

THE *REGISTRO DE INMUEBLES* AS A TOOL OF COLONIZATION IN THE SPANISH PROTECTORATE OF NORTHERN MOROCCO (1912-1956).

After a period of economic and political erosion, which involved also a strong social crisis, caused by the gradual foreign penetration¹, the colonization of Morocco started in 1912 with the signing of two treaties. The first one was between France and the Sherifian Empire, on 30th March, that established the French protectorate over most of Morocco, with an extension of more than 400.000 km². The second, signed on 27th November, involved the two colonial powers, Spain and France, in which the second allowed the first to establish its own protectorate in the northern fringe of Morocco, with an approximate extension of 20.000 km². The Spanish Government had also rights to administrate a Southern region between the French protectorate and the Spanish colony of Sahara, occupied effectively since 1934. In the first treaty, the protecting country acquired the compromise to «set up a new regime in Morocco to provide administrative, judicial, educational, economic, financial and military reforms that the French Government deems useful to introduce into the Moroccan territory». That is, France assumed the task to modernize the Sherifian empire. During the 19th century the Great Britain tried to do the same, without success, but increasing its exportations to the Magribian country². In the French-Spanish agreement the Iberic country assumed the same commitment.

From this moment the Spanish Government, besides to occupy military its protectorate, started to introduce a new legal mark to initiate the tutelary task and facilitate the economic exploitation. The 24th article of the second agreement permitted the instauration of a judicial system based in its own in the metropolis. The Spanish justice was inserted by the *Dahir* (a Moroccan law) of 1st June 1914, which introduced the new courts and a list of fundamental codes to administrate justice. One of this legal codes was the *Registro de inmuebles*, a sort of property register in which landowners could enrol their properties to ensure their possession. The introduction of the Spanish justice didn't abolish the Moroccan. So both of them coexisted in the same territory, which meant an extra difficulty to acquire properties. As we will see, this institution

¹ Abitbol, 2009; Burke, 1976; Pennell, 2000.

² Ben-Shrir, 2005; Pennell, 2000.

was based on the Real Property Act, a law promulgated in 1858 in the British colony of South Australia, planned and written by Sir Robert Richard Torrens³.

The aim of the Torrens Act in South Australia, was to make sure the land transactions, so that the future settlers could acquire lands without any fear that the property title they received would be false. The *Registro de inmuebles* was created to give guarantees to owners. And it was a legal tool to develop the agricultural colonization in Northern Morocco as well. During the 19th century the property regime of the Sherifian Empire had been strongly criticized by many Spanish authors (who also attacked other aspects of their neighbour country, like the justice, the administration, the trade or the religion), viewed as unsure.

The *Registro* had the objective to protect the landowners thorough the advertising of the properties. With it, it was though that it would be easier, among other activities, to acquire rustic properties so as to develop the farming colonization in Morocco. From the 19th century first beginnings, Spaniard travellers which visited the Maghribian country left proves, in an excessive way, of the Moroccan lands quality and the ineptitude of the natives to farm it properly. This explanation became in an argument to colonize Morocco. So, in 1912 one of the worthy activities was farming colonization. As a result, acquiring lands in a quickly way and without difficulties became fundamental for the Spaniard settlers in order to succeed in the field. But the right of the foreigners to buy a property in Morocco, in this case we are studying specially for the Spaniards, was not an inherent right. Along the 19th century European countries acquired it thank to the signing of some treaties.

The international treaties

Nevertheless, it was unusual that a foreigner, especially if he was European or Christian, established himself in the country. There were Europeans living in Tangier, the diplomatic capital of the Sherifian Empire. Also in the few ports opened to the external trade. Before the agriculture, the gradual European penetration and the extension of the consular protection created to Europeans the need to acquire properties.

³ Whalan, 1976.

