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THE EUROPEAN UNION AND URBAN POLICY IN THE COMUNIDAD VALENCIANA¹: A LEGAL OR POLITICAL CONFLICT?

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In 2005, 2007, and 2009 the European Parliament approved, with ample majorities, resolutions which were very critical of the urban policy in the Comunidad Valenciana. This intervention by an institution of the European Union (EU) which questioned the policy of a member state is very unusual; and much more so in an area that does not fall within the competencies of the EU. This paper intends to explain the origin of this conflict, its causes and how it mixes legal and political elements to demonstrate that political factors are the key determinants.

I. CITIZEN COMPLAINTS AND THE INTERVENTION OF THE EUROPEAN PARLIAMENT

The intervention of the EU was initiated as a consequence of the submission to the Petition Commission of the European Parliament of an abundant number of complaints from European citizens that considered themselves negatively affected by the urban development processes in the Comunidad Valenciana. Three delegations of European parliamentarians visited Valencia in 2004, 2005, and 2009 interviewing the affected individuals and writing reports about the conflict.

This problem originated in the Comunidad Valenciana; there the protests began and the majority of the written complaints refer to this territory. But little by little the complaints have increased and extended to other Spanish regions and many other kinds of cases.

The reports refer to «around 15.000» written complaints, but this cannot be confirmed. However, the affected people have had to be so numerous to have generated the formation of the «Asociación Abusos Urbanísticos No» («Association Against Urban Abuse») and its intense activity, the intervention of the ambassadors of various European countries, and a

1 The «Comunidad Valenciana» is one of the 17 Autonomous Regions which exist in Spain as result of 1978 Constitution. In fact, these Regions are like federate states, very similar to the «Landers» in Germany. They have exclusive competences in land and urban planning.

great preoccupation in many Euro-parliamentarians. The affected are principally retired or pre-retired people from European countries, principally the United Kingdom, who have constructed or more frequently have acquired and remodeled a house in a rural dry farming area in the coastal interior of Alicante. They seek a peaceful place in an unspoiled rural environment with a dispersed pattern of settlement. Generally, these people are not well integrated into the local society.

II. THE LEGAL ASPECTS OF THE DISCUSSION

The reports and resolutions of the European Parliament justify its intervention in a series of urban practices in the Comunidad Valenciana assuming violations of the fundamental rights of citizens of the EU. The criticisms center basically on three types of issues: attacks on private property, attacks on the environmental quality, and attacks on free competition.

The references to environmental quality and free competition included in the reports and resolutions of the European Parliament seem to have been raised to provide additional justification to the intervention. The fundamental and principal element is the presumed attacks on property rights. This is what appeared in the first complaints and in the justification of the first visit of the Euro-parliamentarians in 2004. And it is the focus of most of the content in the reports and resolutions.

There are three legal principles which affect the rights of property presented in the parliamentary texts and in the arguments of the affected people:

a) An attack on the free use of private property

It asserts that in the Comunidad Valenciana the basic right to private property is not respected, that is that the urban development processes, according to the Valencian «Ley Reguladora de la Actividad Urbanística» – LRAU («Law Regulating Urban Activity») of 1994, «expropriates» part or all of the property of the affected people; these are authentic «confiscations», they say, because these conveyances have no legal justification and do not provide the just compensatory indemnification.

But what they qualify as «expropriations» are land conveyances which the legislation requires when the urban development process is undertaken. And this is not, as they believe, a normative innovation of the Valencian LRAU of 1994. It is the system established in Spain in the XIX century and institutionalized in Land Law of 1956: so that the property owners can realize enormous financial gains that result from the change of land use category from non-urban to urban, they must cede to the municipality land for public facilities and infrastructure as well as ten percent of its value in compensation for its increased value as urban land. According to the Spanish system, that is unique in the European context, owners are not deprived of their property; on the contrary they are exchanging a rural property for an urban property. This is of smaller size but of much greater value as a consequence of the services and infrastructure provided and the subsequent urban development potential created by public urban planning.

b) The lack of a justification of «Public Interest»

For affected people the «Public Interest» that could justify this expropriation would have to be demonstrated in each urban development project. And as well they do not accept the concept of «expropriation» when, as in these cases, it includes tourist residences, luxury homes, or golf courses. They only view it as acceptable for the construction of subsidized dwelling units for low income families or for basic public services and infrastructure.

Without a doubt, all Spanish urban legislation, as with the existing regional law, has established that the approval of public planning automatically carries with it the consideration of «public interest» without the need to justify each specific urban development project. In Spain public planning is an expression of the collective's wish with respect to the land use of its territory decided by their legitimate democratic representatives. This is clearly affirmed in the existing legislation, so much so in the State Law of the Land of 2007 (Article 28.2) as in the Valencian Urban Law of 2006 (Article 109).

c) Abuses by the municipalities or *agentes urbanizadores* (urban developers)

Here the complaints center fundamentally on the short periods of time for public information and comment (20 days), the lack of adequate information on the urban development activities, and the excessive costs of some urban infrastructure which they have not requested and that they view as unnecessary.

Many of the abuses are a result of the absence of the regulatory development of the LRAU between 1994 and 2006, which was a voluntary omission of the government of the Comunidad Valenciana. In this way the municipal governments had great discretion in decision making, which permitted them to give a dominant role to the urban developers; these have decided the location and characteristics of the new urban developments or have fixed the high cost of urban infrastructure, against the interests of the property owners of the existing residential dwellings.

