

HOUSING EMERGENCY IN SPAIN

THE CRISIS OF FORECLOSURES AND EVICTIONS
FROM A HUMAN RIGHTS PERSPECTIVE

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COORDINATION: Vanesa Valiño

EDITORIAL TEAM: Adrià Alemany, Ada Colau, Irene Escorihuela, Agustín Odonia, Mercè Pidemont, Gerardo Pisarello, and Sílvia Vernia Trillo

COORDINATION OF STATISTICS SECTION: Pablo Simón Cosano

INTERVIEWS CONDUCTED BY: Mònica Clua and Mariona Ferrer Fons

DESIGN AND LAYOUT: Àgueda Bañón

PHOTOGRAPHS: Albert García and Wikimedia

PRINTING: Reial Color

VIDEO PRODUCTION: Pau Faus, Ivan Domínguez, Xavi Andreu, and Sílvia González Laá

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PRESENTATION

The purpose of this report is to analyse the existing housing emergency in Spain from a human rights perspective. Specifically, we study the regulation of foreclosures and evictions in terms of the legal commitments acquired by the State and the concrete impact this has on the families affected.

The report consists of an introduction and two large sections. The introduction describes the main characteristics of urban and housing policy that have led to the current housing emergency.

The first section, for its part, opens with an analysis of the role of the right to decent and adequate housing and of the prohibition of arbitrary evictions in the Spanish constitutional system, in international human rights law, and in the European Union. Then we look at the basic policy guidelines that establish these rights, both at the level of the State and the autonomous communities. In this section we include some responses from the public administrations in reaction to the housing crisis and concrete recommendations addressed to the Spanish State on the part of different national and international bodies.

The second section aims to alleviate the absence of official data on the profile of people affected by foreclosure procedures and on the attitudes of different financial institutions in terms of this problem. With this objective, we will present the results of 11,000 surveys that reflect the concrete impact of the housing emergency on families and four in-depth interviews with people connected to the Platform of Mortgage Victims (Plataforma de Afectados por la Hipoteca – PAH).

The report closes with a third section of conclusions and recommendations addressed to the public authorities.

INTRODUCTION

THE ORIGIN OF THE PROBLEM: THE SPANISH URBAN PLANNING-REAL ESTATE-FINANCIAL MODEL

Spanish urban policy has been characterised by **treating the construction of housing and infrastructure as a source of investment and speculation rather than in terms of its link to people's needs.** The housing market and the real estate sector in general have historically been based on the increase of land prices merely by rendering it suitable for development.

As indicated by Manuel Naredo, continuous land re-zoning, beyond urban planning and without considering basic environmental sustainability criteria, the construction of housing exceeding disposable income and independent of population growth, together with the destruction of heritage, represent constants in Spanish urban planning. This story begins during the Franco regime, is prolonged throughout the democratic transition, and remains in force at present. It has been made possible thanks to two business sectors strongly committed to the expansion of the model, and closely linked to the public administrations: the real estate-construction sector and the banking sector.¹

The relationship between construction companies, the financial sector, and political parties largely explains the main corruption processes that today are the object of criminal investigation.² These processes have resulted in the re-zoning of land originally intended for green spaces or public facilities, procedures of public works allocation that involve sizeable cost overruns, and the construction of ghost housing complexes and airports, like those found in Castellón, Ciudad Real, or Lleida. At the municipal level, moreover, land re-zoning has functioned as a way to overcome a financing system that disregards the economic needs of local authorities.³

In order to favour the growth of the real estate and financial markets, **the housing policy of the last 60 years has also promoted access to housing through private ownership.** Thus, through different formulas such as tax relief on purchases and generalised access to credit, private property has positioned itself as the main type of tenure in detriment to other more accessible forms like renting, transfer of use, collective property, or surface rights.

The current pre-eminence of homeownership, 83 per cent in comparison to 17 per cent in renting, contrasts with the volume of rental housing that characterised the scene until the "50s.⁴ This tendency to incentivise private property has also been a constant in recent decades in other European countries. Nevertheless, there are few cases in which private property is as widespread as in Spain.⁵

In this way, **the residential needs of the population have been subordinated on numerous occasions to the interests of the banks and the large real estate companies.** Unlike the rest of the European countries, even publicly subsidised housing (VPO in Spanish) has been mainly offered through private ownership. What's more, its promotion has corresponded more to the will of stimulating the construction sector in periods of recession, than to facilitating access to decent housing for vulnerable groups.⁶ Hence, **the public housing built during periods of economic crisis has had the revival of economic growth and employment generation as its main objective,** regardless of whether it was accessible or responded to real housing needs.

Urban and housing policy, in short, has boosted

the **creation of a housing stock that is incapable of attending to the needs of society.**

- a) Firstly, **there is no public rental housing stock** that would allow for access for lower-income groups: the percentage of subsidised rental housing does not reach even 2 per cent of the total, while the EU-15 average is between 20 per cent and 30 per cent.⁷ Rent allowances, for their part, are scarce and are linked to budgetary availability.
- a) Secondly, the private rental market is also insufficient (15 per cent of the total) or highly speculative. Unlike countries like Germany or Holland, there are no limits on indiscriminate increases in rent.
- b) Thirdly, **the introduction of measures aimed at fighting against unjustified non-occupancy and underuse of properties has been reject-**

ed. This disregard contrasts with the observable tendency in other countries to consider non-occupancy as a pathological phenomenon, the eradication of which depends, among other elements, on the imposition of tax and non-tax penalties (in France, for example, housing belonging to legal persons that remains empty for more than 18 months can be seized). As a consequence of all of this, **Spain shows the highest percentage of empty housing in Europe: 13.7 per cent** in comparison to 8 per cent in Germany, 6.3 per cent in France, or 1.5 per cent in the Netherlands.⁸

- c) This panorama is completed with **legislation that facilitates evictions**, without taking into account the economic or familial situation of the people affected and **with no measures guided towards the promotion of adequate rehousing.**

THE REAL ESTATE BUBBLE AND THE PROBLEM OF OVER-INDEBTEDNESS

Between 1997 and 2007, the construction of housing and infrastructure soared. It has been calculated that 6.6 million houses were built, the same quantity as France, Italy, and Germany combined for the same period. This explains how Spain, with 25.5 million homes, today has one of the highest ratios of housing per inhabitant in the European Union (EU).

Many of these properties were built in suburbs far from the urban centres, or in tourist developments along the coast⁹ and responded to speculative processes rather than the solution of real housing needs¹⁰. At the same time, Spain has become the EU country with the most motorways and high-speed trains per km².

This situation was made possible thanks to **the hoarding of 70 per cent of the available credit by the construction sector** and to the over-indebted-

ness of the middle class and those in situations of vulnerability. All in a context of **increasing liquidity in the international arena**, especially after the introduction of the euro.

Despite the increase in available housing and the drop in wages, the cost of housing tripled. This scenario coincided with the emergence of numerous human rights violations, like discrimination against immigrants from non-member countries interested in renting a home, the increase in substandard housing and overcrowding, and landlord harassment. That is, harassment of tenants with old rental agreements with the aim of making them leave their homes.¹¹ In 2006, the growing difficulties to access housing were denounced by social movements like *V de Vivienda* (H for Housing) and by the United Nations Rapporteur for the Right to Housing, Miloon Kothari.¹²

However, **the most widespread abusive practice during the real estate boom was the over-indebtedness of the middle classes and of vulnerable groups in their efforts to access housing.** This phenomenon allowed for the concealment of the significant rise in housing prices. During the decade 1997-2007, indebtedness rose from 55 to 130 per cent of household disposable income.¹³ Through payments that could be paid over 30, 40, or 50 years, the total value of the homes was financed. Many of the conditions were agreed upon through false advertisement on the part of financial experts that dismissed predictable scenarios like an increase in interest rates or the bursting of the real estate bubble, resulting in the devaluation of the homes. Moreover, a very significant part of **the mortgage loans included terms of dubious legality that meant significant economic losses for the mortgage debtors.**¹⁴ The repertoire of abusive practices is vast:

- **Granting of "rising mortgages"**, which start with manageable payments in terms of the family unit's income and which triple within in a short period of time;
- **Forced inclusion** in mortgages **of additional products of questionable usefulness**, like *swaps* or unemployment insurance that would only be effective if the unemployed person previously had an open-ended contract;
- **The establishment of cross guarantees**, through which relatives and friends, but also strangers, with scarce resources commit to being responsible not only for their own mortgage but for that of the others in the case of default;
- **Promotion of "bridge loans"** that incentivise access to higher quality housing through the sale of the primary residence, and which with the out-

break of the crisis caused many people to end up with two mortgages;

- **Inclusion of "ground clauses" (*cláusulas suelo*)** that leave the buyer unprotected in the case of increases in interest but that prevent them from benefitting from a decrease in that same interest.

At the same time, **access to the rental market continued to be highly restrictive.** Added to the scarcity of apartments for rent and the absence of minimal conditions of habitability in many of them, there was the imposition of conditions that are difficult to fulfil like six-month or one-year guarantees, open-ended employment contracts, and equally exorbitant prices. Immigrants also had to suffer multiple forms of discrimination depending on their nationality, ethnic origin, or lack of long-term employment contracts. These obstacles were reinforced by **legislation on rentals that enables indiscriminate increases in rent** every five years, and that offers insufficient protection to tenants. All added to the proliferation of institutional messages, and from the financial institutions themselves, according to which renting is simply a way to waste savings.

This context coincided with a precarious welfare state and with insufficient pensions. Over-indebtedness for home purchases thus became one of the few options within the reach of sectors with medium and low incomes to ensure themselves an essential need not only in the present but also beyond their working age.

Over-indebtedness to access housing was generalised among many sections of the population, but it was an especially widespread phenomenon among low-income sectors. The existence of jobs characterised by their temporary nature like those linked to the services and construction sectors, represented an obstacle for accessing housing via rental; but not, on the other hand, for taking out a mortgage.

THE OUTBREAK OF THE FINANCIAL CRISIS AND THE HOUSING EMERGENCY

At the end of 2007 the crisis of the so-called "**sub-prime mortgages**" **breaks out**. The consequences were quickly noticed in Spain. The increase in interest rates, and the international credit crunch seriously affected the real estate business, a sector on which employment creation rested.¹⁵

The increase in the unemployment rate in a context of generalised over-indebtedness translated into growing difficulties to manage housing payments. Unemployment grew from 8 per cent in 2007 until reaching 25.93 per cent in the first trimester of 2014,¹⁵⁶ especially affecting young people and immigrants. **From 2008 and up until the present the material impossibility of paying the rent or the mortgage became a serious problem for families.**

The seriousness of the situation is reflected in the data offered by the General Council of the Judiciary. **From 2008 and until the first trimester of 2013, 547,966 foreclosure procedures were initiated.**¹⁷ **The volume of evictions** reached **327,872**. The judicial data present, however, numerous defects. On the one hand, only from 2013 on would there be a distinction between evictions due to mortgage non-payment and those caused by non-payment of rent. In fact, of the 55,165 evictions calculated from January 2013 until the first trimester of 2014, evictions due to non-payment of rent increased to 30,415. And what's worse, today **the judicial statistics do not distinguish between evictions related to primary residences and those that affect second homes or commercial establishments.**

With the aim of differentiating between these issues, the Association of Property Registrars published a report to evaluate the impact of foreclosures. According to its data, in 2012, 65,778 foreclosures affecting natural persons were initiated. 74.8 per cent were on primary residences. In the provinces of Madrid, Seville,

and Barcelona the percentage of foreclosures affecting primary residences rose to 91.1 per cent, 90.7 per cent, and 90.5 per cent respectively.¹⁸

This lack of data – applicable to the public administrations in general – means that the problem of evictions due to non-payment of rent for the most vulnerable groups still does not receive the attention it deserves. **The official data, for example, makes no mention of the profile of those affected**, that is, to the existence or not of minors or vulnerable persons, or to the level of disposable income of the household, or to the adoption of measures aimed at guaranteeing adequate rehousing.

It is worth highlighting that **an eviction**, whether due to non-payment of the mortgage or the rent, does not only affect one individual but **impacts on the whole family unit. This includes minors and elderly persons** in situations of dependence. **In the case of mortgage foreclosures**, moreover, the loss of the home does not necessarily mean the disappearance of the debt. On the contrary, **Spanish legislation makes it possible for the debt to remain for life.**

When the financial crisis broke out, in 2008, the financial institutions could be awarded the mortgaged home for 50 per cent of the appraisal value for the purpose of auction and proceed to seizure for the rest of the debt, as well as interest and legal costs.¹⁹ This meant that after losing their home, those with mortgages ended up seriously indebted. This situation of indebtedness brought several problems with it: on the one hand, the seizure of a substantial part of their wages and of their present and future assets. On the other hand, the disadvantages of being considered a defaulting debtor in terms of accessing credit or renting in the private or public market.

The impossibility of settling the debt with the handover of the mortgaged home can also affect

other homes and families. This is due to the fact that the financial institutions, foreseeing payment difficulties in high-risk mortgages, demanded guarantees involving the home of some close relative, a very frequent situation among parents and children.

The denial of this emergency situation was the most common reaction among the public administrations.²⁰ Facing the growing deterioration of the situation, there were abundant efforts made to **blame those affected**, accusing them of being irresponsible and of having lived beyond their means. With the aim of finding a way forward, efforts were also made to incentivise construction. In autonomous communities like Catalonia this objective can be seen in the promotion of Strategic Residential Areas (ARES in Spanish) aimed at promoting the construction of new housing, including subsidised housing. Although this policy was

cut short by the recession, it quickly generated criticism from the municipalities affected, as it did not respond to real housing needs and meant unnecessary development in rural areas.

In general terms, none of the big parties at the state level promoted substantial improvements in the situation of persons with unaffordable mortgages from within the Central Government. This situation differs from the housing emergency policies adopted in Argentina during the crisis of 2002, or from the case of Greece, where up until now there is a moratorium on mortgage foreclosures.²¹ The absence of significant measures in favour of insolvent persons contrasts with the economic assistance (around 167,460 million euros) which has been used, since 2008, to rescue the financial institutions without demanding anything in return.²²

THE REACTION OF CIVIL SOCIETY: THE PLATFORM OF MORTGAGE VICTIMS (PAH)

Facing the defencelessness of those affected, **in 2009 the Platform of Mortgage Victims (Plataforma de Afectados por la Hipoteca – PAH) was created in Barcelona.** Its main aim was **to modify mortgage legislation** to allow for the total cancellation of debt upon handover of the property to the bank. As well as fostering a campaign for retroactive *datio in solutum* (retroactive debt cancellation upon the handover of the mortgaged home), the PAHs had the objective of **achieving self-organisation among those affected, many of whom are psychologically devastated.** From the beginning, however, it was clear that the transformation of the financial system would involve many difficulties. Therefore, these collectives incorporated other short and medium-term objectives: to prevent the eviction of the families and individuals affected, to achieve reasonable rehousing alternatives, and to promote a sufficient stock of social rental housing.

The **awareness-raising** campaign in favour of policy change was carried out **on different fronts.** On the one hand, the Platforms promoted the approval of municipal motions to support those affected and in favour of *datio in solutum*. Working with political groups, on the other hand, generated important institutional support. Political parties with parliamentary representation, like Iniciativa per Catalunya Verds and Esquerra Republicana de Catalunya publically supported *datio in solutum* and presented different legislative initiatives to put an end to over-indebtedness.

On the international level, citizen pressure managed to get United Nations agencies, like the Special Rapporteur for the Right to Housing and the Committee on Economic, Social, and Cultural Rights (CESCR), to echo the social demands and to publically advocate for a legal modification that would enable *datio in solutum*. From these agencies the public authorities were also warned

of the obligation to plan reasonable accommodation alternatives for families affected by evictions.

This process of awareness-raising also extended to different legal agents. **In the judicial field, the first resolution questioning the actions of the financial institutions and which paved the way towards *datio in solutum* was passed at the end of 2010 by the Provincial Courts of Navarre.**²³

In September 2011, the association of Judges for Democracy released a statement in support of *datio in solutum*. Different bar associations and legal entities also joined the demand for a legal modification that would allow for a second chance for those affected as is the case in other European countries.²⁴ The urgency of the legislative reform was reinforced by public knowledge of several suicides directly related to the inability to manage housing expenses.

In **2010**, facing the reiterated negative response from the mainstream parties to reform mortgage legislation, the PAH, together with the Observatory of Economic, Social and Cultural Rights (Observatorio DESC), the Workers Commissions (CCOO), the General Workers' Union (UGT), the Confederation of Neighbourhood Associations (CONFAVB), and the Third Sector Committee (Taula del Tercer Sector) decided to promote a **popular legislative initiative** (ILP) with the following objectives:

- to enable retroactive *datio in solutum* for primary residences,
- to establish a moratorium on evictions, and
- to allow those affected to stay in their homes paying a social rent.

These demands refer to all mortgage foreclosure procedures that affect the primary residence of debtors acting in good faith. The proposal was made public in November 2010. However, **the obstacles put in place by the Chamber of Congress Bureau** and the pace of the legislature **delayed the collection of signatures** until April 2012, **almost two years** later.

In January 2013, thanks to 3,253 notaries who vol-

untarily offered their time to collect signatures, and through several Platforms of Mortgage Victims, neighbourhood associations, and the 15-M movement, **the proposal received 1,402,854 signatures**. The result went beyond the expectations. Not only was **triple the amount of necessary signatures achieved**, but **broad social support** was also gathered for the proposal.

The Popular Party (Partido Popular – PP), already in government, immediately showed opposition to the ILP and was on the verge of rejecting its parliamentary debate. Social pressure, and the strong impact of the appearance of the spokesperson of the PAH, Ada Colau, before the Economic Commission of the Chamber of Congress, forced the examination of the ILP.

While the bill was being discussed in the Parliament, the governing party announced its willingness to approve a limited version of the demands contained in the ILP. In response to what was understood as a way of distorting the petition, the PAH announced a **campaign of non-violent public exposure of members of parliament and senators of the governing party**. Different leaders of the PP proposed the criminalisation of the actions of the PAH and its spokespersons. **Despite the antagonistic discourse from the Government, several courts considered the protests to be a legitimate exercise of the right to freedom of expression and the right to protest**. The European Parliament, in fact, decided to award the European Citizen's Prize 2013 to the PAH for its "work in the defence of human rights at the European and transnational level".

While this debate went on, the Court of Justice of the European Union (CJEU) delivered a judgement in which it ruled on the incompatibility between Spanish mortgage legislation and the rights of consumers and users of banking services. In this context, the Government approved **Law 1/2013, of May 14th, on measures to strengthen the protection of mortgagors, debt restructuring, and social renting**. Despite the

name of the Law, the new regulation still did not offer effective solutions to the majority of those affected and **showed the resistance of the Government to impose public service and general economic interest duties on the financial institutions.**

Difficulties in finding housing solutions caused many families to occupy underused land and housing. In many cases, the administrations and the courts did not take long to urge the eviction of these people. In some cases, **the European Court of Human Rights (ECHR) itself would take action in the matter, issuing injunctions that ordered the suspension of the evictions.** The argument that underlines the decisions of the ECHR is that the people in question – families with young children and without resources nor adequate housing alternatives - are faced with a situation of extreme vulnerability that could violate the prohibition of inflicting inhumane and degrading treatment (article 3 of the European Convention on Human Rights) or the right to private and family life (article 8 of the European Convention on Human Rights).²⁵

The PAH has legitimated these actions and has organised collective occupations of housing owned by the financial institutions, especially those that were bailed out with public money.²⁶ Almost 1,200 people have been rehoused through this campaign: Obra Social La PAH. It is hard to predict the outcome of these

actions. In any event, they serve as evidence that, despite the reiterated attacks to which it has been subjected, the right to housing is still a dynamic tool for action among those affected by its violation.

After the state ILP, in 2013 it was decided to start a campaign called "Break from below" (Romper por abajo). This involves actions at a municipal and regional level. At the municipal level the campaign consists of putting pressure on local authorities to fine the financial institutions and other large companies that have permanently unoccupied homes. In Catalonia, more than 100 municipal councils have already approved motions that pave the way for the imposition of fines. Nowadays, the challenge is to make these non-binding motions effective.

Following the logic of the "Break from below" campaign, in different autonomous regions popular legislative initiatives will be presented. Catalonia will be the first: as well as adapting the measures of the state ILP to regional competences, there are new elements included like the need for the government to guarantee/secure access to essential supplies like water, electricity and gas to persons in situations of vulnerability who cannot afford to pay the bills. Finally, there is also the demand for the creation of an affordable housing stock through the forced rental of empty houses, especially those owned by financial institutions rescued with public money.

I LATEST NEWS

The Government has found itself obliged to take measures thanks to the ILP and the pressure from the PAH and organised citizens. The PAH announced that each of the measures presented would be totally insufficient and that the requirements to qualify were so restrictive that practically no one could benefit from them. The official data confirm how the measures taken by the Government (Good Banking Practices Code, Social Fund for Housing, Law 1/2013) are totally insufficient.

Before looking at the data, it is important to highlight that even today the official data on evictions are still insufficient and inexact. Bearing in mind the seriousness of the problem and the social alarm generated, the law should guarantee the minimum of reliable data. However, today, the statistics of the General Council of the Judiciary can only inform on a quantitative level. The terrible quality of the data is seen in the fact that the data on foreclosures and evictions do not coincide in numbers, because many families, finding

themselves at a dead-end, “evict themselves”, and thus there is no need to process the court eviction order. This way, thousands of evictions happen without appearing in the official figures.

The results of the Social Fund for Housing (FSV in Spanish) created in January 2013 are also shameful: fifteen months after its adoption, and almost 70,000 foreclosures later according to data from the General Council of the Judiciary, the Government announced that only 410 social rental agreements have been signed.

The data from the Bank of Spain for 2013 reflect the harsh reality: in 2013, 50,000 mortgage foreclosures took place, 11 per cent more than in 2012, and since 2007 almost 550,000 foreclosures have been carried out. Of these 50,000, 80 per cent were on the primary residence (39,000), 21,000 were legal evictions, and 13,000 *datio in solutum*. Moreover, if the *datio in*

solutum is not accompanied by a social rental agreement, it is essentially a silent eviction. These data show how the problem continues to increase and how the Government’s measures are no response to the housing emergency.

The data from the General Council of the Judiciary for the first trimester of 2014 indicate that 24,226 foreclosures have been initiated; this means almost 3,000 more foreclosures than in the same period in 2013. In the case of evictions, the figures are equally scandalous: 18,492 evictions in the first trimester of 2014, a tiny 5 per cent less than the first three months of 2013. However, if we look at the figures in detail, we can see how mortgage-related evictions increase by 6 per cent in comparison to the same period in 2013, while those related to rental decrease by 11 per cent. Catalonia is the worst case in terms of evictions, followed by Andalusia and the Community of Valencia.

NOTES

1. José Manuel Naredo, "El modelo inmobiliario y sus consecuencias", in Mireia Belil, Jordi Borja, and Marcelo Corti (eds.) *Ciudades una ecuación imposible*, Icaria, Barcelona, 2012.
2. From the Barcenas case which investigated the suspected payment of bonuses to leaders of the Popular Party (PP) through donations from companies, many in the construction sector, to the legal proceedings linked to the cost increases in the development of public works like the Palma-Arena investigation in the Balearic Islands, and including processes of municipal urban planning corruption like the Pretoria case in Santa Coloma, or the case of the Palau de la Música in Barcelona on this issue, consult the contribution of Alcaraz Ramos, M., "De la corrupción urbanística a la corrupción de la democracia" in *El estado de Derecho frente a la corrupción urbanística*, La Ley, Madrid, 2007.
3. "With only 15% of public revenue the local administrations have to deal with a very high percentage of public services. In the era of real estate madness a good part of this difference between public revenue and public expenditure was covered with resources from urban planning. This revenue was considered recurring but was in fact non-recurring revenue, and provisions were not made for a subsequent crisis cycle and fall in the real estate market", Javier Burón, "Los retos de los gobiernos locales y las políticas de vivienda", in *Governments locals i polítiques d'habitatge, balanç i reptes*. Provincial Council of Barcelona, 2012, p. 7. Available at: http://www.diba.cat/c/document_library/get_file?uuid=4d572a5b-4ea1-4a49-b6b7-b0f1232942d9&groupId=479934
4. Concerning the predominant presence of rentals in Spain, the Census of buildings and housing from 1950 confirms that in that year more than half of the housing stock was rented and this percentage rose to almost 90 per cent in big cities such as Madrid (94 per cent), Barcelona (95 per cent), Seville (90 per cent), or Bilbao (88 per cent). José Manuel Naredo, "El modelo inmobiliario español y sus Consecuencias", in M. Belil, J. Borja, and M. Corti (eds.), *Ciudades, una ecuación imposible*, op. cit., p. 65 et seq.
5. According to Eurostat 2013 data, in Europe only the countries in the east show such a predominant presence of home ownership. In comparison to 83 per cent home ownership in Spain, the case of the United Kingdom stands out, which after an important process of privatisation has 70 per cent home ownership, or France with 62 per cent, and Germany with 53.2 per cent.
6. Sánchez, A. and Plandiura, R., "La provisionalidad del régimen de protección de la vivienda pública en España", *Revista Electrónica de Geografía y Ciencias Sociales*, Barcelona, 2003.
7. To consult data on housing in Europe see: *Housing Europe Review: The nuts and bolts of the European social housing system*, CECODHAS Housing Europe, Belgium, October 2011. Available at: http://www.housingeurope.eu/www.housingeurope.eu/uploads/file/_HER%202012%20EN%20web2_1.pdf
8. See Ministry of the Interior and Kingdom Relations, *Housing Statistics in the European Union 2010*, The Hague, September 2010. Available at: https://www.bmfwf.gv.at/Wirtschaftspolitik/Wohnungspolitik/Documents/housing_statistics_in_the_european_union_2010.pdf
9. On the environmental impacts of urban planning policy on the coast, consult the annual reports of Spanish Greenpeace, *Destrucción a toda costa*.
10. The growth in the housing supply was systematically higher than the level of housing needed to satisfy the formation of new homes. Between 1997 and 2006, 390,000 new homes were formed yearly, in comparison to 600,000 new houses built.
11. In 2006, the official responsible for housing in the Catalan Government, Francesc Baltasar, calculated that in Catalonia 10,000 families were affected by this problem.
12. Citizens' movements for the right to housing began in 2004 and quickly managed to gather thousands of supporters. For his part, as a result of the official visit, the Rapporteur released a damning report in which he warned of the overexposure of families to mortgage loans and described the situation as a housing emergency. In the following chapter we will analyse the specific recommendations made by the Rapporteur to the Spanish Government.
13. From 1997 to 2007 the average cost of mortgages went from €50,786 to €149,007, and the average duration of the mortgages increased from 19 to 28 years. For their part, the number of mortgages formalised yearly rose to 822,000 in the same period. See Colau, A. and Alemany, A., *Mortgaged Lives*. From the housing bubble to the right to housing. Translation published by *The Journal of Aesthetics & Protest*, 2014, p. 63. Available at: <http://www.joaap.org/press/pah/mortgagedlives.pdf> (English), and <http://afectadosporlahipoteca.com/wp-content/uploads/2013/01/vidas-hipotecadas.pdf> (Spanish).
14. The judgements of March 14th of the Court of Justice of the European Union enabled significant advances in the judicialisation of unfair terms in mortgage contracts. Some court rulings, like the decisions of court no. 50 in Barcelona from the 5th and 10th of June 2013, for example, established the nullity of foreclosure procedures in the case of the existence of unfair terms. In any case, the illegality of these terms is the object of analysis in the courts. For example, the judgement of the First Division of the Supreme Court of May 9th 2013, declares null, although without retroactive effects, the ground clauses (cláusulas suelo) in mortgage contracts if there was a lack of transparency. The judgement of Commercial Court no. 2 in Malaga, on the 23rd of May, 2013, for its part, not only declares these clauses null but obliges the financial institution to return the amounts unduly charged. Regarding nullity in the procurement of complex financial products like *swaps*, see the judgement of the Provincial Court of Seville from March 2012.

15. "During the height of the bubble, the real estate sector accounted for 18% of the GDP (30% if we take into account all the indirect economic activities that proliferated under construction) and gave jobs to 13% of the population, much more than 6.7% in Germany or 8 % in the United Kingdom", Colau, A. and Alemany, A., *Mortgaged Lives. From the housing bubble to the right to housing*, op. cit., p. 39 et seq.
16. According to the Spanish Statistical Office (SSO), the number of unemployed persons during the second quarter of 2013 was 5,9 million, with Andalusia and Catalonia being the most affected Autonomous Communities. More than 1,8 million households had all their members out of work. Likewise, the 2014 forecasts of the Organisation for Economic Co-operation and Development (OECD) raise the unemployment rate up to 27,8%.
17. The data show how foreclosures increase from 25,943 in 2007 to 58,686 in 2008, 93,319 in 2009, 93,636 in 2010, 77,854 in 2011, and 91,622 in 2012. See *Ejecuciones Hipotecarias presentadas al Tribunal Superior de Justicia, Impacto de la crisis en los órganos del poder judicial*, General Council of the Judiciary, Madrid, 2013.
18. See Colegio de Registradores de la Propiedad, Bienes Muebles y Mercantiles de España, *Impagos hipotecarios de vivienda*, Madrid, 2012.
19. Thanks to pressure from citizens, the amount for which the financial institutions can be awarded the property would continue to increase until reaching 70 per cent.
20. It would not be until the end of 2008 that the Spanish Government would begin to speak of a "crisis". However, in September 2009, the then President of the Government, José Luis Rodríguez Zapatero, insisted that "the worst" of the economic situation had already passed.
21. Greek insolvency Law 3869/2010 prevents banks from evicting families from their homes if the value of the mortgaged home does not exceed 200,000 euros. Moreover, the beneficiaries of this moratorium should fulfil a series of requirements such as having a yearly income of less than 25,000 euros, bank deposits of no more than 15,000 euros, and proof that their income has been reduced by at least 20 per cent since 2009. In Argentina, due to the 2002 crisis, the National Congress passed laws 25563, 25589, and 25640 that suspended the auctioning of primary residences. Later, Law 25798 created the system of mortgage refinancing, through which the executive authority took over the mortgage debts, granting a grace period of one year to the debtor, that would be renewable if their economic conditions had not varied.
22. See *El País*, Madrid, September 11th, 2013.
23. After the decision of the Provincial Court of Navarre, different judgements were made which enabled the cancellation of the debt with the handover of the house. To consult the first judgements see: <http://www.observatoriodesc.org/es/sentencias-dacion-hipoteca>
24. In France and Germany, for example, there are second chance laws aimed at resolving the over-indebtedness of natural persons. This means that after a period of time of between 3 and 6 years the debtor acting in good faith is exonerated from his/her debts.
25. For example, the European Court of Human Rights (ECtHR) in two cases of illegal occupation of public housing and land in Vallecas and Cañada Real in Madrid, in February 2013. In both cases, the families affected had children who were minors, lacked an income, and had repeatedly asked the administration for housing alternatives. The ECtHR saw this as a situation of extreme vulnerability and, facing the lack of sufficient response on the part of the authorities, decided to maintain the injunction.
26. In October 2013, in Gerona, Catalonia, a group of families occupied an empty housing block, property of the SAREB, a private entity created with 45 per cent state capital. At first, the Court ordered the prevention of the eviction of two families with under age children for similar reasons to those put forward in previous cases. The Government, nevertheless, claimed that tolerating occupations put the "national interest" at risk and that in this case the people affected were in fact offered alternative housing arrangements (a point that could not be easily deduced from the document). In the end, the ECtHR decided to lift the injunction.



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**THE RIGHT
TO DECENT
HOUSING**



01

**THE LEGAL COMMITMENTS
OF THE SPANISH
GOVERNMENT
IN TERMS OF THE RIGHT
TO HOUSING AND
THE PROHIBITION
OF ARBITRARY EVICTIONS**



The objective of this first chapter is to briefly recall the main legal commitments acquired by the Spanish government in terms of the right to housing and the prohibition of forced evictions. As well as exploring the content of the right to access decent and adequate housing, we will tackle the regulatory framework of evictions through an analysis of the right to effective legal protection and the duty to rehouse victims.

1

COMMITMENTS UNDER THE CONSTITUTION AND THE STATUTES OF AUTONOMY

In Spain, numerous housing rights and duties are considered indifferent types of regulations. When dealing with a decentralised state, there are distinct levels of recognition: from the Constitution and state laws to the Statutes and autonomous laws.

1.1. HOUSING RIGHTS WITHIN THE CONSTITUTIONAL FRAMEWORK

The **Spanish Constitution (CE in Spanish)** recognises the right to housing in **article 47**. Specifically, the provision stipulates that:

"All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the necessary conditions and establish appropriate standards in order to make this right effective, regulating land use in accordance with the general interest in order to prevent speculation. The community shall have a share in the benefits accruing from the town-planning policies of public bodies."

- From the point of view of entitlement, **the right to housing is granted by article 47 to "all Spaniards"**. However, the literal wording of the constitutional text is not, in itself, an obstacle to its general recognition for all persons nor its specific recognition for especially disadvantaged groups.¹ Several Statutes of Autonomy, in fact, link entitlement to social rights recognised in their Statutes to administrative residence (art. 12 of the Statute of Autonomy of Andalusia) or simply "personality" (arts. 15.2, 15.3, and 26 of the Statute of Autonomy of Catalonia).²
- **Article 47 does not enshrine a simple individual right, disassociated from the context in which it is exercised.** In fact, it imposes obligations on the public authorities that exceed the individual dimension of the right: from the regulation of land use in accordance with the general interest to prevent speculation, to guaranteeing the participation of the community in the benefits generated by the urban planning actions of the public authorities. Together with these obligations, the Constitution and the Statutes of Autonomy provide for other governing principles and mandates in housing matters, urban planning, and regional planning, which include the rational use of resources, social cohesion, and the duty to develop public housing policies.
- **The guarantee of the right to housing also appears to be connected to the existence of links to and limits on economic rights.**³ These limits are expressed in numerous provisions that are found under the title "Rights" and that of the economic organisation of the State. They include:
 - the **social function of property rights (article 33)**;
 - the subjection of **free enterprise to the demands of economic planning (article 38)**;
 - the possibility to **reserve essential resources or services to the public sector (article 128.2)**;
 - the authorisation to **plan general economic activity to attend to collective needs (article 131.1)**; and
 - the **subordination of all forms of wealth to the general interest (article 128 CE)**.
- The **social function of property rights** – and the prohibition of their abuse, provided for in article 7.2

of the Civil Code – operates as a limit to and, at the same time, an integral part of constitutionally protected content. And in the same way as it has allowed the public authorities to promote land reform policies, it also authorises them to drive policies in urban reform that would develop the mandate for real and effective equality gathered in article 9.2 CE, and that would generalise the right to housing.⁴

The **inclusion of the right to housing in Chapter 3 of Title I** has led to its consideration, on the basis of the case law of the Constitutional Court (TC in Spanish), as a non-fundamental right. This has to do with the **specific system of protection** assigned to it in **article 53.3** of the CE. Specifically, this provision establishes that: *"Recognition, respect and protection of the principles recognised in Chapter 3 shall guide legislation, judicial practice and actions by the public authorities"*. And it adds that: *"They may only be invoked before the ordinary courts in accordance with the legal provisions implementing them."*

This wording implies a permitted exception to the general principle that every constitution has normative value as legally binding, as established in article 9.1. In technical terms, this exceptionality would make the right to housing a non-fundamental right or of a legislative type, that is, an unenforceable right as long as there is no law that establishes its content. This argument, however, has many nuances.

- Firstly, because the case law itself has recognised the legal force of article 47 CE.⁵
- Secondly, because several elements of the right to housing are already established by different laws at the state and autonomous level and are eligible for judicial protection.
- Thirdly, because **there are many aspects of the right that are enforceable before a court of law** in connection with other rights that are considered fundamental. This happens, for example, with arbitrary evictions, in cases of discrimination or lack of information and participation in access to housing

programmes, or in cases of abuses against vulnerable tenants on the part of landlords, real estate agencies, or financial institutions.

- That it is not possible, in short, to legally claim for housing in an unconditional way, does not mean that there are no concrete elements or aspects of the right that can be brought before the courts.⁶

From the constitutional point of view, in fact, one of the first issues is the consideration of the enjoyment of decent and adequate housing as a "right". This is relevant since it is not a characteristic that can be extended to all of the provisions that form Chapter 3. Only some, in effect, are recognised as rights (health, culture, environment, housing, consumer protection), which turns out to be decisive in defining their nature and their scope.

No constitutional right can have empty content or be considered a simple rhetorical formula.⁷ Just like other rights, the right to decent and adequate housing presents content that is in part determined and in part determinable, but never non-existent. Its constitutional enshrinement alone, in fact, includes the implicit recognition of certain situations that would be incompatible with its core regulatory content. This would be the case, for example, of the absolute lack of housing or the existence of accommodation that does not have the minimum characteristics of decency, above all when this waters down the content of other constitutional principles and rights or when it affects particularly vulnerable groups, like minors or people with serious disabilities. Different situations can be identified in which the absence of housing or its deficient guarantee can make the content of principles and rights such as personal dignity and free development of personality (article 10), physical and moral integrity (article 15), personal and familial privacy (article 18), due process (article 24), health (article 43), or education (article 27) unrecognisable.

The Constitution makes reference to the right to "enjoy" housing. This expression implies the recogni-

tion of diverse legal channels or options for exercising or fulfilling the right. These options do not have to stop at private property and they can include other possibilities such as rental, transfer of use, surface rights, or cooperative or collective property.

Moreover, article 47 of the Constitution formulates a right with explicit qualifiers: *decent and adequate housing*. These notions, like many other legal concepts, are to some extent vague. But they are far from being rhetorical categories lacking all regulation. The notion of "decent" in fact, has had certain case-law development on the basis of article 10.1 of the Constitution, and has been linked, among other issues, to the exis-

tence of a minimum that cannot be violated and that must be legally ensured.⁸

This minimum or core content, of course, cannot be interpreted in an abstract and timeless way. It must take into account, on the one hand, the personal, social, and economic circumstances of the rights-holders and, on the other hand, the context in which the standard is applied. This dynamic conception of the content of the right could be linked with the notion of *core content understood as that which makes a right recognisable in accordance with the generally accepted idea of it in a certain historical moment*.⁹

1.2. HOUSING RIGHTS WITHIN THE STATUTORY FRAMEWORK

Some Statutes of Autonomy, above all after the reforms initiated in 2006, also include explicit provisions related to the right to housing. Unlike the Constitution, an important part of the recently reformed Statutes of Autonomy recognise the right to housing as having an autonomous function as a right and establish concrete mandates for the public authorities under the heading of governing principles. Also unlike the Constitution, **some of the new Statutes grant social rights and social principles**, including those related to housing, **similar guarantees to those granted to other rights**.

