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## Ten Years of the French DALO and the Catalan Right to Housing Act: European Innovation in the Fields of Land Use Planning and Housing

Camille Mialot  
*Sciences Po Paris Law School*, [camille.mialot@mialot-avocats.fr](mailto:camille.mialot@mialot-avocats.fr)

Juli Ponce  
*University of Barcelona*, [jponce@ub.edu](mailto:jponce@ub.edu)

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# TEN YEARS OF THE FRENCH DALO AND THE CATALAN RIGHT TO HOUSING ACT: EUROPEAN INNOVATION IN THE FIELDS OF LAND USE PLANNING AND HOUSING

Camille Mialot<sup>1</sup>  
Juli Ponce<sup>2</sup>

## CONTENTS

### I. Introduction

### II. National Legal Frameworks of the Catalan Right to Housing Act (CRHA) and the French DALO

### III. The CRHA and the DALO

### IV. Conclusions

## ABSTRACT

The main objective of this article is to give an overview for an international audience of the results of two acts which were passed the same year, 2007 - the French Enforceable right to housing (*Droit au logement opposable*, later referred as DALO) Act, and the Catalan Right to Housing Act (*Llei catalana del dret a l'habitatge*, CRHA). Both acts are good examples of legal innovations regarding land use and housing at the beginning of the 21<sup>st</sup> Century. The first one established an enforceable right to housing in France for the first time in French history. The second one is the first act regarding the right to housing in Catalan history; it connected land use and housing, establishing inclusionary zoning techniques and promoting social mix.

**KEY WORDS:** DALO, Catalan Right to Housing Act, Land Use Planning, Housing, Spain, France

## I. INTRODUCTION

The French Enforceable right to housing (*Droit au logement opposable*, later referred as DALO) and the Catalan Right to Housing Act (*Llei catalana del dret a l'habitatge*, CRHA) are landmarks in their respective legal national frameworks because both significantly transformed the previous regulation. In

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<sup>1</sup> Lawyer and Professor of law at SciencesPo Paris Law School, France.

<sup>2</sup> *Catedrático acreditado*, University of Barcelona, Barcelona, Catalonia, Spain.

that sense, both are the result of national legal developments, but both are also an expression of international concerns about affordable housing and cities today. Moreover, DALO and CRHA share a common concern in relation to (a) the role of affordable housing in relation to sustainability and social and territorial cohesion, and (b) are regulations enacted in the framework of the EU.

#### **A. THE “EUROPEAN SOCIAL MODEL” AND ECONOMIC, SOCIAL AND TERRITORIAL COHESION. ECONOMIC, SOCIAL AND ENVIRONMENTAL SUSTAINABILITY: A COMPREHENSIVE EUROPEAN APPROACH.**

The European model is a concept invoked during discussions concerning European integration. But what does it mean? Obviously, it is a concept in development with clear political roots in an ongoing debate.<sup>3</sup> Some opinions conceive the EU as a free-trade area, ascribing the poor performance of the economy to the “soft” European model being invoked. Those opinions would like to see the role of European institutions being restricted to policing the Single Market. On the other side, other opinions consider this perspective close to the *laissez-faire* approaches of Anglo-Saxon liberalism, seeing the European model as the foundation of a just and competitive society and wanting strong European institutions to fulfill functions otherwise reserved to those of nation states. This second stream conceives the European model as a human order based upon a mixed economy, civilized labor relations, the welfare state and a commitment to social justice.<sup>4</sup>

Scholars and practitioners debating European spatial planning and territorial cohesion policy in the EU also take this discussion into account. In any case, the EU legal framework (as interpreted by an impressive number of official documents following international developments) considers sustainability as a key concept composed by three complementary parts: economic, social and environmental. In other words, it cannot be stated that a society is sustainable unless the three elements exist.

For an international audience, the economic and environmental aspects are more familiar than the social component. What does social cohesion mean? When social cohesion is mentioned, it refers to a concept close to the idea of solidarity, which played an important role in the mind of the relevant French jurist Duguit. He developed the idea of public service linked to the need of social interdependence (or social cohesion in modern terms).<sup>5</sup> This revolutionary French

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<sup>3</sup> About this debate, see Andreas Faludi *The European Model of Society*, in Andreas Faludi (Ed): *Territorial Cohesion and the European Model of Society*, 2007,

<sup>4</sup> Faludi, *supra* note 3, considers the second perspective a model rooted in Social Democrat-Christian Democrat mainstream of continental European politics.

<sup>5</sup> According to Duguit, public service is “all those activities whose compliance must be regulated, guaranteed and controlled by those governing, since it is indispensable for conducting and developing social interdependence and since it is of such a nature that it cannot be entirely guaranteed unless it is provided by the intervention of the governing force”, in *La transformación del Estado*, Francisco Beltrán, undated, p. 64 and generally and p. 119 and generally.

legal thinking may be seen still in the important French Land Use Act, *Solidarité et renouvellement urbains* of 13 December 2000.<sup>6</sup> Social cohesion is a concept focused on relationships between the elements in one group: it mentions the processes by which social ties are established in connection with the interaction of people from different social groups who feel they are recognized as belonging to a community.<sup>7</sup> From the general viewpoint, solidarity may be considered an indispensable tool for social cohesion. Although social cohesion is still a vague concept, various efforts have been made to clarify and measure it.<sup>8</sup>

## **B. THE LEGAL FRAMEWORK: EU, NATIONAL, REGIONAL AND LOCAL LEVELS**

### **1. EU POWERS: POSSIBILITIES, MECHANISMS AND LIMITATIONS**

It is important to note that, according to its “constitutional” framework, the EU did not possess powers in the field of land use and housing. However, as Italian professor Chiti states, the goals of sustainable development, solidarity, the fight against exclusion and economic, territorial and social cohesion lead to increasing intervention in relation to European cities. The EU also had powers in the fields of the environment and other public policies with territorial impact (e.g. transportation), bearing in mind the *principle of subsidiarity* (that is, that matters ought to be handled by the lowest competent authority).<sup>9</sup>

The treaty of Lisbon signed on 13 December 2007 added a new shared competence between the EU and the members States: economic, social and territorial cohesion.

Because of the Lisbon Treaty, the Pact of Amsterdam was agreed upon at the informal meeting of EU Ministers responsible for urban matters on 30 May 2016. This pact refers to the future European urban agenda and sets some guidelines. In paragraph 10, priority is given to sustainable urban development, the fight against urban poverty and the right to housing.

When DALO and CRHA were adopted, EU legislation was less advanced than today. However, those related powers, the political will of taking into account territorial issues by means of the promotion of intellectual and public experiences networking (generating a huge amount of reports, studies and papers) and the use of substantial investments explain the relevant role of the EU in urban

<sup>6</sup> See Jean-Phillipe Brouant “Social cohesion and Land Use Law: Is there a Place for Legal Regulation in France?”, in Juli Ponce (Ed), *Land Use Law, Housing and Social and Territorial Cohesion*, The Rocky Mountain Land Use Institute, Denver, 2006, pages 59-65.

