

CONDOMINIUM OWNERSHIP IN THE CIVIL CODE OF CATALONIA: PROBLEMS AND SOLUTIONS ONE YEAR AFTER RATIFICATION

The entry into force of Book V of the *Codi civil de Catalunya* (Civil Code of Catalonia) in July 2006 signalled an important change in the application of law in our country. Before this, Catalonia had lacked its own regulations and many legal relationships had had to be governed by Spanish law. However with this inclusion of institutions new to Catalan law, Book V displaces the application of Spanish legislation, replacing it with our own regulations. Among the most important of these new institutions, due to its practical effects on daily life, is the regulation of condominium ownership. This is a new, more complex and modern regime, which must be viewed and interpreted not just in the context of Book V, but also in relation to Spanish regulations, including the Act of 1999 itself as well as procedural legislation, registry law, etc. Much still remains to be done in the correct application of the new Catalan condominium regime. But the experience gained during this first year allows some doubts to be aired, some problems raised and some solutions explored that could only have come to light during its practical application. The ESADE Law School, ever sensitive and alert to such important changes, decided to call on a group of experts to bring their different viewpoints to bear in a debate on the changes and differences brought in by this new legal text in the first year after its introduction. On 4th February ESADE organised a study day on '**Condominium ownership in the Catalan Civil Code: problems and solutions one year after ratification**', with the collaboration of the Consell de l'Advocacia Catalana (Catalan Council of Lawyers) and *La Gaceta de los Negocios*.

The study day, attended by some 45 delegates, was inaugurated by Dr. Pedro Miroso, Dean of ESADE Law School (URL), and Dr. Sergio Llebaría, Professor of Civil Law at ESADE Law School (URL) and co-director of the event, who gave a brief presentation on behalf of the hosts and welcomed those attending. The programme took the form of two study groups. The first was chaired by Mrs. Núria de Gispert i Català, lecturer at ESADE Law School (URL), former Minister of Justice of the Catalan Government and the event's co-director with Dr. Llebaría. It included talks by Dr. Josep-Delfi Guàrdia, lawyer and former Minister of Justice of the Catalan Government and Mr. Pedro Yúfera, lawyer and lecturer at ESADE Law School (URL) and Vice-Dean of the Barcelona Bar Association. Both working groups hosted similar discussions.

Dr. Guàrdia's intervention addressed '**The regulation of condominium ownership in the context of the Civil Code of Catalonia**' one year after ratification. He began by recalling the significance of Catalan public law as a symbol of Catalan identity and a manifestation of Catalonia's historic rights. This regulation formed part of the Catalonia's Civil Code, a text that is to law what a dictionary is to language, without prejudice to any necessary modifications which he felt should have been handled more carefully. He went on to analyse Act 5/2006 which regulates the Civil Code's Book V, on condominium ownership. In a historical roundup he highlighted the fact that from the time when it first became conscious of its nationhood, Catalonia had always had its own public law, and that this had required some kind of 'codification'. His introduction concluded with a brief review of Act 29/2002 of 30th December, the first law of the Civil Code of Catalonia, and of Act 5/2006. These acts set a fine example by granting protagonism to the community and allowing the law to be continuously adapted to meet changing circumstances. He went on to describe the origin of the latter Act (...) particularly stressing the consequences of its integration into the Civil Code of Catalonia: the inexcusable implementation of Book I of the Code; its interpretation and

integration into Catalan legal tradition (Article 111.2); the application of the principle of civil liberty (Article 111.6); the principle of good faith (Article 111.7); estoppel (Article 111.8); equity as a principle to be taken into account (Article 111.9); and the obvious application of dispositions on prescription and expiry. He then described the structure and content of the act, a much longer text than the earlier Compilation, whose articles had been abolished or replaced by special laws or by the law on which he was now commenting.

The speaker then dealt with *situations* of community, where the concept of ‘situation’ was somewhat ambiguous and debatable. In Catalan law, the idea of community was a provisional situation, which he felt was mistaken, since condominium ownership is intended to be permanent (...). In conclusion, Dr. Guàrdia indicated that condominium ownership must be considered within the framework of the Civil Code of Catalonia and so the latter’s general principles must be applied. He added that the Civil Code of Catalonia embodied Catalonia’s historic and current law in having its own full civil regulation (limited only by competencies that belonged to the State ‘in all circumstances’), and that condominium ownership was a community similar to others regulated by the Code, particularly in the regulation of property in joint and several ownership that acts as immediate supplementary law.

