



TÍTULO

**PROPERTY, CONSTRUCTION PROCESS AND ENVIRONMENT. THREE ELEMENTS OF LEGAL STRUCTURE WHICH REGULATE OUR RIGHT TO HOUSING
A STRANGE CAUSAL LINK**

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Property, Construction Process and Environment. Three Elements of Legal Structure which Regulate our Right to Housing

A Strange Causal Link

Final Project of the I University Expert Course on Spanish Law taught in English:
Global Study; presented by Francisco José Sierra Quero.

Student: Francisco José Sierra Quero.

Signed

Malaga, 30 June 2015

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TITLE: Property, Construction Process and Environment. Three Elements of Legal Structure which Regulate our Right to Housing.

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SUMMARY: The fundamental object of analysis of the Project presented here is the relationship between Property and Environment, and the obvious manifestation of this Environment in the Natural Parks; specifically, in the Andalusian region.

In order to thoroughly know the inner workings of such protected natural areas, we have also analyzed its Sustainable Development Plans; and the various threats that fall directly onto the sustainability and effective protection of Natural Resources and how affect this environmental idea in construction process.

KEYWORDS: Property; Rights; Construction Process, Environment; Protected Natural Areas; Natural Parks; Natural Resources; Quality of Life; Responsibility; Social Awareness.

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CHAPTER I. PROPERTY: AN ESSENTIAL CONSTITUTIONAL RIGHT.

SECTION I. AN INTERESTING ABSTRACT.

I. I. Different ways to define property.

To start this final project, we should talk about the meaning of the concept of property because that is the essential idea which inspires this report.

For that reason, we can say that the property is, in a broadest sense, the rights people have to control and obtain value from resources in the world. Property tells us what is mine and what is not mine.

However, in the legal sense, the paradigmatic property right would be full ownership of a parcel of land or an object like a boat. In the first case, we talk about real property; in the second case, we talk about personal property or “chattels” -movable property-.

I. II. Concept of property and owners powers.

Full ownership is the right in rem par excellence, which grants its holder the ability to use, enjoy and transfer it, subject only to the restrictions established by statute in accordance with the social function of property.

In accordance with article 348 CC, ownership is the right to enjoy and transfer a thing with no more restrictions than those set out at law. In addition, according to article 349 CC, nobody may be deprived of his property save by the competent authority and for justified grounds of public utility, always after the relevant compensation.

But we need to know and analyze owners' powers. A right of ownership recognizes in its holder the ability to exclusive enjoyment and disposition of the thing owned:

a) Right of enjoyment: The owner is the only one who can legally possess, use, modify, enjoy and, also, consume the thing belonging to him. In short, it is he who may benefit from the thing.

b) Right to transfer: the power to grant your property rights to others is the right to transfer (right to alienate). The owner may transfer the property by gift, sale or to a successor upon death. The owner may rent the thing or reduce his own rights by constituting other in rem rights over the thing. He also can abandon or destroy property. The right to transfer property is important to society because the freedom to transfer is essential to wealth-producing market transactions.

c) Right to exclude others' use of the thing: ownership includes the option to exclude others from using the thing and avoid the damage which the owner's

right might cause. To that effect, the owner has some legal actions in his favour which aim to protect his right and to suppress infringements or disturbances to which it might be subjected.

I. III. Property in the Spanish Constitution: Social function of property.

In this moment, we are going to talk about the nexus between the property`s concept and environment`s concept. We cannot forget that property entails a social function foreseen in our Constitution by Article 33.2. The CE recognizes the right to private property (Article 33.1 CE), but subordinates it to the general interest and not only the particular interest of the owner.

However, we know that the concept of “social function” is an element really abstract of our law system. When we talk about this, we are talking about a lot of different elements that create a new concept that we know as public interest. In the last decade, we have seen that this public interest has been extended until some diverse aspects.

If we analyze this concept, we can include inside a new idea that is really important currently: environment.

We think that environment is an element of our lifes that we must protect because it is the element which will decide de life`s quality of our successors.

In that sense, in this project we don`t analyze only the concept of the property, but we are going to analyze too what are the arguments to support this idea and what is the importance of environment in our days.

But we should talk about another idea of property before talking about environment.

I. IV. *In rem* rights.

Ownership is the right in rem by excellence; however, there are other in rem rights. It is usual for various individuals to exercise different rights over the same thing. For example, it is possible to be the owner of a plot of land and, at the same time, allow a neighbor to access your land, because a right of way has been established.

These limited rights in rem exist alongside the right of ownership. In this way, we can distinguish between the right of ownership as a full right in rem and the other rights in rem which are limited rights in rem or the rights over third-party property. They are “limited rights in rem“ since they do not grant complete power over a thing (unlike ownership) or “rights over third-party property” because they are held over a thing owned by a third party.

The types of limited in rem rights are:

- a) Rights of enjoyment:
 - Usufruct.

