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## TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

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### **Intra-team Comparison Report for**

### **CYPRUS, GREECE, ITALY**

Author: Ranieri Bianchi

Team Leader: Elena Bargelli

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## **ZERP Tenancy Law Project**

### **Comparative Report on Cyprus, Greece and Italy**

#### **Introduction**

The aim of this report is to provide a comparison of Cypriot, Greek and Italian tenancy law systems. Notwithstanding some similarities, the current housing policies and legislations of these three countries are very different. While several regulations of the private rental market were established in Italy in the 1900s and still play a prominent role, in Greece and Cyprus they were introduced much more recently and to a more limited extent.

The first part of the comparison focuses on the historical evolution and on the current situation of the national housing systems, while the second part compares the most significant regulatory aspects.

#### **1. The current housing situation**

##### **1.1. General Features**

###### **1.1.1. Historical evolution of the national housing situation and housing policy**

The development of housing policies in Italy, Greece and Cyprus has followed different paths. In Italy it began in the early 1900s as a consequence of industrialization and the necessity to provide housing for low-income people moving from the countryside to the cities. This increased after the destruction of the two world wars and the economic boom, which were the stimulus for policies financing the building of a great number of public dwellings. At the same time, several types of incentives for home ownership were enforced. Regarding the private rental market, from the 1920s various limitations in the contractual freedom were introduced, consisting of capped rents and forced prolongation of tenancy contracts. Although these were initially designed to be short-term, they were reiterated time after time until the Fair Rent Act came into force in 1978. This law introduced rent control on a permanent basis and a mandatory minimal duration of all residential tenancy contracts.

Changes began in the 1980s when investments in public housing were reduced. Home ownership continued to be subsidised, while the rental market started to be liberalized from the beginning of the 1990s. The new tenancy law came into force in 1998.

In Greece housing policies are less developed and began as a consequence of the huge exodus of the Greek population from the Asiatic coasts of Turkey to the mother land in the 1920s and then due to the social changes following the second world war. However these policies have never led to building homes and nor have they regulated the private rental market. They have only provided subsidies for buying or

renting houses. In 2012 this form of welfare state was suddenly interrupted as a consequence of the dramatic economic crisis in the country.

Likewise, housing policies in Cyprus are mainly a consequence of the exodus of the population from the part of the island occupied by Turkey in 1974. However in this case helps also included the provision of homes or at least of state land for self-building.

Despite these differences and the even more significant differences in population (Italy: 59.5 million; Greece: 11.2 million; Cyprus: 870,000), the percentages of housing tenures nowadays are not so dissimilar. The share of home ownership is high but below the EU-27 average (73.5%) in all three countries. In Italy this is the result of a progressive increase, since the 1990s until the beginning of the crisis, which is mainly the consequence of high sales of dwellings owned by public entities in order to swell the state's coffers as well as the increase in bank loans. On the other hand, both in Greece and Cyprus, where the shares of home ownership were already higher, the situation has remained more stable during the between 1991 and 2011. In the last fifteen years in Italy the share of rent has been clearly affected by the trend in home ownership : initially there was a decrease, and then in 2010 there was a rise following the economic crisis and the drastic cut in loans for new homes.

Rental tenures in Greece were again more stable, though with a similar trend to Italy, which seems to be mainly affected by migration from abroad, which largely heads to the rental sector<sup>1</sup>.

Cyprus had quite a significant increase in rental tenures, which reflected a reduction in other intermediate forms of tenure. The latter are instead quite stable both in Italy and Greece.

It is worth noting that in Italy, unlike Greece and Cyprus, about a quarter of rental tenure is composed of public housing, which corresponds to 5.5% of the total in 2012<sup>2</sup>.

**Table 1**

	<b>ITALY</b>	<b>GREECE</b>	<b>CYPRUS</b>
<b><i>Home ownership</i></b>			
1991	63.9%	73.6%*	-
2001	68.5%**	71.7%	68.4%
2011	67.2%***	73.2%	68.7%
<b><i>Rental tenure</i></b>			
1991	24.6%	20.05%*	-
2001	20.9%**	19.8%	13.9%
2011	21.8%***	21.7%	18.8%
<b><i>Intermediate tenures</i></b>			
1991	11.5%	4.1%*	-
2001	10.6%**	5.3%	17.5%
2011	11.0%***	5.1%	11.3%

\* Data 1992

\*\* Data 2002

\*\*\* Data 2012

<sup>1</sup>T. Konistis, National Report for Greece, 2014, <[http://www.tenlaw.uni-bremen.de/reports/GreeceReport\\_09052014.pdf](http://www.tenlaw.uni-bremen.de/reports/GreeceReport_09052014.pdf)>, 6.

<sup>2</sup> R. Bianchi, National Report for Italy, 2014, <[http://www.tenlaw.uni-bremen.de/reports/ItalyReport\\_09052014.pdf](http://www.tenlaw.uni-bremen.de/reports/ItalyReport_09052014.pdf)>, 10.

Migration has played a significant role in the housing policies of both Greece and Cyprus. This migration was mainly the consequence of specific historical episodes, such as the exodus of the Greek population from Asia in the 1920s or the occupation of part of Cyprus by Turkey in 1974. Above all, more recently there has been an increasing concentration of people in the urban area of Athens.

Migration within the country also had a significant impact in Italy especially during the years of the economic boom, after the WW II, when millions of people left the countryside and began to work in factories, typically concentrated around the big cities in the north of Italy. Still today, there is a tendency to move towards the more economically-developed regions in the north of the country, with the risk of depopulation for certain areas in the south of Italy<sup>3</sup>.

Another important aspect is that both Italy and Greece, after being for many years countries of emigration, have more recently become countries of immigration<sup>4</sup>, although in Greece migrants tend not to remain but just pass through. In the late 1990s, there was a sudden increase in the number of foreigners living in Italy. As the vast majority of these people arrive from poor countries in Africa and Asia and have very limited financial resources, the possibility for them to find suitable dwellings is one of the most difficult housing problems.

**1.1.2. Current situation**

Table 2 reports the number of dwellings and households:

**Table 2**

	<b>ITALY</b>	<b>GREECE</b>	<b>CYPRUS</b>
Dwellings	28,863,604	6,384,353	433,212
Households	24,512,012	4,134,540	303,342

As mentioned above, the percentages of housing tenures are quite similar in these countries: home ownership is rather high and rent accounts for about one fifth of the total (see Table 1). This means that the housing market is not particularly developed in any of these countries.

In Italy there is not a sufficient supply of dwellings to rent, especially in the main cities where people tend to be concentrated and the need for mobility is more widespread. However it especially seems to be a problem of affordability rather than the numbers of dwellings. In Greece and Cyprus housing supply problems with regard to rent do not seem to arise. In Greece, there is quite a high number of vacant dwellings waiting to be sold or rented<sup>5</sup>. The same can be said for Cyprus, as the number of dwellings are proportionate to the households and rent prices seem to be affordable<sup>6</sup>.

In terms of quality, although statistics do not distinguish between owned and rented dwellings, in Italy the percentage of satisfaction expressed by tenants in some surveys strongly suggests that houses and flats to rent in many cases do not meet

<sup>3</sup> See amplius Ibid., 8.

<sup>4</sup> For new recent forms of emigration from Italy, see Ibid., 10.

<sup>5</sup> Konistis, Greece, 14.

<sup>6</sup> T. Konistis, National Report for Cyprus, 2014, <[http://www.tenlaw.uni-bremen.de/reports/CyprusReport\\_09052014.pdf](http://www.tenlaw.uni-bremen.de/reports/CyprusReport_09052014.pdf)>, 13 and 14.

the quality standards required by the occupants<sup>7</sup>. This problem seems to be less evident in Greece and Cyprus<sup>8</sup>.

### 1.1.3. Types of housing tenures

Despite the prevailing role played by home ownership and rent, all these countries have a certain number of intermediate tenures. The traditional distinction between real property rights (such as usufruct and habitation) and tenures deriving from a contract (such as loan for use) is shared by all of them. Rental agreements with the option to redeem the dwelling are becoming more widespread both in Italy and Cyprus as a way to overcome difficulties in obtaining home loans to buy houses<sup>9</sup>.

Condominium ownership is prevalent in all the three countries, and in Italy about 55% households live in this kind of dwelling. Cooperatives are not prevalent in Cyprus, and in Italy and Greece only have a very limited share of the housing market<sup>10</sup>.

With regard to rental tenures, although the share of the market is not particularly different in the three countries (see Table 1), both in Greece and Cyprus, there is no specific legislation for public tenancy. This is due to the fact that a system of public housing has never been created in Greece and Cyprus. In addition in Greece the rental market was completely liberalized during the 1980s and 1990s and after the economic crisis remaining subsidies were also cancelled<sup>11</sup>. In contrast, in Italy public tenancies represent about one fifth of the whole rental market<sup>12</sup>.

In Italy rented dwellings, with an average surface of 74 m<sup>2</sup>, are twice as crowded than dwellings where the owner lives<sup>13</sup>. Further statistics considering only the quality of rented dwellings are not available but, as already mentioned, surveys regarding tenant satisfaction suggest that rented dwellings are often affected by many more quality problems than dwellings where the owner lives (see 1.1.2 above)<sup>14</sup>.

There is no specific data for Greece and Cyprus, but it has been suggested that the general quality of the housing seems to be adequate<sup>15</sup>. In addition, the 2011 national census results confirm that general living conditions have improved since the early 2000s.

Rented dwellings in all the three countries seem to be especially owned by small private owners. In Italy small private owners account for 70% of the market, public housing for about 22% and dwellings owned by corporations for 7/8%<sup>16</sup>.

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<sup>7</sup> Bianchi, Italy, 15 et seq.

<sup>8</sup> See respectively Konistis, Greece, 13 and Konistis, Cyprus, 11.

<sup>9</sup> In Italy their shares are as follows: 7.4% loan for use; 3.3% usufruct or right of housing; 0.3% rent with faculty to redeem the dwelling: see Bianchi, Italy, 11. For Greece and Cyprus it was not possible to find the respective shares of the market, but at least in Greece loans for use seem to be less widespread: Konistis, Greece, 9.

<sup>10</sup> In Italy about 0.17%: Bianchi, Italy, 11.

<sup>11</sup> Konistis, Greece, 10.

<sup>12</sup> Bianchi, Italy, 14.

<sup>13</sup> Bianchi, Italy, 15.

<sup>14</sup> See Bianchi, Italy, 15 for the problems which most commonly affect Italian houses.

<sup>15</sup> Konistis, Greece, 13; Konistis, Cyprus, 9.

<sup>16</sup> Bianchi, Italy, 16.

#### **1.1.4. Other general aspects of the current housing situation in comparative perspective**

The situation of lobby groups operating in the housing market is quite different in the three countries. In Italy there are many associations representing the interests of both homeowners/landlords and tenants, in the private and public sectors.

In the private sector, for the most representative of these organizations, the law expressly recognizes the role of establishing model contracts through a national general agreement, which must be used where parties opt for 'assisted tenancy', 'temporary tenancy' or a tenancy contract executed by a university student for studying purposes (Art. 4 and 4-bis Law no. 431/1998: Tenancy Act). Local agreements among these associations are also required to establish the amount of rents at a local level when rent ceilings apply (Art. 2, subs. 3 Tenancy Act). With regard to 'free market tenancies', the role of these associations is more limited but a further legal provision expressly deals with it: parties may be assisted by these associations during negotiations or for contract renewals (Art. 2, subs. 2 Tenancy Act). In addition, these associations play a lobbying role at local and national levels regarding the interests of their associates, and also offer assistance, through local offices, to landlords or tenants with regard to negotiation, execution, registration and performance of contracts<sup>17</sup>.