The next speaker, Mr. Yúfera, in a talk entitled ‘**Constitutive title and bylaws**’, was very critical of Act 5/2006. He emphasised how important condominium ownership was and pointed out that one of the principles relating to community situations mentioned in the law’s preamble was extensive autonomy (the voluntary legal regime of condominium ownership), although later the same text seemed to contradict this. As a very detailed regulation dealing with legal and practical problems, it established different deadlines from the previous regulations, which could lead to confusion.

He then analysed its general structure and content, demonstrating that Title V (on situations of community) was throughout very differently regulated in the state law on condominium ownership (LPHE), whose philosophy was also very different: permissiveness if this was agreed in the bylaws. Comparing the Catalan law with previous regulations and the LPHE, the speaker indicated among other issues how difficult it was to sustain the law’s voluntary legal system if, for example, there were more than two co-proprietors. The regulations stated that the mere existence of two or more co-proprietors did not mean that they formed a community of proprietors subject to Catalan law, but that they would have to constitute themselves as such, and in the meantime be governed as an ordinary community. However, this regulation would have to be adjusted to meet the requirements of Chapter III, thus invalidating their autonomy to do so because their coverage under the Act was compulsory. When dealing with community contributions, Mr. Yúfera stated that this regulation was broader than national regulations, but so prolix that it could cause many problems in practice. He also pointed out that unanimous agreement was required to change general or special contributions, while modification of special contributions could be agreed by four-fifths of the proprietors (i.e. four-fifths of contributions) at a meeting, provided the requirements of Article 553-45.4 were complied with. Again, this called into question the voluntary nature of condominium ownership: Could proprietors really modify contributions if application of Act 5/2006 has compulsory? (...).

The second group, chaired by Dr. Rebeca Carpi, Assistant Professor at ESADE Law School (URL), was addressed by Mr. Enric Vendrell, lawyer, Assistant Professor at ESADE Law School (URL) and legal adviser to the Board of the Professional Association of Property Administrators of Catalonia, and the Right Honourable Mr. Joan Cremades, magistrate, President of the 13th Division of the Provincial Court of Barcelona and editor of the journal *Sepín, Editorial Jurídica*.

Mr. Vendrell dealt with the subject of the **‘Organs and their operation. Adoption of and objection to resolutions’**. Giving a professional view of the problems arising in the implementation of Act 5/2006, he was fairly critical of the act. It was a highly interventionist, over-regulatory and poorly organised instrument. Bearing in mind its social purpose, it should be less complex. Its precepts made hard reading, were contradictory and were sometimes even impossible to apply.

The speaker next turned to the community’s governing bodies. Among other questions, he addressed the issue of professionalisation when the Secretary and Administrator were persons outside the community. He pointed out that the option of applying to the courts to request their replacement was not envisaged, and regretted the elimination of the condition that proper professional qualifications should be legally recognised. This was surprising, given the responsibility and social impact of this professional activity (...). On the Secretary’s duties, he felt that the two-year custodial period for documentation was too short, and also clashed with the ten-year period (too long) indicated in Article 553-28 (...). On the regulation of meetings, he indicated that Article 20 omitted to mention that this was an Ordinary Meeting (...).

On meeting notifications, he observed that not only the Presidency or one quarter of the contributions and proprietors could issue these (Article 20.2), but according to Article 21, the Vice President, if any, or Secretary could, if no one else did. This extended former arrangements, and in the case of the Secretary, was an innovation. The unsolved issue was at what point refusal or inactivity of the President or the Vice President could be determined, allowing the Secretariat to act. Another important point was that notifications of Ordinary Meetings had to be sent to the proprietor’s designated registered address. The fact that the registered address for notification of proprietors did not now have to be in Spanish territory (Article 21) did little to help governance of the community of proprietors, and could cause problems (...). He also noted that meeting notifications had to be placed on the community’s notice board, and there were only three days to legally advise people who could not be notified in person. However, the solution adopted was that this had to be an ‘additional’ procedure, involving duplication (...). As regards notification details, the place of the meeting established had to be in the municipality of the region where the real estate was located, an unnecessary imposition that would have been better left to the judgement of the Meeting or simply as Catalonia. The notification must also contain other features that were essential for the notification and any resolutions it adopted to be effective. The notification was being turned into a very rigorous document, almost as important as the minutes themselves. In spite of this, some elementary requisites were omitted: the date of the meeting and the agenda. Nor did it seem to allow any proprietor to ask the Meeting to debate a particular subject, very useful for solving disputes, and a procedure that was envisaged in the state law.

