

## Abusos Urbanísticos Almanzora No Campaigning to safeguard our homes

**1<sup>st</sup> December 2010, Parliament of Andalucía**

### ***Summarised Translation of commission hearing on illegal houses in Andalucía (best efforts)***

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#### **Mr. Soler Márquez, PRESIDENT OF THE COMMISSION**

Good morning, Ladies and Gentlemen. We begin this session of the Commission of Public Works and Housing this morning with the first item on the agenda, which is a group discussion of the following submission:

A request for the appearance of the Honorable Minister for Public Works and Housing before this commission to report in general on measures taken by her department to combat illegal housing in Andalucía. And, in particular to comment on the practice of seeking to legalize property through registration as ‘obra nueva’ supported by false certificates of antiquity. The proposer is the parliamentary group of Izquierda Unida-Los Verdes for Andalucía.

The Partido Popular have also requested the appearance of the Minister to report on the census of illegal houses in Andalucía.

The Minister is also requested to inform the commission of the measures taken by the Ministry of Public Works and Housing in relation to illegal construction in Andalucía, at the request of the Parliamentary Socialist Group.

To start the debate I call on the Honorable Minister.

#### **Snra. Cruz Villalón, MINISTER OF WORKS PUBLIC HOUSING**

Thank you Mr. Chairman, Ladies and Gentlemen, good morning. The three separate requests have been grouped into a single appearance before the committee on an issue

of great complexity, which has large social implications in Andalucia, that is to say illegal developments on land not zoned for development. There are some issues of a more specific nature that have been raised in your questions. I will also answer these questions.....

I believe that illegal construction is one of the most.... I would say **the** most pressing issue that we have in urban and regional planning in Andalucia. It is a problem that started a long time ago, not just in recent years; rather it is one that has existed for decades.

But I would now like to present two concepts: Firstly, that we are now tackling a solution with the town councils and secondly that we are now able to quantify or detect the illegal houses through our inspection work and through the inventory of illegal houses and furthermore the problem is to a certain extent arrested at the moment because of the economic crisis, because of public intervention and because there is a greater social awareness about illegal activities relating land development.

*AUAN comment: According to a report published by the Defensor del Pueblo in 2000 and statements made by the Planning Inspector in 2010 there are an estimated 300,000 illegal houses in Andalucia. According to statements from the Junta de Andalucia there are some 11,000 illegal houses in the Almanzora Valley alone.*

Another separate issue that is now being observed is that given the time it takes for judicial proceedings, a number of court judgments are now being passed on developments that have existed for some time.

*AUAN comment: This is one of our many concerns. It is still not clear how many properties have legal proceeding against them or at what stage the proceedings are within the courts. We are also concerned, from experience, that many cases might be unknown to the property owners. .*

Therefore I want to state our overall position and then go into some detail on the measures we are taking.

From the overall position of trying where possible to deliver a solution to the illegal houses, the starting point must be that we are facing a problem of great complexity and diversity. We are not facing a single set of circumstances. We are facing many different situations and for this reason there is not one single solution. There are different solutions, depending on the characteristics of the problem.

From the physical point of view the age and location of the property determine whether or not it can be legalized. We also have two distinct categories of housing; those grouped together on urbanizations or those scattered in the countryside. The solutions are not the same. They do not have the same characteristics and therefore they cannot have the same solution. We must also not overlook the fact that the problem is widespread in the territory. We are currently conducting an inventory.

One group raised a question about a census of illegal houses. We are doing this. However, I would not like to give a figure at this moment about the number of illegal houses in Andalucia, or even list the towns where illegalities exist.

There are no magic solutions or single solutions: Solutions must be provided within the framework of the law.

*AUAN comment: We have always been aware that because of the planning abuses that took place the problems are wide and varied and would agree that no single solution can provide legality for all, however, the Junta states that the solution must be within the current framework of the law and is fixed in its refusal to consider change.*

*AUAN believes that the planning laws need to be changed to further define the usage of 'suelo no urbanizable' a very broad category of land which acts as a sort of catch all for land that is not urban or industrial. The permitted usage of suelo no urbanizable is too restrictive in our view and does not reflect the reality of social need or indeed the reality of the thousands of homes already existing on this type of land.*

*Other territories such as Extremadura, La Rioja or Aragon have successfully incorporated this type of housing by changes to the planning regulations. Why can't Andalucia do the same thing?*

We are facing an issue which is basically the competency of the town council. The autonomous government has competency in the context of inter-departmental and judicial co-operation, specifically in the type of actions that will now be described.

And, of course, these actions must find solutions without additional cost to the public purse. That is to say when infrastructure and services are provided, as required by law to urbanize land so that houses can be legalized, the costs should be borne by the people who live in these houses and the developers who built them, not by the whole community who purchase legal houses or developers who provided infrastructure and cessions in the first place.

What is the legal framework for this issue? For the purposes of this debate I want to point out that the issue is governed primarily by two laws: The Ley de Ordenación Urbanística de Andalucía and, more recently, the Ley urbanística de 2002 and the Ley de Autonomía Local de Andalucía de 2010. Together they endow the town council with the competency, in general, for urban planning and the protection of urban legality: but they also require co-ordination and collaboration from the Autonomous Community and all authorities involved.

