



Research Article

THE OCCUPATION OF PROPERTIES AND PARKING SPACES: THE LEGAL DISTINCTION BETWEEN UNLAWFUL OCCUPATION AND TRESPASS

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THE OCCUPATION OF PROPERTIES AND PARKING SPACES: THE LEGAL DISTINCTION BETWEEN UNLAWFUL OCCUPATION AND TRESPASS

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Abstract: This article provides a comprehensive analysis of illegal property occupation in Spain, examining its criminal, constitutional and social dimensions. Through an in-depth review of case law from the Supreme Court and the Constitutional Court, the study explores the distinction between ‘dwelling’ and ‘non-dwelling property’, a key factor in differentiating between the offences of burglary and unlawful occupation. Emerging phenomena such as ‘*inquiokupación*’—fraudulent tenancy used to gain access to a property—are also addressed, highlighting the challenges at the intersection of civil and criminal law. The paper further analyses the constitutional tensions between the inviolability of the home, the right to property, and the right to adequate housing, and proposes legislative reforms aimed at improving legal and social responses. The study concludes that illegal occupation requires a multidisciplinary approach combining legal reform, procedural efficiency and public housing policies.

Resumen: El presente artículo analiza de forma integral el fenómeno de la ocupación ilegal de inmuebles en España, abordando su dimensión penal, constitucional y social. A través del estudio de la jurisprudencia del Tribunal Supremo y del Tribunal Constitucional, se examina la distinción entre morada e inmueble deshabitado, elemento clave para diferenciar entre los delitos de allanamiento y usurpación. Asimismo, se profundiza en figuras emergentes como la *inquiokupación*, que plantea importantes retos en la frontera entre el derecho civil y el penal. El análisis se completa con una revisión de los conflictos constitucionales entre la inviolabilidad del domicilio, el derecho de propiedad y el derecho a la vivienda, así como con propuestas legislativas orientadas a mejorar la respuesta jurídica y social ante este fenómeno. El estudio concluye que la ocupación ilegal requiere una aproximación multidisciplinar que combine reformas normativas, agilización procesal y políticas públicas de vivienda.

Keywords: illegal occupation; home invasion; usurpation; dwelling; *inquiokupación*.

Palabras clave: ocupación ilegal; allanamiento de morada; usurpación; morada; *inquiokupación*.

ABBREVIATIONS

AN: National Court

AP: Provincial Court

Art.: Article

Arts.: Articles

BOE: Official State Gazette

CC: Civil Code

CDFUE: Charter of Fundamental Rights of the European Union

CE: Spanish Constitution of 1978

CP: Criminal Code

DA: Additional Provision

FCSE: State Security Forces and Corps

FGE: State Public Prosecutor's Office

LAU: Urban Tenancy Act

LEC: Civil Procedure Act

LECrim: Criminal Procedure Act

LOTJ: Organic Law on Jury Trials

MF: Public Prosecutor's Office

No./No.: Number

RAE: Royal Spanish Academy

RDL: Royal Legislative Decree

SAP: Provincial Court Judgment

STC: Constitutional Court Judgment

STS: Supreme Court judgement

TI: Court(s) of First Instance

TC: Constitutional Court

TS: Supreme Court

TSJM: High Court of Justice of Madrid

TSJPV: High Court of Justice of the Basque Country

1. INTRODUCTION

The squatting of properties has become a highly complex legal and social phenomenon in Spain, with a proliferation of cases affecting not only homes but also commercial premises and parking spaces, calling into question the limits of criminal protection, the definition of the concept of a dwelling, and the balance between the inviolability of the home, private property and the right to decent housing. This is exacerbated by the absence of an express constitutional recognition of the right to property as a fundamental right in the 1978 Constitution (CE), unlike the inviolability of the home under Article (Art.) 18.2 CE, which contributes to the complexity of the problem and the diversity of judicial responses.

From a criminal law perspective, the issue requires a precise definition of the offences of breaking and entering (Article 202 of the Criminal Code [CP]) and unlawful occupation of immovable property (Article 245 CP), as well as an analysis of the growing view that squatting may constitute the offence of fraud (Article 248 CP). Case law plays a decisive role in interpreting the concept of a dwelling and the effective use of the property by its owner.

New forms of occupation – *such as the use of garages as makeshift living spaces* – necessitate a re-evaluation of the criteria for habitability, privacy and domestic privacy, raising questions about whether such spaces can be classified as dwellings and about the criminal nature of such conduct.

This article systematically examines the criminal treatment of such occupations – of both dwellings and parking spaces – the doctrinal evolution of the concept of a dwelling, and the possible classification of permanent parking in another person's parking space as trespass. Finally, it addresses the constitutional conflicts involved and puts forward legislative proposals aimed at strengthening legal certainty and procedural efficiency.

2. CONCEPTUAL AND LEGAL FRAMEWORK

Squatting is a complex legal phenomenon situated at the intersection of civil, criminal and constitutional law. Its analysis requires a clear definition of the concepts of 'dwelling', 'domicile', 'possession' and 'property', taking into account the evolution of case law that shapes its criminal treatment.

2.1. CONCEPTUAL FRAMEWORK OF THE PROBLEM OF SQUATTING

Article 18.2 of the Spanish Constitution recognises the inviolability of the domicile as a fundamental right, implying that no third party may enter it without the consent of the owner or a court order, thereby protecting not only a physical space but also a sphere of personal and family privacy and intimacy.

To this end, the Constitutional Court (TC), in its Judgment 22/1984 of 17 February¹, ruled that the protection of the home does not depend on the legal ownership

¹ Judgment of the Second Chamber of the Constitutional Court STC 22/1984, of 17 February, HJ System – Decision: JUDGMENT 22/1984

of the property, but on its actual use as a space for private life, since ‘*n inviolable home is a space in which the individual lives without necessarily being subject to social customs and conventions and exercises their most intimate freedom*’. Thus, a dwelling occupied unlawfully may constitute a ‘morada’ if the occupant carries out their daily life there on a stable basis.

2.1.1. The criminal law concept of a ‘dwelling’

According to the dictionary of the Royal Spanish Academy (RAE), a ‘morada’ is ‘*a place of somewhat continuous residence or abode*’, or ‘*the place where one lives*’. However, legal doctrine defines it as ‘*the place where a person lives, or the physical space, enclosed and separated from the outside world and from third parties, which allows its occupant to protect and lead their private life and personal privacy, and to exercise their right to exclude third parties, where the individual lives without necessarily being subject to social customs and conventions, regardless of whether it is their habitual or temporary residence*’. The Supreme Court (TS) interprets this to include ‘*all the rooms of an inhabited dwelling that are connected to it internally*’², which applies regardless of whether it is used as a permanent, temporary or occasional residence.

Thus, it would include, for example, caravans, boats or any enclosed space, provided that it meets the requirements described above. Even a second home may be considered a dwelling if it is used for everyday activities, a key concept in distinguishing between the offence of breaking and entering, as defined in Article 202 of the Criminal Code, and the offence of unlawful occupation under Article 245 of the Criminal Code.

For criminal law purposes, certain spaces are also considered dwellings if, although located outside a dwelling, they are inseparably linked to it. For example, courtyards, garages, storage rooms, etc., extending to ‘*all rooms of an inhabited dwelling that are connected to it* [for example, a rented room in a shared flat, or a hotel room], *regardless of whether it is a permanent, temporary or occasional residence*’. This also includes places that are not dwellings, such as a caravan, a boat, etc., since, for criminal law purposes, what matters is ‘*that the place in question is being inhabited and is the place of residence of the person concerned*’. This extension of the concept of a dwelling was confirmed in Supreme Court Judgment 3620/2020 of 6 November³, which reaffirms this trend, including second homes. Lockers belonging to military personnel whilst on duty at their unit also enjoy special protection. Article 10.2 of Organic Law 9/2011 of 27 July on the rights and duties of members of the Armed Forces, which deals with the right to privacy and personal dignity, stipulates that the search of a person, their lockers, effects and belongings,

² STS 5484/2014, decision number: 852/2014, dated 11 December 2014, handed down by the Criminal Chamber, Presiding Judge Miguel Colmenero Menéndez de Lúcar: STS 5484/2014 - ECLI:ES:TS:2014:5484 - Judiciary

³ Supreme Court Judgment 3620/2020, judgment number: 587/2020, dated 6 November 2020, handed down by the Criminal Chamber, Presiding Judge Vicente Magro **Servet**: Supreme Court Judgment 3620/2020 - ECLI:ES:TS:2020:3620 - Judiciary

‘... shall require the consent of the person concerned or a court order. However, where there are indications that a criminal offence has been committed, or for well-founded reasons of public health or security, the head of the unit may authorise such searches in a proportionate manner and on expressly stated grounds. These searches shall be carried out in the presence of the person concerned and at least two witnesses, or in the presence of the witnesses alone if the person concerned, having been duly notified, fails to attend’.

