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Squatting in Spain: The tension between the right to private property and the right to housing

Squatting w Hiszpanii: napięcie między prawem do własności prywatnej a prawem do mieszkania

Abstract: This paper analyses the practice of squatting in residential properties in Spain, which stems from the failure of public policies and which leads to different types of problems, for both homeowners and condominiums. The approach to this issue at the legislative, judicial and social levels is diverse and, quite often, contradictory depending on whether the measures are intended to protect the interests of the homeowners or of the squatters. For this reason, the right to private property and the remedies available to homeowners, on the one hand, and the implications of the right to housing, on the other hand, are briefly analysed based on the relevant case law, legislation and legal scholarship on this topic. The paper concludes that public authorities have delegated their duty to provide affordable housing to homeowners.

Keywords: squatting, crime of usurpation, right to housing, right of private property, domicile, housing policies

Abstrakt: Niniejszy artykuł analizuje praktykę squattingu w nieruchomościach mieszkalnych w Hiszpanii, która wynika z braku polityki publicznej i prowadzi do różnego rodzaju problemów, zarówno dla właścicieli domów, jak i wspólnot mieszkaniowych. Podejście do tego problemu na poziomie

legislacyjnym, sądowym i społecznym jest zróżnicowane i często rozbieżne w zależności od tego, czy środki mają na celu ochronę interesów właścicieli domów, czy też squattersów. Z tego powodu prawo do własności prywatnej i środki zaradcze dostępne dla właścicieli domów z jednej strony, a implikacje prawa do mieszkania z drugiej strony, są krótko analizowane w oparciu o stosowne orzecznictwo, przepisy i literaturę prawniczą w tym zakresie. W artykule stwierdzono, że władze publiczne delegowały swój obowiązek zapewnienia mieszkań w przystępnej cenie właścicielom domów.

Słowa kluczowe: przywłaszczenie, bezprawne przywłaszczenie nieruchomości, prawo do mieszkania, prawo własności prywatnej, miejsce zamieszkania, polityka mieszkaniowa

1. Introduction

According to the Spanish Sociological Research Center,¹ as of January 2025 housing was the top concern for most Spaniards, while squatting was ranked 39th out of a total of 57 issues. Squatting constitutes a criminal offence (crime of usurpation) which is regulated in Article 245 of the Spanish Criminal Code 1995 (CP).² It penalises anyone who occupies or stays in another person's property, dwelling or building without due authorisation or against the owner's consent, punishable with a fine of three to six months (in case of violence or intimidation, it shall be punished by imprisonment for one to two years). This criminal offence has increased progressively since 2011: a total of 14,621 properties were occupied by squatters in 2023 in Spain, according to the Statistical System of Criminality,³ whereas this number was 12,214 in 2018, 7,739 in 2013 and 2,702 in 2010. There are no official data on the number of such properties in Spain, but it is estimated that the practice occurs primarily in the autonomous regions of Catalonia, Comunitat Valenciana, Andalusia (in the coastal regions) and Madrid, affecting around 78,800 dwellings, the vast

¹ *Barómetro de enero 2025*, <https://www.cis.es/es/detalle-ficha-estudio?idEstudio=14870> [access: 4.03.2025].

² Ley Orgánica 10/1995 de 23 de noviembre 1995 del Código Penal, BOE-A-1995-25444, <https://www.boe.es/eli/es/lo/1995/11/23/10/con> [access: 4.03.2025].

³ In these cases, a complaint was filed with the police, or an action was taken by the police on their own initiative – *Series anuales sobre Criminalidad*, <https://estadisticasdecriminalidad.ses.mir.es/publico/portalestadistico/datos.html?type=pcaxis&path=/Datos11/&file=pcaxis> [access: 4.03.2025].

majority of which (more than 80%) belong to legal entities (e.g. banks or real estate companies) – and most of which were previously vacant.⁴ This is understandable given the fact that squatting in a household's primary residence or second home (the essential factor is the use of the dwelling as a space where the household fosters aspects of its private life, according to the Spanish Supreme Court ruling [STS] of 6 November 2020⁵) constitutes the crime of housebreaking (*allanamiento de morada*), punishable by imprisonment ranging from six months to two years (Article 202 CP). Accordingly, statistics show that 218 people were convicted for the crime of housebreaking in 2023 (255 in 2022), whereas that figure was 2,874 for the crime of usurpation (4,067 in 2022).⁶

This data may come as a surprise considering that Article 33.1 of the Spanish Constitution (CE)⁷ recognises the right to private property and inheritance as a fundamental right (Constitutional Court ruling [STC] 204/2004 of 18 November⁸), and that both Article 348 of the Spanish Civil Code (1889⁹ CCE) and Article 541-1 of the 5th Book of the Catalan Civil Code (2006¹⁰ CCC) enshrine the right of ownership as an absolute right, entitling the homeowner to civil-law remedies (e.g. possessory actions or *rei vindicatio*) to recover possession of the property. For its part, Article 47.1 CE enshrines the right to decent and adequate housing as a programmatic principle, not as a fundamental right (STC 79/2024 of 21 May¹¹), meaning that public authorities shall promote the necessary conditions and establish appropriate standards in order to make this right effective. There has also been debate about the significance of this phenomenon, given the total number of properties in Spain (26,623,708 million¹²) and the reported cases of usurpation: only 0.06% of the housing stock was affected in 2022, while

⁴ *L'ocupació il·legal d'habitatges es xifra en 78.000 a Espanya*, <https://www.icerda.org/ca/locupacio-il·legal-dhabitatges-es-xifra-en-78-800-avui-a-espanya/> [access: 4.03.2025].

⁵ Judgment of the Spanish Supreme Court of 11 December 2014, Case No. 852/2014, ES:TS:2014:5484.

⁶ *Conviction Statistics: Adults/Minors*, https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736176793&menu=ultiDatos&idp=1254735573206 [access: 4.03.2025].

⁷ An English translation is available at: The Constitution of Spain, <https://www.senado.es/web/conocersenado/normas/constitucion/detalleconstitucioncompleta/index.html?lang=en> [access: 4.03.2025].

⁸ Judgment of the Constitutional Court of Spain of 18 November 2004, Case No. 204/2004, ES:TC:2004:204.

⁹ Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil, BOE-A-1889-4763, [https://www.boe.es/eli/es/rd/1889/07/24/\(1\)/con](https://www.boe.es/eli/es/rd/1889/07/24/(1)/con) [access: 4.03.2025].

¹⁰ Ley 5/2006 de 10 de mayo 2006 del libro quinto del Código Civil de Cataluña, relativo a los derechos reales, BOE-A-2006-11130, <https://www.boe.es/eli/es-ct/l/2006/05/10/5/con> [access: 4.03.2025].

¹¹ Judgment of the Constitutional Court of Spain of 21 May 2024, Case No. 79/2024, ES:TC:2024:79.

¹² *Censos de Población y Viviendas 2021*, National Statistics Office, Madrid 2023, https://www.ine.es/prensa/censo_2021_jun.pdf [access: 4.03.2025].

the possessory proceedings filed for this reason (2,785) accounted for just 0.01% of the total.¹³ However, the symptomatic importance of squatting should not be underestimated:¹⁴ it is a clear example of the erosion of private property and of civil law in Spain. This weakening is evident at both the legal and jurisprudential levels, leading to widespread legal uncertainty among those affected, including banks, landlords and ordinary citizens.

This phenomenon is the result of a combination of different factors. First and foremost it is the weakening of private property and of civil law in Spain. As a matter of fact, Spain was ranked 15th out of a total of 19 economies in Western Europe in the 2024 edition of the International Property Rights Index.¹⁵ The erratic multilevel public housing policies enacted in recent years in Spain¹⁶ have failed to provide real alternatives to homeownership and leases. This has led to tenure becoming increasingly precarious and to a rise in the type of situations that constitute hidden homelessness, such as squatting, which has even been encouraged or protected by certain social movements and judicial decisions, having become an alternative way of gaining access to housing through national and regional laws since 2019. Furthermore, attempts to increase the stock of social and affordable housing (e.g. through expropriations or penalties for owners of empty homes at the regional level) have had limited success. It is worth highlighting that the number of empty dwellings in Spain is estimated at a total of 3,837,328 million homes (14.4% of the total housing stock,¹⁷ although the reality may differ substantially). Furthermore, the stock of social housing is

¹³ J.R. Pérez, *Los datos sobre okupación: hay una denuncia por cada 1.553 viviendas*, <https://www.newtral.es/okupacion-viviendas-espana/20230506/> [access: 4.03.2025].

¹⁴ See also M. Cuenca Casas, *La ocupación ilegal de inmuebles: un necesario enfoque global*, “Cuadernos de derecho transnacional” 2023, vol. 15, no. 2, p. 301. She argues that minimising the phenomenon of squatting means accepting a flagrant and unjustified violation of property rights, which is an insult to the rule of law itself that can have undesirable economic consequences. Due to the importance and significance of the violation, the key is not the number of cases, but the fact that cases occur (*ibidem*, p. 304).

¹⁵ S. Levy-Carciente, *International Property Rights Index 2024*, Property Rights Alliance, Washington 2024, https://cedice.org.ve/wp-content/uploads/2024/10/IPRI_FullReport2024_v3_compressed.pdf [access: 4.03.2025].

