

# Chapter 6

## Report on Greece

### 6.1 The concept of property in Greece

#### 6.1.1 In general

Under Greek law, the term “property” is defined as the right to use, enjoy and possess a determinant thing and the right to exclude others from same. In other words property is the full and absolute power to exclusively control and use for one’s own purposes, that which is owned.

In civil law, the terms “property” and “ownership” are both used to describe the foregoing control of the owner over the thing in the sense of the corporeal object (movable or immovable, namely land and tangible property), whereas in constitution law, property, which is protected under article 17 par. 1 of the Greek Constitution, is conceived in a much broader sense so as to include intangible or abstract property (stocks, bonds, bank deposits ) and intellectual property (copyrights, trademarks etc.) as well.

Nevertheless not everything can be property, thus the air and the water in the sea belong to none. In principle, only those objects or ideas that can be economically, p-physically or otherwise excluded from can be considered property.

In the context of the present report, property shall be understood in the legal framework of civil law, namely as the right over things, in the foregoing sense and more specifically, over real property.

#### 6.1.2 Real property

Real property is not just the ownership of land and buildings, it includes many legal relationships, that are purely conceptual such as the usufruct, which describes the legal right to utilize and derive profit

from property that belongs to another person, or the easement, where a neighboring property may have some right over another's property, or the right of way, namely the right to pass over another's property etc.

According to article 1000 of the Greek Civil Code(G.C.C) "the owner of a thing is entitled to use it and dispose it at will, as well as to exclude others from same, provided that he do not act in disrespect of the law or the rights of others".

That means that despite the fact that the owner has full, absolute and exclusive power of control over the thing, the exercise of such power is not without certain limits. The laws as well as the rights of others form under article 1000 GCC the framework within which the powers of the owner may be exercised.

## **6.2 Situation of Real Estate in Greece**

Nowadays, real estate has become an almost worldwide legal term that encompasses land along with anything permanently affixed to the land, such as buildings, destined for residential and/or professional/business use.

### **6.2.1 Legal Aspects of real estate**

Under Greek law, there are certain restrictions and rules regarding real estate development in general.

The most important ones are set forth by Presidential Decree 14/1999 constituting a codification of the essential legislation on Urban Construction and aiming to the protection of the environment, of the natural, artistic and historic heritage, the local identity of an area and to the improvement of the quality of living of the inhabitants.

The Greek law provides prohibitions, restrictions and guidance about building sizes, uses and features in areas of particular natural beauty, in forest zones, historic or archeological sites, in the historic center of cities or traditional urban units either for housing or business use.

Furthermore, Greek law provides general prohibitions with regard to the use of land distinguishing between purely residential zones, zones of general residence where limited commercial and professional use is allowed, zones of general city centre use as well as light or heavy industrial zones, tourist and recreational zones etc ( art.229- 240 of PD 14/1999).

The law also provides restrictions with regard to the density and the size of buildings. For instance, in certain areas, as specified by the

law, may not be allowed the construction of multi- storey apartment buildings or there may be limits to the number of floors a building may have from one area to another or the surface of a plot that it may be built on or the space that must be left around the building.

In general, no construction or land development for any use may take place without a prior construction permit issued by the competent urban authorities. Such permit is required in order to make sure that all conditions and prerequisites of the law are met particularly with respect to the size and volume of the building which is directly related to the size of the land on which it will be built, the standards of safety, hygiene and aesthetics of the buildings etc ( art. 160 of P.D. 14/1999). Even though substantial freedom is allowed yet styles, safety, and often materials in practical ways may be enforced.

### **6.2.2 The real estate business in Greece**

In recent years, real estate business in Greece has known a substantial growth. The reasons for such growth may be traced in a number of factors.

- The 2004 Olympics Games hosted by Athens have definitely given a big boost in the construction business. Athens has changed in shape as new airport, new roads, new transportation means, new bridges and new sport venues and centers have been built.
- Declining satisfaction with the urban environment, despite recent improvements, has cause a continuing migration to the suburbs of Athens and nearest smaller towns and rural areas in pursue of a better quality of live. Undoubtedly, the construction of new ring roads and railways (both metropolitan and suburban) have played a significant role to such urban exodus which is expected to rise further in the years to come.
- Financial and economic factors have definitely a big share in this development. Mortgage loans have become less expensive and easier to get. That, together with the dramatic drop both in the Stock Exchange Market and the interest rate for savings accounts, have led many to turn to real estate either for investing money, mostly savings or for capitalizing money formerly spent for renting property. The competition among the Banks in the area of mortgage loans and the variety of products offered, has been a significant help for the development of real estate business in Greece despite the fact that the prices of properties have also dramatically increased during the last years.

With the development of private property, real estate has become a major area of business. Purchasing real estate requires a significant investment, and each parcel of land has unique characteristics, so the real estate industry has evolved into several distinct fields. Specialists are often called on to value real estate and facilitate transactions. Some kinds of real estate businesses include:

- Appraisal: Professional valuation services.
- Brokerage: Assisting buyers and sellers in transactions.
- Development: Improving land for use by adding or replacing buildings.
- Property management - Managing a property for its owner(s).
- Relocation services: Relocating people or business.

## **6.3 Property rental**

### **6.3.1 Legal frame work for property rental**

For several years, renting a property for housing had been subject to the protection of the law in favour always of the tenant and not the owner.

However by virtue of law 2235/1994, house rental was liberated with effect as of 01/07 /1997 and the obligatory provisions of law 1703/1987 as it stood amended by subsequent laws, were successively abolished save from the provisions of article 2 par.1 with regard to the duration of the lease agreement.

Therefore, lease agreements of properties for housing use are freely negotiated save from the following.

- The minimum term of a house lease agreement is by the law set to three (3) years regardless of any other agreement between the parties.
- Unless otherwise expressly provided for by the parties, in the event that the term of the lease agreement is extended as above, the agreed monthly rent is adjusted by 75% of the inflation index published by the competent authority of the Bank of Greece for the previous year.

As it regards commercial rental, namely rental for use other than housing (commercial, professional etc), it is governed by P. D 34/1995 on “the codification of legislation on commercial lease agreements”

### **6.3.2 Cost of property rental**

In principle the cost of rental in Greece is not particularly high as it regards housing. However, that may depend on the circumstances. Apparently standard factors such as “offer and demand”, the advantages or the accessibility in terms of transportation, of a specific area, may cause a significant increase in rents asked. Small – one-bedroom-apartments are often more expensive than bigger ones and, nowadays harder to find.

For commercial use, the rent can rise considerably in some highly commercial areas (markets) or even streets.

### **6.3.3 Protection of the owner against insolvent tenant**

Seeking payment of rents due, sometimes for several months, can be effected in two ways, as it regards procedure.

- By filing an ordinary action before the competent First Instance Court . The Greek Civil Procedure Code (GCPC) (art- 647 f) provides a special procedure aiming to the faster and easier satisfaction of the owner. Normally, it would take six to nine months ( from the day of filing) to get an enforceable judgment against the tenant. Usually such proceedings would also contain a demand for eviction of such tenant. To protect the owner against an insolvent tenant and secure payment of the rent , the Civil Code in article 604 provides the owner with a legal lien on the tenant’s movable assets inside the rented property.
- By obtaining a payment injunction order (art.623 fol). Despite the fact that this is a more efficient and faster moving procedure the conditions set by the law are usually quite difficult to meet in case of renting litigations.

## **6.4 Property taxation**

Taxation on property is effected in several, direct or indirect ways, and under different forms. The most important taxes levied on property are the following:

1. In case of leased property, the rents received by the owner are taxed as income. Income tax is levied as a percentage called the tax rate. The tax rate increases with increasing income. Owners, that lease their property, also pay an additional tax (charge ) on the amount of rents received.

- 2.** Transfer of property (FMA), for any cause (sale, exchange, inheritance, donation etc) is subject to taxation by a certain tax rate ad valorem, namely on the value of the property. However acquisition, on any grounds, of a property as “first home” may result to even full and complete exoneration of such tax.
- 3.** Tax levied on big property (FMAP) is an annual charge on the ownership of big estates, namely ownership of property the value.

## Chapter 7

# Report on Italy

The real estate in history  
by Luciano di Pardo

The real estate has always been, since the dawn of civilization, a center of attraction of vital interests, characterized by the need to satisfy the primary needs of the person more or less fit for and at times aware of the State interferences placed to protect the community.

Property according to ancient conceptions is a sole right "ius excludendi omnes alios" and it extends "usque ad inferos et usque ad sidera".

The historical-economic evolution of the concept of private property to be taken in consideration, in order to get a better understanding of the problem, begins from the ancient Greece and clearly turns out to be influenced by the several shapes of administration of "res publica" followed as time passed and by the indications provided by the fathers of the ideological and social culture of the age.

Platone, following his philosophical utopies, in the "Republic" dreamt the removal of private property for the ruling classes and subsequently, in his last dialogue "the laws", he could stand its existence by reason of the imperfection of human nature. He in the "Timeo" spoke generically about a natural law; a concept of justice that is born from the order, the harmony and the rationality of the universe.

The idea of a natural law of cosmic origin can be criticized, but certainly it is charming and not a mere one. However in the milieu of the English Enlightenment of the seventeenth century (1600), as we can see later on, the concept of property, as a natural law, was resumed by Locke the philosopher and it was asserted in a definitive way.

Aristoteles, instead, with his sound realism, was concerned in the

eight books with politics, private property, hoping for a state in agreement with a large well-off middle class.

In Crete during the IIIrd millenium B.C. the real estate constituted by fortified lands and houses belonged to the "Genos" that is the community.

Afterwards such communities broke up and the real estate passed to the single natural families.

With the arrival of the Achei, the more influential Groups took control of the lands and the buildings over which they had an absolute control.

In the following centuries and in particular in the YIII century B.C, free trade was asserted as an act both for the living and mortis causa.

In the V century b.C. there was a substantial identification of the concept of the Greek property with the Roman one.

The owner could dispose of his estates as he wanted without any restriction.

## Chapter 8

# Private property rights in Norway

by

**Gustav J. Saedberg**

Past President of FIABCI-Norway

### 8.1 Introduction

In principle, we have Private Property Rights in Norway.

This principle is stated indirectly in the CONSTITUTION ACT of 1814, paragraph 105, saying :

*“If the Government need that somebody must give up his property Rights for public use, he is entitled to full economic compensation from the Public Treasury”*

Private Property Ownership means the right for the single citizen or single company to :

- possess the property
- use the property
- dispose over the property
- transfer the property

If than we compare these Private Ownership Principles with the paragraph 105 of the Norwegian Constitution Act we should presume that the Norwegian citizens and companies should be in a very good situation to be able to handle the property in a very free way.

But it is NOT so! Since the last World War, the Private Property Rights has been more and more eroded, and therefore the owners have

to a very little extent the rights to dispose over their properties in a free way.

The public apparatus is setting more and more restrictions in the field of private properties.

In this article I will give a report about the most important restrictions we have for enforcement of property rights in a relative free way.

## 8.2 Brief Information about Norway

Norway is a very long and narrow country, with a total length of about 2.000 Km. The total area of Norway is 385.000 Km<sup>2</sup>, including islands, lakes and glaciers.

This area is divided in the following categories :

Productive forest	about 20%
Agricultural land	about 4%
Unproductive and low productive areas including lakes, islands and glaciers	about 75%
Total	100%

The population is 4.500.000 persons (2001).

Norway has than about 11 persons per sq. kilometres, and therefore is one of the thinnest populated countries in the world.

About  $\frac{3}{4}$  of the population is living in cities and suburbs, and about  $\frac{1}{4}$  in rural districts.

The number of registered properties is approximately 2,5 millions.

## 8.3 Restricting Laws on Private Properties

Norway has a lot of ACTS with restrictions on private properties. I cannot mention all of them, but hereby I am giving a list of the more important Acts with rules and restrictions :

1. The Concession Act of 31/5/1974
2. The Planning and Construction Act of 14/6/1985
3. The Expropriation Act of 23/10/1959
4. The Expropriation Value Act of 6/4/1957

5. The Open Air Recreation Act of 28/6/1957
6. The Agricultural Act of 12/5/1995
7. The Allodial Possession Act of 28/6/74
8. The Road Traffic Act of 21/6/1995
9. The Rent Agreement Act of 26/3/1999
10. The Rent Control Act of 7/7/1967
11. The Property Transfer Act of 3/7/1992
12. The Real Estate Brokerage Act of 16/6/1989
13. The Cooperative Housing Act of 4/2/1960
14. The Condominium Act of 23/5/1997
15. The Document Fee Act of 12/12/1975
16. The Property Map Act of 19/6/1978
17. The T.V.A. Act of 19/6/1975
18. The Property Rights Registration Act of 7/6/1935
19. The Renting of Sites Act of 30/5/1975 and 20/12/1996
20. The Joint Ownership of Properties Act of 18/6/1965
21. The Pollution Act of 13/3/1981

The above mentioned Acts are the more important in relation to the real estate sector, but, in addition, we have a lot of smaller Acts concerning limitations of private properties, neighbour relationships, servitudes, etc.

In point 4 I will give a more detailed description about the hereby mentioned Acts.

## **8.4 Brief Information about Restrictive Laws**

### **8.4.1 The Concession Act of 31/5/1974**

The Concession Act says that, in principle, all transfers of private real properties must have allowance from THE KING (in the practice from the government of the Community), with few exceptions for smaller residential properties.

