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JAVIER BURON (Urbania ZH Gestión)

SPAIN'S RECENT AFFORDABLE RENT PUBLIC POLICIES:

TRYING ALMOST EVERYTHING, ACHIEVENING ALMOST NOTHING, GETTING NO HELP FROM THE EU.

KEYWORDS:

Spain, housing policies, social rent, public rent, affordable rent, vacant dwellings, overmortgaged people, force evictions, public aid to banking system, mobilization of vacant housing to rental.

Spain has an estrange market and public sector as far as rent is concerned: very little rent stock, almost no social, public or affordable rent stock and plenty of empty dwellings. Unfortunately, due to domestic causes, but also to EU impositions, this situation threatens to continue with a wide palette of the negative social, economic, environmental and political implications.

1 FACTS AND FIGURES

1.1 SOME FACTS AND FIGURES TO UNDERSTAND THE CURRENT SITUATION OF PUBLIC/SOCIAL/AFFORDABLE RENT IN SPAIN.

- 10% vs. 90%: only around **10% of the total housing stock is dedicated to rental** (the EU-27 average is 30%; United Kingdom, Belgium, Finland, Austria, Netherlands, Denmark, and Germany range from 30% to 55%).
- 1% vs. 100%: officially **1% of the total housing stock is dedicated to public/social/affordable rent** (the EU leader is Netherlands with more than 30%)¹.
- 1% vs. 9%: 10% of the rental dwelling stock is dedicated to public/social/affordable rent (the EU leader is Netherlands with more than 75%).
- **Spain's budget for public housing policies in the last decades never reached 1% GDP.** Most EU Member States range between 1.5% and 2.5%. Leading Member States reach 3%².

¹ Depending of the official sources the figure can be even less than 1%. My own calculations, using ministerial data, point to less than 0.5% of the total dwelling stock.

- Officially **13.5% of the dwelling stock is vacant in Spain** (the EU leaders are Netherlands 1.7% and Sweden 1.5%; other major EU countries range from 6% to 8%)³.
- **The overproduction of housing in the past decade it would have being completely impossible without the investment and financing coming from other EU countries.** Especially Germany and France were allocating surplus liquidity in Spanish real estate products with an extraordinary profit rate⁴. This raises the question of liability of the irresponsible borrowers and lenders.
- Since the beginning of the crisis, Spain has executed **more than 400.000 force evictions**. Official data does not allow differentiating between residential, commercial or industrial force evictions. Nevertheless, this has emerged as a major social problem, and as a central issue of the political agenda.
- **Spanish financial system has received in the last four years more than 490 billion euro in public aids** (around 49% of Spain's annual GDP⁵) and a great part of the financial system is, **directly or indirectly, nationalized**, through the action of schemes such as FROB (*Fondo de reestructuración ordenada bancaria* - Fund for Orderly Bank Restructuring), SAREB (*Sociedad de Gestión de Activos procedentes de la Reestructuración Bancaria* - Company for the Management of Assets proceeding

² In Spain more than 60% of this public expenditure on housing is dedicated to tax breaks on private ownership (*deducción para la compra de Vivienda en el IRPF*). Therefore, direct public investment in housing policies has been consistently around annual 0.3% of GDP. And only a marginal part of it has been dedicated to social rent, since the vast majority of this public funding goes to "*Vivienda protegida*" (subsidized housing for ownership and only temporarily out of the market). We don't have official data for the last three years. But, if we take into account the budget cuts and sales of the Autonomous Regions (Comunidades Autónomas), logic points to a severe reduction in public expenditure in housing policies. Only as an example, in the Basque Country, one of the leading regions in public housing, the budgetary cut from 2009 to 2013 is close to a 60% reduction in direct public expenditure in housing policies.

³ Some media stated in January 2012 that officials of INE (*Instituto Nacional de Estadística* – National Statistics Institute) admit in private that, after the burst of the real estate bubble and in the worst moment of the socio-economic crisis, the level of vacant dwellings in Spain was above 20%. Quite surprisingly in April 2013 the official figure was made public: 13.5%, only 10.8% more than a decade ago, regardless of the evidence that the Spanish financial system and the families hold a large amount of dwellings acquired in the last years of the bubble, that nowadays remain unsold and unrented.