Another important, and more practical, concept is that of *domicile*, which legal doctrine defines as *‘the premises where a person resides, or the physical space that allows its occupant to protect their private life and exercise their right of exclusion vis-à-vis third parties. It is the person’s legal domicile’*. Its importance stems from its inclusion in Article 18.2 of the Spanish Constitution as *‘inviolable’*, a concept extended to other places similar to the habitual residence, such as hotel rooms, since case law establishes that *‘a person’s habitual residence implies not only staying in a place but also the intention to settle there effectively and permanently’*.⁴

Something to bear in mind in relation to the above are the differences between the administrative notion and the case-law perspective of what is considered a dwelling, where Supreme Court Judgment 5271/2013, of 7 October⁵, distinguishes between the concept for criminal purposes and the administrative notion of a dwelling:

‘The concept of a dwelling for criminal law purposes is not identical to the administrative notion of a dwelling. The idea that only those properties duly regularised for tax purposes are eligible for criminal protection lacks any justification. ...//... This highlights the link between the concept of domicile and the protection of an individual’s privacy, which leads to broadening the civil or administrative legal concept of a dwelling to construct that of domicile from a constitutional perspective, as an instrument for the protection of privacy.

...//...

Consequently, compliance with certain administrative requirements, for the purposes of registration, does not add a distinctive feature without which the constitutional protection of the sphere of privacy—which every citizen defines as a boundary of exclusion against public authorities and third parties—must be suspended. ...//... The protected legal interest is not dependent on the size of the dwelling or its administrative status. Hence, administrative certification regarding the existence or absence of a certificate of occupancy would not have added anything to the actual existence of a space in which the activities inherent to Miren’s personal and family life took place’.

⁴ Supreme Court Judgment 4307/2017, of 28 November. Judgment number: 1834/2017, handed down by the Contentious-Administrative Chamber. Presiding Judge: José Antonio Montero Fernández. Supreme Court Judgment 4307/2017 - ECLI:ES:TS:2017:4307 - Judiciary

⁵ Supreme Court Judgment 5271/2013, of 7 October. Judgment number: 731/2013, handed down by the Criminal Chamber, Presiding Judge Manuel Marchena Gómez: Supreme Court Judgment 5271/2013 - ECLI:ES:TS:2013:5271 - Judiciary

Thus, the protection of the home provided for in Article 18.2 of the Spanish Constitution does not depend on compliance with administrative requirements, such as a certificate of habitability or the property's tax compliance. The home is understood as a *'space suitable for the conduct of private life'* and a *'last bastion of personal and family privacy'*, focusing on the protection of the individual's privacy rather than on the administrative compliance of the property. It follows that the right to the inviolability of the home encompasses *'any place where a person carries out activities related to their personal and family life'*.

Thus, the Constitutional Court, through numerous judgments (STC 22/1984, of 17 February, STC 69/1999, of 26 April, STC 283/2000, of 27 November, STC 10/2002, of 17 January, amongst others), has established a distinction between domicile and dwelling, defining the latter as *'any enclosed space in which a person spends the night and keeps their belongings'*. Thus, a dwelling is not limited to a reference to property, but rather to *'the protection of a person's privacy and private life'*, being a very broad and far-reaching concept for the protection of these fundamental rights.

Constitutional Court Ruling 10/2002 of 17 January⁶, in its Legal Grounds 8, held that *'hotel rooms may constitute the domicile of their guests, since, in principle, they are suitable places, by virtue of their very nature, for the private lives of those guests to be conducted therein, given that the usual purpose of hotel rooms is to carry out activities that can generally be classified as falling within the sphere of private life'*, adopting a strict interpretation of the terms relating to the inviolability of the home, ensuring that any ambiguous interpretation is resolved in favour of respect for privacy, and emphasising the connection between the concept of the home and the constitutional right to privacy, protected under Article 18 of the Spanish Constitution.

2.1.2. Trespassing

This consists of *'entering or remaining in another person's home without the consent of the occupier, who would be the person habitually residing there'*. This act is classified as a criminal offence and is regulated in Articles 202, 203 and 204. This offence protects the fundamental right to the inviolability of the home; the key factor is whether entry is made without consent or permission and against the will of the occupier, who may be either the owner or the person in possession of the property. Similarly, the offence would also apply in the event that the occupier withdraws authorisation to remain on the premises.

2.1.3. The unlawful occupation of a property

This refers to situations where a person gains access to, or remains in, a property that does not constitute a dwelling against the owner's will, or where a person occupies another person's property or usurps a real property right through the use of violence or intimidation. In such cases, the properties in question would be vacant, abandoned or under construction; this requires an intention to remain and the absence of a legitimate title, with the protection being directed not at privacy but at possession.

⁶ Constitutional Court Judgment 10/2002, of 17 January, Presiding Judge María Emilia Casas Baamonde: HJ System - Decision: JUDGMENT 10/2002

2.2. DIFFERENCES BETWEEN A DWELLING, OWNERSHIP AND POSSESSION

When dealing with the occupation of properties, it is necessary to distinguish between the legal concepts of dwelling, ownership and possession, as these are often confused, creating problems when addressing the situation arising from the occupation of a property and deciding how to resolve it, thereby complicating the assessment of the facts and the appropriate legal response.

Dwelling, a space of constitutional privacy: this is the space where a person leads their private life, even if they are neither the owner nor the legal possessor. Its legal significance stems from its protection under the right to the inviolability of the home (Article 18.2 of the Spanish Constitution). For example, this would apply to a tenant of a rented flat, which is their habitual residence; although they are not the owner, that place constitutes their home.

Ownership, the full real right: this is the exclusive and full real right over a property, a legal basis for ownership defined by Articles 348 et seq. of the Civil Code (CC). The owner may use, dispose of and transfer the property; their title is evidenced by the deed of sale in their name.

Possession, the protected factual situation: this consists of physically holding an asset and exercising acts of control over it, even if one is not the owner, which does not imply any legal rights over it. The law protects the possessor, who enjoys certain rights, such as the right not to be dispossessed of the property without due process (Article 446 CC). For example, a tenant living in a rented flat is in possession of it, even though the owner is someone else.

Overall, correctly identifying which of these rights is at stake determines whether the conduct should be addressed through criminal or civil proceedings, or by means of measures to protect possession. This distinction is essential in Spanish law, as it is not merely a theoretical exercise, but determines which right is to be protected, which offence has been committed, and which civil or criminal actions are appropriate.

Table 1 –
Distinction between ownership, possession and domicile

Situation	Is it a dwelling?	Is there possession?	Is there ownership?	Is it a criminal offence if this is breached?
Tenant in their flat	Yes	Yes	No	Trespassing if entering without permission
Landlord who does not live there	No	No	Yes	Squatting if occupied without permission
Occupant without legal title	It may be	Yes	No	Trespass if entry is made without consent

Source: own compilation

The key point is that each concept protects a different legal right, and confusing them leads to serious errors in legal classification, particularly in cases involving squatting, trespass and disputes between private individuals, as both the nature of the offence and the legal protection vary depending on who has control of the property. This distinction, in the context of property occupation, is crucial in determining whether a criminal offence has been committed or whether it is simply a civil dispute.