Up to 2000, the limit for free sale was 5.000 sq. meters but now it is increased to 20.000 sq. meters for the site of the property. But in many cases you must fill out a declaration form, and obtain its approval by the Community office.

Unfortunately a lot of Communities (79 Communities, specially those in the coastal zone) have decided a site limit of 0 (zero) and in these Communities are practically entitled to have a permission for transfer.

Some of the Communities have also decided that the owner has the duty of living in the residential property to be a resort property, and have also forbidden to change a resort property to be a residential one.

The result is that many owners will have a great loss because they have not the free choice to sell their properties to the persons they want to sell to.

### 8.4.2 The Planning and Building Act of 14/6/1985

This Act is divided in the following parts :

- The Planning Part
- and The Building Part

The **Planning Part** considers the Country Planning, the Regional Planning, the County Panning, the Community Planning or the planning of special parts of the Community and of private properties.

We have received a huge quantity of such plans, and nearly all land in Nor-way is planned for a special purpose. We now have got so many plans that people is totally bound by these plans, and we have got also a very big bureaucracy for han-dling all the applications for building on the land. And things go very slow.

In this Act we have rules for expropriation in order to implement the ap-proved plans. The Community may decide de expropriation of private properties if the owners do not agree with the implementation of the plan.

The **Building Part** of this Act concerns the site, with special rules about it, and about roads, water and sewage lines, etc. And there is a lot of rules regarding the planned buildings, for instance about its usable dimension, height, surroundings, rules that concern also the old buildings.

For near all things the owner want to do – either with new building or regarding changes in old buildings – it is necessary to send an application to the Community, and the decisions about it may take a very long time.

Also at this point of the building process, there is a very complicated bureauc-racy, with slow dealings and very expensive fees for the applicants. Now the conser-vative government of Norway shall decide about the time limits for the treatment of zoning or building applications, and if the Community exceeds these time limits, it will lost its fees.

#### **8.4.3 The expropriation act of 23/10/1959**

After this Act, the Government or the Community is allowed to expropriate any private property according to a total of 49 purposes , including for instance land for schools, churches, universities, roads, sport areas, industries, water and sewage lines, hospitals, courts, military projects, etc, etc.

So if the public entities decide to take private land, they are entitled to do so but the main rule is that the owners are entitled to have full economic compensation, but in many cases they do not obtain it.

#### **8.4.4 The expropriation value act of 6/4/1984**

In order to give full compensation to the owners in the case of expropriation, the Parliament has decided a special Act with instructions to the Expropriation Court, regarding the principles on which it must build on the economic compensation to be paid.

According this Act that compensation must be based either in the “value in use” of the property or in its “sale value”, choosing the highest of them. In some special cases, the economic compensation shall correspond to the cost of buying a new prop-erty.

#### **8.4.5 The open air recreation act of 28/6/1957**

The purpose of this Act is to open the Nature for public use. Everyone is enti-tled to walk in the mountains, in the forests, and in the coastal areas, both in private properties and in public properties. Everyone has the right to take bath, to have rest or recreation on private properties, but at a distance of more than 150 meters of exist-ing buildings. At the sea, boating is free to everyone and it is also free to everybody the transit through iced lakes.

In a strip of 100 meters width at the seaside, it is forbidden to build without permission from the authorities, and it is necessary to send an application for this and it is very difficult to obtain the correspondent permission.

The politicians are now discussing the possibility of opening areas to built for public use along the coast line.

#### **8.4.6 The agricultural act of 12/5/1995**

The purpose of this Act is to protect the agricultural properties and the agricultural areas, in consequence of what it is difficult to obtain permission to the use of agriculture areas for other purposes.

In the counties and in the Communities, it is established a big administration for handling this protection of the agricultural land, even if the soil is not in use.

The purpose of the same Act is also that of melting smaller agriculture proper-ties into bigger agricultural estates. The aim is to obtain bigger and more economi-cally exploited properties.

#### **8.4.7 The allodial possession act of 28/6/1974**

The Allodial Right is a special Norwegian one for agricultural farms. If a per-son or a family has owned a far for more than 20 years they have obtained allodial rights for the family. This means that if the owner has sold the farm , the other per-sons of the family are entitled to buy it back tithing 2 years after the sale. The eldest person in the family has the best right to buy it back, then the second eldest, after the third eldest and so on.

But they have to pay the usual sale price for the farm, and the court must state what the right price will be.

#### **8.4.8 The road traffic act of 21/6/1955**

This Act gives the rules for both public and private roads and for the planning and maintenance of those roads.

This Act gives rules about drive-ins, berths of the roads, distances from the roads to the buildings to be done, for expropriation of land for planned roads, etc.

It has been established a big road administration for handling the subjects re-lated with the roads.

#### **8.4.9 The rent agreement act of 26/3/99**

In 1999, we have got a new Act of Renting for all types of houses, apartments, lodgings and rooms, in substitution of the Rent Act of 1939.

This Act gives rule for regulating the rent agreements between land-lords and tenants and for all types of spaces either for residential or for commercial uses. There are detailed rules for the establishment of rental contracts, for the duties of the landlords and of the tenants, for rent payments, for deposits, damages, and guaran-ties.

In addition there are rules regarding unreasonable rents, index regulation of the rent, increase of rents, and for the pay-back of unreasonable rents.

#### **8.4.10 The rent control act of 7/7/1967**

During the last world war and many years afterwards, we have had in Norway a very strict rent control, specially for apartments and residential houses, and also for commercial spaces, but after many years of this regime, most of these restrictions have been cancelled.

Nevertheless we still have a Rent Control Act but it is in use only in the 3 big-ger cities of Norway, namely Oslo and Trondheim and this regards only apartments and residential houses built before the last world war.

The Parliament has yet decided that this Act must be cancelled in the 1st Janu-ary 2010.

#### **8.4.11 The property transfer act of 3/7/1992**

This Act states rules for the selling of all types of private real estate properties, but specially for the residential properties.

This Act give also rules for the exchange or gift of properties.

There are detailed rules regarding the maintenance conditions of the proper-ties, the information to be given on it to the buyer, its defects, cancellation and breakage of the contract, and compensations regarding contract breakages.

#### **8.4.12 The real estate brokerage act of 16/6/1989**

In 1939 Norway have got its first Real Estate Brokerage Act but in 1989 we have got a new and more detailed Act.

This Act contains rules regarding the education of the real estate brokers and for the licensing of the brokers

In Norway, only two groups of persons may be licensed by the government :

- persons which has passed the government's real estate brokers examinations and have 2 years of practice as a broker
- persons practicing the professions of lawyers /solicitors.

The government has established an apparatus control with an half-year report duty from the brokers. The broker have also to arrange a big guarantee for the firms of brokerage.

The Act has also rules for the business performance of the firms of brokerage with the obligation of having a written commission agreement form, and rules for the fixation of the commission fees, for the proceedings with the sales prospects, and concerning all the duties of the brokerage firms regarding their clients.

#### **8.4.13 The cooperative housing act of 4/2/1960.**

This Act concerns the Cooperative Housing Companies, where these entities are supposed to own the residential buildings (usually high rise buildings) and where the shareholders own indirectly their apartments. In relation with their Company they are tenants.

These cooperative companies have their own executive committee, a yearly General Assembly, and an Administrator.

There are many of those Cooperative Housing Companies in Norway.

#### **8.4.14 The condominium act of 23/5/1997**

In 1983 we had our first Act about condominiums, but in 1997 it was re-placed by a new and more restrictive one.

This Act gives instructions about the division of the property in various sections which is controlled by the Community.

The owner is obliged to establish ownership sections for all units in the property, and the rule is that each unit shall have its own kitchen, its own bathroom and WC and its own entrance.

When an owner of a property wants to divide it in several ownership unities (condominiums) he must offer the tenants to buy the correspondent units for 80% of the market value, and each tenant has the priority to buy his apartment.

The Act describes also the administration of the units with an Executive Committee and a General Assembly, with special rules regarding accounting, administration and auditing.

#### **8.4.15 The document fee act of 23/6/1978**

In Norway, for almost all the transfers of real estate properties you must pay a “document fee” of 2,5% of the sales value of the property, and you must pay it when you will have the transfer of the property duly registered in the Official Property Registration

This fee is paid to the government, and there is a different Act on this matter.

#### **8.4.16 The property map act of 23/6/1978**

This Act concerns the measuring of the real estate properties, and the insertion of their borders in a map included in the geometrical system.

We have strict rules for measuring and dividing properties and also for gathering devised properties. Each property shall have a map-document informing about how large it is and how are established its borders.

The same Act includes also rules for the administration of such cases and for the registration work.

#### **8.4.17 The TVA act of 19/6/1975**

Generally the T.V.A. (tax value added) is now 24% tax to the government

Indeed in the year 2001 the TVA on food products was reduced to 12% but in the same year the Parliament has decided to fix it in 24% in the case of special services as, for instance, lawyers services, brokers services, counsellors and auditors services.

The Parliament discussed also the value of the same tax in the case of apartment rents, but it maintained them without TVA.

#### **8.4.18 The property rights registration act of 7/6/1935**

In Norway all the real estate properties are registered with its own registration number. This Act contains the rules for the registration of titles, sales documents, property maps, and other documents related with the agreements made on the properties.

There are regional government registration offices keeping two types of registers :

1. The daily journal of the documents.
2. The land registration book, where all the properties are registered.

This Act contains also the rules for the registration and it is a very good and practical system.

#### **8.4.19 The renting of sites act of 30/5/1975**

Concerning the renting of sites for all long term purposes we had the first Act with this aim in 1975, but in 1996 it has been substituted by a new one coming to effect on the 1st January 2002.

You may rent a site for a residential house or an apartment building paying a yearly rent for it, but the minimum period for residential sites is 80 years. For other types of rental buildings – for instance commercial buildings – you are a little more free.

Anyhow the Act establishes strict rules for the landlords and for the tenants, and the governments has also set rule for price control.

#### **8.4.20 The joint ownership of properties act of 18/6/1965**

This Act gives rules when 2 or more persons are owning a property together, for example, rules for administration of the property and preference rights corresponding to a part owner if another part owner wish to sell his part.

#### **8.4.21 The pollution act of 13/3/1981**

The purpose of this Act is to avoid pollution, and therein it are very strict rules for avoiding pollution on properties.

The same act has special rule for garbage, for sewage lines and plants and for avoiding pollution in the Nature., etc

It has been established a very big governmental administration for this sub-ject which controls all types of pollution, and, in the case of serious events, it is entitled to apply strong economical punishments to responsible persons and companies

### **8.5 Conclusions**

The above presented descriptions of the various Acts lead to the following conclusions :

1. The Private Property Rights have been eroded in a great extent.
2. Even the Constitution Act states economic compensation in the case of reduction of the Private Property Rights, the Parliament has given and is still preparing laws that transfer Property Rights from the private owners to the public without compensation. This unhappy development must be stopped.
3. Some of those Acts are of a practical nature and can be maintained, but others must be changed or simplified.

## 8.6 FIABCI Policy

At the International Real Estate Federation (FIABCI) World Congress in 2001 at Oslo, the following principles have been unanimously accepted and must be followed up by all countries in the world :

- Private property rights and private disposal rights on the Real Property is a main principle in FIABCI's policy.
- The private owners interests in Real Property will be defended and FIABCI and its members will stimulate that more people should have the opportunity to own private property.
- The disposal rights in private Real Property are connected with the owner rights, and must not be eroded. Everybody must, in a relatively free way, have the disposal of his property, by using it, developing it, building on it, and transferring it.
- Those who have the Real Property deprived by the authorities by expropriations or similar decisions should be entitled to full economic compensation from the authorities. Such compulsory decisions only are allowed if heavy public interests are involved.
- The taxation of the Real Property must be held on a moderate level, and the actual taxation must not be increased, rather to be reduced.
- Private properties must be protected against pollution, to the benefit of the Community and its citizens.
- The authorities in all countries must have a more efficient handling of applications for developments and new building plans.
- The globalisation demands more and more efficiency in handling real property transactions across the borders.

Kristiansand, 31st August 2002



## Chapter 9

# Report on Poland

### 9.1 Introduction

The change of the political system in Poland which followed the Second World War caused complete conversion of the previous system. The centrally planned economy did not accept the existence of the free market. The Polish constitution from 1952 provided a division of property rights according to some political needs. The Civil Code from 1964 distinguished some forms of property rights – state (national) property rights (they were dominant, the most important and had the best protection), co-operative and public property rights (they were privileged too) and private property rights (particularly the ownership of farms). The final aim of the State was the conversion of private property rights to state or public ones.

The nationalisation was the tool which enabled the rise of state ownership. There were many legal acts referring to this process. As a consequence the State took over not only the biggest enterprises but also medium and small size firms, except for handicraft. Unlike in other socialist countries in Poland people still had possibilities to own land but there were trends towards collective farming. The speed and the scale of the ownership structure modification depended on the political situation – the strongest pressure was in the period of 1948-56, then it was slowly decreasing.

The state property rights were dominant, the trade turnover took place within the scope of only one owner. In civil relations they were performed by the Treasury, the other state corporate bodies had rights only to execute the management. The State was the only owner of banks, mains, communication and industrial firms.

