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Sergio Nasarre-Aznar, Elga Molina-Roig,

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A legal perspective of current challenges of the Spanish residential rental market

Sergio Nasarre-Aznar and Elga Molina-Roig

UNESCO Housing Chair, University Rovira i Virgili, Tarragona, Spain

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Abstract

Purpose – This paper aims to explain the main difficulties in the Spanish residential rental market becoming a true alternative to home ownership.

Design/methodology/approach – Currently, the Spanish rental market only meets temporary housing needs; it is very atomized and lacks professionalism. It does not provide an adequate legal framework to fulfil the parties' aspirations (i.e. stability, affordability and flexibility for tenants; profitability, security and guarantees to landlords). The analysis of this proposition and the resulting proposal are based on six years of research, which started with the TENLAW European project.

Findings – Overcoming these constraints is essential to double the rate of residential leases in Spain and get closer to the European average, thus achieving a true diversification of housing tenures and avoiding future housing bubbles.

Practical implications – The paper makes a series of recommendations to legislators and policymakers to draft an adequate legal framework aimed at increasing the housing rental market share. This is based on the experience of mature tenancy markets in Europe, such as the German, Swiss and Austrian ones.

Social implications – The new proposed legal framework will help to transform the tenancy model in Spain into a functional one, making it more stable, affordable and flexible, while increasing safety and profitability for landlords. The model is also applicable, on a more general level, to all Mediterranean European countries.

Originality/value – Rethinking the regulation of tenancies, in a context of housing crisis and unaffordability (still a reality in many European and worldwide countries) has valuable potential for making this type of tenure more popular and for avoiding future housing bubbles.

Keywords Homeownership, Leases, Housing bubble, Real estate investment trusts, Rent control, Tenancies

Paper type Research paper

1. The current need for a well-functioning housing rental sector in Spain

The Spanish residential rental market has not always been a residual market as it is today. In 2015, it represents only 15.6 per cent of the market, a long way from the European average of 29.6 per cent (EUROSTAT, 2017) and even further away from countries with the highest housing rental sector in Europe, i.e. Switzerland (56 per cent) (EUROSTAT, 2017), Germany (57 per cent) and Austria (40 per cent) (CECODHAS-USH-Dexia, 2008).

Paragraph 33 of the United Nations Habitat New Urban Agenda, October 2016, states a commitment:

[. . .] to stimulate the supply of a variety of adequate housing options that are safe, affordable, and accessible for members of different income groups of society, taking into consideration socio-economic and cultural integration of marginalized communities, homeless persons, and those in vulnerable situations, preventing segregation.

This necessarily includes the existence of a true variety of housing tenures to prevent new housing bubbles and ensure housing affordability. This idea was also raised as a mechanism to prevent evictions and homelessness in Europe in March 2016 (Kenna *et al.*, 2016):

It is important for a balanced housing system that development and availability includes sufficient owner-occupied, private rented, intermediate tenures (shared ownership-like tenures, cooperatives and community land trusts) and social housing schemes. It is suggested that the EU and its Member States promote a continuum of tenures, and that the potential role of intermediate tenures in preventing household over-indebtedness, enhancing flexibility and housing system stability be explored.

Spain is a West European country with the smallest rental sector (see the evolution at Point 2) and there is an increasing need for the Spanish rental market to work as a true alternative to homeownership to avoid further housing bubbles. The existence of a single viable and predominant type of housing tenure leads to bubbles and deeper crisis[1]. In fact, the stagnation of mortgage lending since 2007 and the high unemployment rate (around 20 per cent) have forced many households to rent their homes, causing a high increase of rents in the biggest cities[2]. This is further proof that providing a single viable/attractive housing tenure leads to undesirable results. Below (see Point 3) we address the main barriers to the residential renting market becoming a real alternative to homeownership in Spain, as it is in the case of countries with highest rental rates. It is, in fact, a scarce market that is composed mainly of homes in formation or with temporary housing needs and not by households with stable living projects. In addition, it is a very atomized market and lacks professionalism (see Point 4): most landlords are private individuals looking for the highest profitability for their homes, sometimes to complement their meagre income or retirement pensions[3].

Meanwhile, the legal framework of residential leases, in existence since 1994, has not helped to improve this situation (see Point 5), nor has the reform of 2013, which further liberalized the lease contract. This is evidenced by the fact that, while in 1991 there were 15 per cent of households living under a lease, in 2013, there were 15.4 per cent and, in 2015, 15.6 per cent. We advocate for a profound reform of the legal framework that should offer guarantees to facilitate the doubling of the rental rate to bring Spain closer to the European average, thus having at least a true alternative housing tenure to avoid further housing bubbles. This reform has started to some degree in Catalan civil law (see Point 6).

