

## **Landlords and squatters: neither victims nor executioners? Context and outline of the Spanish reform on eviction of illegal occupiers**

**Propietarios y “ocupas”: ¿Ni víctimas ni verdugos? Contexto y planteamiento de la reforma española relativa al desalojo de ocupantes ilegales**

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**ABSTRACT:** In the aftermath of the Spanish property crash, and to an extent as a side effect thereof, a large number of dwellings remain empty. On the other hand, there is a need for affordable housing that social programmes are unable to cover. This, together with the (timeless) occupation of properties for criminal purposes, and social, cultural or environmental squatting, has led to a huge variety in the type of squatters, including organised groups that take possession of dwellings with the aim of letting them to people in need. The procedures to evict squatters in force until July 2018 were considered insufficient and thus the Spanish Civil Procedure Law was amended to include fast-track eviction of squatters, but only when the claimant is a natural person, a non-profit organisation or a public administration. This paper argues that if distinctions need to be made, they ought to take place at the defendant's end, and not at the claimant's. The reform seems to stem from the idea that banks and other landowners and squatters are "evil", whilst private owners, non-profit organisations and public administrations are by definition "good". Manichean approaches such as these lead to biased and ineffective lawmaking.

**KEY WORDS:** Squatters; eviction; civil procedure; criminal offence; housing; illegal occupation.

**RESUMEN:** Tras la crisis inmobiliaria española y, en buena medida, como consecuencia de ella, un elevado número de viviendas permanecen vacías. Por otro lado, existe una demanda de vivienda asequible que los programas sociales no son capaces de satisfacer. Esto, combinado con la (sempiterna) ocupación de propiedades ajenas con fines delictivos, y con la ocupación social, cultural o medioambiental, ha conducido a la proliferación de una gran variedad de tipos de "ocupas", incluyendo grupos organizados que toman posesión de viviendas ajenas con la finalidad de alquilarlas a personas especialmente necesitadas. Los procedimientos a disposición del poseedor legítimo hasta julio de 2018 eran considerados insuficientes y, por ello, se reformó la Ley de Enjuiciamiento Civil, introduciendo un procedimiento expeditivo para estos casos, pero solo cuando el demandante sea una persona física, una entidad sin ánimo de lucro o una administración pública. Este trabajo defiende que, si hay que hacer distinciones, deberían tener lugar en atención a la situación del demandado, y no del demandante. La reforma parece basarse en la idea de que los bancos y otros propietarios, así como los ocupas, son "malos", mientras que los propietarios particulares, las entidades sin ánimo de lucro y la administración son, por definición, "buenos". Planteamientos maniqueos de este estilo conducen a regulaciones partidistas e ineficaces.

**PALABRAS CLAVE:** "Ocupas"; desahucio; procedimiento civil; delito; vivienda; ocupación ilegal.

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## 1. Introduction

Writing during World War II, Albert Camus described last century as ‘the century of fear’ (*‘le siècle de la peur’*), not just due to the atrocities taking place in Europe, but because when ideas become dogmas and the capacity to understand the other’s position disappears behind them, dialogue is rendered impossible. Thus, the realization that we are living in this kind of radicalised reality, where everything is black or white and there is no space for hesitation, submerges us into a state of dread, of sheer fear.<sup>1</sup>

The grand scale of things seems to be turning in that same direction at the moment, with the growth of extremist political positions throughout the Western world. This panorama can be traced down to concrete realities and specific problems, which are addressed by lawmakers in absolute terms, perhaps because the voters so demand, criminalising certain groups and enshrining others depending on how the polls react, but very seldom allowing for compromise and for promoting collaborative behaviours in order to attain general interest goals.

An example of this can be found in the recent reform of the Spanish procedural law so that certain landlords are in a better position to evict (any) squatters. Whilst distinctions are made on the claimant’s side, mainly to exclude banks and investment funds from benefitting from the reform, none are in place when it comes to deciding how the defendant should be treated. The assumption is that banks and squatters are “evil”, whilst natural persons, non-profit organisations and housing authorities owning squatted properties are “good” and need extra protection.

Bearing in mind that the amount of empty dwellings, the number of people in need of affordable homes and the increase in squats, often run by criminal organisations, are problems that need to be addressed, this paper first provides a general and necessarily partial overview of the Spanish housing landscape (2) and of the variety of squatters that can be found (3), followed by an outline of the procedures available for landlords to evict squatters until July 2018 (4) and the recent reform thereof (5). A few final remarks, suggesting a way forward, can be found at the end (6).

## 2. The Spanish housing landscape today

The Spanish economy, which somehow manages to endure much higher rates of unemployment than any other relatively healthy model, has been dependent on tourism and on construction for decades. However, the property boom that preceded the 2008 crisis, with

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<sup>1</sup> ALBERT CAMUS, “Le siècle de la peur”, *Essays*, Paris, Gallimard, 1967, p. 332: ‘...parce que nous vivons dans le monde de l’abstraction, celui des bureaux et des machines, des idées absolues et du messianisme sans nuances. Nous étouffons parmi les gens qui croient avoir absolument raison, que ce soit dans leurs machines ou dans leurs idées.’

prices rising by 145% in eight years,<sup>2</sup> exaggerated the focus on construction and all its related industries to the limit. When the bubble burst, people lost their jobs – with unemployment reaching 26% in 2012 –, they defaulted on the mortgage loans they had been led to believe were the path to a secure investment in property, and when banks foreclosed on them there was no-one was in a position to buy.<sup>3</sup>

Thus the financial sector ended up owning properties – either because they had foreclosed on natural persons or because they had acquired the assets of bankrupt developers and related businesses– which they could not market successfully. The Sareb, popularly known as ‘the bad bank’, was created in November 2012, in order to remove these properties, together with other toxic assets, from the banks’ balances.<sup>4</sup> Currently 9,760 homes can be found on its website, but it claims to have sold over 68,000 since it came into existence and almost 19,000 in 2017, amounting to 17% of the total sales in the region of Catalonia and 10% in Madrid.<sup>5</sup> A large amount of dwellings for sale in the private market still belong to financial institutions,<sup>6</sup> although banks have also transferred immovables to investment funds.<sup>7</sup>

The latest official census showed that, in 2011, out of over 25 million dwellings in Spain, 3.4 million were empty;<sup>8</sup> i.e. 13% of the total. Another 14% are second homes.

The connection between these realities can be made quickly. In Catalonia, in 2015 a registry of empty dwellings was created,<sup>9</sup> with the ultimate idea of taxing legal persons owning homes that have been empty for two years or more;<sup>10</sup> in 2016, the registry showed that there were 46,974 homes owned by legal persons that had been empty for two or more years in the region and that were acquired as the result of mortgage foreclosures, out of which 2,685 were in Barcelona; 2,100 were in Terrassa and 1,700 in L’Hospitalet de

<sup>2</sup> THE ECONOMIST, “The global housing boom. In come the waves”, 16 June 2005, available at: [https://www.economist.com/node/4079027/print?story\\_id=4079027](https://www.economist.com/node/4079027/print?story_id=4079027) (3.05.2018).

<sup>3</sup> The data is not clear, and it does not distinguish between privately owned homes and those owned by legal persons, but it is estimated that mortgage foreclosures led to around 500,000 evictions between 2010 and 2016. Source: CONSEJO GENERAL DEL PODER JUDICIAL (GOVERNING BODY OF THE JUDICIARY), *Efectos de la crisis en los órganos judiciales*, Madrid, 2007-2018, available at: <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Infornes/Efecto-de-la-Crisis-en-los-organos-judiciales/> (3.05.2018).

<sup>4</sup> More information on its website: [https://www.sareb.es/es\\_ES/](https://www.sareb.es/es_ES/) (10.09.2018).

<sup>5</sup> SAREB, *Resultados Sareb en 2017*, Madrid, 2018, available at: [https://www.sareb.es/file\\_source/web/content/pptpresentacionresultados2017paraweb.pdf](https://www.sareb.es/file_source/web/content/pptpresentacionresultados2017paraweb.pdf) (30.04.2018).