¹⁶ The responsibility for regional planning and housing has been assumed by the Spanish Autonomous Communities based on Article 148.3 of the Spanish Constitution (CE), meaning they have their own housing laws and policies. However, the State might choose to legislate housing matters based on the exclusive competences attributed to the Spanish State by the CE, such as those outlined in Articles 149.1 CE (regulation of basic conditions ensuring the equality of all Spaniards in the exercise of their rights), 149.1.8 CE (the basis of contractual obligations [civil law]), 149.11 CE (the basis for regulations concerning credit, banking and insurance) and 149.13 CE (basic rules and coordination of general economic planning).

¹⁷ *Censos de Población...* op. cit.

among the lowest in Europe: it is estimated to represent between 1% and 2.5% of the total stock.¹⁸ In addition, the civil-law and criminal-law actions available to homeowners are not effective in practice, as shown below, as it can take months or even years to eventually evict squatters.

Not surprisingly, homeowners are increasingly relying on enterprises that specialise in negotiating with squatters to convince them to leave the property voluntarily in exchange for a payment from the homeowner.¹⁹ It is worth noting that homeowners lose between 30% and 60% of the value of the property due to squatting.²⁰ Supported by the legal environment, a new phenomenon has emerged: so-called *inqui-okupación*,²¹ where tenants pay the rent for one or two months and then stop paying while continuing to occupy the home, later applying for a suspension of the eviction due to their status as vulnerable persons. Properties with squatters are even sold, at a discount.²² The legal uncertainty has also favoured the squatting of properties by criminal organisations, who then illegally rent them out to vulnerable persons or use them for other illicit activities, such as growing marihuana.²³ Also, in some cases, people organise themselves (as a citizen patrol) to protect homes from squatters.²⁴ This is understandable, as 80% of squatting cases take place in dwellings that are part of a condominium,²⁵ which might affect not only the homeowner, but also other

¹⁸ The study is incomplete because it does not include, for example, dwellings belonging to third-sector entities. It can be found at Ministerio de transportes, movilidad y agenda urbana, DG de vivienda y suelo, *Boletín especial vivienda social 2020*, Ministry of Transport, Mobility and Urban Agenda, Madrid 2020, p. 4, <https://apps.fomento.gob.es/CVP/handlers/pdfhandler.ashx?idpub=BAW072> [access: 4.03.2025].

¹⁹ The most well-known is Desokupa (<https://desokupa.com>), but other companies have also been created for this purpose.

²⁰ R. Salvador, *El propietario pierde del 30% al 60% del valor cuando le ocupan un piso*, <https://www.lavanguardia.com/economia/20220703/8382427/ocupacion-pisos-okupas-perdida-valor-vivienda.html> [access: 4.03.2025].

²¹ *Okupaciones e inquiokupación en auge, ante el caos normativo*, <https://www.inmonews.es/okupaciones-inquiokupacion-auge-caos-normativo/> [access: 4.03.2025].

²² P. Castán, *La venta de pisos ocupados prolifera en Barcelona y alimenta un 'negocio' paralelo de desocupaciones pagadas*, <https://www.elperiodico.com/es/barcelona/20250330/auge-venta-pisos-okupados-convierte-negocio-okupas-inversores-115685713> [access: 31.03.2025].

²³ M. Saint-Germain, *Mafias, okupación y marihuana: otra tormenta en el mercado inmobiliario catalán*, https://cronicaglobal.elespanol.com/vida/20250129/mafias-okupacion-marihuana-tormenta-mercado-inmobiliario-catalan/919908054_0.html [access: 4.03.2025].

²⁴ See e.g. V. Yusti, *La patrulla vecinal de Carabanchel: una respuesta desesperada a la macrokupación de 28 pisos*, https://www.eldebate.com/espana/madrid/capital/20250112/patrulla-vecinal-carabanchel-respuesta-desesperada-macrokupacion-28-pisos_260050.html [access: 4.03.2025].

²⁵ E. Esparza, *Mayor protección del propietario ante la ocupación ilegal de la vivienda*, <https://www.pisos.com/aldia/mayor-proteccion-del-propietario-ante-la-ocupacion-ilegal-de-la-vivienda/1628528/> [access: 4.03.2025].

neighbours and common areas of the multi-unit building. This problem has even led to the establishment of the Spanish Association of People Affected by Squatting,²⁶ with its counterpart being an office in Barcelona to provide advice to those who want to become squatters.²⁷

Against this background, this paper first outlines how squatting has become an alternative means of accessing housing in Spain due to the failure of multi-level public housing policies. It then discusses the civil-law remedies available to homeowners, how squatting is dealt with in criminal law and the potential role of the right to housing. The paper concludes that public authorities must fulfil their duty to provide affordable and adequate housing without delegating this responsibility to homeowners. To this end, the relevant case law, legislation and legal scholarship on this topic are examined.

2. Squatting as an outcome of the failure of multilevel public housing policies in Spain

2.1. The erratic housing policies adopted since the global financial crisis

The squatting movement began to have a significant presence in Spain during the 1980s. Unlike other EU countries, in Spain there was a greater emphasis on squatting in self-managed social centres rather than private dwellings (entrepreneurial squatting). Likewise, these groups were not usually led by poor families, but by young groups from different social classes.²⁸ The 2007 global financial crisis triggered the emergence of new types of squatting: deprivation-based squatting (which involves poor or working-class people suffering housing deprivation) and squatting as a criminal activity. This outcome has been spurred by a series of social and legal developments.

Indeed, the erratic housing policies enacted in Spain have led to a progressive precariousness of tenure, with the measures taken by public authorities ranging from promoting homeownership to promoting squatting as a way of accessing housing. In this vein, credit restrictions and the insecurity of the labour

²⁶ Homepage, <https://aeko.es> [access: 4.03.2025].

²⁷ Homepage, <https://oficinaokupacio.com> [access: 4.03.2025].

²⁸ R. Adell, M.Á. Martínez (eds), *¿Dónde están las llaves? El movimiento okupa: prácticas y contextos sociales*, Catarata, Madrid 2004, https://www.miguelangelmartinez.net/IMG/pdf/2004_Donde_estan_las_llaves_Catarata.pdf [access: 4.03.2025].

market²⁹ since the GFC have posed difficulties when accessing homeownership, which is not a real option for many Spanish households, including young people and the less affluent, especially over the last 17 years. This implies that now only well-off households are able to secure a mortgage, with low-income families being excluded. Current statistics show that the homeownership rate among young people has decreased from 69.3% in 2011 to 36.1% in 2020 (with the overall homeownership rate falling from 82% to 73%).³⁰

This context has led, firstly, to the economically less-favoured households being forced to rent, which has caused a bubble in the private rental market in large cities since 2016 (between 2015 and 2022, the accumulated growth of rental income per square metre of the rental housing stock exceeded 28.5%), with the indicators that measure economic effort being much higher than for home ownership with or without a mortgage (40.9% of Spanish households devoted more than 40% of their disposable income to housing, particularly among low-income households, compared to the EU average of 21.2%).³¹ Secondly, this has led to a progressive precariousness in access to housing, with the rise of euphemisms such as “collaborative housing” and an increase in hidden homelessness situations, such as renting rooms³² or squatting.

The policies adopted by legislators, as noted above, have been inconsistent. At the regional level, public authorities have attempted to regulate private property through sanctions, tax surcharges and the expropriation of vacant homes, but these measures have achieved limited success. Such measures, which fall under the category of administrative (public-law) regulations, have been deemed to be in accordance with the CE based on the social function of property (Art. 33.2 CE; see also STC 16/2018 of 22 February³³ and 32/2018 of 12 April³⁴). At the state

²⁹ For instance, the unemployment rate among young people reached 21.3% in 2023, which has been constantly higher than the rate for both the Spanish economy as a whole (12.1%) and the rate for young Europeans (11.2%) – see Á. Gavilán, *Informe Anual 2023. Capítulo 4. El mercado de la vivienda en España: evolución reciente, riesgos y problemas de accesibilidad*, Banco de España, Madrid 2024, p. 24, <https://www.bde.es/f/webde/GAP/Secciones/SalaPrensa/IntervencionesPublicas/DirectoresGenerales/economia/Arc/Fic/IIPP-2024-04-23-gavilan2-es-or.pdf> [access: 4.03.2025].

³⁰ Á. Gavilán, *Principales resultados de la encuesta financiera de las familias (EFF) 2020*, Banco de España, Madrid 2020, p. 16, <https://www.bde.es/f/webbde/GAP/Secciones/SalaPrensa/IntervencionesPublicas/DirectoresGenerales/economia/Arc/Fic/IIPP-2022-07-27-gavilan.pdf> [access: 4.03.2025].

³¹ Á. Gavilán, *Informe Anual 2023...*, p. 41.

³² The price of a room in Spain costs on average EUR 488 per month, that is, 57.3% more than 5 years ago (2019) and 89.4% more than 9 years ago (2015) – see A. López, *Viviendas compartidas en España en 2024*, <https://blogprofesional.fotocasa.es/una-habitacion-en-espana-cuesta-un-90-mas-que-en-2015/> [access: 4.03.2025].

³³ Judgment of the Constitutional Court of Spain of 22 February 2018, Case No. 16/2018, ES:TC:2018:16.