<sup>7</sup> Among the European scholars, see ROBINSON, D. (2005): “The Search for Community Cohesion: Key Themes and Dominant Concepts for the Public Policy Agenda”, *Urban Studies*, Vol. 42, No. 8, 1411–1427, July

<sup>8</sup> E.g. Council of Europe, *Concerted development of social cohesion indicators Methodological guide*, available at [http://www.coe.int/t/dg3/socialpolicies/socialcohesiondev/indicators\\_en.asp](http://www.coe.int/t/dg3/socialpolicies/socialcohesiondev/indicators_en.asp)

<sup>9</sup>Chiti, M.P. (2003), “Il ruolo de la comunità europea nel governo del territorio”, in Civitarese, S., Ferrari, E., Urbani, P., *Il governo del territorio*, Milán, Giuffrè editores, pages 162 and ff.

affairs. Moreover, EU environmental policy has had a significant impact on land use law in European countries.<sup>10</sup>

## **2. THE RELEVANCE OF THE NATIONAL LEGISLATION**

As previously mentioned, in 2007, the powers to develop concrete public policies to promote social cohesion by means of land use and housing were in the hands of national authorities, explaining the importance of national legislation like DALO and CRHA.

## **II. NATIONAL LEGAL FRAMEWORKS OF THE CATALAN RIGHT TO HOUSING ACT (CRHA) AND THE FRENCH ENFORCEABLE RIGHT TO HOUSING (DALO)**

### **A. FOREWORDS ABOUT HOUSING IN SPAIN AND FRANCE**

Although, there is currently enough housing to meet the demands of the entire population in Spain, housing has been and continues to be one of the biggest problems for citizens because some segments of the population do not have enough income to buy a home.

Since the new Constitution of 1978, the decentralization of government helped to improve the quality of urban life throughout Spain with the allocation of more resources for cities and autonomous regions, economic improvement and the nation's commitment to providing infrastructure, communication, facilities and housing.<sup>11</sup>

However, the housing problem is still so serious that the Special Rapporteur on adequate housing as a component of the right to adequate standard of living of the UN, Mr. Miloon Kothari, wrote a Preliminary note after his mission to Spain in 2006 stating that "Spain is facing a serious housing crisis" and recommending that the Spanish Government "needs to implement the right to housing and the social function of property as recognized in its national laws and by international standards" and should reflect upon "the functioning of the market, including intervention if necessary to control land and property speculation" addressing urgently "the insufficiency of housing and social services

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<sup>10</sup>In addition to the Primary sources of EU Law, we should keep in mind the Secondary sources, that is legislative provisions which are made and implemented by reference to an article of the EC Treaty. There are different kinds of secondary legislation (art. 249 EC Treaty). Among them, it is important to notice the Directives. A Directive is a legal EU instrument "binding as to the result to be achieved upon each Member State to which is addressed, but shall leave to the national authorities the choice of form and method".

<sup>11</sup> Spain built 700.00 housing units in 2007, doubling France and Italy and four times more than in Germany and UK, although the Spanish population is lower than the population in those four European countries (data extracted from the Catalan newspaper *Avui*, December 13, page. 19). Obviously, the situation is quite different after the economic crisis of 2008. See *The Economist's* report "The Party is Over" of November 8, 2008.

for women and vulnerable groups and people with low incomes,” for example, the homeless, migrants and Romany communities.<sup>12</sup>

France, on the other hand, has a tradition of affordable housing since the end of the nineteenth century. In the middle of the nineteenth century, during the first industrial revolution and with the support of French businessmen, much working-class housing was built, beginning France’s deeply rooted tradition of affordable housing built by the private sector. After the second World War, the public housing sector experienced impressive growth due to the reconstruction, post-war baby boom, and the end of colonial wars. Under the State initiative, using specific zoning tools known as *ZUP* (priority urbanized zones), more than 3 million affordable housing units were built between 1958 and 1970. The result of this huge effort meet the demand of affordable housing is both a failure and a success. It is a success in terms of number of affordable housing built in a very short time period, but a failure in terms of exclusionary zoning that occurred. With the *ZUP* tools, France experienced its first exclusionary zoning because of the location of these new districts.

The decree of 1958 that created the *ZUPs* specified that it aimed at creating new districts dedicated to housing with a minimum of 400 affordable dwelling per district. Both the minimum size, which is really large in fact, and the single use affordable housing lead to the concentration of poverty outside the city - a completely different scenario than American ghettos, typically located in the center of the city. Today, this is still an issue in France and all policies related to affordable housing tend to directly or indirectly address the hot issue, better known in France as “la Banlieue.” This structural lack of social mix and tremendous territorial disparities in the location of affordable housing explain the 2000 adoption of the Solidarity and Urban Renewal Act, aimed at enforcing a quota of affordable housing in those cities that do not have, or have very few, affordable housing units to improve social mix. Seven years after its adoption, the Solidarity and Urban Renewal act directly inspired some measures of the CHRA that also impose quotas on affordable housing.

It’s important to note that the French affordable housing system, run by both private and public sectors, is partly focused on profitability. So that one of the paradoxes and side effect of this profitability-focused system is that the poorest are usually excluded from affordable housing for their lack of incomes. Shortly after the adoption of DALO, France was condemned by the European Committee of social rights for excluding the poorest from the right to housing. In its decision 2006/0033 of the 5 December 2007 *ATD Fourth World vs. France*, the European Committee of social rights considered that:

“130.The Committee considers that the allocation procedure does not ensure sufficient fairness and

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<sup>12</sup>See the Report of the Special Rapporteur of United Nations on adequate housing as a component of the right to an adequate standard of living, after his visit to Spain (A/HRC/7/16/Add.2, 7 February 2008).

transparency, since social housing is not reserved for the poorest households. The application of the concept of “social mix” in the 1998 Act, which is often used as the basis for refusing social housing, often leads to discretionary results excluding the poor from access to social housing. The major problem stems from the unclear definition of this concept in the law, and in particular, from the lack of any guidelines on how to implement it in practice. Therefore, the Committee considers that the inadequate availability of social housing for the most disadvantaged persons amounts to a breach of the Revised Charter.”

## **B. THE FRAMEWORK OF SPANISH LAND USE AND HOUSING LAW**

Urban planning is compulsory, both on a regional basis (decisions made by the *Comunidades Autónomas*) and, more importantly, on a local basis. Urban planning in Spain includes a range of different legal elements: several kinds of maps, some documents and the rules for dividing the land into zones. A plan must exist to regulate land use, as it is a legal requirement in all the *Comunidades Autonomas* (there are currently 17 autonomous regions in Spain).<sup>13</sup>

### **1. THE HISTORICAL PERSPECTIVE**

The current Constitution of 1978 highlighted the deep changes in Spain with the introduction again of democracy after a long period under Franco’s dictatorship and the autonomy of the regions (effectively, Spain passed from a centralized model to an almost federal one).

