

EUROPEAN PARLIAMENT

2004



2009

Session document

FINAL
A6-0382/2005

5.12.2005

REPORT

on the alleged abuse of the Valencian Land Law known as the LRAU and its effect on European citizens (Petitions 609/2003, 732/2003, 985/2002, 1112/2002, 107/2004 and others)
(2004/2208(INI))

Committee on Petitions

Rapporteur: Janelly Fourtou

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	3
EXPLANATORY STATEMENT	9
PROCEDURE.....	11

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on the alleged abuse of the Valencian Land Law known as the LRAU 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 EU Treaty which transposes the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and Article 7 of the EU 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/EEC¹ and 93/37/EEC² on public procurement, Directives 85/337/EEC³, 97/11/EC⁴ and 2001/42/EC⁵ on environmental impact assessment, and Directive 2000/60/EC⁶ on water policy,
 - having regard to the right of petition as contained 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 large number of petitions (around 15 000) from individuals and associations representing several thousand European citizens, and residents, settled in the Valencia autonomous region, complaining about very different aspects of urban development, including destruction of the environment and building excesses and in many cases protesting about the denial of their legitimately acquired 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 by the Committee on Petitions on this subject in May 2004

¹Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ L 209, 24.7.1992, p. 1).

²Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ L 199, 9.8.1993, p. 54).

³Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40).

⁴Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ L 73, 14.3.1997, p. 5).

⁵Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

⁶Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

setting out, in particular, specific cases illustrating serious and persistent 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 has continued the investigations carried out in particular in Madrid and in the region of Valencia 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 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 and the responsible ministers, the president of the Valencian parliament (Cortes Valencianas) and the political group leaders, the Valencian ombudsman (Sindic de Greuges) and the national ombudsman (Defensor del Pueblo), senior government officials from Madrid and Valencia, the federation of mayors of the Valencian region, 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 Court of Valencia who without exception cooperated with openness and goodwill, thus showing a spirit of constructive cooperation which is greatly appreciated,
- 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, for the matter under consideration, in Articles 10, 18, 33, 45, 47, 54, 93 and 105 thereof,
- F. whereas the European institutions have the duty to enforce the provisions of the treaties and of the legislation adopted thereunder, having particular regard to the rights and obligations of European citizenship, and accordingly have a responsibility, in cooperation with the Member States, for resolving the problems affecting Europe's citizens,
- G. whereas current property law in Spain grants property owners 90 % of construction rights and the specific nature of the LRAU requires property owners, in the event of the approval of a land development project (*Plan de actuación integrada – PAI*) by a local authority, to cede a minimum of 10 % of their property to the municipality as 'Patrimonio Municipal Suelo' (municipal land asset), together with the land for any paths, roads, car parks etc., public areas and public facilities, or pay development costs decided by the developer of that new infrastructure, a procedure over which the owner has no control,
- H. whereas it is plain that some property owners have in fact been harmed by this process of land development, which is apparent both from the petitions and on the ground, and whereas these facts are recognised by all the local authorities and the Valencian government is consequently preparing a new law in order to avoid the excesses in the application of the previous one,

- I. whereas the main grievances concern the sometimes one-sided methods of expropriation employing extremely low valuations, in the opinion of the interested parties with subsequent resale at a high market price and information arrangements that do not allow interested parties to respond, all adding up to material loss and mental suffering in very many cases,
- J. whereas the lack of transparency and of clear preset criteria makes it apparent that the methods for awarding contracts are not in conformity with European law, which has led the European Commission to send a Letter of Formal Notice to Spain, and whereas the number of cases in which corruption has been determined 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 ‘urbanisator’, the inadequate means of determination and publication of contracts to be awarded, insufficient notification to landowners and the lack of clear definitions of public interest and adequate compensation, issues in which the law needs to conform, inter alia, with the requirements laid down by the case-law of the Court of Justice 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 Court of Justice (see, for instance, the judgment of the Court of Justice of 19 July 1999¹), 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 of determining the compensation therefor,
- N. whereas the case-law of the ECHR (see, for instance, the judgment of 23 September 1998²) requires that ‘a “fair balance” be struck between the demands of the general interest of the community and the fundamental rights of persons whose property has been expropriated’,
- O. 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,
- P. 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,
- Q. whereas Directive 2000/60/EC laying down a framework for water policy requires the

¹ Case T-14/98 *Hautala v Council* [1999] ECR II-2489.