<sup>6</sup> However, it is relevant to note that it looks like only 3% of the properties that belong to Banks are in cities with more than 500,000 inhabitants, which is where the demand is higher, according to a study carried out by one of the biggest on-line property portals in Spain; see IDEALISTA, *Solo el 13% de los pisos de la banca está situado en las capitales de provincia*, 7 February 2018, available at: <https://www.idealista.com/news/inmobiliario/vivienda/2018/02/07/762745-solo-el-13-de-los-pisos-de-la-banca-esta-situado-en-las-capitales-de-provincia> (10.09.2018).

<sup>7</sup> E.g. a large amount of properties have been acquired by Blackstone: (VOZPOPULI) JORGE ZULOAGA, “Así es el imperio inmobiliario de Blackstone en España”, 6 August 2017, available at: [https://www.vozpopuli.com/economia-y-finanzas/empresas/Asi-es-imperio-inmobiliario-Blackstone-Espana\\_0\\_1050795927.html](https://www.vozpopuli.com/economia-y-finanzas/empresas/Asi-es-imperio-inmobiliario-Blackstone-Espana_0_1050795927.html) (12.09.2018).

<sup>8</sup> INSTITUTO NACIONAL DE ESTADÍSTICA, *Censo de Población y Viviendas*, 2011, available at: [http://www.ine.es/censos2011\\_datos/cen11\\_datos\\_inicio.htm](http://www.ine.es/censos2011_datos/cen11_datos_inicio.htm) (30.04.2018).

<sup>9</sup> Catalan Decree-Law 1/2015, 24 March; see the list of entries at: <https://goo.gl/hqc9wL> (created and last visited: 10.9.2018).

<sup>10</sup> Catalan Law 14/2015, 21 July, available at: [http://portaljuridic.gencat.cat/ca/pjur\\_ocults/pjur\\_resultats\\_fitxa/?action=afectacions&shouldShowActives=fals&versionId=1601051&versionState=02&language=ca\\_ES&documentId=698994](http://portaljuridic.gencat.cat/ca/pjur_ocults/pjur_resultats_fitxa/?action=afectacions&shouldShowActives=fals&versionId=1601051&versionState=02&language=ca_ES&documentId=698994) (10.9.2018). Most of the sections in this act were challenged by the Spanish Government before the Constitutional Court. The Act is currently in force, but pending the Court’s decision.

Llobregat – two densely populated cities near the capital, where the demand for housing is always high. It is estimated that, in this same region, in 2017 there was a need for 230,000 dwellings at affordable prices.<sup>11</sup> This data shows that in Spain the number of empty dwellings is not negligible, that there is a demand for social or at least affordable housing that public programmes are not covering and that the obstacles to liaise both terms of the equation appear to be very difficult to overcome.

Moreover, it is estimated that in Spain there are between 85,000 and 90,000 illegally squatted dwellings, 80% of which belong to banks.<sup>12</sup> The combination of the fact that this type of landlord reacts more slowly to the property being occupied or does not react at all, with the perception that using a bank's property is somehow more acceptable than using a private person's second home, leads to the idea that the financial sector is almost as much to blame for the people's housing needs and for the problems generated by squatters as the occupier's actions *per se*.

But is this so in the first place? Or would this line of thought amount to admitting that robbing from the rich – perhaps to give to the poor – is not really that bad? And what about the squatters? Are they all vulnerable people who have been stripped of their homes by the banking sector? Or are they all ruthless criminals? Reality shows that neither of the above is true.

### 3. The different squatter profiles

When referring to squatters throughout this paper the aim is to include both the different squatter movements (known as “movimiento okupa” in Spain)<sup>13</sup> and all situations where occupancy of another person's dwelling or property takes place without a title. From textbook paradigms of acquisitive prescription to the generalisation of squatting mafias, Spain has them all. A few examples, taken mostly from Catalonia, may contribute to support this statement.

Since June 2012, a Legal Clinic on Housing and Residential Mediation offers free legal information to the general public and to housing authorities and non-profit organisations at the Law School of the University of Barcelona.<sup>14</sup> The Clinic was born during the aftermath of the financial crisis, so naturally it specialised in mortgages and rent contracts. However, queries on other issues are also welcome, as long as someone's home is involved. Last year

<sup>11</sup> INSTITUT CERDÀ, *La ocupación ilegal: realidad social, urbana y económica...un problema que necesita solución*, Barcelona-Madrid, 4 May 2017, available at: <http://www.icerda.org/media/files/Publicacions/Presentaci%C3%B3%20Ocupaci%C3%B3%202017.05.02.pdf> (12.09.2018)

<sup>12</sup> EXPANSIÓN (NICOLÁS M. SARRIÉS), “Al menos 70.000 pisos de la banca están ocupados de forma ilegal”, 16 April 2017, available at: <http://www.expansion.com/empresas/banca/2017/04/16/58f3af7f268e3ebc4f8b459b.html> (9.09.2018).

<sup>13</sup> Among the vast literature on the topic, see HANS PRUIJT, “The Logic of Urban Squatting”, *International Journal of Urban and Regional Research*, Vol. 37, No. 1, 2013, pp. 19-45.

<sup>14</sup> More information at: [www.clinhab.com](http://www.clinhab.com) (12.09.2018).

a mother and son were seeking advice on their situation. They had been living in an apartment in the historic centre of Barcelona for 40 years. Originally they rented the flat via an estate agent. They did not know the owner of the property; they had only seen his name on the contract. Some eight years later, the estate agent died and nobody took on the business. The mother and son found out that the owner had also died, leaving no close relatives. They were at a loss as to how to pay the rent. So they stopped paying. When they came to the Clinic they had been living in the apartment for some 30 years without a title. During this time, they paid the rates and the community expenses, and the mother had been the president of the condominium on various occasions, i.e. at some point they changed the way in which they were possessing and begun to act as owners of the property in an open, peaceful and uninterrupted manner. Since it appeared that this new possession had lasted for more than 20 years and that transitional provisions were in their favour, it was a clear case of acquisitive prescription, which in Catalonia requires neither title nor good faith.<sup>15</sup> Their problem was that the building needed refurbishing and they were not sure whether they could afford both the procedure to register the property in their names (which would entail litigating against the registered owner and his estate) and cover the refurbishment expenses. On the other side of the equation, they had just learnt that they owned an apartment in the very centre of one of the two most expensive cities in Spain.<sup>16</sup>

Another typical text-book case is that of a co-owner who, after the demise of the other, possesses the property as if it belonged to him or her only. Although the Spanish Supreme Court can be reluctant to accept this kind of possession as qualifying towards acquisitive prescription, in Catalonia case law and administrative land registration decisions are more favourable to the consolidation of ownership in the sole possessor.<sup>17</sup>

The abovementioned cases are timeless. They could have taken place under Justinian. But other squatting initiatives are more dependent on the political, social and economic context.

In the 1960s Spain was under the tight grip of Franco's dictatorship. Social, environmental and political squatting was simply not possible. Over a decade after democracy was re-established (the Spanish Constitution dates from 1978) things started to change and different groups began to emulate foreign experiences. Last year, in the already mentioned Hospitalet de Llobregat municipality, 25 years of 'okupa resistance' were being remembered. One emblematic case was that of an 18th century cattle farm – formally under the care of the municipality, but in fact abandoned –, which was used as a social centre and an arts and

<sup>15</sup> Book V of the Catalan Civil Code came into force in January 2007. The derogated legislation provided for acquisitive prescription to take place once 30 years of public, peaceful and uninterrupted possession had elapsed. The new legislation requires 20 years only. Unlike under the Spanish Civil Code, in Catalonia there is only one type of *usufructo*, which requires neither a just title nor good faith. In the case described, the mother and son were not in good faith from a legal point of view, since they knew that they had no title to use the property (even their rent contract had expired years before).

<sup>16</sup> Acquisitive prescription operates *ex lege*, regardless of registration.