⁴ According to data from the Bank for International Settlements, Spanish financial system, at the beginning of 2012, hold a total of 572 billion dollars in debts with other international banks. This figure is much lower than it was in late 2010 when the total debt stood at 706 billion dollars. Most of this current debt has its counterpart in the German banks (139) and French banks (115), which together account for almost 45% of total debt. German and French banks are the main creditors of the Spanish financial system and, consequently, the major stakeholders in these debts are returned. We also have to take into account the purchases of dwellings made by private foreigners during the bubble years. The pick was reached in 2007 with more than 7 billion euro. But some estimation evaluates in 5 billion euro per year the value of those foreign purchases during the bubble years (more than 50 billion euro). All, bankers and individual investors were attracted by the skyrocketing expected profits. Currently most of this investors have a hard time admitting the relation between high expected benefits and high risks.

⁵ 60 billion in capital, 117 in guarantees and 313 in ECB soft loans, according to professor (UB) Antoni Garrido's calculations.

from Restructuring of the Banking System) or ESM (European Stability Mechanism – *Mecanismo Europeo de Estabilidad*).

- The financial systems, along with public authorities, have offered 6.000 dwellings in social rent to evicted families. At the end of the first trimester of 2013, 430 families applied and 50 already lived in this type of dwellings. There are not available figure on dwellings controlled by the financial system. But SAREB alone officially holds 50 billion euro in its books, mixing real estate credits, land and finished buildings. Some unofficial calculations indicate that the financial system holds 200.000 vacant dwelling, figure than in a few months could escalate to 600.000. Even dough, housing sales had failed dramatically, **no public or ppp program has being implemented in order to convert part of the bank vacant housing stock of the Spanish financial system into neither affordable rent nor market rent.**
- The **Spanish Parliament has rejected a ILP** ⁶ (*Iniciativa Legislativa Popular* - People's Legislative Initiative), supported with more than 1.4 million citizens signatures (the largest so far in Spanish democratic history), **that advocated three major legal changes:** (1) a force eviction moratorium, (2) the consideration of current mortgages as nonrecourse debt (*dación en pago*), in order to avoid the lost of the property combined with the remain of important personal lifetime debts, (3) and the urgent construction or acquisition and management of a public stock of social rent dwellings.
- The Spanish Parliament is about to pass a **law on the promotion of rental as a professionalized market and a common way to access to proper housing**⁷. The main changes (shorter contract terms, liberalized annual rent calculation, faster force eviction, easier termination of the rent contract when the property is sold, etc) give more power to the nonprofessional property-owners, weak the position of the tenants and do not satisfy the demands of the small part of corporate and financial sector willing to invest in rental stocks. The key issue (the lack of a professionalized rental market and a state own social rental sector) is not consistently addressed by this law.
- The Andalucian Government (*Junta de Andalucía*, government of the Autonomous Region of Andalusia) has approved a very controversial **regional legislation** ⁸ **based on the constitutional social function of property that includes a polemic scheme of public forced rent** (in Spanish legal terms, an temporary expropriation of the right of use) **of vacant dwellings own by the financial system** that reject public aids for rehabilitation and/or rent⁹.

⁶ *Proposición de Ley de regulación de la dación en pago, de paralización de los desahucios y de alquiler social*. Available at: http://www.congreso.es/public_oficiales/L10/CONG/BOCG/B/BOCG-10-B-102-1.PDF (accessed 16 May 2013).

⁷ *Proyecto de Ley de medidas de flexibilización y fomento del mercado del alquiler de viviendas*. Available at: http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-21-4.PDF (accessed 14 May 2013).

⁸ *Decreto Ley 6/2013, de 9 de abril, de medidas para asegurar el cumplimiento de la función social de la vivienda*. Available at: <http://www.juntadeandalucia.es/boja/2013/69/2> (accessed 14 May 2013).

⁹ Previous attempts to achieve the same goal were impulse by the Basque and Catalan governments during the last years of the formation of the real estate bubble.



- The Spanish Parliament is about to pass a **law on rehabilitation, regeneration and urban renewal**¹⁰ and the Spanish Government has approved the new **National Housing Plan 2013-2016**¹¹. Most experts and public sector managers (including AVS –*Asociación de Promotores Públicos de Vivienda y Suelo* – Association of public housing promoters) state that this package of regulations and aids will not lift significantly the Spanish public and market rental stock.
- The Spanish Parliament, following a ruling of the European Court of Justice (that considered the Spanish mortgage legislation incompatible with EU consumption regulation)¹², recently approved a new **law on protection of the over mortgaged people**¹³. It's designed to stop force evictions and guarantee a social rent to families only in extremely poor condition, taking out of its aim the biggest part of the troubled population.
- The PAH (*Plataforma de afectados por la hipoteca* – Platform of citizens affected by the mortgages), promoters of the above mention ILP and other actions (among them the occupation of vacant dwellings owned by nationalized banks plus the allocation of evicted families on them and the controversial *escraches* -a type of demonstration in which a group of activists go to the homes or workplaces of those who they want to condemn in order to influence decision makers and governments into a certain course of action-) **has become a major socio-political actor in Spain**, taking the defense of housing rights to a unknown position in public arena in the past decades.
- **The Memorandum of Understanding**¹⁴ **signed by Spanish and European authorities in the summer of 2012 states in an express manner that the EU financial aid to the Spanish banking sector could not be converted into tools to reduce force evictions or the mobilize vacant dwellings own by the financial Spanish sector to the rental market.** Recent proposals coming from civil society and political opposition parties (using part of MEDE's funds to reduce force evictions and boost employmen) have being harshly stopped by the EU Commission, stating that the EU financial aid has only one

