

Demarcation in Margarita – and what happens now?

The demarcation and the confiscation of the public property at the canals of Santa Margarita is legal valid. Whether the last word has been spoken remains to be seen.

Who still says that this is all not possible and nothing would happen is a fool!

We do not know how and when the rules of the Ley de costas will be applied to the day today-practices.

Already now grave consequences for Owners and Associations of owners, whether they have been notified or not and the city of Rosas, are valid:

Berths cannot longer (legally) be sold!! Generalitat and Rosas can not go on with plans to regulate the canals (presently).

However the Spanish State will not give up to continue and will start definite steps.

Each affected must consider what he wants to do and he must know which consequences will result from the present situation.

The following scenarios are possible:

Owners and Rosas will file a suit at the administrative court against the actions of the Spanish state which of course will not necessarily mean that the ongoing actions are stopped or delayed.

- 1) Consider the following, the Spanish State is successful, then the „Ley de Costas” remains valid for Santa Margarita!
- 2) The city of Rosas and the Generalitat are successful, then the Catalan Port Law is valid and they can rule over the canals.
- 3) The owners are successful, then the present legal situation continues, private ownership of berths and adjacent property remains and a possibility of participation in the administration through an organisation of users (Junta de Usarios) exists!!
- 4) The European Parliament is more active and increases the pressure on Spain and with the results that Spain compromises.
That in the near future a claim to the European court for human rights is possible and comes to a ruling is rather unlikely.

Which consequences will have to expected from the above described scenarios?

1) The validity of the coastal law (Ley de Costas) means that canals and berths remain public property (Dominio Publico) and thereby under the ruling of the state.

In the register of property appropriate notes will be made to plots, who have been before in private hands. Owners retroactive loose their ownership and right of disposal. You cant sell it and you cant encumbrance it. The former private owner (according to the law he never was the owner), can apply for a concession for an time limited period to use the public property and /or ask for an authorisation for related measures.

In the best case it will be 30 years that can be extended for a further 30 years starting with the date of the Ley de Costas in 1988. So the first periods ends 2018 and the second 2048.

If it is sold, or donated or the user deceased the property falls back to the state.

In the case of inheritance or legacy the concession can be renewed.

Preferable those can ask for a concession for an gratuitous use of the public property, where by court sentence (sentencia judicial) the private ownership was established before the costal law was passed.

In reality the registered ownership is accepted.

Fundamentally can and should a former owner, who can prove his ownership, apply for an gratuitous usage and in case of a rejection by the authorities, go to court.

The application for the concession has to be done within a year.

The cost for the upkeep of the public property has to be paid by the user.

Alterations have to be approved, inappropriate installations are not allowed and have to be removed, the cost for removal pays the user.

The ongoing tax duties and rates are allowed to go on, now for the usage.

The right to grant the concession lies with the authorities, other superior measures, for instance the installation of a shore passageway, can result that the concession is denied.

In overall the coastal law (Ley de Costas) and the implementations are laid down in many words and in detail, but unprecise and unclear.

Principally the authorities are always in the right and have all the possibilities, except if limited by a court decision. This decision is not easily obtained, as with this law, in addition the responsibility is distributed to different authorities, that makes the dealing with these not easier.

So far concessions have been granted for plots located near the sea, experiences under what conditions concessions have been granted, as in our case, along waterways, are not known.

The coastal law requires the installation of a 6m wide passageway along the waterfront, which is not public property (Dominio Publico) however is under state rule. It has to provide free access and has to be kept free of obstacles. Whether or how that can be accomplished in Santa Margarita, where gardens, swimming pools, walls and houses are affected, remains to be seen. Whether all responsible in the authorities and the ministry itself know about the conditions at site is questionable!

In any case the affected are faced with uncertainty, set ideas and arbitrariness of the authorities and their civil servants.

The houses located in the 20 m protection zone along the river Grao have a limited protection of existence. However they are under the rule, that this zone has to be free of houses and no new houses are allowed to be erected. In this area alterations are to be allowed only under given approvals.

It is possible that existing obstacles have to be removed. Here also great uncertainties are existing.

Also a concession can be given to administrate the canals, where the state receives fees, certainly too for the leasing of berths, which have not been granted gratuitous use.

2) If the city and the Generalitat wins the administrative battle, or should the state transfer the administration to Catalonia, the Catalan Port law will be applied. In that case Santa Margarita is not maritim area, beach area, but marina! A port area for sport activities. Here also the berths will be expropriated and a 6m wide accessway created, this time, for nautical services.

However the accessway will not be created where construction conditions exist that makes it impossible.

The port law contains and the regulations of said recognizes berthes with private use that are part of a house. The right of use stay if the house if it is sold or otherwise passed on.

These minor advantages if the Catalan port law, contrary to the Ley de Costas, is applied, are wiped out by the plans of the Generalitat for regulating the canals. These contain high fees for the use of the berths and canals, the renovations and upkeep. The administration (gestion) will be allocated to the city who then will install a commercial orientated concessionary.

3) To get back their property rights and usage the affected owners have to fight a long duration legal battle. They have to represent their position to the Spanish and european public and go to court. They should stick together and get a strong representation, The legal representation will require skilled lawyers and they certainly cost money, however

compared with the values which are threatened the sums are minor!

First we have to file an administrative suite against the decision of the Ministry of environmental and their lower authorities.

This also has to be done against the building plan (POUM) of the city of Rosas, which contains the demarcations of the Spanish authorities.

Every single affected person or organisation of owners should go to court.

The organisation of affected people „APUCSM“ will provide their members with suggestions for competent lawyers, who will develop the necessary statements of claims.

The more people together select a definite lawyer the lower the costs and more effective.

It is important to watch the website of the APUCSM for further information.
(www.euroclub24.com)

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