Thank to this achievement, the right to buy properties would be used later to purchase farmlands. Spaniards were the first Europeans they received this entitlement. The 9th article of the Treaty of peace, friendship, navigation, commerce and fishing signed on 1st March 1799 between Spain and Morocco⁴ stipulated that:

«When Spaniards legitimately buy any land in Morocco, with the Government permission, they may build any house, stores, etc., lease or sell them, as they want. And whenever they hire houses or warehouses for price and time certain, anyone would increase the rental and they will not be evicted. In Spain will occur the same with Moroccans.»⁵

As we said Spaniards were the first foreigners who could buy lands in Morocco, until the treaty between the Great Britain and the Sherifian Empire, signed on 9th December 1856. Since then, the British citizens could own lands with the same conditions⁶. The Spanish Government achieved new advantages after the sign of the Spanish-Moroccan treaty of 20th November 1861⁷, after the war of 1859-1860 between these two countries⁸. The 5th article of the renewed the conditions accorded in 1799 and exempted Spaniards from paying taxes for their properties. Therefore, they were partially released from Moroccan law, referred to real property. We can read this prerogative in the context of the mentioned war. The pyrrhic victory of the Spanish troops made possible this counterpart. The most important conditions of peace were the temporary occupation of Tétouan and the payment of a fine of one hundred million pesetas. If the Makhzen, the Moroccan Government, could not afford it, the Spanish

⁴ This was the third between Spain and Morocco, after the treaties of 1767 and 1780. Since the second half of the 18th century the Sherifian Empire started to open its borders to the European trade, signing agreements with European countries. In the Moroccan-Spanish case, it was also a political change. The relations between the two countries had been hostile because of the problem of the positions conquered by Spain in the North of Africa since the 15th century. Thereafter both countries tried not to settle their differences through aggression. However, during the 19th century they had some clashes. Pennell, 2006 [2003], pp. 164-166.

⁵ Becker, 1918, p. 18; Cantillo, 1843, p. 686; Cagigas, 1952, p. 21.

⁶ Franqueira, 1933, p. 38.

⁷ Becker, 1918, p. 62; Cagigas, 1952, p. 49.

⁸ Abitbol, 2009, pp. 315-322; Pennell, 2000, pp. 64-67.

Government could occupy the Moroccan custom houses in order to collect the compensation. And that's what happened⁹.

Two decades later the right to purchase properties in Morocco was widespread, after the signing of the Treaty of Madrid, on 3rd July 1880. The main issue of this agreement was the consular protection. Some commercial agents and rich men of the country benefited from this legal system, which protected them from Moroccan law. Thus, the protected could escape from the courts of their country and avoid the Makhzen taxes, losing the Sherifian Empire very important incomes from the richest people. In Madrid the European countries and Morocco tried to set the limits of the consular protection, an aggression to the sovereignty of the Magribian country. But it occurred the opposite. Along the second half of the 19th century the Moroccan Government tried to modernize the old structures of the country, with the help of foreign powers, especially Great Britain. But they did not succeed. They obtained debts, and a social, economic and politic crisis, as the external trade penetrated and provoked the failure of the local economy. The consular protection did not beneficiate the country's needs. In addition, the treaty of 1880 got new advantages for the European citizens. One of them was the generalization of the right to acquire properties:

«It is recognized to all the foreigners the property right in Morocco.

The purchase of properties should be made with the full consent of the Government, and the titles of these properties will be subject to the formalities prescribed by the laws of the country.

All questions that may arise regarding this law shall be decided in accordance with the same laws, except the appeal to the Minister of Foreign Affairs stated in the Treaties.»¹⁰

Although the Moroccan Government could not avoid this new step in the European penetration, the Makhzen, and the Sultan, maintained, as we have seen since the Spanish-Moroccan Treaty of 1799, the power to authorize a purchase, which generated, at least from Spain, several complaints from authors and law experts¹¹.

⁹ Rodríguez, 2002.

¹⁰ Becker, 1918, p. 115; Cagigas, 1952, p. 88.

¹¹ Cervera, 1884, p. 79; Franqueira, 1933, p. 38; Rodríguez-Aguilera, 1947, p. 219, alleged that the Makhzen denied systematically every European petition to buy a property.

