

The challenges of human rights in housing cooperatives which adopt a cohousing approach. The Spanish case

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Abstract

Purpose – This work analyses the operability of human rights in the access to housing cooperatives, which adopt a cohousing approach, as well in the treatment of current residents and those who leave or are forced to leave. The purpose of this paper is to detect problems and propose measures to strengthen human rights in this model.

Design/methodology/approach – This work uses the case method and its multidisciplinary analysis, covering the areas of philosophy of law and civil law, through various methodologies, with legal dogmatics and comparative law being among the most noteworthy.

Findings – The legal framework that gives cooperatives extensive powers for self-regulation and the specific dynamics of the cohousing model, especially those related to the high level of social interaction and collective life, carries the potential risk of violating human rights. The case of Spain is a clear example of this problem which, being a structural issue, may be replicated in other countries.

Social implications – Despite the growing presence of housing cooperatives with a cohousing approach, there are few studies that analyse the problems these can cause in practice, including the legal insecurity of their tenure and the potential risk of human rights violations. This paper aims to propose measures for the prevention and rectification of situations that breach human rights, as well as to offer some guidelines for the building of a legal framework providing minimum protection to residents in housing cooperatives.

Originality/value – To the best of the author's knowledge, no other scientific study has been found that analyses the operability of human rights in the framework of housing cooperatives with a cohousing approach. Therefore, no study contains proposals for measures to protect those rights.

Keywords Housing cooperative, Cohousing, Human rights

Paper type Research paper

1. Introduction

Housing cooperatives which adopt the cohousing approach are gaining more visibility due to the dissemination efforts of both the private and public sectors (Czischke, 2018; Mullins, 2018; Moore, 2016; Scheller, 2020; Scheller and Larsen, 2020) [1] and although its market share is still marginal, more and more people are interested in forming new groups or joining existing projects [2]. However, national cooperative legislation, which is the legal format adopted by many of cohousing communities, gives cooperatives greater powers for self-



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regulation (although some jurisdictions give more leeway than others, being the Spanish jurisdiction one of the most generous) than those granted by the rental and condominium legislation.

The above, in addition to the specific and differential dynamics of this housing model, particularly those related to people living in close proximity, with high levels of social interaction and a collective life, entails the potential risk of limiting human rights to equality, respect for private and family life, free development of personality, ideological freedom and freedom of expression. The above risk, being structural, may be replicated in countries where this specific cooperative housing model also exists.

To verify whether cohousing communities under the legal format of cooperatives have a structure that *per se* constitutes a human rights risk, the study used the case method, undertaking multidisciplinary analysis, which covered the areas of Philosophy of Law and Civil Law, through the application of legal doctrine, comparative law and history. The case studies came from the facts and circumstances highlighted in the fieldwork, as well as factual assumptions that are based on our own criteria and are also inspired by the publication *European condominium Law* (Van Der Merwe, 2015), which analyses the condominium model using the Common Core methodology devised by the University of Trento.

With regards to the fieldwork, the data collection instrument consisted of a structured interview with four members of three cohousing communities in Spain, within the total target population, which consisted of 14 communities that were operating at the time of the fieldwork (according to the official websites of Cohousing Spain and eCOHOUSING). The questionnaire was organized according to the timeframe of the issue in question:

- the stage prior to entering the community, where motivational aspects, member selection and financing were assessed;
- during the course of community life, where facets related to objectives, governance and cohabitation were evaluated; and
- the post community life stage, where the causes and consequences of the members departure were studied, depending on whether it was a voluntary or a forced departure.

The information obtained from the recorded interviews was systematised through their faithful transcription, from which the facts, circumstances and data relevant to the research objectives were coded and extracted. Finally, in each of the communities, the problematic facts identified and extracted from the interviewees are studied, classifying them according to the right concerned and in accordance with the sequences of the three temporal phases.

In terms of comparative law, the research has considered jurisprudence from the USA, Canada, Germany, Denmark, Sweden and Italy, both because of the absence of such jurisprudence (human rights jurisprudence in the field of housing cooperatives) in Spain and because of the similarities shared by housing cooperatives in these countries with regard to their functionality. Besides, Spain has been taken as a reference point for the study as the three problematic elements mentioned above (an observable housing model, the dynamics of high social interaction and a weak legislation) are quite evident there.

2. Cohousing communities run as housing cooperatives in cession of use

Cohousing, an American term used by McCamant and Durrett to describe a concept taken from the Danish Bofællesskaber (ScottHanson and ScottHanson, 2004), responds to the desire for a more practical and social domestic environment whose organization, planning and management is carried out by the same people who reside in the community (McCamant and Durrett, 2011). The attribute of a more social domestic environment implies the fostering

of a higher level of social interaction among residents (e.g. by maximizing the surface area assigned for common-use spaces and reducing the surface area designated for exclusive use, by jointly performing household tasks, etc.) that forges values such as mutual help, solidarity, sense of belonging and community (Williams, 2005; McCamant and Durrett, 2011; Jarvis, 2011; Field, 2020; Durrett, 2023). Furthermore, a more practical domestic environment means enjoying the economic, human, time and other benefits of sharing resources: spaces (co-working areas, gym, guest rooms, etc.), equipment (washing machines, household appliances, etc.), services (care services, dining room, day care, etc.) and the collective performance of domestic tasks (care of children and elderly adults, food preparation, etc.) (McCamant and Durrett, 2011; Jarvis, 2011; Vestbro and Horelli, 2012; ScottHanson and ScottHanson, 2004; Meltzer, 2005; Williams, 2005).

Ideally, these community experiences are intended to be an effective instrument for combating social problems, such as the aging of the population and the quality of life of older adults (Scanlon and Fernández, 2015), rural depopulation (Larsen, 2020), the crisis of the Welfare State in terms of Housing, with the advent of less generous transfer systems (Lang and Stöger, 2017; Brenner and Theodore, 2002; Obinger *et al.*, 2005), the economic crisis (Scheller and Larsen, 2020; Nasarre Aznar, 2020), neighbourhood regeneration (Scheller and Thörn, 2018), the need for inclusion, integration and social mixing (Czischke and Huisman, 2018) and climate change (Hagbert, 2020; Chatterton, 2013), among other problems.

Housing cooperatives are considered, in abstract terms, to be characterised as membership organisations and business firms concurrently, contingent on their contextual particularities (Moulaert and Nussbaumer, 2005). The membership organisation emphasises relationships between residents characterised by trust and closeness (a bonding and linking social capital within the organisation). Conversely, the cooperative as a business firm refers to anonymous interactions between members and weaker ties between individuals that can be associated with the concept of bridging social capital (Nilsson and Hendrikse, 2011; Tönnies, 1963; Draheim, 1952). In the UK, housing cooperatives are often associated with community-based participatory planning approaches and a bottom-up culture of collective action, within the context of a liberal housing regime (Roberts, 2008; Somerville, 2007). In contrast, the third housing sector in Vienna is characterised by the dominance of board-run professional cooperatives, which have emerged as the primary vehicle for state-run social housing provision (Förster, 2002).

In the context of Spain, housing cooperatives are defined as societies constituted by natural and legal persons, with the objective of one or several of the following activities: the provision of housing and premises; the provision of facilities and buildings complementary to the housing and premises; the management of the conservation and administration of the housing and premises; the provision of services complementary to the housing and premises; and the rehabilitation of the housing, premises, buildings and complementary facilities (Law 27 / 1999, 16 of July). With regard to the housing tenure, the Law on Cooperatives (at both the state and regional level) permits any form of tenure, including the cession of use.