<sup>17</sup> See the Catalan Supreme Court Judgments of 23 May 1995 (RJ 1996\6255) and 19 May 2005 (ECLI:ES:TSJCAT:2005:6454) and the Resolution of the Catalan General Directorate of Law and Legal Entities 12 June 2014 (JUS/1388/2014, DOGC No. 6648, 20 June 2014; comment by MIRIAM ANDERSON, "Recursos gubernatius. Comentaris a les resolucions de la Direcció General de Dret i Entitats Jurídiques", *InDret*, Vol. 4, 2014, pp. 20 ff., available at: <http://www.indret.com/pdf/1087.pdf> ; 10.09.2018). For a more restrictive approach towards accepting acquisitive prescription among co-owners, see the Spanish Supreme Court Judgment of 5 November 2012 (ECLI:ES:TS:2012:7376).

crafts space, until the squatters were evicted. This was 1998 and the first time in Spain that a group of squatters organised an active non-violent resistance in the face of law enforcement bodies. The building was knocked down and in its place there is now a supermarket.<sup>18</sup> In the same line, a 19th century building known as 'Can Vies' (because of its vicinity to the central Barcelona Sants station and the rail tracks – 'vies' in Catalan) had been occupied since 1997 by youngsters that turned it into a social and cultural centre. The metropolitan transport authority owned the building and planned to demolish it. The goal was to turn the area into an open space, since town planning prevents building on it. The attempts at eviction ended up with four days of riots in 2014.<sup>19</sup> The Barcelona council eventually stayed the eviction and the building is still used as a self-organised social and cultural centre, and partially for housing.<sup>20</sup> Another example in Barcelona is La Nova Rimaia, a block of high-standing flats built in the 1990s that have never been occupied by anyone but squatters. In June 2017, the last group of squatters (who lived there, ran an alternative nursery and allowed the common spaces to serve as the social and cultural centres for various associations) was evicted. This group stems from the student protests against the EU Bolonia higher-education system. The building belongs to a company and it appears that its main shareholder also owns three more empty buildings in Barcelona. This, combined with the fact that perhaps some of the dwellers were at risk of social exclusion, could have led to the eviction being stayed until the council could provide alternative accommodation if a 2016 Catalan law had been applicable<sup>21</sup>. The European Court of Human Rights provisionally stopped the eviction, but in the end it went ahead.<sup>22</sup> Mostly this kind of squat is well accepted by the community. Up until the 2008 crisis, this had been the most widespread type of squatting.

It is safe to say that, although the Spanish mortgage system is by no means a disaster – it is backed by decades of functioning reasonably well, especially when loans were granted for shorter periods – it did not respond well to the crisis. The mortgage enforcement procedure is very creditor-biased, as would become a system designed in the mid-19th century to attract investors by means of guaranteeing their loans with strong security rights over land. However, the crisis had devastating effects on domestic economies, crippling families for life, mainly due to the loss of the family home and the outstanding debt remaining. As already mentioned, the figures, especially for the first years of the crisis, do not distinguish depending on the type of asset (plot, building, family dwelling, second home, business premises, etc.) that were being foreclosed upon, but if one goes back to the beginning of the crisis, it is estimated that since 2007 around 700,000 properties were lost by their owners to

<sup>18</sup> EL PERIÓDICO (NANDO CRUZ), "Hospitalet: 25 años de resistencia okupa", 29 September 2017, available at: <https://www.elperiodico.com/es/mas-periodico/20170701/hospitalet-25-anos-resistencia-okupa-6137808> (10.9.2018).

<sup>19</sup> THE GUARDIAN, "Thirty arrested as rioting continues at Can Vies building in Barcelona", 1 June 2014, available at: <https://www.theguardian.com/world/2014/may/29/can-vies-barcelona-rioting-thirty-arrested> (1.05.2018).

<sup>20</sup> One can see the activities they organize on their website: <https://canvies.barrisants.org/> (1.05.2018).

<sup>21</sup> Law 4/2016, 23 December, which was challenged by the Spanish Government before the Constitutional Court and therefore suspended until the Court decides

<sup>22</sup> EL PERIÓDICO (GUILLEM SÁNCHEZ), "Los Mossos desalojan el bloque de la Nova Rimaia en Barcelona", 14 June 2017, available at: <https://www.elperiodico.com/es/barcelona/20170614/mossos-desalojan-bloque-nova-rimaia-barcelona-6104138> (12.9.2018).

the mortgagee.<sup>23</sup> This has been criticised by European institutions,<sup>24</sup> but both the debt conditions set by the EU and the response by means of the Mortgage Credit Directive do not contribute to improve the situation.<sup>25</sup> By contrast, the intervention of the European Court of Justice has had an impact on the Spanish legislation in this respect, albeit mainly restricted to issues surrounding unfair terms.<sup>26</sup> However, the Spanish legislature is planning on finding a way around these restrictions when finally transposing Directive 2014/17/EU.<sup>27</sup>

This particular panorama has led to another form of organised occupancy of buildings, mainly those belonging to banks. Such was the case of a new build in Salt, a rather poor city near the well-off provincial capital of Girona. The developer went bankrupt and the bank foreclosed on the building. Since no-one bought the building at auction, the bank acquired it and at a later stage transferred it to the already mentioned Sareb. In March 2013, 14 families entered the building and settled there. They were backed by the PAH, the Platform of Victims of Mortgages ('Plataforma de Afectados por las Hipotecas'), the leader of which was the current mayor of Barcelona, Ada Colau.<sup>28</sup> A judge ordered those families to be

<sup>23</sup> See above footnote 3.

<sup>24</sup> E.g. EP Resolution of 8 October 2015 on mortgage legislation and risky financial instruments in Spain (based on petitions received) (2015/2740(RSP)), text adopted P8\_TA(2015)0347, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0347+0+DOC+XML+V0//ES> (1.06.2018).

<sup>25</sup> On this topic, MIRIAM ANDERSON and HÉCTOR SIMÓN MORENO, "The Spanish Crisis and the Mortgage Credit Directive: Few Changes in Sight", in MIRIAM ANDERSON and Esther ARROYO AMAYUELAS, *The Impact of the Mortgage Credit Directive in Europe. Contrasting Views from Member States*, Groningen, Europa Law Publishing, 2017, pp. 50-111. An earlier draft version is available online: HÉCTOR SIMÓN MORENO and MIRIAM ANDERSON, "The Impact of the Mortgage Credit Directive in Spain", Working Papers - Jean Monnet Chair on European Private Law, Barcelona, 2016, at: <http://hdl.handle.net/2445/106294> (12.9.2018).

<sup>26</sup> See among many others, the ECJ Judgment of 14 March 2013, in *Case C-415/11, Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)* (EU:C:2013:164), which led to an amendment of the Spanish mortgage enforcement procedure so that the mortgagor could allege the existence of unfair terms as a defence, or ECJ Judgment of 21 December 2016, in *Joined Cases C-154/15, C-307/15 and C-308/15, Francisco Gutiérrez Naranjo v Cajasur Banco SAU (C-154/15), Ana María Palacios Martínez v Banco Bilbao Vizcaya Argentaria SA (BBVA) (C-307/15), Banco Popular Español, SA v Emilio Irlés López and Teresa Torres Andreu (C-308/15)*, (EU:C:2016:980), whereby the Spanish Supreme Court was corrected once again, this time with regard to interest rate floors and the need to reimburse the consumer with all the amounts unduly paid in the past.

If the General Advocate's Opinion is followed with regard to case C-92/16, *Bankia, S.A. v Henry-Rodolfo Rengifo Jiménez and Sheyla-Jeanneth Felix Caiza*, on acceleration terms, the impact on the Spanish mortgage system may be even greater. The conclusions are available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=205653&pageIndex=0&doclang=ES&mode=req&dir=&occ=first&part=1&cid=697490> (14.09.2018). See also the Opinion on C-70/17, *Abanca Corporación Bancaria, S.A. v Alberto García Salamanca Santos and C-179/17, Bankia, S.A., v Alfonso Antonio Lau Mendoza, Verónica Yuliana Rodríguez Ramírez*, available at: <http://curia.europa.eu/juris/document/document.jsf?text=vencimiento%2Banticipado&docid=205657&pageIndex=0&doclang=ES&mode=req&dir=&occ=first&part=1&cid=548461#ctx1> (20.09.2018).