The **most rights-based regulations** on the right to housing are, probably, those of the Statutes of **Catalonia and Andalusia**.

Article 26 of the Statute of Catalonia, for example, recognises that: *Those individuals who lack sufficient resources have the right to a decent home, and public authorities shall, therefore, establish by law a system of measures to guarantee this right.*

This autonomous recognition of the right as a subjective right is complemented by its recognition as a

governing principle in article 47 of the Statute. This provision, in fact, completes the mandate considered in article 26 and declares that: *The public authorities shall facilitate access to housing by means of the provision of land and the promotion of public and subsidised housing, with special attention to young people and groups with the greatest needs.*

The Statute of Andalusia, for its part, establishes in article 25 that the public authorities are obliged to provide public housing *in order to favour the exercise of the constitutional right to decent and adequate housing*, and it entrusts the law with regulating access to said housing on an equal footing, as well as the public aid that would facilitate this.

Article 37.22 reinforces these mandates and establishes as a governing principle of public policies: The obligation to rationally use the land *adopting all of the necessary measures to avoid speculation and promoting access for those groups that are most in need of subsidised housing.*

Article 16 of the Statute of Autonomy of Valencia enters into detail on the protected subjects. Thus, though the right is recognised for *citizens of Valencia*, it stipulates: The aid which shall promote this right shall be regulated by law, especially favouring the young,

people with no means, women who have suffered abuse, people affected by a disability and *those others for whom the aid is justified*.

Other Statutes of Autonomy, like those of Aragon or Castile-Leon, follow the constitutional system and directly regulate the right to housing as a governing principle of public policies, with certain obligations for the public authorities. Thus, article 27 of the Statute of Aragon declares that: *The public authorities of the Autonomous Community will effectively promote the exercise of the right to decent housing, facilitating access through ownership or rental, through rational land use and the promotion of public and subsidised housing, paying special attention to young people and groups that are most in need.*

Article 16.14 of the Statute of Castile-Leon, for its part, establishes the duties of the public authorities to ensure: *Equal access for all the people of Castile-Leon to decent housing through land generation and the promotion of public housing and subsidised housing, paying special attention to disadvantaged social groups.*

Unlike the Constitution, the new Statutes do not tend to link the recognition of the right to housing or of governing principles in the matter with a weaker

rights-based system than that extended to other statutory rights.

It is not by chance, for example, that the adverb "only", used in article 53.3 of the Constitution to determine the legal effectiveness and possibilities of legal claims of governing principles, has disappeared in some Statutes of Autonomy, opting instead for a formula that better matches the principle of application most favourable to their full effectiveness.

Specifically, article 39.3 of the Statute of Autonomy of Catalonia establishes that: *The governing principles can be invoked before the jurisdiction, in accordance with the provisions of the laws and other regulations that develop them.* Article 40 of the Statute of Andalusia, for its part, stipulates that *they can be claimed before the judges and the courts in accordance with the provisions of the laws that establish them.*

Both articles, in short, suggest that the guarantee of the right to housing will be greater the more established it is by law. But neither holds that the possible absence of law would imply per se the non-existence of a minimum content that could be claimed before the courts.

2 COMMITMENTS UNDER INTERNATIONAL HUMAN RIGHTS LAW

The determination of the constitutional content of the right to decent housing and of other rights linked to this cannot be separated from the provisions established in international human rights law.

Article 10.2 of the Constitution, in fact, stipulates that: "*Provisions relating to the fundamental rights and liberties recognised by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain.*"

Moreover, **article 96.1** establishes that: "*Validly concluded international treaties (...) shall be part of the internal legal system*", such that its provisions "*may only be repealed, amended or suspended in the manner provided for in the treaties themselves or in accordance with the general rules of international law.*"

A rights-based interpretation of these provisions leads us to understand that **both the Universal Declaration and the treatise become interpretative criteria for all rights and freedoms contained in Title I of the Constitution**, independently of their position in the Constitution and therefore of their system of guarantees.¹⁰

2.1. HOUSING RIGHTS AND THE PROHIBITION OF EVICTIONS IN THE EUROPEAN CONVENTION ON HUMAN RIGHTS

An important factor for determining the scope of some of the content of article 47 of the Constitution and other rights connected with it is the case law of the **European Court of Human Rights (ECtHR)**, also known as the Strasbourg Court. The function of the ECtHR, in fact, is to ensure fulfilment of the 1950 European Convention on Human Rights (ECHR). The ECHR does not recognise the right to housing, given that it fundamentally considers civil and political rights.

However, from the 1980s on, the ECtHR began to outline a "social interpretation" of some civil rights in the ECHR and to take from them some concrete obligations for the states. Above all, these obligations had to do with the protection of particularly vulnerable groups – like homeless families, especially when minors were involved – that could not fulfil the rights that corresponded to them and that did not have sufficient assistance from the public authorities. This "**social interpretation**" of certain civil rights allowed the ECtHR to concern itself with cases that involved the pro-

tection of housing in an indirect way, through connection with rights recognised in the ECHR.

In matters of eviction, the connections are the following: firstly, the existence of the right to effective legal protection that would protect people affected by eviction orders. The ECtHR has added detail to this right established in art. 6.1 and art. 13 of the ECHR through the following guarantees:

- **Right to a fair trial** understood as that which guarantees the equality of both parties in dispute such that they can oppose their reasons and have access to the legal means and sufficient time to prepare their defence. In the case of *Lunari v. Italy*, January 11th, 2001, for example, the ECtHR established that foreclosure procedures, characterised by their fast and prompt nature, are also subject to the **adversarial system**.
- **Right to an effective remedy** in the material and not merely formal sense of legal protection. That is, in the case of evictions, the existence of a legal remedy to effectively stop the eviction and prevent action once this remedy has been delivered.

Secondly, the connection with civil rights is found in the **link between evictions and the infringement of rights in relation to private and family life and in relation to the home**, article 8 of the ECHR¹¹, **the prohibition of inhuman or degrading treatment**, article 3 of the ECHR, and **article 1 of Protocol No. 1, which establishes the right to protection of property**. Thus, in the *Back v. Finland* judgement of 2004, the ECtHR established that the measures of property deprivation had to pursue legitimate objectives and at the same time consider a balanced relationship of proportionality between the means employed and the end pursued.

The Court has described evictions as the most extreme form of infringement of the right to protection of the home. Furthermore, the ECtHR has condemned the absence of minimum conditions of habitability and emphasised the obligation to provide for adequate rehousing on the basis of the right to private and family life, to the home, and to correspondence (art. 8) and to the right not to be subjected to inhumane or degrading treatment (art. 3).

- In the case of *López v. Spain*, 1994, it indirectly protected the right to housing through the right to private and family life (article 8) in a case on pollution, smoke, and bad smells produced by a solid and liquid waste treatment plant.
- In *Stretch v. United Kingdom*, 2003, it held that the protection of assets included protection of the expectation of a tenant to continue with the rental (article 1 of Protocol No. 1).
- In the case of *Connors v. United Kingdom*, 2004, it maintained that the eviction of the complainant had not respected the guarantees of due process as it did not offer an adequate justification for public interference in home and family life (article 8).
- In *Moldovan and others v. Romania*, 2005, it considered that the living conditions of the complainants, including housing conditions, and the racial discrimination to which they had been subjected on the part of the

public authorities, constituted a violation of their human dignity due to the humiliation and degradation it had caused them (articles 3, 6.1, 8, and 14).

- In *McCann v. United Kingdom*, 2008, it finally held that the beneficiary of social housing could not be deprived of his/her right without judicial intervention, since the right to accommodation should be considered as a protected "property" not only from the substantive point of view, due to its link with article 1 of the Additional Protocol, but also from the procedural point of view, due to its link with article 6.1.

In terms of the **prohibition of arbitrary evictions**, this case law establishes the following lines of action on the part of the public authorities:

- There can be no interference from the public authorities in the home unless dealing **with a necessary measure for national security**, public security, economic welfare of the country, defence of public order and prevention of crime, protection of health or morals, or the protection of rights and freedoms of others.
- The government should verify whether **there is a situation of absolute need that justifies** the extreme interference in the right to private and family life entailed in an **eviction**. This means explaining if the damages caused by the realisation of the eviction are **proportional to the objective pursued**.
- **Obligation of the public administrations to guarantee adequate rehousing** of people affected by evictions. This means providing a permanent place in accordance with the concrete needs of the people affected. Rehousing in the homes of relatives or in hostels, therefore, is not in accordance with the law, especially when dealing with vulnerable groups. In this sense, the **three injunctions against the Spanish government** are of special interest. These **aimed to prevent the eviction** of vulnerable persons given the absence of measures aimed at guaranteeing adequate rehousing.¹²

2.2. HOUSING RIGHTS AND THE PROHIBITION OF ARBITRARY EVICTIONS IN THE EUROPEAN SOCIAL CHARTER

Another of the benchmark international treaties in matters of housing rights is the **European Social Charter (ESC)**. In its original version from 1961, the ESC did not make any mention of housing questions. In the revised version of 1996, on the other hand, it included various rights linked to protection against poverty and social exclusion and to the right to housing itself. Specifically, **article 31 of the revised Charter** obliges the States Parties to adopt measures intended:

"1. to promote access to housing of an adequate standard; 2. to prevent and reduce homelessness with a view to its gradual elimination; 3. to make the price of housing accessible to those without adequate resources."

The administrative entity in charge of safeguarding the fulfilment of the ESC is the **European Committee of Social Rights (ECSR)**. Spain has not ratified the revised version of the ESC nor the Protocol that allows for the presentation of collective complaints. However, **the 'case law'** that the Committee has developed in relation to article 31 and other articles of the ESC that could affect the **right to housing** (like protection of family life) should be **useful criteria when it comes to determining the scope, not only of article 47, but of other constitutional rights**, like the right to equality (article 14), to freedom of personal development (article 10), to personal and family privacy (article 18), or to physical integrity (article 15).¹³

Thus, on the basis of the Revised European Social Charter, on the different cases resolved through the processing of collective complaints, and on state reports, the ECSR has set the following public duties in matters of housing¹⁴

a) Promote **access to adequate housing**. This refers both to physical conditions in terms of hygiene and

health as well as the avoidance of over-crowding and security of tenure. The ECSR adds that these conditions are enforceable for new constructions and others. In this sense, the Committee has expressed that the right to housing also includes the obligation to plan results and their precision in time.¹⁵

b) **Attend to the homeless**. The ECSR considers that a homeless person is an individual who legally lacks a home or some other adequate housing resource. In order to avoid homelessness, reactive measures are needed but also precautionary measures, including **both the provision of housing and measures for avoiding the loss of homes**.

c) Guarantee **affordability of access to housing**. According to the ECSR, affordability means that the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance, and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located.¹⁶ With the aim of fulfilling this objective the States Parties are required to adopt comprehensive housing benefit systems to protect low-income and disadvantaged sections of the population.¹⁷

From ECSR case law, in fact, several corollaries can be extracted:

a) The States cannot claim absolute discretion when it comes to developing their public policies.

b) Nor can they shelter themselves in an abstract way in economic or tax circumstances in order to justify non-compliance.

c) The States are not only obliged to provide means for the fulfilment of the right to housing but also to generate reasonable results, subject to subsequent control.

- d) Said control can be carried out through the study of different elements:
- effective advances in the satisfaction of the right, depending on the needs of the population;
 - unjustified set-backs, especially when there are alternative measures that are less harmful to the enjoyment of the right;
 - the preparation of adequate responses for different social groups, but above all for the most vulnerable groups; and
 - the setting of reasonable deadlines for achieving the envisaged policies, without reducing the effectiveness of the right.

2.3. HOUSING RIGHTS AND THE PROHIBITION OF ARBITRARY EVICTIONS IN THE ICESCR AND THE ICCPR

The recognition of the right to adequate housing is also present in several **instruments of the United Nations**.

The **1948 Universal Declaration of Human Rights**, in article 25, declares: *Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.*

The right to housing is also recognised in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Said article considers: *The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.*

Additionally, it establishes the state duty to dedicate maximum available resources so that the public authorities may guarantee progressive realisation (art.

2.1) of the fulfilment of the rights included in the Covenant without any kind of discrimination (art. 2.2). The determination of the concrete scope of the articles of the ICESCR has been entrusted to the Committee on Economic, Social, and Cultural Rights (CESCR) of the United Nations.

To do this, the Committee has released various General Comments (GCs). There are two GCs of the CESCR that specifically establish the content of the right to adequate housing gathered in article 11 of the ICESCR: GC no. 4, in which different components are established that define the "adequate" nature of a home, and GC no. 7, which analyses the prohibition of forced evictions as an integral part of the right to housing. Alongside these GCs, there are others that are closely linked to claims for housing rights. For example, GC no. 3, related to the concrete duties of the States Parties.

A. THE BASIC CONTENT OF THE RIGHT TO ADEQUATE HOUSING

Same as the European Committee on Social Rights, the **CESCR** has described in detail, through **GC no.4**, some of the elements that define **the "adequate" nature of a home**:¹⁸

- 1. Legal security of tenure.** The occupants of the property should enjoy a type of tenure that grants them secure permanence in said property. This security status does not necessarily have to coincide with property ownership. On the contrary, this mode has often been shown incapable of guaranteeing the generalised access of the population to adequate housing. Other forms suitable for guaranteeing legal security of tenure could be, in fact, cooperative or social housing, rental, usufruct, transfer of use, etc.

- 2. Availability of services, materials, facilities, and infrastructure.** Adequate accommodation should also include certain services that are essential for health, security, comfort, and nutrition. Thus, for example, access to drinking water, sewage systems, rubbish collection, electricity, heating – when necessary – ventilation, and energy for cooking. Equally, the home should have access to certain community facilities, like fire services and ambulances in case of emergency, and the necessary public transport and roads for access to other basic resources for personal development, such as, for example, schools, health centres, or jobs.
- 3. Affordability.** The costs both of accessing decent housing and maintaining it should not prevent the fulfilment of other basic needs. In principle, no person should allocate more than 30% of their income to the fulfilment of the right to housing.
- 4. Habitability.** The housing must feature the necessary conditions of hygiene, health, and safety.
- 5. Accessibility.** Adequate housing should be accessible for all people, especially for groups in situations of physical vulnerability like elderly people, people with disabilities, or other vulnerable groups. Thus, for example, for a person with motor disabilities, adequate housing should include access ramps, adequate spaces for movement in wheelchairs, etc.
- 6. Location.** The adequacy of housing also includes it being located in a place with access to employment options, schools, or health centres, and, above all, locations that do not put the enjoyment of other rights in danger, like health, family life, and privacy. These elements should especially be taken into account in cases with people affected by rehousing. Housing located as close as possible to the area of the person being rehoused constitutes a central element of the adequate nature of the assistance in question.
- 7. Cultural adequacy.** Same as all social rights, the right to housing includes both generalisable elements, linked to the common needs of people, and differentiating elements related to the cultural contexts in which they are guaranteed. Consequently, housing policy, the way housing is constructed, and the materials used should bear in mind the forms of life and sustenance of the beneficiaries of the right.

B. THE RIGHT TO ADEQUATE HOUSING AND THE PROHIBITION OF FORCED EVICTIONS

CESCR GC no. 7, for its part, establishes that the right to adequate housing under article 11.1 of the ICESCR also includes the prohibition of forced evictions, that is, the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.

The CESCR holds that forced evictions **can only be justified in exceptional circumstances** and in accordance with the relevant principles of international law. Among the actions that could give rise to be described as "exceptional circumstances", the following are worth mentioning:¹⁹

- a) racist or discriminatory declarations, attacks, or treatment of a lease-holder or resident against another;
- b) the unjustifiable destruction of rented property;
- c) persistent non-payment of rent, once the capacity of the tenant to pay has been shown and once non-fulfilment of the landlord's duties in terms of the habitability of the housing does not play a role;
- d) persistent anti-social behaviour that threatens public health or security;
- e) clearly criminal conduct, defined by the law, that constitutes a threat to the rights of others;
- f) the illegal occupation of a property that is inhabited at the time of the occupation; and
- g) the occupation of land or housing by an occupying power.

To be legal, the eviction should be carried out in accordance with legislation that is compatible with international standards in human rights. The CESCR has established a series of **rights that should be respected in cases of eviction:**

1. Right to access **appropriate legal resources.**
2. Right to adequate measures to prevent all forms of discrimination to which the eviction may give rise.
3. Right to the study, together with the people affected, of all the possibilities that allow for the avoidance or at least the minimisation of the need to resort to force.
4. Right to **due compensation** in the case of being deprived of personal property.
5. Right to procedural due process, in which we find: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.
6. Right to **provision of other housing**, relocation, or access to productive land, depending on the case, if the persons lack access to sufficient economic resources. **Specifically, the Committee stresses that evictions "should not result in rendering individuals homeless or vulnerable to the violation of other human rights".**

The increase in forced displacements of people due to development projects motivated the drafting of a specific regulation on the part of the Special Rapporteur on Housing of the United Nations.

These principles are found in the 2006 annual report and they gather **the procedures to be followed in the case of forced evictions due to development projects** like the construction of dams, beautification of cities, or preparation for international events.²⁰ Included among the measures to be followed we find:

- the obligation of the public authorities to carry out **impact assessments**, especially on groups in vulnerable situations;
- the duty to **fairly compensate the people affected**; and
- **control of private powers so that their actions do not increase the vulnerability of impoverished groups.**

C. TYPOLOGY OF STATE OBLIGATIONS IN TERMS OF HOUSING RIGHTS AND EVICTIONS

Same as happens with the case law of the ECtHR or the European Committee on Social Rights, the CESCR has also established some concrete duties for states in terms of housing on ratifying the ICESCR. According to GC No. 3, these obligations would basically be of three types: a) to respect; b) to protect; and c) to positively fulfil the right.

- a) The **obligations to respect** encompass negative obligations; that is, to not intervene arbitrarily in the enjoyment of the right. Thus, according to the Committee, obligations to respect the right would include **not launching deliberately regressive policies** that worsen existing housing conditions, not facilitating arbitrary evictions or promoting unsafe construction or construction in protected areas.
- b) The **obligations to protect** would be aimed at preventing arbitrary interferences in the enjoyment of the right to housing on the part of third parties. This would be the case, for example, of the sanctioning or **prohibition of abuses from private citizens like landlords, real-estate agencies, construction companies, or financial institutions**. Naturally, not all individuals linked to the supply of housing resources are found to be equally bound to the respect for rights found in the ICESCR. One basic principle in matters of rights is that **those who occupy positions of greater power or primacy in the market have greater duties in terms of responsibility**. In matters of evictions, therefore, the same treatment cannot be given to evictions caused by a small landlord as those driven by financial institutions. The measures that bind private people and groups in relation to housing rights should bear in mind their capacity, resources, and influences.
- c) Lastly, the **obligations to fulfil** would be those measures aimed at making the content of the right to adequate housing effective, in a positive way. This would be the case, for example, of the obligation to **guarantee the right to information and participation in housing plans and programmes for the target groups of housing benefits**, that is, in the definition of the content itself of the right, as well as the **obligation to promote affordable public or social housing**.

According to GC No. 3, many of these obligations, like guaranteeing the basic content of the right, are of an immediate nature and are directly enforceable before the public authorities. Others, on the other hand, depend on the principle of progressive realisation found in art. 2.1. However, that the fulfilment of the right to housing can be progressive should not be understood as authorisation for a limitless postponement of the fulfilment of state obligations in housing matters.

On the contrary, **the public authorities should demonstrate:**

- a) that they are making the **maximum effort** (legislative, administrative, economic);
- b) to the full extent of their available resources (human, financial, technological, informative, economic);
- c) to **fulfil the right** in question;
- d) identifying and **prioritising the most urgent cases** and the groups in situations of greatest vulnerability.

According to the CESCR this obligation to give priority to the most vulnerable individuals would take precedence especially in situations of economic crisis, recession, or lack of availability of resources due to structural adjustment policies.

The use of these standards on the part of domestic courts is a more and more frequent practice in comparative law.²¹ This has not been the case in Spain. The Constitutional Court has shown resistance when it comes to using the GCs of the CESCR to determine the scope of constitutional rights. However, there are numerous arguments that would justify a more rights-based attitude in the matter:

- The ICESCR was ratified by Spain in 1977 and therefore forms a part of domestic legislation.
- Spain was one of the first countries to ratify the Optional Protocol that, since May 2013, allows for the presentation of collective complaints for violations of the ICESCR. This ratification means explicit acceptance of the control function and of the doctrine of the CESCR and their disregard in internal policy would be incongruous.
- There are different autonomous administrative entities like the advisory councils²³ and, above all, the ombudsmen, which have already invoked the GCs of the CESCR.²⁴

The ICESCR, in any case, is not the only treaty that acts as a guardian of housing rights. The **1966 In-**

ternational Covenant on Civil and Political Rights (ICCPR) establishes rights that are especially relevant in cases of eviction. This is found in the **inviolability of the home** considered in article 17 of the ICCPR, and through the procedural guarantees that should be available to people affected by eviction procedures, which are found in article 14 of the ICCPR on the **"right to a fair trial and to equality before the courts**

and tribunals."

The administrative entity in charge of supervising the fulfilment of the ICCPR is the Human Rights Committee (HRC). Same as the CESCR, the HRC prepares General Comments with the aim of specifying the prescriptions of the ICCPR.

In its GC No. 16, and in order to avoid arbitrary or unlawful interference, the HCR defines the home as

"the place where a person resides or carries out his usual occupation". Additionally, it imposes a series of obligations on Member States:

- The legislator must determine the "exceptional" circumstances in which interference may take place and the adequacy of said interference in terms of the standards of the Covenant.
- The States are obliged to collect complaints lodged against violations of the inviolability of the home, as well as the state actions that have been carried out to remedy them.

With regard to the right to **effective legal protection** in general and also, consequently, for people affected by evictions, **GC No. 31** on the nature of the States' legal duties (article 2 of the ICCPR) and **GC No. 32** on article 14 of the ICCPR, in relation to the right to a fair trial and to equality before the tribunals and courts, must be adhered to.

In particular, the Committee determines the conditions to guarantee equality between parties and to provide judicial guarantees that beyond their formal existence would also mean effective defence measures. Among other issues, the Committee considers that people must:

- Have **affordable and effective resources** to denounce rights violations.

- Be able to demand **temporary measures** to stop the violation of the right.
- Have guaranteed access to the courts and the appropriate procedural means to defend themselves. This means, among other issues, the possibility to appeal a court decision, the right to legal aid, and, in general, to the **necessary conditions to prevent a disadvantage for the defendant**. In *Dudko v. Australia*, 2007, for example, the HRC questioned the fact that the accused could not defend herself during the hearing through her lawyer while the state attorney was in fact present.
- Be able to know and have the possibility to oppose the evidence and arguments presented by the other party. In the case of *Jansen-Gielen v. The Netherlands*, 2012, paragraph 8.2, for example, the Committee establishes that: *In the absence of the guarantee of equality of arms between the parties in the production of evidence for the purposes of the hearing, the Committee finds a violation of article 14, paragraph 1 of the Covenant.*

Moreover, public administrations should provide information on the obstacles and difficulties that the judicial remedies have in practice and that diminish their effectiveness.

3 COMMITMENTS UNDER EUROPEAN UNION LAW

International human rights law is not the only source of interpretation of article 47 of the Spanish Constitution and other relevant rights in matters of housing.

Article **93 of the CE** establishes that: *"Authorisation may be granted by an organic act for concluding treaties by which powers derived from the Constitution shall be transferred to an international organization or institution." Furthermore, "It is incumbent on the Cortes Generales [parliament] or the Government, as the case may be, to ensure compliance with these treaties and with resolutions originating in the international and supranational organizations to which such powers have been so transferred."*

This article is the **source of the obligations that European Union law imposes on the Spanish government**. In terms of housing, these obligations are exercised indirectly. Responsibilities in housing matters correspond fundamentally to the States and the housing policies of each country depend, therefore, on their particular conception of the social state and of rights.

Without having specific power in housing matters, the EU has had an important impact on the development of the constitutional right to enjoy decent housing. Nevertheless, unlike what happens with international human rights law, the responsibilities that the EU imposes in housing matters are marked by a certain tension:

- a) There are a series of commitments coming from the EU that are potentially rights-based.** These commitments are connected to the development of Community competences in the social sphere closely linked to housing rights. This is the case of matters such as social and territorial cohesion, urban renewal, improvement of energy efficiency in buildings, protection of consumers, environmental issues, or the struggle against exclusion or discrimination.
- b) Together with these commitments, the EU imposes other responsibilities that have a restrictive impact on guaranteeing the right to housing and social rights in general.** These responsibilities have to do with the promotion of free competition, fostering the freedom of capital, services and goods, and the pressure to eliminate the deficit and public debt in Eurozone countries.

3.1. HOUSING RIGHTS IN THE NICE CHARTER AND IN SOME EUROPEAN DIRECTIVES

In the social sphere, in 2000, the **Charter of Fundamental Rights of the European Union**, known as the Nice Charter, was introduced. In article 34.3, this instrument establishes that:

"...the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources".

Moreover, the Charter recognises rights that are also linked to housing rights such as consumer protection (article 38), protection of family life (article 33), and the right to access to services of general economic interest (article 36).

In December 2009, with the entry into force of the Lisbon Treaty, the Charter acquired the same legally binding nature as the treaties. To that effect, the Charter was amended and introduced for the second time in December 2007.

On the basis of the responsibilities mentioned, different directives have also been approved allowing for the protection of housing rights.

- **Directive 93/13/EEC, of April 5th, 1993, on unfair terms in consumer contracts.** This directive is especially interesting in terms of the authorisation of credit and other financial products linked with the purchase of a home. On the definition of unfair terms the Community regulation states: "**A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer**" (art. 3). Furthermore, when it is claimed that a term is not unfair, the burden of proof falls on the seller or supplier. These terms **would not bind the consumer**. The Community regulation was transposed into Spanish legislation through Law 7/1998, of April 13th, on general contract conditions. Among other issues, Spanish law establishes the jurisdiction of the court to interpret the nullity of a concrete term and how this nullity is applied or not to the whole contract. Nevertheless, the Spanish legislator allows that "illegible, ambiguous, obscure, and incomprehensible terms are effective if they have been expressly accepted in writing by the adhering party." This confusion was clarified by means of the judgement of the Court of Justice of the European Union on the 14th of March, 2013.
- **Directive 2000/43, approved on the 29th of June, 2000, relative to the application of the principle of equal treatment between persons** irrespective of their racial or ethnic origin, establishes the **reversal of the burden of proof in situations of possible discrimination**. According to this, it is the party accused of discriminating that must prove that there was no inequality of treatment and not the alleged victim. Moreover, the directive demands the adoption of sanctions and protection measures against possible retaliation towards persons who have reported discrimination. This principle has been especially employed in the housing sector due to its relevance in the fight against phenomena like property mobbing. This is the case, for example, of Catalan Law 18/2007, of December 28th, on the right to housing in articles 45 and 47.
- **Directive 2001/42, of June 27th, 2001, related to the environmental assessment** of certain plans and programmes. This regulation, transposed into Spanish legislation with a certain delay, through Law 9/2006 on the assessment of the effects of certain plans, is added to Directive 85/337 of 1985, on the assessment of the effects of certain public and private projects on the environment. Specifically, the directive establishes the obligation to **undertake a "strategic environmental assessment" before initiating the formulation of the urban planning project** or the construction in question.
- **Draft Directive of March 31st, 2011, on credit agreements for real estate for residential use.** The future directive attempts to promote a more responsible operation and certain harmonisation of the financial sector within the EU. Specifically, the proposal seeks to facilitate access to information for consumers and to avoid their over-indebtedness through an assessment of solvency prior to granting credit. At the same time, the proposed directive is aimed towards preventing the initiation of

foreclosure procedures and tries to limit the interest on delayed payment, in principle to a maximum of 3 times the cost of money. However, it seems that surrender of the home as debt repayment will continue to be a condition linked to the previous agreement between the parties. The opinion of the European Economic and Social Committee (EESC) on the proposal suggests that it should be the borrower who assumes non-payment when the assessment of the consumer's solvency is "mediocre". Finally, the current draft grants the courts the capacity to suspend, as a cautionary measure, an eviction if the affected person reports unfair terms.

As well as the directives there are various documents in which significant advances are established in relation to the right to housing. This is the case, on the one hand, of the **European Housing Charter passed in 2006** by the Urban Housing Intergroup of the European Parliament, in which the existence of a fundamental right to housing is enshrined in the Community legislation as a crucial element for maintaining social

cohesion in Europe. On the other hand, the **European Parliament** approved, in **April 2013, a report on social housing in the European Union** in which it records the following considerations:²⁵

- **Access to social housing is "a fundamental right** that can be seen as a precondition to the exercise of, and to access to, **other fundamental rights** and to a life in conditions of human dignity."
- Mortgage rules must protect consumers and "spread risks fairly". For this, it advocates for the renegotiation and rescheduling of debt repayments for insolvent individuals and families and **urges the States Parties to prevent evicted families from being forced to keep up their mortgage payments.**
- Finally, it indicates **the importance of the participation of social organisations in the definition of strategies in housing matters**, and emphasises the need to **control the price of rental**, as well as promoting other types of tenure like non-profit housing cooperatives.

3.2. THE LUXEMBOURG COURT AND THE PROTECTION OF MORTGAGE HOLDERS AS CONSUMERS

The administrative entity in charge of supervising the fulfilment of these directives, of the rights enshrined in the Charter of Fundamental Rights of 2000 and, in general, EU law, is the **Court of Justice of the European Union (CJEU)**, also known as the Luxembourg Court.²⁶

Recently, **some of its decisions have positively influenced, through the protection of consumer rights, issues linked to the protection of housing rights.**

This is the case of the judgement of March 14th, 2013, that considers the Spanish system of mortgage foreclosure and evictions incompatible with obligations in matters of consumer protection established in direc-

tive 93/13/EEC. The judgement responded to the preliminary ruling²⁷ considered by Commercial Court No. 3, Barcelona, on whether the limited causes for opposition on the part of the debtor in the foreclosure procedure violated the right to effective legal protection of the consumer. Specifically, the trial judge considered three questions, one related to effective legal protection and another two on the concept of unfair terms:

- whether it is in accordance with the law that the judge in charge of the foreclosure procedure cannot analyse the existence of unfair terms and suspend the foreclosure procedure;
- whether it is unfair that the bank may accelerate the maturity of a mortgage contract and claim the

total of the debt in the case of non-payment of a single instalment; and

- whether it is unfair to establish default interest at 18% when the ordinary rate agreed with the institution was of 4.87%.

The CJEU, for its part, made the following observations:

- With regard to the suspension of the foreclosure procedure, the CJEU obliges the modification of the legislation so that the judge may be entitled to know of the existence of unfair terms and, if the case calls for it, be able to suspend the procedure. It will be **the judge who decides if the terms invalidate the mortgage contract or if it can be corrected in some other way**. In short, the CJEU considers that insofar as the declaratory judgement procedure did not provide for the precautionary suspension of the eviction, it lacks effectiveness.
- With regard to the **accelerated maturity** clauses of the debt, **the judge should examine whether**

non-fulfilment has been sufficiently serious "with regard to the term and amount of the loan", and if national law provides "appropriate and effective means" so that the consumer may "find a way to remedy the effects of the accelerated maturity of the loan."

- **In matters of default interest**, again, the Luxembourg Court considers that **the judge should assess sua sponte if they are excessively high**. For which he/she should compare the default interest set by the bank with the legal interest rate, verify that this is adequate to guarantee the achievement of the objectives that default interest pursues in Spain, and check that it does not go "beyond what is necessary to reach them".

With the objective of adapting Spanish mortgage legislation, two months after the judgement of the CJEU, the Central Government passed Law 1/2013, of May 14th, on measures to strengthen the protection of mortgagors, debt restructuring, and social renting.

3.3. EU PRESSURE IN FAVOUR OF MARKET FREEDOMS AND AUSTERITY IN THE EUROZONE

Together with this set of potentially rights-based commitments, **the EU has also boosted regulations and measures with a restrictive impact on the right to housing and on social rights**. This approach, in fact, has been predominant since the passing of the Single Act (1986) and the Maastricht Treaty (1993), and has had an important role since the outbreak of the crisis.

Beyond isolated cases, such as those previously mentioned, **the case law of the CJEU has been marked by the subordination of social rights to the promotion of the free movement of capital, services, and goods**. One of the most emblematic rulings in this sense is the Viking case, of December 11th, 2007, in which the Luxembourg Court ruled in favour of a

Finnish company that, as reported by the unions, changed its residence to Estonia to take advantage of lower wages. This subordination of labour rights to the freedom of establishment of enterprise constitutes a line of case law that repeats itself in the Laval case, of December 18th, 2007, and in the Ruffert case, of April 3rd, 2008, among others.

Another of the EU administrative entities that has prioritised competition law, market freedoms, and austerity policies over housing and social rights is the European Commission. In fact, the Commission, together with the European Central Bank and the International Monetary Fund, make up the troika that, after the outbreak of the crisis in 2008, has imposed adjustment policies that are at odds with existing housing rights on the rescued European States.

In the Netherlands, for example, the European Commission has exercised decisive pressure in favour of the restriction of social policy on housing, one of the most advanced in the continent. Considering the claims of private for-profit developers and construction companies, the Commission considered that the universal vocation of the public housing system distorted free competition. In 2009, after more than 5 years of negotiations, the Dutch Government ended up restricting access to public housing to people with limited economic resources. In this way, it eliminated the "competition" caused for for-profit developers and construction companies by the widespread presence of affordable and good-quality housing provided by the social sector.²⁸

The bank bailout in Portugal in 2011 was also linked to the streamlining of evictions of people with low incomes and to the progressive elimination of rent control.²⁹

In the case of Spain, for its part, the EU has boosted the restructuring of the financial sector without establishing social criteria such as the affordable rental of empty housing owned by the beneficiary institutions or the possibility of *datio in solutum* when dealing with the primary residence of debtors acting in good faith. Moreover, when the Regional Government of Andalusia announced its willingness to force the temporary rental of underused housing in the hands of financial institutions, the Commission brought up "serious doubts" about the legality of the measure.

NOTES

1. According to constitutional case law (among others, Constitutional Court judgement STC 107/1984, FJ 3), the right to housing is a right that may or may not belong to foreign persons depending on the provisions of treaties and laws. However, some case law has determined that a systematic interpretation of article 47 CE in connection with article 10 CE, on dignity and the free development of persons, and with article 9.2 CE, concerning the freedom and equality of "individuals", "groups", or "citizens", would also result in its extension to foreign persons. This is the point of view, for example, of J. Ponce in his "Prologue" to Kenna, P., *Los derechos a la vivienda y los derechos humanos*, ProHabitatge Edicions, Barcelona, 2006, p. 19 and 20. Some autonomous communities, in fact, also came to recognise housing support for foreign persons without legal residence linking it to their competences in matters of public aid and social welfare.
2. Nor does article 47 of the Spanish Constitution (CE) exclude a specific recognition of this right to people with "insufficient resources" (art. 26 of the Statute of Autonomy of Catalonia) or without "means" (art. 22 of the Statute of the Balearic Islands), to the groups "most in need" (art. 27 of the Statute of Aragon; art. 37.22 of the Statute of Andalusia) or "disadvantaged" groups (art. 16.14 of the Statute of Castile-Leon), to "young people" (art. 27 of the Statute of Aragon), to "elderly people" (art. 13.5 of the Statute of Leon), to "battered women", to "dependant persons", or simply to "those in whose case the assistance is justified" (art. 22 of the Statute of the Balearic Islands).
3. Authors such as L. Ferrajoli have insisted strongly on this tension between fundamental rights and economic rights, see *Derechos y garantías: La ley del más débil*, trad. by P. Andrés and A. Greppi, Trotta, Madrid, 1999.
4. See: Constitutional Court judgement STC 37/1987, of March 26th, on Andalusia's Law 8/1984 on land reform, legal basis (FJ in Spanish) 2, 4, and 5. According to the Constitutional Court, the only limit that article 33 marks out for public actions aimed at ensuring these objectives would be the distortion of property rights, in such a way that they could become unrecognisable or impracticable. This possible distortion of property rights, that would be caused, for example, if their profitability were not safeguarded, or if the measures of public intervention were disproportionate, would mark the border between a legitimate delimitation and an illegitimate limitation of the right; or, if preferred, between a delimitation of the core content of property rights protected for social reasons, such as the guarantee of the right to housing, and an expropriating and, thus, indemnifiable intervention.
5. The Supreme Court judgement of February 18th, 2002, for example, highlights that article 47 "establishes a social right or right to assistance that demands, consequently, intervention from the State in the social and economic sphere and positive action from the public authorities for the achievement of material equality advocated in article 9.2. of the Constitution."
6. Often, the consideration of the right to housing and of other social rights as non-justiciable stems from a mistaken conception of the notion of justiciability. A right can be justiciable in some of its contents and not in others. Its subjective nature, therefore, is not tout court determinable but may be subject to nuances.
7. See, among others, Constitutional Court judgement STC 19/1982, FJ 6, of May 5th, or Constitutional Court judgement STC 45/1989, FJ 4, of February 20th.
8. See, for example, Constitutional Court judgements STC 120/1990, FJ 4, of June 27th, and STC 57/1994, FJ 3, of February 28th.
9. Constitutional Court judgement STC 11/1981, of April 8th.
10. For a more general reflection on this see Saiz Arnaiz, A., *La apertura constitucional al Derecho internacional y europeo de los derechos humanos: artículo 10.2 de la Constitución Española*, General Council of the Judiciary, Madrid, 1999.
11. The Court defines "place of residence" in a broad sense, including the occupation of a house for a long period of time without being the owner, accommodation occupied by a leaseholder even if the contract is finished, caravans, or non-fixed abodes.
12. The first injunction, from December 12th, 2012, refers to the attempt to evict a family from the Vallecas neighbourhood in Madrid from the public housing they had occupied for three years after it became vacant. In the second, 3537/13, from January 31st 2013, there was action against the demolition of a home in Cañada Real, Madrid. In both cases, facing the situation of extreme housing vulnerability in which these people would find themselves, the ECtHR established the need for the authorities to guarantee adequate and safe rehousing as a necessary condition for carrying out the eviction. In October 2013, in Gerona, a group of families occupied an empty housing block owned by the SAREB, a private entity created with 45% public capital. The Court ordered a stop to the eviction of two families with children under the age of eighteen for similar reasons to those put forward in the previous cases. The Government, nevertheless, alleged that tolerating occupations put the "national interest" at risk and that in this case alternative accommodation had been offered to the people affected (a point that was not easily deduced from their document). In the end, the ECtHR decided to lift the injunction.
13. The use of these criteria would not be novel. The Constitutional Court, in fact, already carried out this type of operation with the Charter of Fundamental Rights of the European Union when its binding nature was still not provided for in the European treaties. This is the case, for example, of Constitutional Court judgement STC 17/2006, FJ 5, of January 30th. On the possible role of the Charter in the Spanish constitutional field, see Jimena Quesada, L., "La Carta Social Europeo como instrumento de democracia social en Europa y en España", in *Escritos sobre derecho europeo de los derechos sociales*, Tirant lo Blanc, Valencia, 2004.
14. Asociación ProHabitatge, *Dret a l'habitatge. Dels orígens fins avui*, Barcelona, 2009.
15. In the case of the European *Federation of National Organisations working with the Homeless (FEANTSA) v. France*, 2007, the Committee


maintained that the public authorities should not only adopt measures in housing matters but also guarantee their effectiveness, beginning by offering adequate information on the housing situation and providing a calendar for the application of its policies, as well as responses, above all, for the most urgent cases and the most vulnerable groups.

