

Ash wednesday for the owners situated at the canals of Santa Margarita:
The demarcation was declared in power - the building plan (POUM) from Roses approved in Girona.

The owners of houses and berths on the canals of Santa Margarita got a letter – if the postman found them.

The costal authorities in Girona sends you a letter (in Spanish) from the Ministry of Environment and their lower authority in Madrid.

Herein the affected are told that effective on the 5th. February 2010 the demarcation of the public property, done by the costal authorities, are valid. The berths are converted into public property, the 6 m wide access passage along the canals and the 20 m wide passage along the River Grao are specified.

The objections of the Generalitat , the townhall of Roses and the owners(439) were rejected. and the costal authorities in Girona are charged to implement the decisions.

Independently of that, the commission of urbanization in Girona approved the building plan of the city (POUM) on the 11.2.2010 which incorporates the demarcation of the canals.

However Roses considered the Catalan Port law to be valid for Santa Margarita.

The Ministry of Environment denies this in the letter and continues to insist that the Spanish Ley de Costas is valid.

In both cases the administration legislation is finished and the decisions are valid.!!!

What possibilities do we have to counteract this? I will refer to this later.

First I will direct my attention to the letter from Madrid/ Girona and give some help to read it-

The Ministry of environment, refers first to the Antecedentes and the single steps of administrative regulations, referring also to the objections that were made by the Generalitat, Roses and the owners.

The Generalitat and Roses contested the competence responsibility of the central state for the demarcation. They assumed that the Catalan port law and the regulations of said are responsible and have to be applied for the Marina Margarita and the area of the Port Deportivo.

The owners claimed that the affected plots were legally bought, and registered private property.

In addition the river Grao and the canals are part of a river landscape that are not affected by the tides, in addition claimed procedural errors were made.

The prehistory of the resolution are closed with the information that the costal authorities in Girona, after checking the objections, suggested to the authorities in Madrid to approve the plans with some adjustments.

In the next part of the letter considerations are made which are actual more conclusions!.

They consider the procedere and the project of demarcation in reference to the application of the Ley de Costas to be correct.

The claim of incompetence of the central state made by Catalonia to carry out the measurements is rejected with reference to the constitutional court, the constitution and the LEY de COSTAS- Even if there are some ports which come under the Catalan Port Law, is the demarcation the protection and the warranty for keeping open the public access to the maritime zones are a duty of the central state.

In reference to the start of the procedure and the information to the affected the regulation were strictly adhered to, at every moment.

The demarcation refers to the left side of the River Graos estuary, which was converted to a main canal by the building of the urbanization Santa Margarita with their artificially canals.

That main canal created a natural circulation of seawater, because the bottom of the canals are deeper as the highest level of the tide.

The building of the Marina led to the consequence that land was inundated by the sea and a flooding and drainage of seawater into the marina occurs. By taking samples, observations and special studies the boundaries of the public seawater landscape (dominio publico marítimo-terrestre) were proven and marked by („Vertices“) vertex lines.

Further the definition of the protection zones of 100 m and 20m (servidumbre de protección) and public passage ways of 6 m width (servidumbre de tránsito) are defined.

In some areas defined by Poum, as impossible to develop, protection zones of 100 m will be created, in other developed areas a zone of 20 m. Along the excavated canals no protection zone will be created but a servidumbre de tránsito of 6 m will be created. Objections against protection zones and servidumbres will not be permitted because the law requires these. The Ley de costas defines that land areas joining areas of seawater landscape of public property are also covered by the requirements and regulations. The reason of the law is to protect the integrity and existence for public usage, to protect the characteristic and natural elements and to prevent destructive interferences by works or installations. This is in line with the constitution, who guarantees the enjoyment of an adequate environment and the protection of said.

Therefore is the request of the Generalitat to install a passage for nautical services (franja de servicio náutica) rejected, because this will not protect the public property and the adjacent land.

Comment: The question arises- what have these- admittedly honourable environmental goals to do with a longtime developed urbanisation, with man made banks, berths and port facilities of the canals in Santa Margarita. In some cases the berth facilities and the 6 m passageway are integrated in and part of the plots.

Here are the statements of the writers are absolute unrealistic, the implementation will create destruction and definitely will do nothing to protect or create an acceptable environment.

Also looking at the argument of the imputation of the private nature of the canals, berths and landing places refers to the constitution. The constitution and the Ley de costas define that sea areas of public property are unsaleable and the registering in the register of property has to come in second. Only the usage and utilization, within the regulations of the law, is possible.

The question of authorisation for the demarcation was taken up again. In several field studies the salt content of the water in the river and the canals was checked and all results correspond in showing a high salt content.

The logical conclusion of the data, the analyzes, the layout of the terrain and the influence of the sea resulted in the penetration of the sea as far as to the road to Figueres, were consequently now is the boundary for the public property sea area.

The inclusion of the river Grao and the canals of Santa Margarita into the public property and the decisions of the ministry of public works for the creation of the canals dated 1971 is fully within the law.

Based on the above, the Direcccion General de Sostenibilidad de la Costa y la Mare directed by the „Exelentissima Senora“ Minister in agreement with the Servicio Juridico (of the Ministry) has decided :

- 1) The demarcation of the goods of the public sea area in the internal Marina Santa Margarita- Rio Grao according to the plans of Dec. 2008, are approved-
- 2) The Servicio de costas en Girona (coast authorities) is hereby charged to take the proper action to correct the exiting illegal situation in the register as per approved demarcation.
- 3) To set a dateline of one year within the property owners can apply for a concession to get an authorization for the possible considerations, as outlaid in the „Disposition Transitoria Primera“ as part of the Ley de Costas (22/ 1988), by presenting their prove.
(here in the main it means to receive a concession for a time limited usage of the property declared public property, for instance a berth)

Toward the end there is an information how to object.

A) The owners can, within one month (after receiving the letter) file an objection at the Ministry of Environment (Recurso protestativo de Reposition) requesting the abolition of the decision (act).

B) Within two month you can file an administrative objection (Recurso Contencioso-Administrativo) at the national Court (Sala de lo Contencioso Administrtrivo de la Audiencia National).

You can, at first, select only one proceeding. If you select the first you can file an Recurso Contencioso- Administrativo only after the objection has been rejected by the ministry.

The Authorities (Generalitat/ Ayuntamiento) can also file an administrative objection to the Audiencia National (which we believe they certainly will).

As to the Poum of Roses here a administative objection has to be filed at the Tribunal Superior de Justicia de Cataluna. However this seems to be at the moment of secondary importance and can possible be undertaken by the Asociacion de Vecinos in Margarita and the APUCSM (an you can follow).

I recommend to consult immediately with your lawyers about what to do.

It is still necessary to form a wide front of resistance. part of this, if it has not happened yet , is to join the APUCSM and support the Association with your membership fee.

The APUCSM has contact with lawyers (who naturally cost money) we will give recommendations and help.

We will in short present our case to one of the vice presidents of the European Parliament.

Dr. Wolfram Janzen