2. The evolution of the Spanish private rental sector

The form of housing tenures in Spain has varied considerably in the past 60 years. Although the most common one in 1950 was tenancy, representing 51.4 per cent of the total number of households, this regime reached its lowest rate in 2006 with only 10 per cent of the total housing stock, which is reported in Table I.

This evolution towards a regime of homeownership in Spain, with regard to main family dwellings, took place for a number of reasons (Nasarre *et al.*, 2014). First, the low (or even lack of) institutional and tax incentives for tenancies. Second, the low mortgage interest rates in the past decade and the wide expectations of an increase in the value of real estate. These factors were coupled with the context of a relatively weak Welfare State[4], in which homeownership is perceived as a “savings” instrument for periods of need. Third, the

decline in the supply of rental housing (both in the public and private sectors) was caused by its historical relatively low profitability, the risk of default by the tenant and the poor legal protection that landlords had experienced in the past (Borgia Sorrosal, 2010).

The most recent data on the land tenure distribution in the Spanish housing market are collected by the Survey on Living Conditions (ECV, *Encuesta de Condiciones de Vida*) from the *Spanish Institute of Statistics* (INE). According to data published in 2015, which we set out in Table I, 77.3 per cent of Spanish households are homeowners, while 15.6 per cent are tenants.

Consequently, it can be perceived that there is not a real “menu” of different housing tenures available in Spain, as there are basically only two available regimes (leaving apart other informal or cost-free tenures – 7.1 per cent – such as licenses or widows’ usufructs). Instead, the concentration is on homeownership, a pattern, which has only been altered in Catalonia (north-East region of Spain), thanks to a new legal framework for intermediate tenures: the shared ownership and the temporal ownership (Garcia Teruel *et al.*, 2015).

Despite the clear prevalence of homeownership, tenancies have increased slightly in recent years, but not because this is an appealing form of housing tenure[5], rather because of the negative externalities of the economic crisis: in particular, the loss of the primary residence of homeowners as a result of, for example, evictions and divorces; the constraint of mortgage loans because of banking liquidity crisis; and the rise of unemployment[6].

This is coupled with the fact that since 2012, renting was already more expensive than home buying (as it had been since 2007). In fact, in 2017, only in three Spanish regions (*provincias*; Orense, San Sebastián and Lugo) of the 50, is renting a home more affordable than buying[7]. One consequence of these difficulties of taking and paying off a mortgage loan and expensive rents is that Spain is the second country in Europe where young people become independent later from their family unit because of a lack of affordable housing prices (EUROSTAT, 2009), which is going to cause mid-term structural consequences to the country.

Nevertheless, the 2007 financial and real estate crisis opened the way to a new situation in which homeownership has lost much of its appeal because of the economic implications: restrictions on obtaining a bank loan, the end of tax relief for the purchase of a dwelling in 2011 and a market downturn where expectations of revaluation are lost[8]. Indebtedness, arrears and foreclosures[9] make families rethink the benefits of home ownership in terms of stability, security and profitable investment. In addition, the imminent transposition of European Union Directive 2014/17 into Spanish law in 2017, constraining the grant of mortgage loans to only those that will be able to repay them (art. 18 Directive), might prevent many Spanish households from ever becoming homeowners (at least in the property, the area or the city where they want to live). These elements revitalize the interest in tenancies, as, theoretically, a more feasible way to have access to a dwelling in a context of instability (Aramburu Otazu, 2010).

(%)	1950	1960	1970	1981	1991	2004	2006	2008	2010	2012	2013	2014	2015
Ownership	46.9	50.6	63.4	73.1	78.1	79.5	79.5	79.6	79.4	79.2	77.7	78	77.3
Tenancy	51.4	42.5	30	20.8	15	13.9	13.5	14.2	14.5	14.5	15.4	14.9	15.6
Other uses	2.6	6.9	6.5	6.1	7.7	6.7	7	6.1	6.1	6.3	6.9	7	7.1

Table I.
Evolution of tenure’s
percentage in Spain
(1950-2015)

Sources: Borgia Sorrosal (2010); Encuesta sobre Condiciones de Vida (ECV) of the Instituto Nacional de Estadística (INE) (2017)

Finally, the Spanish tenancy market distinguishes between private sector housing and housing with a public task. In the latter, housing for tenancy purposes is very residual (barely 2 per cent of the total housing stock), while the European average reaches 9 per cent (EUROSTAT, 2010a). Owing to the scarcity of rented social housing in Spain, it is usual that the private rental sector works as a way to access housing for vulnerable groups in risk of residential exclusion (Pareja-Eastaway and Sánchez-Martínez, 2010). Thus, the private rental market works as a residual type of housing tenure, both for those who cannot afford buying a property and those who do not have an access to social housing.

