

have to wait if there will be a political will to find a fair solution.

The General position of the official authorities on the problem is that it is mainly a social problem of a few elderly people that could get a substitute in a form of social housing. According to the majority of official representatives other sitting tenants did have enough time to solve their housing problem by themselves.

The position of *Právo na bývanie* (Right to Housing) is that this is mainly a problem of discrimination and social exclusion caused by the state. It was the state who nationalized apartment building many years ago. It was the state who manipulated with nationalized property as it was its ownership. Tenants in previous times did not have the choice to select their housing they were assigned to a certain flat under the principle of take it or leave it. Sitting tenants made in previous times their contracts under same conditions as their fellow citizens and in good faith. It was again the state that by adopting a housing reform based on private ownership only (rental housing does not exist in Slovakia in reality) brought people without home ownership to a position of an asocial outsider. In other words, it was the state that messed it up and it should be the state that solves the problem. This problem concerns not only elderly tenants with lowest incomes but all sitting tenants who have been deprived of their chance to muster up their homes under the same conditions as other citizens.

Conclusion

Our association finds negotiations with the government on a generally acceptable solution as the best way forward. So far, however, no government showed a real interest to solve the injustice caused by the restitutions at the early 1990s. In such case, we foresee a way in "internationalization" of the problem (pressure from respected international subjects or claiming at international courts). In fact, the tactics of all governments so far has been to "narcotize" the problem in some way - real solutions (which certainly will cost money) were less in the interest of the official authorities (with a few exemptions but this was not enough).

FEANTSA gained respect with its collective complaint launched against Slovenia, even if a resolution by the Committee of Ministers has not yet been adopted. We are convinced that cooperation of our association with international partners will have a positive impact on the thinking of official authorities on the problem. The ambition of the conference to be held on 10 September in Bratislava is to draw the attention to the problem and to show that there

are respected international organisations interested in the problem. The reaction of the government to the Slovenian case but there is a that it is relevant only for Slovenia mainly because Slovakia did not ratify Article 31 of the Revised Social Charter and the additional protocol providing for a system of collective complaints. To say to the authorities that there could be also other legal means that could be used in favor of the tenants will be in my opinion very useful to come further in finding solutions for the sitting problem in Slovakia. Slovak tenants are in a difficult situation and, if necessary, we are prepared also for submitting claims at the international judicial institutions.

Finally Slovakia like Slovenia could be also a good example for other countries. I am convinced that if one or two countries find an acceptable solution, governments in other CEE countries will not be in the position to ignore the problem, in particular, if internationalized organisations will be involved.

Public Housing Service in Spain?

Juli Ponce Solé

Head Professor of Administrative Law. Vice-Dean. Faculty of Law. University of Barcelona

Guillem Fernandez Evangelista

ProHabitatge Association. Autonomous University of Barcelona.

Correspondent of Housing Rights Watch

The view of housing as a public service, halfway between an economic or territorial service and a social or personal service, which should include both *monetary benefits* (aid to developers and house buyers and tenants) and *services* (shelters and centers, sheltered accommodation, public housing), seems to be gaining ground in Spain.(1)

In Spain, while no law specifically qualifies housing as a public service, although the idea can be found in Article 50 of the Spanish Constitution, in relation to the elderly.

"The public powers will guarantee, by means of adequate and regularly updated pensions, the economic sufficiency of citizens during their senior years. In addition, and independent from family obligations, they will promote their well-being through a system of social services that will tackle their specific problems in the areas of health, hou-

sing culture and leisure.”

Moreover, according to Article 25.1 of the Law Setting the Main Guidelines for Local Governing Regulations (*Ley de Bases de Régimen Local* or LBRL), housing can be viewed as a public service in its broadest sense:

“The municipality, to manage its interests and within the scope of its competencies, can promote all manner of activities and provide any public services that contribute to satisfying the needs and aspirations of the neighborhood community.”

It is, however, not a compulsory minimum service as established under Article 26 of the LBRL like street lighting, drinking water supply, or for municipalities with a population of over 20,000 inhabitants, civil protection. Therefore, it is not possible to apply to this area the provisions of Article 18 g of the LBRL referring to the inhabitants’ right to demand to establish and provide such services.

This apparent “oversight” by legislation is consistent with a vision of housing as an activity that pertains primarily the private market, where public authorities have historically mainly intervened to perform an administrative activity consisting of limiting rights (for instance, the certificate of habitability) and encouraging certain economic activities or personal situations, and very seldom (generally in situations of social emergency, as was the case of internal migratory movements in Spain in the latter half of last century) taking charge of providing accommodation services.