Therefore, the municipalities have responsibility in general terms to protect urban discipline and legality and the autonomous government has the responsibility to intervene to protect general rights or interests.

*AUAN comment: Which they clearly failed to do and therefore share some of the blame.*

Basically, with reference to article 188 of the Ley de Ordenación Urbanística de Andalucía, the competency of the regional government with respect to the municipalities is stipulated in article 188. We are talking about activities with a territorial impact, such as developments carried out without planning or outside of planning, urban parcellisations on land not classified for building, and activities relating to special planning categories (protected land, listed buildings, public spaces, land specifically categorised as non residential or land classified for infrastructure) which must be carefully protected for the reasons established in the legislation.

We also wanted to develop this activity into one where responsibility to prevent this type of development was shared with the town councils. This is the framework in which two further laws were created. The LOUA of 2002 and the Ley de Autonomía Local de Andalucía de 2010, to which we should also add the new regulations for urban discipline approved in March 2010 which places special emphasis on preventative measures.

What has the Junta de Andalucía done at this time in relation to the matter in hand? Firstly, the Junta de Andalucía has created a framework which permits the execution of an Urban Inspection in collaboration with the municipalities. The foundation for this is in the Ley de Ordenación urbanística de Andalucía (2002). Thereafter, in 2005 the General Inspectorate of Housing and Planning was established. A body of Inspectors with the same name was established and operating rules were adopted. As a result of this the autonomous community benefited from a corps of planning inspectors for the first time in 2005.

Secondly, since this organisational structure was created, there have been inspection plans for territorial, urban and housing planning in Andalucía. One from 2007-2008 and another which is currently in progress from 2009 – 2012.

What are the objectives defined in the 2009-2012 inspection plan?

Firstly, to collaborate....(I'm not sure if there is an order of priority here, rather a list of steps) ... firstly, to collaborate with the competent bodies in respect to building works, construction and illegal edifications; secondly, to control the reservation of land for protected housing ;thirdly, to assist in the preservation of land for public use such as parks, gardens, infrastructure and the like; to help prevent the formation of nuclei of population not covered by planning; to prevent the creation of illegal land parcelizations and in general to assist in the defence of specially protected land.

Ladies and Gentlemen, we have established a framework of co-operation with the municipalities, a framework of economic and technical support for the drafting of plans, because we have observed a direct correlation between municipalities that do not have urban planning and those with irregularities. This is a general policy developed by the Ministry for all municipalities, but specifically at the moment for the development of general town plans for those towns that do not have plans and have problems with houses constructed on 'suelo no urbanizable'. Also via the inventory of plans, we have the means to study how to provide answers via urban planning to those areas where there are irregular buildings; which once they have been inventoried are likely to be included, ie to be made legal within the terms previously described; legal because they have been incorporated into the urban plan and the costs to the owner have been dealt with.

***AUAN comment: All a little too late. The construction abuses took place in the period in which the Junta was developing new regulations and frameworks for control. The horse had already bolted by the time the process was complete. The new laws were ignored or the town councils lacked sufficient expertise to understand them and the Junta had too little enforcement resource to control or supervise what was happening.***

Secondly, a measure that we have also launched since 2007 (in the last three years) is an inventory of buildings on undeveloped land, in collaboration with the affected councils. We have signed to date agreements with 78 municipalities in Andalucía for

the development of municipal inspection plans and the preparation of an inventory of buildings on 'suelo no urbanizable'. This process is currently underway, a process that is meticulous, highly technical and very thorough. But, is already providing us with information about the real situation in towns where we have signed such agreements.

Another line of activity of the Ministry is cooperation and collaboration with other administrations. I am referring in this case to the collaboration agreement signed with the Ministry of Justice which also involved the General Directorate of Registry and Notarisation - and we know the importance of registrars and notaries in the control of processes, especially urban land parcelisation. We also made a general agreement with the State Prosecutor, also signed in 2006, as well as a general protocol with the Ministry of the Interior with whom we are conducting inspections mainly through the Guardia Civil, through SEPRONA, and, in general collaborating with the courts to produce any expert reports that are required. Thus, as a result of this collaboration 1,203 expert reports have been produced at the request of various courts. We have also conducted administrative work....

I have some data if you are interested. We have made more than 5,000 denuncias, and have handled more than 650 'impugnaciones' (challenges to official acts).

*AUAN comment: This might indicate the scale of the potential number of homes that have legal action in place or pending a court date. For reference, 5000 is not the total number, we are aware of denuncias and individual court proceedings that impact the construction of multiple homes (100+).*

The inspection activity began in 2006. The number of challenges decreased after 2008 because of the great efforts that went before, because of agreements made and an increase in awareness that these activities should no be conducted on 'suelo no urbanizable'.

Planning has been controlled; there is a well established planning culture for urban and urbanizable land, whereas I believe that there is work to be done in relation to the acceptance of and compliance with the laws for undeveloped land.