16. In the collective complaint of *FEANTSA v. Slovenia*, case no. 53/2008, the Committee expressly emphasised that very vulnerable groups had to be able to economically access adequate housing.
17. See complaint no. 58/2009 of the *Centre on Housing Rights and Evictions (COHRE) v. Italy*.
18. cf. Pisarello, G. *Vivienda para todos: Un derecho en (de)construcción*, Icaria, Barcelona, 2003; and Kenna, P., *Los derechos a la vivienda y los derechos humanos*, op. cit.
19. Office of the United Nations High Commissioner for Human Rights, Forced Evictions and Human Rights, Fact Sheet No. 25. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet25en.pdf>
20. E/CN.4/2006/41, of March 14th, 2006.
21. For example, the famous judgements of the South African Constitutional Court in *the Government of the Republic of South Africa and others v. Irene Grootboom and others*, October 4th, 2000. More recently, the Supreme Court of Argentina recalled, in the lawsuit *Q. C., S. Y. v. the Government of the Autonomous City of Buenos Aires*, in 2012, that the CESCR is "the authorised interpreter of the homonymous Covenant in the international arena, the interpretation of which should be taken into account given that it includes the "conditions of applicability" of this instrument." In the application of GC No. 3 and GC No. 4 the Court considers that the temporary accommodation provided by the government of the City of Buenos Aires to a mother and her disabled son violated the right to housing, and established the need for the local government to provide "permanent accommodation and with the adequate conditions for the particular vulnerability of the minor." In a similar way, judgement T-312/12 of the Columbian Constitutional Court, April 26th, 2012, expressly mentions GC No. 15 of the CESCR referring to the right to water and its importance for physical and mental health as well as for an adequate standard of living. The Court adds that the GC establishes criteria intended for the state so that through legislation, budget, and economic actions "the greatest possible protection is achieved of the right to water for the whole population."
22. In judgement 247/2007, of December 12th, on the reform of the Statute of Autonomy of Valencia, the Constitutional Court (TC) suggests that art. 10.2 CE does not protect the recognition of the right to water that General Comment No. 15 of the CESCR considers included in art. 11.1 of the ICESCR. According to the TC, "even admitting that we may be looking at an emerging third generation right, it is clear that at present its incipient development is reflected in international instruments that do not require the express manifestation of the states' willingness, which is why we cannot speak of the assumption of concrete commitments in this regard on the part of Spain."
23. In Legal Basis No. 3 of Ruling 282, November 29th, 2007, of the Advisory Council of the Catalan Regional Government on the bill on the right to housing, "habitability, affordable expenses, availability of material services and infrastructure" are cited as elements of the content of the right. Although the Council does not expressly cite it and more so carries out a restrictive interpretation of it, all of these elements are gathered in General Comment No. 4 of the CESCR on the right to housing.
24. See, for example, the article by the Ararteko: Lamarca, I., "Los desahucios: un acuciante problema social que precisa de un enfoque de derechos humanos", in *Jornada de Trabajo sobre Medidas para la protección eficaz del derecho constitucional a la vivienda en un entorno de crisis económica*, Oviedo, 2012.
25. A7-0155/2013, April 2013
26. In order to carry out this function the CJEU has 7 types of resources, including the possibility for national judges to consider a "preliminary ruling" with the aim of clarifying the correct application of European Union law in an alleged case on which it needs to take a decision.
27. The preliminary ruling allows the courts of the Member States, in the context of a pending lawsuit, to question the CJEU on the interpretation of Union Law or on the validity of a Union act. The Court of Justice does not resolve national disputes. It is the national court that must resolve the dispute in accordance with the decision of the Court of Justice. The European judgement likewise binds other national courts that know of a similar problem.
28. See European Commission IP/09/1928, of December 15th, 2009. Recently, in 2012, after an intense campaign discrediting the public housing system, the management of the French construction sector, the Union Nationale de la Propriété Immobilière, lodged a similar complaint.
29. See European Commission, "Portugal: Memorandum of Understanding on Specific Economic Policy Conditionality", May 2011.



02

**THE DEVELOPMENT
OF HOUSING RIGHTS
AND OF THE PROHIBITION
OF ARBITRARY EVICTIONS**



This section has three different objectives. On the one hand, we aim to clarify the distribution of duties in terms of housing and the prohibition of forced evictions across the different levels of the administration. On the other hand, we aim to show some of the state and autonomous regulations on which the implementation of urban and housing policy rests. Finally, this chapter gathers some of the state regulations and the autonomous and local proposals developed in response to the housing crisis.

1

DISTRIBUTION OF POWERS WITH REGARD TO HOUSING RIGHTS AND EVICTIONS

In a state such as the Spanish one, the responsibility to **guarantee the different elements that form the right to housing and the prohibition of arbitrary evictions** is distributed across different institutional levels: the **Central government, the autonomous communities, and the local governments.**

The scope of powers is relevant given that it allows us understand which territorial authority can or should do something to fulfil the right. Nevertheless, the complexity of the territorial organisation has often been a source of conflict in relation to powers. The complex balance between unity and autonomy has given rise to numerous positive conflicts between the Central government and the autonomous communities. This has generated rich case law in the Constitutional Court (TC in Spanish) in relation to the definition of powers regarding the scope, above all, of articles 149.1.1, 11, and 13 of the Spanish Constitution (CE in Spanish).¹ It has also favoured the tendency of the public authorities not to assume many of their responsibilities linked to the fulfilment of the right to adequate housing and to the prevention of arbitrary evictions.²

POWERS OF THE CENTRAL GOVERNMENT

Article 149.1 CE assigns the Central Government exclusive power in several matters. There are 4 paragraphs in this article that, while they are not the only ones, acquire special relevance with regard to housing policy:

- **Paragraph 1**, which entrusts the Central government with the "Regulation of **basic conditions guaranteeing the equality of all Spaniards** in the exercise of their rights and in the fulfilment of their constitutional duties." This explains, for example, that while powers in urban planning and housing may be autonomous, it is the Central government that establishes basic legislation through the Land Act (*Ley de Suelo*), and it may also have a Ministry of Housing.
- **Paragraph 6**, which establishes the responsibility of the Central government to **develop legislation in civil and procedural matters**. Thus, it is responsible in matters of leases and in relation to legislation on mortgage foreclosures, evictions, and procedures for expropriation.
- **Paragraph 11**, which establishes the exclusive competence of the Central government in the "monetary system: foreign currency, exchange, and convertibility", as well as the "**bases for the regulations concerning credit, banking and insurance**", and which means, among other things, that the Central Government is responsible for mortgage legislation and for policy on credit access.
- **Paragraph 13**, which provides for state powers over the "basic rules and coordination of **general economic planning**." This provision, added to paragraph 1 on the regulation of the conditions to guarantee the equality of all Spanish citizens, has been used in a catch-all way to encompass different state actions like rent support policy,³ and in general the basic planning of public housing and the respective financing instruments.⁴

In very simplified terms, it could be said that the **Central Government:**

- a)** has coordinated **housing as an economic sector;**
- b)** has regulated the basic conditions for its **exercise as a right;**
- c)** has established **fiscal policy** in this matter (except in Navarre and the Basque Autonomous Community);
- d)** has developed the basic regulations on buildings, construction, and on the rental system;
- e)** has defined actions subject to protection, regulating their **financing**, level of protection, or the provision of resources; and
- f)** has legislated on **mortgage** and land registration **law** and **compulsory expropriation**.

POWERS OF THE AUTONOMOUS COMMUNITIES

Article **148.1 CE** stipulates that the autonomous communities can assume powers in matters of **regional planning, urban planning, and housing**. The housing policies developed in each autonomous community are **linked**, therefore, **to the degree of autonomy** assumed by each of them and to the combination of their competences with those of the State.

Currently, **all of the communities** have assumed **responsibility in matters of housing on an exclusive basis** in their Statutes of Autonomy. This means that the communities are authorised to develop their housing policy with their own resources, and that urban planning and management and their control also correspond to them. Likewise, they are competent in relation to the following:

- creation of housing and regional planning regulations;
- definition and development of housing policy;
- programming, execution, control, and follow-up of public developments;
- administration of their housing stock;
- classification of protection of private developments;
- control and management of the financing of subsidised housing actions and rehabilitation; and
- land development.

Basically, the autonomous communities have had powers, within what is assumed by their respective Statutes, when it comes to developing their **own legislation in matters of housing and urban planning**. With regard to the financing of protected activities, they **participate in the State Housing Plan** and manage its application in their territory through their own plans. This has not prevented them from having their **own aid schemes that, on occasion, complement those of the state** and, in other cases, measures that include actions that are not planned at the state level, both in terms of housing and land for residential use.

POWERS OF THE LOCAL AUTHORITIES

These State and autonomous powers have not excluded the intervention of the local authorities, whose role in housing and urban planning policy has been defined, among others, by Law 7/1985, of April 2nd, regulating the basis of the local-government system (LRBRL in Spanish), and by Law 57/2003, of December 16th, on measures for the modernisation of the local government (MMGL in Spanish).

Specifically, **Law 7/1985, regulating the basis of the local-government system (LRBRL)** grants the municipal councils **a fundamental role in housing policy**, especially on the basis of **articles 25.2 d) and 28**:

- The local authorities are responsible for **urban planning and land use management intended for processes of urban development** and in particular in order to attain land for subsidised housing.
- Moreover, the local authorities are competent in the **management and administration of their public housing stock and land**, and in establishing, within this framework, the agreements they consider appropriate with different institutions or public and private companies for the development of subsidised housing in its different forms.
- The municipal councils are also authorised to **complement the activities undertaken by other public administrations** in the area of housing.

In this way, provided they do not contradict state or autonomous regulations, they have scope for action that is by no means insignificant. As well as having competences in housing matters, the LRBRL grants the local governments the **power to act in other closely linked elements** like:

- delivery of social services where special attention is paid to **people in situations of housing vulnerability**;
- **protection of consumers and users**, with which it can intervene, although with significant limitations, informing and protecting mortgage holders;
- participation in the management of **primary health care**, an essential tool for prevention, awareness-raising, and care for all health problems derived from an eviction for economic reasons or from poor housing conditions; and
- **environmental protection**.

The scope of action of the local authorities is an object of parliamentary debate. According to criteria of budgetary stability, financial sustainability, and efficiency in the use of resources, the **government bill for the rationalisation and sustainability of the administration, of September 6th, 2013**, aims to eliminate the competences that are established in the current LRBRL and would allocate, instead, a **closed list of the possible actions of the local governments**.⁵

In summary, it can be said that **the autonomous communities have the power to plan and execute their housing policy on a land whose planning and management is the responsibility of the municipal councils.** However, **State competence in matters such as credit and mortgage policy, the promotion of social housing, the regulation of the rental market, regulations in eviction matters, and, especially, the uneven budgetary distribution** between different levels of government, **grant the state a central role.**

LEVEL OF GOVERNMENT	REGULATORY FRAMEWORK	COMPETENCES AND POWERS
STATE Defined in the Spanish Constitution (CE) and the judgements of the Constitutional Court (TC)	Monetary systems: foreign currency, exchange, and convertibility; bases for the regulations concerning credit, banking, and insurance (149.1.11 CE) Basic rules and coordination of general economic planning (149.1.13 CE) ⁶	<ul style="list-style-type: none"> Establish the basic standards for protectable actions: define the actions that may be considered the object of public protection, determine funding formulas, and define the possible beneficiaries on the basis of income limitations. Prepare the housing plans that the autonomous communities should develop. Determine the regulation and funding of the private development of public housing. Design fiscal policy, through which it was decided to benefit the ownership system in detriment to other systems like rental, cooperatives, etc. Regulate mortgages and access to credit.
	Commercial legislation and civil legislation (art. 149.1.6 and 8 CE)	<ul style="list-style-type: none"> Put in place the system of public and private rentals, and, thus, their duration and characteristics. Regulate land tenure and questions related to construction.
	Equality of Spanish citizens, environmental protection (art. 149.1.1, 18, and 23 CE)	<ul style="list-style-type: none"> Establish the basic standards regarding land-use, (Land Act) and the minimum funds to be allocated to social uses.
	Immigration (art. 149.1.2 CE)	<ul style="list-style-type: none"> Regulate the general rules on the rights of the immigrant population.
	Compulsory expropriation (art. 149.1.18 CE)	<ul style="list-style-type: none"> Regulate the rules on compulsory expropriation.
AUTONOMOUS Defined in the CE, Transfer Decrees, judgements of the TC and Statutes of Autonomy	Regional planning, urban planning, and housing (art. 148.1.3 CE)	<ul style="list-style-type: none"> Develop the basic standards for protectable actions and state housing plans. Determine the regulation and funding of the public development of autonomous-level housing. Establish legislation in housing and urban planning matters. Competencies in related matters such as social assistance, youth, advancement of women, protection of minors, etc.
MUNICIPAL Defined in Law 7/1985, regulating the basis of the local-government system (LRBRL) and Law 57/2003, on measures for the modernisation of the local government (MMGL)	Powers and responsibilities of the municipalities (art. 7, 25, and 28 LRBRL, art. 4 MMGL)	<ul style="list-style-type: none"> Urban planning management and execution, definition of the urban form, land use reclassification, and the improvement and consolidation of existing urban land. Development and management of housing. Protection of public health. Activities complementary to those of other public authorities and, in particular, those related to education, culture, advancement of women, housing, health, and environmental protection.

Table 1: Relation between distribution of powers and housing rights

2 REGULATORY DEVELOPMENTS AND STATE-LEVEL POLICIES

Next we analyse state legislation on housing and urban planning matters on the basis of the powers granted to the State by the Constitution of 1978 in terms of the environment (149.1.23), guaranteeing equality to all Spanish citizens (149.1.1), the coordination of general economic planning (149.1.13), and the regulation of the general rules on the rights of the immigrant population (149.1.2).

2.1. STATE LEGISLATION IN TERMS OF HOUSING AND IMMIGRATION

The 1978 Constitution grants certain centrality to the autonomous communities and the municipalities in matters of housing and urban planning. However, the Central Government, on the basis of its competencies in closely related matters, **has promoted a particular view on housing and urban planning policy.**

This approach has considered **housing and urban planning policy from an economic development point of view** that has prevented access to housing from becoming a universal public service. For this, urban development law has established special efforts to protect land ownership rights, in detriment to the protection of other rights that need a territorial expression like the right to decent housing (art. 47 CE), to equality (art.14), to the environment (art. 45), to religious freedom (art. 16 CE), or to education (art. 27 CE).⁷

In overall terms, the infra-constitutional system of guaranteeing the right to housing forms part of the weak conception of the principle of the social state (art. 1.1 CE), in which the regulation and allocation of housing and urban planning resources has favoured the action of private actors. This privatising management of urban planning emerged in 1956 with the first complete law in this matter, Law of May 12th, 1956, on land use and urban planning, and was strengthened during the government of the Popular Party (PP) through Law 6/1998 on land use and appraisal, widely known as the "everything's developable law". The regulation, in force

until June 2007, tried to tackle the growing difficulties to access housing through increasing the supply of developable land. That is, it converted almost all non-protected land explicitly into developable land. The noticeable increase in the price of land once it became developable, especially during an upward trend in the residential market, together with the lack of control over regional planning and management, turned the classification of developable land into a hotbed of corruption. Developers and construction companies came to pay huge sums to re-zone their land.

The increase in housing prices during the validity of the Land Act of 1998, and in general the obstacles to enjoying decent housing, motivated the adoption of different policies on the part of the new government. In 2004, the Government of the Spanish Socialist Workers Party (PSOE) created the Ministry for Housing and, soon after, the Land and Urban Planning Law 8/2007. This law, promoted during the first term of the Government of Rodríguez Zapatero, meant a significant change in the orientation of the "everything's developable" paradigm:

- For the first time, emphasis is placed on the role of regional and urban planning as an effective guarantee for sustainable development, equality, and social cohesion. Also for the first time, **the right to housing is linked to the social function of land ownership** (art. 9), and consequently, **compulsory acquisition is facilitated in cases where the owner neglects his/her duties in terms of construction or rehabilitation** (art. 36.1). Further-

more, the notion of the city as a collective space to enjoy and exercise citizenship is recuperated.

- What especially stands out is the obligation to **reserve a 30 per cent minimum of new residential land for subsidised housing**, in an attempt to moderate the price of unsubsidised housing and to facilitate access for those who are excluded from this market (art. 10).
- Moreover, efforts are made to **block the phenomenon of municipal urban planning corruption**, imposing obligations on the municipal councils that go from the constitution of public land assets to the expansion of rules governing incompatibilities between councillors and municipal executives, or the identification of the owners of land benefited by re-zoning (ninth additional provision).
- With the aim of stopping speculation in the land market, it introduces a key principle: the **appraisal of land on the basis of its actual situation** and not on the basis of expectations, discouraging re-zoning practices and purely speculative withholding (art. 21 et seq.). This important step, however, has been postponed with the passing of different moratoriums.⁸

The ownership mind set on housing can also be seen in the **lack of protection for the rental system**, with an absence of measures to enable the development of a stable life plan in rented housing. This tendency was made manifest with **Royal Decree Law 2/1985, of April 30th, on economic policy measures**, the so-called Boyer Act. Among other issues, this abolished the mandatory extension that existed in rental contracts and created one-year contracts. After this period, the landlord could increase the rent regardless of the level of prices in the area, or the housing conditions, or even evict the tenant whether he/she had intentions of occupying the house or not.

This approach continued in force with Law 29/1994, of November 19th, on rented property (*Ley*

de Arrendamientos Urbanos– LAU). Although it extends the duration of the contracts from 1 to 5 years, after this period the LAU enables indiscriminate increases in rent. Combined with the non-existence of social housing, less than 2 per cent of the housing stock, the regulation of rental matters consolidated the recessive dynamic of this market, resulting in a rental stock characterised by its deterioration and principal occupation by groups with low purchasing power.

With the aim of stimulating the rental market, the Socialist government promoted different contradictory measures. On the one hand, in 2005 it created the Public Rental Corporation (*Sociedad Pública de Alquiler*), and shortly afterwards, in 2007, it established a public aid to facilitate access to rentals for young people, the emancipation allowance (*renta de emancipación*). On the other hand, however, it paved the way for streamlining evictions due to non-payment, ignoring social needs, and increasing the legal insecurity of disadvantaged tenants.⁹

In order to fully understand the impact of the Central Government on the promotion of a certain type of housing policy we need to analyse the role of the State Housing Plans and of fiscal policy. Thus, the plans "despite not having legal force, but regulatory force, have served as housing law, applicable throughout the entire territory."¹⁰ The study of the different plans shows a special concern with satisfying the demands of the construction sector over and above attending to the housing needs of the population. When analysed, we see that the public promotion of the construction of social housing occurred especially during periods of recession in the sector as an element to stimulate the economy. Up until the 2005-2008 Plan, the first plan driven by the Socialist government of Rodríguez Zapatero and prepared in a context of difficulties for accessing decent housing, there were no significant support measures established for the rental sector, nor for the rehabilitation of buildings.

Tax incentives for purchases, for their part, **have traditionally been the most relevant instrument in housing policy.**¹¹ From 1998 the timid tax deductibility of rent introduced in 1995 was eliminated, and almost simultaneously the purchase of subsidised or unsubsidised housing became fiscally privileged, with external financing. Privileging an ownership system which is difficult to generalise across vulnerable sectors with public resources generates some doubts.

Criticism of this policy stresses that the quantitatively most important State aid for housing ends up in the hands of financial institutions. In fact, neither tax deductibility nor other favourable conditions like the reduction of interest rates have served to moderate the price of real estate. These incentives to purchase, in the end, have prevented the development of other more accessible and secure types of tenure like social rental housing, surface rights, transfer of use, or cooperative property.

Beyond confirming the Central Government's priorities, the preparation and posterior application of the State Plans on the part of the different autonomous communities has also served to show discrepancies in terms of the conception of housing policy.¹² The different conceptions of public housing policy are expressed through the development of specific protection formulas for housing built through the autonomous plans. On the one hand, we find the autonomous communities that back the protection of subsidised housing throughout its entire useful life like the Basque Country and Catalonia, to a certain extent. On the other hand, we have cases like the Community of Madrid, with 10-year protection periods for subsidised housing.

In short, the analysis of the different plans and tax deductions for homeownership shows the consideration of urban planning policy as a strategy to stimulate the economy and generate employment. We can confirm that in Spain there has been no authentic social policy on housing. The social objectives

of redistribution, correction of market inefficiency, and equality promotion have been absent since the Franco regime.

The absence of a social perspective on housing policy is evident in the treatment received by immigrants. Organic Law 4/2000 on the rights and freedoms of foreign persons in Spain and their social integration, for example, established in its original draft that "Resident foreign nationals have the right of access to the public system of housing assistance in the same conditions as Spaniards" (article 13).

However, despite the objective difficulties for persons in irregular administrative situations to enjoy decent housing, the reform of Organic Law 8/2000, of December 22nd, eliminated the reference to registered foreigners. That is, the assistance for housing became limited to immigrants with residence permits. Years later, this same article 13, by way of Organic Law 2/2009, of December 11th, experienced another modification aimed at clarifying that the equality in rights and assistance on the same terms as Spanish citizens is restricted to long-term foreign residents.¹³

Moreover, the practice has extended among local authorities of demanding a longer period of residence in the municipality, normally between 2 and 5 years although in some cases up to 10 or more years are requested, to be able to qualify for subsidised housing.¹⁴

For immigrant persons, in fact, having access to housing is no longer a right but a duty, that is, a requirement for accessing other rights. In relation to legal immigrant persons, in effect, the legislation saw, in its previous draft, adequate housing as a condition to reside, work, and exercise the right to family reunification. Specifically, Royal Decree 2393/2004, of November 30th, established the possibility of a foreign person "ceas[ing] to have access to an adequate home, without being able to have another within a period of three months" (article 75) as a motive for expiry of the residence and/or work permit. With regards to family reunification, it provides that by means of certification

from the municipal council or an affidavit it is tested whether the applicant has access to "adequate housing to attend to the needs of the reunified member and the family" (article 42). Unlike when it is the employer's responsibility to facilitate accommodation, as happens in the case of domestic or seasonal workers, adequate housing is defined taking into account the following elements:

- deed allowing for for the occupation of the house;
- number of rooms;
- use for which each room is intended;
- number of people who live in the house; and
- habitability conditions and facilities.

The entry into force of **Royal Decree 557/2011**, of April 20th, by which the **Regulation of Organic Law 4/2000** on rights and freedoms of foreign persons

in Spain and their social integration (after its reform through Organic Law 2/2009) is approved, introduces an article (art. 55) on adequate housing tenure as a requirement for obtaining a residence permit for family **reunification**. This article, in line with the provisions of the previous decree, establishes the attainment of a report from the autonomous community or municipal council as **proof of adequate housing tenure**.

In relation to the causes for invalidating residence or residence and work permits, the new legislation does not make explicit reference to loss of the home, not even in the case of the invalidation of temporal residence permits, as was the case in the previous Royal Decree. It does mention, however, the circumstances that serve as a basis for their authorisation. Fortunately, among them we do not find housing specifically, although it does demand "having fixed and sufficiently regular resources for their care and, where relevant, that of their family."

2.2. MORTGAGE LEGISLATION

State competence in credit regulation and the coordination of economic planning (149.1.11 and 149.1.13), together with powers in matters of procedural law, grant a central role to the State in terms of planning access to credit and the regulation of the mortgage market.

In this way, the promotion of private property is complemented by a legislative framework in mortgage matters that has favoured the inflated growth of the financial sector. **Law 2/1981, of March 25th, on the regulation of the mortgage market**, introduced the phenomenon of the **securitisation of mortgages** on the basis of which different financial instruments have been developed, such as mortgage notes, bonds, and participation mortgages. All with the aim of mobilising the mortgage credit portfolios of financial institutions.

Subsequently, Royal Decree 1289/1991, of August 2nd, furthered this approach by allowing the institu-

tions that issue mortgage bonds to completely transfer the risk associated with the loans to the purchaser, thus removing it from their balance sheets. This expansion of the credit market would be accentuated with Law 19/1992, of July 7th, on real-estate investment trusts and funds and the regulation of mortgage securitisation funds, and above all with Law 2/1994, of March 30th, on the subrogation and modification of mortgage loans. The regulations promoted new paths to indebtedness through the cheapening of the costs of mortgage novation and of the subrogation of mortgages to other institutions.¹⁵

The development of these instruments incentivised overexposure to credit that was denounced by different types of entities. From 2002, consumer organisations, the European Union, and the International Monetary Fund itself, alerted of the risk involved in the over-indebtedness of households.¹⁶ Nevertheless, in 2007, there was a new reform in the mortgage market. In a context that already showed signs of economic decel-

eration, the reform meant an opportunity to resolve the impact of domestic over-indebtedness. But Law 41/2007, of December 7th, on the regulation of the mortgage market, was replete with the same tendency: reduction of mortgage procurement costs and the promotion of new credit products like reverse mortgages.

In summary, **the structure of the mortgage and financial markets has pursued the expansion of**

credit as a widely used financial instrument **without considering the dangers of over-indebtedness.**

The regulation of the process of mortgage foreclosure dates back to 1909. Its configuration has been questioned for favouring the position of financial institutions in detriment to the debtor. In a simplified way, the elements that appear most controversial are the following:

1. THE PRINCIPLE OF THE DEBTOR'S UNLIMITED PERSONAL LIABILITY

This principle, established in art. 1911 of the Civil Code, means that the debtor is responsible for his/her payment obligations with all present and future assets. In mortgage matters, unlimited personal liability means that **once the financial institution has repossessed the property, it can then proceed to the seizure of the salary and all other assets of the person experiencing the foreclosure and of their guarantors** to settle the outstanding debt.

Specifically, Spanish legislation, through the Code of Civil Procedure (LEC in Spanish) 1/2000, establishes that in cases of non-payment the property will be auctioned. If the auction is unsuccessful, the current draft of the LEC provides that the creditor can be awarded the property at 70 per cent of the appraisal value for the purpose of auction (art. 671 LEC).¹⁷ But in the case that this 70 per cent of the original price for the purpose of auction covers the total of the outstanding debt, the bank can be awarded the property at just 60 per cent.

Up until 2011, article 671 LEC provided that the sale could be made at 50 per cent of the appraisal value. This was due to the fact that this article was drafted in a real-estate high point characterised by the possibility of selling housing before it reached auction or of finding interested people in the auction itself. But with the outbreak of the economic crisis, the absence of bidders is the norm. In any case, the financial institutions sell the property for a value that is noticeably lower than the appraisal value and claim the payment of the remaining amount of the debt, plus the interest for late payment and legal costs, from the person experiencing the foreclosure or from their guarantors.

These people will see their salaries seized as well as the rest of their present and future assets. Moreover, they will suffer the consequences of appearing as defaulting debtors. This means they will have great difficulties in accessing other housing, whether through purchase or rental, accessing credit, or opening a bank account.

2. THE GROUNDS FOR OPPOSITION

Article 695 limited the claims of the person experiencing foreclosure to when the debt had been settled, or if the bank had made a mistake in calculation. This prevented the judge from having the option to examine the circumstances that had led to the insolvency of the household, to evaluate the degree of effective information that those affected had at the time of taking out the mortgage, or to determine the existence unfair terms.

As a consequence of the **judgement of the CJEU on March 14th 2013**, the State legislator included a new **ground for opposition** related to the "**abusive nature of a contract clause** that constitutes the basis of the foreclosure or that determines the amount due", art. 695.1.4 of the LEC. It can be deduced from the same article that the judges can examine *sua sponte* if said clauses exist, suspend proceedings underway, and even declare the mortgage contract void.¹⁸

Beyond the progress this new regulation implies, there are still controversial elements. On the one hand, it does not establish the procedure to be followed in relation to foreclosures with unfair terms on which there is already a final judgement. This situation is especially questionable in procedures involving debts that remain after the repossession of the house. On the other hand, the current draft continues to prevent the judge from knowing the reasons why the person did not pay the mortgage.

3. INITIATING THE FORECLOSURE PROCEDURE

Up until Law 1/2013, of May 14th, on the protection of mortgagers, the financial institutions could initiate the acceleration of maturity of the mortgage and **claim the outstanding debt in full with only one month unpaid**.

This situation was another of the doubts considered in the question referred for a preliminary hearing before the CJEU. The Luxembourg Court, in the **judgement of March 14th, 2013**, considered the brevity of the deadline contrary to the European right to consumer protection, although without specifying what the appropriate deadline would be. Through **Law 1/2013** on the protection of mortgagers, article 693 LEC was modified, extending **the deadline from one month to three months**.

4. THE MORTGAGER'S RIGHT TO A FAIR HEARING

A fourth cause for concern is the mortgager's right to a fair hearing in a process that usually entails the loss of the family home. On the one hand, **the availability of a lawyer is not a mandatory issue**. That is, the foreclosure procedure does not consider the need of the debtor to have access to defence counsel. Very often this procedure is carried out without the person having access to due defence.

This lack of defence is especially worrying in **extra-judicial foreclosures**. This modality is regulated in articles 129 et seq. of the Mortgage Law, Decree of February 8th, 1946, and means that, when so stated in writing, the auction is carried out before a notary electronically. As happens in other cases, if the auction is unsuccessful the financial institution will be awarded the house at 70 per cent (60 per cent if the debt is lower) of the appraisal value for the purpose of auction. Once finalised, the notary will issue an accreditation certificate, which should be approved by decree awarding the property and filed by the court clerk. This approval will also be necessary in order to push for the eviction which should in fact be processed by way of the courts.¹⁹

On the other hand, the **right to access justice** is seen to be seriously limited. The **criteria of access to legal aid** are established on the basis of the family unit's income, regardless of whether that income is used for the payment of basic needs like the mortgage. Specifically, **art. 3.1 of Law 1/1996**, on free legal aid, recognises this right for natural persons whose resources and **economic income**, calculated yearly and **by family unit, do not exceed double the guaranteed minimum wage**. In practice, this means a maximum monthly income per family unit of €1,065.02.

Added to this we have the **non-existence of specialised duty solicitors**, which contrasts with the expertise of the lawyers that work with the financial institutions. Moreover, **legal aid is assigned at the start of the actual judicial proceedings**. That is, prior negotiation is excluded; the period in which refinancing, grace periods, and other relevant proposals may be discussed in order to defend the interests of those affected.

In order to understand the special impact of current mortgage regulations on those affected, we need to add two more elements: firstly, **the regulation of evictions that affect the primary residence**. This scenario, set out in art. 704 of the LEC, is differentiated from other evictions in that it establishes the obligation of warning one month in advance. This deadline can be extended if there is a justified reason: "If there is a justified reason, said deadline can be extended by one more month", art. 704 LEC. Some court rulings have considered the schooling of minors or safe nearby rehousing, for example, as sufficient motive to delay the eviction.

After this period, the eviction will be carried out at the assigned time and date. The law does not contain any specifications in relation to the housing needs that may arise after the eviction, or the existence of minors or people in situations of vulnerability.

Together with the eviction, the second element that worsens the impact of mortgage legislation is

the absence, unlike what happens in other European countries, of "second chance" policies²⁰ that enable debtors acting in good faith to overcome their insolvency. In the Spanish case, in fact, the Bankruptcy Law (*Ley Concursal* – LC in Spanish) 22/2003, of July 9th, prepared at a time of economic growth, though it is formally intended for both for legal and natural persons, does not provide effective solutions for the latter.

Specifically, article 55 LC establishes that, once the bankruptcy proceedings have begun, all foreclosures will be stopped except for those with tangible collateral, as is the case of mortgage loans. In turn, article 56 LC specifies that only those foreclosures of assets linked to professional activity will be stopped, which, in principle, appears to exclude the primary residence.

The bankruptcy proceedings also present other obstacles that prevent them from being an appropriate option to resolve situations of personal insolvency: they are difficult to access, expensive, and often take too long to be useful.²¹

2.3. GOVERNMENT RESPONSES TO THE HOUSING EMERGENCY

Facing the emergence of the mortgage-based over-indebtedness dilemma and the spectacular increase in foreclosure procedures since 2008, the Central Government has promoted different responses:

A. THE OFFICIAL CREDIT INSTITUTE (ICO) MORATORIUM AND THE MORTGAGE MARKET REFORM

At the end of 2008, when the special impact of the global economic crisis became evident and with the growth in the number of mortgage foreclosures, the Spanish Socialist Workers Party (PSOE) passed its main proposal to solve household insolvency: the debt moratorium of the Official Credit Institute (ICO).

This programme, with a maximum budget of 6,000 million euros, consisted of the possibility of **postponing the payment of up to €500** of the monthly mortgage instalment for a period of two years. The concrete form of the programme established a series of requirements:

- The moratorium could only be applied to mortgages that did not exceed €170,000. That is, it left out the majority of contracts signed during the real estate bubble in cities like Madrid and Barcelona.
- It limited itself to scenarios of complete non-default in the mortgage payments.
- Even if the person fulfilled the requirements, it was the financial institution's prerogative to accept the moratorium or not.

The Government's projections placed the number of families that could benefit from the measure at 500,000. However, since its launch in 2009 and until its termination at the end of 2010, 13,665 people were accepted. And of the total funds allocated, only 78 million euros were used, that is, 1 per cent of the expected capital.²²

Shortly afterwards, **Royal Decree 716/2009, of April 24th**, on the regulation of the mortgage market and other rules for the mortgage and financial system, enabled the financial institutions to extend mortgages in the case of real estate depreciation. With regard to natural persons, the new regulation meant that, if during a year the value of the property was 20 per cent less than the appraisal value established in the mortgage the financial institution could demand the extension of the mortgage to other assets.

The approach of these measures contrasts with the legislative proposal on the right to housing promoted in 2009 by the parliamentary group ERC-IU-ICV.²³ On the basis of growing citizens' demands the proposal included, on the one hand, limits on the over-indebtedness of families through the control of credit institutions. On the other hand, it established different measures aimed at avoiding the eviction of persons with unaffordable mortgages.

B. ROYAL DECREE 8/2011, OF JULY 1ST, ON SUPPORT MEASURES FOR MORTGAGERS

The limited reach of the ICO moratorium, the impact of unemployment, and growing social pressure in favour of *datio in solutum* forced the drive towards new kinds of measures. On the one hand, at the end of 2010 the Ministry for Housing was closed down. On the other hand, on July 1st, 2011, the Central Government adopted Royal Decree 8/2011 on support measures for mortgagers.

This introduced two modifications to the regulation of foreclosure procedures:

- **A 10 per cent increase of the price by which the financial institutions could be awarded real estate assets.** Thus, if the auction was declared null, the financial institution would take the property not for 50 per cent of the value, but for 60 per cent.
- **Increase in the volume of non-seizable assets** for people who, after losing their home, continue to be indebted to the financial institution. This modification meant increasing the income limit by 50 per cent, that is, €961.10, and by 30 per cent more for each member of the family unit.

C. REFORM OF BANKRUPTCY LAW 22/2003

The 2011 reform of the Bankruptcy Law (*Ley Concursal*) appeared first as a possibility to establish a second chance policy for over-indebted persons.

Nevertheless, the only agreement reached in **Law 38/2011, of October 10th**, on the reform of Law 22/2003, of July 9th, was the **adoption of a single additional provision** that **calls upon the Government to adopt the appropriate responses within a deadline of six months**. Specifically, the provision establishes that:

“Within six months, the Government must send a report to the Parliament on the application and effects of the set of measures adopted to improve the situation of natural persons and families that face difficulties in fulfilling their obligations, especially those that are mortgage-backed.”

D. ROYAL DECREE-LAW 6/2012 ON URGENT PROTECTION MEASURES FOR MORTGAGERS

In November 2011, shortly after coming to power, the Popular Party (PP) announced the adoption of a **Good Banking Practices Code** with the objective of promoting *datio in solutum* among those affected. On March 9th, 2012, through Royal Decree-Law 6/2012, on urgent protection measures for mortgagors, the Code was approved. In order to qualify for *datio in solutum* the following requirements were established:

- **Conditions of the beneficiaries:** considered within the threshold of risk are those cases in which the **family income does not reach three times the public income index (IPREM)**– 19,000 euros annually – and whenever the **mortgage payment represents more than 60 per cent of the income**. The original text established that all of the members of the family unit (debtor, spouse, and dependent children living in the home) would be unemployed. It was Law 1/2013 on the protection of mortgagors that modified the criterion basing itself on the volume of income. The person affected, moreover, **cannot have the support of guarantors that are considered solvent;** that is, guarantors that have other properties with which they could pay the debt.
- **Conditions of the housing:** in order to qualify for this procedure, the mortgaged house should be the **primary residence** and the **only real estate property**. The **purchase price must not exceed 200,000 euros in large cities or 120,000 in smaller cities or towns**.
- **Benefits:** the financial institutions that sign the agreement can present different options to debtors that are unable to afford their payments. The option aimed at the most "solvent" consists of facilitating payment of the mortgage through the **renegotiation of the terms:** a four-year **grace period**, potential **extension** of the rest of the credit to 40 years, limitation of the interest rate (one year Euribor plus 0.25 percentage points). The institution has the **option of assuming** the depreciation of the property's value, and offering **a release of 25 per cent** of the outstanding capital.
- **Datio in solutum: 12 months** after the implementation of other solutions, if the family maintains the conditions of income precariousness and cannot fulfil its payment commitments, the only remaining option is to hand over the house to settle the debt. But they can **avoid eviction** through the **option of paying 3 per cent of the outstanding debt** as rent, and remaining in the house for a maximum period of two years.

