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INTERNATIONAL PROPERTY RIGHTS INDEX 2021

THE NEED TO REINFORCE PROPERTY RIGHTS OVER LAND IN SPAIN

CASE STUDY: INSTITUTO DE ESTUDIOS ECONÓMICOS, SPAIN

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INTRODUCTION

I. PROPERTY RIGHTS IN SPAIN

Property rights are recognized by the Spanish legal framework in Article 33 in its Constitution, within the Fundamental Rights and Duties, which states that “no one may be deprived of their rights and duties, except on justified grounds of public utility or social interest and with a proper compensation in accordance with the provisions of the law.” Therefore, all deprivation of property rights without the development of these requisites is unconstitutional.

For its part, the Charter of Fundamental Rights of the European Union states in Article 17 that “everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. That no one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for

by law, subject to fair compensation being paid in good time for their loss.”

In Spain, property rights are not shaped as absolute, but are subject to the public utility or social interest. In this respect, a significant part of both the Spanish State and Communitarian law deal with the clarification of public utility or social interest under the proportionality principle. The law clarifies that it is not enough for restricting the action of property rights based on social

interest or public utility principles, but also needs to be proportional, referring to a fair equilibrium criterion and a fair relation between the consequences of the restricting measures of property rights and the desired result.

Spain is a developed country in which property rights are subject to a high general preservation. Nevertheless, in the land market these rights are poorly preserved, and public intervention is especially abusive. The legal justification of the denial of property rights in land market can be found in Article 47 of the Spanish Constitution: “All Spaniards are entitled to enjoy decent and adequate housing. The public authorities shall promote the necessary conditions and shall 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 participate in the benefits accruing from the urban policies of the public bodies.”

By means of this justification, land regulation in Spain has established recurring policies that initially started limiting property rights on land, but now deny this essential entitlement. This occurs especially when planning policies not only regulate usage, but are also developed by compulsory purchase of agricultural land causing distance from original market principles, which integrate both localization and future economic income principles.

Interventionist policies are characterized by restrictive and thorough planning, which use expropriation as a development mechanism, simultaneously trying to deny market value (Lawson J. and H. Ruonavaara, 2019). On the contrary, liberalizing planning policy is characterized not only by the authorization of the possibility to develop and build according to the market's needs, but also by the recognition of the market value of land and the prohibition of expropriation processes as development plans. Thus, we must use a joint analysis of property rights with land use planning because both institutions are fully linked.

The requirements for cooperation among economic agents and the adequate exercise of business function and economic activity are welldefined property rights, covered by the applicable law, and freely transferable. Property rights make two apparently incompatible fields come to terms: competition and social cooperation (Cossaer and Wegge, 2013). This will translate to bigger economic growth, wealth generation, long-term welfare, stability, and social peace.

II. URBAN PLANNING AS REGULATION FOR COMPULSORY PURCHASE

One of the main threats to property rights are specific sectorial regulations under the justification of social interest or public utility. The problem goes beyond a formal analysis of the legal validation of regulatory framework itself, becoming necessary to also take into consideration the consequences of said regulation.

Furthermore, the need for excessive regulation must be limited, and the possibility to consider it as expropriation from an economic point of view, with the subsequent impact on justice, needs to be weighed. This would force an individual to withstand the weight of a burden that would befall to society as a whole (Eagle, 2013).





Against the standardized expropriation procedure, for which the Administration physically deprives a landowner of property rights partially or totally, indirect expropriation involves a factual expropriation through a regulatory change. In the least, this reduces the value of the property, sometimes leading to total elimination of that value, reaching a real regulatory expropriation for the ownership.

The expropriation process is an instrument used in all countries, but they are regulated along with property rights. On the one hand, they satisfy market "fair prices", compensating the affected individual in a sense that he or she does not have any economic loss; on the other hand, this limits expropriations to public activities in which they are totally necessary, such as infrastructure construction.

In the case of Spain, urban planning involves an indisputable case of expropriation regulation which empty property rights:

- a. forbidding the right to develop land and build
- b. allowing expropriations to be generally and indisputably used as land management systems, and
- c. performing expropriations at very low prices compared to market values, with the consequent disruption to property rights for affected owners.

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PROPERTY RIGHTS AND URBAN PLANNING IN SPAIN

I. THE INTERVENTIONIST TRADITION IN URBAN PLANNING IN SPAIN

The current interventionist culture for urban planning was born in Spain in the 1950's, in a context of a full autocracy and a non-democratic society with an economic model which granted all kinds of privileges and powers to public intervention. Ironically, the shortage of supply was, precisely, a product of excessive interventions and errors from a totally mistaken approach. This approach has served as a justification to intensify public intervention gradually and continuously, until reaching a situation of emptiness of essential property rights content on urban planning. In practice, this produces planning law to be of a public nature, called administrative right. The same does not apply to Anglo-Saxon countries, where this law is considered as private, that is, part of civil rights.

