

Relationship between the Right to Adequate Housing and Urban Policies (Particularly Planning and Land-Use Planning Policies) in Portugal

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Abstract

The right to housing is more than “the right to a roof and four walls”: it is the right to decent housing that, in order for it to be so, makes it necessary to comply with a wide set of requirements, which demonstrate the complexity of the actions needed to reach it. This text places particular emphasis on urban policies and land-use planning instruments, which are placed as relevant tools to achieve the public housing policies that guarantee the right of everyone to decent housing.

Keywords

Right to Housing, Decent Housing, Urban Policies, Land-Use Planning

1. General Characterization of the Right to Housing

Having a safe place to live corresponds to a fundamental condition for dignity, physical and mental health, as well as the overall quality of life of any human being. Therefore the *right to housing* is universally considered as one of the basic needs of man, and thus a human right as such recognized by the Universal Declaration of Human Rights (1948), by the International Covenant on Economic, Social and Cultural Affairs (1966) and by the United Nations International Covenant on Civil and Political Rights (1966).

The right *to have a home* is, however, much more than the right to have *one roof and four walls*: as far as the respect for the dignity of the human person is concerned, all citizens should be able to enjoy a place in which they feel they belong and a physical space that can be formed as a home to live safely, with pri-

vacy and without risk to their physical and mental health.

Consequently, more than the *right to housing*, this is about the right to have *decent or adequate housing*, which is not (and can never be) considered a luxury or privilege, only within reach of whom, for personal fortune reasons or any other circumstance of life, has the ability to pay a price for it.

Achieving *decent or adequate housing*, involves the carrying out of a complex set of actions.

1) Firstly, the right to decent housing implies security of ownership, namely, the right to live in a place without fear of being displaced, or of suffering unjustified or unexpected threats, which depends on the legal system or culture of each country, region, city or people.

2) It also involves the existence of an adequate space and location to live, which should be served by the necessary infrastructures (such as water, basic sanitation, gas and electricity), equipment (e.g. schools, kindergartens, health, sports and leisure areas) and by urban services (e.g. public transport, cleaning, refuse collection, communications). In this context, a home is decent if the territorial and social context in which it is inserted is also appropriate¹.

Precisely in this sense points Article 14 of Law No. 83/2019 of 3 September that approved the first Portuguese Basic Housing Law, which states:

*“The guarantee of the right to housing includes the existence of a **habitat** that ensures conditions of health, safety, environmental quality and social integration, allowing the full enjoyment of the dwelling unit and spaces and equipment for collective use and contributing to the quality of life and well-being of individuals and for the creation of neighborhood and community ties, as well as for the defense and enhancement of territory and landscape, the protection of natural resources and the safeguarding of cultural and environmental values”.*

3) Adequate housing also requires economic accessibility (an affordable house is that *“whose costs should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised”*. <http://www.hrea.org/>²), and the Governments must ensure that housing associated costs are in line with the income levels of the individuals: for those with incomes below what is necessary to guarantee housing and access to the satisfaction of the most basic needs, they must seek to establish a system of housing benefits or aids that will allow a decent standard of living (e.g. social housing).

4) The right to adequate housing also involves *habitability*: adequate housing must have good safety, health and comfort (living) conditions, which demands the existence of adequate regulation. According to Article 9 of the Portuguese Basic Housing Law, a house is considered adequate for its residents if its area,

¹In terms of location, housing should still be located in a place that offers opportunities for economic, cultural and social development (e.g. being close to places with job offers and sources of income) and that allows access to environmental goods and a balanced environment (places with good environmental quality).

²Affordable cost (for housing purchase or rental) does not compromise the family budget and allows to accomplish other rights, such as the right to food, leisure, etc., which also means that the costs of house maintenance (such as electricity, water and gas expenses), cannot be too onerous.

(the number of divisions) and the available water, sanitation and energy solutions are sufficient and do not cause situations of insalubrity, overcrowding or risk of promiscuity³. According to this Article, the law should define the minimum requirements for housing qualification, taking into account the number of rooms and area, its conditions of hygiene, healthiness, comfort, safety and accessibility, having public entities to guarantee it, to promote environmental sustainability, energy efficiency, fire safety, and enhanced seismic resilience of buildings⁴.

5) Finally, the right to adequate housing requires non-discrimination and prioritization of vulnerable groups. Adequate housing should be accessible to vulnerable groups in society such as the elderly, women, children, people with disabilities, victims of natural disasters, refugees etc., and housing laws and policies should prioritize to take care of these groups and bring into account their special needs. This also entails cultural fit (e.g. how houses are built and the materials used, should express both identity and cultural diversity of the residents).

2. The Role of Municipalities and Their Urban Policies in the Fulfillment of the Right to Housing

This wide set of constitutive elements of the right to adequate housing makes it possible to identify several areas to be considered by public authorities: because a social right is at stake, citizens are entitled to demand from public entities (Governments and Municipalities) a range of benefits to which they have to respond according to their constitutionally defined responsibilities.