The public property rights were divided into two forms – co-operative ownership and ownership of other public entities. Co-operatives as the

corporate bodies were the subjects of property rights but their properties were in economic sense owned by the members of co-operatives. There was a similar condition according to other public entities. Like state ownership the public one was privileged and protected in a special way.

The real estate market did not function normally during the socialist period in Poland. A kind of ersatz was the possibility of trade of farms. Officially, the sales were mostly made by private owners, and the buyers were state and public entities. In fact there was a big informal farm market among individuals. It was caused by economical needs — low efficiency of collective farms and changes in political situation. There were some legal acts accepting this informal situation and converting it to a formal one.

Housing public administration eliminated the freedom of contracts and caused disappearance of free housing market. The other limits were imposed by the legal act from 1961 which entitled the Treasury to pre-emption in case of sale of private real estate (it worked when the real estate was located in town, and sometimes even in case of donation or exchange).

It can be stated that the object of trade — property rights existed in socialist Poland but there were no conditions to establish the free market of real estate. There were also many legal norms — administrative law, agricultural law, main law and other which limited the rights of the owners and imposed many obligations on them. These rules aimed at discouraging the owners from using their rights.

The expropriation was abused frequently, the property was taken over by the State without any compensation or with a very small one. The owners were not able to defend their rights and the share of state property was increasing. The private owners were under the impression that their powers were much smaller than the state's ones and real estate was not a good investment vehicle.

The first stage of Polish transition completed around 1993 (Financial Markets of Eastern Europe 1998) was characterised, as in other post-socialist countries, by a strong dynamics of the occurring changes, that were necessary to transform the existing economic model into a market system<sup>1</sup>. In that period most prices were liberated, the legal system was remodelled and institutional changes were introduced, that allowed to strengthen the status of private property, also privatisa-

---

<sup>1</sup>The economic programme by Prime Minister T. Mazowiecki's government stated that the Polish government required essential systemic changes aimed at building a market system resembling that operated in the developed countries. It was planned that it would be introduced soon, using radical actions, to possibly shorten the transitional period cumbersome for the society.

tion of state-owned enterprises was initiated. The adjustments allowed Poland to receive financial aid, necessary to continue its reforms, and to really participate in international trade.

The course of the second stage of transition is not so fast or smooth as the first one. It aims at adjusting the whole legal system to a market economy needs. This is expected to enable the restructuring of economy, combined with expansion of export to the European Union and USA. The changes intend to encourage investment, enlarge export and increase country's wealth. In the second stage of transition also careful observation of customer preferences is important and making business decisions on the basis of conclusions drawn. This stage is still incomplete in Poland due to prolonged adjustment of the legal system and still unfinished restructuring, e.g. privatisation<sup>2</sup>. In 1989, with first reforms towards the creation of free market conditions, the process of establishing a real estate market started. It was necessary to change the legal rules, particularly in the direction of equalisation of protection of property rights of different owners' groups, settlement of property rights and free trade. It was also indispensable to create an efficient registration system which would guarantee the security of trade and would be strictly connected with using real estate as a collateral. To form a real estate market the following economic conditions were necessary – growth of society's wealth and easy access to long-term capital. There was a need for professional service too.

The East European Real Estate Foundation defined the main problems of the Polish real estate market in 1993. The most important ones were: lack of certain legal rules, especially those referring to the restitution of real estate, lack of long-term capital and lack of efficient management. It was also stated that the Polish society was not prepared for understanding completely the powers and obligations of owners and rules of the free market. There was also a problem with the proper registration system of real estate.

Over the recent years the situation has changed but there are still some limits restricting the development of the Polish real estate market. A lack of the conclusive settlement of property rights poses a serious problem. The basic element of the developed real estate market is not complete; harms of former owners and their descendants have not been compensated. Without any complete regulation only some people are

---

<sup>2</sup>This process, still incomplete, should not be understood as a mere sale of government property; it is necessary to create a new system, comprising public and private property that co-exist on the market; see: O. K. Pedersen, Selling a State or Building a Society – Private Property Reforms in West and East, in: Transformation Processes in Eastern Europe: Western Perspectives and the Polish Experience, J. Hausner, G. Mosur, (eds) Kraków 1993.

able to win trials, the others have to wait still. There is also the division among the people who lost their property located in Warsaw, in other part of the country and the people who had to leave their real property in the former eastern territory of Poland.

The lack of restitution creates higher risk for investors, who are not sure about the security and length of their investment. There is a possibility of stopping the projects by being engaged in a lawsuit. It also forms a probability of strain on the state finances because of the necessitated payment of compensation in cash for to former owners (after long and expensive trials). It is an important factor in the difficult fiscal position situation of the Polish budget.

The another problem is malfunctioning land and mortgage registry system what undercuts supply and thus reduces owners' opportunities to sell their assets or to use them as collaterals. It can be stated that the corruptive character of the existing situation makes impossible for the property market to function efficiently under the present circumstances.

## **9.2 Transition of the residential market**

### **9.2.1 The socialist period**

The residential segment of the market deserves special attention due to its social and economic dimension. In the socialist period components of housing economy, i.e. the production of housing, its distribution and use, depended on a number of political factors and were funded by the national budget. Concerning the production aspect, special solutions facilitating financing of residential building made it possible for co-operative housing to grow, which was accompanied by a regression in other forms of building. Among other consequences, this brought stagnation of building activities in small towns (where housing co-operatives did not exist), undermined the propensity for making savings (loans were granted to the co-operatives and not their members, and the so-called housing contribution to be paid by future occupants was not high). The queues of expectant tenants grew longer, the most common type of construction was prefab blocks of flats erected in vast residential quarters; in general, the very nature of co-operative housing was distorted (Frackowiak, 1998).

Also the distribution of the produced flats and the maintenance of the existing stock was largely controlled by the government. Until 1990 the major owner was the state, revenue from rents covered only part of the maintenance costs – see table 1 and 2. Attempts were made to reform this situation, but it quickly reverted to the previous

condition. After 1990 the problems started to burden municipalities and enterprises who took over ownership of the housing stock, but did not receive necessary maintenance funds. A temporary solution that offered funds was the liberation of rents paid on commercial space (their level grew quickly, the revenues were used to maintain the housing stock).

### 9.2.2 The period of transition

Introduction of the market economy rules necessitated adjustments in the macro, mezzo and micro economy. Until mid 1990s economic activity neglected housing – see Table 3. This is visibly proved by the ratio of GDP growth rate to the level of investment outlays on residential building. Macro economic and institutional roots of this situation can be identified. The macro economic causes were: high level of inflation that impeded broader use of foreign capital, low level of wages in real terms and a high rate of unemployment, which altogether limited the use private funds for financing residential projects. Institutional problems resulted mainly from the fact that old regulations that did not comply with the new circumstances were abolished but modern solutions to replace them were not provided<sup>3</sup>.

Housing needs in Poland are estimated at roughly 1.5 million of new flats and in the next several years the situation is expected to deteriorate, as a consequence of the unavoidable liquidation of the depreciated stock<sup>4</sup>. However, residential building does not grow at a rate that might promise prompt satisfaction of this shortage – see Table 4. After a period of growing numbers of flats put to use, which boom resulted from the impending threat of nullification of tax regulations supportive of residential building, a new downswing in the number of new flats is expected.

The declining support offered by the state – see Table 5 – undercuts opportunities to fund residential building<sup>5</sup>. Characteristically, in the recent period the number of unoccupied space in the brand new housing has been growing while housing needs are still unmet. One may hope that the newly enacted laws<sup>6</sup> will make mortgage loans available to a

---

<sup>3</sup>Foundations of a modern residential sector appeared as late as mid 1990s (residential property ownership law of 24 June 1994, flat renting and housing allowances law of 2 July 1994, law amending the co-operative law of 7 July 1994, building law 7 July 1994, law settling the rules for transferring company residential buildings by SOEs of 12 October 1994 and other).

<sup>4</sup>Monitoring rynku mieszkaniowego, 2001, IGM 2002.

<sup>5</sup>Budget funds are mostly spent on previous obligations, development of social housing and new schemes funded to a much smaller extent.

<sup>6</sup>New legislative solutions, offer, amongst others a fixed interest rate loan – 7%,

larger number of people; it seems however that a real encouragement to use this option would be a general improvement in economy – a drop in the level of unemployment and a growth in population’s incomes in real terms.

The existing housing stock

Larger part of the residential space in Poland, see table 6 and 7, was built after the Second World War (Dominiak, Uchman 2001). With unfolding transition, processes of first municipalisation and then privatisation of the public housing stock were initiated. Privatisation of the housing stock – controlled by municipalities and enterprises – actually surged in the second half of the 1990s, after laws had been changed.

Municipalities became owners of a considerable portion of the housing stock, frequently depreciated and requiring large outlays on repairs. Their consequent decision was, and still is, to sell the flats much below the market price – an average selling price paid by a buyer accounts for only 10-20% of a flat’s market price, and there are cases when such a discount reaches as much as 99% of the market price<sup>7</sup>. As a result of privatisation the existing owner – a public entity – is released from an exclusive responsibility for the state of repair, part of the financial burden is transferred on the new flat owners<sup>8</sup> in proportion to the interest they hold. There are new problems, however, as new owners of old residential space have to incur the unavoidable high costs of repairs.

### 9.3 Rent policy

Until 1994 rents in Poland were administered – fixed at the central level by ordinances of the Council of Ministers. Due to their low values the revenue covered only 30% of the current maintenance costs. The 1990s reforms aimed to subject the residential sector to market rules,

---

the remainder of interest due to a commercial bank would be covered by the government; ironically, however this might not serve the borrower in a longer term due to declining inflation and falling interest rates. Another program anticipates the possibility of deducting interest on the repaid mortgage loans for buying or building a new flat from the taxation base, subject however to certain limitations.

<sup>7</sup>The discount level depends exclusively on the property’s owner; co-operative flats are subject to different rules, as housing co-operatives are not allowed to offer such high discounts.

<sup>8</sup>Who become co-owners of the common areas (represented by both the land under a building as well as parts of a building and facilities that are not marked for exclusive use by owners of particular flats), they have interests whose amount depends on the ratio of the usable floor area of a flat according to the usable area of all flats in the building.

the municipalities were given the right to set rent rates<sup>9</sup>. Yet, the new regulations were not fully utilised, as a result of which in late 1990s rents paid for only 60-70% of the maintenance costs. As part of the administered rent law was inconsistent with the Constitution a new law was passed<sup>10</sup> to provide a comprehensive solution for the area of rented space. Municipalities avoided radical rent increases, anxious that large increases would entail higher burden on local budgets due to the mandatory payment of higher housing allowances (Kulesza 2000). Another reason for the very limited level of increases was the fear of losing community support and consequently in local elections.

However, the law (mind its characteristic name – a tenant protection law) provoked a number of controversies, as it limited the contractual freedom and disabled the freedom of making upward rent adjustments<sup>11</sup>. After the law has been amended, landlords commonly raise rents, public owners react with more reserve.

Together with the rent reform, a system of housing allowances was introduced, with the intention to protect groups of people the most exposed to the negative financial impact of rent increases. However, the several years of the new regulations being in operation were not satisfactory. The system of housing allowances did not spread to a large extent, as considerable part of those possibly interested was illegible for the assistance<sup>12</sup>.

The low use of housing allowances necessitated an amendment of the relevant law, which took place in mid 2001; the new regulations became effective at the beginning of 2002. The expanded criteria for granting housing allowances aim to enlarge the number of eligible persons.

---

<sup>9</sup>The so-called administered rent was introduced to be paid by tenants using public housing stock and those tenants in private housing that were granted an administrative premise-allocating decision in the period of socialism. The ceiling on the annual rent was 3% of the replacement value of a flat, but in fact the rent never reached that level.

<sup>10</sup>The Constitutional Tribunal ruled that limits on rent in private housing combined with forcing landlords to make outlays that frequently considerably exceeded the amount of income drawn from a property was illegitimate.

<sup>11</sup>The restraint imposed on contractual freedom consists in that only unfixed time contracts can be concluded – the owner has restricted possibilities of cancelling the contract, it is also possible to make the contract for a fixed period of time not shorter than 3 years, the rules for raising rental rates were ruled by the Constitutional Tribunal as contradicting the Constitution and were nullified.

<sup>12</sup>Persons occupying large and very large flats, tenants in arrears.

## 9.4 Conclusions

There are some obstacles of development of the Polish real estate market still. The ownership problems cause disbelief in the fundamental property rights. The registration system, which is necessary to secure the rights, has not worked efficiently. A continued development of the residential sector hinges on economic, social and political determinants. The rules underlying production and distribution of housing stock have been subjected to market control, unlike the maintenance. Rent increases are even more difficult, as the liberated, market prices of electricity, heating and hot water present a severe burden for household budgets. On the other hand, without rent increases necessary repairs are impossible. The increasingly sinking residential space in many towns and the unmet demand for social housing combined with disputes over the rent rates<sup>13</sup> frequently lead to a negative evaluation of the direction of reforms in the residential property sector in Poland.

The huge demand for residential space (reaching ca 1.5 million flats) combined with high rates of unoccupied brand new flats provided by developers highlight serious disturbances in the financing of purchases. At the same time worth noting are very unrealistic expectations of young people as regards the possibility of meeting their housing needs.