An exemption to this approach was the liberalizing law of land market. Passed in 1998, this reform had reasonable arguments such as the only value of land being its market value. Another is the right for individual landowners whose properties were located in plots defined as ideal for development to transform their land to urban use, conducting any investment needed to this purpose. This approach establishes the right to firstly urbanize and secondly build in a plot of land, which is an intrinsic part of ownership rights over that land. Public interven-

tion regulates the exercise of this right according to general interest criteria.

This reform entailed a disruption with the previous interventionist approach, which linked the decision, and right, to firstly develop and secondly to build, to public intervention. The confusion was that it mixed the regulation of an exercise of a right with the fact that this right was ultimately initiated by the biased will of an administrative land expert, which is intrinsically wrong. This expert did not make the decision based on unbiased conditions of whether urban land expansion had to take place in one area or another, but simply recognized their existence. As a matter of fact, if this process were as simple, there would never be land shortage, since the solution would simply be an unlimited increase in the number of urban experts.

The main problem was that this liberalizing state law had very limited impact due to the fact that implementation collided with plans of town Councils and Autonomous Communities. These institutions were in favor of keeping their absolute and discretionary powers over the land market, rather than liberalizing it. Consequently, this approach was not able to solve land shortage problems.

The paradox is that, instead of taking a deeper look into the liberalizing solution proposed, interventionism was intensified due to a bigger public intervention through the passing of the 2007 regulatory framework, which is still enforced and constitutes the main focus of this case study.

The current Spanish planning model is, apart from restrictive, based on the assumption that the possibility to urbanize or build depends on the arbitrary decision of the corresponding urban planner agent, regardless of objective circumstances. This characteristic produces corruption and influence peddling, as well as market inefficiencies.

Strict zoning established by actual law artificially reduces land supply, making it a scarce resource. The great enhancement of the Law of 1998 relies on the definition of urban land, which stated the conditions necessary for a plot of land to be considered as urban or rural, theoretically reducing the discretion ability of Town Councils. These institutions did not have to decide where land development could take place, but rather justify in a theoretically unbiased decision where it could not be materialized. This ruling had to be based on *"landscape, historical, archeological, scientific, environmental, agricultural, forestall, livestock or natural riches values"*.

The change in framework meant that the subject to be justified were the reasons not to develop land, instead of the ones to do so. Although this may look similar, it was not. It may look clear and indisputable that certain land can never be developed — for instance a natural park — and that a neighboring area next to urban land inevitably had to be developed. However, most land is not part of these categories. With

the previous framework they were subject to prohibition, but with the new modification they were allowed to be developed and built if they complied with certain conditions. This is the type referred to as developable land. As a matter of fact, if the Administration did not take part in the process, owners could directly promote non-developable land transformation and urge relevant agents approve corresponding development planning.

This first liberalizing step only survived until 2003, when local administrations regained the temporarily lost ability to define discretionary non-developable common land. In other words, they re-gained the ability to exclude land from development projects whose main reason was not agricultural — the old non-developable classification of special protection. Instead, they responded to exclusively biased and subjective criteria from the land expert who might consider the criteria inadequate for urban development.

The law that regulates urban planning, still in force, was passed in 2007. This law aimed for a new step in this wrongful plan with rigid and determinist zoning. It ignored the developable classification and dualized land into two categories: rural and developable land. This last category is especially restrictive as it only considered as developable land those whose situation was *"legally and effectively integrated in the dotation network and own services for the population nucleus"*. This law consequently considers the remaining land as rural, therefore with limited interference capacity in the market. Current regulatory framework points out, *"Urban planning cannot be funded on an indiscriminate classification, but rather in a responsible classification of the developable land needed to meet economic and social needs"*. As a consequence, the justifi-

cation to be made inside the public discretionary environment is the classification as non-developable land, not the exclusion as rural for a plot of land that potentially and objectively should be classified as developable under the propositions of the preamble: *"Land policy have to respond to the requirements of a sustainable development, minimizing the impact of growth and taking a chance on regeneration in the existing cities"*.

From then until now, rural land has been the prevailing figure, with increasing importance. This increase of urban land has been intensified

II. PROPERTY RIGHTS AND URBAN PLANNING INITIATIVE

In the previous interventionist Spanish urban planning model, private initiative was the most predominant form of effort. In that framework, the totality of costs and planning burdens were supported equally among landowners, while the remaining developable lots were equally distributed. It is the prevailing model among developed countries with high property rights protection, for instance, Germany or Netherlands. This model is also considered the most efficient with regard to public sector costs and the fairest in terms of costs and benefits redistribution (Almeida J. et al, 2018).