- Easements.

- b) Rights of option and preemption and redemption:
 - Option.
 - Preemption and redemption.

- c) In rem guarantees:
 - Pledge.
 - Mortgage.

Now we want to do a general definition of these concepts. Respect the rights of enjoyment, they grant rights to use and enjoyment to their holders to the detriment of the owner of the asset, who, at the same time, sees his rights reduced or limited.

But we have said that exist two figures inside this concept. Usufruct entitles one to enjoy another's property with the obligation to preserve its form and substance, unless otherwise authorized by the deed pursuant to which it was created or the law (Article 467 CC); an easement (*servidumbre*) is an encumbrance or charge over an estate which benefits the owner of another estate. Easements are very commonly used to overcome impediments to access to land that can limit development and use and enjoyment of land (right-of-way easements).

In second time, we have rights of option and preemption and redemption. Option is the right that the owner of a thing grants to another person in order that the latter may acquire the thing in the future, by paying the agreed price; preemption enables a person to acquire a thing before another person in the case of transfers, by paying the price that the other would pay and, on the other hand, redemption is the right to become subrogated, under the same conditions provided in the contract, in the position of the person who acquires the thing pursuant to a sale.

Finally, we can talk about guarantee, which is a promise to be answerable for an obligation (typically a debt, an obligation of payment) in the event of breach or nonperformance. A guarantee is any means of reinforcement added to a right in personam.

Person who is required to provide security may do so by:

- Personal security or personal guarantee, by a surety (*fianza*), in which a third party assumes the debtor's obligation.

- Real security or in rem guarantee, by the pledge of movable things or by the creation of mortgages on land.

In that sense, pledge is an in rem guarantee in which the debtor gives the possession of a movable thing to the creditor or a third party agreed by common consent (Article 1863 CC), upon by both as a guarantee of fulfillment of the obligation, and regarding

mortgage, the debtor, owner of the real property, grants the creditor, the owner of the mortgage, the right to sell the real property at public auction in order to obtain its monetary value and collect the debt in that way, returning any surplus to the debtor.

I. V. The different ways of acquiring ownership.

In our legal system, we have different ways to acquire the property. Firstly, we have an original way to acquire it and it's the acquisition of property not acquired by transfer. In that sense, there are some concepts inside in this original acquisition of property.

a) First possession would be this concept and it is called occupation. The basic idea of first possession is that the first person to possess an otherwise un-owned object becomes the owner. It is required both an intention of control over the object and a significant degree of power over the object.

b) Now, we can talk about discovery of hidden treasure. If a thing that has lain hidden for so long that the owner can no longer be established (treasure) is discovered and as a result of the discovery it is taken into possession, one half of the ownership is acquired by the discoverer, and the other half by the owner of the thing in which the treasure was hidden.

c) Next figure is accession. Accession uses ownership of one thing to establish ownership over yet another un-owned or contested thing.

d) Finally, adverse possession or prescription (*usucapión*) is a method by which someone, without the owner's permission, acquires the ownership of a personal or real property already owned.

Secondly, we can talk about a second way to acquire property and it is the transfer of property by sale. Ownership and other in rem rights can be transferred by derivative methods such as sale, gift and inheritance; that is to say by methods that require the existence of a previous owner.

In the Spanish legal system, in order to transfer ownership and other real rights by contract two elements are necessary: certain contracts, such as a sales contract (title) and traditio (transfer of possession) (la teoría del título y del modo).

In the previous paragraphs, we have talked about the different aspects that entail the idea of property; however, it is time to talk about and analyze the concept that we have enunciated previously, the concept of environment.

Then, we are going to explain the importance of the environment in our legal system.

CHAPTER II. ANDALUSIA. ENVIRONMENT AND NATURAL PARKS. FROM THE UNKNOWN TO THE GLOBALLY WELL KNOWN.

SECTION I. INTRODUCTION.

"First, it was necessary to civilize man in relation to man. Now, it is necessary to civilize man in relation to nature and animals. "

Victor Hugo (1802-1885).

Over the years, humans have tried to satisfy their personal needs. At the dawn of our history, humans tried to satisfy both weather and food needs. However, even though progress has been slow and currently conditioned by the different social, political and economic situations, our needs in order to feel satisfied are now different. In a globalized world where there have been major progresses in the field of science, a democratic maturity has also been acquired. Values, respect and solidarity have become essential in human relations. We can still move forward in other fields.

Society can now work to achieve other objectives. Among them is the environment. We are fully aware and absolutely convinced that some countries and nations should unite their efforts and capital to achieve their environmental objectives.

However, the major world powers still have the moral duty to increase their commitment to the environment and ratify symbolic agreements on environmental protection.

Environment and Sustainable Development are two concepts that are essential to understanding the future of our planet in the medium-long term. Both terms are closely related. We have to work towards achieving a healthy environment in which we can protect the natural resources in order to meet the needs of our future generations.