Therefore, it can be concluded that the slight increase in the rental sector since 2007 is mainly due to a forced option for many families because of the bad economic situation, the lack of alternative attractive housing tenures (Nasarre Aznar, 2014) and the rental black market (which represented 41.4 per cent of the total in 2015) (El Mundo, 2016). This, in turn, affects the transparency of the rental sector and the quality of rented properties and, therefore, worsens the situation of tenants (Nasarre Aznar and García Teruel, 2016).

3. A mere temporary or frictional demand

The Spanish tenancy market is still associated with a temporary or frictional demand for occupational, personal or family reasons: a person who chooses this market does so because he/she is opting for a temporary strategy before accessing home ownership for as long as a job and/or family stability and a sufficient/stable income are not achieved (Aramburu Otazu, 2010).

This kind of cyclical demand occurs mainly in the middle class and among young people, who believe that the purchase of dwellings requires onerous requirements in the short to medium term given the current situation. In fact, only 41.7 per cent of Spaniards between 18 and 30 years old want to become tenants. In addition, while the vast majority of tenants live under this tenure for labour or economic reasons, only 40 per cent do so because of the flexibility that tenancies offer (the possibility of moving home because of a bigger family, labour mobility, variations in economic situation, etc.). Spaniards between 35 and 55 years old prefer buying, but homeownership loses interest in the group of more than 55 years old. In fact, a high percentage of tenants of this age group are happy with their current type of housing tenure (44.5 per cent between 55 and 65 years old and 50.2 per cent of those older than 65 years old) (López Letón, 2015). However, the working class is willing to make a greater effort to buy a home than the middle class (rich in cultural capital). The latter group are less willing to waive certain tangible and intangible goods (e.g. travelling) to purchase a dwelling in the future (Aramburu Otazu, 2010).

The usually short term of leases (especially since Act 4/2013) and high rents (free establishment of initial rent and its updates since 2013) make it difficult for tenancies to be perceived as an adequate or even attractive way to access housing for families that want to establish a long-term life project in a property.

This is illustrated by a report of 2013, which revealed that the reasons for a household to rent instead of buying a property were their economic (19 per cent) or labour (17 per cent) situation. Nine per cent acknowledged that they could not afford the expenses entailed in buying a property. Usually, 20 per cent of the property's value is required and there are also around 13 per cent extra costs in taxes and fees to be paid upfront. An additional nine per cent revealed that they were waiting for home buying prices to decrease. With the duration of new tenancy contracts since 2013 being three years (reduced from a minimum duration of five years) and the unaffordability of homeownership for many, speculation in property is contributing to a major increase in rents in Barcelona and Madrid by the end of 2016 and

2017[10] (precisely when those contracts arranged in 2013 expire). As far as the Catalan new intermediate tenures are concerned, these are not widespread enough.

In general terms, then, it can be affirmed that Spaniards today do not buy a property because they cannot afford it (i.e. mortgage loans' granting constrains and high unemployment rates since 2007). Indeed, of those who answered the 2013 survey, 72 per cent said that they would prefer to buy instead of rent (only 12 per cent). In addition, for 73 per cent, buying a property was preferred in the long term and 63 per cent said that a dwelling is the best inheritance that can be delivered to a son or daughter (FOTOCASA, 2013).

There are different groups that are potentially the main target in need of the private rental sector: less affluent families[11] unable to become homeowners but who do not comply with the requirements to access to social housing (only 2 per cent); or those, whilst fulfilling such criteria, find that their demand cannot be met: young workers; single, separated or divorced people, who are living alone or with others (Trilla Bellart, 2001); and single-parent families; all of them with low income. The studies carried out on poverty show that these groups comprise the main demand in the tenancy market. They tend to have inadequate living conditions, a high risk of poverty and to be excluded. Consequently, households who rent dwellings in Spain have a higher risk of poverty (De La Fuente Lechuga *et al.*, 2009).

Taking into account the demographic factor and accessibility threshold (standing at around 30 per cent of disposable wage income), a report drawn up by CatalunyaCaixa in 2012 (Oliver Alonso, 2012) assessed that rental housing demand would be potentially close to 658,000 rental homes, of which about 95,000 would be from young people without a spouse, and about 563,000 from couples (according to 2010 data).

It is also important to analyse the endogenous changes in the structure of households. Young people are changing their emancipation patterns and the composition of households often varies to the extent that provisional coexistence increases.

