

Report - Hearing#10: "Unsocial rents in social housing - a new attempt to reform social housing?"

At the tenth hearing of the IniForum, there was a lively discussion about whether the so-called obligatory rent (Verpflichtungsmiete) in the old social housing sector represents an improvement or a deterioration. The event was a case for specialists.

The reason for the hearing was the upcoming reform of the Housing Act (Wohnraumgesetz), which regulates so-called old social housing.

"Nothing is going well here" (Nichts läuft hier richtig) was the title of a conference in 2012 on rent levels in social housing. Since then, initiatives such as "Kotti & Co." and Mieterstadt.de have been fighting to cap social rents – which are sometimes higher than the rents of privately financed apartments, even though the old social housing was subsidised with large sums of money. The point of contention was and is the economic rent (Kostenmiete), which is now to be replaced by a statutory obligatory rent (Verpflichtungsmiete).

Sebastian Jung from Mieterstadt.de explained that the new regulation would allow landlords to claim costs from tenants that they had previously contractually waived without the IBB being able to sanction them as a supervisory body. Early voluntary repayment of loans would also reward landlords: "This will accelerate the end of the social bond." He is also concerned about the possibility that landlords could claim so-called extraordinary maintenance measures.

Andrej Holm explained how long a reform of social housing had been under discussion and criticised the administration: Over two legislative periods, it has undermined the agenda of the respective coalition – the comprehensive reform of social rents and the cancellation of notional costs – as well as the preference of the experts to retain the economic rent. It had made the abandonment of the economic rent law the basis and repeatedly presented the "2nd Act to Amend the Berlin Housing Act". In the meantime, the political will of the administration has adapted – and the law will probably be passed quietly.

Stephan Machulik, State Secretary for Housing and Tenant Protection, disagreed: "The administration only implements what the politicians send out," he said. It is necessary to pass the law now because it also regulates the increase in rent subsidies. The pension increase last year meant that many existing tenants lost their entitlement to these subsidies; another pension increase is due in July. Moreover, the obligatory rent was not being introduced for the first time – it had been around for a long time – but only standardised because it had not been enforceable for IBB. In 2022, violations were reported for 49 properties with 1,925 apartments, but the IBB was unable to act. With the standardisation of the law, she could now take legal action before the administrative court.

Dirk Böttcher, Head of the Housing and Rental Policy Department, also rejected Holms' accusation. No foreign power under the name of Administration thinks up something and tries to enforce it. Following the conclusion of the expert commission, the administration has done what was not included in its final report, but was set out in the 2016 coalition agreement: to present an income-oriented guideline rent for social housing. "We put a lot of work into the draft bill, but it was never passed." It is a fundamental question of what is fairer for the tenants: Rent according to their income or – as with the economic rent law – according to the random financing structures of their builders or owners. From the point of view of fairness, he found the then draft bill on the guideline rent very good. Nevertheless, they had resigned themselves to the fact that the draft bill had been lost. It is all the more important that the MPs pass the draft bill now before them because the obligatory rent is always lower than the economic rent. The obligatory rent had already had to be agreed when the subsidy was approved; capital costs etc. had already been factored out. The obligatory rent, therefore, fulfils precisely the requirement to deduct fictitious costs. It is four euros

lower than the economic rent. "I can see nothing wrong with authorising the IBB to sue for compliance in the administrative court instead of leaving this to the tenants," he said. The economic rent law is federal law and the obligatory rent is a Berlin speciality that must be made legally secure and enforceable in court.

He explained the unauthorised rent increases: Neither the IBB nor the Senate could now set arbitrary rent increases. If anyone knows of an example where the rent has been increased due to extraordinary maintenance measures, please let it know – it knows of none. If expenditure loans are redeemed early, which is lawful, there is a twelve-year grace period for the social commitment and the rent is frozen.

Many questions arose in the further discussion: Where it is stated that the future obligatory rent will always remain below the economic rent, as well as after the debt cancellation gains. Are simulations and calculation proposals for the obligatory rent available? How can tenants be protected from rent increases due to extraordinary maintenance measures?

Thomas Thron, group leader in Dirk Böttcher's department, explained that the draft bill stipulates that the rent frozen in the event of early redemption cannot be reduced. According to the Housing Commitment Act, an additional agreement should be created to close the existing regulatory gap and create the possibility of sanctions. Repaid loans should no longer be included in the economic rent. The proposal to prevent the charging of such costs by law or regulation is hardly legally feasible. Numerous reviews have already been carried out. A Berlin ordinance could not replace the economic rent law.

An extension to apartments without follow-up funding would be problematic: "Properties with different subsidies or initial circumstances cannot simply be assigned the same restrictions." It has not been ruled out in principle, but various tests have identified major risks.

In response to the question of the impact assessment, Peter Ludolph explained that it concerned around 50 properties with almost 2,000 apartments where, according to the IBB, the obligatory rent had been exceeded. These households could be helped with the possibility of initiating administrative offence proceedings. The law would also benefit the 65,000 apartments with follow-up funding for which no violations are known, as the rent for them could be fixed at the level of the comparable rent.

Thomas Thron added that there is the possibility of certain extraordinary maintenance measures for apartments with follow-up funding. However, a multi-stage approval process is planned for these, at the end of which the consent of the tenants and the responsible senate administration is required.

In a concluding remark, Andrej Holm summarised the difficulties that the initiatives continue to face: It was to be feared that certain areas would be conclusively regulated by the law, while further reform possibilities would be blocked. Uncertainty is also caused by the black box of extraordinary maintenance measures. If the law stated that the obligatory rent may not exceed the economic rent, this would take a lot of tension out of the discussion and provide certainty. "Why isn't the law used to build in an additional hurdle for the early exit from social housing?" he asked. This could counteract the already rapidly shrinking stock of social housing.

In view of the many years of developments, the current meeting was long overdue; there have been times when such draft laws were discussed more with initiatives and activists – and not just in such ritualised formats as the hearing.