Social expectations of persons raised in the period of bygone social privileges and their aspirations to enjoy standard of living typical of western societies are excessive compared with the country's economic potential. However, the incomprehensibility of reforms and some inconsistency of new regulations do not improve the existing situation. It should be hoped that having learnt our lesson we will be able to make up for the irregularities and the situation on the residential market will improve in the longer term.

### References:

J. Chłopecki, Sprzeczności polskiej transformacji, (in:) Transformacja w Europie Środkowo-Wschodniej, K. B. Janowski (ed.), Kieleckie Studia Społeczne 1995, vol. 2,

W. Dominiak, R. Uchman, Makroekonomiczne uwarunkowania rozwoju budownictwa mieszkaniowego w Polsce, Sprawy Mieszkaniowe 2002,

Financial Markets of Eastern Europe and the Former Soviet Union, Gresham Books 1998,

M. Frąckowiak, W sprawie rozwoju spółdzielczości mieszkaniowej w Polsce, Sprawy Mieszkaniowe 1998, nr 3,

---

<sup>13</sup>It seems that here we face a so-called rent stabilisation trap meaning strong social resistance against deregulation of rents.

	1965	1970	1980	1987	1991	1994
Share of rents and flat related utilities in paid costs (%)	26	50	34	24	32	28
Share of subsidies in cost payment (%)	50	39	54	76	20	35

Table 9.1: Share of rents and flat-related utilities in paid costs. Source: *J. Kornilowicz, Oplaty za mieszkania i koszty ich utrzymania, Sprawy mieszkaniowe 2000.*

J. Kornilowicz, *Oplaty za mieszkania i koszty ich utrzymania, Sprawy Mieszkaniowe 2000,*

C. Kosikowski, *Prawo gospodarcze publiczne, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 1992,*

H. Kulesza, *Czynsze a dodatki mieszkaniowe, Sprawy Mieszkaniowe 2000,*

S. Lis, *Rola państwa w okresie transformacji gospodarki polskiej, (in:) Transformacja systemu ekonomicznego w Polsce, S. Lis (ed.), Secesja, Kraków 1994,*

T. Mołdawa, *Problemy transformacji ustrojowej Polski, (in:) Transformacja w Europie Środkowo-Wschodniej, K. B. Janowski (ed.), Kieleckie Studia Społeczne 1995, vol. 2,*

*Monitoring rynku mieszkaniowego , 2001, IGM 2002*

O. K. Pedersen, *Selling a State or Building a Society – Private Property Reforms in West and East, in: Transformation Processes in Eastern Europe: Western Perspectives and the Polish Experience, J. Hausner, G. Mosur, (eds) Kraków 1993,*

A. Rychard, *Czy transformacja się skończyła ? Instytut Badań nad Gospodarką Rynkową, Warsaw 1996,*

*Transition to democracy in Poland, R. F. Starr (ed.), St. Martin's Press, New York 1993;*

K. A. Wojtaszczyk, *Transformacja ustrojowa w krajach Europy Wschodniej, Środkowej i Południowej, (in:) Transformacja ustrojowa państw Europy Środkowej i Wschodniej, E. Zieliński (ed.), Dom Wydawniczy Elipsa, Warsaw 1996,*

*Zmiany strukturalne w polskiej gospodarce w okresie transformacji w latach 1989-95, K. Gawlikowska-Hueckel (ed.), Instytut Badań nad Gospodarką Rynkową, Gdańsk – Warsaw 1996,*

## Tables

2	1995	1996	1997	1998	1999	2000	2001
Average rates of rents PLN/ sq. m a month	0.64	0.80	1.01	1.17	1.58	1.88	2.15
Growth rate	100	125	158	183	247	293	336
Av.ge maintenance costs PLN/ sq. m a month	1.12	1.32	1.78	2.33	2.46	3.56	4.15
Growth rate	100	118	159	208	220	317	370

Table 9.2: Raises in rents and costs of housing stock maintenance, years 1995 – 2001. Source: *J. Kornilowicz, Oplaty za mieszkania i koszty ich utrzymania, Sprawy mieszkaniowe 2000.*

3	1991	1992	1993	1994	1995	1996
GDP	93.0	102.6	103.8	105.2	107.0	106.0
Rate of inflation	170.3	143.0	135.3	132.2	127.8	119.9
Rate of unemployment	12.3	14.3	16.4	16.0	15.5	14.2
Av. real net wages	99.7	97.3	97.1	100.5	103.0	105.7
Flats put to use	101.9	97.2	71.0	81.1	88.2	92.5
Total inv. outlays	95.9	100.4	102.9	108.0	117.1	119.2
Outlays on new housing stock	97.7	86.3	75.4	90.8	92.7	96.8
	1997	1998	1999	2000	2001	
GDP	106.8	104.8	104.1	104.0	101.0	
Rate of inflation	114.9	111.8	107.3	110.1	105.5	
Rate of unemployment	12.7	10.4	13.0	15.1	17.4	
Av. real net wages	107.3	103.5	103.5			
Flats put to use	118.7	109.4	101.7	106.7	120.7	
Total inv. outlays	122.2	115.3	107.0	103.1	91.5	
Outlays on new housing stock	117.7	113.3	116.4	120.0		

Table 9.3: Basic macro economic indicators in the years 1991 – 2001, fixed prices, previous year = 100. Source: *Central Statistical Office* (GUS)

4	1990	1991	1992	1993	1994	1995
N° of flats put to use	134,215	136,790	132,969	94,449	76,080	67,072
— cooperative	68,382	83,554	84,260	50,002	31,741	26,800
— municipal	2,987	2,560	3,656	4,577	3,577	3,299
— company's	15,434	10,718	8,190	5,922	3,842	2,531
— private players'	47,412	39,958	36,863	33,516	35,516	31,675
— for sale or rent	—	—	—	485	1,404	2,767
— social housing	—	—	—	—	—	—
	1996	1997	1998	1999	2000	2001
N° of flats put to use	62,130	73,706	80,594	81,979	87,800	106,000
— cooperative	24,641	28,131	28,039	27,490	24,400	25,800
— municipal	2,992	3,745	3,410	2,670	2,000	2,300
— company's	1,612	1,380	1,438	964	1,200	1,000
— private players'	30,135	35,074	37,322	33,304	35,500	40,700
— for sale or rent	2,691	5,099	8,963	14,195	20,700	29,400
— social housing	59	277	1,422	3,356	4,000	6,800

Table 9.4: Residential building 1990–2001. Source: *Central Statistical Office (GUS)*

5	1991	1992	1993	1994	1995	1996
TOTAL (million PLN)	1227	2350	1923	2760	2817	3398
Change (prev. year = 100%)	100.0	191.5	81.8	143.5	102.1	120.6
Housing outlays as % of budget spend.	5.1	6.1	3.8	4.0	3.1	2.7
Housing spending as % of budget spending	1.5	2.0	1.2	1.3	1.0	0.9
	1997	1998	1999	2000	2001	
TOTAL (million PLN)	3392	3297	3103	2590	3957	
Change (prev. year = 100%)	99.8	97.2	94.1	83.5	153	
Housing outlays as % of budget spend.	2.7	2.4	1.5	1.7	2.2	
Housing spending as % of budget spending	0.8	0.6	0.4	0.4	0.5	

Table 9.5: Budget spending to meet housing needs, years 1991 – 2001.  
Source: data provided by the *Office of Housing and Urban Development*.

	1970	1980	1990	1995	2000
Occupied flats (million)	8.08	9.79	11.02	11.49	11.84
Occupants in flats (mill.)	31.85	34.73	37.43	37.84	37.87
Average flats/1000 inhabitants	247.6	274.1	288.7	—	306.50
Average usable area per flat	50.7	54.5	59.6	60.50	61.50

Table 9.6: Housing stock in Poland. Source: *Gospodarka mieszkaniowa*, GUS

	1996	2000	2001
Total (1000)	11,547	11,845	11,946
Housing cooperatives (total)	3,205	3,387	3,410
Housing cooperatives (member-owned)	1,788	2,230	2,350
Municipal (ownership and co-ownersh.)	1,692	1,371	1,280
Company	911	542	483
Condominiuns (dwellings of natural persons)	466	692	688

Table 9.7: Inhabited dwellings by type of ownership. Source: *Central Statistical Office (GUS)*

## Chapter 10

# Report on Portugal

by

**Manuel Joaquim Monteiro de Barros**  
Confederação Nacional das  
Associações de Proprietários Imobiliários  
Vice-presidente da  
Associação Lisbonense de Proprietários

1 The critical factor in the Portuguese real estate panorama, is constituted by the depreciation of all the less recently built stock, but mainly of the housing one, due to the rent control existing in this country since the end of 1910, depreciation which results from the appraisal criterion known everywhere by “direct capitalization” (annual rent divided by the capitalization rate on this kind of properties at the moment) because the corresponding factor is applied to very reduced rent values.

Indeed, the real value of those rents, all along this so long period, has been gradually shrinking as a cumulated consequence of the incidence of the inflation - with two digits in some years - without escalation in some periods and with reduced escalation in others - up to levels now-a-days insignificant (between 20 to 40 times smaller than the equivalent market values).

With this legal scheme, more than 95% of the economic benefits of the occupied spaces has been transferred from owners to tenants, and as such the correspondent fraction of the real property ownership.

The resulting consequences of this circumstances for the renting property stock (which, 40 years ago, corresponded to more than 60%

of the families' way of lodging, and now is equivalent to no more than 20% of the housing stock) has not ceased to exert influence upon all the national real estate markets, by the different aspects detailed as follows.

**2** Only after 1985 and mainly after 1990, a first liberalization of rents took place, but it was limited to the new leaseings, and related either with the use of new buildings, or (very rarely) with the case of old structures, in which the implicit rescission of the existing leaseings was due to the moving out of their current tenants and to the consequent vacancy of spaces inside them.

But these old tenants were not the same that signed those leaseings many years before, because the corresponding tenancies, according to the legislation successively created, could be transmitted in the same contractual conditions (including rents), by death of the entitled tenant, to his closer relatives - and later on, to simple co-habitants after a certain period of cohabitation - with a maximum limit of 3 transmissions of this kind. .

**3** The first consequence of what has been said in (1) is the decapitalization of the property owners in these conditions, with a decreasing evolution of their incomes up to levels in many cases lower than that of their own subsistence, if they had no wages or any other economical resources, thus obliging them to sell the dwellings to their tenants by prices resulting from the capitalization of the current rents and, as such, by ridiculous amounts.

Meanwhile, by this way, it was unjustifiably offered to those tenants the opportunity of exceptional bargains, by voiding and selling them immediately in the free market with prices 20 to 40 times bigger than that they had paid for the same properties some days before, because, as owners-occupiers of those properties, they had not the limitations their former property owners had suffered for putting them in the market in the same conditions.

**4** In the case of retail properties. the situations have been even more aberrant : the leaseing transmissions are traded with prices of more than the equivalent to 5.000 times the annual rent paid to the owner, through the selling of the shares of the firm in which name is the leasehold.

By this way, despite the changing of the real occupier, the tenant-firm — a moral person — is always the same, like the correspondent leasing that must be respected as such by the owner, allowing the

maintenance for ever on the initial conditions, including price. This has been the consequence of a very strong “lobby” in a considered “open” economy of a considered “lawful state”.

**5** The inevitable and more apparent consequence of this situation on the building stock is the decay of the structures that are the subject of this system of “rent control”, in view of the economical impossibility of their owners to afford the charges of the necessary maintenance, together with those related with taxes, licensing and management of the same properties ; and those charges are frequently bigger than the net operating income of those investments, that if this designation can be applied to the capitals, compulsory maintained in these kind of utilizations.

**6** The national housing stock under legal rent control has had, thus, the tendency to disappear from the leasing market to be absorbed, in its great majority, by the selling market ; and this explains partially the gradual reduction — mentioned in (1) — of the relative importance of the residential rent stock in the global housing stock.

**7** On the other hand, the new buildings have been more and more allocated also through the selling market (only 1% to 2% of the produced units are been rented, whereas during the years 60, this percentage attained more than 60%) due to difficulty and delay to obtain the judicial expulsion of the tenant in the case of default of rent payment.

Besides the expenses of these procedures and those of refurbishings, the loss of incomes during 4 or 5 years of its duration made this type of investment to became puzzled, des-timulating to the owners of dwellings to keep them in leasing. In these conditions, and despite the high level of free rents, more than 20.000 dwellings are usually vacant, for in-stance in Lisbon.

As an answer to this “speculative” attitude of the property owners, the last government has studied the possibility of penalties application (files, tax increases, etc) to this dwelling situation, considered as illegitimate and offensive to the national economy.

**8** The resulting offer of dwellings for rent, in the zones to where the population had been attracted (the coastal strip of about 40 Km width, from Oporto in the North to Setubal in the South, now equivalent to 16% of the territory with 65% of its population) could not be sufficient to the corresponding demand, thus giving place to excessively high values of the free rents, phenomenon which, in the government circles

as in the media which “duly” inform the public, is called “speculation”, and ascribed to the property owners and to the real estate professionals.

These excessive values of the dwellings and of the rents are - by coincidence - parallel to the real construction costs which are heavily loaded up to 35 to 50% of those values with charges related with licensing, taxes and other payments to the Administration, assumed as needed to the necessary infrastructures and to the social housing policy.