¹⁰ *Proyecto de Ley de rehabilitación, regeneración y renovación urbana*. Available at: http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-45-1.PDF (accessed 13 May 2013).

¹¹ *Real Decreto 233/2013, de 5 de abril, por el que se regula el Plan Estatal de fomento del alquiler de viviendas, la rehabilitación edificatoria y la regeneración y renovación urbanas 2013-2016*. Available at: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-3780 (accessed 14 May 2013).

¹² *Sentencia del tribunal de justicia (sala primera), de 14 de marzo de 2013, asunto C-415/11. Mohamed Aziz vs. Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)*. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0415:ES:HTML> (accessed 17 May 2013).

¹³ *Ley 1/2013, de 14 de mayo, de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de deuda y alquiler social*. Available at: <http://www.boe.es/boe/dias/2013/05/15/pdfs/BOE-A-2013-5073.pdf> (accessed 15 May 2013).

¹⁴ *Memorando de Entendimiento sobre condiciones de Política Sectorial Financiera, hecho en Bruselas y Madrid el 23 de julio de 2012, y Acuerdo Marco de Asistencia Financiera, hecho en Madrid y Luxemburgo el 24 de julio de 2012*. Available at: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-14946 (accessed 14 May 2013).

aim: the capitalization of the private banks that will conduct them to respect their credit obligations with foreign borrowers, as I said, remarkably German and French (private and public) banks.

- **Spain has consumed in the last fifteen years the same land than in the previous 12.000 previous years:** the artificialisation of land was very similar in these two periods: from the beginning of the sedentism era to the beginning and the real estate bubble of the last decade and half.
- **Spain, during the socio-economic crisis and austerity drive, has reduce inaccessibility to housing from 3 times the recommended level (9 full year incomes) to just two (6).** In order to convert with leading EU member states (3 full year incomes), Spain, among other things, has to improve its rental market and public policies (deflate sale and rent prices in market and subsidized schemes).

2 POLICY INSTRUMENTS

The different Spanish Administrations (national, regional and local) in the last decade have produced more than a dozen of legal-administrative techniques to promote social, public or affordable rent. At least, we should take into account the following (presented in groups):

2.1 INSTRUMENTS OFFERED AS A PROMOTION OF SOCIAL/PUBLIC/AFFORDABLE RENT, BUT IN FACT ORIENTATED TO PRIVATE OWNERSHIP

1. **Rental of *Vivienda protegida*** (subsidized housing for ownership only temporarily out of the market) **with a purchase option.** The combination of the purchase option with extreme short time periods of conversion into market housing, means, in fact, the use of land intended for social rental housing (*vivienda protegida en alquiler*) for market ownership housing. This instrument has been heavily used in some Autonomous Regions such as Madrid.
2. **Sale of public rent stock to private funds and corporations.** In theory, these funds and corporations have the obligation to keep the tenants. And these manoeuvres are justified as a way to make more robust the social rent scheme. But the obvious objective is to reduce public deficit. Many observers fear that the social condition of the rent contracts might suffer in the following months. Some evidences point already to this trend.

2.2 INSTRUMENTS WIDELY USED OR PLANNED BY PUBLIC AUTHORITIES

1. **Building new dwellings dedicated to social/public/affordable rental,** through state promoted/owned units, public private partnership and cooperation with charities (*parque público o concertado de vivienda protegida de alquiler*). Public aids to this type of housing have been scarce and very limited and most public housing plans have failed, by large, to meet the objectives proposed.
2. **Public Intermediation in the private rental market.** The public authorities sign insurance contracts in order to secure the monthly payments of the tenants to private landlords. In exchange, they accept a reduction in monthly payments generally in the range from 5% to 10%. Some good local practices have emerged in the last years. And an attempt at national level (*Sociedad Pública de Alquiler* – National Public Rental Company) failed harshly. But, from a quantitative point of view, the effects on market prices and accessibility have been marginal.