This long list of requirements explains, surely, its favourable reception by the financial institutions. In fact, during its first year of operation, according to figures from the Ministry of Economy, 3,322 applications were processed, of which 2,190 were rejected for not fulfilling the requirements. In total, 298 *datio in solutum* were granted across the entire state.

OBSTACLES FOR QUALIFYING FOR THE GOOD PRACTICES CODE

The case of Oliverio, 49 years of age, labourer, Barcelona

Oliverio, his wife, and their five children, after running out of unemployment benefit, survive on €425 a month in family support. However, they are excluded from the Good Practices Code because the apartment, 89m² and located in the working-class neighbourhood of Nou Barris in Barcelona, cost them more than €200,000.

CatalunyaBanc (CX), protecting itself with this fact, conditioned the granting of *datio in solutum* to the family taking on a personal loan of €10,000, plus interest, which the same institution would supply them with. That is, the bank intends to keep the house, the money they have been paying since 2005 when they took out the mortgage, and another €10,000 more. If they do not accept the deal proposed by the bank, Oliverio must bear a debt of more than €250,000 as well as losing his home.

The distress suffered by Oliverio brought him to the PAH in Barcelona where he has been negotiating for more than a year with CX. Thanks to the PAH, Oliverio discovered that he is not alone. And what's worse, that CX's proposal is, in fact, a corporate strategy that consists of offering *datio in solutum* in exchange for personal loans.

But even when all of the requirements demanded by the Good Practices Code are in place it is not always easy to achieve *datio in solutum*. Maximiliano, 60 years old, construction worker and resident of Barcelona, with the support of the PAH had to insist to the point of desperation for almost a year so that Banesto would apply the Code to which it had adhered.

E. ROYAL DECREE-LAW 27/2012, OF NOVEMBER 15TH, ON URGENT MEASURES TO STRENGTHEN THE PROTECTION OF MORTGAGERS

The limited repercussions of the measure and the **social alarm** caused by **three suicides**, in less than one month, **of people who were going to be evicted** from their homes²⁴, forced the approval of new measures.

Seven months after the Good Practices Code came into force, the Central government approved Royal Decree-Law 27/2012, of November 15th, on urgent measures to strengthen the protection of mortgagors. On this occasion, the legislator focused the response not so much on renegotiating the debt, as on how to stop evictions affecting extremely vulnerable people.

Objectives: to facilitate a two-year moratorium on evictions that affect families in situations of extreme social and economic vulnerability and to foster the **creation of a Social Fund for Housing** (FSV in Spanish) to house families that are victims of foreclosure.

Conditions to qualify for the eviction moratorium:

- **Economic** conditions: maximum monthly income of €1,597 per family unit; the mortgage payment must consume more than 50 per cent of the income; in the four years prior to the application the family unit must have suffered a significant alteration in its economic circumstances in terms of difficulties in accessing housing.
- Added to the economic requirements we have **social** requirements: large families; single parent families with two dependent children; families with at least one child less than three years of age; or with members with more than 33 per cent disability or dependence that permanently prevents them from working.
- Moreover, the moratorium is only made effective if it is the financial institution that is awarded the house. And in any case, **the two-year moratorium** does not count from when the affected person applies for it, but **from the approval of the Law**.

ELEMENTS OF DISCRIMINATION IN THE EVICTIONS MORATORIUM

The case of Desiré, 35 years of age, phone operator, la Llagosta, Barcelona

Desiré lives with the distress of legal proceedings that advance towards a sure eviction. Despite fulfilling the strict economic requirements to qualify for the moratorium, she does not fit into the social profile since her daughters – four and eight years of age – are more than three years old.

Facing this clearly unjust situation, Desiré, with the support of the PAH, is fighting for the BBVA to accept *datio in solutum* and to allow her and her daughters to continue living in their home paying a reduced rent.

F. THE SOCIAL FUND FOR RENTED HOUSING

Royal Decree-Law 27/2012 entrusts the Government with the creation of a housing fund to host foreclosed families through social rent. This fund would consist of 6,000 houses – according to the Government's estimations – owned by the financial institutions. The families, as well as being victims of mortgage foreclosure procedures, should fulfil the requirements of vulnerability previously mentioned. The price of the rent would be between 150 and 400 euros per month and would reach a maximum of 30 per cent of the total net income of the family unit. The contract would be for two years, extendable for one more year, except if the family ceases to fulfil some or any of the criteria set.

The allocation of housing to the fund is decided by the financial institutions. For their part, **the affected families should address the same banking institution that evicted them in order to access the housing.** In June 2013, according to data from the Ministry of Economy, after three months in force, 250 houses had been provided. The Government went from calculating the families that would qualify at 600,000 to less than 120,000.

G. THE CREATION OF THE COMPANY FOR THE MANAGEMENT OF ASSETS PROCEEDING FROM THE RESTRUCTURING OF THE BANKING SYSTEM (SAREB)

In a context characterised by the depreciation of real estate, the accumulation of unoccupied housing in the hands of financial institutions, and the increase in evictions, the Central Government promoted the creation of the SAREB, more widely known as the "Bad Bank". Under the formula of "asset management" the **largest real estate agency ever** was created. More than 89,000 finished houses and 13,000 km² of land, property of the financial institutions most affected by the burst of the housing bubble: Bankia, CatalunyaCaixa, Nueva Caixa Galicia, and Banco de Valencia.

This initiative stems from the conditions imposed by the Memorandum of Understanding (MoU) agreed on the 23rd of July 2012 with the EU for access to European credit. The most controversial elements of the initiative are the following:

- Both the SAREB and the banks that transfer properties to it enjoy public financial support via the Fund for Orderly Bank Restructuring (FROB in Spanish) and via the state guarantee of credit for private investors. However, **despite the allocation of public funds, the regulation of the SAREB did not provide for any effective measure for alleviating the housing emergency**, nor for correcting the approach based on ownership and the promotion of housing as a speculative investment.
- **The "Bad Bank" promotes the sale or rental of this stock through large investment funds.**²⁵

H. LAW 1/2013 ON MEASURES TO STRENGTHEN THE PROTECTION OF MORTGAGERS, DEBT RESTRUCTURING, AND SOCIAL RENTING

The last legislative response was Law 1/2013 on measures to strengthen the protection of mortgag-ers, debt restructuring, and social renting. The drafting of this Law corresponds with the acceptance for processing of the ILP (popular legislative initiative) in favour of *datio in solutum* and social renting, and against evictions. In turn, it aims to incorporate the contributions of the CJEU's court ruling of March 2013.

With regard to the demands of the ILP, the text establishes the following:

- **Moratorium on evictions, linked to criteria of extreme social and economic exclusion.** It gathers, thus, with slight modifications, the economic and social conditions to qualify for the Good Practices Code.
 - **Economic conditions:** that we are dealing with a mortgage obtained for the acquisition of a primary residence; that the household income does not reach €19,000 per year; that the household has experienced a serious alteration in its economic circumstances in the last four years; and that the mortgage payment exceeds 50 per cent of the family unit's income.
 - **Social conditions:** large families; single parent families with two dependent children; families with at least one child less than three years of age; or with members with more than 33 per cent disability or dependence that permanently prevents them from working.
- **Increase from 60 to 70 per cent of the value by which the financial institutions can be awarded the property.** However, if the amount at 70 per cent cancels the outstanding debt the bank can be awarded the house for 60 per cent.
- Establishment of a **35 per cent release** from the outstanding debt once the house is handed over, **when in 5 years 65 per cent of the total has been paid**, or a **20 per cent release** when **in 10 years 80 per cent has been paid**: difficult requirements to fulfil in a context characterised by unemployment and job precariousness.

The **application of the CJEU judgement of March 14th is summed up in the following way:**

- One **month is granted to report possible unfair terms**. However, the debtor, unlike the creditor, does not have the option of appealing the court decision in relation to the existence or not of unfair terms.
- Limitation (non-retroactive) of **default interest charges**, for its part, is placed at **three times the legal interest rate**. A value which exceeds that established in Consumer Credit Law 16/2011, which determines a maximum of 2.5 times the legal interest rate.

In general, the Law appears to stem from the premise that the citizens have lived beyond their means and presents possible elements of unconstitutionality. Among them, the legality of the timeframe for claiming unfair terms, the discrimination against minors of more than three years of age, and the indeterminacy of the Social Fund for Housing (FSV). This situation was quickly denounced by the PAH. However, facing the impossibility for organisations to present a constitutional motion, the PSOE, in August 2013, presented a motion before the Constitutional Court which was declared admissible.

I. REFORMS IN THE RENTAL MARKET

Following the path set out in 2009 with the Law on methods for promoting and improving rental procedures and energy efficiency in buildings, known as the "speedy eviction Law", in 2013 a new reform was passed. With the aim of "revitalising the rental market", Law 4/2013, of June 4th, on measures for promoting the rental market and making it more flexible, proposed the following changes:

- **The duration of the rental contract is reduced from 5 to 3 years.** This means that every 3 years indiscriminate increases can occur in the rent and the rental contract can be cancelled without having to justify the need to repossess the home.
- **The annual increase in rent is disassociated from the increase of the consumer price index (CPI in Spanish).** The law stipulates that the lessor and owner decide what criteria to apply to determine the increase in rent.
- **New reasons are included to enable the suspension of the rental agreement** like in the case of a third party buying the property, if the rental is not registered.
- **Evictions due to non-payment of rent are streamlined.** After one month of non-payment of the rent an expeditious procedure can be initiated in which the person has ten days to pay the debt.
- **A register of final decisions on non-payment of rent is created,** a type of register of defaulting debtors, in which the details of people who have not fulfilled their rent obligations will be listed for a period of six years.

Law 4/2013 **did not provide for measures to solve the situation of families that do not have sufficient resources to pay the rent.** Nor does it establish any difference between the non-payments that affect large-scale owners and financial institutions and the non-payments of rent that affect small property owners.

The reform, lastly, is complemented by Law 16/2012, "By which various tax measures are adopted and geared towards the consolidation of public finances and the boosting of economic activity." In this Law, **tax privileges are established for large economic and financial groups that invest in the sector regardless of the use they give to the properties.**

Also with the aim of attracting capital, the Central Government announced, in June 2013, its willingness to **link the issuing of residence permits to immigrants that buy homes.** This announcement was finally set in **Law 14/2013, of September 27th,** on support for entrepreneurs and their internationalisation. Specifically, in **art. 63.1.b. it facilitates residence permits for foreign persons that buy homes at a cost of €500,000 or more.**

The approach of this policy is clearly far from the practices of the countries that are most advanced in this matter. In those countries, as well as having a stock of social rental housing to host low-income groups, measures are considered for intervention in the private rental market. This is what happens in **France**, for example, where 20 per cent of the property stock is social rental housing, and where evictions for economic reasons are prohibited during winter. In **Germany**, for its part, rental contracts are open-ended and there are also limits on the prices of the private rental market that prevent speculative processes like those experienced in Spain.

3 REGULATORY DEVELOPMENTS AND POLICIES AT THE AUTONOMOUS AND LOCAL LEVEL

The distribution of powers in housing matters has facilitated regulation and public policy implementation by the autonomous communities and the local authorities. Now we will look at the cases of the Basque Autonomous Community, and the Communities of Catalonia and Andalusia. All of which have fostered significant advances in this area. Finally, some responses to the housing emergency situation are gathered from the local level.

3.1. THE BACKGROUND OF SOCIAL POLICY ON HOUSING IN THE BASQUE AUTONOMOUS COMMUNITY

The Basque Autonomous Community (CAPV in Spanish) has been a pioneer in the introduction of important instruments to guarantee the right to housing. These actions have been facilitated by the Basque Province's specific powers in matters of financing.²⁶

The **Housing Master Plan 2002-2005** (*Plan Director de Vivienda*) was the first to introduce, through Decree 315/2002, **the permanent classification of subsidised housing**, prohibiting the sale of this housing in the free market. With this new regulation, the Department of Housing and Social Affairs, through its regional offices, reserved the **possibility to exercise the right of pre-emption and first refusal** on 100 per cent of subsidised housing transactions that are attempted in the free market.

Another of the instruments included in the Master Plan, with the aim of guaranteeing the right to housing, was the Bizigune Empty Housing Programme. The main objective of this programme is to foster subsidised rental through the mobilisation of unoccupied houses. Unlike other mediation programmes, in the Bizigune Programme there are no direct contractual relations established between the owner and the tenant. It is a public company that manages the contract separately with the tenant and the lessor. This company pays the owner a monthly rent close to the mar-

ket rent. When the programme appeared in 2003, up to a maximum of €750 was paid. Currently, the owners can charge an amount of €450. This company is in charge of the allocation of housing to tenants previously registered as applicants. The awardees of housing in this programme pay a monthly rent that is, at most, equivalent to 30 per cent of their monthly income; that is, a subsidised rent.

This programme, which mobilises 5000 houses, has experienced considerably greater success than other mediation programmes. The most severe critiques, however, maintain that in fact it means an indirect subsidy for private landlords of urban housing.²⁷ The empty property, in effect, is rented at a price similar to the market price and the Administration rents at the subsidised housing price, assuming the difference between the market price and the rent price, whether the housing is rented or not. Also with the aim of boosting rentals, the Basque Government has promoted, since March 2012, the Programme of Intermediation in the Unsubsidised Housing Rental Market (ASAP in Spanish). Unlike Bizigune, however, this is aimed at people demanding higher rents, it does not require that the house be previously vacant, and the role of the Administration is merely as an intermediary between private actors.

In matters of **public aid**, individual housing assistance, now traditional in the CAPV, **tends to focus on ownership**: assistance to buy unsubsidised used

housing, assistance to buy subsidised housing, and assistance for housing rehabilitation. With the Housing Master Plan 2002-2005 the first types of public aid aimed towards rental were introduced, although this is indirect aid limited to leases established within the framework of the Bizigune Programme.

In fact, many of the initiatives in housing matters in the CAPV ended up being included in Law 2/2006 on land and urban planning. This law gathers important changes that would later influence even the preparation of the 2007 state law.

For example, it recognises different types of subsidised housing, from general subsidised housing to those in special schemes or social housing. The regulation also establishes that access to subsidised housing can happen, in accordance with the corresponding call for applicants, through full legal ownership, rental, surface right, or other modes considered in civil legislation. Minimum access requirements are also established like legal capacity, objective situation

of housing need, census registration (with a minimum of one year prior to the date of publication of the procedure to allocate housing), and maximum and minimum income levels.

Finally, it establishes the minimum land to be allocated to subsidised housing. In terms of land for development, for example, it was established that 75 per cent of new constructions would be used for housing subsidised in some way. Of this 75 per cent, 55 per cent would be used for general subsidised housing and special schemes (for the most vulnerable groups).

Some institutions, like the Ararteko (the equivalent of the Ombudsman in the CAPV), regretted that the law had not made the most of the situation to expressly establish the reserves designated to truly accessible housing, like social rental housing. On the other hand, they celebrated that the text defined the subsidised housing scheme as permanent.²⁸

3.2. SOCIAL POLICY ON HOUSING IN THE AUTONOMOUS COMMUNITY OF CATALONIA

As well as the CAPV, in Catalonia some pioneering measures have been promoted in housing policy matters. **Law 2/2004, on the improvement of neighbourhoods, urban spaces, and towns that require special attention**, considered by some commentators as an authentic "anti-ghetto law"²⁹, was aimed at fostering processes of urban renewal in problematic agglomerations, whether due to the ageing of the population and the infrastructure, or due to a lack of social cohesion, or economic deterioration.

Another of the emblematic regulations in the matter is **Law 18/2007, on the right to housing**, passed by the Catalan Parliament on the 19th of December after more than three years of negotiations. This is the first regulation in Spain that considers the housing issue in terms,

not of public policy, but of the right to housing. This regulation presents many interesting elements:

- It links the guarantee of the **right to housing** to the broader **right to the city**.
- It sanctions **abnormal uses of property**, like the permanent and unjustified abandonment of properties, the violation of the duties of rehabilitation or overcrowding, and defines **landlord harassment** as a housing discrimination instrument in order to establish **reversed burden of proof**.
- Additionally, the Law expresses willingness to change housing policy so as to guide it towards facilitating access to subsidised schemes other than private property.
- The objective to foster **urban solidarity** through the

achievement, in 20 years, of a 15 per cent minimum housing stock intended for social policies in municipalities of more than 5000 inhabitants and in the county capitals. Moreover, it authorises municipalities to establish areas of pre-eminence and first refusal and to restrict the construction of second homes.

- The prolongation of the **subsidised scheme** to the legally permitted maximum (90 years) for houses built on public land.
- In the case of houses that are permanently and unjustifiably abandoned, and in areas of strong and authorised residential demand, the introduction, after the offer of assistance and incentives to the owner, of the possibility of **temporary expropriation of the property's usufruct**.
- The incorporation, with the aim of improving transparency and equality in access to subsidised housing, of a **single register of applicants**.

During the parliamentary procedure, the Law was the focus of attacks from the conservative political parties of the opposition and from the big private landowners and construction companies. This meant that **during the process the text experienced significant changes**. Thus, for example, it renounces the aim to prolong the protection of all subsidised housing throughout its entire useful life – only those houses built on public land will have 90 years of protection – and sets a period of 30 years. Secondly, it limits the obligation of reserves for subsidised housing in existing buildings to developments of more than 5000m². Finally, despite the existence of a register of applicants, private developers can reserve up to 30 per cent of the housing to be awarded outside of the public draws (art. 101).

The element of the Law that was most questioned by conservative sectors, to a large extent due to its symbolic value, **was article 46.2 on the temporary expropriation of the usufruct of unjustifiably abandoned housing**. Consulted on the constitutionality and the statutory relevance of this measure, the

Advisory Council of Catalonia considered that this provision did not imply a disproportionate burden on property rights. On the contrary, given the guarantees and incentives provided for (aid, compensation, etc.), it established that this was a legitimate instrument for ensuring the right to housing. On the other hand, it considered that the vagueness around what an area of "strong and authorised" residential demand meant, or the lack of specification of the mechanisms for detecting abandoned housing, could introduce unequal or discriminatory treatment among different landowners. Consequently, and before passing the Law, the Parliament of Catalonia modified article 42.6 to clarify these issues.

The approval of the Law was carried out together with the prior signing, in October 2007, of a big **"national" housing pact** (Pacte Nacional per l'Habitatge 2007-2016) with the construction sector and some civil society organisations and political groups. Convergència i Unió (CiU) and the Popular Party (PP) opposed the agreement on the grounds of their rejection of forced rental.

The Pact, in effect, aimed to fight against residential exclusion and significantly increased aid intended for different vulnerable groups (the elderly, people with disabilities, people at risk of exclusion, or the homeless). Likewise, it announced measures against landlord harassment the intentional deterioration of housing, as well as introducing inspections intended to guarantee housing quality. However, to a large extent, and **despite the exhaustion of the economic development model, we were dealing with a Pact aimed at stimulating the construction of new housing** – 160,000 subsidised houses – **the majority under private ownership** – 60 per cent – and under different formulas like agreed schemes, the prices of which would be even greater than those of the market. This motivated the criticism of social organisations and movements that had been denouncing the accumulation of vacant homes in tandem with growing difficulties to access decent housing.

The Government support for the construction of housing with some kind of public subsidy scheme as a countercyclical measure facing the difficulties of the construction sector is reflected in Decree-Law 1/2007 on urgent measures in urban planning matters. Specifically, this fosters the creation of "Strategic Residential Areas" (ARES in Spanish) through which the development of 90,157 new homes is planned, in 86 Catalan municipalities, a minimum of 50 per cent of which would be subsidised in some way. Neighbourhood opposition³⁰ and the impact of the crisis prevented the development of these areas, which were strongly criticised for perpetuating a construction model far removed from the real housing needs of the population.³¹

The worsening of the crisis and the changes in government led the new government to test different responses and regulatory changes. The special impact of the economic crisis in Catalonia forced, firstly, the detention of the construction of housing as an engine of growth planned in the ARES and facilitated the suspension, in 2011, of the Law on neighbourhoods (*Ley de Barrios*). Secondly, solutions were needed for insolvent persons incapable of paying their mortgage payments. The main response to the problem of foreclosure procedures, beyond the promotion of a line of isolated assistance, was the creation of the Intermediation Service OFIDEUTE in January 2010.

This line of action is aimed at "reconciliation" between over-indebted families and banking institutions through voluntary mediation. Or, in the words of the organisation, to "intercede on behalf of families with payment difficulties before the lending institution with the aim of renegotiating a new agreement for the mortgage loan that would make the payment and maintenance of the home viable, or would achieve the non-onerous termination of the contract", all with the principal aim of "avoiding evictions caused by the non-payment of mortgage loans." But this mediation service, which in reality developed due to the impossibility of coming to an agreement with the financial

institutions, is based on the good will that the banks may or may not have. The absence of effective pressure measures makes OFIDEUTE depend on the interests of the institutions, and not on the families' situation of vulnerability.

Thirdly, the Government has incentivised the real estate sector through different formulas. For example, through Law 9/2011, of December 29th, on the promotion of economic activity, better known as the Omnibus Law (*Ley Ómnibus*), substantial elements of the Law on the right to housing were modified:³²

- **Cancellation of the temporary expropriation of the use of vacant housing.** In any case, permanent and unjustified vacancy of a house continues to be seen as an abnormal use of property that can give rise to tax and other measures aimed at penalising the permanent and unjustified non-occupancy of housing (art. 42.5).
- The Sector-based Territorial Housing Plan's (PTSV in Spanish) possibility to establish subsidised housing reserves on consolidated development land disappears, but the municipal option to establish them remains.
- **Urban solidarity ceases to be a legal obligation** and is only necessary if so established in the PTSV.
- **De-legalisation of the 30-year minimum time-frame for subsidised housing classification.** This modification opens the door to shorter periods of protection and will have to be reconciled with what is established in the current State Plan.
- Possibility for a **subsidised housing user to buy another home** 5 years after the acquisition of the subsidised housing.³³
- The **obligation of reserving 10 per cent for especially vulnerable groups, the so called special quota, disappears**, and will now depend on whatever is determined by the municipality.
- The Single **Register of Applicants is eliminated** for subsidised housing for purchase.

The approach of the modifications is expressed in the text itself of Law 9/2011, which establishes as the "main objective the promotion of the real estate sector through measures such as the facilitation of access to subsidised housing, increased flexibility of the requirements in newly constructed buildings, the elimination of certain urban planning reserves, and the elimination of the mandatory report on the decisions of the urban development plan, among other measures."

In general, this new scenario continues to struggle with various, mostly frustrated, attempts at negotiation with the financial institutions, and with interim assistance aimed at the payment of rent or mortgages that

excludes an important part of the population in need and calls for applications which depend, in any case, on budgetary availability.

Recently, moreover, **the Catalan Government** has announced that it **is looking into the sale of the publicly owned apartments of the Catalan Land Institute** – an estimated 14,000 apartments – as a strategy to reduce the public deficit of 2014. This means following the steps of the Government of Madrid, where the Municipal Council and the Autonomous Government sold more than 5000 social houses in 2013 to international funds like Goldman Sachs and Blackstone.

3.3. SOCIAL POLICY ON HOUSING IN THE AUTONOMOUS COMMUNITY OF ANDALUSIA

In September 2007, on the other hand, the **Government of Andalusia** began to process the bill on the right to housing, which would give rise, in February 2010, to the Law regulating the right to housing in Andalusia.

This Law introduces interesting proposals:

- The obligation of the municipal councils to develop **municipal housing plans** where they define, through sociological studies and specific surveys, the concrete needs of the residents of every municipality and the resources to fulfil them, through the municipal land assets and minimum reserves of 30 per cent of residential land for subsidised housing.
- The idea of **temporary accommodation** (art. 20) to facilitate intermediate housing solutions, between individual and collective housing, for people in need who cannot opt for subsidised housing under ownership or rental.
- Another of the central elements of the Law is its reference to the **quality of unsubsidised housing constructions**. For these housing constructions to

be considered decent, they should ensure, among other factors, that they respect sustainability criteria, facilitate access to public services and facilities, and guarantee accessibility for people who are dependant or who have disabilities. The text also regulates, by law, the rehabilitation of housing, historic centres, and deteriorated neighbourhoods, with the aim of eliminating substandard housing in Andalusia.

The approved text, however, **disregarded more ambitious proposals**. Firstly, the objective of "guaranteeing housing to Andalusian citizens without the economic effort to acquire it exceeding a third of the family income in the case of acquisition, or a quarter in the case of rentals' disappears. Secondly, **the last articles consider the possibility of bringing a complaint before the municipal council on the infringement of the municipal plan as a main path to the enforceability of the right to housing**.³⁴

The Andalusian Law also presents some other problems. In the long-term, it maintains the dependence of the production of subsidised housing on the construction of new housing. This problem is exaggerated by the fact that the 2001 census in Andalusia

recorded some 630,000 empty apartments. Secondly, the Law complicates access for immigrants to subsidised housing as it establishes the requirement of three years of residency in the municipality.

The worsening of the housing emergency situation and the willingness of the new Government of the Regional Executive to take a step forward gave rise to new measures. In fact, the first Community **to consider part of the citizen demands expressed in the ILP (popular legislative initiative) for *datio in solutum* was Andalusia, through Decree-Law 6/2013, of April 9th, on measures to ensure the fulfilment of the social function of housing.**

The text mentions international human rights law as a regulatory basis together with constitutional requirements aimed at fostering material equality. At the autonomous level, there is reference to Law 1/2010, regulating the right to housing in Andalusia. In terms of constitutional regulations, the text includes part of article 33 CE in which the social function of property is established, article 128 CE that subordinates wealth to the general interest, and article 40 CE, which urges the public powers to promote social and economic progress and an equitable distribution of income. Moreover, it expressly mentions both the 1948 Universal Declaration of Human Rights and the 1976 International Covenant on Economic, Social, and Cultural Rights.

The Decree-Law is based on the situation of "social and economic emergency" that affects Andalusia and on the significant volume of empty homes, 700,000, or 22.7 per cent of the total of primary residences. It defines the non-occupancy of homes as an "antisocial use of property" and **especially penalises the non-occupancy of homes on the part of financial and real estate institutions and asset management institutions.**

With the aim of intervening in the unoccupied housing stock it established the creation of a Register of Vacant Housing in which those properties that had been unoccupied for more than 6 months during one year would be included, with the exception of second

homes, tourist houses, etc. The inclusion of the home in the Register gives rise to different actions depending on whether we are dealing with the property of a natural person or a legal person.

- a) Measures intended for natural persons who own unoccupied homes: in this case different forms of assistance are considered to enable rental, from the guarantee of payment to mediation and rehabilitation assistance. Ultimately, the house would be included in the Register and a surcharge of 50 per cent of the property tax would be applied to it.
- b) Measures intended for legal persons who own unoccupied homes: it grants a thirty-day deadline to communicate the existence of unoccupied properties and sets down a series of sanctions that start from very serious, with fines of up to 9000 euros, which would include non-occupancy and lack of upkeep. The seriousness should be regulated depending on whether the housing is located in an area of high residential demand, the existence of intentionality, or the number of vacant houses owned.

Together with a more long-term policy, the Decree-Law seeks urgent solutions for impoverished households that are experiencing foreclosure procedures. For this, the second additional provision **prevents mortgage-based evictions** that affect families who are particularly vulnerable and establishes the **forced rental of the house for 3 years** at a maximum cost of 25 per cent of the income of the family unit. For the families to qualify, they must prove that the mortgage payment consumes a third of the family income and that the house in question is their only residence, as well as other economic criteria.

The aim is thus no other than to generalise access to housing. For this, it **condemns antisocial uses of property and distances itself from the consideration of housing as a "simple consumer good subject to the laws of the market"**. In short, in the same

way that the social function of private property has allowed the public powers to promote agrarian reform, it also authorises the promotion of urban reform policies that would develop the terms of material equality gathered in article 9.2 CE and would generalise both the right to housing and the right to the city.

Other autonomous communities, like Navarre, approved similar regulations soon after. However, despite its rights-based approach, the Andalusian Decree-Law did not take long in being questioned by the European Commission and the Central Government itself. In a letter addressed to the Ministry of Economy, the Commissioner for Economic and Monetary Affairs, Olli Rehn, manifested his concern about the impact of the regulation on the stability of the financial system and warned about the possible withdrawal of foreign investment. **The Spanish Government, for its part, posed a question of unconstitutionality** based on the following elements:

1. the effect on the core content of property rights;
2. the lack of authorisation of autonomous communities to regulate property rights through their competences in housing and urban planning matters, and the possible infringement of articles 149.1.1 CE on basic conditions for exercising rights, and 149.1.8 on civil law;
3. the disproportionate nature of the sanctions on owners that do not rent in the absence of clear support policies and sufficiently reasonable offers; and
4. the possible discrimination among property owners on whom the prevention of the eviction falls.

In April the Constitutional Court allowed for the appeal process and suspended the Decree-Law. It did the same in November with the Law on urgent measures to guarantee the right to housing in Navarre, of June 27th, 2013.

The Parliament of Andalusia, in any case, passed **Law 4/2013, of October 1st on measures to ensure the social function of housing**. The new law, in fact, goes even further. On the one hand, it **extends protection in cases of mortgage-based evictions** to guarantors, freelance workers, and people with bridge loans in situations of social emergency. On the other hand, in the second additional provision there is a commitment to adopt more measures, through the next Housing and Rehabilitation Plan, to attend to people in vulnerable situations that have been evicted due to non-payment of rent.

Without prejudice to the advances established in Andalusia, what is certain is that housing and urban planning policy, both at the state and autonomous levels, seems to be permeated by an especially evident contradiction in times of crisis: the pressure to extend the reach of the right to adequate housing and to a decent and sustainable urban environment without granting real priority to vulnerable groups and, above all, without effectively preventing or sanctioning the most serious speculative and antisocial exercise of property rights and market freedoms.

3.4. RESPONSES TO THE HOUSING EMERGENCY FROM THE LOCAL LEVEL

Without a doubt, the administrations most affected by the issue of foreclosures and evictions in general are the municipal councils due to their proximity to the people affected. Therefore, since the beginning of the crisis they were the first administrations to report the situation and to foster different responses.

MEASURES OF A SYMBOLIC NATURE

- a) **Political stances.** Since the beginning of the crisis it has been calculated that more than 200 municipal councils distributed throughout the state territory have passed motions in which they urge the Central Government to modify mortgage legislation. Basically, they advocate the adoption of the measures set out in the popular legislative initiative (ILP): *datio in solutum*, prevention of **evictions** of people who are in situations of unexpected and involuntary insolvency, and access to **social rental housing** for all families affected. With a willingness to find support for these measures the municipal proposals were reported to the executive and the two legislative chambers. Moreover, during the processing of the **ILP** various local authorities, as well as approving the support measures, gave up their office spaces for the collection of signatures.
- b) **Non-collaboration practices.** There are also numerous municipal administrations that have agreed **not to contribute to evictions with municipal resources**. The most recurrent formula consists of refusing the participation of the **local police**. Evictions are, in fact, an issue for the criminal police, in such a way that the participation of the municipal police depends on the will of the municipal council. Thus, although their abstention does not prevent the eviction from happening, their non-collaboration, as well as manifesting municipal rejection, can complicate the eviction.
- c) **Exemption from the tax on the increase of urban land value**, widely known as the municipal added value tax (*plusvalía*). The current regulation of this municipal tax, over which the municipal councils, however, have little power, taxes people that are granted *datio in solutum* or who are victims of mortgage foreclosure. Hence, with the outbreak of the crisis several local authorities urged the Central Government to modify the law on local tax offices so that in cases of *datio in solutum* and foreclosure on primary residences it would be the banking institution that would assume the tax.³⁵ In reaction to the lack of response, the municipal councils have opened up different possibilities aimed at freeing the people affected from this other burden. These range from the approval of a subsidy intended for paying the tax, as in the case of Barcelona, Ávila, or Torrejón de Ardoz, to the suspension of its charge, which is applied in Sant Celoni on the basis of the fact that the Local Authorities have urged the Government to modify the precept, as well as the declaration of bad debt that leaves it at a standstill until its four-year statute of limitations runs out, as happens in Granollers.

THE ABSURDITY OF THE MUNICIPAL ADDED VALUE TAX

The case of Mercedes, 56 years of age, accountant, Barcelona

In Barcelona, the fight against the payment of the municipal added value tax has a lot to do with the bravery and perseverance of Mercedes and the support she received from the PAH in Barcelona. Mercedes took out a mortgage in 2001 with Banca Cívica. Everything had been going well until in 2010 the company she worked for closed and the difficulties for paying for her home began.

With the support of the PAH, Mercedes managed to defeat resistance from La Caixa and they accepted *datio in solutum*. However, shortly afterwards, she discovered with surprise that the supposed increase in the value of the land where her flat was located obliged her to pay €2,911 in tax on the increase in urban land value to the Municipal Council of Barcelona. Mercedes' determination and the PAH's public denunciation were crucial for making the problem visible and getting the Municipal Council of Barcelona to approve a subsidy for payment of the tax. But the Municipal Council's subsidy is not retroactive and today Mercedes, like many other people, is still forced to give €80 of her family's €425 monthly welfare benefit to the payment of this tax.

NEGOTIATION AND COOPERATION MEASURES

- a) **Negotiation with the financial institutions.** The optimal solution to the emergency situation would be to facilitate the social rental of vacant apartments owned by the financial institutions in areas of high residential demand. This has been attempted through private negotiations that in most cases have not resulted in significant achievements. The Mayor of Barcelona, Xavier Trias, has fostered various mechanisms with the aim of reaching cooperation agreements. However, lack of transparency and information complicates an objective assessment of the success of the municipal initiatives.
- b) **Creation of mixed commissions.** These are spaces for coordination between the local public administration, social entities, and the PAHs to avoid evictions or at least alleviate their effects. Different entities such as bar associations, judges, social services, political parties, and organisations from the third sector, among others, debate and propose municipal measures. Some of the commissions at work represent interesting initiatives impacting the local administration, raising awareness, and providing guidance for citizens. This is the case, for example, of the Commissions of Terrassa or Gerona. From these commissions, proposals have emerged such as the development of an informative leaflet that was sent to all of the inhabitants of Gerona. Nevertheless, their progress is slow and incipient. The actions depend to a large extent on the political willingness of the municipal council, and to date they have only fostered isolated solutions.

EFFORTS TO PRESSURE THE FINANCIAL INSTITUTIONS

a) Actions against imminent evictions.

- **Closing accounts.** The first municipality to threaten a banking institution with the closure of the municipal account was Santa Cruz de Tenerife. This city had previously approved a protocol to avoid evictions, by which, in certain cases, the Municipal Council mediates with the banking institution to achieve social rental, *datio in solutum*, or the prevention of eviction. In November 2012, after unsuccessfully attempting mediation with Bankia, the Authorities decided to withdraw the 1.5 million euros they had deposited in the bank. The threat managed to stop the eviction and was replicated by other municipal councils such as the Council of Ares in Galicia.

b) Actions when dealing with unoccupied housing

- **Register and tax vacant properties.** The property tax (*Impuesto sobre Bienes Inmuebles – IBI*) taxes the value of properties through a surcharge that affects the holder of the real rights. Provision 72.4 of Royal Decree 1/2004, by which the revised text of the Law regulating local finances is passed, expressly established the possibility for the municipalities to impose a surcharge of up to 50 per cent of the property tax on residential properties found to be permanently vacant. Having said that, the rule subjects the possibility of applying the increase to the regulatory definition of what is understood by vacant housing. This has enabled the **Catalan Supreme Court of Justice, in judgement 535/2011, of July 22nd, to annul the actions of the Municipal Council of Berga aimed at enabling the increase of the property tax.** The Court declared the definition of the Local Government as null, seeing it as an issue exclusively for the Central Government.³⁶
- **Compulsory acquisition and rehabilitation of properties in poor conditions.** Royal Legislative Decree 2/2008 (art. 36), which approves the revised text of the Land Act, establishes the possibility of compulsory acquisition of housing from those owners who have failed their duties in maintenance and rehabilitation. In reference to this provision, **in Alzira, Valencia, actions have been undertaken regarding compulsory acquisition, rehabilitation, and social rental.** Specifically, the Municipal Council, through a municipal register of housing that requires rehabilitation, and after unsuccessfully urging the owner to carry out home improvement works, decides on the compulsory acquisition. Once the property belongs to the Municipal Council it is rehabilitated through a municipal occupancy plan, and is offered as a rental to people affected by foreclosures through local social services. Despite the interest that the intervention has drawn, it is clear that it presents significant limitations. On the one hand, the possibility of compulsory acquisition is subject to the economic capacity of the local authorities. On the other hand, it limits itself to housing with owners who have failed their legal maintenance, safety, health, accessibility, and beautification duties, as established in article 9.1 of the 2008 Land Act.
- **Sanctioning non-occupancy.** Article 123.h of Catalan Law 18/2007, on the right to housing, establishes the possibility for local administrations to impose sanctions on the owners of

unoccupied residential housing. Article 42 of the Law establishes that prior to this, policies should be developed to promote the rental of vacant housing, to guarantee the payment of rent, and to foster the rehabilitation of housing in poor conditions. With the adoption of these policies, the local governments can impose sanctions of up to 900,000 euros and successive penalties of 20 per cent of this amount, up to three times, to promote the occupation of the home. On the basis of this legislation, the **Terrassa Municipal Council has opened more than 300 administrative procedures against banking institutions for abnormal use of housing that they own.** Specifically, the Municipal Council gives them one month to occupy the dwellings in question. They are also offered the option of giving the house up to the Municipality for its rental. Otherwise, the corresponding sanction will be imposed on them, as well as subsequent penalties if the situation is not rectified.