To these direct production charges it must be added the resultant overcosts, for the building industry, from its almost permanent suboccupation (60% when in other European countries the occupation rate is around 80%) greatly due to limitation imposed to the real estate activity, as exposed in other items.

These overcosts have been considered by the governments as a consequence of the backward techniques used by the private sector for the building construction, despite the fact that, in this same country, the industrialized building techniques have already had application with success (1965-74) under all the points of view, but could not be maintained, due to changes in political-administrative conditions that economically disabled them. Those excessive prices are also usually ascribed to the “land speculation”, by coincidence in zones where the demand is knowledgably much higher than the reduced available spaces that the very official departments, national or municipal, restrict through strict rules of zoning and town planning, and the slow formalities needed for the licencing of development and building.

**9** The scarcity of new buildings also resulted from the inevitable consequences (indeed inevitable, except if it was established an official and compulsory table of prices with penalties for the correspondent disobediences, hypothesis which could not be excluded under some of our governments) of the fixation of prices by the developers based on the criterion of “direct capitalization” (relating the value of the dwelling with their rent through the capitalization rate) and in the real rents of the similar dwellings in the free market.

This rent improvements give place to abnormally high capitalization rates, but the perspective of such yields could attract to the correspondent investment, (if they were not obliged to suffer so abnormal risks as those referred before), bigger quantities of capitals that would be sufficient to provide equivalent improvements of the production and of the spaces’ offer, and so to correct those excessive prices in the rent and selling markets, if it was allowed the free running of them, as normal and competitive markets.

**10** This cost increase is even more sensible for an individual family, because for it the relative dearness of any kind of goods is instinctively measured through the relation between the price of this kind of goods and the annual income of the subject family.

In fact, regarding housing, its relative dearness evaluated in years of family gross income, varies, in all the remaining European countries, between 2,6 (in Sweden, due to its abundance of territory in relation with its reduced population) and 6,0 (in Nederland's where, with a bigger population and a the scarcity of land, it obliges the country to recuperate areas from the sea) meanwhile in Portugal, without that relative scarcity, that ratio varies between 9 and 12 years.

**11** It is obvious that, for the called "housing problem", the buying solution is thus specially contra-indicated in the case of the Portuguese population, due to its special demo-graphic-geographical conditions before exposed. But it is even more so in what concerns the young couples (between the ages of 25 and 35 years) in a period of their lives during which they are statistically in conditions of an even bigger instability of employment and of more reduced family incomes compared with those between 35 and 45 years and mainly with those between 45 and 55 years, age intervals within which is more normal, in other countries<sup>1</sup>, the housing acquisition.

**12** In all this panorama, it is not unimportant the fact that, during the years 60 of the past XX Century, the Portuguese government has given maximum priority to the industrial investment and, since it has been noted as a great obstacle to that aim and that priority, the fact that the real estate investment corresponded, at the time, to more than 60% of the Gross Capital Formation, it was the reason why this type of placement has been officially labeled as "speculative and not reproductive", and treated as such.

And this label, despite the numerous and deep changes verified in the governments ever since, it has been invariably maintained up to day in the set of economical concepts of the so called "post-fascist" Administration, with a complete abstraction of the reflected direct effects in the building industry, in the activities in the up-stream of it, and by this way, in the very GDP.

---

<sup>1</sup> "Les bailleurs personnes physiques comme les propriétaires occupants, se situent plutôt dans les tranches d'âge supérieures à cinquante ans et dans le quart supérieur des revenus" in the page 93 of the publication "Les ménages et leur logement" of the Ministère de l'Équipement des Transports et du Logement –Economica – Paris - 1997.

Through recent studies developed in a close European country<sup>2</sup>, it is deducted for this reflection a factor (multiplier) of around 18 times, (1 Euro more in the real estate production gives place to an increase of 18 Euros in the GDP) which gives a quantitative idea of the relative importance on the global economy of a so restrictive policy for the real estate activities

A joint consequence of this guide lines and of the continuity of the rent control has been represented in Portugal by the low rhythm of new house building (of 4 to 5 dwellings a year and by thousand inhabitants) and by an incidence of the rehabilitation works in the value of this production of about 5% during the period of more than 25 years that was specially favorable for this (1950-75), meanwhile in the rest of Europe, it was over-passed the rhythm of 10 dwellings a year and by thousand of inhabitants in new buildings, with an incidence of rehabilitation of more than 30% of this production.

According to the mentioned studies regarding the “multiplier” of the real estate production over the GDP, and having in mind the average building cost of a dwelling in the corresponding period, the per capita income of the Portuguese population shall have been reduced by more than 40% regarding the levels that it could attain if the policies adopted were not those adopted.

**13** The preference of the governments in what concerns the housing policy, later on (1983) given to the acquisition of the house by the family (and not to its renting) and the programs that derived from it, had as a consequence, the total absence of measures directed to stimulate the investment in building for renting (which, up to the years 60 has enormously grown by itself<sup>3</sup>. The quoted publication of the “Ministère

---

<sup>2</sup> “Libro Blanco del Sector Inmobiliario” – IESE Universidad de Navarra ; FEI – Fundación de Estudios Inmobiliarios ; Ministerio de Fomento –Secretaria General Tecnica – Madrid 1999 – pages 58 a 67.

<sup>3</sup>This tendency is not occasional or specific of the population or of the subject market (Portugal during the years 50-60). In France, for instance, in the publication before mentioned it is possible to read in the page 92 that, in the sequence of the change in the government policy in the sense of the liberation of the building ownership regarding the limitations imposed up to it “la fin du désengagement des propriétaires bailleurs personnes physiques renforce le rôle régulateur traditionnellement exercé par le parc locatif privé sur le marché du logement pour l'accueil des ménages mobiles et des nouveaux ménages” It is added that these changes “sont à l'origine du redressement du secteur locatif privé constatée à l'occasion de cette enquête. D'après leurs déclarations, les propriétaires bailleurs personnes physiques possèdent en moyenne un peu moins de deux logements de rapport. Le patrimoine immobilier est dispersé et seul une minorité de propriétaires dispose d'un parc de plus de quatre logements. Si la situation la plus courante est donc la possession d'un seul logement, voire de deux logements, pouvant produire un revenu accessoire,

de l'Équipement des Transports et du Logement affirms that during the period before “l'immobilier locatif subit en effet la concurrence dans la période 1988-1992, d'autres types de placements répondant mieux aux exigences formulées par les investisseurs : exigence de rendement, de liquidité, de sécurité et d'une fiscalité avantageuse. A cette situation peut, en outre, venir s'ajouter chez les bailleurs privés un sentiment d'insécurité, généré en particulier par des situations conflictuelles avec les locataires” exactly in the same conditions verified also in Portugal./\*/ ceasing to determine the generalized savings which are necessary for this investment, and the implicit reduction of the inflation rate as it arrived up to then.

It is opportune to emphasize the central and fundamental role that a leasing market could have – if it could be really competitive and balanced – in the general real estate landscaping that has been described before.

This general overview allows us to consider the governmental measures leading to this evolution of the private investment, as being anti-natural – since they counteract a natural tendency – and destabilizing for the housing market, through the corresponding reduction of the offer of dwellings for rent in relation with the foreseeable demand, and through the related rise of prices, either in this renting sub-market or in the selling one, by the exposed reasons.

From the human and even social point of view, we must also emphasize the character of treason that represents this change of governmental guide lines concerning thousands of families.

Indeed – entrusting as always in the continuity of the existing conditions (legal, fiscal, financial), based in which, up to the end of the years 60s, they have made this type of investment – they have seen shrinking afterwards the real value of the relative incomes, as a consequence not only of the withdrawal of those protections, but also due to the joint effect of the inflation and of the rent control.

---

ils sont cependant 10% à posséder 41% des logements locatifs”. If we have in mind that (“Économie immobilière” – Jean-Jacques Granelle – Economica – Paris 1998 – pag 120) “dans le cycle de vie patrimoniale de Modigliani l'accumulation en vue du financement de la période du troisième âge est la motivation principale de l'acte d'épargne” we may finish by concluding that “plus fondamentalement, on y trouve confirmé le raisonnement économique sous-jacent à l'investissement en logement”. This means that this type of familial behavior is normal in any market and that it is thus natural from the point of view of the social life ; so, we must consider as anti-natural and anti-social the government rules (corresponding to the Portuguese case) that hinder that normal behavior of the families./\*/ with the subsequent, inevitable and very sensible recession of this type of placement (by the firms and by the families.

**14** This governmental policy concerning the priority of the house buying by the families - leading to the assumption of this way as the only solution for having a home – that had as a great help the sudden fall of the interest rates between 1990 and 1999, and the simultaneous rise of the competition prompted by the European Union, competition to which have escaped up to then this sector of the economy.

The rhythm of house buying has registered a spectacular increase (up to the level of 10 dwellings a year and thousand inhabitants, equivalent to the double of what it was previously attained) with an important improvement in the building industry occupation, traditionally limited to around 60% as said before, with the obvious reflects in its productivity and in the resultant costs, added to the taxes incidence as also mentioned. The banking system helped on this unbalance between the two competing alternatives, (leasing and buying), commercially profiting the opportunity in favor of the last one, and easing by anyway the mortgage financing with this aim, either through the favorable appraisal of the buildings, or by rising the loan to value ration or even extending the maturity up to 40 years (with governmental approval) with the natural reduction of the monthly payments of their clients ...and the corresponding extension of the “fidelity period” of them.

**15** These circumstances, providing a certain release to the existing housing shortages which was considered by the contemporary government as its exclusive triumph (unable nevertheless, to compensate the cumulated shortages during more than 25 years, in the produced volumes of new and rehabilitated dwellings) has given place to a progressive familiar indebtedness, out of the local traditions. This has been noticed mainly in the younger layers of the population, creating, this way, a social and not meaningless risk, (in similar conditions of those which have been verified in U.K and U.S.A. at the end of the years 80s) in view of a possible rise of the interest rates by the European Central Bank.

Any possible rise of these interest rates may have, as consequences, the insolvency of this type of debtors, not only due to the rise of the monthly payments value of the mortgages but also to the fall of the market prices, resultant from the increase of housing offer for selling in situations of despair for a big quantity of insolvent debtors (institutional and personal) in these conditions, and at the end, to the insolvency of all that big volume of credits existing in the very banking system.

**16** As it has been verified in all countries with the same problems, both the maintenance of the rent control systems and the preference for the acquisition of the family house have been conducive to a clear “fixation” of the population to the places where are located the dwellings which are the object of the correspondent options.

This gives place to the “immobility” of the manpower, which, in turn, makes it impossible the transfer of that manpower from the zones where there are unemployment to those where the salaries are higher, damaging the flexibility of the global economy and, this way, the economical and social progresses provided by those migrations.

The advantages of this mobility of entities and persons has been emphasized by the Council of Europe through the priority adopted in the sense of “the elimination of any obstacles to the free circulation of services” decision which has paradoxically been taken during its summit of Lisbon in Jun 2000, so in a moment and in an environment where this free circulation suffers of strong obstacles, due precisely to the policies adopted by the local governments.

**17** Meanwhile and during a long period, a great percentage of the Portuguese families got used to benefit from a very reduced level of monthly housing costs (which have attained, in the national average, a level of 5% of the annual family income, when the correspondent figures for the other European countries varied between 13% and 28%, with an average of 18%). In these conditions and in the quality of tenants they have naturally adopted a posture of absence of responsibility regarding the management, maintenance and running charges of the dwellings occupied by them covered by a legislation which has assigned them only rights, privileges and protections. And, on the other hand, they applied in consumption the extra buying power obtained this way, pushing the rise of inflation.

When, due to the change of its statute from tenants to owners of their dwellings, they were obliged to assume the responsibilities inherent to their new position, already with mortgage charges at least equivalent to the rent they were “environmentally” used to face, either by themselves or through their parents with whom they have lived before, they don’t get adapted – as owners in a condominium – to the additional and normal charges of this new situation.

Thus are being created conditions for new habitudes of non-acceptance of those charges and for the consequent lack of maintenance of the buildings, difficulties in the relationships among neighbors with possible situations of conflict, which, finally, don’t favor that “social cohesion” invoked as justification for the establishment of all this old (for

not calling it decrepit) voluminous, and constrictive whole of legislative measures, that has been in the cause of this situation, without meanwhile creating any way for legally controlling the fulfillment of the obligations of the new owners concerning the maintenance of their properties with the same severity that has been adopted again the individual owners of flats or buildings.

**18** The deviation, before referred, between the average percentage reflection of the housing charges on the annual family income (effort index) in the case of Portugal and in the average of the other European countries, which must be considered the normality under this point of view at our level of civilization and development and which corresponded at that time to 13% of the average annual family income, this deviation, as we said, has been affected by the permanent influence of the simultaneous maintenance of the rent control system.

The resultant distortion in the global economy corresponded to a total social transfer (with a doubtful justification), done via this rent control at the expenses of the whole concerned property owners in favor of their tenants which was, at the time, equivalent to 40% of the total amount paid by the State as social assistance and in addition to it.

The before expressed doubt regarding the justification of this transfer (which, anyhow, ought not be done at the expenses of the private owners) is based in the fact that, according to inquiries contemporarily officially performed, 73% of the beneficiaries of this transfer had “effort indexes” smaller than 10%, and to more than 75% of the correspondent property owners these meager incomes constituted more than 33% of their revenues .