Therefore, since the approval of the Ley de Ordenación Urbanística de Andalucía, in late 2002, and, fundamentally, the creation of the Corps and General Directorate of Inspection in late 2005 which commenced operation in 2006, decisions have been taken directly with the Inspection Plans in the Ministry, in contact with the town councils, to sign convenios with 78 town councils to produce inventories of the legal situation on undeveloped land, and with the various judicial bodies to work with them to resolve this problem.

Once we start from the basis of administrative support and an understanding of the territorial reality of Andalucia, in some cases recognition of that reality can be delivered via the sub regional plans.

One concrete example we have is the Territorial Plan for North Eastern Coast of Cadiz, which can be applied to other sub regional plans, is the identification of sub-urban or 'Alegal' areas which can be recognised without the application of rule 45 of the Plan de Ordenación del Territorio de Andalucía, which limits the growth of a municipality by a specific amount.

*AUAN comment: There is currently no territorial plan for Alto Almanzora. Our white paper suggests that such a plan should a) be produced and b) should consider the incorporation of homes that cannot be incorporated in town plans.*

We are also currently finalizing 33 municipal inspection plans, the first to be initiated. We are in contact with and have ongoing meetings with the Director General of Inspection, the Director General of Planning in these affected areas and, crucially with the mayors to work out ways to address the problems through planning.

There are two basic categories of developments on 'suelo no urbanizable':

Rustic Land which has been artificially segregated for developments which could be classified as 'suelo urbano no consolidado' a classification which necessitates the provision of missing infrastructure with the co-operation of the owners of these illegal plots.

And then there is scattered housing.

In reality there are more than two distinct situations. There are many shades of grey between the clearly identifiable land parcelizations to widely scattered housing. The inventory that we are conducting is exhaustive in terms of identify the land parcels, the characteristics of the land, the date of construction, the size of the house and its' precise location. Some are found in dangerous locations, on protected land, in flood zones, in a wide variety of circumstances. And finally some are found in dispersed locations which may in turn be densely or less densely scattered.

If rustic land which has been artificially segregated for development is to be included in the urbanisation process, our intention is that this will be done in a manner which is compatible with territorial and town plans and in compliance with the duties and obligations of the planning laws with respect to urban land. And in a manner which does not involved charges to the public purse.

In the case of disseminated housing more subtle justifications are required. There may be homes that cannot be regularized because of their characteristics but steps cannot be taken to restore the land because any planning infringements have now been proscribed by the passage of time. In these cases a regulation seems necessary to permit living conditions and health and safety aspects to be maintained without consolidating the construction in urban terms.

It is also important to improve information provided to citizens in Andalucia so that they know the laws of Andalucia and they understand the penalties for planning infractions; to increase social awareness of the problems caused by illegal construction and to be more aware of missing infrastructure when they consider purchasing these properties.

In summary, ladies and gentlemen, the reality of this situation is that it is very diverse and complicated. It results from decades of development when urban planning control did not exist as it now does. With the current work with the town councils and the assumption of costs derived from the urbanisation process the land can be urbanised all things being equal.



Thank you, Mr President.

### **Señor SOLER MÁRQUEZ, PRESIDENTE DE LA COMISIÓN**

Thank you Minister. To continue we will hear from Sr. Garcia Rodriguez, spokesperson for Izquierda Unida Los Verdes.

### **Sr. Garcia Rodriguez, spokesperson for Izquierda Unida Los Verdes.**

..... The first thing that surprises me about the Ministers speech is that there is currently no real census of the illegal houses in Andalucia. Taking into account that a house is not something that you can hide in your pocket it is surprising at this point – when all the authorities recognise that there is a problem – that we still lack a census. Especially when the report of the Defensor del Pueblo in July 2000 ie. Over 10 years ago, indicated his surprise that the Junta had “no census or no real knowledge of the scale of illegal developments in Andalucia and the number of people living in them”. This was said in 2000 and in 2010 we seem to be in the same situation. It also surprises me that faced with a problem of this importance the Ministry has behaved so passively. The proliferation of this phenomenon is often attributed to a certain urban culture, affecting almost all social classes, which does not appear to exist in other regions. However, I believe that some responsibility lies, by omission, with the Junta de Andalucia.

In the majority, illegal developments or illegal houses represent a clear degradation of the land, because they have been conducted without rational planning and are presented as a fait accompli, generating situations which including significant contamination.

We must understand, in the first place that the fundamental responsibility for all the illegal land division and illegal construction lies undoubtedly with whoever divided the land and constructed the houses. It goes without saying that we cannot excuse this type of action.

Throughout history we can see various examples. In this instance I will speak of a council where a large problem developed. El Puerto de Santa Maria in Cadiz – Firstly, I would like to say that in the eighties when the problem initially began there was a certain aspect of personal necessity. That is to say for different reasons, in this municipality, due to failure in urban planning and also because of the economic crisis and suchlike, people were obliged to build their own houses. But this stage quickly moved on to one in which second homes proliferated, not out of necessity but because people living in an ordinary neighbourhood aspired to have a house with a pool or a second home in the country. By the nineties and the early years of 2000, we had moved on from second homes to the development of an actual business sector.