NOTES

1. In relation to article 47 and to article 149.1.1 of the CE, Constitutional Court judgement STC 152/1988 established, for example, that "housing policy (...) should have a noted social emphasis, in view of the governing principle established in article 47 of the fundamental rule (...)." However, it clarifies that "article 47 does not constitute in and of itself an autonomous title of competence in favour of the State (...)." As regards article 149.1.1, "this authorises the state to regulate the conditions not that establish, but that guarantee the equality of Spanish citizens in exercising their constitutional rights. But this function of basic guarantee in terms of the right to enjoy decent housing is what the state can and should enforce when implementing its powers on the regulation and coordination of the economic planning of the housing subsector and on credit regulation." Lastly, the court maintained, evoking what was already maintained in Constitutional Court judgement STC 146/1986, that "the promotion of equality and state action intended for this, "should be implemented bearing in mind the peculiarities of a system of autonomous regions."
2. A good summary of these conflicts can be consulted in the report by the Ararteko institution presented to the Basque Parliament, *Las políticas públicas de vivienda dirigidas a la población joven en la CAPV*, 2007, p. 156 et seq.
3. See Constitutional Court judgement STC 129/2010, of November 29th, on basic emancipation assistance for young people.
4. See Constitutional Court judgement STC 152/1988, of July 20th, where the distribution of powers established in art. 149.1 is clarified in paragraphs 1 and 13.
5. Local competences in urban planning, article 25.2.d, for example, become "the protection and management of the historical heritage. Promotion and management of subsidised public housing with financial sustainability criteria. Conservation and rehabilitation of buildings." Likewise, the section that allocates powers in the field of social services becomes "evaluation and information on situations of social need and immediate attention to people in situations or at risk of social exclusion." Moreover, the bill links the possibility of exercising these powers to the presentation of a report. Lastly, it eliminates article 28 that establishes the possibility for the municipalities to carry out complementary activities in matters of education, culture, advancement of women, housing, health, and environmental protection.
6. The reason for State intervention in the promotion of social housing lies in the interpretation made by Constitutional Court judgement STC 152/1988 and continued by Constitutional Court judgement STC 59/1995, of March 17th.
7. Ponce, J., "El derecho a la ciudad: elementos para superar la gestión neoliberal del espacio público", Observatorio DESC, Barcelona, p. 9 et seq. Available at: http://www.observatoridesc.org/sites/default/files/dchociudad_JuliPonce_Curso_sp.pdf
8. This means that until June 2013, more than five years after the law was passed, the land portfolios in the hands of the financial institutions, for example, were still valued on the basis of the expectations of future business expressed in the urban planning projects where they are located, and not on the current business prospects.
9. The Law on measures for the promotion of housing rental and the energy efficiency of buildings, 19/2009, of November 2009, more widely known as the "speedy eviction Law", paved the way for the streamlining of evictions that seriously questions the right to the effective legal protection of tenants.
10. These plans serve to programme economic assistance and forms of financing, they define protected actions, determine the requirements the beneficiaries should fulfil, and establish the maximum cost of the protected actions.
11. It is estimated that of the total housing support, 75 per cent corresponded to tax breaks on income tax, and that the reduction of tax revenue rose to 3,000 million euros annually. Bermejo Latre, J. L., "La evolución de las políticas de vivienda en el España del siglo XX", in Fernando López Ramón (coord.) *Construyendo el Derecho a la Vivienda*, Marcial Pons, Barcelona, 2010, p. 190.
12. The draft of the State Housing Plan 2005-2008, for example, included the full useful life classification of subsidised housing, but this formula could not be preserved in its final draft. One of the reasons was the strong opposition of some autonomous communities that threatened to go to the Constitutional Court. Finally, a minimum classification of 30 years was established, that could be increased by the autonomous communities.
13. Under the new article 13 established by Organic Law 2/2009, of December 11th, on the reform of Organic Law 4/2000, "Foreign residents have the right to access public assistance systems in housing matters on the terms established by the laws and the competent administrations. In any case, long-term foreign residents have the right to this assistance on the same terms as Spanish citizens."
14. This situation has been denounced by the ombudsmen. See, for example, the Ombudsman of Catalonia (Síndic de Greuges de Catalunya), *El Derecho a la Vivienda: obstáculos y límites*, Barcelona, 2007, p. 47.
15. Bermejo Latre, J. L., "La evolución de las políticas de vivienda en el España del siglo XX", op. cit.
16. You can consult, in this regard, the Opinion of the European Economic and Social Committee on the over-indebtedness of households, 2002/C/149/01, and the International Monetary Fund's report on Spain, 2004, available at: <http://www.imf.org/external/np/ms/2004/110804.htm>. In 2003 the PSOE (Spanish Socialist Workers Party) presented a bill on the prevention of household over-indebtedness due to unexpected causes and with debtors acting in good faith. In its electoral programme for 2004 it also considered a programme of measures for tackling these situations.

17. Thanks to pressure from citizens, the amount for which the financial institutions can be awarded the property has been increased. In 2008, when the crisis broke out, the Code of Civil Procedure provided that the banks could be awarded the mortgaged home at 50 per cent of the property value and could seize assets and salaries from those affected until the rest of the debt was settled, as well as legal costs and overdue interest charges. In 2011, due to the PAH awareness campaign, Royal Decree 8/2011, of July 1st, was passed, which increased by 10 per cent the value at which the financial institutions could be awarded the mortgaged homes. In March 2013, Law 1/2013 on measures to strengthen the protection of mortgagors, debt restructuring, and social renting, increased this percentage from 60 per cent to the current 70 per cent.
18. The Constitutional Court (TC), in decision 113/2011, of July 9th, as a result of the question of unconstitutionality considered by the judge of Sabadell, Guillem Solé, on the other hand, alleged that the lack of due process at the heart of the procedure did not cause defencelessness, given the possibility of seeking a subsequent declaratory judgement trial. The TC, unlike what would later be established by the CJEU, seemed to forget that said trial does not suspend the foreclosure procedure nor, thus, the auction of the property and that even in the case that a favourable sentence were reached for the debtor, he/she would not be able to get the auctioned property back. The TC came to claim that whoever takes out a mortgage knows that they subject themselves to a procedure with elements of limited knowledge, so that even though they do not give up the right to a fair hearing, they consent to that right having momentarily reduced effectiveness.
19. After Law 1/2013 on measures to strengthen the protection of mortgagors, debt restructuring, and social renting, if the notary detects unfair terms on which access to the extrajudicial option is based or that determine the amount required, he/she must make this known to the parties so they can consider it before a judge if deemed appropriate. Additionally, when there are pending legal proceedings on the unfair nature of any of the mortgage terms the notary will suspend the foreclosure and later the question will be resolved, provided that the unfair term did not constitute the basis of the foreclosure.
20. Second chance policies refer to those mechanisms or institutions – like the Over-indebtedness commissions in France, or the English Insolvency Service – aimed at solving the insolvency of debtors acting in good faith. Thus, after a reorganisation process and a payment plan, and after a certain amount of time has passed, those affected can return to effective participation in legal affairs on equal grounds. This means both the exoneration of debts as well as overcoming the restrictions linked to late payment. In short, they are policies that at the same time as they avoid social exclusion by enabling people to overcome over-indebtedness, they also promote economic activity. In France, for example, since the end of the eighties there is a policy specifically dedicated to freely resolving situations of over-indebtedness among natural persons. Thus, Law 2003-710, of August 1st, *D'orientation et de programmation pour la ville et la renovation urbaine*, establishes a mechanism, known as the "second chance" mechanism, which allows for the cancellation of outstanding debts once the debtor's assets are liquidated, except for those assets that are indispensable for professional and personal development.
21. On second chance policies and the bankruptcy system in Spain see Gonzaga Serrano, L., "Reflexiones de Derecho Administrativo Económico sobre concurso y segunda oportunidad", *XXXIII Jornadas de la Abogacia General del Estado*, Madrid, 2011.
22. Gómez Guinda, J., "Financiación de las políticas públicas de vivienda", Instituto de Crédito Oficial (ICO), Madrid, 2011.
23. Boletín Oficial de las Cortes Generales del Congreso de los Diputado, IX Legislatura, serie B, núm. 152-1, February 13th, 2009.
24. It is difficult to calculate with certainty the number of people who have taken their lives due to the impossibility of dealing with housing payments. In any case, in order to show the magnitude of the problem it is enough to mention the cases of José Miguel Domingo, 54 years of age, from Granada, who hung himself on the 25th of October a few hours before being evicted; or Manuel G. B., 53 years of age, who on that same day threw himself off his balcony in Valencia after the bell was rung by a member of the officers of the court that came to evict him; and, also, of Amaia Egaña, 53 years of age, in the Basque Country, who on the 9th of November threw herself out of the window of her home on the fourth floor, when the officers of the court arrived to evict her.
25. In fact, it is no coincidence that its development coincides with the consolidation of important fiscal stimuli for real-estate investment trusts (SOCIMI in Spanish) promoted by Law 16/2012, of December 12th, on tax measures, and with the deregulation of the rental market by Law 4/2013, of June 4th, on measures to promote the rental market and make it more flexible.
26. See Ararteko, "Las políticas públicas de vivienda dirigidas a la población joven en la CAPV", *Special report to the Basque Parliament*, op. cit. p. 180 et seq.
27. At the end of 2009, Bizigune had a housing stock of 4,557 homes for rental, and cost 21.2 million euros: 17 per cent of the budget of the Housing Department of the Basque Government. The cost of the subsidy per house is calculated at €4,650 per year, a cost that is much lower than that of the direct development of public rental housing, €117,000, or the cost of assistance for development on the part of other agents, €55,000, without considering savings in terms of the environment and the sustainability involved in the use of unoccupied housing. Basque Housing Observatory, *Evaluación del Programa Bizigune*, Donostia, November 2010.
28. Ararteko, Las políticas públicas de vivienda dirigidas a la población joven en la CAPV, op. cit., p. 433.
29. For example, Ponce, J., *Segregación escolar e inmigración, contra los guetos escolares: derecho y políticas públicas urbanas*, Centro de estudios políticos y constitucionales, Madrid, p. 64.
30. In Sant Celoni, Vallès Oriental, for example, the Municipal Council found itself obliged to reject the AREplan for the construction of 750 homes after the result of a popular referendum. Some of the most important criticisms include: the possibility of the ARE being


developed on non-developable land, disregarding the current Urban Development Plan; the creation of neighbourhoods that are non-existent in municipal planning reducing as much as possible the time limits and controls required; the absence of processes of citizen participation in the planning, and in general the violation of municipal autonomy in matters of land-use planning.

31. In fact, according to data from the General Council of the Judiciary, Catalonia is, after Andalusia, the community with the greatest volume of foreclosure procedures underway, and with a volume of evictions for non-payment that is more and more worrisome.
32. This modification, as indicated by Juli Ponce, is certainly confusing since it goes against the spirit of the Law, which is no other than the promotion of the right to housing for groups in special situations of vulnerability and the prevention of abnormal uses of property. Moreover, the impossibility of subsidised housing remaining unoccupied is still in force (art. 5.2 d), and the obligation of the beneficiaries of subsidised housing to demonstrate a particular economic situation. See Juli Ponce Solé, "Habitatge, dret i crisi econòmica. La modificació de la llei del dret a l'habitatge operada per la llei 9/2011 i la suspensió dels llançaments en els processos hipotecaris pel real decret 7/2012, de 15 de novembre", in *the Revista Jurídica de Catalunya*, I, Barcelona, 2013.
33. The limitations of the Catalan and Andalusian laws are made clear if we compare them with the most rights-based European legislation. In Scotland, for example, there is a law from 2003 on homeless persons (Homelessness Scotland Act), which obliges the local authorities to ensure, by 2012, adequate accommodation for homeless people as a first step towards ensuring the general right to adequate housing. In a similar way, French Law 2007-290, of March 5th, on the enforceability of the right to housing, has developed the right of people in situations of need to make claims before a Contentious-Administrative Court.
34. The unjustified refusal of access to housing on the part of the public authorities.
35. This modification has already been introduced for the few cases that fulfil the conditions to qualify for the Good Banking Practices Code; therefore its extension would suffice.
36. Regarding the creation of a census of unoccupied properties, the judgement rules that it could be used for other effects, once the inclusion requirements are not set by the municipal council but on the basis of autonomous-level definitions.



03

RECOMMENDATIONS FOR THE PUBLIC ADMINISTRATIONS WITH REGARD TO HOUSING AND THE PROHIBITION OF ARBITRARY EVICTIONS



Public policies implemented in recent years in relation to housing and evictions have been the object of evaluation by different international and state agencies and organisations. Almost all of them have confirmed the existence of generalised housing rights violations and have developed recommendations for the public administrations to review this situation.

1

RECOMMENDATIONS FROM THE UNITED NATIONS CESCR

The duty of the Spanish government to present periodic reports before the CESCR on its fulfilment of the ICESCR constitutes an important opportunity to assess the situation of social rights in general and the right to adequate housing in particular.¹

Thus, already in **2004 the CESCR** showed concern in relation to the housing situation in Spain. At that time, the CESCR warned of an increase in the number of homeless people and people affected by forced evictions. It also highlighted the growing deterioration of the housing sector and the **lack of social housing**.²

Therefore, the Committee urged the public administrations to carry out the following actions:

- To guarantee the **effective protection of the economic, social, and cultural rights of all those who reside in the territory**, in accordance with article 2.2 of the Covenant. Also, it encouraged the promotion of the legalisation of undocumented immigrants so that they could fully enjoy their economic, social, and cultural rights.
- To intensify activities aimed at providing **assistance to homeless people** and to study the situation in order to have a more complete picture of the problem and its causes.
- It also encouraged the state to **provide disaggregated and comparative data on** the number of people affected by **evictions** and to ensure that any evictions carried out would comply with the guidelines of the Committee's General Comment No.7.
- Improve the conditions of housing and provide more housing, individual or collective, as well as credits and subsidies to low-income families and disadvantaged and marginalised groups.

The **United Nations CESCR's disapproval** of the increasing violations of the right to housing in Spain was

repeated in the last examination in **2012**². Specifically, the United Nations emphasised the following housing **problems**:

- Growing **difficulties in paying for long-term mortgages**;
- The **discretionary nature** of Law 6/2012, March 9th, on urgent measures for the protection of mortgagors without resources, known as the **Good Practices Code**, to the extent that it authorised the banking institutions the admission or not of *datio in solutum*;
- The persistence of **evictions without due legal guarantees**, without those affected being consulted beforehand, and without offering them alternative accommodation or compensation; and
- The absence of an official definition of a "homeless" person that would allow for the collection of reliable information and the development of policies on the issue.

Specifically, the CESCR urged the public administrations to carry out the following **actions**:

- Establish the **appropriate procedures to carry out evictions** on the basis of international standards in the matter;
- Undertake a legislative amendment to **authorise *datio in solutum* as payment of the debt**;
- Incentivise rental and **increase the offer of social housing**; and
- Gather disaggregated data on the impact of the economic crisis on the number of people without homes.

Lastly, the Committee requested that the Spanish government "ensure that all the austerity measures adopted reflect the minimum core content of all the Covenant rights and that it take all appropriate measures to protect that core content under any circumstances, especially for disadvantaged and marginalized individuals and groups."⁴

2 RECOMMENDATIONS FROM THE UNITED NATIONS SPECIAL RAPPORTEUR ON HOUSING

The **United Nations Special Rapporteurs** are independent experts that work on behalf of the United Nations in the protection of human rights. They combine their term in office in the United Nations with their professional activities. This absence of professional ties with the United Nations guarantees greater autonomy and critical capacity.

At the end of 2006, the **Special Rapporteur on the right to adequate housing**, Miloon Kothari, after several years of pressure from different social organisations led by the Observatorio DESC itself, was accepted by the Spanish government for an official mission.⁵ As a result of his visit, the Rapporteur presented a **report** before the United Nations Human Rights Council in which he **defined the housing problem as "the most serious in Europe and one of the worst in the world"**⁶.

Specifically, the Rapporteur highlighted the following **problems**:

- **Urban planning speculation and uncontrollable corruption** as generalised practices in the housing market in Spain.
- He confirmed, among other issues, that between 20 per cent and 25 per cent of the Spanish population was excluded from the housing market, due mainly to its high prices.
- He denounced the **absence of action protocols in eviction matters** that would guarantee the protection of the rights of those affected.
- He warned of the large proportion of **unoccupied homes**.

In order to curb the situation of housing exclusion the report urged the public authorities to **take the following measures**:

- **include the human rights perspective in housing policies;**

- recover the **social function of private property** expressed in the Spanish Constitution and cease to treat housing as a commodity;
- **stop the promotion of private ownership** through public subsidies and foster renting;
- provide **disaggregated data** on the **housing situation in Spain;**
- investigate and **punish speculative and corrupt actions;**
- enable effective ways to report violations of the right to housing; and
- **create a public rental housing stock using empty housing.**

As well as undertaking missions to countries and addressing concrete recommendations to states, the United Nations Rapporteurs develop annual reports in which they analyse global issues and suggest alternatives. In this sense, the growing international concern in relation to the violation of the right to housing in Spain, and specifically with regard to **the issue of people with unaffordable mortgages, was quickly echoed within the United Nations**.

The first response came from the 2009 annual report of the Special Rapporteur on Housing, Raquel Rolnick. This report analysed, on the one hand, the impact of certain housing policies on the generation of the global economic crisis and, on the other hand, the repercussions of the crisis on the fulfilment of the right to adequate housing.⁷ Specifically, it expressly mentioned the housing problem affecting the Spanish government, seen in the alarming eviction figures. Among other issues, it denounced the dramatic consequences of the generalised abandonment of housing policy on the part of the public authorities to the benefit of the private sector. And it showed

how the enormous profits of the real estate and construction sectors were made possible thanks to the over-indebtedness of families through high risk or subprime mortgages, both in the United States and in other countries, including Spain.

The report entrusted the public authorities with the following **actions**:

- to review in depth the policies adopted in recent years, recognising the multiple functions of housing beyond being a simple commodity;
- to foster secure types of tenure other than private property such as affordable rent that is stable over time; and
- to **resolve the housing crisis with the same urgency and predisposition that they show in relation to the crisis of the financial institutions.**

Later, in October 2012, the Rapporteur followed up this first document and dedicated her annual report to analysing the **impact of the financialisation of housing in terms of human rights**. The report looks at the situation in Spain as a relevant example where the

excess of international liquidity added to the financialisation of housing has caused the unprecedented over-indebtedness of families. Specifically, the Rapporteur identifies as main causes of the current housing crisis:

- the construction of housing for private ownership as an engine of economic development almost all over the world;
- **the financialisation of housing through the fostering of mortgage markets;** and
- the austerity policies and bank bailouts.

To put an end to the situation, she **demands**:

- **the modification of the model based on private property and the financialisation of housing;**
- the need to analyse the impact of adjustment policies on the right to housing of impoverished groups; and
- the urgent need to promote other types of secure tenure like private and public rental – with regulated prices – or collective property.

3 RECOMMENDATIONS FROM THE OMBUDSMEN

Ombudsmen form institutions intended for the non-judicial supervision of the actions of bodies in different public administrations to thus guarantee the fundamental rights and freedoms of persons affected by administrative irregularities or the poor functioning of the administration.

Beyond their daily tasks of resolution of complaints on public administration actions linked to housing and the fruits of the analysis of their resolution, the ombudsmen have expressed reflections and proposals and have issued general recommendations for changes in legislation in response to the issue of foreclosures: to remind the public administrations that they must remove obstacles and promote all possible measures to guarantee the right to decent housing.

3.1. RECOMMENDATIONS FROM THE OMBUDSMAN

The Ombudsman developed a report on the issue, ***Crisis económica y deudores hipotecarios: propuestas del defensor del pueblo*** (Economic crisis and mortgagers: proposals from the Ombudsman)⁸, presented to the Cortes Generales (parliament) in January 2012, as well as to different administrations and bodies with competences in the matter. This report has been updated with the responses or silences to the recommendations formulated, and with the subsequent events.

The recommendations were divided into three groups: preventative; palliative; and general, which consists of reinforcing the independence of the complaints system of the Bank of Spain.

The **preventative** measures insist on the need to:

- a) Improve mortgage transparency in banking services.
- a) Make effective the technical advice provided by financial institutions and notaries.
- b) Develop the duty of responsible lending, knowledge of the client's solvency, and establish consequences for the credit institutions that do not comply.
- c) Restrict the practice of imposing loan protection insurance, when in the majority of cases it does not guarantee payment.
- d) Intensify the independence of real estate appraisal companies.
- e) Establish the duty to attempt prior reconciliation before resorting to the chosen legal proceedings.
- f) Adopt, in a way appropriate to the social times, the regulation of mortgages that affect the primary residence and the place of business where the acti-

vity that constitutes the livelihood of the individual is exercised. Legal arrangements of these assets should be separated from those of other assets, when they are given as a guarantee of the fulfilment of a mortgage loan.

Regarding **palliative** recommendations, the following are emphasised:

- a) Regulate a specific procedure for the insolvency of natural persons.
- b) Improve the effectiveness of the auction system of the Code of Civil Procedure.
- c) Adopt additional measures to avoid situations of social exclusion, allowing debtors acting in good faith to continue in the home or business premises by means of a manageable price, through alternative legal options (forced leasing, right of habitation, repurchase, etc.), that would allow them economic recovery and social integration.
- d) Limit by law the costs of late payment for the mortgager acting in good faith to twice the legal interest rate according to judicial criteria.
- b) Facilitate temporary moratoriums on mortgage payments and the increased flexibility of instalments, as well as the establishment of a payment system with a grace period, making it more manageable. Facilitate payment deferrals, abolish fees and costs, moderate penalty clauses or stop the accrual of interest, or allow for the payment of capital before interest to reduce the debt generated by accessory obligations.
- c) Establish a payment plan in cases of irresponsible lending and, failing to do so, accept *datio in solutum*.

3.2. RECOMMENDATIONS FROM THE ARARTEKO IN THE BASQUE COUNTRY

In general terms, the reflections of the Ararteko (Basque Ombudsman) intended for the public authorities place special emphasis on the fact that, as well as being a constitutionally recognised right, the right to decent housing is a human right that is internationally enshrined in art. 25 of the Universal Declaration of Human Rights and in art. 11.1 of the ICESCR.⁹

In relation to the specific problem of evictions, the proposals are the following:

- a) Use the maximum available resources to guarantee the effective fulfilment of the right to housing for all persons;
- b) Pass a housing law that would guarantee the enforceability of the right to enjoy decent and adequate housing before a court of justice;
- c) Back the promotion of subsidised rental housing;
- d) Assign a significant part of the SAREB properties to social rental housing;
- e) Generalise *datio in solutum* as a responsibility clause;
- f) Establish a moratorium on the payment of a loan when the borrower has become unemployed or when he/she is in a vulnerable situation;
- g) Allow the judge the ability to suspend forced foreclosures until he/she has been able to analyse the issue in detail, checking whether the loan contract contains any unfair terms for the consumer;
- h) Establish a mandatory mediation procedure, which would include assistance for families, and which would aim to guarantee the fulfilment of housing rights;
- i) Pay special attention to very vulnerable families, especially those with minors at risk of exclusion.

In the opinion of the Ararteko, Law 1/2013, of May 4th, on measures to strengthen the protection of mortgagors, debt restructuring, and social renting, does not satisfy social demands.

3.3. RECOMMENDATIONS FROM THE OMBUDSMAN OF CATALONIA

The reflections of the Ombudsman of Catalonia (Síndic de Greuges de Catalunya) are intended to create a more tolerable situation for people who, as well as having lost their primary residence due to foreclosure, continue to have an outstanding debt. People, therefore, with serious economic problems and often at risk of social exclusion.

The Ombudsman of Catalonia has analysed the context in which these problems present themselves and has proposed possible changes, both in terms of legislation and management, which the public administrations, within the scope of their powers, can

carry out to improve the scenario. These proposals, put together during 2011 and presented in July 2012 with the report on the regulation of mortgage debt restructuring¹⁰, revolve around three core ideas:

Spread already existing information and mediation services to find the most valid strategy to tackle debt and avoid eviction; encourage the financial institutions to participate and collaborate in processes of mortgage debt restructuring; incentivise agreements to prevent mortgagors from losing their homes, such as the transfer of ownership to the financial institution and the reconversion of the mortgage loan into an affordable rental contract, with the possibility of future repurchase of the home when the economic circumstances improve.

- a) Establish a series of **fiscal modifications** on operations which the creditor and mortgager can agree on, thus avoiding taxation disincentives for financial institutions when carrying out certain operations and, on the other hand, facilitating a solution for people who are over-indebted and whose family unit has a single home on which the mortgage was taken out. Specifically: modify the regulation of the tax on the increase of urban land value so that whoever has lost a home may be exempt from this tax, both when the transfer of the primary residence derives from a foreclosure procedure and when, with the handover of the house to the mortgage creditor or its subsidiary, the outstanding mortgage debt is totally or partially settled.
- b) Regulate a **voluntary and free system of debt restructuring** through a commission of an administrative nature that could develop a mandatory debt restructuring plan, both for the debtor and for the creditors. This would entail the suspension of foreclosures until an agreement is made and the prediction that once the plan has been in force for a certain amount of years and the debtor has fulfilled its conditions, he/she may be released from the outstanding debt.

The Ombudsman of Catalonia considers that the constitution of the SAREB is a historic opportunity to assign part of the properties obtained at a low cost by this company to social rentals. For this, in a resolution released in November 2012¹¹, it proposes the urgent promotion of regulatory measures aimed both at allocating these properties to social ends and at avoiding new evictions, for example:

- a) Create an over-indebtedness assessment commission, which in a binding way would develop a debt restructuring plan for each case allowing for reconciliation between mortgager and creditor.
- b) In the case of persons in situations of social precariousness and over-indebtedness, the creditor

should apply the same reductions in the debt that are provided for in the transfer of housing from financial institutions to the SAREB.

- c) **Allocate 30 per cent of SAREB properties to social rentals.**

Finally, in July 2013, the Ombudsman carried out an analysis of the degree of fulfilment of its recommendations as well as an evaluation of the legislative initiatives around foreclosures, the set-up of the SAREB, and the Social Fund for Housing (FSV).

Regarding measures to palliate the situation of over-indebtedness, the Ombudsman considers that these are not adequate and, thus, insists on the recommendations to regulate a debt restructuring system. In relation to the characteristics and ends of the FSV, it considers that they do not comply with real needs, for which the following recommendations, among others, are reasserted:

- a) To establish, within the fund for orderly bank restructuring (FROB), a line of **assistance for families** (mini-FROB for families) at serious risk of losing their home, to reduce the outstanding debt and allow them to continue with the purchase of the house at a cost that is manageable for their current income.
- b) To apply the same **reductions in prices** provided for in the transfer of housing to the SAREB (54.2 per cent) to housing still being paid for by families in great difficulty and which the banks have still not repossessed.
- c) To adopt mechanisms of public control of the profits generated by properties obtained at a low cost and, thus, subsidised by the State, and **ensure that a minimum of 20% of the profits are returned to the Public Administration**. That is, to the community that, with its budgetary effort, enables the sale of properties to the SAREB at a low cost.
- d) Assign **30 per cent of land** classified as residen-

tial **in areas of strong social housing needs** to the construction of subsidised housing or to facilities of public use.

Regarding the FSV:

- a) Allocate 30 per cent of the properties obtained at a low cost, often used for first homes, to social rental;

- b) Assign the **management of the Fund to social non-profit organisations specialised in the management of social housing**; and

- c) Prioritise the allocation of rental housing to family units who have lost their home when this forms part of the FSV.

3.4. RECOMMENDATIONS FROM THE OMBUDSMAN OF ANDALUSIA

For its part, the Ombudsman of Andalusia has also put forward various proposals aimed at guaranteeing the right to the enjoyment of decent and adequate housing¹². In this case, it is worth highlighting: the measures proposed to redirect public policies aimed at the achievement of this end, adapting them to the current situation; its considerations in terms of mortgage loan implementation on the part of the financial institutions in the framework of current mortgage regulations; and its view on subsidised housing seized by financial institutions, which should be returned as soon as possible to the protected market.

Regarding the public policies to promote the right to decent and adequate housing, published in the 2011 annual report and updated in November 2012, the Ombudsman of Andalusia **considers it essential that the public authorities redirect the offer of subsidised housing towards the rental system and that they adapt the public housing offer to the profile of the needs of the main applicants** for these houses, as well as extending the subsidised housing scheme to the full useful life of the home. In turn, the Ombudsman advocates the implementation of support for owners and tenants who, temporarily and for unexpected reasons, cannot manage the mortgage loan payments or the rent.

The considerations in terms of mortgage loan implementation on the part of the financial institutions in the framework of current mortgage regulation point to

the weak potential of *datio in solutum* as a possibility in mortgage contracts, given the dominant position of the financial institutions. Thus, the Ombudsman of Andalusia proposes two alternatives to be studied by the public authorities:

- a) To add a legal provision by which, in any event, **when the mortgage is on a home that is the primary and permanent residence of the mortgagor, the secured obligation is executed solely and exclusively on the mortgaged property, with the total cancellation of the debt**; and
- b) To always **demand this type of contract in the case of housing with some kind of public subsidy**, intended for lower-income populations.

In relation to the subsidised housing that the financial institutions seize from their holders, the Ombudsman considers the contradiction that housing that was built for sectors of the population that could not fulfil the constitutional right considered in art. 47 CE becomes a property asset of these financial institutions, thus breaking with the social function that justified their construction with public funds.

Thus, the proposals of the Ombudsman of Andalusia published in July 2012 include: the return of unoccupied homes to the protected market; the promotion of social rental; the consideration of persons affected by eviction procedures as preferred applicants for these rentals; the consideration of the compulsory acquisition powers of the autonomous

administrations in relation to subsidised housing that does not fulfil the obligation of being put on offer, as this violates the social function of property; and the regulation of the prices of such housing

currently owned by the financial institutions, reducing the maximum prices considered in legislation on subsidised housing in an effort to make it more affordable to the citizenry.

NOTES

1. In turn, social organisations have the possibility of comparing, before the United Nations, the information presented by state representatives through the development of "parallel reports or shadow reports". The Observatorio DESC has actively participated in the coordination of alternative reports on the situation of social rights in Spain. The last report from 2012: http://www2.ohchr.org/english/bodies/cescr/docs/ngos/JointSubmission19NGOs_Spain_CESCR48_sp.pdf
2. E/C.12/1/Add.997, June 2004.
3. E/C.12/ESP/CO/5, June 6th, 2012.
4. On duties in matters of human rights during periods of crisis see the Report of the Ararteko, *Los derechos humanos como base de las políticas públicas en tiempos de crisis económicas*, Bilbao, June 2012.
5. The visit took place from the 20th of November to the 1st of December 2006, during which the Rapporteur visited different cities and interviewed senior representatives of the State, the autonomous governments, and the local governments, as well as numerous social collectives and organisations.
6. A/HRC/7/16/Add.2, February 7th, 2008.
7. A/HRC/10/7, February 4th, 2009.
8. http://www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/Documentacion/informe_deudores_hipotecarios.pdf
9. http://www.ararteko.net/RecursosWeb/DOCUMENTOS/1/0_2949_3.pdf
10. http://www.sindic.cat/site/unitFiles/3334/Informe%20reestructuracion_deuda_hipotecario.pdf
11. <http://www.sindic.cat/site/unitFiles/3375/Resolución%20sindic%20sobre%20dificultades%20pago%20vivienda%20habitual.pdf>
12. See Defensor del Pueblo Andaluz, Informe al Parlamento 2011 and 2012.





LIVES AT STAKE

TA: D. Jesús Aranzabala
marzo de 2010

Juzgado el anterior escrito de demanda, sus
originales los correspondientes autos y registros
ador Sr/Sra ANTONIO M^o DE ANZIZU FUREST en la re
de CAIXA D'ESTALVIS DE CATALUNYA.

ANTECEDENTES DE HECHO


Por el Procurador Sr/Sra [redacted] en nombre y
representación de CAIXA D'ESTALVIS DE CATALUNYA se ha presentado
anda, solicitando se despache ejecución frente a [redacted] al siguiente título
recutivo: escritura de préstamo hipotecario de fecha 9.8.08. Asimismo h
presentado escrito 23.2.10 acompañando la certificación literal de la inscripción
requerida por este Juzgado.

CANTIDAD RECLAMADA 246.409,98 euros de principal e intereses dev
en su caso, hasta la fecha de [redacted] de la cuenta, más los intereses de c
se devenguen con posterioridad a [redacted] fecha hasta el total pago de c
costas y gastos que se cau [redacted] presupuestada por el a
euros.

FUNDAME

01

**RESULTS OF THE SURVEY
CONDUCTED WITH
MORTGAGES VICTIMS**



This second part of the report is dedicated to studying the impact of overexposure to mortgage credit on those affected and the behaviour of the financial institutions. For this, firstly, we will analyse the results of 11,561 surveys conducted with people affected by mortgages. Secondly, we will look at four interviews with people linked to the Platform of Mortgage Victims (PAH).

METHODOLOGICAL NOTE

In this part of the report we will look at the survey conducted to obtain information about those affected. The survey was launched on the 19th of March 2013 online through the PAH website using the free programme Survey Monkey¹. **In a little less than one month we reached 2,721 responses**, gathering the data on the 28th of April of that same year.

This report provides valuable information that expands and complements information from other organisations and agencies. Thus, since 2008 the General Council of the Judiciary, through the publication of "data on the impact of the crisis on the judiciary", has documented the number of foreclosure procedures initiated and the evictions carried out in the different provinces. However, the judicial statistics do not distinguish between first and second residences, they omit any data related to the affected population, and do not provide information on the financial institutions involved.

Recently, the scarce documentation available has been complemented by a study by the Spanish Association of Property Registrars², and another by the Bank of Spain³. Both reports provide data on the volume of mortgage non-payment that affects primary residences and on the volume of *datio in solutum* carried out in 2012. In the case of the report of the property registrars the nationality of the mortgaggers is also documented and the geographic concentration of the issue.⁴

The present study is relevant, on the other hand, in terms of two novel elements. Firstly, an extensive sociological and social vulnerability description that reflects the typology of those affected, the concrete impact the problem entails for them and their families, and the assessment they make of the social services.

METHODOLOGICAL ISSUES

Before beginning, we must present the following methodological issues. The first refers to the fact that **the study is exclusively representative of people affected by mortgages who have been in contact with the PAH**. It is not representative of all people who have mortgages in Spain or of those who have difficulties but do not contact the organisation. This survey presents,

Secondly, as well as the socio-demographic profile, the survey also deals with the behaviour of the banking institutions.⁵ Relevant data that the banks are reluctant to facilitate is thus gathered, such as the amount of mortgages affected or the volume of foreclosures and evictions that the different institutions carry out.

To the extent that there is no integrated research on the profile of those affected by mortgages or the concrete impacts that the problem generates in the fulfilment of other basic needs, with this report a relevant contribution is made towards influencing the responses to be taken by the public authorities.

The results obtained from the 2,721 surveys are complemented by another survey that is broader both in terms of time and responses. Specifically, the first survey started on the 23rd of February 2009 and was active until the 16th of October 2012, when the data base was put together for its analysis. During those three years we gathered a sample of 8,840 people. The results of this survey can be found in the annex. In total, therefore, the present study is based on the analysis of 11,561 surveys.

For the main report we will maintain the most updated survey from the second wave. Although it is clear that it includes a smaller number of cases, it has two advantages. On the one hand, it possesses more specific information than the previous one. On the other hand, in the second survey the number of open questions⁶ was reduced. This is relevant because although it limits the individual specificities of the person surveyed, it facilitates the systematisation of the information.⁷ The analysis of the first survey is used, in any case, both to strengthen the results of the main report, and to observe trends.⁸

thus, what is known as self-selection: only those affected by mortgages and who are in contact with the PAH responded to it. For this reason we must proceed with caution when it comes to generalising the information presented here. In any event, this does not invalidate the deductions made if they are limited to those who have contacted the Platform.

A second issue to consider is that the survey was conducted online. Thus it is plausible that it underrepresents those affected who do not have internet access, presumably elderly people or people with no fixed abode.

A third consideration is that the survey was administered solely in Spanish. There could be, therefore, an overrepresentation of Spanish-speaking immigrants. This means that unlike what appears to be indicated by the study's data, there may be other groups

especially affected – aside from the Latin-American population – who due to their lack of command of Spanish have not made contact with the PAH.⁹

In short, the survey focuses exclusively on those affected who have contacted the organisation. However, up until now this is the only study aimed at systematising the different elements – economic, sociological, and social vulnerability – of the dilemma, describing the action of the financial institutions, and showing the assessment of those affected in relation to the necessary responses.