Both elements had a legal impact in the field (see art. 148.1.3 of the Spanish Constitution) and on the local level (see art. 140, establishing the autonomy of local government).<sup>14</sup> An act in 1985 specifically mentions land use regulation among the local authorities.<sup>15</sup>

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<sup>13</sup> See PONCE SOLÉ, J. “Land Use Law, Liberalization, and Social Cohesion Through Affordable Housing in Europe: The Spanish Case”, *The Urban Lawyer*, Spring 2004, volume 36, number 2, pages 322-331.

<sup>14</sup> Article 140 of the Spanish Constitution (English version prepared by the Spanish Parliament) “The Constitution guarantees the autonomy of municipalities. These shall enjoy full legal entity. Their government and administration shall be vested in their Town Councils, consisting of Mayors and councillors. Councillors shall be elected by residents of the municipality by universal, equal, free, direct and secret suffrage, in the manner provided for by the law. The Mayors shall be elected by the councilors or by the residents. The law shall lay down the terms under which an open council of all residents may proceed.”

<sup>15</sup> Act 7/1985, Foundations of Local Regime

With regard to housing, the important Constitutional Court decision of 20 July 1988 clarified the situation.<sup>16</sup> Although the Constitutional case law had denied the existence of a general “spending power” in relation to the national level, the Constitutional Court accepted a limited role for the national government in that important decision, thanks to its economic constitutional powers (art. 149, paragraphs 11 and 13: general economic regulation). According to those powers, the national level can define housing policy programs and establish national contributions to the sector. Complementary subsidies and detailed regulations are still in regional hands.

That legal system shows a high degree of complexity that has to be managed by means of different cooperative legal mechanisms (eg. sectorial conferences and public agreements, according to the Common Administrative Procedure Act 2015).

## 2. THE RIGHT TO SHELTER

According to the Constitution, Spain was declared a "Social State" (see art. 1), and several social rights were introduced including the right to housing, Article 47:

“All Spaniards are entitled to enjoy a decent and adequate housing. The authorities shall promote the necessary conditions and lay down appropriate standards in order to make this right effective, regulating land use in accordance with the general interest in order to prevent speculation. The community shall have a share in the benefits accruing from the town-planning policies of public bodies.<sup>17</sup>”

This article must be read in connection with several others in order to understand its full implications. For example, Articles 9.2 and 14, regarding equality:

9.2 :“It is incumbent upon the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.”

14 :“Spaniards are equal before the law and may not be discriminated against on account of birth, race, sex, religion, opinion or any other condition or personal or social circumstances.”

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<sup>16</sup> Constitutional Court decision 152/1988.

<sup>17</sup> All the English quotations of the Spanish Constitution come from the Spanish Parliament’s translation.



Art. 45 is also relevant:

- “1. Everyone has the right to enjoy an environment suitable for personal development, as well as the duty to preserve it.
2. The authorities shall safeguard a rational use of all natural resources with a view to protecting and improving quality of life and preserving and restoring the environment, by relying on essential public cooperation.
3. Criminal or, where applicable, administrative sanctions, as well as the obligation to make good the damage, shall be imposed, under the terms to be laid down by the law, against those who break the provisions contained in the foregoing paragraph.”

The problem is that if we read Article 47, it is clear that the Constitution does not directly provide dwellings for everybody. Article 47 is included in a section devoted to social and economic policy principles, which bind authorities in the way described by Article 53.3:

“The legislation, judicial practice and general action of the authorities shall be based on the acknowledgment, respect and protection of the principles recognized in Chapter 3. The latter may only be invoked in the ordinary courts in accordance with the legal provisions implementing them.”

Thus, the Constitution “only” provides that public powers (that is the legislative, the executive including municipalities, and the judicial branch) are obliged to give a “realistic opportunity” (using the American expression from the *Mount Laurel* case law<sup>18</sup>). This Spanish constitutional duty does not extend to results, but rather to an attitude towards achieving the constitutional goal.<sup>19</sup>

### **3. THE DISTRIBUTION OF POWER AMONG THE PUBLIC LEVELS. REGIONAL LEGISLATION.**

Using the Constitutional Clause (148.1.3) the seventeen *Comunidades Autónomas* (and among them Catalonia, whose capital is the city of Barcelona, with a long history, its own language and a strong identity of nation status) have enacted laws, creating their own land use and housing law.

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<sup>18</sup>*Southern Burlington County NAACP v. Township of Mt Laurel* (336 a.2d 713 NJ), known as Mount Laurel I. This decision was followed by two more, known as Mount Laurel I and Mount Laurel II, in 1977 and 1986.

<sup>19</sup> Juli Ponce, “El derecho a la vivienda. Nuevos desarrollos normativos y doctrinales y su reflejo en la Ley catalana 18/2007, de 28 de diciembre, del derecho a la vivienda”, in Juli Ponce and Domènec Sibina (Eds.), *El Derecho de la Vivienda en el Siglo XXI: sus relaciones con la ordenación del territorio y el urbanismo. Con análisis específico de la Ley catalana 18/2007, de 28 de diciembre, en su contexto español, europeo e internacional*, Marcial Pons, 2008.

In the case of Catalonia, for example, the CHRA came into force in 2008 and the Catalan Land Use Act in 2002 (but modified several times), to deal with the changing social and economic climate.

The autonomous community of Catalonia, an industrial and rich region in northern Spain, covers an area of 32,114 km<sup>2</sup> with an official population of 7,134,697 (2006) of which immigrants represent an estimated 12.3%. The density is 224 inhabitants per square kilometer.<sup>20</sup>

In 1900, the population of Catalonia was 1,984,115 inhabitants, rising to 5,107,606 in 1970. This was mainly the result of the demographic boom produced in Spain during the 60's and early 70's, but also due to the large-scale internal migration from the rural interior of Spain to its industrial cities. In Catalonia, that wave of internal migration arrived from several regions of Spain, but especially from Andalusia, Murcia and Extremadura.

This historical region has gradually achieved a greater degree of autonomy since 1979, thanks to its autonomous statutes of 1979 and 2006. The *Generalitat* (the Catalan government) holds exclusive jurisdiction in various matters including land use regulation and housing, while it shares jurisdiction with the central Spanish government in other fields such as the environment.

With a long and rich history and its own language (Catalan), there is significant Catalan nationalist sentiment among a large part of the population. As it is known, it has created some moments of tension, especially during 2017.<sup>21</sup>

#### 4. LOCAL LEVEL: THE EXAMPLE OF BARCELONA

The metropolitan region of Barcelona, the capital city, covers an area of approximately 4,000 km<sup>2</sup> and is home to about 5 million people with an additional 2.5 million who live in a radius of 25 km around the city of Barcelona.