Table 2
Key differences

Concept	Does it imply ownership?	Does it involve use?	Is it legally protected?	Can it be the subject of a criminal offence if infringed?
Dwelling	Not necessarily	Yes	Yes (it is a fundamental right)	Yes (unlawful entry into a dwelling)
Property	Yes	Yes or no	Yes (it is a right in rem)	Yes (trespass, theft, etc.)
Possession	Not necessarily	Yes	Yes (protection of possession)	Yes (dispossession, usurpation)

Source: own work

2.3. THE CONCEPT OF OCCUPANCY AND ITS LEGAL TREATMENT

2.3.1. What is meant by *the* ‘occupation’ of a dwelling?

Occupation can be defined as: *‘the situation that arises when a third party, without title to possession and without the owner’s consent, enters a property and settles there with the intention of remaining permanently, thereby affecting the essential content of the right to property or, where applicable, the constitutionally protected sphere of the home’.*

This definition emphasises the lack of title, the physical occupation, the intention to remain, and the infringement of the relevant legal right.

2.3.2. Legal treatment: Is it a criminal offence or not?

There are two legal avenues to address the problem: the civil and the criminal routes.

With regard to civil proceedings, depending on the specific circumstances of the case, there are two procedures:

- a) Cases where the occupant has gained access to the dwelling without the owner’s consent: the procedure to be followed would be the summary proceedings for the protection of special possession of an occupied dwelling, set out in Article 250(1)(4) of the Civil Procedure Act (LEC): *‘the aim is the immediate recovery of the unlawfully occupied dwelling’.*

One of the specific features of this procedure, introduced by the sole Additional Provision (DA) of Law 5/2018 of 11 June, is the requirement to notify the competent public services responsible for social affairs so that *they may 'determine whether a situation of particular vulnerability exists and whether it is necessary for them to take action'*. Such notification is subject to obtaining the prior consent of the parties concerned. The existence of a situation of vulnerability has become a key factor in preventing the enforcement of evictions in these proceedings.

- b) Cases in which, prior to the occupation, the claimant had consented to the use of the property: a '*claim for eviction on grounds of precarious occupation*' shall be brought, as provided for in Article 250.1.2 of the LEC, enabling the owner of the property to regain possession when a person occupies it without a title justifying their stay or authorising their use of the property.

As regards criminal proceedings, which must always be a *last resort*⁷, the usual course of action is to apply the provision described in point 2 of Article 245 of the Criminal Code⁸, which classifies the occupation of immovable property as a criminal offence. This would constitute a 'minor offence', in accordance with the provisions of Articles 13.4 and 33.3 of the Criminal Code, and the procedure to be followed is that set out in Article 962 et seq. of the Criminal Procedure Act (LECrim). The legal right protected is real estate assets; the offence is prosecuted on the basis of damage to those assets, requiring that harm be caused to the owner of the affected property.

As regards filing a complaint with a reasonable prospect of success, it is necessary to prove ownership of the property by means of the title deed or an equivalent document (for example, a contract of sale), and to demonstrate the lack of consent to the occupation, which can prove to be quite complicated and difficult to establish.

A complaint can be lodged in various ways: the most common is with the State Security Forces (FCSE) responsible for the area where the occupied property is situated. It can also be lodged with the duty court or the court of first instance (TI) corresponding to the judicial district where the property is situated. The main difference is that the police draft the complaint and, before forwarding it to the Court of First Instance, may carry out an investigation into the matter. In the courts of first instance (TI), the complainant drafts the complaint, with the associated drawbacks regarding accuracy and compliance with legal requirements. In both cases, it is advisable to consider whether to request an urgent eviction order where it can be proven that the property in question is the complainant's habitual residence, as this would entail a more complicated procedure, potentially constituting a breach of the peace. In all cases, the TI assesses the occupant's personal circumstances; whilst this does not legalise the occupation, it may influence the type of proceedings (civil or criminal) and the enforcement of the eviction, without removing the unlawful nature of the act.

2.4. CAR PARK SPACES AS RESIDENCES

Recently, a situation has arisen that poses an interpretative challenge: the *use of garage spaces or storage rooms as dwellings*. Given the current housing situation, population

⁷ Definition of the 'ultima ratio' nature of criminal law: Pan-Hispanic Dictionary of Legal Spanish – RAE

⁸ Legal concepts: Article 245 of the Criminal Code

growth and the concentration of people in major cities, there are changes taking place in the use of commercial premises, converting them into dwellings, and situations where storage rooms or similar spaces are being let. Without going into the legality or illegality of such situations, this is of interest when dealing with occupations, or trespasses, of other premises or areas attached to a dwelling.

The illegal occupation of garage spaces is becoming more widespread and usually occurs when someone parks a vehicle in a garage space they do not own, without having the necessary authorisation to do so; in many cases, this is done to prompt the owner to offer a sum of money to vacate the space and avoid lengthy legal proceedings.

However, there are also situations in which the person occupying the parking space uses it as a permanent residence, which could raise the question of whether the parking space should be considered a dwelling. Nevertheless, in order to apply the criminal offence of trespass, case law tends to require objective evidence of habitability and everyday use.

Looking at the issue from the owner's perspective, there are properties that include attached parking spaces and/or storage rooms; therefore, where such a property constitutes the habitual residence of the person living there, those premises that form a single, indivisible registered unit with the dwelling to which they are attached shall also be deemed part of that dwelling, and the occupation of such parking spaces shall be interpreted as trespass.

3. CONSTITUTIONAL PERSPECTIVE AND CONFLICTING RIGHTS

Illegal occupation pits the right to private property against the right to decent housing, and the Constitutional Court, with regard to the conflict between the two, in Constitutional Ruling 32/2019 of 28 February⁹, recognises that both must be weighed up in accordance with the principle of proportionality, particularly in cases of social vulnerability, in the following terms: *The right to choose one's place of residence is not an absolute right that entitles a person to occupy any dwelling, as it must be exercised in accordance with the law and with respect for the rights of others.* Furthermore, evicting occupants from a dwelling without legal title does not infringe the right to decent and adequate housing; consequently, the legislature has a wide margin of discretion to adopt provisions in social and economic matters.

The occupation of properties raises a conflict that transcends the criminal sphere, entering the realm of fundamental rights and bringing into play three constitutional pillars: the inviolability of the home (Article 18.2 of the Spanish Constitution), the right to private property (Article 33 of the Spanish Constitution) and the right to decent and adequate housing (Article 47 of the Spanish Constitution). The Constitutional Court has held that these rights must be weighed against one another, whilst respecting the principle of proportionality and human dignity, and that criminal law cannot be the means of resolving housing disputes; it must be applied proportionately and with due regard for constitutional guarantees.

⁹ Plenary Session. Constitutional Court Judgment 31/2019, of 28 February 2019. Appeal for constitutional protection 1086-2018. https://www.boe.es/diario_boe/txt.php?id=BOE-A-2019-4446

The inviolability of the home: according to Article 18.2 of the Spanish Constitution, the home is inviolable and no entry or search may be carried out without the consent of the occupant or a court order, except in cases of flagrante delicto. This provides direct protection for personal and family privacy against external interference, and any breach of this right may constitute the offence of unlawful entry. The Constitutional Court has interpreted 'home' as '*any space where a person leads their private life, regardless of ownership or physical nature*', including rented accommodation, shared rooms and even spaces occupied on a precarious basis, provided there is stable and personal use of the premises.

The right to private property: Article 33 of the Spanish Constitution recognises the right to private property, adding that its scope is defined by its social function; it is not an absolute right and may be limited for reasons of general interest, with reasonable restrictions being imposed. In the Constitutional Court's view, this social function of property does not legitimise unlawful occupation; consequently, the criminal protection afforded to the owner remains fully valid, being enshrined in the offence of unlawful occupation of immovable property (Article 245 of the Criminal Code), which defines the offence without requiring the property to be a dwelling.