In the realm of cooperatives in cession of use, a plethora of terminological distinctions prevail on an international scale. These include *andelsboligforeninger* in Denmark, *cooperativas de vivienda de usuarios* in Uruguay, *Bostadsrätt* in Sweden and *wohnungsgenossenschaften* in Germany, to name but a few. This category of cooperatives is a type of legal entity (Gbadeyan, 2011) that is frequently used by many cohousing communities, characterised by its unique attributes of collective ownership, the right of use and self-management (Davis, 2006; Lacol y la Ciutat Invisible, 2018; Sørvoll and Bengtsson, 2016; Vidal, 2019; Machado Macellaro, 2020; Heath, 2021). In Spain, it was found that all cohousing projects were legally organised as cooperatives, especially the cession of use model (REAS and Alterhabitat; Crabtree, 2018).

However, it should be emphasised that housing cooperatives and cohousing, although they can overlap, are two different concepts.

Thus, the right of use implies that membership in the cooperative grants the right to reside in a given dwelling indefinitely, but not to dispose of the property (it is not possible to sell, lease, assign, constitute rights in rem or obtain any form of economic benefit from the property). One of the functions of collective ownership is that it can help to combat housing speculation, given that it is the cooperative, as a separate entity with its own legal status, distinct from that of the members, which owns the property. This is precisely to avoid the possible transformation of the cooperative into a condominium regime and to obstruct any attempt to make a financial gain on the houses. Finally, self-management includes the participation of the members in the administration of the community, its governance, decision-making and, in general, in the economic, legal, architectural and other responsibilities of the cooperative.

This study focuses on housing cooperatives in cession of use model that adopt the cohousing approach. However, it should be stressed that this model is only a subcategory of the broader housing cooperative movement (Heath, 2021; Etxezarreta and Merino, 2014), as well as one of the integral parts of the collaborative housing model (Czischke, 2018).

3. Human rights cohousing communities through housing cooperatives in cession of use

Now, we identify the human rights that are potentially at risk of violation in housing cooperatives, which take the form of cohousing. These rights include the rights to equality [3], respect for private and family life [4], ideological freedom, freedom of expression and the free development of personality [5]. Later, we address the practical situation of the aforementioned human rights in a range of real scenarios, drawing on the experiences of three Spanish housing cooperatives (as Table 1 shows), and some other cases derived from simulated scenarios inspired by the assumptions of facts studied in the work *European condominium law* (Van Der Merwe, 2015). We have covered three different stages, namely, access to housing, the treatment of current residents and their treatment when leaving the cooperative.

3.1 Access to housing stage

This will be followed by an analysis and discussion of the problematic human rights issues (potential violations) discovered by the research in the access to housing phase.

Housing cooperatives, unlike condominiums, have the power to select their members and this has been used by members to exclude historically marginalised groups (Bailey, 1990; Maldonado and Rose, 1996; Strahilevitz, 2006; Lasner, 2012; The Real Deal News, 2021, 2023). Although the mechanism of (self-) selection of members is a manifestation of the group's freedom of association as a private cooperative [6] and subjective criteria are important for the functionality of the community (it is understood that the rapport between members and their interests avoids conflicts that can obstruct the internal functionality of the community) (Jackson, 1999; Williams, 2005; Leafe, 2007; Clark and Tuffin, 2015; Scanlon and Fernández, 2015; DiCalogero, 2009; Viela Castranado, 2018), it is illegitimate when the mere fact that the applicant belongs to a vulnerable group (distinguished by race, ethnicity, gender, sexual orientation, religion, age, disability, etc.) is used as a (usually hidden) basis for the denial of membership. This means that the evaluation of the membership application is not based on the adequacy of the applicant to comply with the objective obligations of the housing contract (e.g. the payment of the membership fee and housing expenses), but on his or her belonging to a vulnerable group.

Consequently, we are faced with the problematic issue of the impact of private associative autonomy on the right to equality and non-discrimination. In this respect, it is important to

Table 1. Fieldwork results

Rights	Stages	Interviewees and communities			Interviewee N° 4-C3
		Interviewee N° 1-C1	Interviewee N° 2-C2	Interviewee N° 3-C1	
Risks of violation of the right to equality	AS	The absence of any health problems that would make the applicant dependent on the care of others is established as a selection criterion	-Not having been previously expelled from another cooperative or having cancelled your membership in another cooperative without due justification (irrespective of the circumstances of the case) are established as selection requirements -Friendship, sympathy or “feeling” as a selection criterion Ø	Sharing a common life philosophy with existing members and having aptitudes, skills, abilities and capabilities that allow the applicant to make a positive contribution to the community are set as selection criterion Ø	Ø ⁱⁱ
	TS	Potential conflicts regarding the composition of the menus offered to minority members, to cater for their nutritional needs (vulnerable residents; the elderly, pregnant women, etc.) and members with special diets (vegetarians, vegans, etc.) Ø Ø Ø ⁱ			Ø ⁱⁱⁱ
Risks of violation of the right to privacy and freedom rights	LS		Ø	Ø	Ø
	AS		Ø	Ø	Ø
	TS		Situations where the member has felt obliged to interact with other members (despite the member's desire to be allowed time alone) -Non-compliance with bylaws on quorums, voting procedures and majorities Non-compliance with bylaws on quorums, voting procedures and majorities	Ø	Ø ^{iv}
	LS	The process of self-promotion could become quite overwhelming (time, costs, collective decision-making, etc.)		A member being obligated to leave the community due to involvement in conflicts	Ø

Notes: AS = The access to housing stage; TS = The treatment stage of current residents; LS = The (forced) resident departure stage; C = Communities (1, 2 and 3); Ø = No findings; *The limitation of collective activities due to the community's short life span of approximately one year (at the time of the interview) and, above all, due to the COVID-19 pandemic, which led to restrictions that the members had to deal with from the very beginning of their life in the community; The organised use of common spaces, and therefore the undertaking of collective activities, is postponed and is subject to the completion of the second phase of the development; ⁱMany members do not live in the community and the cooperative rents the dwellings to third parties without setting any requirements other than economic capacity; ⁱⁱⁱThe services offered in the community are personalised, according to the member's degree of personal autonomy, so that situations of vulnerability are dealt with on an equal standing; ^{iv}Active participation in community self-management is limited according to the member's degree of personal autonomy (negatively affecting elderly members)

Source: Authors' own elaboration

reflect on some of the issues on the basis of which the prohibition of discrimination can be justified. Firstly, the consideration of housing as a good that satisfies a basic need (a human right), whose barriers to access are of greater significance than those that could be faced when seeking to access any other type of organisation (e.g. a club).

Secondly, the commitment of public administrations to direct their actions towards the achievement of social inclusion and integration in the context of a multicultural society, as well as their implicit obligation to impose on individuals receiving public benefits, a duty not to discriminate in the enjoyment of said benefits (*Moose Lodge v. Irvis*; *Norwood v. Harrison*; *London & Quadrant Housing Trust v. Weaver*, R.).