That is, it had moved on to the construction of developments on ‘suelo no urbanizable’ by various promoters who tried and in many cases succeeded in selling these houses, thus passing on the problem to the people who bought them, in most cases in good faith. We believe that if hardly anyone can sell you a stolen car, because

you check via Trafico if it is stolen, it does not become credible that people can buy a house without knowing that it is illegal.

*AUAN comment: We would like to point out that Trafico are more effective at identifying stolen cars than the Junta de Andalucia is at identifying illegal houses.*

Well, given these three phases, we believe that there is a shared responsibility, firstly the culpability of the promoter, then the responsibility of the administration which effectively, in part, resided with the town councils. But, we think that the Junta de Andalucia should not escape responsibility in this matter. Because the Ley de Competencias de la Comunidad Autonoma and previously established state laws establish that the relevant Ministry can adopt a series of precautionary suspension measures based on article 181 when it observes that the town council are not acting to prevent the occupation of 'suelo no urbanizable' and especially when, as has occurred in several cases, land with a certain level of environmental protection is involved. There are also measures such as article 37 of the LOUA which allows powers to be taken away from the councils in certain administrative proceedings.

There is one case that you may know of, at least by hearsay, and that is the case of Las Beatillas, in the Puerto de Santa Maria where there is even an order from the Supreme Court supporting a demolition order of the Junta de Andalucia but even after 6 or 7 years the development is still standing.

There is a clear violation of the regulations, in the first place by the municipalities but the Junta has also abdicated its responsibilities in terms of sanctions. In fact the law envisages a series of incremental penalty payments but they have rarely been applied to a town and it is a rare occasion when the Junta has intervened in the neglect of a municipality. And when I talk of these municipalities, I probably talk of municipalities of all political persuasions. But we must recognise that this has contributed to a culture in Andalucia that nothing will be done, that at the end of the day everything will be legalised in a PGOU....and... well its worth taking a chance because what you build using black money, without a construction project, without IVA, without a license.... will eventually become urban and you can put it on the market at a profit... convenient. No?

It is also fair to say that when a municipality has denounced such activities they have run into serious problems in the courts. That is to say that the courts have not responded quickly or have not responded because they are waiting for particular type of denuncia. This is troubling and perhaps places the ball back in the court of the Junta de Andalucia to review the legal bodies that act in planning manners so that it is clear that certain actions are clearly subject to penalty.

As a case in point, lets look at the process of declaring 'obra nueva' (new works) such as occurred in two municipalities in Cadiz, Chiclana and El Puerto de Santa María where attempts have been made to legalise edifications or entire estates via a certificate of antiquity signed by a professional. In some cases these certificates have been issued before the buildings were completed. That is to say, a house is being constructed, somebody denounces it and there is a technical architect who declares that the works are over 5 years old and therefore time barred and exempt from demolition and the work isn't even finished. And there are councils where such properties have been registered and legalised. Well when this situation is denounced



through the actions of SEPRONA, individuals, Ecologists in Action or through allegations made by Izquierda Unida – by the time it reaches the courts everything is time barred including the issuance of false certificates.

It is very perplexing. We are in a lawful state but someone needs to take responsibility for this situation. Because it is not on the issue of construction on undeveloped land, but also the legalisation of this construction and in addition the use of false documentation to do so. An official falsifies a public document and then subsequently the false certification is admitted. And so it goes on and on.

The Minister spoke of the measure taken to counteract illegal housing, the creation of the Inspectorate (I think it was in 2005). Whilst we welcome this measure we remain critical of the way in which it has been deployed is such a small way. Looking at the region of Andalucia I believe that there are about 37 inspectors which is clearly insufficient when faced with the proliferation of this phenomenon especially when they are supposed to investigate other issues, not just illegal housing. We are also surprised by the way in which the Inspectorate has been deployed, being centralised in Sevilla with little or no presence in the provinces thus reducing its effectiveness in the field. If we continue with the example of Cadiz we have situations which are clearly illegal where at some point the case file is sent to Sevilla, and ministry officials tell you off the record that they are unable to control anything and in situ monitoring is much more difficult.

These are situations that have occurred and the Junta de Andalucia must share some responsibility for them. No?

Well, in any case, moving on, I was surprised to see no mention in the speech of the latest measures: the famous express demolition law which, at the time of its launch purported to endow Andalucian municipalities with the power to conduct the emergency demolition of illegal works, one of the things which was proving to be most difficult in the municipalities. And I really do not know or it is difficult to assess if these measures adopted in April of this year (I think) have had any measurable effect because we must not forget that the economic crisis has stopped a lot of illegal development.

But we must look to the future and in a sense we agree with you that we need to analyse each case and probably each municipality. Amongst other things if you look at the different classifications: primary homes to second homes to speculative developments there probably should be different solutions. In any case, I believe we must start from the principle that not everything can be regularised and that unfortunately where constructions are on protected land they will have to be demolished.