³⁴ Judgment of the Constitutional Court of Spain of 12 April 2018, Case No. 32/2018, ES:TC:2018:32.

level, the first State Housing Act, enacted in 2023,³⁵ granted Autonomous Communities the authority to implement rent controls on residential leases (so far, only Catalonia has done so; it has been in force there since March 2024³⁶ and it is not having the desired results³⁷). The Act has converted the ownership of primary residences into a land tenure controlled and supervised by the State.³⁸

2.2. The gradual increase in squatting

Within this context, squatting has been encouraged by a series of social and legal developments since the GFC of 2007. For instance, 2011 marked the beginning of so-called “Robinprudence” in Spain, i.e. a “tolerant stage” with the non-payment of mortgages and rents being overlooked and permitted by some judges without any legal basis.³⁹ Examples of “Robinhoodian” court decisions in Spain are those that force creditors to accept a *datio in solutum* in

³⁵ Act 12/2023 of 24 May 2023 on the right to housing, BOE-A-2023-12203, <https://www.boe.es/eli/es/1/2023/05/24/12/con> [access: 4.03.2025]; enacted basically under the umbrella of art. 149.1.1 CE, offers common definitions for the whole housing system (e.g. social and affordable housing, art. 3), establishes the rights and duties of citizens in relation to housing (arts. 8 and 9), outlines broad principles on non-discriminatory urban rehabilitation, regeneration and renewal (arts. 12 and 13), implements new types of social housing (art. 17), regulates the so-called “stressed residential market areas” (e.g. when the average burden of the cost of a mortgage or rent on a household’s budget, plus basic expenses and supplies, exceeds 30% of the average household income, art. 18) and promotes collaboration between public administrations and consumer protection institutions in relation to housing matters (art. 20), e.g. by implementing transparency measures in the purchase and rental of homes (art. 31).

³⁶ See Report for the declaration of 131 municipalities in Catalonia as areas of stressed residential market in accordance with Law 12/2023 of 24 May 2023, on the right to housing, <https://habitatge.gencat.cat/ca/ambits/preus-ingressos-i-zones/limit-preu-lloguer/normativa/index.html> [access: 4.03.2025].

³⁷ M. Gutiérrez, *Barcelona ha perdido el 75% de la oferta de alquiler permanente en cinco años*, <https://www.lavanguardia.com/economia/20241009/10007925/barcelona-perdido-75-oferta-alquiler-permanente-cinco-anos.html> [access: 4.03.2025].

³⁸ Article 10.1.a Act 12/2013 stipulates that the ownership of a dwelling comprises the power to use, enjoy and dispose of the property in accordance with its classification, state and objective characteristics, in accordance with the legislation on housing and other legislation that may be applicable, e.g. the acts implemented by Autonomous Communities. Unlike the previously discussed intrusive interventions of Autonomous Communities that interfered with the right to private property (e.g. expropriations of empty dwellings), which were of an administrative (public-law) nature, this article was enacted under the competence the State has to legislate on civil-law matters (Art. 149.1.8 CE), thereby affecting the right of ownership regulated in the Spanish Civil Code (Art. 348). See H.S. Moreno, *La evolución constitucional de la función social de la propiedad y el nuevo régimen del derecho de propiedad sobre una vivienda en la Ley por el derecho a la vivienda*, “Derecho privado y Constitución” 2023, vol. 42, p. 139 et seq.

³⁹ S. Nasarre Aznar, *Los años de la crisis de la vivienda. De las hipotecas subprime a la vivienda colaborativa*, Editorial Tirant Lo Blanch, Valencia 2020, p. 339 et seq.

the course of mortgage enforcement proceedings (which ordinarily requires the creditor's consent, according to Art. 1166 CCE) or those that do not allow them to continue seizing the debtor's assets once the mortgage enforcement proceedings have come to an end and the creditor acquires the encumbered property (in breach of Art. 1911 CCE). This open tolerance even led to the publication of the first "squatting manual" by the Platform of Mortgage Victims in 2013.⁴⁰

A turning point was the legal protection of "vulnerable" squatters, who have never held a legal housing title. The first such measure was Catalan Decree-Law 17/2019⁴¹, which amended Catalan Act 4/2016⁴² by providing for the possibility of offering temporary accommodation to squatters occupying public housing if a series of conditions are met (e.g. if the squatters were at risk of residential exclusion). For its part, the First Additional Disposition of Catalan Act 24/2015⁴³ provides for (as amended by Decree-Law 17/2019) the duty of large landlords (e.g. legal entities owning more than 10 properties or natural persons owning more than 15 properties [Art. 5.9 of Act 24/2015]) to offer a social lease contract to squatters before initiating an eviction procedure, if the requirements established in the law are met. This measure was rendered unconstitutional by STC 16/2021 of 28 January⁴⁴ due to the legal instrument that was used (Decree-Law), but it was later reimplemented by Article 12 of Catalan Act 1/2022 of 3 March⁴⁵. The measure was again rendered unconstitutional by STC 120/2024 of 28 October,⁴⁶ as it infringed on the state's exclusive competence on procedural legislation (Art. 149.1.6 CE).

At the central/state level, Royal Decree Law 11/2020 of 31 March⁴⁷ was enacted during the lockdown caused by COVID-19 to protect vulnerable tenants

⁴⁰ *Manual 'obra social la PAH'*, P.A.H. Obra Social, 2013, <https://afectadosporlahipoteca.com/wp-content/uploads/2013/07/MANUAL-OBRA-SOCIAL-WEB-ALTA.pdf> [access: 4.03.2025].

⁴¹ Decree-Law 17/2019 of 23 December 2019 on urgent measures to improve access to housing, BOE-A-2020-2509, <https://www.boe.es/eli/es-ct/dl/2019/12/23/17/con> [access: 4.03.2025].

⁴² Catalan Act 4/2016 of 23 December 2016 on measures to protect the right to housing for people at risk of residential exclusion, BOE-A-2017-522, <https://www.boe.es/eli/es-ct/l/2016/12/23/4/con> [access: 4.03.2025].

⁴³ Catalan Act 24/2015 of 29 July 2015 on urgent measures to address the emergency in the field of housing and energy poverty, BOE-A-2015-9725 <https://www.boe.es/eli/es-ct/l/2015/07/29/24> [access: 4.03.2025].

⁴⁴ Judgment of the Constitutional Court of Spain of 28 January 2021, Case No. 16/2021, ES:TC:2021:16.

⁴⁵ Act 1/2022 of 3 March 2022 amending Act 18/2007, Act 24/2015, and Act 4/2016, to address the housing emergency, BOE-A-2022-4208, <https://www.boe.es/eli/es-ct/l/2022/03/03/1> [access: 4.03.2025].

⁴⁶ Judgment of the Constitutional Court of Spain of 8 October 2024, Case No. 120/2024, ES:TC:2024:120.

⁴⁷ Royal Decree-Law 11/2020 of 31 March 2020 adopting additional urgent social and economic measures to deal with COVID-19, BOE-A-2020-4208, <https://www.boe.es/eli/es/rdl/2020/03/31/11/con> [access: 4.03.2025].

from being evicted; it postponed evictions for a maximum of six months after its entry into force. Tenants were entitled to apply for an extraordinary suspension of an eviction. Royal Decree-Law 1/2021 of 19 January⁴⁸ extended this possibility to other court proceedings (e.g. possessory actions), including squatters involved in criminal proceedings until the end of the state of alarm (which was initially expected to conclude on 9 May 2021), provided that the requirements established in the law were met (e.g. the tenants were in a vulnerable situation).⁴⁹ STC 15/2023 of 7 March⁵⁰ deemed this measure to be constitutional, as the proprietary faculties of homeowners are only affected temporarily and only applies in cases where the legally established cumulative requirements are met. This is consistent with the previous doctrine of the Spanish Constitutional Court.⁵¹ Homeowners are entitled to demand compensation according to Articles 4–6 of the Second Additional Disposition of Royal Decree-Law 37/2020 of 22 December⁵² (which will consist of the average cost of renting a home in the area where the property is located), but only if certain requirements are met. For instance, homeowners must apply for compensation within three months of the date of the social services report, provided that the report identifies the appropriate measures required to address the proven situation of vulnerability and that those measures have not been adopted. In addition, the homeowner must also prove that the suspension of the eviction has caused them economic harm because the property was offered for sale or rent prior to being occupied. It has been argued that these requirements violate Art. 33.3 CE.⁵³

⁴⁸ Royal Decree-Law 1/2021 of 19 January 2021 on the protection of consumers and users against situations of social and economic vulnerability, BOE-A-2021-793, <https://www.boe.es/eli/es/rdl/2021/01/19/1> [access: 4.03.2025].

⁴⁹ This does not mean that criminal proceedings will not be pursued against the squatters, as the judge can only intervene to suspend the eviction once a final judgment is made. SAP Madrid 17 March 2022 (Judgment of the Provincial Court of Madrid of 17 March 2022, ES:APM:2022:3512) precisely denied a request from a squatter to suspend the criminal procedure on the basis of RDL 12/2021.

⁵⁰ Judgment of the Constitutional Court of Spain of 7 March 2023, Case No. 15.2023, ES:TC:2023:15.