Now is the time to reconcile man with the environment and this will lead to a better quality of life of the Earth's habitants. We do not want to eliminate the exploitation of natural resources that nature provides; we should aim to develop this activity in a responsible, rational and consistent way.

Given the importance of this subject, I think that it is very important to analyze the concept of Environment and Natural Parks figures, taking into consideration the main issues and the management of national parks through instruments such as the Sustainable Development Plans.

SECTION II. ENVIRONMENT AND NATURAL PARKS.

II. I. The Environment. Concept.

The first thing we must do is to describe the concept of environment. What is the real meaning of this noun? We can see that in the last two decades the concepts of economy and industry have overtaken the environmental topics. Paradoxically, this expression of two words acquire as large as the concept of environment force.

Environment has different social visions. For ecologists it is their flag and rationale. For capitalists, it is a concept incompatible with the idea of incessant production of products. For others, it is a concept that we must know and respect. But the environment is not a forgotten concept. The environment is not against industrialization and market economies. The environment is a concept that encompasses all of the above.

If we are at a cross-universe, where the movement of capital, human resources and goods is a reality, we must consider the relevance of the environment.

It is true that there are many people who are aware of the need to protect the environment. However, politicians do not always have a loyal interest in caring or protecting it. Politics often look to improve their public image and gain the support of voters.

The concept of environment is not a recent one; this concept has always been present in our history. But it is true that the idea of environmental sustainability has gained special prominence in recent years. However, the concept of environment has been driven by the European Union.

We are facing a pro-European wave. The European Union believes it is very important to promote the environment because it is a transversal policy. Depletion of environmental values contributes to an increase in pollution. Moreover, the massive exploitation of resources contributes to its depletion in a shorter period of time.

It is necessary to stop the relentless exploitation of natural resources and it is necessary to apply the laws to order production activities whose main raw material is nature.

The environment is a state of uncertainty for the majority of society. This concept appears as an abstract term. By "environment" we mean the existence of a subjective right. From a purely personal point of view, we have to protect environmental values but also work to include these in the idea of globalization too.

Then, this concept should not be a utopian idea of environmental protection, this concept should be the result of an operational and useful definition.

II. II. Environment in the Constitution.

It is now time to define the environment from a technical perspective. To define this concept from a theoretical point of view, we must check the supreme law of our legal system, the Spanish Constitution.

Article 45:

“1. Everyone has the right to enjoy a suitable environment for the development of the person and all have the duty to preserve.

2 The authorities will order the rational use of all natural resources to protect and enhance the quality of life and preserving the environment.

3 For those who violate the above, the law establishes criminal or administrative sanctions. It is also mandatory to repair the damage.”

Under the Constitution, the concept of Environment remains ambiguous and imprecise. To avoid this uncertainty it is useful to refer to the Constitutional Court interpretation offered. The Spanish Constitutional Court has ruled that the strictest factors of the environment concept are: air, water and soil. Also, we find the concepts of flora and fauna. But finally, there is a third area in the concept of environment which would be formed by other elements such as landscapes, artistic, historical, cultural, social and economic heritage.

We have the strict idea of environment as the natural physical reality, an intermediate concept that would be a set of natural elements with other artificial man-made and finally, a broad concept that incorporates the human figure.

But the protection of the environment also has a very important purpose. This important goal is to increase the quality of life of citizens.

Now we know what our legal text’s definition of environment is. For that reason, we cannot incorporate the concept of environment to other rights such as health, freedom of enterprise or personal privacy. The environment is well defined by the Constitution through three different areas.

We must fight for the sustainable exploitation of natural resources to enjoy the environment. We have to reach a compromise between environmental protection and human needs. Environment is a unitary concept that influences the lives of people, but also influences other policies such as urban planning and land use planning.

Environment is a right, because everyone has the right to enjoy a healthy environment; but it is a duty too, because everyone has an obligation to respect and protect natural resources. In addition, public authorities have to monitor the proper functioning of environmental policy.

However, the activity of the authorities shouldn’t just include punishment. The government needs to encourage compliance with the law because it is very difficult for the environment to be completely restored once it has been damaged.

II. III. Distribution of powers in environmental matters.

For the competence of public authorities in the environment, we have to look at the 148 and 149 articles of our Constitution. On Article 149's first paragraph, we see that the state shall have exclusive jurisdiction to enact basic legislation on the protection of the environment and it says that the Autonomous Communities may adopt additional standards of protection.

Article 148 says that it is the regions that manage environmental protection.

Article 149's first paragraph of the Constitution states that the state shall have exclusive jurisdiction to issue a basic law and that the Autonomous Communities may adopt additional rules for management environment.