<sup>27</sup> Spain is currently the only member state of the EU to not have communicated transposition of the Mortgage Credit Directive, which should have taken place before the end of March 2016, according to the European Commission's monitoring ([https://ec.europa.eu/info/publications/mortgage-credit-directive-transposition-status\\_en](https://ec.europa.eu/info/publications/mortgage-credit-directive-transposition-status_en); 7.09.2018). Since November 2017 a bill is following its parliamentary proceedings. It is available at: [http://www.congreso.es/public\\_oficiales/L12/CONG/BOCG/A/BOCG-12-A-12-1.PDF](http://www.congreso.es/public_oficiales/L12/CONG/BOCG/A/BOCG-12-A-12-1.PDF) (7.9.2018). In this bill, arts. 22 and 23 aim to impede litigation on the unfairness of terms concerning default interest rates and acceleration by setting mandatory rules, which cannot be altered even if this would benefit the consumer. For instance, the bill establishes that the default interest rate is three times the legal interest rate, which at the moment would amount to 9%; according to the current wording of the bill, the parties would not be able to agree on a lower rate.

<sup>28</sup> This Platform has been active in trying to stop evictions, protesting at bank branches and promoting legal changes. Its main vindication was initially to impose on the banks the cancellation of the debt in exchange for the transfer of the mortgaged property, so that debtors would no longer lose their homes and be left with outstanding debt as well; i.e. *datio in solutum*, deeds-in-lieu of payment or non-full recourse were their goal. However, this was a somewhat pointless vindication from the point of view of the need for housing: if one loses one's home, one will not be able to pay for alternative accommodation either. Plus the PAH quite often discouraged any kind of dialogue with the banks, viewed as the enemy and the ultimate generators of the crisis, so that quite often people ended up having wasted precious time to negotiate better conditions or some

evicted, but a request for interim measures from the European Court of Human Rights allowed for more time, since the Court in Strasburg demanded information on the housing solutions in place for families with minor children.<sup>29</sup> However, once this information was provided, the police entered the building, evicted the people living there (nine families – those without minor children – were left with nowhere else to go) and changed the locks. Four years later, with a member of the CUP party – a Catalan anti-system and pro-independence formation – in charge of the municipal Housing and Social Services, the opposition is blaming the council for turning Salt into an ‘okupa-friendly’ city, since they hold that nothing much is being done to prevent empty homes from being squatted.<sup>30</sup> Other examples of this kind of squatting include four buildings in Madrid, which have been occupied for about six years under the auspices of the PAH: they have Internet access, but no running water. This is currently their battle; the council seems to be willing to help, but the procedure is slow. The neighbours are against what they perceive would amount to legalising the squats, but they admit that these people do not generate conflicts and they are appalled at the thought that just around the corner families are living without running water.<sup>31</sup>

Not only cities, but also villages and housing estates in small municipalities are affected by this situation. In some instances, it is the council itself that surveys empty or underused properties in order to coach their owners to agree on transferring the management of dwellings to the housing authorities so that they can be let to vulnerable people. In other cases the police is called out repeatedly by the neighbours in order to prevent new occupations promptly, by forcing the squatters to leave before it is understood that they have made the property their home and the proceeding to evict them becomes judicialised and therefore more complex (see below 4). Generally people who enter another’s property to cover basic housing needs are not perceived as a threat (of course, as long as it is not one’s second home being taken over!), although they may generate problems due to the mere fact of needing to access power and water illegally or by not being in a position to cover community expenses. But sometimes neighbourly relations flow so smoothly that the owner of the house next door will even agree to share the utility supplies and split the cost.

However, most people with a family in Spain managed to somehow pull through the crisis thanks to their relatives. It was usual for elderly parents, living on their often meagre pensions, to take in their children and grandchildren and stretch the little money available to cater for all. Hence why most would not even know where to start in order to forcefully enter someone else’s property. And here is where the mafias come into play.

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kind of moratorium, while their debt was growing by the minute. However, the PAH played a relevant role in bringing awareness of the problems related to housing in Spain, involving international institutions and, perhaps more importantly, creating a network for people undergoing dramatic times, who thanks to their meetings and activities managed to realise that they were not alone. Their website is: <http://afectadosporlahipoteca.com/> (13.9.2018).

<sup>29</sup> *Ceesay Ceesay and Others v. Spain*, ECtHR Application no. 62688/13, 13 October 2013.

<sup>30</sup> DIARI DE GIRONA (TAPI CARRERAS), “Salt, una vila «okupes friendly»”, 2 March 2017, available at: <http://www.diaridegirona.cat/girona/2017/03/01/salt-vila-okupes-friendly/831962.html> (12.9.2018).

<sup>31</sup> EL PAÍS (FRAN SERRATO), “Con Internet pero sin agua corriente”, 17 February 2018, available at: [https://elpais.com/ccaa/2018/02/17/madrid/1518867696\\_966761.html](https://elpais.com/ccaa/2018/02/17/madrid/1518867696_966761.html) (12.9.2018).

Often squatters are classified as: political, ecological, social, human needs and settlement squatters. But for South Americans, and now also for Spaniards, it is quite obvious that a new category has to be added: professional criminal squatters.<sup>32</sup>

At this point we are not referring to whether squatting is a criminal offence or not (this will be dealt with below 4), but to organised groups who specialise in breaking into properties (usually properties that are left vacant for long periods of time, as occurs with those belonging to banks) and then sell them or, more usually, rent them to people who are desperate to find a home and cannot afford the market prices or access the market for other reasons (e.g., perhaps they cannot prove what their expected income is to the landlord's satisfaction), but will pay a (cheaper) year's rent in advance or even 'buy' for an impossibly low price. In the most usual scenario, the person needing shelter will pay up front an amount of €1,500 to 1,800 per apartment in Barcelona. Under the legislation in force up until now and due to the slow pace of the courts, this would 'guarantee' the use of the home for almost two years. The property is handed to the tenant with the services running and thus 'included' in the price. If one browses the classified adverts websites, such as 'Mil Anuncios',<sup>33</sup> it turns out that the existence of these mafias is so well known that people who cannot find another path to access a home actually look for squatted (or should this rather be simply 'broken into') properties to rent. The 'landlords' even give the future 'tenants' instructions as to how to behave once they are in the apartment: whether they need to register at the council, what to do and say if the police appears, etc. As is to be expected, sometimes discounts are offered in exchange for sex.<sup>34</sup>

If these organised groups are even more cunning, in cities like Barcelona they will rent the apartments to tourists for high fees, but usually their aim is to move out of the picture as quickly as possible.

On the other hand, the amount of empty homes and the frequency with which occupations take place seems to grant protection to the usual criminals, who enter homes by their own means (i.e. drug dealers and producers, procurers, people running illegal immigration schemes, etc.). On a bigger scale, the so-called 'narco-apartments' are altering the way of life and the security in emblematic areas in the city centres.<sup>35</sup>

The different scenarios mentioned above should not lead to believe that only properties owned by banks or other legal persons are being occupied. Private owners are also affected, although as already stated it is estimated that only 20% of the squatted properties in Spain are privately owned. The press reports cases such as that of a man who moved out of

<sup>32</sup> PRUIJT, p. 22, for instance, does not refer to this kind of squatting.

<sup>33</sup> Literally, "A Thousand Adverts": <https://www.milanuncios.es/> (12.09.2018)

<sup>34</sup> ARA (JORDI MUMBRÚ), "Busco pis okupa urgent!", 30 April 2018, available at: [https://www.ara.cat/societat/Busco-pis-okupa-urgent\\_0\\_2006199372.html](https://www.ara.cat/societat/Busco-pis-okupa-urgent_0_2006199372.html) (12.09.2018).