Traditionally, public initiative expropriation-based systems were subsidiaries to private initiative, the latter being the most generalized compensation system, with costs and benefits equally distributed. The problem has become that private initiative is currently being banned without any clear motivation, and urbanization is being forced to operate through expropriation.

without the need for justification and rationality with respect to the unbiased circumstances of new developable land. The last has limited the new developable land supply in the short term and urban land in the medium term. As a matter of fact, new restrictions for the classification have been introduced, which have both expanded and drove up transformation. For instance, urban instruments are subject to environmental evaluation and infrastructure usage evaluations. These new restrictions have given public administrations the power to ban new developments.

The generalization of the expropriation system has multiple, perverse implications, but this procedure is not considered the standardized form in any developed countries. Not only does it repress private initiative, but expropriation also excludes and furthermore, heavily attacks, horizontal equity. Expropriated owners contribute to the maintenance of public burdens in a bigger proportion than the rest of the citizens or owners of non-expropriated lands. Valuation systems are now so far from reality that theory defines them as "confiscatory expropriations".

A specific problem of the noncompliance of land property rights involves a proliferation of supported risk by land operators, who have the perverse effect of driving up price and driving down supply of developable lots. Jurisdiction insecurities that come with the denial of property rights and the provision of the inheritance of the buildable characteristic, add high levels of uncertainty to the already high-risk activity of real estate. This denies the attainment of credit to finance the creation of new developable land.

To give an appearance of trying to alleviate this unfair circumstance, in which the decision of the planner bans an individual landowner to be part of the development process by being a victim of an expropriation execution system, the law recognizes the owner with a compensation to prevent the right to participate in the development. In practice, compensation would represent a 15% to 20% of the same market value already developed. This compensation is an institutionalization of the fault of recognition of property rights on land in Spain.

The right to build is an intrinsic part of property rights. With that in mind, although planning can have a regulative effect on property, it must not be mistaken for the attributes of that property. Property is a natural right previous to the moment in which society establishes the rules for building. As a matter of fact, the Spanish Constitutional Court's judgment in 1997 supported this thesis with the recognition that the essential content of the regulation of property corresponds to the State. Furthermore, in this context, the economic liberalization process, understood as a bigger guarantee

of free market, can be nationally implemented. As long as they constitute a basic content for the exercise of property rights, they cannot be breached by regional legislation. The exception to the above rule are cases in which a region considers that the content of property rights must be sheltered above the basic state level, for example, exempting transfers from charges in the transformation of developable land, but never contrarily.

Closely related to expropriation, the law has developed the perverse character of the property developer. This agent is awarded the expropriator faculty on public-private collaboration models, replacing the initial landowner to develop to its advantage. This faculty deprives the possibility for the owner, against his or her will, to join the urbanization process, striking against business freedom and restricting competition. The theoretical justification for the existence of this agent is to supplement possible owner absenteeism, which, coherently, would bring the expropriation system to be subsidiary, but is now located in an equal position to the rest.

Owner absenteeism does not exist. When the development of a plot of land is left to owner initiative through a compensation board, and landowners do not join in, they would be expropriated by the board. The frequent procedure is usually that the whole board is willing to join the urbanization process; and if not, a willing company, usually a property developer, would be disposed of the land. The property developer is a legal instrument whose reason is no other than trying to transfer (under public power tutelage) rents from initial owners who acquired their plots in the free market, to other agents, bidders, and urban developers, with the consequent disruption of business freedom and property rights.

The main purpose of the property developer is to capitalize the obtained benefit from taking advantage of coercive prerogatives which are discretionally conceded by the Administration — for instance, the possibility to pay landowners a much lower price compared to the market. This speculative action would not be wrong if it were done transparently and in a competitive market, but in this regulatory framework is totally unac-

ceptable. If a business invests in gross land in expansion zones that have a long-term maturity period, at the moment of maximum return, the regulation allows a third party to skim from the business without supporting any risk. As a matter of fact, Spanish regions where these systems have been widely introduced, such as Valencia or Castilla La Mancha, were ones with more land corruption and developed a bigger real estate crisis in 2009.

Previously, the Constitutional Court recognized that essential property right regulation corresponded to Central Administration, not to Territorial Administration. In fact, it validated the Central Administration to *"Define the basic concept of property rights in accordance with its social function, regulating the conditions that assure the exercise equality essence in all national territory"*.

Despite having these precedents, state regulation misuses their powers by having as the main goal the non-recognition of property rights through a system that legitimizes public expropriator intervention through artificial valuations



far from market prices. The rule forgets that the right to build is a configurative, intrinsic, and indissoluble part of the property right, and therefore cannot be avoided without prejudice for urban planning to regulate it. This is a very different question than the idea of the latter being the party who assigns it.