II. IV. The decomposition of the concept of Environment and its areas of operation.

The first area of the concept of environment is a residual area because it is composed of elements that have a specific mention in the Constitution. For example, this area is composed of factors such as the contamination of the atmosphere, protected natural areas, waste, and spills of the evolution of environmental impact.

The second area is composed of elements that have substantivity on their own and are expressly mentioned in the Constitution. For example, inland waters, river fishing, hunting, fishing, forestry.

Finally, the third area is composed of elements that have a specific purpose, but they are related to the environment. Some examples of the elements that make this area would be land management, urban planning, building state infrastructure, international agreements, and economic policy.

All the above activities are activities that influence the environment because developing these involve harming the environment. These attacks are unavoidable and for this reason we promote the responsible use of natural resources.

We can say that the environment is an essential element of the social, economic and political life. Environment is an element that must be protected to ensure the quality of life of future generations.

II. V. Protected Natural Areas in Andalusia.

The United States of America consistently influence the policies adopted by states worldwide.

With regard to environmental issues, the United States also believed it was very important to protect the environment. In the late 19th century, the United States would launch the first National Parks, requiring that these National Parks have a special legal regime to allow protection of its natural values. In the Stockholm Conference of 1972, the international community established that states must set their nets on Protected Natural Areas.

However, some people continue thinking that the creation of protected natural spaces is an element of negative influence. Some people think that establishing a protected

natural space involves reducing the productive activity of the place where this natural area is. It is true that declaring an area as a protected natural area involves reducing the productive activity of the area, but to declare an area as a protected natural area does not mean eliminating the exploitation of natural resources of the area. If an area becomes a protected natural area, natural resources should be exploited responsibly.

Although some people believe that the protected natural areas reduce the income of the area, the result is the opposite because that space will be where other productive activities such as rural tourism responsible or outdoor sports have developed.

Furthermore, the area can also be used to foment farming activities, but those activities would need to respect the environment and natural resources. It is also essential to know the value that the area acquired after this statement.

In Spain, the first protected natural area would be in Covadonga in the year 1918, but it was in the last decade of the last century when the idea of a healthy environment would become important in Spain. The European Union and the Autonomous Communities drove this change.

All protected natural spaces of Andalusia are the "Natural Areas Network of Andalusia". Law provides four figures of protection: Natural Parks, Nature Reserves, Natural Monuments and Protected Landscapes.

II. VI. Natural Parks.

According to the National Law, Natural Parks are "natural areas that have great beautiful range of landscapes, ecosystems or are representative of the uniqueness of its flora, fauna or geological diversity; they have ecological, aesthetic, educational and scientific values of conservation which deserve preferential treatment."

The declaration of Natural Park belongs to the Governing Council of the Andalusian Regional Government through Decree. The Ministry of Environment must make the proposal after consultation with the affected municipalities. Then, it is necessary to meet public information.

The constitution of the Natural Park requires the preparation and approval of a Plan for Natural Resources (PONR). Moreover, developing the Master Plan for Use and Management (PRUG) will complete the legal regime of the park. The contents of PONR are detailed in the PRUG. The Governing Board of the Park draws up the PRUG.

With regard to the management of the Parks, the Ministry of Environment (CMA) of Andalusian is responsible and each park has a Curator Director and Governing Board. The Director-Conservative is the official responsible for the administration and management of the reserve. The Governing Boards are advisory bodies.

SECTION III. ANDALUSIA: A COMMUNITY COMMITTED TO THE ENVIRONMENT.

The goal of environmental policy is to ensure compliance with constitutional mandates and compliance with international agreements. We need to respect sustainable development, the rational use of natural resources, the environmental protection and job creation.

III. I. Andalusia and its environmental policies.

With the Presidential Decree 148 from the year 1944, the Ministry of Environment was created in Andalusia. This Council would have the authority to direct responsibility for the Environment.

The creation of this Ministry was essential for the management of environmental policy in our region because the powers were unified. Prior to the creation of the Ministry, the powers were attributed in a dispersed form among different organs and were not well defined. The powers were configured abstractly and cooperation between administrations was very difficult.

Among the essential functions of the Ministry are the overall management, planning and encouragement of civic and social participation. The environment agency had all the powers of the Council on the protection of environmental quality in the region, the management of their natural environment and development of the necessary equipment to allow the performance of these functions.

We also have this structure in other colleges of social participation. Some examples could be the Forest Council Andalusian, Andalusian Game Council or the Andalusian Environment Council.

Within the environmental policies of the Autonomous Community, we highlight the adoption of three key laws; the first, from July 18, 1989, approving the inventory of Protected Natural Spaces of Andalusia; law from May 18, 1994, Environmental Protection (valid until 20 January 2008), and the law of June 15, 1992, Forestry Andalusia.

The environmental policies of the Autonomous Community focused earlier in this century in implementing plans to correct air pollution, develop waste plans networking control and monitoring of air pollution, and implementation of plans for recovery of plant and animal species. It was also an essential defence against fire policy.