In this regard, special emphasis is given to the urbanism and land-use planning responsibilities: the strict connection between the *right to housing* and planning law arises, in particular, from the Constitution of the Portuguese Republic which directly relates them in Article 65 under the title “Housing and urbanism”. According to paragraph 2 of this constitutional provision:

“In order to guarantee the right to housing, it is the State responsibility.

1) *To programs and implement a housing policy within general planning plans and supported by urbanization plans that guarantee the existence of an adequate transport and social equipment network” (our underlines).*

Among public entities in Portugal, the municipalities play the most relevant role in this area. In addition to their housing competences and recognizing the importance of their intervention to guarantee the fundamental *right to housing*, the legislator has transferred to the municipalities a large number of the Gov-

³According to paragraph 3 of this article, there is a risk of promiscuity and inappropriate housing for its residents when it is not possible to guarantee differentiated sleeping rooms and sanitary facilities to preserve the intimacy of individuals and family privacy.

⁴In Portugal, there is specific legislation in the licensing of residential buildings which imposes the preparation of projects for water and sewage networks, rainwater, power supply and distribution of electricity, telephone and telecommunications installations, gas installation, fire safety and thermal and acoustic behaviour. In what concerns to interventions in buildings before the existence of this legislation, Decree-Law No. 95/2019, of 18 July, allowed the waiving of some of them, formulating, however, the laws that regulate them, requirements that the buildings must, nevertheless, comply with.

ernment competences in this domain through Decree-Law No. 105/2018, of 29 November. Now, it is the responsibility of the municipalities for:

- 1) The management of urban lease and urban regeneration support programs;
- 2) The management for social purposes of the Government housing stock, through the celebration of agreements that may include conservation and rehabilitation of these housing;
- 3) The lease or exploitation of dwelling units;
- 4) The assignment of social housing.

The reason for this transference of responsibilities from the Government to the municipalities, is due to the bigger proximity that these entities have to the needs of the citizens. This enables them to have a better knowledge of reality, to be able to more efficiently evaluate existing housing (and social) problems and to more directly promote the necessary support for needy households and owners.

This transfer is also justified because the municipalities have a relevant role in defining urban policies (such as regeneration and rehabilitation policies) and land-use planning (with particular emphasis on the approval of municipal plans). In fact, relevant issues in housing policy, such as the location of houses, the number of dwellings, the typological characteristics of buildings, the price, the form and ease of access, and their use, are basic topics of land planning, especially urban planning, therefore this means that urban planning is a fundamental component to articulate the regulatory and the financing dimensions to ensure the fulfilment of public housing responsibilities.

This is why Article 21 of the Portuguese Basic Housing Law says:

“For the proper implementation of local housing policy, municipalities must integrate the municipal housing policy into land-use management instruments, taking precautions to foreseen adequate and sufficient areas for housing use and guarantee the managing and preservation of municipal housing heritage, ensuring its maintenance”⁵ (our underline).

3. Right to Housing and Land-Use Planning

But it is not only for this reason that planning instruments are considered such important housing policy instruments. The land-use and urban plans also appear as relevant instruments to guarantee a city/territory for all. This is because the process of approving a plan is a *interests weighting process*, where the housing interests (needs) of the population, particularly the socially most disadvantaged ones, are especially important so that the plan can incorporate into their regulations *standards* relating to these needs as a solution to housing problems

⁵To this end, municipalities may in particular to build, rehabilitate, rent or purchase affordable housing; to promote the construction or rehabilitation of cost-effective housing; to contribute to the improvement of dwelling conditions of the housing stock; to promote the urban regeneration of degraded areas and the reconversion, where possible, of illegal urban areas; to practice a soil policy compatible with the objectives and goals of the municipal housing policy and adapt them to the municipal tax policy; to prevent urban gentrification; to participate, in liaison with local social services and networks, in national programs and strategies for homeless people, to fight racial or ethnic discrimination and to protect victims of domestic violence (Article 21 of the Housing Bases Law).

[1] [2].

Moreover, planning options—which are presented as the result of that *interests weighing process*—can (and must) create solutions for positive discrimination to disadvantaged groups (because of their insufficient economic status and quality of life), and hence be considered as social and environmental just options.

Within the same goal, the urban plan can avoid territorial solutions that only burden minority or disadvantaged social groups. Thus, for example, locating unwanted land uses, frequently with negative environmental and territorial burdens (or relocating existing ones), should be done in such a way as to avoid systematic proximity to more fragile social groups (from an ethnic, economic, cultural point of view) which, furthermore, do not have the same capacity as the rest of the population, either to trigger an appropriate reaction or, ultimately, to relocate housing, work or recreation.

Urban planning instruments can also promote the development of urban policies aimed at creating and developing jobs in districts with problems, opening them up to the rest of the city, promoting a greater social and functional mix in these districts, as well as of policies promoting greater residential mobility and urban security of its inhabitants [3].

Municipal plans also attend to ensure the coexistence in the same region of diverse urban uses (residential, industrial, commercial) and/or housing typologies destined at different social classes, with which it is promoted the coexistence, in a common space, of people from different social classes or distinct cultural groups, and the territorial cohesion.

