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Residents fight 'ridiculous' law

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By INÊS LOPES news@algarveresident.com

A group of property owners from Ericeira, north of Lisbon, is contesting an ancient law concerning waterfront properties which threatens to transfer their ownership to the Portuguese State unless it can be proven in court that the land has been in private hands for at least 150 years.

As the Algarve Resident reported in its edition of May 3, the controversial ruling, under Law nº54/2005 of November 15, obliges owners of property in waterfront locations, such as those along the Algarve coastline, considered by the State as "hydric land" in the public domain (Domínio Público Hídrico), to prove in court before January 1, 2014 that their land has been in private hands for at least a century-and-a-half or the land will be subject to public domain treatment, including use and occupation licences and taxes.



Manuela Netto Rocha addressing a group of property owners from Ericeira at a meeting last month held at her cliff-top property to discuss actions taken against the law

Properties affected are those located on land within 50 metres from the sea or cliff-top edge and within 30 metres in the case of a riverbank.

Ericeira is a coastal town, like so many in Portugal, with a history that goes back many centuries and cliff-tops lined with ancient properties, many now in the hands of heirs.

Property owner Manuela Netto Rocha, a member of the group leading the fight against this law, told the Algarve Resident that "this ridiculous piece of legislation" must be scrapped, or at least simplified to avoid the court procedures, and calls on all property owners affected by it to join in their effort to force the government to make a U-turn.

The Ericeira group was formed in 2005, when the law was reviewed, and comprised just 20 property owners. In 2006, when the cliffs of Ericeira underwent stabilisation works, it became clearer what the law entailed from communication with the environmental authorities (formerly INAG) in charge of the cliffs' project.

The group now includes more than 80 property owners, who, assisted by lawyers and historians, meet regularly to discuss actions against the measure.

"Our battle has been ongoing since 2006," said Manuela Netto Rocha, who has made several visits to the local Land Registry Office (Conservatória), tax services (Finanças) and even the National Archive of Torre do Tombo in Lisbon to source the necessary documentation paperwork to serve as evidence in court, "just in case..."

"If this law is enforced as it is, it will hit many property owners hard," she said.

But until that day comes, "and if it comes", the group has vowed to continue in their concerted efforts to expose the ridiculousness of this law.

"People find it hard to believe this law actually exists, but it is there and the government has shown no intention of abolishing it," said Manuela Netto Rocha.

"In fact, we don't even believe the government is fully aware of its implications. Will the State force the eviction of property owners? Will it concession or sell the properties back to the owners? How will it maintain so many properties, the majority in tourist destinations? How will it compensate farmers whose main source of income comes from the land? Will the State force upon property owners heavy taxation and rates?"

Earlier this year, the group sent a formal letter to the Ministry of the Environment, which appeared to dismiss the subject by passing it on to the Secretary of State for the Environment. No satisfactory reply to the letter was ever received.

The Ericeira property owners then contacted an MP in February and the subject was finally discussed in Parliament in April, with both the PSD and PS presenting proposals to alter the law and agreeing to expose the case to a specialist commission.

Then in June, the group met with the Comissão do Ambiente, Ordenamento do Território e Poder Local (Commission for the Environment, Land Planning and Local Government) to present their proposals to alter the law.

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the Environment, Land Planning and Local Government) to present their proposals to alter the law.

Among the proposals was the extension of the deadline to present the documentation by an additional two years, the implementation of administrative procedures – instead of court actions – to simplify the process and make it less costly, and the automatic recognition of a property as private without the need to present ancient documentation as proof.

“However, we fear that these alterations, if voted for, may come too late for us. I have been told that the voting may take place in Parliament on October 4 and promulgated at the end of October. So my advice is, property owners should prepare themselves for the worst and start collecting the documentation needed to meet the December 31 2013 deadline,” said Manuela Netto Rocha.

She urges affected proprietors to complain to the government about this law. She understands the complexity of the matter at hand and is keen to discuss it with property owners in the Algarve. “The more people who get involved in this fight the better,” she said.

Several political groups have also contested the complexity of the process for property owners to legalise their situation within the short timeframe, the bureaucratic and legal costs involved and the mandatory hiring of a lawyer to present a court case.

Property owners are advised to contact the Agência Portuguesa do Ambiente (APA) for more information regarding Law nº54/2005 and how it could affect them: arhalg.geral@apambiente.pt

Alternatively, they could contact the Ericeira group, which has carried out extensive work into this law:

ericeira1864@gmail.com

|| About the law

Law nº54/2005 of November 15, concerning areas designated as ‘Domínio Público Hídrico’, dates back to 1864, when a royal decree was published regarding public domain areas considered indispensable for the State, namely the coastline and river banks, and four years later, in 1868, when the Code of Seabra came into force making reference to cliff-top areas as also being of public domain.

Lawyers Margarida Osório de Amorim and Andreia Candeias Mousinho from the law firm PLMJ explained the contours of this law.

The aim of the legislation at the time was to ensure the unobstructed use of, and access to, these areas by the State for strategic and national security reasons.

The need to prove private ownership of property in these public domain areas dates back many years, but has since been clarified, first in 1971 with the Decree-Law nº468/71 of November 5, and more recently with the Decree-Law 54/2005, establishing the 2014 deadline.

“The law is being implemented with little regard for the consequences it will have on the thousands of people who unknowingly and in good faith purchased property in public domain areas and have always believed to be the legitimate owners of the land,” said the lawyers.

Once designated as public domain land, its occupation by private individuals will be subject to a State-granted authorisation/licence, which has to be paid for and has a validity period, the use of the land will be limited and rates for occupying state property will be charged. “Rates are charged according to the size and use of the land, for example a residential house or a golf course, but can potentially be high,” said the lawyers.

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