This article remained valid with the new international treaty related with the Sherifian Empire, signed in Algeciras, Spain, on 7th April 1906. It was the result of an international conference to settle the future of Morocco. After the signing of the Entente Cordiale between France and the Great Britain in 1904, these imperial powers entered in a new era of peace and collaboration to avoid any conflict between them and to help each other in case of aggression by another country. Thus, France agreed to not to block the British colonial penetration in Egypt, while the Great Britain agreed to do the same with the French pretensions in Morocco. There was also a secondary agreement, signed by France and Spain, in which both accorded the distribution of the Sherifian Empire in two hinterlands. The Spanish one was the northern fringe of the country. But Germany, a new colonial power after its unification, reacted to this treaty with the visit of the Kaiser Wilhelm II to Tangier in 1905 to proclaim himself as the defender of Moroccan independence, despite he also had imperial pretensions. The Algeciras Conference was convoked to curb the German hostility, but finally confirmed the colonial division of Morocco. The diplomatic delegation of the North African country, as happened in other occasions, did not have a relevant role in the conference, although its country was the protagonist of the meeting¹².

As we said, the article 63 of the new treaty also renewed and extended the 11th one of the Treaty of Madrid of 1880. But in this case the text forced the Makhzen to not to deny, without any reason, the authorization to buy properties. In addition the Europeans could acquire lands without the consent of the Moroccan authorities in a radius of ten kilometers around the ports opened to external trade and in a radius of six kilometers around the cities of Ksar el-Kebir, Asilah and Azemmour¹³. The changes are clear enough. Unlike before, from 1906 the Makhzen was obliged to authorize a sell. In order to restrict its power, there was some places, where the European colony (formed by traders and diplomats) did not have to wait for any permission to buy properties. It was a new erosion of the power of the Sultan. The radius also let Europeans to buy rustic lands.

Finally, the 24th article of the Franco-Spanish agreement of 27th November 1912 closed the cycle to permit foreigners to acquire properties in Morocco. It only renewed

¹² Martín and González, 2007, pp. ; Pennell, 2006, pp.

¹³ Becker, 1918, pp. 203-204; Cagigas, 1952, pp. 160-161.

the two previous treaties (the most important of all we have analyzed). But there was a substantial difference. Since 1912 the Spanish government was officially the responsible to supervise the Makhzen in its hinterland. Although Morocco was under the regime of protectorate, in the practice the colonial powers ruled their new territories without any opposition. Therefore, the problems to buy disappeared because the colonial authorities were interested in developing the agricultural colonization. Since this moment, and despite the right of the Sultan to ban, the pressure of the new colonial authorities and the compromise to no block this kind of operations, in a principle there would not be any more problems for the foreigners to acquire properties.

The Registro de inmuebles.

This institution founded in 1914, as we said before, was based in the same procedure applied by the Act Torrens Act or Real Property Act. It was a registration system based on the existence of a public book of registers which had to record every information that described and defined every property. Each entry in the log book thus became a sanction granted by the state which established the right of property in an absolute, unassailable way. The procedure was the following. The landowner had to apply for an inscription. At that moment he and his land borderings were summoned to establish the provisional land limits. When demarking the land limits a provisional plan was made in order to describe them. Finished this process the act was provisionally approved. If there was not any contesting from the neighbours, the property was registered and its title deed issued. On the contrary, the complain had to be solved through legal channels, so that the registration could only go on after the judge verdict¹⁴.

The Dahir which introduced the *Registro de inmuebles* established the next registration process. First of all, it wasn't obligatory to register the properties. In second place, the introduction of the Spanish justice didn't abolish the Moroccan, so both of them coexisted in the same territory. To start the registration process it was necessary to present an application and validate the legal documents that confirm the possession of the lands. Those written in Arabic should be translated into Spanish so that the colonial

¹⁴ Whalan, 1976.

civil servants could understand them. Once checked the documentation, was fixed a day to proceed with the demarking of the land in ten days in advance. It was a public act, so its celebration was announced in order to inform all interested people. The demarking was led by the property recorder, assisted by an expert or by a technical officer, which was in charge of establishing the land limits and making a provisional plan. If the applicant didn't show up the process couldn't be made.

