

# Abusos Urbanísticos Almanzora No

Campaigning to safeguard our homes

## Petition Number 0159/2010

Thank you for your email of 15<sup>th</sup> May 2012, informing us of the lack of progress of our petition to the EU Parliament regarding the illegality of our homes in the Almanzora Valley in the Almeria region of the Province of Andalucía in Spain.

We are grateful for the continued concern of the Petitions Committee regarding our circumstances and welcome the opportunity to present additional information.

Firstly, we would like to address the responses of the European Commission to our petition on the 13<sup>th</sup> January 2011 and the 18<sup>th</sup> July 2011.

The commission's reply states that "the European Commission can only intervene if the matter concerns the implementation of Union law. Such a connection has not been identified at this point ". We argued in our submission to the Petitions Committee that that EU law referring to the free movement of capital was infringed by our situation given that "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>1</sup>"

In its response the committee acknowledges that "The free movement of capital principle enshrined in Article 63 TFEU provides that restrictions in capital movements between MS and MS and third countries are prohibited." It further acknowledges that "According to the nomenclature in Annex I of Directive 88/361 which still has indicative value, an acquisition of real estate (both for private or commercial purposes) falls within the remit of the rules governing free movement of capital" **and that** "Only a measure fulfilling certain objective criteria can be considered as restrictive. A measure must be liable to impede the exercise of a capital movement, i.e. be of a restrictive nature, and be attributable to a Member State acting as a public authority". The commission concludes that "In the case at stake the national provisions do not restrict the acquisition of real estate in Spain".

In response we would like to again draw the Commissions attention to rulings of the European Court of Justice in which it 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.

We would claim that the unreliability, lack of transparency and ad hoc nature of the mechanisms controlling the acquisition of property in Spain is acting as a deterrent to investors. Currently, a Google search of ‘illegal property Spain’ returns 50 million results.

In support of this statement we can, for example, cite numerous instances where the Spanish Land Registry or any other mechanism failed to disclose the existence of legal impediments to investment in a property. For example:

Mrs and Mrs V became the second owners of a property in Albox, Andalucía in 2007. The property which had all of its legal documents including planning permission, escritura and a licence of occupation was purchased via an estate agent using the services of a lawyer and in possession of a Nota Simple from the Land Registry which indicated that no charges or impediments existed against the property. The transfer of ownership was duly notarised and registered at the Land Registry. At no point in this chain of investment did the system reveal that the property was in fact the subject of legal proceedings since 2002, that planning permission had been revoked and the property was the subject of a demolition order. Mrs and Mrs V now face the prospect of losing their investment and their only home without any real hope of compensation due to the failings in this system.

Cases such as the one cited above, and that of Mr and Mrs Prior in Vera (Andalucía), whose home was demolished in 2008 exposing failings in the system of investment is, or is soon to be, widely reported, and deters investors from entering the market.

Numerous examples of poorly enforced planning regulations and delays in the court system add to an overall picture of unreliability and lack of transparency which again is widely reported and acts as a deterrent to the investment of capital in this market.

We also note that the Commission has failed to specifically respond to our comments regarding ‘disinvestment’ of capital in property in Spain. We refer to the instances where investors are informed that they cannot disinvest and leave the country because their property is illegal, a fact not disclosed to the investor at the time of investment. We would argue that lack of transparency and proper control at the investment stage, places investors in a position where they face restrictions at the point of disinvestment, representing both a restriction on the free movement of capital and a deterrent to further investment given the widespread nature of such cases.

As the Commission well knows we are not talking about isolated incidences with any of the problems quoted above. In our view the cumulative effect of the numerous failings in the mechanisms of capital investment in this marketplace acts as both an impediment and a deterrent to the free movement of capital attributable to a Member State acting as a public authority given its responsibility for both the Land Registry and the planning regulations (more specifically a lack of adherence to and/or timely enforcement of same).

We would ask that the Commission reconsiders its continued refusal to act on this matter.

Finally, in respect to new developments that are relevant to this petition we would like to bring the following to the attention of the Petitions Committee and the Commission:

**Regarding the case of Len and Helen Prior whose home in Vera, Andalucía was demolished in 2008:** Mr & Mrs Prior have yet to be compensated for the loss of their home in breach of Article 17 of the EU Charter of Fundamental Rights which 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.”. The commission has indicated that it has ‘no competence to intervene in cases concerning infringement of individual fundamental rights when EU law is not involved’ and indicates that “... claims for compensation, have to be dealt with by the national courts”. As long as the Commission holds the narrow view that the Charter only applies where matters relating to the implementation of EU law are involved then the Charter remains ineffective with respect to the lives of EU citizens; this notwithstanding the fact that the Charter itself is EU law and that it has become national Spanish law as well. That restrictive interpretation means in effect that the European Court of Justice is out of reach when it comes to violations of the property rights provisions of the Charter.

