

Abstracts

FIGHT AGAINST CORRUPTION AS AN INTEGRAL PART OF THE RIGHT, THE DUTY AND THE POLICIES OF GOOD ADMINISTRATION

Joan PRATS CATALÁ

The exercise of the jurisdiction has been traditionally associated to the recognition to the judges assigned to this function, the member of the juridical career, of a specific statute that, among other elements, means some restrictions to basic rights. Without prejudice that in the Constitution continues beating a model of judicial career bureaucratized, and that the text incorporates explicit restrictions for the exercise in certain rights (art. 127), those limits must be contextualized in the frame of the Social and Democracy State that establishes the Constitution. The reinterpretation of the juridical system of the freedom of speech of Judges and Magistrates in the light of those considerations is the object of this article.

CONSTITUTIONAL HOUSING RIGHT VERSUS URBAN SPECULATION

Gerardo RUIZ-RICO RUIZ

Despite the normative weakness that most of the social rights recognized by the Spanish Constitution of 1978 suffers, a social and juridical conscience have been consolidated favourable to consider them as true fundamental rights of the citizen in the contemporary society. In this sense, the housing right is becoming a source of priority attention in political programs and social and urban legislation. One of the aspects in which the concern of legislator stresses more, is fulfilling the constitutional order of article 47, that impose to public powers the adoption of measures to avoid the speculation in the land use,

favouring the social interest. It's an objective that determine in a good measure the configuration of the urban regimen, on its success depends mostly the achievement of the housing right.

THE CONTRIBUTION OF THE LAW 8/2007, OF LAND, TO THE SOLUTION OF THE URBAN ARBITRARY AND ITS CONSEQUENCES IN CORRUPTION.

Luciano PAREJO ALFONSO

From the serious cases of urban corruption in Spain, this article will analyse, firstly, the main causes that have contributed to this deplorable situation and, secondly, examine the important function that this Law 8/2007, May 28th, of land, will play to get over the malfunctions pointed before. With this objective, it is stressed the observance that the legal text does of the function of the general-state legislator of setting on a solid constitutional foundation the minimum bases indispensables to assure the efficiency of public policies in the use of land according to general interest and the subordination to this interest of all the richness, in its different forms and independently of its tenure. And, besides, the article stresses also the right formulas used by the new law that avoids the only reactive dynamic that has characterized the legislator during more than a decade, now the law aspires to stabilise the legal framework without a significance perturbation of the autonomic legislation.

ADJUSTMENT OF LAW 8/2007, MAY 28TH, OF LAND, TO THE CONSTITUTIONAL ORDER OF POWERS DISTRIBUTION BETWEEN THE STATE AND THE AUTONOMOUS REGIONS

Luis ORTEGA ÁLVAREZ

The interventions of the State in the regulation of the land and urban legislation come from the interdisciplinary character of this matter and, therefore, from the rest of the power distribution titles of the State that affect the land, like economic planning, infrastructures, environment, etc. The Constitutional Court has recognized and admitted the validity of this powers connection. The study is concentrated, thus, in analyzing how Law 8/2007, of Land, is born from the powers titles that legitimize the State to pass the content of the specific regulation contained in the law, including the concept of transitory basic norm, to make possible the immediate application of modules and standards of the new Law.

POWER DISTRIBUTION BETWEEN THE STATE AND THE AUTONOMOUS REGIONS IN URBAN DEVELOPMENT AND HOUSING LEGISLATION

Pablo SANTOLAYA MACHETTI

Constitutional Court has set that the power in urban development and housing policies concern primarily the autonomous regions, and that the legislation of the state should be general principles, giving them scope for action. The Law uses correctly this technique.

One of the most important aspects is the reserve of, minimum 30% of the suitability for building land, for state-subsidized housing, principle that must be concredited by autonomous regions legislation. On the contrary, it is a problem to establish Provisional Bases, because the State cannot regulate additional right. That is why it would have been advisable to turn the adaptation of the bases in a duty for Public Administrations whose failure would be punished because is indispensable for the efficacy.

THE REFORM OF THE LAW REGULATORY OF THE BASIS OF THE LOCAL REGIMEN TO COMBAT THE CORRUPTION IN THE MUNICIPAL LIFE SCOPE

Javier GARCÍA FERNÁNDEZ

This work describes, in the first place, the reforms experimented by the Law regulatory of the Basis of Local Regimen of 1985. This Law has been reformed 13 times, but the central target of this study is the reform caused by the Law 8/2007, May 28th, of Land, that gives more transparency to the municipal approve of town planning agreement and to the alienation of real state of the City Council, also to ensure the publicity of the instruments of town and country planning. The new reform has demanded more transparency in the asset of councilmen and senior official no-voted in municipal Administration. In conclusion, it is an ambitious reform to restrict municipal corruption in the town planning scope.

CRIMES ON THE ARRANGEMENT OF THE LAND AND THE URBAN DEVELOPMENT CORRUPTION: ENCOUNTER AND MIX-UPS IN ITS TREATMENT STRATEGY

Antonio VERCHER NOGUERA

The crime on the arrangement of the land and urban development, including in the legal context that regulates the crime against the environment,

as it comes predicted in the Spanish penal system, is translated, many times, in manifestations or forms of the phenomenon known as corruption. It entails important difficulties, not only at the time of applying the penal norm, like it is logical, but also, and this it is the point in which the article concentrates mainly, at the time of determining the power distribution, whether its investigation corresponds to the organ of the competent Fiscal Ministry to know the problematic one the corruption, or whether it corresponds to Public prosecutors specialists in environment and urban development. The article, based in the determining aspects of the powers of both Office of the public prosecutor, takes care of the peculiarities that, from the point of view of facts, are raised in the matter, as well as the options applicable to the difficulties that, in accordance with all this, could provoke.

Cuadernos de Derecho Público

31: MAYO - AGOSTO 2007



GOBIERNO
DE ESPAÑA

MINISTERIO
DE ADMINISTRACIONES
PÚBLICAS

Presentación

- Javier García Fernández

Estudios

La lucha contra la corrupción como parte integrante del Derecho, el deber y las políticas de buena administración

Joan Prats Català

Derecho constitucional a la vivienda versus especulación urbanística

Gerardo Ruiz-Rico Ruiz

La contribución de la Ley 8/2007, de Suelo, al remedio del arbitrio urbanístico y su secuela de corrupción

Luciano Parejo Alfonso

Adecuación de la Ley 8/2007, de 28 de mayo, de Suelo, al orden constitucional de reparto de competencias entre el Estado y las Comunidades Autónomas

Luis Ortega Álvarez

La distribución de competencias entre el Estado y las Comunidades Autónomas en el urbanismo y en el régimen de la vivienda

Pablo Santolaya Machetti

La reforma de la Ley Reguladora de las Bases del Régimen Local para combatir la corrupción en el ámbito de la vida municipal

Javier García Fernández

Delitos sobre la Ordenación del Territorio y la Corrupción Urbanística: Encuentros y Desencuentros en lo que a su estrategia de tratamiento se refiere

Antonio Vercher Noguera

Abstracts