Once approved in a provisional way the demarking of the property, there was a period of three months to oppose the process by providing documentation to confirm the contestation. If there wasn't any contestation during this period, the property was registered and its title deed issued. In case of contestation, it should be solved through legal channels. This process could last many years, so it was hardly criticized by various Spanish lawyers. There wasn't any specific squad in charge of the property registrations, so temporarily judges was responsible of it. Nevertheless they continued they task until the final protectorate. A decision that caused many critics.

The new property title contained specific details of the land, personal details of the owner, documents of acquisition, its taxes, a credential of accomplishing all the legislation prescriptions and the definitive plan of the land. This title voided the previous ones, and it was the base to subsequent property transmissions. Once the first registration was done the title was unassailable. The contestation was only possible during the registration process.

This proceeding could be applied for all private properties. Nevertheless the Moroccans could keep theirs under makhzenian jurisdiction; while the foreigners had to accept the Spanish one, although its registration wasn't obligatory. To register the acquisitions they should have made it by following the established rules of the international treaties mentioned before. However, until the establishment of the *Registro de inmuebles* several foreigners acquired lands in an irregular way, without paying attention to the settled rules by the international agreements. Because of this, it was not possible to register them. So these properties remained under Moroccan jurisdiction. In case of a later selling, the new owner could apply¹⁵.

¹⁵ Rodríguez-Aguilera, 1947, pp. 221-223.

Critics to the *Registro de inmuebles*

According to the expert Commission that was in charge of introducing the Spanish law in Morocco, the new property legislation was made «an imitation of the French zone with the same purposes that they advised there and to reveal the precepts that establish the Dahir». The adaptation in the Spanish zone of the French property legislation settled since 1913 was admitted, even though the 24th article of the Hispanic-French agreement from 1912 specified, as we said before, that both Governments could settle down their own legislation. It wasn't an exception. Some researches had shown that the Spanish colonialism tried to imitate the French model in many aspects, up to the point of making them think about their aptitude¹⁶. The same Commission also affirmed that the new legislation was inspired in the Royal Decrees relatives to the Property Legislation of the colonial possessions of Guinea, with the appropriate modifiers for Morocco. In fact it was valid during some time.

The sources in which the Morocco colonial property legislation had inspired were a debated element in the judicial and academic fields. According to José Castán Tobeñas, Civil Law professor in the Valencia University, «it's an almost exact reproduction, in that Zone, of *l'immatriculation des immeubles*, introduced in the French Zone». He believed that they shared some of the most important aspects of the Torrens Act, like the acts that could be inscribed, the advertising of the Register, the general effects of the registration of the preventive notes, cancellations and civil responsibility of the recorders. However there was a distinguishing in the obligatory registration and especially in the procedure to obtain and make the first and the second registrations, more important question, at his judgement, among all the rest. Conversely he didn't denied the inspiration in the Torrens Act in the register and title forms, in spite of regretting the difficulties carried by the first registration¹⁷.

¹⁶ That's the case of the interventions, which imitation model was from Argelia. «The precarious character of the Spanish colonization in Morocco remained fully reflected in the institutional tools used by politics and military to achieve an occupational plan and management of the land little thorough and lack of means, and conditioned by the own reaction of the Moroccans». Also some aspects of the justice. Cañabate, 2011; Mateo, 2003, pp. 55-60.

¹⁷ Castán, 1922, pp. 25-26, 77-78, 86.

For the jurist Cesáreo Rodríguez-Aguilera the Commission in charge of establishing the Spanish colonial law inspired his labours in the current disposition in Spain and in the Dahirs promulgated in the French zone about the subject.

But this wasn't the point that most worried the experts about the Property Legislation. There were other issues connected with its running that caused controversy and critics. Miguel Gamba Sanz worked as judge and recorder of properties in Nador during the first years of the protectorate. Even though he has a favourable opinion of the *Registro*, because according to him it improved the Moroccan property legislation, he was conscious that its running had defects. On one hand he recognised the institution as the best way to assure the colonization. On the other hand he recognised that the main problem, which complicates the registers, was that the property titles were only untouchable after the first register. Because of this the process was long and tedious. Any objection to the labours of demarking could cause that the process continued as a dispute¹⁸.