SUMMARY: PRESENTATION OF THE SURVEY

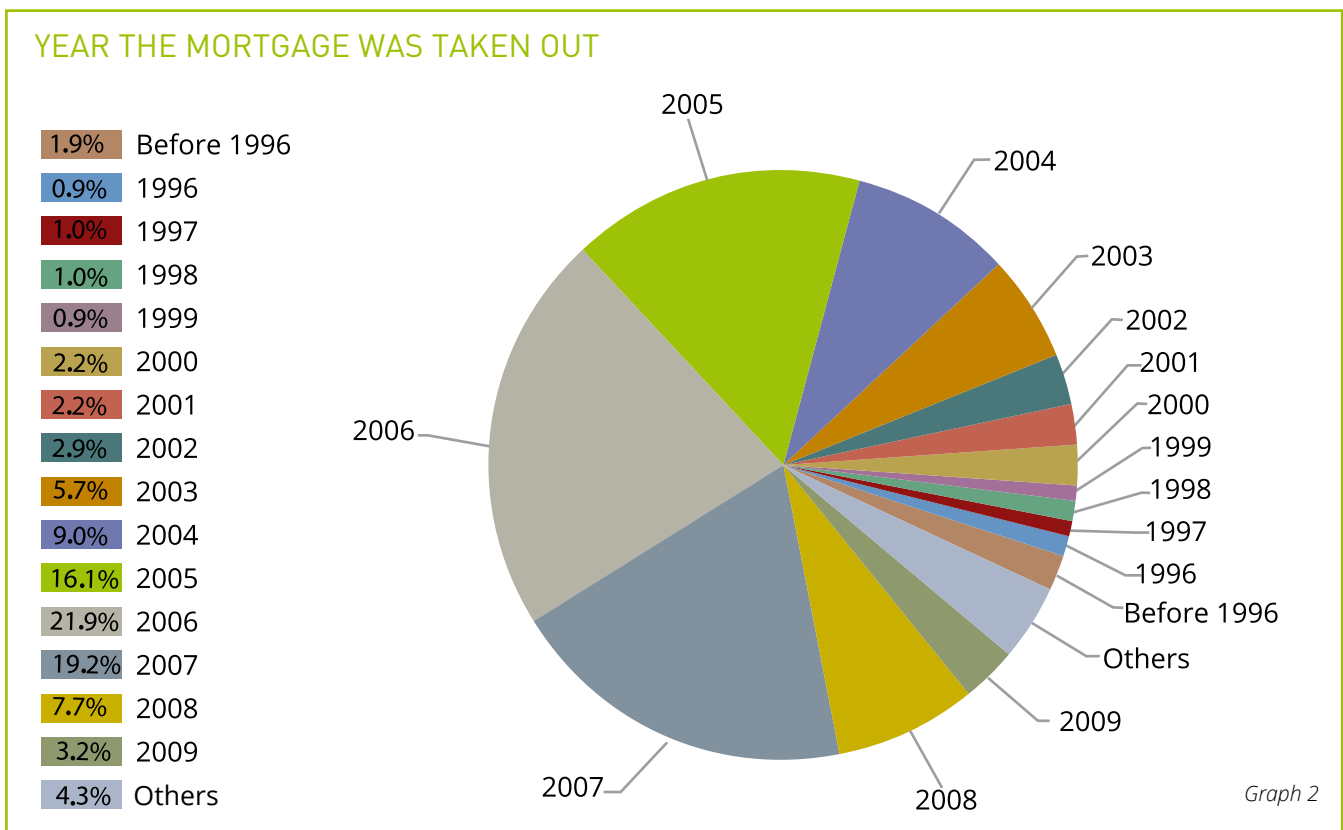
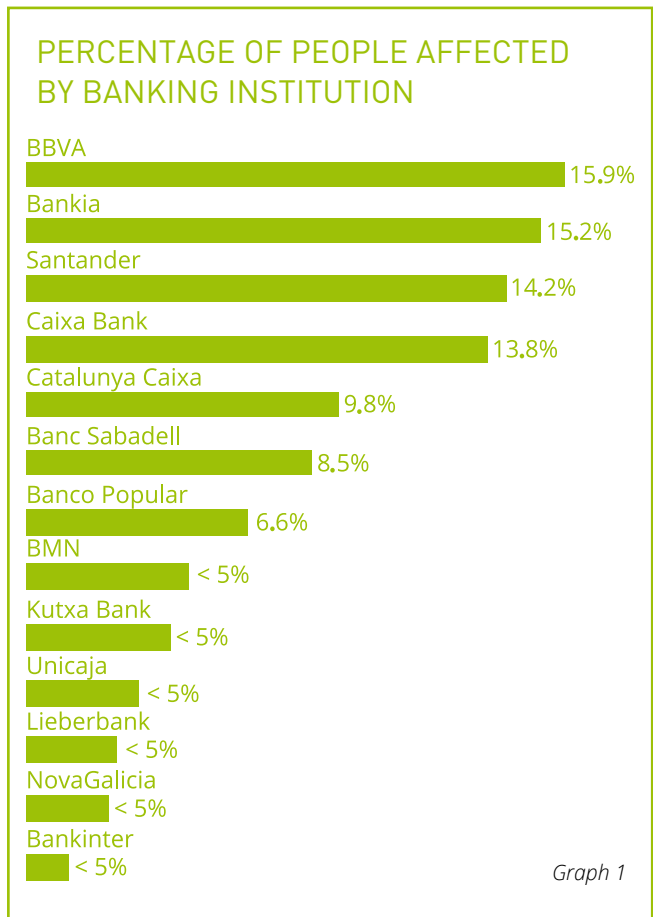
- The survey was conducted online with people affected by mortgages who accessed the PAH website.
- The survey was delivered between the 19th of March and the 28th of April, receiving 2,721 responses.
- A previous study with 8,840 surveys is added to the 2,721 surveys, serving to strengthen the results and to show trends in the issue. In total, the study includes 11,561 surveys.
- Advantages: the survey looks at socio-demographic information and information on the social vulnerability of those affected, as well as including data on the behaviour of the financial institutions.
- Disadvantages: self-selection, only applicable to people linked to the PAH; moreover, it was conducted online and in Spanish, which limits the possibilities for generalising the results.

1 CHARACTERISTICS OF THE MORTGAGES

The first question refers to the banking institution or institutions with which those affected took out their mortgage(s).¹⁰ Following the process of bank restructuring that has taken place in recent years we have grouped together 120 typologies of institutions and mortgage relations in a total of 15 institutions.¹¹ Therefore, the analysis encompasses 92% of the sample.¹²

The results obtained from this first question indicate that those affected are mainly concentrated in the BBVA, with 15.9%, and Bankia, with 15.2%. These are followed closely by Banco Santander, with 14.2%, and Caixa Bank, with 13.8%. Moreover, CatalunyaCaixa, with 9.8%, Banc Sabadell, with 8.5%, and Banco Popular, with 6.6%, are also significant. BMN, Kutxa Bank, and other banks cover less than 5% of the people who responded to the survey.¹³

More than half of the mortgages were taken out between 2005 and 2007, years that are characterised by the high price of housing. Only 13% of the mortgages included in the sample were signed after 2008. Once again, these data coincide with the previous survey.



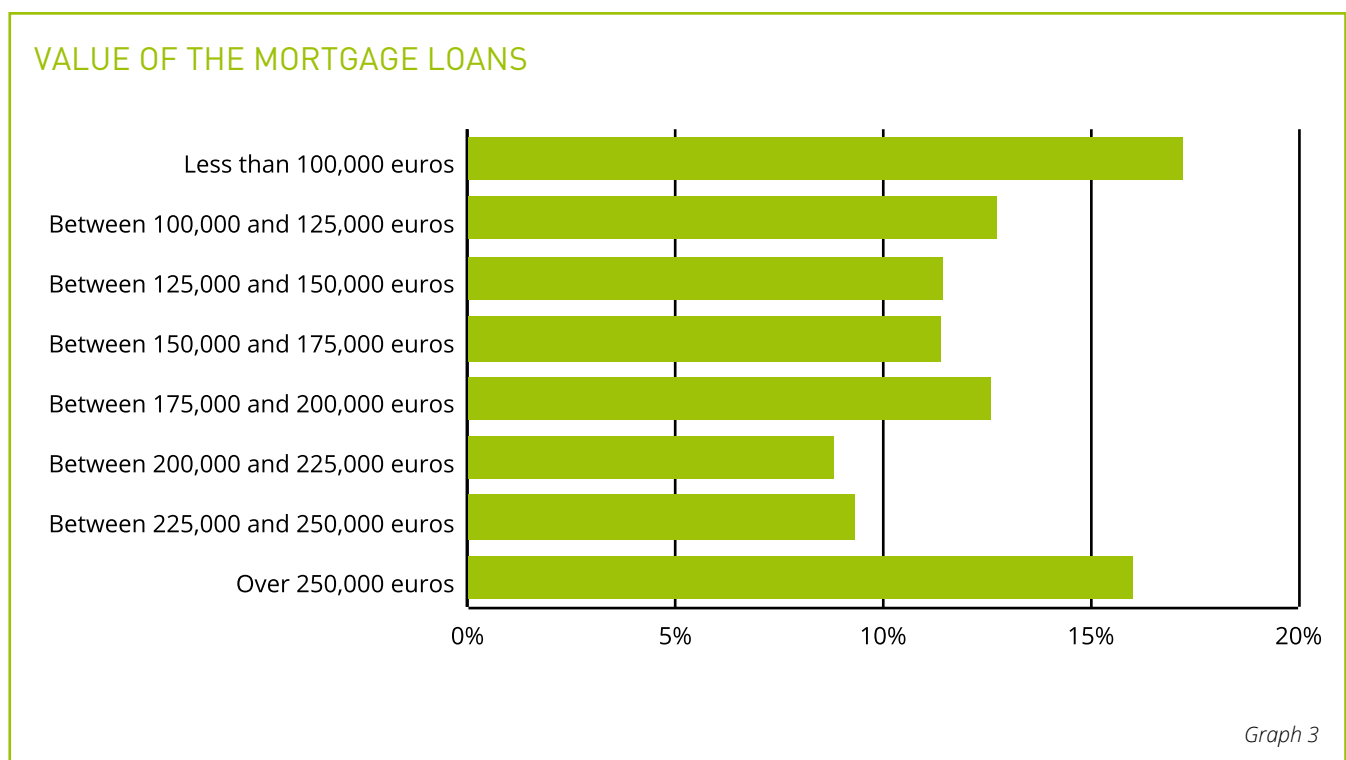
Regarding the autonomous communities, **Catalonia has a higher percentage of people affected by mortgages (30.3%), followed by the Community of Valencia (20.7%), the Community of Madrid (12.9%), and Andalusia (9.27%).** This information coincides in general with the data of the General Council of the Judiciary that show Catalonia, Valencia, Madrid, and Andalusia to be the most affected autonomous communities.¹⁴

If we break down the information in terms of location by provinces, almost 25% of those affected are concentrated in the province of Barcelona, followed by Valencia with 15%, and Madrid with 13%. Unlike the first survey, the volume of people affected is greater in Valencia than in Madrid. The rest of the provinces follow them at a greater distance, in no case accumulating more than 5%. The order of these provinces from most to least affected is Alicante, Toledo, Balearic Islands, Tarragona, Murcia, and Seville.

We have also attempted to capture to what extent these people used their mortgaged home as the primary residence. 72.5% of the respondents declared that they lived in the mortgaged home. 7.3% said they did not because they had been evicted, 5.4% because they were renting it, 3.1% because they had relatives living in the house, and almost 11% said that they did not reside in the house for other non-specified reasons.

They were also asked about the total amount of the mortgage. In the overall sample, 17.3% stated that it was less than 100,000 euros, 45% that the amount was between 100,000 and 200,000 euros, and 34.2% of the group indicated that the value of their mortgage is over 200,000 euros.

This means that at least a third of the people affected could not qualify for the Good Banking Practices Code passed by the Government through the Royal Decree-Law 6/2012, of March 9th, since their mortgages are over 200,000 euros.¹⁵

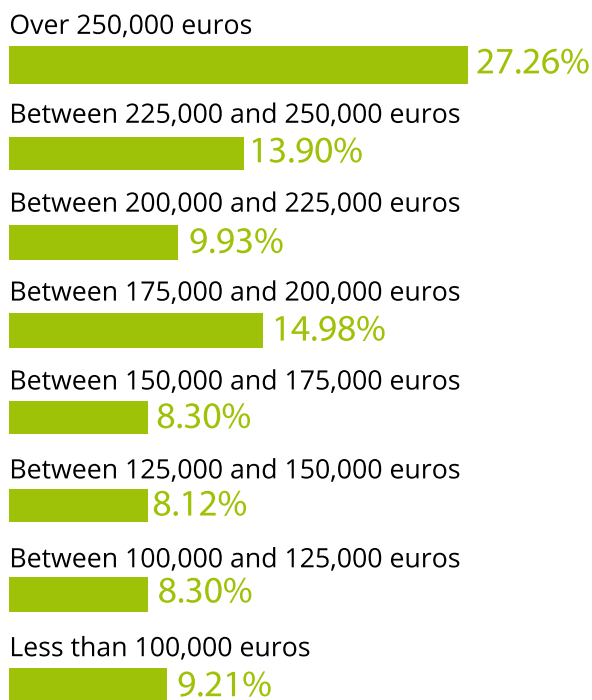


With the aim of seeing to what extent the Good Banking Practices Code is useful in places with a greater concentration of those affected, the data has been broken down for the provinces of Madrid and Barcelona.

If we analyse the amount of the mortgages in Barcelona, the data are revealing: 51.09% of those affected have mortgages of over 200,000 euros. Therefore, at least half of the people affected in the province of Barcelona would be excluded from the Good Banking Practices Code.

If we break down the data for **Madrid**, the result is similar: 48.5% of those affected have mortgages of over 200,000 euros. At least **half of the people affected in the province of Madrid would be excluded from the Good Banking Practices Code.**

VALUE OF THE MORTGAGE LOANS IN THE PROVINCE OF BARCELONA



Graph 4

VALUE OF THE MORTGAGE LOANS IN THE PROVINCE OF MADRID

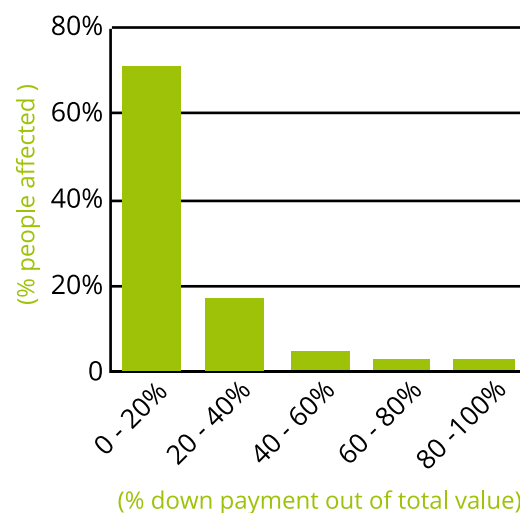


Graph 5

An added issue is that of people who took out more than one loan on the same home. 32% of those who responded to the survey confirmed that this was their case. Of this third, more than half stated having up to two loans, while 36% had three. Therefore, at least **a third of those affected have at least more than one loan on the same home.**

In this same context, the next question addressed the access criteria for mortgage credit. Of those who responded to the survey, 38.6% accessed a mortgage without any down payment. Moreover, when there was a down payment, in 70% of the cases it was an amount of less than 20% of the property's value. Only 17.6% paid between 20% and 40% of the total mortgage value.

PERCENTAGE OF DOWN PAYMENT OUT OF TOTAL VALUE

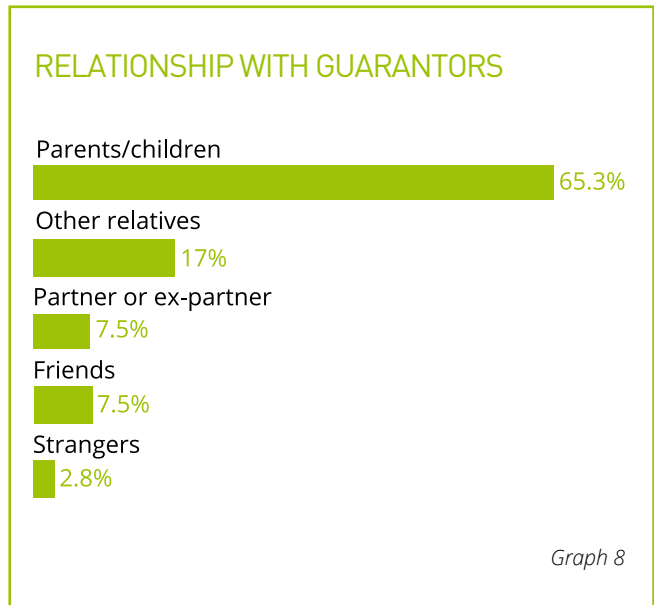
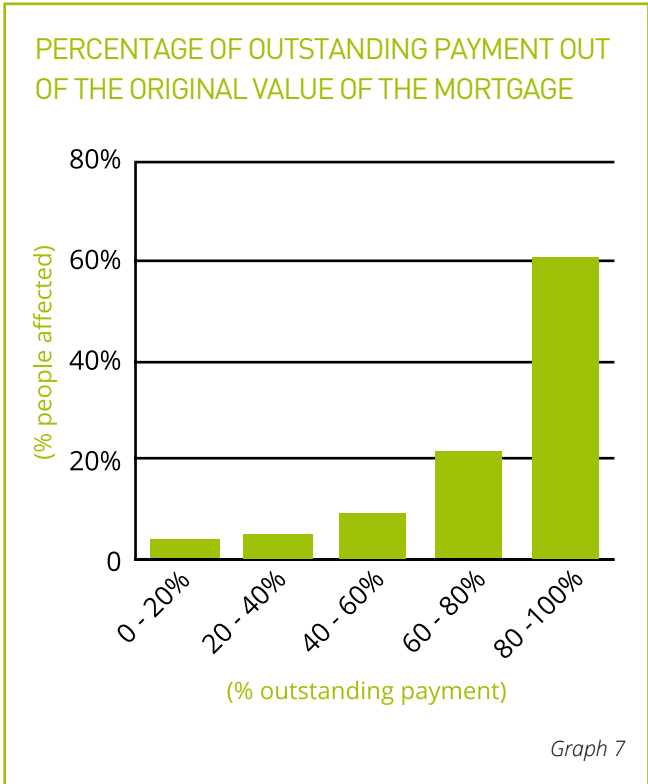


Graph 6

On the amount of the mortgage yet to be paid, the results are the following: in **the majority of the cases, 60.8%, between 80-100% of the mortgage is still unpaid.** Only 21% have paid off more than 60%.

Of the total of those surveyed, **87.9% stated that they were the mortgage holder** while the rest were guarantors. A large part of the former, 63%, shared the ownership with another person. Only 28% owned it alone, and the remainder corresponds to mortgages with three or more holders.

In the survey we also asked about the existence of guarantors: 35.6% stated that they had guarantors. That is, other people who are responsible for the debt in the case of the mortgage holder's insolvency. Among these, in 65.3% of the cases the guarantors were parents/children, in 17% they were other relatives, in 7.5% it was the partner or ex-partner, and in 7.5% of the cases they were friends.



The existence of guarantors means, on the one hand, that the person cannot qualify for the options offered by the Good Practices Code, and, on the other hand, that the problem extends beyond the people who are directly affected.

Lastly, it is noteworthy that 2.8% of the respondents stated that their guarantors were strangers, supposedly facilitated by the financial institution itself or the real-estate agency. And that **10% of the people affected stated that they, in turn, are guarantors for other people.**¹⁶ This practice probably corresponds with the existence of cross guarantees; that is, the promotion of guarantees among people with limited capacities to pay.

This information was broken down on the basis of the national origin of the person and the data indicate that there are **no substantial differences in guarantee requirements on the basis of nationality**. With barely two percentage points more guarantors among those born outside of Spain.¹⁷

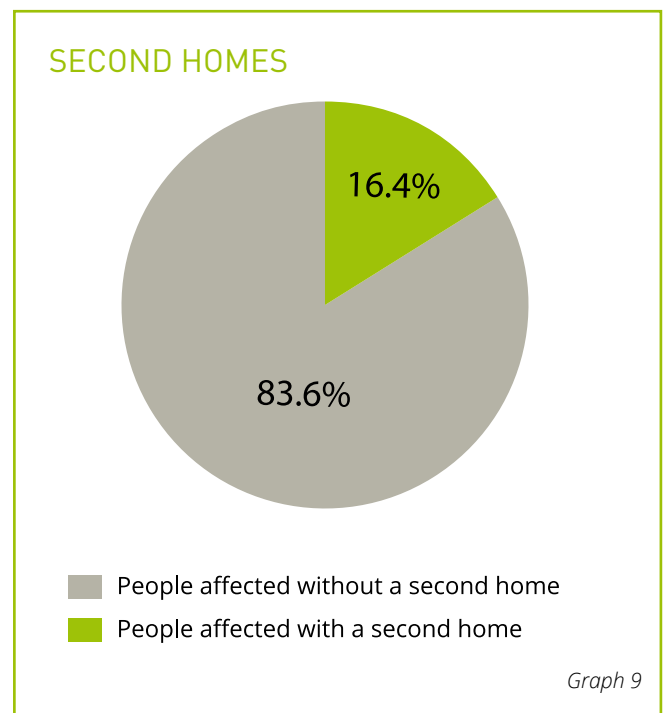
However, we can detect that **among immigrants there tends to be more friends and strangers as guarantors**.

RELATIONSHIP WITH GUARANTORS IN THE CASE OF IMMIGRANTS

	BORN OUTSIDE OF SPAIN	BORN IN SPAIN	TOTAL
PARENTS/CHILDREN	8.7% (46)	91.3% (483)	100% (529)
PARTNER OR EXPARTNER	31.15% (19)	68.85% (42)	100% (61)
OTHER RELATIVES	37.23% (51)	62.77% (86)	100% (137)
FRIENDS	78.69% (48)	21.21% (13)	100% (61)
STRANGERS	73.91% (17)	26.09% (6)	100% (23)
TOTAL	22.32% (181)	77.68% (630)	100% (811)

TABLE 1

Regarding the assets of those affected, the study shows that only 16.4% had another home besides the primary residence. 47.9% of these people said they had a second property with a mortgage in place, which indicates that around 8% of the total of those affected could be facing a case of "bridge loans": a formula through which a change of house is facilitated for people who were already owners or who were still paying their mortgage. For this, one mortgage is endorsed with the verbal commitment that the old home will be sold easily. With the outbreak of the crisis, however, the difficulties began for selling the first residence so that these people sometimes ended up with two mortgages.



SUMMARY: CHARACTERISTICS OF THE MORTGAGES

- After the process of financial restructuring the mortgages affected were concentrated in BBVA, Bankia, Banco Santander, and Caixa Bank, and the vast majority were taken out between the years 2005 and 2007.
- The average value of the mortgages is between 100,000 and 200,000 euros. In provinces such as Madrid and Barcelona, the majority of those affected took out mortgages of over 200,000 euros.
- More than 50% of the surveys were concentrated in the provinces of Barcelona (25%), Valencia (15%), and Madrid (12%). This proportion coincides with the volume of foreclosures and the impact of the issue.
- The requirement of the Good Practices Code in relation to the value of the home excludes at least a third of those affected. In the provinces of Barcelona and Madrid, those excluded reach at least 50%.
- The majority of those affected (85%) only have the mortgaged home. For their part, bridge loans could affect 8% of those surveyed. The vast majority (93%) took out mortgages in order to access decent housing.
- The majority of those affected (60%) have repaid less than 20% of their mortgage.
- More than a third of those affected indicated that they have a guarantor, normally parents or children. These people would also, in principle, be excluded from the Good Banking Practices Code. Immigrants tend to have a greater proportion of friends and strangers as guarantors.
- 10% of those affected are, in turn, guarantors for other mortgages.
- Almost 40% of those affected accessed mortgages without a down payment, and for those who did pay a down payment, it was less than 20% of the value of the house. A third of those affected, moreover, have a second mortgage on the same home.

2 THE NATURE OF THE PROBLEM

In this section we will tackle the concrete situation in which those affected find themselves. Out of the total of the responses, 53.8% said they were not up to date on their mortgage payments. 37% said that they were up to date but that they were having difficulties. Only 9% responded that they had no problems in managing the payment. Therefore, **the majority of the sample, 91%, has difficulties or is already defaulting.** This percentage is relatively **higher than that found in the first survey** in which around 50% of the respondents were in this situation.

A significant part of these people, **27.2%, have received a foreclosure order. Lastly, 7.3% stated that they had already been evicted, of which a third of the cases responded that they have gone to live with relatives.** More than half, however, said they were included in other categories that were not the homes of families, or friends, or host services. **53% of the people evicted said they had sought help from social services, of which only 27.4% found this useful.**

This information refers to the specific moment in which those affected were surveyed. Given that we are not dealing with a panel data structure in which one can carry out follow-up on the data, it is impossible to know whether their situation has worsened or improved in some way.¹⁸

The participants were also asked about the reasons why they had ceased to pay the mortgage or had difficulties in doing so. Those affected could respond with more than one option: 70.4% stated that it was due to unemployment, for 32.8% of the cases the difficulties were related to an increase in the mortgage payment, and for another 21.3% they were due to other debts. 15.1% stated that they had difficulties related to separation or divorce, while 28% said it was for other reasons.

ABILITY TO PAY THE MORTGAGE

Up to date on payments without difficulties



Up to date on payments with difficulties



Delay on at least three payments



Delay on more than three payments



Graph 10

MAIN REASONS FOR NON-PAYMENT

Unemployment



Separation or divorce



Increase in mortgage payment



Other debts



Other reasons



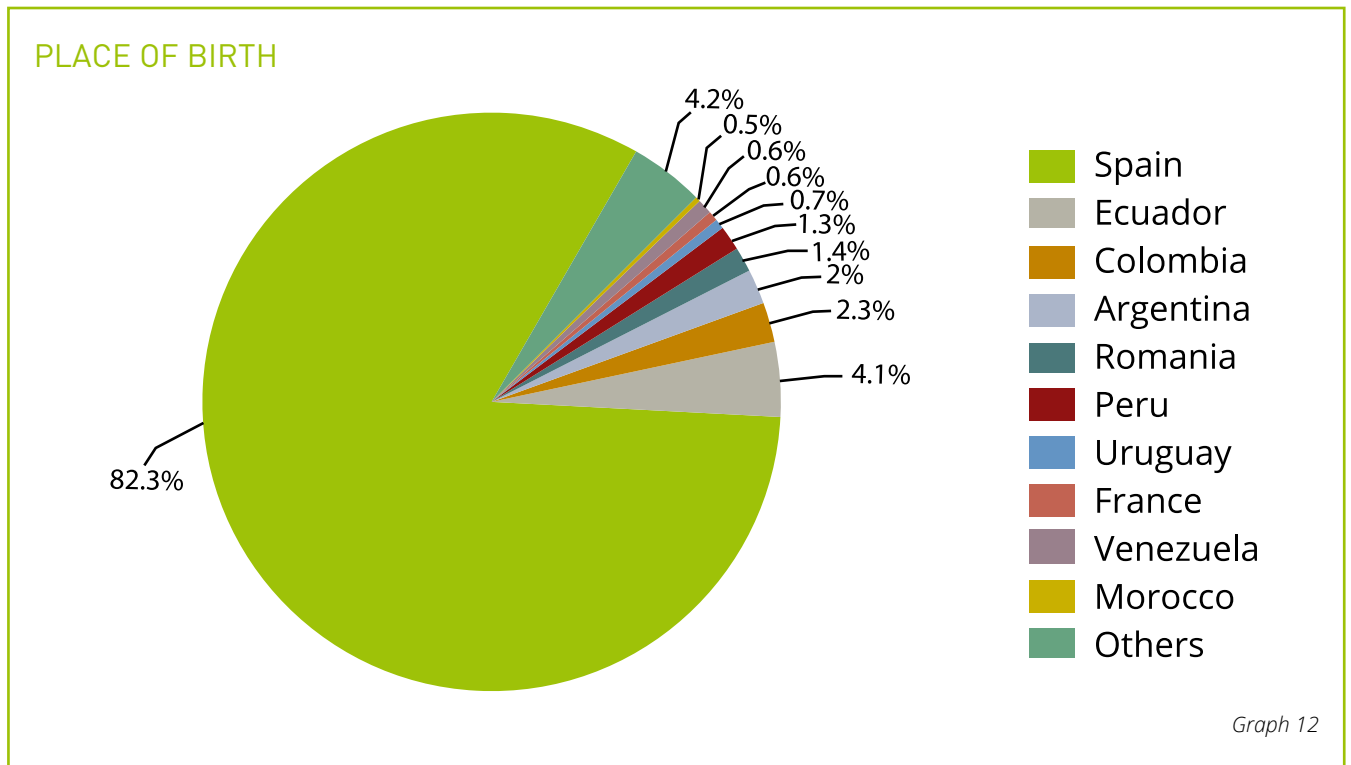
Graph 11

SUMMARY: THE NATURE OF THE PROBLEM

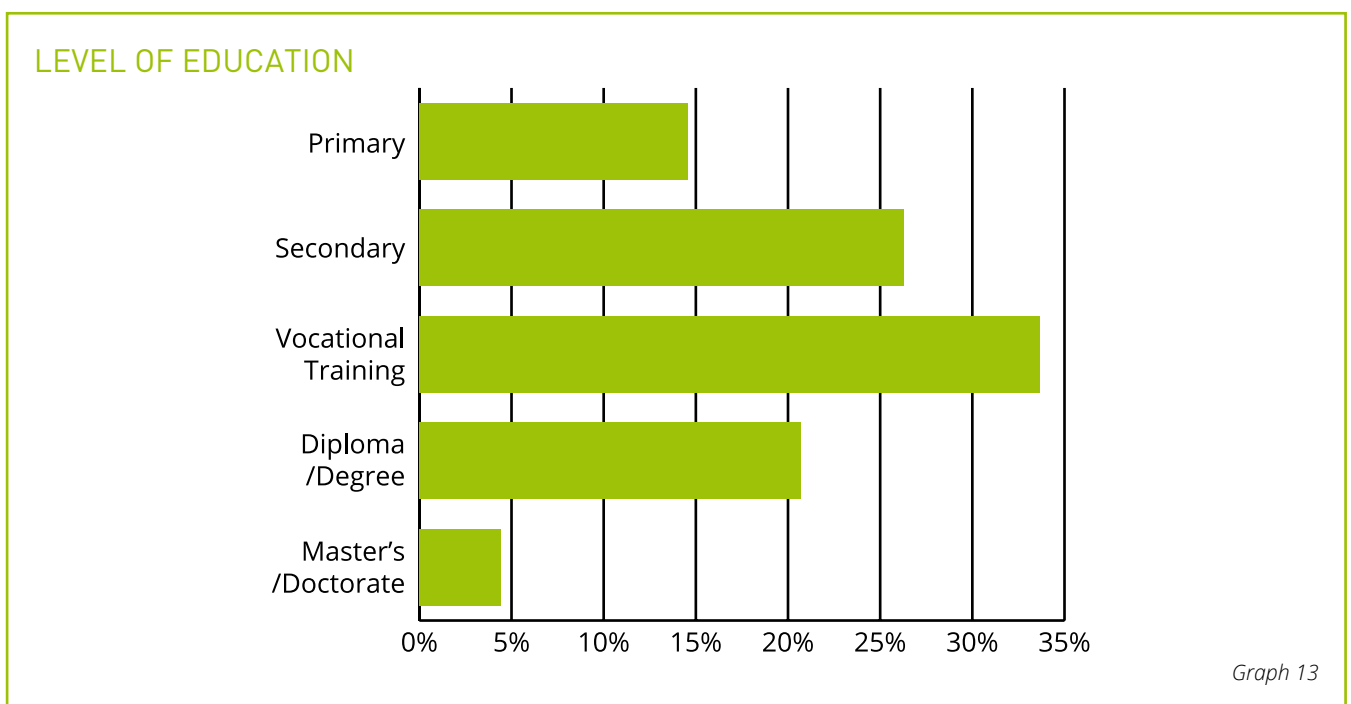
- 91% of those surveyed stated that they had stopped paying their mortgage or had serious difficulties in doing so. This percentage is higher than the 50% from the first survey.
- 27.2% of those surveyed had received a foreclosure order, and 7.3% had already been evicted. Of the total of those evicted, 53% had gone to social services. Of those who went, only 27.4% found it useful.
- The majority of those affected (70%) have stopped paying or have serious difficulties in doing so because they have lost their jobs. 32% of those affected said their difficulties were due to an increase in the mortgage payment, and 21% due to other debts.

3 THE SOCIOLOGICAL PROFILE OF THE RESPONDENTS

The **average age is 51 years**, with a standard deviation of 9.56. As we can see in the following graph, **around 82% were born in Spain**, 4% in Ecuador, 2.3% in Colombia, and 2% in Argentina. Among those with Spanish nationality, however, there is a significant proportion of cases of dual nationality of Latin-American origin; approximately 10% of the total.

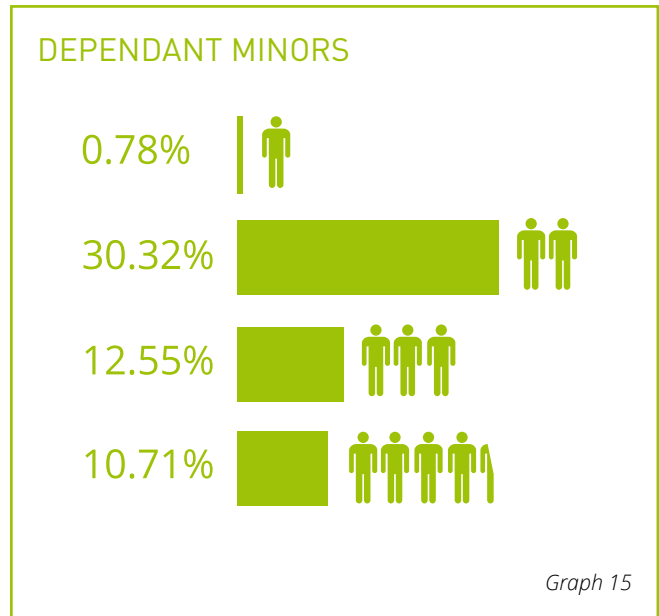
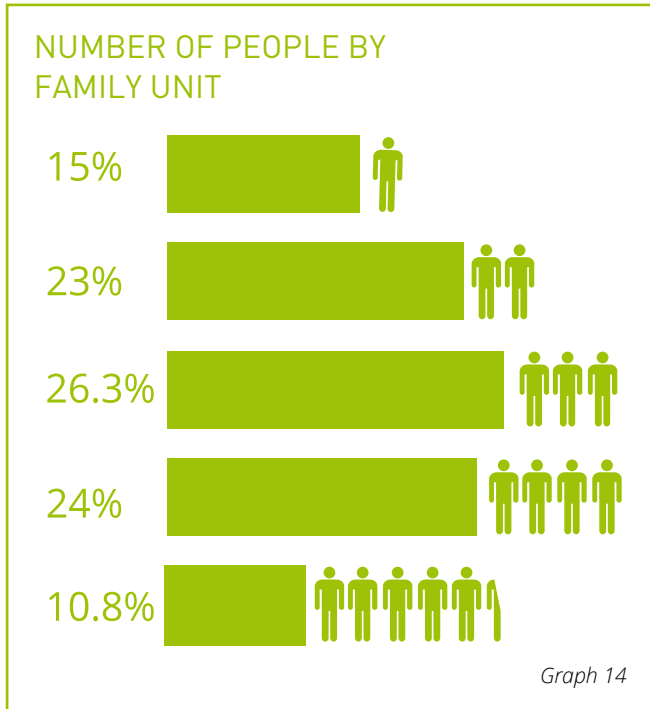


Level of education of the respondents: the majority, **59%**, have **secondary education or vocational training** and **24%** have **university studies**. This shows that the level of education is slightly higher than in the overall population.¹⁹

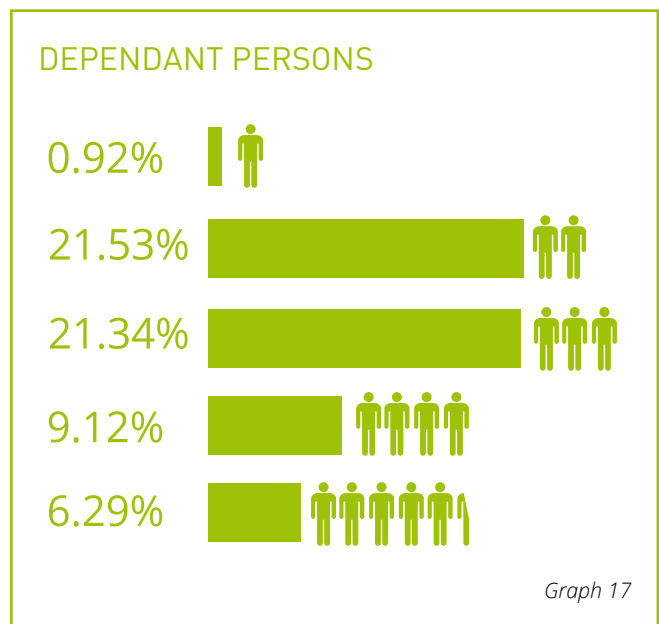
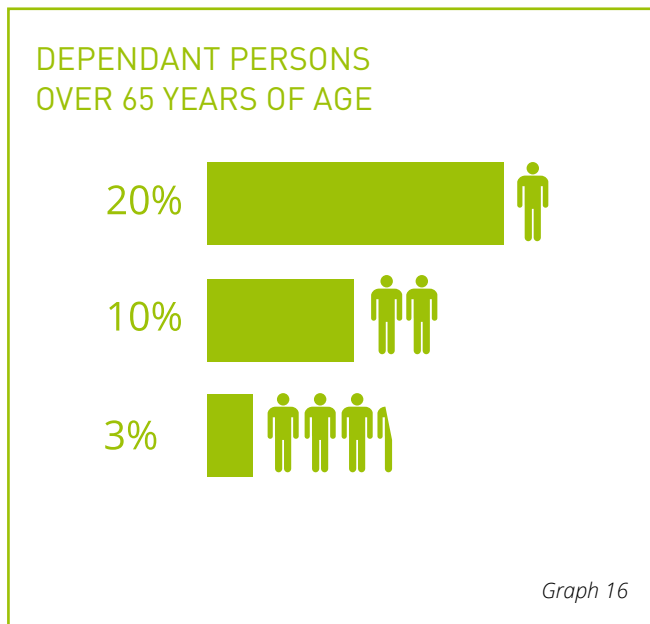


Regarding the data on the size of the family unit of those affected, 15% stated that they lived alone, 23% with another member, 26.3% with another two people, 24% with up to four, and only 10.8% live with five or more.

The participants were also asked about the number of minors or elderly people in the family unit. In the following graph we indicate the number of minors (under eighteen years of age) in the affected households. Specifically, we can see that **more than half of the families affected include at least one minor**. The value that predominates most among those who have minors in their care is two children.



Moreover, **20% of those surveyed stated that they had one person of over 65 years of age in their care, and in 10% of the cases two elderly people**. Around 3% have three or more. The following graph shows the total of elderly people and minors that those affected have in their care. As you can see, **more than half of the sample cares for at least one dependant person**. In absolute numbers, a calculation has been carried out in accordance with the responses, showing that, in a total sample of 2,700 individuals, the issue directly affects a total of 4,832 minors and elderly people. This calculation is added to the estimation of the first survey, according to which 9,629 minors and elderly people were affected. The overall result would be that 14,461 elderly people and minors are affected by the problem.



