

**Diàlegs d'Habitatge**

*The option of rent  
regulation in response  
to the affordable  
housing shortage*

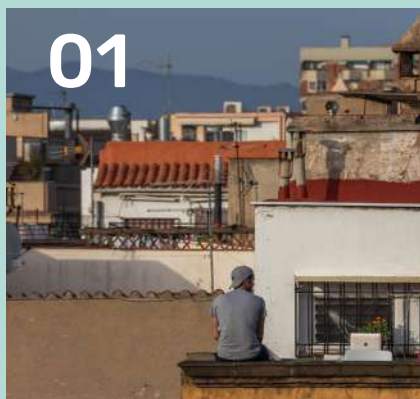
An analysis of the rented housing situation in Barcelona  
in the context of Catalonia and Spain, and European  
and international examples of price-control policies

# *The option of rent regulation in response to the affordable housing shortage*

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and Spain, and European and international  
examples of price-control policies

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and Renovation

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# Introduction

**How can fair and affordable rent prices be guaranteed? This is a question that we have asked ourselves time and again over the last few years, although the issue has only recently entered the public agenda in a country where the culture of ownership has been promoted historically (and well into the 21st century) as the prevailing model for access to housing.**

The subject has been gradually introduced into the political and media agenda as increasing numbers of people have opted to live in rented properties, both in Catalonia and in the rest of the Spanish State, and lease prices have risen more and more, two phenomena that have been occurring in parallel and with special intensity in large cities such as Barcelona. The start of the economic crisis in 2008 led to the impoverishment of large sections of the population and mortgage credit restrictions, hampering the option of buying a flat. The percentage of Barcelona's population living in rented housing has already reached 35%.



The number of people living in rented housing started rising at the same time as an upward trend appeared in lease prices, which have increased by 36.4% in Barcelona since 2013. This has unleashed an ever-increasing gap between family incomes and rent prices, which particularly affect people with more moderate or lower incomes, to the extent that it has become a factor that generates social inequalities.

The worst example of this are rent-default evictions, which affect families unable to meet the cost of this price inflation and whose numbers have multiplied over the last few years. Whereas civil society organised itself at the start of the economic crisis in 2008 to fight against mortgage evictions, mainly through the Platform for People Affected by Mortgages (PAH), today it does so chiefly to demand fair and affordable rent prices with new movements such as the Tenants' Union. In addition to these home-grown social movements, numerous neighbourhood associations, groups and unions continue to champion the right to housing through local approaches.

Pressure from social movements has helped to put the issue of rented housing on the agenda over the last few years. The debate on rental price regulation reached Catalan and Spanish institutions alike between 2018 and 2019. In Catalonia, the regional government presented a proposal to regulate rent prices in the middle of 2019, which failed for want of support in the Catalan chamber. But following a complex process to reach the necessary political consensus, more recently, in September 2020, a new bill to regulate rent prices\* promoted by the Tenants' Union was enacted in the Catalan Parliament.



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\* ACT 11/2020, of 18 September, on emergency measures for capping rental prices in housing leases and amendments to Act 18/2007, Act 24/2015 and Act 4/2016, on protecting the right to housing.



At the Spanish State level, during this government's term of office, the government agreement between the PSOE and Podemos political parties also provides for extending this regulation throughout Spain, though it is yet to be specified and implemented.

The application of this measure has not been without controversy. One of the main criticisms from its detractors is that price regulation will reduce the rental housing supply and will end up causing the undesired effect of raising prices. By contrast, its champions believe that this argument is founded on the perfect-competition market dogma, which is not how the property market really works. They recall that, during the period of the property boom (1997–2007), the sharp rise in the supply of residential property for sale, far from causing prices to fall, was accompanied by an exponential increase in prices.

Many cities in Europe and the rest of the world are already regulating rent prices. This publication will examine examples of such regulation in Berlin, Paris, Vienna and New York. Its application is not free of obstacles, however, and in many cases, the price-control system initially thought up has required tweaks and adjustments in order to achieve its desired goals.

With the aim of furthering the debate on the effects of implementing price-regulation policies in our local context, the Economic, Social and Cultural



Rights Observatory (DESC), working in collaboration with Barcelona City Council's Municipal Housing and Renovation Institute (IMHAB), organised a day event on 18 November 2019 on this issue.

Taking part in the event, which was held at the Barcelona Lawyers' Association Centre, were representatives from Berlin and New York City Councils, who explained how rent prices were regulated in their respective cities. The presentation was given by **Florian Schmidt, a sociologist, activist and head of urban planning** from Berlin's Friedrichshain-Kreuzberg neighbourhood; and by **Lucy Joffe, the Assistant Commissioner for Housing Policy at New York City Council's Department of Housing Preservation & Development**.

The day event ended with a round table, moderated by **Irene Escorihuela, from the DESC Observatory**, taking part in which were **Jaime Palomera, the spokesperson for the Catalan Tenants' Union; Maria Sisternas, an urban planner and architect, and Marina Estévez, a journalist at Eldiario.es** specialising in housing.

This study is based on the content of that day event and subsequent work entailing interviews and documents, carried out mainly in a pre-COVID-19 crisis scenario. The goal is to continue furthering the debate on the consequences of regulating rental prices in our local area. We hope you find this study useful. 📖



# 02

An historic look at  
the reasons for the  
affordable housing  
shortage in Spain





Compared to other European countries, Spain has a serious shortage of affordable housing, above all rental accommodation. Almost half of Spain's population (43%) renting a flat at market price spend more than 40% of their income on rent. This is one of the highest housing cost overburden rates of all the EU member states, surpassed only by Greece (84.6%), Serbia (68.3%), Bulgaria (50.4%), Croatia (45.2%) and Lithuania (48.3%), according to Eurostat data (2016).

Problems accessing rental housing are further exacerbated by a second factor. Spain has one of the smallest public-housing stocks, rental housing in particular, in Europe. Only 2% of Spain's total housing stock corresponds to public and social rental properties, compared to 32% in the Netherlands, 24% in Austria and 19% in Denmark. This is indicated in a reported entitled "Gestión híbrida de la vivienda social en España. Hacia modelos colaborativos de provisión pública al margen del lucro" [Hybrid management of social housing in Spain: Towards collaborative public-provision models beyond profit] from the Alternativas Foundation (2019).

## The affordable housing shortage, a problem that dates back to the early 20th century

The fact that Spain lags behind many of its neighbouring countries when it comes to housing policy, particularly central and northern European countries, is nothing new. It was more than a century ago that Spain drifted off the course being taken by many of these countries which, at the start of the 20th century, had begun applying their first social housing programmes. The Francoist dictatorship only worsened Spain's lag in terms of housing policy, a lag which it has been unable to reverse since the transition.

Under the first social housing programmes, industrialised countries in northern Europe – such as Sweden, Denmark, Austria, Germany, the Netherlands and the United Kingdom – aimed to respond to the first great rural-urban migration wave of the 20th century, which increased housing demand in urban centres. It was during the first half of the 20th century, then, that most European countries built up a considerable social housing stock. In the case of France, although there had already been a few initiatives in that respect, it was not until the 1950s and 1960s that the mass construction of social housing accelerated.<sup>1</sup>

The context in Spain was quite different.



Spain's authorities proved incapable of responding appropriately to the first rural-urban migration wave of the 1920s and the new urban population ended up living in shantytowns or substandard housing on the outskirts of big cities, due to the shortage of social housing. The only measures that were adopted, which were wholly insufficient, came from the enactment of the first legislation on cheap housing (1911 and 1922).<sup>2</sup>

A few small advances were made during the Second Spanish Republic (1931-1939), such as the construction of workers' residences and the enactment of legislation to fight unemployment, which exempted housing with cheaper rent from some municipal charges, but the Spanish Civil War broke out before they had time to succeed.<sup>3</sup>

The turbulent start to the 20th century in Europe, with two world wars (the first from 1914 to 1919 and the second from 1939 to 1945) and the Spanish Civil War in between, led to a considerable fall in housing stock in many countries across the continent. It was in this context, with the difficulties the continent faced trying to rebuild the housing stock at the pace needed, that it opted for policies to freeze rental prices, thereby slowing down the rise in price of the scarce housing supply.<sup>4</sup>

In Spain's case, its government adopted

a rigid rent-price control in 1920, with the so-called Bugallal Decree, which was subsequently maintained during the Francoist dictatorship and even well into the restoration of democracy. By contrast, it did not follow the course taken by other countries with regard to the expansion of the affordable housing stock.<sup>3</sup>

From the end of the Second World War and up to the 1980s, many European countries put considerable effort into rebuilding and expanding their housing stock, especially social and affordable housing, for example, through subsidies and tax incentives for those developing such properties. That way they also met the growing housing demand arising from the baby boom.



View of Carrer Argenteria de  
Barcelona. 1936.

## The Francoist dictatorship exacerbated Spain's lagging behind in housing policies


While Europe was steaming ahead building up its public and social housing stock between the 1950s and 1980s, above all rental housing, Francoist Spain was promoting the culture of ownership.

It should be borne in mind that the policy of autarchy adopted in the early years of the Franco regime hindered the recovery of Spain's housing stock, given the initial shortage of foreign investors. The Francoist regime, suffering from international isolation, passed acts theoretically aimed at solving its housing-access problems for large sections of the population. The most notable was the Support Facility Housing Act of 1944, which is fundamental for understanding how Spain's official housing-protection system is configured, even today. These regulations promoted state-built dwellings for private ownership rather than for rent, the opposite of what was happening in the rest of Europe. During the 1950s, it was the regime itself that directly developed this housing, whereas, from the 1960s on, it opted to grant public funding to private property developers to build it, the model that continues to this today. <sup>4</sup>

It was during the 1960s that the Francoist regime began to promote mass access among the population to privately owned property, while continuing to disincentivise the alternative of rental property. The so-called Horizontal Property Act of 1960 incentivised the construction of tall building blocks (with flats located horizontally one above the other) in cities throughout the State and,

above all, in outlying neighbourhoods, intended for purchase. In fact, this was the period when access to mortgage credit began to be promoted among city residents to this end, credit that was provided at the time by a public bank: the Banco Hipotecario Español. <sup>4</sup>

According to several authors, this system also had a clear political purpose, based on the premise that families with mortgage debts would be more inclined to resist harsh labour conditions and would be less predisposed to take part in social disturbances. And we should remember, on this topic, the eloquent remark made by Franco's Minister of Housing from 1957 to 1960, José Luis Arrese: "We want a country of property owners, not proletariats". <sup>5</sup>



**During the 1960s, the Francoist regime also proved incapable of adequately responding to the second great migration wave of the 20th century and shantytowns expanded again**



During the 1960s, the Francoist regime also proved incapable of responding appropriately to the second great migration wave of the 20th century, when hundreds of thousands of people moved from the countryside to the industrial hubs of cities such as Barcelona, Madrid and Bilbao, at the height of the period of developmentalism. Once again, the authorities failed to adequately meet the housing demand of the newcomers, leading to further expansions of shantytowns.

It was not until the final throes of the Francoist period that the regime started to dismantle shantytowns, relocating the people living in them to the large blocks of flats it developed on the outskirts of towns and cities, in neighbourhoods lacking services and basic infrastructures, described as “vertical shantytowns” because of their living conditions. The numerous protests held by the residents’ movement of the late Francoist period demanded improved living conditions for residents, especially in these outlying neighbourhoods.<sup>6</sup>

## From the Transition period to the emergence of the property boom (1997-2007)

The Transition period saw no substantial changes to the housing model that had developed during the Francoist dictatorship and the ownership culture continued to grow, with the provision of mortgage credit to the population through private banks or tax incentives for purchasing flats, at the expense of renting.<sup>6</sup> It should also be borne in mind that, just when democracy in Spain began to take root, a new trend appeared which went against the social policies fostered by the State in the previous decades. A new liberal wave was sweeping through Europe and the rest of the world, with Margaret Thatcher in the UK and Ronald Reagan in the USA at the helm.

In 1985, the famous Boyer Decree also liberalised rent prices in Spain, after a decades-long freeze, which led to an exponential rise in rental prices and made renting a less attractive option – with prices often higher than mortgage rates – for most of the population.<sup>7</sup> The foundations of the property boom that occurred between 1997 and 2007 had already been laid by the end of the 1980s, with the convergence of various factors.

First, it was influenced by the interest banks had in granting mortgage loans

**The interests of the financial and property sectors, the liberalisation of land and promotion of ownership culture in the media, some of the key factors behind the property boom 1997-2007**

for high amounts over long periods of time, so they could thereby receive more money as interest. In many cases, such loans were even awarded to people with little financial solvency, in high-risk conditions and at high interest rates.

Second, the property sector was seeking to maximise returns and therefore aimed to massively expand its construction and sales activity. Third, the collusion of the public authorities with the interests of these two sectors resulted in legislative changes, such as the Land Act of 1998, known as the “ley del todo urbanizable” [“everything developable act”]. From then on, all land was reclassified as developable by default, unless it had some kind of protection declared for it. The spirit of the regulations remained in force until they were reformed in 2007.<sup>7</sup>

Fourth, we should not forget the important role played by the media and commercial advertising in reproducing the discourse of ownership culture, legitimising and promoting the interests of the property and finance sector.<sup>6</sup>

This model led, on the one hand, to prioritisation of the free property market over public and affordable housing and, on the other, property ownership being preferred to property renting. Towards the end of the property-boom decade, 80.6% of Spain's population lived in flats they owned, a percentage that would fall from then on and which currently stands at 77.8% according to data from Eurostat (2016). Even so, it remains considerably higher than the figures for other European countries, such as Germany (51.7%), Austria (55%), Denmark (62%) and the Netherlands (69%).

In addition, we should note that social housing in Spain can be reclassified once a period of between 25 and 30 has lapsed, depending on the regional community – with the sole exception of the Basque Country, since 2003, and Catalonia since the start of 2020 –, a measure that is detrimental to the preservation of the public housing stock.



## The financial and mortgage crisis

This shortage in public and affordable housing further worsened the consequences of the economic and mortgage crisis of 2008, which broke the property-boom model. Facing a huge wave of housing evictions (570,708 occurred throughout Spain between 2008 and 2017, according to data from the General Council of the Judiciary), the authorities lacked the capacity to provide housing alternatives to the people affected.

Paradoxically, the greater the public and social housing demand, the fewer the efforts that were made to meet it. The economic crisis halted the plans made for expanding the public and affordable housing stock. Good evidence of that can be seen in the systematic failure of the Catalonia Housing Act of 2007 (which established that 15% of Catalonia's housing stock should be public and affordable within 20 years).

It was in this housing-emergency context that social movements such as the Platform for People Affected by Mortgages (PAH) organised themselves to put pressure on institutions to achieve, at least, measures for dealing with the most pressing needs. This social pressure gave rise to the State's popular legislative initiative (ILP) of 2013 for dation in payment and social renting, which ultimately failed in the lower chamber, although it did give considerable visibility to the demands of the PAH, and the Catalan ILP against evictions and energy poverty. The second initiative was passed in the Catalan chamber and led to Act 24/2015. We should, of course, remember that a large part of its measures were halted for over 3 years by the Constitutional Court, following the appeals lodged by the previous Spanish executive led by the PP.

## The reasons for rental price increases and the reaction of social movements

Right up to the passing of Act 24/2015, the housing debate was essentially focused on the need to guarantee housing alternatives for people at risk of residential exclusion, basically through social renting. But the debate on guaranteeing affordable rental housing for all city residents, through price regulation policies, was still absent from the public agenda. This began to change, particularly from 2017 on, through the acceleration of the phenomenon known as gentrification and the lease-price bubble.

ANAÏS LÓPEZ (Fotocasa and Habitaclia)

**“The last few years have seen a growth in tenant numbers, partly because of the impossibility of accessing housing to buy”**

Several factors have contributed to the increase in rental prices over the last few years. **Anaïs López, the director of Communication and Contents at Fotocasa and Habitaclia,** believes this increase is basically due to the rise in demand in a context where there is a shortage of supply: “The last few years have seen a growth in tenant numbers, partly because of the impossibility of accessing housing to buy”. The option to buy, for López, has declined in favour of renting, owing to the restrictions on mortgage credits following the collapse of the property boom.

While she regards difficulties in accessing a

mortgage as the “main reason” for the decline in housing purchases, López adds that this was also influenced by the “slight shift in mentality in favour of renting” that has been occurring over the last few years. “The percentage of potential buyers has been falling slightly year on year”, she remarks.

## Social movements believe that the reform of the LAU of 2013 also encouraged the increase in rent prices

According to social movements such as the Tenants' Union and the PAH, the reform of the Urban Leases Act (LAU) of 2013 is an additional factor. This reform, among others, reduced the minimum term for most leases from 5 years to 3 years and speeded up the processes for evictions, establishing that tenants had a maximum of 10 days to pay the rent they owed, from the date they receive the corresponding notice from the property owner. It should be noted that the LAU was reformed once more in 2019 and that the minimum term for leases is currently back to 5 years.

Another factor that has contributed to the rise



IRENE ESCORIHUELA (DESC Observatory)

### The “malpractices of REITs” are causing huge increases in rent prices

in rental prices is the activity of REITS (real-estate investment trusts), which are dedicated to purchasing and developing properties to let and which seek maximum returns for their shareholders, together with those of the investment funds that have entered the housing market.

Escorihuela believes “their malpractices with tenants” have been demonstrated and demands that at the very least they should be taxed, given that REITs are currently exempt from paying corporate taxes, in addition to enjoying tax advantages. In many cases they buy up blocks of flats to then rent them out at a much higher price, which in practice leads to the expulsion of residents unable to afford the increase in rent.

The **urban planner and architect Maria Sisternas** refers to the case of a block of flats in the Progrés de Badalona neighbourhood, purchased by the Lazora investment fund in July 2019. So, three months after acquiring the property, the investment fund started notifying its residents that it was going to increase their rent by 80%, from 1,000 euros to 1,800 euros, unleashing a unanimous rejection from social movements. According to Sisternas, not only social movements but also the owners themselves should position themselves in favour of “an internal control” and “self-regulation” of property activity, to protect against such malpractices.

Given all the factors that have contributed to the



Maria Sisternas during her talk at the Rent Regulation Conference held at ICAB on 18 November 2019.



JAIME PALOMERA

**Renting ought to be seen as a life-long residential option and not as a temporary solution**

exponential growth of rent prices over the last few years, the spokesperson for the **Tenants' Union**, **Jaime Palomera**, believes rentals require urgent regulation, since currently close to half of the population are being "condemned to extreme precariousness". According to data from the Tenants' Union, 42% of Barcelona's residents live in rented property (the official data put this at 35%). From their point of view, the reason for this precariousness is twofold: the lack of stability and the lack of affordable tenancies.

With regard to the stability of tenancies, it should be noted that the State decree on Rentals of March 2019 extended the length of leases from a minimum of 3 years to 5 years, an advance that social movements appreciated but considered insufficient. According to the Tenants' Union, renting ought to be considered as a life-long residential option and not as a temporary solution for those unable to buy, as occurs in Spain. Such is the case in the ten EU countries (the

Netherlands, Portugal, Italy, Greece, Sweden, Denmark, Finland, Switzerland, Germany and Austria) with permanent leases, which can only be interrupted in legally established exceptional cases.

With regard to affordability, as we will see in more detail in the following section, this is presently not guaranteed. 43% of the metropolitan area's residents spend more than 40% of their income on housing (when the maximum recommended portion, according to the United Nations, is just one third). When housing expenses represent an overburden for family finances, it is hardly surprising that the possibility of regulating rent prices is achieving greater social consensus. According to the Barcelona Municipal Barometer of July 2018, three out of every four people living in the city described themselves as in favour of price regulation. "The question is not whether we have to regulate prices but how", concluded Palomera, before the recent passing of the Rental Price Regulation Act in the Catalan Parliament in September 2020, on the initiative of the Tenants' Union. In any case, social movements now insist on the need for the effective implementation of this regulation. 🏠



# 03

## The current situation of rental housing in Barcelona in the context of Catalonia and Spain



Having taken a journey through history to identify the reasons for the shortage of public and affordable housing in our country, in this section we go on to describe the situation as it stands today, based mainly on data from the Barcelona Metropolitan Housing Observatory (OHB), which have been supplemented with official statistics and various indicators from the Fotocasa property portal. Promoted by Barcelona City Council, the AMB, Barcelona Provincial Council, and the Generalitat de Catalunya with support from the Catalan Social Housing Managers, the OHB is dedicated to producing studies for assessing and designing housing policies in the metropolitan area, as well as disseminating these data and making them accessible to city residents.

Detailed below are some of the current trends in renting in Barcelona in the context of Catalonia and Spain as well as other factors affecting the situation of leases in the city.

## The number of people living in rental housing in Barcelona is growing

The **director of the OHB, Anna Vergés**, maintains that, both in Barcelona and in the rest of the metropolitan area, “the number of people living in rental properties has been rising over the last few years”, reaching levels similar to those at the start of the 1990s, before the property-boom period (1997–2007), during which access to privately owned housing was basically promoted. As can be seen in Table 1, the percentage of rental properties is higher in Barcelona than in the metropolitan area as a whole.

A similar trend is found in Catalonia and in the Spanish State as a whole.

**TABLE 1. PERCENTAGE OF THE POPULATION LIVING IN RENTAL HOUSING**

	1991	2001	2011	2016–2017
<b>Barcelona city</b>	35.9%	28.5%	30.1%	35.0%
<b>AMB</b>	28.1%	20.9%	23.5%	27.8%
<b>AMB without Barcelona</b>	17.2%	12.0%	16.1%	20.0%

Sources: Population and housing censuses from 1991, 2001 and 2011; Barcelona Institute for Regional and Metropolitan Studies (IERMB), metropolitan statistics on living conditions, 2016/2017.



**TABLE 2. EVOLUTION OF PERCENTAGE OF LEASES VERSUS HOUSING SALES**

	2006	2018
<b>AMB</b>	41.7% lease	71.6% lease
	58.3% purchase	28.4% purchase
<b>AMB without Barcelona</b>	27.3% lease	62.3% lease
	72.7% purchase	37.7% purchase

Source: Ministry for Public Works, from the General Council of Civil-Law Notaries; and the Secretariat for Housing and Urban Improvement, based on deposits paid to Incasòl.

In the case of Catalonia, the proportion of rental properties rose from 16.6% to 23.6% between 2001 and 2017, according to data from Idescat. The proportion of the population living in rented property in Spain as a whole during that same period rose from 11.4% to 22.9%, according to Eurostat.

This trend has also coincided with an increase in leases and a “slight decline in the number of residential property sales”, according to the OHB’s director. In line with the above data, this has particularly been the case in Barcelona, as can be seen in Table 2.

## Rent prices are rising

As the number of people living in rental properties has been rising, so too have rent prices, especially since 2013, in big cities such as Barcelona. According to data from the OHB, rent prices in Barcelona rose by 36.4% between 2013 and 2018. They rose less, by 28.3%, in the metropolitan area’s other municipalities, between 2014 and 2018.

However, the recent pressure on rent prices in Barcelona has been spreading to other municipalities in the surrounding metropolitan area (see Table 3). According to the latest data from the OHB, from 2017 to 2018, the rise in prices in the metropolitan area’s other municipalities (6.7%) was already higher than the rise in Barcelona (6%).

The rate at which rental prices increase is not uniform in Barcelona’s various neighbourhoods and districts. So, for example, in 2018, rent prices reached their highest levels in Sarrià - Sant Gervasi (1,268.9 euros/month), Les Corts (1,089.5 euros/month) and Eixample (1,038.3 euros/month). Nevertheless, the pace of price increases has been levelling off more in these districts than in the city as a whole. Whereas rent prices in Barcelona as a whole went up by 6% from 2017 to 2018, the increase in these districts was between 3% and 3.5%, according to the Secretariat for Urban Housing and Territory.

It is in the districts with the lowest rents where prices are currently rising the most. According to data from 2018, the biggest increases occurred in Ciutat Vella (10.3%), Sant Andreu (8.1%) and Nou Barris (7.8%).

ANNA VERGÉS  
(Metropolitan Housing Observatory)

**“The pace of growth in rental prices has been levelling off both in Barcelona and in the metropolitan area as a whole”**

Taking into account the accumulated increase between 2014 and 2018, we can also observe that the increase was especially significant in Ciutat Vella, where rental prices rose by 43% during that same period. It was followed by Sant Martí (38%) and Nou Barris (35.1%).

Overall, throughout the city as a whole, Barcelona's average rent price is 929.6 euros a month, remaining above that of the metropolitan area's other municipalities (735.10 euros). Even so, residence self-containment is higher in Barcelona than it is in all the other metropolitan towns and cities. In other words, a greater proportion of residents in Barcelona who change dwelling do so in the same city, whether in the same neighbourhood or district or in another part of the city. According to data from the OHB from 2017, the rate in Barcelona was 72.8%, compared to 62.5% in the metropolitan area's other municipalities.

What Barcelona shares with the metropolitan area's other municipalities is a levelling off of the upward trend in rental prices. "The pace of growth in rental prices is being curbed both in Barcelona and the metropolitan area as a whole, because, since residents can no longer pay more, the market is tending to stabilise", explains Anna Vergés.

**Barcelona's average rent price is 929.6 euros a month, remaining above that of the other municipalities in the metropolitan area (735.10 euros).**

The pace of rental price rises has also been tempered throughout Catalonia and Spain, as corroborated by data from property portals. According to Fotocasa, prices rose by 5.1% in 2019 throughout Spain, the smallest growth in the last three years.

Anaïs López, the director of Communication and Contents at Fotocasa and Habitaclicia, explains that the regional communities of Catalonia and Madrid, where rent prices had risen sharply over the last few years, have started to see a curb in price rises (3.1% in Catalonia and 2.3% in Madrid in 2019). Nevertheless, this does not mean that price rises have halted; in fact, 2019 ended with the highest rental prices for the last 13 years in Spain. According to Fotocasa, they amounted to €10.18/m<sup>2</sup> by the end of 2019.

**TABLE 3. EVOLUTION OF AVERAGE RENTAL PRICES\***

	Average price 2018	Increase in prices from the lowest point*	Increase in prices 2016-2017	Increase in prices 2017-2018
<b>Barcelona</b>	€929.6 per month	+ 36.4% (2013)	+ 9.5%	+ 6%
<b>AMB without Barcelona</b>	€735.1 per month	+ 28.3% (2014)	+ 9.3%	+ 6.7%

Source: Secretariat of Urban Housing and Territory, based on deposits paid to Incasol.

\* The rent prices were at the lowest minimum level of the series in Barcelona in 2013, after which they started to rise. The minimum rent levels in the other metropolitan municipalities correspond to 2014.

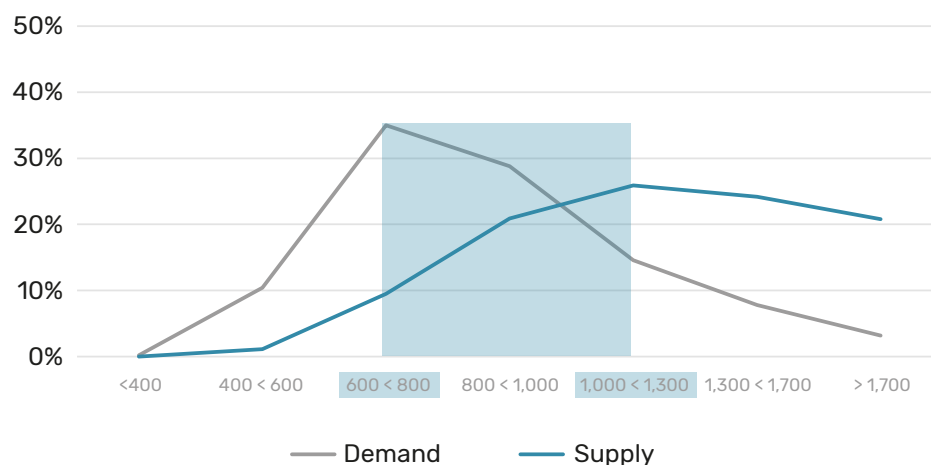


Anna Vergés, Director of the Barcelona Metropolitan Housing Observatory (O-HB).

## A considerable gap between asking price and offer price

Despite the reduction in the rate of rent increases, there continues to be a considerable gap between asking price and offer price, as the following chart shows. Whereas the range of rental prices in highest demand is between 600 euros and 800 euros a month (accounting for 35% of the demand), most offers are above 1,000 euros a month (68% of the supply). If we observe the way rental prices have evolved by neighbourhood, we find the more notable increases are in the areas of the city where prices were lower: Ciutat Vella, where they have gone up by 43% over the last 4 years, Sant Martí (up 38%) and Nou Barris (up 35.1%).

**CHART 1. RELATIONSHIP BETWEEN RENTAL PRICES OFFERED AND DEMANDED (FROM THE SECOND QUARTER OF 2017 TO THE SECOND QUARTER OF 2018)**



It is for this reason that many people are having difficulties finding flats to rent at the price they are looking for and, at the same time, many owners are having trouble finding tenants able to pay the amounts they are asking for.

Fotocasa's director of Communication, **Anaïs López**, recognises that city residents' rent prices "do not correspond with the level of prices currently found in the market". According to data from Fotocasa, 75% of individuals who rented or attempted to rent a property last year stated that price was their main obstacle.

An annual study from Fotocasa and Infojobs suggests that citizens throughout Spain are currently spending an average of 34% of their salaries on their monthly rent payments. In the case of Madrid, residents are spending 51% and in Catalonia, 49%. "These percentages mean citizens have no chance of putting money aside for savings at the end of the month and this therefore makes it almost impossible for them to save up to buy a property in the future", López acknowledges.

In the current situation, the people who have most difficulties finding a flat to rent in Barcelona are the ones looking in the lowest price ranges, as that is where there is less supply and, at the same time, higher demand, as shown in Table 4.



Anaïs López, Director of Communication and Contents at Fotocasa and Habitacía.

According to a study from Fotocasa and Infojobs, tenants in Catalonia and Madrid spend close to half their income on rent

One of the main reasons for this gap between rental price supply and demand is none other than the disparity between housing costs and city residents' income. As Table 5 shows, the average rental price has grown twice as much as city residents' incomes, taking into account the gross disposable household income (RFDB) from 2000 to 2018. Purchase prices of both new and second-hand dwellings have also experienced greater growth than household income.

It is in this context that families with low or moderate incomes have also seen their options limited when it comes to choosing the location or neighbourhood they wish to live in, as the prices in many areas are beyond their financial means.

So, for example, in 2018, a household with an income equivalent to 2.5 times the minimum wage (€2,146 net a month) could rent a dwelling in only 5 of the 33 municipalities in the Barcelona metropolitan area, according to the average price of flats in these locations, without spending more than a third of their income. By contrast, a household with income equivalent to 3.5 times the minimum wage (€3,005 a month) could access a dwelling in 30 of the 33 municipalities in the metropolitan area and in 4 of Barcelona's districts, under the above criteria.

This is causing the continued and increased residential segregation of citizens by neighbourhood, according to their socio-economic conditions, and undermines social cohesion.



**TABLE 4. DAYS FOR WHICH RENTAL OFFERS ARE PUBLISHED, ACCORDING TO THEIR PRICE**

Days for which the offer is announced	Average price offered
2-7 days	€772 per month
1-2 months	€950 per month
More than 5 months	€1,116 per month

Source: Data prepared by the Barcelona Metropolitan Housing Observatory, based on data provided by Habitatclia.



**TABLE 5. COMPARATIVE EVOLUTION OF FAMILY INCOME AND HOUSING PRICES**

	2000-2018 growth
Gross disposable household income	+63.4%
Average rent price	+127.7%
Average price of newly built dwellings	+147.7%
Average price of second-hand dwellings	+144.7%

Source: Data prepared by the Barcelona Metropolitan Housing Observatory, based on data provided by Idescat, Barcelona City Council and the Catalan government.

## More than 84% of evictions in Barcelona between 2013 and 2017 were rent related

The worst example of such inequality and discrimination in access to housing are evictions, most of which are currently due to rent arrears. In Spain as a whole, 67.4% of all evictions relate to rent (67.71% in Catalonia), according to data from the General Council of the Judiciary for 2019. During this period, a total of 54,006 evictions were carried out throughout the Spanish State, 12,446 of which (23%) were in Catalonia, making it the regional community with the highest number of evictions.

In Barcelona's case, the Metropolitan Housing Observatory states that the percentage of evictions for rent-related reasons reached 84.1% between 2013 and 2017. The number of evictions in the city remains high, although there is now a downward trend: in 2017, there were 2,519, 9% fewer than in 2016.

**Demographic changes and fragmentation of ownership, two factors that have to be taken into account for planning public housing policies**

## Other factors to bear in mind that have an impact on rent in Barcelona

The director of the OHB, **Anna Vergés**, also refers to other key factors for planning public housing policies in the city during the coming years, which relate to the profiles of both potential tenants and landlords.

In the first place, she highlights the importance of the city's demographic changes. She explains that the size of Barcelona's population "has stabilised" at around 1.6 million residents, although "the number of foreign nationals has grown". The overall number of foreign-national residents comes to 392,743, representing 24.2% of the total. Diverse profiles are included in this group: from individuals immigrating to our shores from poor countries in search of better living conditions to others moving here from fellow European states, attracted to Barcelona's quality of life or professional-development possibilities, among other things.

Add to that the ageing of the population. According to data from the Observatory, the percentage of young people has dropped by over 5 points since 1996 (from 20.4% to 15%), whereas the number of older people (over the age of 65) now represents 21.54% of the population.



Second, she refers to the profiles of the owners of dwellings found in Barcelona's rental or sales market. Throughout Barcelona there are calculated to be 774,190 dwellings belonging respectively to 512,178 owners, 97.1% of whom are individuals. The average number of flats per persons is 1.5.

As for the specific case of rental properties, these represent a total of 233,291 flats, a third of the city's main dwellings. The profile of the owners of the rental flats is distributed as follows. Of the total number of rental flats, 68.8% are owned by individuals, whereas 24.3% are owned by corporations (financial, property sector and so on) and 5.2% by the Authorities, whereas the remaining 1.6% belong to non-profit or religious organisations.

In sum, the structure of the ownership of the dwellings – both flats and the entire remaining stock – “is strongly fragmented and mostly in the hands of individuals”, states Anna Vergés. This is an especially significant factor when it comes to assessing policies or regulations that may be more effective in guaranteeing citizen accessibility to housing. As well as impacting on large property owners, they also need to take account of this strongly fragmented ownership and be aimed at the individual owners who make up a large part of the rental property on offer.

**As well as impacting on large property owners, they also need to take account of this strongly fragmented ownership and be aimed at the individual owners who make up a large part of the rental property on offer.**



## Rental prices on property portals, up to 57% higher than in the official statistics

As regards the data on rental prices provided by property portals, it should be borne in mind that they are substantially higher (up to 57%) than the official statistics. This was underscored when Spain's central government published its own price statistics for the first time, in 2019, based on the finance records of the regional communities.

According to a study from the Ministry of Public Works, the average rental price in Spain is 8.1 euros per m<sup>2</sup>, whereas Fotocasa and Idealista state that it is 8.3 euros/m<sup>2</sup> (2.47% more) and 10.4 euros/m<sup>2</sup> (28.4% more) respectively. The differences in some provinces between the prices stated by Foment and the property portals are much more pronounced and reach a maximum of 57% in the case of the Balearic Islands. In Barcelona province, while the official data state that the rental price is 9.6 euros/ m<sup>2</sup>, Fotocasa puts it at 14.1 euros/m<sup>2</sup> (46.88% more) and Idealista at 14.6 euros/m<sup>2</sup> (52.08% more).

The Metropolitan Housing Observatory has also corroborated this trend in the case of Barcelona. Data from Incasòl stated that the average rental price in the city was 929.6 euros a month in 2018, compared to the 1,452 euros stated by the Habitaclicia property portal.

**Anaïs López, the director of Communications and Contents at Fotocasa and Habitaclicia,** attributes this gap between the prices from the official

data and the property portals to their respective methodologies, above all with regard to the sample of dwellings analysed. She warns that the percentage of owners paying deposits to official bodies —where the Ministry's data are based — “is small” in many regional communities, except in the case of Catalonia. “It is notable that communities such as Catalonia have three times as many dwellings analysed as in the regional community of Madrid, when the number of rent transactions in the latter is much greater than in the former”.