In Greece there is an association of owners and landlords and also an association of tenants. Their role however is more limited, concerning representation and defending their interests, as well as consultation services and solicitation of payments<sup>18</sup>.

Finally in Cyprus, there is only an owners/landlords association, which plays the same role as the corresponding Greek association<sup>19</sup>.

The issue of vacant houses affects all three countries, although its numbers can only be roughly estimated as it involves the exclusion of 'second houses' and the black rental market.

In Italy vacant houses are in the range of 400,000/500,000 (out of 28,863,604 total dwellings), which is quite a significant number considering the housing problems (due to shortages, not affordability, low quality) affecting many Italian households. The most critical situation is vacant public housing (generally not rented because they need repairs), as they are frequently subject to illegal occupations<sup>20</sup>. Until 2012, fiscal policies were used to some extent to deter vacancies. After the reforms to housing taxation carried out over the last few years, fiscal policies for deterring vacancies have played an even minor role. In fact, owners are currently required to pay an income tax on 'non-rented dwellings' (which also includes dwellings granted to relatives free of charge and 'second homes') only when they are located in the same municipality as the owner's 'first home'<sup>21</sup>.

In Greece, according to the 2011 national census data, 2,249,813 dwellings (35.3 % of the total dwellings) were found to be vacant. Most of these (representing 60.09% of vacant dwellings and 21.21 % of total dwellings) are holiday homes, but a significant percentage is made up of houses available for rent (453,901 houses, representing 7.12 % of total dwellings and 20.2 % of vacant dwellings) or for sale

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<sup>17</sup> For further details see Bianchi, Italy, 16 and 178 et seq.

<sup>18</sup> Konistis, Greece, 12 and 94.

<sup>19</sup> Konistis, Cyprus, 11 and 84.

<sup>20</sup> For further details see Bianchi, Italy, 17.

<sup>21</sup> See Bianchi, Italy, 52 et seq.

(88,996 houses, representing 1.4% of total dwellings and 4% of vacant dwellings). A number of these houses (357,806) were built after 2001<sup>22</sup>.

Therefore, unlike in Italy, the housing supply in Greece seems to exceed demand, which is why policies to counteract vacancies have not been adopted<sup>23</sup>. The situation seems similar in Cyprus, where about 12.6% of dwellings are available for rent or sale and there are no policies in force to counteract vacancies<sup>24</sup>.

As far as irregular practices in the rental sector are concerned, black rental market seems to be the most significant. Non-registration of tenancy contracts is a problem in all three countries, although in Greece and Cyprus, data on the extent of this are not available. In Italy it is estimated that there are almost 1,000,000 non-registered contracts, which is about one fifth of the whole market. In addition, this does not include cases of students renting a room or a flat in university towns where they study, even though they formally live with their parents. Black rental market definitely affects students and immigrant contracts to a very high extent.

In Italy there are three main reasons for such a widespread phenomenon: tax evasion, the high number of dwellings not fulfilling habitability requirements, and irregular immigrants. In Greece and Cyprus black market seems to regard mainly low quality and abusive houses, especially in poorer neighbourhoods<sup>25</sup>.

In Italy other illegal practices include registered contracts which for fiscal reasons indicate a lower amount of rent. In terms of public dwellings, the most common problems are illegal detention or occupation.

## **1.2. Economic factors in comparison**

### **1.2.1. Comparative view of the housing market**

The three housing markets, despite many differences in size, historical evolution and response to the 2007 crisis, have various similarities.

In Greece and Cyprus a public rental sector does not exist, as public intervention has constantly incentivised home ownership or subsidised the private rental market. The result of these policies was the massive access to home ownership also for the lower classes, although in many cases this was of low quality and in some cases the housing had been built illegally. This housing stability was reached between the 1950s and 1980s, and has been only partially altered by more recent events, such as immigration and the economic crisis.

This seems to be particularly true for Cyprus, where the supply of houses is in proportion to the population, so although after the crisis investments in new buildings have been less attractive, there do not seem to be any notable housing problem<sup>26</sup>.

Also in Greece for the moment the housing situation does not seem to be as dramatic as the overall economic situation. The number of homeless people has definitely greatly increased but the problem almost only affects Athens where 15,000 of these people live (out of a total of about 20,000). Similar to Cyprus, throughout the whole of Greece there are several hundred thousand commercial and residential

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<sup>22</sup> Konistis, Greece, 14.

<sup>23</sup> Konistis, Greece, 26.

<sup>24</sup> Konistis, Cyprus, 11 and 22.

<sup>25</sup> Konistis, Greece, 15 and Konistis, Cyprus, 11.

<sup>26</sup> Konistis, Cyprus, 12 et seq.

units abundant, although the number of new buildings has drastically decreased in the last few years. This situation, together with the significant increase in housing taxation and the demand for reductions in rents, encourages landlords to offer substantial discounts for rents. Thus the absence of protective legislative measures for the rental sector is at least partially compensated for: the market was liberalized years ago and funds were completely cut in 2012 as a consequence of the crisis.

The trend in housing loans in Greece is potentially more problematic. These contracts significantly increased before the crisis. Although the indicator of mortgage debts of Greek households is still low compared to the European average, it is worrying that the share of non-performing housing loans is high and increasing (23% in May 2013<sup>27</sup>). Until now the consequences of this situation have been limited through regulations protecting borrowers from foreclosure, however there is pressure to limit these restrictions, thus the current equilibrium could change.

For the moment the general impression is still of quite a balanced market, apart from Athens, where an increasing percentage of the Greek population tends to be concentrated and the scarcity of dwellings and affordability problems are more evident, especially considering that no public housing or other subsidies for the rental sector exist.

There are further differences in the Italian housing market . Despite the wide sales of public dwellings over the years, the public sector, with about 900,000 dwellings, still accounts for about one fifth of the rental market and provides help in some problematic situations. More recently 'social housing', as it is called in Italy, aims to provide affordable dwellings through joint ventures between public subsidies and private investments.

As for the legislative framework, despite a progressive liberalization of the rental market since the 1970s and 1980s, in Italy there is still a protective approach towards tenants. The mandatory minimum duration of tenancy contracts is worth mentioning, together with the so-called 'assisted tenancies', which are particular contracts that provide a rent ceiling in return for a more favorable fiscal treatment for the landlord.

Despite these policies, the housing market in Italy has many critical points. Unlike Greece, Cyprus and Spain, the country did not experience an overproduction of new dwellings during the period before the crisis, but their number increased at a pace with the number of new households. Thus, since 2007 prices both to buy and to rent have experienced a limited decrease. In contrast, the condition of many households has deteriorated faster as a consequence of unemployment or reduction in income. The result is, for example, a drastic increase in eviction orders due to non-payment of rents (about +75% from 2007 to 2013). In addition half of the landlords have reported delays or irregularities in payments. Also the number of homeless people has significantly increased. They are now estimated to be about 50,000, while in 2001 the estimated number was about 17,000.

Since 2000 the unprecedented amount of immigration from Eastern Europe, Africa and Asia has also played a role in the evolution of the housing situation in Italy, as these people on low incomes or unemployed have had to face additional problems in finding suitable accommodation. In contrast, the impact of immigration was more limited for Greece and Cyprus.

As for the Italian housing loan market, the habit of buying houses with family savings and the traditionally cautious approach followed by the Italian banks limited the number of mortgages contracted before the crisis. Then after the crisis there was an immediate and drastic cut in new home loans and only very recently have there been

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<sup>27</sup> According to data from the Bank of Greece.

slight signs of recovery. The level of indebtedness of Italian households is still among the lowest in Europe, even lower than in Cyprus and Greece<sup>28</sup>. In addition the percentage of non-performing loans is also still limited (3% in 2011). On the other hand, a number of households who are not able to receive bank loan opt for tenancy, which subsequently has experienced an increase in demand since the crisis. This further explains why the cost of renting has not been decreasing as much as the disposable income of Italian households.

All this helps to explain the imbalance in the Italian housing market. However, the situation is not uniform throughout the country. The really problematic areas are the biggest cities and their surroundings: Rome, Milan, Turin, Genoa, Venice, Trieste, Bologna, Florence, Naples, Bari, Palermo and Cagliari, where about 35% of the Italian population is concentrated, including an above average percentage of immigrants<sup>29</sup>.

### **1.2.2. Comparative view on price and affordability**

No recent national data are available with regard to the average cost of rent per household in the three countries investigated. Thus it is only possible to consider a rough estimate: 300-400 euros per month in Greece, and about 400 euros in Cyprus and in Italy. The corresponding gross average household income is 1,830; 2,666 and 2,083 euros respectively per month. Consequently, no particular problems of affordability seem to affect the Cypriot rental market, while potential problems are more likely to affect low income households both in Greece and in Italy.

Specifically in Italy, rents differ by region and according to the size of the town. For example in the 19 regional capital cities, the average rent in 2013 was 516 euros per month, which increases in the cities in the centre and the north. In addition, rental households tend to belong to low-income classes (according to 2007 data, about 77% of whom earned 20,000 euros or less per year). All of these factors imply that affordability is a serious problem for many households in the main Italian cities. This is illustrated by the percentage of tenants for whom rent accounts for more than 30% of their income: this percentage in 2002 was 22%, in 2008 26%, in 2010 31% and in 2012 37%. Where the head of the household is a foreigner, this percentage is as high as 42%, according to 2012 data.

In all three countries ownership has always long been preferred to renting. Before the crisis, this traditional approach was further stimulated by the development of bank loans, which were almost equivalent to the payment of rent. After the beginning of the crisis, the situation changed drastically, at least in Italy, where banks adopted a very restrictive approach towards new credit, thus, since the peak in 2006, the number of transactions has now more than halved. This explains a recent rise in the demand for houses to rent. However surveys reveal that there is still considerable interest in home ownership: most people are waiting for mortgages to become easier to obtain.

### **1.2.3. Tenancy contracts and investment**

The Return on Investment (RoI) for residential rental dwellings in all three countries is only moderately attractive for investors. Properties have been traditionally considered

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<sup>28</sup> In 2011 the mortgage debts per household in thousand Euros were: Cyprus, 15.74; Greece 6.93; Italy, 5.98.

<sup>29</sup> For further details see Bianchi, Italy, 19 et seq.

as a safe harbour for savings and generally preferred to other forms of investment. Recent developments will probably, at least in part, modify this attitude.

In Cyprus gross RoI is relatively stable at around 3.8% for apartments and 2% for houses. These values are considered quite low, and in addition there is a high number of vacant dwellings on the island<sup>30</sup>.

In Greece data on the exact RoI is not available, but similar investments seem to be attractive only for construction companies who already own the piece of land on which the housing will be built or where there are mixed work contracts<sup>31</sup>. The problem of vacant housing also affects Greece.

In recent years the gross RoI in Italy has increased (3.2%, according to 2012 data), which presumably means that rents have decreased less than house values. On average, percentage returns have risen for smaller houses and are highest for apartments of up to 60 m<sup>2</sup> (3.6%) and just 2.3% for those over 120 m<sup>2</sup>.