Barcelona is the capital and most populous city of Catalonia and the second largest city in Spain. It is located on the Mediterranean coast in the Northeast of Spain. Barcelona's population as of 2006 was 1,605,602 inhabitants with a population density of over 15,000 inhabitants per square kilometer.<sup>22</sup>

It is also, together with Bilbao, one of the two largest industrial areas in Spain and an important port. There are several public and private universities and a rich cultural atmosphere including opera and several museums.

Like all Spanish cities, Barcelona's local autonomy is protected by the Spanish Constitution (Art. 140) and regulated both by Spanish (Local Regime Act 1985<sup>23</sup>) and Catalan legislation (autonomous statute<sup>24</sup> and complementary legislation<sup>25</sup>).

<sup>20</sup>The data quoted here and in later paragraphs are gathered from Idescat (Catalan Statistics Institute, a public body) More information at: <http://www.idescat.net/en/>

<sup>21</sup> See *Catalonia crisis in 300 words*: <http://www.bbc.co.uk/news/world-europe-41584864>

<sup>22</sup> Source: Barcelona City Council ([www.bcn.es](http://www.bcn.es))

<sup>23</sup> Act 7/1985

The government of Barcelona has been especially active in the last few years in enforcing the CRHA.<sup>26</sup>

### **C. THE FRAMEWORK OF THE FRENCH RIGHT TO HOUSING**

The French framework is very different from the Spanish one. The centralized State has a central role and all evolutions of the right to housing are due to statutory laws prepared by the French Government and adopted by the national Parliament. The framework can be divided into three parts: (a) the constitutional part that is relatively weak; (b) the legislative part that is much more interesting with prominent antecedents to DALO, however; (c) it is the political and social part that really was at the origin of DALO.

#### **1. THE FRENCH CONSTITUTIONAL FRAMEWORK**

The right to housing is not part of the French Constitution of 1958. In the context of the post-second World War, a declaration of human rights with a prominent social content was adopted in 1946. This declaration is a part of the preamble of the 1946 constitution whose social content can be explained by the political context of the time with the communist party majoritarian in France.

Until a decision of the French Constitutional Council of 1971, which recognized the constitutional value of the preamble of constitution of 1946, it was considered a text without legal value. Indeed, this text was not explicitly included in the 1958 Constitution.

Two sections implicitly refer to housing:

"10. Nation guarantees to the individual and the family the necessary conditions for its development.

11. Nation guarantees everyone, and especially the child, the mother and the retired workers, the protection of health, material safety, rest and leisure. Every human being who, due to his age, his physical or mental state or his economic situation, is unable to work, has the right to obtain from the community the necessary means of existence."

From these provisions the Constitutional Council concluded in its decision n ° 94-359 DC of January 19, 1995 apt.7: "The possibility for any person to have a decent accommodation is an objective of constitutional value."

However, an objective of constitutional value does not constitute a subjective right warranting protection, but merely an objective that is imposed on the public powers and in the first place on the legislator. Beyond the preamble and

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<sup>24</sup> Act, *Ley Orgánica*, 6/2006.

<sup>25</sup> Which can be consulted using the Catalan Parliament web: <http://www.parlament.cat/portal/page/portal/pcat/IE01/IE0101> (last visited 17 July, 2009).

<sup>26</sup>

the aforementioned decision of 1995, the constitutional framework does not directly support DALO.

## 2. THE FRENCH LEGISLATIVE FRAMEWORK

The legislative framework is more relevant and has a particularly interesting recent history.

- The statutory law of June 22, 1982 proclaims in Article 1 that the right to housing is a fundamental right; however, this law deals with rent, and not the general housing issue.
- The statutory law of May 31, 1990 for the implementation of the right to housing, recognizes a subjective right and a correlative obligation of the community to enforce it. From this point of view, it is an innovation. It consists of the implementation of a departmental plan of housing and accommodation reserved for people who do not have a decent accommodation, in the hands of the prefects, representatives of the State, and a mechanism to promote the construction of social housing. This 1990 Act is, in a way, the basis of the 2007 DALO Act. It was the failure of the 1990 Housing Act that led to the adoption of the DALO Act 17 years later.
- The statutory law of orientation on the city (*loi d'orientation sur la Ville, LOVE*) of 1991 includes in Article 1 the right to the city, a right that today would perhaps include the right to housing, but at the time was not clearly defined. Even today, the right to the city is not clearly defined. This first article is of particular importance, but it was repealed with the reform of the urban planning code.
- The Anti-Exclusion Act of July 29, 1998, later codified in article L.115-2 of the Social and Family Action Code, establishes that combating exclusion is a national challenge, but based on the principle of equal dignity for all human beings sets it as a national policy priority. The Act seeks to ensure universal access to fundamental rights in the fields of employment, housing, health, justice, education, training and culture, and family and child protection. Central government, local and regional authorities and other public bodies such as municipal and joint municipal social services departments, social security bodies and other social and medical institutions shall contribute to implementing these principles. They should implement policies designed to identify, prevent and remedy situations that might lead to exclusion.
- The SRU Solidarity and Urban Renewal Act of 2001 establishes the principle of social mix (*mixité sociale*) and institutes a minimum quota of social housing per municipality, a system that incidentally inspired the Catalan CHRA as previously stated. Article 1 of the SRU Act requires that all urban plans adhere to the principle of diversity of urban functions and social mix in urban housing and rural housing, providing for sufficient

construction and rehabilitation capacities to satisfy, without discrimination, present and future housing needs.

Article 55 sets a quota system: “The provisions of this section apply to communes with a population of at least 1,500 inhabitants in Ile-de-France and 3,500 inhabitants in the other regions which are included, within the meaning of the general census of the population, in an agglomeration of more than 50,000 inhabitants comprising at least one commune of over 15,000 inhabitants, and in which the total number of social rental housing units represents, on 1 January of the previous year, less than 20% of the main residences.” “From 1 January 2002, an annual levy on the fiscal resources of the municipalities referred to in Article L. 302-5 shall be made, with the exception of those which benefit from the urban solidarity endowment provided for in Article L. 2334-15 of the general code of local authorities when the number of social housing exceeds 15% of the main residences. This levy is equal to 1000 F (150€) multiplied by the difference between 20% of the principal residences within the meaning of I of the Article 1411 of the General Tax Code and the number of social housing units existing in the municipality the previous year, as stated in Article L. 302-5, without exceeding 5% of the actual operating expenses of the municipality recorded in the administrative account for the penultimate year.”

To summarize, municipalities under the quota of 20% of affordable housing are required to build affordable housing, or be subjected to a penalty. One can easily deduce from this system that the richest municipalities under 20% can afford to pay the penalties without building more affordable housing.