Thirdly, anti-discrimination law does not prohibit all distinctions, exclusions, restrictions or preferences, but only those that cannot be justified under the principles of legitimate purpose and proportionality [7]. Thus, it is not an absolute limitation for communities, and they can exempt themselves from any liability for discrimination by providing a sufficiently reasonable justification for their actions.

Fourthly, EU equality legislation [8], in a very limited way, includes housing within its scope of application with the limitation that the housing must be “publicly available” and “offered outside the sphere of family life” (concepts that are subject to more or less narrow interpretations). These limiting criteria confirm once again that adherence to the principle of non-discrimination is not absolute, as it can be overridden by other rights (such as privacy) or other legitimate interests (like giving priority to certain vulnerable groups: such as the elderly, the disabled, etc.).

Fifthly, cooperatives are governed by the open-door principle ([International Cooperative Alliance, 2025](#); [Vargas Vasserot, 2015](#)), which implies adherence to the principle of non-discrimination. To this effect, objective membership requirements (defined as requirements that are directly justified in relation to social object of the cooperative and which are generally required of all applicants, without involving any kind of arbitrary discrimination, i.e. any distinction, exclusion, restriction or preference that has no rational basis) are used as a mechanism to guarantee the principle of non-discrimination.

Sixthly, although there are studies that suggest the potential social benefits of cohousing communities ([Ruii, 2014](#); [Czischke and Huisman, 2018](#)), it is important to focus research on a more systematic and longitudinal analysis, based on evidence and quantitative data (beyond individual cases) that allows us to visualise the wider and longer-term impact that these communities could have on housing ([Chiodelli, 2015](#); [Tummers, 2017](#)). It should be noted that the groups living in cohousing communities tend to be homogeneous ([Meltzer, 2005](#); [Sardinha and Carvalho, 2007](#); [Lietaert, 2010](#); [Ache and Fedrowitz, 2012](#); [Chiodelli and Baglione, 2014](#); [Chiodelli, 2015](#); [Tummers, 2015](#); [Bresson and Denèfle, 2015](#); [Droste, 2015](#); [Huber, 2017](#); [Bruun, 2018](#); [Jakobsen and Larsen, 2019](#)), which serves to reinforce the “us” and “them” mentality ([Bauman, 2009](#)). That homogeneity constitutes a guiding criterion when assessing how inclusive and socially sustainable these communities are. The above because, far from functioning as a social anchor, homogeneity can reinforce the exclusion of “outsiders”, creating a bond among members, but excluding the rest of society ([Portes, 1999](#); [Arbell, 2021](#); [Stavrides, 2016](#)) [9]. This affects vulnerable groups the most, as they are characterised by insufficient economic, social and cultural capital; have less time to participate in group activities; may face social stigma; etc. ([Bressons and Tummers, 2014](#); [Tummers, 2016](#); [Huber, 2017](#); [Garciano, 2011](#); [Moore and McKee, 2012](#); [Wallace et al., 2013](#)).

Hence, USA, Canadian and Swedish jurisprudence have identified various instances of discrimination. These instances include, but are not limited to, the following: refusals based on compatibility with other members when the alleged issues have racial implications and may lead to a discriminatory impact on certain races (*United States v. Youritan Const.*).

Refusals based on the alleged “belligerent and irritable” appearance of the applicant (*United States v. West Peachtree Tenth Corp.*). Refusals based on rumours about the applicant (*Robinson v. 12 Lofts Realty*). Refusals based on the fact of having certain sources of income, assuming that the applicant with a subsidy is unable to afford housing expenses (*Iness v. Caroline Co-operative Homes Inc.*). Refusals based on the denial of access to a person with a disability (*United States v. 505 Avenue Central Corp*; ÖH 873–12). Refusals based on the application of an internal policy of prohibiting children under 12 years of age without having legally constituted the cooperative as “housing for older persons” – HOPA – (*United States of America v. Isle of Paradise “B”, “C”, and “E”, Inc.*; ÖH 11080–17). Refusals based on the implementation of an internal policy categorically banning persons with a criminal record, without consideration of the timing of the conviction, the nature of the conduct, the actions of the convicted individual since then, etc. (*Fortune Soc’y v. Sandcastle Towers Hous. Dev. Fund Corp.*; ÖH 9029–09). Furthermore, refusals based on the issuance of instructions to real estate agents to use delaying tactics and various other practices aimed at discouraging applicants from ethnic minorities (*United States v. Youritan Const. Op. Cit.*).

Thus, the cooperatives that own dwellings tend to consider other highly subjective factors that are difficult to evaluate, such as having a good vibe or a friendly relationship with those who are already members; compatibility of ideas, opinions and convictions, which would be beneficial for the functionality of the community; skills, abilities and competencies applicants can offer; among other aspects of the human condition that make cooperatives more susceptible to discriminatory practices. Discrimination will likely be less frequent in condominium access for two reasons. Firstly, the owner is unlikely to be overly concerned about the buyer’s personal characteristics or impact on the community of owners, as long as he or she fulfils the financial criteria of the purchase. Secondly, the community of owners has no legal influence over to whom the owner sells or leases the property ([Tarnopolsky and Pentney, 2004](#)). Discrimination will also be less frequent by landlords who may be concerned about the personal characteristics of the tenant, but to a lesser degree than in a cooperative because the elements of high social interaction and collective life are not necessarily a factor.

3.2 Treatment stage of current residents

This will be followed by an analysis and discussion of the problematic human rights issues (potential violations) discovered by the research in the treatment of current residents.

Discrimination is a phenomenon that happens not only in access to housing (including admission and denial of membership), but also while living in the dwelling ([European Union Agency for Fundamental Rights and Council of Europe, 2018](#)). Therefore, during the stay in housing cooperatives that adopt the cohousing model, the discriminatory practices include arbitrary [10] distinctions, exclusions, restrictions, preferences or unequal effects ([Rey Martínez, 1995](#)), in matters such as:

- Conditions attached to the right of use of the dwelling, e.g. the imposition of any form of waiver of the right of occupancy in the event that the resident suffers some form of disability (*Eagleson Co-Operative Homes Inc. v. Théberge*; *United States v. Rutherford Tenants Corp*; interviewee N° 1-C1, AS: non-dependence and difficulties in activities of daily living as a selection criterion).
- Services provided by the community, e.g. canteen service in conjunction with religious and ideological convictions, cultural identities and special nutritional needs of members (interviewee N° 1-C1, TS: potential conflicts over diets).

- The exercise of rights and obligations, e.g. restrictions on the use of common areas or limitations on visiting arrangements to the detriment of a minority and for reasons of ethical/religious/moral intolerance from a majority (CMHC, 2002; *The New York Times*, 2024; *Habitat Magazine*, 2008).
- Living relations, e.g. hostility, harassment, reprisals, etc. (*United States v. Goitia et al [S.D. Iowa]*; *United States v. Rutherford Tenants Corp.*; CMHC, 2002), which may engage the liability of the cooperative (*Welykyi v. Rouge Valley Co-operative Homes Inc.*; *Alex Girvin Housing Co-operative Inc. v. Booth*; Lasner, 2012; *The Guardian*, 2022).
- Accessibility of facilities, spaces, services and internal policies, i.e. failure to accommodate “reasonable accommodation” [11] (*United States v. 118 East 60th Owners*; *United States v. Rutherford Tenants Corp.*; *United States v. 4 Anchorage Lane Owners, Inc.*; *Potter v. Vancouver East Cooperative Housing Association*; N° 1-C1, AS: non-dependence and difficulties in activities of daily living as a selection criterion; *Castlegreen Co-op v. Lester and Hazel Oickle*).
- Any other matter arising from relations between members and between those and the cooperative regarding dwellings.

Discriminatory practices during the stay in the housing are not exclusive to housing cooperatives with cohousing dynamics (as it can also take place in condominiums, where dwellings may have both owners and tenants). However, the homogeneity of population that characterises cooperatives (which accentuates the “us” and “them” and the rejection of difference), its internal dynamics of high interaction and close proximity between members (sensitive to conflict) and its life philosophy are triggering and enabling factors that foment such practices (CMHC, 2002). In this sense, the conflict resolution mechanisms often found in cooperatives (e.g. mediation, which in Spain must be carried out by a qualified person) [12] are important, as they allow for better conflict management, although they do not guarantee a positive and satisfactory outcome of disputes.

As opposed to the condominium scheme, housing cooperatives that adopt the cohousing model conceptualise relationships among members at a much closer level and. Consequently, the intimacy (spatial and factual) of members and their families is exposed to a higher degree (McCamant and Durrett, 2011; Williams, 2005). The level of exposure, in turn, is a function of the degree of social interaction required and the extent of collectivisation applied to housing facilities, spaces and services, as well as the household chores that regularly take place there (variability of the social element, depending on the community; Tummers, 2017; Viela Castranado, 2018). Hence, the legitimacy of interference, both within the home and the private sphere, must be assessed on the basis of what was agreed at the time of deciding to join the community (e.g. the commitment to provide or pay for care services for other cohabitants or to live in a housing scheme where there are no spaces reserved for exclusive private use) and the general limits of private autonomy (Symeonides, 2014; Hasneziri, 2023), i.e. public order, law and morality [13].

An important factor to consider in relation to the dwelling is the characteristic element that distinguishes between different types of housing cooperatives, those with delimitation of spaces for exclusive use and those known as “up to the façade” cooperatives (sometimes understood as “communal living”, “communes”, “co-living” or “co-vivienda”) (McCamant and Durrett, 2011; Ghodsee, 2023), where members share the use of all spaces (i.e. there is no exclusive use of an apartment) [14]. In the first case, the faculty to exclude, prevent or prohibit entry to the exclusive use unit is analogous to that possessed by the private owner and the

tenant with respect to the dwelling (STC no. 22 / 2003; [Gatewood, 2014](#); ECHM, *Denisov v. Ukraine*), and even the right to privacy held by the guest in relation to a hotel room (STC no. 10 / 2002; [Ontario Human Rights Commission, 2025](#); ECHM, *FNASS and Others v. France*). In the second case, all members are considered co-dwellers of the common housing and, in principle, the rules to be followed are those that the members have established by mutual trust. However, in the event of a conflict of interests, no member is entitled to dispose of the privacy of another (a right of which they are not co-holders), unless there is *ad hoc* consent [15]. Consequently, this research underscores the challenge of safeguarding the right to use for all co-dwellers, while ensuring a minimum level of privacy for them and their families, in the context of the indiscriminate and simultaneous use of facilities, spaces and services that constitute part of a building designated for communal housing.

Another significant factor in the analysis of lawfulness is consent ([Faden and Beauchamp, 1986](#); [Gisclard, 2014](#)), which can legitimate intrusions on the privacy of residents (in both the factual and spatial sphere). This consideration should not only be considered at the moment of deciding to join the community (where it is understood that there is an implicit approval of submission to the rules indicated in the bylaws and house rules) (ECHR, *Sørensen and Rasmussen v. Denmark*; [Alfaro Águila, 2016](#)) but also during the period of residence in the community. Thus, to adopt new rules or modify existing rules that involve substantial intrusions into the private lives of members and their families, their express consent is required. Two key aspects need to be clarified. The first is the type of rules that would require express consent: those that affect a particularly important facet of a person's existence or identity and that do not comply with the formal (majority, quorum, etc.) or substantive (matters or issues over which the cooperative has competence) requirements laid down in the bylaws or that exceed the limits of reasonableness, morality and proportionality ([Alfaro Águila, 1993, 2016](#); [Wenar, 2007](#); [Murphy, 1979](#); [Singer, 1972](#); [Garzón Valdés, 1986](#); [Bayón, 1986](#)). The second aspect relates to the ways in which consent is obtained, which can be requiring the consent of the affected members to submit the matter in question to the majority of the meeting, approving the agreement unanimously or exempting the dissenting member from complying with the corporate agreement. These two aspects correct the inappropriateness of subjecting members to the rules approved by simple or qualified majority, as it would be inappropriate to restrict a fundamental right such as the right to privacy (a right which, outside the cases expressly permitted by the legal framework and those in which there is a prior and reasoned judicial authorisation, requires the holder to validate the intrusion into his or her sphere of privacy) [16].

Furthermore, an issue related to consent is that of its revocability by the consent holder, as a prerogative of the right to privacy ([Gisclard, 2014](#)) [17], and the consequent expulsion by the cooperative in response to the member's decision to withdraw consent. The validity of the expulsion in these cases implies analysing, in each specific case, factors such as the degree to which community interests are affected (the exclusion of the member can only result from an extremely serious act of misconduct) [18], the possible existence of alternatives that are not detrimental to the development of community interests, the existence of a reasonable expectation of privacy of the member with respect to the place or event to be protected [19], the degree of fulfilment of the duty of fidelity to the cooperative [20], among others.

For example, this research found meritorious the expulsion of a member of an "up to the façade" cooperative who had unilaterally decided to install a door that did not previously exist, as a measure to protect his privacy, and who refused to remove and to adopt any palliative measure (e.g. the installation of curtains or the allocation of shifts).

3.3 *The (forced) resident leaving stage*

This will be followed by an analysis and discussion of the problematic human rights issues (potential violations) discovered by the research in the (forced) resident leaving stage.

Based on the broad regulatory power that cooperative legislation confers on cooperatives, thus enabling the extensive private autonomy of co-operatives, the research observes that throughout his/her stay, the resident member is continuously bound by what the majority prescribes as mandatory for community residents (given that non-compliance can result in disciplinary expulsion), especially in areas that go beyond the ordinary framework of relations between neighbours (e.g. the imposition of working hours or participation in recreational activities, within the framework of a community policy of “a highly social domestic environment”) (*Eagleson Co-Operative Homes, Inc. v. Théberge*; [Hughes, 1992](#); [CMHC, 2002](#)). This scenario is further aggravated if the diversity of cooperative legislation (e.g. in Spain, Canada, the USA, among other countries, each state or autonomous community has its own legislation on cooperatives) and the diversity of bylaws (each cooperative gives itself its own rules) are combined.

Although the aforementioned circumstances do not inherently constitute an infringement of human rights, as freedom to associate, in accordance with the conditions laid down in the bylaws and internal regulations, is regarded as a legitimising element. However, it is crucial to emphasise that the evaluation of this right is to be conducted in the context of the particular circumstances of each case [21]. In any event, it represents a disadvantage in comparison to rental and condominium regimes. In the latter cases, the legal provisions regulate these regimes in a more exhaustive, detailed, uniform and mandatory manner [22], resulting in the standardisation and certainty of the legal relations between owners and communities of owners and between tenants and landlords. By contrast, cooperative members assume the risk of being compelled to vacate their dwelling for various, variable and fluctuating causes (*Street v. Pullman*).

The requirement (either through disciplinary sanction or through communal reproach which, in serious cases, can lead to situations involving hostility and mobbing) (*Welykyi v. Rouge Valley Co-operative Homes Inc*; [CMHC, 2002](#)) of compliance with the behavioural guidelines for putting cohousing into practice (e.g. those involving the collective carrying out of housework and care duties) ([Hughes, 1992](#); *Eagleson Co-Operative Homes, Inc. v. Théberge*; [CMHC](#), [Reyes et al., 2022](#)) places limitations on the freedom (ideological, of expression, etc.) of dissident members (considered individually); which is subordinated to the freedom of association of the community (considered as a collective and whose interests prevail over individual interests) ([CMHC, 2002](#)). However, unlike in religious communities where the freedom of the dissenting member is exercised through his or her freedom to leave the community (ECHR, *Affaire Mirolubovs Et Autres v. Latvia*; and Decision of The European Commission of Human Rights, *X. v. Denmark*), in housing cooperatives the applicability of this rule is questionable in terms of proportionality.

Thus, the cancellation of the membership necessarily implies the member will leave current housing and search for a new dwelling (which entails an economic, human and time effort), in a context characterised by a scarce stock of affordable housing, especially in the rental market ([Nasarre Aznar, 2015](#)), and by the tightening of the requirements for accessing mortgage credit (Directive 2014 / 17/EU). It may also lead to significant deductions in refundable contributions, which makes access to new housing even more difficult [23].

In addition, the refusal of a member to participate (or to participate only to a lesser extent) in the collective life does not entail that community interests are immediately affected. It is appropriate in each case to analyse the reasonableness of the internal measure or policy involving participation, to explore possible alternatives that are equally effective in

achieving the purpose of the measure or policy, to examine the proposed just causes for non-participation (or less participation) and any particularly relevant circumstances.

4. Proposed measures. Special reference to the Spanish legal framework

4.1 Right to equality and non-discrimination

In view of the problems identified during the research, this paper tables proposals for measures aimed at both the legislator and the cooperatives. These measures have taken as a point of reference the Spanish legal framework on the subject, but their applicability, to a greater or lesser extent, can be taken into consideration in other countries where similar housing cooperative schemes are being developed.

As proposals for legislative measures to reinforce the right to equality and non-discrimination, it is considered that, together with the mandate of non-discrimination both in the access to housing and during the period of residence at the dwelling (applicable in the general field of housing and, therefore, extendable to housing cooperatives), certain exceptions should be expressly stipulated for some housing providers. These exceptions are justified by the respect and protection of other conflicting rights, such as the right to privacy and religious freedom [24], as well as by the need to give priority attention to vulnerable groups (e.g. the elderly or persons with disabilities). On the other hand, in the specific field of housing cooperatives and as proposals for measures that contribute to the general mandate of non-discrimination, the research suggests:

Firstly, a stipulation that the bylaw requirements for the acquisition of membership must have an objective nature, oriented to reasonably measure the adequacy of applicants to fulfil the obligations set by the cooperative (this excludes criteria such as being a “good neighbour”; having certain sources of income, to exclude applicants receiving public assistance; undergoing medical evaluations, to determine disability; etc.).

Secondly, making it obligatory for the Management Board (or whoever is acting in its stead) to justify refusals of applications (for admission) under rational considerations, justified on the cooperative purpose and the activities inherent to it.

Thirdly, the express provision of the possibility for aspiring members to appeal against refusals of applications (for admission) through the courts [25].

Fourthly, the express submission of housing cooperatives to the duty to make “reasonable accommodation” to the building, rules, policies or practices of the cooperative to comply with the rights of persons with disabilities. In this respect, it is important for the effectiveness of this measure that the legislator refers to aspects such as the economic mechanism that serves as the basis for calculating when a “reasonable adjustment” is proportional (and therefore mandatory); the way in which the costs will be computed and the general timeframe for executing the requisite construction work (at the very least, requiring diligent conduct); the majorities required to approve adjustments that are not deemed “reasonable” (either because they exceed the maximum expenditure or because the judicial body considers them disproportionate) and that therefore require a majority/qualified majority vote to oblige the members to accept the proposed measures; the possible exemptions; the scope of application which not only addresses structural barriers, but also those relating to communication and attitudes (i.e. the rules contained in the bylaws, statutes and the contract of use; policies; services; practical aspects of community life...), that exist at all stages of the housing process (from application for admission to eviction), etc.

As proposals for facultative measures for housing cooperatives (with cohousing dynamics) to reinforce the right to equality and non-discrimination, this paper recommends ensuring the transparency of processes for admission of members. In this regard, it is essential to define and publish (internally and externally) the criteria for selection, assign a

quantified importance to each of these criteria, determine the documentation and the type of information with which such criteria can be accredited, identify each of the stages of the process, and monitor waiting lists, these would be among the most important measures. Furthermore, to show that the cooperative is being proactive against bad practices, and to avoid any responsibility, it is important to implement internal procedures to receive and process requests for reasonable accommodation and complaints that report patterns of discrimination, while ensuring fair, prompt and effective investigations, evaluations and resolutions (*Francis v. Kings Park Manor*; *DiSalvo v. Halton Condominium Corporation*; *Payne v. Otsuka Pharmaceutical Company*). Finally, the introduction of education programmes is essential in preventing discriminatory practices among members, while ensuring the efficient exercise of the roles and responsibilities of the bodies in charge of implementing internal antidiscrimination policies and procedures ([The Ontario Human Rights Commission, 2013](#); Housing and Urban Department of The USA -HUD, 2011).

4.2 *Right to private and family life and freedom rights*

As *de lege ferenda* proposals, to introduce legislative measures that reinforce the right to private and family life and freedom rights, this paper considers that it would be important to regulate at least certain basic parameters of housing cooperatives, related to the cession of use, which would allow current and future members to foresee what might happen in the legal relationships established in this field, and thus provide them with a minimum and uniform protection of their rights. Among the minimum aspects to be regulated are the rights and obligations of members and cooperatives in relation to housing and causes for justified cancellation of membership and disciplinary expulsion.

Concerning rights and obligations, this research established general rules of what both the members (holders of the right of use) and the cooperatives (owners of the building) can and have to do in relation to the housing. The elaboration of these rules was based on four essential pillars, which are usually regulated in the legislation on condominiums and rental housing. These pillars are firstly, the maintenance and conservation of the spaces, facilities and services of the development. Secondly, improvements to these spaces, facilities and services. Thirdly, subletting [26] or leasing (depending on who is the lessor: the member or the cooperative) and the *inter vivos* and *mortis causa* transfers of the shareholding linked to the right of use of the dwelling. Fourthly, pre-emption rights and its exceptions.

Furthermore, it is important to distinguish between rights and obligations according to the type of housing cooperative, i.e. between housing cooperatives with areas delimited for exclusive use and those whose communal areas go “right up to the façade” (sometimes understood as “communal living”, “communes”, “co-living”, “co-vivienda”) ([McCamant and Durrett, 2011](#); [Ghodsee, 2023](#)). This classification affects the earnestness with which rights and duties are enforced, as [Table 2](#) shows. For instance, the possibility for a member of an “up to the façade” cooperative to sublet a dwelling or to request the cooperative to lease the accommodation, when there is a just cause that makes it impossible to temporarily occupy the dwelling [27], is more limited and requires a provision in the bylaw allowing it or, in the absence of such a provision, the authorisation of the cooperative. This is justified by the fact that there are no exclusive areas, which means that members have to give up more of their privacy to each other. Therefore, no member can dispose of the privacy of another, in this case, by allowing third persons to enter and stay in the common domicile, without the *ad hoc* consent of the others.

Moreover, these general and simplified rules are subject to variation depending on the circumstances of each case and on the existence of bylaws that further increase protection or modulate responsibility, to the benefit of the shareholder.

Table 2. Strictness of the enforcement of rights and duties according to the type of housing cooperative

	Housing cooperatives with areas delimited for exclusive use	"Up to the façade" housing cooperatives	Members of housing cooperatives with areas delimited for exclusive use	Members of "up to the façade" housing cooperatives
Rights	Stricter in terms of: + Requirements for the maintenance and conservation of the dwelling (assigned exclusive use unit) Less strict in terms of: - Conditioning, restricting, or prohibiting the subletting (by the member) or renting (at the request of the member) of the assigned exclusive use unit - Conditioning the <i>inter vivos</i> and <i>mortis causa</i> transfers of the shareholdings (which give rights to use the dwelling) to third parties who have not been living with the member	Less strict in terms of: - Requirements related to the maintenance and conservation of the dwelling (the whole building) Stricter in terms of: + Conditioning, restricting, or prohibiting the subletting (by the member) or renting (at the request of the member) of the accommodation + Conditioning, restricting, and prohibiting <i>inter vivos</i> and <i>mortis causa</i> transfers of the shareholdings (giving rights to the dwelling) to third parties who have not been living with the shareholder, without his express consent or approval of the third party	Stricter in terms of: + Using the dwelling in an exclusive (assigned exclusive use unit) + The possibility of subletting or requesting the cooperative to rent the assigned exclusive use unit when there is a just cause that makes it impossible for the member to temporarily occupy the dwelling + Unilaterally carrying out minor improvements to the assigned exclusive-use unit Less strict in terms of: - Carrying out repairs for which the cooperative is responsible	Less strict in terms of: - Using the dwelling (the whole building) exclusively - The possibility of subletting or requesting the cooperative to rent the accommodation - Carrying out unilateral improvements of all types Stricter in terms of: + Carrying out repairs for which the cooperative is responsible Stricter in terms of: + Unilaterally carrying out all kinds of improvements - Less strict in terms of the obligation concerning maintenance and conservation
Duties	+ Stricter in terms of the obligation to put and keep members in possession of the exclusive use units assigned to them - Less strict in terms of the obligation concerning maintenance and conservation	- Less strict in terms of the obligation to provide accommodation for members + Stricter in terms of the obligation concerning maintenance and conservation	- Less strict in terms of unilaterally carrying out minor improvements to the assigned exclusive use unit + Stricter in terms of the obligation concerning maintenance and conservation	

Source: Authors' own elaboration

Finally, some of the other issues that need to be regulated to provide minimum protections include the causes that allow the voluntary cancellations of membership to be considered justified and the causes that would warrant the disciplinary exclusion of members. As for the former, in addition to including specific situations, this study ultimately included all situations typified by the bylaws. This is in accordance with respect for the private autonomy of cooperatives and, to a large degree, is guided by the notion that such permissibility leads to an extension of the basic legal protection, i.e. it improves and in no case weakens the position of the members.

Among the causes which this paper deems sufficient to justify the cancellation of a membership, the following are highlighted [28]:

- Substantial changes in family composition that make the dwelling unsuitable, and the impossibility for the cooperative to provide another housing unit that can satisfy the new needs.
- Significant degradation of the dwelling and/or common elements due to causes not attributable to the member.
- Manifest non-compliance with the deadlines for the execution of works and the allocation of the dwelling or with the characteristics of the dwelling in accordance with the terms of the initial agreement.
- Non-compliance with the duty to make reasonable accommodation in the building, rules, policies or practices of the cooperative, to facilitate access for a disabled member or, even if the cooperative has complied with all requirements, but the adoption of reasonable accommodation is not sufficient to ensure universal accessibility to the dwelling.
- Unjustified inaction of the cooperative in the face of the disruption of the occupancy rights of the member and his or her family by acts committed by third parties or other members.
- Moving to another place for work (e.g. labour mobility or change of job), academic (e.g. temporary or permanent academic stays), health (e.g. loss of autonomy or moving to healthier urban environments or places close to health services) or compelling reasons (cases considered by the courts).
- When a dissident or absent member (with a just cause for absence from the General Assembly) is affected by the modification or suppression of rights or the creation of new personal obligations, approved at the General Assembly.
- Substantial difficulty in fulfilling financial obligations in a timely manner, without being in default.
- Termination of cohabitation between spouses or domestic partnerships.
- Cancellations of memberships for causes that are not typified as unjustified under either the law or the bylaws.
- Other scenarios where the cancellation of membership is justified under the bylaws.

As for the causes which could justify an expulsion, this work considers the followings as “very serious” offenses and, therefore, as grounds for expulsion of the offending member [29]:

- Non-payment of the use fee or occupancy charges and any other economic obligation owed by the member to the cooperative relative to the dwelling and facilities for common use.

- A change in the use of the dwelling that is not authorised and contravenes the bylaws (this includes issues such as subletting, non-use of the dwelling, use of the unit for tourist rental purposes, etc.).
- Serious non-compliance with the member's duties of care and maintenance, which constitutes a danger for the safety, habitability or sanitary conditions of the dwelling or common use areas.
- Refusal of the member to allow access to the assigned dwelling for the purpose of carrying out necessary repairs.
- Repeated disruptive or antisocial behaviour by a member that significantly disturbs (i.e. beyond what should reasonably be tolerated) the ordinary community life or the rights of other members and their cohabitants to the peaceful use of spaces, services and facilities, whether for exclusive or common use (includes issues such as excessive noise, aggression, mobbing, harassment, etc.).
- A particularly serious non-compliance, in terms of its nature and scope, with the obligations assumed by the member towards the cooperative if it is reasonable, proportional, and expressly included in the bylaws.

The last cause includes a general and open clause with which this paper intends to materialise the legal permissibility for cooperatives to regulate and typify other “very serious” forms of misconduct (thereby respecting private autonomy), but at the same time limit their disciplinary power (to expel members) to the analysis of objective and reasonable factors, such as (without being exhaustive): the nature of the non-compliance, whether or not it is a material condition of membership or of the usage contract, the importance of its fulfilment for the cooperative and the repetition or persistence of the non-compliance.

5. Conclusion

Housing cooperatives that adopt cohousing dynamics face a structural problem which consists of a set of more or less analogous elements at the international level. These comprise a legal framework that gives cooperatives extensive powers for self-regulation (although some jurisdictions give more leeway than others, being the Spanish jurisdiction one of the most generous), a growing housing tenure model and the internal dynamics of high social interaction and close proximity. As this research suggests, cooperatives, under the modality studied, entail a potential risk of violation of human rights such as the rights to equality, privacy and freedom.

In terms of equality, the research has detected the susceptibility of the cooperative tenure to develop discriminatory practices in the member selection processes; the conditions to which the right of occupation is subject; the services provided by the community; the exercise of rights and obligations among its members; living relations; the accessibility of spaces, services and internal policies; etc. In turn, this potential risk of discrimination is caused (primarily and without being exhaustive) by factors such as the (self-)selection of their members, the interest in keeping their population homogeneous (economic and social issues), the close interactions between members and the overly broad interpretations of their private autonomy.

In terms of privacy and freedom, the paper has detected a higher degree of exposure of the privacy of members depending on the greater or lesser degree of social interaction required and the level of collectivisation implemented with respect to the facilities, spaces and services of the dwelling, as well as the sharing of housework. Our research also finds a lack of certainty for members about their long-term presence in the housing, which is caused by

the broad disciplinary and regulatory power that cooperatives have to decide who enters, who leaves, how and when. This puts members at constant risk of expulsion when they stray from the behavioural patterns required by the cooperatives, especially those that call for a high level of social interaction and proximity.

The legislative and bylaws measures that this research has proposed to prevent and address treat the problems detected, although hardly able to completely eliminate the risk of human rights violations, do make it more difficult for cooperatives to commit transgressions. Towards this aim, the paper offers guidelines for the development of a future and necessary legal framework (which is sufficient, systematic and differential) for this housing model, as well as the necessary minimum parameters on the basis of which the management of cooperative housing can be evaluated from a human rights perspective.

The implementation of the proposed measures in the communities under study is expected to have an impact on several aspects. Firstly, an increase in the mixtivity of the internal population composition is suggested. Secondly, an increase in freedom, especially for dissenting members in their individuality, and for the use of exclusive use spaces is foreseen. Thirdly, an improvement in the legal certainty of the rights and obligations of the parties involved is predicted. However, the proposed measures could potentially impede those seeking to preserve residential homogeneity, whether for reasons of internal cohesion and functionality or exclusivity and exclusion. Nevertheless, it is our suggestion that the proposed measures could increase the attractiveness and functionality of this housing model for a wider range of the population. In the context of cooperatives, the proposed measures are expected to contribute to the mitigation of adverse risks (including court convictions, the nullity of social agreements, financial expenditures, loss of prestige, prolonged membership cancellation processes, etc.) that have the potential to jeopardise the economic stability and impede the corporate functioning of the cooperative. Moreover, it is anticipated that these measures will engender greater transparency internally (amongst current and future members) and externally (with private and public institutions willing to invest or finance) of cooperatives and to enhance their social perception (with private, public and third sector actors).

Notes

1. In Spain, from the public sector, e.g. the State Housing Plans 2022-2025; Decree-Law 50/2020, of 9 December; Law 3/2023, of 13 April. From the private sector, e.g. Sostre Civic, Coop57, Lacol, etc.
2. Even in Denmark, considered the most advanced country in this field, cohousing communities represented only 0.3% of the total housing stock in 2021. BUILD Aalborg Universitet, Bofællesskab.dk and Falkenstjerne Fælles (2022). "Mapping and analysis of cohousing communities in Denmark". In Sweden, according to the Swedish Cohousing Association (Kollektivhus UN), there are approximately 55 collaborative housing communities. In Spain, according to cohousing, there are 13 communities in operation and approximately 50 projects under development.
3. This right is recognised in art. 2 of The Universal Declaration of Human Rights (UDHR); arts. 2.1 and 26 of The International Covenant on Civil and Political Rights (ICCPR); arts. 2.2 of The International Covenant on Economic, Social and Cultural Rights (ICESCR); art. 14 of The European Convention on Human Rights (ECHR); arts. 20, 21 and 23 of The Charter of Fundamental Rights of the European Union (CFR).
4. This right is recognised in art. 12 of UDHR, art. 17 of ICCPR, art. 8 of ECHR, art. 7 of CFR.
5. This right is recognised in art. 18 and 19 of UDHR, art. 18 and 19 of ICCPR, art. 9 and 10 of ECHR, art. 10 and 11 of CFR.

6. This right is recognised in art. 20 UDHR, art. 22.1 ICCPR, art. 11 ECHR, art. 12.1 CFR.
7. The principles of legitimate aim and proportionality have been included in EU Directives 2000/43/EC (art. 2.2 b) and 2004/113/EC (art. 4.5), as well as the case law of the ECHR ([Council of Europe, 2020](#)).
8. See art. 3.1h of the Directive 2000/43/EC and Whereas n°. 16 and art. 3.1 of Directive 2004/113/EC.
9. As occurred in some Andel model cooperatives in Denmark, where members often chose to keep the value of shares or participations below the maximum permitted amount, in order to facilitate the entry of their family and friends into the organisation. See [Nasarre Aznar \(2020, p. 624\)](#), [Bruun \(2018, pp.140–155\)](#). For information on the exclusivity of a common good, see [Portes \(1999\)](#), [Arbell \(2021\)](#), [Stavrides \(2016\)](#).
10. Arbitrariness is defined as the absence of a reasonable and objective justification. See ECHR, *DH and Others v. Czech Republic*, no. 57325/00, par. 175, 2007; and *Molla Sali v. Greece*, no. 20452/14, par. 135, 2018.
11. “Reasonable accommodation” is a legal concept that originated in the USA when *The Equal Employment Opportunity Act of 1972* was passed to combat discrimination in the workplace, and it was later included in *The Americans with Disabilities Act of 1990*. At European level, this concept was adopted by Directive 2000/78/EC and, at global level, by the UN International Convention of People with Disabilities. “Reasonable accommodation” means “necessary and appropriate modifications and adjustments (in the physical, social and attitudinal environment) to provide for the needs of persons with disabilities that do not impose a disproportionate burden”. See. UN (2006). *International Convention of People with Disabilities (CRPD)*, Treaty Series, Vol. 2515, art. 2; Spanish Law 15/2022, of 12 July, art. 6.1a. In this sense, persons with disabilities are holders of the right to reasonable accommodation, which means, firstly, that the accommodation is effective (that the modification or adjustment prevents or eliminates discrimination); and secondly, that the accommodation does not create an undue burden on the obligor (the judge’s analysis of the costs and benefits, the effects of not making the accommodation, the characteristics of the person or entity obliged, the possibilities of state funding, etc.). Thus, in the field of housing, reasonable accommodation includes actions (the installation of a lift, a ramp or a video door entry system; exemption from pet fees in the case of an emotional support pet; allowing a tenant to move to a unit on the floor below, etc.) that improve accessibility for a disabled or elderly and allow the use of the building under the same conditions as the rest of the people. See. Keating, A. (2010). “Reexamining Reasonableness: An Analysis of Reasonable Accommodation Under the ADA”, SSRN, <http://dx.doi.org/10.2139/ssrn.1597416>.
12. In Spain, alternative dispute resolution methods require the intervention of a professional duly trained and qualified to perform this function (mediator), so that the cooperative cannot implement these formulas for resolution without the inclusion of this third party (legitimacy). Law 5/2012, of 6 July, art. 11. In Catalonia, Law 15/2009, of 22 July, art. 3; and Decree 135/2012, of 23 October, arts. 17–21.
13. See art. 8 of ECHR.
14. With regard to “up to the façade” cooperatives, the doctrine has made a commendable effort to group together certain recurrent and common characteristics (which do not always strictly concur) of cohousing communities. Nevertheless, it is conceivable, at least within the Spanish legal framework, to use the legal formula established for cooperatives to establish communities that aspire to elevate the social or community life element to a higher level. This is precisely because of the heterogeneity of cohousing communities, which vary in size, design, collective services offered, tenure, legal formats, types of financing, among many other aspects, depending on the respective needs, objectives and resources of the group of members concerned.