These data provide a perspective completely reversed of the real social need to be dealt with, simultaneous with the political treason to the small investors in dwellings for rent that has been referred before in (13).

**19** The chaotic situation in which the tax administration is in Portugal constitutes another aspect of the cleavage of the market of dwellings in rent, in its share of new rents and that one of old rents, as much as of the valorizing consequences of the two resulting standards of rents (in a disproportion of, as said, before 1:20 and 1:40 for the same quality and location of the spaces rented) for the evaluation of the buildings, and so in the very different taxes paid on similar properties.

Since the importance of the building stock under rent control still corresponds to around 20% of the whole housing stock, it is easy to reckon the importance of the reduction of taxes collection suffered by

the very government through this control, and to understand that the beneficiaries of this reduction are the same families that profit the “old rents”, cumulating both privileges and - as has been said before - constituting a majority of those for whom it is not indispensable this important “social assistance”.

This “generosity” regarding those families corresponds, on the other hand, to a glaring social injustice regarding the whole of the young couples unable to assume the high levels of the new rents.

These two aspects characterize jointly whole a real estate regime which has been obstinately and demagogically maintained in this country after more than 90 years. The high tax incidence on assets and a series of other implicit or explicit iniquities integrate the panoramic view generally invoked as producing the so mentioned “tax escaping” in conditions justified by the famous “curve of Laffer”.

**20** For fighting against the obvious consequences of the decay of the national housing stock, but confessing implicitly the State responsibilities in the situation, the last governments offered to the owners of properties under rent control, subsidies up to 50% of the incurred rehabilitation costs, what means that those owners would perform the remaining investment of 50% of the same costs over the non profitable one, already sunk in the same properties .

Indeed such an additional investment must, thus, be made on an asset that, at the contemporary free market prices, allows, to the property value in this base, yields around 1%.

To obtain some adhesion to this program, the law assures to the owner-investor, but only for this additional investment, which constitutes his share in the rehabilitation cost, a capitalization rate of 8%, through an authorized rents increase to pay by the benefited tenants, increase that, in this way, in monetary values go on being for the tenants as much reduced as politically it interests to the government they must be.

If, on the one hand, the mentioned increase may cover the costs of financing which will be necessary for the owner to obtain, on the other hand it cannot change the global rentability of the concerned buildings in more than 0,5%, (thus from 1% to 1,5%) of the value that would have the same properties in the free rent market.

**21** The real viability of this solution remains, nevertheless, subordinated to the owner’s availability of the correspondent capital, condition that is not fulfilled, having in mind the before referred decapitalization of the same owner (see (2)) leaving him as the only alternative the

banking credit

But for him, considering the depreciation referred in (1), it is usually difficult or impossible to obtain this financing due to the lack of collaterals with a sufficient value which the subject building, needing rehabilitation and depreciated by the rent control, cannot provide with the assurance usually desired by the banks, but even more, due to the fact that the majority of the owners in these conditions are included in an advanced age class (> 65 years) circumstance that impedes them to obtain life insurance policies which could back the banks (in the case of the debtor's death) for accepting these contracts.

**22** In the case in which the owner cannot financially mobilize his share in the cost of the works, the legislation concerned with this governmental program gives to the Municipalities the right of take administrative possession of the subject buildings, perform the rehabilitation works, fix the new rents for the existing leaseings (conditioned rents) according to a "convenient" and imposed table of values (that are sufficiently lower than those of the free market) and reimbursing itself of the cost of those works with these same rents during the period needed for this reimbursement.

At the end, it gives back to its owner the fruition and the management of his property, naturally with the rents and other leasing conditions established by itself including the allowed escalation clauses, in a scheme of intervention on the private affairs clearly unconstitutional mainly regarding the normal guarantees supporting the Property Rights.

**23** In a characteristic evolution in the aftermath of bad political options, and passing from a problem to another by reasons of moral responsibility, the government, to round about the "light" difficulties of the owner's financing of the rehabilitation works, took the resolution of offering to the property owners the possibility for them of being financed, with less restrictive conditions than those of the private banks, by the INH (national housing institute) the official department concerned with the housing policy.

There is not yet sufficient experience of this solution to take conclusions but, in principle, the normal bureaucratic functioning of the organizations of this type cannot give the necessary fluidity to the procedures for solving voluminous problems like this one.

**24** To face the remaining real estate local shortages in what concerns the land spaces necessary to urban development, in the frame of a very discussed and controversial "land policy", always in a permanent fear

and struggle against the famous” land speculation” (demagogic designation applied to the unbalances between the demand and the offer of developed land due to the town planning limitations) the government transferred, to the municipal assemblies, the powers and prerogatives of the right of “eminent domain” for public utilization, traditionally reserved to the central administration of the State. According to a law made, there are few years with this aim, these “municipal assemblies”, similar to popular committees, are democratically enabled to decide and administratively entitled to take possession of any real estate properties considered to have this public interest, if necessary by the cadastral values which are obviously affected by the general depreciation referred in (1).

**25** As it is natural, the associative local organizations – and mainly those of the real estate sector – have not stopped to claim actively for solutions to this state of affairs, either through the media, directly before the public opinion, either before the political parties, or, as it is indispensable, before the public administration.

Despite that, in the general understanding of the people, it begins to be felt a certain acknowledgment of, at least, some of the reasons exposed before, and individually, by some personalities more concerned with these problems which form and interpret this general understanding, it has not been possible, along the correspondent evolution of the country during the past period of more than 91 years, to change the political guide lines, the legislative bases and the economical concepts that, implicitly or explicitly, have been in the origin of the situation..

From the side of the politicians in power, the general position was expressed by one of their most prominent members, alleging publicly that, “having in consideration the assumed positions of the remaining political forces, his government could not be interested but on the aspect of the rehabilitation of the national residential stock”, (naturally the more visible but also the more superficial aspect of the problem) and so not on the interests of the owners and the other aspects in stake.

Confirming such a perspective as perceived by this minister regarding the remaining political forces, a detailed petition submitted by a federation of associations concerned with it to the Assembly of Republic asking its intervention on this matter so important to the general interests in the Country, did not overpass the Parliamentary Commission, could not be discussed in the plenary session and has been sent back without any possibility sequence.

**26** The present government with an absolute majority in the parliament, recognized, immediately after assuming functions, the importance of the residential rent market re-launching and of the solution of the “problem of the old rents” – being the first one in 90 years to do it – and announced its intentions of removing all the obstacles to attain both objectives.

After 6 months of exerting the public administration, the same government begins now to limit its initial aims, arguing that “the old rents correspond to vested rights” and postponing for some years later the possible measures envisaging the liberalization of that market regarding the definition of the values of the rents, and making this way a step more in the eternization of the rent control.

## **Conclusions**

The detailed description made above, try to give a complete panorama of the economical and social situation in Portugal, resulting from a strong and very extensive damage to the general prescriptions of the Property Rights, caused directly and indirectly, not only by the rent control applied there after more than 90 years, but also by other different legal ways.

The whole set of the existing conditions has been, not only reducing the rhythm of economical development of the Country, mainly in the last 30 years (to the point of being now almost the lowest in the U.E.), but also – because the establishment of people and firms from abroad is sensibly limited through the reduced availability of the national real estate stock – compromising the importance of the trade exchanges inside the Union, and the very integration of the Country in it.

After a so long period, during which much of the other countries have experienced - and removed as non performing - these types of measures, the political and administrative structures in Portugal has not been able to promote here, by themselves, the same evolution followed abroad, thus confirming the general verified principle according to which the longer is the duration of this restrictive rules, more improbable is the exit from them.

In the context of the European Union, which has been created and developed during a much more recent period and has included Portugal in an even more advanced stage of its evolution, this situation is not only rather delayed regarding the common progress attained - and so demanding urgent correction for the going on of that common progress - but also it is not possible of over passing, locally and individually, as it is proved after that long period of unchanged situations, even more having in view the recent experience.

This situation characterizes a clear case in which the “principle of subsidiarity” don’t exclude, but on the contrary exacts, the application of common rules on this matter.

The reasons and arguments exposed in the “Introduction” of this document and the clear reference to the “possible need of regulation” of the Property Rights, consecrated in the text of the Article 17 of the Charter of the Fundamental European Rights, emphasize, in what concerns the Portuguese case, that need of regulation also elucidated in this document with the cases of all the other member-countries.

But this regulation must be made with a common aim of preserving the essential contents of those Property Rights and of avoiding its gradual corrosion, as it happened everywhere, mainly during the last 60 years, with the consequent damages to the prosperity and progress of the peoples involved.

Just like the elimination of the excessive deficit of the government budget, the elimination of the rent control and of all the other iniquities affecting the Property Rights in Portugal, is necessary and advantageous for the national progress and prosperity as much as for its communitarian connection with the other member-countries.

Just like with the deficit elimination, the elimination of the encroachments to the Property Rights is not possible to obtain spontaneously through the normal run of the democratic system, because, in the short delay, it brings reductions in some individual net incomes, eventually excessively higher, for a big quantity of elements of the population, and as such it is not a popular measure.

Again like the deficit elimination under the effect of the “Pact for Stability and Co-hesion”, it requires the issue of a communitarian prescription providing the compulsory enforcement of a set of common rules that allows the regularization of a so important matter, deeply related, not only with the local global interest, but also with the desirable integrity of the Union

It is, thus, this communitarian regulation of the Property Rights which, by the subscribers, is demanded with this “white paper” to the European Commission.

Lisboa, 30 de Agosto de 2004



# Chapter 11

## Report on Spain

### 11.1 Urban Property in Spain

#### 11.1.1 General facts

The Spanish Constitution, ratified on 27 December 1978, guarantees the right to private property in Article 33, in addition to stating the possibility that a citizen be deprived of private property for justified causes of public use or social interest, in exchange for appropriate compensation.

Imbued with the legacy of Roman law, in practically all European constitutions property is taken up within a framework of basic, inviolable rights. Its rights are guaranteed in the first article of the Additional Protocol to the European Convention on Human Rights, and more recently in the Treaty of Nice, as well as in Article 17 of the new European Constitution.

In practice, governments have used public or social interest to justify limitations on property rights, plundering in the name of expropriation and turning property into an easy source of tax revenue.

At least in practical terms, Spain makes no real distinction between property for social use (understood as that used for family housing, whether or not it is rented, as a fundamental citizens' right under Article 47 of the Spanish Constitution), or that used for productive purposes (agricultural, commercial or industrial) and non-social property, such as second residences, and properties that are a result of the welfare state, that require no special constitutional protection.

This lack of distinction authorizes the different levels of government that exist in Spain (national, autonomous and municipal) to generally use property as a source of tax revenue, although, save in exceptional cases, and in any case in very low amounts, property for family use does receive differential treatment.

Nor does Spain offer different treatment for properties that serve the owner and those being rented out. Repeated rent freezes, dating from the Spanish Civil War up to 1994 (and rents have only partially recovered since that time) discouraged investment in this type of property. Therefore, the percentage of property available for rent (which stood at some 70% of the total in the 1950's) dropped to among the lowest levels of the EU, a process culminating in the complete deterioration of this property, as the rents could barely cover the costs of proper conservation and maintenance for the buildings. This only came about when, having overcome the administrative and rent-related limitations, which is no easy task, owners could again have access to their properties, finding them rundown and in need of renovation they could not always afford. This has fuelled the so-called "okupa" squatter movement, whose advocates turn the unauthorized occupation of property into a form of social protest.

To the contrary, second residences, for owners as well as for tenants paying low rents, have become a necessity in large cities. Thus, they struggle through the week in their tiny, dilapidated city homes to enjoy true properties only at weekends and during holidays. Spain is one of the countries with the highest percentage of this type of property.

## **11.2 Construction**

Historically, the cost of new construction in Spain was not comparatively high. But the current real estate boom, in addition to a number of administrative barriers and taxes, place the true price of such properties among the highest in the world: given the lack of urbanizable plots, the price of land is the first of these obstacles, but there are also the intermediaries put in place by the administration (the intervention of the directing architect and executing architect) which are in turn supervised by other government architects, not to mention the ten-year insurance policy. The cost of these intermediaries is fixed by the professional guilds (and the government) themselves, in a monopoly that unjustifiably adds to the cost of construction.

## **11.3 Intermediaries in the real estate trade**

All documents relevant to property must be registered at the Land Registry, with the intervention of a notary public, an administrator who oversees the payment of taxes and a registrar of deeds, who, in another monopoly, all receive officially-fixed fees. This makes for an increase in final costs of some 3% over the before-tax sales price. The taxes

and fees directly levied on construction (local tax on increased value of real estate, works permits, capital gains tax, fees for documented conveyances and legal acts and value-added tax [VAT] of 7 to 16%) can, on occasion, stand for over 50% of the cost of the land and buildings.

## 11.4 Renting

The Administrations and Economic-Social Council have repeatedly stated the need to increase the built stock of rental homes and business premises in an effort to stimulate occupational mobility in the job market. It has been shown that the lower the availability of rentals, the higher the unemployment rate. Spain is among the EU countries with the highest unemployment rates. This is due to its low percentage of rental homes and commercial facilities, which have descended from near 70% in the 1950's to less than 10% of the total nowadays. This percentage continues to drop, because every year thousands of properties are withdrawn from the rental market, there being little incentive for their owners to even maintain them.

