



17.1.2024

NOTICE TO MEMBERS

Subject: Petition No 0459/2023 by Christine Gamboa (French) on alleged violation of property rights in the Canary Islands in Spain

1. Summary of petition

The petitioner cites the Charter of Fundamental Rights, and more specifically the right to property, to speak out against a regulation in force in the Canary Islands (Spain): Law 7/1995 of 6 April 1995 on the regulation of tourism in the Canary Islands. Under this law, the owners of properties located in a complex are required to entrust the use of the complex for tourism to a single company (the unitary tourism use principle, Articles 38 et seq. of the Law).

According to the petitioner, this implies that the property can only be used for tourism purposes and not for residential purposes, in accordance with Articles 5(2) and 23(1) of Law 2/2013 of 29 May on upgrading and modernising tourism in the Canary Islands, and with Article 31(1) of Decree 85/2015 of 14 May adopting the regulations implementing the Law on upgrading and modernising tourism in the Canary Islands. The petitioner is complaining about this practice that she views as being questionable, as it allegedly favours a group of businessmen supported by regional politicians to serve private interests. She claims that over 50 000 people, who have come together in an association (PLAT), are affected by this same regulation in force in the Canary Islands. Mentioning her own experience, the petitioner says that the management companies, who are not owners, make no investments at all and leave the tourist complexes in a poor condition. The petitioner calls for the unitary use principle to be repealed and for the owners who want to manage or live in their properties to be able to do so. She asks for an investigation to be conducted and an EU delegation to be sent to witness the extent of the issue.

2. Admissibility

Declared admissible on 24 August 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 17 January 2024

Article 17 of the Charter of Fundamental Rights of the European Union (the Charter) provides that everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. However, according to its Article 51(1), the provisions of the Charter are addressed to the Member States only when they are implementing Union law.

On the basis of the information provided, it does not appear that the matter referred to is related to the implementation of Union law. It is therefore for the Member State in question to ensure that its obligations regarding fundamental rights – as resulting from international agreements and from their internal legislation – are respected.

Conclusion

Based on the elements provided in the petition, the Commission cannot pursue this case any further. The petitioner can bring the case to the attention of national authorities, including the judiciary, and if the petitioner considers that any of its fundamental rights have been violated, it may lodge a complaint with the Council of Europe's European Court of Human Rights.