Treaties ... any discrimination on grounds of nationality shall be prohibited.”

<sup>14</sup> Which occurs where apparently neutral provisions, criteria or practices, put persons of a different national origin at a particular disadvantage compared to state nationals.

<sup>15</sup> Reported in the official bulletin of the Andalusian Parliament “Diario de Sesiones del Parlamento de Andalucía, Comisiones, Obras Públicas y Vivienda, VIII Legislatura, núm. 468, año 2011, Sesión celebrada el miércoles, 9 de marzo de 2011”, at page 20, where the Minister is reported as stating: “*Señorías, para confusión, la suya. Yo creo que usted no sabe lo que está defendiendo. No sé si está defendiendo la intrusión de personas, no sé si está defendiendo los intereses de un conjunto de personas que no son de este país, que se han instalado aquí de forma ilegal, no sé si está defendiendo esos intereses, señoría. No lo entiendo, de verdad que no lo entiendo. Creo haber dicho en esta ocasión que hemos tenido reuniones al respecto también con el Embajador Británico, pero a mí me interesa, a mí me preocupa la situación general, y no me preocupa una situación parcial de un conjunto de personas que se han establecido ilegalmente en nuestro territorio. No entiendo..., luego, su confusión... No sé si está defendiendo la legalidad o no está defendiendo la legalidad. Señoría, no sé lo que usted está defendiendo, no sé de parte de qué y de quién está usted. Nosotros estamos tratando de abordar un problema que se ha producido en Andalucía como consecuencia de la falta de respeto a la cultura del territorio, a la cultura del paisaje y a la cultura urbanística, y, por lo tanto, hay que adecuar, nosotros queremos dar respuesta dentro de la legalidad, dentro del planeamiento urbanístico, dentro de la ordenación del territorio y dentro del respeto a toda la legislación sectorial de espacios protegidos, de suelos forestales, de suelos protegidos por la legislación de vías pecuarias, de costa, etcétera, etcétera, etcétera(...). Mañana tengo prevista una reunión en la Almazora, señoría. Mañana tengo prevista una reunión con los alcaldes. Señoría, yo me reúno*”

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*con los alcaldes, que son los responsables locales de la ordenación de su municipio, y, a partir de ahí, se podrá darles información a los vecinos que están afectados, sean de una organización o no sean de ninguna organización, sean vecinos que se han establecido de buena fe o no de tan buena fe, y que ahora están demandándonos a nosotros que resolvamos un problema que son ellos los responsables de haberlo creado”.*

<sup>16</sup> Article 51 (page 402) of the Charter states that “The provisions of this Charter are addressed to ... Member States only when they are implementing Union Law”.

<sup>17</sup> Article 1 (page 392) of the Charter states that “Human dignity is inviolable”. It must be respected and protected”.

<sup>18</sup> Article 7 (page 393) of the Charter states that “Everyone has the right to respect for his or her private and family life, home and communications”.

<sup>19</sup> Article 17 (page 395) of the Charter states 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.”.

<sup>20</sup> Also right to equality (article 20, page 395); non-discrimination (article 21, page 396); consumer protection (article 38, page 399), right to justice (art 47, page 401).

<sup>21</sup> Treaty on the Functioning of the EU, article 26, page 59 – see note 6 above.