Though the administrations are constantly trying to implement programs to promote renting through incentives or low-interest loans, such measures are insufficient. In any case, they are much lower than the tax hikes that the administrations continuously apply and add to. It is clear that only a set of well-adjusted tax regulations can remedy this severe problem.

The legal uncertainty of renting and especially the existence of rental laws that limit property rights are also reasons that thwart the proliferation of rental housing and business facility developments. Spain is still suffering from over a century of totalitarian laws obliging rental home and business site owners to perform a social role that should be reserved for the State, as is laid down in Article 47 of the Constitution.

In truth, renting only survives thanks to the senior owners still in existence, because private or public rental housing developments are few, if not non-existent.

## 11.5 The Urban Rent Act

Obviously, the first obstacle that truly blocks the creation of rental properties is the existence, even today in the 21st century, of third-world, obsolete rent laws.

Following several decades of rent freezes, a new Law was passed in 1994, which not only failed to promote the creation of additional rental

properties, but drove more owners to get rid of the rented properties they held up to that time, by maintaining nearly all tenants' prerogatives in force. Over 100,000 homes have been taken off the rental market since 1994.

The Urban Rent Act clearly distinguishes between habitual residences and the rest of properties, placing on the former the limitations over property with justified social use. In fact this is a barrier to augmenting the rental stock.

Thus, with a simple change of residence, the tenant, not the owner, could decide which legislation is applicable, thereby enjoying a number of privileges: minimum duration of five years; possibility for the lessee to cancel the contract, but not for the owner; subrogation for a family member, spouse or common-law companion (considered as such on the condition that there exist "affectivity" even if it is a homosexual couple) in case of death of the rental contract holder; impossibility of increasing rents above rises in the cost of living; and preferential purchase rights, that is, right of first refusal at the original selling price.

Although they can be relinquished, the new law has created limitations for owners that rent business premises, such as those on the right to receive compensation from tenants if they do not continue with the contract and to transfer and sub-lease to third parties, in addition to preferential purchasing rights.

This Urban Rent Act is largely devoted to attempting to solve the problems entailed in the prior law, in which it only partially succeeds. This is because although it officially eliminates perpetual contracts, in reality it converts those for housing into lifetime arrangements, not only for the contract holder, and their spouse or common-law companion, but also for any children over 65, or with a disability. In some cases it can even be extended to certain relatives for several more years. As for business premises, they can also be lifetime contracts for natural persons or public corporations. For companies, in some cases the duration reaches the year 2020. In practice, after nearly 10 years of the new Urban Rent Act, the rent of 10% of the rental homes and business premises has appreciated, 20% have been discharged either due to vacancy or death of the owner, the rents of 40% have appreciated by 50%, and the remaining 30% are simply maintained frozen.

Finally, owners' mistrust toward the Urban Rent Act is absolute. For example, the Act guaranteed financial aid for owners saddled with frozen rent contracts, which has never been specified or paid out. One final problem emerges when it comes to discharging a contract due to non-payment, or simply any breach of the obligations assumed. Aside from the new procedural complications, mention must be made of the

owners' obligation to hire a solicitor and an attorney, who must be physically present at the trial. If these requisites are not met, one can not go to court to enforce the terms of the contract. This makes the process long and costly; on average nearly a year from the initiation of proceedings to the eviction, as long as there are no possibilities for appeal. In that case, it may take several years, during which time the tenant can even continue living in the rental property without paying rent.

## **11.6 Urbanistic Environment and Utilities**

Private property can not be conceived of without the elements and characteristics that adapt it for use. Therefore, property can not be considered without a proper urbanistic environment, with not only the infrastructures necessary to be able to reach it, such as streets, avenues, public transport, etc., all properly maintained, but also those other facilities for the people that live and work on the property, such as supermarkets, schools, civic or leisure centres, parks, bank offices, etc. In this regard, it is worth noting that there is a lack of most if not all of these services in minimally acceptable conditions.

Nor should this article overlook the absence or shortcomings in maintaining the most basic utilities such as water, electricity, gas, tele-metric communications or waste and waste water removal. There is not only a lack of quality in this area, but also high costs, to which the also high and unjustified contracting fees must be added.

Likewise, the Administration increases its supervision of services for which the owners have responsibility, overlooking those for which it, or its participated companies, are responsible, such as infrastructures or essential utilities.

## **11.7 Tax Regulations**

The realm of taxes is where the most damage is done to the principle of property in Spain, as there are many, and they are quite costly.

The decentralized autonomous community system now in force in Spain does not allow modification of the former taxes. When it was established, the relevant taxes were attributed to each level of government; State, Autonomous Community and Municipality. Now it is difficult for them to relinquish these revenue sources, though most are obsolete and inappropriate for a modern country.

**For the State:**

- **Personal Income Tax and Corporate Tax:** This tax, which can easily reach the 46% rate, taxes the net income of citizens, and if any deductions exist, they are only possible through application of a higher rate. Therefore, citizens pay all the same.
- **Value Added Tax:** In Spain, sales of newly-built homes and business premises are taxed from 7 to 16% of the selling price respectively, with no possibility for compensation in the case of rented homes.
- **Tax on Increased Value of Real Estate:**

#### **For Autonomous Communities:**

- **Property Transfer and Court Record Proceedings Tax:** This tax is applied to any document in which a Notary intervenes in any way, which is why nearly all the operations and statements of property, whether or not they must be registered in the Land Registry, must pay it. It ranges from 0.5 to 2.0% of the operation amount. This tax is even applied to the interests of mortgage loans and appraisal values for auctions, making it all the more expensive to finance a property purchase.
- **Gift and Inheritance Tax:** Though non-existent in several parts of Spain, most Autonomous Communities maintain this obsolete tax, which can reach 70% depending on the amount and degree of kinship.
- **Capital Gains Tax:** This tax came into being in the 1980's, based on the need to conduct a census of citizens' wealth as something circumstantial. It was even called the Extraordinary Capital Gains Tax. In fact, it has become quite "ordinary", and as cadastral values have increased, what began as a simple statistical statement has ended up as a true, costly annual tax on the wealth of citizens who, in good faith, declared their assets, putting this information in the hands of the Administration.

#### **For Municipalities:**

- **Real Estate Tax:** This annual tax is the backbone of municipal financing. It allows municipalities to offer all types of community services although, those which benefit property receive the least financing. Simply put, these taxes pay for the lavish festivals and events that all businesses and citizens enjoy, but do little for street paving, utilities and in general, urbanistic services, traffic and

security of the properties that pay for them. It has continuously grown at an average rate of 10% per year, much higher than rises in the Consumer Price Index or cost of living.

- **Tax on Commercial and Professional Activities:** The Administration does not grant owners who maintain property in rent any of the benefits given to companies. But this does not stop them from levying on property owners with assets of over 600,000 euros this annual municipal tax reserved for businesspeople, that stands for approximately 0.2% of the value.
- **Tax on Increased Value of Real Estate:** (Duplicate of the State Tax) The owner who sells or transfers his property must, in addition to all of the taxes derived from the creation or acquisition and maintenance of the property, pay a tax, from 3 to 10%, arbitrarily established and imposed by the administration, equivalent to the profit they have supposedly made, with no consideration as to whether a profit truly exists, nor to the amount paid to the State under this concept.
- **Utility taxes:** In Spain, something as necessary as water consumption, which is quite high to begin with, is taxed at a rate of some 10%.
- **Other taxes:** There are still fees or taxes, such as the stamps for rental contracts, which are officially mandatory. There are others such as those of the metropolitan corporations, which archaically affect the cost of property services and utilities.

## 11.8 The Cadastre

The cadastre, as a registry for land and its value should only work as a statistical reference. Nonetheless, in Spain, this is not the case, as the references and appraisals of the cadastre are even preferential over those of the Land Registry, and are used by the Administration as the minimal value of reference, and as the basis for levying the above-mentioned taxes. What began as a simple reference with values that differed greatly from the real situation has ended up as a major tax threat for property as the latest adjustments have doubled the former values. The appraisals do not take into account the interior condition of the property, whether the urbanization is appropriate, whether there are limitations, such as urbanistic mortgagings, perpetual rental contracts or frozen rent arrangements, etc.

## 11.9 Conclusions

**A)** Spanish property needs a precise definition of concept, and for there to be a national and international determination of the rights and obligations of owners and users, and objective rules by which those rights and obligations may be enforced.

**B)** The growing tax burden faced by property and its use makes obligatory a national and international stabilization and harmonization of the objective rules by which the various taxes and fees can be established, and the maximums they may reach in the various phases of purchase, construction and use.

**C)** The still-existing limitations in rentals make necessary their repeal, or otherwise their replacement by standards based on the community and consumption, not third-world privileges as is the present case.

**D)** The State must acknowledge its responsibility to comply with Article 47 of the Spanish Constitution, and therefore offer subsidies and generous tax exemptions to facilitate the efforts of those who develop housing, either for their own use or rental, instead of increasing what is already the heaviest tax burden in the world, with revenues from the real estate sector that now stand for 52% of the gross domestic product.

# Chapter 12

## Report on Switzerland

### 12.1 General data

#### 12.1.1 Basic information

1. At the end of 1991, Switzerland's population was 7,261,000.
2. The surface area is 41,284 km<sup>2</sup>.
3. Population density is 175.9 inhabitants per km<sup>2</sup>.

#### 12.1.2 Legal framework

##### **The Federal Constitution of Switzerland (dated April 18, 1999 / latest amendments approved by the people)**

1. Under Article 26, titled "guarantee of property", it is stipulated that property is guaranteed. Full compensation is due in the case of expropriation of or restriction to the property. (This text is part of the basic rights).
2. The principles of privacy and respect of Federal law are explained under Article 49, in the sense that a Federal law will supersede a cantonal law that contradicts it. (It is also closer to district or commune legislation than to cantonal law).
3. Under Article 75, with regard to town and country planning, it is stated that the Confederation will set the guidelines to be applied in planning. The cantons are then responsible for ensuring the legal and regulated use of the land and sensible occupation of it. The Confederation encourages and coordinates the work of the cantons and collaborates with them.

The Confederation and the cantons take into consideration the various constraints of town and country planning when carrying out their work. These are water resources, forests, protection of natural resources and national heritage (this is the responsibility of the cantons), hunting and fishing, and protection of fauna.

4. Energy policy is dealt with under articles 89 onwards. The main points are that the Confederation sets the guidelines to be applied in the use of energy, legislates on consumption and encourages the development of energy techniques.

## 1.22

**With regard to the respective responsibilities of Confederation, cantons and communes on housing,** it is worth quoting Articles 108 and 109 in their entirety, as they are essential to the developments mentioned below, to wit:

*Article 108: Promoting the construction of housing and accessible home-buying*

1. The Confederation encourages the construction of housing and the purchase of apartments and family houses for private use, as well as the activities of developers and organisations that construct housing for public use.
2. In particular, the Confederation encourages the purchase and preparation of land for the construction of housing, the planning of such construction, the lowering of the cost of construction and the lowering of housing costs.
3. The Confederation may legislate on the preparation of land for the construction of housing, and on the planning of such construction.
4. However, the Confederation gives special consideration to the interests of families, the elderly, the handicapped or those in need.

*Article 109: Leases*

1. The Confederation legislates in order to eliminate abuses on leases, particularly excessive rents, as well as ending illegal evictions and extending leases for a set period.
2. The Confederation may legislate on the enforcement of framework contracts for leases. In order to be considered binding, such

contracts must take into account the legitimate needs of minorities and regional differences, as well as respecting the principle of equality before the law.

### **Cantons and communes**

There are 26 cantons in this small country, each with its own legislation also affecting property laws, housing laws, etc. The more than 3,000 Swiss communes also have authority with regard to the use of property (taxes, construction policy, etc.)

### **Per capita land**

Around 1948, current statistics stated that some 18 m<sup>2</sup> per inhabitant was used for housing purposes. At the start of this millennium, the figure is closer to 50 m<sup>2</sup>. This standard of living – or luxury – has a cost which will be expanded on later.

### **Historical development**

The basic principle aims to make property rights or indefeasible rights confer on the title holder absolute and exclusive ownership of an object within the limits of the law. This is an absolute right in that it exists with regard to everyone. Each person is obliged to refrain from disturbing another person's ownership of an object. In fact, the opposite occurs and this White Paper will now be developed by focusing on several targets and developing each individually.

## **12.2 White paper**

### **12.2.1 Potential (town and country planning)**

It is understood that the section headed "Potential" refers to reserves of land allocated for construction within a reasonable period.

It is true that potential land for construction is very considerable in Switzerland. Nevertheless, the fact is that quite often the sites allocated, either for industrial or housing construction, are unsuitable or have become unsuitable for economic reasons.

The main problem, therefore, is obtaining reasonable decisions – we dare not say fast ones – on the classification of land. Opposition quite often comes from owners of land that has already been classified, who do not wish to lose a potential profit, or who have obtained substantial loans on the basis of the allocated. In Geneva, to quote another example, land is allocated for urgent construction that has already been

allocated and built on; it is obvious that the existing houses will not be demolished in the near future and that agricultural land will have to be set aside for construction in order to meet the real needs of the economy.