As for property portals, there are also frequent demands from social movements relating to preventing the publication of fraudulent offers, increasing transparency and improving their roles as intermediaries. Regarding this, López maintains that Fotocasa is already working on the issue: “A team of experts in moderation and fraud are working exclusively to ensure the maximum security of each and every advert”. One of Fotocasa's main tools for preventing online fraud are its personal, non-transferable verification codes, which are sent to the advertisers by telephone and which the latter have to include in the offers they publish on the portal. According to López, this enables them to guarantee that the telephone number the property will be published with belongs to the advertiser. “Fotocasa does not allow the publication of illegal, harmful and fraudulent adverts”, she concludes. 📌

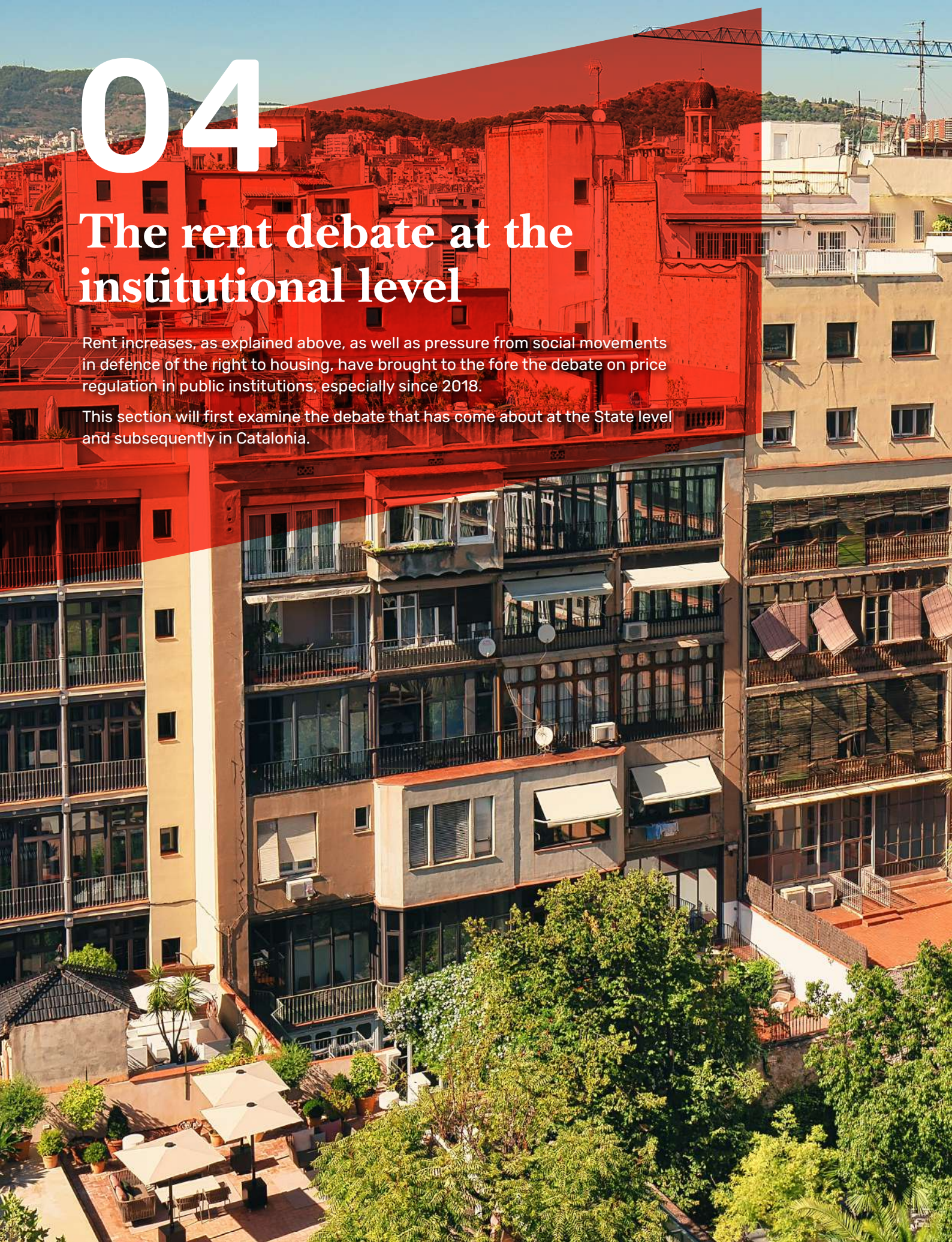


# 04

## The rent debate at the institutional level

Rent increases, as explained above, as well as pressure from social movements in defence of the right to housing, have brought to the fore the debate on price regulation in public institutions, especially since 2018.

This section will first examine the debate that has come about at the State level and subsequently in Catalonia.





# The debate on rental price regulation at the State level

The debate on rental price regulation has gone through various phases since it was first considered after the vote of no-confidence against the PP political party, which brought the PSOE political party to the State government in June 2018. Below, we will take a brief look at the various stages this debate has been through since that time to identify its most controversial points, understand the current situation and examine future prospects.

## 1st stage: rental price regulation, in the PSOE-Podemos budget agreement for 2019

Following the no-confidence vote, the debate on rental price regulation began towards the end of 2018, at the same time as the debate on the State's general budgets which the new executive under PSOE wished to approve for 2019.

It was in that context that PSOE and Podemos reached a budgetary agreement in October 2018, which also incorporated proposals on housing. As for rental price regulation, Marina Estévez, an *Eldiario.es* journalist specialising in housing and tax, points out that the agreement stipulated that local authorities or regional communities could create a rent reference index which would enable the regulation and restriction of rental price rises in urban areas with tight markets, among other aspects. Other notable points included the lengthening of lease terms from 3 years to 5 years for individuals, and from 5 years to 7 years for corporations, with extensions of at least 3 years in both cases. This reversed the shortening leases had undergone under the Urban Leases Act (LAU) of 2013.

## 2nd stage: the PSOE government's approval of a first decree on rentals without price regulation, outside the budgets

Estévez remembers that, although the PSOE initially agreed to include this second point in the budgetary agreement with Podemos, the Ministry of Public Works later on “flatly refused to apply it”, causing a “considerable controversy” between the two political parties.

So much so that the PSOE government approved a decree in December 2018 –outside the budget– that amended rent regulation, but without including the possibility of limiting rental prices. It did maintain, however, the lengthened duration of leases. Which explains why, when the decree was put to the vote at the Spanish Parliament for validation, Podemos voted against it. The rejection by the latter and other political parties, for different reasons, stopped the decree from going ahead.



Maria Estévez, an *Eldiario.es* journalist, during her talk at the Rent Regulation Conference held at ICAB on 18 November 2019.





### 3rd stage: given the failure of the first decree, a second was presented which would regulate the price increases within a lease but not between leases

Nor was there any possibility of success for the State's general budgets, which the Spanish government put to the vote in Parliament in February 2019. After the budgets had been rejected, the PSOE political party saw time was running out for their term of office and opted to prepare decrees which would at least enable some of the most important points contained in the budgets to go ahead, including housing-related measures.

It was in this scenario, in March 2019 that the Spanish government presented its second proposed decree on rentals, this time having reached an agreement beforehand with Podemos, to ensure its approval. During the negotiation process, Podemos failed to convince PSOE to accept the measure initially included in the budgetary agreement enabling local authorities and regional communities to regulate rental prices in areas with tight markets, although it did agree to another concession: "The decree ends up limiting the rise of prices within the same leases to the CPI", asserts Estévez. It should be noted that the LAU of 2013 made this level of price updating dependent on an agreement between landlord and tenant.

This is what finally tipped the scales for support from Podemos, according to the *Eldiario.es* journalist. The prospect of new general elections around the corner and pressure from large owners in defence of their interests should also be taken into account. Hence Podemos's acceptance of this decree "as the lesser evil", although it did not incorporate price regulation, explains Estévez.

The PP political party brought an appeal against the constitutionality of its contents in May 2019, questioning the "extraordinary situation and urgent need" that the Spanish government had been justifying its measures with. The Constitutional Court made its ruling in January 2020 and, while it partly accepted the PP's appeal against the decree, it did not refute its most fundamental parts. The State decree's main measures on rentals are briefly examined below.

## MAIN CONTENTS OF THE STATE DECREE ON RENTALS OF MARCH 2019

The main measures of the State decree on rentals approved in March 2019 (7/2019) notably include the following:

1. It lengthens the minimum term of leases from 3 years to 5 years for individuals, and from 5 years to 7 years for corporations, with extensions of at least 3 years in both cases.
2. It links any rent increases within the lifetime of a lease to the CPI.
3. It contains a commitment to create a State reference index system for housing rental prices within a period of 8 months. Given the hung parliament resulting from the April 2019 elections and the holding of new elections in November of the same year, that commitment could not be met. However, by the end of June 2020, the Spanish government finally presented this system.
4. It strengthens protection for people who have been or are at risk of being evicted from their homes: the courts have to assess whether the individuals in the process of being evicted are in a vulnerable situation and, if they are, notify the social services of this. If individuals in the process of being evicted are in a vulnerable situation and the flat they live in is owned by a corporation (for example, a bank), the decree postpones the eviction for at least 3 months. In addition, the decree makes it illegal to carry out open evictions, where residents are not given any prior notice of their date or time.
5. It enables the authorities to expand their social and affordable housing stock. It provides for the so-called "20,000 Plan", to start building this number of affordable rental homes during this government's term of office.
6. It proposes eliminating administrative and financial barriers so local authorities can build social and protected housing.
7. It provides for the Authority's right of pre-emption, so that it has priority in buying flats that are for sale and can allocate them to this purpose.
8. It commits to public-private collaboration in promoting affordable housing. One of the channels proposed by the government is granting the use of public land to companies or cooperatives to build such housing.
9. The decree clearly distinguishes between tourist-apartment regulation and residential-housing regulation. It establishes that tourist accommodation will be regulated, not by the Urban Leases Act, but by the sector's regulations that apply in each case and are marketed through tourist-offer channels. In addition, it establishes that a residents' association can limit or determine the activity of tourist apartments in their block of flats, where three fifths of members so decide.
10. It puts an end to the requirement under the LAU of 2013 for leases to be registered with the Land Registry to be valid. Under the former requirement, any investment fund that bought a block of flats with sitting tenants could easily force them out if their leases had not been registered.
11. Some of the initial barriers to accessing rental housing have been removed, by lowering the cost involved in drawing up formal leases. For example, it limits the amount that has to be put down as security, a deposit or any other additional guarantee to three months' rent. The expenses for drawing up and managing a lease will also be borne by the owners if they are corporations.

## 4th stage: PSOE and Podemos government agreement of December 2019 once again incorporates the proposal for rental price regulation

Besides the implementation of this decree, we should note the new scenario that opened up in 2020 when the new Spanish government was established, comprised of a coalition between PSOE and Unidas Podemos. The government agreement between the two political parties provides that local authorities and regional communities can “regulate abusive rises in rental prices in areas previously declared to be tight, while preventing possible effects of a shrinking rental housing supply”, based on a benchmark state-index system for housing rental prices.

The agreement also provides that regional communities can prepare their own index under the same methodology and takes account of “the advances” made by communities which, like Catalonia, already have one. It also establishes that local authorities themselves can declare them “temporarily and exceptionally” to be tight market areas. Even so, towards the start of 2021, this remains one of the main points of friction between the various political party groups for pushing ahead with the State’s new legislation on housing. Representatives of the PSOE in the government this year went back on the aim expressed in the coalition-government’s agreement at the start of its term of office.

## 5th stage: Catalonia marks a watershed with a pioneering piece of legislation

The fifth stage was entered towards the end of 2020, with the passing of an Act in Catalonia on rental price regulation, a pioneering piece of legislation in the State. The Catalan Parliament passed Act 11/2020, on urgent measures for containing rent in residential leases, 9 September, following the proposal made by the Tenants’ Union, with support from the various social movements in safeguarding the right to housing.

Catalonia was becoming, then, the first regional community in the State to have legislation of this kind. Given this precedent, during these times, there are several political forces that are keen to extend these regulations to the rest of the State, to put into effect what is already part of the agreement reached by the coalition

government between the PSOE and Podemos political parties. By contrast, other political sectors wish to return to the past and have brought an appeal against the regulations before the Constitutional Court, as they believe, among other things, that the Catalan Act violates State jurisdiction. That Court accepted the appeal brought by the Partido Popular (PP) on those grounds, at the start of 2021. In fact, the PP and Ciutadans (Cs) had already requested a report from the Council for Statutory Guarantees of Catalonia on the level of conformity of the proposed rental price regulation to the jurisdiction of the Catalan government and, according to that body, it could encroach on the State’s jurisdiction.

It is therefore difficult at present to predict the effect the Act will have in Catalonia let alone the possibility of exporting it to the rest of the State.

We summarise below the main points of the Act on rental price regulation in Catalonia.

## MAIN CONTENTS OF THE ACT ON RENTAL PRICE REGULATION IN CATALONIA

- .. Rental price regulation will apply to the areas that are considered tight markets, which are found to be especially at risk of lacking sufficient affordable rental housing to guarantee this right to all city residents. Under the criteria established by the Act for these purposes, the regulation can be applied to some sixty Catalan municipalities.
- .. The Catalan government is responsible for declaring an area as a tight market. But Barcelona City Council and the Barcelona Metropolitan Area (AMB) are also empowered to do this directly, on their own initiative or at the request of one of the municipalities within the area. Tight-market declarations may remain valid for a maximum period of five years.
- .. As a general rule, the Act establishes that a previously let flat cannot be rented out for more than the price of the previous lease, where the latter was signed within the last five years.
- .. If the flat had previously had a price above the average for the area in which it is located, the price of the new lease cannot be above the maximum value established in the Catalan government's rent reference index. This can lead to, mostly moderate, price reductions in various cases where prices are currently above the average.
- .. Generally speaking, if a flat is let out for the first time, its price will have to be, as a maximum, the one stated in the reference index.

- .. The Act establishes a disciplinary system to ensure compliance.
- .. It also provides pioneering recognition of tenants' organisations as mediators in possible disputes between owners and tenants.

### Some exceptions to the Act's application

- .. Rental prices may rise, with justification and limits, above those of previous leases in specific cases; for example, owing to renovation and improvement works in dwellings. Prices may also rise where the previous tenant was a family relation of the owner.
- .. For the first three years that the Act is in force, the regulation will not apply to dwellings that are newly built or have undergone major renovation work.
- .. The Act does not cover dwellings subject to special rent-determination systems, including rent-control leases or leases signed before 1 January 1995, or officially protected housing, homes included in the public networks of social-insertion housing or mediation for social rent or the Rental Housing Fund for social policies. Flats that provide assistance and with mandatory social rent are also excluded from the Act.
- .. Nor does the Act apply in specific cases, for example, if the landlords are part of a household unit whose income is under 2.5 times the Income Sufficiency Indicator for Catalonia (IRSC), including income from the rent.



## The opinions of experts and social movements on the latest measures adopted by the State government on rent

Social movements see the State decree of March 2019 as a lost opportunity for regulating rental prices throughout Spain. So long as there is no such regulation, tenants will be defenceless against owners, according to both the Director of the **DESC Observatory**, **Irene Escorihuela**, and the spokesperson for the **Tenants' Union**, **Jaime Palomera**. Note here that although the Act on rental price regulation has been approved in Catalonia, doubts remain over its constitutionality, according to some political and social sectors. This is creating uncertainty over its future implementation in Catalonia.

When a lease ends, the landlord is not only entitled to decide on whether or not to renew it with the same tenant but also to set a new price "without any kind of restriction", maintains Escorihuela. Here she explains that in countries such as Germany the price of a new lease must not be more than 10% of the previous one and calls for Spain to adopt a similar system.

The spokesperson for the Tenants' Union, **Jaime Palomera**, also bemoans the fact that the measures taken so far by the State have relegated the issue of REITs, which remain exempt from corporate tax. He believes that putting an end to tax privileges would help to eliminate speculative practices in the property market.

The spokesperson for the **PAH in Barcelona**, **Lucía Delgado**, emphasises the impact that social movements had on ensuring that the Decree of March 2019 "clearly" banned open evictions and expresses her satisfaction at the results of the new regulations. It should be noted that "there had been a sharp rise in this *modus operandi*" since 2018. According to the PAH, while there were only 7 open evictions in Barcelona in 2017, there were as many as 55 in 2018 and 32 during the first quarter alone in 2019, before the decree was passed. By contrast, there has been a very significant drop in the number of cases since the approval of the decree.

JAIME PALOMERA (Tenants' Union) and  
IRENE ESCORIHUELA (DESC Observatory)

**Rental prices for new leases  
need to be regulated and tax  
privileges for REITs ended**

She is more critical of the 20,000 Plan's proposal. While she believes building more flats may be necessary to a certain extent, it should not be considered a top priority. She is of the view that we ought to opt mainly for reclaiming as many vacant dwellings as possible for social and affordable rental housing which hail from mortgage foreclosures or rent-default evictions. In Delgado's view, this option not only reduces the need for building new flats – and their subsequent environmental impact – but is also faster and more effective in responding to the housing-emergency situation, as planning and building new dwellings are more long-term measures.

As for the government agreement between PSOE and Podemos, the spokesperson for the PAH regards it as a "collection of good intentions", but that the "regulatory and budgetary specifications" of the various measures it provides for need to be known. It was for the very purpose of goading the Spanish government into action that the PAH presented it, around the start of 2020, with a proposal of shock measures, which included halting evictions involving any family in a

LUCIA DELGADO (PAH Barcelona)

**confirms a drop in eviction numbers but notes the lack of measures for bringing vacant flats into the social rental housing market**

vulnerable situation. On that matter, we should point out that at the start of March 2020, the Spanish government announced that it would carry out a moratorium on mortgage-related evictions for 4 years and include a ban in the LAU on evictions for defaulting on rent payments in tight market areas and in cases where investment funds are speculating with housing prices and putting this social right at risk.

The **Manager for Housing and Renovation at Barcelona City Council and an expert on the issue, Javier Burón**, believes the drafting of the coalition government's agreement "is open and not absolutely clear in what it will lead to". Even so, he welcomes the fact that the agreement establishes a common, objective methodology for preparing rent reference indexes for the various regional communities and local authorities, as up to now there had only been measurement systems limited to specific territorial areas. So far, besides Catalonia, the regional communities of Valencia and the Basque country have rent reference indexes or similar systems.

While upbeat about the creation of the State index, Burón criticises the fact that no measures are being suggested for optimising the functions that a reference price index could have in the field of tax policies and subsidies (for awarding subsidies or applying exemptions or reductions in taxes for owners that put their rent prices below the reference rates). "Using taxation to stimulate a drop in rent prices is not controversial, although up to now there have been no tax incentives other than local ones", he maintains.

The State decree on rentals of March 2019 enables local authorities to offer up to a 95% deduction on the property tax (IBI) of owners who allocate their dwellings to social and affordable housing and to apply that tax at a higher rate to owners who leave their flats vacant. Burón considers these to be positive measures, but adds the following: "Local taxes such as the IBI have little bearing on taxation in general, the key is in corporation tax, VAT and income tax, which are basically state taxes".

JAVIER BURÓN (Barcelona City Council)

**"Using taxation to stimulate a drop in rental prices is not controversial, although up to now there have been no tax incentives other than those corresponding to local taxes"**



Javier Burón, the Manager for Housing and Renovation at Barcelona City Council.

For her part, the Director of Communication and Contents at Fotocasa and Habitacalia, **Anaïs López**, insists on the following: “We have not noted any impact since the decree on rentals came into force”. She maintains that property portals have followed the same trend in rental offers as the one recorded before the decree came into force, in offers from individuals and professionals alike.

ANAÏS LÓPEZ  
(Fotocasa and Habitacalia)  
**“We have not noted  
any impact since the  
decree on rentals  
came into force”**

Estévez is critical of the goals of the 20,000 Plan for building this number of dwellings in 4 years, at a rate of 5,000 a year. She believes they are “unambitious” and remembers that, in Barcelona alone, close to 4,600 affordable rental dwellings started to be built during the last municipal term of office.

In addition, she warns of the risks of granting the use of public land, normally for periods of 50 years, to

companies or cooperatives for building affordable housing, unless measures are taken to prevent their privatisation in the long-term. Once this period of half a century has passed, the dwellings and land become public property once again, although Estévez warns that, depending on the government’s political colour, it could opt to sell them if no measures are taken in advance to protect them in perpetuity.

As for the possibility of rental price regulation during this government’s term of office, Estévez expressed her scepticism during the conference on rent regulation held before the coalition government was formed. She highlighted how the development of housing policies would be determined by the Ministry of Economy and the delegated commission for Economic Affairs. This responsibility once again falls to Nadia Calviño, who followed the “dogmas of economic austerity” during the last term of office and did not facilitate rental price regulation. In fact, the Minister for Economy had already expressed her opposition to rental price regulation on 23 January 2020, coinciding with the publication of a report from the Bank of Spain against this measure, despite its inclusion in the coalition government’s agreement.

Nevertheless, other members of the Spanish government subsequently reaffirmed their aim to comply with what had been agreed to. This mandate, then, will be key to checking whether and how effectively rental price regulation is implemented in Spain, framed by a strong controversy between political, economic and social players.

MARINA ESTÉVEZ, a journalist  
specialising in housing:  
**the affordable-  
housing goals  
“are unambitious”**

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## The debate on rental price regulation in Catalonia

Besides the debates on the issue being held at the State level, the possibility of the regional government directly regulating rental prices has been raised over the last few years in Catalonia; that possibility was realised in the regulations recently passed in Parliament at the instigation of the Tenants' Union.

According to the **Director of the Catalan Housing Agency (AHC), Judith Gifreu**, the Catalan government "has recently shown itself beyond doubt to be pro-active on this issue", as well as keen to act as directly as possible on rent prices. The Catalan government presented Executive Decree 9/2019 in May 2019, on emergency measures for containing rent prices in residential leases, which, according to Gifreu, was aimed at "helping to contain prices without harming the viability of a market with little rental housing supply".

Even so, the decree ultimately failed, for want of parliamentary support, as all the opposition political party groups opposed it for different reasons: some for considering it too interventionist

JUDITH GIFREU  
(Catalan Housing Agency)

**The rent reference index "is a tool for bringing transparency to the market"**

regarding the market and others for regarding it as insufficient for guaranteeing the affordability of rental prices.

The mechanism proposed by the Decree for regulating rental prices is based on the Catalan reference rent-price index. This index calculates the average rent in a certain area, by establishing a range between the highest and lowest rents, based on Incasòl's register of deposits. It is based on objective data from over 300,000 real lease deposits made with Incasòl over the last 3 years.



Note that the sole function of the Index is not that of acting as a basis for a price-regulation system. In fact, when the index began to be promoted in Catalonia in 2015, it had not been created for that purpose, but rather to provide, in a transparent way, information on the market prices of leases, so that both owners and tenants would have the same information. Judith Gifreu emphasises this function of the Index: “It’s a tool for bringing transparency to the market, a key aspect if we want prices to behave in a way that brings supply and demand into line with each other and make room for every type of person and family looking for rental housing”.

Along the same lines, the **Manager for Housing and Renovation at Barcelona City Council, Javier Burón**, explains as follows: “According to the classic economic theory, if the two parties to a transaction are well informed, the supply and demand will intersect at the average market price, not well above or well below”. In any case, he warns that, while it is not to be underestimated, the informational function of the index has “a limited capacity” for reducing prices in a tight market situation”.

It was for the very purpose of helping to contain rental prices that the Catalan government presented Executive Decree 9/2019. The proposed regulation was based on this same reference index, establishing that the rental prices could not rise above market rates by more than 10%. This could be temporarily applied in cities or neighbourhoods with tight markets.

The **Director of the DESC Observatory, Irene Escorihuela**, points out that the last few years have seen “a very substantial change” compared to the situation in 2015, when the possibility of regulating rental prices was not even on the political agenda. Nevertheless, both the DESC Observatory and social movements championing the right to housing were very critical of the contents of the decree presented by the Catalan government, which was why it had to carry out intense lobbying and negotiations with the institutions to ensure the Act on rental price regulation would be passed in the Catalan Parliament.

Since the start of the debate on



Jaime Palomera, the spokesperson for the Tenants' Union during the Rent Regulation Conference of 18 November 2019.

JAIME PALOMERA (Tenants' Union)

**the reference index “should be based on data from diverse sources [...], for example, taking account of disposable household income”**

this issue, social movements have questioned the mechanism for preparing the reference rent-price index as the basis for a regulation system. In the view of the **spokesperson for the Tenants' Union, Jaime Palomera**, the Catalan government's reference index “does not seek to cover the needs of citizens or the right to housing”. He believes the index should be based on “data from diverse sources, not just from the public register of rent deposits, and on the average property-tax register value, and to make the necessary social weighting that would determine its accessibility for local residents, for example, by taking account of the available household income or the unemployment index of residents of a certain district”. For the Union, an index with these features should also have to be of mandatory compliance in the areas with problems of residential exclusion and gentrification and “extendible to the entire metropolitan region”.

Even so, it was during the process enabling the enactment of the Bill on rental price regulation in the Catalan Parliament in September 2020, thanks to the impetus from the Tenants' Union, that the social movements had to show flexibility in some of their positions on this and other issues, to bring about an agreement which they

considered, overall, to be satisfactory and a great victory for tenants.

The **Manager for Housing and Renovation at Barcelona City Council, Javier Burón**, agrees with the need expressed by social movements to adapt rental prices to citizens' incomes. However, he is not in favour of incorporating socio-economic and income criteria into the rent reference index but rather of “taking these into account when determining whether or not a tight market situation is occurring in an area”. In other words, the areas with a considerable gap between the average income of their residents and average rental prices could be considered tight markets and the price-regulation system could be applied there.

By contrast, he rules out taking socio-economic and income criteria into account when constructing the rent reference index owing to the need to combine price affordability for citizens with profitability for owners. He warns that making significant reductions to profitability for owners could be counter-productive and cause a drop in the supply of rental housing in the city. He insists that price-regulation measures will need considerable “fine tuning” if they are to achieve their desired effects.

Another controversial aspect to the

JAVIER BURÓN (Barcelona City Council)

**believes socio-economic and income criteria should be taken into account when determining whether or not an area is a tight market**



Catalan government's rent reference index is that it cannot be constructed by taking into account the deposits corresponding to all the rental dwellings in an area, but rather only those corresponding to the latest leases. The spokesperson for the Tenants' Union, Jaime Palomera, warns here how it is precisely these latter leases that are the most expensive.

Which is why both Palomera (Tenants' Union) and Irene Escorihuela (DESC Observatory) bemoan the fact that, with this index, the Catalan government "is bringing legitimacy to the prices of the current bubble".

Using an index, then, that is based on leases from the last few years may achieve the opposite of the desired effect: that in an economic cycle of price contraction, the index continues to legitimise their rise. This is how Jaime Palomera puts it, when he states how, at present, several vulture funds are using the Catalan government's reference index to justify hikes in prices to residents defended by the Tenants' Union.

On this subject, **the urban planner**

**Maria Sisternas** warns how the Administration should use rent regulation to prevent a repetition of the same mistakes made when setting the purchase prices of officially protected housing: "For a long time here, officially protected flats in the general system were at 10% to 15% below the market price; when market prices dropped spectacularly due to the crisis, the general housing system stopped being taken into account". Here she calls for the public sector to be capable of "anticipating property cycles".

The Tenants' Union also condemns the opaque way in which this index is updated and believes it is essential for it to be transparent. They believe the index should be produced through a

process of agreement and consensus between the authorities with jurisdiction over housing (Catalan government, local authorities etc.,) the social and economic players involved (property chambers, professional associations and so on) and social organisations and

movements championing the right to housing, such as the Tenants' Union itself and the Federation of Residents' Associations. Social movements are generally of the view that the Catalan government should have taken more account of them throughout the price-regulation decree's drafting process, which ultimately failed for want of sufficient consensus.

By contrast, the Director of the Catalan

IRENE ESCORIHUELA  
(DESC Observatory)

**the Catalan government's index "is legitimising the prices of the current bubble"**



Marco Aparicio, who was the Chair of the Desc Observatory during the Rent Regulation Conference held at the ICAB in November 2019.

Housing Agency defends the soundness of the data that the reference index is based on. "From the point of view of its reliability, the index is much sounder than other tools launched all around Europe, as it is based on real data with a very wide numerical, time and geographic scope", explains Gifreu, who believes some European initiatives "are based on much less reliable surveys and data".

Javier Burón also shares the view that the database on Catalan rental prices is "better" than its equivalent in countries such as Germany and France, where rental prices are now regulated. He points out that Catalonia has "real data on almost all the rentals in the market", because, as most leases are mediated by a professional, the corresponding deposit with Incasòl is guaranteed. By contrast, the rent reference index in Germany is based on a particular sample of owners

and tenants.

Burón believes Catalonia is the regional community that is "in the best position" as regards the availability of data on the rental market, based on which a price-regulation system would be coordinated. "It is the community that first approved the index and the one which has been using it from the start, not just for its statistics but also for making housing policies", in reference to the Catalan government's tax policies for rewarding those who put rental prices below this rate.

Nevertheless, Burón believes the Catalan rent reference index still has room for improvement. Here he explains that the various authorities taking part in the Metropolitan Housing Observatory use this space "as an area for reflection and technical improvement" of this index. Here he explains that work has been carried out to ensure the registration forms of the deposits with Incasòl collect more data on each dwelling, to have more accurate knowledge of the rental market, which could be taken into account for adjusting the rent reference index. These are

JUDITH GIFREU  
(Catalan Housing Agency)

**"From the point of view of reliability, the index is sounder than other tools launched across Europe"**

JAVIER BURÓN  
(Barcelona City Council)

**"Catalonia is the regional community 'best equipped' to coordinate a broader price-regulation system"**



data on the category of the dwelling, its location, its height, whether or not it has been renovated, whether or not it has received subsidies and so on. In his opinion, this will enable the progressive improvement of the index in the future.

Besides the rent reference index, social movements are also questioning other aspects of the Catalan government's decree on rentals of May 2019. Another of the main criticisms levelled against it has to do with the exceptions where the limitation thresholds apply. "It has a host of exceptions", remarks **Lucía Delgado from the Barcelona PAH**, describing the decree as a "loophole act".

According to the assessment made by the DESC Observatory, the decree established so many exceptions to rental price regulation that it could only apply to leases for second-hand dwellings that had previously had a price below the one established in the index. Exempted from the rent regulation are leases for dwellings that are new or which have been wholly renovated (in such cases rental prices could be raised up to 20% above the index); and dwellings with special features (areas with a garden, swimming pool and exceptional views etc., where the price could be 15% above the index). Other leases also excluded from the regulation are those for flats whose previous prices were above this threshold or with surface areas of over 150 m<sup>2</sup>.

The Tenants' Union is critical of the



Lucía Delgado, the Barcelona PAH's spokesperson during her talk at the Housing and Renovation Forum (FHAR).

fact that the Catalan government's decree did not provide any disciplinary mechanisms for cases of non-compliance.

It should be added here that, in cases where it was possible to limit rental prices, the decree put the onus on tenants to detect possible breaches. For social movements, the Authority should take formal action in response to breaches and not make tenants responsible for having to report them, as they are the weaker party to the lease agreement and can be pressured into silence.

LUCÍA DELGADO (Barcelona PAH):  
**believes that the Catalan government's rental decree had "a host of exceptions" and describes it as a "loophole act"**

According to the DESC Observatory, the experiences of other cities reveal the inefficiency of this mechanism and they mention the example of Paris, where tenants, in most cases, were too intimidated to report anything. In the context of Spain, where the minimum term of a lease is 5 years, it is reasonable to think that tenants will be somewhat reluctant to report a landlord on whom, once this period has passed, the renewal of their lease will depend.

Another weak point in the decree, according to the Tenants' Union, is that it did not provide for any disciplinary mechanisms for owners who violated the price limits. It only established that tenants who brought a claim, whether through legal channels or by mediation, could recover the difference between what they had paid and the legal limit.

## Different positions on whether or not the Catalan government has the jurisdiction to regulate rent prices

Political groups such as Catalunya en Comú Podem and CUP opposed the decree for reasons similar to those of social movements. The other political party groups, with the exception of those belonging to the Catalan executive (Junts per Catalunya and ERC), also voted against the decree when it was put to the vote in the Catalan Parliament in June 2019, for different reasons.

It should be noted that, before it was voted on in Parliament, the Council for Statutory Guarantees issued an opposing – though not binding – report on Decree 9/2019. According to the Council for Statutory Guarantees, jurisdiction here falls to the State and the Catalan government's decree violated the Catalan Statute and the Spanish Constitution.

It was precisely this issue of jurisdiction that was one of the main reasons for the PSC political party group's opposition to the Catalan government's decree. The PP and Cs political party groups also opposed it for the same reason and because they considered it counter-productive to intervene in the private rental market.

The Catalan government argued that it had jurisdiction over rent regulation. The Director of the Catalan Housing Agency, **Judith Gifreu**, has the following to say on the matter: "We believe that, in accordance with the statutory mandate, which is a constitutional mandate and which states that jurisdiction in housing policy falls exclusively to the Catalan government, we must be able to have the possibility of approving rules that enable us to have an effect on the behaviour of our country's rental market". The Catalan government relied on the Catalan Civil Code to present this decree.

IRENE ESCORIHUELA (DESC Observatory)

**“I’m strongly in favour of attempting it in Catalonia, but I believe the solution depends more on the Spanish Parliament”**

On the issue of jurisdiction, the Director of **the DESC Observatory, Irene Escorihuela**, points out that the Catalan government itself refused to accept such jurisdiction, when called on to do so by social movements a few years ago, on the basis that it was entitled to launch rental price regulation, under the Catalan Civil Code. Finally, it changed its mind and proposed this first decree, which never got off the ground. In the current political situation, where Vox has 52 members in the Spanish Parliament and can bring appeals for unconstitutionality (a minimum of 50 members of parliament are required), Escorihuela thinks it likely that an appeal for unconstitutionality will be lodged in response to any possible Catalan rent regulation. Hence her following conclusion: “We have to do our utmost, attempt it on all fronts; I’m strongly in favour of Catalonia trying to do this, but I believe the solution depends more on the Spanish Parliament”.

The Manager for Housing and Renovation at Barcelona City Council, **Javier Burón**, is more optimistic about the possibility of regulating rental prices through the Catalan government. In his view “the path to Catalan regulation for tenants has never been so open”, following a recent ruling by the Spanish Constitutional Court (Ruling 132/2019, of 13 November), on housing regulation in Catalonia.

This was a ruling on the Catalan regulation of the legal system for residential property sales, which the CC considered to be in keeping with the Constitution. In this case, the Court concluded there was nothing contrary to market unity about a private player being able to choose between two legal systems: the Catalan Civil Code and the Spanish State’s general law on sales. “If it said all this about the Catalan civil law on sales, it is highly unlikely it will not take the same point of view on rentals, which is ultimately a more reversible transaction”, he remarks.