Moreover, there is, in fact, no penalty for those municipalities that continue to concentrate affordable housing and poverty as long as they are above the quota.

Therefore, the progress obtained through the SRU Act must be put in perspective. It should be emphasized as well as that the Constitutional Council itself distorted, in part, the scope of the principle of social mix by specifying in its decision n° 2000-436 DC of December 7, 2000, using the technique of reservation of interpretation, that the law could not impose an obligation of result, forcing the judge to make a minimum control, called control of compatibility, of the urban plans.

- The 2006 ENL Act (National Housing Commitment Act), adopted an economic point of view, focused merely on housing supply, and pursues the objective of promoting it. It does not intend to reinforce the subjective right to housing.
- The 2007 DALO Act establishes and guarantees the right to housing, which will be discussed in more detail in the next part.
- The 2014 ALUR Act (Access to Housing and Urban Renewal Act) establishes a system of rent control in the private market in the large cities of France. However, recently, the administrative Courts canceled

the rent control plans of the cities of Paris and Lille that derived from the same Law.

From this set of laws, we can conclude that the DALO Act is not an isolated text, but a part of a series of laws that have been added for more than a century, designed to counteract its potentially negative effects.

Indeed, one can only understand the adoption of DALO Act as a response to the partial failure of the Law of May 31, 1990 for the implementation of the right to housing. The DALO Act intends to enforce a right recognized 17 years ago but that was ineffective, as revealed by the social situation in 2007.

### **3. THE POLITICAL AND SOCIAL CONTEXT IN FRANCE**

The political context can be summarized in one sentence: the right wing was in power; the housing policy of the State was not the most ambitious in the pre-crisis economic context of 2008.

The social situation, with the homeless problem worsening, drew much more attention. A movement emerged from the street led by Augustin Legrand, an actor and journalist, who created a documentary film about the homeless. His indignation, then supported by the association "Les enfants de Don Quichotte" (the children of Don Quixote), resonated loudly with the media, provoking a political response and DALO was born.

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Both the French and Spanish constitutional frameworks give some clues for the right to housing, but constitutional provisions or jurisprudence only give a goal or an objective. The French legislation is an important source, and there is an old tradition of affordable housing. Nevertheless, all efforts made since the beginning of the eighties did not end with the exclusion of the poorest people from the affordable housing system. In Catalonia, until the CRHA, partly inspired by the French SRU Act and its quota system, there was no comprehensive legislation dealing with the right to housing.

To summarize the state of legislation in both countries before the French DALO and the Catalan CRHA, there was a structural dysfunction in the French right to housing, and a lack of comprehensive legislation in Catalonia. In 2007, both countries intended to address their different issues, but the goal was exactly the same - to make the right to housing effective.

### **III. THE NEW APPROACHES OF THE CATALAN RIGHT TO HOUSING ACT 2007 AND THE FRENCH DALO**

#### **A. THE CRHA**

##### **1. A GENERAL OVERVIEW OF THE CRHA**

The Catalan Act is a long (more than 150 articles) and complex text. Obviously, it is not possible to explain it in detail here, and will instead give a brief overview, focusing on connections between land use, affordable housing and segregation.

From a general point of view, the CRHA can be considered a revolutionary legal document: the first in Catalonia and Spain to systematically link land use law and housing, and the first to declare in the title an effort to make the right to housing effective. The following are important aspects:

- The act tries to make the right to housing effective globally. Article 1 proclaims that its goal is to regulate “the right to housing, understood like the right of all person to access to a proper house that it is suitable in the distinct stages of the life of each one, in accordance to the familiar, economic and social situations and to functional capacity”. However, the act was unable to establish a direct enforceable right to housing in courts following the previous experiences of other European legislations, like the English or the Scottish.<sup>27</sup>
- The preamble of the CRHA stands out from a first moment that “pretends to guarantee the right to housing, taking for granted that this right includes the urban environment in which houses are included.” There are many references to “urban environment” that must be “proper and suitable” [article 2.c)], the sustainability and integration in the urban environments (article 22.2). The territorial and urban planning have to attend to the territorial balance [article 2.G)] in the provision of housing attached to social policies, and especially “to promote the diversity and social cohesion in the neighborhoods and residential sectors of the cities and villages as a guarantee of a suitable integration in the urban environment” [article 2.h)]. That integration is considered fundamental to “avoid phenomena of segregation, exclusion, discrimination or harassment by socioeconomic, demographic, gender, cultural, religious or of any another type of reasons.”
- The regulation considers social, economic and environmental sustainability. From the social approach, the three essential concepts that inform the philosophy of the regulation and that direct or indirectly are

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<sup>27</sup> See BALL, J., “The right to housing and housing rights: Enforceability and effectiveness in England and France”, *Revista de Derecho Urbanístico y Medio Ambiente* 2015, XLIV(287), 89-122.

present in the major part of the text are: social cohesion [articles 2.c), 3.n and 16.d)], urban solidarity (articles 73- 75) and social mix (articles 86, 100.3 and 101.5.)). The three concepts address the challenge of materializing the principle of equality from distinct perspectives.

- The legislation establishes the important principle of delimitation of the social function of private property [article 2.j)], reiterating in article 5.1 that the exercise of the right of property has to fulfil its social function, considering like forms of breaching this social function of private housing, for example, the violation of the legal duty of conservation or the existence of empty houses in a permanent and unjustified way for more than two years in areas with a high need of housing (calling for public incentives to avoid empty houses and, as a last resort, the possibility of fining the owner for violating the social function of property).<sup>28</sup>
- The act creates the concept the urban solidarity to make effective the right to housing in all the territory of Catalonia, with a clear French inspiration.

In the original text of the law, all the municipalities of more than 5.000 inhabitants must have a minimum supply of affordable housing in 20 years, amounting not less than 15% of the total existing houses, in accordance with the calendar to be established by a future regulation. The system was changed in 2011, when a later act established that the system will be only activated when a territorial plan is passed by the Catalan government, which has not yet occurred.

Beyond those aspects, let's consider with more detail three other elements introduced by the CRHA.

## **2. THE ANTIDISCRIMINATION EU DIRECTIVES AND THEIR IMPACT ON THE CATALAN RIGHT TO HOUSING ACT<sup>29</sup>**

The 1997 Amsterdam Treaty included Article 13, which empowers the community to take action to deal with discrimination based on a whole new range of grounds, including racial or ethnic origin, religion or belief, age, disability and sexual orientation.

In order to apply these measures, three directives have been introduced, along with various documents.<sup>30</sup> Under the current EC legal framework, racial

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<sup>28</sup> Possibility used by some municipalities like Terrassa, in the metropolitan area of Barcelona. See MOLTO, J.M and PONCE, J. *Derecho a la vivienda y función social de la propiedad*, Thompson Reuters Aranzadi, 2017, which includes references to case law generate by the opposition of private owners to administrative orders. At the moment, the municipality is winning the majority of cases at the first judicial level.