² Case of *Aka v. Turkey* (Rep. 1998-VI, fasc. 90).

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 a river basin’,

- R. whereas the Confederación Hidrográfica del Júcar has objected to at least 30 new urbanisations in Valencia and the Commission has sent a reasoned opinion to Spain due to inadequate implementation of the Water Framework Directive,
- S. whereas the fact that all these issues and all these events have become a subject of political debate at all levels further emphasises the need for prudent and objective consideration of all of the key questions of disagreement,
1. Notes that tens of thousands of European citizens have for decades lived in the Community of Valencia 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 urban planning abuses;
 2. Considers that the main problems raised by citizens have focused on the improper application of the LRAU by those involved in the urban development process and on the administration by competent public authorities, in particular certain local authorities and the Government of the Community of Valencia;
 3. Welcomes, in the light of the foregoing, the decision of the government of the Valencia autonomous region to frame and pass a new law designed to replace the LRAU in order to avoid the acknowledged excesses in the application of the latter, and, in particular, the invitation by the President of the region to the European Parliament to submit recommendations;
 4. Encourages the autonomous region of Valencia in its efforts to resolve the problem more quickly than was hitherto the case as genuine evidence of its concern for the public;
 5. Considers that it is not responsible for amending the draft version of this new law but urges that the future rules on expropriation respect both in terms of substance and of form the rights of property owners and that development projects incorporate the concerns for sustainable development, the environment and ecology that constitute major 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 norms – 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 ‘urbanisator’, and of the procedure for awarding public contracts to the ‘urbanisator’ selected, to ensure that this office 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 safeguard the property rights of European citizens,
 - measures to ensure that each property owner concerned by any urbanisation 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, through binding norms, that general plans for development and urbanisation which are likely to have significant environmental effects and which set the framework for future development consent of projects are made subject to a strategic environmental impact assessment pursuant to Directive 2001/42/EC;
 8. Recalls that nationally competent authorities are obliged to carry out an environmental impact assessment in respect of planned activities belonging to a category listed in Annex I of Directive 85/337/EEC, as amended by Directive 97/11/EC, and that the selection of projects listed in Annex II of Directive 85/337/EEC must be made on the basis of transparent screening 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 on the level of 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 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 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;
 12. Wishes to be informed of the preventive measures that the regional government will be taking to avoid a recurrence of the excesses that occurred when the previous law was applied;
 13. 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;

14. Demands that the Commission continue careful monitoring and investigation to ensure the conformity of the new LUV legislation and its application with Community law in the area of public procurement and related fields and keep the Petitions Committee fully informed as to developments in this regard;
15. Undertakes – in keeping with Europe’s responsibilities – to continue to exercise vigilance in terms of monitoring compliance with tendering procedures and the risks of misappropriation of public funds;
16. 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;
17. Asks the Commission to draw on the experiences of this episode and, in view of the large number of EU citizens now buying immovable/real 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;
18. Instructs its President to forward this resolution to the Council and Commission, the government and parliament of the Valencia autonomous region, the Sindic of Greuges of the Valencia autonomous region, the Spanish Government and the petitioners.

EXPLANATORY STATEMENT

For over two years Parliament has been receiving a large number of petitions concerning what seems to be an extremely critical situation relating to the application of a land development law in the region of Valencia (LRAU). The number of those protesting directly through associations is thought to be in the order of 15 000.

The subject of the complaints concerns the improper encroachment on their existing property by urban amenity and land development projects. The criticisms relate both to the substance

- legal, economic and environmental legitimacy of such projects - and to the form
- poor information, lack of transparency, excessively short deadlines for lodging challenges and proposals, too low a level of compensation.

In addition, serious accusations have been made concerning compliance with tendering procedures, observance of environmental standards and, still worse, cases of corruption. It should be noted that both the legal and the political responsibility for this situation and for future projects rests with the following three bodies:

1. the Spanish Government as regards land law;
2. the autonomous community of Valencia as regards local legislation concerning planning rules;
3. the municipalities which, on the basis of both Spanish and regional legislation, implement the programmes which they deem legitimate.

What is at issue in this matter is the LRAU law introduced in 1994 which has been challenged both in terms of its substance and, above all, in terms of its implementation.