It must also be pointed out that the tax regime and other state measures for turning agricultural land into construction land are reasonable. The problem is more to do with flexibility and suitability in relation to need.

### **12.2.2 Density**

A piece of land is also valued for its capacity, that is, the volume or gross surface area which can be built upon. Current Swiss trends mean there is major opposition to the building of tower blocks in this country, and it is very rare for any to be built nowadays. This ought to come under serious review as far as urban areas are concerned.

### **12.2.3 Demolition**

As a result of the so-called post-war 'baby boom', by the 60s and 70s Switzerland needed additional housing. This was then built quickly and cheaply because wages were low. The result is that a number of these buildings, with small, unusable kitchens and walk-through bedrooms, usually badly insulated for sound and heat, now ought logically to be demolished. The rent protection system in combination with the political environment means that few owners decide to demolish these buildings and the content themselves with maintaining them. The risk is that these buildings may one day become social housing because of their sub-standard condition, and that this will lead, in the medium or long term, to the creation of new ghettos.

I will not mention here the financial risk concerning the management of mortgage loans which is going to emerge following successive reassessments by the banks of this kind of property (high risk rating).

### **12.2.4 Freedom to buy / sell**

In order to protect farmers, existing tenants of agricultural land have multi-stage pre-emption rights on purchasing the land which can extend as far as six people. This pre-emption right can be carried through to up to six claimants. In this area, evidently, the market is frozen.

In order to protect national heritage, foreigners are severely restricted from investing in real estate in Switzerland. This outdated practice, which is no longer justified, is a major deterrent to investment potential and to certain basic ideas about freedom.

### **12.2.5 Yield I**

When a developer builds on a piece of land, he takes on all the risks of fluctuations concerning tenders, as well as all the imponderables arising from the state of the site and other reasons. From the moment that he places a value on his building, for example if he rents it out, his property becomes, so to speak, an administered asset. The national and regional legal frameworks coincide in applying a strong restriction to the idea of the market. To be more precise, a number of constraining legal clauses create obstacles to useful applications that would follow market forces (obviously those that would permit property owners to raise service charges and rents). Another example: on one hand, the landlord is required to maintain the rented property adequately for use during the tenancy period and, on the other hand, the tenant has the power to refuse the measures that lead to this maintenance (renovation, etc.).

### **12.2.6 Yield II**

2) In Switzerland as elsewhere, we are witnessing a strong element of mobility, due to changes of work place, divorce, etc. The average length of use of accommodation should not exceed five years, in general representing a turnover of between 16% and 18% a year. A third of dwellings are privately owned and because of this are more likely to be bought and sold.

Registration and legal fees, rising to four or five per cent depending on the area, and taxes obtained by a variety of different calculations, act as deterrents to such transactions. In effect, every time a building is sold, the State brings down its value. This devaluation is unacceptable if Switzerland wishes to pursue its political aims of making property more accessible and mobility easier for its citizens.

### **12.2.7 Added taxes during use**

The normal taxes applied for community charges and services affect buildings as a matter of course. However, property taxes that rely on local decisions are too high and affect the property charges substantially. Local authorities would do better to make property owners create maintenance funds linked to the buildings in order to keep them maintained.

### 12.2.8 Maintenance funds

Here we have one of the best examples of the prevailing common attitude, namely: on the one hand, it is considered inappropriate to create maintenance funds because legally such costs should not be met through the rent, that is, by the tenant. On the other hand, should there be a rise in rent, and if this is contested, it is understood that such funds should have been created beforehand because tenants cannot be made responsible for maintenance costs, other than those that create an added value (new technology or another improved use). It would be useful to deal with this matter once and for all in order to impose greater clarity on the issue.

\*

In conclusion, we can state that the main factors that impede property ownership are of a financial nature and arise from the fact that the implementation of legal texts concur in considering buildings as administered assets once they have been built.

These legal texts are dense, at the limit of comprehension, and sometimes stem from a political rather than an economic model.

For example, in Switzerland, some very complex subsidy models were created in 1974. They did not follow natural economic forces and today they are completely out of date. We are not talking about the free market here, simply about wanting to make operations more transparent, and transactions more fluid and less restricted. Economic times are hard enough without making such operations harder than is reasonable.

# Chapter 13

## Report on United Kingdom

by

**David Roodyn**

This article offers an overview on three facets of property rights in the United Kingdom.

- Structure of our system.
- Methods and cost of acquiring property.
- Market situation.

### 13.1 The Structure of Property

Insofar as structure is concerned, there are two types of property: “freeholds” and “leases”. A freehold is “absolute” property. Freeholders are the full owners of their properties. Therefore, their property rights never expire. “Lease” means the rental of a property for a given period of time. Today it is still possible to apply for an extension of the lease for housing purposes and, in some cases, even acquire the freehold. Historically, in England, much of the land has belonged to the aristocracy. In the past, the lease system made for an intelligent way for them to maintain their wealth. In fact, property values tend to rise, a gain that benefits the owner-lessor. Much of central London sits on large estates (valuable landholdings passed down from generation to generation), like Cadogan in Chelsea, Grosvenor in Mayfair or de-Walden, north of the West End. For example, my father is a doctor,

and his house forms part of the deWalden Estate. Although my father holds a long-term lease, the freeholder (the person with the freehold over the property, and who grants a lease on it) prohibits use of the property for any other purpose than that of doctor's office or housing.

Simply put, a lease is composed of a contract to hold and occupy certain plots of land over a specific time period. The clauses or articles of a lease are called covenants. There used to be a standard model for commercial leases, but currently each law office has its own rules and terms, all designed to benefit the owner-lessor. Thus, the lease goes from lawyer to lawyer, until each one has managed to bolster or weaken the covenants being negotiated.

This is the procedure followed for new leases. But it may be that the lessee does not want to continue occupying the property, and seeks to rescind the lease. In such case, the lease is assigned to a new lessee, who takes responsibility over the obligations. As a result, the former lessee is freed from any commitment. During the recession of the early 90's, there was a lessee who had left his lease and was suddenly made responsible for payment of the rent, as the new tenant was unable to make the payments. Such unfair situations no longer arise, but they exemplify how England, as a country, mainly protects landowners' interests, to the detriment of tenants' rights. The ordinance from 1 January 1996 is still enforced, by which the owner-lessor can insist that a lessee deposit a guarantee as a condition for granting the lease.

The duration of commercial leases is shorter than those used for housing. Nonetheless, upon expiration, the lessee often has the right to negotiate a new lease, paying commercial rent at all times. A commercial lease features covenants to pay rent, cover expenses for certain services and the maintenance of the building in optimum condition. It may also contain covenants for rent adjustment. This can lead to the coexistence of disparate situations in a single property. For example, in the case of rent adjustment, the lessee must always pay the same rent as before. But if the market price declines, a new lessee may pay only half that amount. I am familiar with law firms that have been near bankruptcy for misreading the market: they leased their offices at a high price, and then devoted all their profits to paying the rent.

Freehold is a much more attractive means of acquisition, as it involves full possession of the property. Houses are often bought under this system, but not flats. Nevertheless, in a single block of flats, the owners may have a share of freeholdings. In the office sector, freeholds, and even leases of over 15 years, are rare.

Freeholds have two main restrictions: first, town planning. Each property is planned for a specific usage. For example, a house planned

as residential can not be used as an office or place of business. Development plans and planning controls can be revealed through investigation. A change of urbanistic planning zone can be applied for, but this may entail a long process, as the residents of the area are consulted. In London, efforts are underway to build a new terminal near Heathrow Airport, and the *Planning Enquiry* (a commission created to gather information on the matter) has been investigating for years, since there are obviously many people affected by such air traffic.

The second restriction is that rights tend to correspond to the occupant. For example, the right to gain access. This is made clear in the property deed certificate.

A lease is much less attractive for would-be occupants, given that every year the occupation term is lessened, though the property value grows. Furthermore, it is impossible to control the costs. I have been living in an apartment for years, and thought that I was paying a low price, until I had to repair the roof. The work has cost me and the other lessees thousands of pounds. Under proper management, a fund is usually created to cover such major expenses.

In conclusion, a freehold is the more attractive investment for clients, as the term of occupancy is indefinite and the obligations are not as strict.

- There are two other property matters that deserve attention: **mortgages** and **licenses**.

Surely you are familiar with the concept of a mortgage. In England **solicitors** frequently act for the two parties; that is, for the lender as well as the borrower. This can lead to difficult situations. For example, when the borrower seeks to conclude negotiations as soon as possible, and the lender wants to wait and examine every detail of the deed. A mortgage is registered on property and will appear on the ownership deed as well as in the mortgage registry.

Oftentimes, banks require guarantees for commercial loans, and a second mortgage is taken out on a property. This system is positive when there is equity, but in recession times, the value of the mortgage can exceed that of the property. In healthier markets, we solicitors have had to litigate on mortgage fraud; in other words, mortgages taken out on non-existent property, or that overvalued property to obtain greater amounts of financing. Stricter controls are now in place, as money laundering makes our job all the more demanding, and stressful.

The **license** grants the right to occupancy but none for possession or protection based on the legislation in force governing relations between lessor and lessee. An example can be found in the conversion

of a bedroom into an office, or rooms used as a doctor's office several days a week, or an office shared by several persons. When the Lease Act excessively protected lessors, some dishonest lessees attempted to forge deeds purporting ownership of a license. Nonetheless, it must be underscored that certain conditions established by law must be met to consider full rights to all the foregoing.

## 13.2 Buying a Property

In our country, the professional figure of the notary public does not exist. The legal profession has two branches: *barristers* who are specialists that act before high courts, and *solicitors*, who handle problems relative to property, commercial and corporate law, dispute resolution and trusts. Up to a few years ago, solicitors held a monopoly on the work in the area of property rights and the drafting of transfer deeds. They are still responsible for many property transactions.

The procedure to purchase a property begins with the agent responsible for its publicity. Buyers can make offers on properties that interest them. It could be inferred that if the offer is accepted, a binding contract could exist, pursuant to the Contracting Act. But this is not the case, a source of significant stress and discomfort. Solicitors have to draw up a contract, which must then be adjusted, and often, a deposit must be paid. Once this is completed, a buyer can be certain that a property will belong to them. Nonetheless, there is the inevitable period between acceptance of the offer and the signing of the contract. In an upside market, there can be multiple interested parties confronting one another.

There is no separate administration for the Notary in England. Usually, the solicitor is responsible for property transfer. This procedure is called *conveyancing*, from the word "*convey*" (to transfer).

Before exchanging contracts, the buyer's solicitor will investigate in the local Administration as to the existence of any problems affecting the property, and whether the deed is valid. The fact that a property is registered means that all of its relevant details are conserved in the *Land Registry*. If it is not registered, the seller must prove the validity of the deed. Once the contract has been exchanged, the buyer must insure the property. Usually, a 10% deposit is made when the contracts are exchanged. Nonetheless, insofar as commercial property is concerned, the parties are not involved with such an exchange of contracts, as a lease already exists and the obligations are clear.

In England, property can be purchased at auction. In this case, before the auction, it is essential that the solicitor advise on the deed

and other problems, since once the offer is accepted, the deal is closed and it is too late for the solicitor to detect any deficiencies in the property.

Once the transaction has been concluded, the solicitor must draw up certain documents with the Land Registry, and must ensure that all taxes are paid. In the purchase of a freehold property of 250,000 pounds, this would be:

Agency costs	£ 4,000
Solicitor fees	£ 1,250
Taxes generated	£ 1,000
Appraisal	£ 750
<i>Taxes on land</i>	
Registry	£ 300
Investigation taxes	£ 100
Sundry expenses	£ 100

Generally speaking, the procedure to fix the price to be applied to property takes three months.

In England there is a *Council Tax* (like a property tax) for properties used for housing and the *Business Rate* for properties to be used for commercial purposes. These can be quite high. In essence, these taxes were created to build local infrastructures. But much confusion was generated some years ago, and general protest ensued due to a *poll tax*, which was eliminated. A small number of offices pay 6,000 pounds per year for this tax, though the benefits they receive in exchange for this amount are unclear.

Another area in which there is major potential for expense is building maintenance. It is essential that the solicitor carry out a thorough investigation. If, for example, it is thought that a new roof costs 3,000 pounds, and it turns out to be much higher, the solicitor could be held responsible.

In our suite, the expenses for services we receive are covered. This means that we pay a fixed amount, that does not necessarily correspond to the work carried out.

Aside from the expenses, it is indispensable to know whether a commercial lease can be expanded after its expiry; that is if one has the right to continue occupying the rented property. Leases are governed by the *Landlord Act* and the *Tenant Act*. Consequently, they can be

extended. This will be made clear through investigation, as by law the lessee has the right to an extension.

### **13.3 Market Status**

The commercial and housing markets have enjoyed good health for several years, although certain qualifications must be made.

- This is a regional phenomena, which is more pronounced in the south-east than in the north of the country.
- The high value of the pound also discourages foreign investors.
- Investments from Japan and Hong Kong have dropped due to those countries' economic difficulties.

That said, a one-room apartment in downtown London would cost at least 300,000 pounds, and a 1,500 m<sup>2</sup> office in good condition, some 22-25 pounds per square meter.

To conclude, despite the foregoing, I am still certain that buying in the right area of one of the biggest international cities is the best investment thanks to the appreciation of capital and the income it generates.