<sup>29</sup> For a more detailed analysis you can read PONCE, J., "Housing discrimination and minorities in European cities: the Catalan Right to Housing Act 2007", *International Journal of Law in the Built Environment* 2010 2:2, 138-156, available at:

<http://www.emeraldinsight.com/doi/pdfplus/10.1108/17561451011058780>

<sup>30</sup> See <http://europa.eu/scadplus/leg/en/cha/c10313.htm>



discrimination is prohibited in the areas of employment, training, education, social protection, social benefits and access to goods and services (Directive 2000/43/EC). The scope of protection against discrimination on grounds of religion or belief, age, disability and sexual orientation is limited to employment, work and vocational training (2000/78/EQ). Directive 2004/113/EC extends protection against sexual discrimination to the area of goods and services, but not to certain other areas covered by Directive 2000/43/EC.

Existing empirical studies show a panoply of actions and omissions causing discrimination and harassment in the housing sector in Spain. In the case of direct discrimination, the worst and most evident reports on a European level highlight cases occurring in Catalonia and Valencia, referring to rental advertisements placed by real estate agencies which declared "no foreigners" or "we do not rent to non-EU foreigners." The intermediaries in some of these cases claimed that they were exercising the wishes of the owners. Likewise, in Burgos, it was common practice to demand higher rental prices for minority groups and immigrants, along with offering them properties of inferior quality (EMCRX, 2005, p. 70).

In the case of indirect discrimination, which is more subtle, existing European reports highlight cases in which length of residence in a municipality has been used as a barrier to prevent access to protected housing (EMCRX, 2005, p. 71).

With regard to real estate agent harassment, or mobbing as it is commonly known in Spain, this phenomenon can be explained within the context of specific economic and social circumstances in Spanish cities and in connection with rental legislation in force for many years in Spain. In the recent past, rental contracts provided one of the main bases of "social" policy with respect to accessible housing since they were heavily regulated in terms of duration and price under the Urban Rental Act of 1964.

Since the 1980s (*Decreto-Ley* 2/1985, 30 April, Urban Rental Act of 1994), a new regulation for the rental market was introduced, although serious parallel public policies with regard to accessible housing were not applied and many existing rental contracts were still protected by the Urban Rental Act of 1964, with financial conditions which did not encourage ownership, certainly when compared with newer contracts which were more likely to be agreed in accordance with real market factors.

This situation helps us understand the financial motives behind many of the alleged cases of real estate agent harassment: evict the tenant, by one means or another in order to obtain a higher rental income from the property in the future.

Among the practices which can imply real estate harassment, the following are violation of existing laws: whether for omission (a typical case of lack of compliance in respect of urbanistic conservation duties on the part of the landlord, for example) or by action (cutting off utilities, disturbances caused by

hypothetical "improvement" works, bad odors, lack of hygiene, the introduction of lodgers who cause trouble to the detriment of communal facilities or the peaceful enjoyment of the property, etc.).

These real situations explain the reaction of the CRHA. We must refer to Articles 45 and ff that establish the general framework<sup>31</sup>.

Articles 45 and ff prohibit that *any person* (Spanish nationals or otherwise) suffer discrimination, either direct or indirect, or harassment and should be respected by all persons and all officials, both in the public and the private sector (Article 45.1 and 2). In order to guarantee that this prohibition be respected, the law requires public authorities responsible for housing-related issues to adopt "appropriate measures" (Article 45.2). These protective measures to avoid direct or indirect discrimination, harassment or any other form of illegal housing (such as sub-standard housing or over-occupancy, for example) can consist "in adopting positive action in favor of vulnerable groups and individuals," the "prohibition of discriminatory conduct" and the need for "reasonable adjustments to guarantee the right to housing" (Article 46).

Having established this mandate for public action, the law goes on to define the terminology used and establishes a specific regulation with regard to the burden of proof and *locus standi*, in the same line that the aforementioned EU directives (Articles 45, 46.2, 3 and 4, 47 and 48, respectively).

With regard to the definition of legal terms used, following European and state guidelines, the Catalan law defines the concepts of direct and indirect discrimination and real estate harassment (Article 45.3).<sup>32</sup>

In relation to real estate harassment, the law defines what is understood to be harassment and qualifies it as discrimination (Article 45.3.). In addition, it modifies the burden of proof of harassment (Article 47). Finally, associations and

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<sup>31</sup> In fact, fact, according to the analysis in the report of the European Social Housing Observatory by CECODHAS (2007), the Catalan Act would be pioneer in the implementation of EU directives with regard to housing, since many countries have not adopted anti-discrimination measures in the housing sector (p. 23).

<sup>32</sup> "(a) Direct discrimination occurs when a person receives, in a housing related issue, a different treatment than others in a similar situation, as long as the difference in treatment does not have a legitimate justification that is objective and reasonable and the and means to reach that objective are adequate and necessary".

"(h) Indirect discrimination, occurs when a norm, a plan, a conventional or contractual clause, an individual pact, a unilateral decision, a criterion or a practice that is apparently neutral causes a particular disadvantage for someone in respect to others while exercising their right to housing. Indirect discrimination does not exist if the act has a legitimate end that is objective and reasonably justified and is used to reach an adequate and necessary motive".

"(c) Real estate harassment is understood as any act or omission of an act which causes one's rights to be abused and has the objective of disturbing one's housing needs through harassment and a hostile environment. This can be 'expressed in a material, personal, or social manner, with the ultimate motive of forcing someone to adopt a decision that they do not want in regard to their right which protects them from occupying their home, The unjustified denial of accepting rent by a homeowner is an indication of real estate harassment".

other organizations representing collective interests have *locus standi* if authorized by the claimant (Article 48) in accordance with the EU directives and national legislation we have analyzed.

Regarding "reasonable adjustments to guarantee the right to housing" as a possible protective measure to be deployed by the administration, another EU concept, Article 46, Sections 2.4, defines these as:

“the measures directed towards fulfilling the singular needs of certain persons to help them achieve, without imposing a disproportionate burden, social inclusion and enjoyment of the right to housing in equal conditions with the rest of the population.”

Without any doubt, people with disabilities are an obvious group that could be affected by these adjustments (for example, a landlord can have the right to impose a restriction on pets in the terms of tenancy. This would be discrimination if the potential tenant is blind and relies on a guide dog to compensate for his physical disability).

In the same way, we can highlight the regulation on positive actions in Article 46.1 of the law. As we have already shown, Article 47 of the Spanish Constitution (and 26 of the Statute of Autonomy of Catalonia) should be interpreted systematically in conjunction with Article 9.2 of the Spanish Constitution (and 4.2 of the Statute), which establishes the mandate to the public authorities to promote conditions so that freedom and equality are real and effective, removing existing obstacles. This ruling, therefore, opens the door to the unfortunately named "positive discrimination," drawn from various EU directives with the terminology "positive action."