But the main objective that the government must pursue is to achieve a healthy environment to have a sustainable environment and to increase the quality of life of citizens. This is a goal that the Autonomous Community shares with its municipalities.

III. II. Protected Natural Areas from the Andalusian perspective.

The basic principles for the protection of natural areas are the conservation of natural resources, the restoration and the enhancement of these resources.

The inhabitants of the municipalities, where these natural areas are, believe that it is very important to find the balance between economic development and environmental protection.

Furthermore, the Constitutional Court declared the possibility of Andalusia taking over the management of natural areas with areas of maritime-terrestrial domain; for example, Cabo de Gata.

III. III. Natural Parks in the Autonomous Community of Andalusia.

Natural Parks are a specific figure within the possible rating that a protected space can have.

The figure of the natural park has a high ecological potential in contrast to the low socioeconomic structures dynamism. Sometimes, these areas have natural parks that seem to be a hindrance to real economic growth. Despite this, the Andalusian natural parks have high ecological value, but the economic structure of these parks is also very important.

We also need to analyse the structure of population in areas where national parks are. It is true that the population structure of the municipalities of parks shows regressive characteristics, with negative rates of aging and growth. However, it is also true that these areas are depopulated areas. Despite this, due to the current economic crisis, we are seeing that people believe that returning to live in the rural world is a choice of life due the high cost of living in some central areas.

III. IV. Andalusia, its people and the concept of environment.

The progressive degradation of the environment now has an essential importance in information and communication. The local information is an effective way of disseminating news, even those with international relevance.

It is necessary to conduct a campaign to teach people what are the environmental problems and what are the ways to combat them.

We need to educate people on environmental issues because most of our society believes that environmental problems are temporary and specific phenomena.

If we look for those who are responsible for environmental degradation, we can see that we have a shared guilt because public and private agents must learn to respect the environment.

SECTION IV. ANDALUSIA NATURAL PARKS AND SUSTAINABLE DEVELOPMENT PLANS.

Achieving Sustainable Development Plans has a special importance for the revitalization of the rural sector and to set the new model of economic development in a specific area.

The development of these plans is an effort to look for a middle point between the local government interests and interests of citizens. For this reason, the main objective will be to identify the main environmental problems in order to outline the courses of action to help to remove barriers that may exist.

IV. I. The value and objectives of Sustainable Development Plans.

Now we know what are the main objectives of such plans. The final and main goal is to improve the quality of life of the population in areas of socioeconomic influence of parks.

Sustainable Development Plans seek to educate and teach about the best use of productive resources and encourage productive relationships between business groups and Protected Natural Areas.

We also must identify the environmental problems of the field and analyse the different responses to reduce the progressive deterioration of the environment.

IV. II. Development of Sustainable Development Plans.

To develop a Sustainable Development Plan we have to note three basic criteria. We have to address the holistic concept of plan, the importance of coordination and the general local participation.

Sustainable Development Plans are integrated into development planning of the Andalusian region. These plans are not separate parts of the mechanism of the Autonomous Region for growth and development in the most varied aspects; these Sustainable Development Plans are a member of the planning of the region elements.

For this reason, we cannot forget the cutting nature of environmental issues. This transversal policy requires coordination between social partners to avoid duplication.

Furthermore, the involvement of local actors is necessary to gain the support of various local private actors.

IV. III. ¿Abstract or concrete? The concept of Sustainable Development.

The concept of "Sustainable Development" is exempt from being an abstract concept. Sustainable development is one able to meet the needs of the present without compromising the ability of future generations.

To advance the development without compromising future generations requires changing some factors. Sustainable development requires a change in the dynamics and operation of productive systems, in the style of consumption and in the ways of management and behavioural patterns of society in general. These changes could be seen from an educational perspective.

One possible answer to help us achieve the goals would be teaching. You need to approach population centres to convey new concepts, changes and respect and solidarity.

But this activity of teaching by public authorities must have a two-way process because citizen communication is very important. It is also necessary to integrate and coordinate economic and environmental policies, foster institutional cooperation and promoting social dialogue. In short, any new policy should help to reduce environmental degradation and improve the quality of life of people.

IV. IV. Social Participation in Development.

To achieve these goals, the participation of villagers will be necessary, incorporating these in the processes of choice and decisions concerning the development. The inclusion of people in making decisions that affect the public interest give them a positive sense of contribution to society. This participation will also contribute to a real democratization of state decision-making.

Development is a dynamic engine of society that is in constant use and in which the importance of the public sphere extends to any decision that could affect the lives of people.

IV. V. The Sustainable Development Plans: management and monitoring and evaluation.

The public sector streamlines the process of gathering of public and private stakeholders because it should promote effective coordination between government and private actors.

But the management of national parks also affects business dynamics. In a society like ours, the company must compete in three different areas. First, they must compete against other companies of the sector; second, they must compete with one's environment; and finally, the company must compete against itself.