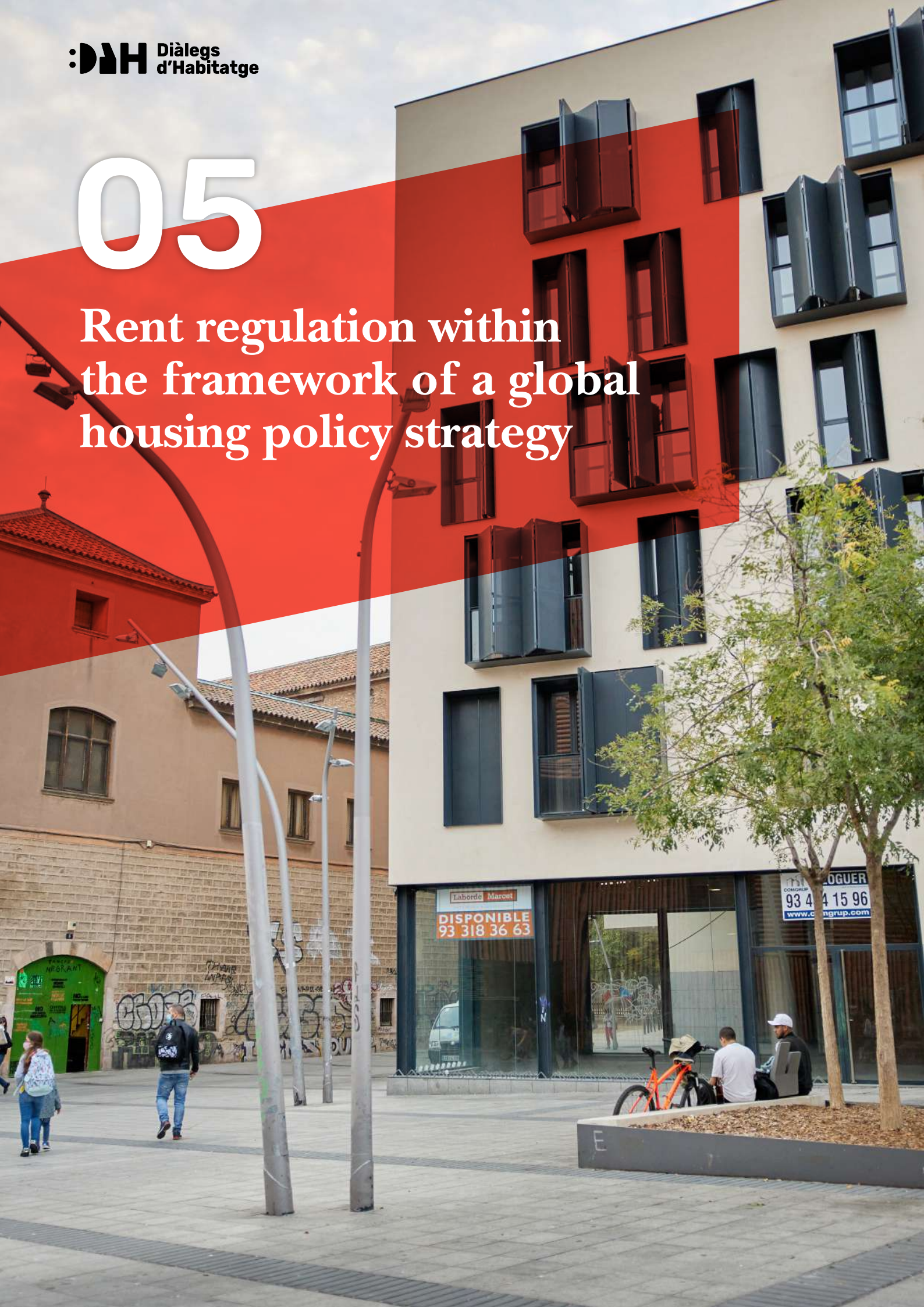
For the reasons expressed above, doubts were raised regarding the constitutionality of the Act on rent regulation recently approved by the Catalan Parliament in September 2020. The course the Act follows will determine whether it is legally possible to implement a Catalan act on this matter.

The new regulations establish that new leases may not have prices above those established by the reference index. As for renting a dwelling already let out in the five years before the Act came into force, the price of the new lease cannot be higher than that of the previous lease, in other words, it will be frozen. The Act will apply in the city’s tight-market areas with over 20,000 residents. 📌



# 05

## Rent regulation within the framework of a global housing policy strategy





The social and political debate on rent regulation examined in the sections above is part and parcel of a broader dialogue on a global housing policy strategy.

It is not the aim of this publication, which focuses on the issue of regulation, to go over the large range of housing policies that may be implemented to ensure this right for citizens. However, we will be examining a few contributions and reflections on the policies that should accompany price regulation to ensure this measure can help to effectively guarantee the right to housing.

These measures notably include expanding the social and affordable rental housing stock. Price regulation would affect the private market, but at the same time the public and social housing supply will have to increase to adequately meet the needs of citizens.

MARIA SISTERNAS (urban planner)

**opts for “changing the public budgetary-investment criteria and prioritising housing over public space and facilities**

Here the **urban planner Maria Sisternas** suggests “changing the public-budgetary investment criteria” of the last few years to promote the expansion of the public housing stock. While investments in public space and facilities had been prioritised over the last few years, she believes the time has come to allocate those funds mainly to housing.

For her part, **the Director of Communication and Contents at Fotocasa and Habitaclicia, Anaïs López**, agrees on the need to make a “firm and long-term commitment to creating a rental housing stock”. According to her, “looking for synergies with the private sector ought to be a preferred option” with this objective in mind.

The percentage of social and affordable housing throughout the Spanish State has remained below 2% for the last decade. The PSOE-Unidas Podemos coalition government’s agreement, signed in December 2019, provides for measures to reverse this situation. So, for example, it reinforces the obligations of large property owners to offer social rentals to people in vulnerable situations. Their aim is to mobilise vacant flats belonging to large property owners, through penalties or tax incentives, for allocation to affordable rental housing. These measures aim to extend to the whole State the provisions already found in Catalan Act 24/2015 and which in fact have already been incorporated into the agreement at the instigation of social movements themselves, which were the driving force behind the approval of these regulations in Parliament. On the other hand, the government agreement includes the commitment to steadily expand the housing budget and make land available for expanding the social and affordable public housing stock, through public-private collaboration.

## Over a decade of paralysis in expanding the social and affordable housing stock

In the case of Catalonia, we should note that the Catalan Housing Act of 2007, a pioneering piece of legislation in the State, set out the following target: that 15% of the entire housing stock would be social and affordable by 2027. However, as criticised by social movements, these targets have been systematically failing to achieve this landmark. The percentage even today remains stuck at 2%.

To achieve the target of 15%, we would have to have 440,000 social and affordable dwellings available in Catalonia (out of a total stock of 2.99 million dwellings). According to a report drafted in 2014 by the Bureau of Third Sector Social Entities of Catalonia,<sup>8</sup> some 230,000 dwellings were needed at the time to achieve this target, since when no substantial progress has been made.

The **DESC Observatory** and the **University of Barcelona's TransJus Research Institute** also drafted a report in 2017 to assess the first 10 years since the Catalan Housing Act came into force<sup>9</sup>, noting the reasons for its scarce implementation. The eruption of the economic crisis, in addition to the subsequent cuts in public investment, put obstacles in the way of implementing pioneering acts and policies in 2007.

It was when Artur Mas (CiU) was the president of the Catalan government that several of the targets set by these regulations were lowered, under the "Omnibus" Act of 2011, which reduced the reserves of land for protected housing and deactivated the temporary expropriation of vacant dwellings for social rentals, among other aspects.

It should also be noted that the strategic residential areas project (ARE) was present that same year (2007), reserving land to boost the building of protected housing. In fact, at least 50% of the houses built in these areas – where housing demand is high but supply is low – must be protected. Since then, however, "there has been very little development of AREs", bemoans the urban planner Maria Sisternas.

The **Director of the Catalan Housing Agency, Judith Gifreu**, recognises that the crisis "has led to a paradigm shift that makes AREs practically infeasible". Given this situation, she explains that the Catalan government's Department of Territory and Sustainability (which the Catalan Housing Agency is answerable to) has been working on "adapting the tool of AREs to today's socio-economic conditions and, consequently, the possibility of implementing them". Which is why it is pushing for a revision of the AREs' urban-development master plans throughout Catalonia, in accordance with the establishment of the future sectoral territorial housing Plan.

JUDITH GIFREU  
(Catalan Housing Agency)

**believes it is "not feasible" to develop strategic residential areas as conceived in 2007 and that they have to be adapted to "the current socio-economic conditions**



Judith Gifreu, the director of the Catalan Housing Agency (AHC) during her talk at the Barcelona Housing and Renovation Forum (FHAR).

Note that the Sectoral Territorial Housing Plan had already been provided for in the Act of 2007, where it was scheduled to be drafted within a period of one year, that is, in 2008. This was the plan in which the regulations' targets and implementation calendar were to be specified. However, following the eruption of the economic crisis, it failed to materialise, and it would be another decade before the Catalan government would once again attempt to deal with the issue.

That decade of paralysis in social housing policies coincided paradoxically with the period in which more people had difficulties ensuring this right was guaranteed, in a context of economic crisis and a wave of housing evictions. Given this situation, social movements championing the right to housing pushed for the passing of emergency housing legislation to meet at least the most immediate needs of people experiencing residential exclusion.

In the case of Catalonia, this led to the passing of Act 24/2015 in the Catalan Parliament, as a result of the popular legislative initiative (ILP) against the housing emergency and energy poverty, presented by the PAH, the Alliance against Energy Poverty (APE) and other social movements. Among other issues, under these regulations, large property owners had to offer social rentals to families in vulnerable situations, before they could proceed to evict them, or allocate empty flats to social rental housing. Nevertheless, it should be noted that nine months after the Act was passed, these and other articles were appealed against before the Constitutional Court by the then PP-led Spanish government and did not come back into force until 2019, after the partial withdrawal of the appeal by the PSOE-led Spanish government.

## What routes are available for expanding the social and affordable housing stock?

Besides the emergency measures incorporated by Act 24/2015, the need remains for embarking on structural policies to expand the social and affordable housing stock, under various formulas. On the one hand, there are those based on building new homes, whether through public initiative or a public-private partnership; or the establishment of obligations on the property sector by the Administration, for example, the obligation to allocate 30% of new property developments and major renovations to protected housing, brought about by Barcelona City Council in September 2018 on the initiative of social movements.

As for public-private partnership projects, note too the Administration's collaboration with the social and cooperative economy. The most extensive projects here are the assigned-for-use co-operatives, in which the latter are the owners of a housing block and their members, paying an affordable monthly fee, can enjoy the use of their dwelling in perpetuity (that is, they have the right to live in them, even though they are not their owners). Barcelona City Council has been a pioneer in granting the use of public land to cooperatives for this purpose. A good example of this is La Borda, the first cooperative housing block built on municipal land in Barcelona, on the Can Batlló de Sants complex.

On the other hand, we find measures that depend on re-using the already existing housing stock. For example, by exercising pre-emption rights, public authorities have priority when it comes to buying dwellings for sale, to allocate them to social and public rental housing. Another measure of this kind would be expropriation of the use of vacant flats for allocation to social housing. There are also measures associated with renovation that can be used for incentivising affordable housing prices, for example, by making subsidies conditional on this purpose or putting lease prices below those of the reference index.

**Judith Gifreu** explains that the Barcelona Housing Consortium, which is co-owned by the Catalan government, has linked certain financial subsidies for renovations to letting dwellings at prices below the reference index for rental prices. She adds that other mechanisms may be applied to influence rent prices and believes local authorities can contribute here. She refers to the exemptions for municipal taxes and rates linked to renovation and home-improvement work, provided rent prices are below the index.

Barcelona City Council has been making municipal subsidies conditional, since 2019, on putting prices below the reference index and renewing leases for 5 years. Even so, the Manager for Housing and Renovation at Barcelona City Council warns that they encountered difficulties during the

JAVIER BURÓN (Barcelona City Council)

**renovation grants have to be tied to rental price reductions, although that is not enough in a tight-market situation**



first year of implementation. “The problem in a tight market with high prices is that if a private landlord weighs up the difference between the subsidy they will receive and the income they will be giving up, in some cases they may find it more worth their while to keep that income and not bother with the subsidy”, Burón points out. From his point of view, that does not mean the measure makes no sense, because some owners do apply for it. However, in a tight-market situation, he believes it has to be accompanied by rental price regulation.

MARIA SISTERNAS (urban planner)

**owners will have to “prove”, with documentary evidence, the investments they have made in the quality of their flats and “how that is reflected in their rent price”**

As for the maintenance and renovation of dwellings, the urban planner **Maria Sisternas** believes that more control and transparency of owners is required, to ensure they provide evidence of the investments they have made in the quality of their flats and show “how this relates to the rental price”. She complains that many owners are currently raising their rent prices when renewing their leases, without having made any investment in maintaining and improving their dwellings,

following “a speculative and non-productive economic model”. This contrasts with the obligations of tenants who, if they want to recover their deposit money, have to show that everything is in perfect condition.

Sisternas bemoans our having “failed” over renovations, as we have “an ageing housing stock, which we are renting out, without making any investments in it”. She is also critical of the inefficiency of technical building inspections (ITEs), which are legally mandatory for properties that are over 45 years old, although non-compliance is commonplace. These inspections should serve to oversee and guarantee that the oldest dwellings undergo the appropriate renovation works.

The possibility of both renovating and reusing the existing stock for social and affordable housing through other channels (expropriation of the use of vacant flats, pre-emption rights and so on) and building new dwellings through the collaboration of public institutions with the private sector are provided for by one of the latest legislative advances in housing in Catalonia. This is the Decree on Emergency Measures for improving access to housing (Executive Decree 5/2019), which came into force on 31 December 2019 and was ratified by Parliament on 23 January 2020. Its contents are explained below.

Jaime Palomera, the  
spokesperson for the Tenants'  
Union, and Irene Escorihuela, the  
Director of the Desc Observatory,  
during the Rent Regulation  
Conference held at the ICAB.



## The Emergency Measures Decree includes important advances in housing policy

Despite its name putting the emphasis on emergency measures, the decree not only includes such measures for meeting the housing needs of groups at risk of exclusion but also establishes the bases for expanding the public and affordable housing stock in the medium and long term.

Note that this is the second version of a decree that was first presented by the Catalan government's Ministry of Territory and Sustainability in March 2019 and which, at first, did not satisfy the aspirations of the social movements. Nor did it reach the stage of being voted on in Parliament, for want of support.

From the time of that failed first attempt, social movements continued to engage in dialogue and negotiate with the Catalan Ministry of Territory and Sustainability on the matter, and made significant inroads. This led to the recent presentation of a second proposal, which social movements have expressed their overall satisfaction with, although they still regard some of its measures as insufficient.

JUDITH GIFREU  
(Catalan Housing Agency),  
on the emergency measures decree

**"It is the biggest amendment  
to the regulatory framework  
for housing in Catalonia  
since 2007"**

For the Director of the **AHC**, **Judith Gifreu**, that decree is "the main amendment to the regulatory framework for housing in Catalonia, since the passing, in 2007, of the Act on the right to housing", a reflection shared by the **Manager for Housing and Renovation at Barcelona City Council, Javier Burón**. Gifreu points out that the decree establishes the bases for expanding the social-rental housing stock, containing rent prices and combating the housing emergency more effectively, with a cross-cutting approach in which urban planning plays a major role. The main new features of the decree are detailed below.

## 1. MORE OBLIGATIONS ON LARGE PROPERTY OWNERS TO OFFER SOCIAL RENTAL HOUSING TO VULNERABLE GROUPS

The first set of measures in the decree are aimed at guaranteeing the right to housing for people in vulnerable situations, boosting some of the measures provided for in Act 24/2015. They extend the range of cases in which large property owners have to offer social rental housing to individuals and families who can provide supporting evidence, with the relevant reports from the municipal social services, that they are in a vulnerable situation.

They will not only have to offer social rental housing to people in vulnerable situations who are affected by eviction processes (defaulting on mortgage or rent payments), but also to tenants whose leases have been terminated after they are no longer able to continue paying the rent at the same price as before, let alone a higher one. Social rental housing will also have to be granted to people who, by the time the decree has come into force, have been squatting in a dwelling belonging to a large property owner.

For Gifreu, the broadening of obligations on large property owners to offer social rental housing to families in vulnerable situations “is another way of making progress with regard to the social returns on bank rescues, as was the tax on vacant dwellings in its day”.

IRENE ESCORIHUELA (DESC Observatory)

**one of the main advances of the emergency measures decree is the obligation on large property owners to offer social rental housing when a lease ends, where a tenant is going through financial hardship**

For her part, the Director of the **DESC Observatory**, Irene Escorihuela, believes that one of the main advances is the fact that, under the decree, large property owners have to offer social rental housing “despite the fact that there are no legal proceedings behind it”, where a lease has been terminated when the tenant is going through financial hardship. The spokesperson for the **Barcelona PAH**, Lucía Delgado, also highlights the inclusion of squatting among cases of social rental housing, even though she bemoans the measure’s time limitations. She explains that the decree does not provide for granting social rental housing to people who are squatting from now on or to people who had been squatting in a property for under 6 months when the decree came into force. “They made it like an amnesty, but the problem is not going away”, she warns.

On the other hand, note that the term of social rental housing leases is being extended from 3 years to 7 years in the case of dwellings belonging to large property owners. The Tenants’ Union warns that the decree proposes that the extension to 7 years for social rental housing can only apply during a 3-year period. As the housing emergency is expected to continue beyond this period, the Union supports extending the decree’s period of implementation to a minimum of 6 years.

In addition, the decree strengthens the control requirements that the authorities will have to make to guarantee effective compliance with the obligation to offer social rental housing. Besides the control measures, Gifreu also points out that the decree provides for encouraging private initiatives to make protected rental housing through public financial aid.

## 2. ESTABLISHING THE CONDITIONS THAT WILL ENABLE THE EXPROPRIATION OF THE USE OF DWELLINGS BELONGING TO LARGE PROPERTY OWNERS FOR SOCIAL RENTAL HOUSING

The decree also overcomes what had been an obstacle up to now to the possibility of expropriating the use of vacant dwellings owned by banks and vulture funds for allocation to social rental housing, as established under Act 24/2015. When the Spanish Constitutional Court lifted the suspension on most of the articles of Act 24/2015 and Act 4/2016 (subsequently passed by Parliament as an attempt to dodge the suspension of the former), it applied one condition for expropriations to apply. Owners had to be compensated and the Constitutional Court did not consider that social rent prices were sufficient in that respect, as both acts had initially proposed.

**Compensation for owners will be 40% of the price set for protected housing**

“When they presented the decree in March, they legislated on this price without us”, explains **Lucía Delgado** from the Barcelona PAH. An agreement on this point was reached in the second version. It sets the compensation at 40% of the price established for officially protected dwellings. The measure therefore complies with the Constitutional Court’s requirement and can go ahead.

## 3. EXTENDING THE CASES IN WHICH A LANDLORD IS A LARGE PROPERTY OWNER

The decree extends the cases in which landlords are deemed to be large property owners (up to now, basically banks) and are therefore subject to the above-mentioned obligations. According to the decree, this category also includes natural persons with more than 15 dwellings, a measure which social movements regard as positive but still insufficient.

The Tenants’ Union warn in their published assessment of the decree that a distinction has to be made for individuals with five or more rented dwellings and who, thanks to that, can live off rent as small property owners. “Those with one or two properties must not be put in the same category as those with ten or fourteen”, they emphasise.





#### 4. ACCOMMODATION ON LAND ORIGINALLY ALLOCATED EXCLUSIVELY FOR FACILITIES, TO GUARANTEE THE RIGHT TO HOUSING BOTH FOR PEOPLE AT RISK OF SOCIAL EXCLUSION AND FOR OTHER SOCIAL GROUPS

Besides social rental housing, the decree provides for another alternative to ensure the right to housing for people at risk of social exclusion and other groups, such as young people and the elderly. These are known in Catalan as *allotjaments dotacionals*, which refers to “housing specifically for people at risk of social exclusion built on land originally intended for a facility”.

It should be borne in mind that urban planning deals with residential land – which dwellings can be built on – and “dotacional”, land which is meant for facilities, and in both cases it could be either public or private. What this decree enables is boosting the construction of facilities, which are not strictly speaking dwellings but which enable temporary housing solutions to be provided for various groups, on “dotacional” land.

*Dotacional* dwellings have already been around for several years in Barcelona, but from now on they may increase in number and extend to more areas in the territory. “Dotacional” dwellings can also be built on private land, state assisted by the Administration, which will ensure their prices and conditions are adapted to the general interests and needs of the groups they are allocated to.

#### 5. STRENGTHENING THE AUTHORITIES’ PRE-EMPTION RIGHTS

The decree also strengthens the pre-emption rights of authorities (or preferential purchase of dwellings for sale to expand the public and social housing stock). On the one hand, it strengthens the authorities’ capacity to exercise this right over dwellings that come from foreclosures and belong to banks. On the other hand, it enables local authorities to exercise their pre-emption rights over land. They can buy land or complete buildings where there is a need to boost the public housing stock.

According to data from the AHC, it is thanks to its pre-emption rights that the Catalan government has been able to acquire 3,000 flats for its public housing stock over the last 4 years. This measure was already in force in cities such as Barcelona and now the decree is extending this possibility of exercising pre-emption rights to every municipality in the country until 2027.

#### 6. MORE DISCIPLINARY POWERS FOR LOCAL AUTHORITIES

From now on, local authorities will also have more disciplinary powers. They will be able to fine owners that breach their obligations over the social functions of their properties. The Housing Act of 2007 already established penalties for such breaches, but up to now “we had been facing many difficulties as local authorities wanting to bring disciplinary proceedings, to carry out inspections and issue fines, as we were understood to lack the jurisdiction”, explains **Javier Burón**. He considers the decree here “clarifies and strengthens” the capacity of local authorities to carry out inspections and issue fines.

#### 7. LINKING PUBLIC AID TO PUTTING PRICES BELOW THE REFERENCE INDEX

As for rental housing, the decree also stipulates that where lease prices go above the rent reference index, owners cannot receive public aid (to promote the rental, subsidise renovations and so on). What is more, to ensure that tenants and owners have the same information on average rental-market prices, publication of the reference index has been established as a mandatory measure for leases and for offers published on property portals. Failure to comply with this measure will constitute a serious violation and penalties will be applied.

**8.  
LAND RESERVES ARE BEING  
EXPANDED FOR PROTECTED HOUSING  
AND CAN NO LONGER BE WITHDRAWN  
FROM THE CLASSIFICATION**

**Judith Gifreu** also points out that an important advance is “the permanent classification for new officially protected housing”, long demanded by social movements, which, up to now, had only been in operation in the Basque country, since 2003. This means such dwellings can no longer be withdrawn from the social housing classification and returned to the private market, as is still the case in the country’s other regional communities after a period of between 20 and 25 years.

**Javier Burón, the Manager for Housing and Renovation at Barcelona City Council** and an expert in the field, explains how the decree manages to provide de facto permanent protection for officially protected housing in Catalonia. According to the legal system on housing, a distinction is usually made between land and its overlying structures, which consist of the buildings that are constructed on it. Burón explains that the new decree “unifies the urban-planning classification” of land and its overlying structures: “Where land in urban planning is classed as land for officially protected dwellings, its overlying structures will also have to correspond to that housing system”. The land will have to remain classified as such unless the urban-solidarity targets established in the Housing Act of 2007 have been reached (15% affordable housing out of the entire housing stock). In addition, should a municipality reach this 15%, it would not be allowed to reduce this percentage either. That means de facto protection of officially protected housing in perpetuity, or at least for many decades.

**9.  
INCREASING LAND RESERVES FOR  
PROTECTED HOUSING**

In general, the decree significantly increases the land reserves for protected housing. If, up to now, 30% of the land had to be reserved for protected housing on buildable land (fit to be built on) and unconsolidated urban land (land located in an urban centre and not yet developed), the decree raises the percentage to 40%. On buildable land, this percentage is expected to rise to 50% in the metropolitan area. On the other hand, for consolidated urban land (where buildings have already been constructed and are to be pulled down for redevelopment or renovation), it sets a mandatory reserve of 30% for officially protected housing. This is the measure that was approved at the Full Barcelona Municipal Council Meeting of September 2018 and which the decree now “ratifies”. Another important aspect is that half of these protected housing reserves will have to be mandatorily allocated to rental housing.

This measure is linked to a re-structuring of the categories of protected housing. Up to now there had been three types of protected housing, all with prices below the market rate, but with differences between one another. In order from most to least inexpensive, these three officially protected housing types were: special system, general system and state-assisted system. Under the new decree, there are now only two simplified protected housing categories: rental (mandatory) and the rest (which can be sold or rented out). What it does, then, with land reserves for protected housing is to make it obligatory for at least 50% of flats to be allocated to the first of these two categories.

While it sees the proposal as a positive development, the Tenants’ Union points out that it would have to go further and follow the Basque example on this point, where, from 2020 on, all new protected housing will be rental.

## 10. DWELLINGS IN BUILDINGS CONSTRUCTED ON PRIVATE RESIDENTIAL LAND WILL HAVE TO BE ALLOCATED TO RENTAL HOUSING

The decree also aims to promote an expansion of the private rental housing stock, so that the increased supply will help to counter the upward trend in rental prices. The goal is to enable private residential land to be reserved in urban planning for the construction of dwellings that are not divided horizontally for sale. In other words, the flats cannot be sold off separately but will have to be rented out. The only alternative would be to sell the entire block to another operator that would be mandatorily required to rent its flats out.

Note that, once the content of the emergency measures decree has been reviewed, should social movements regard it positively, they will insist on examining its level of implementation to ensure compliance. **Judith Gifreu** explains here that a fundamental element for implementing the measures provided for in the decree is the Catalan Sectoral Territorial Housing Plan, which is currently being finalised by the Catalan government. "This document must serve for us, the authorities and the social, economic and institutional players, as a guide for determining the main housing policy measures, including, obviously, the expansion of public housing stocks and the social or affordable rental housing stock, with targets for the next fifteen years", she concludes.

## The COVID-19 crisis has led to the launch of emergency housing and rental measures

The usual development of housing policies and debates at every territorial level (municipal, Catalan-region, Spanish State) was interrupted due to the COVID-19 health crisis and its socio-economic consequences. The declaration of the state of emergency in Spain on 14 March, and the lockdown of the population under various conditions at each stage of the emergency has had serious repercussions on housing. On the one hand, we should take into account that the halt in economic activity in several sectors has made it difficult for many families to continue paying their rent or mortgage instalments. On the other hand, it has also resulted in a loss of earnings for some operators in the property sector, especially for owners of tourist apartments or hotel establishments.

That is why the emergency measures taken by the Spanish government during the state of emergency included some that were aimed at mitigating the effects of the housing crisis.

Royal Executive Decree 11/2020, of 31 March, on supplementary emergency measures in social and economic areas for tackling COVID-19, puts a stop to rent-default evictions for individuals in vulnerable situations and without housing alternatives, as from 2 April and for a maximum period of 6 months. It also provides for an extraordinary extension, as from that same date and for the same period of time, of leases which expire up to two months after the end of the state of emergency. Where individuals have financial difficulties paying their rent in the usual manner, the decree envisages different measures depending on whether the dwellings



belong to small or large property owners (the latter with over 10 dwellings or possessing a gross floor area in excess of 1,500 m<sup>2</sup>).

For small property owners, a phased process is established. In first place, the two parties should attempt to reach a voluntary agreement (either for postponing or for totally or partially forgiving the tenant's debt). In second place, provided that the first option has not been possible, tenants may request a temporary and extraordinary postponement of their rent payments and landlords will be under an obligation to present a proposal, within a period of one week, for postponing the debt or arranging for its payment in instalments. Third, and only where owners refuse to accept a proportionate pro rata division of the debt, tenants may request a loan guaranteed by Spain's Official Credit Institute (ICO), repayable within a maximum period of ten years, to pay for up to 6 months' rent. Tenants who are struggling to pay back this loan under the terms established could also request financial aid of up to 900 euros a month under the State Housing Plan, through the regional community in which they live.

As for large property owners and public housing organisations, tenants may also apply for a temporary postponement of their rental payments. If no voluntary agreement is reached with the landlord, the landlord can choose between two options: halving the rent price for a maximum period of 4 months; or applying a moratorium to rent payments during the state of emergency and the following months (which can be extended one month at a time up to a maximum of 4) should the vulnerable situation continue during that time. Accumulated debts must be paid back in instalments and without interest over a 3-year period, once the moratorium has ended. Several administrations have criticised the fact that the decree establishes the same obligations on the public housing enterprises as it does on the large property owners (banks, investment funds and so on), which carry out their activities for profit.

Before they can resort to any of the above-mentioned measures, families will have to provide documentary evidence that they are in a vulnerable situation resulting from the COVID-19 crisis. This will be considered so if the employment situation of the household members has been



affected by Covid-19 (for example, they have become unemployed or have been temporarily laid off under a Temporary Employment Regulation Record (ERTO) and, in addition, the family unit falls below the income threshold (3 times the Public Income Indicator with Multiple Effects (IPREM)) and the financial burden of the rent and utility bills is 35% or more of their net income.

Besides rent-related financial aid, the Spanish government has also approved a moratorium of mortgage payments for up to 3 months for individuals in vulnerable situations who have become unemployed or had their income reduced because of the COVID-19 emergency and who can provide documentary evidence of their situation. Once this moratorium period has ended, payments due will be postponed for an equivalent period, that is, mortgage payments will be deferred for up to 3 months.

Note too that although the Spanish State is the authority responsible for establishing the main extraordinary measures and general guidelines that have to be abided by throughout the territory during the state of emergency, both the Catalan government and the region's local authorities have also implemented various housing measures, within their scope of action.

Notable measures taken by the Catalan government include the moratorium on rent payments for its housing stock for a total of 20,000 households, from April to the end of the state of emergency, for debts to be subsequently paid back in instalments within a period of 1 year. Progress has been made in the payment of rent subsidies to groups in vulnerable situations, such as women suffering gender violence or people over the age of 65.

At a local level, some local authorities have applied moratoriums for rent payments to municipal housing stock

or provided mediation services between landlords and tenants in search of solutions. So, for example, Barcelona City Council applied a moratorium for rent payments to its municipal housing stock, where 8,748 families live, between April and September 2020. It established that those families could pay back the debt due, as of October, over a period of 54 months. This measure has also been extended to 400 commercial premises located in the ground floors of buildings, with rental properties developed by the Municipal Institute of Housing and Renovation (IMHAB), and to 1,400 officially protected dwellings developed by the IMHAB.

Similarly, both the IMHAB and the **Hàbitat 3 Foundation** (which manages 250 dwellings under an agreement with Barcelona City Council and the Catalan government) have revised rent prices downwards for families living in the dwellings managed by them and who have been suffering significant financial effects caused by the COVID-19 crisis.

Finally, the City Council has provided financial aid for rent payments for families who live in flats in Barcelona's Social Rental Housing Pool (with 891 dwellings) and suffer financial hardship caused by the COVID-19 crisis. This financial aid reached 11,689 IMHAB tenants.

Apart from these extraordinary current measures, the social and financial consequences resulting from this health emergency are raising questions about the development of the housing-related plans that had been envisaged. The political decisions of the post- COVID-19 crisis era will be decisive in determining whether, after months of interruption from the state of emergency, progress is made on the action lines and debates on housing policy followed previously, or whether we take a step backwards, which could prolong even further the housing-emergency situation that Catalonia and Spain have been suffering since 2008. 📌

# 06

## Benchmark rent regulation policies in Europe and the rest of the world





When various positions on price regulation are compared in the political and media debate, many nuances are often lost regarding this highly complex issue. Far from being an unequivocal term, rent regulation covers a broad range of regulations, with very significant differences depending on the period in which they were implemented or their adaptation to the context of a specific city or country.

So much so that in the various studies on this subject, we find a range of terms corresponding to the major historical trends to regulate rental prices, which date back to the early

**Price-freezing systems have been applied since the first third of the 20th century**

20th century.

If we follow their chronological order, we first find rent control or rent freezes in reference to the strictest regulation systems that were applied in various European countries and the United States coinciding with the First and Second World Wars and the postwar period and up to the 1960s. Note that armed conflicts led to the mass migration of populations to urban centres to work in the military industry and, at the same time, resulted in the destruction of a large part of the housing stock. Given the context of excessive demand and scarce housing supply, rent prices tended to rise and many countries opted to freeze them, establishing rigid price ceilings.<sup>10</sup>

Second, we find references to moderate rent control or rent stabilisation, in relation to the more flexible price-control systems that were implemented

**Rent-stabilisation systems began to be applied in the 1970s**

in various parts of the world from the 1970s on. Coinciding with the oil crisis that led to the inflation of prices—including housing prices—and thanks to pressure from various social movements, such price-stabilisation systems were launched in several countries and cities all over the world.<sup>11</sup>

Unlike rent-price freezing, the system is based on benchmark price rates, which can be exceeded up to a set maximum, and which are periodically updated in line with inflation. What's more, they usually contain other measures which bring flexibility to the regulation. For example, they usually exclude newly constructed dwellings earmarked for rental housing (known as "built-to-rent") so as not to disincentivise investment in flats.

They also enable owners to raise rental prices above the pre-established margin if they invest in improving or renovating their dwellings, albeit with limitations. In addition, they help to protect tenants, with mechanisms for preventing evictions and forcing tenants to move. Also excluded from regulation in several rent-stabilisation systems are dwellings built after the

systems have been implemented – so as not to disincentivise the building of dwellings – and luxury residences, among other exceptions.<sup>12</sup>

### **The wave of neoliberalism has been undermining stabilisation systems since the 1980s**

Following the surge of Neoliberalism in the 1980s, headed by Margaret Thatcher in the UK and Ronald Reagan in the USA, price-stabilisation systems were undermined across the globe and, in some cases, vanished completely. Even so, the debate around rental price regulation has recently reappeared with a vengeance, in the face of the gentrification processes occurring in many of the world's cities.

In some cities such as Berlin, where price-stabilisation systems were already up and running but not totally effective, changes have even been planned to tighten the regulation. For cases such as Berlin's, there is now talk of third-generation regulation, in reference to the price-control

methods which, based on the stabilisation system, supplement this with additional measures.

Below are a number of contemporary examples of how rent prices are being regulated in various cities around the world. A more in-depth explanation is given of the cases of Berlin and New York, cities that were represented at the Barcelona conference on rental price regulation which prompted this publication, and, more generally, the experiences of Paris and Vienna.

**Faced with the phenomenon of gentrification, there is a growing need to step up rental price regulation**



Florian Schmidt, the head of housing and planning in the Friedrichshain-Kreuzberg district of Berlin and Lucy Joffe, the Assistant Commissioner for Housing Policy at NYC Department of Housing.



# Berlin

To understand how rental housing is currently regulated in Berlin and in general throughout Germany, we will first examine the situation in the country and its capital for leases and look at how the present price-stabilisation system has evolved over time; a system which dates back to the 1970s and which has come on in leaps and bounds since that time.

Unlike Spain, Germany as a whole, especially in its urban centres, has a strong rental housing culture. The percentage of tenants in its big cities is close to 80%, while the remaining 20% are owner occupiers living in flats. However, in the country as a whole, the proportion of tenants drops to 50%, given the higher proportion of property owners in towns and rural areas. This was the explanation given by **Florian Schmidt, a sociologist and urban activist** and the head of housing and planning, since 2016, of the Friedrichshain-Kreuzberg district located in the centre of Berlin.

**84% of Berlin's population lives in rental housing**

More specifically, the country's capital, which is home to more than 3.5 million people, has 1.9 million dwellings, 1.6 million of which are rented out (84%). As many as 1.4 million of these currently have regulated rent prices, according to Schmidt.

FLORIAN SCHMIDT (Berlin City Council)  
**is critical of the privatisation of the city's public housing stock over the last two decades**

German cities experiencing a tight rental-market situation, such as Berlin, have had a *rental brake* in place since 2015, which prevents their prices from rising more than 10% above the benchmark index, as explained below in greater detail. However, various political and social sectors are critical of this system for not being sufficiently effective.

According to Schmidt, the problem represented by rising rent prices is being worsened by the scarcity of public housing. 7.1% of rental dwellings in Berlin are social housing and 5.7% have some other form of protection, according to data from Investment Bank Berlin from 2017.<sup>13</sup> A percentage which, according to Schmidt, is low, even when we remember that the equivalent in Spain is no higher than 2% overall.



Schmidt reports how over the last 20 years the city has lost a large part of its public housing stock, mainly through sales to private companies, blind support from Germany's conservative governments for the neoliberal economic current and the halted activity of public companies dedicated to promoting the construction of such housing.

Add to that the constant growth of Berlin's population, with every year seeing an average of 40,000 newcomers, resulting in greater need for affordable housing.

## A system for stabilising prices and open-ended leases since the 1970s

Germany is one of the countries where rental price controls were first introduced, during the first half of the 20th century, initially through rent-price freezing, and later, from the 1970s on, through rent-price stabilisation systems.

The first step towards establishing a stabilisation system was to limit the rise in rental prices during the lifetime of a lease up to a maximum determined by the costs of dwellings with similar features. This was the precursor to the first rent reference indexes (or *Mietspiegel*), a key concept within the system for regulating lease prices in Germany, which establishes a price bracket according to the features of a dwelling and which was initially merely informative and non-binding. <sup>14</sup>

At the same time, Germany also introduced an open-ended lease model in the 1970s, thereby guaranteeing housing-tenancy stability. From the 1970s on, all



leases in Germany have been open ended, apart from exceptional cases stipulated in legislation, for example, if owners have to use their rental dwelling for themselves or a family member, if they are experiencing serious financial difficulties having their property rented out or if their tenant has manifestly breached the terms of the lease they signed.