And then – and with this I will finish Mr President – another principle on which we can agree is that urbanisation works relating to the regularization process, in general the urbanisation project, should consider cessions for the provision of public spaces, green spaces etc.

And we believe that the bulk of the costs for urbanisation should fall on the offenders and not on the public purse. I would venture to ask for a kind of political pact for the forthcoming elections, to prevent some parties try to win votes based on promises that

certain developments are going to be legalized without costing a penny, because that seems irresponsible.

And I hereby propose that agreement so that especially in the municipal elections that nobody takes advantage of this situation by making promises that cannot be kept and will generate disappointment and a further lack of credibility in our institutions.

Thank you Mr. President.

*AUAN comment: Izquierda Unida make a number of valid points. Their emphasis is on compliance with the regulations and enforcement of the penalties although it does acknowledge that the problems have been passed on to some homeowners who acted in good faith. A component of their umbrella group, Ecologists in Action have denounced many illegal activities over the years in the face of the Juntas inaction.*

## **Señor SOLER MÁRQUEZ, PRESIDENTE DE LA COMISIÓN**

Thank you Senor García. To continue we will hear from Señora Martínez Martín, spokesperson for the Popular Parliamentary Group.

## **Señora MARTÍNEZ MARTÍN**

Thank you. – Thank you very much Minister for your presentation in an appearance that I would like to state was the initiative of the Partido Popular although we now participate in a group debate. I want to emphasise that this is a topic of interest to me and was one of the first initiatives I raised in this house when I became a member of parliament. The PP made a ‘proposicion no de ley’ (non legislative proposal) in 2008 to bring a solution to this problem, which, as stated by the spokesperson for Izquierda Unida and by the Ombudsman, was a known problem in Andalucia.

We made a non-legislative proposal two years ago for the Junta de Andalucia to provide uniform criteria when dealing with this problem via the general urban plans, in a manner, as you rightly pointed out, which must give due consideration to the Ley de Suelo; where the authoring of the plans for Marbella or Chiclana would not be a isolated technical initiative but would develop common criteria for all of Andalucia.

This non-legislative proposition was rejected and then one month later the Socialist Party approved, via this House to continue or renew Inspection Plans from 2009 to 2012 creating a census of illegal houses and inspection plans in order to address these problems.

Well, Minister, I would like to say that it is clear from your speech that little or nothing has changed. I am really worried because I have met with many residents in Andalucia, both on the coast and inland, and you are quite correct when you say that this is a very complicated and very varied problem with diverse origins and one that is widespread in Andalucia.

But the situation, when we see how it has advanced from two years ago to today in this hearing, is really more than a worry. More than a worry because the census is still being conducted in 78 municipalities and 33 have Inspection Plans. But there are up to 770 municipalities in Andalucia. In fact up to 300,000 illegal homes, a number, of

which you have said little. No, I have not invented this figure. It appears in the Report on Planning and Housing developed by the Ombudsman's Office.

In any event, Madam Minister, you are fully aware of the magnitude of the problem and it is also evident that that territorial planning in Andalucia has gone one way and social reality another, since in many cases what has happened is that the municipalities and indeed the Junta de Andalucia itself has lagged behind the social reality of many municipalities. Planning has been slow, cumbersome and in many cases has failed to recognise the social needs of the municipality.

You finished your speech by saying that there were previously no laws for monitoring and inspection. But it is true that the Ministry of Housing had these competencies from 1979 and the Territorial Planning Laws weren't approved until 1994 and the Town Planning Laws weren't approved until 2002, a law which required all of the municipalities, all 770 municipalities to have town plans by 2007. To date 11% have completed their plans, (maybe 84 towns but no more than 100). You yourself said in your speech that there is a direct co-relation between towns that do not have PGOUs and planning irregularities. And I agree absolutely but also, that this is the heart of the problem, the lack of urban plans. Many municipalities have not produced plans, amongst other reasons because of all of the legislative changes that have occurred during the time they were given to do them.

The Minister did not bring the dates of the Territorial Plans to this table. That is to say at the time when the municipalities were due to deliver their town plans, the Territorial Plan for Andalucia was approved with the limitation in article 45 in terms of population growth and growth of the municipality which gave rise to absurd situations. Absolutely, as you well know.

Therefore, the responsibility of the Junta de Andalucia is very clear, to the extent that they have created planning support offices – the famous OTAU – 52 regional offices that have been of no use; 10 million euros for nothing.

Last week we had the opportunity to meet with a very important group affected by this problem, which is AUAN-Abusos Urbanísticos Almanzora No. You know about them, because last week you met with British Ambassador also, to discuss this problem.

This organisation, headed by a lady, is in an unfortunate situation and they tell me that even though the situation came to light 7 years ago, not a single house has been legalised.

Madam Minister, the conclusion that I have drawn from your speech is that we are in the same position as we were seven years ago and also I cannot see signs of any solution for anything. Therefore we are concerned and more so because there are people affected by these different situations. There are buyers in good faith – clearly there are because they have licences from their town council; There are houses with licences but without water and electricity; there are people paying taxes; entire neighbourhoods with the approval of the Delegation, without the approval of the Ministry of Planning.....

