

## *Prologue*

The transition from Communist dictatorships to democratic systems, from closed societies to open society, and from a centralised, planned economy to the free market economy requires, as a necessary condition, that property rights must be thoroughly defined and guaranteed. The recent history of property rights is no more than the history of property right protection, and the Land Registry is the institution created by the modern state to guarantee property rights and facilitate trading in property rights.

The democratic transition processes that began in the countries of Southeast Europe with the fall of the Communist regimes in 1989 gave rise to a new kind of political organisation, and that new kind of political organisation has to establish a legal system to protect property rights and allow private persons to demand contract enforcement. Citizens need to be able to predict the behaviour of public institutions, be they the courts to which citizens turn on the occasion of lawsuits, Registries to which they go to protect their rights or municipal governments to whom they apply for permits and licenses. The construction of the “rule of law”, democratisation and the protection of property rights are unseverably joined. Without property right protection there would be no secure transactions, no legal certainty, nor would it be possible to build democratic systems.

Therefore the problem of the definition and protection of property rights requires a public solution, and the property registration system is the most efficient, most affordable public solution for enabling citizens to engage in property purchases in absolute safety with no fear of encountering rival claimants. For that reason Registries are not, and must not be, reduced to mere databases. Any buyer of property who relies on a Registry’s pro-

nouncements is protected vis-à-vis not only the transferor, but also any private person and the administration. Property rights only exist if they are exclusive and if they are imposed vis-à-vis everyone. In other words, property rights only exist if society recognises their holders as such, and the mechanism through which society consents to and recognises the rights that affect all is called the property registration system.

In 2003, more than a decade after the start of the transition, and when the wars that had convulsed the area had ended, the World Bank held a public tender for the performance of a study entitled «*Feasibility Study for the Establishment of a Primary Housing Institution*». The study covered the countries of Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia and Serbia, and it was meant to find the degree of certainty that property titles provide, as a prerequisite for the development of a mortgage market. The study was also intended to explore the possibility of creating national mortgage banks, and there was even some floating of the hypothesis of fostering the establishment of a financial institution encompassing several of the countries in the region, as the study's title indicated.

The consortium promoted by Expansión Exterior and made up of Analistas Financieros Internacionales, Imathia and Registra won the tender. The work was done during 2004 and 2005, and its results were presented at IFC headquarters in Washington in May 2005. The presentation took place in the presence of World Bank specialists and was followed by videoconference by World Bank representatives in each of the countries at issue in the study. REGISTRA SLU, a company whose sole shareholder is the Association of Land, Mercantile and Movable Property Registrars of Spain, had the task of studying the legal framework, particularly land law, property transfer mechanisms, property registration legislation, registration processes, mortgage legislation and foreclosure procedures.

The work this book contains served as the basis for the definitive report. However, for reasons of methodology, its size was reduced, and its scheme of exposition was adapted to match that applied to the economic matters addressed by the other mem-

bers of the consortium, to yield a single uniform result. In response to the demand for the legal study, we felt it would be a good idea to publish the material that served as the basis for the definitive report, using a different system of organisation and enriching the contents with the contributions of a seminar held in Madrid in September 2004, sponsored by the Spanish Cooperation Agency (AECI) and the International and Ibero-American Foundation of Public Administration and Policies (FIIAPP), in which Registry directors, judges, World Bank project directors and urban planners from the countries of Southeast Europe participated.

The work covers not only the study of the target countries' legislation, but also an analysis of the application of the law, or in many cases its non-application. The following pages offer plentiful examples showing how regulations may push in one direction while citizens act in another. When laws are incapable of disciplining the action of the public administrations and private persons they are designed to guide, solutions arise outside the law. The reasons why the law fails to be applied are several; sometimes institutions typical of highly economically developed countries have been aped without a critical eye to their transplanting. In other instances the legal tradition of the target countries has been ignored and attempts have been made to impose institutions overnight without making any provisions for a transitional system, and without considering the time it has taken to consolidate such institutions in the other countries of Europe. In short, there has been a lack of flexibility in institutional design, and this may eventually discredit the resulting institutions if citizens lose their trust in the legal system. There will be no lack of cases where the designing has been done by economists, engineers and other specialists, while underestimating the impact of the legal issues involved. The problem of property, its regulation and its protection is an eminently legal issue that requires a political decision, while all other aspects of the issue, physical and technical, are subordinated. Sometimes it must be remembered that a "perfect" solution cannot be imposed upon transitional systems, and in the countries of southeast Europe this is seen to be true every day.

In international projects, the target countries are frequently blamed for any failures, although in many cases the real problem is a short-sighted institutional design, ignorance of real conditions and an inability to tailor legislative solutions to the specific case instead of replicating those of the consultant's country. Many countries of southern Europe enjoy a long legal tradition, and in them there are jurists more expert than those who are supposed to act as their advisors.

The data this book contains come not only from the legislative analysis but also from visits to each of the countries. There have been interviews with judges, attorneys, registrars, municipal and state authorities, university professors, cadastre officials, representatives of financial institutions, developers, estate agents, public housing entities, consumers, project heads and, in short, everyone related with the matters at issue in this study. There have also been contacts and exchanges of information with other international institutions working in the area, especially the United States Agency for International Development (USAID), the German Cooperation Agency (GTZ) and the European Union Stability Pact. We thank them all.

The members of the working group were Francisco Javier GÓMEZ GÁLLIGO, Juan José JURADO JURADO, Celia MARTÍNEZ ESCRIBANO, Eduardo MARTÍNEZ MORA, Manuel MONTÁNCHÉZ RAMOS and José Simeón RODRÍGUEZ SÁNCHEZ. The group combined extensive experience in international subjects with lengthy experience in providing advisory help in the drafting of legislation. To research and teaching in a number of Spanish universities, they added the publication of articles and monographs on registration legislation and the mortgage system. To university experience, they added the understanding that comes from the daily keeping of Land registries in Spain. Although the work presented here was the responsibility of the team as a whole, the task of writing the reports on each country fell to individuals: Celia MARTÍNEZ ESCRIBANO and José Simeón RODRÍGUEZ wrote about Albania, Macedonia and Kosovo; Francisco Javier GÓMEZ GÁLLIGO and Juan José JURADO JURADO summed up Croatia and Bosnia and Herzegovina; and Celia MARTÍNEZ ESCRIBANO, Manuel MONTÁNCHÉZ RAMOS and Eduardo MARTÍNEZ MORA reported on Serbia.

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