From a general perspective, the possible adoption of specific public measures to guarantee the equality of specific groups had already been endorsed by the Spanish Constitutional Court in various sentences.<sup>33</sup>

Along these lines, therefore, Article 46.1 of the Right to Housing Law indicates that:

“The protective measures which should be adopted by public authorities may consist in the adoption of positive action in favor of the vulnerable group or person, the prohibition of discriminatory conduct and a demand for the elimination of obstacles and restrictions in exercising the right to housing and reasonable adjustments to guarantee the right to housing.”

Finally, we should emphasize that the law specifically acknowledges discrimination and real estate harassment, whether through action or inaction, as a serious administrative violation (Article 123.2.a) with a potential fine of up to

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<sup>33</sup> For example, Decisions 216/1991 and 269/1994, accepting positive actions in relation to gender or disability, quoting article 9.2 of Spanish Constitution

900.000 euros (article 118.1), regardless of possible civil or penal actions. To this point, it raises doubt as to whether the imposition of an administrative fine and the simultaneous criminal action for an assumed coercion could imply a case of *bis in idem*, prohibited by Spanish judicial legislation (this means that it is not possible to punish a conduct both criminally and administratively, if the punishment applies to the same person for the same conduct). We believe, however, it can be argued that the grounds for the administrative fine are different from the criminal charges, since in the first case the legal question is the right to housing whilst in the second it concerns equality. Thus, punishing the same conduct twice is not a case of *bis in idem*, but rather the defense of two different legal fundamentals by two different channels (administrative and criminal).

### **3. URBAN PLANNING AND HOUSING SEGREGATION IN THE CATALAN REGULATION**

With regard to the Catalan regulation on public activity to prevent urban segregation, this consideration is prevalent throughout the law, from the Preamble in favor of social mixing as the antidote to segregation, through the planning phase for social housing, until the moment of allocation. The Catalan Act of 2007 considers residential segregation as a kind of discrimination (at least, a *de facto* discrimination, caused by the market). Thus, the act designs some measures in favor of equality through social mix.

At the planning stage, the Spanish National Land Use Act of 2008, applicable also in Catalonia, establishes a reserve of land for the construction of housing under public protection across Spain. This statute allows the setting of maximum sale and rental prices, with a minimum requirement of 30 percent protected housing in all new residential housing projects (article 10b). The statute also allows for the increase or reduction of these reserves through regional legislation on land use and urbanization, within certain limits as long as their location respects the principle of social cohesion.

Following this act, reserves in the Catalan legislation range from 30 to 50 percent depending on certain circumstances (e.g. the population of the city). With regard to urban areas that are already developed, particular importance is placed on the potential to inject protected housing, for example Article 66.4 of the Catalan regulation of July 18, 2006 which develops Catalan planning law. This establishes reservations for protected housing on consolidated urban land, both for new developments and for major renovations to existing buildings, totally or partially allocated for protected housing. Now, the CRHA reduces this percentage to 20 percent of the surface area in apartment blocks over 5,000 square meters.

An important aspect connected with the social mix of the region as an antidote to urban segregation is the distribution of reserved land in the territory. This is because the reserves of protected housing, in order to provide dignified and adequate living conditions, should avoid spatial concentrations of poor people

and be evenly distributed throughout the territory. In this sense, the best approach seems to be, in principle, an even distribution of affordable housing across all sectors. However, the decision concerning specific location remains in some regions at the discretion of local planning departments within the general framework already mentioned.

In the Catalan case, Article 57.4 of the Catalan Land Act establishes that:

“The reserves for the construction of publicly protected housing should be situated so as to avoid an excessive concentration of housing of this type, in accordance with article 3.2, in order to favor social cohesion and avoid the territorial segregation of citizens based on their level of income.”

#### **4. ALLOCATION OF SOCIAL HOUSING AND SOCIAL MIX**

FEANTS (2005) believes that social mix is primarily a (urban) planning issue and that mechanism for the allocation of individual dwellings should only be a secondary means to ensure social mix. When it comes to the stage of allocation of social housing, the Catalan Right to Housing Act provides for positive action, through the technique of the so-called special quotas, reserved for vulnerable groups, among whom immigrants may be included (Article 99). These kinds of quotas try to guarantee the presence of vulnerable groups' members. On the other hand, it seems that the Act leaves the door open for the possible implementation of quotas (in that case as a limitation of some groups) and other measures against segregation in the allocation process for social housing by means of a lottery as mentioned in Articles 100.3 and 101.5:

“Art. 100.3: In order to guarantee an effective social mix in official protected housing developments, the specific conditions of allocation in each development should establish systems which ensure that the final composition of the occupancy reflects the social makeup of the town, district or area, both in terms of income level as well as place of birth, and to avoid excessive concentrations of groups who can put the development at risk of social isolation.”

“Art. 101.5: The lottery may be divided into blocks made up of applicants within various income brackets or various interests groups, to ensure the social mix established in article 100.3, or even the length of time the applicant has been registered on the waiting list in the Official Register of Applicants for Protected Housing.”

In the absence of known conflicts in relation to this regulation, it is necessary to remain alert as to its administrative application and judicial control.

Without doubt, this is a delicate aspect which can shift the balance between the achievement of social mixing and possible discrimination when it comes to access to housing. As far as Catalonia is concerned, the Right to Housing Act associates the concept of social mixing with social cohesion in Article 3, a key legal guideline in the allocation of housing. However, the specific application of these guidelines will warrant closer scrutiny in the future; as indicated by CLIP, following an analysis of the use of quotas in various European cities (e.g. Frankfurt in Germany; CLIP, 2007, pp. 16 and ff. and p. 95):

“Quota regulations must be carefully checked in terms of fairness, effectiveness and lawfulness with regard to the Directive against racial discrimination.”

In our opinion, it is essential this analysis take into account the various aspects of possible anti-segregation measures in allocating social housing in accordance with the legal principles of EU, Spanish and Catalan Law, which occasionally use different terminology in the State members law level (about similar legal techniques used to control discretionary powers in Europe, for example proportionality, reasonableness, equality, etc.; Ponce, 2001).

## **B. THE FRENCH DALO ACT**

The description of the DALO Act below merely aims to provide an overview of the system enforced by this statutory law, allowing us to understand that the principal innovation remains in the central role of the right to housing contender. The mechanism is set to make this right to housing effective, enforceable.

One must keep in mind that the DALO was created as a response to an internal failure of affordable housing allocation, which excluded the poorest people from the affordable housing system.

The preamble of the DALO Act of March 5, 2007, indicates that the Act aligns with the previous laws, in particular the statutory law of 2006 (ENEL Act). But in our opinion, it is quite innovative. Unlike the previous statutory laws, the DALO Act, in effect, places the owner of the right to housing at the center of the system.