The right to decent and adequate housing: Article 47 of the Spanish Constitution (CE) proclaims the right of citizens to enjoy decent and adequate housing, obliging public authorities to promote the necessary conditions to give effect to this right; it is a guiding principle of social and economic policy and not a fundamental right enforceable before the courts. According to the Constitutional Court, this right does not justify unlawful occupation, but it must be taken into account when balancing interests, particularly where minors or vulnerable persons are affected.

Any conflict between rights requires the establishment of criteria for weighing them up; therefore, resolving conflicts between these rights requires the application of the '*principle of proportionality*', which involves: *assessing the severity of the impact on each right, considering the occupant's personal circumstances* (vulnerability, state of need, etc.), *examining the behaviour of the right-holder* (abandonment of the property, lack of use, etc.) and *ensuring respect for human dignity and the best interests of the child, where applicable*.

Case law tends towards a more flexible interpretation, distinguishing between *abusive occupations* (for profit or involving violence) and *occupations out of necessity*, and proposing differentiated responses under criminal, civil and administrative law.

4. OFFENCES RELATED TO OCCUPATION

The Spanish Criminal Code addresses the unauthorised occupation of properties through two criminal offences: *trespass* (Article 202 of the Criminal Code), which protects domestic privacy, and *the unlawful occupation of immovable property* (Article 245 of the Criminal Code), which protects property and non-domiciliary possession. Furthermore, consideration is currently being given to whether, in certain cases, the offence of fraud, as provided for and punishable under Article 248 of the Criminal Code, may have been committed. The correct criminal classification depends on determining whether the property in question constitutes a dwelling; this is an essential distinction, as unlawful entry () is a more serious offence that does not require intent to

make a profit, whilst usurpation does require the absence of authorisation and the intention to remain there permanently.

4.1. TRESPASSING ON A DWELLING (ART. 202 OF THE CRIMINAL CODE)

Trespassing on a dwelling protects domestic privacy, recognised as a fundamental right in the 1978 Spanish Constitution, and penalises entering or remaining on another person's property without the occupant's consent, even without the use of violence. Case law has extended this concept to non-traditional spaces, provided they are used for personal and private purposes, classifying them as '*spaces of privacy*', regardless of ownership but based on their actual use as a place of residence, thereby extending protection to second homes, hotel rooms, caravans and other spaces used as private refuges. Such conduct may be classified as trespass, in which case the procedure to be followed will be that of the Jury Court, in accordance with the provisions of Article 1.2(d) of the Organic Law on the Jury Court (LOTJ)¹⁰.

According to the general theory of crime, the key elements of a crime are '*the set of essential characteristics and components that constitute every crime*', enabling its study through a structural analysis; these are interdependent factors that are taken into account when passing a criminal judgement on a specific case. From a general perspective, we refer to the parties to the offence (who may be active or passive), the criminal act, its classification as a specific offence, its unlawfulness, culpability (which may arise from recklessness, negligence, incompetence or failure to comply with regulations), or its punishability.

In the case of the offence of breaking and entering, some of these elements might include: *the existence of a dwelling*, understood as the space where a person leads their private life; *unauthorised entry or presence*, for which it is sufficient that the occupant has not authorised access or the person's continued presence—even if the person entered with permission but intends to remain without authorisation; *and the perpetrator's intent*, as they must be aware that they are entering another person's dwelling; the offence is aggravated if committed through the use of violence or intimidation. The standard penalties range from six months to two years' imprisonment where no violence has been used, whereas where the offence is committed with violence or intimidation, the penalty increases to between one and four years' imprisonment plus a fine.

Legal doctrine and case law emphasise that protection centres on the function of privacy afforded by the space, not on its ownership or habitual use; consequently, the classification of the offence will depend on the factual assessment of each case. To cite a few examples of this:

The Supreme Court judgement, STS 7287/2009, of 25 November¹¹, regarding the definition of the offence of unlawful entry, states that this offence protects strictly personal rights, such as the inviolability of the home, which is a fundamental right of

¹⁰ Organic Law 5/1995, of 22 May, on the Jury Court: Organic Law 5/1995, of 22 May, on the Jury Court

¹¹ Supreme Court Judgment 7287/2009, of 25 November. Decision number: 1231/2009, handed down by the Criminal Chamber. Reporting Judge: Alberto Gumersindo Jorge Barreiro: Supreme Court Judgment 7287/2009 - ECLI:ES:TS:2009:7287 - Judiciary

the individual, established to guarantee their privacy within the limited space that the individual themselves chooses and which ‘*must remain exempt or immune from external invasions or attacks by other persons or by the public authorities*’, an exemption or immunity which is justified by the fact that, according to Constitutional Court Ruling 22/1984¹² and Constitutional Court Ruling 181/1999¹³, ‘*the home is a space in which the individual lives without necessarily being subject to social customs and conventions and exercises their most intimate freedom*’.

Furthermore, Constitutional Court Ruling 10/2002 of 17 January¹⁴ states that the fact that a property *is not habitually occupied* does not prevent it from being classified as a domicile, establishing that ‘*... a dwelling is a domicile even if it is unoccupied at the time of registration (Constitutional Court Ruling 94/1999 of 31 May, Legal Ground 5)...*’. It goes on to state that ‘*neither its location, nor its physical configuration, nor whether it is movable or immovable property, nor the existence or type of legal title authorising its use, nor, finally, the intensity or frequency with which private life is conducted therein, are relevant*’. It further provides that, although the conduct of private life is the determining factor in considering the space in which it takes place to be a domicile, such suitability may be inferred from any of these features or others, ‘*in so far as they represent objective characteristics on the basis of which it is possible to define the spaces which, in general terms, can and are usually used for the conduct of private life*’.

More recently, Supreme Court Judgment 3620/2020, of 6 November¹⁵, extends the concept of a dwelling to include second homes, caravans, rented rooms and other non-conventional spaces, provided they are used as a sphere of personal privacy.

4.2. THE OFFENCE OF UNLAWFUL OCCUPATION (ART. 245 CP)

This offence protects property and non-domiciliary possession, penalising the unauthorised and permanent occupation of another person’s property that does not constitute a ‘dwelling’, such as empty homes, abandoned premises or parking spaces. Supreme Court Judgment 5169/2014, of 12 November¹⁶, defines the essential elements of the criminal offence of peaceful occupation of property, which are as follows:

- a) *Peaceful usurpation*: this does not require violence or intimidation; it must involve a dwelling or building that does not currently constitute a residence, and must be carried out with a certain intention of permanence.
- b) *For the associated disturbance of possession to be classified as occupation under criminal law*: the interpretation of the typical offence must be made from the perspective of the protected legal interest and the principle of proportionality underpinning the criminal justice system (Article 49(3) of the

¹² Constitutional Court Judgment STC 22/1984, of 17 February: HJ System - Decision: JUDGMENT 22/1984

¹³ Constitutional Court Judgment STC 181/1999, of 11 October: HJ System - Decision: JUDGMENT 181/1999

¹⁴ STC 10/2002, of 17 January: HJ System – Decision: JUDGMENT 10/2002

¹⁵ Supreme Court Judgment 3620/2020, of 6 November. Decision number: 587/2020, handed down by the Criminal Chamber. Reporting Judge: Vicente Magro Servet. Supreme Court Judgment 3620/2020 – ECLI:ES:TS:2020:3620 – Judiciary

¹⁶ STS 5169/2014, of 12 November, Decision number: 800/2014, handed down by the Criminal Chamber. Presiding Judge: Cándido Conde-Pumpido Tourón: STS 5169/2014 - ECLI:ES:TS:2014:5169 - Judiciary

Charter of Fundamental Rights of the European Union – CFREU). Thus, occupation classified as a criminal offence is *‘that which entails a significant risk to the victim’s possession of the property in question, which is what renders the conduct harmful; occasional or sporadic occupations, without any intention of permanence, fall outside the scope of the criminal offence’*.

That the perpetrator lacks a legal title authorising and legitimising such possession: for, had they been authorised to do so, the act could not be considered a criminal offence and the owner of the property would have to resort to civil proceedings to regain possession.

- c) *That there exists, and is on record, the owner’s opposition to this situation: either before it occurs or afterwards, as such opposition must be expressly stated.*
- d) *Intent on the part of the perpetrator: implying knowledge that the property belongs to another and that there is no authorisation, coupled with the intention to infringe the legal right protected by the offence (the actual disruption of the property owner’s possession).*

Case law, specifically Supreme Court Judgment 1852/2011 of 2 March¹⁷, recognises that occupation may be effected by any means, including the forcing of locks, as *‘this is a type of offence which allows for occupation to be carried out by any means, including forcing locks or padlocks, given that what is relevant for the purposes of protection is that the premises or dwellings in question are unoccupied’*. However, in accordance with the recent Supreme Court judgement, STS 1827/2025¹⁸, of 30 April, the Second Criminal Chamber, in distinguishing between the classification of certain acts as theft or as robbery with force, has pointed out that acts such as breaking locks or windows may constitute violence or force, as it establishes that smashing a window of a parked vehicle constitutes a typical act of force, even without breaking anything visible, and points out that *‘breaking, forcing or rendering a security lock inoperable through physical effort also constitutes breaking, within the terms of Article 238.2 of the Criminal Code’*, therefore, forcing locks or padlocks, or breaking the windows of a dwelling to gain access to it, could fulfil the requirement of violence necessary for the offence to be classified as an aggravated offence, as defined in Article 245.1 of the Criminal Code.

Furthermore, there are judgments by Provincial Courts that are key to distinguishing between a dwelling and an unoccupied property. To cite some very well-known examples: the Judgment of the Provincial Court of Barcelona 7670/2012, dated 4 July¹⁹. Presiding Judge Fernando Jerónimo Valle Esques distinguishes between the occupation of a dwelling and the occupation of an uninhabited property; also, the

¹⁷ Supreme Court Judgment 1852/2011, of 2 March. Judgment number: 143/2011, handed down by the Criminal Chamber. Presiding Judge: José Antonio Martín Pallín: Supreme Court Judgment 1852/2011 - ECLI:ES:TS:2011:1852 - Judiciary

¹⁸ STS 1827/2025, of 30 April. Decision number: 385/2025, handed down by the Second Criminal Chamber. Reporting Judge: Pablo Llarena Conde: STS 1827/2025 - ECLI:ES:TS:2025:1827 - Judiciary

¹⁹ SAP B 7670/2012, of 4 July, Reporting Judge: Fernando Jerónimo Valle Esques: SAP B 7670/2012 - ECLI:ES:APB:2012:7670 - Judiciary

Judgment of the Provincial Court of Madrid 16417/2012, dated 18 January²⁰. Presiding Judge José María Casado Pérez analyses the proportionality of the sentence in light of the context of the occupation.

4.3. BORDERLINE CASES AND CONFLICTS OF CLASSIFICATION

There are numerous cases where the criminal classification is unclear, giving rise to conflicts of classification. For example, the occupation of a property that is not a habitual residence but is used as a second home; the occupation of a garage space converted into makeshift accommodation; or occupation by vulnerable families in need. The classification depends on the actual use of the property, the occupant's intention and the impact on the legitimate owner's privacy. The State Public Prosecutor's Office (FGE), in its Instruction 1/2020 of 15 September²¹, recommends applying swift precautionary measures in cases of breaking and entering and assessing cases of squatting out of necessity with greater flexibility. In situations involving minors or vulnerable individuals, the courts must weigh up the best interests of the child and the existence of alternatives offered by the authorities.

The following are examples of the practical distinction between squatting and trespass:

a) Occupation of an empty property: squatting or trespass? If private use of the property is proven – through utility bills, photographs, witness statements, etc. – it could be considered trespass; otherwise, it would constitute squatting.

The most typical scenario is *where a person occupies a property that is uninhabited but belongs to someone who uses it as a second home*. The debate would centre on whether that property is considered a dwelling, even if it is not the owner's habitual residence. The Supreme Court has recognised that a second home may be considered a dwelling if it is used for private activities, even if only sporadically. In this case, the applicable offence could be trespass (Article 202 of the Criminal Code) if it can be proven that the owner uses it as such, even if only sporadically. If such personal and private use cannot be proven, the offence would be *unlawful occupation of property* (Article 245 of the Criminal Code).

b) Occupation of a parking space during lockdown. In principle, this would not be considered a dwelling, so it would normally constitute unlawful occupation, unless stable residential use could be demonstrated, in which case it might be considered a dwelling.

A real-life case in which, during the state of emergency declared due to the pandemic, a neighbour occupied the parking space of a family who were unable to travel to their second home. When the lockdown ended, the occupant refused to return it. Whilst the Criminal Code does not expressly mention parking spaces, the courts have accepted that their occupation may constitute the offence of unlawful occupation if they

²⁰ SAP M 16417/2012, of 18 January, Presiding Judge: José María Casado Pérez: SAP M 16417/2012 - ECLI:ES:APM:2012:16417 - Judiciary

²¹ State Public Prosecutor's Office. Instruction 1/2020, of 15 September, on criteria for requesting precautionary measures in cases of unlawful entry into a dwelling and unlawful occupation of immovable property: Annexes. Instructions. Instruction 1/2020

do not constitute a dwelling. For this to apply, there must be a disturbance of possession (unauthorised use), an intention to remain, and the existence of mens rea (the intention to occupy without legal title).

c) Occupation of a dwelling by vulnerable minors. Liability may be mitigated where there is a state of serious, current and unavoidable necessity; therefore, poverty must not be criminalised nor should impunity be permitted.

This is a fairly common scenario where families facing social exclusion occupy vacant dwellings on the grounds of extreme need. Whilst the state of need may be considered a partial or complete defence, the International Courts and Tribunals (IT) usually require it to be *'serious, current and unavoidable'*. The State Attorney General's Office (FGE) recommends assessing these cases with particular sensitivity. Cases where the applicable offence might be unlawful occupation, but with mitigating circumstances if a state of necessity is proven. The presence of minors in the property does not necessarily prevent eviction, but it does require social services to take protective measures.

The High Court of Justice of Madrid (TSJM), in its recent judgement of 28 March 2025²², has upheld evictions, even where minors are present, provided that the authorities have offered alternatives or protective measures, whilst requiring that the best interests of the child be taken into account; however, occupation is not justified merely on the grounds of having children.

In summary, the distinction between squatting and trespass requires a detailed factual assessment, as these proposals reflect a tension between the need to protect private property and the urgency of addressing situations of social vulnerability. This is why there is a need for regulations that distinguish between occupations out of necessity and abusive or profit-driven occupations, without criminalising poverty or allowing impunity.

5. INQUIOKUPACIÓN: BETWEEN BREACH OF CONTRACT AND CRIMINAL FRAUD

'Inquiokupación' — a term coined in legal and media discourse — refers to *'cases in which a tenant ceases to pay rent, refuses to vacate the property following the termination of the tenancy agreement, and remains in the dwelling without legitimate title'*. It stems from a valid contractual relationship that becomes illegitimate due to an abuse of rights or breach of contract. In recent years, situations have arisen in which people, who have a property rented under a tenancy agreement, stop paying the rent stipulated therein. The tenant cannot be considered a 'squatter', as they hold a valid title enabling them to occupy the property in question, which is regarded as their habitual residence—unlike in the so-called 'occupation' of properties.

²² STSJ M 4085/2025, of 28 March, handed down by the Contentious-Administrative Chamber, Reporting Judge: Ana María Jimena Calleja: STSJ M 4085/2025 - ECLI:ES:TSJM:2025:4085 - Judiciary

The presidents of the Provincial Courts, at the 22nd Conference of Presidents of Provincial Courts²³, which took place in May 2024 in the city of Valencia – where issues such as the practical application of the Law on the Right to Housing were discussed – concluded that occupation and *squatting* are two distinct concepts and should therefore be treated differently under the law. In fact, it was stated that the landlord has a legal avenue for redress—the civil eviction procedure—except in cases where the act could be considered a ‘*crime of fraud*’. On this point, it is necessary to define what the current Spanish Criminal Code, in Article 248, considers to be a criminal offence, which reads as follows:

‘A person commits fraud if, with the intention of making a profit, they use deception sufficient to mislead another person, inducing them to carry out an act of disposal to their own detriment or that of another.’

The following section explains in which cases *squatting* may be considered a crime of fraud. According to Supreme Court Judgment 272/2020, of 6 February²⁴, its existence could be recognised in cases where a person signs a tenancy agreement, having fulfilled the entry requirements prior to the formalisation of the contract (for example, payment of a deposit, the current month’s rent, or even payment of several months’ rent in advance) and, once the rent paid in advance has been used up, ceases to pay the subsequent instalments, with such an intention existing at the time of signing, and where the necessary elements of the offence are present to distinguish it from mere civil breach of contract.

5.1. LEGAL NATURE OF THE PHENOMENON

From a civil law perspective, unlawful *occupation* constitutes a breach of the tenancy agreement governed by the Urban Tenancies Act (LAU). The landlord may seek eviction on the grounds of non-payment or the expiry of the contractual term. However, when the tenant refuses to vacate the property and employs tactics to prolong their stay, the question arises as to whether their conduct may constitute a criminal offence.

To distinguish between a criminal offence and a civil breach of contract, the decisive factor is ‘*the existence of intent at the time the tenancy agreement was signed*’, as failing to pay the monthly rent immediately after signing the agreement demonstrates that the intention to breach it already existed at the time of signing. However, certain subsequent circumstances may also be taken into account (for example, loss of employment due to redundancy after the contract was signed). For the purposes of proving the existence of that intention not to pay or to breach the terms of the contract at the time it was entered into, Supreme Court Judgment 3148/2022 of 20 July²⁵ provides significant clarification:

²³ Conclusions of the 22nd Conference of Presidents of Provincial Courts. May 2024: PD0000396414(1).pdf

²⁴ Supreme Court Judgment 272/2020, of 6 February, handed down by the Criminal Chamber, Presiding Judge Vicente Magro Servet: STS 272/2020 - ECLI:ES:TS:2020:272 - Judiciary

²⁵ Supreme Court Judgment 3148/2022, of 20 July, handed down by the Criminal Chamber, Presiding Judge Andrés Palomo del Arco: Supreme Court Judgment 3148/2022 - ECLI:ES:TS:2022:3148 - Judiciary

In Supreme Court Judgment No. 51/2017 of 3 February, we stated that fraud may exist whether the criminal intent represented by the deceit arises prior to the conclusion of the contract or subsequently, during the performance of the contract. There has been a shift in case law based on the view that it is not always necessary to require that criminal intent be prior to the conclusion of the contract as an absolute condition for the offence of fraud to be punishable. Maintaining this position would prevent certain types of conduct from being classified as fraud where the contract is initially lawful and no criminal intent is apparent on the part of the perpetrator. The perpetrator acts in reliance on the contract, just as the victim of the offence does. It is only subsequently that the criminal activity arises. Indeed, the perpetrator devises a plan to obtain an unlawful profit by taking advantage of the circumstances that have unfolded up to that point, and by arranging the relevant factors to bring about the deception.

Thus, failure to pay rent due to an inability to meet the payment for unforeseen reasons is not the same as those cases in which, at the time of signing the contract, there is a clear and evident intention not to pay the rent in order to live rent-free for a certain period of time – a period which will depend on the caseload of the court to which the matter is ‘assigned’.

5.2. POSSIBLE CRIMINAL CLASSIFICATION: UNLAWFUL OCCUPANCY OR FRAUD?

Legal scholars and case law have debated whether *squatting* may fall under any of the criminal offences, as it may constitute *fraud* (section 248 of the Criminal Code) if there is contemporaneous intent – the intention not to pay at the time of signing the tenancy agreement – in which case the tenant would gain access to the property through deception, by concealing their intention not to pay or by feigning solvency, which raises the possibility of applying the offence of contractual fraud; or as *unlawful occupation of property* (Article 245 of the Criminal Code) where the tenant continues to occupy the property without authorisation after the lease has expired; consequently, some courts consider that, once the lease has expired, continued occupation without valid authorisation may constitute unlawful occupation, particularly where there is an intention to remain and resistance to eviction; or it may constitute a *minor offence of coercion* (Article 172(3) of the Criminal Code) in cases where the tenant prevents the owner from using the property through acts of pressure or intimidation.

The decisive criterion in this regard is the distinction between non-payment due to unforeseen circumstances (which is not a criminal offence) and non-payment with fraudulent intent from the outset. Case law recognises that fraudulent intent may arise either before or after the contract is signed, depending on the proven circumstances.

5.3. RELEVANT CASE LAW

There are judgements that refer the matter to the civil courts where there is no violence or deception; others convict the defendant of fraud where initial deception or fraudulent intent is proven. As examples of judgements relating to cases of *squatting*, we cite the following:

- *Judgement of the Madrid Provincial Court 20266/2023, Section 3, dated 22/12*²⁶ : which holds that remaining in the property after the termination of the tenancy agreement does not constitute a criminal offence if there is no violence or deception, referring the matter to the civil courts on the grounds that it is a dispute over possession and not criminally reprehensible conduct.
- *Judgment of the High Court of Justice of the Basque Country 1125/2024, dated 17 April*²⁷ : a woman who rented various commercial premises with no intention of paying was convicted of fraud. The Court confirmed that there had been deception from the outset, and that the offence therefore met the criteria for fraud.
- *Judgment of the Supreme Court 4247/2019, dated 19 December*²⁸ : rejects the application of the offence of unlawful occupation where a prior contractual relationship exists, unless there is subsequent occupation without title and with the intention of remaining.
- *Supreme Court Judgment 3620/2020, dated 6 November*²⁹ : reinforces the idea that use as a dwelling is not negated by non-payment, but may lose its legal legitimacy if the contract is terminated.
- *Supreme Court Judgment 5619/2024, of 15 November*³⁰ : a conviction for property fraud, addressing key elements such as ‘the application of mitigating circumstances, the assessment of evidence, the calculation of the limitation period and civil liability arising from the offence’, reaffirming the principles of effective judicial protection and consistency in the assessment of evidence in complex proceedings.

5.4. DOCTRINAL PROPOSAL

The following are some of the doctrinal proposals^{31,32} on the issue of *unlawful occupation*: to create a specific criminal offence for abusive unlawful occupation, penalising unlawful continued occupation after the end of the tenancy agreement, where this is accompanied by active resistance or fraud; To introduce preventative contractual clauses into tenancy agreements, stipulating that ‘the landlord reserves the right to bring the appropriate criminal proceedings for the commission of the offence of fraud under Article 248 of the Criminal Code, seeking a custodial sentence and requesting the investigating judge to order immediate eviction and arrange for the tenant’s arrest in such cases’; Increase the penalties for procedural fraud in cases where there was intent

²⁶ SAP M 20266/2023, of 22 December 2023, handed down by the 3rd Section, Presiding Judge: Rosa Esperanza Rebollo Hidalgo: SAP M 20266/2023 - ECLI:ES:APM:2023:20266 - Judiciary

²⁷ STSJ PV 1105/2024, of 17 April, handed down by the Criminal and Civil Chamber, Presiding Judge: Ignacio José Subijana Zunzunegui: STSJ PV 1105/2024 - ECLI:ES:TSJPV:2024:1105 - Judiciary

²⁸ Supreme Court Judgment 4247/2019, of 19 December 2019, handed down by the Criminal Chamber, Reporting Judge: Vicente Magro Servet: Supreme Court Judgment 4247/2019 - ECLI:ES:TS:2019:4247 - Judiciary

²⁹ Supreme Court Judgment 3620/2020, of 6 November, handed down by the Criminal Chamber, Presiding Judge: Vicente Magro Servet: Supreme Court Judgment 3620/2020 - ECLI:ES:TS:2020:3620 - Judiciary

³⁰ Supreme Court Judgment 5619/2024, of 15 November, delivered by the Criminal Chamber, Reporting Judge: Pablo Llarena Conde: Supreme Court Judgment 5619/2024 - ECLI:ES:TS:2024:5619 - Judiciary

³¹ Bracho-Fuenmayor, P. L. (2025). ‘Sufficient deception in fraud: a proposal based on Spanish case law and objective imputation’. *Juridicas CUC*, 21(1), 44–69. <https://doi.org/10.17981/juriduc.21.1.2025.03>

³² López Sainz-Cantero, F. J. (2025). ‘Criminal protection of the right to housing amidst fast-track trials, express evictions and justified property-related violence’. *El Criminalista Digital. Papeles De Criminología*, (13), 41–60. Retrieved from <https://revistaseug.ugr.es/index.php/cridi/article/view/34220>

at the time the contract was entered into, thereby constituting a criminal offence of fraud rather than a civil breach³³ ; *Establish swift procedural mechanisms for eviction, without the need to resort to ordinary civil proceedings; Coordinate criminal proceedings with the Labour Courts (TI), in order to avoid duplication of proceedings; and, finally, treat the offence of unlawful occupation as equivalent to that of breaking and entering.*

- *In conclusion, the line between a civil breach of contract and the commission of a criminal offence depends on the existence of intent and the available evidence (advance payments, deception, manoeuvres to remain on the premises, intent to make a profit, etc.).*

6. CAR PARK SPACES AS POTENTIAL RESIDENCES

The occupation of garage spaces presents a highly novel legal challenge, as cases have recently emerged in which people in vulnerable situations use garage spaces as places of refuge or even as makeshift accommodation. This raises the question of whether a space designed for parking can be considered a dwelling for criminal law purposes and, therefore, whether its occupation would constitute trespass (Article 202 of the Criminal Code) or, conversely, unlawful occupation (Article 245 of the Criminal Code). The key lies not in the site's town planning classification but in its actual function: when a parking space is used as a private living space – with elements of habitability such as a bed, a portable kitchen, lighting and an intention to remain there – it may come close to the concept of a dwelling, as the decisive factor is that the space fulfils a function of personal privacy.

Legal doctrine and judicial practice, for example in judgments such as Supreme Court Judgment 3620/2020 of 6 November³⁴ , have progressively broadened the notion of a dwelling to include non-conventional spaces provided they are used as a residence:

'...a dwelling is not defined by its usual use or by its architectural configuration, but by its function as a sphere of personal privacy, allowing caravans, rented rooms or commercial premises to be considered as such, provided they are used as a residence'.

Similarly, the FGE, in its Instruction 1/2020 of 15 September³⁵ , emphasises that what matters is the actual use as a place of private life and not the town planning classification. Whilst there is no general rule that converts a parking space into a dwelling, some Provincial Courts (for example, those of Madrid and Barcelona) have considered this possibility in exceptional cases where the conditions of habitability (presence of a bed, electricity and a portable kitchen), intimacy and privacy are met through stable and prolonged use of the space, as well as a demonstrable intention on the part of the occupant to remain there, raising the possibility of the offence of trespass.

³³ CUENA CASAS, M. (2025). *The problem of illegal occupation in Spain*. Treatise on Housing Law. Vol. II, Edited by Cuena Casas, M., and Tejedor Bielsa, J. 2025, ISBN 9788434030909. pp. 1321–1341.

³⁴ Supreme Court Judgment 3620 of 6 November, issued by the Criminal Chamber, Presiding Judge Vicente Magro Servet: Supreme Court Judgment 3620/2020 – ECLI:ES:TS:2020:3620 – Judiciary

³⁵ Instruction No. 1/2020 of the State Public Prosecutor's Office, dated 15 September: Annexes. Instructions. Instruction No. 1/2020

From a criminal law perspective, if it is established that the garage functions as a habitual residence or a private living space, its occupation without consent could be classified as unlawful entry (Article 202 of the Criminal Code) and carry a prison sentence of between six months and two years; if there is no residential use, the conduct would constitute the unlawful occupation of immovable property (Article 245 of the Criminal Code), with penalties of a fine or imprisonment, as the case may be.

There is a special case involving garage spaces attached to a dwelling; whilst the occupation of a garage space is usually regarded as unlawful occupation of property, which is punishable under both criminal and civil law, there are circumstances in which such occupation could be considered a criminal offence of trespass. Thus, a distinction should be made between two types of garage spaces:

- 1°. *Independent parking spaces*, of which there are two types:
 - Those acquired in the same transaction as the dwelling in which the owner resides, and which are situated in the same building or attached to it. In this case, it would be possible to regard their illegal occupation as *'trespass to premises'* since, although they have their own registration entry distinct from that of the dwelling, the title deed is a single document, for the sake of procedural efficiency.
 - Independent parking spaces, with a land registry entry separate from that of the dwelling, situated in a location other than the dwelling where the owner resides. In this case, it would be regarded as *'unlawful occupation of property'*, which is punishable under both civil and criminal law.

- 2°. *Parking spaces that form a single registered unit with the dwelling to which they are attached, having a single cadastral reference*. In this scenario, proceedings could indeed be brought for the offence of trespass, since occupying such a garage space—which is inextricably linked to the dwelling that serves as the domicile of the owner or a tenant of the dwelling—constitutes the same situation as if a dwelling serving as the residence of a person or family were being occupied.

In summary, the classification depends on the actual function of the space, the presence of elements of habitability, the intention to remain there, and the link in the land registry to the dwelling; each case requires a specific factual and legal assessment to determine which criminal offence should be applied.

7. PROPERTIES: RESIDENCE VS UNINHABITED PROPERTY

The occupation of dwellings raises a central and contentious issue in criminal law, particularly when determining whether the occupied property constitutes a dwelling or is simply an unoccupied property, as this determines whether the conduct constitutes trespass on a dwelling (Article 202 of the Criminal Code) or unlawful occupation of immovable property (Article 245 of the Criminal Code). This legal classification is based on factors such as *'the actual use of the property, the intention of the lawful owner and the infringement of their privacy'*.

A dwelling ceases to be regarded as a home when the owner has abandoned it, there is no actual use of it nor any intention to return, and there are no elements indicating a personal connection, such as furniture, active utilities or regular visits. These are cases in which the occupation does not infringe upon the owner's privacy, but only their possession, and therefore falls under the offence of unlawful occupation.

Another decisive factor in the legal classification of the occupation is the occupant's intention to remain, as this helps to distinguish between the criminal offences applicable to the case, as well as to assess the seriousness of the conduct; for if the occupation is merely temporary or accidental, it may not constitute a criminal offence; however, where there is an intention to settle in the property, the corresponding criminal offence would be established. Recent case law – such as various judgements from the Provincial Courts, including SAP IB 3/2026 of 9 January³⁶, SAP M 1855/2026 of 23 February³⁷, SAP PO 2863/2025, dated 3 November³⁸, amongst others – concludes that prolonged occupation without a legitimate title constitutes trespass, even when the owner's privacy is not directly affected.

Furthermore, the Supreme Court has broadened the concept of 'dwelling' by recognising that secondary dwellings, such as second homes, country houses or flats used sporadically, may also be considered dwellings if they are used for private activities, even if there is no continuous use. It is for this reason that occupying them without consent may constitute trespass. Supreme Court Judgment 3620/2020 of 6 November³⁹ reinforces this interpretation by including within the concept of a 'dwelling' those spaces which, although not permanently inhabited, are used privately and personally by their owner, such as second homes, thereby opening the door to considering other spaces as such if they fulfil similar functions.

'There is no legal provision whatsoever that obliges a person to choose which is their place of residence, given that they may have several that fulfil this function.'

8. PROPOSALS FOR LEGISLATIVE AND DOCTRINAL IMPROVEMENTS

The unlawful occupation of properties highlights significant regulatory gaps and procedural inconsistencies, hindering an effective and balanced response that clearly defines the applicable criminal offences. The lack of clarity regarding the concept of a 'dwelling' and the tension between fundamental rights call for legislative reform that provides legal certainty, procedural efficiency and social sensitivity. This is why various academic and professional circles agree on the need for comprehensive reform, aimed at:

³⁶ SAP IB 3/2026, dated 9 January, Presiding Judge Jorge Manuel Pastor Panadero: SAP IB 3/2026 - ECLI:ES:APIB:2026:3 - Judiciary

³⁷ SAP M 1855/2026, dated 23 February, Presiding Judge David Suarez Leoz: SAP M 1855/2026 - ECLI:ES:APM:2026:1855 - Judiciary

³⁸ SAP PO 2863/2025, of 3 November, Presiding Judge Belén María Fernández Lago: SAP PO 2863/2025 - ECLI:ES:APPO:2025:2863 - Judiciary

³⁹ Supreme Court Judgment 3620/2020, of 6 November, handed down by the Criminal Chamber, Presiding Judge: Vicente Magro Servet: STS 3620/2020 - ECLI:ES:TS:2020:3620 - Judiciary

8.1. CLARIFICATION OF THE CONCEPT OF 'MORADA'

The legal definition of this concept is fundamental because, although case law has gradually adopted a functional approach, it is necessary for the legislator to determine clearly and objectively the cases in which a property constitutes a dwelling, as well as to include in the Criminal Code those special cases, such as second homes, shared accommodation or non-conventional spaces (caravans, converted garages, storage rooms), thereby enabling a uniform application of the offence of breaking and entering and avoiding erroneous classifications in borderline cases.

8.2. SPECIFIC REGULATION OF THE OCCUPATION OF CAR PARK SPACES

This occupation poses problems, both due to its use as a dwelling in contexts of social exclusion and due to its use for criminal purposes (storage, drug trafficking, etc.). It is proposed that they be included as protected property under Article 245 of the Criminal Code, alongside the establishment of an aggravated criminal offence for occupying them for unlawful purposes or in a manner that seriously disrupts neighbourly coexistence, and that they be exceptionally recognised as a dwelling where conditions of habitability and private use are demonstrated.

8.3. DISTINCTION BETWEEN OCCUPATIONS OUT OF NECESSITY AND ABUSIVE OCCUPATIONS

Another proposal would be to make a legal distinction between occupations arising out of necessity—which occur in situations of vulnerability, a lack of housing alternatives or the presence of minors—and abusive occupations, which are carried out for profit, through violence or intimidation, or by members of organised groups, as well as fraudulent occupations (known as '*inquiokupación*'), involving the use of contracts as instruments of deception or deliberate non-payment from the outset.

Similarly, specific mitigating factors should be introduced into Article 245 of the Criminal Code for occupations out of necessity, upon proof of exceptional circumstances, and a separate criminal offence should be created for profit-driven or repeat occupations, establishing more severe penalties and strengthened precautionary measures.

8.4. IMPROVING THE PROCEDURAL RESPONSE

The slowness of legal proceedings and the lack of effective interim measures exacerbate the problem of squatting, leading to situations in which victims are required to pay each and every one of the costs and taxes attributable to the squatted property throughout the legal proceedings, with no subsequent possibility of reimbursement due to the common declaration of insolvency. It is therefore recommended that the Criminal Procedure Act (LECrim) be amended to allow for precautionary eviction in flagrant cases of unlawful entry into a dwelling and to reduce procedural time limits, the establishment of rapid response protocols between the Public Prosecutor's Office and the Law Enforcement Forces, and the coordination of criminal proceedings with social services, guaranteeing alternative accommodation in cases of vulnerability; it is necessary to adopt a comprehensive approach that combines public policies on affordable housing with early

social intervention in contexts of exclusion, and to promote legal education on rights and duties relating to property and coexistence.

8.5. RELEVANT LEGISLATIVE PROPOSALS

8.5.1. Draft Organic Act against Illegal Occupation (2024)⁴⁰

Tabled in the Senate on 9 February 2027 and referred to the Congress of Deputies on 23 February, its main objectives were *‘to strengthen the protection of private property, to expedite the eviction of illegal squatters and to improve neighbourly relations and security within owners’ associations’*. The main measures it entailed were *‘to allow for immediate eviction in flagrant cases, to recognise the owner’s right to recover their property without delay, and to strengthen police and judicial action against squatting for profit or by organised crime groups’*.

8.5.2. Legislative proposal by the Barcelona Bar Association (ICAB)

Submitted in March 2024 to the Government Delegate in Catalonia, its main objectives were *‘to reform the Criminal Code and the Criminal Procedure Act, to clearly criminalise squatting for profit, and to distinguish between squatting out of necessity and organised squatting’*.

The main measures were *‘to create a specific criminal offence for occupation for profit, to establish harsher penalties in cases of repeat offences or membership of organised groups, and to strengthen precautionary measures to protect the owner from the outset of the proceedings, consisting of ordering the immediate eviction from the occupied property’*.

8.5.3. Proposal on the occupation of garages

This is a doctrinal analysis of the need to regulate the occupation of garages as an emerging phenomenon, which is becoming a new problem affecting property rights. Although they are not dwellings, their occupation is generating insecurity and neighbourhood conflicts, in which the main problems or motivations encountered include their use as emergency accommodation—as a place to sleep or live temporarily—logistical and criminal purposes (such as storage, concealment and drug trafficking), and the lack of control and slow response, which is creating a ‘pull factor’. The current legal framework does not protect these spaces in the same way as it does residential properties, which is creating difficulties when it comes to evicting the occupants.

That is why we propose calling for a reform of the law to enable a swifter and clearer response to all such situations. This proposal involves including parking spaces in the Civil Code as property protected against unlawful occupation, whilst establishing criteria for considering a parking space as a dwelling in exceptional cases.

⁴⁰ Draft Organic Act against illegal occupation: Draft Organic Act against illegal occupation and for neighbourly coexistence and the protection of the safety of persons and property in owners’ associations.

9. CONCLUSIONS

An analysis of property occupation in Spain reveals a complex legal landscape, where criminal and civil law, as well as constitutional principles, intersect. Distinguishing between trespass and unlawful occupation is at the heart of the discussion, although social realities are giving rise to new scenarios that demand clearer and more tailored responses. Therefore, the proposals for improvement put forward are as follows:

- 1°. *Extending the concept of a 'dwelling' beyond the habitual residence*, recognising second homes or non-conventional spaces, provided they are used as a private living space. An effective functional interpretation of the ' ' (private life), though this creates uncertainty in borderline cases, such as the occupation of garage spaces converted into dwellings.
- 2°. *Consolidation of 'usurpation' as the criminal offence applicable to the occupation of uninhabited properties, garages not used for residential purposes or vacant premises*. However, the lack of specific regulation regarding certain scenarios creates legal loopholes that hinder judicial and police action.
- 3°. *Rethinking the regulatory framework in light of emerging phenomena such as 'inquietupación'*. Remaining in a dwelling after the termination of a tenancy agreement presents a dilemma between civil breach of contract and criminal fraud. It is suggested that a specific criminal offence be created to penalise such abusive conduct, particularly where there is initial intent or active resistance.
- 4°. *Balancing conflicting rights — private property* (Article 33 of the Spanish Constitution), *the inviolability of the home* (Article 18.2 of the Spanish Constitution) *and the right to decent housing* (Article 47 of the Spanish Constitution) — *based on occupation driven by social necessity* — vulnerable families, minors, housing exclusion. Criminal law should not be the primary tool for resolving structural housing problems, but it should offer proportionate and differentiated responses, whilst avoiding impunity and the criminalisation of poverty.

Consequently, a comprehensive legislative reform is essential which: clarifies the concept of a dwelling and regulates cases such as garages and second homes; distinguishes between abusive occupation and occupation out of necessity, with differentiated criminal and social responses; introduces a specific criminal offence for *abusive occupation*; and, finally, strengthens the procedural mechanisms for rapid eviction in flagrant cases, whilst guaranteeing the protection of vulnerable groups.

Only through a multidisciplinary approach will it be possible to tackle this phenomenon effectively, fairly and in a manner consistent with constitutional principles.

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