One of the techniques in the American legal system adopted to achieve this goal—of mixing social classes in the same city to strengthen social cohesion—is *inclusionary zoning*. This technique aims to guarantee the inclusion of disadvantaged populations in certain urban areas by imposing, to private investors, affordable housing or a minimum percentage of low-income housing units, which, in some cases, are accompanied by federal aid⁶ [4].

In short, land-use planning instruments are relevant for the quest for housing policies [5] [6]. The integration of housing issues into territorial planning policies allows us to overcome the traditional urban planning paradigm, which had as its characteristic hallmarks: 1) the almost exclusive attention to the protection of property rights (forgetting its social integration or reintegration aspects and other distinct constitutional rights); 2) the view of the *right to housing* from a predominantly economics perspective (looking at housing production as a sector of economic activity); and 3) the decoupling of housing issues from those of urban planning (lack of integration of housing programs, especially those for unprotected classes).

⁶The inclusionary zoning technique was intended to overcome others that, under the cover of regulating land use, worked out as authentic urban segregation and exclusion practices for poor racial minorities: covenants; redlining; setting of minimum buildable parcels; limitation of the number of dwellings to be built; construction of isolated single-family houses with refusal to build multi-family housing; absence of areas reserved for social housing or low income; and exclusionary zoning.

The consideration of housing issues transforms the plans into an instrument that empowers the correct provision of public services to the different population segments and the effective respect for constitutional rights. Plans are no longer a pure instrument for regulating property rights, but rather concern themselves with social issues.

In addition, the incorporation of social (and housing) concerns into territorial planning enhances the fundamental ideas of equity or social justice and, consequently, of the reasonable distribution of costs and benefits generated by the city [7].

4. Relationship between Planning Policies and Housing Rights in the Portuguese Basic Housing Law

The importance of planning and land planning policies in the implementation of the *right to housing* is expressed in the Basic Housing Law, which contains a whole chapter about the articulation between housing policies and soil and land management policies.

Hence, according to this law, it is the public land-use planning instruments that allow the availability and stock of public soils to ensure, namely: 1) the regulation of the housing market, promoting the increase of supply and preventing land and real estate speculation; 2) public intervention in the areas of housing and urban regeneration to address housing shortages and habitat enhancement needs; 3) the location of the infrastructure, equipment and green areas or other for collective use that promote the well-being and quality of life of the populations.

Also, urban policies include adequate instruments to promote the property and cadastral regularization of soils where urban areas of illegal origins or precarious housing clusters are located (as long as they are susceptible to reconversion or regeneration), as well as to guarantee the free transfer of plots to the municipal private domain in ways that allows them to be allocated to public housing or re-housing programmes (for example, in the scope of urban management).

In addition, capital gains resulting from land-use changes provided by territorial plans or urban operations may be redistributed accordingly with the law or allocated to public housing programmes.

Finally, it should be mentioned the possibility for municipalities to elaborate *Local Housing Strategies* (mandatory instrument for municipalities wishing to access the so-called “*Programa 1° Direito*”, a Housing Access Support Programme) and *Housing Municipal Letters*, which should be articulated within the framework of the municipal master plan along with the other planning management instruments and other strategies approved or thought for the municipal territory.

According to Article 22 of the Basic Housing Law, this Letter shall include: 1) the diagnosis of housing shortages in the municipality area; 2) the identification of housing resources and local potentialities, namely on expectant urbanized

soil, abandoned urban allotments or buildings, and vacant, degraded or abandoned dwellings; 3) the prospective planning of the needs resulting from the installation and development of new economic activities to be started; 4) the strategic definition of the objectives, priorities and goals to be achieved within their term.

It should also identify: 1) the needs of urbanized soil and the building rehabilitation that responds to housing requests; 2) situations that require housing resettlement due to social or urban degradation of housing or building; 3) the identification of households in a situation of manifestly lacking of means to access housing; 4) interventions to reverse population loss and gentrification processes; 5) the identification of agents, public or private, who are responsible for implementing the interventions to be developed; 6) the identification of agents from the cooperative sector, the social network and resident associations or committees, called upon to cooperate in order to implement the interventions to be developed.

The Housing Bases Law also states that these *Housing Municipal Letters* should incorporate, when necessary, a reasoned declaration of housing shortage, which, in addition to giving the municipality the priority in access to public financing for housing, urban rehabilitation and integration of disadvantaged communities, enables the municipality to reinforce areas projected for residential use in territorial plans and to condition private urban operations to fulfil municipal permanent housing targets at controlled costs.

5. Conclusion

With the present text, we intend to present urban policies, in particular land-use planings as instruments that allow to guarantee relevant dimensions of the right to adequate housing: location, access to equipment and infrastructure, adequate green spaces, etc., promoting the quality of people's lives.

The study of planning instruments and their several dimensions thus presents itself as a research tool that must be developed to guarantee the right to housing of all human beings.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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