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Forced relocation and tenancy law in Europe

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ABSTRACT

Tenants are in a vulnerable position in relation to investments by landlords in their homes. Both, overinvestment, resulting in gentrification, and underinvestment, resulting in deterioration, are processes that have been well analysed in studies on gentrification and rent control. Much less is known about institutions that seek to ensure a balance between overinvestment and underinvestment. Tenancy law may be one of these institutions. Based on a Europe-wide survey of tenancy law produced by the FP7 TENLAW project, this paper analyses the role of tenancy law in the legal positions of tenants towards investments by landlords in their properties. A special focus is on the position of tenants in urban renewal, especially since urban renewal may result in the relocation of current tenants through the force of law. The legal relationships between landlord and tenant are classified by four ideal typical positions — namely short-term contracts, in which security ends with the termination of the contract, long-term contracts, which provide tenants more security of tenure, but which have also provisions to terminate the contract for reasons of urban renewal, protected tenants, who can only be relocated if a suitable alternative dwelling is provided, and informal users, who cannot rely on the safeguard of a rental contract, but have some legal protection based on the European Convention of Human Rights.

1. Introduction

Tenants live in homes owned by landlords who have specific powers and duties in relation to maintenance and investment. Without investment in property, buildings deteriorate, which may eventually result in the abandonment of whole areas. It is generally in the interest of tenants, then, that some investment takes place. It may even be in the tenants' interest that investments go beyond simple upkeep and repair. Throughout the last century, investments in sanitation, electric lighting and heating systems have improved the health and safety of homes as part of the general improvement of housing conditions. Currently, investment in the energy-efficiency of homes can lead to lower energy bills for tenants, helping to keep homes affordable, for example (Haffner & Boumeester, 2015). Landlords may prefer to raise rents to shift the cost of these investments to the tenants. Consequently, rules that protect tenants from rising rents, such as systems of rent control, may result in underinvestment and the misallocation of housing, fuelling the emergence of black markets (Jenkins, 2009; Tsenkova, 2014). Recent studies also show that the specific design of a system of rent control matters and that smarter ways of regulating rents, such as the Danish model (Skak & Bloze, 2013; compare Andersen, Turner, & Søholt, 2013) and Swedish (Lind, 2015) cases, have more refined outcomes. Overinvestment by landlords is an issue that has attracted even more attention than underinvestment, especially in the context of gentrification. Landlords may aim to renovate properties in order to attract tenants who will pay more than the sitting tenants. This forces current tenants to move out, and puts upward pressure on rents and property taxes for those who stay, making the area unaffordable (Hartman, 2002/1984).

Both processes – underinvestment *and* gentrification – have been relatively well covered in the literature (Atkinson, 2012). It has been shown that these processes can be triggered in many contexts and situations, resulting in a rather pessimistic view for tenants, whose position seems to be very delicately balanced. The current paper aims to contribute to knowledge about developing more a balanced relationship between overinvestment and underinvestment. The idea is that certain institutions, including tenancy law, could provide buffer capacity, making tenant–landlord relationships less sensitive to the 'acid' of gentrification or the 'base' of underinvestment, and so provide more security and stability for tenants. The idea is that this buffer capacity may differ between different systems of tenancy law. However, there is insufficient insight into what these legal differences are and how they affect these relationships. The legal position of tenant households is 'under-theorized and under-researched' (Hulse & Haffner, 2014, 573). Many studies on urban renewal and, especially, on the forced relocation that urban renewal causes do not analyse tenancy law itself but only the urban policies that result in relocation and the social movements that fight these policies by defending rights that are not protected under the current legal system (Curti, Craine, & Aitken, 2013; Maeckelbergh, 2012). However, the legal system is not immutable by nature and absolute rights do not exist. Even within Europe, a wide variety of tenancy law can be found, and these impact the position of tenants in urban regeneration processes. Although research suggests

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that there is a 'common core' (Schmid & Dinse, 2013) established by the European Convention of Human Rights (ECHR) as interpreted by European Court of Human Rights (ECtHR) (see also Ploeger & Groetelaers, 2007), there are also differences in the way that national practices apply these principles. The ECtHR, on the one hand, found, in the context of forced relocation, violations of landlords' due process rights in many Italian cases, and, on the other hand, has criticised the way that the right to respect for the home is handled in several cases from the United Kingdom (Schmid & Dinse, 2013). Court cases, however, provide only a selective overview of legal reality.

This paper aims to contribute to our knowledge on buffering tenant–landlord relationships, specifically by studying the legal position of tenants versus forced relocation in the context of urban renewal. The assumption underlying this is that the law matters in protecting the interests of tenants in urban renewal. After all, forced relocation is most often relocation forced by law. Based on the criteria developed by Hartman in the classic paper on "The Right to Stay Put" (Hartman, 2002/1984) and the analysis of Tenancy law in Europe in the TENLAW project (Schmid & Dinse, 2014), ideal types of relationships between tenants and landlords will be developed and evaluated.

This study fits within a wider context of research, based on the observation that processes of restructuring 'are affected by institutional arrangements and legal framework' (Kleinhans & Kearns, 2013, 166), meaning that "…social housing systems, and processes therein, vary between countries so that the extent of choice and control within relocation processes differs in ways which make a crude distinction between 'forced' and 'voluntary relocation' unhelpful to the explanation of outcomes across contexts" (Kearns & Mason, 2013, 183). Important differences, framed by rules, can be found within Europe (Posthumus & Lelévrier, 2013). This paper helps us to understand what differences there are in the context of forced relocation, which may be relevant for its impact.