But in the LRAU the urban developer is designated as the agent of the public authority (the municipal government), selected through public bidding; they can only do what the municipality has approved. The abuses of the urban developers are not a result of the LRAU; these have been possible because of abandonment by many municipalities of their responsibilities: whether because of technical, political or economic weaknesses and because they consider the urbanization process very positive and they wish to facilitate it, and even on occasion through corrupt practices.

In the traditional Spanish legal system land zoned for urban uses was developed slowly and infrequently. The intention of the LRAU was to facilitate the process. This explains the short time limits, the most expeditious means of communication, and other procedural steps. But practice has shown that these were not always the most adequate for foreign property owners who were poorly integrated into the local society and with little knowledge of the Spanish urban development laws.

It seems evident that these legal arguments of the affected people and the European Parliament are very feeble. This is supported in the written manifesto of the Commission of

Legal Affairs of the European Parliament, appended to the European parliamentary resolution of 2009.

III. THE POLITICAL FACTORS OF THE CONFLICT

So how does one explain then the enormous repercussions of this problem at the scale of the European Union? The reason is that it does not relate to a legal problem, but rather it is a political problem. But in order for the European Parliament to intervene and for the affected individuals to defend themselves, they had to give it the appearance of a legal problem.

Those, who with their petitions have unleashed the intervention of the Commission of Petitions, form a very distinct group. They feel that they have become involved in the urban development process against their will because the rural areas where they have their residences has been zoned for urban development by a municipal decision subsequently approved by the government of the Comunidad Valenciana. They do not want live in an urban area, to lose any of their properties, or to pay the costs of urbanization. This is so because they have a more limited vision of the limits of public decision making in the area of the public land use planning.

Spanish law supports the demands of the urban development process, but is based on the typical situation of rural space which is nearly vacant or in decline. The peculiarity of these areas in the province of Alicante with so many pre-existing residential dwellings owned by a very distinct group of people, should have occasioned a more prudent urban development policy; considering if these zones were the best for urban development and in any case to have applied the legal norms in a more flexible manner.

But, on the contrary, in this context many municipalities supported by the Valencian government embarked on a very expansive urban development policy. Between 1997 and 2006 more than 700,000 new dwelling units were constructed in the Comunidad Valenciana, with the coast of Alicante being one of the areas of most intense activity. With the coastal margin already intensely developed, many of these new urban developments were set in rural areas of the coastal interior where isolated dwelling units existed, being either permanent or temporary residences of foreigners that had sought this type of location and a semi-rural way of life.

These facts permit one to understand why the complaints arose precisely in the Comunidad Valenciana and the municipalities of the coastal interior of Alicante. The foreign residents found that the area they lived in or the landscape that they contemplated had changed overnight to be land zoned for urban development, affecting their property and their way of life.

However, the circumstances about which they complained did not result from the law, but in the form of its application by the regional government of Valencia. It is a consequence, as said in the Parliamentary Report of 2005, «of the abusive application of the LRAU ... by its implementation by some municipalities and the Generalitat Valenciana». Actually the first complaints arrived in 2003, nine years after the approval of the LRAU, when the urban development process was extended anomalously to land not previously zoned for urban development, but through rapid reclassifications or urban planning made at the request of developers.

This is a process favored by the concept of «all land is suitable for urban development» of the state law of 1998 pushed by the government led by the Partido Popular.

The reaction of the Valencian government to this conflict was to view it as inconsequential and to respond inadequately. It greatly aggravated the problem and increased the anger of the affected people and the European parliamentarians. In the first instance they took a stance that the matter did not relate to them: it was a problem of legislation ... but the responsibility of others, of the rival political party: the previous regional administration (the Partido Socialista País Valenciano) which had approved the LRAU in 1994 and the government of Spain (also Partido Socialista) that was responsible for the laws that dictated the rights and duties of property owners.

Then, with the continuing intervention of the EU, they said that it was political persecution by Europe's left and even got to the point of accusing some of the European parliamentarians of being subservient to tourist lobbyists from other countries. This attitude led them to maintain the same expansive urban development policy and to continue to approve projects of gigantic dimensions, which increased the protests of the affected people and the anger of the European Parliament for not addressing its demands.

The extension of this immoderate urban development to almost all of Spain has produced the arrival to the European Parliament of complaints from other places and of various types. This explains the *Auken Report*, the basis of the parliamentary resolution of 2009, which contains a severe criticism not only of the law and the Valencian urban development policy, but also Spain's, setting forth the demand for its modification.

IV. CONCLUSIONS

In spite of its appearance as a legal problem, the decisive determinants of the conflict between the European Union and the Comunidad Valenciana are basically political:

- An expansive urban development policy that does not take into account the peculiar situation of the territory where it is applied, with isolated dwelling units of a distinct group of foreigners that want to continue living in a rural context.
- The affected people do not understand nor accept the Spanish urban development system nor the power of the community to authorize land use decisions.
- The inadequate reaction of the government of the Comunidad Valenciana which aggravated the problem.
- The growing conscience in all of Spain of the consequences of the immoderate urban development policy that has increased the complaints to the European Parliament taking advantage of the conflict which has arisen in Valencia.

Finally, not only has this produced a very political intervention by the European Parliament against Spanish urban development policy, but it has generated a legal conflict that is difficult to solve: in spite of the feebleness of the legal arguments, it has permeated European public opinion with the idea that the Spanish urban development legislation is inadequate and must be changed.