⁵¹ I.G. Fernández-Díez, *La suspensión temporal del procedimiento de desahucio o de los lanzamientos derivados de una condena penal en el caso de la llamada «ocupación pacífica» de viviendas: aspectos legales y constitucionales*, “Cuadernos de Derecho Privado” 2021, vol. 1, p. 104 et seq.

⁵² Royal Decree-Law 37/2020 of 22 December 2020 on urgent measures taken to combat social or economic vulnerability related to housing and transportation, BOE-A-2020-16824, <https://www.boe.es/eli/es/rdl/2020/12/22/37/con> [access: 4.03.2025].

⁵³ “No one may be deprived of his or her property and rights, except when justified on the grounds of public utility or social interest and only when accompanied by the payment of the corresponding compensation in accordance with the law”. See I.G. Fernández-Díez, *La suspensión temporal del procedimiento...*, p. 119.

Thus far, the deadline for this measure has been extended several times, and it is now scheduled to be in force until December 2025,⁵⁴ so it seems that the right to property is no longer affected temporarily, but permanently, which violates Art. 33.1 CE.⁵⁵ Indeed, there is a real risk that this measure will become *de facto* permanent, as has occurred with the moratorium that protects vulnerable mortgage debtors from eviction, implemented by Act 1/2013 of 14 May.⁵⁶ It was only supposed to be in force for a period of two years, but it has been extended several times, with the current expiration set for May 2028.⁵⁷

There are no official statistics on the number of people who benefited from such measures, but it is estimated that 25% of the evictions carried out from 2021 to 2023 would have been suspended had these measures been applied.⁵⁸

Lastly, the State Housing Act of 2023 also takes squatters into consideration in the application of procedural law. “Big landowners” (i.e. natural or legal persons owning more than 10 properties [Article 3.1.k]), prior to initiating a possessory procedure to recover the possession of a dwelling, were required to prove whether the occupant was in a vulnerable position and to start an inter-mediation procedure with the occupier (5th Additional Disposition Act 12/2023). These measures were rendered unconstitutional by STC 26/2025 of 29 January,⁵⁹

⁵⁴ Article 72.1 of Royal Decree-Law 1/2025 of 28 January 2025 approving urgent measures in the areas of the economy, transportation, and social security, and to address situations of vulnerability, BOE-A-2025-1560, <https://www.boe.es/eli/es/rdl/2025/01/28/1/con> [access: 4.03.2025].

⁵⁵ In this vein, it has been argued that suspending an eviction for such a long period would constitute an unjustified postponement of the right of the landowner to the execution of a final judgment, which cannot be shielded by reasons of public order or of giving due social attention to people in vulnerable situations, as it is the responsibility of the public authorities to satisfy these needs, not landowners – J.L. Rodríguez Lainz, *Mitos, leyendas y otros sesgos doctrinales sobre el delito de ocupación ilegal de inmuebles. Parte II*, https://diariolaley.laleynext.es/Content/Documento.aspx?params=H4sIAAAAAAEAFWNsQ7CIBiEn0ZmQCRx-KfiG3Q3tByGSPgNpca-vbCYeMMNd-7n7UgjkZtllrLX6LN6oW-JCWmojr0qJwgGzm2gvATEVBJH9gJyNGJ9GDxTUtN5q5TrWKR6OI_l4galPGwQW5ucf5P47R0it05xvIHU5aaNkt1F_AVFDmm-ZAAAAWKE [access: 4.03.2025].

⁵⁶ Act 1/2013, of 14 May 2013 on measures to strengthen protection for mortgage debtors, debt restructuring, and social rentals, BOE-A-2013-5073, <https://www.boe.es/eli/es/l/2013/05/14/1/con> [access: 4.03.2025].

⁵⁷ The last extension was made by article 1.1 of Royal Decree-Law 1/2024 of 14 May 2024 extending the measures suspending evictions from primary residences for the protection of vulnerable groups, BOE-A-2024-9699, <https://www.boe.es/eli/es/rdl/2024/05/14/1> [access: 4.03.2025].

⁵⁸ G. Domingo Utset, M.R. Díaz-Reixa, L. Delgado Ramisa, I. Escorihuela Blasco, *Informe impacto de la moratoria de desahucios 2021-2023. Primera evaluación de las medidas para evitar los lanzamientos del “escudo social”*: RDL 11/2020 y sus prórrogas, Observatori DESCA, Barcelona 2024, <https://afectadosporlahipototeca.com/wp-content/uploads/2024/12/informe-moratoria-desahucios-vf.pdf> [access: 4.03.2025].

⁵⁹ Judgment of the Constitutional Court of Spain of 29 January 2025, Case No. 26/2025, ES/TC:2025:26.

as they placed a disproportionate burden on landowners seeking to exercise the right to effective judicial protection (Art. 24 CE).

All in all, the adoption of such measures at the central/state and regional levels does not contribute to making the right to decent and adequate housing under Article 47 CE an effective right. On the contrary, it has the effect of making housing increasingly unaffordable in any form of tenure.⁶⁰ In addition, squatting has become another form of temporary housing tenure when the occupants are in a vulnerable situation.⁶¹

3. Civil-law remedies available to homeowners

3.1. Overview

The protection offered by the legal system against squatting is mainly based on the procedural actions derived from the civil-law protection of possession (Articles 446 CCE and 522-7.1 CCC). Indeed, Article 250.1.2 of the Spanish Civil Procedural Law of 2000 (LEC)⁶² provides for the possibility of filing a summary action to seek the recovery of a rural or urban property that has been precariously transferred, either by the owner, an usufructuary or any other person entitled to possess the property. The case law has further expanded the concept of “precariousness”, which was originally limited to being in possession of a property with the tolerance of the owner, to include other cases such as the possession of an alien thing without holding any legal title to it and against the will of the owner: “squatting” (see STS 21 December 2020⁶³). Article 250.1.4 LEC also provides for a summary action to seek the recovery of an asset or right by those who have been deprived of it or whose enjoyment of it has been disturbed. In this case, no definitive decision is taken on issues of ownership or superior right to possession, which are reserved for a subsequent declaratory judgment (STS 28 February 2022⁶⁴). Of course, homeowners may

⁶⁰ See S. Nasarre Aznar, *Los retos de la vivienda en Europa. Especial atención a la evolución y situación en España*, Diputada al Parlamento Europeo, Brussels 2025, p. 35 et seq., <https://sergionasarre.eu/wp-content/uploads/2025/03/snasarre-retos-de-la-vivienda-en-europa-2025.pdf> [access: 4.03.2025].

⁶¹ F.P. Méndez González, *La crisis de asequibilidad de la vivienda. Análisis y propuestas*, Tirant lo Blanch, Valencia 2025, p. 172, 188.

⁶² Act 1/2000 of 7 January 2000 on Civil Procedure, BOE-A-2000-323, <https://www.boe.es/eli/es/l/2000/01/07/1/con> [access: 4.03.2025].

⁶³ Judgment of the Spanish Supreme Court of 21 December 2020, Case No. 4385/2020, ES:TS:2020:4385.

⁶⁴ Judgment of the Spanish Supreme Court of 28 February 2022, Case No. 149/2022, ES:TS:2022:792.

exercise claims to recover possession of the property based on the right of ownership. The most common type of claims is *rei vindicatio* (Articles 348 CC and 544-1 CCC). Also, Article 250.1.7 LEC establishes that holders of property rights which are duly registered in the Land Register may file a claim to enforce those rights in the event that they are disturbed.

In practice, there are no official statistics on the most commonly used procedures, as each one has its own pros and cons.⁶⁵ For instance, a summary action under Article 250.1.4 LEC results in a judgment with *res judicata* effects (concerning the possession) and there is no one-year limitation period, as occurs with actions regulated under Article 250.1.2 LEC (following Article 439 LEC), while the defendant's grounds for opposition are legally limited (Article 444.2 LEC) in the procedure outlined in Article 250.1.7 LEC. On the other hand, *rei vindicatio* is not a summary proceeding, making it a slower route to recover possession of a property. However, these procedures were not specifically intended to address squatting, which led the Spanish legislature to implement a new procedure through Act 5/2018 (see below).

Indeed, as there are no precautionary measures in the framework of the possessory procedures that allow for the occupier to be evicted in advance,⁶⁶ Act 5/2018 of 11 June⁶⁷ implemented a new summary possessory procedure with the aim of speeding up the recovery of properties occupied by squatters. Under this act, squatters (after the decree admitting the claim) shall be given five days to provide a legal title justifying their possession. If they fail to do so, the court shall immediately order that the property be delivered to the possession of the claimant, without the need to wait for the 20-day period referred to in Art. 548 LEC to elapse. Social services shall be notified if the squatters consent to a search for alternative remedies to their situation. STC 32/2019 of 28 February⁶⁸ upheld the constitutionality of Act 5/2018, as it does not infringe on the right to effective judicial protection (Article 24 CE).

However, the Act has proven to be ineffective in practice. It is worth noting that only individuals, non-profit entities and public entities are entitled to use this legal action, as it excludes legal entities – who are the ones most affected by the phenomenon. Condominiums are also excluded, and must instead file

⁶⁵ According to A. Miranda Anguita, *Acción de indemnización de daños y perjuicios frente al poseedor en precario de un inmueble*, “Revista Crítica de Derecho Inmobiliario” 2023, no. 800, p. 3544 et seq.

⁶⁶ As highlighted in M. Cuena Casas, *La ocupación ilegal...*, p. 316.

⁶⁷ Act 5/2018 of 11 June 2018 amending Act 1/2000 of 7 January, on Civil Procedure, regarding the illegal occupation of homes, BOE-A-2018-7833, <https://www.boe.es/eli/es/l/2018/06/11/5> [access: 4.03.2025].

⁶⁸ Judgment of the Constitutional Court of Spain of 28 February 2019, Case No. 32/2019, ES:TC:2019:32.

for an injunction (under Articles 553-40.1 CCC and 7.2 Spanish Condominium Act 49/1960 of 21 July⁶⁹) if the activities of homeowners (or squatters) disrupt social harmony or might cause damage to the property. Furthermore, the introduction of the new possessory action initially helped to effectively reduce the average length of the procedure, bringing it down to 4.8 months in 2018. However, it has increased progressively since then, reaching an average of 12 months (one year) in 2023,⁷⁰ which is almost identical to the duration of the summary possessory procedures mentioned above (12.7 months in 2023). In addition, squatters –when required to do so by the court – often provide a title that appears valid, allowing the summary procedure to be easily delayed.⁷¹ It has been suggested that an ad hoc court hearing should be implemented to analyse the validity of titles submitted by squatters.⁷² In the end, the speed of the process depends on the court hearing the case.

3.2. Discussion

The recovery of possession of the property by its rightful owner should occur as quickly as possible. Any delay would undermine the right to property as guaranteed under Article 33 CE. In fact, the European Court of Human Rights has emphasised the need for procedures not to be unduly prolonged.⁷³ The Spanish legislature has tried to streamline the possession procedure through Act 5/2018, but the lack of human and material resources within the justice system has diminished the effectiveness of the procedure.⁷⁴ Furthermore, the exclusion of legal entities from the scope of the law warrants a negative

⁶⁹ Act 49/1960 of 21 July 1960 on horizontal property, BOE-A-1960-10906, <https://www.boe.es/eli-es/l/1960/07/21/49/con> [access: 4.03.2025].

⁷⁰ *Estimación de los tiempos medios de duración de los procedimientos judiciales – Órganos Unipersonales*, <https://www.poderjudicial.es/cgpj/es/Temas/Transparencia/ch.Estimacion-de-los-tiempos-medios-de-duracion-de-los-procedimientos-judiciales.formato1?idOrg=20&anio=2023&territorio=España&proc=Verbales%20posesorios%20por%20ocupación%20ilegal%20de%20viviendas> [access: 4.03.2025].

⁷¹ M. Cuenca Casas, *La ocupación ilegal...*, p. 317.

⁷² M. Cuenca Casas, *La deficiente tutela procesal civil de la posesión: una llamada a la “okupación” de inmuebles*, <https://www.hayderecho.com/2020/12/14/la-deficiente-tutela-procesal-civil-de-la-posesion-una-llamada-a-la-okupacion-de-inmuebles/> [access: 4.03.2025].

⁷³ Judgment of the European Court of Human Rights of 13 December 2018, 67944/13, *Casa di Cura Valle Fiorita S.r.l. v. Italy*, LEX 2602643.

⁷⁴ As pointed out by V. Pérez Daudí, J. Sánchez García, *La okupación de bienes inmuebles y la protección efectiva del poseedor legítimo*, <https://diariolaley.laleynext.es/Content/Documento.aspx?params=H4sIAAAAEAMtMSbF1CTEAAmNDE3NTY7Wy1KLizPw827DM9NS8k-LS13MSSktQiWz9HABfbwl4qAAAAWKE> [access: 4.03.2025].

ruling on its constitutionality, as it contradicts Article 33.1 CE⁷⁵ (which recognises that legal entities are also entitled to the rights granted by the CE, as established in STC 23/1989 of 2 February,⁷⁶ such as the right of private property). Condominiums were also excluded from the scope of Act 5/2018. Considering that the available legal action may take up to several years,⁷⁷ it has been suggested that the condominium should have a legitimate right to file an action against squatters, either directly or subsidiarily, if the homeowner of the property fails to do so.⁷⁸

As a matter of fact, a similar measure was implemented by the Catalan legislature through Act 1/2023 of 15 February.⁷⁹ The procedure is as follows: in the event of squatting, a “big landowner” (as defined above in Catalan law) must take the necessary actions to evict squatters if the situation disrupts community harmony or poses a threat to the safety or integrity of the property. If they do not act, the city council of the municipality where the property is located may compel the “big landowner” to do so (ex officio or at the request of the condominium board). If no action is taken within one month of the request, the city council is entitled to initiate the eviction procedure (Arts. 44 bis Catalan Housing Act 1/2007 of 28 December⁸⁰ and 553-40 CCC). As the standard conduct of a “big landowner” involves non-compliance with the social function of the property, this may be grounds for the city council of the municipality where the property is located to temporarily acquire use of the dwelling for a period of seven years (Article 118.7 Act 18/2007). The Act does not specify which procedure the admi-

⁷⁵ Á. Juárez Torrejón, *El derecho de propiedad y vivienda: perfiles constitucionales y legales*, in: M.G. Rodríguez de Almeida (ed.), *“Nuevo” derecho de propiedad inmobiliaria en Iberoamérica*, Tirant lo Blanch, Valencia 2022, p. 44 et seq. It could also violate Art. 24 CE – see V. Gimeno Sendra, *Lección 17. Los juicios posesorios*, in: V. Gimeno Sendra, M. Díaz Martínez, S. Calaza López (eds), *Derecho Procesal Civil. Parte Especial*, Tirant lo Blanch, Valencia 2020, p. 378.

⁷⁶ Judgment of the Constitutional Court of Spain of 2 February 1989, Case No. 23/1989, https://www.boe.es/diario_boe/txt.php?id=BOE-T-1989-4730 [access: 4.03.2025].

⁷⁷ J. Bueno Del Amo, *Comunidades que “desokupan” viviendas*, <https://elpais.com/economia/2020-09-04/comunidades-que-desokupan-viviendas.html> [access: 4.03.2025].

⁷⁸ A. Fuentes-Lojo Rius, *Ocupación y desahucios. Problemática procesal y propuestas de lege ferenda*, in: M.G. Rodríguez de Almeida (ed.), *“Nuevo” derecho de propiedad inmobiliaria en Iberoamérica*, Tirant lo Blanch, Valencia 2022, p. 92 et seq.

⁷⁹ Act 1/2023 of 15 February 2023 amending Act 18/2007, on the right to housing, and Book Five of the Civil Code of Catalonia, relating to property rights, in relation to the adoption of urgent measures to address the inaction of property owners in cases of illegal occupation of homes that disrupt neighborly coexistence, BOE-A-2023-5752, <https://www.boe.es/eli/es-ct/l/2023/02/15/1> [access: 4.03.2025].

⁸⁰ Act 18/2007 of 28 December 2007 on the right to housing, BOE-A-2008-3657, <https://www.boe.es/eli/es-ct/l/2007/12/28/18/con> [access: 4.03.2025].

nistration could employ for this purpose, but it seems that criminal proceedings are excluded.⁸¹ However, in our view, Catalan Act 1/2023 contradicts Arts. 33.1 and 3 CE, as it allows the public administration to temporarily expropriate the use of private property without providing compensation.

Be that as it may, other measures have been suggested as alternative possessory remedies available to homeowners, such as a new procedure specifically designed to protect real estate owners seeking the immediate recovery of possession of a property seized by squatters, by postponing the procedural hearing where the occupant can present counterarguments during possessory proceedings until after the delivery of possession, or by prohibiting appeals against a court ruling ordering the delivery of possession, thus obliging the occupant, where appropriate, to engage in the corresponding declaratory proceedings to assert their rights.⁸²

4. Effectiveness of the criminal procedure

4.1. Overview

In the criminal sphere, the crime of usurpation (Article 245 CP) requires the fulfilment of certain requirements (STS 18 May 2023⁸³): (1) that the occupied property, dwelling or building is not the residence of another person at the time the occupation occurs (if it is, the crime is considered housebreaking, as per Article 202 CP); (2) that the occupation takes place without violence or intimidation and is intended to be permanent (i.e. not temporary, transitory or occasional, such as a stay of a single night or a few days; in this case an administrative penalty might be imposed, as discussed below); (3) that the oc-

⁸¹ A. Fuentes-Lojo Rius, *La novedosa legitimación por substitución de la Administración para desahuciar a okupas*, <https://diariolaley.laleynext.es/dll/2023/04/05/la-novedosa-legitimacion-por-substitucion-de-la-administracion-para-desahuciar-a-okupas> [access: 4.03.2025].

⁸² See A. Fuentes-Lojo Rius, *Ocupación y desahucios...*, p. 2 et seq. For a discussion in favour of a new civil-law procedure that includes a specific precautionary measure without allowing the squatter the possibility of presenting conclusive proof that they should not be evicted, see M.G. Rodríguez de Almeida, *La okupación de inmuebles: un supuesto de posesión ilegítima*, “Revista Crítica de Derecho Inmobiliario” 2021, no. 784, p. 1202.

⁸³ Judgment of the Spanish Supreme Court of 18 May 2023, Case No. 2136/2023, ES:TS:2023:2136. See also C. Vázquez González, *Lección 12. Delitos contra el patrimonio y el orden. Socioeconómico (I). Hurto, robo, extorsión y usurpación*, in: C. Vázquez González, D. Fernández Bermejo, S. Cámara Arroyo, M. Teijón Alcalá, F.L. Meléndez Sánchez (eds), *Derecho Penal. Parte especial*, Tirant lo Blanch, Valencia 2023, p. 463 et seq.

cupation lacks a legal title which legitimises the possession of the property (e.g. a contract or the explicit tolerance of the homeowner); (4) that there is evidence of the owner's express opposition and intolerance of the occupation; and finally, (5) that there must be malice on the part of the perpetrator, which includes knowledge of the alien nature of the property and the lack of authorisation. The legal interests protected by this criminal offence are real estate assets (STS 12 November 2014⁸⁴).

In addition to the need to comply with these requirements, there are other problems with the crime of usurpation that are worth noting. As it is now considered a minor or misdemeanour offence under the CP following the passage of Organic Act 1/2015,⁸⁵ in practice this means there are greater difficulties when seeking an immediate eviction based on a criminal precautionary measure (Article 13 of the Criminal Procedure Act 1882⁸⁶ [LECrim]). This is highly significant as the police (unlike in the case of housebreaking) cannot intervene unless squatters are caught in flagrante delicto (Article 553 LECrim), where the person who is committing or has just committed the crime is caught in the act (Article 795 LECrim). In fact, the judicial intervention introduced by Act 5/2018 was key to its constitutionality (STC 32/2019). Indeed, once individuals establish themselves in the property, it is deemed to be their "home", therefore triggering the protection offered by the concept of the inviolability of the home. As stated in Article 18.2 of the Constitution, "the home is inviolable. No entry or search may be made without the consent of the householder or a legal warrant, except in cases of flagrante delicto". For this requirement to be fulfilled, it is necessary to hold a court proceeding to ensure compliance with the right to effective judicial protection.⁸⁷ Moreover, the criminal procedure takes time due to the need to identify the occupants (this is not necessary in the possessory procedure introduced under Act 5/2018), who must appear at the proceedings with a lawyer and a legal representative. The same applies to enforcing the judgment (which takes place once the appeal has been resolved).⁸⁸

⁸⁴ Judgment of the Spanish Supreme Court of 12 November 2014, Case No. 800/2014, ES:TS:2014:5169.

⁸⁵ Organic Law 1/2015 of 30 March 2015 amending Organic Law 10/1995, of November 23, of the Criminal Code, BOE-A-2015-3439, <https://www.boe.es/eli/es/lo/2015/03/30/1/con> [access: 4.03.2025].

⁸⁶ Royal Decree-Law of 14 September 1882 approving the Criminal Procedure Act, BOE-A-1882-6036, <https://www.boe.es/eli/es/rd/1882/09/14/1/con> [access: 4.03.2025].

⁸⁷ L. Salamero Teixidó, *La autorización judicial de entrada en el marco de la actividad administrativa*, Marcial Pons, Madrid 2014, p. 390.

⁸⁸ S. Nogueras Capilla, *La usurpación de bienes inmuebles. Problemática del tratamiento penal como delito leve*, in: P. Izquierdo Blanco, J. Picó i Junoy (eds), *El juicio verbal y el desalojo de viviendas okupadas*, Wolters Kluwer, Madrid 2018, p. 321 et seq.

4.2. Discussion

The right to private property has been one of the pillars of the success of Western societies. While the prosperity gap between countries can be attributed to various factors, the presence of inclusive political and economic institutions that protect property rights has played an important role.⁸⁹ The significance of the right to property requires that the crime of usurpation must continue to be applied based on the principle of legality. Thus, if the objective and subjective elements of the offence are present (since Article 245 of the penal code makes no distinction between natural and legal persons – SAP Barcelona 4 November 2024⁹⁰), criminal law must act independently of other legal channels,⁹¹ such as the possessory remedies available under civil law (see e.g. SAP Madrid 28 November 2024⁹² Barcelona 22 November 2024⁹³ or Murcia 12 November 2024⁹⁴). Citizens cannot address the housing shortage on their own; it is the responsibility of public authorities to provide solutions to the housing problem (SAP Madrid 27 November 2024⁹⁵).

However, case law shows that a minority of court rulings in squatting cases have set criminal law aside,⁹⁶ exemplifying what has been referred to as “Robinprudence”. Thus, the principle of minimal intervention of criminal law has been applied in cases involving abandoned properties (or properties that

⁸⁹ D. Acemoglu, J.A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*, Crown Publishers, New York 2012.

⁹⁰ Judgment of the Provincial Court of Barcelona of 4 November 2024, ES:APB:2024:14137.

⁹¹ Following L. Roca de Agapito, *Consideraciones político-criminales sobre el fenómeno delictivo de la usurpación de inmuebles ajenos*, in: F. Vázquez-Portomeñe Seijas (ed.), *Cuestiones actuales de política criminal*, Tirant lo Blanch, Valencia 2023, p. 192. The interest at stake (property rights) justifies the application of criminal law to prevent such crimes, but criminal law should be the last resort, i.e. it should only be employed in serious cases, not those involving temporary occupations or those where the squatter(s) do not intend to stay in the property permanently. Criminal law is also applicable when civil-law remedies are not enough to address the problem. See J.M. Jiménez París, *Desahucio exprés contra la ocupación de viviendas*, “Diario La Ley” 2018, no. 9262. For this author, not only should the criminal classification of this conduct be maintained, but the penalty for this criminal offence should be increased by at least one day’s fine, to restore it to the category of a less serious crime. It is not appropriate to restrict the application of the criminal classification solely because possession is protected by civil law and based on the principle of minimum intervention of criminal law. See also M. Cuenca Casas, *La ocupación ilegal...*, p. 306.

⁹² Judgment of the Provincial Court of Madrid of 28 November 2024, ES:APM:2024:13401.

⁹³ Judgment of the Provincial Court of Barcelona of 22 November 2024, ES:APB:2024:14078.

⁹⁴ Judgment of the Provincial Court of Murcia of 12 November 2024, ES:APMU:2024:2956.

⁹⁵ Judgment of the Provincial Court of Madrid of 27 November 2024, ES:APM:2024:16597.

⁹⁶ For more details, see J.L. Rodríguez Lainz, *Mitos, leyendas y otros sesgos doctrinales sobre el delito de ocupación ilegal de inmuebles. Parte I*, “Diario La Ley” 2024, no. 10583.

are in a completely uninhabitable state of repair) or situations where the owner lacks effective possession of the property. This has resulted in courts prioritising civil-law proceedings over criminal law (SAP Barcelona 27 November 2024⁹⁷ and 4 November 2024,⁹⁸ Cantabria 4 May 2023,⁹⁹ Guipúzcoa 31 March 2021¹⁰⁰ or Toledo 10 June 2020¹⁰¹). Another argument in this regard is the enactment of Organic Act 4/2015,¹⁰² whose Article 37.7 classifies the occupation of any property, dwelling or building as an administrative (minor) offence when it does not constitute a criminal offence. This provision, which was deemed constitutional by STC 172/2020 of 19 November,¹⁰³ should be applied if the owner of the property does not exercise effective possession of it (SAP Islas Baleares 29 November 2018).¹⁰⁴ This line of reasoning has been supported by scholars, who argue that the owners of properties occupied by squatters are provided with sufficient (civil-law) remedies to end the occupation, and the issue should be addressed through these means.¹⁰⁵ Lastly, the personal, family and economic circumstances of the occupants must be taken into consideration when imposing the minimum fine provided for in Article 245.2 CP (SAP Madrid 24 July 2020¹⁰⁶) and when applying exemption from criminal liability to occupants who are in a state of necessity under Article 20.5 CP (SAP Madrid 19 November 2018¹⁰⁷).

At the legislative level, several proposals have been presented in the Spanish Congress,¹⁰⁸ tabling different approaches for addressing the phenomenon of squatting depending on the ideology (left-wing or right-wing) of the political party involved. These proposals include increasing the penalties for the crime of usurpation,¹⁰⁹ implementing precautionary measures to facilitate the eviction

⁹⁷ Judgment of the Provincial Court of Barcelona of 27 November 2024, ES:APB:2024:14168.

⁹⁸ Judgment of the Provincial Court of Barcelona of 4 November 2024, ES:APB:2024:14185.

⁹⁹ Judgment of the Provincial Court of Cantabria of 4 May 2023, ES:APS:2023:873.

¹⁰⁰ Judgment of the Provincial Court of Guipúzcoa of 31 March 2021, ES:APSS:2021:570.

¹⁰¹ Judgment of the Provincial Court of Toledo of 10 June 2020, ES:APTO:2020:824.

¹⁰² Organic Law 4/2015 of 30 March 2015 on the protection of public safety, BOE-A-2015-3442, <https://www.boe.es/eli/es/lo/2015/03/30/4/con> [access: 4.03.2025].

¹⁰³ Judgment of the Constitutional Court of Spain of 19 November 2020, Case No. 172/2020, ES:TC:2020:172.

¹⁰⁴ Judgment of the Provincial Court of Islas Baleares of 29 November 2018, ES:APIB:2018:2520.

¹⁰⁵ F. Muñoz Conde, *Derecho Penal. Parte especial*, Tirant lo Blanch, Valencia 2023, p. 370; see also M. Roig Torres, *Delito de ocupación pacífica de inmuebles (art. 245.2 CP). Las últimas proposiciones de ley de reforma*, "Revista de Derecho Penal y Criminología" 2021, no. 25, p. 125 et seq.

¹⁰⁶ Judgment of the Provincial Court of Madrid of 24 July 2020, ES:APM:2020:8427.

¹⁰⁷ Judgment of the Provincial Court of Madrid of 19 November 2018, ES:APM:2018:15539.

¹⁰⁸ *Homepage*, <https://www.congreso.es/en/> [access: 4.03.2025].

¹⁰⁹ *Proposición de Ley Orgánica contra la ocupación ilegal y para la convivencia vecinal y la protección de la seguridad de las personas y cosas en las comunidades de propietarios (124/000003)* of 23 February 2024, in parliamentary procedure. This measure is supported by F.J. Rodríguez

of squatters,¹¹⁰ prohibiting squatters from registering in the Municipal Register of Inhabitants¹¹¹ and even decriminalising squatting entirely.¹¹²

In our view, an increase in the penalty does not necessarily mean fewer squatting cases, particularly when they involve families in need, who may continue to squat if they do not find alternative housing elsewhere. An increased penalty could have a deterrent effect in those cases where squatting pursues criminal purposes. However, challenges have been identified when seeking to apply the offence of criminal organisation,¹¹³ as illustrated by a recent case in which a family was convicted of this crime (STS 17 May 2024¹¹⁴). Although the explicit regulation of a precautionary measure would provide legal certainty to homeowners and courts,¹¹⁵ case law has effectively already granted such measures in squatting cases based on Article 13 LECrim, thanks to Instruction 1/2020 of 15 September, issued by the State Attorney General's Office,¹¹⁶ provided that both *fumus boni iuris* and *periculum in mora* are present (Orders AP Burgos 17 October 2023,¹¹⁷ Madrid 2 March 2023¹¹⁸ and Barcelona 20 February 2023,¹¹⁹ as well as Judgment SAP Santa Cruz de Tenerife 8 August 2022¹²⁰). The effectiveness of the measure established in Organic Act 1/2025,¹²¹ which amen-

Almirón, *Estudio jurisprudencial de las cuestiones más controvertidas en relación con el delito de usurpación del artículo 245 CP*, "Cuadernos de Política Criminal" 2020, no. 132, p. 222.

¹¹⁰ Proposición de Ley de medidas urgentes para hacer frente a la ocupación ilegal de inmuebles (Orgánica) (122/000150) of 31 January 2025 (BOCG-15-B-173-1), in parliamentary procedure.

¹¹¹ Proposición de Ley de modificación de la Ley 7/1985, de 2 de abril, Reguladora de las Bases del Régimen Local, con el fin de modificar el padrón municipal en los casos de ocupación y de inmigración ilegal (122/000039) of 21 December 2023, rejected. The measure was supported by M. Cuenca Casas, *La ocupación ilegal...*, p. 335.

¹¹² Proposición de Ley de emergencia habitacional en familias vulnerables en el ámbito habitacional y de la pobreza energética (122/000172) of 9 February 2018, rejected.

¹¹³ Indeed, it is difficult to identify the members of the group or criminal organisation that promotes such behaviour. See J.C. Rodríguez Utrera, *Ocupación ilegal y allanamiento de morada: Disfunción penológica y procesal*, <https://confilegal.com/20210819-opinion-ocupacion-ilegal-y-allanamiento-de-morada-disfuncion-penologica-y-procesal/> [access: 4.03.2025].

¹¹⁴ Judgment of the Spanish Supreme Court of 17 May 2024, Case No. 2558/2024, ES:TS:2024:2558.

¹¹⁵ This measure was proposed by J. Muñoz Ruiz, *La ocupación pacífica de inmuebles: el delito leve de usurpación (art. 245.2 CP)*, "Cuadernos de Política Criminal" 2021, no. 134, p. 120–121. The author also argues in favour of the possible application of Article 334 LECrim (p. 118–119).

¹¹⁶ Instruction 1/2020 of 15 September 2020, of the State Attorney General's Office on criteria for applying for precautionary measures in the crimes of breaking and entering and seizing property, BOE-A-2020-11243, https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-11243 [access: 4.03.2025].

¹¹⁷ Judgment of the Provincial Court of Burgos of 17 October 2023, ES:APBU:2023:717A.

¹¹⁸ Judgment of the Provincial Court of Madrid of 2 March 2023, ES:APM:2023:2579.

¹¹⁹ Judgment of the Provincial Court of Barcelona of 20 February 2023, ES:APB:2023:1856A.

¹²⁰ Judgment of the Provincial Court of Santa Cruz de Tenerife of 8 August 2022, ES:APTF:2022:2000.

¹²¹ Organic Act 1/2025 of 2 January 2025 related to measures regarding the efficiency of the Public Justice Service, <https://www.boe.es/eli/es/lo/2025/01/02/1/con> [access: 4.03.2025].

ded Article 795 of the LECrim, remains to be seen. The amendment expands the scope of the article to include the crime of usurpation, which means that expedited proceedings will be followed.

The decriminalisation of usurpation could, in turn, lead the legislature to redefine property rights based on the social function of the property, thereby granting greater protection to squatters. In fact, lower courts have invoked this principle to justify prioritising civil-law proceedings over criminal proceedings when landowners seek to recover possession of a property, particularly when the owner (a bank) has not been actively exercising its property rights (SAP Barcelona 3 June 2021¹²²). As a matter of fact, Act 12/2023 has implemented a new regime governing the right of ownership of dwellings, granting public authorities the power to regulate their use. In light of the fact that the offence has been decriminalised, the question that arises is whether the legislature could go to the extreme of obliging certain owners of empty dwellings, whether natural or legal persons, to consent to their occupation by squatters who are at risk of social exclusion based on the social function of property. In our opinion, the ultimate safeguard for the right to private property lies in respecting its essential content, as established in Articles 33.1 and 53.1 of the Spanish Constitution. Any limitation must comply with the proportionality test (STC 48/2005 of 3 March¹²³), which comprises three elements: (a) the judgment of appropriateness (the measure being assessed must be suitable for the constitutionally lawful objective to be achieved); (b) the judgment of necessity (the measure must be necessary, and no less onerous alternative exists); and (c) the judgment of proportionality in the strict sense, which entails a cost-benefit analysis, meaning the advantages obtained with the measure must outweigh the disadvantages it imposes.

Accordingly, a permanent legal legitimisation of squatting based on the social function of property would not pass the constitutionality test, since it would be neither appropriate (squatting cannot be considered a legitimate means of accessing housing, as discussed below) nor necessary (given the availability of other, more structural and less burdensome solutions). Furthermore, it would impose an undue burden on homeowners).¹²⁴

¹²² Judgment of the Provincial Court of Barcelona of 3 June 2021, ES:APB:2021:7697.

¹²³ Judgment of the Constitutional Court of Spain of 3 March 1998, Case No. 48/1998, <https://www.boe.es/buscar/doc.php?id=BOE-T-2005-5419> [access: 4.03.2025].

¹²⁴ As pointed out in H. Simón Moreno, *La ocupación de viviendas sin título habilitante y los derechos fundamentales y humanos en conflicto*, "Revista Critica de Derecho Inmobiliario" 2021, no. 786, p. 2165 et seq.

5. The right of ownership and the right to housing

5.1. Overview

The right to housing is enshrined in Article 25 of the Universal Declaration of Human Rights 1948¹²⁵ and Article 11 of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR).¹²⁶ Its content is defined by a series of key elements, including security of tenure, availability of services, affordability, habitability, location and cultural adequacy. These standards do not impose obligations of result on States Parties, nor do they grant subjective rights in favour of citizens, as is the case with Article 47 CE.

However, some of the views expressed by the Committee on Economic, Social and Cultural Rights (CESCR), which monitors the implementation of the Convention and can study individual complaints alleging violations thereof (under Optional Protocol 1966¹²⁷), stem from Spanish cases related to Article 11.1 ICESCR. In this regard, the CESCR has found that the right to adequate housing was violated in Spanish cases involving the eviction of squatters and tenants,¹²⁸ as these evictions took place without the Spanish authorities undertaking the required proportionality assessment. In squatting cases, the Committee emphasises that while the lack of legal title to a dwelling may justify an eviction,

¹²⁵ Universal Declaration of Human Rights of 10 December 1948, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [access: 4.03.2025].

¹²⁶ International Covenant on Economic, Social and Cultural Rights of 16 December 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> [access: 4.03.2025].

¹²⁷ Optional Protocol to the International Covenant on Civil and Political Rights of 16 December 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-civil-and-political> [access: 4.03.2025].

¹²⁸ Regarding squatters, see Communication from the Committee on Economic, Social and Cultural Rights, on the case of Yaureli Carolina Infante Díaz v. Spain, Communication No. 134/2019, E/C.12/73/D/134/2019, Decision of 27 February 2023; Communication from the Committee on Economic, Social and Cultural Rights, on the case of Sara Vázquez Guerreiro (represented by Plataforma de Afectados por la Hipoteca de Leganés) v. Spain, Communication No. 70/2018, E/C.12/74/D/70/2018, Decision of 9 October 2023; Communication from the Committee on Economic, Social and Cultural Rights, on the case of Maribel Viviana López Albán v. Spain, Communication No. 37/2018, E/C.12/66/D/37/2018, Decision of 11 November 2019. Regarding tenants, see Communication from the Committee on Economic, Social and Cultural Rights, on the case of Aicha Naser v. Spain, Communication No. 127/2019, E/C.12/71/D/127/2019, Decision of 28 February 2022; Communication from the Committee on Economic, Social and Cultural Rights, on the case of Mohamed Ben Hakima El Goumari and Ahmed Tidli v. Spain, Communication No. 85/2018, E/C.12/68/D/85/2018, Decision of 16 March 2021; and Communication from the Committee on Economic, Social and Cultural Rights, on the case of Mohamed Ben Djazia and Naouel Bellili v. Spain, Communication No. 5/2015, E/C.12/61/D/5/2015, Decision of 5 July 2017.

this process must comply with the provisions of the ICESCR, meaning that the court must assess the balance between the benefits of implementing the measure at that time (in this case, safeguarding the property rights of the entity that owns the property) and the potential consequences that this measure could have on the rights of the evicted persons (an analysis that was not carried out in this case). The CDESCR proposes assessing the following aspects: the personal circumstances of the occupants and their dependents, whether the person occupied the property in good faith and whether they cooperated with the authorities in seeking suitable solutions. The ICESCR violation also occurred because the State denied families access to social housing due to their lack of legal title to the property, and also because it offered alternative accommodation (shelters) that could not be considered decent and adequate housing, since it did not provide legal security of tenure.

5.2. Discussion

The right to housing must be upheld and developed by public authorities at the state, regional and local levels. This obligation is founded on the provisions of both Article 47 CE and the ICESCR:

- Firstly, the right to housing cannot be seen as encouraging squatting, as this is an internationally recognised form of homelessness. Indeed, the European typology of homelessness and housing exclusion developed by the European Federation of National Associations Working with the Homeless¹²⁹ advocates a broader definition of homelessness that encompasses not only people without shelter or living in temporary accommodation, but also people living in inadequate or insecure housing. The latter category includes people in need of housing who are occupying a dwelling without a legal title.

It makes no sense to consider squatting a viable alternative for gaining access to housing, when it simultaneously constitutes a form of homelessness. For this reason, the convenience of legitimising this situation through the provisions of Catalan Decree-Law 17/2019 and Spanish Decree-Law 1/2021 must be called into question.

- Secondly, human rights have allowed international bodies to consider the rights of people who are evicted from their primary residence. Ho-

¹²⁹ *ETHOS – European Typology on Homelessness and Housing Exclusion*, <https://www.feantsa.org/en/toolkit/2005/04/01/ethos-typology-on-homelessness-and-housing-exclusion> [access: 4.03.2025].

wever, in reality the practical application of such rights in the civil-law sphere still raises serious doubts.

In its judgment from 6 November 2018,¹³⁰ the European Court of Human Rights ruled that Article 8 of the European Convention of Human Rights¹³¹ (right to respect for private and family life) does not apply to relationships between private individuals. Consequently, the principle of proportionality (i.e. assessing the impact of eviction on the right to respect for private and family life) can only be invoked if a specific legal provision allows for it. The overall impact of the CESCER recommendations is likely to be quite limited in Spain due to the difficulty of conferring on them legal effect at the national level and their limited influence on the practices of national courts. These recommendations are not binding on Spanish courts, and no specific legal procedure requires courts to consider them. Moreover, Act 12/2023 only provides for the temporary suspension of an eviction (two months for natural persons and four months for legal persons) so that, during that time, the social services can take any measures they deem appropriate (Article 441.6 LEC). Therefore, this act has not fully implemented the requirement to evaluate the proportionality of the evictions, which is the standard mandated by the CESCER.¹³² From the perspective of the CESCER, another question is whether social services should offer alternative accommodation to the occupants. In our view, this is not necessarily required. The CESCER stipulates that the State must have taken reasonable measures, to the maximum of its available resources, to provide alternative housing for those involved in eviction proceedings.¹³³ For this reason, a failure to provide suitable accommodation would not, in itself, give rise to financial liability for the administration (according to the CEDSC's views), provided that it can demonstrate an adequate use of available resources.

Nevertheless, it is important to remember that the right to private property is a fundamental right in Spain (Art. 33.1CE), whereas it is absent from the ICE-SCR principles. Therefore, the implementation of housing policies must take this right into consideration.

¹³⁰ Decision of the European Court of Human Rights of 6 November 2018, 76202/16, *F.J.M. v. the United Kingdom*, LEX 2594235, para. 41 et seq.

¹³¹ Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, https://www.echr.coe.int/documents/d/echr/convention_ENG [access: 4.03.2025].

¹³² A. Macho Carro, *El examen de proporcionalidad de los desalojos forzosos y su recepción en el ordenamiento español*, "Revista de Derecho Político" 2023, no. 116, p. 330 et seq.

¹³³ See also A. Macho Carro, *La tutela del derecho a la vivienda en la doctrina del Comité de Derechos Económicos, Sociales y Culturales de Naciones Unidas (comentario a los dictámenes de febrero de 2021 sobre las comunicaciones 85, 54 y 48/2018)*, "Revista de Estudios Europeos" 2022, vol. 80, p. 228–229.

- Thirdly, public authorities, in view of the tangible content of the right to housing (Art. 47 EC), should seek structural solutions to the problem of squatting. For example, Spain needs to establish a comprehensive range of functional housing tenures covering the whole spectrum from public housing to full ownership. This should include various types of social housing, intermediate tenures (shared ownership and temporary ownership, a structural measure of civil law which is currently only regulated in the CCC – Arts. 547-1 et seq. and 556-1 et seq.) and a diversity of private rental options. These types of tenancy should cater to both young professionals in need of high mobility and households seeking long-term stability. Collaborative housing may also play a role. A broader spectrum of functional housing tenures would ensure more affordable housing options for every type of household, reducing reliance on financial markets and minimising the need for intervention by the public administration, which would ultimately mean more freedom for citizens.¹³⁴

Another structural solution would be to increase the public stock of social housing. There are various ways to achieve this objective, ranging from housing construction to the mobilisation of vacant housing stock. In the latter case, in addition to providing owners with guarantees related to rent collection, housing maintenance, protection against non-payment etc., it is worth considering other measures or incentives. These might include financial aid for property renovations, close collaboration with real estate agents and the third sector to find suitable housing for specific groups or subsidies for property taxes and rubbish collection charges for owners who allocate their properties to the social rental sector. In any case, any expansion of the social housing stock should be accompanied by private partnerships to ensure proper management. There are currently a wide variety of providers/managers (public, mixed, private for-profit and private not-for-profit) operating in an unstructured and uncoordinated manner, with significant differences in terms of their nature and size (housing stock and staff).¹³⁵

Another less intrusive option available to the legislature would be to encourage homeowners and squatters (provided they are in a proven state of

¹³⁴ S. Nasarre-Aznar, H. Simón Moreno, *Spain*, in: C. Schmid (ed.), *Ways Out of the European Housing Crisis*, Edward Elgar Publishing, Cheltenham 2022, <https://housing.urv.cat/wp-content/uploads/2022/09/NasarreSimon-TenuresInnovationDiversification2022.pdf> [access: 4.03.2025].

¹³⁵ N. Lambea Llop, *Social Housing Management Models in Spain*, “Revista Catalana de Dret Públic” 2016, no. 52, p. 115 et seq.

residential exclusion) to voluntarily reach a consensual solution by means of a proactive mediation/intermediation service provided by the public administration. Of course, in the case of public housing, this must not alter the ordinary allocation of social housing. Thus, access to subsidised housing must follow the corresponding administrative procedure and adhere to the same award criteria applied to all citizens, even in cases where specific regulations already provide for the allocation of housing in situations of extreme need (SAP Cáceres 29 January 2018¹³⁶).

Conclusions

I. Squatting reflects the failure of multilevel public housing policies in Spain, which have lacked the effective structural measures required to combat this phenomenon. As a result, the duty of the public authorities to provide social housing has been shifted to private owners, particularly legal entities, thus exposing the ineffectiveness and inefficiency of the public authorities.

II. The analysis of the human and fundamental rights at stake shows that 1) while the right to private property is already protected under civil law, attempts to expediate the procedure have had limited success; 2) criminal procedures could be made more effective through the implementation of precautionary measures, whereas neither increasing the penalties nor decriminalising the offence constitute structural solutions; 3) squatting can hardly be protected by the right to housing when it is simultaneously considered to be a type of homelessness, which should therefore not be afforded legal protection; 4) the right to housing could be the basis for requiring the completion of a proportionality test to assess the level of interference in the private and family life of squatters when an eviction takes place, as advocated by the CESCR. In any case, the application of the principle of proportionality raises the issue of limitations, something which has yet to be resolved: to what extent can the fundamental right to property be restricted in such cases.

III. Public authorities must adopt structural measures to address housing affordability and the phenomenon of squatting. These measures include ensuring that the justice system has a sufficient level of material and human resources, diversifying land tenures, augmenting the social housing stock and mobilising

¹³⁶ Judgment of the Provincial Court of Cáceres of 29 January 2018, ES:APCC:2018:128.

empty dwellings, in addition to improving existing civil-law and criminal-law remedies.

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