Before the real estate crisis in Spain in 2007, the number of households increased quickly despite the stagnation of population, causing a reduction in the average size of dwellings and an increase in provisional coexistence and single-person households, because of the constant variation in the composition of these households (Trilla Bellart, 2001). However, this residential dynamic has changed since 2007, as people, who have been affected by the economic situation of the country, are forced to renounce access to a dwelling. For instance, the following phenomena are commonly increasing:

- The renunciation of emancipation by young people.
- The number of individuals or families that are unable to pay for their own home and are obliged to share one with relatives or strangers. In this sense, 300,000 families (tripled since 2008) have all their members' unemployed and they live thanks to the retirement pensions of their elderly relatives (Laparra and Pérez Eransus, 2012; Fundación Encuentro, 2013). Furthermore, one-fifth of all unemployed people live on the pension of an elderly relative.
- Forced coexistence caused by the impossibility of affording a separation or divorce. In such sense, divorce is considered a major cause for eviction and homelessness and about 120,000 people per year lose the use of their family homes, even if they own them. Usually, middle-aged men are most affected by the loss of the right to use a family home due to divorce (Kenna *et al.*, 2016).
- The residential expulsion to isolated areas of one's social circle or the inadequacy of housing (Riba Renom, 2010).

All these factors can give rise to substandard and overcrowded situations in dwellings. In addition, as LEAL and ALGUACIL (Leal and Alguacil, 2012) point out in their report on immigration and housing of 2012, more than two-thirds of immigrants from developing countries rent their homes, whilst it is only the preference for 17.4 per cent of Spanish households. The main reasons for this are the uncertainty about their future employment and the lack of resources to buy a dwelling. Thus, in the same report, it is pointed out that as the duration of the stay in the country increases, the number of immigrants who access home ownership also grows, following the same pattern of the Spaniards. That is because home ownership is perceived as a way to channel savings; meanwhile, tenancy is considered an expense[12].

4. A market that is atomized and not professionalized

The Survey on Tenancy Dwelling in Spain (2006) evidences that 86 per cent of landlords are non-professional, 7.2 per cent are of the public sector and 6.7 per cent are private entities (INE, 2016). This distribution also has an impact on the nature of the current Spanish rented market, as non-professional landlords usually look for short-term benefits (i.e. they prefer free establishment of initial rent and updates) (Nasarre Aznar, 2013), seek to maximize benefits (e.g. might be more keen to find new tenants ready to pay more) and are not motivated to maintain the dwelling properly and prefer shorter duration of lease contracts (e.g. to recover the property for a child). Although some professional landlords might act in the same way, they are more ready to compensate loss of earnings with other tenants, and thanks to the economy of scale, they might incur more expenses finding new tenants, so they would prefer to keep current ones. Professional landlords do not have “family needs” and they are more publicly supervised (e.g. to keep the dwelling in adequate conditions[13]), while tenants are better protected, as they fall under the category of consumers (Avilés García, 2014).

Professional landlords can be distinguished between those that are for-profit and those that are non-profit entities:

- (1) Profit entities that currently manage a portion of the housing stock in Spain include the following:
 - The asset-holding companies aimed at housing development or leasing. They are generally incorporated as capital companies (mostly corporations, but sometimes, they are limited liability companies).
 - Real estate investment funds (FII, *Fondos de Inversión Inmobiliaria*) – these are regulated by the Collective Investment Institutions Act 35/2003, as they are non-financial collective investment institution modalities aimed at urban real estate investment. Their income comes from both rents and the annual increase of the real estate value through appraisals. They have some structural problems that have restricted their full development (Nasarre Aznar and Rivas Nieto, 2006). Similar institutions, called Real Estate Investment Companies (SII, *Sociedades de Inversión Inmobiliaria*), have additional problems (Menéndez Serrano, 2007).
 - The SOCIMI, the Spanish version of the real estate investment trusts (REITs), is created as a corporation through the enactment of Act 11/2009, and its shares are admitted to trading on an official stock market. Its main corporate purpose is direct or indirect acquisition and development of urban real estate to be earmarked for tenancy, in the terms and requirements established in the law. However, unlike the previous collective investment institutions, SOCIMI

participates in the stock-exchange market, which provides investors with a higher liquidity, and since the 2012 reform, they are zero-level taxed at corporation level[14], which entitles them to international REITs taxation benefits (Nasarre Aznar and Rivas Nieto, 2009). In the current situation of 3.5 million empty dwellings, SOCIMI might be a useful instrument to put them into the market, as they could constitute a diversified stock at a better price than during the past years (García Garnica and Rojo Álvarez-Manzaneda, 2010). In this context, there has been an important increase in the creation of new SOCIMI, which had properties worth €2.6 million in 2015. The three biggest SOCIMI are Merlin Properties, Axiare Patrimonio and Lar España (Diario el Mundo, 2017).