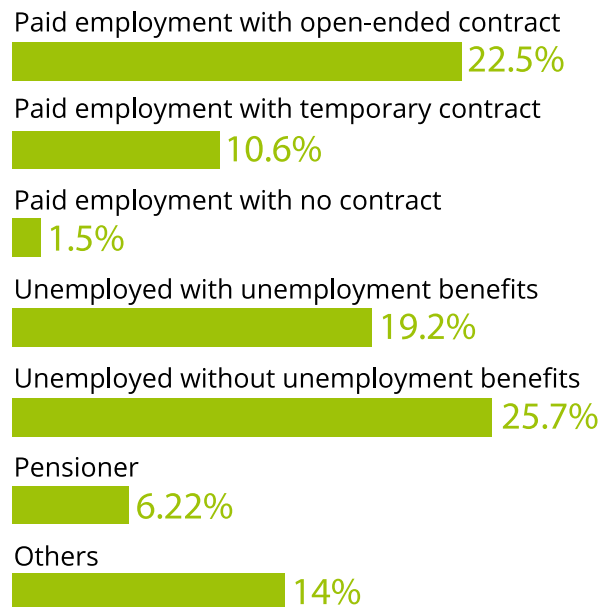
Regarding vulnerability, **63.2% of the respondents stated that there was only one wage earner in the family unit**, while 33.4% stated that there were two. Thus, more than half of those affected have only one family member providing the family unit's income.

When asked about their employment situation, 25.7% said they were unemployed and not receiving unemployment benefits and 19.2% said they were unemployed and were receiving unemployment benefits.

Among those affected who do have employment, 10.6% have a temporary contract and 22.5% have an open-ended contract. 6.22% stated that they were pensioners, and 14% fall into the category "others". Therefore, approximately half of those affected are unemployed.²⁰

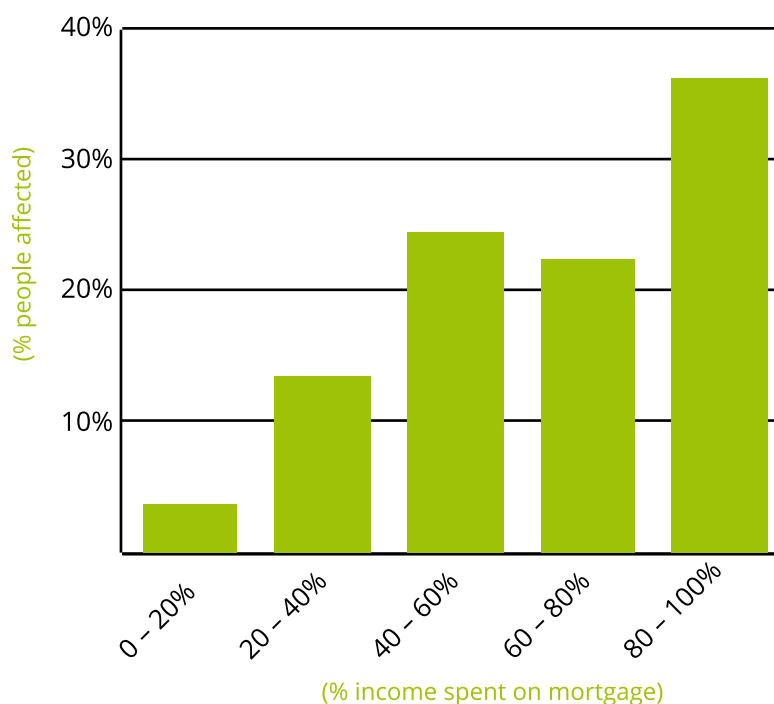
In order to assess the efforts required to pay the mortgage, the participants were asked about the percentage of the family income spent on this expense. Only 15% set aside less than 30% of the monthly income to pay the mortgage. For 59.6% of those affected the mortgage payment consumes more than 60% of the family income. For more than a third, it consumes the total income.

EMPLOYMENT SITUATION



Graph 18

MONTHLY INCOME SPENT ON MORTGAGE PAYMENTS



Graph 19

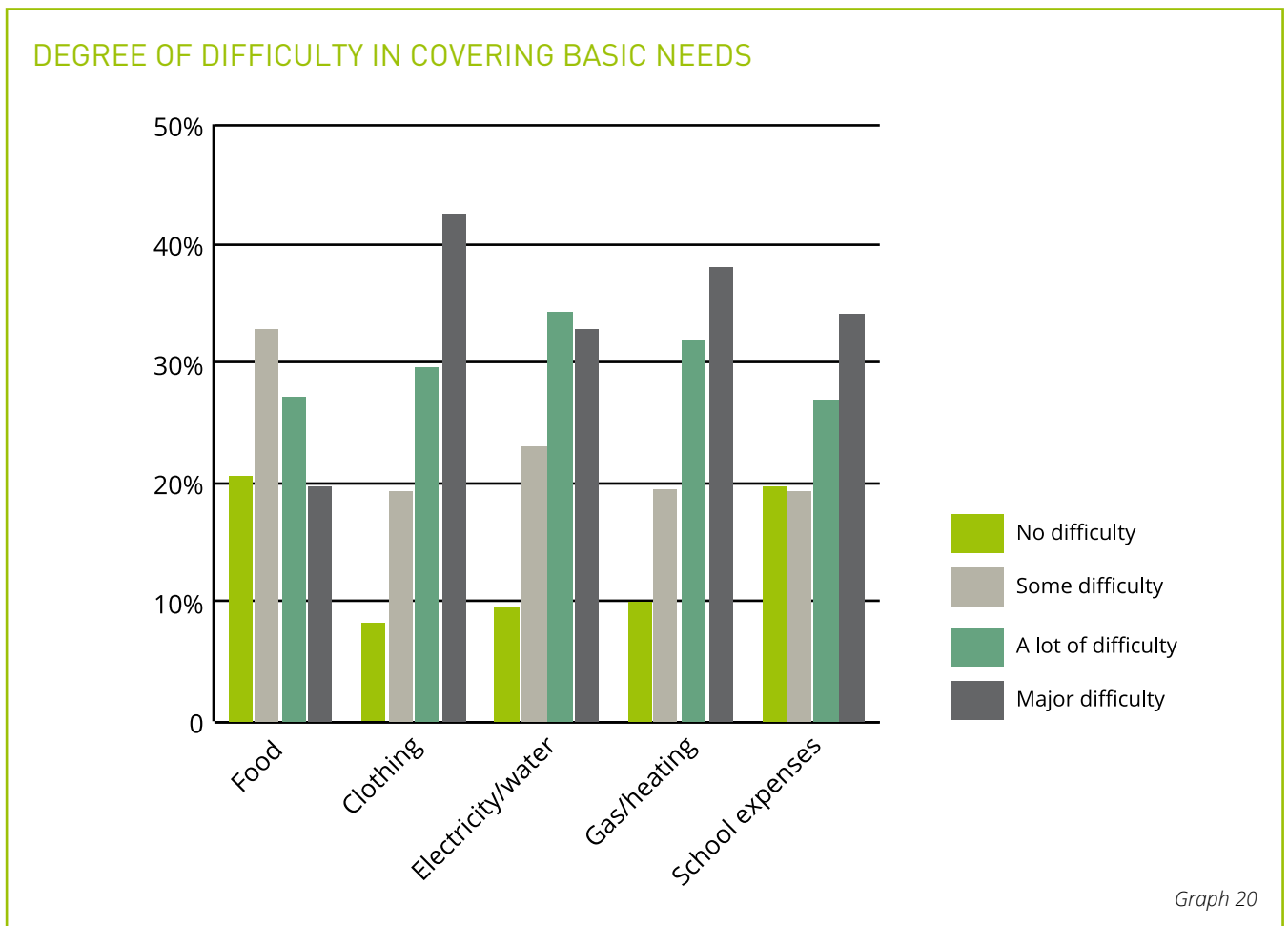
SUMMARY: SOCIOLOGICAL PROFILE OF THE RESPONDENTS

- In line with the data from the first survey, 82% of those affected were people born in Spain.
- Almost 60% of those affected have completed secondary studies or vocational training, and 24% have university studies.
- More than half of those affected have at least one minor in their care, and 30% an elderly person.
- Moreover, two thirds of the respondents stated having only one earner in the family home.
- 25.7% of the respondents do not have work or unemployment benefits.
- Only 22.5% of the respondents said they had stable employment.
- For more than a third of those affected the mortgage has at some point consumed the entire family income, while for more than half (59.6%) the mortgage takes up more than 60% of the monthly family income.

4 IMPACTS IN TERMS OF HEALTH AND FULFILMENT OF OTHER BASIC NEEDS, AND THE RELATIONSHIP WITH THE PUBLIC ADMINISTRATIONS

In the first question the person was asked to evaluate on a scale of 1 to 7, where 1 is "no anxiety whatsoever" and 7 is "constant anxiety", to what extent the mortgage problem affected their health. **62.6% of the respondents indicated that the problem caused them constant anxiety**, 14.9% placed themselves at 6 and 9.5% at 5.

This question was linked to the degree to which the person considered that their family unit had difficulties in covering certain basic needs. The objective is to compare to what extent the mortgage problem is linked to unfulfilled basic needs that can lead to poverty. And specifically, to detect the basic needs that are being compromised.



The main difficulty the families face is the expense related to clothing. Thus, 42.6% of those surveyed said they had major difficulties in paying for clothes. A second difficulty is found in the payment of utility bills: water and electricity. The payment of these bills causes major difficulties for 34.5% of the sample and a lot of difficulties for 32%. Regarding gas/heating the percentages are similar, 32% and 38% respectively.

Together with the phenomenon of energy poverty, the survey warns of the difficulties the families affected face in accessing adequate food. 20% stated that they experience major difficulties, and 27% experience a lot. Lastly, 34% of the respondents said they experienced major difficulties in paying for school expenses while 27% said they experienced a lot of difficulties.

If we consider only the categories of major or a lot of difficulties in managing expenses, the main difficulty is found in paying for clothing (70%) followed by utility bills (around 65%). A little over half of those affected have problems paying for school expenses, while around 45% have major or a lot of difficulties when it comes to buying food.

Of those surveyed only 10% confirmed receiving some kind of benefit or assistance from the Administration (apart from the unemployment benefit that 19.2% said they receive).

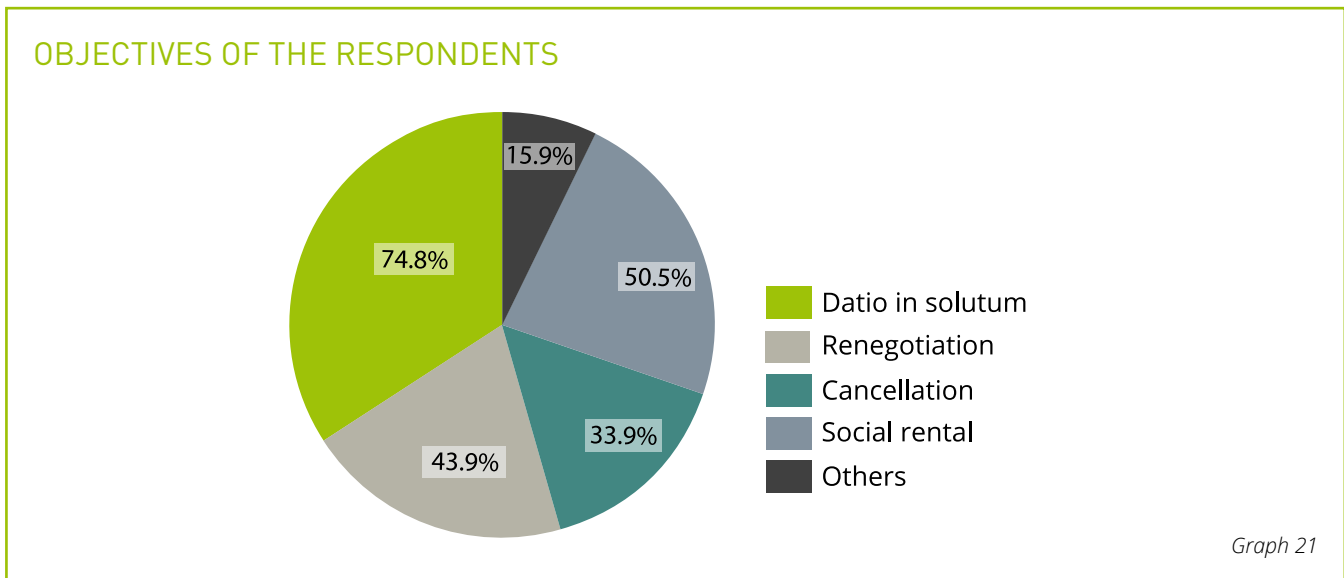
66.5% of these people stated that they had no other house to go to in the case of eviction. This question coincides approximately with those individuals who indicated that their primary residence is the one that is mortgaged.

Regarding the actions undertaken by those affected, 84% of the respondents stated having tried to renegotiate their mortgage to find some type of solution with the bank. 93.1% describe the result of this encounter as negative. The associations of the most frequent words found in the open questions are those of deferral, grace period, and *datio in solutum* on the one hand, and negative, wait, debt, and payments on the other. In general, 92% stated being unsatisfied with the treatment received from the banking institutions.²¹

Those affected were also asked about their contact with public administrations or social entities. It should be considered, in any case, that many families may hide the fact that they went to them or will perhaps cease to go due to the growing stigma around poverty.²²

32.1% of those surveyed have been in contact with social services and 26.1% said this was useful. 15.7% stated having gone to mediation services facilitated by the public administration and for 28.3% this was useful. 15% said they had been in contact with other organisations apart from the PAH, and almost half said that they found this contact helpful for their situation.

Finally, the respondents were asked to indicate the objectives they want to achieve through the PAH's action. Without being mutually exclusive, the results are the following: 75% of the respondents want *datio in solutum*, 50.4% social rental, 43.9% mortgage renegotiation, 33.8% cancellation of the debt, and 16% answered "others".



SUMMARY: IMPACTS IN TERMS OF HEALTH AND ACCESS TO OTHER BASIC NEEDS. RELATIONSHIP WITH THE ADMINISTRATIONS AND SOCIAL ENTITIES

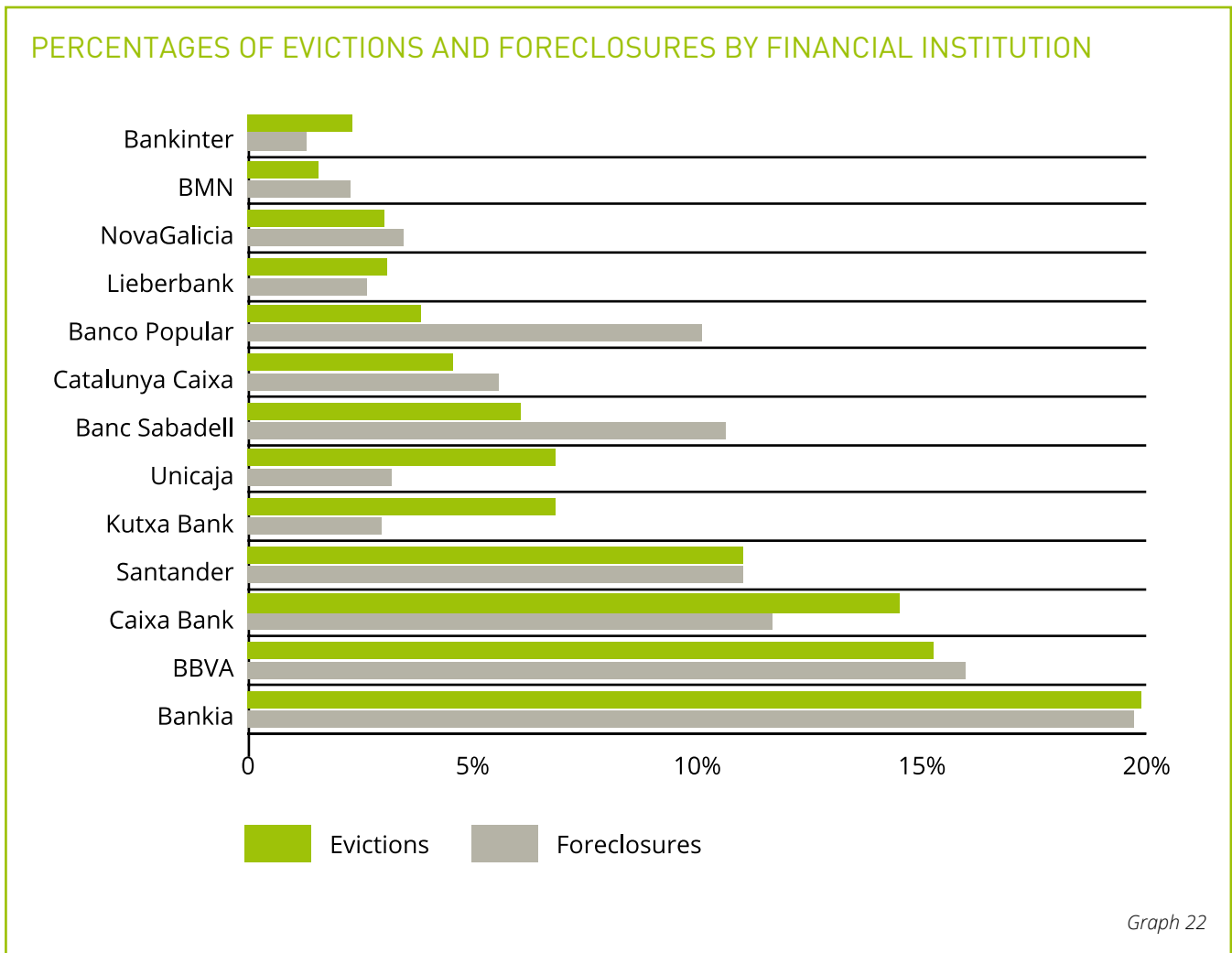
- Those affected by their mortgage suffer constant and intense anxiety.
- The group faces serious difficulties in accessing basic needs. The greatest difficulty is found in paying for clothes (70%) and home utility bills (65%). A little over half of the respondents have problems with school expenses, while around 45% have major or a lot of difficulties when it comes to buying the food they need.
- Of those surveyed, only 10% stated receiving some kind of benefit or assistance from the administration (apart from possible unemployment benefits).
- Regarding the actions undertaken, 84% of the respondents stated having tried to renegotiate their mortgage to find some type of solution with the bank. The vast majority (93.1%) described the result of these negotiations as negative.
- The majority of those affected (almost 70%) have not sought help from the public administration. Of those who did approach these services, 27% responded that it was useful for them.
- 75% of the respondents hope that the action of the PAH will serve to achieve *datio in solutum*, 50.4% want social rentals, 43.9% want to renegotiate their mortgage, and 33.8% want the debt to be cancelled.

5 FORECLOSURES, EVICTIONS, AND FINANCIAL INSTITUTIONS

This last section is dedicated to analysing the situation of those who are either experiencing foreclosure procedures or have already been evicted.

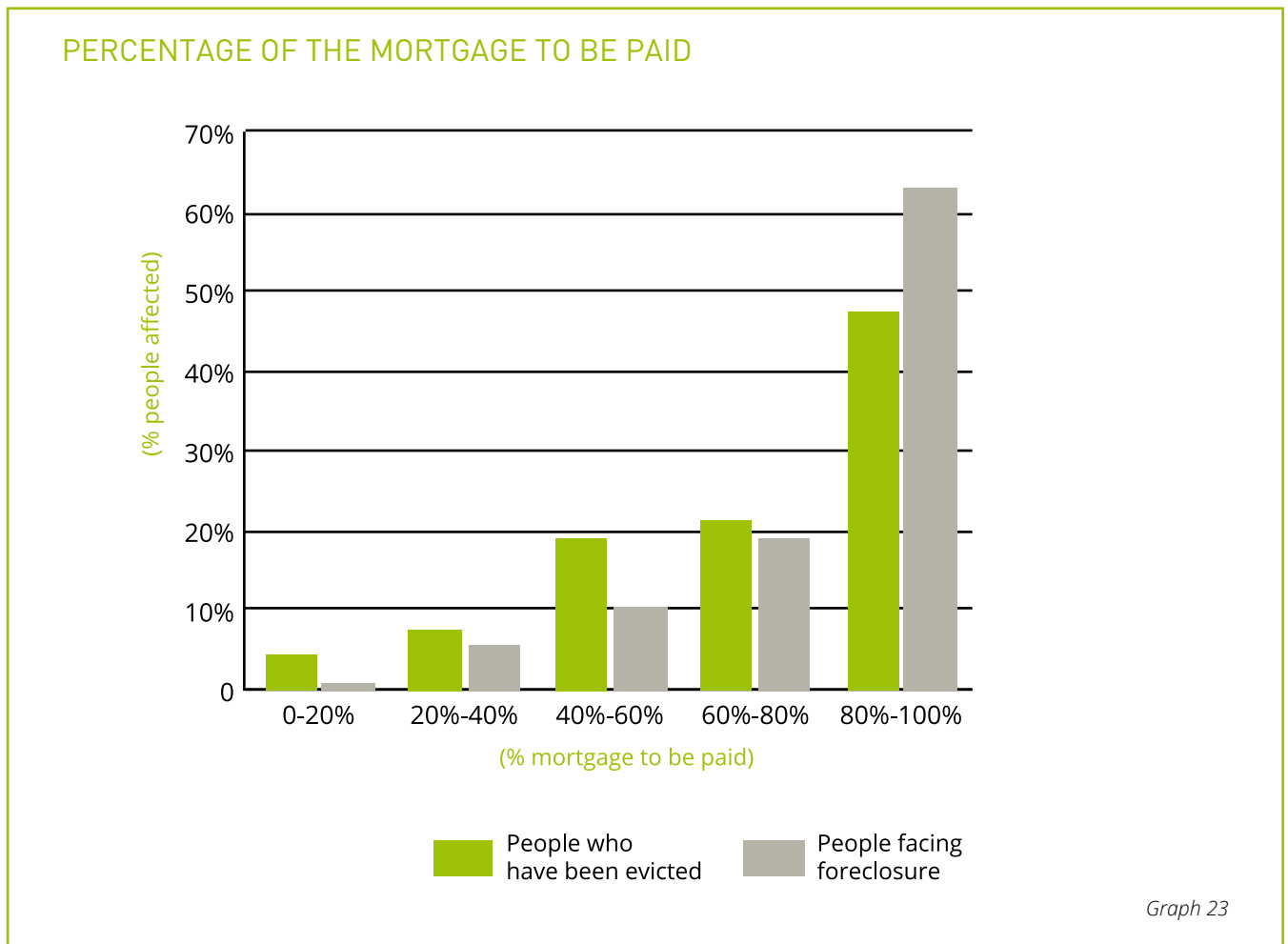
27.2% of those surveyed have received a foreclosure order, and 7.3% have already been evicted.²³ Since the process of bank restructuring, the problem of evictions is concentrated in: Bankia (20%), BBVA (15%), Caixa Bank (14%), and Banco Santander (12%). These are, in fact, the institutions that gather the greatest number of those affected (see Graph 1).

In order to identify the behaviour of each institution we have compared the number of foreclosures with the number of evictions. In this sense, though we must indicate that in general there is a certain correspondence between both elements, institutions like Banco de Sabadell present a much higher percentage of foreclosures than of evictions.



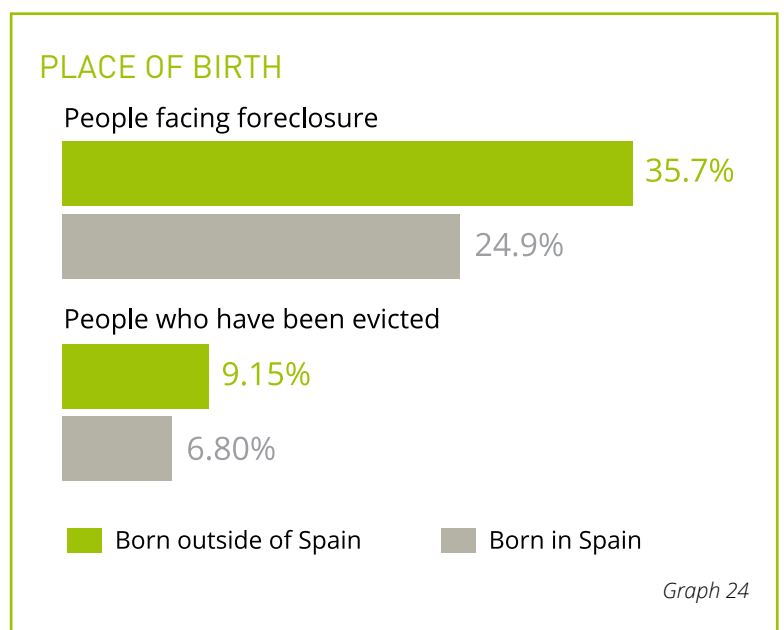
When we analyse the **total value of the mortgages of people facing foreclosure or who have already been evicted**, we find that more than a third are dealing with home loans of over 200,000 euros.

Among those who are currently experiencing the foreclosure process, around 80% have an outstanding payment of more than 60% of the mortgage.



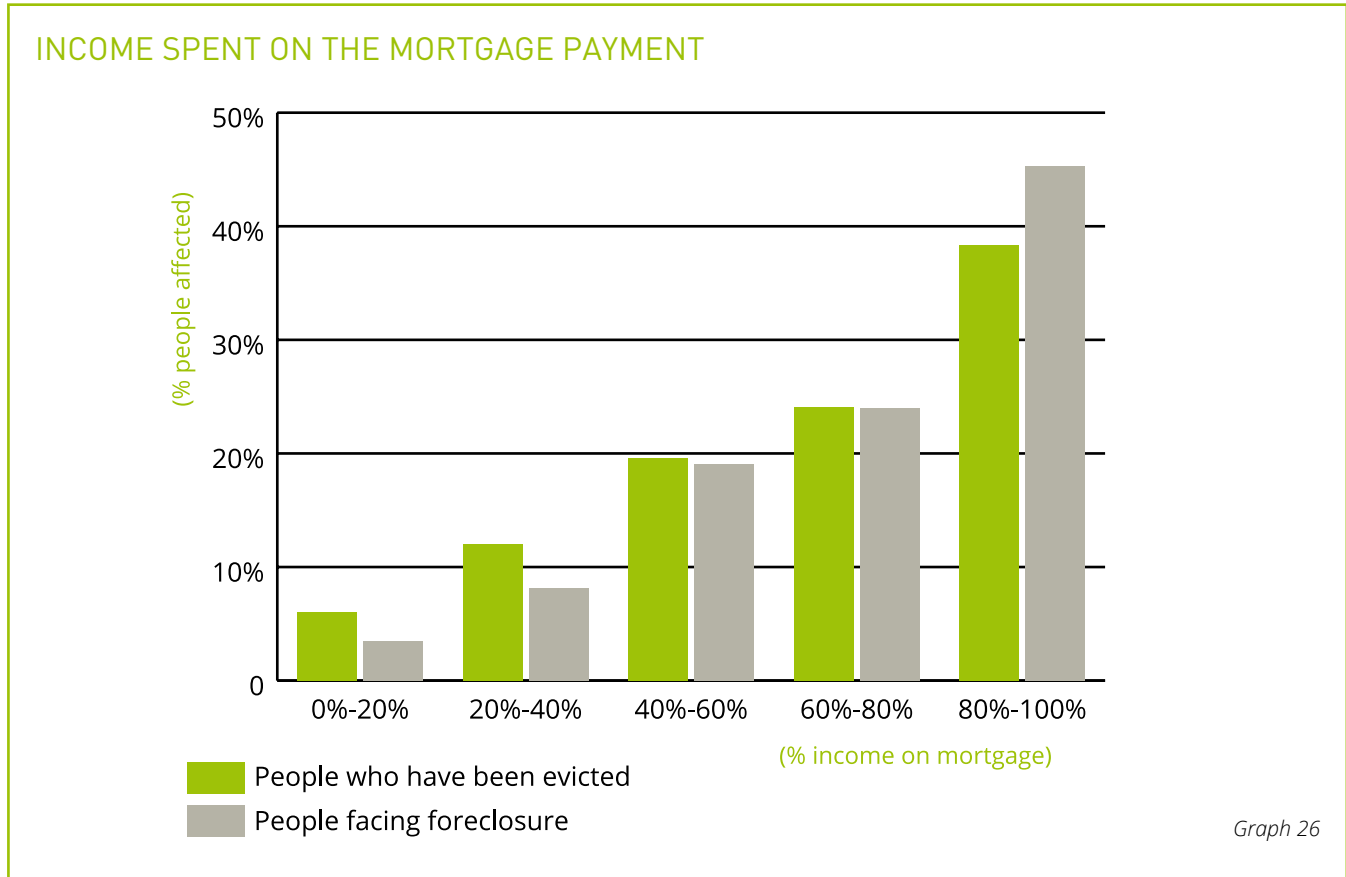
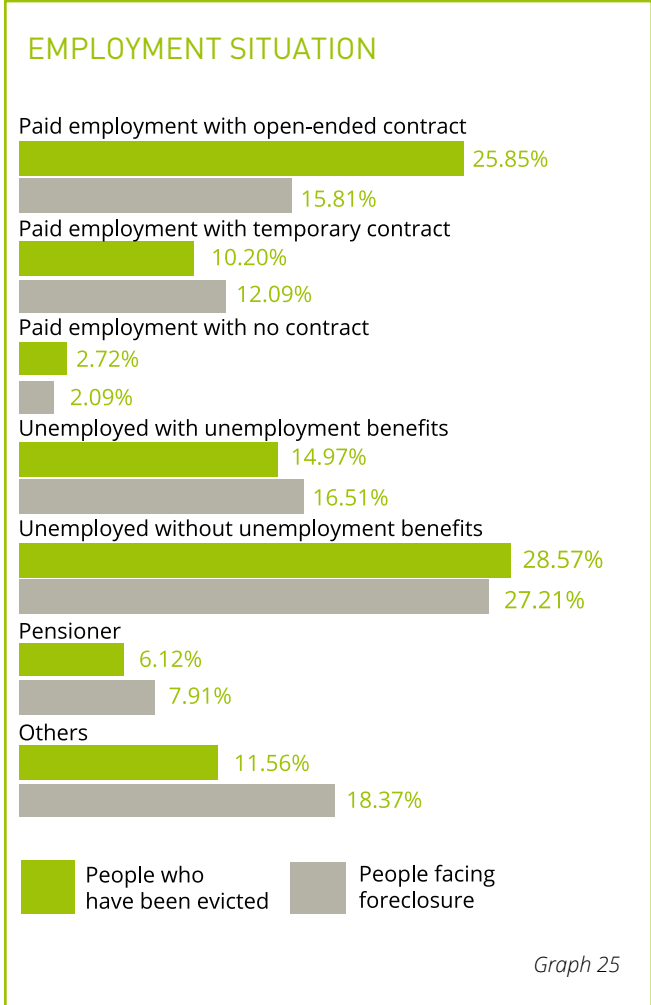
Another interesting issue is **to what extent the insolvency of these people affects other families**. For this, we have looked at the percentage of those facing foreclosure or who have already been evicted that had guarantors. We discovered that **a third had guarantors**. Around half had parents/children as guarantors, while around a quarter stated that they were other relatives.

In order to further explain the profile of the group, we have looked at their place of birth. In both cases, people who have received foreclosure orders or who have already been evicted, we find an overrepresentation of immigrants. Of the total of immigrants, 35.7% have received foreclosure orders, in comparison to 24.9% of those born in Spain. Of the total of immigrants that participated in the survey, those that have been evicted represent 9.15%, in comparison to 6.8% of those born in Spain.

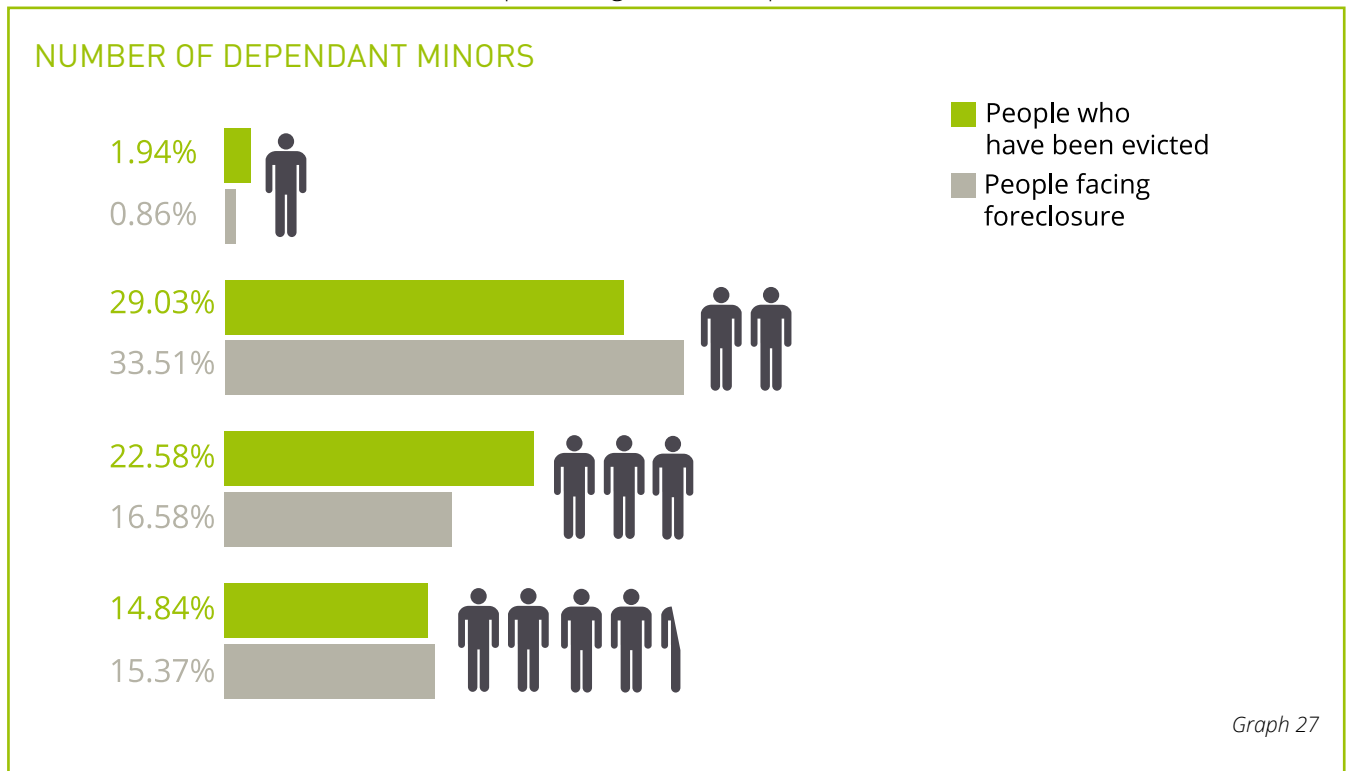


Next we present the employment situation of those facing foreclosure or who have already been evicted. As we can observe, the results do not differ much from the sample as a whole.²⁴ **The two most victimised groups are unemployed persons without benefits (25%), on the one hand, and those who have open-ended paid employment (25% of those evicted, 15% of those with foreclosure orders) on the other.** In any case, around **40% are unemployed.** Moreover, **7% of those facing foreclosure or who have already been evicted are retired.**

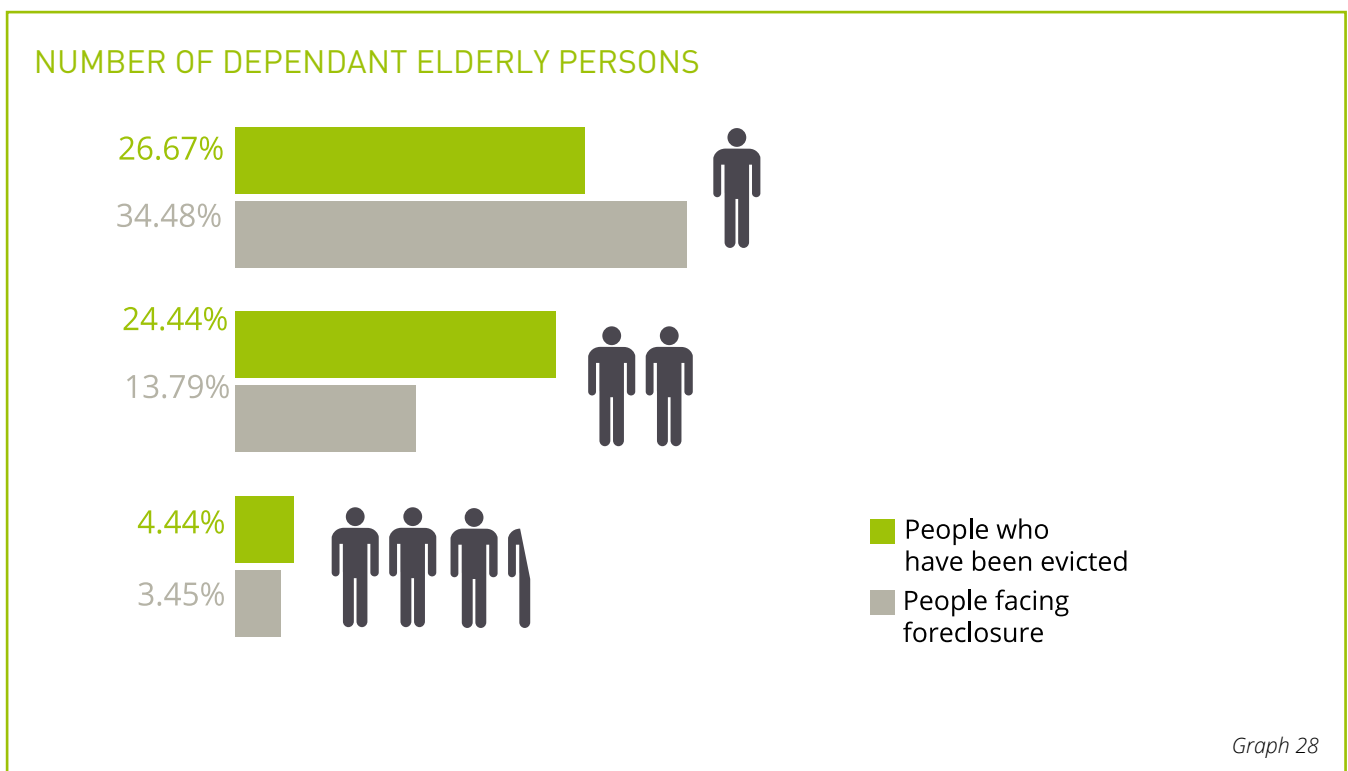
Another question posed was on the **percentage of the family income spent on the mortgage payment.** The result is approximately similar for both groups. Around **40% set aside more than 80% of the household income to pay for the mortgage** in the phase prior to their current situation. Around a quarter spent between 60% and 80% on the mortgage, while around 20% spent between 40%-60% of the monthly household income on mortgage payments. In short, for four out of every ten people affected, paying the mortgage prevented them from accessing other basic needs such as food, clothes, or payment of utility bills.