Rent regulation has been developing continuously over the last few decades. In 2001, it was incorporated into the German Civil code, thereby harmonising the various regulations on leases under a single system, and the *Mietspiegel* reference index became binding. Later, in 2015, another key piece of the present rent regulation system was approved: the rental brake or *Mietpreisbremse*, which puts a cap on the prices of new leases. Even more recent are the new measures, approved in 2019, both for the country as a whole and specifically for Berlin, to strengthen rent regulation.



Some of the key concepts are examined in detail below, so we can understand rent regulation in Germany with regard to rental price affordability.

## Price reference index (*Mietspiegel*), the cornerstone of the regulation system

As mentioned above, a key piece of the German system for regulating lease prices is the rent-price reference index (or *Mietspiegel*).

**Florian Schmidt** explains how this reference index establishes various price scales according to the features of dwellings, taking account of various factors (location, size, age, quality of facilities and so on) and assessing the costs of similar flats. The head of housing and planning for the Friedrichshain-Kreuzberg district in Berlin explains that this price scale establishes “an average rent-price reference for the city” and that when an owner wants to raise the rent price of an ongoing lease “they cannot do so by more than 20% above this average price”.

Even so, Schmidt warns that this does not mean that rent cannot go above this 20% cap indefinitely over time.

It should be noted that this reference index is periodically updated, by once again comparing the rental prices of dwellings with similar features, so the reference rate can rise. In other words, the index “slows down but does not stop” price rises.

Schmidt warns that another key issue in the way this index is produced is the age of the leases that are taken as references. If only the most recently signed leases were taken into account, the rent-price reference index would tend to rise (unless the period considered has coincided with a recession or drop in prices). If the leases from years back were taken into account, the rent-price index would tend to drop.

SCHMIDT:

the reference index  
“slows down but does  
not stop” price rises

Florian Schmidt, the Head of housing and planning in Berlin's Friedrichshain-Kreuzberg district, at the Rent Regulation Conference held on 18 November 2019.





The period taken for calculating the reference index has been varying with time, depending on the political persuasion of the government. While in the late 1970s it was calculated taking into account all the country's rental housing, from 1982 on, with the arrival of the government under the conservative Helmut Kohl (CDU), it only took account of leases signed within the previous 3 years. The period now is 4 years. Another factor also needs to be considered: how frequently the index is updated. The more often it is updated, the more it will encourage a widespread rise in rent prices in the city (unless it occurs after a period during which there has been a drop in prices).<sup>13</sup>

The *Mietspiegel* differs in each municipality and it should be borne in mind that it is not mandatory to produce it. State regulations advise municipalities to produce a reference index when this is required to ensure city residents have access to housing at reasonable prices in line with their purchasing power, normally in tight-market situations. In addition, *Mietspiegels* are not mandatory (or authorised) in every municipality that has been provided with one, and in many cases they are merely for information purposes.

**Half of Germany's most populated cities, such as Berlin, have a rent-price reference index that must be complied with**

According to the latest available data from Germany's Federal Institute for Construction, Urban and Regional Research (BBSR), close to half of the most populated municipalities (with 100,000 or more residents) and a fifth of municipalities with populations ranging from 50,000 to 100,000 had an authorised *Mietspiegel* in 2014. Berlin is one of these municipalities.<sup>13</sup>

Schmidt explains that most rental housing in the capital (1.4 million out of a total of 1.6 million homes) is regulated by this reference index. The remaining properties that are excluded from regulation fall under some of the exceptions to the *Mietspiegel*: detached or semi-detached single-family dwellings; homes located in two-dwelling buildings; newly constructed buildings completed after 1 January 2016 or with particular features (very large dwellings, with luxury features or, the opposite, very precarious, which justify establishing their rent price above or below market rates).





## New leases cannot exceed the price index by more than 10%

A new mechanism came into force in 2015 to regulate lease prices, the so-called *Mietpreisbremse* or rental brake, which is also closely linked to the previous index (*Mietspiegel*). "Up to then, prices for new leases had been spiralling upwards", Schmidt points out.

The rental brake establishes that, when it comes

to signing new leases, prices are capped at 10% of the rental reference price. State regulations limit the application of

the rental brake in tight-market situations, where there is an imbalance in the market which causes sharp rises in rent prices. Such is the case with Berlin, where, the *Mietpreisbremse* can therefore apply.<sup>14</sup>

**Florian Schmidt** believes this system "has not been as effective as it was thought to be", as it has been used "for putting a brake on" the pace of growth of rent prices, rather than "stopping" their rise. Here he maintains that, in the case of new leases, Berlin's tenants have to spend close to 40% of their income on rent. He attributes

this lack of effectiveness to several reasons, mainly to the exceptions that allow owners to dodge price caps.

One of the most controversial exceptions is the one that allows prices to go above those capped by the price reference index and the rental brake, when renovation work

is carried out on a dwelling.

Schmidt bemoans the fact that the regulation has even "encouraged speculation". In such cases, owners can shift part renovation costs

of their onto their lease prices.

Another exception is flats that already had rent prices above the ones capped by the *Mietpreisbremse* (in previous leases) which are exempt from adjusting to the index. Of course, owners cannot use this exception for rent-price increases agreed to during the final year of the previous lease.

SCHMIDT:  
the exceptions to the rent brake when alteration work is carried out on dwellings "have encouraged speculation"

"If the flat was furnished there was no brake either", remarks Schmidt. Other exceptions include dwellings rented out for the first time since 1 October 2014, the aim being to prevent the measure from disincentivising the entry of new flats into the rental market. Nor are dwellings affected by the rental brake where they are rented out for the first time after a complete refurbishment, among other things.

In addition to the terms provided for in the lease regulations, the German Economic Penal Code (*Wirtschaftsstrafgesetz*) establishes fines of up to 50,000 euros for abusive rent, considering as such prices that

SCHMIDT is critical of the fact that it is up to tenants to report illegal rent prices and that it is not an obligation on owners monitored by the Administration

exceed the reference index by 20%. Prices that exceed the reference index by 50% or more are deemed “indecent” or “harmful” and can lead to prison sentences of up to three years or larger fines, according to the Friedrichshain-Kreuzberg district’s Head of housing. In both cases it must be shown that the owner has taken advantage of the tenant’s vulnerable situation, inexperience or lack of knowledge.

Schmidt warns of the numerous difficulties tenants have in demonstrating that their landlord is unlawfully receiving rent in excess of the *Mietpreisbremse*’s 10% cap. In fact, until quite recently, many tenants were forced to sign leases with prices above this cap, not knowing whether any of the exceptions to the *Mietpreisbremse* were genuinely being met, and were only able to make a claim after a drop, if they managed to prove that it was not the case. Of course, this lack of prior information prevented people unable to pay the rent initially demanded from accessing certain rental flats. “Now it has changed and tenants can ask what price the previous tenants had paid, but it remains an option for tenants to ask for a reduction in the rental price and not an obligation on landlords”, he explains.



## Rent prices of current leases cannot rise by over 15% in 3 years in tight-market situations such as Berlin’s

The conditions for updating rent prices during a lease’s lifetime are established as soon as the lease is signed and can be under various criteria. One of these is revising in accordance with the equivalent to the German CPI, as has been the case in Spain, since the passing of the State decree on rentals in March 2019.

But this price revision in Germany can also be governed by the conditions initially agreed to by landlord and tenant or according to how reference prices evolve for comparable dwellings in the rental market. It is in the third case that the *Mietspiegel* (rent reference index) can be resorted to, although not necessarily, because it may be done in accordance with other parameters (a justified expert report, a database of comparable housing rentals and so on). Whichever price revision formula is used, price increases for current leases cannot exceed 20% within a period of 3 years and 15% in a tight-market situation such as the one Berlin is presently experiencing, although this excludes the additional increases that may result from modernisation work on dwellings. <sup>13</sup>

## Regulation loopholes and pressure from gentrification are behind the new reforms from 2019 on

The regulation mechanisms explained above have not been sufficiently effective so far to halt the rise in lease prices, because of the ineffectiveness of some aspects of the regulations, on the one hand, and the continued presence of socio-economic factors putting upward pressure on rent prices, on the other.

Among these factors, which are common to many cities around the world, Schmidt mentions the redevelopment of several urban areas, which have increased the value of buildings; and global phenomena such as “company investment of global capital” in housing, with the aim of maximising their financial profits, at the cost of raising the rent prices of the buildings acquired or speculating by selling them at higher prices.

In a country with a greater prevalence of single-family dwellings or buildings with a smaller number of flats than in Spain,

Schmidt also refers to the phenomenon of “building subdivision” as a symptom of property speculation. In other words, there has been an increasing horizontal division or segmentation of buildings over the last few years, to fit in more flats, and thereby draw out as much financial profitability as possible.

By taking into account all these factors and the confirmation that many aspects of the rent price regulation could be improved, both the federal government of Germany and the regional government of Berlin recently launched measures to make it more effective. Below we explain first the federal reforms, which came into force in January 2019, and then the measures recently launched by the regional government of Berlin (of the Land or federal state), which have been in force since the start of 2020.

## The federal reform limits price rises due to renovation work

The German government approved a reform of its rental regulation (the *Mietrechtsanpassungsgesetz*) on 18 December 2018, which came into force on 1 January 2019.

The main changes are notably as follows:

1. Landlords are obliged to duly justify any rental prices that exceed the 10% cap, that is, to demonstrate that they fall within some of the exceptions provided for in the *Mietpreisbremse* (rental brake).
2. A new cap is established for rent-price rises for modernisation work on dwellings. While renovation work could previously increase annual rent by an amount equivalent to 11% of the cost of the work carried out, the percentage has currently dropped to 8%.
3. The amount that prices can be raised by for modernisation work on dwellings is limited to 3 euros per square metre (during a period of 6 years) or to 2 euros per square metre, for dwellings where the rent price is below 7 euros per square metre.

4. This excludes modernisation work that justifies an increase in rent prices determined according to type of alteration work. For example, work necessary for maintaining the dwelling's good state of repair is not included here. What is more, tenants can reject the work or the price increase it leads to if they are in an especially vulnerable situation.
5. Prices may only increase for modernisation work in accordance with previous limits, if the conditions for revising rent prices that appear on the lease are governed by the evolution of the reference index. This will not be possible, by contrast, if they were conditions agreed to between landlord and tenant or if the price revision is carried out in accordance with the evolution of the consumer price index. In the latter case, rent prices can only be raised for improvement works if the alterations carried out were outside the landlord's control.

In addition to these reforms, the federal government has also been studying changes to the calculation basis for the rent-price reference index (*Mietspiegel*). For example, it is assessing whether to extend the number of leases taken as a reference. While leases signed over the last 4 years are currently taken into account, the proposal now is to go back further in years, in which case the reference price rate would tend to drop. Another change that is being considered is to extend the frequency with which the reference index is updated from 2 years to 3 years, which would also help to slow down price rises. <sup>13</sup>

## **The Berlin regional government is freezing reference rent prices for 5 years, a pioneering measure in Germany and the rest of the world**

As well as the above reform launched throughout Germany in 2019, the Berlin regional government (Land), made up of the Germany Social Democratic Party (SDP), the Greens and Die Linke (the Left) launched additional measures in 2020.

The most notable of these is the freezing of the rent-price index for 5 years, so that, throughout this period, they would be governed by the *Mietspiegel* of 2013. Reference prices differ, as mentioned above, according to the location and features of a property. The maximum monthly price at the most expensive end of the scale would be 9.80 euros per m<sup>2</sup> according to the *Mietspiegel* of 2013.

**The Berlin Court considers the measure unconstitutional and has referred it to the German Constitutional Court**

This measure came into force on 23 February 2020, but less than a month after it was put into operation, the German law courts declared it unconstitutional. According to the Berlin Federal Court, the Land government has no jurisdiction over rent regulation, which was why it took the case to the Constitutional Court for its ruling on the matter.

The measure, now awaiting the ruling from the Constitutional Court, also establishes that rent-price reductions can be requested "retroactively". That is, if a tenant were paying rent 20% above the *Mietspiegel* of 2013, they could request its reduction. Furnished flats are also included in the rent-control system and fines of up to 500,000 euros can be imposed for reference-price violations. It should be noted that the regulations provide for a limited number of exceptions where prices could exceed the reference price (recently constructed dwellings, cases where landlords are experiencing financial difficulties, alteration works in certain cases and so on).



SCHMIDT:

**it is an indispensable measure  
“for giving citizens breathing  
space” and for giving the city  
“time to roll out the machinery  
for affordable housing”**

Berlin was the first German federal state to approve a measure with these features. Schmidt explains how it has encountered considerable resistance from the finance and property sectors and the more conservative political parties, in addition to obstacles in the legal arena.

He acknowledges it is an exceptional measure, but considers it essential “to give breathing space to citizens” heavily overburdened financially by rent, and to give the city time “to roll out affordable housing-construction machinery”. “This is a process that takes years, activating land and organisations that have not carried out any public housing construction for 40 years”, reflects Schmidt, who considers it essential to make the most of these 5 years “to balance the housing market”. Here the doubts over its legality represent a harsh setback for the regional government, which was confident it could achieve these goals.

**The constitutionality of the  
measure under debate: does  
jurisdiction fall to the Land or  
to the federal government?**

There are currently doubts over whether or not this measure is in line with the German Constitution and whether it will be able to follow its course, owing, above all, to the issue of jurisdiction.

In fact until recently, the regional government believed it had no jurisdiction to do so, but Schmidt explains how it discovered that it could, under a new legal interpretation of federal regulations from 2014: “A lawyer working for a Berlin district wrote a small legal essay saying that Germany’s provinces did have the jurisdiction to implement rent regulation [...]. It pointed out that there had been a change in federal legislation in 2014 that gave such jurisdiction, but up to then no one had interpreted it that way”.

To date, the German Constitutional Court has still not made any ruling on the matter, “although it did state in February 2019 that landlords could not ask for permanent rent regulation but that it was legitimate for it to change in line with the social situation of cities”, Florian Schmidt affirms. The German Constitutional Court has considered that second-generation regulation does not strike at the heart of the right to ownership, even if it does represent a restriction on freedom of enterprise for the benefit of the common good. In this regard, the doubts that had arisen on the constitutionality of the measure because of another issue – that it represented an excessive interference in the private rental market and private ownership – seem to have disappeared.



## Other measures from Berlin City Council to slow down price rises

Besides the measure for freezing reference rent prices, Berlin City Council has other instruments at its disposal to slow down price rises.

Schmidt explains there is a municipal byelaw (*Zweckentfremdungsverordnung*) that bans dwellings from being rented for commercial uses, to counter the “strong trend for turning flats into offices”.

On the other hand, using federal urban-planning legislation, the Council is also proposing to demarcate protection areas for local residents (*Milieuschutzgebiete*) in gentrified areas. In such cases, Schmidt explains that “the modernisation processes leading to rental price rises can be slowed down” and, for example “permits can be denied” for carrying out certain kinds of alteration work.

In tight-market areas, the Administration also exercises pre-emption rights. “Public housing companies, of which there are 7 in Berlin, are tasked with buying housing in the free market and receive public money to do that”, explains the Head of Housing in the Friedrichshain-Kreuzberg district, who then adds that cooperatives are publicly funded for that same purpose. Seven hundred flats were acquired that way from 2017 to 2018 in his district alone, raising the percentage of affordable housing from 25% to 27%.



Seven hundred affordable rental dwellings have been acquired over two years in the Friedrichshain-Kreuzberg district, through the Administration's pre-emption rights

## The social movements' most notable initiatives

In addition to the measures launched by the Administration, civil society has been the driving force behind several campaigns championing the right to housing. Florian Schmidt explains that one of the most notable of these is the initiative to expropriate Deutsche Wohnen and other similar companies, majority owned by large international investors, that have a large housing stock at their disposal in the city, "through which they aim to maximise their financial profits, without attending to the common good".

argues that it is a constitutional measure according to various legal studies, as the German Magna Carta considers that private property also "has to be put at the service of the common good".

It will be up to people of Berlin themselves to decide whether these companies are expropriated, in a popular vote in 2020. If they vote in favour of the expropriation, as many polls suggest, the Berlin government will have to apply this measure, which would affect close to 10% of the city's housing stock (some 200,000 flats).

**Berlin's residents will decide by popular vote in 2020 whether to expropriate close to 200,000 flats from large property companies**

Schmidt explains that these companies had been expanding their property holdings a decade ago, buying state-owned flats that were for sale at the time. "It was a mistake made by the State itself", maintains Schmidt, for whom this initiative is an opportunity to recover dwellings for the community. He also

**The 200 Häuser initiative aims to combat the subdivision of dwellings into several flats to be sold off for maximum profit**

A second initiative, 200 Häuser (200 houses), focuses on combating house subdivisions (horizontal divisions). Schmidt explains that many landlords are currently putting pressure on tenants to move out of their houses, so they can then subdivide their properties into several flats and maximise their financial yield. In many cases, the argument used by landlords for breaking leases is that they or members of their

family personally need to use the property (one of the exceptional grounds for early lease terminations in Germany, which are generally open ended). But this is merely a pretext for forcing out tenants and afterwards carrying out their true aim of subdividing their properties.

"This is one of the issues causing the most confrontation", reports the Head of Housing for the district in the centre of Berlin, where 28% of residents already live in subdivided buildings. In fact, Schmidt warns that, after rent regulation was strengthened, this is "the only business channel" left for the property sector: dividing up buildings to then sell the houses to the highest bidder. Here he recognises that "there has been no regulation" so far to halt this phenomenon, against which he believes action ought to be taken.

## **Berlin's goal is to ensure half its housing stock is public or owned by cooperatives within 30 years. The figure currently stands at 25%**

One of Berlin's main challenges in the coming years, according to Schmidt, is expanding the affordable housing stock, whether public-owned or in the hands of cooperatives. While these currently represent 25% of the city's flats, compared to the 75% which remain in private hands, the City Council's goal is for half of the city's housing stock to be public or cooperative by 2050.

To achieve this goal, Berlin will have to build half a million affordable dwellings through one of these two channels over the next three decades. Schmidt points out that considerable public investment will be required both for building and for purchasing dwellings: "One scenario that crops up time and time again, is that when an owner dies,

their children want to sell the building to share out their inheritance. They then try and sell it to whoever pays the most and that will normally be those aiming to subdivide the building so they can sell off its various flats and maximise their financial profit. What we need to do is put a brake on this, by encouraging people to sell their dwellings to the city or to cooperatives, and provide funding for such transactions".

Schmidt, in short, frames the need to bring rental price regulation into a more comprehensive strategy, to guarantee the right to housing, which depends too on expanding the public and cooperative affordable housing stock. 🏠



## New York

Some 8.4 million people live in New York city and as many as 2.5 million do so in rental apartments. It is a city, then, with a high number of tenants and it should be pointed out that as many as 45% of its rental housing (close to 1 million properties) have rent prices regulated by the public sector. The city's rental housing supply, then, is divided almost equally between the free market and the regulated system, according to **Lucy Joffe, the Assistant Commissioner for Housing Policy at New York City Council's Department of Housing Preservation & Development.**

In a city with an average family income of 60,762 dollars a year (5,064 dollars a month), the average gross rent price is 1,396 dollars a month (taking both regulated and de-regulated housing into account). <sup>15</sup> Prices in the private market have been sky-rocketing and the average is much higher, at 3,477 dollars a month. <sup>16</sup> On average, people who live in rental housing in New York spend some

34% of their income on their rent, "a percentage that has constantly gone up since 1965", remarks Joffe. By contrast, she points out the positive side, that the quality of dwellings has been improving over time and that there have been fewer and fewer maintenance problems.

Lucy Joffe explains that New York has two separate systems for regulating rent prices. The main one is rent stabilisation, which establishes a maximum price limit, currently set at 2,733.75 dollars a month. Most dwellings regulated by this system are in buildings with six or more storeys built before 1974, when the New York State legislation that established rent stabilisation came into force and which continues consolidating the pillars of the system today.

The stabilisation system also includes other, more modern buildings constructed with government assistance or with tax incentives for developers. New York city has a housing agency which issues its own bonds, so that various investors contribute to the funding of housing projects. Every private company that wants to receive funding through this channel has to enter the stabilisation system. That means having a large infrastructure, only available to state cities on the scale of New York.

LUCY JOFFE (New York City Council)  
**the stabilisation system, with a maximum rental price limit of 2,734 dollars a month, is the main channel for regulating rent**

The second rent-regulation system, currently in decline, is rent control. It only covers apartments that have housed the same tenants continuously since before 1971. According to data from 2017, there are 20,000 rental apartments regulated under this system in New York, most occupied by elderly people on low incomes. There are fewer and fewer apartments in this situation in this North American city and, "on leaving this system, dwellings usually enter the stabilisation system", explains Joffe.



Lucy Joffe, Assistant Commissioner for Housing Policy at NYC Department of Housing Preservation & Development, at the Rent Regulation Conference held at ICAB.

## **A city with a long history in rent regulation, at the forefront in the United States**

New York is one of the North American cities with the longest tradition of rent control. The first price-freezing systems in the US go back to the inter-war period of the 1920s. Rent control continued to be strengthened during the Second World War, as were the local authority's powers to enforce it. But once the war ended, these control measures began to weaken in most North American states, except in New York where they remained effective, under strong social pressure, until the start of the 1960s.<sup>10</sup>

Following a period of further rental market deregulation in the mid-1960s, strong social pressure once again managed to restore rent control in leases. New York's municipal government was initially more inclined than its state government to regulate rent prices and the issue became the subject of a dispute between the two authorities.

The state government ultimately ended up approving the Emergency Tenant Protection Act in 1974, regulations that established the parameters for regulating rent all around the state, under a second-generation

## **The Emergency Tenant Protection Act of 1974, the basis of the rent stabilisation system**



JOFFE:

**pro-tenant measures have been launched since 2011 “to reverse more than 25 years of accumulated regression”**

stabilisation model, which the various cities within the state could resort to. It was adopted by New York, Nassau, Westchester and Rockland Counties. At the same time, the Act was implemented through the regulations established under the Rent Stabilization Code.<sup>17</sup> Joffe explains that the regulations provided for a review every 4 years and that the changes made and applied “have tended to be more favourable to landlords under conservative governments and more favourable to tenants under progressive governments”.

In fact, the neoliberal wave, headed by Ronald Reagan in the United States, led to a weakening of rent regulation in the 1980s and 1990s. It did not disappear in New York city but it did become much more lax. Numerous exceptions had been approved since 1994, allowing

owners to dodge the regulation system. That resulted in the loss of 291,000 apartments from the rent stabilisation system since the mid-1990s.

Various reforms were approved from then until well into the 21st century, to the advantage of property owners and at the expense of tenants. The turning point did not come about until 2011, when the first pro-tenant measures began to be launched, “to reverse more than 25 years of accumulated regression”, explains Lucy Joffe, pointing out how it was only recently, in 2019, that the most important reforms were embarked on, as we will discuss below.

**Some 291,000  
rent-stabilised  
dwellings have been  
lost since 1994**

## Key features of the rent stabilisation system

The first factor that has to be taken into account is that the rent stabilisation system cannot be applied in just any context. According to the state regulations, it can only apply in a housing-emergency situation, which is understood to be when there is an insufficient supply of rental housing available (vacant). This level is considered insufficient when, out of the total rental housing stock, less than 5% is available for renting. Joffe points out that, "if this 5% were exceeded, the stabilisation system would disappear", but that, in New York's case, this rate "has been at about 3% since the 1960s".

The city's local regulations establish the need to conduct periodic housing surveys, to monitor and determine, among other things, the number of vacant dwellings at any time. This is the New York City Housing and Vacancy Survey (NYCHVS), which is conducted every 3 years, under a collaboration agreement between New York City Council and the United States Census Bureau.

Note that the survey is of critical importance to ensure the smooth running of the rent stabilisation system. Implementation of the stabilisation system is dependant on the data provided on vacant rental apartments in the city. What is more, it should be borne in mind that it is the United States' longest running survey, dating back to 1965, and it therefore enables comparative analysis of the city's housing data over time. According to Joffe, "it's a benchmark source of information" also for the people dedicated to housing research, for those tasked with

designing public policies or for social movements or pressure groups calling for improvements in this area.

Every three years an official survey is conducted, which determines the vacancy rate of rental apartments and examines the state of the city's housing stock

The survey sample, representative of the city's entire housing stock, is currently made up of some 19,000 apartments and the possibility of raising that number to 30,000 is now being studied. The Assistant Commissioner for Housing Policy at New York City Council explains that the methodology followed is based on personal interviews and building observations. If dwellings are occupied, interviews are conducted with people of reference with community knowledge, who can provide key information on all the occupants. In the case of empty apartments, key informants, people who know about the situation of the properties, are also sought out for interviews.

The survey contributes information not just on the apartments available for renting but also on the situation and features of the dwellings in various neighbourhoods, as well as the utilities at their disposal. "We are also studying the possibility of incorporating new questions on accessibility and mobility of individuals in the dwellings and on the needs of people with functional diversity", explains Joffe.



## How do dwellings enter the regulated system?

To determine the rate of apartments available for renting, we should note that this concept does not include every flat in the city that is not occupied (or which is vacant). It does not include apartments that are already being rented – because landlord and tenant have already reached an agreement or have signed a lease– but which have not yet been occupied; or properties that are awaiting renovation or alteration work. Also excluded from this concept are rental apartments for recreational, seasonal or tourist use; or vacant apartments that have been sold but are yet to be occupied by their purchasers.

Therefore, to further narrow down the concept defined by the rate, we can consider that what it calculates is the proportion of vacant dwellings that have not fallen into disrepair (for one of the above reasons) and are available for rent. The official English term here is Vacant Non-Dilapidated Units Available for Rent. The rate is calculated by dividing these dwellings by the city's total housing stock, which also includes occupied rental housing and non-dilapidated rental apartments.

If the stabilisation system is to be applied, then it is also essential to decide on the criteria for updating the prices of regulated rental housing. In New York's case, the body that decides how prices develop annually is the Rent Guidelines Board (RGB), which is made up of nine members: two representing landlords, two representing tenants and five representing city residents in general. To determine the annual variation in prices, the body takes various housing indicators into account, but its overall decisions are the result of assessing the interests and points of view of landlords and tenants. The criteria that are therefore applied are "essentially political", asserts Joffe.

"The annual increases decided by this body's votes have historically been around 3%", she explains.

As we remarked above, once the rent stabilisation legislation was passed in 1974, dwellings constructed before that year and inside buildings with six or more storeys were now under the regulated system.

Joffe explains that, to expand the stabilised rental housing market, since that time "a number of affordable housing programmes have been tied to the system". So, for example, to be eligible for certain tax exemptions for carrying out major alterations or renovations, dwellings will have to enter the regulated system. Tax exemptions are also provided for building new dwellings with the same goal. Owners must guarantee that their properties remain in the regulated system for at least 35 years. New York City Council also has various loans and subsidies available for carrying out renovation work which are tied to the stabilisation programme.

The number of dwellings under the stabilisation system has been growing while the number of rental apartments under historical regulation systems, such as rent control, has been dropping.

JOFFE:

**reference prices are updated based on "essentially political" criteria, balancing landlord and tenant interests**

## How do dwellings leave the regulated system?

One of the main exit channels for dwellings from the stabilisation system was vacancy decontrol, from its approval in 1994 to the recent reform of lease legislation brought about by New York State in 2019. Joffe explains that this clause enabled landlords "to take an apartment out of the stabilisation system where its price came close to 2,700 dollars a month and it remained vacant". Apartments could also leave the system where they were occupied by family units with an income in excess of 200,000 dollars a year. This is known as luxury decontrol.

Vacancy bonuses were approved in 2003, enabling rental prices to increase by 20% where a new tenant rented a dwelling under the stabilisation system. According to a study from the Community Service Society of New York (CSS), the implementation of these bonuses caused up to 48% of the total rent-price increases under the stabilisation system from 2011 to 2014. <sup>10</sup>

Also in 2003, a reform was approved, linked to preferential rents, which involve lower prices than those established under the stabilisation system, through conditions agreed between landlords and tenants. Lucy Joffe explains that what a priori ought to be advantageous for tenants, in paying lower prices, became a real "hobbyhorse" for the Administration. Since the reform of 2003, tenants with preferential rents no longer had an assured tenancy, or rather, their right to renew their tenancy was not guaranteed. That meant that tenants were unprotected when it came to sharp price rises once their leases expired.

On the other hand, dwellings can also leave the regulated system where they undergo extensive alterations or their use is changed from residential to commercial or professional. Dwellings would likewise fall outside the system where they were in a poor state of repair, were demolished or permanently abandoned the rental market for other reasons.

Another case is that of dwellings which enter the regulated system through a tax incentive for a specific period and which then leave it once that period lapses.

Finally, apartments are also allowed to leave the rent stabilisation system where they are allocated to housing alternatives, such as those known as condos and co-ops in the United States: two cooperative forms of housing that differ over issues relating to structure of ownership, funding options, prices, rates, etc.



## Profile of rent-stabilised housing tenants

The representative from New York City Council insists on distinguishing the rent stabilisation system, which acts on free-market prices, from public-housing systems, which are run directly by the Administration. In the case of the stabilisation system, “there is no need to meet income criteria to access housing”, in other words, any city resident can choose this option. By contrast, “to access public housing programmes, tenants are required to have a certain level of income”.

Of course, in practice, the stabilisation system guarantees the right to housing for many people who would otherwise be unable to afford private-market rent prices and who have not had access to a public apartment either. Note that the volume of housing under the stabilisation system (close to 1 million dwellings) is far higher than that for public housing (close to 180,000). “In general, people who live in housing under the stabilisation system tend to have a more vulnerable profile than the general population”, explains Joffe.

Among those living in such housing, “there is a higher proportion not just of people who are on very low incomes or unemployed but also elderly people, adults living on their own with a low level of education or who come from abroad”. For many of these people, paying rent, even at a regulated price, involves very considerable financial effort.



JOFFE:

**“People who live in dwellings under the stabilisation system tend to have a more vulnerable profile than the general population”, but income criteria are not required to access them**

## The advantages of the stabilisation system

As well as setting a price cap, Joffe points out, the stabilisation system incorporates other “equally important” aspects for championing tenants’ rights which would otherwise remain unprotected in the free market. “Tenants of dwellings under the stabilisation system are entitled to renew their lease” and landlords can only refuse this under certain circumstances, for instance, if the tenant has breached the lease conditions. It is therefore a regulation that provides affordability and stability at the same time.

Rent regulation also makes its mandatory for landlords to maintain certain quality standards with regard to services and living conditions in the dwellings they rent out. In fact, if they fail to comply with their legal obligations here, “tenants are legally entitled to demand a reduction in their rent price”.

Landlords are also under an obligation to register their rent-stabilisation apartments annually with the state housing agency, under the Omnibus Housing Act of 1983. “Failure to comply with this obligation leads to a fine which, if unpaid, can result in further restrictions being imposed on the landlord in future rent-price increases”, explains Joffe.

Another advantage for tenants is that rent regulation caps the amount they need to put down as a deposit, which can be a barrier to accessing housing, especially for people on low incomes.

In addition, the rent stabilisation system provides a regulatory framework enabling tenants to safeguard their rights and protect themselves in the face of price rises, termination of irregular leases and property-mobbing situations.

Thanks to the regulation, tenants are also guaranteed, to a much greater extent, the right to information. For example, they can request information on the history of an apartment they wish to rent, to find out the amount that previous tenants had been paying, and all the details of any renovations and improvements carried out leading to price increases.

Their legal protection is also better, as the regulations guarantee tenants the right to receive free legal assistance when they need

JOFFE:

**“Tenants are legally entitled to demand a reduction in their rent price” where landlords do not maintain the quality of their dwelling**

**Tenants can also access free legal assistance**





**A programme featuring tax advice, aid and exemptions is offered to property owners wishing to enter the stabilisation system**

it, to defend their rights in disputes with landlords.

As for landlords, the legal obligations the stabilisation system entails also come with a series of advantages or incentives, as Joffe explains. For example, they are offered advisory programmes if they are interested in accessing the stabilisation system and are able to benefit from tax exemptions, loans and subsidies for alterations

and renovations to their dwellings for this purpose.

Besides the direct advantages that the rent stabilisation system has for tenants

and landlords, it offers benefits on both neighbourhood and city levels. Rent stabilisation helps to combat gentrification and, as a result, the expulsion of people with lower purchasing power and their relocation to other areas of the city with more affordable prices. This therefore helps to prevent and contain phenomena such as homelessness.

Stability in housing tenancy is also beneficial for social cohesion and integration, by enabling people to live in the same home for a long period of time and strengthen their ties with the neighbourhood.<sup>10</sup>

**A mechanism against neighbourhood gentrification that promotes social cohesion**

## The reforms of 2019 combating the “loopholes” in the stabilisation system which went against tenants

Various reforms were approved in 2019 to combat the various legal loopholes that had been undermining the rent stabilisation system, by limiting price increases above the rates established for renovation work and eliminating some of the above-mentioned measures, approved between the mid-1990s and start of the 21st century, to promote the interests of landlords. During her talk, Lucy Joffe mentioned some of the main measures approved, which are listed below:

1. It eliminates vacancy decontrol. Rental apartments can no longer leave the rent stabilisation system if they remain empty and exceed a certain price cap (up to 2019, set at 2,733.75 dollars a month).
2. It eliminates luxury control. Dwellings cannot be deregulated where the income of the people living there exceeds a specific level (up to 2019, set at 200,000 dollars a month).
3. Gone now are vacancy bonuses that enabled rent-price increases by 20% where a new tenant rented a dwelling under the stabilisation system.
4. Landlords must maintain preferential rents for tenants while they continue living in the dwelling. In other words, tenants can renew leases at the same price and are not exposed to abusive price rises.
5. Price increases above regulated levels are restricted, in the case of general building alterations (*major capital improvement*) or apartments in particular (*individual apartment improvements*), both in quantity and frequency of application. In addition, there is a limit to the type of alterations that can fall under either of the two above categories. If the alterations are very substantial or the dwelling is turned into *condos* or *co-ops* (cooperative housing models), they can then leave the stabilisation system.
6. What is more, it puts an obligation on the Administration to inspect at least 1 out of every 4 buildings and apartments where major alterations have been carried out, to verify whether the work justifying the rent-price increase was properly performed.
7. Landlords are fined if they fail to register rent-price increases of apartments with the agency in charge of the stabilisation system.
8. Measures have been approved to strengthen the protection of elderly people or people with functional diversity regarding the conditions of their leases.
9. The amount that can be required for deposits from new tenants has been limited. Deposits must not exceed the equivalent of one month's rent.

“They are important measures for closing the loopholes” that enabled landlords to dodge the stabilisation system's restrictions, Joffe points out. In addition, to ensure continuity over time, Joffe adds, the clause was removed which made it an obligation to review the contents of the regulation every 4 years. The goal: that, from now on, counter-reforms undermining tenants' rights cannot be applied. 📌

# Paris

Some 52% of households in the French capital and its surrounding municipalities, the *Paris Agglomeration*, live in rental housing, 28% private and 24% social and public. These are data from the Paris Agglomeration Rent Observatory (OLAP), for the area which is currently home to 10.7 million people.

**The average rental price in Paris is 1,165 euros a month**

More specifically, Paris is estimated to have more than 380,000 free market rental dwellings. The average rent price in the French capital in 2019 was 1,165 euros a month (23.3 euros/m<sup>2</sup>), higher than the 960 euros of the Paris agglomeration (18.3 euros/m<sup>2</sup>). This is according to the latest data available from OLAP (July 2019).

This is why, over the last few years, Paris City Council has been leading the demands to step up rent regulation, which falls to the State to legislate, in addition to launching social housing policies. **Ian Brossat** explains that 104,000 new social dwellings have been built in the city since 2001.

The bases of the current rent-stabilisation system in France go back to the reform of the Urban Leases Act passed in 1989, during the presidency of François Mitterrand, which has undergone a succession of reforms since that time. Nevertheless, regulation systems in France, as with those in Germany and the United States, date back to the start of the 20th century and started with price freezes, before more recently adopting stabilisation systems.

## Measures for promoting affordable rental prices

To understand how rent prices are currently regulated in Paris we need to go back to 2012. This was the time when the first of two measures, still in force, was approved with this aim. This measure limits changes to the rental price when a lease for a flat is renewed or a flat is let to another person. In such cases, the price developments follow the same criteria that they had during the lifetimes of previous leases: they are limited by the IRL (Rent Reference Index).