One of the most critic expert against the Register and its process was Juan Francisco Marina Encabo, property recorder, who worked as a attorney in Morocco. His critics were focused in the language and the money and time spent during the first registration. First of all, he conceived the language as a barrier between colonizers and colonized. As we have seen, all the documents that the applier delivered in Moroccan had to be accompanied by its Spanish translation. He regretted the lack of an interpreter who could contrast the translation of the original document to avoid misunderstandings and cheatings. According to this author there were some cases in which several lands were registered without being purchased or that the real owner didn't agreed to sell them, in that case he remarked that the responsibility wasn't from the recorders. Another problem related to the difference of the language was the lack of understanding between all the parts during the act of demarking. If all parts attended the act («not always possible», according the author, even though that the Dahir requires the appearance of the applicant¹⁹) the most common situation is that they didn't get to understand each other.

¹⁸ Gamba, 1925, pp. 20-22, 34-35.

¹⁹ This was another obstacle in the land registration that could lead to the contestation of the demarcation and a later lawsuit, which delayed the property register. The recorder proceeded anyway with the

Mostly all Spaniards didn't know the native language and among the Moroccans few of them could speak Spanish²⁰. Another argument supported to demonstrate that the Torrens Act didn't fit to the register situation in Morocco was the amount of money and time wasted during the process of registering a property. Any transaction of demarking could last for five or six months, without considering any reclaim against it, which was likely to end up in the courts. And as Marina Encabo said, the cost of a demarking act was very high. Both circumstances lead many owners to not to register their properties²¹.

Marina Encabo also mentioned the provisional naming of the judges as recorders. He denounced this fact two decades after the Register implantation, «time enough to this provisional status to reach its end». But this situation kept going on. To mend it, he asked for the creation of a Property Register squad under the orders of the president of the Audience of Tétouan, the maximum court of the Spanish justice in Morocco. This unit was ruled by the Spanish mortgage law. It even existed among the colonial possessions in Guinea Gulf, where the vacancies in this occupation could be covered in the first place by the Peninsula recorders. According to Marina Encabo the application of this guideline, the professionalization of the recorder, would improve the register labours²².

Another jurist, Ramón V. Franqueira, joined in the critical group against the Property Legislation. He pointed at two huge defects, that especially harm those who applied for a property registration. On one side there's the mentioned «slow, expensive and detailed process to prepare the registration [also referring to French Morocco and Tangier]». On the other side, the annoying process for the first registration wasn't worthy enough compared with the unassailable guaranty of the owner title: «in spite of establishing a Register of the real legal state of the Property Legislation, they introduce a simple administrative Register that protects the third's rights». So, he denounced that the title was only unassailable since the second registration. The first one was at the mercy of the contestations even though the documents given by the first applicant were theoretically checked and certified by the recorder. This was the centre of his complaint.

demarcation, and once made the contestations started arriving from the adjoining owners. Consequently the registration was delayed.

²⁰ Marina, 1933, pp. 908-909.

²¹ Marchán, forthcoming, chap. III.

²² Marina, 1935, p. 529.

Why was possible to impugn if the documents delivered by the applicant had been checked and validated? For this reason, after the provisional demarking of the land the Register could become a simple archive to accumulate documents. To illustrate this position he quoted the case of a property of the Makhzen called Ain Buchina. Its inscription was applied in the Larache Register in 1919, but was impugned. The judicial sentence appeared 15 years later, nullifying the application. As a consequence, according to Franqueira, «so as not to invalidate the acquisition of a building of a third, it would be necessary a second registration»²³.