IV. VI. The image of the Natural Park and its correct Sustainable Development.

Finally, we must make a brief reference to the image of the national parks. The declaration of a geographical area as a natural park is a source of revenue for municipalities to affect the statement. For this reason, the park and its image could benefit some private agents and promote an image of respectful engagement with the environment by the general government.

SECTION V. A THREAT AND A SOLUTION: "AUKEN REPORT".

We also explain in this final project, the "Auken Report"; a report made by the rapporteur Margarete Auken about the impact of extensive urbanization in Spain in individual rights of European citizens, the environment and the application of Community law. This report is based on the requests that individual citizens and groups of citizens file; who are victims of massive urbanization.

Now, we would like to review the most important paragraphs of this report, exactly, explanatory statement of this.

“The draft resolution which is now presented for the consideration of the European Parliament is necessary in order to ensure that the Treaty rights of many thousands of European citizens are respected.

The Petitions Committee did not embark lightly on its course of action which has seen it conduct three fact-finding visits to Spain in the course of this legislature. Parliament itself has adopted two resolutions on this subject endorsing the Committee's findings, the first in 2005 and again in June 2007.¹ Parliament's position as then voted is contained in recital N in this draft resolution. Had anything tangible been done by the responsible authorities at national or local level to respond to concerns previously expressed by this House then it is doubtful whether this resolution would have been necessary. They have not and therefore it is.

Yet, today, thousands of European citizens continue to be victims of a system of massive urbanization that has, in the view of the Petitions Committee, in many instances ridden roughshod over their legitimate rights as property owners and which has at the same time destroyed the fragile eco-systems and Mediterranean coastal environment in many parts of the Spanish coast-line and hinterland. Petitioners have presented their case for scrutiny on several occasions during well-attended meetings of the Petitions Committee, and the authorities - notably from the Autonomous regions of Valencia and to a lesser extent Andalucía, have used the possibility offered to defend their actions. In the meantime the European Commission has opened an infringement case against Spain, directly related to urbanization in Valencia and the application of the Public Procurement Directives, and is investigating other allegations of failure to apply EU law in matters related to the Environment and water. A key element is whether the cumulative effect of so many large scale urbanization schemes lacking a positive water report from the responsible authority would render the application of the Water Framework Directive impossible by denying water for human consumption and for agriculture.

Many European citizens have chosen to live in Spain because of all the advantages the country and its people have to offer, and in so doing have made use of the rights which are granted to all European citizens under the Treaties. But, the problems covered by this report are also experienced by

Spanish people themselves who are at least as numerous in terms of the petitions received on this subject.

It is therefore unacceptable for certain political authorities, and party leaders, to claim that the problems are only raised by foreigners who of course can not understand Spanish laws; or, to state that victims have only to address themselves to the nearest court for their situation to be clarified and resolved. Many petitioners have indeed attempted this course of action but without any result; others have not the money to do so. Most are bewildered by the conflicting advice they are given by local authorities and lawyers who they have turned to for counsel but who have helped them little. (Not to mention the many cases where the municipal authorities and the lawyers themselves have been an intrinsic part of the problem.) Most petitioners and many legal practitioners are confounded by the lack of legal certainty and confusion resulting from imprecise or excessively complicated legislation related to urban development and its implications alongside even more confusing implementing provisions. The recently resurrected Coastal Law of 1988 is an additional case in point.

The Petitions Committee recognises that urban planning is a competence of the Autonomous Regions and the municipalities in Spain; it acknowledges that the national authorities also have competence over such matters as the general framework for land law and for such environmental questions as the provision of water, and the protection of listed species. The Committee has no misconception on the scope and applicability of national law and it misleads none of the petitioners on these points. Indeed we have consulted the regional ombudsman, the *Sindic de Greuges*, on a number of occasions.

However, the laws that are applied in these areas must be in conformity with the general provisions of the EU Treaties and with EU legislative acts and it is up to the national government to see that this is so. It is on this legal foundation that the Petitions Committee has acted, based upon petitions received under Article 194 of the EC Treaty.

It acts because European citizens have rights under the Treaties; it respects the principle of subsidiarity.

It acts because European citizens have turned to the Petitions Committee for help in resolving their individual and collective personal dramas, and the directly elected members of the European Parliament have responded to defend the rights of their electorate.

It has acted because it believes that all Member States have a political, legal and moral obligation to function according to the essential principles contained in the Treaties, including the Charter of Fundamental Rights signed by the Presidents of the three main EU Institutions. European citizens expect their politicians to respect what they have signed up for and not to try to escape their responsibility.