<sup>35</sup> EL PERIÓDICO (BEATRIZ PÉREZ), "El Raval, gran circo de la ocupación", 14 February 2018, available at: <https://www.elperiodico.com/es/barcelona/20180214/ocupados-todos-los-pisos-de-una-finca-del-ayuntamiento-en-el-raval-6625033> (13.09.2018), where chance had it that while the neighbours had organised a 'narco tour' (i.e. a guided tour of the heroin distribution apartments in the area, aimed at attracting attention), the police arrived and tried to evict squatters from a building owned by the Barcelona council; it had been refurbished and the apartments were about to be let to social tenants, but the police could not vacate the building without a court order, since the squatters had already made their home there.

Barcelona a few years ago, but used his flat there when he went for medical check-ups. The last time he went, he found some people living there and he knows he needs to undertake a long court case in order to recover it.<sup>36</sup>

In light of this panorama, which also includes owners reversing to 'squatting' their own properties, as will be shown below (4), it is unsurprising that companies providing 'anti-squatter' doors<sup>37</sup> as well as those offering 'legal' and fast recovery of the property are thriving.<sup>38</sup> The underlying feeling is that the law does not protect private property enough and that something needs to be done about it.

#### 4. The procedures in place to recover possession

Before the recent reform that will be discussed below (5), the different paths available to recover possession included both criminal remedies and civil law remedies. Neither of these procedures, which are still in force, varies depending on whether the landlord is a natural or legal person; the squatter's situation is not taken into account either.

Since 1995, art. 245 of the Spanish Criminal Code considers squatting a felony, which is called usurpation. If entry into someone else's dwelling took place with violence or intimidation, as well as the sentence for these crimes, the offender may be sentenced to a minimum of one year and a maximum of two years in prison. This will rarely entail actual imprisonment, at least for people without a criminal record. If the squatted property was not someone else's home, the penalty will be a fine (lasting between three and six months, for the amounts laid down in the Criminal Code).<sup>39</sup> Squatting, even by the mafias described above (3), usually affects empty properties, so it will hardly ever lead by itself to imprisonment.<sup>40</sup> The fine is not much of a deterrent, but the fear of having a criminal record may be. However, the problem is that this is not a fast procedure. According to the body responsible for the Judiciary, in 2016 a case of this nature would last 10.8 months, or 14.7 months if the first instance decision was appealed.<sup>41</sup> Based on reported cases, some hold

<sup>36</sup> LA VANGUARDIA (DOMINGO MARCHENA), "Nos han robado la casa", 23 April 2018, available at: <https://www.lavanguardia.com/local/barcelona/20180423/442869793026/ocupas-piso-cerradura-cambiada-policia-jueces.html> (7.09.2018).

<sup>37</sup> E.g. the company Iron Doors, at: [https://puertasantiokupa.net/?gclid=CjwKCAjwoKDXBRAAEiwA4xnqv6lok-Z\\_zMxR\\_jhZ5lxaqRCC9yunnGCrS\\_XT30gzsR1JgJxhP2mKxoCQsEQAvD\\_BwE](https://puertasantiokupa.net/?gclid=CjwKCAjwoKDXBRAAEiwA4xnqv6lok-Z_zMxR_jhZ5lxaqRCC9yunnGCrS_XT30gzsR1JgJxhP2mKxoCQsEQAvD_BwE) (13.09.2018).

<sup>38</sup> See for instance Desokkupa, at: <https://www.desokupa.com/> (13.09.2018), whose boss is an ex-boxer, ex-bouncer and ex-debt collector. They charge around €2,000 and promise that the property will be vacated within 72 hours.

<sup>39</sup> One of the proposed Bills on this issue, promoted by the Ciudadanos party, did foresee imprisonment for these cases. The proposal is available at: [http://www.congreso.es/portal/page/portal/Congreso/Congreso/Iniciativas/PropLey?piref73\\_1335476\\_73\\_1335473\\_1335473.next\\_page=/wc/servidorCGI&CMD=VERLST&BASE=IW12&PIECE=IWA2&FMT=INITXD1S.fmt&FORM1=INITXLBA.fmt&DOCS=8-8&QUERY=%28proposicion+adj2+ley%29.tipo.+no+%40fcie+no+concluido.fase.](http://www.congreso.es/portal/page/portal/Congreso/Congreso/Iniciativas/PropLey?piref73_1335476_73_1335473_1335473.next_page=/wc/servidorCGI&CMD=VERLST&BASE=IW12&PIECE=IWA2&FMT=INITXD1S.fmt&FORM1=INITXLBA.fmt&DOCS=8-8&QUERY=%28proposicion+adj2+ley%29.tipo.+no+%40fcie+no+concluido.fase.) (10.09.2018).

<sup>40</sup> For case law considering that no criminal offence was committed, due to the fact that the property was empty, see ALMUDENA ÁLVAREZ TEJERO, La usurpación delito leve o infracción administrativa 'A vueltas con el art.245.2 del Código Penal', *ElDerecho.com*, 17 July 2016, available at: <https://elderecho.com/la-usurpacion-delito-leve-o-infraccion-administrativa-a-vueltas-con-el-art-245-2-del-codigo-penal> (10.09.2018).

<sup>41</sup> CONSEJO GENERAL DEL PODER JUDICIAL, *Justicia dato a dato - Año 2016*, Madrid, 2017, available at: <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Infornes/Justicia-Dato-a-Dato/>

that the duration of the proceedings would amount to 17 months.<sup>42</sup> Other studies, based on interviews to layers, suggest that it can take even longer to obtain a final judgment.<sup>43</sup> Moreover, this judgment will still need to be enforced in order to recover possession. Immediate recovery by means of a precautionary measure would require proof of the *periculum in mora*, i.e. irreversible damage due to the duration of the proceedings, which will not be easy to provide, since in the usual scenario enforcement will still be possible at the end. Precautionary measures such as the one described, even in criminal cases, are governed by arts. 721 *et seq.* of the Civil Procedure Law. Needless to say, a person who has rented an apartment from a person or organisation that broke into it will not be found guilty of this offence, although the judgment may be enforceable against him or her in terms of recovery of possession.<sup>44</sup>

As for civil procedure remedies, different courses of action are available. Obviously, litigation on the full merits of the case, probably using *rei vindicatio*, is possible but not the fastest option.

Spanish private law protects possession as such and grants the possessor who has been deprived of the asset an action to regain material control of it within one year, by means of a summary proceeding where the merits of the respective titles will not be discussed.<sup>45</sup> Therefore, this sort of injunction would also be available to the squatter if the title holder regained possession by applying self-help (e.g. by forcefully entering into the property and changing the lock), although litigation by a squatter against the real owner is of course rare to see.<sup>46</sup>

In the normal scenario where the owner sues the squatter, difficulties may arise for the former to prove that he or she was in possession of the property before it was squatted (for instance, because it was inherited or because it had not been under the owner's material control for over one year).

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(12.09.2018). Naturally it will be rare for a professional criminal to appeal, but it is usual for people squatting due to deprivation, or for social or ideological purposes to do so, if only in order to gain time.

<sup>42</sup> VICENTE PÉREZ DAUDÍ and JESÚS SÁNCHEZ GARCÍA, "La protección del propietario frente a actos de ocupación ilegal de un bien inmueble", in *Diario La Ley*, No. 9008, 26 June 2017, section II.

<sup>43</sup> A study carried out by CÀTEDRA UAB-CICAC, OBSERVATORI SOCIAL I ECONÒMIC DE LA JUSTÍCIA, based on interviews with practitioners, suggests that on average it takes over 1,000 days to obtain a final judgment at the court of appeal; see *Informe sobre l'estat de l'administració de justícia a Catalunya 2016*, Barcelona, available at: <http://observatorijusticia.uab.cat/images/Informe2016cat.pdf> (12.09.2018).

<sup>44</sup> For a criticism to the way the courts have been applying art. 245 of the Criminal Code, ALVARO MANGAS CAMPOS, "La interpretación del art. 245.2 del Código Penal y el activismo judicial", *Diario La Ley*, No. 8672, 28 December 2015.