### The first measure limits rent price rises to the rate of inflation, even when the tenants change

The Rent Reference Index, which is equivalent to the consumer price index, excluding rent and tobacco, is an annual indicator defined by the INSEE (National French institute of Statistics). Brossat explains that the index “serves as the basis for reviewing the rental price of vacant and furnished dwellings and sets the cap on annual rent rises that landlords can ask for”, except for the oldest leases which are governed by legislation from 1948.

In practice, this means that new tenants pay the same as their predecessors. The measure had already been provided for by the Act of 1989, but had never been implemented, and contains a number of exceptions that enable a “progressive rise in manifestly undervalued rental properties up to a market level”, according to a comparative study conducted on rent regulation in Berlin and Paris from 2017 to 2018 prepared by the Metropolitan Housing Observatory (O-HB).<sup>13</sup>

Two years after this measure came into force, in 2014, another Act was passed, known as ALUR<sup>17</sup>, which amended the Lease Act of 1989, adding a complementary system for regulating rent prices, which came into force in Paris in 2015. Up to then, the rental price of a flat was regulated during the lifetime of its lease and between leases, but without any cap on price rises. What the ALUR Act does is set this cap, based on the reference prices (average prices observed for comparable dwellings), and determines that prices do not rise above these by more than 20%. The reference price plus 20% is what is known as *loyer majoré* (increased rent) and its amount is set annually by decree.

This would be the system most comparable to Germany's, where rent-price restrictions on the basis of a price reference system is the main regulatory mechanism. By contrast, the role of this system in France “is subsidiary to the main updating mechanism, which is where rent increases follow the evolution of the IRL”, according to a report from the Metropolitan Housing Observatory.

The rent price cap in France from the ALUR Act remained in force up to November 2017, when it was abolished by the Paris Administrative Court on the grounds that it was

Following the repeal of this measure in 2017, the ELAN Act passed in 2018 re-established the measure for capping rent prices, but is valid for a limited period of 5 years

not in keeping with the legal system as it applied solely to one municipality and not throughout the entire Paris Agglomeration. Of course, the restriction on rent-price revisions in force since 2012 continued to operate.

It should be noted that in June 2019, France's Council of State recognised the legality of the price-restriction measure, contrary to the ruling of the Paris Administrative Court two years previously. But during the period between the abolishment of the ALUR Act and the ruling from the Council of State, another piece of legislation, known as the ELAN Act, was passed in November 2018, re-establishing rent-price restrictions, but only for a limited period of 5 years, on the understanding that an experiment was being conducted to check the results of this measure.

### The second measure sets a cap on rent prices, based on average reference rent prices which can only be exceeded by up to 20%



IAN BROSSAT  
(Paris City Council)

**“The city of Paris had expressed its desire to have a permanent measure in place”**



Despite the positive assessment of the re-establishment of this measure, **Ian Brossat, the Deputy Mayor of Paris in charge of the Area of Housing and Emergency** in the French capital, criticises the limitation of its implementation to 5 years: “The city of Paris had expressed its desire to have a permanent measure in place”.

Brossat also underscores the fact that this rent-price restriction is not applicable to every situation. The ELAN Act of 2018 sets out four criteria to enable the city to demand its implementation by the State. First, an important gap between the level of private-market rental prices and the public and social rental housing stock. Second, a high average rent level. Third, a low rate of new leases signed, compared to the rate of the last five years; and fourth, limited prospects for the production of and growth in number of leases registered with the local housing programme. “The city of Paris can demonstrate that its territory meets these four criteria”, Brossat explains.

Which is why, soon after the ELAN Act was passed, Paris City Council called on the State, as the authority with jurisdiction over the matter, to implement the price-restriction measure in the city immediately. That same measure is currently in operation in the city of Lille as well.

Regarding the ELAN Act, Brossat also highlights the fact that it establishes fines for landlords that fail to comply with the restrictions on prices (capped at 5,000 euros per natural person and 15,000 per legal person) and that it is up to the State to define its methods of application. According to the Paris Councillor for Housing, this can contribute to the effectiveness of the measure depending on how it is applied: “Assessing how these fines are applied will enable us to measure whether or not they work as a deterrent based on the number of fines issued and their relationship with the amount by which landlords have exceeded the cap”.

**Until the repeal of the price cap, rent prices stabilised in Paris between 2015 and 2017**

Brossat does not believe the measure has been in place sufficiently long for its effectiveness to be assessed, despite what is known of the precedent from the period that the ALUR Act was in force in, between 2015 and 2017. According to data from Paris City Council, those three years saw rent prices stabilise compared to their sharp rise (50%) in the previous decade (2005-2015) and, following the Act's suspension, they rose again, by 3% in 2018. It remains to be seen whether the rate at which prices rise will slow down from now on.

## Stable tenancies

Up to now we have been describing the measures for slowing down the growth of rent prices and ensuring their affordability. We shall now explain how the duration of these leases is regulated.

Unlike Germany, leases in France are not open ended, although landlords are under an obligation to renew them when they expire, except in a limited number of exceptions regulated by legislation. So then, although leases are formally temporary (with a minimum term of 3 years, where the landlord is a natural person, and 6 years, where a legal person), in practice the stability of a tenancy is guaranteed. If they have not opted directly for a system that provides for open-ended leases, this is because it would be incompatible with landlord rights under the French Civil Code, as explained in the report from the Metropolitan Housing Observatory.<sup>13</sup>

**Leases in France are not open ended, although they are automatically renewed, apart from a few exceptions**

The only exceptions when a landlord can refuse to renew a lease is when the landlord needs the dwelling as a main residence for themselves or their family members or they wish to sell the property. In the latter case, when notifying a tenant that their lease will not be renewed, landlords must inform the tenants of both the price and terms and conditions of the sale of the property, as tenants enjoy pre-emption rights should they be interested in purchasing their

BROSSAT:

**"The legal system for the short-term lease of furnished dwellings is no more permissive than it has been for long-term leases" since 2014**

home.

If a landlord wishes to end the lease for a flat which is home to someone over the age of 65 on a low income, they may only do so where they can guarantee alternative accommodation for their tenant. If a landlord intends to terminate a lease on false grounds, they can be fined up to 6,000 euros where they are a natural person (and up to 30,000 euros where they are a legal person). In addition, their tenants can demand they make good any damage or loss caused.

With the exception of such cases, leases have to be automatically renewed and this can be done in two different ways: by tacit renewal and by lease renewal.

Ian Brossat explains what tacit renewals involve: "If neither of the two parties (landlord or tenant) informs the other, according to the administrative and legal methods provided for under the lease, of their wish to change the terms of the lease or terminate it, the lease is automatically renewed under its initial conditions and for the term provided for under it". The new leases' terms are the same legal ones as in previous leases (3 years or 6 years depending on whether the landlords are natural or legal persons, respectively) and their prices also rise

in accordance with the reference rent price index (IRL).

As for the second method, lease renewal, this applies in cases where rent prices are manifestly below the level of the private market prices for leases in the same area. As explained in the report from the OHB <sup>13</sup>, landlords in such situations may request a revaluation of their rent prices, which have to be progressively applied for the duration of their new lease (by dividing the total amount of the increase by the number of years of its term, 3 or 6 years). This protects against sudden price rises in leases.

The lease renewal method also takes account of tenants' rights, on the one hand, by limiting the price-revaluation level, which cannot be undefined. On the other hand, it should be noted that any request for rent-price revaluations must not be linked to any refusal to renew leases. This protects tenants from the threat of their landlords terminating their lease to raise the rental price of their property.

In addition to the general rules governing the duration of leases, there are also special cases where the term may be shorter for justified reasons. For example, shorter-term leases of a minimum of one year may be offered where a landlord can prove they need the dwelling for family or professional reasons in the short term. If the circumstances justifying the recovery of the dwelling are delayed, the termination of the lease may be postponed, but only once. If they do not

subsequently occur, the lease would then continue, with a 3-year term.

There are also certain exceptions for furnished dwellings with regard to length of tenancy. The ELAN Act of 2018 creates the new category of "mobility" lease for furnished dwellings, to adapt them in a flexible way to the needs of people staying in a locality for brief periods, exclusively for professional or academic purposes. These are leases with terms ranging from 1 to 10 months, which cannot be renewed for the same tenant.

Generally speaking, the regulation of furnished dwellings has been steadily approaching the level of unfurnished flats over the last few years. Until the ALUR Act was passed in 2014, the owners of furnished dwellings enjoyed more favourable conditions than owners of unfurnished dwellings, because they were exempt from the application of the Lease Act of 1989. The Paris Councillor for Housing, Ian Brossat, explains that this has changed over the last few years: "The legal system for short-term leases of furnished dwellings is no more permissive than it is for long-term leases. In addition, in the case of furnished dwellings, the legal system is now very similar to the system for





unfurnished dwellings since the ALUR Act was passed in 2014 and the ELAN Act in 2018”.

The ALUR Act only provides a few exceptions for furnished flats. For example, they may charge a two-month deposit and the minimum term for leases may be 1 year instead of 3 years. Of course, landlords are also under an obligation to renew the leases, except in exceptional cases, which are the same as for unfurnished housing.

To ensure owners of furnished dwellings comply with these regulations, Brossat believes greater control is necessary: “The difficulty lies in the practical application of stricter regulations which are very often not respected and which require monitoring and legal action”.

**BROSSAT: “In response to the rise in the Airbnb phenomenon, in 2011 and 2012, various acts were passed to step up the control of tourist apartments”**

Furnished dwellings also include tourist apartments, a phenomenon on the rise in Paris, as in many other European cities. Which is why, Brossat explains, Paris City Council has stepped up its regulation of tourist apartments over the last few years.

“In response to the rise in the Airbnb phenomenon, in 2011 and 2012, various acts were passed to step up the control of tourist apartments run by rental companies”, explains the Paris Deputy Mayor for Housing Policies. Since then, it has been mandatory to register tourist apartments, which are allocated a licence number that has to be included in any announcements published. Any flat that is not a main residence (occupied for at least 8 months a year), is deemed to be a short-term let apartment (whether or not it is a tourist let) requiring authorisation to be used as such.

In addition, in the case of tourist apartments, owners are under an obligation to provide information on the number of nights the dwelling is let each year (the maximum permitted number is 120). Failure to comply with these obligations leads to fines.

Looking to the future, Paris City Council has proposed measures to further strengthen this regulation, for example, by banning platforms such as Airbnb from operating in the centre of Paris, where 26,000 homes were lost in the last few years while the number of tourist apartments rose, according to the declaration made by the city's Mayor, Anne Hidalgo, in September 2019. This, however, requires authorisation from the State government.

The city continues to demand greater autonomy and a greater scope for action to carry on combating all the factors that have been undermining the right to housing. 🇫🇷



# Vienna

The Austrian capital, where close to 2 million people currently live, has become a housing-policy benchmark throughout Europe. What characterises the Viennese model overall is its extensive social and affordable housing stock, representing 45% of all the city's flats.

SUSANNE BAUER  
(Vienna City Council):

**“Vienna is the European capital of social housing”**

“Vienna is the European capital of social housing”, affirms **Susanne Bauer**, a researcher at the **Department of Research in Housing at Vienna City Council** (*Wiener Wohnbauforschung*). This department is dedicated to analysing the city's housing needs and promoting urban renovation and innovation in the quality of properties, above all in technology and energy efficiency, among other areas.

The city has 420,000 social and affordable dwellings. As many as 220,000 are owned by the City Council and a further 200,000 belong to limited-profit housing associations.

Boasting 220,000 public flats, Vienna City Council is de facto one of the world's main housing owners, with a municipal agency (*Wiener Wohnen*) to manage the administration and maintenance of its housing stock.

Thanks to this extensive housing stock belonging to the Administration or limited-profit housing cooperatives and companies, up to 60% of the city's residents live in social or public flats. What is more, the introduction of these dwellings in the city's various areas is also a factor promoting social mixing and community life among various population profiles. This can be seen on Vienna City Council's social housing website (**Wien Social Housing**).

The vast majority of the public and social dwellings are rental housing. Susanne Bauer points out how rental culture is deeply rooted in the Austrian capital. “Vienna is a tenants' city, even though there is a higher percentage of owners than in the more rural towns and areas”, she explains. In total, 78% of the city's 1.1 million dwellings are rental. As in the rest of Austria, the city's leases are permanent.



BAUER:

**“Vienna’s municipal government has never sold its public housing stock, which has never been privatised”**

Bauer attributes Vienna’s leading position in housing policy to its long history in this matter. “Social housing policies first began to be implemented in the city over a hundred years ago”, she states. The origin of these policies goes back to the late 19th century and early 20th century, when the aftermath of the country’s industrialisation process, which unleashed waves of migration to large cities such as Vienna, brought about housing needs. To meet those needs, the first limited-profit housing associations were created and the first public-housing policies subsequently implemented.

Bauer adds that, unlike many other European cities, “Vienna’s municipal government has never sold its public housing stock, which has never been privatised”. This historical legacy is what puts Vienna at the helm today. Given that a quarter of the country’s population of 8 million lives in Vienna, its housing policies also influence those of the rest of the country.

“Historically, most of the affordable dwellings had been publicly owned, but this has changed over the years and more and more now belong to limited-profit housing associations”, Bauer adds.

**Limited-profit housing associations build close to a third of Austria’s dwellings**

She explains that limited-profit housing associations (LPHAs) “are regulated by state legislation that sets out their rights and obligations”: the

Limited-Profit Housing Act. She explains that the profits from these associations “are limited and part of those profits have to be re-invested” in renovations, land expenses and the construction of new dwellings. The associations are also under an obligation to guarantee an affordable rent in accordance with established rates (currently 7.5 euros per m<sup>2</sup> in Vienna). In exchange for these limitations, the housing associations are exempted from the equivalent of corporation tax. What is more, they have access to public funding for their housing projects.

Such associations have built over a million dwellings throughout the country since the end of the 19th century. They currently produce 15,000 dwellings a year, representing between 25% and 30% of all flats built in the whole of Austria. There are presently 185 limited-profit housing associations in operation, of which 98 are cooperatives and 87 no-profit companies. In all, they manage over 920,000 properties, 70% of which are rental and 30% owned, according to data from the Austrian Federation of LPHAs.

Vienna has had a specialist foundation since 1984 for managing land where public and social housing is built. This is the Vienna foundation for managing land and urban renovation (*wohnfonds\_wien*), which currently manages up to 2.8 million m<sup>2</sup> of land, according to the Wien Social Housing website.

**The City Council authorises funding for companies and cooperatives for affordable-housing projects and, in exchange, limits their prices**

Besides managing land, the foundation also organises competitions which the various public and private companies, such as LPHAs, are required to enter when they want to build affordable dwellings. The researcher **Susanne Bauer** points out that candidates enter their social housing projects in the competition, and these are assessed by a jury based on criteria such as social sustainability, architectural features, energy saving and economic costs. The aim is to use the competitiveness between the various companies to incentivise innovation and quality in their housing projects.

The winning team can opt to buy the land where the dwellings are to be built at a set price. In addition, the Administration also awards them loans for funding up to 35% of the entire building costs. In return, housing developers have to guarantee affordable rent prices.

One of the main features of the Austrian system is precisely this, that most of the public

investment in housing is made through loans. In fact, Austria allocates 0.3% of its GDP to housing, a percentage 4 decimal points above the European average, according to data from the Federation of Limited-Profit Housing Associations.

The loans are awarded by regional governments and, although each of them has its own particular features, they are generally very low interest loans (at around 1%), which both limited-profit housing associations and private providers can apply for and which can be paid back over a period of 35 years. Besides the 35% funded by public loans, the rest of the dwellings' funding comes from bank loans, the developers themselves or from contributions from the tenants themselves, according to the Wien Social Housing website.





## Regulating the private rental market

Private market rent prices have also been affected by the fact that public and cooperative dwellings represent almost half of the city's housing stock. "We have had some influence on the private market, by lowering their rent prices, although the market does have its own inertia", the researcher Susanne Bauer points out.

BAUER:

**"Regulation needs to be stepped up for the most modern and newly built dwellings"**

It should be noted that, besides the pressure from the public housing stock on free-market rent prices, the private market is also subject to its own regulation and lease prices cannot be without limits. That is the explanation given in the "Rent Control in Austria best practice and bad practice" report (2017) by the University of Vienna lecturer and expert in rentals, Margret Funk.<sup>18</sup>

Rent regulation in Austria goes back to the same era when the first social housing policies began to be implemented, at the start of the 20th century. According to Margret Funk's report, rent prices were regulated for the first time in 1917, during the First World War, originally with the aim of protecting the widows and orphaned children of the conflict's fallen soldiers from exorbitant rent prices. After the war, from 1929 to 1931, the regulation's conditions were relaxed in favour of owners. After the Second World War, however, from 1951 on, stricter regulations were brought in for landlords.

Rent regulation currently generates broad consensus in Vienna, owing to the long history of this measure and affordable-housing policies overall. According to the above-mentioned report, up to 40% of Vienna's voters declared in 2015 that they hoped their political representatives would not consider rent as a commercial asset and that they would guarantee its affordability.

The regulations governing rent prices in Austria at present come from state legislation: the Tenancy Act. Since 1994, this has been based on

a system which puts a cap on rent prices. This cap is defined on the basis of several criteria: the date of construction of dwellings, their size, their land value, the location of the buildings and apartments inside blocks of flats, their facilities and so on.

These rent-price caps vary according to the province.

As Margret Funk's report explains, one of the main loopholes in this price regulation system is that it only affects dwellings built before 1945. A good part of the city's housing stock was built before that date, which is why 1945 was set as the temporary threshold for regulating lease prices, when the regulations were drafted. Today, however, this means that more and more dwellings are falling outside that system of regulation. According to data from her 2017 report, 226,000 of the 292,000 private rental dwellings





were completely subject to rent regulation. The remaining 66,000 were either only partially subject to or completely exempt from that regulation. The latter include residential buildings constructed after 1968, although the Act does not protect profiteering or exorbitant prices.

Funk's report also explains that there are dwellings governed by specific regulations. For example, large apartments (of more than 130 m<sup>2</sup>) can be rented out at a higher price than the standard rate, though not without limits. Landlords can receive a "fair rent", one that is reasonable for the dwelling's features, something that requires endorsement from the authorities. There is also what is known as "right of succession", which enables a tenant benefiting from a very low rent to assign their lease, under the same conditions, to family members, or at a price only slightly higher.

The researcher Susanne Bauer believes rent regulation "is strong", especially for the older dwellings, but that "regulation needs to be strengthened for more modern and newly built dwellings". "We are not happy with this type of regulation. Unfortunately, there have been no political majorities that have allowed any changes to the system over the last few years", she bemoans. It should be remembered that rent regulation depends on the state and that the last few years have seen Austria under a coalition government between the conservative ÖVP party and the far-right. Since the start of 2020, however, a government formula arose, unprecedented both in Austria and the rest of Europe: a coalition between the Conservatives and the Greens, which has just begun to operate. The political situation on the State

level contrasts with the city of Vienna, where the Social-Democratic party has traditionally governed. This was the party of Michael Häupl, the city's mayor from 1994 to 2018, who was succeeded by Michael Ludwig (in 2018).

## Environmental sustainability in housing policies

In addition to guaranteeing the affordability of rent prices, by regulating them and above all boosting the public and social housing stock, Vienna City Council also aims to apply environmental sustainability criteria to its urban-planning and property-development strategy.

The city's population grew from 1.67 million to 1.90 million residents between 2008 and 2019. To meet the growing demand for housing and establish its city model for the future, Vienna has already adopted an urban-development plan with a 2025 horizon. According to the Wien Social Housing municipal website, the plan aims to combine urban-planning and new-housing developments with renovations and green-space conservation. Environmental criteria are being especially promoted, both in the building of new dwellings and in large-scale renovations, so energy-efficient buildings can be constructed.

Vienna is thereby aiming to become a benchmark city not just for its extensive social and public housing stock, but also for the quality and energy efficiency of its buildings. 🏡





# 07

## Positions on rental price regulation





## AGAINST

The debate on rent regulation is highly politicised and, depending on the point of view it is based on, can lead to very different conclusions.

Several representatives from the property and finance sectors as well as from the academic world, from the field of economics in particular, have expressed their radical opposition to rent regulation. One of their main arguments is that regulation would reduce the supply of leases and, contrary to their objective theory, lead to a rise in prices. Another criticism raised time and again is that it would undermine the quality of dwellings, due to the lack of incentives for owners to invest in renovation works, as they would receive less rental income.

By contrast, other social and political sectors and experts in housing believe that arguments such as these are neoliberal myths or dogmas without any empirical evidence. There are also more nuanced or middle-ground opinions, which are favourable or at least not wholly opposed to rent regulation, even if they believe such a measure involves risks if not properly applied.

This section offers a number of testimonies and reports with various positions on rent regulation. First, it explains the opposing voices and then the responses to their arguments from the champions of this measure.

GONZALO BERNARDOS, a lecturer in Economics and a property analyst:

**“Rent regulation through caps would be a mistake, as it would harm those it actually aims to benefit”**

A lecturer in Economics at the University of Barcelona, **Gonzalo Bernardos**, believes that rent regulation through caps would be “a mistake, as it would harm all those it actually aims to benefit”. In his opinion it would cause “a reduction in the rental supply and an increase in demand, an imbalance that would lead to a high oversupply, to discontent and dissatisfaction among many wanting to live in rented accommodation, to a large boost to the black market and to a sharp rise in prices in this market”.

Bernardos adds that a regulation system, such as price caps, would bring about a deterioration in the quality of dwellings. “If flats have little profitability, their owners would not bother to carry out any work on them and their habitability would become increasingly worse. Only families on low incomes would be prepared to live in them. The middle classes would be pushed out of this market”, he asserts.



Bernardos, who is also the Director of the Master's Degree in Property Consultancy, Management and Development at the University of Barcelona, points out that there is "historical evidence" that demonstrates the inefficiency of the rent regulation system, cap models, in cities where it has been applied. "It's never had any success, not in New York, not in Berlin and not in Paris. Why should it then triumph in Barcelona? It's an ideological measure, lacking any support from economic science", he maintains.

He refers to the effects of the freeze on rental prices applied in Spain during the Franco dictatorship: "When buildings were old, owners began to lose money from them, because they were unable to recoup their renovation costs through rent prices. That was why, towards the end of the 1960s and throughout the 1970s, many owners decided to sell their properties. The result was a large reduction in the rental housing stock. In 1944, 83% of properties were rented out. At the start of the 1980s, the figure had dropped to around 20%".

One of the main criticisms he levels at putting caps on rent is that this does not provide for how dwellings would be allocated in a context of a large oversupply: "If, for example, we established a cap of 750 euros in many neighbourhoods, the number of families that would opt to rent a dwelling in Barcelona would rise enormously. How, then, would we allocate places to anyone wishing to live in the city? From my perspective, no one acquires any rights just because they already live in rented accommodation or were born in Barcelona. I am completely opposed to discriminating against anyone on the basis of where they live now or the municipality they were born in".

In his opinion, the key to lowering lease prices lies not in price regulation but in increasing the supply, by incentivising investments in rental flats. "Increasing the supply will raise competition between owners and prices will fall. Investors who thought they would achieve a certain profitability see that it is lower than they expected.

If the Administration wants to stop them from selling their dwellings and reducing the rental housing supply, it should provide them with tax incentives. Such incentives would enable investors to obtain a minimum desired profitability on the one hand and the City Council to permanently achieve lower rent prices on the other".

In addition to incentivising investments in the free rental market, Bernardos believes "two more markets need to exist: one regulated and the other social. The first comes from public-private collaboration. The land is public, the building, ownership and management of the dwellings is private and the prices and habitability conditions of the flats are determined by the City Council. This also guarantees a minimum annual profitability for the company that owns the property. The second is social, for groups suffering from serious problems or at risk of social exclusion. In that case, the owner and manager is the City Council. The price is zero or symbolic", he concludes.



CATALAN COMPETITION AUTHORITY

**“A measure that can have the direct negative effect of reducing the rental housing supply is unlikely to be an effective way of improving accessibility”**

The Catalan Competition Authority (ACCO) also considers that rent regulation could lead to a restriction in supply. This is the assertion made in its report on the Catalan government's rental decree of 9/2019, which failed at the parliamentary procedural stage, during which warnings were given of the risks of going ahead with it.

The ACCO believes that rent regulation would reduce supply in two ways: first, by forcing properties out of the rental housing stock and into the private market; second, by disincentivising new flats from entering the rental market, especially those that could easily be rented out at higher prices than those set. Hence the following explanation: “A measure that can have the direct negative effect of reducing the rental housing supply is unlikely to be an effective way of improving accessibility”.

It also warns that rent regulation can also lead to a rise in demand, given the “certainty of caps or of a particular price range” which would be generated among city residents. The convergence

of increased demand with restricted supply would lead to long waiting lists for access to regulated housing, as has happened in cities such as Stockholm, after applying price-regulation systems. There the waiting list for accessing a rental flat was 8.2 years in 2015, according to the ACCO's report.

**Professor of Applied Economics at the Autonomous University of Barcelona, Miguel-Ángel López García**, maintains that price regulation “will lead to a steady deterioration in quality of dwellings already built”. This is the explanation given in the report entitled “Vivienda y política pública: objetivos e instrumentos” [Housing and public policy: goals and tools] commissioned by the Estudios de Economía Aplicada Foundation (Fedea).

Although owners may be disincentivised from investing in maintenance, in not being able to recoup their costs through rent prices, the reverse can occur with tenants. They may be more inclined to invest in the dwellings they are renting where they are given more legal protection. Of course, all things considered, this may lead to the communal areas of a building being neglected, he warns, and to private areas being in a better condition through action taken by the tenants themselves.

This context of restricted supply and increased demand, López García believes, would not only cause long queues for accessing regulated dwellings but also encourage discriminatory practices by owners. They could, for example, choose their tenants on the basis of factors such as race, religion, sexual orientation and lifestyles, in addition to income levels.

In addition, he also believes that, as regulated dwellings would be aimed at the entire population and not just at the people who need them the most, it could lead to their being occupied by high-income families.

MIGUEL-ÁNGEL LÓPEZ GARCÍA,  
professor of Economics:

**“It will lead to a steady deterioration in the quality of the dwellings that have already been built”**

BANK OF SPAIN

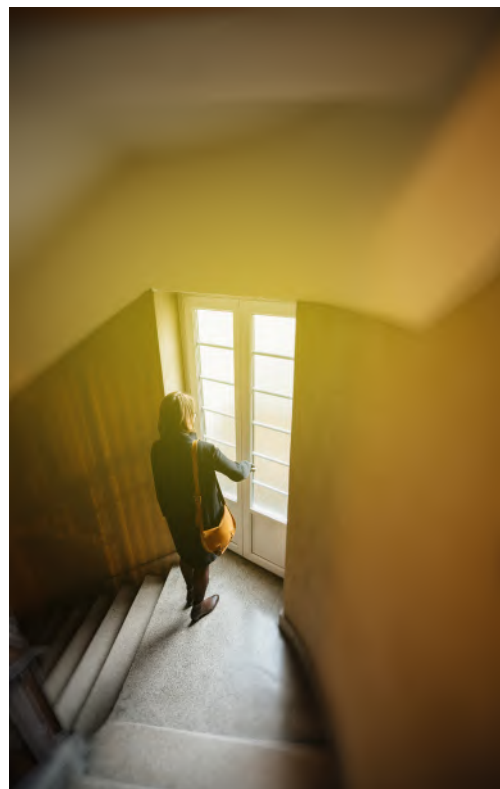
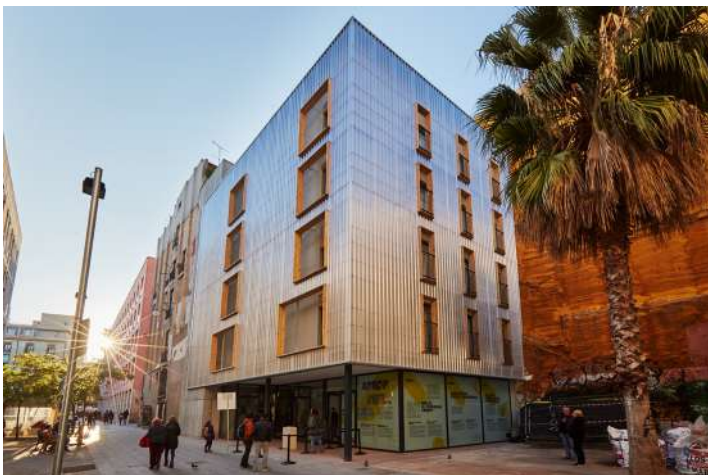
**“This policy can cause segmentation in the housing market, by focusing rent-control measures on certain groups or areas in the city”**

A recent report from the Bank of Spain, compiled by the researchers David López-Rodríguez and Maria de los Llanos Matea and published in January 2020, also warns of the “adverse effects” of rent regulation. Entitled “La intervención pública en el mercado del alquiler de vivienda: una revisión de la experiencia internacional”, [Public intervention in the rental housing market: a review of international experiences], the report maintains that although public interventions in rent prices may have positive effects initially, they are counter-productive in both the medium and long term.

According to the report, “this policy can cause segmentation in the housing market, by focusing rent-control measures on certain groups or areas in the city”. That, at the same time, would cause a “segmentation of the population based on their financial situations”, in other words, it would heighten the

differences in place of residence of the classes with greater and lesser purchasing power.

According to the report, “a regulation-created reduction in net yield from residential-renting investments would lead to a drop in expenditure on rental-housing maintenance and renovation, thereby reducing its quality over time”. By contrast, it would incentivise changes in “the composition of the dwelling offered to evade regulation”. Another negative assessment is that regulation could have an adverse effect on workers’ mobility, because of its aim to keep leases below market prices.



## Studies opposed to rent regulation

The report entitled “Rent Matters: What are the Impacts of Rent Stabilization Measures? (University of Southern California, 2018)”<sup>11</sup> examines several studies both for and against rent regulation, based on the experiences of several North American cities. The first of these included a study from Diamond, McQuade and Qian in 2018,<sup>19</sup> based on the case of San Francisco, which asserted that rent-stabilisation systems incentivised owners to transfer their apartments from the rental market to the sales market or turn them into their own residences or carry out renovation work on them so they would fall within one of the loopholes exempting them from price regulation.

That same study went further and concluded that price-regulation systems could contribute to gentrification processes, as had occurred in San Francisco, and encourage landlords to evict their tenants and convert their apartments into condominiums, an assertion that has “ignited controversy”.

Other studies, such as that of Glaeser and Luttmer (2003)<sup>20</sup> report how in 1990, 20% of tenants in New York were living in apartments with either a greater number or fewer rooms than they would in an unrestricted market. Like some other experts, they believe that price regulation encourages tenants to stay put in the

same dwelling, even when their circumstances have changed (for example, after changing job and now working further away from their place of residence), as a result of which they would be depriving others in greater need of those dwellings from living in them.

Glaeser (2003)<sup>21</sup> also questioned the effectiveness of rent regulation for meeting the housing requirements of those most in need. He believed low-income tenants would benefit from price regulation in the same way as the middle-class or even high-earning population would.

As for dwelling maintenance, other academic studies such as the one from Sims (2007),<sup>22</sup> focusing on the case of Massachusetts, have established that chronic conservation problems of dwellings (holes in walls or in the floor, paint peeling off walls, insufficiently secure rails and so on) are more frequent in dwellings subject to the price-regulation system than in free-market apartments.

In sum, the studies against regulation warn that it would reduce the number and quality of the lease supply in two ways: by disincentivising the construction and renovation of dwellings for this purpose and by promoting the withdrawal of apartments from the rental market and their transfer to the sales market.

**FOR**

JAIME PALOMERA,  
spokesperson for the Tenants' Union:

**"There is no empirical  
evidence that rent regulation  
reduces supply"**

The spokesperson for the **Tenants' Union**, **Jaime Palomera**, considers the assertion to be neoliberal dogma according to which rent regulation reduces supply and pushes up prices and that the solution is to build more to increase it. In Palomera's opinion, this is based on the "dogma according to which supply and demand are self-regulated because perfect-competition markets exist", something he regards as "pure abstraction". He believes markets are conditional on the socio-economic context they operate in and do not function merely according to mathematical criteria.

He attributes this "dogma" to the strong neoliberal ideological consensus that developed in the 1980s. Here he criticises how the industry in the UK, the USA and France "has allocated considerable amounts of money to funding reports against rent regulation". He points out that these reports have no "empirical evidence that rent regulation reduces supply". Nor do any of these studies demonstrate that regulation affects the quality of dwellings.

He turns around the argument used by detractors of this measure and refutes the assertion that deregulation serves to stabilise prices. "There is historical evidence that the removal of rent controls in the 1990s triggered sharp price rises and did not lead to greater supply in Massachusetts", he concludes.

LUCÍA DELGADO, the  
PAH's spokesperson:

**"It's not true that prices  
will drop if supply goes up,  
just look at the property  
boom years"**

**Lucía Delgado**, the spokesperson for **Barcelona PAH**, believes the main argument used by rent regulation's detractors is based on a fallacy. "It's not true that prices will drop if the supply goes up, just look at the property boom of the 1990s. We built more dwellings than France and Germany did together and that was when the prices of flats for sale were at their highest", she recalls.

Delgado believes it is essential to regulate rent prices so as to guarantee "the right to the city" of the people living there and to ensure they don't find themselves forced out of their homes and neighbourhoods, as a result of gentrification processes. Delgado warns as follows: "We have to protect against the phenomenon of families having to move from one place to another, unable to live where they want because of rent-price increases".

Here she criticises the "showcase Barcelona" phenomenon designed more for tourists temporarily staying there than for the people who live there all year round. In her view, a measure such as rent regulation can make a contribution to the "social cohesion of cities".



JAVIER BURÓN, Municipal Manger of Housing in Barcelona:

**"If the regulation were applied, most of the property market would attempt to comply with the standards established and adapt"**

MARIA SISTERNAS, architect and urban planner:

**"Rent regulation has to be implemented now and we cannot afford to be debating it for much longer"**

For the **architect and urban planner, Maria Sisternas**, "rent regulation has to be implemented now and we cannot afford to be debating it for much longer". She believes it is necessary to guarantee lease-price affordability in both the short and medium term and that social and affordable housing stock needs to continue growing at the same time.

She also points out that it is usual for flats in gentrified areas to be revalued for reasons that have absolutely nothing to do with their owners, not linked to their investments in home improvements, but rather public investment in urban-regeneration processes.

It is her belief that we need to "think about how to capture the added value that the public sector brings", so avoid incentivising speculative behaviour. She believes that rent regulation can be useful in that respect.

**The Manager for Housing and Renovation at Barcelona City Council, Javier Burón**, points out a trap that most of the criticism levelled against rent regulation falls into. He warns that such criticism refers to the old models of rent-price freezing, which established rigid price caps, and not to the modern, more flexible (second-generation) price-stabilisation systems.

For Burón, the stabilisation system takes account of the interests of both landlords and tenants alike. He gives an example: "If a lease costing 800 euros a month is profitable for a landlord and the cap is 10%, that is, they can rent out their property for up to a maximum of 880 euros a month, I don't understand why 880 euros isn't profitable when, five minutes before, it was. Well, maybe your expectation is to rent it out for 1,200 euros a month...".

Burón also rejects the view that applying the stabilisation system would lead to a contraction in supply of rental housing. He believes that families or small property owners with a few dwellings "would not stop renting them out", if they could continue receiving an income that improved their quality of life. As for large property owners, with thousands of rental dwellings, he doubts whether they could sell such large stocks of flats. "The message they'd be throwing at the market would be *I need to sell, I'm under pressure, I'll be making low offers* and they're not interested in selling their properties at a lower price than the investment they've made". The same could be said of family offices (medium-sized companies), which usually imitate the behaviour of large companies.

Burón predicts that "if the regulation were applied, most of the property market would attempt to comply with the standards established and adapt to find the best possible space". If the measure is to be implemented, he believes it is essential for the price scales established by the stabilisation system to be adjusted and realistic, to prevent landlords' profits from diminishing or disappearing. "It's a delicate operation, it has to be carried out carefully, with very good data, although, in the short term, there will be no alternative but to do it, because it will take many years and billions of euros to expand the affordable housing stock. You can't tell successive generations of people they have to wait until this solution arrives", he concludes.