Net returns are thus affected by fiscal policies, which in the last few years have significantly increased for properties, while the reform of the flat rate tax option (*cedolare secca*) represents a potentially lighter fiscal regime for income from rents<sup>32</sup>. Further elements negatively impacting on such investments are expenses for house maintenance, non-regular payment of rents, which have been increasing in recent years, and lengthy court proceedings in the case of breaches of contract<sup>33</sup>.

#### 1.2.4. Other economic factors

In the three countries the position and role of estate agents has many similarities. Selling and renting real estate is considered as a form of brokerage, thus at least in Italy, the professional has a right to a fee provided that the contract is executed as a consequence of his/her intervention. However, as in Greece and Cyprus, it is also usual in Italy for the agent to play a more active role on behalf of one of the parties, for example actively looking for people who might be interested in renting or sale/purchase.

In the three countries, there are no restrictions on becoming an estate agent, they just need a minimum education<sup>34</sup> and to be registered.

The amount of fees is also fixed in accordance with the free market, but on average the equivalent of one month's rent for each of the parties is usual in all three countries, as well as about 3% of the sale price. It is also usual that both parties bear the expense.

These standard prices seem to create a certain rigidity in the market of estate agents, with the result that the fee is not always regarded as fair with respect to the actual role played by the agent. This is true in particular for Italy and Greece, while in Cyprus the intervention of estate agents is mostly limited to commercial leases.

Among the main obligations common to agents in all three countries, are providing fair and complete information on the qualities of the property, as well as reporting any defects that come to their notice. Information also includes whether the agent has any personal interest in a specific dwelling or if he/she received a mandate from both the parties. Confidentiality duties are equally important.

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<sup>30</sup> Konistis, Cyprus, 15.

<sup>31</sup> Konistis, Greece, 16.

<sup>32</sup> See below para. 3.1.1.

<sup>33</sup> See for further details Bianchi, Italy, 29.

<sup>34</sup> See Konistis, Greece, 20; Konistis, Cyprus, 17; Bianchi, Italy, 31 et seq.

In addition, in order to counteract the black market, in Italy estate agents are responsible for the fiscal registration of contracts agreed as a result of their intervention, and for the payment of the related taxes, in cases where these contracts are not drafted or authenticated by a public notary.

### **1.2.5. Effects of the current crisis in comparative perspective**

The 2007 crisis has affected Italy, Greece and Cyprus to a different extent and subsequently also the impacts on housing policies are quite different. In all three countries, there is a lower level of household debt for house purchases compared with the European average. It was only quite recently, in the years before the crisis, that mortgage credit progressively substituted more traditional ways to buy houses, such as family savings.

Despite this, the impact of the crisis was clear. In Italy the decrease regarded the number of new operations, the percentage of houses bought with a mortgage loan, and the loan-to-value ratio. For example, the overall amount of new home loans in Italy decreased from over 60 billion euros in 2006 to 24 billion in 2012. In Greece and Cyprus the decrease was not so drastic however banks adopted a more cautious stance in granting new loans for housing.

The share of non-performing housing loans is another significant aspect. In Greece this figure is high (23% in May 2013), while in Italy it is significantly lower (around 3%)<sup>35</sup>. This also explains the different legal responses to the problem of repossession. Greece adopted a strict protection of borrowers from foreclosures. Firstly, from 2011 a ministerial decision prohibited banks from auctioning main residences worth less than 200,000 euros. Then in 2013, in part also as a consequence of the International Monetary Fund, European Central Bank, European Commission and merchant banks, a law introduced additional requirements in order to receive protection from auctions<sup>36</sup>. In Italy a similar act limiting the possibility of repossession was adopted in 2013 however it is applied only in the case of debts with the tax authorities, and was adopted as a consequence of bitter criticism regarding episodes of repossession and sale of primary houses by the national tax agency even for rather low fiscal debts<sup>37</sup>.

Despite these limitations and the fact that repossession is seen by banks as a last resort (because of the difficulties in managing and selling buildings), the number of repossessions has significantly increased since the beginning of the crisis. For example, according to data regarding Italy between 2008 and 2011, repossessions by banks increased by about 75% (38,000 houses in 2011 and about 100,000 over the last four years).

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<sup>35</sup> No data are available for Cyprus.

<sup>36</sup> Therefore, from 1<sup>st</sup> January 2014, public auctions of defaulted main residences are prohibited provided that the following conditions are met:

- the objective value of the protected main residence should not exceed 200,000 euros;
- the net annual income of the household should not exceed 35,000 euros;
- the total value of the debtor's movable and immovable property should not exceed 270,000 euros;
- the debtor should not hold bank deposits of more than 15,000 euros.

<sup>37</sup> Art. 52, subs. 1 Decree Law 21 June 2013, no. 69 (later converted into Law 9 August 2013, no. 98) establishes that the national tax agency cannot repossess a dwelling if the following conditions are met: it is the only dwelling owned by the debtor, it is classified as a residential dwelling and the debtor resides there provided that it is not a luxury dwelling or a dwelling included in cadastral categories A/8 (villas) or A/9 (castles). In addition, repossession of property has been limited to debts exceeding 120,000 Euros (the previous limit was 20,000 euros) and cannot be required within six months of mortgage registration.

The impact on the rental market seems to have differed in the three countries. In Italy the drastic cut in new home loans was only followed by a limited decrease in sale prices. The result was a significant reduction in transactions and an increase in rental contracts.

In Greece after the crisis people seem to prefer homeownership rather than rent. In fact, the number of new vacant dwellings is much higher in comparison with the population and so prices have fallen much more than in Italy. Thus buying has become more affordable or at least is perceived as safer than renting. A similar situation can be seen in Cyprus where rent prices decreased slightly compared to residential prices, and so home ownership is now regarded as more attractive than rental tenures.

The housing policies adopted in the three countries in recent years reflect these differences.

In Italy the onset of the crisis coincided with a renewed interest at a national level in housing policies, which were almost completely left in the hands of the regional authorities in the previous years. The aim was to make house purchases more affordable, to increase the supply of housing benefitting from subsidies, and to set up specific funds to help tenants and owners. More recently attention has also focused on the recovery of the home loan market, which experienced a drastic decrease after the crisis.

In 2007 and 2008 the center-left and center-right governments, which rapidly succeeded each other, approved two different housing plans. The common aim of these projects was to stimulate the offer of affordable dwellings for households in need. However, the centre-left plan mainly focused on 'public housing', which means housing directly built with public funds by public entities, and therefore on houses for rent. The centre-right government on the other hand, mainly adopted a program of 'social housing', which means projects to provide housing, both for sale and for rent, through various forms of partnership between public entities and private investors. Then in 2013, the new Letta government focused on incentives to the banks so that banks could provide new home loans. They considered this as a key measure for dealing with housing problems and, more in general, with the economic crisis.

Further provisions regard funds for families to afford home loans or rents for families in particular situations of difficulty as defined by the law: one fund finances payment suspensions; another guarantees banks half of the provided home loan; the third provides money to 'non guilty' tenants who cannot pay the rent regularly.

Finally in 2014 a new national housing plan was adopted by the Renzi government aimed at combining and reintroducing the measures launched with both the 2007 and 2008 housing plans. Subsidies for the private rental market were also enhanced, increasing the incidence of fiscal incentives and funds.

During the years of the crisis provisions to suspend evictions in particular circumstances have also been periodically created however they are a typical feature of Italian housing policies and not something specifically connected to the last crisis.

In Greece, the most recent housing policies mainly originate from pressures to come to terms with the country's debt and from the need to prevent massive repossessions, given the high percentage of borrowers in default.

The austerity policy in Greece led to the abolishment, in 2012, of all forms of housing subsidy, previously granted through O.E.K. programs<sup>38</sup>. In addition a significantly heavier legislation on property taxes was introduced.

On the other hand, law no. 3869/2010 on the '*debt adjustment of overcharged households*' was introduced. The main purpose of this act is the judicial adjustment of debts, provided that households are unable to pay due to reasons beyond their control and as long as there is no property that could be liquidated. In addition, since 2011 a ministerial decision prohibited banks from auctioning primary residential dwellings worth less than 200,000 euros. As previously mentioned, this protection was later partially limited.

Finally in Cyprus, where the housing and financial situation seems more stable, no particular housing policies have been adopted since the beginning of the crisis.

In conclusion, Cyprus seems to be the best-performing country in overcoming the crisis. In fact, despite a decline in the home loan market, in Cyprus the dwelling stock is enough to fulfill the housing needs of residents.

The Greek problems are instead related to debts both of the country and households. These circumstances have involved cuts in housing subsidization, increased taxation, and difficulties in paying loan installments. For the moment more widespread housing problems seem to have been prevented thanks to the wide availability of vacant dwellings, a high decrease in sale prices, and a protective policy against repossessions.

In Italy, the crisis has mainly affected the affordability of housing. Many households have incurred a reduction in income because of job losses, job reduction schemes etc. This situation has not been compensated for by the limited reduction in house prices either for sale or for rent. This is due to different reasons such as the structural rigidity in the Italian housing market made up of many small owners, a low number of vacant dwellings (few new ones or ones that are immediately available), and increased taxation on properties. In addition access to bank loans to buy houses is still difficult.

### **1.3. Urban and social aspects of the housing situation in comparison**

#### **1.3.1. Urban aspects in comparative perspective**

In the three countries rented houses tend to be concentrated in the biggest cities, where their percentage is significantly above the national average<sup>39</sup>. In contrast in smaller cities and in the countryside, the percentage of rental properties is below the average. In Greece this concentration of rental property especially applies to Athens, while in Italy it is typical of a wider number of big and medium size cities throughout the country.

Rented houses tend to be more widespread in certain neighbourhoods, in some cases in the city centres, in other cases in the suburbs. This mainly depends on the characteristics of the tenants and towns. For example in Italy, where rental contracts

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<sup>38</sup> This scheme was particularly used to grant loans for the purchase of a house with subsidized interest rates, to subsidize the payment of rents for low income families and for housing sensitive social groups.

<sup>39</sup> Konistis, Greece, 23; Konistis, Cyprus, 18; Bianchi, Italy, 38.

are typical of students, immigrants and in general low income people, rented houses tend to be concentrated near colleges, transport hubs and the most dilapidated parts of towns.

A similar situation creates the risk of segregation. In Italy this has been especially observed for public housing neighbourhoods, which lead to the concentration of many problematical situations in locations that increase a sense of separation from the rest of the town. Thus new public and social housing projects tend to enhance a social mix or at least avoid too big housing estates.

More recently communities of immigrants are at risk of segregation as they tend to settle in dilapidated parts of towns, left by Italian residents, and experience further difficulties in finding suitable places to rent. For the moment the different ethnic origins of the immigrants residing in Italy and, paradoxically, the absence of specific public programs aimed at these people have favoured a social mix and prevented, to a certain degree, segregation. In addition, the traditional concentration of these communities in the biggest cities, such as Rome and Milan, has been slightly decreasing in recent years, and the towns surrounding the metropolitan areas are becoming new areas of settlement<sup>40</sup>. However in some problematic neighborhoods, the economic difficulties brought by the crisis create more evident cohabitation problems between Italians and immigrants.

In Italy the situation of the Roma is also particularly problematic. It is estimated that about 40,000 of these people still live in the hundreds of legal and illegal camps all over Italy, often lacking a regular water supply, electricity, heating, and a sewage system.

In Greece and Cyprus, the contribution of housing tenures to segregation seems less evident. This is due to the absence of public housing policies, and more generally, the diffusion of home ownership in all social classes limits the effect of segregation for tenants. However these countries also experience accommodation problems for Roma living in camps and more recently for immigrants.