On attendance, the speaker illustrated the excessive interventionism of the regulation, which far from solving problems in fact created them. Thus it curiously and incomprehensibly referred to representation at a meeting, distinguishing it from the delegation of vote covered in Section 24. Representation had always been understood as attending and voting, since someone voting on behalf of anyone else obviously represented them. It would have been better to unite this precept with Article 24, or vice versa. Article 24 also seemed to imply that you could not delegate in favour of a spouse or child... This would have to be interpreted with common sense.

Mr. Vendrell pointed out some mistakes in Article 25, which deals with resolutions. He indicated that the new regulation made it possible for some extremely important matters (dismissal and nomination of the entire Meeting or taking legal action against its members) to be dealt with without appearing on the agenda, and at a meeting summoned to deal with secondary matters (...), which may cause considerable legal insecurity. Another point was the new quorum for second notification, also a serious error, since it could give rise to growing disagreement and contradictory decisions in the courts, etc. (...). Another serious and inexplicable error was the fact that at first notification, the quorum had to have a double majority of community members and contributions, and at the second this became a majority of contributions of those present and represented. This meant that a multiple proprietor could impose his or her criteria on other neighbours, so breaking the equilibrium requiring a double majority of members and contributions (...). Mr. Vendrell also felt it went too far in ruling that the community could be condemned to install and pay for a lift if this was requested by persons with mobility problems, proprietors or simply users of a private entity, even if the community had not adopted any resolution because it had not reached the majority required.

Other issues poorly dealt with: Article 27 regulated the minutes, raising another threat to the governance and normal operation of the community. It stated that, once all points on the agenda had been dealt with, that is, at the end of the meeting resolutions had to be drafted and, if approved, the minutes must then be drawn up. The impression was that two approvals were required (...), which could cause many problems. Here the text displayed ignorance of the real, day-to-day situation in communities, as well as a considerable mistrust of the Secretary and continuous and unjustifiable reference to corporations (...). Mr. Vendrell stated that some administrators had objected to minutes being drawn up in Catalan. He felt that this should have been left to the discretion of the Meeting of Proprietors, and that everyone should be entitled to request minutes in the official language of their choice. In his opinion, Article 29 relating to enforcement suffered from incomplete drafting, and was a threat to the functioning of the community of proprietors (...), it opened the door to proprietors who did not comply with resolutions to claim that they had not been notified in the minutes, even though they may have been present at the Meeting (...). On objection, he considered that the new regulations introduced uncertainty about the period for objecting to resolutions that were unlawful (1 year, 2 months, 10 years?). And that these regulations might affect the legal certainty of community members, since if a resolution was against the law this opened the door to any proprietor acting against their own acts and objecting to a resolution that they had voted for at the Meeting (...). He also lamented the lack of any requirement to be up to date with contributions, or to deposit any debt before objecting, precisely to avoid objection being used to justify default in payment and preventing abuse of the system. In other words, debtors could not vote, but could contest

resolutions as unlawful, or at least when they considered that they had been illegally prevented from voting, etc.

The last talk given by Mr. Joan Cremades was entitled '**Procedural aspects**'. He began by recalling that the Administration of Justice and Procedural Administration are matters for the state, without prejudice to any duties of the autonomous communities (Article 149.5 and 6 EC; Article 551.1.4 of the Civil Code of Catalonia). The LEC (Rules of Civil Code Procedure) dealt with many procedures but attempted procedural simplification. He addressed some general issues: jurisdiction and competence; specialism (simplified trial); determination of amount: procedural postulation; legitimation, in which the parties' participation in the process is greater; appearance at trial; the president, community members, 'community', administrators. He also reviewed precautionary measures with their specific implications (immediate cessation of the prohibited activity, suspension of the contested resolution and embargo of privative elements). He then dealt with the determination of procedures in the LEC, and how this had changed, including *oral hearing*, *civil hearing* and *special hearing*, noting in passing that the 'equity hearing' envisaged in state law had disappeared. He then tackled the subject of notification of the judgment, and presumption of right to appeal if a community member was sentenced to pay debts. He followed this with appeals (to higher courts; extraordinary), enforcement (provisional and definitive; for community debts)). He ended by referring to arbitration, showing that while the law of arbitration did not exclude raising matters of condominium ownership, the compulsory regulations established in Article 533 of the Civil Code of Catalonia could not be changed (proprietors' obligations, rules on notifications, the different quorums required for adoption of resolutions, etc.).

Study prepared by Dr María Dolors Oller i Sala. Lecturer at ESADE Law School

* A more detailed summary is included in the Spanish version