It is necessary to emphasize a distinction in the French affordable housing system that is explicitly included in the DALO act - the distinction between the right to housing and the right to shelter. The right to shelter refers to homeless people, while the right to housing corresponds to people who already have accommodation but, belonging to the categories of poorly housed, may have a right to rent in social housing. It should be noted that the right recognized through the DALO is not a right to own affordable housing; DALO is limited to the rental of affordable housing.

## 1. STAKEHOLDERS OF THE DALO PROCEDURE

The stakeholders of the DALO procedure are numerous and include all agents who in one way or another participate in the complex system of French affordable housing.

Before entering the DALO procedure, it is necessary to describe each stakeholder, and its role.

### *The applicant.*

The DALO is an administrative procedure through which a right to affordable housing is recognized by a mediation committee. The applicant, the central stakeholder of DALO, asks for the recognition of his or her right to housing. The applicant must first meet several administrative requirements.

The administrative requirements include: 1) Have the French nationality or be in good standing with the laws on stay in France; this requirement excludes undocumented people awaiting the granting of refugee status. 2) Demonstrate a processed application for social housing. In the event that affordable housing is requested, it is required that the applicant is already in the "circuit" of social housing, that he has not yet been granted a home, and that he meets the emergency requirements listed below. 3) Not having sufficient means to access private sector housing. This requirement seems obvious, but it is not always easy to prove.

Additionally, the applicant must demonstrate at least one or several of the following conditions: 1) Not having fixed accommodation. 2) Staying in emergency social housing (not housing) for more than 6 months. 3) Being in an unhealthy, overcrowded accommodation or house. 4) Be under threat of expulsion without an accommodation solution. 5) Be requesting a home for an abnormally long time. 6) Being or having charge of, a disabled person in a maladjusted accommodation.

### *The associations.*

In practice, they have the key role of informing, accompanying the applicants, guiding them, as well as preparing their folders. They take part in the mediation commission (described below) that decides on the applications, either recognizing or denying the right to housing. Several associations can be mentioned, such as the DAL (right to housing), the DALO (*droit au logement opposable*), the Abbé Pierre foundation (Catholic), etc. There are also local associations that act before the commissions.

### *The State.*

The State is the debtor of DALO. The representative of the State (*Préfet*) in the provinces (*départements*) is in charge of the policy of shelters and housing aimed at people who lack decent housing. The representative of the State has the part of social housing and accommodation, called "reserved", for said emergency

policy since the 1990 statute law. The request of DALO is addressed to the State. In case of non-response or inadequate response from the State, the latter is obliged to provide shelter or housing. In case of breach of duty, the responsibility of the State can be sought before the administrative litigation courts.

#### *Entities in Charge of Affordable Housing*

Public and private entities that manage social housing as well as the territorial entities: municipalities, metropolitan areas, entrusted by law of competencies in housing and social housing and that decide on the allocation of social housing.

#### *The Mediation Commission*

The mediation commission, one for each province, is in charge of examining the applications for the DALO and recognizing an enforceable right to housing. The commission includes: 3 representatives of the State, 3 representatives of the territorial collectivities (municipality, province metropolitan area), 3 representatives of the entities managing social housing, 3 representatives of associations for the insertion and representatives of tenants, and 3 representatives of associations of defense of people without housing or poorly housed. It follows from the composition of the commission that stakeholders, who are on the side of the applicant, are the minority.

#### *Administrative Courts*

The administrative courts role are an innovation of DALO and a central element of the mechanics. In case of noncompliance with the commission's decision by the State, an administrative appeal before the courts of administrative litigation is opened in the form of measures of a maximum duration of two months; it is the logical consequence of the enforceable nature of the right to housing.

#### *The Evaluation Committee*

The evaluation committee, established by law, is responsible for annually evaluating the application of the law, producing an opinion with studies and proposed reforms. This regular monitoring of the application of the law is also an innovation, ensuring effectiveness. As we will see later, the committee takes its role very seriously and makes a detailed and critical control of the application of the DALO Act.

## **2. THE DALO PROCEDURE**

The DALO act has two mechanisms: an administrative procedure and a judicial process.

Both mechanisms are based on the idea that DALO is recognized through an administrative process. The right to housing only becomes enforceable when



the mediation commission grants it. After having acquired strength through the process of recognition, it can be enforced by judicial decision.

Dealing with the administrative procedure, the applicant presents an application for an enforceable right to housing before the aforementioned mediation commission. The applicant has to comply with the aforementioned administrative requirements.

The commission has a six month period to grant or deny the enforceable right to housing. In case of refusal, the applicant has two ways to appeal -an appeal before the same commission, or an appeal before the administrative Court. The acceptance and correlative grant of an enforceable right to housing by the commission is binding for the State, requiring an allocation of affordable housing. The mediation commission decision determines a limited period during which the State is obliged to give an affordable housing. In case of breach of this period, the holder of the right to housing has an appeal before the administrative Court. Courts are empowered to oblige the state to allocate affordable housing under penalty. A specific quick judicial remedy was set up by the DALO Act, requiring the judge to decide within two months.

As can be seen, effectiveness is the center of the DALO Act.

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To conclude, it seems that the system laid down by the DALO Act is less ambitious than the CRHA. It appears to be an extra layer on an already well established system. In the Catalan case, the CRHA is a turning point in Spain, opening the door to other similar Spanish regulations passed in recent years (e.g. Basque right to housing act in 2015, Valencia right to housing act 2017). But the CRHA failed to create a right to housing enforceable in the courts with resulting obligations, for example, obtaining a home. In this sense, the situation in Catalonia is less developed when compared to the French context.

On the other hand, although the CRHA appears to be inspired partially by the French SRU Act and its quota system, it goes further in the fight against housing discrimination, influenced by the EU antidiscrimination directives, which are also influenced by the U.S. system. This highlights an important difference between the two legal systems. Until the DALO Act, the fight against discrimination was not a primary concern of the legislator, aside from the declarations and the preambles of the successive statutory laws. The history of the French legal system may as well be seen through the lens of the building of a structurally discriminating affordable housing system.

#### IV. CONCLUSIONS

In summary, this article highlights different ways in which law and public policy cross-fertilization could help us to face urban challenges during the 21st century, especially in the field of affordable housing.

The DALO Act and the CHRA are a result of two different legal traditions, which have been described in this article. However, they both share a common European concern about affordable housing that is relevant beyond the EU.

At the end of the day, both try to address a relevant problem described by the economist John Kenneth Galbraith in his book, *The Culture of Contentment*, that there is no advanced country where the market alone can produce houses that poor people can afford. Today, the problem includes the middle class in many countries and cities, and also extends to the production of non-segregated affordable housing.

The DALO and the CHRA are legal tools designed to help stop these economics trends. A decade is still too short of a time period to determine if the tools are succeeding, and later assessments will be needed to answer to that crucial question for France, Catalonia and the rest of the world.

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