Differences also exist in terms of gentrification. This is prevalent in certain Italian cities, as a consequence of the restoration of dilapidated but valuable areas of historical centers, and in certain expensive holiday resorts, whose housing market is affected by the interest of wealthy Italian and foreigner investors. However, at least in the former, Italian public opinion does not appear to be particularly concerned by the phenomenon and a positive attitude towards the restoration usually prevails. Neither Greece and Cyprus seem to be affected by any problems of gentrification.

Squatting is another social phenomenon worth mentioning. In both Greece and Cyprus this is mainly linked to the Roma, who illegally occupy land for camping, as they tend to move continuously within the country. Also in Italy squatting exists, however it involves mainly dwellings. The problem affects in particular vacant public dwellings, which are waiting to be restored, assigned or sold. The crisis and the difficulty in finding affordable dwellings have been playing a decisive role in the increase in squatting. Recently its wide diffusion has led to Italian public authorities taking a stronger action against it, also because it has become clear that behind these occupations, there are often groups which exploit people in need and receive money in return for housing.

This new trend is confirmed by Decree Law no. 47/2014 (converted into Law no. 80/2014), according to which occupants cannot be recognized as resident in the occupied dwelling and the dwelling cannot be provided with 'public services', such as

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<sup>40</sup> For further details, see Bianchi, Italy, 39 et seq.

water, electricity, gas; any contract contrasting with these prohibitions is null and void (Art. 5).

Squatting is also considered as a criminal offence. In Italy Arts 633 and 639 *bis* Crim. Cod. Punish any illegal entrance into a private or public land or building in order to occupy it or to gain another form of profit. In Greece occupation is indirectly punished through Art. 381 Crim. Cod. regarding damage to property belonging to another party. The owner is also entitled to exercise the remedies provided for by property law and by tort law<sup>41</sup>.

With regard to the law in action, a decision by the Italian Court of Cassation is worth mentioning, according to which if occupants of a public dwelling are in housing need, the offence of squatting is excluded, as occupation is held to be out of necessity (Art. 54 Crim. Cod.)<sup>42</sup>. However, as the court pointed out in a subsequent decision, permanent occupation cannot be considered an act prompted by necessity, which requires that the occupants are in a temporary and urgent danger of injury to health<sup>43</sup>.

### 1.3.2. Social aspects

In all three countries, common opinion is that homeownership is a preferable tenure form and an important goal in life. Rent, on the contrary, is mostly considered a temporary solution to cover short-term housing needs. The idea that rent is a “waste of money” if you can afford a house is still widespread. This is the consequence of a still low interest in other forms of investment, particularly financial, and of the relatively easy access to bank loans, at least before the crisis, which enabled people to buy a house by paying a monthly sum almost equivalent to a rent. However the burden of home ownership, not only from an economic point of view but also in terms of mobility, seems to be undervalued by the dominant opinion.

In Italy a more negative opinion concerns renting public housing, as this is traditionally associated with low-income families and possible further problematic situations<sup>44</sup>.

The idea that home ownership provides protection for savings, especially after retirement, is equally widespread in the three countries. Currently, the taxation of properties has been significantly increasing, at least in Italy and Greece. In addition the percentage of a household’s wealth composed of properties is already particularly high (in Italy they account on average for 85%). This situation can create a deficit of current assets, especially for old people, thus, also from this perspective, a greater interest towards other forms of investment is advisable.

The above situation explains the prevailing interest of tenants in home ownership. According to a 2009 Italian survey of two thousand families, 80% of people living in rental properties were not satisfied with their housing conditions and would prefer to buy a house if they could afford it. Of the same sample of people, 95.2% said, in more general terms, that they prefer homeownership to renting<sup>45</sup>. The attitude seems to be very similar both in Greece and Cyprus<sup>46</sup>.

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<sup>41</sup> No data are available for Cyprus with regard to this issue.

<sup>42</sup> Cass. pen., 26 September 2007, no. 35580, *Foro Italiano*, 2007, II, 678.

<sup>43</sup> Cass. pen., 7 August 2012, no. 14222, unpublished.

<sup>44</sup> In Greece and Cyprus, as already said, public dwellings do not exist.

<sup>45</sup> Nomisma, ‘La condizione abitativa in Italia’, 96 and 99.

<sup>46</sup> Konistis, Greece, 25 and Konistis, Cyprus, 19.

Moreover, tenants of rented properties do not feel their home belongs them, which often results in the poor maintenance of the premises. An important difference in Italy regards public housing, as in these cases tenants generally enjoy a much safer and more stable position: once they have obtained the house, they tend to keep it throughout their lives. The effect is that people living in public housing consider themselves to be in a situation which is much more similar to ownership than all other tenants.

## **2. Housing policies and related policies in comparison**

### **2.1. Introduction**

The three Mediterranean countries share a high level of 'familism'. This means that kinship plays a particularly crucial role in the housing system, as families can provide one of the main ways of financing the building or purchasing residential housing for the younger generations.

Given this common feature, it is necessary to make a distinction.

Italy has quite an established welfare system in the field of housing, whose origin dates back to the early 1900s, when, as in other European countries, industrialization began to move increasing numbers of people from the countryside to the cities where factories were built. Therefore, the milestones of housing policies are in common with the other European countries of early industrialization, although with some particular features. In fact, after the end of WWI there were periodical regulations of the private rental sector to control both rents and the termination of the contracts. In addition, after the destruction of WWII there were many public housing initiatives. This was followed by subsidies for home ownership, where a significant part consisted of the sale of public housing to occupants at very low prices.

In 1978 a new regulation of the private rental sector was introduced but it turned out to be excessively strict and distorted the market. Next there was a progressive move towards a liberalized private rental market in the 1990s, together with the introduction of a system of public funds to help rental affordability.

There was a new focus on the housing issue after the beginning of the last economic crisis. This was mainly in terms of funds, subsidies or fiscal incentives to sustain both home ownership (bank loans in particular) and the rental sector; attempts to improve the management of public dwellings; 'social housing' projects, which provide dwellings at lower prices than the market, involving both public funds and private investors<sup>47</sup>.

Although with different phases over the decades, this tradition of housing as part of the welfare state has survived and is still prevalent in the country.

Conversely, Greece and Cyprus, have a much more recent and limited experience of housing policies. This is in part a consequence of the fact that they are much smaller countries, much less densely populated and remained mainly rural for a longer period of time.

Greece experienced significant urbanization after WWII, although the country was still lacking an industrial backbone. During this period policies were mainly aimed at also guaranteeing access to homeownership for rural migrants, however policies of

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<sup>47</sup> See also Bianchi, Italy, 43 et seq.

rent control were also adopted. In 1954 O.E.K. ( 'Labor Housing Organization') was set up as the only competent body for subsidization in the housing field. It was not aimed at building public dwellings but mainly promoted homeownership for workers and employees, handing over dwellings at cost price or paid with subsidized rates. This scheme also provided funds for the improvement of housing conditions and rental contributions for low-income families. The result of these policies was massive access to homeownership also for the lower classes and a substantial social equilibrium in housing, despite the significant social changes that were taking place in the country.

After this period, focus on housing policies began to decrease. Special regulation for the private rental sector was attempted by a socialist government at the beginning of the 1980s, introducing a minimum duration, rent levels in certain cases, and rules for rent increases. However these regulations were rapidly abandoned and since the 1990s the market has been completely liberalized, save for a minimum duration of residential tenancy contracts, which is still in force.

In 2012 the O.E.K.'s activity completely terminated as part of the austerity measures imposed on Greece, with an act which expressly declared it as '*non-priority social expenditure*'<sup>48</sup>. In other words, in the last few years housing has been substantially cut from welfare policies.

The situation in Cyprus is quite different again. As the island was part of the British Empire, the regulation of tenancy law closely resembled the English legislation in force in the 1920s. The adoption of English-based rules continued even after independence in 1960. The Rent Control (Work Dwellings) Law of 1961 is particularly worth mentioning, which provided for fixed rent of work dwellings as well as restricting evictions. The episode that drastically affected Cypriot housing policies was the occupation of the northern part of the island by Turkey in 1974. The result was a massive migration of about 200,000 Greek-Cypriots to the southern part of the island, with the subsequent problem of providing them with suitable dwellings. Stricter regulations were thus introduced, in particular to protect expatriated households from eviction, thus creating a wide system of statutory tenancies. Today this system is criticized as the vast majority of cases brought before rent control courts are rarely connected with residential tenancies but rather with contracts of a commercial nature<sup>49</sup>.

The Turkish occupation was also the occasion to introduce subsidies for the payment of the rents for low-income expatriated households. These measures are still in force today, however the vast majority of public subsidies, which are split into a wide number of schemes, target ownership instead of tenancy (subsidies to buy houses or to improve their quality).

Therefore, similarly to Greece, in Cyprus the welfare system has never created a system of public/social housing, but, more generally, has paid limited attention to tenancies, mainly due to the invasion by Turkey. Thus also Cyprus has focused on the widespread diffusion of home ownership, considering this as a sufficient means to obtain a social equilibrium in housing.

As for fiscal policies, there is a common trend among the three countries. For many decades all three have favoured the acquisition of home ownership which has been stimulated via favourable taxation. After the beginning of the crisis, the taxation of

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<sup>48</sup> See Konistis, Greece, 26 and 5: «All obligations already undertaken by OEK, were transferred to a 'Temporary Administrative Committee' (in Greek: «Προσωρινή Διοικούσα Επιτροπή»), assigned with the liquidation of O.E.K. However, the said Committee explicitly does not have the right to undertake any new obligations or exercise any new social housing policy».

<sup>49</sup> Konistis, Cyprus, 43.

properties became one of the key measures to gain new resources for the state budget. This is particularly evident for Greece and Italy, but also in Cyprus the Immovable Property Tax was reformed in 2014. In view of the wide diffusion of home ownership, this is considered as a way to reach almost all citizens and, in addition, evasion is more difficult than for other forms of taxation. However, the disadvantages of this taxation are that it burdens capital assets and not incomes, and evaluations by which properties are taxed, are often not updated to present market prices.

A fundamental right to housing is expressly provided for only by the 1975 Greek constitution, among other 'social fundamental rights', such as the right to employment, health and social security, with the following words:

Art. 21, subs. 4 – *The acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care.*

The absence of a constitutional court in Greece limits its role to a behest towards the legislator so that it adopts policies to supply houses to people in need or to improve their conditions. The individual citizen cannot enforce a legal claim against the state in order to obtain a suitable dwelling, so the right to housing remains a declaration of principle and a socio-political goal for the State.

Neither in Italy nor in Cyprus is a right to housing expressly provided by the constitution.

However, in Italy an indirect reference can be found among the 'Economic Rights and Duties':

Art. 47, subs. 2 Const. – [The Republic] *promotes the access to home ownership through the use of private savings...*

This article has become the justification for policies aimed at supporting people's access to housing. Even more significantly, the right to housing has been seen as a necessary prerequisite for achieving and maintaining some of the fundamental rights directly granted by the constitution. In other words, even though not expressly mentioned by the constitution, the right to housing can be combined with other social rights and become directly enforceable under certain circumstances. For example, the right to create a family (Art. 31 Const.), to support and educate children (Art. 30 Const.) and the inviolability of the home (Art. 14 Const.) all require a person to have a dwelling. The lack of a place to live may even jeopardize the principle of 'human dignity' and 'substantial equality', granted amongst the 'fundamental principles' of the Italian constitution.