To this effect, the law establishes that *"when land belongs to a rural category to the effects of this law"*, condition applicable to all land except the urban type according to their restrictive criteria, *"the plots will be valued by means of annual or potential income, whichever is greater, obtained from the exploit according to their state in the moment the valuation should be taken into consideration"*.

The preamble of the new land law points out that *"without considering land expectations, location weighs in the valuation of this land, position being a relevant factor in the traditional formation of the land price"*. The problem is that this premise is a false solution because it establishes that *"the value of rural land obtained under these premises could be upwardly corrected until a maximum of the double according to unbiased location factors, such as accessibility to population nucleus or economic activity centers"*.

Land that borders any land development would then be valued at most for only double of its capitalization of rural income value, which implies a negation of the majority of its value. The Spanish Supreme Court voided this limitation and now recognizes the whole of the location earning in rural land, but top to double of the value remains a psychological anchor, despite not being legal anymore, which limits this circumstance.

Regulation also affects urban land because it artificially splits the market through the incom-

patibility route of different usage of the approved by the plan itself. Said usage does not compete among themselves for land usage. The consequent upper price relation from usage with a bigger imbalance between expected gross supply and demand, and the possibility that, simultaneously, due to forecast errors, results in the possibility of an excess of land for a certain usage and a shortage of it for another.

The truth is that, in principle, modification possibilities in usage are always positive by connecting each other according to the alterations of relative principles. Because of that, usage limitation, whose possible technical justification mostly does not compensate for disruptions introduced to competition in different land plots, should be relaxed. This gives way to ease modifications and the possibility to choose in the moment of building between different alternative usage options, especially in developable land.

It seems reasonable that a particularly annoying industry should not be located in an eminently residential area; but in other areas where there are already industries to which the concentration of this type of activity not only does no harm, but may even benefit them by generating external economies creates positive conglomeration.

Equally reasonable is that certain tertiary usages — housing or commercial — can coexist in the same plots and evolve through time according to social demand without intervention, different from the requirements of the minimum standards for each usage — for instance, garage allocation and general services.

The ultimate motivation of artificial valuations stems from Administrations' desire to see their own expropriation costs reduced. But it is forgot-

ten that this happens at the expense of expropriated citizens who contribute to the maintenance of public burdens in a bigger proportion than the rest. This situation could be avoided if these acts were financed by general budgets. Ultimately, when a legislator tries to fix administrative prices below market value, it is implicitly recognizing that her or his interventionism reduces land supply and increases price. Instead of aiming for the general solution of increasing supply, preferred partial solutions ease access to certain collectives at the expense of the rest: expropriated landowners, or housing owners whose prices have been increased due to inadequate intervention, among others.

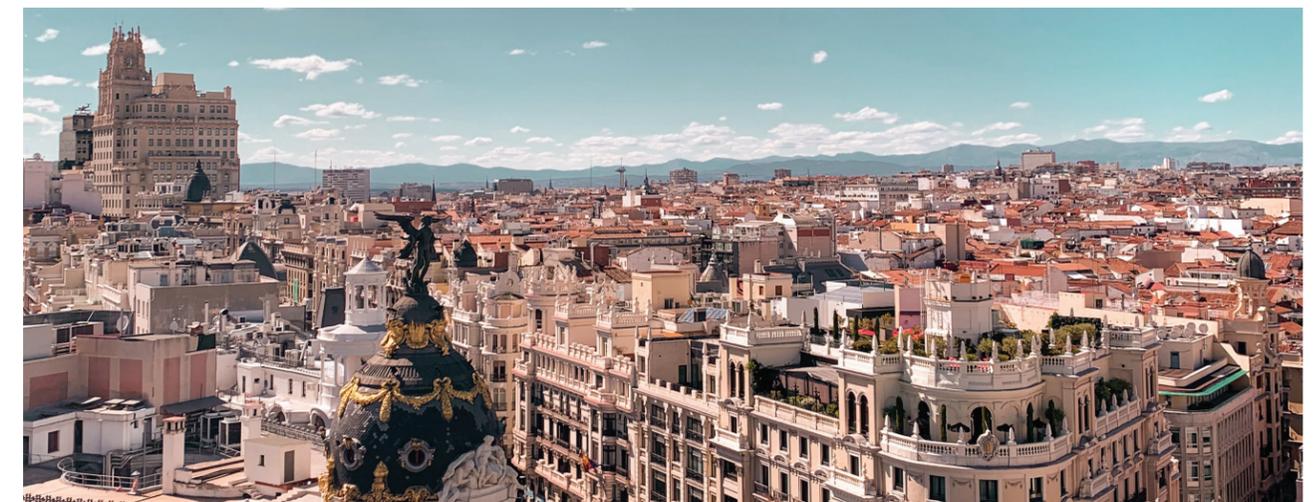
The attempt to not recognize any value of developable land relying on its own execution through the expropriation system is against vertical equity. Undevelopable land, which in principle would never be developable, can never be equally valued as developable urban land, whose objective conditions have been considered as such in the planning..