3. **Direct public aid to tenants to pay rents** (RBE -*Renta Básica de Emancipación* – Basic Emancipation Payment). The National Government embarked for the first time in Spanish history a program of this type (during the Franco's dictatorship rent public control was a common system to tackle the accessibility problem). RBE was directed to young working people and was conceived as a help for emancipation. More than 275.000 people profited with 210 euros/month (maximum). It was immediately terminated by the current government, once it enters into office.
4. **Simplification and speed up of the force eviction process for tenants.** Several national laws were implemented in order to speed up tenants force evictions. According to successive National Government the weakness of the rental Spanish market is directly related to the slow force eviction process. Even though it is quite difficult to use consolidated statistics, Judicial Power states that not, as an average, more than 5% of the rental contracts implied a judicial plea. After the implementation of these laws, rental stock has not increase significantly. In the other side, force evictions are under a dramatical escalation.
5. **Public promotion of the mobilization of vacant dwellings in order to increase social/public/affordable rent and penalization of vacant private housing stocks that rejects aid for its rehabilitation and/or rental.** Three Autonomous Communities (Cataluña, Basque Country and Andalusia) had tried in the last decade to promote with public aids the mobilization of private vacant housing to rental. These three local authorities had tried, as well, to implement penalizations to this type of dwellings, facing strong political and social opposition. Regardless of the fact that the Spanish Constitution in an express manner orientates all types of property to its "social function" (art. 33, 47 and 128.1 of the Spanish Constitution), not only allowing, but forcing, public authorities to implement measures that reduce the size of the vacant stock and increases the rental stock (art 9.2).

2.3 INSTRUMENTS PROPOSED BUT ONLY MARGINALLY USED

1. **Public arbitration of private rent contracts.** An almost unused measure. Even when many local authorities recently have developed schemes of mediation between overmortgaged families and banks. Public mediation or arbitration between landlords and tenants is almost non-existent.
2. **Access to the social public aids available for the construction of new social rental housing (*vivienda protegida en alquiler*) in the case of the right of use (*derecho de superficie*).**
3. **Administrative concession of public land linked to the construction of social rental stock** (concesión administrativa de dominio público con destino a alquiler protegido).
4. **Conversion of vacant private housing stock into temporary subsidized housing**, either for rent or sale. It was intended in the first years of the crisis as a relief measure for corporations and banks with a large stock of unsold dwellings. The exhausted demand has been a major obstacle for this type of conversions. Only a few thousands have been completed.
5. **Public management of guarantee deposits of private rental contracts.** Only one Autonomous Region (Cataluña) has consistently use the deposits made by tenants to guarantee their payments (usually made to the local authorities) to finance public housing policies. The sum is of some interest in areas with rental stock above the average (Madrid and Barcelona quite remarkably). But, so far, this possibility has not been used at its full potential.

6. **Legal obligation to create a minimum social/public/affordable rental stock in a given time/territory, enforced with penalties for the local authorities that refuse to use the necessary means and fail to meet the standard.** A technique imported by Catalan legislator from France, was included in the Catalan regional housing legislation¹⁵, but rapidly repealed by the current administration.

2.4 INSTRUMENTS PROPOSED BUT NOT USED AT ALL

1. **Legal protection of the tenants.** No single measure has being taken to secure the legal position of the tenants in the last decade. Most influential political and economics groups link legal guarantees for tenants with a decrease in rental stock. Strong empirical evidence through the EU points to the contrary conclusion.
2. **Promotion of the tax reform debate necessary on rent.** Traditionally ownership has being promoted with taxation breaks (more than 70 billion euro in the last decades, amounting as much as 60% of public budgets on housing policies in the last decade). As an implicit part of MoU 2012 and explicit demand of German Chancellor, the tax reliefs on home sales have being suspended. But main political and economic actors intend to recuperate them as soon as possible. In the other hand, tax breaks or reliefs for rental payers have being minimal and almost unpublicized.
3. **Tax incentives to private, public or ppp rental stock builders/managers.** In the last decade several attempts have being made to adapt the tax regime of the SOCIMIS (the name of the Spanish REITs -Real Estate Investment Trust-), but so far the effects have being rather poor. No relevant specific tax incentives have being design for public rental efforts (public companies), ppp or charities actions in this field.
4. **Consideration of housing as an individual right at regional level,** with effective judicial review of the action of the Administration, that should mean a reasonable chance to access a public rental housing facility or a public aid to pay a market rent. Only two Autonomous Communities (Cataluña and Basque Country) have tried to implement laws containing this type of public commitments, in line with French or Scottish recent legislation. Nowadays these laws are no longer applicable. And public authorities do not consider housing as an enforceable right. Only judicial activism, applying international and constitutional Spanish law, is trying to change this situation.