With the approval of the Spanish Constitution and the provision regarding the right to housing, there is no doubt that the public powers are subject to legal obligations in this respect, which can be viewed as inherent to the public service in the sense that a mere activity of policing or encouraging the private sector is not enough. The Administration must take a step forward and guarantee (directly or indirectly) the existence of affordable housing that is both sufficient and not territorially segregated.⁽²⁾

Article 4.1 of the Catalan Law 18/2007, dated 28 December, contains a transcendental change of paradigm in the sphere of public housing policy in Catalonia, and as a reference for Spain as a whole, when it notes that:

“The set of activities linked to the supply of housing destined to social policy is configured as a service of general interest to ensure decent and adequate housing for all the citizens”

The formal declaration of public housing as a service of general interest (following the European Union’s own terminology) involves a true “*publification*”, which considers public activity in the area of affordable housing as a true public service, obviously, devoid of public monopoly. In contrast to the occasional and subsidiary public activity (with regard to private initiative) the Right to Housing Law in Catalonia seeks to set up the “*publification*” of public activity, always without becoming a monopoly, which, in the EU, constitutional and statutory legal framework in effect, will effectively guarantee the constitutional and statutory right to decent and adequate housing. Although, it is important to note that we cannot yet analyze its specific legal consequences in detail.

Obviously, the consideration of social housing as a service of general interest has important conceptual and political consequences. More importantly for us, it also has technical-legal consequences. In addition to helping bridge the gap between public activity regarding affordable housing and other sectors where this activity is more developed and being able to apply tested solutions and techniques, it also means better understanding of the role of the private sector in the supply of affordable housing. It even means to operate with categories like that of public service obligations, which could complete the framework already offered by the social function of property in the area of providing land for protected housing, for instance.

New Developments at the Autonomous Region Level

This growing awareness of housing as a public or general-interest service also leads the various legislative bodies at the Autonomous Region level to provide for land for the construction of public housing as part of an institutional system. Thus, Article 34 of Catalan Legislative Decree 1/2005, dated 26 July, establishes the possibility that town planning may provide land reserved for public *institutional* housing aimed at meeting the temporary needs of groups of persons who require assistance and have emancipation-related needs. The latest Catalan development in this area is found in various precepts of the Right to Housing Law 18/2007, dated 28 December, especially Article 18, which establishes public institutional housing as the public-domain infrastructure that should accompany one of the public service provisions relating to housing indicated in Article 4.

Along the same lines, in Navarre, Article 53.7 of Regional Law 35/2002 on Land Use and Town Planning refers to the compul-

sory setting aside of land for public housing as a *supramunicipal endowment*. Basque Law 2/2006, dated 30 June, on land and town planning, goes even farther and creates a *compulsory minimum service* for municipalities with 20,000 or more inhabitants, which are required to zone land in their plans for “rotational accommodation” beyond a benchmark set by the law itself.

Galician Law 6/2008, dated 19 June, on Urgent Housing and Land Measures, which modifies Law 9/2002, follows the same line. As an “important novelty” according to its Preamble, the law introduces a regional network of institutional land reserved for public housing that completes the land reserves for protected housing in order to meet the housing needs of certain sectors of the population that do not even have the resources to gain access to ownership of protected housing”. Article 47, section 10 of this Law provides for the compulsory reserve of land in town planning in sectors of *zoned land* for residential use (predominant or not) in order to build publicly developed and owned housing. A specific study in the plan of the habitational needs of the population is required to set the specific buildable area.(3)

Catalan law, unlike other laws at the Autonomous Region level, does not require a compulsory land reserve benchmark for VDP (acronym for *Vivienda Dotacional Pública*, which translates as Institutional Public Housing), and, instead, refers to the temporary requirements and needs expressed by the town planning social report (Article 18.1). However, the absence of a benchmark does not mean that the Catalan law does not require the existence of VDP. Careful reading of Article 18.1 of the law reveals that the law does indeed require its existence, and only when the report expressly justifies the absence of needs to be served by VDP may the municipality refrain from making reserves in town planning for such purposes. It can easily be

deduced that what has just been noted is very different from stating that such reserves are not compulsory: they are, although the law does not quantify them, and allows for the possible exception that the report shows an absence of this need. Logically, moreover, the omission of reserves when they are actually needed (because the social report explicitly states it or says nothing against it) may be legally controlled as a violation of Article 18.1 of the Catalan law.

In our opinion, there is a lack of awareness of the paradigm shift rendered by the Catalan Right to Housing Law 18/2007 when it declares housing to be a public service, as it creates figures that are still incomprehensible for many (including a

large number of town planners) like that of the Institutional Public Housing, based on the idea of housing as a fixed asset rather than an investment asset, and where what matters is not the ownership of the infrastructure that serves to provide the benefit, which must always and in all cases be a public-domain asset, but rather the accommodation service being provided.

(1) on housing as a public service, see for example the general reflections in (VAQUER M, *La acción social*, Tirant Lo Blanch-IDP, 2002: 114, 174, 180) and more specific reflections in (PAREJA, M & PONCE, J & GARCÍA, L (2004): *Urbanisme i habitatge com a eines de desenvolupament sostenible*, Fundació Carles Pi i Sunyer, Barcelona, 2004: 118)

(2) Professor Bassols Coma adopted this view many years ago when he pointed out that: “the social orientation imposed by Article 47 of the Constitution regarding the enjoyment of housing transforms this sector into a true public service, which, although not provided under a monopolistic system, attributes the power to arrange and intervene in the entire sector involving the production and use of housing to the public powers” (BASSOLS, M. (1983): *Consideraciones sobre el Derecho a la vivienda en la Constitución española de 1978*, RDU, Madrid, 85)

(3) The preamble of the Galician law attributes to housing legislation the task of specifying the use and enjoyment of the housing built on such land, in all cases based on its consideration as public.