

A LEGAL APPROACH TO RENT REGULATIONS IN THE EU

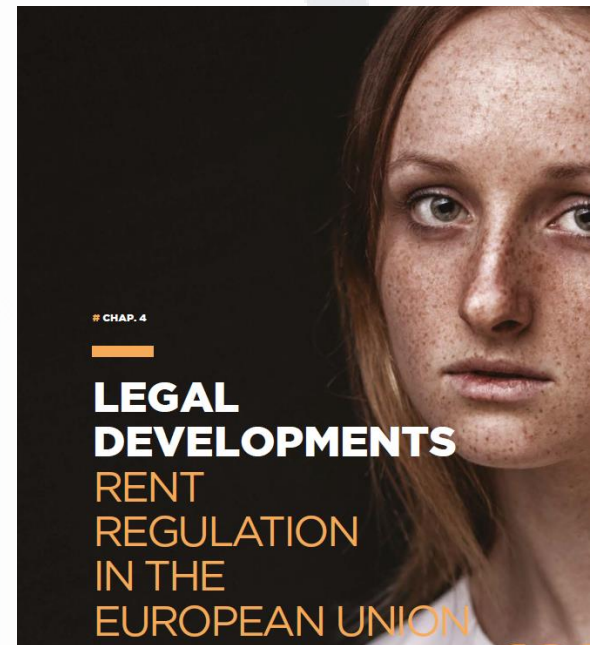
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RIGHTS-BASED APPROACH TO HOMELESSNESS

- FEANTSA and its members consider homelessness as a situation that deprives people of fundamental rights
 - Reducing homelessness and improving access to housing would ensure the right to housing.
- Housing Rights Watch: multidisciplinary European network committed to promoting the right to housing for all. (advocacy and strategic litigation)



RENTS v INCOME

- Increase in rents to private housing, especially in cities with a tight rental market
- Growing financial effort for European citizens
 - 1/3 of the inhabitants housed in the private rental park.
 - 1/ 10 spends more than 40% of income on housing
- Poor households face an excessive effort rate 8 times more (37.1% in excessive effort rate in 2019) than non-poor households (4.6%).
- Disconnection between rents and household incomes
- Governments decide to regulate the rental market to ensure access to affordable housing.

AFFORDABILITY

- Key component of the right to housing
- Article 11(1) of the International Covenant on Economic, Social and Cultural Rights. Right to and adequate standard of living. –adequate housing-
- General Comment No. 4 of the UN Committee on Economic, Social and Cultural Rights
 - ***“Housing costs should be at a level that does not threaten or compromise people’s other basic needs.”***
 - ***“States must ensure that housing costs are not disproportionate to income levels”.***
- Governments have a wide range of measures at their disposal to remedy market failures, including rent control.

FINANCIALIZATION OF HOUSING

- An obstacle to the realization of the right to housing.
- As housing is a basic need, a right, it should not be the subject of speculation.
- The economic activity of actors such as investment funds or vulture funds can have a structural effect on rising rents due to the large number of homes they hold in their portfolios.
- The 'Expropriate Deutsche Wohnen & Co' initiative, aimed to bring buildings owned by large landlords back under public control to reverse the privatisation of public housing in Berlin.
 - On September 26th, 2021, Berliners (56.4%) voted “Yes”

RENT CONTROL: DIFFERENT REALITIES

- What?
 - Limits to the initial rent
 - Rent review of a lease in progress
 - Renewal of the lease, a different contract
 - Rent caps at a set level, at a given time. (Freeze)
- Exceptions: renovation
- Private law, different in different countries in Europe.
- Rental housing v home ownership (Germany country of tenants)
- Social housing is declining throughout Europe.
- Housing competence of the State/ regions
 - EU more impact: Airbnb, consumer rights, etc.
 - Municipalities, a bigger role.
- Role of housing observatories/ Essential to Control of compliance with the rent limitations.

BALANCING THE RIGHTS OF LANDLORDS AND TENANTS

- Balance between the landlord's right to property and the tenant's right to housing.
 - The notion of social function evolution of the right to property
- Fear that landlords will decide not to rent their properties or consider other uses (short-term rental)
- Dual objective: preserve the supply of affordable housing, ensure security of tenure for the occupants (evictions)
- Tension right to housing and right to property
- ECHR does not oppose rent controls, but it need to strike a balance between the general interest and the landlord's right
- ECHR case-law notion of "*reasonable and adequate rent*"

RENT CONTROL IN GERMANY

- Germany: Highest % of private sector tenants in the EU (55%)
- Rent Mirror (Mietspiegel): serves as a **reference** for updating the rent of existing leases and publishes average rental prices.
- 2015: Rent Control Act (*Mietpreisbremse*) allows to limit the amount of rent for **new rentals**:
 - the rent at the beginning of a lease cannot exceed the local comparative rent by more than 10%.
 - Tenant can challenge the rent too high if the lessor does not provide the necessary information
- In Berlin also **rent cap** (*Mietpreisdeckel*)
 - Judgment of the Constitutional Court 25.03.2021. Unconstitutional.

FEDERAL CONSTITUTIONAL COURT GERMANY

- *“Rent-regulation provisions, as legislation defining the contents and limits of property, are permissible under constitutional law. In particular, the interference with property rights is proportionate.”*
- *“It is in the public interest to prevent the displacement of economically weaker sections of the population from areas where demand for residential accommodation is high”.*
- *“Therefore, rent-regulations are necessary; there are no other means that would, with certainty, be equally effective in the short-term. The legislator found a fair balance between the legitimate interests of property owners and the common good”.*
- *The guarantee of private property does not protect expectations of the highest possible rental income.*

RENT CONTROL IN FRANCE

- Since 2012: a decree prohibits rent increases in 28 municipalities above the IRL
 - Exceptions in the case of major works or manifestly undervalued rent
- 2018: the ELAN law provides for an **experimental rent control system** for 5 years in strained housing areas:
 - An approved observatory
 - Obligation of landlords to reimburse the tenant if not respected:
 - In case of non-compliance: administrative fines up to €5,000
- The Prefect had to set reference rents per square metre each year for each housing category and geographical area
- Rented dwellings cannot exceed the median rent known as the upper reference rent by more than 20%



CONCLUSIONS

- Need to impose conditions and restrictions on the right to property in order to fulfil the social function of housing.
- Rent controls are becoming a key short-term measure, in conjunction with other public policy instruments.
- International and European human rights law has established that the full guarantee of the right to housing is not compatible with a deregulated system in which the state delegates its responsibility to private markets without the necessary safeguards.
- Market intervention continues to be constrained by ideological considerations.
- Although the pandemic has legitimised public action on a large scale, measures are still modest.
- More decisive action is required to ensure an adequate supply of housing and allowances for low-income households.