A further indirect constitutional basis of the right to housing is identified in Art. 42, subs. 2:

*Private property is recognized and guaranteed by law, which prescribes the ways it is acquired, enjoyed and its limitations so as to ensure its social function and make it accessible to all.*

In recognizing the social function of property, Art. 42 allows the legislator to introduce limits to property rights in order to grant prevailing rights. Tenancy law is definitely one of the fields where Italian legislators, through rent regulation, have most frequently used their power to limit private property and contractual autonomy.

The courts have also played an important role in affirming the principle of the right to housing, although its practical applications remain circumscribed. The most significant application in the field of tenancy law concerns non-married partners. On the basis of the right to housing, the Italian Constitutional Court stated that non-married partners habitually cohabiting (living *more uxorio*) were entitled to succeed in their dead partner's tenancy contract concerning their dwelling, although this

possibility was not expressly mentioned by Art. 6 of Law no. 392/1978<sup>50</sup>. The same principle was later also applied by the court in the case of tenancies regarding a public dwelling<sup>51</sup>.

The constitution of Cyprus also contains an indirect reference to the right to housing:

Art. 9 – *Every person is entitled to the right to adequate living conditions and social security.*

Therefore, also in this case, there is a declaration of principle and a socio-political goal for the State, but not a right directly enforceable by each citizen.

The overall impression is that, despite the different constitutional formulations, housing is commonly perceived as one of the fundamental aims of social policies, even though its practical enhancement depends on a combination of political actions, judicial decisions and the attention of legal experts.

## **2.2. Policies and actors**

### **2.2.1. Governmental actors**

Government intervention concerning housing policies is on a greater number of levels in Italy than in Greece and Cyprus. This is particularly due to a constitutional reform adopted in 2001, which introduced a model defined as the ‘multi-level protection of social rights’.

The Italian system gives a central role to regional authorities, who set targets, carry out undertakings and in some cases decide on the destination of funds, even if received from the State. Regional decisions also concern the management of public buildings destined for housing policies, for example access criteria and the amount of rents. Consequently, today public services concerning the right to housing depend almost entirely on regional rules<sup>52</sup>.

The Italian Constitutional Court specified that in order to protect human dignity, the state still has exclusive responsibility to determine the minimum level of offer (both in terms of quantity and standard of quality) concerning dwellings for the weakest members of the population. The State also shares responsibility with the regional governments for the ‘government of the local area’, which means that it gives national guidelines concerning public housing for residential purposes. In addition, the State coordinates the regional governments regarding important national programs and splits national funds destined for housing policies between them (in particular, the Social Fund to help people pay their rent).

Italian municipalities are the main owners of public rental dwellings for social purposes and, in accordance with rules set by the regional governments, they regulate how these buildings are managed and accessed. Municipalities are also entitled to provide different solutions to local problems concerning housing, such as providing temporary accommodation. In addition, through the adoption of special urban plans, municipalities are responsible for deciding the location in their area of urban interventions decided at the upper levels of government. Finally, local authorities may provide policies to help people pay rent, for example by means of reduced rent arranged with the owners.

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<sup>50</sup> Const. Court, 7 April 1988, no. 404, *Giustizia Civile*, 1988, I, 1654.

<sup>51</sup> Const. Court, 20 December 1989, no. 559, *Giustizia Civile*, 1990, I, 612.

<sup>52</sup> See Bianchi, Italy, 48.

This system at a national, regional and municipality level can be considered as an application of the well-known principle of subsidiarity. However, especially at the beginning, it created problems of responsibility, which needed to be solved by the Constitutional Court. In addition regional governments had lower funds to deal with these policies than the State previously had. This explains why, after the beginning of the crisis, stronger intervention by the State, through national housing plans, became necessary.

In Greece, as a consequence of a more limited focus on housing policies and of the fact that the competences among the various levels of government are less articulated, the decisions in this field are still mainly centralized. Housing policies are introduced and implemented by the Ministry of Labour, Social Security and Welfare and by the Ministry of Environment, Energy and Climate Change. The former is responsible for social policy, while the latter is responsible for regional planning and urban development. Municipalities are then responsible for housing policies at the local level<sup>53</sup>.

Similarly, in Cyprus housing is split between the Ministry of Social Internal Affairs and the four local districts that make up the island. However, in Cyprus, where there is a wide range of housing schemes, some ministry departments play a significant role: the Department of Housing and Housing Policy, the Expatriated Care and Restitution Service, the Cyprus Land Development Corporation, and the Housing Finance Corporation<sup>54</sup>.

### **2.2.2. Housing policies**

Traditionally housing policies in Cyprus, Greece and Italy have favoured home ownership. The main aim was to provide each household with a house, although of a low quality, by granting subsidies or discounts in order to make it affordable. Tenancy contracts were not encouraged, however they were subsidized when it became clear that it was very difficult (and, for certain aspects, not wise) to increase the share of homeownership further.

This is particularly evident considering for example, that in Italy thousands of public dwellings built for rental purposes were progressively sold to the occupants at very low prices, or that both in Cyprus and in Greece, the vast majority of the housing schemes were aimed at helping people to buy.

However, with about 20% of the population in all three countries living in rented housing, and often its weakest sectors, some subsidies have been provided to this sector.

Differences in national policies have become more evident over the last few years. Italy, which has always focused more on rents than the other two countries, has reduced its policies to favour homeownership and, at the same time, favours rents with subsidies and other forms of incentives, especially when rents are lower than market prices (so called 'assisted tenancies')<sup>55</sup>.

In Greece, in contrast, in 2012 subsidies to the housing sector were dismantled, thus at present, no tenures are directly favoured by the legislator. Considering that the taxation of properties has increased, this could become an indirect incentive for tenancy contracts.

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<sup>53</sup> See Konistis, Greece, 27 et seq.

<sup>54</sup> For further details, see Konistis, Cyprus, 21 et seq.

<sup>55</sup> See Bianchi for details, Italy, 50 et seq.

Finally, in Cyprus changes in traditional housing policies are not so evident. Schemes continue to be mainly targeted at home ownership and only to a more limited extent provide funds to tenants in need. In addition, the traditional rules of rent regulation, introduced to protect expatriated Cypriots after the Turkish invasion, are increasingly criticized as they no longer serve their original purpose.

Only limited attention is paid to vulnerable groups through housing policies in the three countries.

In Greece there are no specific policies aimed to groups such as migrants and Roma. In Cyprus there are only the rules to protect expatriated Greek-Cypriots.

In Italy some initiatives have been adopted to improve the living conditions of Roma, which are generally decided at local or, at most, regional levels, thus their results are not easy to verify. In any case they are definitely insufficient to solve the problem of Roma living in camps, as the decisions by the European Committee for Social Rights against Italy in 2005 and 2010 testify<sup>56</sup>.

A more cohesive set of rules can be found with regard to migrants. The Italian Immigration Law considers the availability of a suitable dwelling as a requirement for a non-EU citizen to live in Italy, to be awarded the status of 'long-term resident' and to reunite the family. Further provisions specify the right for these people to have access to public/social housing programs, the prohibition of discriminatory acts, also with regard to housing, and accommodation in centers which are thought to provide immediate and temporary housing for regular immigrants in need<sup>57</sup>.

### 2.3. Urban policies

Segregation is prevalent to some extent in all three countries, but is generally the consequence of a plurality of socio-economic factors, thus housing policies do not always contain provisions to counteract it. This explains why, for example, in Greece and Cyprus there are no measures related to urban policies aimed at preventing segregation.

In Italy one difference lies in the existence of the public housing sector, which typically represents a segregation risk. These neighborhoods, made up of only public dwellings, often set in peripheral and low-cost areas, without a doubt create a feeling of separation with the other parts of the town and, in the worst cases, are dilapidated, socially degraded and crime-ridden.

Recently measures have thus been adopted in order to limit these effects, through strategies which limit the concentration of households in need in certain areas and pay more attention to a 'social mix'. For example, Min. Decree 22 April 2008 defines 'social dwelling' and expressly indicates the need to 'integrate different social groups' in this field. However a contrasting provision can be found in Art. 3 Decree Law no. 47/2014<sup>58</sup>, which introduces a plan to sell public dwellings and stresses the opportunity to sell dwellings in "*mixed condominiums where the public ownership is below 50% or in different situations from 'public housing'*". Such a measure to reduce costs seems to imply the worrying intention to reduce attempts at social mixing in public housing.

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<sup>56</sup> Italy was considered guilty of discriminatory acts against the Roma, Sinti and other nomadic populations with particular regard to housing rights, in contrast with the provisions of the European Social Charter.

<sup>57</sup> For a more detailed analysis of the rules for immigrants in the field of housing, see Bianchi, Italy, 53 et seq.

<sup>58</sup> Now converted into Law no. 80/2014.

Policies against gentrification are even more unusual: both in Greece and Cyprus it seems that this phenomenon has never been encountered. In Italy, in contrast, this clearly exists, thus particularly affecting the historical centers of more attractive big and medium size cities and renowned holiday resorts. Despite this, public concern for this situation is quite limited, thus policies to counteract the phenomenon are very limited and generally depend on municipal initiatives<sup>59</sup>.

The quality of private rented dwelling is monitored in different ways in the three countries.

Neither in Greece nor Cyprus is there a regulation indicating the minimum requirements of a dwelling, thus parties are free to decide on a contract. The only exception is where the dwelling is of such a poor quality that the constitutional principle of respect of human values is violated<sup>60</sup>. In addition, Art. 588 GCC, in the case of an important risk to the tenant's health, grants the latter the right to terminate the contract "*even if at the conclusion of the contract or the delivery of the lease the tenant was aware of the dangerous circumstances or he/she waived from his/her relative rights*"<sup>61</sup>.

In Italy, the legislation provides a broad number of minimum requirements that a dwelling should have and that need to be proved by a specific 'certificate of conformity to standards'<sup>62</sup>. However, the absence of these requirements, does not prevent the dwelling from being rented *per se*. Courts tend to consider it as a breach of contract by the landlord. According to tenancy law, in the event of 'defects' affecting the rented property, the tenant can discharge the contract (or ask for a reduction in rent) only if the defects make the dwelling 'significantly unsuitable for the agreed use' and if the tenant was not aware of these problems or they were not easily recognizable. This means that Art. 1578 ICC cannot be invoked if the tenant accepted the risks regarding the future granting of the certificate from the competent authorities, or when a specific use of the dwelling, for which certain standards are required, was not indicated in the contract, as in this case the landlord cannot be expected to provide for these standards.

However, as in Greece, when the defects of the rented property are a risk to the health of the occupants, tenants in Italy may in any case terminate the contract, despite having been aware of the risk and notwithstanding different agreements (Art. 1580 ICC)<sup>63</sup>.

## 2.4. Energy policies

The impact of energy policies still seems to be different in the three countries, even though this issue has been subject to various European directives.

In Greece the most recent intervention seems to be Law no. 3661/2008, according to which each tenancy contract should be accompanied by an 'energy efficiency certificate'.

Similarly, in Cyprus Laws no. 141/2006 and no. 30/2009 establish that every sale and tenancy contract should be accompanied by an 'energy efficiency certificate'. In

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<sup>59</sup> See Bianchi, Italy, 59 et seq.

<sup>60</sup> Konistis, Greece, 30 and 24.

<sup>61</sup> However, the tenant must not have provoked the dangerous circumstances or these must not be easily avoidable.

<sup>62</sup> For these requirements, see Bianchi, Italy, 60 et seq.