- (2) Non-profit entities that currently manage a small portion of the housing stock are as follows:
- Housing cooperatives (Spanish Act 27/1999 plus many pieces of regional legislation): the cooperative holds either the ownership or a right to build of a block and arranges with its partners either the sale of the unit or a tenancy contract, in exchange for a payment of an initial and recoverable amount, as well as the payment of a periodic rent. The assignment of a right of use of units by cooperatives is not widespread in Spain with only specific cases in progress (La Borda, 2016) and, in general terms, although housing cooperatives might have contributed to some extent to palliate housing availability problems[15], it is hard to assess its extent and impact so far.
 - Non-governmental organizations (NGOs) with an associative base: these are non-profit entities aimed at promoting the satisfaction of the right to decent and adequate housing, encouraging the development of accommodation programmes offering affordable housing and also improving the quality of socioeconomic residential stock and/or accompanying especially vulnerable communities by facilitating their residential inclusion. To meet these goals, they have adopted the legal form of an association[16], which is characterized by being a democratic entity managed through the government and representation organs agreed in its Statutes and independent from public authorities. Some examples of these associations are *Provivienda*, *Prohabitatge* and *Plataforma para una vivienda digna*.
 - In addition, there are others generalist NGOs that, among their social action sphere, also promote residential integration and accommodation programmes. These have different legal forms, such as foundations, religious entities and confederations. The following are the most relevant: *Caritas*, *Fundació Foment de l'Habitatge Social*, *Red Acoge* and *Cruz Roja*.

Although non-professional landlords manage most of the rented-housing stock in Spain, the number of rented dwellings managed by investment funds and corporations has increased in recent years. In 2016, 65 per cent of the acquisition of dwellings was undertaken by investment funds, with the intention to resell them in the future (i.e. when housing prices increase) and, meanwhile, to rent them to get some returns[17], thus contributing to keep that temporary or frictional demand (see Point 3 above). In 2013, the investment fund Blackstone bought 18 buildings (1,860 social dwellings) from the Public Housing Company of the municipality of Madrid (EMVS) (Idealista, 2016). In this vein, the Public Housing Institute of the region of Madrid sold to the fund Azora-Goldman Sachs 2,935 social dwellings (Política Elpais, 2016). In addition, SAREB[18] sold 24,000 properties during its

first two years (22 per cent of its initial stock) to private developers and investment funds (Gallego, 2015).

5. Current Spanish legal framework for tenancies and subsequent changes in the rental market

Act 4/2013 is the most significant recent amendment of the Urban Leases Act (LAU) 1994, and it regulates measures, among others, to increase the flexibility of the contractual relationships between the parties and to provide more agility to the eviction process (Molina Roig, 2015).

According to this Act:

- The minimum duration of the lease contract is reduced from five to three years (art. 9.1 LAU).
- The duration of the extension term is also reduced from three years to one year (art. 10 LAU).
- The possibility to freely arrange the initial rent and the rent increases by the parties (art. 18.1 LAU). (Before the 2013 reform the first five years was capped until the Consumer Price Index).
- The possibility for the tenant to renounce his pre-emption rights in case of sale or forced sale of the rented property (art. 25 LAU).
- The legal possibility for the landlord to recover the dwelling when he evidences the need of it (art. 9.3 LAU). (Before this an express agreement was needed).
- The possibility for the tenant to unilaterally terminate the lease contract after the first six months, with compensation to the landlord if agreed (art. 11 LAU).
- The *emptio non tollit locatum* principle is applied only if the tenancy is registered in the Land Registry (art. 14 LAU), while with the previous version of the law (LAU 1994), the buyer of any rented property had to respect up to the first five years of the lease in any case.

In conclusion, the Act 4/2013 was essentially aimed at protecting landlords' interests (in particular, professional ones) to promote rental housing. But the reduction of the compulsory minimum time extension, the landlord's possibility of increasing the rent without limits or to waive the right of pre-emption for the tenant in case of sale of the property are measures that presumably will hardly achieve the intended purpose (the widespread use of tenancy as a true alternative type of tenure), as it seems clear that they neither provide stability nor legal certainty to tenants nor do they facilitate their access to decent and adequate housing[19].

In fact, first, according to Table I, the use of tenancies as housing tenure has only increased by 0.2 per cent from 2013 to 2016 and mainly, as it has been explained, because of "forced" tenants; and, second, we have also evidenced that the reduction of tenants' stability to three years has contributed to rent increases in new tenancies in big cities in late 2016 and 2017. This is due to the maturity of most contracts arranged in 2013, the lack of credit for home buying (e.g. much more affordable in 2017 in Barcelona and Madrid) and the lack of widespread alternative housing tenures.