¹⁵ *Ley 18/2007, de 28 de diciembre, del derecho a la vivienda de Cataluña.* Available at: <http://www.boe.es/boe/dias/2008/02/27/pdfs/A11653-11696.pdf> (accessed 17 May 2013).



3 CONCLUSIONS

3.1 MOTORIZED LEGISLATION

Spanish public administrations can be accused of anything, but not of being ungenerous legislating, regulating, planning or advertising.

The rules and plans are so intricated that is difficult to know, even for professional or academic specialists, the state of affairs. In this context, we must understand that Administration and business people feel disorientated in this forest of regulations that reproduce, mutate, combine, synthesize, disappear, blend, etc.

Without entering in the field of standardization of competences of regional and local institutions, a little more clarity, legal certainty and brief rules would be positive for all Administrations, public managers, citizenship, financial institutions, employers, etc. Many times less is more. This may be one of them.

3.2 LACK OF ADMINISTRATIVE COORDINATION AND CONSOLIDATED STATISTICS THAT PREVENT TO MEASURE THE EFFECTIVENESS AND EFFICIENCY OF THE PUBLIC ACTION ON RENTAL

It was said that Spain is a country of few and bad statistics. It is possible that this is no longer true in general terms. But in the field of public housing policy the statement unfortunately is still true.

It is very difficult to find an Autonomous Community with a repository of statistics and reports consolidated, comprehensive, systematic and sustained over time¹⁶. And if this is difficult in the case of a single community, it is clear that all the Administrations do not perform these tasks in a coordinated manner. And what it's even less understandable, the national Government does not provide data or an overview on the vast variety of public housing plans.

Under these conditions, it's almost impossible to make a precise judgment on the effectiveness and efficiency of public spending, given the disseminated, fragmentary and unsystematic information. It would be extremely desirable that all Administrations, working together, put a remedy to this issue.

3.3 MANY INSTRUMENTS FOR THE PROMOTION OF RENTAL AVAILABLE TO THE ADMINISTRATIONS IMPLIES THE INEXISTENCE OF A SOLID PUBLIC POLICY ON SOCIAL/PUBLIC/AFFORDABLE RENTAL

Facing such a plurality of instrumental, I feel that shooting all the birds at once makes impossible to get one single shot right. It's extremely necessary to implement coordinated public plans on the promotion of social, public and affordable rental. We should not dismiss the minority good practices that over the

¹⁶ I quote an example of good practice in this field: *Observatorio Vasco de la Vivienda* - the Basque Housing Observatory. Available at: <http://www.garraioak.ejgv.euskadi.net/r41-ovhome/es/> (accessed 17 May 2013).

years we have had in Spain. We should try to critically import tested good practices from other EU member states. And moreover, we should overcome the dysfunctional succession of policies, often characterized by ideological drives, rather than pragmatism.

Most likely, this will imply a game of few powerful losers (the promoters of the ownership model and the aggressive use of land for new developments) and a vast majority of winners (the ordinary people and the Spanish economy as a whole).

3.4 SPANISH EXCEPTIONALITY IN SOCIAL/PUBLIC/AFFORDABLE RENTAL STOCK MIGHT LAST MANY MORE YEARS DUE TO DOMESTIC INACTIONS MoU AND EU IMPOSITIONS

Taking into account all that has been indicated in this text, unless major and unexpected changes, I believe that Spain, due to domestic weakness and EU impositions, will continue to be for many years a strange country within the EU in terms of housing.

A country with 25.3 million dwellings, that hardly reaches 2.3 million rental units. A country that barely has 128.000 social rental units (less than 0.5% of all households). A country with hundred of thousands force evictions and millions of vacant dwellings, mainly controlled by banks hold alive by public aids. A country that every year losses a great part of its social/public/affordable housing stock, through the conversion of subsidized/regulated housing (*vivienda protegida en propiedad*) into market/deregulated housing (*vivienda libre*). A country that, even in the "good years" (1998-2008), only produce, out of the total amount of new dwellings, 20% of subsidized property housing, being extremely marginal the part dedicated to social/public/affordable rent. A country where families are indebted with 600 billion in mortgages (equivalent to 60% of our GDP). A country characterized by a monoculture of new housing developments intended only for sale/property.

For all, a country with a dysfunctional model, far away from the social, economic, environmental and public practices of the leading EU countries.

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