In short Madam Minister, the problem is so widespread that we could conduct a census, like you said, for an eternity but the problem must be addressed with courage and intelligence.

And I do not know – I say to you – with what moral authority you can make demands on the owners of these properties when the Junta de Andalucia has taken 12 years to approve a territorial plan for Andalucia or has taken 10 years to approve the only regulation of the Urban Planning Law, the urban discipline regulation approved this year. Meanwhile, we have other regulations dating from 1978. Tell us Madame Minister, with what moral authority you can leave these people with problems. In many cases indeed there have been speculators, promoters without scruples; but in many, many cases Minister, there are people, as their spokesperson said to me, who simply wanted to use their savings to have a house with a pool, which of course they are entitled to do.

We will talk about the capacity of the Junta de Andalucia to control the situation or the urban inspections. The reality of the situation is what it is and if you are telling me that we must demolish 300,000 homes, this is not possible.

Look, this problem has been addressed in other autonomies. The solution to the problem is not always - as you have rightly said – compatible with the LOUA and it is not free from cost, etc. Obviously it will take a change to the law to regulate the use of undeveloped land, Madam Minister; scattered rural settlements should be defined, and other types of land that have no special protection should be defined as well as land that does. But this will have to be fixed with changes to the regulations, being brave and tackling the problem, eliminating it would seem to me the growth limiting computation in article 45 of the POTA which creates absurd situations such as that in La Colona which has a constantly increasing population, but the increase cannot be managed within the law. . The town has been increasing in size for years. The land is becoming urban and must be included in the plans. Solutions will have to be provided for these situations Minister, as has happened in other autonomies.

Look, in Madrid in 1984 an urban discipline regulation was approved. It undertook a catalogue of illegal houses. Only one year later a special law was approved, one which dealt with the illegal houses in Madrid. Do you know how long this took? Two years. In this way it solved the illegal housing problem in Madrid.

In Extramadura, governed by the Socialist Party, a law was approved in September 2010 to resolve precisely this problem or in Cantabria where a parliamentary bill has addressed this issue or La Rioja or Aragon etc, etc.

So, Minister, I am trying to explain that there are some situations that are untenable. Some families like the Priors in Vera who have seen their home demolished while El Algarrobico still stands. It is absolutely outrageous. And there are people who have no water or electricity and people with demolition orders on the cards. Therefore, I think that we cannot be constantly making census of illegal houses because this has been done for many years. We must urgently change the law.

*AUAN comment: As previously stated, we are in agreement that there needs to be changes to the law. In order to progress legalisation in a timely manner it would be practical to change the law rather than working within the current framework, especially when the current laws do not allow for*

*the level of construction that has taken place in most towns and does not recognise the reality of the situation on non urban land. More importantly such intransigence could delay the approval for access to services that many need NOW!*

So, we propose that we should make agreements with the towns where the Junta, somehow, will agree to legalise these urbanizations, because in most cases the prosecutor will then be able to paralyse any demolition orders. We think that this is important because it is something that can be done quickly and also, as I said earlier, change the law to define an updated and comprehensive legal framework that regulates 'alegal' developments and construction on undeveloped land.

*AUAN comment: This is an important point. While there is more detail to the issue, simply put it is likely that future court directives to demolish any property could be postponed on the basis that the property could in the near future be incorporated into a plan. We know that unfortunately there are properties that will be demolished, but not those that cause no risk to persons or the environment.*

There are developments in all of Andalucia; In Almeria, La Almanzora, in Cádiz, El Litoral; in Córdoba, Medina Azahara; in Granada, La Vega; in Jaén we have Las Vegas; in Málaga, La Axarquía; in Sevilla we also have Arahal, Castilblanco, Carmona, Lebrija, etcétera.

But Minister, the question being asked by these homeowners is why if it is possible to regularize 99% of the houses in Marbella or Chiclana through integrated management areas, or through appropriate planning actions, why is it not possible to legalize these houses.

On this basis we are making several suggestions. What is needed is the removal of the limits in the sub regional plans which limits the growth of a town by 40% and the growth of its population by 30% and we ask for is a local Andalucian regulation to address the problems of 'suelo no urbanizable' the municipalities of Andalucia, incorporating a list of 'alegal' (lawless) developments which can be managed by Regional Administration and the permitting of rural land divisions not subject to the minimum requirements of single family farm units.

It has previously been stated that this type of land requires endowments under the LOUA. You know, Minister, that there are many different situations, such as holiday homes and that it makes no sense to impose the standard of endowments required by the law, since they already consist of green spaces. Therefore we ask for the law to be changed so that holiday homes to not have to provide the same endowments needed for urban land.

That is why you need to change the law, to understand what is happening in Andalucia, and to understand the social need. In cases were there are primary residences we will have to establish mechanisms to obtain the endowments from the residents and see how this can be achieved. But this can be done via special plans, determining the necessary endowments and will have to define, in the planning, how to incorporate different types of land.