Barcelona (Departament D'estudis I Programació De L'ajuntament De Barcelona, 2016) is the city that has recorded the highest increase (17 per cent), followed by Madrid, Málaga and Palma de Mallorca, mainly because the demand is much higher than the number of properties available[20]. In addition, the offer of private rented properties has also been constrained because of the increase in the number of holiday apartments (Lambea Llop,

2016; EY Building A Better Working World, 2015) and the rent of rooms (instead of whole dwellings) in these cities (300 per cent), which is more profitable for landlords.

With this evidence, it is difficult to say that Act 1/2013 has been successful in either increasing the Spanish residential rental sector or containing rent prices; on the contrary, it has contributed to increased prices in key cities and areas. This dubious result is combined with the limited success[21] of many intrusive market measures adopted by several Autonomous Communities to increase taxation or to impose penalties[22] on empty properties[23] or to expropriate them for social reasons[24].

This has led us to conclude that a real need exists for the introduction of deep and structural reforms to the legal infrastructure of residential leases to make them a true alternative to homeownership (Queralt, 2016).

All in all, the main current drawbacks for landlords in the Spanish private rental sector (PRS) are as follows:

- Historically low profitability of the PRS when compared with other uses of the property, such as renting it for holiday purposes or room rental.
- Bad state-of-repair of a large part of the Spanish housing stock (55 per cent of buildings were built before 1980; INE, 2011) and lack of incentives to repair to public administrations.
- Slow repossession of property in cases of rent default or misbehaviour of the tenant. With regard to the eviction process, the law has been reformed on several occasions (many of them quite recently) to reduce deadlines and to try to simplify the process. However, this goal is difficult to achieve unless the workload of the courts is reduced, either through resolution by means of other mechanisms, e.g. alternative dispute resolution (ADR), or through the provision of more human and technical resources to get a faster resolution (Molina Roig, 2015).
- The Spanish rental market is very atomized and is not professionalized. There is also a need for a proper training of real estate conveyancers.

The main current drawbacks for tenants are as follows:

- The market is not affordable, nor is it stable or flexible. On the one hand, the average rent in Spain is nearly the same amount as the minimum salary, and since 2013, it is free for the parties to agree any amount for the initial rent and for subsequent rent increases. Having the smallest PRS in Western Europe does not help to develop a healthy rented housing market. On the other hand, the reforms made by Act 4/2013 have dramatically reduced the protection of tenants (e.g. shorter minimum duration) and have not increased the capabilities of tenants to make their tenancy more flexible (e.g. if they unilaterally terminate the contract, they have to compensate the landlord).
- For most vulnerable households, there is not enough affordable housing, in a way by which the PRS ends up completing this function, which has generated a sort of stigmatization of the tenure. The inter-change of roles (public administration managing private dwellings, while private landlords manage public dwellings) also does not help.

Beyond Act 4/2013, there is now a real need for a mechanism that helps to stabilize rent prices, to guarantee a duration of lease contracts, which may help households to remain in a property as long as they fulfil their obligations, as well as to ensure transparency,

guarantees and attractiveness of the market and, basically, to reach an equilibrium between the rights and obligations of the parties.

6. The need for major legislative changes. Catalan principles 2017

These are precisely the reasons why Catalonia has started to develop a new legal framework (a new model) for urban leases since July 2016, following the outcomes of TENLAW project (TENLAW, 2017). It seeks to offer stability, affordability and flexibility to tenants and profitability, legal certainty and guarantees to landlords (Nasarre Aznar, 2014). A proper Act is likely to be passed by the end of 2017, but the Tables for a rent-reference system is already available in July 2017 at: <http://agenciahabitatge.gencat.cat/indexdelloguer/>.

The residential leases model we proposed to the Catalan Government was mostly adopted in January 2017 (Diarimes, 2017). The parameters for the model were agreed with the 15 housing-related institutions (these ranged from consumers' associations, public administrations and NGOs to landlords' representatives, real estate conveyancers, real estate funds, etc.) who tried to focus the discussion within a range of general rules that could be assumable by all involved parties.

It ended up being a functional model based partially on the German one (e.g. rent reference system, co-liability in the maintenance and improvements of the rented property and role of associations of landlords and tenants), Swiss (e.g. landlords' and tenants' clauses for unilateral contact resolution and subleases) and Austrian (e.g. open-ended contracts) existing models, combined with other models for particular matters such as methods for alternative dispute resolution (Irish model) or the register of residential leases (English and Scottish models). Apart from these key aspects, we considered it essential to make a change following these comparative law models, but other functional rules of the Spanish tradition of urban leases were respected (e.g. rules in relation to rented property in case of divorce or death of the tenant) or recovered from older versions of the law of 2013 (minimum compulsory duration re-established at five years).