When land is objectively undevelopable, and, as a consequence, the planner excludes it from the rating, she or he cannot expropriate it at its

own interest as rural land. It would become a dangerous misuse of power in which objective conditions that rule the planner decisions are combined with subjective conditions from the landowner, a context in which corruption and arbitrariness can appear.

Desired or not, the only fair and acceptable price (in a market economy with fair benefit and cost distribution) to assign value to a property is the opportunity cost, that is, its best alternate use, which for land is naturally destined to be urban. This makes real market value and integrates urban expectations in a sense that they are aligned with the worst and most residual alternatives for the use of said land.

Market value is assigned in practice with residual method, which is an assessment of market value of the best constructive use that could be developed in the future minus the necessary cost for its development. As a consequence, this value integrates location economies resulting from its situation and distance in relation to the already existing infrastructure and urban developments. (Ryan-Collins J. et al, 2017)



MAIN COSTS OF THE SPANISH INTERVENTIONIST URBAN PLANNING MODEL

I. THE EFFECTS OF INTERVENTIONISM ON COMPETITION

Public intervention in urban planning, as a process of physical and jurisdictional land production, is conceptually justified to avoid possible market failures resulting from free play of actions of private agents: negative externalities (which can emerge in the urban process or be derived from certain usages), the potential substandard of public equipment, the existence of economies of scale, and externalities in the development of certain infrastructures (urban streets or infrastructure connections). The practical problem is that, although the market does not always work efficiently, public intervention does not either. Furthermore, international experience shows that where public intervention is more intrusive, price of new and used properties are higher, build-up densities are increased, and new promotion rhythm is slowed down.

There are multiple negative impacts of competition limitation, like shortage of the real estate product. Long-term elasticity of the supply of new homes in relation to price levels can aid as an indicator of the level of disruption that urbanist regulation adds in the real estate market. Between 1989 and 2016, that elasticity was 0,5 in Spain, compared to an average of 0,6 in the Organisation for Economic Cooperation and Development (OECD) countries, with multiple

developed economies such as United States, Canada, Denmark, Finland, or Switzerland with elasticities higher than 1. (Geng N, 2018). Supply restrictions result in an enrichment of property in relation to income (Cavalleri M.C. et al, 2019).

In 1993, the Spanish Tribunal for the Protection of Competition stated: *"In the Spanish case, the urban authority has tried to plan with excessive diligence, bringing the considered necessary land to the market and deciding in detail the usage that this could have. This intervention, which theoretically tried to add rationality, has only managed to free plan arbitrage, segment the land market and generate scarcity"*.

Restrictive regulations on land usage are one of the main explanations in the enrichment of real estate prices (OECD, 2017). When real estate demand increases, limitation to the growth of urban land prevents meeting this demand with a greater flow of construction of new homes. In this regard, it has been pointed out that one of the most needed urban policies to favor accessibility to housing is the "liberalization of those components of urban regulation that makes difficult the availability of housing in tensioned areas". (Bank of Spain, 2020). Improvements by different institutions have been suggested to ease economic normalization regarding the

COVID crisis. It has been pointed out that "easing land-use restriction is a way of facilitating the recovery of homebuilding and better aligning the supply of housing with evolving demand and the needs of society". (OECD, 2020).

This means that, given a demand increase, when there is a shortage of supply as a consequence of regulation, the pricing adjustment is bigger than in countries that facilitate a better quantity supply adjustment when demand elasticity increases. In other words, restrictive land regulations cause an increase of the land supply slope, reducing its elasticity in relation to the land market with a lower level of intervention. (CNMC, 2013).

Planning and intervention introduce an important delay between the moment land valuation is qualified as developable urban land until it becomes urban. As the Spanish Tribunal for the Protection of Competition stated in 1993: *"Under a ruling system (without prejudice of how strict this is), timing is decided by economic operators; under a discretionary system, timing is imposed by the Administration and the idle time that stock exchange markets have to withstand prior to its usage, before being properly used, due to the complexity of the bureaucracy system have to be solved by different public bodies that, both, act slowly"*.

In Spain, the average transformation process of a plot of urban land is rarely lower than five years and can easily be ten years. This time obstructs supply adaptation to changing demand, enriches land cost in the sense that heavy financial burdens have to be undertaken, is a source of instability, and can sometimes lead to delocalization of economic activities and even citizens.

This transformation process is often enriched as a consequence of its usage to finance Public, regional and local Treasury. In this respect, any private urban action in Spain is forced to freely give up a minimum of 10 to 20% of the already urbanized build-up rights to the Administration. As land supply shortage is caused by oligopoly planning and is facing an inelastic demand, urban burdens are translated, mostly, to the individual purchaser; buyers and tenants of new houses finance public burdens in a bigger proportion than the rest of the citizens.