The next section discusses tenancy law, relocation and urban renewal. This is followed by sections on our methodology and findings. The paper concludes with a discussion and conclusion.

2. Tenancy law, relocation and urban renewal

The legal traditions of different countries provide a range of definitions of the relations between tenants and landlords. Generally speaking, rights relating to property can be considered to be relations between people about things, such as the relationship between a tenant and a landlord about a dwelling. This relationship, however, fits within a wider social fabric of relations, that is 'a relational web of obligations, connections, and potential negative externalities' (Blomley, 1997, 293). Property rights are a 'web of interests' (Arnold, 2002). In urban renewal, the relationship between the local authority and the landlord and, directly or indirectly, the tenant is relevant. Usually urban renewal must be based on the planning powers of the local authority. These planning powers may also be enhanced with extra powers vis-à-vis landlords and tenants in order to promote urban renewal.

Since rights relating to property concern relationships between people about things, these rights are relative to those relationships and not absolute, but 'some rights are more powerful than others' (Porter, 2014, 389). The most absolute private property right, at least in legal doctrine, is the civil law concept of ownership, as 'the most complete absolute right, in respect to both content and duration, that a subject can have in regard to an object' (Van Erp, 2003, 4), which is based on the Roman law concept of dominium. This right is, however, not absolute in relation to the state (Booth, 2002). The state has a 'dominium eminens' (Grotius, 1625) and can expropriate property if this serves a public utility, such as the implementation of planning policy (Korthals Altes, 2014). Moreover, the state limits the exercise of property rights, for example through environmental regulations, planning provisions or rent controls. Modern history has witnessed the 'progressive socialization' (Léwy, 1956, 167) of property rights. These limitations on property rights are designed not only to protect public interests, but they also serve private interests (Léwy, 1956), such as the interests of tenants, where this is deemed in the public interest. In a civil law doctrine, these rights still constitute part of ownership since government does not take these rights, but simply limits the exercise of those rights. In a common law context, the idea of property as a bundle of sticks may imply that one of these sticks is taken out of this bundle by government. Generally speaking, rent is a right that an individual has in order to use a property owned by someone else in exchange for a periodic payment. However, there are many differences between tenants' rights under different jurisdictions, and these differences appear to be relevant to the position of tenants in processes of urban renewal.

A very specific account of the role of tenant rights in urban renewal is Chester Hartman's classic paper on "The Right to Stay Put" (Hartman, 2002/1984). The basis that Hartman works on is what he considers to be that of the vast majority of American tenants and landlords. Here, 'the landlord has the right to evict tenants for virtually any reason, with but thirty-days' notice or upon termination of the lease period' (Hartman, 2002/1984, 127). Such a 'no-grounds termination' (Easthope, 2014, 586) can frame the relationships between tenants and landlords; for example, in relation to proper maintenance, tenants may fear that any complaints will lead to termination by the landlord.

Based on Hartman (2002/1984), the dimensions by which tenants' rights can be analysed are the following. Firstly, there is the landlord's right to evict. Hartman criticises the principle of eviction on any grounds. The aspirational level Hartman proposes is that (a) the law must specify a set of acceptable reasons, and that the landowner bears the burden of proof in relation to these reasons and that (b) these reasons must only apply to the conduct of the tenant(s), such as failure to pay rent, damage to the property, nuisance to the neighbours and violation of basic contractual terms, and may not apply to choices of the landlord, such as needing a property for his/her own use, refurbishment or taking the property off the market. One of the remarks that Hartman makes is that if grounds such as refurbishment can be used to evict a tenant, systems of enforcement must be put in place to assess whether such refurbishment actually takes place. A second point relates to the conditions under which eviction can take place. A thirty-day notice period, also in mid-winter, is the current practice or basic case. Anything more is an improvement. The third point is the lease period. Is it enduring, as is Hartman's aspirational level, or short-term as in the basic case? The fourth criteria concerns rent levels. The basic case is that a landowner can terminate a rental agreement for no reason and start a new one for any higher price. For the aspirational level, Hartman sets five criteria, which are as follows (a) rent increases must be based on real and unavoidable cost increases born by the landlord, (b) there must be no escape routes from effective rent control, (c) the rent control must cover most of the rental stock and (d) must regulate for all forms of tenure and (e) there must be a good and accessible system of enforcement. To interpret this framework, it is necessary to see the broader picture: "The right to stay put is but a short step from a right to be decently housed" (Hartman, 2002/1984, 130). Criticisms of displacement and projects 'concern basic housing rights: the demand that an affluent society should guarantee a minimally decent standard of affordable housing to its members' (Fenton, Lupton, Arrundale, & Tunstall, 2013, 377). In this way, the right to stay put can be seen as a step towards the right to a decent home and not as a final or an absolute goal.

Although the issue of security of tenure is much debated in housing studies (Fitzpatrick & Pawson, 2014; Hulse & Haffner, 2014), it seems that an absolute right to stay put is a rather utopian idea. Within the European context, human rights are in practice never absolute, but there is an 'inherent' (Christoffersen, 2009, 90) search for a fair balance between the incompatible human rights of various individuals and the role of the state to pursue the public interest. Forced relocation, implying that 'housing authorities and landlords decide who has to