

## BALANCING HOUSING POLICIES: EXAMINING RENT CONTROLS IN EU MEMBER AND CANDIDATE COUNTRIES THROUGH THE LENS OF CONSTITUTIONAL RIGHTS

**Meliha Sermin Paksoy, PhD, Associate Professor**

Altinbas University School of Law

Büyükdere Caddesi, No: 147, 34000 Esentepe /İstanbul, Turkey

sermin.paksoy@altinbas.edu.tr

### **ABSTRACT**

*The social housing policies in many European Union (EU) member and candidate countries, coupled with challenges in the private property market, have resulted in an inability to adequately address the housing needs of low and middle-income households. Approximately one-third of the EU population resides in privately rented housing, prompting several member and candidate countries to implement rent controls due to a significant surge in rents within the private housing sector. These controls may involve setting rent ceilings, limiting the annual increase in rental rates, and other similar interventions.*

*For instance, in Turkey, the legislature has imposed a 25% limit on the increase of rental prices in existing contracts over the past two years. It is noteworthy, however, that the official inflation rates declared by the government in 2022 and 2023 were almost three times higher than the rental increase limit imposed by the legislature. The implementation of such interventions has sparked debates on the compatibility of such rent controls with the constitutions of the relevant countries and the European Convention on Human Rights (ECHR).*

*Various cases, including *James and Others v the United Kingdom*, *Aquilina v Malta*, and *Ur-bárska Obec Trenčianske Biskupice v Slovakia*, illustrate instances where the European Court of Human Rights (ECtHR) has addressed restrictions on landlords' rights. According to the court, countries have a margin of appreciation in implementing such restrictions, but they must ensure that the limitations imposed are proportionate and guarantee fair and adequate rent.*

*Several constitutional courts, including the Turkish Constitutional Court, have also examined the constitutionality of rent controls. The objective of this paper is to establish criteria for acceptable rent controls based on the decisions of the ECtHR and the constitutional courts of EU member and candidate countries. These criteria aim to guide policymakers in striking a*

*balance between addressing housing challenges and respecting property rights and freedom of contract for landlords.*

**Keywords:** ECHR, freedom of contract, housing shortage, landlords' rights, Rent controls, tenant protection

## 1. INTRODUCTION

Rent control can be defined as any form of tenancy legislation that imposes restrictions on rent setting and/or rent increases in rental agreements. Both national constitutional courts and the European Court of Human Rights (ECtHR) have acknowledged that rent controls particularly interfere with the property rights of housing and occasionally business owners. However, both the European Convention on Human Rights (ECHR) Protocol 1, Article 1, and the constitutions of many countries stipulate that property rights can be limited for the public interest<sup>1</sup>. In questioning the compatibility of rent controls with the ECHR, it must be established on what grounds and to what extent public interest can be used as a reason to intrude into private legal relationships. Additionally, it is important to establish a balance in regulating the tenant and landlord relationship in accordance with the principle of proportionality.

In an analysis serving this purpose, it is crucial to first point out the objectives of states in adopting rent controls. Next, examples of legislation pertaining to rent controls will be presented. Following these examples, the problems stemming from rent controls will be examined, along with an assessment of their effectiveness. Subsequently, ECtHR case law and constitutional court rulings will be scrutinized to ascertain the courts' positions in this debate. Finally, an analysis for balanced regulation of rent controls will be provided. Although rent control also concerns other rights such as freedom of contract, this paper will be limited to property rights.

## 2. EXPLORING THE OBJECTIVES BEHIND RENT CONTROLS

One-third of the population in the European Union resides in rented accommodation, with one in ten families allocating over 40% of their income to rent<sup>2</sup>. Fur-

<sup>1</sup> German Constitution Art.14 II [[https://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html](https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html)], Accessed 17 March 2024; Turkish Constitution Art. 35 II [<https://www.icisleri.gov.tr/kurumlar/icisleri.gov.tr/IcSite/illeridairesi/Mevzuat/Kanunlar/Anayasa.pdf>], Accessed 17 March 2024.

<sup>2</sup> Cuerpo, C.; Kalantaryan, S.; Pontuch, P., *Economic and Financial Affairs Rental Market Regulation in the European Union*, Economic Papers 515, 2014; FEANTSA Legal Developments Rent Regulation In The European Union, [[https://www.feantsa.org/public/user/Resources/reports/2021/CH4\\_Legal\\_EN.pdf](https://www.feantsa.org/public/user/Resources/reports/2021/CH4_Legal_EN.pdf)], Accessed 17 March 2024, p. 2.

thermore, the share of the private sector in rental housing supply varies between 2% and 52% across European countries<sup>3</sup>. The main issue driving politicians to adopt rent control is the surge in rental prices, while the increase in the income of at least a portion of tenants does not correspond to that pace<sup>4</sup>.

The fundamental and essential nature of housing needs, coupled with shortages in rental housing supply, doesn't always ensure accurate rent pricing through free market dynamics. Landlords, particularly in situations such as natural disasters, mass migration or other occasions where demand suddenly or continuously increases, may exploit the housing shortage in their favor, given their ability to control prices and generally stronger economic position compared to tenants<sup>5</sup>. Under typical circumstances, the supply of the essential commodity should rise to fulfill demand in such a scenario. However, due to the inelastic nature of housing supply, housing shortages will persist in the short term<sup>6</sup>. Therefore, there may be a need for occasional rent controls to meet the housing needs of low-income families<sup>7</sup>.

The primary objective behind states implementing rent controls is to guarantee that individuals with modest incomes can access a housing at reasonable rates<sup>8</sup>. Given that housing is a fundamental necessity, this cause is justified. Additionally, states are tasked with the duty of safeguarding the right to housing<sup>9</sup>. The right to housing is enshrined in Article 11, paragraph 1 of the International Covenant on Economic, Social and Cultural Rights. According to this article, the States Parties recognize the right of everyone to an adequate standard of living for themselves and their families, including adequate housing, and will take appropriate steps to

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<sup>3</sup> Kettunen, H.; Ruonavaara, H., *Rent regulation in 21st century Europe. Comparative perspectives*, Housing Studies, Vol. 36, No. 9, 2021, p.1450-1451.

<sup>4</sup> In fact, to determine that the rent price increase is excessive, the increase in construction costs and the consumer price inflation rates should be evaluated together. Blankenagel, A.; Schröder, R.; Spoerr, W., *Verfassungsmäßigkeit des Instituts und der Ausgestaltung der sog. Mietpreisbremse auf Grundlage des MietNovGE*, NZM, 2015, p. 2.

<sup>5</sup> Visser, C., *Rent Control*, Acta Juridica, 1985 p. 356; Maass, S., *Rent Control: A Comparative Analysis*, Potchefstroom Electronic Law Journal, Vol.15, No. 4, 2012, p. 87.

<sup>6</sup> Lee, R. G., *Rent Control - The Economic Impact of Social Legislation*, Oxford Journal of Legal Studies, Vol. 12, No. 4, 1992, p. 544.

<sup>7</sup> Baar, K., *Would the Abolition of Rent Controls Restore a Free Market*, Brooklyn Law Review, Vol. 54, No. 4, 1989, p. 1235; Kettunen, H.; Ruonavaara, H., *op. cit.*, note 3, p. 1448; *Hutten-Czapaska v Poland* (2006) ECtHR, par. 166.

<sup>8</sup> *Kasmi v Albania* (2020) ECtHR, par.76; *Radovici and Stănescu v Romania*, par. 88.

<sup>9</sup> Portugal, Spain, the Netherlands, Sweden, Poland, Finland, Greece, and Belgium are countries where national constitutions include housing clauses. Koloceck, M., *The Human Right to Housing in the 27 Member States of the European Union*, European Journal of Homelessness, Vol. 7, No. 1, 2013, p. 137.

ensure the realization of this right<sup>10</sup>. For the right to housing to be truly fulfilled, the budget allocated for housing should not jeopardize individuals' ability to meet their other expenses<sup>11</sup>.

Sometimes the renovation of homes can be an indirect objective of rent controls due to the fact that rent controls are not applied, or are applied more restrictively, to renovated homes<sup>12</sup>.

Moreover, at times of high inflation, rent controls are told to be introduced to curb rising inflation<sup>13</sup>. Combatting high inflation can serve as another justifiable cause, given its detrimental effects on various aspects of the economy and public life.

While these aims given can be seen as reasonable purposes for introducing rent controls, they should be questioned from two perspectives: Firstly, are the rent controls effective in achieving the stated objectives? Secondly, under what conditions can interference with freedom of contract and property rights of landlords be deemed legally acceptable to achieve this goal?

### 3. DIVERSE METHODS OF RENT CONTROL IN THE EU AND EU CANDIDATE COUNTRIES

Even though European housing systems have predominantly shifted towards deregulation and neoliberalization, it has been observed that rental controls exist in sixteen out of thirty-three European countries<sup>14</sup>. Consequently, the compatibility of these legislations with the European Convention on Human Rights (ECHR) and constitutional rights may vary depending on the specific rent control. To elucidate our analysis, we will first provide examples of rent control policies implemented in three different countries, each with distinct restrictions.

<sup>10</sup> Elements of the right to housing can be identified in various other international and regional human rights treaties, including Article 8 of the European Convention on Human Rights (ECHR), and Article 31 of the Revised European Social Charter (RESC).

<sup>11</sup> General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), [<https://www.refworld.org/legal/general/cescr/1991/en/53157>], Accessed 1 March 2024

<sup>12</sup> In § 559 BGB, there is a provision regarding this matter [[https://www.gesetze-im-internet.de/bgb/\\_559.html](https://www.gesetze-im-internet.de/bgb/_559.html)]; Similarly, in the case of *Mellacher and Others v. Austria*, rent control imposes much less intervention on renovated homes. *Mellacher and Others v Austria* (1986) ECtHR, par. 157.

<sup>13</sup> Altas, H., *Kira Parası Artıřlarının Sınırlandırılması*, Ankara Üniversitesi Hukuk Fakültesi Dergisi , Vol. 49, No. 1, 2000, p. 107; Ruhi, M. E., *Gayrimenkul Kiralarının Sınırlandırılması Hakkındaki 4531 Sayılı Yasaya İliřkin Anayasa Mahkemesi Kararı Üzerine Bir Deęerlendirme*, Ankara Üniversitesi Hukuk Fakültesi Dergisi , Vol. VII, No. 1-2, 2003, p. 218.

<sup>14</sup> Kettunen, H.; Ruonavaara, H., *op. cit.*, note 3, p. 1461.

### 3.1. Germany

The regulations concerning the determination and increase of rent in Germany are in paragraphs 557-561 of the BGB<sup>15</sup>. According to these provisions, the parties to a lease agreement can either determine annually how much rent will be paid and when the increase will occur, or they can agree to base it on the price index determined by the consumer price index. Moreover, in accordance with these regulations, a rent increase cannot be requested before one year has passed. It is stipulated that the initial rent determined cannot exceed 20% of the comparable rent. In housing markets where demand is high, this limit is set at 10%. Rent increases to be made within three years cannot exceed a total of 20% and, in places experiencing housing shortages, cannot exceed 15% (BGB § 558). If the rent exceeds these limits, the tenant can request a refund for the past 30 months. An exception to rent increase limits is granted in cases of property renovation. The possibility of entering into a fixed-term lease agreement exists only in residential leases under the conditions specified in §575 (1) of the BGB<sup>16</sup>.

The German system of rent control involves capped rent increases, which establish guidelines based on the local rental market. Landlords are prohibited from increasing rent beyond the limits set by the average comparable rent. With this intervention, rent increases are slowed down<sup>17</sup>.

### 3.2. Croatia

Different forms of rent control exist in Croatia. According to the provisions of the Lease of Flats Act regarding rent, tenants can either pay protected rent or freely agreed rent (Art. 6). Protected rent is determined based on conditions and standards set by the Government of the Republic of Croatia (Art. 7)<sup>18</sup>.

As per Article 8 of the Lease of Flats Act, protected rent applies to apartment users residing in apartments built with funds allocated for addressing housing needs

<sup>15</sup> BGB, [<https://www.gesetze-im-internet.de/bgb/index.html#BJNR001950896BJNE000102377>], Accessed 14 March 2024.

<sup>16</sup> Fieldfisher A brief guide to rent controls in Europe, 11.3.2024, [<https://www.fieldfisher.com/en/insights/a-brief-guide-to-rent-controls-in-europe>], Accessed 16 March 2024.

<sup>17</sup> A similar rent cap is also introduced in Austria. In the years 2025 and 2026, for reasons of social compatibility, the effects of rent increases will be capped at 5%. Parliament Austria [[https://www.parlament.gv.at/aktuelles/pk/jahr\\_2023/pk1411](https://www.parlament.gv.at/aktuelles/pk/jahr_2023/pk1411)]; Belgium, Luxemburg, Norway and Poland also have similar rent caps. Kettunen, H.; Ruonavaara, H., *op. cit.*, note 4, p. 1451.

<sup>18</sup> EU-project: Support to the Judicial Academy: Developing a training system for future judges and prosecutors, [<https://pak.hr/cke/propisi,%20zakoni/en/ApartmentLeaseAct/Apartment.pdf>], Accessed 16 May 2024.

of financially vulnerable individuals, those using apartments in accordance with regulations concerning Croatian veterans' rights, or those designated by special regulation as holders of occupancy rights before the enactment of this Act<sup>19</sup>.

In cases of freely agreed rents, the rent can be negotiated for a subsequent period up to 20% higher than the average freely agreed rent within the same settlement or county for a comparable apartment in terms of amenities and location (Art. 9). Should the proposed rent exceed this threshold, the lessee has the right to petition the court for a determination of the rent amount within 30 days of the proposal. During this period, the tenant pays an advance rent equivalent to the agreed amount (Art. 11).

In summary, there exists a general ceiling determined based on the average rent to prevent excessive rent increases in Croatia, akin to the German system. Additionally, there is a model that allows certain groups of tenants, deemed in need of protection, to rent at rates lower than the average.

### 3.3. Türkiye

In response to the increasing rental prices and high inflation in the housing market, a temporary provision was incorporated into the Turkish Code of Obligations on June 8, 2022. According to this regulation, the increase in ongoing rental contracts is limited to 25% until July 1, 2023. This period was later extended for another year. On the other hand, the Turkish Statistical Institute (TÜİK) announced inflation rates of 64.77% for 2023 and 64.3% for 2022. It is estimated that the actual inflation rates are much higher than officially announced.

In addition to the rent increase limitation, the right of termination of the lease by the lessor in residential leases has been already significantly restricted through legislation and lengthy legal proceedings.

Diverging from examples in other countries, the rent control model implemented in Turkey sets a significantly lower limit on rent increases for existing residential leases, well below inflation, without imposing an upper limit on the rent to be determined for new lease agreements. Additionally, all residential tenants party to an ongoing lease agreement are protected. This aspect makes the appropriateness of the regulation subject to questioning from various perspectives.

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<sup>19</sup> *Ibid*, It is also stated that public tenancy, offered by certain local authorities at various levels, targets specific protected groups such as young families who do not meet the eligibility criteria for social housing. Jakopic, A.; Žnidarec, M.; Mežnar, S.; Josipovic, T., *Tenancy Law and Housing Policy in Croatia*, ToKnowPress, 2015, p. 103.

## 4. NAVIGATING RENT CONTROL: ASSESSING EFFECTIVENESS AND ADDRESSING ASSOCIATED PROBLEMS

While rent controls are commonly employed by governments, there is ongoing debate regarding the efficacy of rent increase limitations and their actual impact on controlling rental prices<sup>20</sup>. Assessing the effectiveness of rent controls is pivotal in determining the compatibility of the intervention with the European Convention on Human Rights (ECHR) and constitutional rights. If it is determined that rent control measures fail to achieve their intended purpose, the restrictions they impose may be deemed unlawful. Furthermore, it is important to acknowledge that rent controls may also give rise to a range of social and economic challenges, which must be carefully considered when evaluating the efficiency of such restrictions.

Of course, the effectiveness of rent controls will vary depending on the specifics of the regulation and the economic and social conditions of the relevant country. Nonetheless, certain generalizations can still be made.

### 4.1. Drawbacks of Blanket Approach

Rent controls, if applied to all landlords or specific landlords in certain regions and cities, benefit all tenants without distinguishing between rich and poor, and without discriminating between rich and poor landlords. This blanket approach doesn't always make sure neediest tenants are placed in rent-controlled housings<sup>21</sup>. For example, in Turkey, all tenants, regardless of their economic situation, including those living in luxury accommodations, can benefit from the rent increase limit applied to existing contracts. However, a family with limited finances searching for new housing might encounter excessively high rental prices in new contracts. Likewise, in the *Amato Gauci v. Malta* case, the ECtHR also took note when a

<sup>20</sup> Lee, R. G., *op. cit.*, note 6, pp. 543-557; 4.; Schmid C.; Dinse, J., *European Dimensions of Residential Tenancy Law*, European Review of Contract Law, Vol. 9, No. 3, 201, p. 201; Silvia, H.; Christiansen, L., *Web Of Interest: Reframing The Conversation Around Unaffordable Housing*, Corporate and Business Law Journal, Vol. 4, No. 1, 2023, p. 238; Der Bundesrat Das Portal der Schweizer Regierung, [https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-98836.html], Accessed 1 April 2034;

Buckley, J.; Gary N.; Conley, G., *Housing Market Operations and the Pennsylvania Rent Withholding Act - An Economic Analysis*, Villanova Law Review, Vol. 17, No. 5, 1972, pp. 886-927; Baar, K., *op. cit.*, note 7, pp. 1231-1238; Epstein, R. A., *Rent Control Revisited: One Reply to Seven Critics*, Brooklyn Law Review, Vol. 54, No. 4, 1989, pp. 1281-1304.

<sup>21</sup> Lee, R. G., *op. cit.*, note 6, p.547; Wolfstädter, L.; Rump, C., *op. cit.*, note 22, p. 843; Schultz, M.; Irrtum Mietpreisbremse, ZRP, 2014, p. 41; Critical of a legislation which doesn't make this distinction. *Hutten-Czapska v Poland* (2006) ECtHR, par. 174.

tenant, who was benefiting from controlled low rent, was renting out their own property<sup>22</sup>. It must be recognized that such rent controls operate with a significant efficiency gap. This would also weaken the social acceptance of the restrictions. In some countries, such as Switzerland, this efficiency gap is being addressed by not implementing rent controls, at least for luxury or properties with six or more rooms<sup>23</sup>. Croatia's system of listing tenants eligible to benefit from rent-controlled units can also be considered a more efficient model.

## 4.2. Discouragement of Investing in Housing and Renting

Rent controls are criticized, particularly when the controlled rent is significantly lower than the market value, as critics argue that it leads to a decline in available rental housing<sup>24</sup>. When rent controls drive rental prices below market rates and make eviction more difficult for tenants, some landlords are inclined to keep their properties vacant, resort to short-term rentals, or find alternative ways to monetize their real estate, leading to a further shortage of rental housing<sup>25</sup>. It is evident that this does not serve the goal of providing accessible and reasonable housing<sup>26</sup>. For instance, in major tourist cities where rent controls are prevalent, it has been observed that landlords prefer short-term rentals through platforms like Airbnb rather than long-term leasing, resulting in significant reductions in rental housing supply that caters to long-term housing needs<sup>27</sup>. Studies point out that the rent controls, which were in effect in Catalonia, Spain from 2020 for about one and a half years and later annulled by the Constitutional Court, led to a slight decrease in rental prices while causing a significant decrease in the supply of rental housing<sup>28</sup>.

<sup>22</sup> *Amato Gauci v Malta* (2009) ECtHR, par. 61.

<sup>23</sup> OR Art. 253b, [[https://www.fedlex.admin.ch/eli/cc/27/317\\_321\\_377/de#a143](https://www.fedlex.admin.ch/eli/cc/27/317_321_377/de#a143)], Accessed 29 March 2024.

<sup>24</sup> Lee, R. G., *op. cit.*, note 6, pp. 543/544,554; McKenzie, R.; Dwight R., *How Economists Understate the Damage from Rent Controls*, Regulation, Vol. 41, No. 4, 2018-2019, p. 22; Leuschner, L., *Die „Mietpreisbremse“ – Unzweckmäßig und verfassungsrechtlich höchst bedenklich*, NJW, 2014, 1931; Schultz, M., *op. cit.*, note 22, p. 37.

<sup>25</sup> Visser, C., *op. cit.*, note 5, p. 360; Silvia, H.; Christiansen, L., *op. cit.*, note 21, p. 142; Cuerdo, C. *et al.*, *op. cit.*, note 2, pp. 10-11; Kettunen, H.; Ruonavaara, H., *op. cit.*, note 3, p.1449.

<sup>26</sup> FEANTSA, *op. cit.*, note 8, p. 123.

<sup>27</sup> Coupechoux, S.; Clark-Foulquier, C.; *The City Is Ours! How To Regulate Airbnb In The Face Of A Housing Crisis*, FEANTSA and the Foundation Abbé Pierre Report, 2020, [<https://www.housing-solutions-platform.org/single-post/the-city-is-ours-how-to-regulate-airbnb-in-the-face-of-a-housing-crisis>], Accessed 3 March 2024, p. 7; Maass, *op. cit.*, note 5, p. 88.

<sup>28</sup> Vilchez, R.; Maria, J.; *The Lessons Learnt by the First Academic Assessments of Rent Control in Catalonia*, Revista Catalana de Dret Public (Catalan Journal of Public Law), Vol. 66, 2023, p. 87; Kholodilin, K.A.; López, F.A.; Blanco, D.R.; Arbues, P. G., *Lessons from an aborted second-generation rent control in Catalonia*, DIW Berlin, 2022.



Furthermore, low rental income discourages individuals from investing in housing, further limiting housing construction<sup>29</sup>. Sometimes, to combat this trend, new constructions are exempted from rent control regulations<sup>30</sup>.

On the other hand, despite rent control, housing investment may still be attractive if the property's own value increase is sufficiently high<sup>31</sup>. However, as rental income decreases and eviction becomes more difficult, landlords may prefer to keep the property vacant. This is because both rent control and the difficulty of eviction can decrease the property's resale value significantly<sup>32</sup>.

### 4.3. Fueling Disputes

If rent controls push the rent price significantly below the market rate, and landlords would benefit more if the tenants left, landlords may start to resort to legal measures to terminate the lease agreement. They might potentially exploit legal loopholes to circumvent the law, thereby exerting pressure on the judiciary<sup>33</sup>.

If rent controls only intervene with rental prices increase in existing rent agreements, it means that rental prices can be freely determined for new leases, allowing for periodic adjustments to market rates. However, it has been observed that tensions between landlords and tenants increase in this model of restriction. This is because landlords prefer rent agreements to be as short as possible and to adjust rents to market rates. Consequently, landlords may seek ways to terminate the lease of existing tenants in order to adjust the rent to market rates. Additionally, in this case landlords often prefer tenants whom they anticipate will stay for a short period<sup>34</sup>. For example, the restriction of rent increases in continuing residential lease contracts in Turkey, visibly increases the number of disputes between tenants and landlords and brings courts to a standstill<sup>35</sup>. When combined with regulations allowing residential lease terms to extend up to ten years, rent increase limitations lead former tenants, who pay significantly below market rates, to prompt

<sup>29</sup> Silvia, H.; Christiansen, L., *op. cit.*, note 21, p. 139; Cuerpo, Carlos *et. al. op. cit.*, note 2, p.11; McKenzie, R.; Dwight R., *op. cit.*, note 25, p. 22.; Epstein, R.A., "Rent Control and the Theory of Efficient Regulation, Brooklyn Law Review, Vol. 54, No. 3, 1988, p. 767; Leuschner, L, *op. cit.*, note 25, p. 1931; Schultz, M., *op. cit.*, note 22, p. 41.

<sup>30</sup> Epstein, R. A., *op. cit.*, note 21, p.1288.

<sup>31</sup> Lee, R. G., *op. cit.*, note 6, p. 553.

<sup>32</sup> *Statileo v Croatia* (2014) ECtHR, par. 131.

<sup>33</sup> Epstein, R.A., *op. cit.*, note 30, p. 764-765; McKenzie, R.; Dwight R., *op. cit.*, note 25, p. 25; Epstein, R. A., *op. cit.*, note 21, s. 1287.

<sup>34</sup> Vilchez, R.; Maria, J.; *op. cit.*, note 29, p. 99; Epstein, R.A., *op. cit.*, note 30 p. 763.

<sup>35</sup> Dünya Gazetesi, 11.8.2023, [<https://www.dunya.com/sectorler/emlak/kira-tahliye-davalari-patladi-haberi-701252>], Accessed 14 May 2024.

landlords to sell their properties, initiate eviction lawsuits due to necessity, or file rent determination lawsuits if conditions permit. Undoubtedly, the increase in the number of lawsuits also places a burden and pressure on the judiciary system and carries an economic cost. These factors should be considered in evaluating the impact and effectiveness of rent controls.

#### 4.4. Escalating Rents in Unregulated Agreements

Due to the ineffectiveness of rent controls in addressing the housing shortage issue, it is expected that rents for unregulated housing escalate, surpassing previous market rates<sup>36</sup>. Especially, if rent controls only limit rental prices increase in existing rent agreements, it is anticipated that landlords will set much higher new rent prices to offset the impact of the restriction<sup>37</sup>. Indeed, in Turkey, while the rent increase in existing contracts is limited to 25%, the absence of an upper limit for rent prices in new lease agreements has resulted in a significant gap between the rents paid by new and existing tenants in a short period of time. Landlords factoring in the cost of the 25% rent increase restriction from the outset by setting the initial rent high also contributes to this. As a result, limiting rent increases only in existing contracts has not been effective in curbing the rise in rent prices. Rent prices have increased sixfold in Turkey over the past four years<sup>38</sup>.

#### 4.5. No Solo Influence in the Fight Against Inflation

As mentioned above, rent controls are sometimes employed to mitigate inflation during periods of high inflation. However, it is widely recognized that rent controls alone cannot effectively reduce inflation when the underlying causes of inflation are not comprehensively addressed<sup>39</sup>. Furthermore, it is argued that rent controls, which set controlled rents below the market average, may increase purchasing power for goods and services beyond housing, potentially contributing to inflationary pressures<sup>40</sup>. Indeed, rent increase restrictions implemented in ongoing lease agreements in Turkey over the past two years have proven ineffective in con-

<sup>36</sup> Lee, R. G., *op. cit.*, note 6, p. 546.

<sup>37</sup> Vilchez, R.; Maria, J.; *op. cit.*, note 29, p. 98.

<sup>38</sup> BBC Turkce, 5.6.2023, [<https://www.bbc.com/turkce/articles/c3g0xylry03o#:~:text=Kiralari%20ise%20%C3%BClke%20genelinde%20son,ortalama%20art%C4%B1%C5%9F%20oran%C4%B1%20%697%20oldu.ard>], Accessed 15 May 2024.

<sup>39</sup> Visser, C., *op. cit.*, note 5, pp. 357-358.

<sup>40</sup> Lee, R. G., *op. cit.*, note 6, p. 547.

trolling high inflation; instead, they have become one of the categories experiencing the highest price increases<sup>41</sup>.

#### 4.6. Discouraging Renovation of the Rent-Controlled Houses

Continuous low level-rent control policies discourage landlords from renovating rent-controlled properties. Additionally, they diminish landlords' incentives to invest in property maintenance, which accelerates the deterioration of rental units<sup>42</sup>. Consequently, these circumstances may even result in shifts in the demographic profiles of tenants residing in rent-controlled areas<sup>43</sup>.

#### 4.7. Locking the tenant to the rent-controlled house

Rent controls, when offering housing well below market prices, may not actually provide the best housing option for tenants but still discourage them from vacating the premises. This hinders the mobility of former tenants and leads to potential lock-in effects, which can even influence workers' job preferences and labor mobility<sup>44</sup>.

### 5. RENT CONTROLS: INSIGHTS FROM ECTHR PRECEDENTS AND DERIVED PRINCIPLES

As noted, rent controls are implemented in many European countries, and the compatibility of these controls with fundamental rights and freedoms, especially the right to property, freedom of contract, and the principle of equality, has been questioned. This questioning has also been brought before the European Court of Human Rights (ECTHR) on numerous occasions. The ECTHR examines the following criteria for the compatibility of rent controls with the convention a) Does the restriction have a legal basis? b) Does the regulation serve a legitimate aim? c) Is the intervention proportionate? Additionally, the following principles can be derived from ECTHR jurisprudence on the issue.

<sup>41</sup> TUIK, [https://data.tuik.gov.tr/Bulten/Index?p=Tuketici-Fiyat-Endeksi-Mart-2024-53613], Accessed 15 May 2024.

<sup>42</sup> Olsen, E., *An Econometric Analysis of Rent Control*, Journal of Political Economy, Vol. 80, No. 6, 1972, p. 8; Lee, R. G., *op. cit.*, note 6, p. 546.; Sheldon, S., Rethinking Rent Control: An Analysis of Fair Return, Rutgers Law Journal, Vol.12, No. 3,1981, p. 650; McKenzie, R.; Dwight R., *op. cit.*, note 25, p. 22; Epstein, R.A., *op. cit.*, note 30, p. 765; Leuschner, L., *op. cit.*, note 25, p. 1931.

<sup>43</sup> Visser, C., *op. cit.*, note 5, p.360; Silvia, H.; Christiansen, L., *op. cit.*, note 21, *op. cit.*, note 10, p. 136; *Hutten-Czapska v Poland* (2006) ECTHR, par. 158.

<sup>44</sup> Visser, C., *op. cit.*, note 5, p. 362; Silvia, H.; Christiansen, L., *op. cit.*, note 21, p. 141.

## 5.1. Legal basis

Article 1 of Protocol No. 1 allows for the deprivation of “possessions” under the conditions prescribed by law in the second sentence of the first paragraph. Regarding the legal basis of the intervention, the ECtHR does not make restrictive interpretations. Established ECtHR case law, secondary legal regulations, and even established judicial precedents can fulfil this condition<sup>45</sup>. The principle of lawfulness also presumes that the relevant domestic legal provisions are sufficiently accessible, precise, and predictable in their application<sup>46</sup>. Therefore, rent control legislations are required not to be arbitrary and unpredictable<sup>47</sup>. This indicates that frequent and unexpected interventions with lease agreements will be more questionable before the ECtHR<sup>48</sup>. On the other hand, even if landlords are aware of the restrictions, the Court expresses a finding in favor of landlords, stating that they may not anticipate increases in rent and property prices<sup>49</sup>.

## 5.2. Do rent controls serve a legitimate aim?

Governments argue that rent controls aim to meet the housing needs of the low income groups at an appropriate cost<sup>50</sup>. On the other hand, rent controls imposed on commercial leases are said to serve purposes such as ensuring business continuity, promoting economic initiatives, and preventing unemployment among workers in these establishments<sup>51</sup>. As presented below, the Court accepts these objectives as legitimate. Furthermore, the ECtHR considers the preservation of property rights of landlords as a legitimate aim if rent controls are lifted, thus returning to a regime without intervention in contractual freedom.

In *James and Others v. UK*, the UK granted tenants who are parties to long-term lease agreements the right to purchase the property or extend the lease under certain conditions. In this case, the applicants argued that interference with the right

<sup>45</sup> ECHR Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights, p. 25 [https://www.echr.coe.int/documents/d/echr/Guide\_Art\_1\_Protocol\_1\_ENG] Accessed 13 May 2024.

<sup>46</sup> *Ibid*, p. 25; *Hutten-Czapska v Poland* (2006) ECtHR, par 163.

<sup>47</sup> Rent control provisions of domestic law should sufficiently accessible, precise and foreseeable in their application. *Kasmi v Albania* (2020) ECtHR, par. 73.

<sup>48</sup> Uncertainty, whether legislative, administrative, or stemming from the practices of authorities, must be considered when evaluating the State's actions. When a matter of public interest is involved, it is the responsibility of public authorities to act promptly, appropriately, and consistently. *Hutten-Czapska v Poland* (2006) ECtHR, par. 168.

<sup>49</sup> *Zammit and Attard Cassar v Malta* (2015), ECtHR par. 58.

<sup>50</sup> *Op. cit.*, note 8.

<sup>51</sup> *Zammit and Attard Cassar v Malta* (2015), ECtHR par. 58.

to property would be lawful if it provided benefits to the general welfare of society. Consequently, they claimed that the condition of “general public interest” would not be met if property was transferred from one individual to another for private benefit. The Court accepted that interference with the right to property solely for the benefit of one person, without any other reason, could not be considered as serving the “general public interest.” However, at the same time, the Court noted that the compulsory transfer of property from one person to another could serve the public interest depending on the circumstances and could be a legitimate means such as the housing needs of the population<sup>52</sup>.

Similarly, the Court recognized the provision of affordable housing in society as a legitimate aim in the 2009 case of *Amato Gauci v Malta* and the 2020 case *Kasmi v. Albania*<sup>53</sup>.

The 2015 case of *Zammit and Attard Cassar v Malta* concerns commercial lease agreements. The applicants argued that they could not terminate the lease agreement, that rent increases were limited, that they could not bring the rent in line with the market value, and therefore their property rights were violated. The ECtHR stated that restrictions aimed at protecting commercial tenants served the purpose of safeguarding commercial enterprises and their employees, which could be considered a legitimate aim. This decision demonstrates that rent limitations imposed on commercial leases are evaluated in a manner very similar to residential leases by the ECtHR.

In *Pařízek v the Czech Republic case*, the intervention in the rental agreement’s specified rent was brought before the Court by the tenant this time. The tenant argued that local courts intervened in the rental agreement based on an assumption that the landlord was not making a profit or was incurring losses, whereas landlords acquired their property voluntarily with an awareness of the income to be obtained from rental agreements under rent control regulations<sup>54</sup>. The tenant alleged that the decisions of the Constitutional Court and other courts regarding rent limitations unjustly interfered with rental agreements, causing harm to tenants without compensation. The ECtHR determined that intervention through established judicial decisions could also be considered lawful and aimed at the legitimate purpose of removing regulations disadvantageous to certain landlords, allowing them to fully enjoy their property rights. Thus, the Court dismissed the application<sup>55</sup>.

<sup>52</sup> *James v UK* (1986) ECtHR par 38-45.

<sup>53</sup> *Amato Gauci v Malta* (2009) ECtHR, par.70; *Kasmi v Albania* (2020) ECtHR, par.76.

<sup>54</sup> *Pařízek v the Czech Republic* (2023) ECtHR, par. 36-40.

<sup>55</sup> *Ibid*, par. 58/59.

### 5.3. Proportionality of the Rent Controls

It should be emphasized that according to the Court, the mere fact that an interference with the right to property serves a legitimate aim is not sufficient for the interference to be lawful. There must also be a reasonable relationship of proportionality between the means employed and the aim pursued. This balance will not be found if the owner of the interfered with property bears an “individual and excessive burden”<sup>56</sup>. While it’s important to conduct separate analyses of proportionality for each specific rent control legislation, certain conclusions can be derived from the jurisprudence of the European Court of Human Rights (ECtHR) regarding the proportionality test.

#### 5.3.1. Broad Margin of Appreciation

The ECtHR recognizes governments’ broad discretion in such social housing policy preferences. Court thinks decisions regarding whether and when to allow free-market forces to operate fully, or to subject them to state control, as well as the selection of measures to meet the community’s housing needs and the timing of their implementation, inevitably involve complex social, economic, and political considerations<sup>57</sup>.

For example, in *James and Others v. UK case*, the court noted that national authorities, being directly informed about their societies and needs, are in a better position than international judges to appreciate what constitutes the “general public interest”. Therefore, they should have a broad margin of appreciation<sup>58</sup>.

According to the Court, it is not necessary for interference with the right to property to be the only way to achieve the said legitimate aim. The availability of alternative solutions does not in itself render a rent reform law unjust; rather, it is one of the factors considered in determining whether the chosen methods are reasonable and conducive to achieving the intended legitimate aim, taking into account the need for a “fair balance”. As long as the legislative body stays within these limits, the Court does not check whether the legislature represents the best solution to the problem or whether legislative discretion should be used differently<sup>59</sup>.

<sup>56</sup> *Radovici and Stănescu v Romania* (2007), par. 76; *Hutten-Czapska v Poland* (2006) ECtHR, par. 221-222.

<sup>57</sup> *Hutten-Czapska v Poland* (2006) ECtHR, par 166; *Lindheim and Others v Norway* (2012) ECtHR, par.96; *Kasmi v Albania* (2020) ECtHR, par.75.

<sup>58</sup> *James and Others v UK* (1986), par. 46-47.

<sup>59</sup> *Hutten-Czapska v Poland* (2006) ECtHR, par. 223; *Statileo v Croatia* (2014) ECtHR par. 140.

### 5.3.2. Examining Further Constraints and Safeguards in Rent Agreements

The ECtHR also evaluates the proportionality of rent controls in conjunction with other regulations related to the lease agreement. Especially when the landlord's right to unilaterally terminate the lease agreement is restricted for a long time, it is considered disproportionate for rent control to curb a rental price significantly below the market value<sup>60</sup>. For example, in *Zammit and Attard Cassar v Malta*, the court considered the inability to terminate the lease agreement and the fact that the rent received by the applicant remained significantly below the market value when combined with the limits on rent increases, and it ruled a violation<sup>61</sup>.

The *Lindheim and Others v. Norway* judgement ruled that rent control disproportionate burden on the applicant lessors, because lease extensions were indefinite, with rent increases tied to the consumer price index rather than land value. Only lessees could terminate the lease, either by rescinding the contract or purchasing the land under preferential conditions<sup>62</sup>.

The ECtHR holds that proportionate rent control restrictions should include adequate procedural safeguards to maintain a fair balance between the interests of protected lessees and landlords. This is particularly crucial when landlords face significant challenges in terminating rental agreements and obtaining fair rent. The Court's position suggests that the absence of these procedural safeguards could potentially lead to a finding of disproportionality<sup>63</sup>. *Amato Gauci v Malta* case, the Court found that the tenants were subletting their suitable housing to others and did not have a protected interest, concluding that the law did not establish procedural regulations that would ensure a fair balance between the landlord and the tenant<sup>64</sup>.

### 5.3.3. Requirement of Fair Compensation

According to the Court, compensation is necessary to ensure that an interference with an individual's right to property is proportionate when it is deprived. However, full compensation for property damage may not necessarily mean full market value compensation within the framework of the purpose underlying the interference<sup>65</sup>.

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<sup>60</sup> *Statileo v Croatia* (2014) ECtHR, par. 156; *Zammit and Attard Cassar v Malta* (2015), ECtHR par. 58.

<sup>61</sup> *Kasmi v Albania* (2020) ECtHR, par. 85.

<sup>62</sup> *Lindheim and Others v Norway* (2012) ECtHR, par 134.

<sup>63</sup> *Statileo v Croatia* (2014) ECtHR par. 128; *Zammit and Attard Cassar v Malta* (2015), ECtHR par. 58.

<sup>64</sup> *Op. cit.*, note 22.

<sup>65</sup> *Portanier v. Malta* (2019), ECtHR, par. 63.

The Court seeks for the rental price to be sufficient to cover the landlord's taxes, expenses related to the property, and to obtain a reasonable profit. The Court accepts that the intervention is manifestly unreasonable when the income obtained as a result of rent control does not cover the expenses of the property and the lease agreement cannot be terminated for a long time<sup>66</sup>.

In the 2020 *Aquilina v Malta* decision, the applicant argued that both the extension of the lease for an indefinite period and the significant limitation on rent increases during this period violated his right to property. According to the court, rent control should not lead to manifestly unreasonable consequences, such as rental amounts equivalent to 10% of the market value, as in the case at hand<sup>67</sup>.

Similarly, the 2014 case of *Bittó and Others v Slovakia* concerns complaints from landlords in Slovakia during the transition from state-controlled rentals to negotiated lease contracts following the collapse of the communist regime and fundamental reforms. The court found that rent controls made it impossible for landlords to generate rental income or at least cover maintenance costs, thereby violating Article 1 of Protocol No. 1<sup>68</sup>.

In the 2009 case of *Amato Gauci v Malta*, ECtHR evaluated the likelihood of the landlord regaining the right to use the property due to the possibility of indefinite extension of the lease and inheritance as low. Consequently, the Court ruled that in this case, the clear and significant disparity between the highest rent that the applicant could receive, and the long-standing undervaluation of the market price constituted a disproportionate interference<sup>69</sup>.

According to the court, the protected group of tenants may indeed be socially vulnerable with low purchasing power, deserving of protection. However, in such cases, it is deemed contractually inappropriate for the financial burden of funding this group to be solely placed on one group of landlords<sup>70</sup>. Regardless of how vulnerable the protected tenant may be, providing the landlord with a minimum income opportunity is unacceptable<sup>71</sup>.

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<sup>66</sup> *Bittó and Others v Slovakia* (2014) ECtHR, par. 111-113.

<sup>67</sup> *Aquilina v Malta* (2020) ECtHR, par. 29.

<sup>68</sup> *Bittó and Others v Slovakia* (2014) ECtHR, par. 111-113; In the same line *Statileo v Croatia* (2014) ECtHR, par. 128; *Urbárska Obec Trenčianske Biskupice v Slovakia* (2023) ECtHR.

<sup>69</sup> *Amato Gauci v Malta*, par. 63; In the same line *Hutten-Czapska v Poland* (2006) ECtHR, par. 202.

<sup>70</sup> *Hutten-Czapska v Poland* (2006) ECtHR, par 225, *Statileo v Croatia* (2014) ECtHR par. 142; *Radovici and Stănescu v Romania* (2007) ECtHR, par. 88.

<sup>71</sup> *Statileo v Croatia* (2014) ECtHR, par. 142.



## 6. SAMPLES FROM CONSTITUTIONAL COURTS ANALYSES

As explained above, it is also important to consider the underlying causes of the housing problem in the relevant country and whether the rent control legislation in question is effective in solving the problem when assessing its legality. The ECtHR leaves this assessment to the relevant government, conducting its evaluation within the aforementioned framework. National constitutional courts are closer to the field and thus better positioned to assess the effectiveness of rent control within the principle of proportionality.

In nearly every country where rent controls are examined, it is determined that rent control serves the public interest. The principle of proportionality of the intervention is the main subject of examination in the evaluations of the Constitutional Courts. In this assessment, the extent to which landlords can get rental income after the restriction is implemented is crucial. On the other hand, the efficiency and concrete effects of the relevant rent controls, availability of less intrusive methods are often not considered or superficially considered when evaluating the constitutionality of the law. In the author's opinion, constitutional courts should assess whether rent controls achieve their intended purpose. Additionally, problems caused by rent controls, such as an increase in rent disputes, should also be part of this examination. Furthermore, the duration of rent controls should be analyzed because if these controls cause rents to fall significantly below average market rents, they should be considered a temporary measure. Below, evaluations from two Constitutional Courts will be provided as examples.

### 6.1. Germany

The German Federal Constitutional Court has ruled on the constitutionality of the 10% rent cap stipulated in the German Civil Code on July 18, 2019. As mentioned above, the German Civil Code regulates that the rent may not exceed 20% in some areas and 10% in others of the benchmark rent. In this ruling, the court stated that property rights and freedom of contract can be limited in the public interest, emphasizing that property rights do not guarantee maximum profit. According to the court, the restrictions are not contrary to the principle of equality<sup>72</sup>. If the intervention is not disproportionate, it cannot be said that rent controls are unconstitutional. Preventing economically weak groups from leaving high-demand housing areas is important for the public interest. Therefore, rent caps are

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<sup>72</sup> The German Constitutional Court has also previously issued a similar ruling. According to the guarantee of property, it is permissible for landlords of apartments to request a rent increase of up to 30 percent, but they cannot demand a higher comparable rent. BVerfG, Beschluß vom 04-12-1985 - 1 BvL 23/84 u. a. NJW 1986, p.1669.

necessary; there is no other equally effective short-term solution. The legislature aims to find a fair balance between the legitimate interests of property owners and the public interest. The effects of rent control on property are not a threat to the essence of property or the loss of the ability to use property, as it is based on average market prices. It may not be appropriate to impose a single rent level nationwide to establish sufficient connection to regional market rents. Therefore, it is appropriate to apply a special rate, especially in markets where the housing market is particularly tight. Treating individual landlords and corporate landlords the same under the rent caps does not violate the principle of equality. The aim of rent caps justifies applying the maximum rent regardless of the economic significance of rental income for the landlord<sup>73</sup>.

In this decision, the court found the regulation appropriate to achieve its objective, as the legislature's aim with the rent ceiling was to prevent lower-income individuals from being forced out of highly sought-after residential areas due to excessive price increases. Scholars have made similar evaluation<sup>74</sup>. On the other hand, it is also argued that even after such interventions, landlords will still prefer tenants with better financial situations, and that such rent controls are not in accordance with the constitution<sup>75</sup>.

## 6.2. Türkiye

The Turkish Constitutional Court has ruled on previous rent controls several times.

In 1963, the Constitutional Court questioned the constitutionality of rent freezing and determining rent by municipal authorities during a period of high inflation. In this decision, the Court stated that interventions in rent amounts were justified due to the potential threat to housing needs and entrepreneurial freedom if rents were allowed to rise unchecked. However, the Court ruled against the lack of criteria provided for price determination by municipal authorities, the minimal increase in rent compared to other sectors, the disadvantageous position of real estate investors compared to investors in other sectors, and the unequal treatment and disadvantage of landlords due to the inability to determine rent according to market conditions, ultimately leading to the decision of nullification<sup>76</sup>. The court

<sup>73</sup> Bundesverfassungsgericht, [[https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2019/07/lk20190718\\_1bvl000118en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2019/07/lk20190718_1bvl000118en.html)], Accessed 12 March 2024.

<sup>74</sup> Wolfstädter, L.; Rump, C., *op. cit.*, note 22, p. 843.

<sup>75</sup> Leuschner, L., *op. cit.*, note 25, p. 1929; Schultz, M., *op. cit.*, note 22, p. 41; Blankenagel, A.; Schröder, R.; Spoerr, W.; *op. cit.*, note 4, p. 28.

<sup>76</sup> AYM, KT. 26.3.1963; E:1963/3 K: 1963/67, RG.11416, 31.5.1963.

also stated that this law cause unrest among property-owning citizens and such unrest does not fail to affect other citizens, thus, it cannot be accepted that they serve the public interest anymore.

In a decision dated November 16, 2000, the Turkish Constitutional Court examined an mandatory regulation allowing a maximum of 25% increase in rent in 2000 and 10% increase in 2001. It was argued that this limitation infringed upon property rights and freedom of contract. In this decision, it was determined that in order to ensure the right to housing as a requirement of being a social state governed by the rule of law, if the state did not take precautions against housing shortages, rent prices could rise excessively. It was also noted that property rights could be restricted for the public interest and that freedom of contract could be limited for the purpose of ensuring the proper functioning of private enterprises in accordance with the requirements of the national economy and social goals, providing security and stability, ultimately leading to the rejection of the nullification application<sup>77</sup>.

Following these decisions, inflation in Turkey was reported as 39.03% in 2000 and 68.53% in 2001. High inflation triggered new allegations of unconstitutionality regarding the same restrictions. Indeed, on July 19, 2001, the Constitutional Court re-evaluated the constitutionality of the same regulation. In this application, it was argued that limiting the increase to 10% in 2001 was unconstitutional. This time, the court ruled that the 10% rent limit in 2001 was an unreasonable intervention against landlords due to the significant increase in inflation<sup>78</sup>.

## **7. ANALYSIS AND RECOMMENDATIONS FOR EFFECTIVE AND LAWFUL RENT CONTROL POLICIES**

Since rent control interferes with fundamental rights, especially property rights, in an ideal legal system, the legislator should explain the specific problems necessitating rent control with data and demonstrate how and within what timeframe rent control will address these issues. The impact of the rent control measure should also be periodically evaluated with data. However, in many legal systems, the necessity and appropriateness of such interference are not adequately explained by the legislator, and the impact of the measure is not monitored. If less intrusive, more effective measures are available, that option should be chosen first.

Ensuring the right to housing is not an easy task, and planning for housing needs must be long-term, comprehensive, and multidimensional. Governments have var-

<sup>77</sup> AYM, KT: 16.11.2000, E.2000/26, K.2000/48, RG: 24696, 15.3.2002.

<sup>78</sup> AYM, KT: 19.7.2001, E.2001/303, K. 2001/333, RG: 24524, 15.9.2001.

ious methods at their disposal to ensure the right to housing. Among these options, rent controls implemented in the private sector are often the least costly and easiest for policymakers to adopt. Such rent controls attempt to address the multifaceted problem of accessible housing by imposing a financial burden on landlords. Nevertheless, the preference for rent controls mostly stems from their simplicity and ease of implementation as a policy response. Politicians may have low motivation to adopt more effective and costly public policy tools, such as increasing public leasing and social housing construction, even though they may yield more effective results in the long term<sup>79</sup>. However, to achieve an effective solution, factors such as the purchasing power of minimum wage, income inequality, housing demand and supply, lack of social housing and support must be considered together<sup>80</sup>. In most cases, without a multidimensional approach, relying solely on rent controls will not be effective. Studies indicate that the primary reason for the increase in rental prices is the shortage of housing supply, emphasizing that measures that do not address this issue will not be effective<sup>81</sup>. Similarly, on December 16, 2023, in an interview, the head of the Turkish Central Bank stated that rent prices are rising due to a shortage of social housing and that the way to stop increasing rent prices is by boosting the supply of social housing<sup>82</sup>. This indicates that the problem cannot be addressed through rent increase restrictions in existing lease agreements.

On the other hand, rent controls are popular among voters, and this does not discourage politicians from adopting this method<sup>83</sup>. For example, German politicians have recognized the popularity of rent controls, and therefore the introduction of a rent control measure was included in several election programs<sup>84</sup>.

As a result, each rent control measure should be examined considering the specific conditions of the relevant country, the purpose of the rent control regulation, and its details. Nevertheless, the legality of rent controls can be analyzed with a dual distinction. Rent control that only prevents excessive rent increases by indexing the rent increase to the price of a similar average property can be seen as more acceptable. However, it still interferes with the rent that the landlord could freely obtain by renting out their property. Furthermore, the continuous implemen-

<sup>79</sup> Visser, C., *op. cit.*, note 5, p. 362.

<sup>80</sup> Silvia, H.; Christiansen, L., *op. cit.*, note 21 pp. 126-127.

<sup>81</sup> Vilchez, R.; Maria, J.; *op. cit.*, note 29, p. 98; Visser, C., *op. cit.*, note 5, p. 362; Wolfstädter, L.; Rump, C., *op. cit.*, note 22, p. 843; Leuschner, L, note 25, 1931; Buckley, J.; Conley, G., *op. cit.*, note 21; p. 927; Lee, R. G., *op. cit.*, note 6, p. 557; Epstein, R.A., *op. cit.*, note 30, p. 746.

<sup>82</sup> Hurriyet, [<https://www.hurriyet.com.tr/yazarlar/ahmet-hakan/vatandasin-kemeri-zaten-siki-42376770>], Accessed 19 May 2024.

<sup>83</sup> Visser, C., *op. cit.*, note 5 pp. 349-368; Epstein, R.A., *op. cit.*, note 30, p. 768.

<sup>84</sup> Blankenagel, A.; Schröder, R.; Spoerr, W.; *op. cit.*, note 4, p. 3.

tation of this limit will increasingly distance the rent price from the intervention-free market value and the property's worth over time<sup>85</sup>. However, even in this scenario, the appropriateness of artificially limiting rent increases in preferred properties is being questioned too<sup>86</sup>. In this case, the measure does not function to meet the housing needs of low-income individuals at below-market rates. A limitation on rent increases for combating inflation will only serve its purpose if it is part of a comprehensive and effective economic program. Therefore, a proportionality analysis should begin by examining whether the intervention is suitable for achieving its aim. For example, the purpose of the German rent control regulation is to prevent low-income families from being displaced due to high rents in certain popular residential areas. The impact of this regulation on the trend of low-income individuals moving out of highly demanded residential areas should be examined<sup>87</sup>. Additionally, it should be assessed within the principle of proportionality whether the concrete impact produced and the income that landlords could have earned without the intervention are proportional.

At the same time, rent controls are also legislated to provide housing at below-market rents for low-income tenants. The European Court of Human Rights and Constitutional Courts have mostly questioned the constitutionality and conformity to conventions of this second type of rent limitations. Providing rental housing at below-market rates for low-income groups can be seen as serving the right to housing and thus a legitimate aim, but ensuring the right to housing is the duty of the state, and this legitimate aim alone is not sufficient for the intervention to be lawful. It is not acceptable for governments to continuously place the duty of providing housing for low-income individuals on certain landlords.

Setting rent below the market rate, imposing increases below inflation, and additionally restricting the termination of lease agreements should only be a short-term measures<sup>88</sup>. These short-term measures can be adopted to combat acute problems such as mass immigration or extraordinary decreases in housing supply due to a devastating earthquake. Long-term or permanent rent control should at least pro-

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<sup>85</sup> Blankenagel, A.; Schröder, R.; Spoerr, W., *op. cit.*, note 4, p. 27.

<sup>86</sup> One concrete criticism to German rent cap argues that the rise in rents is a result of the state's policies, which almost completely withdraw from its decades-long intensive supply-oriented housing policy. Similarly, the government has also completely withdrawn from the indirect (tax) support of housing construction. Additionally, at the level of municipal land-use planning and other local policies, the designation of new development areas has been greatly neglected. Concurrently, the costs for planning new residential areas have been significantly increased by numerous intervention instruments, such as environmental protection regulations. Blankenagel, A.; Schröder, R.; Spoerr, W.; *op. cit.*, note 4, p. 2; *Op. cit.* note. 75.

<sup>87</sup> *Ibid.*, p. 7.

<sup>88</sup> FEANTSA, *op. cit.*, note 2, p. 136.

vide landlords with the opportunity to earn a reasonable income that approaches market value<sup>89</sup>. While meeting the housing needs of low-income individuals is a legitimate aim, the cost of this objective should not be borne solely by landlords but should be spread across society as a whole. If tenants are protected through a blanket approach, there should be procedural safeguards allowing landlords to demonstrate that the tenant does not need the protection or that the landlord has a greater need for the property and the income it generates. Rent controls that allow for reasonable adjustments in rent based on the average property price or inflation rate, or slightly above these rates, and provide for periodic updates proportional to the value of the property can be considered acceptable, because in these cases it can be accepted that landlords are fairly compensated.

## 8. CONCLUSION

Considering that providing housing and planning to meet this need is the duty of the state or government, not landlords, unless there is a market failure preventing the correct determination of rent, legislatively controlled rents below market levels transfer income from landlords to tenants, disrupting the housing market balance. Although this intervention might have a legitimate purpose, such as providing housing for low-income residents, it is still difficult to justify this transfer. This approach provides a tempting but superficial solution; it does not address the housing shortage itself. The only real solution lies in increasing the supply of social housing. Additionally, as explained above, such rent controls usually have serious efficiency problems and cause other social and economic challenges. However, rent control might offer a temporary solution while more lasting and less intrusive measures are pursued. To achieve an effective solution, factors such as income disparity, the purchasing power of the minimum wage, housing demand and supply, and the lack of social housing and support must be considered and planned together.

The ECtHR leaves the assessment of the necessity and effectiveness of rent regulations to the relevant national governments. However, in the proportionality assessment, whether the intervention serves its purpose, in other words, whether it is effective, is also important. Similarly, national courts tend to focus more on the financial loss suffered by the landlord, with the effectiveness of achieving the aim either not being evaluated or remaining superficial.

In evaluating rent controls, the assessment should not only consider the financial burden on the landlord and the extent to which the tenant deserves protection. It should also take into account whether the rent control regulation serves its purpose

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<sup>89</sup> Sheldon, S., *op. cit.*, note 44, p. 650.

or how it might cause other problems, as part of evaluating the proportionality of the intervention. The existence of alternative solutions and their non-preference by governments should also be taken into account.

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