Among interventionist culture and practices, frequently usage of a procedure called "atypical urban planning agreements" can be found. In these agreements, the Administration commits to modify urban qualification, usage, and intensity in certain land plots in exchange for compensation based on transfers or bigger risk taking from the provisioned levels in the general regulations. The final consequence is an increase in the product subordinating urban planning, which becomes the excuse for regulation. Fiscal interest is truly the motivation of that regulation.

Not only is regulation excess the problem — which could be revised modifying it — but interventionist models produce an internal dynamic that, by reducing free competition, generate oligopolist revenues for the different agents which participate in the mentioned process. Specifically, city councils and Autonomous Communities are the main supporters of this intervention, along with free-riders, who, taking advantage of the possible political and bureaucrats corruption, base their activity on influencing the development, modification and knowledge of urban regulation, with the consequent loss of social wealth.

Linked to property rights, it is important to point out that “to undervalue or overvalue the land can be a powerful tool of coercion and subject to bribery” (Transparency International, 2018). Thus, it is not strange that there have been numerous corruption cases linked to regulation in Spain. To this respect, it has been estimated that between 2000 and 2010, Spanish detected

corruption has affected 8,3% of the municipalities (Jerez L.M. et al, 2012) with some Autonomous Communities specially affected such as Murcia (57,8% of the municipalities), Canary Islands (39,8%), or Balearic Islands (35,8%). It is understood that detected corruption is only a fraction of the total corruption, which, by definition, can happen without notice.

II. URBAN PRESSURE AND LEGAL FRAMEWORK AS DETERMINANTS OF HOUSING PRICE EVOLUTION

An analysis of the evolution of urban development between 2000 and 2008 shows that the European Union experienced relatively homogeneous growth, between 10,1% in France and 6,5% in Greece, with an average of 8,0%, according to OECD¹. Simultaneously, the population evolution was unequal with a 2,8% growth for the average of the European Union. Interestingly, growth was negative in Germany at -0,1%, while Spain experienced an outstanding increase of 14,3%.

This strong increase of the Spanish population, significantly greater than the increase in built up area which was 8,7% in the studied time span, resulted in heavy development pressure. This was even more enhanced due to the increase of second house supply caused by tourism, both national but largely foreign. Figure 1 represents the difference among population and built-up area change, which is greater in Spain than in any other country studied. In fact, Spain is the only country with a positive differ-

ence, 4,7 points against the average of -5,3 in the European Union.

The comparison of Figures 1 and 2 shows a clear relation between the increase in development pressure and housing prices. In Spain, because the increase in population was not matched by the change in built up area, there was a resulting affect on urban pressure. This explains why Spanish housing prices experienced a bigger increase. Due to the interventionist character of the Spanish development framework, the increase in demand was not matched by an increase in supply, so the adjustment had to be produced with an increase in prices.

At the other extreme we find countries like Germany or Portugal, with less urban pressure, or countries like Netherlands and Germany who have developed models with higher preference for private initiative and property rights protection. Under those characteristics, demand increases were matched with an

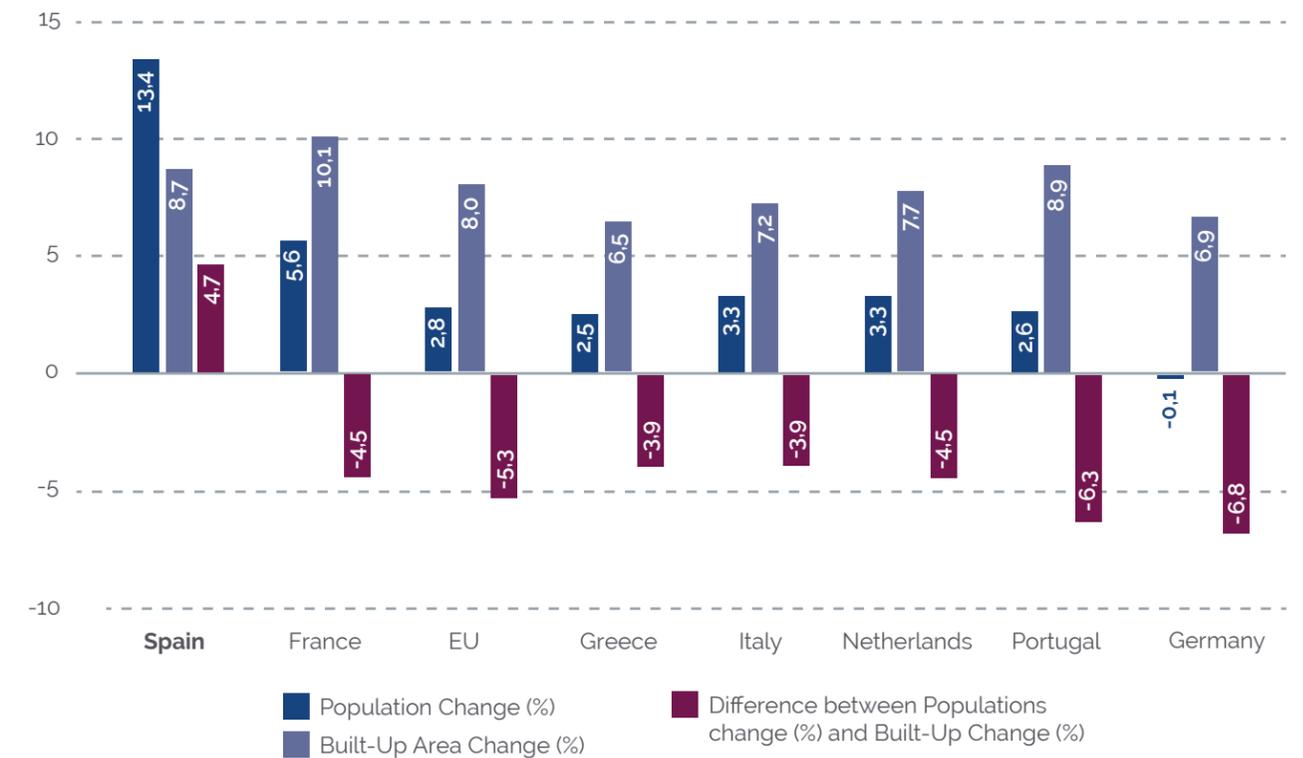
increase in housing construction resulting in a moderate increase of prices.