## Studies in favour of rent regulation

Based on the experiences of price regulation in North American cities, we also find studies that reach opposite conclusions to those expressed above and which highlight the positive effects of this measure. Research by Gilderbloom and Ye (2007),<sup>23</sup> carried out in 76 municipalities in the State of New Jersey, concludes that stabilisation measures have not caused any significant variations in the construction of new rental housing. This study takes account of the effects of other social variables on the housing market (such as demographic changes, percentage of vacant and occupied dwellings etc..) and concludes that none of the variations can be attributed to rent regulation. Previous studies (Arnott, 1995;<sup>24</sup> Gilderbloom, 1981<sup>25</sup>) had already concluded that variation in housing stocks depends more on local-economy cycles than on rent regulation or other determining factors.

Other studies conducted in New Jersey and California not only suggest that rent-stabilisation systems improve the affordability of regulated apartment prices but also ensure that their effects extend to the entire housing stock. As soon as potential tenants can opt for a regulated dwelling, they can also decide not to pay significantly higher rent in the free market and that can cause the prices of deregulated apartments to drop. As explained in a study by Glaeser in 2003,<sup>26</sup> this type of research shows that cities with regulation systems have 10% lower rent prices than cities without such systems.<sup>26</sup>

A report entitled "Rent regulation in New York City" (2019)<sup>10</sup> also warns that it is whenever prices have been deregulated that exponential rent-price increases have occurred.

When rent-control measures were withdrawn in the State of Massachusetts in 1994, rent prices in its cities went up exponentially.

As for the effects of regulation on rental supply, that same study concluded that it was not the measure itself that could reduce the rental housing stock but rather the loopholes permitting the avoidance of price restrictions in a few cases, for example, through renovation work. On this point, the report mentions a study conducted in San Francisco in 2018 highlighting how landlords had been taking their apartments out of the regulated rent system and carrying out renovation work on them for conversion into condominiums. Sometimes they even had their apartments demolished to make way for newly constructed condominiums.

This is why other studies (Gorska and Crispell, 2016<sup>27</sup>) also make the case for putting legal limits on such loopholes, for example, narrowing down the cases where rental apartments can be sold off. They offer proposals such as banning the conversion of rental dwellings into flats for sale in buildings of a certain size or limiting the percentage of flats in a block which can be sold off, or even requiring owners to bear a significant share of the expenses tenants incur in having to find another dwelling.

Note that these studies make the case for limiting price-control exceptions, but not for eliminating such exceptions completely. They understand that enabling landlords to raise rent prices above reference prices (but not without limits), when they invest in renovation work, can encourage them to invest in the maintenance of their dwellings.

Various studies also demonstrate that regulated dwellings, although aimed at all city residents, benefit mainly individuals with greater financial difficulties and racialised groups, as is the case with other universal public services. The wealthiest individuals have more options and opportunities available to them in the private housing market. A study entitled “Forty Years of Rent Control: Reexamining New Jersey’s Moderate Local Policies after the Great Recession”<sup>28</sup> shows that areas with regulated rent tend to have lower rent prices, a smaller percentage of home owners and a higher percentage of immigrants.

Another positive effect of regulation is that it improves the security of housing tenancies and encourages tenants to stay longer in the same place and therefore strengthen their ties with neighbourhoods. According to Clark and Heskin (1982),<sup>29</sup> it also benefits well-being and quality of life, as well as social cohesion in cities.

In sum, the studies in favour of rent regulation underscore how it helps to make leases more affordable and benefits mainly the groups with the most socio-economic needs. This encourages tenants to stay longer in the same home, thereby helping to strengthen their ties to their neighbourhoods and promoting social cohesion. In their opinion, second-generation regulation *per se* does not reduce lease supply and they point out that there are other economic factors that may vary the availability of rental apartments. They also recommend keeping the exceptions to price regulation, but with limits, in the case of alteration work, so that it does not become a loophole for

## An intermediate opinion

ANAÏS LÓPEZ

Fotocasa and Habitaclia

**"Any proposal to regulate rent has to be very well established and grounded so it does not affect or harm landlords"**

increasing rent prices or moving apartments over to the sales market.

**Anaïs López, the Director of Communication and Contents at Fotocasa and Habitaclia,** offers an

intermediate position on the proposed rent regulation considered under the agreement between the PSOE and Podemos political parties and also by the Catalan government, in the decree that ultimately failed.

It seems "positive" to her that both the government agreement between PSOE and Podemos on the State level and the Catalan government considered regulating rent prices, as "they have seen it is a problem and that it has to be tackled and measures have to be put in place". Even so, she warns of the following: "Any proposal to regulate rent has to be very well established and grounded so it does not affect or harm landlords". Otherwise, if the regulation fails to take account of landlords' interests, it could be

counter-productive: "Landlords could choose to put their properties up for sale, reducing an already scarce supply of lease properties".

She also warns that, facing a price-regulation measure, "landlords could opt to invest less in their dwellings or even offload certain taxes and rates (property tax, waste collection rates) onto their leases for tenants to pay", to make up for the drop in income that price regulation would cause.

She also calls for "greater legal security for tenants and landlords alike" and believes that the current measures are aimed more at protecting the former: "We need a more stable and professionalised rental market, one that therefore has to be attractive and secure". She concludes as follows: "Both professional and individual landlords must have guarantees that their investment or savings do not incur risks, otherwise the lease supply will diminish".





# Conclusions

**The debate on rent regulation has been back with a vengeance since 2017. Having been absent from the public agenda, it has become a central housing issue for various reasons.**



## **The rise in the number of tenants and rising lease prices have brought the debate on regulation to the public agenda, particularly since 2017**

On the one hand, it should be borne in mind that more and more people are living in rented dwellings, especially in big cities such as Barcelona, where 35% of the population already lives in rented properties, according to data from the Barcelona Metropolitan Housing Observatory (OHB). While the prevailing culture in Spain is ownership, owing to the historical legacy of the Franco dictatorship, the last few years have seen mortgage-loan restrictions and an emerging change of attitude towards renting, both of which have led to a growth in renting. On the other hand, this rise in the number of people living in rental housing coincides with a rise in rent prices that is disproportionately high when compared to the growth in household incomes. The average rent price in Barcelona grew by 127.7% from 2000 to 2018, whereas gross disposable household income only rose by 63.4%.

Although the rate of growth of rental prices in big cities such as Barcelona and Madrid – where they have grown the most in the last few years – is beginning to slow down, prices are still on the rise. In addition, 2019 closed with the highest

rent prices in Spain since 2006, according to data from Fotocasa (19.18 euros/m<sup>2</sup>). The upward trend in prices has extended to the metropolitan municipalities around big cities and, in Catalonia, beyond the province of Barcelona. According to Fotocasa, the growth in rent prices in 2019 was higher in Lleida (+11.8%), Girona (+11.6%) and Tarragona (+7.3%) than in Barcelona (+2.1%).

It was within this context of rising prices and evictions for defaulting on rent payments that the Tenants' Union was established in 2017, to champion tenants' rights. Along with the other social movements championing the right to housing, such as the PAH and numerous neighbourhood organisations, associations and unions, they managed to put the issue on the media's agenda and subsequently on the political and institutional agenda, through social pressure. At the same time, there has also been a growth in social awareness on rent regulation in big cities. More specifically, three out of every four people living in Barcelona have already declared themselves to be in favour of this measure.



## The debate on price regulation has been taken up by institutions since 2018

On the State level, the debate on rent regulation began during the previous government, after the vote of no confidence which brought the PSOE political party to power in June 2018. In fact, this option was provided for within the budget agreement between PSOE and Podemos, but the government subsequently took a step back and the State decree on rentals does not provide for rent regulation in new leases. It does limit any rise in rent prices within the same lease to the CPI and also extends the minimum term of leases from 3 years to 5 years, among other amendments.

Following the approval of this decree and the general elections (in the second round of elections in November 2019), which led to the coalition government between PSOE and Podemos, the proposal for rent regulation in tight-market areas was brought back in 2020, although we shall have to wait and see how it is implemented.

On the Catalan regional level, the government presented a decree on rentals in May 2019 that provided for price regulation, but it failed at the Catalan chamber. Social movements and left-wing forces such as Catalunya Sí que es Pot and CUP were opposed to it as they considered it insufficient, whereas the other political party groups either believed it represented excessive interference in the free market or questioned whether the Catalan government had the jurisdiction to regulate leases. The Catalan government believes it has the jurisdiction to do so, under the Catalan Civil Code. The debate over the recent legislation for rent regulation driven by the Tenants' Union and passed in the

Catalan Parliament in September 2020 led to the return of similar arguments. Despite its passing, we shall have to assess the legislation's level of implementation from here on and take account of the risks that come with doubts over its constitutionality.

The debate came to Barcelona City Council in the framework of a non-permanent commission on rent regulation. The commission held four meetings with the participation of some thirty speakers representing owners, tenants' associations, professional associations and experts at both State and international levels. Several aspects relating to rent regulation were dealt with: the housing-policy situation, international experiences, the regulation framework and possible effects of rent regulation.

Taking part in the commission, which was created at the proposal of the ERC political party, were the various political parties with representation in the City Council. Its conclusions were approved by Barcelona en Comú, the Partit Socialista de Catalunya, Esquerra Republicana de Catalunya and Junts per Catalunya, the political parties that took part in all its meetings. And these had one basic premise<sup>\*\*</sup>: rent needs to be regulated and the debate ought to be focused on how such regulation has to be implemented.

<sup>\*\*</sup> To see the conclusions in full, please see the annexes to this publication, found on page 119.



## **A controversial measure: pronouncements in favour and against rent regulation**

Within the current scenario, both in Catalonia and in Spain, the question of whether or not to regulate rental prices is still being hotly debated. This is a measure opposed by numerous detractors, mainly from the world of economics and the business sector. Their main criticism against the proposal is that it would reduce the supply of rental properties while increasing demand, thereby triggering the undesired effect of price rises. In their opinion, a black rental market would appear, where tenants would end up paying the difference between regulated and real prices.

Rent-regulation detractors also warn of the difficulty of assigning leases with regulated prices to everyone applying for one, in a context of a supply shortage. They warn of the arbitrariness by which such a decision could be taken, which, if it remained in the hands of landlords, would give them even more negotiating power over lease applicants, so there would be no guarantee that regulated dwellings would effectively go to those most in need of them. On the other hand, they point out that, in a context of low supply, long waiting lists could arise for renting a dwelling. Another criticism raised time and again is that, by losing profits, landlords would no longer have any incentive to invest in the maintenance and renovation of their flats. This would lead to a steady deterioration in the quality of the dwellings.

For those who champion rent regulation, the above-mentioned arguments are fallacious. They

believe they are based on a perfect-competition market dogma, where supply and demand self-regulate, which is not how the property market really operates. Social movements recall how during the property-boom period in Spain there was no shortage of properties for sale (close to 6 million dwellings were built between 1997 and 2007, more than in Germany, France and the UK together), and yet this did not lead to a fall in prices. According to the report from the UN's former Special Rapporteur on adequate housing, Miloon Kothari, this last decade saw house prices in Spain rise by 10% a year and double in cities such as Barcelona and Madrid.

Those in favour of regulation believe that it helps to make leases more affordable for city residents, that it benefits mainly groups with more socio-economic needs and that it encourages stronger ties between residents and their neighbourhoods and promotes social cohesion. They assert that more modern rent regulations do not reduce lease supply *per se* and that there are other economic factors which affect the availability of rental apartments.

In addition, they turn the argument made by the measure's detractors on its head, noting that it is deregulation, rather than regulation, which causes prices to rise. For example, they point out that there is historical evidence demonstrating how rent prices grew exponentially in US states such as Massachusetts, after prices were deregulated in the mid-1990s.





**Today, we are looking to stabilisation systems that are more flexible than the old price freezes, with rigid price caps**

Rent-regulation defenders also point out a trap that most of the criticism levelled at the measure falls into. Such criticism is mostly focused on first-generation regulation (price freezing), which was applied in a number of European countries during the first half of the 20th century and in Spain, during the Franco dictatorship. This proposal involved the establishment of rigid price caps, a measure taken after a good part of the housing stock had been destroyed during both the First and Second World Wars, when the housing shortage problem worsened.

By contrast, the rent regulations implemented since the 1970s (Rent Stabilization) in various European countries and in the United States offer greater flexibility. Rent reference prices are periodically updated and adjusted to the rate of inflation and, in addition, regulation establishes various exceptions so as not to disincentivise the entry of new dwellings into the leasing market. For example, they usually exclude newly constructed dwellings earmarked for rental housing (known as *built-to-rent*).



**In cities where stabilisation systems have been applied, changes are gradually being made, based on acquired experience, to make them more effective**

This publication has examined examples from cities around Europe and the world where rent-price stabilisation has been implemented: Berlin, New York, Paris and Vienna.



## **Rent regulation in Germany is based on a price reference index and a rent brake that defines the extent to which index prices can be exceeded in new leases**

In the case of Berlin, price regulation is based on two key indexes: the *Mietspiegel* and the *Mietpreisbremse*. The *Mietspiegel*, a system in operation since the 1970s, establishes rent-price reference rates and is periodically updated. It is drawn up taking account of the value of comparable dwellings on the market, their location, size, age, quality of services and facilities and so on. Landlords cannot raise rent prices more than 20% above this reference rate in current leases. This index was joined in 2015 by the so-called rent brake (*Mietpreisbremse*), which establishes that rent reference prices cannot be exceeded by more than 10% in new leases.

According to Berlin City Council, the system has been used to slow down the rate of rent-price rises, but not to contain them completely. One of the factors undermining the effectiveness of the system are the numerous exceptions where landlords can demand higher prices than those established by the previous indexes (for example, for alteration work on dwellings). That is why the German government stepped up rent regulation in 2019, eliminating some of these exceptions, and the Berlin regional government froze the price reference index at the start of 2020, having decided that the rates established in 2013 would remain valid for the next 5 years. This is a temporary measure to enable policies to be launched in parallel for expanding the city's affordable rental housing stock. Nevertheless, the Berlin Federal Court declared the measures unconstitutional and referred it to the German Constitutional Court, which has yet to make a ruling on the matter.



## **New tenants in Paris pay the same as their predecessors: prices are only updated based on an index equivalent to the CPI**

In the case of Paris, rent regulation rests on another cornerstone. Since 2012, when a new lease for a flat is signed, the person who starts living in the property pays the same rent as the previous tenant. The price is only revised in accordance with the rent reference index (IRL), which is based on the French CPI. This is the same criterion governing changes in rent prices during the lifetime of the same lease. Only some exceptions are provided for, when lease prices are manifestly below market prices.

As a complement to this system, the ALUR Act of 2014 established a rent-price cap (the previous system only established that it must be revised in accordance with the IRL but not the maximum level it could reach). This limitation is based on a price reference index, which can only be exceeded by 20% (the index price plus this 20% is what is known as the *loyer majoré*). This new system was suspended by a Paris administrative court in 2017, which then led to the approval of regulations (the ELAN Act of 2018) with similar – though less ambitious – features in an attempt to dodge this ban. The difference between the ELAN Act of 2018 and the ALUR Act of 2014 is that the most recent one limits the validity of this price limitation to 5 years. It envisages it as a temporary measure.



## **Vienna, the European capital of social housing: 45% of the city's dwellings are in the hands of the Administration or limited-profit housing associations**

In the case of Vienna, it is the huge size of its affordable and social public housing stock that has the most influence, rather than private-lease price regulation. Its influence is so important (representing 45% of all housing in the city and home to some 60% of Vienna's residents) that it also puts downward pressure on the prices of the rental properties found in the free market. Vienna is the European capital of social housing, a position it has achieved not just through public initiatives but also thanks to the participation of limited-profit housing associations (LPHAs). In fact, 220,000 of the city's 420,000 social and affordable dwellings are owned by the City Council itself and a further 200,000 by LPHAs, which are cooperatives or limited-profit companies.

Note that, paradoxically, Vienna is capable of funding a system with an extensive social housing stock without allocating it a high level

of public expenditure. The City Council provides (low-interest) loans to public and private companies and to the LPHAs building these dwellings, to fund up to 35% of the building costs. In return, housing developers have to guarantee affordable rent prices.

Besides having an extensive public and social rental housing stock at its disposal, private leases in the city are also subject to a price-regulation system. The current system dates back to 1994 and limits the price of dwellings that were built before 1945, given that most of the city's housing stock was built before that date. Today, however, this means that more and more dwellings are falling outside that system of regulation, which is why a number of social movements and left-wing forces have been calling for the system to be revised, to strengthen tenants' rights.



**Incentives, based on loans, are being offered in New York for landlords who move their dwellings over to the stabilisation system. The city's housing agency issues bonds in the market to find funding for this purpose**

In the case of New York, the price-regulation system presents certain special features when compared to the above-mentioned cases of European cities. As in these cases, it is based on a stabilisation system, with a rent-price cap, which almost half of the city's rented dwellings are governed by. The other half are in the hands of the free market. Unlike Vienna, the public housing stock in this North American city is residual; so, in practice, regulated private rentals also end up meeting the housing needs of people with the most socio-economic difficulties.

The stabilisation system is made up of practically all dwellings built before 1974 with 6 or more storeys as well as more recently built properties under financial incentives and aid from the public administration. It is in this last entry route to the system where we see one of the main differences between New York and the cities mentioned above. New York city has a housing agency which issues its own bonds for housing-project funding. Every private company that wishes to apply for this funding to building housing has to enter the stabilisation system. It should be noted that, to carry out operations of this magnitude, a large infrastructure is required, something that New York, which is regarded as a city state, can provide itself with.

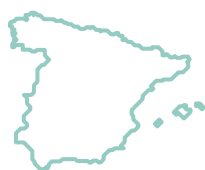
Another difference with respect to Berlin or Paris is that the criterion for applying the price stabilisation system has nothing to do with the existence of a tight market (where offer prices

are disproportionately high, given the income of the applicants). The system is operative so long as under 5% of all the city's rental housing is available (vacant). It is based on the so-called vacancy rate, which was historically set in New York at around 3%. This rate, among many other data on the state of the city's housing stock, is determined by a far-reaching official survey on the issue with a long history behind it: the New York City Housing and Vacancy Survey (NYCHVS).

A third special feature of the New York system is the criterion for revising the prices of regulated dwellings. Reference prices are not periodically updated, taking account of the comparable apartments on the market, but rather their revision depends on a body, the Rent Guidelines Board (RGB), which is made up of landlord, tenant and civil-society representatives. Its system for determining price revisions is based above all on weighing up the interests and points of view of the various parties and is therefore essentially political.

As in the case of Berlin, the system's numerous exceptions have undermined its effectiveness. Which is why the New York government stepped up the regulation in 2019 to give tenants more protection, restricting some of the system's loopholes, for example, by limiting the renovation work that can justify prices that exceed the reference rates.





## Rental price regulation features in the current government agreement between PSOE and Podemos in Spain

The proposals presented up to now, not just in Catalonia but in the whole of the Spanish State, share some of the features of the Berlin model in particular, as they are fundamentally based on the establishment of rental price limits, based on a price reference index. The PSOE-Podemos agreement of 2020 authorises both local authorities and regional communities to regulate abusive rent-price rises in previously declared tight areas, based on the State's Rental Housing Price Index System. It will also take account of the advances made by regional communities that already have their own index, such as Catalonia, or which can produce one in the future following a methodology similar to the State's.

A rent-price reference index has already been in place for several years in Catalonia, produced on the basis of the Incasòl register of deposits. It was initially envisaged as a measure for transparency. It is understood that it is used so that both landlords and tenants have the same information on average rent prices, to help create a level playing field between the parties during negotiations. It is on the basis of this index that the Catalan government subsequently coordinated the proposed decree on rent regulation which failed to gain a sufficient majority in Parliament in June 2019, and did not convince social movements.

First of all, these social movements questioned the decree's numerous exceptions, which provided for a wide range of cases where flats were not subject to price restrictions (for example, dwellings that are newly built or where major renovation work has been carried out).

Another reason for criticism has to do with the methodology used to produce the rent-price reference index. As in Berlin, the index in Catalonia is based on the prices of comparable dwellings in the market, according to their features, sizes, location, facilities and so on. Social movements

believe that the index ought to be fed data from diverse sources, not just from the rental market, and take account of socio-economic criteria too, such as disposable household income. In addition, they question whether only lease deposits from the last 3 years should be taken as a reference, since this was a period of rising prices. They therefore believe the Catalan government is legitimising the prices of the housing bubble. They demand that the index is built transparently and through a process of dialogue, where the views of social movements are taken into account.

Even so, it was during the process enabling the enactment of the Bill on rental price regulation in the Catalan Parliament in September 2020, thanks to the impetus from the Tenants' Union, that the social movements had to show flexibility in some of their positions on this and other issues, to bring about an agreement which they considered, overall, to be satisfactory and a great victory for tenants.

Other experts in favour of the regulation are keen to include socio-economic criteria, not for producing the reference index but rather for determining whether an area is a tight market. Only where an area is classed as such can price regulation then be applied there. These same experts are naturally of the opinion that including socio-economic criteria in the index could cause a loss of profitability among landlords and that this could lead to a drop in rental supply. They warn that the price regulation system has to be built by balancing the interests of landlords and tenants alike, and that the way in which it is coordinated needs greater fine-tuning if it is to achieve the desired effects. The fact that the index in Catalonia is built on the basis of real lease deposits – in contrast to cities such as Berlin, where it is based on representative property samples – means that it has a very good quality database and that these reference prices can be fine tuned and adjusted.



### **More use needs to be made of tax policies and subsidies to put downward pressure on rent prices**

In addition to regulating prices, it should be borne in mind that there are many other measures that can be taken to influence rental costs. The rent reference index can also be used as the basis for tax-policy measures or subsidies. In other words, tax incentives or subsidies can be provided to landlords who rent out their flats below reference index rates, for example, to renovate their dwellings, and they would otherwise not be eligible for these subsidies or incentives. This measure is already being implemented in several locations, although it should be borne in mind that it is exclusively applied with municipal taxes, such as the property tax IBI, which have little bearing on general taxation compared to state taxes such as VAT and income tax.



### **REIT regulation, unfinished business**

Other demands from social movements relate to the need to slow down the speculative activity of REITs (real-estate investment trusts) in the housing market. One of the main demands relates to its tax system, as they are currently exempt from corporation tax.



### **Giving more stability to tenants, with the aim of putting us on the same level as ten other European countries with open-ended leases**

Another demand from social movements concerns lease terms. While the State decree on rentals of March 2019 extended minimum lease terms from 3 years to 5 years, social movements remain committed to an open-ended lease model such as the ones found in ten European countries (the Netherlands, Portugal, Italy, Greece, Sweden, Denmark, Finland, Switzerland, Germany and Austria).



## Rent regulation has to be framed within a more general strategy, with a commitment to expanding the public and social housing stock

Finally, both social movements and various experts highlight the need to link rent regulation policies to a comprehensive strategy on housing. The key element in that strategy is expanding the affordable housing stock, especially rental housing. This would become a more medium- and long-term line of action, whereas price regulation would be used to curb short-term price rises.

It should be noted here that, compared to other European countries, Catalonia and indeed the whole of Spain are a century behind in their social housing policies. As a result of this historical legacy and incapacity to reverse it to this day, a mere 2% of Spain's total housing stock corresponds to public and social rented dwellings, compared to 32% in the Netherlands, 24% in Austria and 19% in Denmark.

It is high time, then, we established the bases for reversing this trend. The best example to follow here is the city of Vienna. Expansion of the affordable housing stock can essentially be carried out in two ways: by building new dwellings or by renovating and reusing existing dwellings. In the first case, what is fundamentally needed is collaboration from the public Administration not only with the private sector (where the private sector takes joint responsibility for guaranteeing the right to housing) but also with housing cooperatives. In the second case, tools can be used such as the Administration's pre-emption rights, to acquire dwellings for social renting, or its expropriation of large property owners' vacant flats for the same purpose.

# 2027

## Future outlook

Following a decade of paralysis over the expansion of our affordable housing stock, during which the urban solidarity targets of the Housing Act of 2007 (set at 15% social housing in Catalonia by 2027) were systematically missed, we have recently reached a turning point. Decree 5/2019 on Emergency Measures is regarded by several experts as the most important housing regulation since the Act of 2007.

Besides the emergency measures for guaranteeing housing alternatives for people at risk of residential exclusion, after which the decree is named, the decree also contains numerous structural measures. Catalonia is becoming the second regional community in the Spanish State, after the Basque Country, to effectively protect officially protected housing (HPO) in perpetuity. In addition, land reserves for HPO have been increasing very substantially on buildable land and on unconsolidated urban land (up to 40%) and, among other measures, at least half of these dwellings have to be allocated to rental housing.

The decree only came into force on 31 December 2019 and was subsequently ratified by the Catalan Parliament. It is only at the start of its implementation and an essential tool for ensuring its compliance is the Territorial Sectoral Housing Plan. This document is meant to specify the timetable and the implementation goals of Catalonia's housing policies.

The expansion of the public and social housing stock requires time and resources and, in the meantime, measures need to be taken that guarantee the short-term affordability of rental housing. Price regulation is one of these.

But it should be noted that expanding the public housing stock requires time and resources and that an assessment will be needed regarding the extent that plans with this aim may be affected by the COVID-19 health emergency and all its economic and social implications.

The social and economic scenario arising from the pandemic also has implications in the property market, which the public authorities will certainly have to take into account when planning housing policies. However, under no circumstances must this critical social and economic situation be turned into a pretext for delegitimising policies or proposals that are not fully in keeping with the interests of the private sector. Considered solutions need to be sought, that put citizens' right to housing at the forefront, and for which private players share co-responsibility, in keeping with the social function of property. A proposal which Barcelona City Council put to tourist-apartment owners, who have suffered sharp losses of profit since the outbreak of the pandemic, is to transfer their properties to the residential rental market. Despite the difficulties we have been experiencing, this change of use of dwellings could expand the city's residential rental housing stock.

It should be noted at the same time that the COVID-19 crisis has also had a strong impact on the finances of families and their capacity to meet their rent or mortgage payments. Of course, so long as the large gap lasts – or worsens – between the purchasing power of families and rent prices, and at least so long as the public and affordable housing stock remains insufficient to meet the needs of the city's residents – a

long-term challenge –, we shall have to continue working on measures which, in the short term, guarantee affordability in the private rental housing market. Rental price regulation, which is being implemented in several cities in Europe and the rest of the world, is one of them.

In the specific case of Barcelona, the high proportion of tenants living in the city (35%) and the high level of social consensus on the measure (75% of city residents are in favour of it) are advising us to stop sitting on the fence.

As has been the case in many other cities, it is likely that implementing this system in Barcelona and throughout Catalonia will not be without challenges. But the experiences of other cities show that the only way to adapt the measure to each local context is to keep on adapting the system through praxis. It is now time for action.



# Annexe

## Report on the findings of the non-permanent commission for the regulation of rent in the city of Barcelona

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## **Informe de aportaciones de la comisión no permanente de estudio sobre la regulación de los precios de los alquileres**

### **» 01. Antecedentes**

El Plenario del Consejo Municipal, en su sesión del 23 de julio de 2019, acordó, a petición de los grupos municipales de ERC y JxCat, lo siguiente:

- » Instar al Gobierno de la Generalitat de Catalunya a iniciar el trámite para un proyecto de ley que regule los precios de los contratos de arrendamiento de vivienda.
- » Crear una comisión no permanente de estudio en el Ayuntamiento de Barcelona de acuerdo con lo previsto en los artículos 35 y 39 bis del Reglamento orgánico municipal (ROM), sobre la aplicación y la repercusión que tendría la regulación de los contratos de arrendamiento de vivienda en la ciudad de Barcelona y en el área metropolitana.

### **Objeto de la comisión**

Estudiar la aplicación y la repercusión que tendrá la regulación de los precios de los contratos de arrendamiento de vivienda en la ciudad de Barcelona y en el área metropolitana de Barcelona. El objetivo es impulsar y conseguir la implantación efectiva de esta regulación en la ciudad.

La comisión ha celebrado cuatro sesiones de trabajo sobre los temas y con los ponentes que se enumeran a continuación:

- » **Sesión 1. La situación y las políticas de acceso a la vivienda en la ciudad de Barcelona, en el área metropolitana y en otras grandes ciudades globales.**

Ponentes:

- » **Elena Massot**, vicepresidenta de la Asociación de Promotores de Cataluña.
- » **Joan Ràfols i Esteve**, presidente de la Cámara de la Propiedad Urbana de Barcelona.
- » **Lluís Hosta** (sustituye a **Lídia Guillen**, presidenta de la Asociación de Gestores de Políticas Sociales de Vivienda de Cataluña).
- » **Guillem Domingo Utset**, técnico de Vivienda y Ciudad del Observatorio DESC.
- » **Sorcha Edwards**, secretaria general de Housing Europe.
- » **Pilar García Almirall**, catedrática de Arquitectura de la Universidad Politécnica de Cataluña.
- » **Carme Trilla**, presidenta del Observatorio Metropolitano de la Vivienda, que, por motivos de salud, tiene que excusar su ausencia.

## » Sesión 2. Las experiencias internacionales en la regulación de los precios de los alquileres

Ponentes:

- » **Cea Weaver**, coordinadora de la campaña “Housing Justice for All”, de Nueva York.
- » **Eoin Ó Broin**, portavoz político del Sinn Féin en materia de vivienda.
- » **Jaime Palomera**, portavoz del Sindicato de Inquilinas e Inquilinos.
- » **Elga Molina**, responsable de la Oficina de la Vivienda del Consejo Comarcal del Tarragonès y asesora jurídica en derecho inmobiliario.
- » **Sergi Nasarre**, director de la Cátedra UNESCO de Vivienda en la Universidad Rovira i Virgili.
- » **Jaume Fornt**, director adjunto de la Agencia de la Vivienda de Cataluña.
- » **Ana Puig-Pey**, directora del Máster en Dirección de Empresas Inmobiliarias Innovadoras, y evaluadora de los programas LIFE, SÓCRATES y JESSICA, de la Unión Europea.

## » Sesión 3. El marco competencial y los escenarios potenciales de la regulación.

Ponentes:

- » **Xavier Bernadí**, doctor en Derecho y director general de Derecho y de Entidades Jurídicas en el Departamento de Justicia.
- » **Esther Arroyo**, catedrática de Derecho Civil por la Universidad de Barcelona y de la Cátedra Jean Monnet de Derecho Privado Europeo.
- » **Domènec Sibina**, profesor titular de Derecho Administrativo de la Universidad de Barcelona.
- » **Josep Ferrer**, catedrático de Derecho Civil por la Universidad Pompeu Fabra.
- » **Héctor Simón**, profesor de Derecho Civil y miembro de la Cátedra UNESCO de Vivienda de la Universidad Rovira i Virgili.
- » **Joan Ràfols i Esteve**, presidente de la Cámara de la Propiedad Urbana de Barcelona.
- » **Pol Borrellas**, investigador titular del Instituto Ostrom Catalunya, economista y graduado en International Business Economics por la Universidad Pompeu Fabra.

## » Sesión 4. Los impactos sociales, económicos y urbanísticos de las regulaciones de los precios de los alquileres en Barcelona y en el área metropolitana de Barcelona.

Ponentes:

- » **Jordi Bosch i Meda**, doctor en Arquitectura, licenciado en Ciencias Políticas y codirector del Posgrado de Políticas de Vivienda de la Escuela Sert.
- » **Leilani Farha**, relatora de las Naciones Unidas sobre vivienda adecuada entre el 2014 y el 2020, y directora de “The Shift”.
- » **Stephen Barton**, doctor en Planificación Urbana y Regional por la Universidad de California y exdirector de Vivienda de la ciudad de Berkeley.
- » **Luis Zarapuz**, economista del Gabinete Económico de Comisiones Obreras.
- » **Josep Maria Vilanova**, representante del Colegio de Arquitectos de Cataluña y

profesor del Departamento de Urbanismo y Ordenación del Territorio de la Universidad Politécnica de Cataluña.

- » **Montserrat Junyent**, jefa de la Asesoría Jurídica del Colegio de Agentes de la Propiedad Inmobiliaria de Cataluña y presidenta de la Federación de Asociaciones de Empresas Inmobiliarias.

La comisión no permanente de estudio se extinguirá en el momento en que se elabore un informe que recoja las aportaciones y los puntos de vista que se manifiesten en las sesiones (este informe), y una vez se cumpla el calendario de trabajo, de conformidad con el acuerdo de creación aprobado por el Plenario del Consejo Municipal en la sesión de 23 de julio de 2019.

### **Aprobación de la Ley 11/2020, de medidas urgentes en materia de contención de rentas en los contratos de arrendamiento de vivienda**

El día 18 de setiembre de 2020, se aprobó la Ley 11/2020, de 18 de setiembre, de medidas urgentes en materia de contención de rentas en los contratos de arrendamiento de vivienda y de modificación de la Ley 18/2007, de la Ley 24/2015 y de la Ley 4/2016, relativas a la protección del derecho a la vivienda.

La redacción y la aprobación de esta ley tuvieron lugar en los meses en que se llevaba a cabo la propia comisión y, por lo tanto, la ley ha añadido un elemento importante de debate a las sesiones celebradas.

#### **» 02. Objeto**

El objeto de este informe es recoger las aportaciones, las conclusiones, el debate y los puntos de vista manifestados en las sesiones de la comisión no permanente de estudio sobre la regulación de los precios de alquiler, en especial todo lo que pueda permitir mejorar el acceso a la vivienda de alquiler.

#### **» 03. Diagnósis, síntesis de debate y recopilación de aportaciones**

Se incorpora una diagnosis y la síntesis de debate para conocer la situación de la problemática y la postura defendida por cada ponente. La recopilación de aportaciones se estructura de acuerdo con los temas tratados en cada una de las sesiones de la comisión, ya que cada una ha abordado puntos de vista complementarios para evaluar la pertinencia de la regulación de los precios de alquiler y los mecanismos para llevarla a cabo.

### **La situación y las políticas de acceso a la vivienda en la ciudad de Barcelona, en el área metropolitana y en otras grandes ciudades globales.**

#### **Diagnóstico**

Barcelona y el conjunto del área metropolitana se encuentran en una situación crítica con respecto a la dificultad de acceso y mantenimiento de la vivienda, en gran medida a causa de la gran tensión a la que está sometido el mercado de la vivienda y, en especial, el mercado de alquiler.

En este contexto cabe destacar lo siguiente:



- » En el conjunto de la ciudad, el parque de viviendas vacías es muy bajo y se sitúa en 10.052 viviendas, el 1,22 % del parque, un porcentaje muy reducido que muestra la gran presión que hay sobre la vivienda.
- » La estructura de la propiedad en la ciudad está atomizada y hay un importante predominio de la propiedad particular. No obstante, se ha dado un proceso de concentración y actualmente las personas jurídicas, que solo representan el 2,6 % de los contribuyentes, son titulares del 10,7 % de las viviendas. Esta concentración está, pues, en muy pocas manos, de modo que el 0,2 % de los contribuyentes disponen del 9,8 % de las viviendas (75.767 viviendas, cifra que representa una media de 69,7 viviendas por tenedor).
- » Se ha producido un fuerte crecimiento del alquiler, aunque el parque sigue siendo mayoritariamente de propiedad. En la ciudad de Barcelona, entre el 2011 y el 2017 el alquiler ha pasado de representar el 30,1 % de las viviendas a situarse en el 35 %. En el caso de las personas jóvenes, el 86,1 % viven de alquiler.
- » Este aumento del parque de alquiler ha sido paralelo al crecimiento del precio de las viviendas que, en la ciudad de Barcelona, se encuentra en crecimiento desde el 2014 y, al cierre del 2019, se situaba en 978,81 euros de media.
- » Estos elevados precios hacen que haya una discrepancia importante entre los precios de la oferta y la capacidad de la demanda, de modo que entre los años 2000 y 2018 se ha producido un distanciamiento entre la renta familiar disponible bruta (RFDB) y los precios de compra y alquiler.
  - » En la ciudad de Barcelona, la RFDB ha aumentado un 63,4 %, mientras que los precios de alquiler han aumentado un 127,7 % (dos veces más) y los de compraventa de segunda mano un 144,7 % (2,3 veces más).
  - » En el conjunto de Cataluña, la RFDB ha aumentado un 38,2 %, mientras que los alquileres lo han hecho un 91,8 % (2,4 veces más) y los precios de compra de segunda mano, un 93,9 % (2,5 veces más).
- » Esta realidad hace que los hogares que viven de alquiler en la ciudad destinen una media del 43,5 % de sus ingresos al pago de la vivienda. De acuerdo con las recomendaciones europeas, los hogares tendrían que destinar un 30 % de sus ingresos a pagar la vivienda (incluido el pago de la vivienda y los suministros).
- » Barcelona tiene un parque escasísimo de vivienda de alquiler de titularidad pública o social: solo el 5,2 % del parque de alquiler pertenece a administraciones públicas y el 1,6 %, a entidades religiosas y del tercer sector.

## Síntesis del debate

**Sra. Elena Massot**, vicepresidenta de la Asociación de Promotores de Cataluña (APCE)

- » Es necesario aumentar la oferta. El parque no crece lo suficiente para dar respuesta a las necesidades, y los precios aumentan.
- » Sin crédito hipotecario, los potenciales compradores se han pasado al mercado del alquiler.
- » Hay un mercado de alquiler extremadamente atomizado.
- » Es necesario acabar el planeamiento y desarrollar solares. Es necesario priorizar la construcción de las 20.000 viviendas de protección oficial (VPO) que se pueden hacer en Barcelona.
- » Es necesaria más dotación presupuestaria para las políticas de vivienda.

- » Es necesaria una colaboración público-privada y medidas flexibles, como el *coliving*.
- » Es necesario reducir el exceso de burocracia en el área metropolitana de Barcelona y en Barcelona.
- » Debe dotarse de seguridad jurídica al sector inmobiliario.
- » Los riesgos de una intervención en el mercado del alquiler son:
  - » reducción de la oferta,
  - » aumento del mercado negro o economía sumergida,
  - » selección restrictiva de los inquilinos.
- » Falta una visión conjunta; ahora hay una visión local.
- » Es necesaria una política de transporte público metropolitana, para acercar la vivienda y el trabajo a todo el mundo.
- » Es necesario un aumento de los presupuestos, los incentivos, los complementos de renta y las bonificaciones fiscales.
- » Los agentes privados deben ser una parte de la solución, no la única solución.
- » Es necesario elaborar un plan estratégico para la vivienda con una previsión de quince años.
- » Es necesario favorecer la corresponsabilidad con el sector privado, empezando por un marco claro y estable.

**Sr. Joan Ràfols i Esteve**, presidente de la Cámara de la Propiedad Urbana de Barcelona

- » En el 2018 volvió a crecer el fenómeno de la inmigración en el área metropolitana de Barcelona; sin oferta, aumenta la exclusión residencial.
- » La escasez de vivienda de alquiler es consecuencia directa del control de alquileres español que hubo entre 1920 y 1994.
- » España tiene el porcentaje más alto de familias que dedican más del 40 % de sus ingresos al alquiler por la ausencia de una política social ligada a la vivienda de alquiler.
- » Regular el precio de los alquileres es pasar toda la carga al mundo privado.
- » El control del alquiler no funciona y distribuye los beneficios y las cargas de manera injusta.
- » No puede haber control de alquileres ni parque público de alquiler sin un estado de bienestar que garantice el acceso a la vivienda a las familias que están excluidas del mercado.
- » Se debe dotar de inversión pública la vivienda social.
- » Se debe desarrollar todo el suelo urbanizable.
- » En Barcelona no hay suelo y hay que ir a buscarlo más allá del área metropolitana de Barcelona.
- » La VPO tiene el precio limitado, pero no tiene ningún beneficio fiscal.

**Sr. Lluís Hosta**, representante de la Asociación de Gestores de Políticas Sociales de Vivienda de Cataluña

- » Los alquileres no pueden estar en el libre mercado absolutamente.
- » Hay que entender el control de rentas como una solución coyuntural necesaria, pero se debe pensar en soluciones a largo plazo.

- » El porcentaje de vivienda de parque público es ínfimo; si la oferta fuese suficiente, no se dispararían los precios.
- » El 80 % del parque de alquiler está en manos de pequeños propietarios y no dejarán de alquilar por la regulación.
- » La regulación debe tener seguridad jurídica.
- » Deben dotarse de presupuesto las partidas de vivienda.

**Sr. Guillem Domingo Utset**, técnico de Vivienda y Ciudad del Observatorio DESC

- » El aumento de los hogares de alquiler significa que hay más familias expuestas al aumento de precios (el 42 % entre el 2013 y el 2018).
- » Se detecta un desajuste entre una oferta inasequible y las capacidades de la demanda, y se genera desigualdad y segregación (gentrificación).
- » Las familias barcelonesas tienen que hacer un sobreesfuerzo dedicando, de media, el 40 % de sus ingresos a pagar la vivienda.
- » Según el Observatorio de la Emancipación del Consejo de la Juventud de España, las personas jóvenes tienen que dedicar el 120 % de su salario a acceder a la vivienda de alquiler.
- » En el 2019, en Barcelona hubo 2.125 desahucios (1.700, de alquiler).
- » Históricamente, las políticas públicas (municipales, catalanas y estatales) se han enfocado mal y no han fomentado lo suficiente el alquiler.
- » Ha faltado exigir al rescate bancario un retorno social, por ejemplo, en forma de viviendas para aumentar el parque público.
- » El marco legal es un elemento definitorio del modelo de vivienda.
- » El sistema de vivienda en el Estado y en Cataluña ha tenido resultados negativos con respecto a los derechos fundamentales de las personas.
- » En el artículo 33 de la Constitución se indica que la función social forma parte esencial del derecho a la propiedad privada.
- » El informe presentado por la relatora de la ONU por el derecho a la vivienda nos indica que, si una persona tiene una actividad económica relacionada con un bien de primera necesidad, seguramente habrá regulaciones superiores que deberá soportar.
- » La medida del 30 % en suelo urbano consolidado es una medida estructural a largo plazo.
- » No hay ningún ayuntamiento que haya puesto la mesa de emergencia a cero, porque los desahucios no cesan.
- » Es necesario que todas las administraciones cooperen.

**Sra. Sorcha Edwards**, secretaria general y responsable de Relaciones Institucionales de Housing Europe

- » Se están utilizando viviendas vacías en el centro de la ciudad como activos.
- » Se necesita una inversión en el sector inmobiliario que después retorne a las ciudades.
- » Internacionalmente se está viendo un crecimiento del alquiler privado, que actualmente no es un sector que añada valor a la sociedad, sino que le resta.
- » Hay una falta de competitividad de las ciudades a consecuencia de los problemas relacionados con la vivienda asequible.

- » Se deben conocer los errores del pasado para no repetirlos.
- » En los lugares donde hay muchas organizaciones sin ánimo de lucro, hay una mayor resiliencia del sector de la construcción en época de crisis.
- » En Europa, el Green New Deal es primordial para aumentar los recursos financieros y mejorar la calidad del parque de vivienda sin aumentar los alquileres.
- » La Unión Europea no tiene competencias sobre vivienda ni tampoco en regulación de los alquileres ni en planificación urbanística, pero sí que puede facilitar el intercambio de buenas prácticas entre ciudades.
- » Hay una demanda y una necesidad sociales crecientes: el 80 % de los europeos no pueden acceder a una vivienda asequible en el lugar donde viven.
- » Limitar los precios del alquiler es una solución a corto plazo.
- » No se pueden reproducir en Barcelona soluciones de otras ciudades sin tener en cuenta las características de cada una.
- » No es lo mismo la demanda de mercado que la demanda social: los estudiantes, los trabajadores de renta baja, los docentes son colectivos que deben poder vivir en la ciudad.
- » Si no hay construcción, no hay movilización de viviendas para el 30 % de VPO en suelo urbano consolidado.
- » Se deben abordar soluciones para los grupos de renta media y baja, un sector de la población cada vez más numeroso que se ha quedado encallado entre la vivienda protegida y el mercado privado.

**Sra. Pilar García Almirall**, catedrática de la Universidad Politécnica de Cataluña

- » En Cataluña, las políticas de vivienda siempre han estado muy ligadas a la construcción, al desarrollo económico y al fomento del empleo.
- » La financiación de esta construcción de vivienda se ha orientado a crear propietarios en potencia.
- » Tenemos un parque de viviendas viejo: el 80 % de las viviendas son anteriores a los años ochenta.
- » Hay problemas para incidir en el mercado de la vivienda, sobre todo por la falta de financiación y de inversión en vivienda social.
- » Se necesitan asociaciones que creen fondos de garantía de vivienda social para financiar la mejora, la rehabilitación y la construcción de viviendas.
- » Las organizaciones privadas que gestionan vivienda pública en el resto de Europa están muy profesionalizadas y evalúan constantemente su impacto económico y social, con una exigencia a la que el sector público difícilmente puede llegar.
- » Hay que priorizar el parque de alquiler, la compra atomiza el parque y hace más difícil su gestión.
- » Sería conveniente aglutinar el parque en paquetes de gestión compartida para favorecer la optimización de los costes.
- » Se debe fomentar la introducción de parque de alquiler en una parte de los programas específicos de rehabilitación y mejora.
- » Sería necesario adoptar un sistema de control que se acote, que tenga en cuenta el coste de mantenimiento y el coste de actualización, e ir mejorándolo a medida que haya más información.
- » En un mismo barrio podemos encontrar varios submercados diferentes: el turístico, el de inquilinos normal y el de infraviviendas.



- » Todos los actores deberían alinearse para aportar soluciones.
- » Para tener un impacto sobre el mercado de alquiler, se debe ampliar la oferta y controlar los precios.
- » El mercado de la vivienda es disruptivo; la oferta no casa con la demanda.
- » Se debe incentivar que la gente no tenga ninguna dificultad a causa de este control de precios.
- » Hay que cambiar el chip e ir hacia un tipo de beneficio más seguro, más estable y prudente, y lo único que se debe evitar es que sea económicamente inviable.
- » Se deben buscar todas las medidas posibles para que la gestión y la administración sean más eficientes.

### Aportaciones a la comisión

- » **Corresponsabilizar la propiedad privada.** No dejar al mercado libre el control del acceso a un bien de primera necesidad; deben asegurarse todos los mecanismos para garantizar el derecho a la vivienda. La ONU pide la regulación de los precios de alquiler en zonas especialmente tensas.
- » **Se debe aumentar la oferta de vivienda de alquiler.** La subida de los precios de alquiler se debe a la combinación del cese de la actividad constructora, que ha reducido la oferta, y al aumento de la demanda por falta de crédito para acceder a la compra. Se necesita un aumento de la oferta a escala metropolitana vinculado a una mejora del transporte y a la sustitución de una visión localista por una visión global.
- » **Se deben reforzar las políticas públicas para generar vivienda asequible:**
  - » Planificar las políticas de vivienda.
  - » Aumentar los presupuestos.
  - » Potenciar el parque de alquiler.
  - » Estructurar una buena financiación (actualmente hay fondos europeos para impulsar su promoción).
- » **Se debe potenciar la colaboración público-privada:**
  - » Impulsar nuevas figuras en la gestión del parque asequible y social con una visión de profesionalización y servicio público: *housing associations*, cooperativas de alquiler, agencias de servicio a la vivienda y entidades del tercer sector, entre otras.
  - » Impulsar mecanismos más flexibles, como el derecho de superficie y la covivienda.
  - » Dar apoyo a la mejora del parque privado.
  - » Dar ayudas al pago del alquiler para facilitar el acceso a la vivienda asequible a los colectivos sin capacidad de acceder al mercado.
- » **Se deben alinear todos los agentes para hacer posible un parque de vivienda asequible potente.** Es necesaria una política conjunta entre las diversas administraciones y todos los agentes del mercado.
- » **Se debe ofrecer seguridad jurídica:**
  - » Para dar seguridad a la propiedad, hay que evitar los cambios excesivos de la normativa.
  - » Para dar seguridad a las personas arrendatarias, hay que impulsar cambios normativos que mejoren la protección, ya que muchos de los cambios normativos se

han hecho en detrimento de estas personas arrendatarias.

- » Se debe mejorar la fiscalidad del alquiler, que incentive la promoción de vivienda de alquiler y la puesta en alquiler de viviendas ya existentes.
- » Se debe acompañar la regulación del alquiler de unos índices que establezcan unos precios y que sean rigurosos y fiables.
- » Deben reducirse los tiempos de tramitación de las licencias para impulsar la promoción y la mejora del parque que se pueda destinar al alquiler.
- » Deben impulsarse comisiones para evaluar otros temas que también son clave en la política de vivienda, como los beneficios fiscales de determinadas sociedades o la licencia a perpetuidad de las viviendas de uso turístico.
- » Deben flexibilizarse las normativas administrativas para facilitar la transformación en viviendas de espacios que reúnan unas condiciones de habitabilidad adecuadas.

### **Las experiencias internacionales en la regulación de los precios de los alquileres**

#### **Diagnóstico**

Actualmente, hay países europeos que en sus legislaciones han reconocido sistemas para limitar el precio del alquiler: Austria, Alemania, Suiza, Francia, Bélgica, República Checa, Dinamarca, Italia, Holanda, Portugal y Suecia.

La mayoría de los países europeos que pretenden estabilizar las rentas disponen tanto de un sistema libre como de un sistema regulado de renta (Austria, Bélgica, República Checa, Dinamarca, Alemania, Italia, Portugal). Además, estos sistemas pueden referirse tanto a las rentas iniciales como a su actualización. Para generar una regulación equilibrada de los precios de alquiler, se pueden tener en cuenta aprendizajes de su aplicación en otros países:

- » Los sistemas de regulación existentes trabajan a partir de tres elementos básicos:
  - » La asequibilidad, a partir de la regulación tanto del precio inicial como de las actualizaciones.
  - » Los incentivos, dirigidos a la propiedad para aumentar la oferta de vivienda de alquiler y fomentar la rehabilitación de las viviendas.
  - » La previsibilidad y la transparencia por ambas partes, con el fin de impulsar la puesta en oferta por parte de la propiedad y el acceso a este régimen de tenencia, más asequible y flexible, por parte de las personas que buscan vivienda.
- » En Alemania se elaboran unas tablas con índices correctores que se aplican a los índices de referencia de los precios de alquiler según las prestaciones y las reformas de la vivienda. Estos valores se deben negociar entre las asociaciones de propietarios, las asociaciones de arrendatarios y la Administración, para otorgar legitimidad democrática al proceso.
- » El índice de referencia de precios de alquiler a partir del que se deberían aplicar estos índices correctores tendría que ser el índice medio, no el superior, ya que, si se utiliza este último, el sistema no contendrá las rentas, que es la finalidad que pretende la medida.
- » Se deberían establecer limitaciones con respecto a los contratos de alquiler existentes en el momento de la entrada en vigor de la normativa y con respecto a los que superen el límite fijado por el índice, ya que, si no, es difícil contener los precios, como ha pasado en Alemania.
- » En países con un parque de alquiler amplio y que disponen de sistemas de regulación de rentas, se establecen mecanismos de compensación que buscan el equilibrio entre asequibilidad y

rentabilidad.

- » La actualización de la renta se deja a la libre voluntad de las partes, que pueden escoger entre aplicar el IPC o dejar al arrendador aumentar libremente la renta, siempre que, como máximo, lo haga anualmente y no la aumente más del límite establecido por el sistema de renta referenciado.
  - » En Alemania se establece un límite general de no aumentar la renta anual en tres años más del 20 %.
  - » En Francia también hay supuestos en que se permite al arrendador aumentar la renta cuando está muy devaluada en relación con los precios comparables de la zona.
  - » Países como Suiza ponen límites a estos incrementos de renta para evitar que sean abusivos, por ejemplo, cuando son muy altos en relación con el último año o cuando los beneficios de los arrendadores son excesivos.
- » Se permite al arrendador repercutir los gastos reales de la vivienda al arrendatario, siempre que en el contrato de alquiler se haya acordado que el arrendatario se hará cargo de estos gastos.

## Síntesis del debate

**Sra. Cea Weaver**, coordinadora de la campaña “Housing Justice for All”, de Nueva York

- » En Nueva York, el 52 % de los contribuyentes no pueden pagar más del 30 % de sus ingresos, y el 30 % de los inquilinos pagan un 50 % de sus ingresos, lo cual implica un gran riesgo de exclusión.
- » En los últimos años ha aumentado el porcentaje de grandes propietarios, hecho que comporta que más personas puedan acabar alquilando pisos, pero a un precio muy alto.
- » Hay dificultades para acceder a la vivienda, especialmente entre la población más joven (20-30 años).
- » Las personas mayores generalmente venden su casa a una empresa y no a un particular.
- » Hay una gran discriminación racial en el mercado: las personas negras alquilan más que las blancas, que suelen comprar.
- » El movimiento de inquilinos para poder controlar los alquileres en el estado de Nueva York (2019) trabajó del siguiente modo:
  - » La ley que establece que los inquilinos tienen el derecho de renovar sus contratos de alquiler.
  - » Hay una compensación económica si las viviendas que no se utilizan se ponen en el mercado de alquiler con unos precios más limitados. En el caso de que se deba hacer alguna reforma, hay ayudas para poder ofrecer mejores viviendas (para propietarios e inquilinos).
  - » Si un propietario intenta echar a un inquilino, este tiene derecho a un abogado que lo defienda.
  - » Se entiende la búsqueda de vivienda como derecho humano.
- » El objetivo es tener un impacto sobre la estabilidad de los alquileres y de la comunidad, ya que cada vez habrá más personas que puedan alquilar y no comprar.

- » En los Estados Unidos hay un crecimiento a escala nacional de varias medidas que afectan positivamente al mercado inmobiliario del alquiler.
- » Algunos de los argumentos que se utilizan en relación con el control de los alquileres han sido extraídos del sistema.

**Sr. Eoin Ó Broin**, portavoz político del Sinn Féin en materia de vivienda

- » En el caso de Irlanda:
  - » Los dos problemas importantes en el sector del alquiler privado desde el 2014 son el incremento de los alquileres y el incremento de los desahucios.
  - » Algunos inquilinos no podían asumir los incrementos y muchos propietarios empezaron a vender sus propiedades, lo que dejó a muchas familias sin hogar.
  - » La COVID-19 ha generado un gran impacto, y desde el 7 de marzo se ha aplicado una nueva ley que prohíbe los incrementos de los alquileres.
  - » Una gran cantidad de inquilinos ha perdido el trabajo como consecuencia de la COVID-19, y preocupa que esta carga afecte a la sociedad de una manera más intensa.
  - » En el sector del alquiler hay problemas estructurales; se deben atender las necesidades tanto de los inquilinos como de los propietarios.
  - » Hay una ley que pide la prohibición de los aumentos de los alquileres durante tres años; los inquilinos también podrán recibir una bonificación y tendrán acceso a crédito.
  - » Existe una serie de leyes constitucionales que buscan reducir los incrementos. También se quieren cambiar las leyes del alquiler para hacer que este sea indefinido y solo se pueda echar al inquilino en casos de daños a la propiedad o de participación en actividades criminales.
  - » Uno de los principales problemas es la gran cantidad de propietarios semiprofesionales que compran para alquilar. Eso está provocando que se pierdan grandes cantidades de propiedades.
  - » Se introdujeron unos impuestos para desincentivar los fondos de inversión —todos los inversores tendrán que pagar el mismo nivel de impuestos— y ahora los fondos se han ido a España, Portugal o Grecia.

**Sr. Jaime Palomera**, representante del Sindicato de Inquilinas e Inquilinos

- » En los años noventa empezó, a escala global, una agenda política neoliberal que implicaba privatizar la vivienda pública y eliminar las regulaciones en la vivienda privada: la vivienda se convirtió en un activo financiero de primer orden.
- » Se ha demostrado un fracaso histórico de estas políticas de desregulación, y de todos los *booms* inmobiliarios basados en el aumento de la oferta y en la construcción.
- » La crítica habitual sobre la regulación de precios es que hace bajar la oferta, cosa que no es cierta, ya que esta oferta está constreñida por políticas, pero también por factores sociales y culturales.
- » Todas las políticas de vivienda se han orientado históricamente a priorizar la compra.
- » En San Francisco, en 1950, se hizo el control de precios y eso no frenó el aumento de la oferta; Dinamarca tiene un gran mercado de alquiler estable que regula precios desde 1979 y en



Austria hay regulaciones del precio de la vivienda y del precio del suelo.

- » La regulación de Berlín (2015) es demasiado reciente para poder hacer una evaluación adecuada y, además, está llena de agujeros. Por eso, este 2020 se han congelado los precios y a finales de año hay prevista una bajada de estos.
- » En los países y las ciudades donde se eliminaron las regulaciones de precios en los años noventa, los precios se dispararon inmediatamente.
- » Las regulaciones del alquiler siempre van acompañadas de la extensión de los derechos colectivos.
- » La regulación de los alquileres no resuelve el problema de la vivienda, pero tampoco es el apocalipsis, y allí donde se hacen regulaciones la vida de quienes viven de alquiler mejora de manera inmediata, porque se ve mínimamente protegida.
- » En Francia y en Alemania hay una prórroga forzosa de los alquileres.
- » Para aumentar la oferta, hay que empezar por movilizar la vivienda vacía y por recuperar las miles de viviendas desviadas al turismo para convertirlas en alquileres estables.
- » Dinamarca, Austria, Francia y Alemania son referentes: tienen una mirada holística de todo el sistema de vivienda.
- » Se debe poner sobre la mesa el derecho a renovar el alquiler.
- » En Barcelona, como mínimo el 35 % de los tenedores son personas jurídicas, empresas, y de los particulares muchos son multipropietarios o grandes tenedores. Las personas que tienen un local o vivienda tienen unos ingresos medios de aproximadamente el doble de lo que ingresan los hogares inquilinos.
- » Se necesita una ley que haga del alquiler una opción de vida segura y estable.

**Sra. Elga Molina**, responsable de la Oficina de Vivienda del Consejo Comarcal del Tarragonès y asesora jurídica en derecho inmobiliario

- » Las normas internacionales europeas establecen que el mercado de alquiler tendría que ser un mercado asequible, y en el informe de las Naciones Unidas se indica que debería plantearse muy seriamente la regulación de los precios del alquiler.
- » En Cataluña, como en el resto del país, hay un grave problema de asequibilidad del alquiler.
- » En el ámbito europeo, España es el séptimo país con respecto a la carga familiar que supone el alquiler. En los países con tasas de alquiler más elevadas y regulación de los precios, las tasas de esfuerzo familiar para el pago del alquiler son más bajas.
- » La regulación del alquiler tiene que ayudar a mejorar la asequibilidad y, a su vez, garantizar una rentabilidad suficiente para el arrendador.
- » Se deben buscar mecanismos para que los propietarios puedan sentirse cómodos con la regulación.
- » Se deben establecer sistemas que den respuesta a la diversidad de la demanda.
- » Hay que regular los precios del alquiler desde el punto de vista estructural y, también, elaborar programas que limiten aún más las rentas para los colectivos más vulnerables.
- » Hay que tener en cuenta el máximo de características del inmueble para fijar un precio de mercado.
- » La regulación debe centrarse en mejorar la asequibilidad del mercado privado y tener en cuenta lo que marcan las normativas internacionales.
- » La regulación de los alquileres ayudaría a mejorar la distribución de los recursos públicos, que deberían destinarse a las personas en una situación de vulnerabilidad más grave.

- » Se debe regular una herramienta adecuada mediante el índice de precios de alquiler en Cataluña, y los precios tendrían que negociarlos las diversas entidades y administraciones públicas.
- » La regulación de precios aporta un alquiler estable.
- » La limitación de precios debe ir acompañada de una duración larga de los contratos; es buena para el inquilino y para el propietario, ya que asegura que los alquileres no quedan desfasados en el tiempo y que se actualizan los precios con la evolución del mercado.
- » Se deben revisar los sistemas de incentivos (reducciones del IRPF, bonificaciones, garantías y ayudas).
- » Hay un problema de oferta, pero también hay un problema de precios.

**Sr. Sergio Nasarre**, director de la Cátedra UNESCO de Vivienda en la Universidad Rovira i Virgili

- » Según el Eurostat, algunos de los países que se toman como referentes (Gran Bretaña, Dinamarca, Alemania y Suiza) tienen una tasa de inasequibilidad mucho más alta que la media europea, mientras que España está por debajo.
- » En España, el alquiler privado tiene una inasequibilidad objetiva. No hay una correlación directa entre una renta referenciada y que la vivienda sea objetivamente asequible.
- » No es el control de la renta de alquileres lo que hace que haya más alquileres.
- » El alquiler siempre ha ido decreciendo, con la excepción de los últimos años, en que las personas no han tenido más remedio que alquilar porque no podían comprar.
- » Alemania tiene una sociedad de ricos propietarios y de pobres inquilinos.
- » El control de la renta es un elemento más dentro de un sistema equilibrado de alquileres; hay que buscar un equilibrio entre los propietarios y los inquilinos.
- » Si solo se modifica un elemento, se produce una huida por parte de los ofertantes.
- » En Alemania:
  - » La *Mietspiegel* (voluntaria) ha funcionado como un sistema de contención de aumento de la renta en las grandes ciudades.
  - » Del *Mietpreisbremse* (obligatorio) todavía no hay datos fidedignos para saber si funciona.
  - » La *Mietendeckel* parece que produce algunos efectos, como la reducción de la oferta de alquiler.
  - » Como no hay una discriminación por zonas, los más beneficiados en Berlín son los ricos que viven en el centro de la ciudad.
  - » Ha habido un aumento de la venta de pisos, porque, cuando el alquiler no es rentable, lo que hacen los propietarios es vender sus pisos.
- » El alquiler tiene que ser funcional y una alternativa real a la propiedad. El 76 % de los inquilinos actuales desearían ser propietarios.

**Sr. Jaume Fornt**, director adjunto de la Agencia de la Vivienda de Cataluña

- » En Cataluña hay un problema de accesibilidad a la vivienda de alquiler muy importante.
- » Se necesita regulación, pero también política fiscal y ayudas al pago del alquiler.
- » Las subidas del alquiler en Barcelona disminuyeron en el 2019.

- » Hay que evitar transposiciones automáticas de las regulaciones de otros países y tener en cuenta:
  - » la distribución entre propiedad y alquiler,
  - » la distribución de la estructura de la propiedad en Cataluña y en Barcelona, y
  - » el índice de precios de alquiler.
- » Viena tiene un parque de 900.000 unidades de vivienda; de estas, 220.000 son de protección oficial y 120.000 más reciben alguna ayuda. Nada que ver con Barcelona.
- » Se debe evitar que se produzca un incremento del dinero negro del mercado de alquiler.
- » La reducción en el IRPF del alquiler habitual está indiferenciada.
- » Las administraciones públicas deben trabajar para conseguir inversores que busquen estabilidad con rentabilidades más bajas para invertir en el mercado de alquiler.

**Sra. Anna Puig-Pey**, representante del Colegio Oficial de Arquitectos de Cataluña (COAC)

- » Debemos tener claro cómo queremos vivir y cómo tienen que ser nuestras viviendas.
- » La vivienda tiene:
  - » varias funciones, que son la física y la psicológica (refugio y protección) y la económica (inversión, ahorro, comercio), y
  - » problemas de tipo “macro”, como la segregación socioespacial y la estigmatización, el déficit de viviendas (oferta insuficiente) o la degradación del parque y el déficit de la rehabilitación.
- » Las políticas de vivienda implican regulaciones técnicas, regulaciones públicas de los agentes de mercado, legislación civil, políticas financieras, políticas fiscales, planeamiento urbanístico, ayudas públicas a promotores y consumidores, e intervención pública directa.
- » Se debe movilizar el suelo público que interesa trabajar con una colaboración público-privada.
- » El COAC propone que se hagan más de 100 concursos de arquitectura y promoción en suelo público para más de 2.500 viviendas.
- » Se necesita tecnología que haga más inteligente la vivienda y una arquitectura flexible y, en su caso, industrializada.
- » Cuando Europa habla de eficiencia energética, no habla de edificios sino de distritos y de ciudades.
- » No se puede hacer buena arquitectura sin tener muy clara la parte económica.

### Aportaciones a la comisión

- » Defender **el derecho a la vivienda**. La ciudad de Barcelona tiene que entender su obligación de respeto por los derechos humanos, uno de los cuales es el derecho a la vivienda, y la ciudad debe avanzar para hacerlo posible. Por lo tanto, hay que utilizar todas las herramientas que se tengan al alcance para hacer posible que las personas se mantengan en su vivienda. El control de los alquileres es un mecanismo que permite que las personas se puedan quedar en sus viviendas y, por lo tanto, ofrecer seguridad de tenencia. Así pues, si no se hace esta regulación, hay que tener muy claro por qué no se hace.
- » En **Irlanda**, se identificó la llegada de propietarios profesionales y semiprofesionales que

compraban viviendas a particulares, lo que afectaba a la subida de precios. Se modificó la legislación para que no tuviesen beneficios impositivos. Como consecuencia, estos propietarios se han ido a otros países como España, Portugal o Grecia.

- » La regulación de los precios de alquiler no ha implicado una reducción del parque de alquiler en los países donde se ha aplicado:
  - » Dinamarca. Se aplica desde 1979 y el parque ha mejorado, y ahora se han congelado las rentas para evitar la entrada de fondos buitres.
  - » San Francisco. Se aplicó en los años cincuenta y no se detectaron cambios en el volumen del parque de alquiler.
  - » España. La desregulación de 1985 no hizo que aumentara el parque de alquiler, sino que siguió bajando.
- » Crear espacios de negociación entre la propiedad y las personas inquilinas. La ciudad de Nueva York es un referente en este sentido, ya que se crean representantes del bloque en casos de propiedad vertical. Los sistemas que mejor han funcionado son los que más han impulsado el pacto.
- » Establecer sistemas de mediación en caso de que la propiedad o las personas inquilinas consideren que la norma no es justa:
  - » Suiza. Se ha definido el concepto de *renta abusiva*. En estos casos, la persona inquilina puede reclamar que se le baje la renta, y se empieza un proceso de mediación.
  - » Francia. La propiedad puede reclamar que tiene la renta devaluada y se entra en una mediación.
- » Acompañar la regulación de precios con medidas para la estabilidad de las personas inquilinas y de incentivos a la propiedad. La asequibilidad tiene muchos factores, y cuando se toca un elemento, se pueden generar distorsiones. Se necesita una combinación y pensar muy bien los parámetros.
  - » En Austria, Dinamarca y Alemania no se puede echar a la persona inquilina, ni subir el precio de una manera indiscriminada, si esta persona cumple sus obligaciones como tal.
  - » Dinamarca. La renta se calcula así: costes mantenimiento + mejoras + beneficio razonable.
  - » Aplicación en Cataluña:
    - » Contratos de alquiler de larga duración + contención de rentas.
    - » Ampliación de los incentivos a la propiedad (reducciones de impuestos por alquiler a determinados colectivos; aumento de garantías de pago —mejora del régimen Avalloguer—, aumento de las ayudas a la mejora de las viviendas).
    - » Mejora del índice de precios de alquiler y aplicación del índice medio con medidas correctoras negociadas por las administraciones públicas y las asociaciones de personas propietarias e inquilinas.
- » Evaluar los resultados que se obtienen de la regulación y establecer mecanismos de corrección, de modo que el sistema pueda ir conteniendo las rentas si se encuentran fuera de la asequibilidad.
  - » Berlín Tiene sistema de control de rentas desde 1990.
    - » Hasta el 2015 era voluntario y se utilizaba ampliamente (90 % de los contratos). Se definían cuatro zonas geográficas, algunos parámetros correctores y muchas excepciones. Todo ello hacía que el sistema fuera demasiado subjetivo y no permitió alcanzar el control de rentas deseado.



- » En el 2019, se regula el incremento de la renta fruto de las mejoras, y pasa del 11 % al 8 %.
- » En enero del 2020 se aprueba la congelación de rentas durante cinco años. Hay un límite de 13 euros por metro cuadrado (actualmente, en Barcelona es de 14 euros por metro cuadrado). Aún no se puede evaluar si ha obtenido buenos resultados.

### **Marco competencial y escenarios potenciales de regulación**

#### **Diagnóstico**

Los días 9 y 10 de setiembre, el Parlamento de Cataluña aprobó la Proposición de ley de medidas urgentes en materia de contención de rentas en los contratos de arrendamiento de vivienda. Previamente, en el 2019, se había elaborado el Decreto ley 9/2019, de medidas urgentes en materia de contención de rentas en los contratos de arrendamiento de vivienda y de modificación del libro quinto del Código Civil de Cataluña en el ámbito de la prenda, que no fue ratificado.

Esta sesión quiere aclarar las alternativas de regulación de los precios del alquiler a partir del análisis de cómo, por qué y quién tiene que hacerse cargo de elaborar la normativa dentro del ordenamiento jurídico vigente. Como documentos base para esta sesión, se han trasladado a los miembros de la comisión dos informes:

- » **Un equilibrio justo: Los límites del TEDH a la regulación del precio de los alquileres**, redactado por Andrei Quintiá Pastrana

En este trabajo se analiza la jurisprudencia del Tribunal Europeo de Derechos Humanos sobre este tema para intentar construir una teoría sucinta de los límites de la regulación del precios de los alquileres. Esta extensa jurisprudencia nos permite construir un estándar mínimo de protección del derecho a la propiedad frente a los controles de las rentas. Este estándar se asienta en tres factores:

- » el examen de un equilibrio justo entre los intereses generales y el de los propietarios, reforzado con la aplicación de un juicio de proporcionalidad;
- » el respeto a un núcleo indisponible que parece encontrarse en torno a las cantidades necesarias para hacer frente al mantenimiento del inmueble y la relación proporcional a los valores de mercado, y
- » el respeto a una distribución justa de los costes de la política social de vivienda.

Se llega a la siguiente conclusión:

- » Las medidas de limitación de los precios del alquiler son habituales en el contexto europeo y han estado presentes a lo largo de este siglo y del siglo pasado.
- » No obstante, su configuración está sujeta a unos límites fijados por el respeto al derecho de propiedad privada.
- » Pese a todo, el disfrute del derecho a la propiedad está limitado por la propia función social de la propiedad.
- » Por lo tanto, la regulación de los alquileres está sometida a la aplicación de un test de proporcionalidad, en el que se debe equilibrar la propiedad privada con la función

social de la propiedad.

- » **DICTAMEN 4/2019, de 17 de junio, del Consejo de Garantías Estatutarias de Cataluña, sobre el Decreto ley 9/2019, de 21 de mayo, de medidas urgentes en materia de contención de rentas en los contratos de arrendamiento de vivienda y de modificación del libro quinto del Código Civil de Cataluña en el ámbito de la prenda**

El objetivo del dictamen es dirimir la constitucionalidad del Decreto ley 9/2019 y su colisión o no con la normativa estatal según las reglas de distribución competencial que establecen la Constitución española (CE) y el Estatuto de Autonomía de Cataluña (EAC).

El Decreto ley 9/2019 (en adelante, *decreto ley*) quiere establecer una regulación propia del contrato de arrendamientos urbanos que supere las limitaciones de la legislación estatal vigente y que, entre otros, permite dotar “a las administraciones públicas de las herramientas necesarias para limitar los incrementos de precios del alquiler de viviendas en zonas de fuerte demanda acreditada”.

El decreto ley califica la contención de rentas como una medida restrictiva excepcional y limitada en el tiempo, mientras no se lleven a cabo las políticas públicas que atenúen o reviertan la situación crítica del mercado de alquiler.

Así pues, dice, se trata de una acción normativa congruente con la configuración constitucional del derecho a la propiedad (art. 33 CE) e instrumental para contribuir a la efectividad del derecho a disfrutar de una vivienda digna y adecuada (art. 47 CE), que “busca un equilibrio razonable entre el deber de respeto del interés patrimonial del arrendador y la función social de la propiedad urbana”.

El decreto ley también prevé que, en ejercicio de su competencia en derecho civil (art. 129 EAC), el Gobierno presentará más adelante al Parlamento, en el plazo de seis meses, una regulación integral de los contratos de arrendamiento de fincas urbanas, que pasará a formar parte del libro sexto del Código Civil de Cataluña.

El Consejo de Garantías Estatutarias de Cataluña llega a siguiente la conclusión:

- » La Generalitat de Catalunya es competente para regular el contrato de arrendamiento de vivienda, total o parcialmente, pero con el límite de que dicha regulación no contradiga las bases de las obligaciones contractuales establecidas por el legislador estatal.
- » En la vigente legislación estatal de los arrendamientos urbanos, con respecto a la determinación de la renta, rige el principio de libertad de pactos (art. 17.1 LAU), el cual está en íntima conexión con el de libertad de contratación (art. 1255 Código Civil español).
- » El régimen de contención de rentas que configura el decreto ley establece limitaciones a la fijación de los alquileres para contratos celebrados en determinadas áreas del territorio, que chocan con el principio de libertad de estipulación de la renta que actualmente caracteriza a la legislación estatal sobre arrendamientos urbanos (art. 17.1).

## Síntesis del debate

**Sr. Xavier Bernadí**, doctor en Derecho, director general de Derecho y de Entidades Jurídicas en el Departamento de Justicia

- » Una política de contención de rentas afecta al derecho de propiedad, por lo tanto, se tiene que establecer mediante una ley, y se debe valorar la idoneidad o la legitimidad de una norma con rango de ley, es decir, la constitucionalidad.
- » A la constitucionalidad se podrían hacer dos tipos de objeciones: por motivos sustantivos o de fondo y por motivos competenciales.
  - » Motivos sustantivos: el acuerdo es bastante amplio si la cuestión se analiza a partir de la propia jurisprudencia del Tribunal Europeo de Derechos Humanos. Una política normativa de contención de rentas especialmente respetuosa con el principio de proporcionalidad y de carácter no expropiador tiene que ser plenamente compatible con esta función social del derecho.
  - » Motivos competenciales: lo primero que se debe hacer es concretar si la competencia es estatal o autonómica y, para hacerlo, antes hay que especificar de qué materia forma parte la contención de rentas (si se situaría en materia de vivienda, de derecho civil o de regulación económica).
- » El derecho no es una ciencia exacta, y las normas que hacen referencia a la distribución de competencias, aún menos.
- » La competencia exclusiva de la Generalitat de Catalunya, recogida en el artículo 129 del Estatuto de Autonomía, sobre el derecho civil de Cataluña, ampara una regulación orientada a contener las rentas de los alquileres.
- » El Consejo de Garantías llega a la conclusión de que tanto las reglas relativas a la duración del contrato de arrendamiento como las relativas a la renta o al precio son bases de las obligaciones contractuales. Como el Estado no ha identificado estas bases desde un punto de vista formal, se puede considerar competencia de la Generalitat, y nada impediría la aprobación y la entrada en vigor de la ley.
- » Si el Estado otorgara carácter formal de base al artículo 17.1 de la Ley de arrendamientos urbanos o al artículo 1255 del Código Civil español, la legislación catalana quedaría desplazada, no derogada ni invalidada.
- » El legislador catalán debe tener una presunción de constitucionalidad o de estatutoriedad.
- » El Estado podría habilitar al legislador catalán modificando el artículo 17 de la LAU y admitiendo la contención de rentas o, mediante el artículo 150 de la Constitución, dictando una ley que habilite a las comunidades autónomas a dictar sus normas.
- » Negar las competencias al legislador catalán, llevaría a la conclusión institucional (no jurídica) de Cataluña ya repetida, en que ni le permiten hacer una regulación ni el Estado la saca adelante. Pero habría muchos mecanismos para hacer posible que el poder estatal habilite a la Generalitat de Catalunya a sacar adelante esta regulación.
- » Cuando se habla de la constitucionalidad o inconstitucionalidad de algo, lo que se está preguntando es qué diría el Tribunal Constitucional si le llegase ese caso. El Tribunal Constitucional no actúa de oficio, sino impulsado por el Gobierno estatal o por la oposición.
- » El Consejo de Garantías Estatutarias entiende que Cataluña no tiene suficientes competencias al deducir que hay una base estatal de libertad de fijación de renta no formalizada; ahora bien, remarca la competencia (de gran envergadura) para regular los contratos de arrendamiento de

vivienda.

- » Si la competencia catalana no es suficiente para regular la contención de renta, hay mecanismos constitucionales para hacerla encajar, y se pueden promover habilitaciones estatales.

**Sra. Esther Arroyo**, catedrática de Derecho Civil por la Universidad de Barcelona y de la Cátedra Jean Monnet de Derecho Privado Europeo

- » La regulación de alquileres pone de manifiesto el problema del acceso a la vivienda que tenemos en las áreas densamente pobladas. Que Cataluña se plantee ponerle remedio no es solo legítimo, sino que también es un deber.
- » Para establecer la ley de regulación de rentas con ciertas garantías, existen dos vías: la competencia de vivienda y la competencia civil.
- » Hay un vínculo con la tradición jurídica catalana: la legislación republicana regulaba los arrendamientos mediante decreto (junio y agosto de 1936), y no la contención de rentas, sino su fulminante rebaja.
- » Después hay competencia civil, pero el problema es que, en materia civil, la comunidad autónoma no tiene la competencia absoluta para regularlo todo, sino que ha determinado materias que pertenecen al Estado, como las bases de las obligaciones contractuales. Ahora bien, nadie sabe exactamente qué quieren decir, porque el Estado nunca ha fijado estas bases y, por lo tanto, hay que inferirlas de la legislación estatal vigente.
- » En Cataluña siempre ha regido el principio de la rescisión por lesión en contratos onerosos: si se puede impugnar un contrato cuando el precio es abusivo, de entrada se debe poder establecer un límite para evitar que el precio sea abusivo.
- » Las bases de las obligaciones contractuales se definen como lo que es esencial, que debe funcionar como criterio general para todos los contratos para garantizar una unidad de regulación a favor de la universalidad del tráfico económico. La pregunta es: ¿hay universalidad de tráfico económico en el mercado de los arrendamientos, un mercado que, por definición, no es unitario?
- » ¿Hasta qué punto se puede afectar a la propiedad de las personas que dan en arrendamiento sus inmuebles? Cabe recordar que la propiedad no se puede entender de una manera absoluta, ya que está subordinada a su función social. Si la regulación es equilibrada y no genera pérdidas sostenidas e indefinidas, se admite, sin muchos problemas, que el legislador puede intervenir en el mercado regulando la renta.
- » Cuando se habla de contención de renta, no se habla necesariamente de congelación de la renta en un contrato indefinido.
- » No es una cuestión de “contención sí o no”, sino de qué contención se está proponiendo.

**Sr. Domènec Sibina**, profesor titular de Derecho Administrativo de la Universidad de Barcelona

- » Primera idea: hay una enorme complejidad y mixtura del marco normativo.
- » Segunda idea: siempre que se habla de la contención de renta y de la responsabilidad del propietario de ayudar a satisfacer el derecho a la vivienda, se pone en el otro lado de la balanza cuál es la actuación pública necesaria para garantizar este derecho, pero no se dice que las políticas de vivienda, entre 1980 y el 2013, han servido para ayudar a los promotores



inmobiliarios a encontrar compradores.

- » En el 2007, empezó una caída del mercado que hace que la vivienda protegida sea prácticamente inexistente.
- » Las políticas de vivienda iban ligadas a una política de crecimiento inmobiliario.
- » La vivienda protegida iba destinada a las clases medias, no a las necesitadas.
- » Desde el 2013, se hace política de servicios sociales, se cubre la emergencia, y la política de vivienda decae, porque se fundamentaba en el crecimiento exponencial del mercado inmobiliario.
- » Tercera idea: el Real decreto ley 7/2019 ampliaba los periodos de duración de los contratos, solidificaba los derechos del arrendatario e introdujo los índices de referencia como medida de fomento, quien no los cumple no recibe ayudas. El índice de referencia es una técnica muy relevante, sin embargo, si no refleja realmente el mercado, acaba siendo un obstáculo y no una solución.
- » Cuarta idea: las normas comparadas. Desde el punto de vista sustantivo, la regulación y la contención de renta entran en la doctrina del Tribunal Europeo de Derechos Humanos, el Tribunal de Justicia y el Tribunal Constitucional.
- » Conclusión: desde el punto de vista sustantivo, se plantearían menos problemas, mientras que desde el punto de vista competencial, si se busca un encaje constitucional, tendría que ser con un acuerdo con las decisiones que tomara el Gobierno del Estado.

**Sr. Josep Ferrer**, catedrático de Derecho Civil por la Universidad Pompeu Fabra

- » La determinación del precio de los contratos de alquiler es una parte esencial de la regulación del contrato y, por lo tanto, del derecho civil.
- » La Generalitat de Catalunya tiene competencias sobre el derecho civil, limitadas al propio título competencial en algunos aspectos, entre los que se encuentran las bases de las obligaciones contractuales.
- » El Consejo de Garantías Estatutarias, con el dictamen del 2019, consideró que el decreto ley (el primero) era inconstitucional por el hecho de infringir las bases de las obligaciones contractuales.
- » El Tribunal Constitucional dictó la sentencia 132/2019, que resuelve el recurso contra el libro sexto del Código Civil de Cataluña, que hace pensar que puede regular los contratos de arrendamiento, incluido el de arrendamiento de vivienda, y también concluye, con poco margen de duda, que una regulación catalana de los precios del alquiler en los contratos entre particulares puede ser declarada inconstitucional.
- » Que se cuestione la competencia de los niveles de gobierno subestatales para dictar este tipo de normas no es exclusivo de este país y ha pasado también en Berlín, que es un *Land*.
- » Proceder por medio de una iniciativa coordinada con el Estado daría mucha más seguridad.
- » Se debe respetar el contenido esencial de la propiedad.
- » Hay una cierta “expropiación” del grado de beneficio que pueden obtener los titulares de viviendas.

**Sr. Héctor Simón**, profesor de Derecho Civil y miembro de la Cátedra UNESCO de Vivienda de la Universidad Rovira i Virgili

- » Catalunya tiene competencia sobre vivienda, pero la contención de las rentas forma parte de la competencia en materia civil.
- » En relación con las bases de las obligaciones contractuales, una amplia regulación de los arrendamientos urbanos no afectaría a los principios generales de la contratación (Código Civil) ni a los principios económicos constitucionales ni al tono original del contrato o de las obligaciones.
- » Las bases solo definen lo esencial; uno se puede preguntar si hay universalidad en el tráfico económico en el mercado de alquiler.
- » A pesar de estos argumentos para defender la competencia del Código Civil de Cataluña, el Tribunal Constitucional se podría acoger a esta normativa básica y a reglas que incidan directamente en la organización económica, en las relaciones entre las partes y en la economía interna de los contratos para declarar inconstitucional la norma. Con una negociación de competencias o con una regulación por parte del legislador estatal, se podría poner fin al problema.
- » Hay varios niveles de renta según la intrusividad:
  - » La renta inicial es libre y las actualizaciones también son libres.
  - » La renta inicial es libre y hay un espejo de renta voluntario para las actualizaciones que consiste en un sistema de actualización de rentas libre (modelo alemán hasta el 2015).
  - » La renta inicial es libre y hay un sistema de actualización de rentas obligatorio, un sistema de actualización que podría elaborarse de acuerdo con un sistema de espejo de renta (no hay ejemplos) o con un índice como el IPC o el índice de garantía de competitividad.
  - » Un sistema de freno de renta obligatorio en determinadas ciudades y de actualización de rentas de libre elección.
  - » Un sistema de freno de renta obligatorio para determinar la renta inicial, así como un sistema de actualización obligatorio de las rentas de acuerdo con un sistema de espejo de renta (no hay ejemplos) con un índice como el IPC o el índice de garantía de competitividad.
- » Los sistemas más intrusivos pueden tener repercusiones o resultados contraproducentes, pueden afectar a las rehabilitaciones de los inmuebles o a la oferta de inmuebles en el mercado privado del alquiler, y dar lugar a un aumento de inmuebles en alquiler en el mercado negro, mientras que un mecanismo más blando, que diera más libertad a las partes y que fuese menos intrusivo, podría ser una vía adecuada para regular o contener los precios de las rentas del alquiler.
- » Optar por un control de rentas fomenta que los alquileres sean una alternativa real a la vivienda en propiedad, pero, de forma ideal, debería ir acompañada de una regulación de los arrendamientos en Cataluña.
- » Se debería intentar conseguir un consenso tanto de propietarios como de inquilinos para que todo el mundo se sintiese cómodo con una limitación de renta.

**Sr. Joan Ràfols i Esteve**, presidente de la Cámara de la Propiedad Urbana de Barcelona

- » En España, la Ley de 1994 fue poniendo fin, muy gradualmente, al régimen antiguo, se descontrolaron los alquileres y no se instrumentó la parte de la política social.
- » Siempre se consideró que la legislación sobre arrendamientos era competencia estatal, con el

argumento de las bases de ordenación general de la economía y del gran impacto que tenía el sector de la vivienda en la economía del país.

- » El Tribunal Constitucional decía que el marco de contención de renta debía ser temporal e ir acompañado de políticas de promoción del incremento del parque de vivienda, tanto en alquiler como en venta.
- » Cuando hay más demanda que oferta, los precios siempre acaban ajustándose.
- » La ley de control de rentas catalana es mejorable, ya que hay áreas tensas donde no hay tensión real. Además, no da una solución a las familias que no pueden pagar ningún tipo de alquiler.
- » La oportunidad de un proyecto de ley así, en un momento en el que los precios ya tenían cierta tendencia a moderarse y a bajar, es dudosa.
- » Se necesita una política de vivienda que analice qué pasa con el alquiler y qué se puede hacer para incrementar el parque.
- » Cuando en Alemania se elaboran políticas de control de rentas, se establecen dentro del contexto general de la política económica de vivienda y siempre incorporan elementos de política social para los colectivos en situación de vulnerabilidad.
- » El proyecto de ley técnicamente tiene problemas, como, por ejemplo, con respecto a la repercusión de obras, qué es una renta o cuál es la renta.

**Sr. Pol Borrellas**, investigador titular del Instituto Ostrom Catalunya, economista y graduado en International Business Economics por la Universidad Pompeu Fabra

- » Efectos esperables de la regulación de los precios del alquiler:
  - » Regulará la oferta.
  - » Aumentará el riesgo de aparición de una economía sumergida.
  - » Provocará una presión alcista de los precios en las zonas no reguladas.
  - » Empobrecerá el mantenimiento de los inmuebles para compensar la reducción del retorno.
  - » Surgirán efectos secundarios como la discriminación de los arrendatarios de renta más baja, la disminución de la movilidad laboral y la distribución ineficiente de los recursos.
- » Razones por las que se esperan efectos perniciosos:
  - » Hay falta de oferta; se necesitan incentivos para destinar más viviendas al alquiler, y una fuerte regulación contractual por las cláusulas que sufre el mercado de alquiler y las restricciones y retrasos en los procesos de desahucios, lo que provoca inseguridad en los propietarios al poner en alquiler sus inmuebles.
  - » Los propietarios ya no pueden compensar el aumento del riesgo con una renta más alta, de modo que les quedan tres opciones: reducir mucho el mantenimiento del inmueble, pasar a la economía sumergida o sacar el piso del mercado de alquiler.
  - » Hay un atrincheramiento laboral por el cual las personas no se mueven a otra ciudad para aceptar un nuevo trabajo.
  - » Al regular los precios, quienes quieran pagar más por estar en un determinado lugar no podrán acceder a este.
- » Evidencia empírica sobre este razonamiento:
  - » En San Francisco, la regulación de esta ciudad californiana provocó una disminución

de la oferta del 15 %.

- » En Estocolmo, el Ayuntamiento controla los precios *de facto*, y la media de espera para acceder a una vivienda con precios controlados es de ocho años, aproximadamente.
- » Soluciones para facilitar el acceso a la vivienda y evitar el riesgo de exclusión habitacional a largo plazo y sin dañar la oferta:
  - » Revocar la regulación contractual.
  - » Garantizar la seguridad jurídica.
  - » Simplificar los requerimientos urbanísticos.
  - » Conseguir un sistema judicial eficiente.
  - » La Administración pública debe hacerse cargo de los casos de emergencia habitacional.

### **Aportaciones a la comisión**

- » Cualquier tipo de regulación de precios de alquiler que se quiera establecer se debe hacer de acuerdo con el derecho. Eso significa que:
  - » en el ámbito competencial, tiene que ser la administración competente la que regule, y,
  - » en el ámbito sustantivo, la regulación se debe adecuar al ordenamiento jurídico.
- » Con respecto al debate competencial, a la comisión se han presentado tres posiciones sobre si el Parlamento catalán tiene competencia para regular los precios de alquiler por medio del derecho civil catalán:
  - » Una de las posiciones argumenta que las normas sobre fijación de la renta en el arrendamiento de viviendas pertenecen al derecho civil y, por lo tanto, aprobarlas compete al Estado (art. 149.1.8 CE). Es necesario respetar la competencia estatal para dictar las bases de las obligaciones contractuales —entendidas como “una garantía estructural del mercado único”— y las “reglas que incidan directamente en la organización económica y en la economía interna de los contratos”, incluyendo la libertad de contratación. Por lo tanto, es dudoso que las comunidades autónomas, con competencia para desplegar su derecho civil propio, puedan dictar disposiciones en esta materia.
  - » Otra posición argumenta que la competencia exclusiva de la Generalitat de Catalunya, recogida en el artículo 129 del Estatuto de Autonomía, sobre el derecho civil de Cataluña, ampara una regulación orientada a contener las rentas de los alquileres; por lo tanto, esta se puede considerar una competencia de la Generalitat especialmente porque el Estado no ha identificado las bases desde un punto de vista formal y, por eso, nada impediría que esta ley se aprobase y entrara en vigor.
  - » Una tercera posición indica que las bases de la regulación las tiene que establecer el Estado, pero como no lo ha hecho, Cataluña puede establecer una regulación que quedaría desplazada en caso de que el Estado estableciera estas bases.
- » Si se acepta la necesidad de una regulación estatal para encontrar acomodo constitucional a eso en nuestro ordenamiento jurídico, esta regulación se puede dar mediante tres fórmulas:
  - » Una habilitación estatal (art. 150 CE) para que las comunidades autónomas o los municipios regulen un sistema de contención en los contratos de arrendamiento de vivienda permanente.
  - » Una modificación de la legislación de arrendamientos vigente (art. 17 LAU), en el



sentido de admitir la contención de rentas.

- » Directamente una regulación estatal.
- » En la regulación catalana existe el concepto de *rescisión por lesión*, es decir, se puede impugnar un contrato en caso de que se considere abusivo. Por lo tanto, se debería poder impugnar un contrato que establezca un precio de alquiler que sea abusivo.
- » Con respecto al debate sustantivo, la regulación de los precios de alquiler encuentra acomodo en el ordenamiento jurídico vigente en virtud de la función social de la propiedad (art. 33.2 CE). No obstante, todo dependerá del test de proporcionalidad, dado que la contención de los precios de alquiler debe garantizar un beneficio razonable para el arrendador, porque, en caso contrario, podría suponer una vulneración de su derecho de propiedad privada.

### **Impactos sociales, económicos y urbanísticos de las regulaciones de los precios de los alquileres en Barcelona y en el área metropolitana**

#### **Diagnóstico**

La regulación de los alquileres se ha producido en Europa desde los años veinte del siglo pasado. Esta regulación ha pasado por varias fases en las que han ido variando los objetivos y, por lo tanto, también sus efectos. Además, en algunos casos se han establecido medidas complementarias para reducir los posibles efectos negativos.

- » **Primera generación:** se introdujeron en Europa y en los Estados Unidos a raíz de los periodos de crisis social generados por la Primera Guerra Mundial y la Segunda Guerra Mundial. La medida permitía actuar de una manera inmediata sobre el bienestar de los hogares arrendatarios sin requerir un coste presupuestario elevado. Estos controles se mantuvieron posteriormente para las viviendas más antiguas en muchos de los Estados, que solo permitían incrementos periódicos para mitigar el alza de los costes de mantenimiento.

En el caso de España, la congelación de rentas de alquiler y el carácter indefinido de los contratos, los introdujo la Ley de arrendamientos urbanos de 1946, si bien el Real decreto de 21 de junio de 1920 (Real decreto Bugallal) ya había congelado las rentas del alquiler.

- » **Segunda generación:** tiene lugar en la década de los setenta y se caracteriza por introducir límites al crecimiento de las rentas del alquiler. Esta tipología era muy heterogénea entre países y ciudades, los cuales podían permitir una actualización limitada de las rentas cuando se producía un cambio de persona inquilina, o bien hacerlo de manera periódica. En algunos casos, también se permitía introducir cláusulas de compensación a la propiedad en caso de incrementos en los costes de mantenimiento, o se le garantizaba un retorno mínimo. Estas regulaciones tendían a aplicarse únicamente sobre el parque existente en el momento de su entrada en vigor.
- » **Tercera generación:** en los últimos años, el aumento desproporcionado de los precios en buena parte de las grandes ciudades ha supuesto un resurgimiento de las demandas sociales que reclaman el establecimiento de límites al precio de los alquileres.

En general, en los países donde se ha establecido una regulación, se destaca que la regulación permite la reducción de los precios y la estabilidad del vecindario, y que supone una muy baja inversión pública y unos costes de gestión muy pequeños en comparación con los beneficios que genera para las personas inquilinas. Sea como fuere, en todos los casos se han detectado efectos tanto positivos como negativos.

### **Efectos positivos**

- » Mejora del bienestar de las personas inquilinas afectadas por la medida:
  - » Más asequibilidad de la vivienda.
  - » Más renta disponible.
  - » Más estabilidad. Reducción de la incertidumbre en la toma de decisiones laborales y de consumo de los arrendatarios.
  - » Protección de las personas inquilinas ante la posibilidad de desahucios y desplazamientos no deseados.
- » Más capital social acumulado en la comunidad.
- » Más simetría entre propiedad e inquilinato.
- » Política redistributiva cuando el sistema beneficia a los hogares más vulnerables.
- » Permite mantener la mixtura social.

### **Efectos negativos**

- » No se dirige específicamente a los hogares más vulnerables, sino que beneficia a un amplio espectro de la sociedad. Este hecho no tiene por qué ser negativo si todo el mundo tiene acceso al control de los alquileres.
- » Se reduce la oferta de alquiler, tanto por transferencia hacia compraventa como por una reducción en la inversión en construcción y rehabilitación que podría generar un aumento de precios en el mercado libre. En los informes americanos se señala que no se ha producido una reducción de la oferta en la obra nueva y que la conversión de alquiler a compraventa se puede limitar mediante ordenanzas locales (como ya hacen la mayoría de ciudades de California que aplican la regulación de alquileres).
- » Se reduce la inversión en mantenimiento y en renovación de las viviendas. Se podría mitigar con ayudas u ordenanzas que impulsaran esta rehabilitación, así como mediante mecanismos disciplinarios que garanticen la habitabilidad.

### **Síntesis del debate**

**Sr. Jordi Bosch i Meda**, doctor en Arquitectura, licenciado en Ciencias Políticas y codirector del Posgrado de Políticas de Vivienda de la Escuela Sert

- » La incidencia de las medidas de control de los alquileres depende del contexto.
- » En los controles de los alquileres, son muy importantes el diseño y la gestión de la medida. ¿Cuál es el objetivo que se pretende conseguir con este control de alquileres: moderar el incremento de precios o aumentar la oferta de vivienda asequible?
- » El sistema de vivienda es un concepto de las teorías de política de vivienda que consiste en la interacción del mercado, es decir, en la oferta, la demanda y la intervención pública directa e indirecta.
- » El control de los alquileres es solo una pieza del puzle de este sistema de vivienda.
- » Una primera consecuencia obvia del control de los alquileres es la mejora de la seguridad de los inquilinos. A corto plazo, no se produciría tanto una mejora de la seguridad como una congelación de la problemática. A medio y largo plazo, si el incremento de los precios está muy por debajo del mercado, parte de este alquiler controlado pasaría a ser una oferta más o menos

- asequible.
- » La mejora en la accesibilidad tiene un efecto positivo en los presupuestos de las familias y, por lo tanto, repercutiría positivamente en la economía.
  - » Riesgos:
    - » Posibilidad de que se expandan el mercado negro y las prácticas abusivas.
    - » Agravamiento de la demanda de alquiler no protegida.
    - » Riesgo de la reducción de la oferta de alquiler.
    - » Riesgo de degradación del parque residencial.
    - » Riesgo de que se produzca un proceso de discriminación y de filtraje.
    - » Desequilibrio en la implantación del control del alquiler.
    - » Prácticas abusivas del mercado negro que pueden socavar la cohesión social.
  - » Se necesita una planificación territorial temporal y la coordinación con otras medidas de política de vivienda.
  - » Sería interesante planear la posible gestión pública del alquiler privado, con un proceso de adjudicación entre inquilinos y propietarios.
  - » Un elemento clave en el conjunto de los controles de rentas es toda la normativa de arrendamientos urbanos. En muchos países, el control de alquileres va ligado a la posibilidad de que el inquilino tenga más condiciones de estabilidad.
  - » En cuanto al sistema de vivienda, el control de alquileres a escala territorial, con respecto a un espacio tan concreto como el metropolitano, se tiene que planificar.
  - » Son necesarias medidas de fomento de la rehabilitación para evitar la degradación.
  - » Sería necesaria una combinación de incentivos más un sistema de control y sanción, y la gestión pública directa o indirecta, para evitar el mercado negro y los procesos de filtraje.
  - » Se debe garantizar un beneficio razonable al propietario.
  - » Se debe planificar a escala territorial y no solo “macro”, para mejorar la cohesión social.
  - » Para conocer los impactos, las externalidades y las disfunciones, tenemos que saber cómo se puede hacer el seguimiento, la evaluación y, en su caso, la revisión y planificación del instrumento y de todas las políticas de vivienda.
  - » Se puede mejorar la coordinación del instrumento con otras políticas.

**Sra. Leilani Farha**, relatora de las Naciones Unidas sobre vivienda adecuada entre el 2014 y el 2020, y directora de “The Shift”

- » Es muy fácil extraer la política de vivienda de la realidad, de las luchas del día a día.
- » Más de doscientas ciudades de los Estados Unidos tienen una forma de control de los alquileres; Francia, a raíz de la pandemia, ha extendido el control de los alquileres a 28 ciudades más, aparte de París; Berlín intenta imponer una congelación de los alquileres, y Dinamarca ha seguido un camino muy similar.
- » El control de los alquileres por sí solo no inhibe la oferta de alquiler. Es la manera en que se estructura el control de estos alquileres lo que podría comportar menos viviendas en el mercado.
- » El control tiene que ir orientado a asegurar que los inquilinos puedan seguir pagando el alquiler en las comunidades donde quieren vivir. Lo que se debe controlar es que la oferta de alquiler actual no se convierta en oferta de propiedad para evitar el control.
- » Se debe incentivar la construcción de viviendas sostenibles y asequibles.
- » Las preguntas que debemos hacernos son: ¿Qué es el mercado?, ¿existe el mercado de forma

separada a los inquilinos y a su capacidad de poder pagar los alquileres? Desde la perspectiva de los derechos humanos, el mercado debería estar determinado por las personas que necesitan un alquiler y que no tienen dinero para pagarlo. Las personas y los Gobiernos son el mercado.

- » El control de los alquileres promueve el bienestar social, porque permite a los individuos y a las familias seguir viviendo en sus hogares y en sus comunidades de manera continuada.
- » La conceptualización del control de los alquileres dentro de una sociedad hace que esta salga más beneficiada, y es un beneficio social que hace que los hogares sean mucho más que ganancias o beneficios.
- » La ciudad de Barcelona debe seguir avanzando para garantizar que las personas tengan derecho a una vivienda digna. Se deben buscar todos los medios disponibles para asegurarlo a los más necesitados, y el control del alquiler es una de estas medidas.
- » El derecho internacional sobre derechos humanos dice que hay que buscar todas las herramientas a nuestro alcance para asegurar que las personas puedan quedarse en sus hogares y, en este sentido, el control ayuda.
- » El control de los alquileres es una herramienta importante y, por lo tanto, si se rechaza, se deben tener muy buenas razones para hacerlo.
- » La medida tiene que coexistir con toda una serie de medidas adicionales.
- » Los derechos humanos son la mayor de las prioridades, motivo por el cual el derecho a la vivienda se ubica en un ámbito totalmente diferente al de los derechos de propiedad o al de los derechos de los actores financieros para sacar un beneficio.

**Sr. Luis Zarapuz**, economista del Gabinete Económico de Comisiones Obreras

- » El acceso a una vivienda, principalmente en las grandes ciudades como Madrid o Barcelona, representa un volumen de recursos importante para las clases trabajadoras.
- » Las generaciones mejor preparadas de la historia tienen que destinar gran parte de sus recursos y de su tiempo no a formarse ni a mejorar su capital y su cualificación, sino a pagar unos gastos de vivienda cada vez más elevados.
- » El sistema financiero español se basa en las garantías físicas hipotecarias, la concesión de hipotecas o el negocio de la construcción. En lugar de estar orientado hacia la economía productiva y la financiación del emprendimiento o hacia los nuevos proyectos de la economía digital, sigue anclado en garantías físicas.
- » La propuesta sindical abordaba dos ejes complementarios: a corto plazo, el fomento de la regulación del mercado del alquiler, y a medio y largo plazo, el desarrollo de un parque público de vivienda asequible y social.
- » Comisiones Obreras y la UGT apuestan claramente por la limitación del precio máximo del alquiler en las zonas tensionadas. Debe ser una regulación de ámbito estatal, no solo en relación con los incrementos del precio del alquiler en las zonas tensionadas, sino también con respecto al nivel del alquiler de estas zonas, y que lo vincule a un porcentaje de los ingresos de la población que allí vive.
- » Limitar la regulación del precio de la vivienda o actuar sobre ella tiene sus efectos. Los propietarios pueden buscar alternativas para la vivienda para tratar de escapar de la regulación.
- » Estas son algunas propuestas para intentar resolver externalidades negativas del control de rentas:



- » Ofrecer incentivos fiscales para actuar sobre las viviendas vacías.
- » Limitar o regular el destino de las viviendas turísticas en zonas tensionadas.
- » Desarrollar el eje estructural de constituir una oferta pública de vivienda social o de vivienda del parque público de alquiler.
- » A corto plazo, es necesario un control de los alquileres en las grandes ciudades como Barcelona.
- » La regulación puede tener consecuencias negativas, pero las consecuencias negativas estructurales son las que sufre la población en estos momentos.
- » Disponer de indicadores fiables y oficiales es clave para conocer la composición y la evolución del mercado del alquiler y diseñar las políticas públicas.

**Stephen Barton**, doctor en Planificación Urbana y Regional por la Universidad de California y rector de Vivienda de la ciudad de Berkeley

- » Tres ideas principales:
  - » El control de los alquileres es la única política pública que puede ponerse en marcha rápidamente para proporcionar a los inquilinos la posibilidad de acceder a un alojamiento estable.
  - » Un buen sistema de control de alquileres no impide que se pueda obtener una renta mediante los alquileres y, en cambio, aumenta el resultado de la demanda social en un lugar concreto.
  - » Los controles de alquiler deberían ser parte de programas de vivienda más extensos.
- » Por qué hay que controlar los alquileres:
  - » Porque el control de los alquileres ofrece a los inquilinos estabilidad en el lugar donde residen.
  - » Porque se puede poner en marcha de manera rápida, con unos beneficios inmediatos y un gasto público moderado.
  - » Porque los costes humanos del desplazamiento son muy duros cuando hay movimientos forzados: las familias deben abandonar la zona donde están sus amigos, su familia, su médico de confianza o la escuela de sus hijos.
- » Con respecto a la parte económica, el control de los alquileres residenciales combina dos factores: un edificio físico y la ubicación.
- » Las regulaciones que limitan una renta que no se percibe o una imposición fiscal que recaptura esta renta no tienen efectos negativos en las actividades productivas.
- » Un sistema del control de los alquileres bien diseñado tiene que permitir a los propietarios obtener un beneficio razonable del mantenimiento y funcionamiento de los edificios, a la vez que se limitan las rentas.
- » Es importante que los controles de los alquileres formen parte de un programa más amplio de vivienda.
- » Es primordial que haya sistemas de emergencia y de ayuda al alquiler durante periodos de desempleo.
- » Cuando el edificio debe rehabilitarse, se tiene que permitir a los propietarios subir el alquiler para cubrir este coste y, además, debe haber algún tipo de subsidio para el inquilino o para el

propietario.

- » La regulación de los alquileres tiene poco o ningún efecto en la construcción.
- » Esta regulación debería evitar los abusos tanto de los inquilinos como de los propietarios.
- » La regulación del alquiler puede proporcionar beneficios sustanciales y significativos tanto para los inquilinos como para las comunidades donde viven, aunque estos beneficios no estén valorados ni reconocidos por el mercado.

**Sr. Josep Maria Vilanova**, representante del COAC y profesor del Departamento de Urbanismo y Ordenación del Territorio de la Universidad Politécnica de Cataluña

- » En el 2007, el sistema de inversiones inmobiliarias se desplomó y, del 2007 al 2009, el número de viviendas proyectadas cayó un 97 %.
- » ¿Qué significa el mercado de alquiler, qué características tiene y qué puede pasar con la entrada de la regulación de los alquileres en Barcelona?
- » El mercado residencial no es la oferta, sino lo que realmente resuelve las necesidades de vivienda. Se dispone de los datos y las estadísticas sobre el funcionamiento real del mercado.
- » En el caso concreto de Barcelona, el mercado inmobiliario ha funcionado, fundamentalmente, a partir del alquiler, a diferencia del conjunto de Cataluña.
- » En Barcelona, tres de cada cuatro soluciones de vivienda tienen lugar por medio del alquiler, ya que Barcelona tiene el parque de vivienda disponible de alquiler más importante de Cataluña.
- » Desde 1994, el mercado del alquiler funciona bajo la Ley de arrendamientos urbanos, que permitió una actualización muy importante de los precios del alquiler, pero los edificios no han mejorado sustantivamente durante estos 25 años.
- » Existe la necesidad de que los edificios y las viviendas de Barcelona incorporen unas mejoras ambientales importantísimas. El 40 % de la huella ecológica del país proviene de la ineficiencia energética de los edificios.
- » El alquiler en Barcelona es central en cualquier política de vivienda. Por lo tanto, la medida de controlar los alquileres es fundamental.
- » Los precios del alquiler en el periodo 1994-2019 aumentaron un 180 % nominal. Traducido a euros constantes, el incremento es del 60 % en 25 años.
- » Este grave problema tiene su reflejo más dramático en el mantenimiento de unas tasas de desahucio inaceptables socialmente, que no se deben tanto al incremento del precio del alquiler como a la reducción de las rentas.
- » Será necesario tener en cuenta la incidencia de los derechos humanos sobre las políticas de vivienda y urbanísticas que deben desarrollarse en un futuro y, por otra parte, el hecho de que en el control de los alquileres es primordial la relación entre el precio del alquiler y la renta de la población.
- » Se debe crear un parque de vivienda asequible, vivienda social, sobre todo para las capas más débiles.
- » Se debería pasar del 0,1 % del PIB de Cataluña y España, al 0,6 %, que es la media de la Unión Europea.
- » En el precio del alquiler es muy importante el emplazamiento. Los lugares son únicos y no se pueden reproducir.
- » No hay una correlación entre inversión y rentas, pero eso es así desde 1994, y pasa también con el urbanismo y el suelo, en los que no hay correlación directa entre valores de suelo e

inversión real hecha.

**Sra. Montserrat Junyent**, jefa de la Asesoría Jurídica del Colegio de Agentes de la Propiedad Inmobiliaria de Cataluña y presidenta de la Federación de Asociaciones de Empresas Inmobiliarias

- » No valora positivamente la norma, especialmente por cómo se ha tramitado, ya que se ha gestionado al margen de los propietarios de los inmuebles.
- » Hay un problema de vivienda y se deben tomar medidas para favorecer el acceso a la vivienda de los colectivos más desfavorecidos, pero no se puede desviar la atención exclusivamente al sector privado, aunque cabe admitir que tiene una responsabilidad.
- » Hay propietarios que han actualizado sus inmuebles y ahora no pueden recuperar la inversión, ya que la renta que percibirán será la misma que la de un piso en que no se haya hecho ningún tipo de actuación.
- » Muchos propietarios se están planteando la opción de sacar sus productos del mercado y buscar la rentabilidad en la venta.
- » El perfil medio del propietario en Cataluña es un pequeño propietario que puede tener entre una y cinco viviendas.
- » El problema es la escasez de producto. El sector privado invertirá en la construcción de vivienda de alquiler asequible si también va acompañada de una política fiscal adecuada.
- » El mercado de alquiler empezó a tensionarse cuando se redujo la opción de la compra porque se cerró el crédito hipotecario.















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