Furthermore, the spaces that are considered to be “private spaces” may vary according to the interpretation of the term “housing” (a stand-alone concept from a human rights perspective: ECHR, *Paradiso and Campanelli v. Italy* n°. 25358/12, par. 140, 2017): rooms, caravans, tents, yachts, garages, storage rooms, a bed, etc. In addition, the interpretation of “private” may encompass private property (art. 396 Spanish CC), exclusive use of a private element (arts. 396, 467, 524, Spanish CC), exclusive use of a common element (arts. 553-11.2 c and 553-43 Catalan CC), etc. However, the majority of the cooperatives that incorporate the dynamics of cohousing in Spain delineate the spaces for exclusive use.

15. The Spanish TC, in STC 22/2003, Op. Cit., FJ 9, stated that the police search carried out without judicial authorisation and with the sole consent of the appellant’s wife (co-dweller 1) violated the right of the appellant (co-dweller 2) to the inviolability of the home. The TC explained the need for the consent of co-dweller 2, without it, a search violates the said right, as it is an individual right of which is not jointly held by co-dweller 1 when there is a conflict of interests between co-dwellers.
16. This right is recognised in art. 18.2 of Spanish Constitution and STC 10/2002; art. 72 of Danish Constitution; arts. 10-13 of The Dutch Constitution; art. 9 of French Civil Code and arts. 226-1, 432-8, 432-9 of French Criminal Code; arts. 6, 20.2, 22.2, 25.3 of Chapter 2 of The Swedish Instrument of Government; the Fourth Amendment to the United States Constitution, art. 8 CEHR; etc.
17. For an example see EU Regulation 2016/679 of 27 April 2016.
18. See SAP Barcelona 137/2005; art. 18.5 of Spanish Cooperative Law; art. L. 201-5.-III of French Cooperative Law; arts. 2533.2 and 2286 of Italian Civil Code.
19. The “reasonable expectation of privacy” is a concept created by the US Supreme Court and used by the ECHR, which requires the application of a double test. Firstly, the subjective expectation of privacy that each person has in a society, and which varies for everyone according to his or her circumstances. Secondly, the reasonable expectation of privacy recognised as an abstract concept applicable to all individuals in a society. See *Katz v. United States*, 389 U.S. 347 (1967). In this sense, the characteristics of the space or area concerned may change depending on the time, e.g. a beach in summer or in winter; or on the decisions of third parties, e.g., the use of company computers for private purposes when authorised by the employer or when such use is prohibited. See STC, no. 12/2012, Appeal 4821/2009, FJ. 5.
20. See arts. 7 and 1258 of Spanish Civil Code; arts. 11.2, 19, 28.2, 32.2, 35 and 39 of Danish Contract law; art. 6:248 of the Dutch Civil Code; arts. 1337, 1366, 1375, 1460 and others of Italian Civil Code; Catanian-Italian Court Sentence no. 822/2019; Chap. 6: art. 6-12 and 6-13, Chap. 5: art. 8-16 of the Norwegian Housing Cooperative Law; Chap. 2: art. 3, Chap. 4: arts. 6 and 8 of the Swedish Housing Cooperative Law; Swedish Law on contracts and other legal documents in property law, etc.
21. E.g. a member who capriciously refuses to carry out cleaning and gardening activities in the common areas or to cover the costs of outsourcing them, when he had committed to doing so.
22. Highlighting Law 49/1960, of 21 July 1960, on Spanish Condominiums; and Law 29/1994, of 24 November 1994, on Spanish Urban Tenancy.
23. See arts. 51.1, 51.3 y 89.5 of Spanish Cooperative Law; art. 15: Stk. 5-7, and art 20: Stk. 2 and 3 of the Standard Bylaws for Danish Housing Cooperatives; art. R. 200-5 of French Decree no. 2015-1725 of 21 December 2015.
24. The right to equality and non-discrimination is not violated where there is a real close and personal proximity between the owner or his/her family and the occupant. For example, when the accommodation is in a dwelling in which the owner or his/her family resides or when the occupant must share essential living spaces (kitchen, bathroom, etc.). In terms of religious freedom, this implies granting greater autonomy to religious communities that provide or manage

accommodation. For example, a religious organisation that serves exclusively and on a non-profit basis the interests of people with housing needs, but limits access or gives preference to those who belong to the same religion as the organisation. See Council Directives 2000/43/EC and 2004/113/EC; ECHR, *Affaire Mirolubovs Et Autres v. Latvia*; The U.S. Fair Housing Act.

25. This possibility came into effect with the recent passing of Spanish Law 15/2022, art. 26.
26. Although a member of a transfer of use type housing cooperative is not technically a tenant (nor an owner) of the housing, this study used the term “subletting” to refer to the legal situation in which the member rents the accommodation over which he or she has the right of use by virtue of his or her membership in the cooperative. However, a different position is taken by German Courts, in a judgement made on 21 January 1985, 3 REMiet 8/84 and a judgement from 10 September 2003, VIII ZR 22/03, which interpreted the contract between a cooperative and its members as a rental contract to which the rental law applies, even if it is called a contract of use.
27. Circumstances that could justify temporary non-occupancy by a member are, e.g. temporary absences for work, academic or health-care reasons. In these cases, it is reasonable to allow the subletting of the (temporarily) unoccupied accommodation or to require the cooperative to rent it, while maintaining the membership of the member (who cannot occupy the accommodation temporarily) who retains the right to recover the use of the accommodation (once his or her temporary absence has ended and as long as the maximum period allowed to recover the dwelling has not elapsed).
28. Some of them are included in different legislation at the comparative law level (e.g. Decree no. 183/018 of Uruguay, art. 66), others have been analysed by jurisprudence (e.g. SAP Ávila, 18/07/2013, no. 102/2013; SAP Madrid, 3/10/2016, no. 324/2016), others are provided for (more or less precisely) in the general legislation on cooperatives (e.g. Catalan Law 12/2015, of 9 July, art. 71.4; Law 27/1999, Op. Cit., arts. 17.4 and 46.2; Madrid Law 2/2023, of 24 February, art. 18.3), and others were identified by this study.
29. Some of them are included in different legislation at the comparative law level (e.g. Uruguayan Decree no. 183/018, Op. Cit., art. 70; the Norwegian Cooperative Law, Op. Cit., arts. 5-22 and 5-23; Ontario Co-operative Corporation Act, art. 171.8[2.2]; the Swedish Cooperatives Law, Op. Cit., art. 18; the Standard Bylaws for Housing Cooperatives in Denmark, Op. Cit., arts. 9: Stk.6 and 20; *40 West 67th Street Corp. v. Pullman*, Op. Cit.; Civil Court of the City of New York, *New York County, London Terrace Towers, Inc. v. Davis*, 2004 N.Y. Slip Op. 24497 [N.Y. Civ. Ct. 2005]; Sentence passed by the High Court of Eastern Denmark, 24/03/2020, case BS-43482/2018-OLR) and others were identified by this study.

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