The parameters that facilitated the discussion and the agreement on crucial points by all involved parties were, basically, as follows:

- Residential tenancies should be a true alternative to homeownership. Thus, any new rule that may make tenancies insufficiently attractive for both parties and reduce their functionality and appeal should not be included. For example, introducing open-ended contracts (good for good tenants) without "exit" clauses for landlords in case they reasonably need the value of the rented property would not make these new rules functional for landlords, thus, not functional at all (e.g. to mobilize the 3.5 million empty properties instead of having them closed down).
- An equilibrium between the rights and obligations of the parties must be reached. We have identified that, on the one side, landlords seek to get as much profitability as possible from the dwelling (e.g. from the rent), they want to use it as a "piggy bank" in case of need (e.g. through its sale) and want to be awarded as many guarantees and as much certainty as possible in case of default or misbehaviour of the tenant. On the other side, though, tenants look for stability, affordability and flexibility. Thus, in trying to combine such opposed interests, crucial decisions should be taken on what happens in case of sale of the property by the landlord (should the tenant be evicted? On which basis if he complies with his duties?) or how to balance the amount of the initial deposit (a guarantee for the landlord) and the role of tenancies as a last resource mechanism for someone for access to housing (it should be affordable).

- If the tenants are granted more rights on the property (e.g. based on the protection of their right to housing), such as open-ended contracts and a mechanism of rent reference, they should be involved in it. For example, while there is a need for incentivizing the repair of rented properties (in 2011, about 10 million primary residences of a total of 18 million were more than 30 years old and about 3.5 million were over 50 years old; *Instituto Nacional de Estadística [INE], 2011*), a way should be found to involve a long-term tenant in the payment for those works if they represent a real improvement of the dwelling's habitability. This is on the basis that, although the landlords get an economic improvement of the property, it is the tenants who will enjoy the dwelling as long as they behave, and therefore, they will be the sole beneficiaries of the improvement as long as they remain in the premises. This is, for example, the solution adopted in §§ 559 and 554 German Civil Code (BGB).
- There is a need for combining historical law (i.e. historical Spanish law of residential leases) with disruptive and innovative rules (sort of transience). Several rules present in functional residential leases in Europe (e.g. Germany, Austria and Switzerland) evoke to many real estate stakeholders classical rules of Spanish law of leases of the 60s, which caused the Spanish rental market to freeze and collapse (e.g. because of a freeze of rents for decades and the generational link-up of lease contracts). Therefore, we find the need to have an optional approach to new rules (combined with the classical ones) that should be as attractive as possible for the parties to opt in. Therefore, we think it as more advisable to make open-ended contracts coexist with time-limited contracts (attractiveness for landlords of open-ended contract should be to keep a loyal tenant that contributes to the maintenance and improvement of property) and to keep the possibility of agreeing upon a rent increase referenced to market-oriented tables or arranging the updates freely (attractiveness for landlords here is to be sure that rent increases will not be neither challenged by the tenant nor become old-fashioned because rent increases are tables-based).

7. Conclusions

One of the main disadvantages of the current Spanish rental market is the lack of a sufficient offer to respond to all possible households in need in cities and regions where people want/have to live, regardless of whether they have temporary or permanent housing needs and regardless of whether they have economic resources or not.

The two main causes for this are the bad state-of-repair of many dwellings in Spain (This even prevents many properties being rented legally, as they do not fulfil the minimum conditions to be habitable, thus increasing the rental black market) and the legal framework that makes tenancies a "risky" and "not-so-profitable" operation for landlords and an undesired option for tenants, as most of them would rather become owners if they could.

Therefore, there is a need for a true professionalized market and suitable regulation that makes tenancies truly available for a bigger audience. Thus, a stable, flexible and affordable rental market could be offered to tenants that cannot become homeowners, and can neither access social housing (because of its scarcity). In addition, it is necessary to provide landlords with sufficient mechanisms to guarantee the payment of rent and other expenses, conservation of housing, sufficient profitability and to promote the conservation and rehabilitation of the rental housing stock, to double the current Spanish rental rate and bring it up to European standards.

In short, there exists a need for a deep change in the legal framework for leases in Spain combined with advanced housing policies (e.g. to increase the stock of social housing for rent for the less affluent, to increase and professionalize the rental market stakeholders) to make tenancies a real alternative to homeownership. This is the path taken in 2017 in Catalonia where a set of well-balanced principles have been adopted to work as a basis for new legislation.

Notes

1. UNECE (2016) stated that “Reliance on, and disproportionate support to, one tenure model proved to be unsustainable in the long term, to be insensitive to local housing market volatility, and to be exposed to national and international financial market fluctuations”.
2. See Nasarre Aznar (2017). See the news about the sharp increase of rents in Barcelona in 2016, available at: www.lavanguardia.com/local/barcelona/20161002/41720510856/aumenta-precios-alquiler-barcelona.html (accessed 8 March 2017).
3. In relation to salaries, 34 per cent of Spanish employees earned less than 645 euros/month in 2014, available at: www.elmundo.es/economia/2014/11/21/546e5c3dca4741a15b8b457d.html; (accessed 14 March 2017). In relation to retirement pensions, their public scheme is constantly at risk: in 2016 the public pensions’ fund had 15 billion euro but five years ago it was of 66.8 billion euro (US system of billions) (see www.elmundo.es/espana/2017/01/04/586c0a0de2704e8f4b8b45ac.html; (accessed 14 March 2017).
4. See some indicators in relation to the recent postponement of retirement age until 67 and cuts in public health and education at Nasarre Aznar (2017).
5. Only 20 per cent of current tenants are happy being so; the others would rather like to become homeowners if they could, according to FOTOCASA (2015).
6. Although the unemployment rate has diminished in the second term 2016 to 20 per cent (4.5 million unemployed people), according to last data available by INE, in May 2014, Spain ranked the second in the European Union (25.1 per cent) after Greece, according to EUROSTAT. See more details at Prieto *et al.* (2011).
7. www.elconfidencial.com/vivienda/2017-01-29/si-pagases-lo-mismo-de-alquiler-que-de-hipoteca-comprarias-casa_1315309/ (accessed 8 March 2017).
8. The average inter-annual housing price started to decrease in the second semester of 2008, which is a trend that continues today. According to INE (15-9-2012), the accumulated fall in the period 2008-2012 was 21.9 per cent.
9. In 2012, mortgage foreclosures of first residence took place 39,051. Since then, they have been reduced every year (2013 they were 38,961; 30,056 in 2014 and 29,327 in 2015) (see press releases of the Bank of Spain 19/05/2014 and 20/07/2016).
10. See www.elperiodico.com/es/noticias/economia/burbuja-precios-alquiler-llega-grandes-ciudades-5621351 (accessed 16 March 2017).
11. Eurostat defines poor families as those whose resources are so scarce that they cause them to be excluded from consumption patterns and activities that comprise the minimum acceptable level of life of the society they belong to (EUROSTAT, 2010b).
12. As the report points out, the access to home ownership will only take place in very advantageous situations, when a contribution of a minimum of a 20 per cent may be made and with a guarantee of job stability.
13. See www.nolo.com/legal-encyclopedia/difference-between-renting-individual-landlord-property-management-firm.html (accessed 21 March 2017).
14. Ley 16/2012 que modifica la Ley 11/2009.

15. See some cases at Sostre Civic (<http://sostrecivic.coop>) and some data at: http://economia.elpais.com/economia/2016/01/26/vivienda/1453812758_615096.html (accessed 29 October 2016).
16. Regulated in the Ley Orgánica 1/2002, de 22 de marzo, reguladora del Derecho de Asociación (BOE 26/03/2002 núm. 73).
17. According to report of Observatorio para la Protección del Propietario de la empresa Alquiler Protegido www.alquilerprotegido.es/noticias/el-65-de-los-compradores-de-viviendas-son-fondos-de-inversion-pisos-com (accessed 6 October 2016).
18. The “bad bank” created by law to get rid off of the extra housing stock of the banks intervened by the State because of the crisis.
19. Molina Roig (2015, p. 41). See above the conjunctural reasons for the slight increase of the private rental sector during the past years.
20. Available at: http://economia.elpais.com/economia/2016/02/14/actualidad/1455477137_281474.html (accessed 21 October 2016).
21. Some of them have been rendered unconstitutional and some others are suspended by the Spanish Constitutional Court. In addition, there is no transparent calculation of their cost-benefit. See below for more details.
22. For example, arts. 5.2.b, 41, 123.1.h, 113 and 118.1 of Catalan Act 18/2007.
23. For example the Catalan Act 14/2015, 21 July.
24. Several Spanish regions have developed measures in this sense during the past years, but most of them have been challenged before the Spanish Constitutional Court. In Catalonia art. 7 Act 24/2015 was suspended by Constitutional Court ruling of 24 May 2016 (BOE 03/06/2016 no. 36606). The art. 72 Act 3/2015 of Basque Country’s Act was suspended by Constitutional Court ruling 19 July 2016. Also in Andalusia Act 4/2013, 1 October de 2013 was suspended by Resolution 17 February 2015.

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Corresponding author

Sergio Nasarre-Aznar can be contacted at: sergio.nasarre@urv.cat

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