<sup>63</sup> See Bianchi, Italy, 90 et seq.

addition, all newly built dwellings and all buildings bigger than 1,000 m<sup>2</sup> that are to be radically renovated should fulfil certain standards for energy efficiency. For this reason the impact of energy policies is still limited in these countries.

In Italy the recent adoption of Directive 2010/31/EU led to the introduction of the 'certificate of energy performance' (as a replacement of the previous certificate) and to an increase in the responsibilities for owners or landlords upon execution of a contract regarding a dwelling. These measures involve significant savings in energy costs, thus it is expected that they will increasingly affect the market and the price of dwellings both for sale and for rent, although for the moment only about 15% of dwellings comply with the highest standards of energy efficiency. In order to promote renovations in accordance with these rules on energy saving, a broad range of concessions have been provided over the last few years.

## **2.5. Subsidization**

All three countries have traditionally provided subsidies to both tenants and homeowners, although to different extents. In Cyprus and Greece subsidies for homeownership are more evident than in Italy, where the approach seems to be more balanced.

In Greece subsidization was adopted before 2012, however since then housing subsidies have been completely cancelled for state budget reasons. Subsidies consisted, on the one hand, of loans with favourable interest or without interest rates to buy, complete or repair houses; on the other hand, lump sums to tenants to help them pay the rent.

In Cyprus the situation is much more established as there are more than a dozen housing schemes. These can be divided in two main groups: one for the whole population and another one for expatriated households. Almost all of them are targeted at home ownership as they provide different types of help to buy, build, and repair houses. These involve lump sums, loans with favourable interests, provision of land for self-housing or houses at favourable prices. Notable also is the provision of housing units in Expatriated Housing Blocks, which share some similarities with public housing. In addition, there are two programmes of rental subsidies, for the whole population and for expatriated households.

In Italy subsidies to home ownership mainly consist of funds to enable citizens to take out bank loans and of sales of public dwellings at favourable prices, generally to the occupants. Rental subsidies consist of help for the payment of rents and, even more significantly, of tax deductions for both tenants and landlords. Finally there are public and social housing programmes.

In all three countries it seems there is a low level of discretion in assigning the subsidies. Provided that the household sends the application and has the necessary legal requirements, the subsidy is granted.

Also the amount of subsidy is generally indicated by the law, however there are some cases, such as the Cypriot Unified Housing Plan, where only the minimum and maximum amounts of subsidy are indicated; in these cases the authorities have some discretion in deciding the exact amount of subsidy to assign.

One limitation is represented by the funds available. In some cases, such as the Italian Social Fund for Rents, the yearly budget is divided among all the eligible people. In other cases subsidies are assigned following a priority order, generally in accordance with criteria indicated by the law. For example, this is the case of public

and social housing, which means that, when no dwellings are currently available, the applicant can only wait and he/she cannot claim another accommodation or request an indemnity.

Both in Cyprus and Greece, subsidies always seem to be assigned at a national level by the ministerial authorities, whereas in Italy, about 85% of housing subsidies depend on regional and local policies.

As already mentioned, both in Cyprus and in Greece most housing subsidies have been traditionally targeted at home owners, thus compensating for the lack of public and social housing. In Italy the situation is more balanced: subsidies to the rental sector, both public and private, are more developed and the most important measure to facilitate home ownership – the sale of public dwellings at very low prices – is now less common than in past decades.

Some of the major criticisms of the efficiency of the above-described subsidies are worth mentioning.

The system of public housing in Italy is rather rigid, which means that, once the dwelling has been occupied, occupants tend to be lifelong. This is due to the fact that the regulations protect the stability of the tenure and that dwellings are very cheap, thus occupants are generally interested in staying there as long as possible. In certain conditions, occupants can also bequeath the tenure to their heirs. In addition, even when the occupants no longer have the right to continue occupancy, evictions tend to be difficult and lengthy. The result is that public housing in Italy represents a significant form of subsidy but its benefits are enjoyed by a limited number of households, while many hundreds of thousands of applicants are waiting to receive housing.

The sale of public dwellings, used for many years in Italy to subsidize home ownership, has an even worse effect, as it grants a very high subsidy to a household once and for all, represented by the discount on the market price.

However, more recent forms of subsidization have also been criticized, such as the funds to help tenants pay the rent. This is because they are considered to benefit landlords and prevent rental prices from being reduced.

## **2.6. Taxation**

In none of the three countries do tenants pay taxes on their rental properties. However in Italy tenants and owners are jointly and severally liable for payment of a 'registration tax' regarding the tenancy agreement, thus this, as well as the stamp duty, tend to be split between the parties.

In all three countries both taxes on properties and the income from properties exist. One difference is that in Greece and Cyprus, the tax only seems to refer to money effectively gained from the dwelling, such as the rent. In Italy an income tax is paid, with certain conditions, also notwithstanding the real income. Before 2001, every non-rented house had to pay an income tax calculated on its cadastral rent. This provision was abolished for the owner's primary residence (the so-called 'first home') in 2001 and for all other non-rented houses in 2012. However, in 2014 payment of income tax was partially reintroduced at 50% for 'non-rented housing', provided that they were located in the same municipality as the owner's 'first home' (thus 'second

homes' should normally be exempted). In other words, the present regulation only aims to deter vacancies but does not consider as a taxable income the fact that the owner occupies his/her own houses.

All three countries also tax the sale of immovable properties, these taxes include a specific tax on the surplus value. In Cyprus it is applied to every kind of sale of a property and amounts to 20% of the net value<sup>64</sup>. In Greece this type of tax was only introduced in 2014 and amounts to 15%, however, where the property was already owned by the seller before 1 January 1994, the tax does not apply<sup>65</sup>. Similarly in Italy the profit is taxed only if the sale is considered as a speculative investment (the rate is 20%). For this reason the following transactions are exempted:

- sale of a property more than five years after the purchase;
- sale of a property received by inheritance;
- sale of a dwelling used as 'first house' by the owner or a relative for most of the time between the purchase and the sale<sup>66</sup>.

In Greece the subsidization of rental tenures via the tax system is quite limited. The tenant can deduct the rent paid from the total amount of tax imposed at 10% of taxable income and under the condition that any deducted tax does not exceed 1,000 euros.

In Cyprus subsidization concerns only the landlord's position: for the income tax, the taxpayer is entitled to deduct 20% of the collected rent premiums from his/her taxable income, and for the Special Contribution for Defence, the 3% rate applies only to 75% of the rent collected.

In Italy there is a wider subsidization of the rental sector via the tax system. This mainly involves tax deductions, regarding both tenants and landlords, and an alternative fiscal regime for rent incomes<sup>67</sup>. These measures favour 'assisted tenancies', i.e. contracts where rents cannot exceed a ceiling fixed in accordance with the law. In Greece and Cyprus the influence of these subsidies on the rental sector is clearly limited.

Tax evasion is a problem in all the three countries and also widely affects the rental sector. Landlords in many cases do not register tenancy agreements in order not to pay the relevant income taxes. In Italy the black market of non-registered contracts is estimated at about 20% of the total, which means almost one million. In other cases landlords declare a lower income than they actually earn.

As for the effects of this evasion, on the one hand, for a number of people this option, although illegal, is a stimulus to rent out properties; and may lead to cheaper rents. On the other hand, evasion and non-registered contracts facilitate further violations that negatively impact on tenants: for example, non-compliance with mandatory rules concerning the duration and amount of rent or minimum requirements of health and hygiene and the safety of the dwellings. In addition, evasion obviously reduces the amount of funds received by the state and involves a higher level of taxation, which at least in part is also a burden on legal contracts.

Both in Greece and Cyprus tax subsidies favour homeownership, in particular the purchase of a residential dwelling by a person who has no other properties<sup>68</sup>. In Italy

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<sup>64</sup> Konistis, Cyprus, 35.

<sup>65</sup> Konistis, Greece, 37.

<sup>66</sup> See Art. 67 D.P.R. 22 December 1986, no. 917.

<sup>67</sup> For an analysis, see Bianchi, Italy, 70 et seq.

<sup>68</sup> Konistis, Greece, 38; Konistis, Cyprus, 36.

over the last few decades, the wider development of fiscal incentives in the rental sector reflects a tendential neutrality towards the different forms of tenure.

In Greece and Cyprus the tax system is used to influence the rental sector only to a very limited extent. Also in Italy, despite the greater focus on fiscal incentives in order to promote house affordability also in the rental sector, the role of taxes is still limited. Assisted tenancies, which are the most subsidized form of tenancy, still represent only about 20% of the market.

### **3. Comparison of tenures without a public task (Regulation in Private Markets)**

**Key parameter: “Socio-economic equilibrium” between position of landlord and tenant – so as to accommodate both the tenant’s need to have access to decent housing at an affordable cost and the landlord’s profit-orientation and property rights**

#### **3.1. Evaluative criteria for the landlord**

##### *3.1.1 Profitability*

In all three countries legal limits on the amount of rents play a residual role, although with clear differences.

Greece can be considered the most liberalized country of the group as together parties can fix the amount of rent as they choose and increase it during the tenancy. An automatic rent increase, amounting to 75% of the previous year’s price index is imposed by law, notwithstanding a specific agreement. Therefore the only legal limit is that the landlord cannot unilaterally increase the rent during the tenancy<sup>69</sup>. Unfortunately, no data are available on how this regulation impacts on the average return of a tenancy investment in Greece.

Similarly, in Cyprus, parties are free to agree on the rent at the beginning of the tenancy and the landlord cannot modify it later unilaterally. However there is a stricter rule with regard to rent increases. After the tenancy agreement expires, if the tenancy becomes ‘statutory’, an increase of more than 14% of the previous rent is prohibited<sup>70</sup>. Recently the Rent Control Law has been highly criticized, due to the fact that the vast majority of the cases brought before rent control courts are rarely connected with residential dwellings, but in most cases are of a business and commercial character. Therefore, in theory, limiting rent increases in certain cases might also be unreasonable, however, as right now rent prices are decreasing because of the economic situation, this is not so evident.

As for the effects of these rules on the return of tenancy investment, in Cyprus, at the end of the third quarter of 2012, its average gross percentage stood at 3.8% for apartments and 2% for houses.

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<sup>69</sup> Konistis, Greece, 83.

<sup>70</sup> Statutory tenancy is a measure introduced by the Rent Control Law no. 23/1983 to deal with the housing emergency of expatriated Greek-Cypriots and has a wide field of application: if a tenancy - for a dwelling built before 1999 in a controlled area (practically all the urban areas and surroundings) - is terminated by the landlord or expires, then it automatically becomes statutory provided that the tenant does not leave the dwelling.

In Italy the situation is more complex. After the partial abrogation of the Fair Rent Act in 1998, legal limits to rent levels have been generally decided by the parties involved. In other words, they may decide to opt for 'assisted tenancies', which fix a maximum rent, lower than the market price, in exchange for other fiscal and regulatory benefits for the landlord. These contracts represent only about one fifth of the total market but, when opted for, it means that the landlord considers that such a solution is profitable over all.

Contracts with a shorter legal duration and contracts executed by university students for studying purposes<sup>71</sup>, according to the prevailing opinion, must always respect the legal rent ceilings for 'assisted tenancy'. This is justified due to the uniformity and the reduction of transactional costs but has received some criticism considering that it was introduced by a law that was supposed to liberalize the tenancy market. The dissatisfaction with this regulation is testified by the fact that contracts with university students with fixed market rents are widespread in practice<sup>72</sup>. The black market also very seriously affects this kind of tenancy.