Clearly the global financial crisis and its implications have impacted harshly on the Spanish construction industry and this is a tragedy for the workforce, but even before the events of autumn 2008, the construction industry was heading for a shock. The years of massive urbanisation and coastal destruction which lead to considerable financial profit for the industry and massive overbuilding - there are now one and a half million new homes waiting for a buyer, and how many new golf courses - based on the irrational and greedy assumptions of property developers and urbanisers, have now lead Spain into a disastrous recession.

The Spanish authorities, in the regions in particular, remain in denial; while the victims are counted in thousands. At best, in many instances, their behaviour has been complacent with regard to individual property rights; at worst they have been downright dismissive.

The damage to the landscape has been done - as many authoritative reports attest¹ - while the outstanding urbanisation plans remain like so many concrete swords of Damocles over many rural and coastal communities. That is why the resolution calls for local authorities to suspend and review all existing plans and only to proceed when sustainability has been proven, involving the local communities in their choice, and environmental safeguards ensured. Legitimate rights to property must be upheld.

The report of the first fact-finding visit to Spain in 2004 already described in great detail what was going on and its implications. During the second visit certain politicians and developers, sitting side by side in the same meeting room as if to emphasise their umbilical support, even went so far as to say that the situation was the fault of the Petitions Committee which was responsible for loss of investment in the Valencian region, and they said as much directly to the members of the Committee delegation. During the third visit to Valencia in 2007, arrogance was at its height, and members of the delegation were told that the petitions received were fabrications of the Committee's collective imagination. In January I was able to discuss the issue frankly with the Valencian minister responsible though at national level this proved not to be possible.

It is perhaps no coincidence that in parallel to the Committee's ongoing investigations the Spanish judicial and enforcement authorities have also been conducting their inquiries. The result has been, as we all know, an almost endless list of local politicians and officials on mainland Spain and on the islands who have been arrested on corruption charges related to the massive urbanisation deals which have been concluded in the recent period. The fact that more cement and concrete have been used to build homes in Spain during the last decade than in France, Germany and the UK combined has become a well-known fact.

This tragedy has of course hidden a valid point made by many people who are critical of the Committee's investigations. That is that, of course, not all local authorities are corrupt, not all have fallen into the honey-trap of

easy financial gain. Many have acted responsibly, most local mayors only have the interests of their communities at heart; but the sad fact is that they have also become the victims of massive urbanisation.

Many members of the building industry, with whom your Rapporteur has held meetings, are also victims of the rush to wealth and political power of the biggest players. It will no doubt be the rather smaller building companies who act in a sustainable manner, in association with local requirements and more modest yet environmentally sound objectives who will ultimately emerge to regenerate the industry when once order and regulatory mechanisms are established and respected.

The Petitions Committee has hundreds of individual case studies contained in the documents submitted by petitioners. They cover a rather wide variety of specific situations as can be seen in the table which is annexed to this report. Most petitions have been submitted by individuals on behalf of the residents of a particular community; others have a wider basis of support, some are from very vulnerable elderly persons who feel afraid that their life savings, invested in their retirement home, is to be swallowed up by unscrupulous and irresponsible local dealers.

The Petitions Committee has tried to categorise these petitions in order to make the problems faced by European citizens more easily identifiable to those with the power to deliver solutions, whether the remedy be legal or political. It has, in the resolution suggested certain avenues which could be explored in order to ensure that European citizens are properly compensated for their losses as a result of the land-grab which has been practised. It has called for preventive measures to be established. The precautionary principle must govern the environmental impact assessment of all programmes.

Above all it is calling for more legal certainty and greater respect for legitimate property owners and their rights. Confidence in the Spanish judicial system needs to be restored particularly in the light of statements made by prominent members of the Valencian Bar who said clearly that there was no legal remedy for victims of massive urbanisation. This is in the interests of citizens and municipalities alike.

It is calling for more precise information to be made available and for all developments to be made more transparent with the implications for property owners made clear. Where charges are to be incurred these must be justifiable and reasonable; not arbitrary, which is too often the case at the moment. No person should be deprived of their land or their homes without due process and adequate and proper compensation, in conformity with the jurisprudence of the European Court of Human Rights which all Member States are bound to respect under Article 6(2) of the Treaty on the European Union.

The Committee asks the responsible authorities in Spain to look again and eventually revise legislation where necessary to guarantee the rights

contained in the Treaty for property owners, and to cancel all developments where EU law is not respected or applied.¹ New urbanisation plans which do not respect environmental sustainability and social responsibility and the rights of legitimate property owners should be suspended and reviewed. The role of the urbanising agent and the conditions under which tenders have been granted to them by local authorities has been the subject of many petitions and is currently the subject of infringement proceedings before the European Court of Justice. For that reason your rapporteur will not comment any further except to say that the Committee has supported the European Commission fully with this action as have many petitioners.