The comparison between France and Netherlands, both countries having similar development pressure levels, with a difference of -4,5 points between the increase in population and the built-up area, exemplify that changes in prices also influences regulatory framework. Evidence shows that France, with a more interventionist framework, results in a bigger

increase of prices than Netherlands, a model characterized by free competition and respect for property rights.

Ultimately, the Figures show the correlation between bigger development pressure and price increase. But they also reflect the relationship between the interventionist character of the framework and the limitation of competition, causing an imbalance between supply and demand resulting in bigger price increase.

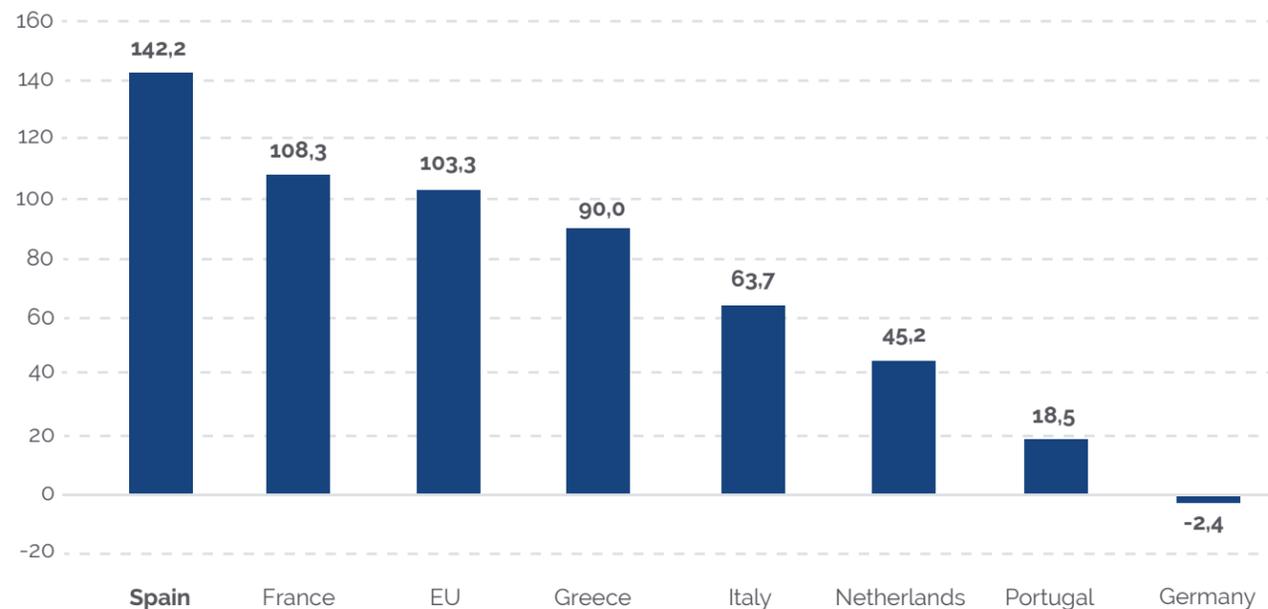
FIGURE 1. POPULATION AND BUILT-UP AREA CHANGE BETWEEN 2000 AND 2008



Source: Instituto de Estudios Económicos from OECD data (Built-up area and population)

1. The OECD collects information on the “built up area” for the years 2000 and 2014. The data for 2008 have been obtained as an interpolation between these results.