The option then is, only after ALL legal remedies in this country are exhausted, to attempt to get the European Court of Human Rights in Strasbourg to take a relevant case- a process that in total is far beyond the capacity of many victims of property rights abuses here to endure. That interpretation may suit some EU citizens in other union countries, but given the uncertainties of the legal system here in Spain the stance of the Commission is unsatisfactory.

In our opinion the European Court of Human Rights is also far beyond the reach of victims like Len and Helen Prior because the Spanish legal system appears inexhaustible in matters such as the one described.

In June 2008 the Constitutional Court ruled the Priors rights under the constitution were breached and ruled all actions resulting from the original court case to be null and void. The Regional Government simply asked the lower courts in Almeria to retry the case. They won. Vera council appealed this decision and on it went.

In **March 2012**, four years after the demolition of their property, an administrative court in Almeria rejected Helen and Len Prior's claim for compensation against Vera council for the demolition of their home in 2008 as 'premature'.

The judgement was made on the basis that a definitive decision has not been made regarding the legality of the building licence issued to construct the property, due to the existence of an ongoing appeal in the High Courts of Justice of Andalucía (TSJA).

It is likely that this process of appeal and counter appeal will continue for many more years thus rendering the notion of 'fair compensation paid in good time' a right that has been rendered unobtainable by the Spanish legal system.

**Decree 02/2012 of the 10<sup>th</sup> of January 2012 of the Junta de Andalucía regarding property constructed on non urban land in Andalucía:** The decree which purports to 'regularise' the circumstances of approximately 90% of the estimated 300,000 illegal properties in Andalucía has proved in practice to have several limitations which further prejudices the situation of investors in good faith:

- Property subject to legal proceedings is excluded. This leads to anomalous situations where for example Mr. and Mrs. V, in the case previously cited, would qualify for regularisation if they did NOT have planning permission. Instead they face demolition whilst their neighbours, whose houses were constructed without planning permission, qualify for regularisation.
- The decree clearly stipulates that the considerable costs of regularisation, including the provision of missing infrastructure, must be borne by the landowner/property owner with no consideration of the circumstances in which the property was acquired. Thus, the State exempts itself from any responsibility

with regard to the problems caused by its failure, or the failure of those to whom it delegated responsibility, to enforce its planning regulations.

- Furthermore, the decree fails to address the issue of illegal land divisions, specifically so called '*parcelaciones urbanísticas*', whereby non urban land was subdivided for the creation of building plots. Many such activities resulted in the creation of individual land escrituras which have been notarised and registered on the Land Registry. The decree requires that such arrangement be undone by the landowner with no consideration of the circumstance in which such arrangements came about. Many of these properties were sold on to third party purchasers in good faith and many possess licences of segregation or equivalent granted by our town halls using powers delegated by the State.
- The terms of the decree require town halls to identify properties that are not proscribed from prosecution due to their location on protected land (principally waterways or cattle trails (via pecuaria)). In practice we find such determinations to be imprecise, placing the onus on the property owner to disprove such claims at their own expense. To this end our organisation has lodged an objection to the Plan of Inspection published by the town of Albox, Andalucía under the terms of the decree.
- In practice we find that some town halls fail to provide residents with sufficient information to determine if they should or should not apply for the expensive procedure which results in their classification as outside of the town plan (fuera de ordenacion) but tolerated. This is simply a matter of advising homeowners if they are included or excluded from the town plan. To this end our organisation has lodged an objection to an Ordinance published by the village of Albarchez, Andalucía under the terms of the decree.
- The classification of assimilated as fuera de ordenacion under the terms of the decree, results, in our view, in the creation of a second class category of property on the Land Registry further prejudicing the interests of homeowners who purchased in good faith.

## **Payment of Property Tax (IBI)**

Our town halls, using powers delegated from the state, currently pursue the registration of properties deemed to be illegal for the payment of property tax. In practice, the taxable value of the property is calculated by classifying the property as URBANO or urban even though the property fails to meet the criterion required for this designation in law.

## **Embargos on Land and Property**

The problem of illegal properties in Andalucía and the failure of the government to provide adequate solutions in a timely manner has resulted in a particular problem for those who purchased their properties in good faith from promoters/developers.

Many developers, unable or unwilling to register the transfer of title to purchasers in good faith, have accumulated debts in this time of economic crisis. Creditors have begun to place embargos on land currently occupied by purchasers in good faith.

Unfortunately the creditor will ordinarily seek to sell the land at auction, which could cause an obvious prejudice to those whose houses are on that land.

In conclusion we would like to state that we are very disappointed with the response of the European Commission to our requests for support.

We fear that our petition will be dismissed and closed without any actions or sanctions being put on the Spanish Government to correct this inhuman treatment of thousands of EU citizens, whose Human Rights are being totally ignored by a Member State, We would, of course, ask that our Petition remain "Open" and subsequently advanced in order that the Petitions Committee recommend suitable actions to bring some pressure to bear on Spain to correct this situation in the shortest possible time.

Signed

M Hillen, President AUAN

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