The Committee understands and supports the Spanish authorities in their attempts to preserve and where possible restore the coastal environment. What it fails to understand is why the 1988 Coastal Law has been resurrected at this stage, in this time, when it has been in practical abeyance for thirty years when so much devastation took place. Why is its application such a shambles and so arbitrary when traditional coastal housing is being demolished and newly developed modern apartments being tolerated? Why were people allowed to buy such property during the last thirty years, respecting all the legal requirements with which they were faced, only to be confronted today with a law with retro-active effect which denies them the rights associated with legitimate ownership? That speculators and property developers who had the legal resources to know better should be penalised is reasonable; what is not is that people who have bought their property in good faith respecting all the demands made upon them should lose their rights, and that of their families and descendants to their homes.

The European Commission may use the infringement procedure to ensure the compliance of a Member State with its responsibilities under the Treaties or under the terms of EU Directives. The European Parliament, which does not have this weapon at its disposal, may, in duly justifiable cases, use its budgetary authority to achieve similar ends if it decides to do so. Suffice it to say at this stage that there are many instances where massive urbanisation has incorporated elements of EU funding for new infrastructure into the overall programme to allow the Parliament, and its Budgetary Control Committee, to look into such cases more closely if progress is not made to resolve the issues raised by the petitioners with the European Parliament. As rapporteur I naturally very much hope that this will not be necessary”.

The main idea of the report is that Spanish legislation allowing developers to acquire private land below market rates breaches the European Convention on Human Rights.

For that reason, MEPs acted on complaints from Britons and other homeowners who feared their homes might be bulldozed; MEPs say they hope the vote will increase pressure on the Spanish government to change its laws.

The European Parliament voted overwhelmingly to freeze hundreds of millions of euros in Spain's EU funding if the Spanish government did not tackle what the parliament condemned as "extensive urbanisation" practices. In that full vote in

Strasbourg, 349 MEPs voted in favour, 114 abstained and 110 cast their vote against the report by the Danish Green Party MEP Margrete Auken. In accordance with our country, MEPs from the Spanish conservative PP party were among those who voted against the report while those from the governing Socialist Party abstained.

The report was drafted after more than 100 petitions by thousands of expatriates living in Spain complaining of breaches of their land-ownership rights were sent to the EU's petitions committee. One of the main campaigners behind the case, Canadian expat Charles Svoboda, says local and regional governments often rubber-stamp planning applications submitted by developers. Under current Spanish laws, developers can then demand that home-owners sell their properties at prices well below the market rate. If they refuse to sell, Mr. Svoboda says, they may even have their houses demolished. MEPs backing the report say that constitutes a breach of citizens' legitimate ownership rights.

Speaking after the "yes" vote, Margrete Auken said this showed the European Parliament was willing to fight on behalf of EU citizens:

- "We've shown now that this parliament can listen to the citizens and can take their case seriously and really support them. So it's much easier for them in the future to have the feeling that they have the EU institutions behind them."

The European Parliament also criticised the "endemic corruption" which it says the Spanish property market suffers from, and demanded that any plans which did not comply with EU law be halted.

We should remember that this is the third time that the European Parliament has debated urban planning practices in Spain. It condemned the lack of redress Spanish and foreign residents have in the face of alleged development excesses in 2005 and 2007.

This time though, it said, Spain will suffer the consequences to the tune of millions of euros in frozen funds if it fails to act.

In conclusion, the Auken Report was approved by the EU in March 2009, and in accordance with Margrete Auken said, we can conclude that:

"Spain has permitted a culture of endemic corruption to build up around construction".

"Many Spanish citizens feel that they must quietly accept fraud and corruption from building companies who can expel them from their homes without any compensation"

This document revealed to the EU the wide range of issues in Spain that has permitted the construction of hundreds of thousands of homes without any permits whatsoever.

But it is true also what Ms. Auken pointed out:

“The Spanish government refused so far to give an official reply to the Auken report and so we believe the time has come for the EU to officially demand a reply to the report. This report recommends EU sanctions against Spain if it does not act to tackle urban abuse and property instability in the region”.

CONCLUSIONS.

We must mention the importance of the protection of natural values from an environmental perspective and from a social point of view.

The sustainability of the planet is directly proportional to the level of respect that current generations have with the environment and directly proportional to the commitment that humans have towards future generations.

We need to promote environmental protection and the principles of solidarity between regions and people, as well as advocating for principles of responsibility, respect and consistency of our actions; and all of this must inspire Spanish constructive labour and should inspire our old property`s concept.

Environment determines our quality of life and also affects the quality of life of the future generations.

The analysis hereby has helped us to understand the magnitude of the environmental problem and how important it is to cultivate the necessary social awareness; which we know must be born from the commitment of the government and private individuals”.

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ABBREVIATIONS.

- CC: Constitutional Court. (TC: Tribunal Constitucional).
- SDP: Sustainable Development Plans. (PDS: Plan Desarrollo Sostenible).
- MEP`s: Members´ Europe Parliament (MPes: Miembros del Parlamento Europeo).

