Rent Regulation in Portugal

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The regulation has a significant impact on tenant–landlord relations and the overall functioning of the private rented sector. Different forms of rent regulation—in relation to rent levels, rent increases, security of tenure, etc.—also affect the quality, the social composition and, ultimately, the size of the private rented sector. Together they affect the character of much urban regeneration and renewal. The introduction in Portugal of more flexible rent regimes that aimed to gradually replace open-ended tenancies with freely negotiated contracts led researchers to classify the country as a free market system.

private rental sector rent regulation housing markets urban regeneration

1. Introduction

There is a vast body of literature that compares different types of—and rationales for–government rent regulation and examines its (long-lasting) effects upon markets [1]. The body of literature that has observed that rent regulation, which has been described as "rent policy in which rents are controlled below theoretical market levels" [2] (p. 46), is linked to other regulation that affects tenant—landlord relations, such as that which deals with tenant security and contract duration. A basic distinction can be made between fixed or definitive contracts versus open-ended contracts [3].

There is also regulation, which is typically formalised within legislative frameworks, concerning the circumstances or events that justify the termination of a lease, and the efficacy of enforcement mechanisms (inside or outside the legal system) for dispute resolution. For example, when tenants breach the terms of the contract, such as in cases of persistent delayed rent payments or property damage.

The comparison of regulatory environments across countries and over time has enabled the identification of different regimes of rent regulation, from the point of view of how rigidly they regulate rent increases and/or set initial rents, or how they have (or have not) been associated with other forms of social or economic support, such as exemptions from landlord fees, or tenants' housing allowances [4].

Studies have also shown the importance of correctly calibrating rent regulation and tenancy security. On the one hand, there is evidence that overly strict rent regulations can protect tenants from rent increases, but not necessarily from poor housing conditions. As they limit profitability for private rental landlords, they tend to discourage building improvement and maintenance [5] as well as further investments in the sector, thus limiting housing supply. Overly strict rent price protection can also have other negative consequences for the housing market, such as the growth of informal markets, and mismatches between dwellings size and family needs, with small households occupying large dwellings, and large households unable to find larger dwellings that satisfy their need [6][7]. On the other hand, there is also evidence from Germany and Switzerland that rent controls can be compatible with the development of a rental market that protect tenants from eviction and excessive rent increases, and that allows landlords to make enough profit [8]. Whitehead et al. [9] note that strong tenancy protection is a precondition for long-term demand for rental dwellings, as lower tenant security pushes more consumers towards the owner-occupied secure. Whitehead and Williams [10] also note the relevance of path dependency (the influence of past events on the present and future) and that sudden large changes in policy can take a long time to take full effect.

2. Rent Regulation: A Key Housing Policy Instrument

Rent regulation is a housing policy instrument that aims to keep rents below a theoretical market level. It can be described as a restrictive government policy, although, as Clarke and Oxley [11] point out, it has been associated with other instruments, such as subsidies (in different forms) that seek to expand housing supply, improve affordability, satisfy certain quality standards and assure security and access for households in poverty. For example, rent regulation has been linked to housing allowances that are subsidies tied to housing which are paid to consumers or directly to landlords or mortgage lenders on the consumers' behalf. In several countries (such as the UK or Denmark) low-income households in the PRS are entitled to housing benefits. Scanlon [12] stipulates that government housing subsidies covers around 35% of households in the PRS.

Rent regulations, which are formulated and implemented in the context of specific power relations, are guided by different ideals and objectives, (such as those of market efficiency and social protection, a mix of these) and have a significant impact on the overall operation of the PRS [13]. This is important for several complementary reasons. On the one hand, private rental has traditionally been an important type of tenure for low-income families [14][15], thus errors in the sector's regulation can have major consequences, not only for more vulnerable families, but also for levels of cohesion, which are linked to socio-spatial segregation processes. On the other hand, the PRS has been a destination for global real estate investment in search of greater profitability [16][17], which has led to the proliferation of second homes, that are linked to seasonal uses and short-term rentals and had facilitated by the co-existence of two urban phenomena: overheated housing markets and major 'rent gaps' centred and dependent on the dynamics of tourism development.

Urban regeneration has been a priority in neighbourhoods where a decades-long absence of public and private investment has contributed to their general degradation and the dilapidation of buildings. Regeneration projects attempt to improve the image of these places in order to attract new inward investment in social, economic and green infrastructure, as well as middle-high income people to these neighbourhoods. Urban regeneration involves a series of environmental, economic, social and cultural improvements that generally increase land and real estate values, resulting inadvertently in displacement, gentrification, decreasing liveability and an increasing need for affordable housing [18].

Urban rehabilitation, meanwhile, is a more specific process of urban transformation. It too is prompted by the degradation of urban buildings, but is limited to the conservation, recovery and retrofitting of buildings and urban spaces to provide—as in urban regeneration—better living conditions for their inhabitants, while maintaining the basic structural scheme and the original exterior appearance of buildings and urban spaces. Although urban rehabilitation can range from simpler to more complex interventions, it is never as broad and deep as urban regeneration.

A sustainability-oriented urban regeneration approach should be able to connect the stimulation of economic growth and environmental enhancement with social and cultural vitality, and seeks to achieve social sustainability at the community or local level [19]. Social sustainability depends on how individuals, communities and societies live with each other and set out to achieve the objectives of urban development, taking into account the physical and social limits and potentialities of their places and communities. At a more operational level, social sustainability stems from actions in key thematic areas—encompassing the economic, environmental and cultural spheres—which range from capacity building and skills development to tackling environmental and spatial inequalities. Thus a social sustainability approach brings together traditional social policy areas and principles—such as equity, housing and health; the built environment and heritage; and identity, sense of place and culture—with emerging issues—such as participation, empowerment and access; social capital; social mixing and cohesion; and well-being and quality of life. These are critical areas for the social sustainability of local communities and neighbourhoods, and it is of fundamental importance to assess the potential direct and indirect impact that proposed urban regeneration projects are likely to generate for them, in order to prevent displacement and gentrification in terms of housing and local economic activities and services [20][21]. These areas have become the focus of an international interest in social sustainability, a concept that is increasingly being used by governments, public agencies, policy makers, NGOs and corporations to frame decisions about urban development, regeneration and housing, as part of a burgeoning policy discourse on the sustainability and resilience of cities, and is also associated with the different impacts of rent regulation regimes [22].

International comparative analyses have identified different generations of rent regulation. Whilst some authors have distinguished between a first and a second generation of rent regulation, more recently others have opted to add a third ideal type. In the first group are Priemus [2] or Haffner et al. [5] for whom the first generation of rent regulation (implemented during the First and Second World Wars) consisted of either the application to all rents of nominal rent caps, or the limiting of all yearly rent increases to below the inflation rate. This was a very restrictive instrument or, in Priemus' [2] words, a sort of emergency-braking system. The second generation of rent regulation, introduced in several countries in the 1980s, was a gradual relaxation or softening of the previous long-standing hard controls. It allowed rents to increase annually, by a certain percentage, or by supplementary additional discretionary rises in response to some combination of landlord cost increases and profitability concerns. Lind [23] identify two dimensions along which the second generation of rent regulation may vary: (i) the type of contracts subject to regulation—existing vs. new rental contracts; and (ii) the basis for rent regulation—cost-based vs. market based. In relation to the former, while some countries have applied regulation to both existing and new contracts, limiting what landlords can charge when letting residential property, in other countries regulation has been restricted to existing contracts.

Looking at these differences, Kettunen and Ruonavaara [24] opted to add a third generation of rent regulation and to apply it to the classification of 33 countries. In their own words: “If both initial rents and rent increases were regulated, it was classified as second-generation rent control. If only rent increases were regulated, it was classified as third-generation rent control” (p. 16). Even though they recognized that the range of second- and third-generation rent regulations was not always clear cut, and that in many countries the former is only applied to some parts of the housing stock (e.g., in larger cities or areas of high demand), they were able to distinguish between a second generation of rent controls (applied both to initial rents for new lettings and rent increases within tenancies) and a third generation of rent controls, which constitute a much lighter form of regulation applied solely within an individual tenancy.

The work of Kettunen and Ruonavaara [24], which likens the typology of four distinct welfare regimes [25] to the typology of three generations of rent regulation, provides a good illustration of the relevance of ‘ideal types’ for building theory and guiding the formation of hypothesis [26][27]. It also illustrates the importance of testing hypotheses against statistical data, as the authors did for the Nordic countries. More questionable, however, is Kettunen and Ruonavaara’s [24] decision to exclude from the classification of other countries (such as Portugal) what they designate as “old strict laws” that “are still applied to rental contracts dated before the 1990s” (Idem, p. 6). In the end Portugal is classified as a country with a free rent market. An idea that became somehow common in some political and academic debates that over the last decades governments have almost complete liberalized or abolished rent controls in Portugal.

References

1. Jonkman, A.; Janssen-Jansen, L.; Schilder, F. Rent increase strategies and distributive justice: The socio-spatial effects of rent control policy in Amsterdam. J. Hous. Built Environ. 2018, 33, 653–673.

2. Priemus, H. Rent Policies for Social Housing. In International Encyclopedia of Housing and Home; Smith, S.J., Elsinga, M., Fox O’Mahony, L., Seow Eng, O., Wachter, S., Wood, G., Eds.; Elsevier: Oxford, UK, 2012.

3. Kholodilin, K. Long-Term, Multicountry Perspective on Rental Market Regulations. Hous. Policy Debate 2020, 30, 994–1015.

4. Kemp, P. Access and affordability: Housing allowances. In International Encyclopedia of Housing and Home; Smith, S.J., Elsinga, M., Fox O’Mahony, L., Seow Eng, O., Wachter, S., Wood, G., Eds.; Elsevier: Oxford, UK, 2012; pp. 40–45.

5. Haffner, M.; Elsinga, M.; Hoekstra, J. Access and Affordability: Rent Regulation. In International Encyclopedia of Housing and Home; Elsevier: San Diego, CA, USA, 2012; pp. 40–45.

6. Instituto Nacional de Estatística. O Parque Habitacional e a sua Reabilitação-Análise e Evolução 2001–2011; Instituto Nacional de Estatística: Lisboa, Portugal, 2013.
7. Garha, N.S.; Azevedo, A.B. Population and Housing (Mis)match in Lisbon, 1981–2018. A Challenge for an Aging Society. Soc. Sci. 2021, 10, 102.
8. Gilbert, A. Rental housing: The international experience. Habitat International 2016, 54, 173–181.
9. Whitehead, C.M.; Scanlon, K.; Monk, S.; Tang, C.; Haffner, M.; Lunde, J.; Voigtlander, M. Understanding the Role of Private Renting: A Four Country Case Study; University of Cambridge: Cambridge, UK, 2016.
10. Whitehead, C.; Williams, P. Assessing the Evidence on Rent Control from an International Perspective; Housing Supply & Rents, Occasional Reports, Regulation & Enforcement Reports; LSE: London, UK, 2018.
11. Clarke, A.; Oxley, M. Using Incentives to Improve the Private Rented Sector: Three Costed Solutions; Joseph Rowntree Foundation: York, UK, 2018.
12. Scanlon, K. Private Renting in Other Countries. In Towards a Sustainable Private Rented Sector; Scanlon, K., London, L.S.E., Eds.; London School of Economics and Political Science: London, UK, 2011.
13. Azevedo, A.B.; López-Colás, J.; Módenes, J.A. Recent increase of tenancy in young Spanish couples: Sociodemographic factors and regional market dynamics. J. Hous. Built Environ. 2019, 34, 1043–1063.
14. Kemp, P. Low-income tenants in the private rental market. Hous. Stud. 2011, 26, 1019–1034.
15. Alves, S. Poles Apart? A Comparative Study of Housing Policies and Outcomes in Portugal and Denmark. Hous. Theory Soc. 2017, 37, 221–248.
16. Feliciantonio, C.D.; Aalbers, M.A. The Prehistories of Neoliberal Housing Policies in Italy and Spain and Their Reification in Times of Crisis. Hous. Policy Debate 2018, 28, 135–151.
17. Mendes, L. Tourism gentrification in Lisbon: The panacea of touristification as a scenario of a post-capitalist crisis. In Crisis, Austerity and Transformation: How Disciplinary Neoliberalism Is Changing Portugal; David, I., Ed.; Lexington: London, UK, 2018; pp. 25–48.
18. Lees, L.; Bang Shin, H.; López-Morales, E. (Eds.) Global Gentrifications: Uneven Development and Displacement; Policy Press: Bristol, UK, 2015.
19. Colantonio, A.; Dixon, T. Urban Regeneration and Social Sustainability: Best Practice from European Cities; John Wiley & Sons: London, UK, 2011.
20. Glasson, J.; Wood, G. Urban regeneration and impact assessment for social sustainability. Impact Assess. Proj. Apprais. 2009, 27, 283–290.

21. Kohon, J. Social inclusion in the sustainable neighborhood? Idealism of urban social sustainability theory complicated by realities of community planning practice. City Cult. Soc. 2018, 15, 14–22.
22. Woodcraft, S. Understanding and measuring social sustainability. J. Urban Regen. Renew. 2015, 8, 133–144.
23. Lind, H. Rent regulation: A conceptual and comparative analysis. Eur. J. Hous. Policy 2001, 1, 41–57.
24. Kettunen, H.; Ruonavaara, H. Rent regulation in 21st century Europe. Comparative perspectives. Hous. Stud. 2021, 36, 1446–1468.
25. Esping-Andersen, G. The Three Worlds of Welfare Capitalism. Cambridge and Princeton; Polity Press and Princeton University Press: Princeton, NJ, USA, 1990.
26. Bruun, H.H. Science, Values and Politics in Max Weber's Methodology; Taylor & Francis Group: Abingdon, UK, 2007.
27. Alves, S.; Burgess, G. Planning policies and affordable housing: A cross-comparative analysis of Portugal, England and Denmark. In Proceedings of the International Conference on the Global Dynamics of Social Policy, University of Bremen, Bremen, Germany, 25–26 October 2018.