<sup>45</sup> Arts. 250.1 and 437 *et seq.* of the Civil Procedure Law 1/2000, 7 January, and corresponding articles in the Spanish Civil Code and in the legislation of different Autonomous Communities.

<sup>46</sup> But not impossible; see LA RAZÓN, "Sus okupas las denuncian por usurpación", 21 November 2016, available at: <https://www.larazon.es/local/madrid/sus-okupas-las-denuncian-por-usurpacion-JM13977824> (13.09.2018) or LIBRE MERCADO, "Desalojados los dueños de una casa tras la denuncia de sus okupas", 15 May 2017, available at: <https://www.libremercado.com/2017-05-15/desalojados-los-duenos-de-una-casa-tras-la-denuncia-de-sus-okupas-1276599014/> (12.9.2018).

Another path available to the owner is to take advantage of his or her registered title against the squatter, which overcomes the problem of proving previous possession and the defences available to the squatter are almost non-existent.<sup>47</sup>

Both procedures are conducted using the quickest of the two main civil proceedings provided for by the Civil Procedure Law, but its duration is still excessive. For a first instance judgment, the average time is 6.1 months according to the Judiciary; if the case were to reach the Supreme Court (i.e. after a first instance and an appeal judgment), the Judiciary estimates that it would take 28.6 months.<sup>48</sup> Moreover, the final judgment will still have to be enforced. There is no data in this respect, but a few factors should be taken into consideration: (1) If the property is the squatter's home, he or she will be given 30 days to leave (art. 704 Civil Procedure Law); (2) If third parties are living in the property, they will be given ten days to justify their title, a hearing will be set within another ten days (art. 675 Civil Procedure Law); and (3) by the time the decision on this matter has been made, it is estimated that 162 days will have gone by on average.<sup>49</sup> If the person occupying the property has made his or her home there, precautionary recovery of possession will most likely be out of the question, since it will be the squatter, and not the owner, who will claim that abandoning the property will cause irreversible damage.<sup>50</sup>

On the other hand, various judicial districts, in view of the European Court of Human Rights' take on this matter, have reached agreements with the local social services and housing departments so that, where people in a vulnerable situation are concerned, the actual eviction will not take place until the administrative authority has found alternative accommodation for the squatter and his or her family.

In light of the time and cost of the procedures described above, it is not surprising that both natural and legal persons consider other options in order to recover possession. Some squatters can be bribed to leave (and in fact some squat precisely with the bribery money in mind) and other mechanisms of self-help may be considered, which of course leads to dangerous courses of action.

The slow pace of the courts is not exclusive to these procedures; it affects all cases. A landlord seeking to recover possession after the termination of a rent contract will be in the same position. The press has recently reported on two instances where the owners had rented their apartments and the tenants were subletting them to tourists at very high prices per night. Leaving aside the gentrification issue that arises from the widespread use of homes as tourist apartments in Barcelona and in other cities – although it is forbidden without a license –, the fact is that these owners could have rescinded the rent contract and recovered possession as a result, but again the court proceedings would have lasted a long

<sup>47</sup> Art. 41 of *Ley Hipotecaria* (Law on Mortgages and Land Registration) and arts. 250.1 and 437 *et seq.* of the Civil Procedure Law 1/2000, 7 January.

<sup>48</sup> See above footnote 41.

<sup>49</sup> PEREZ DAUDI AND SANCHEZ GARCIA, section II.

<sup>50</sup> On the restrictive approach taken by the courts in this respect, and a criticism, JULIO J. NAVEIRA MANTEIGA, "Recuperación de la posesión de bien inmueble ante una ocupación ilegal: problemática actual", *Abogacía española*, 28 September 2017, available at: <https://www.abogacia.es/2017/09/28/recuperacion-de-la-posesion-de-bien-inmueble-ante-una-ocupacion-ilegal-problematica-actual/> (13.09.2018)

time and they were responsible towards the other neighbours in the condominium for the damages, including nuisance, generated from their property. Therefore they both decided to rent their own apartment for one night on Airbnb - the portal generally used for illegal tourist lets, since until recently it has shown no interest in checking who advertises on it - and, once in, change the locks and let the occupier decide whether to sue them or not.<sup>51</sup> These are clear cases of self-help, which Spanish law forbids, but can one blame the owners?

On the other hand, public authorities providing social housing also have problems evicting their own former tenants. The already mentioned Legal Clinic on Housing dealt with a case concerning a local council in the Barcelona province. It ran a programme providing one-year rent contracts to people who urgently needed shelter. The contract was linked to an agreement stating other obligations that the tenant should comply with, such as actively looking for a job, attending rehabilitation programmes or taking proper care of their children, for instance. A number of tenants did not comply with these obligations and neither would they leave the properties after the year had elapsed. The local housing authority had a list of people who desperately needed a home and who were waiting for the former tenants to leave. Bearing in mind the length of the procedures in place to evict them, the housing authority wanted to know whether there was any other course of action available. As a preliminary consideration, it should be noted that social housing programmes such as these require a proper legal framework, which is not currently in place in Spain. All rent contracts for housing purposes are subject to a private law 1994 Act.<sup>52</sup> As amended in 2013,<sup>53</sup> the tenant has the right to extend the contract to up to three years under the initial terms. It is clear that many social housing programmes do not adapt well to this set of rules: there are good reasons to provide housing for shorter terms or under different conditions. Moreover, in this particular case, the apartments belonged to a bank, who had previously rented them to the housing authority for an almost symbolic rent. This trilateral legal relationship is not properly regulated either. However this may be, the fact is that the Catalan administration can revert, in cases like the one here described, to administrative eviction, which is decided by the administration and merely authorised by the judge, at the end of the procedure.<sup>54</sup> Under the Spanish Public Property Law 33/2003 (art. 41), the same procedure may be used when seeking to recover possession of assets belonging to the public administration. And art. 33 of the equivalent Catalan Legislative Decree 1/2002 also makes administrative eviction available during the first year following loss of possession. Similar provisions exist for the other regions in Spain.

<sup>51</sup> 20MINUTOS, "Una mujer realquila su propio piso para recuperarlo y Airbnb retira el anuncio", 22 June 2017, available at: <https://www.20minutos.es/noticia/3071777/0/airbnb-retira-anuncio-piso-realquilado-como-turistico-barceloneta/#xtor=AD-15&xts=467263> (10.09.2018).

<sup>52</sup> Law 29/1994, 24 November, *de arrendamientos urbanos*.

<sup>53</sup> Law 4/2013, 4 June, *de medidas de flexibilización y fomento del mercado del alquiler de viviendas*.

<sup>54</sup> Catalan Law 4/2016, Final Provision 4. This is a law designed to protect the right to housing, by imposing the obligation to offer affordable rental on legal persons and on whoever acquires properties from debtors due to the impossibility to pay the mortgage instalments, even before initiating mortgage enforcement or rent eviction proceedings. The provisions governing this 'social rent' are not in force at the moment, since the Spanish Government challenged the constitutionality thereof because it considered it infringes the right to private property. However, Final Provision 4 was not challenged and therefore it still applies to the cases it covers, i.e. when eviction from dwellings managed by the public administration is necessary to provide social housing.

This would appear to be a quicker track towards recovering possession. Nevertheless, there have been instances when the case has reached the Supreme Court due to human rights considerations. Thus, in Madrid, the housing authority was aware of the fact that a woman had been living in one of its apartments since 2007; in 2011, they carried out the administrative eviction proceedings; notice was served to another woman, who said she was the original occupier's sister-in-law and that she lived in that apartment on a minimum state aid (€426/month) with three minor children. In spite of this, the first instance judge authorised the eviction, holding that the proceedings had been carried out properly and that it was not the judge's place to take social concerns into account. This authorisation was appealed and it reached the Spanish Supreme Court, which decided, on 23 November 2017, that the judge should have taken into consideration the fact that there were minors involved. The Supreme Court did not say that the eviction should not have been allowed, only that the situation of the children ought to have been analysed before authorizing it.<sup>55</sup> So, six years later, the Madrid administration needed to apply for the judicial authorisation again. Perhaps the children's' eighteenth birthdays had come and gone by then.