In order to capture the level of social vulnerability these profiles have been compared with the characteristics of the household and the existence of dependants. The data are the following: almost 30% of the respondents have two minors in their care, a little over 20% have three, and around 15% have four minors or more. Therefore, 7 out of every 10 families that have been evicted or are experiencing foreclosure procedures have two or more minors in their care.



Regarding people over 65 years of age who form part of the family unit, around 25% of the households affected had one elderly person, another 25% had two, and 5% had three or more. In terms of households that have received a foreclosure order, around a third of those affected stated having an elderly person in their care, 13% had two, and less than 4% had three or more. This means, therefore, that **almost half of the households affected by the issue had at least one elderly person in their care.**



SUMMARY: FORECLOSURES, EVICTIONS, AND FINANCIAL INSTITUTIONS

- People who have received a foreclosure order and those who have already been evicted from their homes represent 27.2% and 7.3% of the total sample respectively.
- After the process of bank restructuring, the institutions with most evictions are Bankia (20%), BBVA (15%), Caixa Bank (15%), and Santander (14%).
- Approximately a third of the loans granted are over 200,000 euros.
- Almost half of the people experiencing foreclosures or who have already been evicted had parents/children as guarantors.
- Immigrants are overrepresented by 8 percentage points among the group of people facing foreclosure.
- By employment situation, the most victimised groups would be those who are unemployed and without benefits (25%), on the one hand, and people with open-ended paid employment (25% of evictions, 15% of foreclosure orders) on the other.
- For four out of every ten people affected, paying their mortgage prevents them from accessing adequate food, paying the utility bills, or buying clothing.
- Almost 7 out of every 10 families that were evicted or are facing foreclosure have two or more minors in their care. Half of those affected have at least one elderly person in their care.

NOTES


1. On this website you can create free surveys, and the data is then shown on a spreadsheet.
2. Panorama Registral. *Impagos hipotecarios de vivienda* 2012, April 2013.
3. Bank of Spain, *Nueva estadística de procesos de ejecución hipotecaria sobre vivienda*, May 2013.
4. For this they look at the number of foreclosure procedures initiated, the number of homes reposessed due to mortgage issues, and the number of *datio in solutum*. In the three cases the percentage of national and immigrant persons, the effect on the primary residence, and the autonomous communities most damaged by the problem were analysed.
5. The study refers to the behaviour of the financial institutions such as they are currently organised. Consult the process of bank restructuring in the annex.
6. That is, questions in which the individuals did not have to mark a pre-set option but had to write out the answer.
7. There are good reasons to believe that in the first survey the participants did not always respond to what they were asked. In some cases, there was confusion causing them to give information that did not fit the question. Secondly, we must indicate that it was necessary to subsequently codify the open questions in order to group them into categories. This suggests that there may not be exact correspondence between what the individual wanted to say and the criteria with which it was codified. Lastly, the open structure of some of the questions has obliged us to reject them because it was impossible to treat the data in a systematic way.
8. A good research design demands to be reproducible. Having and comparing both surveys enables us to confirm that the results are solid, something which will be shown throughout the report.
9. In any case, the figures coincide with the cited report of the Registrars Association, which indicates a special impact on immigrants from Ecuador (5.74%), Morocco (3.73%), the United Kingdom (2.14%), and Romania (1.67%).
10. Unlike the survey considered in the first wave, on this occasion data is taken from all institutions, without limiting ourselves to the first one with which the mortgage loan was taken out.
11. Consult the process of bank restructuring in the Annex.
12. Various cases such as local employment offices or individuals fall into the category "others".
13. These answers are coherent with the results of the first survey.
14. Specifically, the report of the Property Registrars Association on the year 2012 documents 12,206 foreclosure procedures on housing owned by natural persons initiated in Catalonia, 13,094 in Andalusia, and 11,604 in Valencia.
15. The options of refinancing and *datio in solutum* offered by the Good Practices Code are applied to mortgages of less than 200,000 euros in big cities and less than 125,000 in smaller cities/towns. This criterion alone would exclude one third of those affected. However, there could be many more depending on the territorial distribution of the mortgages and the other requirements to qualify for the Code.
16. Of this percentage, 39% stated that they are guarantors for parents/children, 28.8% for other relatives, 14.9% for friends, 12.9% for partners or ex-partners, and 5% for strangers.
17. This contrasts with the information from the first survey, in which it was indicated that those affected of immigrant origin had more guarantors.
18. A panel survey is when the same individuals are questioned in successive waves. This methodology is much more expensive but has the advantage of showing to what extent the situation, attitudes, or preferences of those affected have evolved, avoiding problems of double causality or endogeneity.
19. According to data from the last Labour Force Survey (EPA in Spanish), around 50% of Spanish citizens have secondary education or vocational training (9 points less than in the survey), while 12.6% have university studies (almost 12 points less than the survey): EPA 2012 tercer trimestre. This situation may be related to the fact that the survey was distributed online.
20. This data should be distinguished from reasons for non-payment. While in the question on the reasons for having difficulties one could opt for multiple answers, this other question referred to the objective situation of the person interviewed.
21. These data are in line with the results of the first survey, which show a similar percentage of refusals on the part of the financial institutions.
22. This problem in surveys is found when the real preferences of the individuals are hidden because an option is socially sanctioned. The reverse can also happen: an individual may not be completely sincere on a preference since it is the most desirable one. A classic example is the vote in Spain. The post-election surveys always show higher participation rates than that actually found in the elections because those surveyed often claim to have voted when facing the social undesirability of abstention.
23. It is important to clarify that here we are dealing with a concrete situation, the most extreme case of effects caused by mortgages. In the overall sample of those affected, there were more diverse problems like difficulty in paying or delays in monthly instalments. For more information, see point 2.
24. This was also compared with the level of education and the data are also similar to the overall sample. For example, out of the total of those evicted: 18.54% have primary education, 25.83% secondary, 31.79% have vocational training, 18.54% have a degree, and 5.30% have a masters/doctorate. Once again, therefore, the educational level is above the average of the overall population.



02

**IN-DEPTH
INTERVIEWS**





The purpose of this last section is to present the issue of mortgage over-indebtedness through four interviews with mortgages victims.

INTERVIEW WITH MERCEDES

Accountant, 56 years of age

Member of the PAH Barcelona



WHAT IS YOUR SITUATION? WITH WHICH BANK DID YOU INCUR DEBTS?

I bought the house in 2001. Then I had a small clothes shop. But I was robbed five times and was selling less and less. So I got a mortgage increase, not very much, around €40,000, to be able to pay the suppliers, because I wanted to close the shop and have less worries in my life. In fact, that didn't make my monthly payment go up very much.

What did affect me was the increase in the interest. In 2005 I was paying 1,100 euros, but in 2010 the mortgage cost 1,700 euros. That's when I closed

the business, because the crisis began and the megastores were destroying small businesses. I found work in a company but I had a work-related accident and they let me go. So I was unemployed. When I was running out of unemployment benefits I got in contact with my bank, Banca Cívica, to come to an agreement.

Up until then the bank had been telling me that if I couldn't pay I could always sell the flat; that a property in the centre of Barcelona would not go down in price. But when the time came there was no way of finding someone who would want to buy the flat at the price of what I owed. Then the bank said that if I couldn't pay it was my problem, that they wouldn't accept *datio in solutum*.

WHEN AND HOW DID YOU CONTACT THE PAH?

I knew there was a Platform of Mortgage Victims, and I sent an email. I was never a depressive person, but with this situation I started to think that my life had no meaning. I didn't know what I was doing in this world, I have no family, no children... The surprise was arriving at the PAH and seeing so many people explaining that they had been evicted, people with children, elderly people. Until then I had isolated myself from the world. And, all of sudden, you go to a place and you realise that there are more people in your situation, and that many have stopped their evictions.

At that time the rage accumulated against my bank helped me support other people, to organise protest actions. When I saw other cases like mine all I wanted was to help. And that's how I started to channel the rage. The anger I felt served me to help other people, and that gave me a lot of strength. At least I didn't feel useless.

At first I couldn't even speak, I was too ashamed. Now I'm not so ashamed, but being considered a defaulter is very painful. Words and labels have a lot more power than they appear to have. A corrupt person can be a hero, but a defaulter who can't pay the mortgage is a disaster, a loser.

HOW DID THE NEGOTIATION WITH THE BANK GO?

My case was different, an uncommon type of procedure that allows the bank to be awarded the home extra-judicially for a euro. At first the bank said that we would sort it out, that we would find a solution.

That was until they gave me the address of the main office of Banca Cívica in Barcelona and put me in contact with the area manager. This man said that of course we would come to an agreement. That I would hand over the keys to my home and I would end up with a personal loan of €60,000. If I didn't accept, the bank would take my house for a euro. That was the threat.

Then the Platform took action. They managed to arrange a meeting with the head of the Association of Notaries to claim that the extrajudicial foreclosure procedures had to be changed. If the bank is awarded the house

for 60 per cent in a judicial sale, then it should also be awarded the house at 60 per cent with a notary public. And for two months we wrote a lot, we reported the situation to the media. Finally, the Chairman of the Notaries Association urged the Ministry of Justice to match the notary auction with the judicial sale, that is, for the bank to be awarded the flat for 60 per cent.

We were negotiating for six months with protest actions. The bank wanted the keys to the house but didn't want to give me *datio in solutum*. Finally, thanks to the actions in front of the Banca Cívica office and to the impact of the media, on the 31st of September 2012 I signed the *datio in solutum*.

AFTER ACHIEVING DATIO IN SOLUTUM, WHERE DO YOU LIVE?

In a room, because *datio in solutum* is no miracle. You hand over the keys, probably, to many dreams. When you leave your house because you've handed over the keys the second part comes: the flat remains empty, deteriorating in the hands of a financial institution. Even families with small children have to occupy a room. And that's not life, that's not dignity.

We're talking about the fact that there are thousands of vacant homes and people on the street, people who, with €400, have to put water in their children's milk so that they can eat. That's why I think occupying those homes is extremely important. To find a way to negotiate because, otherwise, they remain empty. Why won't the banks let families live there paying a fair rent? We're not asking for charity, what we're asking for is dignity, what we are asking for is justice. It's only fair that the empty houses be used for people to have a decent home.

DO YOU THINK THIS EXPERIENCE HAS CHANGED YOUR WAY OF SEEING THINGS?

Absolutely. I was just another sheep who did what the system told me. When you enter the PAH you realise that there is another way of life. Now I'm a lot happier, because I don't have the attachments I had before. I don't live in that vortex, in that structure where consumerism is everything, where, in order to be happy, you have to have a house in the city, an apartment for holidays, a car, a moped... Without those basics society tells you that you can't be happy. But to have those basics you probably have to give up many things as a human being.

For the first time I've stopped being in a rush. Here in the PAH you can't be in a rush, because there are lives at stake. So, all of the concepts in your life change, your way of thinking... Now I can live in a way which seems much more coherent to me, healthier, with more solidarity. What I'm doing here has an impact on other people.

WHAT ARE YOUR EXPECTATIONS?

In the short-term I expect to leave. I have possibilities to work outside of Spain. But if I go away that doesn't mean that I'm going to detach myself from the PAH. I'll probably make contact with other social movements. Now it's impossible for me to live any other way. I wouldn't even think of being somewhere else and working, who knows, in a financial institution; even if they offered it to me, I wouldn't do it.

But I do want a decent job. And if I can get a decent job somewhere else then I'll have to go.

ANYTHING ELSE?

That I will always be grateful to the PAH. I feel deeply lucky, above all, for having learned to channel my anger by helping other people, and for being at peace with myself. I'm grateful to the PAH for all of that, and I'm grateful for having control over my life again.

INTERVIEW WITH CLEVER

Chef, 35 years old, lives with his partner and their three children
Member of the PAH Barcelona

WHAT IS YOUR SITUATION?



We bought a flat that, with deed related expenses and everything, cost 196,000 euros to be paid over forty years. We started with a monthly payment of 810 euros but it went up and we ended up paying 1,380 euros a month.

But the flat needed to be fixed up. So we went to ask for a loan from the same bank, Caixa Tarragona, which was later taken over by CaixaCatalunya, to furnish it and to do the necessary repairs. But they denied us the loan and we went to ask in the BBVA using the flat as collateral. Finally, they gave us a personal loan of 18,000 euros, to be paid over 8 years in monthly instalments of 250 euros.

WHEN DID THE PROBLEMS TO PAY THE MORTGAGE BEGIN?

We were paying the mortgage even when I was out of work. The 1,000 euros I got from unemployment benefit for 18 months were eaten up by the mortgage. And what my partner, Gloria, earned was for food and expenses. And we were surviving like that until the unemployment benefit ended and I started to get the monthly support of 420 euros.

We quickly saw that we couldn't pay those 1,000 euros and we had to refinance. This meant paying half of the instalment; we were paying 500 euros until the 400 euros support ran out.

The refinancing option was for a period of two years, and later, if you couldn't pay, they would renew it for another two years. They granted us a loan and they took the money from that and paid half the payment. And later then we couldn't pay the instalment on time because I couldn't get as much work as before. This meant that they added on surcharges. And so on until September 2012 when we stopped paying.

We received a burofax (certified fax) that demanded the total of the debt, 184,000 euros, to be paid immediately. The situation is very unfair because we've paid 123,000 euros, but the bank only recognises 10,000.

We stopped paying because if we continued to do so it would be like putting the noose around our necks. When the two year grace period ends they will charge us the full payment, 1,000 euros, plus the grace period payments, in total we're talking about 1,470 euros per month just for the mortgage. If we were both working we could do it, but I still haven't found work.

HOW HAS THE PAH HELPED YOU?

People had told us about the Platform a few months before, but we didn't go until we decided to stop paying the mortgage. We thought there were just a few of us with that problem, but when we arrived there were at least 150 people explaining their cases, some were much worse than ours.

Explaining my situation made me very ashamed. Even today I'm ashamed to talk about the issue. But the same need and desperation makes you speak and tell people what's really happening to you. Explaining what we were suffering just came from the heart.

Listening to other people was like a balm for me. I thought: 'Dear God, there are people with five small children, and they throw them onto the street. At least we're still in the house; they haven't thrown us out yet. We can still do something.' And that's when everything started. After two weeks we went to ask for *datio in solutum*, which they accepted because we qualified for the Good Practices Code.

My problem was getting rid of the personal loan that I had taken out with BBVA. If I didn't settle that loan I couldn't qualify for *datio in solutum*. So the PAH supported me to ask for the cancellation of the debt. I hadn't even considered it because it's a personal loan. I didn't dare to go to the bank to explain that I couldn't pay.

If I had been alone it wouldn't have occurred to me to go to the bank. But of course, since in the Platform they had already had similar cases they told me we could manage it. For three months I was going to the bank to present the partial or total debt cancellation document, but they didn't want to accept it.

HOW DID THE NEGOTIATION WITH BBVA GO?

They told me nothing could be done, that the only solution was to pay. I insisted and they brought it down to 8,000 euros, but we didn't have that. Plus, they wanted it in cash. So we continued negotiating for four months. I offered them 1,000 euros which is what I could get. They said they were going to look into it, to see if it was possible. I went back after eight days and they told me I had to increase the offer. Then I offered them 2,000 that I thought I could put together asking for help from the family. And they said no, either 8,000 euros or nothing.

And we kept insisting, insisting, insisting until they stopped responding to me. Then, from the Platform we decided to organise a protest action. After 20 minutes the manager and assistant manager came out. Before we only spoke with the assistant manager, but that day the manager did come out and I explained my situation to him. Anyway, they called the Mossos d'Esquadra (Catalan police force) to remove us.

But a police woman calmed us down. We had communicated the demonstration and we had no plans to break anything, or hurt anyone at all. So we had nothing to fear, she said. From the bank, then, they told me that if we left they'd give me an appointment for the next day to solve the issue.

We went the next day with a friend from the Platform, someone also affected by mortgage issues who already had experience negotiating with financial institutions. The agreement was that with the handover of 2,000 euros the loan would be cancelled. But when I went to pay they gave me a document that said that they were not cancelling the whole debt, but rather that the amount was just a partial payment and the debt remained.

A friend from the PAH got in contact with the bank again and finally we resolved the problem. In the end, the 2,000 euros served to cancel the personal loan and to get them to accept *datio in solutum*.

AND CAIXA CATALUNYA?

In Caixa Catalunya, where we have the mortgage, they treated us like fools. The credit recovery person told us that his father, who didn't know how to read or write, would never have done something so stupid.

HOW HAS THIS SITUATION AFFECTED YOU?

To begin with, we haven't had a holiday since. Before we used to go to the cinema once a month or something like that and that's over too. We notice it with food as well, we used to buy yogurts and the like, now only what's necessary; meat and fish only now and then. Luckily we have a priest that helps us with food that people donate. The worst is definitely the psychological impact. You can't sleep, you can't think, you're nervous. If you try to speak, for example, with your partner, you respond badly to everything.

AND NOW THAT YOU ARE FREE FROM THE DEBT, WHAT ARE YOUR PLANS?

I came to Spain because I wanted to have my own business, and in Ecuador I didn't have that option. I'm from a poor family, we lived in the countryside, and I wanted to get ahead. I was 21 when I arrived. I took the decision because one of my sisters had come to me first and said that she could help me. That was the idea. I didn't consider buying a house until I was around 26 or 27. I came to get money to be able to set up a business in Ecuador, a small restaurant, because I'm a chef.

Now, well, what I want is to go back to Ecuador. There the government is helping emigrants who return to the country and who want to set up a business. So these are my hopes: to be able to leave and set up my business. The dream I came to Spain with is starting to come alive again.

INTERVIEW WITH ROSA

Works cleaning apartments, 53 years old, lives with her husband, they have two adult daughters. Member of the PAH Terrassa.



WHEN DID THE PROBLEMS BEGIN?

We had our mortgage with CaixaCatalunya. It was a fifteen-year mortgage. But with the crisis my husband's business started to have problems, and we had to ask for money from the mortgage to let the workers go.

The man from CaixaCatalunya, who is probably retired now, warned me not to do it. He said he wouldn't increase my mortgage because things were going to change and I would regret it. He advised me to look for money elsewhere, not to re-mortgage my flat.

But I couldn't do it any other way. The only thing I wanted was to close a business that was creating too many debts. An acquaintance who had been working for BBVA said that I wouldn't have problems with them. And so I went. They came to appraise my flat and I asked for 20 million pesetas, around 120,000 euros, to pay the tax office, the social security of my workers, compensate them, and close my business properly. I didn't want my workers to go without getting paid. That was my big mistake.

Soon after I couldn't pay the 700 euros of the mortgage, so I asked for a grace period. There we made another mistake, because the grace period finished us off. Because when it's over you pay interest and you have to have capital. So when the grace period ended I received a document asking for the outstanding debt in full.

You can't pay one month and then they ask you to pay the money that you would normally pay them over thirty years in one go. And I said to them, 'Look, if I can't pay you one month, how am I going to pay you for thirty years?'

They gave me the option of paying in two or three instalments, but it was impossible. And after seven months I received the foreclosure order at home. My flat was put up for auction on the 24th of October 2011. Between 2009 and 2011 we were negotiating with the bank but I didn't have money to pay for a lawyer...

HOW DID THE NEGOTIATION WITH BBVA GO?

We asked them to accept *datio in solutum* and to let us rent the flat. But there was no way.

Initially they asked, since my husband's freelance and we've no steady income whatsoever, to present a payslip belonging to one of us. Then I started cleaning. I had two payslip, one for 675 euros and the other for 230 euros.

They advised me to pay the 6 months needed to finish paying the grace period and that after that we'd talk. At that time my daughter was studying and they had given her a grant to finish her studies. So I asked my daughter for her grant to pay the grace period.

We had a bungalow in Playa de Aro, we always went camping, and we'd been going to the same campsite for twenty years. We sold that bungalow for 33,000 euros and I gave the bank 24,000. But it was no use. We also sold my husband's car at a loss, my husband has worked his whole life and he loves cars and he'd bought himself an Opel. And that was no use either because when the grace period ended the bank said we were insolvent.

According to what they told us that meant that the Bank of Spain would not assume our debt in the case that we had problems. In a nutshell, it wouldn't give our bank the permission to take out the mortgage again.

In October, the foreclosure was carried out, and I would have to leave my flat in June. So, in February I looked for a rented flat, because there was no other solution; I couldn't bear them coming to throw me out of my home. But once the house was handed over I still owed 129,000 euros because the bank took the house for 60 per cent.

HOW DOES THIS DILEMMA AFFECT THE FAMILY?

During the foreclosure procedure the worst thing was that they discovered my husband had cancer. At that point I wanted to kill myself, because I didn't understand. You can't understand that you're going to lose your home; that your life has turned around like that.

Because you've worked from 7 in the morning to 12 at night to have something in this life, and you haven't even had luxuries. You've worked to eat, and at most to go to a bar, or take a trip. But always working, no-one has given you anything for free. And what they're going to take are the homes of working people, I don't have a chalet, I have a modest flat in Terrassa. They take it away from you, and neither you nor your people understand anything.

My husband and I didn't want to worry our youngest daughter, because it's hard for her to admit things and she has a tendency to get depressed. My other daughter, the eldest, was the only one who knew what we were going through. In our family circle they didn't know what was happening either.

So, my husband and I decided that it was our problem, and that no one else had to suffer from it. But we started to fight a lot. I blamed him for not knowing how to manage the business well, for not having resolved the situation. He became absent, lost around two and half stone, and I lost almost two.

With no money coming in we started to live off our daughter, off her husband's salary. We make meals communally. It changes your life. You start to delay on paying the electricity bill, first one, then two, and even three bills unpaid.

You pawn your jewellery, you sell it. You stop turning on the lights, you don't use water, or the telephone. When I sold the jewellery I said to myself well, my daughter had bought it for me as a present when I turned 40 and at least it was of some use to me.

But the worst was when they detected that my husband had cancer. That was when he broke down completely. When they told him that he had to do three years of chemotherapy, he said: 'Ah here, what kind of shit luck is this? Not everything can be so...'. And then it's not the same, you're not as strong. And there were a lot of fights... One day we had a really big fight and I threw him out. Luckily my daughter convinced me that we couldn't throw our marriage overboard. We've been married for 35 years; we've been together since we were 16.

'Mam, with how much you love each other, are those 4 bricks going to get the better of you? Mam, give over the key, you're not going to solve anything. Hand over the key and save your marriage. That is in your hands.'

Then I called my husband and asked him to come home, that together we would fight and bring the keys to the court, we couldn't take it anymore. One of those days, coming out of work, I was so tired of the situation that I wanted to throw myself off a drop in the park. But I saw my granddaughter and said to myself that I had to fight for her, to see her grow up. This won't get the better of us, I said to myself, so we handed over the keys and started renting.

DAY TO DAY IMPACTS

My fridge is always empty. There was already nothing in the larder. If my daughter bought a bottle of oil, we shared it. And if you don't have dinner or lunch, well then you don't have lunch or dinner. And that's how my husband lost 15 kilos, and I lost almost 10. And people asked what diet we were on. But you're not going to tell people that it's because you've nothing to eat.

We became unable to buy the medicines prescribed for my husband. I went to do the shopping with ten euros and that made me think a lot about what was most important. I remember before, I went and didn't look at what I was spending. I had a gold card, a visa. Since 2009 I go to the bank to pay up, but I don't know what it's like to have money in a bank anymore. And my visas, they took them from me.

Later, you go out with your granddaughter and you can't even buy her a chocolate bar. I haven't gotten my grandchildren Christmas presents in 3 years. But my little girl is very grateful and she doesn't notice. I don't want much, I don't want millions, I just want to be able to pay the bills and live in peace.

WHY DID YOU DECIDE TO GO BACK TO YOUR HOUSE?

Because I'm unemployed now. When the bank asked us for payslips I started working in two cleaning companies. But not after long one fired me. And in the other, the policy is that they take you on for a year and a half because they don't make anyone permanent. You join with those conditions. So in December 2012 I knew I'd be let go.

So I went to sort out my unemployment papers. But it turned out that because I was a defaulter no bank would let me open an account. And in the unemployment office they assured me that the only way to get the benefit was through a bank account, that they didn't make the laws.

It was in the PAH that they told me I could open an account in the post office to be paid. They even came with me and we set everything up.

HOW DID YOU DECIDE TO GO BACK TO YOUR HOUSE?

One night I said to my husband: 'Let's go, get the car, I want to go home'. And I went at 11 at night and stood there looking up at my flat. I could see that it was empty, that the awnings were breaking because they'd loosened them, and I'd left them secured.

The neighbours told me the flat was empty, and that they would help me get in. They've paid for the community maintenance fees, they've given me food, they've paid the electricity... I came to think that if they put me in prison at least they'd give me food and my problems would be over.

When we changed the lock my husband gave me the keys and said to me: 'Here, the keys I once took from you, I'm giving them back to you again. I'm sorry for what's happened.' And in front of six people he started to cry like a boy. And here we are.

And now I'm fighting because I want to get rid of the debt. I need the social rent, but if they take away the debt I will have achieved a lot, because I could keep working legally. Because if not, how do we do it? How am I going to pay the rent, electricity, water, gas, food, and always thinking about what they're going to take from me to pay the debt?

AND NOW, HOW DO YOU FEEL?

Well, I'm not doing great. Although I'm strong I break down a lot. The bank has already come twice to try to get into the house. Both times I was there, by coincidence. But what I'm afraid of is that one day they'll come in and take my house.

One time when they came to change the lock I had gone out. It was a neighbour who rang me to warn me that they were trying to open the flat, so I went running home. The Mosso d'Escuadra (Catalan police force) asked if it was my house, and then calmed me down. He said they weren't going to throw me out. And they left.

Later, two months ago, I was here with my grandchildren in the house and I heard the bell. I thought it was my granddaughter, the eldest, playing with the lock. But I looked through the spyhole and it was the bank again. They said they had to appraise the flat to sell it, because my flat is in the SAREB.

It was a young man, a worker, who apologised saying it was his job. I told him that I'm dealing with procedures with the bank. At the time my grandson was wired, so I apologised to the young man and shut the door. Then I realised how lucky I was that I was at home because if I hadn't been they would've changed the lock.

That's my fear. That I'm in the middle of procedures with the bank but they've wanted to get into my home twice. Like I say to the PAH: 'And what if one day they get in?' They say it won't happen, but I live with that anxiety every day.

WHAT ARE YOUR HOPES?

I plan to keep working and to be able to stay in my flat on social rent. I also want to pay the debt I have with the Social Security so that my husband can go back to working legally. That's all I hope for: to get by, without luxuries or anything but not owing, like now, four or six electricity bills. My dream is to be able to pay the bills when they arrive. That's living.

INTERVIEW WITH LINA

Unemployed butcher, with two children
Member of the PAH Alt Penedès



WHAT IS YOUR SITUATION?

I had two butcher shops and my ex-husband, the father of my children, had his company, he delivered meat to me and to other clients. We worked to get along in life, to have a future, to be able to pay for our house. Then the crisis came and our clients started to let us down, you start off thinking that things will get better the next month, but then the time comes when you can't do it anymore, and you end up closing down with losses.

We had already been asking Banco Pastor to please reduce the monthly payment a little, to help us because we couldn't pay so much, and they said they'd look into it.

HOW HAS YOUR RELATIONSHIP WITH THE BANK BEEN?

The mortgage was for 12 million pesetas (72,000 euros), and we'd been paying for more than ten years. We had a fixed monthly payment of 500 euros. Whether the Euribor (Euro Interbank Offered Rate) went up or down we paid the same amount.

My ex-partner had employment insurance, for which the bank gave him a policy, and he was working with that money, because he usually got paid after 90 days. But then the problems started, the crisis, he didn't get paid and then we couldn't pay the bank.

And then the bank told us that the only thing they could do was take my ex-husband's insurance policy, for which we paid another 500 euros, and put it in the mortgage. This way they explained to us we would only have a single payment of 700 euros, because the time period would be longer.

But after three months, when we went to pay they told us that the mortgage had gone up. That the Euribor had gone up and that the mortgage was now variable, it went from 700 euros to 900 euros, then 1,100 euros, until it got to 1,390 euros.

At that moment I realised that they'd tricked me. What they had done was put my mortgage in my ex-husband's employment insurance policy because it generated more interest and my parents were guarantors, which wasn't the case with the mortgage.

Soon after, they rang us from the bank offering us a solution: we had to get €17,000 to pay the outstanding interest. They assured us that if we got that money we'd catch up on payments and they'd make us a smaller monthly payment and the problem would end there.

My ex-husband had to travel to France where some clients would lend us the money. Our neighbours helped us too and finally we managed to put the money together. But when my husband went to deposit it they told him there was no need; they were going to auction the house the next day. So the next day he went to the court to explain the situation. The judge told him not to worry that she would stop the foreclosure procedure for twenty days, which is how long they would take to cash those checks. The judge said it was the first time she had someone there who wanted to continue paying for the house with the bank still trying to go ahead with the foreclosure.

When there were five days left of the twenty that the judge had given us, the phone rang. It was Banco Pastor. They were calling from the legal office: 'Look, I'm ringing to tell you to come by the office to collect the checks. We want cash.' They didn't care about leaving two kids on the street, they were after the house.

Then they went ahead with the foreclosure and auctioned my home for 50 per cent, because they wouldn't take it from me for 60 per cent, it was for 50 per cent. That's when the first eviction was to happen. But I managed to stop it.

HOW DID YOU STOP THE FIRST EVICTION?

I went to present an appeal before the court, asking, please, for more time, telling them I had nowhere to go, that the kids were sick. When I went to hand in the document the woman who was there told me it was no use, that there was no point presenting anything.

Then Monday arrived, several neighbours came to help me take what was necessary. I was there to hand over the keys. And when the time came, at half past three, I was there smoking like crazy. But nobody came.

The next day, at nine in the morning, I went to the neighbour's house and called the court in Villafranca: 'Look, I'm the woman you were supposed to evict yesterday.' Someone called Silvia, the court clerk, came on the phone and told me to calm down, that I was going to spend Christmas at home. My appeal had arrived at the last minute and had postponed the eviction. I started crying, I didn't know if it was from joy or sorrow.

AND LATER THE SECOND EVICTION NOTICE CAME

Yes, five or six months had passed. They were coming to evict me on Wednesday, and the Friday before I went to the school to see my kids in the carnival parade. And there were two members of the PAH there.

YOU STILL WEREN'T IN THE PAH AT THAT TIME?

No. I knew it existed, but I didn't have internet or a phone to contact them. They were the ones who came to me and invited me to join. They brought me to a meeting of the Platform in Barcelona and when it ended I decided I wouldn't hand over the keys to my house. The people in the PAH calmed me down, they offered help with anything I needed.

The day of the eviction people came with placards explaining that two children were going to be evicted by the Banco Pastor. And there the eviction was stopped, and of course, that's when I went back to being myself. In that moment I really became stronger.

After eight months I got the third eviction letter. This time the judicial documents warned me that they would come with police back-up. Then I took a rented flat, two streets away from my house, just in case. But people came from here, from the Platform in el Garraf, from Baix Penedès, from l'Anoia, from Barcelona, some from Gerona, and together we managed to stop the eviction. And that was when I said to myself: 'Now we're invincible, now we've stopped three evictions.'

WHAT DOES THE BANK OFFER YOU?

There have been no more attempts to evict me. The last thing that arrived was a letter saying that my mortgage debt, €120,000, had been sold to a company in Luxembourg, and that I'd have to sort things out with them. Soon after, this company sent a letter to the father of my children, to me, and to my parents, in which they asked us for 32,000 euros each.

I still don't know what I want, because I've received two offers. One, if I get 30,000 euros, I would catch up on my payments and then buy my house at a monthly sum of 600 euros until the mortgage is done. But I don't have that money. And the other possibility is social rent- with purchase options - at €400 a month for five years, with which I would complete a down payment.

HOW HAS THIS SITUATION AFFECTED YOU?

The day the man from the bank said to my ex-husband, who's Moroccan, to go back to his country, was the last straw. He started to change then. He really felt like a "dirty Moor" (*moro* in Spanish is sometimes used colloquially to describe people from North Africa in a very general way and with derogatory connotations). Lunch time would

come round and he would disappear, 'I'm going to look for work'. And it could be four in the morning when he got home, when I practically had to get up to bring the kids to school. And when I returned, he tried not to be with me. He did everything he could to avoid me. Until in the end he decided that the best thing was for us to separate.

Caritas helps us with the food and the neighbours do too. The neighbours have been giving me food for two years. Now I get the monthly benefit of 400 euros; I can "survive" with that, I can keep going.

Especially since now over the last two years I've gotten used to doing everything at home, bread, clothes, everything. Now I can even buy some types of fish for the kids for 4 euros. But you have to make it stretch a lot because it doesn't last long.

Actually, you practically don't do anything, because you can't. My son was signed up for football since he was four, and he also did aikido. Now he does neither because signing him up for after school activities is a luxury. You can't go to the birthdays you're invited to either, because you can't buy the kid a present. The kids are basically being marginalised, because they can't have a social life.

AND NOW, HOW DO YOU SEE THINGS?

I think the Platform has given life back to a lot of people, especially psychologically. People arrive destroyed and they welcome you and you feel like it's a big family. They don't let you break down.

And then there are people who come to you and say 'I have never helped anyone, and now I realise that I'm happy helping other people.'



CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

- ① Spain is experiencing a housing emergency. This situation is explained by the real-estate, financial, and urban-planning model that finds its origins in the Franco regime. This model has persisted under current constitutional rule, and it constitutes an anomaly in the EU-15.
- ② This model has privileged indiscriminate construction and access to housing through ownership. The consequences of this are the existence of a meagre social housing stock (less than 2 per cent of the total stock), a large amount of vacant and underused housing (13.7 per cent of the total stock), and a marked neglect of other forms of secure and more affordable tenure like social rental, cooperative property, transfer of use, or surface rights.
- ③ The difficulties for accessing basic needs like decent housing, quality food, a good level of health, and sufficient income have worsened with the crisis. The majority of people in housing emergency situations have difficulties when it comes to paying the electricity, the heating, and other utility bills. According to this study's data, 70 per cent of these people have lost their jobs and 83 per cent lack another home to stay in.
- ④ The problem of evictions for economic reasons is one of the most worrying in the context of the current crisis. According to data from the General Council of the Judiciary, since 2008 more than 400,000 foreclosure procedures have been initiated. During this same period at least 250,000 evictions have been carried out, many of them due to inability to pay the rent.
- ⑤ A good part of the vacant housing that could be used for social rentals, at least 600,000 houses, is owned by financial institutions, property developers, or the SAREB. Some of these financial institutions, like Bankia, have been bailed out with public funds, while others, like BBVA, Caixa Bank, and Banco Santander, present themselves as examples of good financial management, and nevertheless they carry out the most evictions.

- ⑥ This situation is in stark contrast with many of the legal commitments regarding the right to housing and human rights in general made by the Spanish government. Some derive from the 1978 Constitution itself and from the Statutes of Autonomy of some of the autonomous communities. Others, from international human rights law and from European Union regulations.
- ⑦ In general terms, it is clear that housing policies have not developed this regulatory framework in a rights-based way. The main consequence of this is that market principles and the search for large short-term profits have regulated and allocated resources in housing and urban-planning.
- ⑧ Reversing this model demands, above all, structural reforms –financial, fiscal and economic - not only in terms of housing, but also in other areas like employment or social security. Public and social control of banking, an anti-speculation tax system that is socially and environmentally just, and the reversal of the privatisations and cutbacks that have been in practice up until now should be fundamental elements of this change.
- ⑨ In the specific area of housing, attention must be paid to the best practices implemented in other countries like the control of the rental market in Germany, or the support for social housing in Holland and France. Attention must be paid to collective demands that defend the right to housing (like *datio in solutum*) and to recommendations in the matter made by different international and local organisations and courts, including the United Nations and the ombudsmen.

RECOMMENDATIONS

Specifically, and in line with their commitments in human rights matters and best practices in this area, the public authorities should, within the field of their competences:

- Avoid evictions for economic reasons and, in any case, guarantee the adequate rehousing of those affected.
- Establish policies that recognise *datio in solutum*, and that in general consider a "second chance" for people who are over-indebted.
- Refrain from provoking unjustified and discriminatory set-backs in housing policy. The privatisation of the public housing stock, the lack of legal protection for people renting, or the elimination of housing support intended for lower-income groups, are included among such practices.
- Develop a policy that prevents or penalises anti-social uses of property, such as the abandonment of properties for speculative ends, indiscriminate increases in rent, and the violation of maintenance and service duties.
- Prioritise secure and affordable forms of tenure like social rental, transfer of use, cooperative property, or usufruct.
- Oblige the SAREB and the financial institutions, starting with those bailed out with public funds, to fulfil their public service duties and to use vacant housing in their ownership for social rentals and other affordable forms of tenure.
- Ensure the effective and informed participation of social organisations and those affected in the public housing policies that may concern them.
- Avoid the criminalisation and stigmatisation of groups that make the basic causes of housing rights violations and the responsibilities that correspond to the public authorities in this matter visible.
- Investigate all of the evidence of irregularities and malpractice in the granting of mortgage loans on the part of the financial institutions and establish legal and political responsibilities in the matter.





The **Platform of Mortgage Victims (PAH) in Barcelona** was the first Platform created in Spain. Its aim is to unite people with mortgage payment difficulties or who find themselves facing foreclosure threats, as well as those who feel solidarity with this issue.

Facing mortgage legislation that condemns over-indebted people to social exclusion, the PAH aims to be a meeting place and a place for empowerment. Specifically, the PAH directs its struggle towards achieving policy changes that would enable a second chance for people affected by mortgages, as happens in other European countries.

Moreover, until this policy change materialises, the PAH, through the stop evictions and obra social campaigns, avoids evictions and supports the adequate rehousing of families.



The **Observatorio DESC** (Observatory of Economic, Social and Cultural Rights) has been working for ten years to make the right to housing and the right to the city effective.

Promoting access to decent housing as a fundamental right for developing an autonomous life project is one of the objectives of the Observatorio DESC, a platform formed by organisations and individuals.

The Observatorio DESC works in coordination with other social organisations and social movements, fostering dialogue with public administrations, and actively participating in international and local networks.

Con la colaboración:

