Vulnerability as a Barrier to Eviction

A New Chapter in Spain's Constitutional Protection of Housing Rights

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08.10.2026 doi: 10.59704/9af442254e876f8d

In the final days of September 2026, the eviction of María del Carmen Abascal, an 87-year-old resident of Madrid known to everyone as Maricarmen, shocked Spanish public opinion. The cries of solidarity with the elderly woman, which also reflected growing public frustration over the worsening housing crisis in Spain, resonated far beyond the country's borders. Political reactions followed at remarkable speed, and, within ten days, Spain has moved from public outrage over a highly publicised eviction to the calling of a general election. During that period, the Government put forward two packages of urgent measures aimed at strengthening the right to housing, particularly for vulnerable people. Although these legislative packages were ultimately rejected by some of the political groups in the Congress of Deputies, they sought to deepen a pre-existing trend linking the public authorities' duty to promote access to housing (Article 47 of the Spanish Constitution) with the social function of property rights (Article 33 SC) and the right to effective judicial protection (Article 24 SC).

The key concept behind this trend is vulnerability. Although the term does not appear explicitly in the Spanish Constitution, the obligation of public authorities to counter it can readily be inferred from the social dimension of the democratic state. That idea was clearly reflected last week in one of the flagship measures of the Government's legislative packages: the prohibition of evictions of vulnerable persons without alternative housing until the end of 2030. Among the many measures proposed, this one represented a decisive step in that evolving constitutional trend. It was not merely a political reaction to a particular widely publicised eviction. Rather, it meant to be part of a broader regulatory framework in which vulnerability already operates as a barrier to eviction and is gradually reshaping the relationship between housing rights, effective judicial protection, and property rights.

The Rise of Vulnerability

It is true, however, that this regulatory framework has largely been forged through successive responses to crises with a direct impact on housing. As I argued in a study published in 2024, the first of these turning points followed the 2008 financial crisis, which prompted the Government in 2012 to adopt a package of urgent measures aimed at protecting insolvent mortgage debtors. A few years later, in 2018, a law was enacted to expedite evictions in cases of unlawful occupation, which had become an increasing concern in Spain. But, at the same time, where unlawful occupants were found to be in a situation of vulnerability, judges were required to notify the social services. In 2019, consideration of vulnerability was further incorporated into urgent measures addressing judicial eviction proceedings based on rent arrears or the expiry of tenancy agreements.

And the most significant turning point came in 2020 with the outbreak of COVID-19. The decree declaring the state of alarm in Spain also introduced a temporary suspension of evictions affecting vulnerable persons. That temporary suspension was extended repeatedly throughout the pandemic. It continued to be renewed afterwards, officially in response to the economic consequences of successive geopolitical crises in Ukraine, Gaza and Iran, but also, less officially, because of the exponential increase in rental prices, the shortage of affordable housing, and growing speculation in the housing market.

To consolidate this trend and avoid the need for further extensions, the Government proposed, and

Parliament enacted a nationwide Housing Act in 2023. Among its many provisions, the Act required judges to suspend certain eviction proceedings for two or four months, while public authorities were expected to use that time to secure alternative accommodation for those affected. Yet the succession of crises described above continued to render those deadlines insufficient. As a result, the Government repeatedly relied on emergency legislation to keep vulnerable people protected from eviction. That approach lasted until early 2026, when part of its parliamentary support withdrew. The so-called social shield fell, and it was no longer in place when Maricarmen was evicted.

When Vulnerability Meets Property Rights

That the collapse of the *social shield* was the result of broader political tensions and electoral competition is evident, and has been confirmed by the Prime Minister's decision to call an election for 29 November. In my view, however, a more nuanced understanding of the state's housing protection obligations towards vulnerable persons lies beneath the immediate political dispute.

According to that second view, anti-eviction legislation has imposed increasingly far-reaching constraints, both in duration and in intensity, on property rights, while eviction proceedings have progressively drifted away from the guarantees of effective judicial protection safeguarded by Article 24 of the Spanish Constitution and Article 6(1) of the European Convention on Human Rights. Amid the current climate of social unrest and political polarisation, it is the case law of the Spanish Constitutional Court that will ultimately have to bring clarity to these competing claims.

Drawing Constitutional Boundaries

In fact, the Constitutional Court had already taken a first step towards addressing this issue in its second judgment on the 2023 Housing Act, delivered in January 2025. On the one hand, the Court held that the Act was compatible with the Constitution insofar as it allowed judges to suspend eviction proceedings involving vulnerable persons until the relevant public authorities had intervened. The suspension, limited to a period of two or four months, was considered reasonable: it protected an important social interest without disproportionately restricting property rights. On the other hand, the Court found the Act unconstitutional where it required certain landlords to certify the defendant's vulnerability before being allowed to initiate judicial proceedings. In the Court's view, this transferred to the claimant the burden of investigating the defendant's personal circumstances and, in doing so, unduly hindered the right to effective judicial protection.

Over the past five years, the Constitutional Court has also had the opportunity to rule on specific cases involving the judicial eviction of vulnerable persons through the *recurso de amparo* provided for in Article 161 of the Constitution. Two aspects of this case law deserve particular attention. First, while the legislation governing evictions defines the category of vulnerability, the Court has repeatedly stressed that, in individual cases, judges may have to take into account additional constitutional principles, such as the best interests of the child. Second, claims of vulnerability must be properly raised and substantiated in the judicial proceedings by the defence of the person facing eviction. In other words, procedural law should remain a limit.

The International Influence

This proposition, namely that procedural law should operate as a limit to the protection of a vulnerable person's home against claims brought by a private rights-holder, sits comfortably with the case law of the European Court of Human Rights on the matter. I am thinking in particular of *F.J.M. v. the United Kingdom*, which was declared inadmissible in 2018. In that decision, the Strasbourg Court held that British judges were not required to conduct a proportionality assessment of the forced eviction of a woman suffering from a psychiatric illness, however sympathetic her personal circumstances might have been, where domestic mortgage enforcement legislation had already established the parameters for balancing the competing rights and interests at stake.

However, the picture changes somewhat when one considers the criticisms directed at Spain by the UN Committee on Economic, Social and Cultural Rights. The Committee's decisions in *Ben Djazia v. Spain* (2017) and *López Albán v. Spain* (2019) are particularly significant in that they affirm the responsibility of public authorities in cases involving the eviction of vulnerable persons, even where the eviction is sought by a private party. Furthermore, in *López Albán v. Spain*, the Committee added a further requirement: public authorities must balance the interests of the owner against the circumstances of those facing eviction, assessing the proportionality of the eviction even when the occupation itself is unlawful.

The Constitutional Dilemma

The impact of the UN Committee's doctrine on public opinion has been particularly visible in the social mobilisations against Maricarmen's eviction. Although her eviction resulted from the lawful termination of her tenancy agreement, although that termination had been upheld in judicial proceedings conducted with full procedural guarantees, and although the authorities had offered her accommodation in a care home, the protests against her eviction were ultimately grounded in a conception of substantive justice that differed from the one embodied in the law.

It is here that I identify the constitutional dilemma. On the one hand, I observe the consolidation of an emerging constitutional trend, one in which vulnerability operates as a constraint on eviction, driven by legislative measures establishing the balancing criteria that judges must apply when deciding eviction claims. The Constitutional Court's case law discussed above has, at least for the time being, endorsed that trend. On the other hand, I can also identify two competing currents in public opinion, constitutional, and, above all, political debate. One calls for greater protection of vulnerable persons and argues that eviction cases should ultimately be resolved through an assessment of the proportionality of the individual case. The other advocates a return to an earlier balance, one in which property rights prevailed in situations involving breaches of contract, expired rights of occupation, or unlawful occupation.

What comes next?

The next general election scheduled for 29 November may shape the legislative direction taken in the years ahead. The constitutional dilemma, however, is unlikely to disappear. On the contrary, it may generate further litigation before the Constitutional Court, given the Government's stated intention to adopt new emergency anti-eviction measures before election day. The controversy surrounding evictions in Spain reveals a society still searching for a stable balance between housing rights, property rights and effective judicial protection. How that balance should be struck is likely to remain one of the central constitutional debates of the coming years.

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SUGGESTED CITATION

Serrano, Miryam Rodríguez-Izquierdo: Vulnerability as a Barrier to Eviction: A New Chapter in Spain's Constitutional Protection of Housing Rights, Verfassungsblog, 08.10.2026, doi: 10.59704/9af442254e876f8d.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20261008-143629-0.