Further limits regard the possibility to increase the rent during the tenancy. Clearly this cannot be done by the landlord unilaterally. In case of 'free market tenancies', the prevailing opinion is that parties can decide on rent increases only at the beginning of the contract. In the case of 'assisted tenancies', rent increases need to be expressly allowed by local agreements which also indicate their amount. In any case such increases cannot exceed 75% of the official yearly inflation rate. For contracts executed by university students for studying purposes and contracts with a shorter legal duration, rent increases are not allowed at all. The explanation for this is that for these kinds of contracts, all of which have a shorter legal duration, the need to update rents is less important. However, such strict rules might have a role in the high percentage of black market rentals, especially for university tenancies.

Finally, when the landlord opts for *cedolare secca* (flat rate tax) – an alternative fiscal regime for rental income – the possibility of an increase in rent 'in any form' is suspended until the tax regime applies. This is likely to affect a wide percentage of both 'free-market' and 'assisted tenancies'. Presumably, the reason for this provision by the legislator is that the tenant may also benefit from the option for *cedolare secca*. However, considering that the duration of residential tenancies is compulsory and quite long<sup>73</sup>, such a limit in periods of high inflation might appear unreasonable.

As for the return on investment in Italy, in 2010 its gross value was 2.9%, while in 2012, it was 3.2%. These figures are quite low and furthermore affected by an overall increasing taxation on properties. However, in a period of difficult economic investments, they still attract a certain number of small savers.

All three countries tax rental incomes. Italy is the only country of the three to introduce the possibility of a tax regime specifically for rental income. However this is not necessarily more profitable than the ordinary income tax, which provides some specific deductions for rental income. Cyprus applies ordinary taxes to rental income but also with specific deductions. Greece applies the ordinary income tax regime without any relief.

In Italy the *cedolare secca* regime was introduced in 2011 in order to counteract the high number of black market rentals. It grants landlords, who are natural persons, to have rental income taxed separately at various fixed rates: from 21% for 'free market

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<sup>71</sup> Contracts for holiday reasons and public dwellings are excluded from this regulation.

<sup>72</sup> De Tilla & Giove, 'Le locazioni abitative e non abitative', in *Trattato Teorico Pratico di Diritto Privato*, ed. by G. Alpa & S. Patti (Padova: CEDAM, 2009), 447.

<sup>73</sup> For 'free-market tenancies', 4+4 years; for 'assisted tenancies', 3+2 years.

tenancies' to 10% for 'assisted tenancies' in municipalities with a 'scarcity of dwellings' (Law no. 61/1989) or with 'serious housing problems' (Resolution CIPE no. 87/2003)<sup>74</sup>. In addition, the contract is exempted from the annual registration tax and the stamp duty<sup>75</sup>. On the other hand, the choice of this form of taxation prevents any form of rent increase and tax deduction.

The ordinary fiscal regime provides that rental income is taxed together with the rest of the landlord's income through IRPEF (personal income tax): the rates go from 23% for annual incomes below 15,000 euros to 43% for incomes over 75,000 euros, with three intermediate income brackets (incomes up to 8,000 euros are exempted). In addition, a percentage of the collected rent can be deducted: 5% for 'free-market tenancies' and 33.5% for 'assisted tenancies'. All these differences explain why *cedolare secca* is not always more profitable, but generally only for higher incomes.

In Cyprus, incomes from immovable properties are taxed separately with a specific income tax ranging from 20% to 35% (over 60,000 euros). Incomes up to 19,500 euros are exempted and a deduction of 20% of the collected rent is allowed. The Defense Tax then imposes a further rate of 3%, but only on 75% of the total rental premium collected.

Finally in Greece the total taxpayer's income is calculated and taxed with rates of 11% (up to 12,000 euros) or of 33% (for income exceeding this limit). This is the result of the tax reform introduced in 2014, which, among the other things, also abrogated the exemption for incomes up to 5,000 euros.

The differences in these approaches are quite clear. While Italy tries to use fiscal subsidies also to reduce the black market, the Cypriot tax system provides a more traditional subsidy to rental tenures. Finally the Greek system is clearly greatly affected by state budget difficulties and seems to have abandoned any form of subsidy through fiscal policies.

With regard to other expenses, such as costs of repairs or utilities, while Greece and Italy provide specific regulations, Cyprus has no provisions, but the practical results are not very different.

Both Greek and Italian legislations share the principle that the landlord has to ensure that the dwelling is offered and maintained suitable for the agreed use during the tenancy. This means that the landlord is responsible for all essential maintenance works and repairs on the dwelling. In Cyprus the same principle seems to originate from the general rules on tenancy contracts<sup>76</sup>.

Italian law (Arts 1576 and 1609 ICC) specifies that only 'small repairs' are the responsibility of the tenant, such as the replacement of window glass, locks, lamps broken as a consequence of use. Repairs deriving from the age of the dwelling or from fortuitous events on the other hand, are always the responsibility of the landlord<sup>77</sup>.

Similarly, in Greece, Art. 592 GCC states that the tenant is not liable for damage or alterations that result from the agreed use of the dwelling, but only for repairs due to improper use.

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<sup>74</sup> The rate for 'assisted tenancies' in the above mentioned situations would be 15%, but it has been further reduced to 10% from 2014 to 2017.

<sup>75</sup> It is worth considering that the registration tax is another annual tax on rental income: 2% of the yearly amount. A reduction of 30% is provided for 'assisted tenancies'.

<sup>76</sup> Konistis, Cyprus, 69.

<sup>77</sup> However the landlord cannot be required to rebuild the dwelling if it has been totally or partially destroyed: in both cases, the supervening impossibility of performance can be invoked.

It is important to remember that these rules are all dispositive, thus the duty of the landlord to carry out repairs can be contractually derogated by the parties. Limits arise, at least in Italian law, when parties decide that repairs are the responsibility of the tenant, as this involves an additional burden for the latter. With 'assisted tenancies', this provision cannot be used to derogate the legal rental ceiling.

Also for utilities, similarities among the three countries are evident: in all of them, utilities are considered as expenses for the use of the dwelling and therefore are normally to be paid by the tenant, except for different agreements.

As for Greece, the only exception concerns the Temporary Special Tax of Electricity Supplied Surfaces, which, according to Art. 12 Law no. 401/2011, the tenant can lawfully set-off from the rent.

As for both Greece and Italy, it is worth remembering that, according to case law, with the common utilities in a condominium, the owner is always the only subject responsible for payment towards the condominium. Then, after payment, the owner/landlord can ask to be refunded by the tenant.

Finally, although the taxation of properties is not directly connected to the landlord but rather the owner, it is worth noting its potential impact on the field of tenancies. This is because in all three countries, this form of taxation was recently increased as one of the main resources to cover state budget problems after the beginning of the economic crisis.

### *3.1.2. Property rights respected de jure and de facto*

The payment of a deposit is a common procedure in all three countries and its function is to serve as a guarantee against future claims made by the landlord and not as an advanced rent payment.

In both Greece and Cyprus the amount of the deposit can be freely decided on by the parties. In Italy, Art. 11 Law no. 392/1978 indicates that the deposit cannot exceed three months' rent, however this rule is nowadays considered as dispositive for contracts executed under Law no. 431/1998<sup>78</sup>.

The aforementioned Italian regulation indicates that interest on the deposit should be given to the tenant at the end of each year, but also this provision is mainly considered as dispositive, at least with regards to 'free-market tenancies'. Also, in Greece and Cyprus, in the absence of a specific provision, the issue is a matter of debate. In Greece the prevailing opinion is that the landlord is obliged to return the deposit plus interest to the tenant once the contract expires, and all claims against the tenant are set off. Another opinion retains that interest should be paid only if the landlord defaults on returning the deposit to the tenant<sup>79</sup>. The latter solution seems to prevail in Cyprus<sup>80</sup>.

It is notable that, at least in Italy, the landlord cannot automatically retain the deposit: he/she has to file civil proceedings in order to ascertain the amount due and be authorised to retain it.

Both Greece and Italy provide a lien on the tenant's belongings, although with some differences. Cyprus has no provision for this, but a lien can be agreed between the parties.

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<sup>78</sup> See Bianchi, Italy, 135 et seq.

<sup>79</sup> See for references Konistis, Greece, 76.

<sup>80</sup> Konistis, Cyprus, 69.

The principal differences between the Greek and Italian models are the following<sup>81</sup>:

- the Greek provision (Art. 604 GCC) considers all the movable objects brought into the dwelling by the tenants or his/her family, provided they are legally subject to attachment. The Italian provision (Art. 2744 ICC) refers to belongings that 'furnish' the dwelling, thus anything but furniture, such as money, jewels, clothing and similar are excluded;
- the Greek provision also expressly considers the things belonging to the wife and the children of the tenant or the subtenant. Also in Italy the furniture of the subtenant is included but the belongings of other subjects are excluded, provided that the landlord was aware that they did not belong to the tenant;
- in Greece the lien secures only the tenant's claims for delayed rent (for a period of two years before the tenant's belongings are seized). In Italy it can be used for any credit arising from a breach of contract, such as a refund for repairs not carried out by the tenant or for damage to the dwelling.

In any case, in all three countries the deposit is a much preferred form of guarantee for the landlord's claims. In Greece this is because the lien does not secure any kind of claim, in Italy it is because a guarantee for furniture is less practical than a guarantee for a sum of money and generally requires a longer procedure to be paid.

A personal security is quite common, especially when tenants are university students or young people in general. This is also due to its very simple mechanism: another person, often parents or other relatives, can be required to pay the rent in case the tenant is in default. Many landlords do not rent dwellings to young people without such a security, but according to public opinion this is a reasonable precaution. This is probably another indication of the inter-familial approach to housing in southern Europe.

Insurance against damage to the dwelling by the tenant or non-payment of the rent exist but is quite unusual, at least for normal dwellings. However, in Italy, since the beginning of the crisis, an increasing number of landlords have opted to secure rents.

As for terminating contracts, if the property is needed for personal use, for close relatives or other economic uses, the three countries follow very different policies.

As far as Italy is concerned, it is worth focusing on Law no. 431/1998, although termination, for a very limited number of tenancies is still regulated by the Civil Code or by Law no. 392/1978<sup>82</sup>.

Law no. 431/1998 liberalized the rent market but in return it introduced stricter rules for the duration and termination of the contract. Therefore contracts regulated by this statute cannot be terminated by the landlord at any time but only after three or four years from the beginning of the contract (depending on the kind of tenancy: 'free-market' or 'assisted'), with at least six months' notice. Termination in these cases is also possible only for one of the reasons indicated by Art. 3, lett. a) to g). These include: *a) when the landlord wants to use the dwelling for him/herself or for his/her spouse, parents, children, relatives up to the second level, for a residential, commercial, artisan or professional activity; b) when the landlord is a public, cultural or religious legal entity that wants to use the dwelling for its own purposes, provided that it provides the tenant with another adequate and fully available dwelling; ... g)*

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<sup>81</sup> For further details on these liens see, respectively Konistis, Greece, 73 et seq.; Bianchi, Italy, 131 et seq.

<sup>82</sup> For termination by the landlord in similar cases, see Bianchi, Italy, 165.

when the landlord wants to sell the dwelling, provided that he/she does not own other residential dwellings, in addition to his/her own house; a pre-emption right is granted to the tenant in such cases<sup>83</sup>. Thus the legislator takes into consideration, with very precise conditions, various needs of the landlord to interrupt the contract for personal reasons, balancing it with the interest of the tenant in stability. These rules are considered unilaterally mandatory which means that they cannot be derogated in favour of the landlord. At the end of the legal term (five or eight years, depending on the kind of tenancy), the landlord is free to terminate the contract without justification, with at least six months' notice.