The Community of Valencia recognises improper practices triggered by this law and is preparing to revise it with a new law. In this connection, the Community of Valencia proposed to our committee during its visit that it would submit the new draft to the committee in order to incorporate into it any suggestions or amendments which we might make.

The issue has also become highly politicised, which makes it even harder and trickier to decide what one can contribute.

What role can there be for Europe in dealing with this problem given that both Parliament and the Commission are being contacted by a growing number of citizens, not only Spaniards but also from most of the other member countries of the European Union?

Intervention by Europe can be based only on Community law and, in this particular case, on a possible infringement of the directive on public procurement (the Commission has started an investigation to this end).

On the environmental issue, the subject is much more complex and difficult to act on since land development does not fall within the existing terms of reference of the Union* and the environment is not included among the areas of exclusive competence of the Union (see Articles 1-13 and 1-14).

* See Commission communication of 11 April 2004 COM(2004)6

Lastly, on the issue of respect for human rights as such, since the Charter of Fundamental Rights has no binding force, we can only advise referral to the Court in Strasbourg.

However, this debate must not make us overlook either the urgency of the situation or the response to be given to an extremely large number of existing property owners fearful of suffering unacceptable loss without mentioning those who already believe that they have been despoiled.

It is plain that, since a case-by-case review is outside the capacity and responsibility of European bodies, we can only confine ourselves to making a strong recommendation calling on the Community of Valencia not only to improve its law - which is already under way - but also to initiate a procedure for assessing situations on a case-by-case basis and putting in place appropriate rectifying measures and compensation.

The Committee on Petitions, after considering the complaints, travelled to the area in question and was impressed by the number and nature of the protests lodged by a large number of citizens both Spanish and from the majority of European countries.

Without being in a position to form an opinion on the substance of the matter which would involve obtaining legal and economic expert opinions outside the scope of the Committee on Petitions, it is nevertheless plain to everyone - including the Community of Valencia - that excesses and probably abuses did occur. This warrants implementation of arrangements for rectifying the situation. The European Parliament has a duty to respond while staying within its powers so as not to create a level of expectation among the citizens which might only be disappointed.

In conclusion, there seems to be an urgent need:

1. to start a procedure identifying what is factual and within Community competence (tendering) and which rules out any kind of judgment as to the lawfulness of the adopted project;
2. to make an appeal to the Community of Valencia and to the municipalities concerned recording the complaints received and the strength of feeling of the members of the Committee on Petitions at what appears both in terms of substance and of form to be a lack of consideration and respect for the European citizens concerned;
3. to formulate Parliament's wish that a process of rectification and compensation be implemented for injustices that have been proven;
4. to make an appeal that the rights of the environment so cherished by the whole of the European Union be taken into account in the projects that are in progress.

PROCEDURE

Title	The alleged abuse of the Valencian Land Law known as the LRAU and its effect on European citizens (Petitions 609/2003, 732/2003, 985/2002, 1112/2002, 107/2004 and others)	
Procedure number	2004/2208(INI)	
Basis in Rules of Procedure	Rule 192(1)	
Committee responsible Date authorisation announced in plenary	PETI 18.11.2004	
Committee(s) asked for opinion(s) Date announced in plenary		
Not delivering opinion(s) Date of decision		
Enhanced cooperation Date announced in plenary		
Motion(s) for resolution(s) included in report		
Rapporteur(s) Date appointed	Janelly Fourtou 29.9.2005	
Previous rapporteur(s)		
Discussed in committee	15.6.2005 10.10.2005	
Date adopted	23.11.2005	
Result of final vote	for: 22 against: 0 abstentions: 1	
Members present for the final vote	Robert Atkins, Inés Ayala Sender, Alessandro Battilocchio, Michael Cashman, Elly de Groen-Kouwenhoven, Janelly Fourtou, David Hammerstein Mintz, Roger Helmer, Carlos José Iturgaiz Angulo, Marcin Libicki, David Martin, Mairead McGuinness, Manolis Mavrommatis, Willy Meyer Pleite, Marie Panayotopoulos-Cassiotou, Rainer Wieland	
Substitute present for the final vote	Joan Calabuig Rull	
Substitutes under Rule 178(2) present for the final vote	Herbert Bösch, Salvador Garriga Polledo, Sarah Ludford, Antonio Masip Hidalgo, Antonio López-Istúriz White, Luis Yañez-Barnuevo García	
Date tabled – A6	5.12.2005	A6-0382/2005