Similarly, Minister I would like to comment on how the urban regulations are functioning in practice, as you already know, because these activities are approved by your Ministry. That is to say that in some cases councils are in desperation approving

ordenanzas where much of the housing in this situation is classified as ‘fuera de ordenacion’ based on Article 53 of the Law of Urban Discipline. What that leaves us with is a sticking plaster which forever defines the houses as ‘alegal’ or administratively illegal forever.

We believe that for development that occurred after the entry into law of the Reglamento de Disciplina Urbanistico (2010) it **is** possible to control the situation going forward but we cannot address what has gone before, because any action has become time barred and no action can be taken against these developments.

Therefore, when the Ministry sells this regulation as something that will solve all the problems of illegal developments, speaking of express demolition and such like, in reality this regulation does no good for the 300,000 illegal houses that already exist or may exist in Andalucia. This regulation only prevents the creation of new urban nuclii. But the Minister does not address this question. Nor can we see how she could do so.

Therefore, I ask the Minister in her reply to tell us exactly what the solution to the problem consists of. We know that you are doing the census of illegal houses in 78 municipalities as you have already stated, but how are you going to solve the problem? Because associations such as AUAN have met with you and what they expect is a real roadmap within a reasonable timescale and with reasonable participation.

Note that these residents are not refusing to participate in meeting the required costs. What they want is a legal and fair solution to the problem and a solution that also grants them basic human rights such as water and electricity; basic services that I understand cannot be denied to anyone.

Nothing more and thank you very much.

## **Señor SOLER MÁRQUEZ, PRESIDENTE DE LA COMISIÓN**

The debate then transferred to Senora Cuenca Cabeza, spokesperson for the Parliamentary Socialist Group who made some statements in support of the Minister. (NOT TRANSLATED).

The debate then passed to the Minister.

## **Snra. Cruz Villalón, MINISTER OF WORKS PUBLIC HOUSING**

Thank you Mr. President.

Firstly I would like to thank the spokespersons of the parliamentary groups for the constructive nature of this debate. I think that it is important that a debate of this nature is brought here to the committee showing that there is a common concern for the territorial reality that has spread in Andalucia as it has in other autonomies and other Spanish territories. There is not the slightest doubt that this is the case.



We have extensive territory in Andalucia, we have natural environmental features that are highly valued and we must work to ensure that they are preserved.

I will try to answer some specific questions but first I want to say.... It has been said that there is little progress.... I do not share that view. I believe that progress has been made; much progress has been made in coordination. Progress has been made in coordination with the town councils, with the public prosecutor, with notaries, with registrars and other judicial bodies. Much has been achieved.

*AUAN comment: We would prefer achievement to be based on the number of houses that have been legalised.*

Progress has been made with coordination. When it is said that the number of municipalities is small – the 78 of which I spoke are those who wished to sign agreements with the Junta. Some councils' may be working on the problem independently. Those who sign agreements with us, want, value the input of the Junta and many of them have the biggest problems. But this does not mean that all councils have to sign these agreements because the problem does not cause concern in these municipalities.

There has also been progress in awareness. I believe that this is very important because for a long time there was no understanding that the land laws also related to land NOT classified as urban or urbanizable.

We could say that from the standpoint of the law, we speak of urban land, urbanizable land and non urbanizable land. I believe that there was no social awareness or awareness within the town councils that non urbanizable land meant rural land, rustic land or whatever.

I do not want to negate the responsibility of the town councils but in some cases there have been serious difficulties. The process of tracking those responsible for a development through the registers via intermediary companies can make it very difficult to act in the public interest. There are many ways for vested interests to protect themselves.

Specific reference has been made to the case of Las Beatillas. This case is under appeal....

I would like to insist that there have been great advances in awareness and it is naturally the councils who were the first to become aware of the need for intervention, of the appearance of illegal houses which caused problems for the management of their own territory. And what are talking about when we speak of illegal houses? We are talking about self builds, about illegal land division, about houses sold via a promoter, about agreements between say - six householders, perverse use of the minimum plot size – perverse in the sense of illegality. The construction of homes using a nave licence, or other ways. But what is certain is that when these homes were built, they were built without the necessary infrastructure.

It is claimed that some poor people have no electricity or water. They have built.... Look.. This is what we want.. Houses to be built legally so that they can then have access legally to services. Many environmental problems are created as a result of the construction of these homes, without having adequate provision for electricity, mainly water and most especially sewerage services.

Therefore, it is a primary concern for us and for the town halls that these houses be constructed with adequate infrastructure. Not so these poor people can have electricity and water but to also ensure that the conditions of habitability are met. We are asking that houses be constructed with the conditions of habitability as required by law. And when they are built without conditions of habitability it is then claimed that there are poor people who have no light or water.

Naturally, a solution must be found. I believe therefore that the town councils are primarily concerned with this and are aware that a solution must be provided.

*AUAN comment: We are sure those of you without the essential utilities are not comforted by this comment especially as town halls to our knowledge have expressed difficulty in finding any solution or expect the Junta to find the answer.*

You must look at the territorial reality said one of the spokespersons and we have done this. We must look forward and look for solutions within the law. Not by adapting the law to specific problems, but by providing answers within the law. Do not be in any doubt ladies and gentlemen that if we thought that it was necessary to change the law, we would do so.

We are advancing in knowledge, we believe that we have identified a third of the estimated illegal houses. We will have finished the first inspection plans and completed the first inventories in a couple of months and since this includes measure to address the problems, it is not only a census but a census with solutions.

*AUAN comment: Considering the time it has already taken, only a third of the illegal properties have been identified.*

Reference is often made to how the problems of illegal houses have been overcome in two municipalities... Chiclana and/or Marbella. Each one with a different problem, completely different, coming from self building, coming from second homes. What you need to know ladies and gentlemen is that both municipalities have solved their problems within the framework of their general plan.

They have done this by means of at town plan, recognising reality and taking measures by which these illegal urbanisations contribute firstly towards the provision of infrastructure and then land cessions. We are talking about illegal urbanisations in both cases, not scattered developments. Scattered developments are a separate issue.

The cases cited are cases that have been resolved within the overall plans and of course the residents have been obliged to contribute to the infrastructure and services so that their properties can be urbanised legally.

And when we say urbanised legally, this means that the urbanisations have been equipped with infrastructure and services so that the residents can live in the conditions that they are now demanding.

In other words, you cannot demand services that are not there precisely because the properties are illegal. We must see how we can resolve this. Because if we don't what is happening is that the rest of the residents must contribute with their taxes to.... At the end of the day we must collect rubbish in these neighbourhoods, we must provide a fire truck when there is a problem, we must provide a school if it is needed, the same services as other residents. These developments must meet the same conditions as everyone else in Andalucia.

Progress has been made in awareness and understanding that is fundamental. And I think that... That's why I appreciate this debate... if we all agree that this is a problem for which we must all find a legal solution, it has to be fairly clear that you cannot allow this problem to spread in Andalucia for either Spanish people or residents from other countries.

And I think that we have to move forward without telling people what they want to hear. That which is not legally possible or socially acceptable, because everyone must contribute equally to the development of our towns and the provision of infrastructure.

And I think that it would be an injustice to the rest of .... That it would be an injustice to the rest of society, if some people had access to the same conditions of legality without making the same contributions as others.

And I believe that the mayors are mature enough and aware enough to know that when you legalise a development you must provide it with services, and infrastructure. And I think that the ones with the most interest in ensuring that everything is done in a orderly fashion with due consideration for the interests of the municipality are those that reside legally in the municipality and those who have a house which has not been constructed with the same conditions of legality.

With reference to criticisms of the Inspectorate. There is uniformity in the service we provide. There is no neglect of the territory. There is permanent contact with the provincial delegations through the delegates and the town planning services; the service was centralised to provide a uniform treatment for the problems. There is no neglect.

There was another reference from the portavoz of Izquierda Unida to the falsification of some certificates by some technical architects.

With respect to the particular actions of some people we are not in a position to judge without case files and names. But in any case I can also say that action has been taken when we are aware of cases of false certification. But this is a generic denuncia of technical architects and I am sure that they would not be happy with this type of assertion if they were in the room. In specific cases, with a specific denuncia, it would of course be our job to put a case to the State Prosecutor.

There was also a reference to article 45 of the POTA. I think there is some confusion here because the sub regional plans are not to get around article 45 of the POTA. The sub regional plans are designed to deal with supra municipal problems and find synergy in the territory.

The fact of the matter is that this regulation which places a limit on growth was proposed in parliament and unanimously approved by all parliamentary groups. Therefore, this is a rule which emanates from this parliament and must be respected. One of the steps that we are aiming for is when we proceed to legalise any of these developments, is that they would not be counted in the total because if not we would slow growth. However, the rule has been issued by Parliament which must be respected. But I do not believe that this rule will affect the legalisation of houses on suelo no urbanizable.

*AUAN comment: It does. By virtue of the fact that it limits the rate at which town plans can expand to absorb development that has already taken place. Given that it can take many years to approve one iteration of a town plan, this restriction slows the process of regularisation to a snails pace.*

I must assert again that we must work within the framework of the law, with the agreement of councils and the affected citizens. But this should not be done by telling people what they want to hear and taking short cuts and attributing lack of services to these properties to the administration instead of the to those who built the houses in an illegal way, knowing that they had no electricity and water.

Therefore I think it is time to make no false promises but to work together and to have more discussions at this table and at others with respect to this issue.

*AUAN comment: In our discussions with PP and IU there has never been a suggestion that this problem would be resolved at no cost to the homeowner.*

Thank you very much Mr. President.

*AUAN comment: We could of course make many more comments and explain in detail our concerns or agreements to the various statements made by all parties at this hearing. We hope that at least its detail has given you a further insight to the problem and what lies ahead and of course what approaches each party is considering. We are pleased that the issue is being discussed at the highest level of government in Andalusia and we fully intend to progress a continued debate.*

*Irrespective of what was stated at this hearing, we are sure that the coming elections in May will offer each party the opportunity to 'promote' their solutions. As a legal or illegal homeowner you are affected by the problem that surrounds us. Your vote will be important.*