As one would expect, the timings described throughout this section can be longer due to applications for legal aid, which stay proceedings until a decision is made in this respect,<sup>56</sup> and also because of the eternal problem of properly suing squatters that may prove difficult to identify<sup>57</sup>.

## 5. The 2018 reform

In light of the scenario described above, different proposals directed to expedite evictions were submitted to the Spanish Parliament. A bill prepared by the Parliamentary Mixt Group was submitted in November 2017 and, following a number of amendments, on 11 June 2018, Law 5/2018 was enacted<sup>58</sup>. It came into force 20 days later.

The explanatory notes repetitively justify the reform because of the need to adequately protect natural persons' private property and to allow public administrations to evict squatters and let the properties to social tenants. The wording shows that those drafting it were worried about squatters that have been described above as mafias, which take possession of properties to let them to desperate people or to extort the owner, i.e. with the

<sup>55</sup> Spanish Supreme Court Judgment of 23 November 2017 (ECLI: ES:TS:2017:4211).

<sup>56</sup> Law 1/1996, 10 January, on free legal assistance.

<sup>57</sup> For an explanation in English of the situation prior to Law 5/2018, MIRIAM ANDERSON, "Case study 2- Spain", in SONIA MARTÍN SANTISTEBAN AND PETER SPARKES, *Protection of Immovables in European Legal Systems*, Cambridge, Cambridge University Press, 2015, pp. 133-134. Law 5/2018 (discussed in the next section) modified arts. 437 and 441 of the Civil Procedure Law in order to expressly state that notice of the proceedings to evict squatters from homes may be served with full effects to the people actually in the property at the time and to the 'unknown occupiers'.

<sup>58</sup> The bill is available at: [http://www.congreso.es/public\\_oficiales/L12/CONG/BOCG/B/BOCG-12-B-78-1.PDF#page=1](http://www.congreso.es/public_oficiales/L12/CONG/BOCG/B/BOCG-12-B-78-1.PDF#page=1) (12.09.2018). The amendments that the relevant committee proposed to incorporate are available at: [http://www.congreso.es/public\\_oficiales/L12/CONG/BOCG/B/BOCG-12-B-78-5.PDF#page=1](http://www.congreso.es/public_oficiales/L12/CONG/BOCG/B/BOCG-12-B-78-5.PDF#page=1) (12.09.2018). The definitive text is available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2018-7833> (12.09.2018).

aim of making money out of it. However, in the proposed sections no distinction is made depending on who is actually occupying the property: the expedite proceedings are designed, to a large extent, regardless of the circumstances of the particular squatter. And neither is there leniency for squatters who are not looking to make a profit out of their actions. As will be shown below, the provision of a home for evicted squatters who may need and deserve it is not something that the courts are called to get involved with; the only requirement is for them to inform the social services in case their intervention is required, but the proceedings continue whether social housing has been found or not.

Curiously, in the text originally submitted to Parliament, squatting was always referred to as *'okupación'*, with a 'k', instead of *'ocupación'*. The latter is the only one of the two words that the Spanish Royal Academy of Language accepts, whilst the former is the signature, not of organized mafias or criminals, but of all the political and social squatting movements in Spain since they began. For instance, the cattle farm squat in L'Hospitalet referred to above was promptly renamed *'La Vakería'*, instead of *'La Vaquería'* (*'vaca'* is the Spanish term for 'cow') and the letter 'k' is quickly associated with Anarchist and/or rebellious or anti-system ideologies. The text finally enacted always refers to illegal *'ocupación'*.

In the same explanatory notes, a particular phrase stands out. It would translate as follows: 'Illegal squatting, i.e. squatting that is neither consented nor tolerated [by the legitimate possessor], does not amount to a title that allows to access possession of a home and it is not protected in any manner by the constitutional right to adequate housing'.<sup>59</sup> It is certainly a radical statement. And yet, both the Spanish and the Catalan Civil Codes will grant title to a long-term possessor, regardless of his or her good or bad faith. Provided the general prerequisites of open, public and uninterrupted possession are fulfilled, acquisitive prescription will take place after 30 years under the Spanish Civil Code<sup>60</sup> or after 20 years under the Catalan Civil Code<sup>61</sup>, counting since the time when all form of violence ceased and, if applicable, any criminal offence prescribed.<sup>62</sup>

Basically, the same summary procedure available to recover possession within one year mentioned above (4) is extended to owners and to those with a right to possess the property in order to evict a squatter (as already mentioned, any squatter), but the one-year time limitation does not apply, so it can be used at any moment, and the plaintiff need not have possessed previously.

This fast-track procedure is only available to certain claimants: (a) natural persons that own the property or have another legitimate title to possess it; (b) non-profit organisations holding the right to possess; or (c) public bodies that own the property or are lawful

<sup>59</sup> In Spanish: *'La ocupación ilegal, esto es, la ocupación no consentida ni tolerada, no es título de acceso a la posesión de una vivienda ni encuentra amparo alguno en el derecho constitucional a disfrutar de una vivienda digna.'*

<sup>60</sup> Arts. 1940 to 1960 of the Spanish Civil Code. The possessor's good faith, combined with a valid title, reduces the time required to 10 years (or 20 when the lawful title holder is abroad or "overseas").

<sup>61</sup> Arts. 531.23 to 531-29 of the Catalan Civil Code. See footnote 15.

<sup>62</sup> Also in Navarre, section 357 of Law 1/1973, 1 March, provides that good faith and title are not required for acquisitive prescription as long as possession has lasted for 40 years, except when the lawful title holder has been absent for all that time.

possessors thereof. The chosen scope is in accordance with the goals explained by the legislator: (i) natural persons are to be protected because they may be in a vulnerable situation as well (whether this is the case or not does not seem to worry the lawmaker); (ii) public administrations and non-profit organisations carrying out social housing programmes must have adequate means to recover possession from squatters and thus be in a better position to provide housing to those who require it.

The wording of the new rules is not a model of clarity. It would be possible to understand that a landlord whose tenant will not leave once the rent agreement has come to an end is an 'owner' with 'the right to possess' in this context, but since the text refers to the fact that the claimant must not have consented possession by the occupier, coupled with the existence of specific eviction proceedings for landlords when a tenant does not pay the rent or the contract is terminated, which have not been modified, leads to excluding this type of claimant.

Needless to say, not all natural persons for whom this procedure is available will be in a vulnerable or difficult situation; the new provisions do not require it. The presumed damage caused by lack of possession is deemed to affect any natural person in the same way, whether this person relies on the income generated by the squatted property to complement a meagre pension, or whether the claimant owns 20 luxury apartments in Barcelona or Madrid or 20 second homes. The only requirement is that the squatted property is a home (including second homes), and not business premises or other types of properties (such as agricultural or industrial land). Once again, it is difficult to explain why the wealthy owner of multiple homes is more protected from illegal occupation than the plumber or the mechanic whose workshop has been occupied while they were on holiday.

However, the wording of the text finally enacted seems to broaden the scope to include claimants that the original bill excluded, such as the tenant who has been dispossessed or the ex-spouse who may be living in the property on the grounds of a divorce settlement, although it remains to be seen how the courts will construe the new provisions.

Together with the claim, proof of the title to possess must be submitted to the court. The plaintiff may seek immediate recovery of possession. If so, the court will give the presumed squatters 5 days to present evidence of their right to possess. If they do not, the court will order the squatters to leave the property – as long as the plaintiff's title is sufficient. This decision cannot be appealed.