Manuel de la Plaza, who practiced as a lawyer in Morocco, didn't show up so critic as the previous authors, but believed that a reform of the Property Legislation in Morocco was needed²⁴. In his point of view the *Registro* was also inspired in the French zone system and from the colonial possessions of the Guinea Gulf. But he criticised the adaptation, little considered, of several elements of the Spanish mortgage system. Also, Plaza, thought that this system was different from the Torrens Act, the base of all organization. Despite his critics against the registration system weakness, we can deduce from his words, that it was the better possible one:

«In any assumption, the adopted system, even with these deviations [referring to the adaptation of the dispositions of the Spanish mortgage system], it was the only possible one in a country where time ago and still nowadays needs to define the legal and physical condition of the properties; without it, the value of the land would be remain paralyzed.»²⁵

It was probable that he didn't show up more critic with the Register due to, besides working for the Audience of Tétouan, he also performed some political

²³ Franqueira, 1942, pp. 399-400. Galo Ponte Escartín indicated this possibility after the *Registro* establishment; its influence will change the system of the Moroccan properties: «The establishment of the *Registro de inmuebles* will be only written in the official bulletin of the zone without achieving legal reality or will produce a transcendental reform in the being of the territorial property». In 1950 the propagandist and military. Epifanio González Jiménez admitted that the delimitation of any kind of good, fundamental process to make the first registration in the Registro, was «target of the biggest disputes, because after being catalogued and later catalogued, a land supposed Majzen and gathering conditions for being colonized resulted after the Native Colectivities or Yemaas, particular property or Habous». González Jiménez, 1950, p. 187; Ponte, 1915, p. 70.

²⁴ Plaza, 1941, pp. 6-7.

²⁵ *Ibid.*, pp. 15-16.

positions in Morocco. De la Plaza was the High Commission General Secretary, a charge below the High Commissioner²⁶.

The Judge Cesáreo Rodríguez-Aguilera Conde critics weren't also so profound. We have to take in account that in his analyzed Works, he offered a general perspective of the Spanish justice in Morocco. So, the property right was another of his study subjects. In his doctoral thesis he considered that the building properties were safer with the protectorate instauration:

«[The property in Morocco] crosses from instability and insecurity caused by former anarchism from the Morocco Empire, to a state of accuracy, valuation and safety of itself, affirming vigorously from the Protectorate implantation.»²⁷

In this work, about the different jurisdiction coexistence during the protectorate, he developed quickly this issue, standing up for the applications of the precepts of the Muslim right. According to Rodríguez-Aguilera, the building law from the protectorate should have inspiration in the native law, «without scarifying its development to the discovery in the detail of the occidental pure Maliki orthodoxy», the school of Fiqh that followed the Moroccan justice. Nevertheless he admitted that is was quite complicated making it because there wasn't any Spanish works dedicated to this subject, as a consequence of the lack of academic interest that Morocco awakened in the past²⁸.

Conclusions

The right to acquire properties in Morocco from foreigners, especially Spaniards, evolved during the XIX century. First of all, it was necessary the governmental authorisation, but with the narrowing of the colonial siege in Morocco, this process became a simple formalization, particularly since 1912, when France and Spain began to tutelary, to rule *de facto*, the Majzen. Afterwards its implantation in the Spanish zone, the *Registro* became a tool to create trust among the future foreign

²⁶ Cañabate, 2011, pp. 242, 277.

²⁷ Rodríguez-Aguilera, 1947, p. 217.

²⁸ *Ibid.*, pp. 226 y 295.

owners. Consequently, among other motivations, to encourage the farming colonization. Thanks to the revelation of the demarks and the property titles the building owners had to be more secure. However the registration process it could be very long and sometimes it didn't reach an agreement. For this reason the *Registro* was criticized from various points of view among the experts in the subject.

Beyond his inspiration or not in the Torrens Act, which produced certain debate, what especially worried those interested in the *Registro de inmuebles* was its most pragmatic aspect, the effective running. For this reason they pointed out some practical problems such as the language, slowness and the high costs of the process in order to obtain the property title, the need for a professional recorders unit or to assure the unassailable of the first registration (the case Ain Buchina is an example of the magnitude of the problem). So, even though in some occasions some solutions were suggested, some of the experts wondered about the possibility of changing the property system, especially to introduce the Spanish mortgage law. Apparently these critics were not took in account, despite the good intentions of their authors. There were only two reforms: in 1922 and in 1934. None of them included the critics at least until the last date. Concerning about an hypothetical implantation of the Spanish registration system, the *Registro de inmuebles*, promulgated in 1914, was a current institution until the end of the protectorate.

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