FIGURE 2. HOUSING PRICES INDEX CHANGE (%)



Source: Instituto de Estudios Económicos from Eurostat (house price index)

In more detail, the Spanish case shows that urban development errors enhanced property pressure, which was already relevant compared to other countries. The errors also caused an even bigger price increase during the expansive estate cycle, reaching “bubble” levels with the consequent decrease afterwards.

Between 2000 and 2008 the population increase was much bigger in Spain. Furthermore, as seen in the Figures, this increase of the potential housing demand, a consequence of population increase, was not matched with an even similar increase in the supply of built-up area. Spain is the only country in which the population change is bigger than the change in built up area, the latter being similar to the European Union average and even lower compared to economies such as France or Portugal.

These imbalances between demand and supply produced an excessive and unsustainable increase in prices in a relative short time span, which, after the 2008 crisis, resulted in a deep property crisis. In fact, the intensity of the crisis of the last decade was caused, to a larger extent, by malfunctions of the real estate market and negative impacts on the solvency of the financial system. The 2013 annual report by SAREB (Asset management company for the Spanish government funded after the 2008 crisis) stated that 27% of their portfolio

composed of 11.000 assets were land assets (around 3.000). This situation revealed that development planning errors resulted in stock emptiness in areas in which there was no need, with growth in areas in which there was no real demand. On the other hand, the imbalances and urban pressure in other areas were even bigger than the available data reflect because land shortage and supply restrictions did not answer demographic strength and resulted in increased housing prices.

4

ECONOMIC POLICY RECOMMENDATIONS TO GUARANTEE PROPERTY RIGHTS

Property rights are not an exclusively jurisdictional concept; they are also an economic concept. Full property rights only exist when public intervention draws from the premise of considering market value of properties, not only in expropriator processes, but also in retributive or price intervention processes.

Consequently, fixing regulatory interventions — compensatory price controls based on administrative or regulatory values that do not consider market value, which is the natural configuration of property rights — is not justified. In this sense, we present certain good practice proposals from the perspective of the natural link between property rights and market value.

Real market value must always be recognized in the fixture of fair prices, expropriations, or asset compensations. The real market value of land assets must have, at least, the repo-

sition cost, in another words, the cost of the necessary resources in that moment to go back to replace or reacquire an equivalent asset. For instance, the estimated value of the capital function of a country in its national accounts or its balance of payments is not performed under a historical value of the net value of the capitals, but rather valued at the reposition cost updating those accounts.

The best way to determine the market value of an asset is through the valuation of the opportunity cost: its best alternative use. In this sense, it can be contrary to property rights. For example, the procedures of urban valuation through which a developable urban land is pretended to be valued as a rural land. The explanation is clear: land that is aimed to be built and developed cannot be expropriated to its worst alternative use, the rural one.

The established value for an asset must be independent from the returns, positive or negative, that could have yielded in the past, except as a proxy for what could be the future returns of the property itself. These assets have to be valued, or their retribution must be established, always through market conditions: in other words, through the present value of the future flow for its economic function.

The need to recognize property rights requires a change in urban policy more open to the transformation of new developable urban land. This policy must be constrained to establish lands for general infrastructure and areas to be protected. This limitation of lands, not allowed to be urban developed, must be made beforehand and in a rational and justified way. The rest of land has to be considered as developable urban land.

The actual attributive plan (the one who is conceded the attribution to urbanize and build) should be substituted for an alternative focus of structural planning relative to the general system: infrastructure network and free spaces. Developable urban land should have general and flexible ruling referring to their possible densities, usage, and capacity to build. The goal for this ruling must be a guarantee for competition among different locations to the urban development of land.

To cheapen transformation costs it is a necessary condition that urbanism stops being the main vehicle to finance local treasuries, which separates its true end with land regulation. This is compatible with new land developments being able to finance partly or totally necessary infrastructures.

5

CONCLUSIONS

Relentless and wrongful land intervention in Spain has severely damaged land market functioning with the consequent enrichment and shortage of real estate product. In fact, excessive intervention and administrative discretion, with its corruption consequences, valuation errors, and arbitrariness, must make way to a freedom for economic agents. As empiric experiences have widely proved, and nobody with some solvency doubts, the market is a better resource distributor than planification.

Similar to other markets, urbanism should add the few economic principles that can guarantee, without any doubts, correct functioning for the land market. These are liberalization of the planning process, the increase of land supply, cost reduction, and transformation schedules. This will re-gain business freedom and private initiative in the interest of benefiting from the virtues of competition and respect for property rights as a fundamental institution for the proper functioning of a modern economy.

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