At first sight, this preliminary recovery of possession appears to be very quick. Nevertheless, it has been suggested that since the court will often feel that rulings on title cannot be made based merely on appearances and evidence has to be taken into account properly, recovery of possession may not be as quick as anticipated.<sup>63</sup> In any event, because this is not an interim measure (arts. 721 *et seq.* Civil Procedure Law; see art. 728), but part of the new

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<sup>63</sup> SERGIO MARTÍNEZ COMPÁN, "Reforma de la LEC1/2000, mediante la ley 5/2018 sobre el fenómeno de ocupación il·legal", *Lealtadis Abogados*, 9 July 2018, available at: <https://www.lealtadis.es/reforma-de-la-lec-1-2000-mediante-la-ley-5-2018-sobre-el-fenomeno-de-ocupacion-ilegal/> (13.09.2018).

specific squatter eviction proceedings, no deposit will be required in order to recover possession at this early stage, and it will not be necessary to prove *periculum in mora*. One may wonder whether it is correct to extend this possibility as much as the proposed text does (i.e. disregarding the need to strike a balance between squatter's needs versus the owner's situation). It is held that in cases of illegal occupation there would be an objective *periculum in mora*, which is defined as the need to bar the squatter from taking advantage of the duration of the proceedings. Experts in civil procedure may hold different views in this respect, but although preventing squatters from benefitting as a result of the slow pace of the courts may be positive for society in general, the reform leaves no space for the court to consider whether the damage to the claimant that generally justifies interim measures of such importance is present or not in a given case. Conversely, one may also wonder what the reasons for not extending this possibility of immediate recovery to other claimants, such as a landlord evicting a former tenant, could possibly be.

Having said this, it is positive to note that the reform generalises the requirement to notify the administration (and thus the social services) whenever service of a decision that states a date for eviction takes place, regardless of the type of procedure, as long as the person has agreed to this. However, this modification does not entail a stay in the proceedings until the housing authorities have found alternative accommodation; therefore, given the difficulties to provide social housing in Spain, it does not amount to real cooperation between the administration and the courts in this respect, which will probably continue to evolve on other grounds, such as local agreements.

In order to successfully oppose a final decision in favour of the claimant, the defendant must prove his or her right to possess or the claimant's lack of a right to possess. In practice, fake rent contracts (and even sales contracts) will have to be struck down by the court; as already stated, this will not be as straightforward an issue, at the preliminary stage, as the lawmaker seems to believe it to be. On the other hand, acquisitive prescription by the squatter may, in years to come, turn out to be the squatter's best defence.

Although the squatter's position may look bleak, it should be noted that the new provisions do not alter existing rules allowing the occupier to appeal the court's decision without a deposit, and, pending a final ruling, the decision will not be enforceable, which means that the claimant will not recover possession promptly, unless the court had already granted it at the abovementioned preliminary stage. Moreover, one or two additional months may be granted to occupiers if the property concerned is their home or if they show that they are in a vulnerable situation, risking social exclusion.<sup>64</sup>

All in all, as one may gather, the reform seems to be designed to make it to the headlines, but it probably falls short of attaining its goals, among other reasons because there are two factors that cannot be addressed with simple legal changes: the need to respect the right to a due process, and the slowness of the judicial system.

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<sup>64</sup> Arts. 675 and 704 Civil Procedure Law. See PÉREZ DAUDÍ and SÁNCHEZ GARCÍA, 2017, section III.

## 6. Final remarks

Illegal occupancy of properties generates a number of problems. A recent report<sup>65</sup> states that as well as stress-related issues, poor housing conditions and the risk of becoming permanently excluded from the system in terms of access to rights and services which directly affect the squatters, damages to third parties can also be detected. It is estimated that in between 40% and 60% of squatted properties the connection to utilities has been manipulated, which is dangerous in itself and entails costs for the neighbours and for all consumers. Certain types of squatting may lead to more nuisance, criminal activities flourishing, the deterioration of the surrounding areas, a negative impact on businesses and, ultimately, the exclusion of the original neighbours, which find themselves forced to leave the area. The public administration also endures costs related to securing the buildings, hiring private security services, maintaining the properties and the surroundings thereof, and costs generated by the staff involved, such as mediators or police forces; this of course makes it difficult to apply social housing programmes efficiently and detracts from the resources that could be dedicated to this. It is estimated that squatting cost Madrid €5 million in two years and Barcelona €1 million in one year. Also, properties devalue; squatting is perceived as unfair for those who are on the social-housing waiting lists, and the situation in condominiums can become difficult, due to lack of implication in the management of the building, difficulties fitting in and unpaid joint expenses, which end up having to be covered by the other inhabitants in the building.

Even the activist PAH, which not so long ago endorsed squatting as a path towards the right to housing and in some instances still encourages the occupation of empty buildings, now seems to not recommend this course of action. Whatever the case may be, this just goes to show that, as in so many other areas, housing is a sea of greys. It is difficult to point at behaviours or groups or classes of people as being 'good' or 'bad'.

Therefore it is discouraging – yet not surprising – that once again politicians seem to have decided to avoid facing the complexity of the problem and legislate taking only one view of the matter in hand.

As stated repeatedly throughout this paper, in a context where people have been severely hit by the mortgage crisis in Spain and it is believed that a human rights approach to housing issues should be undertaken prior to any kind of eviction, it is disappointing to see enactments that disregard this perspective completely, with the aim of protecting those who are seen as vulnerable at a given moment: owners who are natural persons (however much property they may own) and non-profit organisations and public administrations. As regards the latter, one could easily wonder why so many of the properties they own are not occupied. This is not to suggest bad faith in any manner, but rather to point out that lack of

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<sup>65</sup> The already cited report by the INSTITUT CERDÀ; see footnote 11.

resources, coupled with bureaucracy, surely play a very relevant role, amounting to inefficiency. If we bear in mind that Spain has a high percentage of people at-risk of poverty and social exclusion<sup>66</sup> and a lack of social housing, it would probably be convenient to concentrate efforts on increasing the availability of affordable rented properties, although of course systems with high percentages of social housing would probably argue that this is not the path to follow either.

On the other hand, if it is true that 80% of illegally occupied properties belong to banks and these landlords are excluded from newly designed fast-track procedures to recover possession, can one really blame them for not being more active in evicting troublesome squatters, as is often the case? If there are so many negative collateral effects to squatting, surely it would make sense for any landlord to find it easier to evict and put the property back on the market, thus lessening the pressure on it. Speaking to people when squatters are creating problems, they will often say: 'It is the bank's fault; it should have boarded the property up much before', or 'it should have evicted these squatters ages ago', but then when a private person's second home is occupied illegally, these same people will often blame the police and the judiciary for not being more expedite and immediately evicting these 'evil' squatters, as opposed to the 'good' squatters who had nowhere else to go. Beyond doubt, banks played a very negative role in the build-up to the property bubble and many of them dealt dreadfully with the consequences when it burst, but it is difficult to see what advantage is to be gained from making it more cumbersome and more expensive for them to evict, when it is obvious that this will only end up being paid for by consumers – perhaps young people who need credit to access adequate housing – or companies that need loans to function – and employ people.

In my view, if distinctions need to be made, they should take place at the defendant's end, not at the claimant's. The landlords can be seen to all be in a similar position, yet the squatters' situations can vary radically. If the right to housing and to personal dignity are at stake, procedural caveats should be in place from the beginning. Justice is slow and may be even slower in these cases, but the alternative – one would have thought – was abandoned decades ago.

In this respect, granting the courts broader discretion may be a way forward,<sup>67</sup> even for civil law jurisdictions, as long as our judges can be trusted to not take a black and white approach to any of these issues. Messianic visions, as Camus explained, are often responsible for making dialogue impossible, and probably dialogue is the only way to move forward in the realm of housing, where probably there are no perfect solutions.

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<sup>66</sup> EUROSTAT, *At-risk-of poverty or social exclusion rate, 2014 and 2015*, available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:At-risk-of\\_poverty\\_or\\_social\\_exclusion\\_rate\\_2014\\_and\\_2015\(%25\).png](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:At-risk-of_poverty_or_social_exclusion_rate_2014_and_2015(%25).png) (10.09.2018).

<sup>67</sup> As is the case with the recent 2017 Irish Keeping People in their Homes Bill, available at: <https://www.oireachtas.ie/en/bills/bill/2017/25/> (18.09.2018). Other legislations, such as the South African Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 1998, contain similar provisions, although of course comparison in this case is risky due to the radically different underlying contexts.

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