Both in Greece and Cyprus, there is a much more liberalized approach to the problem of termination, which means that the protection of stability for the tenant is more limited.

In Greece the main distinction is between open-ended contracts and those that are limited in time. In open-ended contracts, the landlord can always send a notice of termination without justification. The law simply indicates the period and the minimum deadline to send the notice, but these rules are dispositive. It is also necessary to consider that, pursuant to Art. 5, subs. 1 Law no. 2235/1994, the minimum duration of a residential tenancy for a primary residence is three years, thus during this period freedom of termination does not apply. During this term only the rules regarding termination in exceptional cases are applicable: which are also only applicable for time-limited contracts. These provisions do not provide for the right to terminate the contract earlier in order to meet the landlord's personal needs. The only possibility is termination of tenancies exceeding 30 years: *"If a lease is entered into for a period longer than thirty years, or for the lifetime of one of the lessor or the lessee, either party may after thirty years give notice of termination of the lease according to the provisions of the lease of non-fixed duration"* (Art. 610 GCC).

In addition, both the courts and the legal doctrine accept 'termination for outstanding reasons', in accordance with the principles of good faith, although the Civil Code does not expressly state it. According to case law, this form of termination cannot be invoked by the landlords in order to terminate the contract earlier for their own use<sup>84</sup>. Obviously, apart from the only mandatory rule in this field, regarding the minimum duration for primary residential tenancies, parties are free to provide clauses for early termination in the contract.

In Cyprus the role of contractual terms, at least in theory, is even more important, as formally there are no provisions with regard to minimum duration or restrictions to termination of the contract. The only limit is that parties must always indicate a term for the tenancy contract, thus a specific clause for earlier termination for particular reasons should be provided.

Despite this, the Rent Control Law, which grants special protection to tenants against eviction, plays a key role in this field. When this law is being applied, no eviction orders can be issued against the tenant, even after proper termination, except in the cases indicated by Art. 11, subs. 1<sup>85</sup>. Of these, it is worth mentioning the following:

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<sup>83</sup> The other reasons are the following: c) *when the tenant has at his disposal a free and adequate dwelling in the same municipality; d) when the building is seriously damaged and needs repairs which are prevented by the presence of the tenant; e) when the building must be fully renovated, or destroyed or elevated (in the latter case, the tenant must be living on the top floor and the building needs to be evacuated); f) when the tenant does not continuously occupy the dwelling without a legitimate reason, save cases of succession in the contract.*

<sup>84</sup> See Konistis, Greece, 90.

<sup>85</sup> The Rent Control Law and the notion of 'statutory tenant' have a very wide application in Cyprus: this law applies to all the dwellings in controlled areas (practically all the urban and surrounding

- f) if the owner needs to use the property as a residence for him/herself, spouse, children or dependent parents. However, in such a case the court will not issue an eviction order if it is proven that such an order would cause serious damage;
- g) when the owner reasonably requires the dwelling in order to demolish it and construct a new building, or to make substantial changes or alterations which will lead to the development of the property or to execute works in a preserved building. In this case, the tenant should be given four months' notice;
- k) if the tenant has given prior notice declaring his/her intention to vacate the dwelling, and the landlord concluded a sale or tenancy contract<sup>86</sup>.

Cyprus therefore has a *de facto* regulation, which is quite similar to the Italian regulation, when the Rent Control Law applies. Although no minimum duration of tenancies is provided, the stability of tenants is widely protected by the special statute: the landlord can recover the dwelling only for one of the reasons expressly indicated by the law, which are similar to the reasons indicated by the Italian law. In Cyprus the Rent Control Law has been criticized as it no longer seems to be coherent with its original purpose: protecting expatriated people after Turkish occupation. In addition, the fact that the rule only applies to dwellings built before 1999 seems to create an artificial distinction between two almost opposite systems.

The Greece and Cyprus situations have similarities in terms of eviction procedures. In particular, due to the vast supply of houses available for rent, tenants, at least with regard to residential tenancies, generally prefer to leave the house, rather than begin time-consuming and costly court proceedings<sup>87</sup>.

In Greece proceedings are quite lengthy but, on the other hand, no particular protection against eviction is granted by the legislator. Thus considering that first-degree judgments in tenancy disputes are immediately enforceable, evictions do not seem to be subject to considerable delays<sup>88</sup>.

In Cyprus court proceedings seem to be faster but the Rent Control Law represents a significant limit to evictions, when the tenant does not spontaneously leave the dwelling. First of all, it is necessary that one of the grounds for the eviction provided by Art. 11 of the law applies. Then the landlord has always to give one month's notice, unless agreed otherwise. Finally, the court may, in any case, suspend the execution of its judgment for up to one year<sup>89</sup>.

In both countries mediation has been recently introduced and for the moment, as with other alternative dispute resolutions, appears to be rarely used<sup>90</sup>.

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areas), built before 1999; «a tenant is deemed statutory if, after the expiration or termination of the first tenancy, he/she remains in possession of the dwelling»: Konistis, Cyprus, 82.

<sup>86</sup> The other reasons are the following: a) When rent is in arrears for more than 21 days after a written notice demanding payment is given to the tenant, should he/she fail to pay the amount due within 14 days from the service or should the tenant constantly default on the rent. b) In the event that the tenant proves to be a nuisance to neighbours, or uses the dwelling for illegal or immoral purposes, or permits such use. c) If the Court finds that the condition of the dwelling has worsened due to the destructive actions or gross negligence of the tenant. d) If the tenant, despite the explicit obligation not to sublease the property, does so and the Court considers this reasonable cause to issue an eviction order. e) If the tenant exploits the dwelling in a way that the profit gained is disproportionately high compared to the rent owed. h) When the dwelling is required for legal planning purposes. i) When the landlord has been expropriated by law. j) When the dwelling is reasonably required for public law purposes. See Konistis, Cyprus, 82 et seq.

<sup>87</sup> Konistis, Greece, 97 and Konistis, Cyprus, 85.

<sup>88</sup> Konistis, Greece, 96.

<sup>89</sup> Konistis, Cyprus, 82 et seq.

<sup>90</sup> See Konistis, Greece, 96 and Konistis, Cyprus, 84

The most important difference in the Italian situation is that in a wide number of cases tenants tend not to leave the dwelling spontaneously. This is probably the consequence of a more difficult tenancy market, where available dwellings are not as widespread as in Greece and Cyprus. In addition Italy is affected, apparently even more than Greece, by very lengthy court proceedings, at least when the tenant files an opposition to the eviction<sup>91</sup>. Furthermore, once the eviction order has been obtained, evictions can be significantly delayed. Firstly, the law grants the judge the possibility to delay the order for up to six months (twelve in exceptional cases). Then for many years in Italy a periodically updated law has provided a temporary suspension of evictions for tenants in particularly difficult conditions. Finally, also public authorities who should factually intervene in order to vacate the dwelling have a certain power to 'graduate evictions', in consideration of political decisions, such as the difficulty and the opportunity to go ahead with the procedure<sup>92</sup>.

The result is that in certain cases eviction can be really difficult and take years. After the intervention of the ECHR and the Italian Constitutional Court, attempts were made to limit the time and discretion in these procedures. However the economic crisis has greatly increased evictions and also the protests against them, so it is doubtful whether the lengths of court proceedings really are being shortened.

The situation in public housing in Italy is even more complex as evictions in these cases have been always delayed much longer than in the private sector. In addition, more recently, evictions from public dwellings have been increasingly contested and prevented through pickets by groups fighting for the 'right to housing', even when evictions concern illegal occupations.

Since June 2013 mediation before filing ordinary proceedings for tenancy law has become compulsory again, but it is still too early to find data regarding its effects<sup>93</sup>.

### *3.1.3. Construction and rehabilitation capabilities*

In all three countries the modernization and extension of mortgages was one of the driving forces for the significant development in the housing market in the years before the crisis. Since 2007 new bank loans have decreased considerably, although with partially different effects .

In Italy the reduction in new home loans was particularly drastic, from 60.4 billion euros in 2006 to 24 billion euros in 2012, and signs of recovery are still quite limited. The result is that house purchases more than halved and there has been an increase in the percentage of people living in rental properties.

In Greece and Cyprus, the reduction in new home loans was more limited and in addition affected a market with a high number of available, often newly built, dwellings. Thus the impact was more evident for the construction industry, which had to abandon many new or ongoing projects, rather than on families looking for a house to buy.

In Cyprus a significant proportion of public subsidies target the construction or renovation of buildings. These plans include loans with limited or no interest to build or renovate houses but also the provision of land for self-building programmes<sup>94</sup>.

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<sup>91</sup> For an analysis of the procedures: Bianchi, Italy, 171 et seq.

<sup>92</sup> For further details on all these aspects, see Bianchi, Italy, 174 et seq. and 180 et seq.

<sup>93</sup> Bianchi, Italy, 180.

<sup>94</sup> Konistis, Cyprus, 26 et seq.

Also in Greece, until 2012, loans were provided to complete or repair houses, but were later cancelled for budget reasons<sup>95</sup>.

In Italy, subsidies in this field are represented by fiscal incentives. A certain percentage of the expenses for the construction or renovation of a building can be deducted from the taxable income of the person who paid for such expenses (owners, landlords but potentially also tenants). In recent years deductions have been increased, as they are considered an important measure to stimulate investments and economy<sup>96</sup>. In addition, these works have a reduced VAT at 10%.

In all three countries a performance in kind by the tenant, who renovates the dwelling during the tenancy, is admissible only when parties expressly agree to it. It is not easy to say how widespread this is. In Italy it is sometimes adopted for public housing, in order to rent dwellings that need refurbishments for which the public owner does not have sufficient funds.

## **3.2. Important evaluative criteria for the tenant**

### *3.2.1. Affordability*

Both in Greece and Cyprus parties are free to fix the rent at the beginning of the contract.

In Italy this is also the most frequent solution (so called 'free-market tenancies'), however 'assisted tenancies' also exist. In the latter, the rent is fixed in accordance with various legal parameters, thus it is generally slightly below the market level.

The different regulation with regard to rent increases was described above in Sect. 3.1.1. The common feature of the three countries is that the landlord can never increase the rent unilaterally, not even for renovations or other measures that increase the value of the dwelling during the tenancy<sup>97</sup>.

Greece is the only country to provide an automatic rent increase (75% of the previous year's price index) in the absence of a different specific agreement between the parties.

In Cyprus limits to rent increases only regard 'statutory tenants', when, an increase of more than 14% of the previous rent is prohibited.

In Italy rent increases are not allowed for contracts that are stipulated for studying purposes by university students and shorter legal contracts to meet the needs of one of the parties. In the case of 'assisted tenancies', rent increases need to be expressly allowed by local agreements, which also indicate their amount. In any case such increases cannot exceed 75% of the previous year's consumer price index. In the case of 'free market tenancies', the only limit seems to be that parties must decide on the rent increases from the beginning of the contract. The last exception is represented by *cedolare secca* – an alternative fiscal regime for rental income. In this case the possibility of obtaining an increase in the rent 'in any form' is suspended for the duration of this regime.

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<sup>95</sup> Konistis, Greece, 32 et seq.

<sup>96</sup> The percentage of deduction depends on the type of work and on the year; from 36% to 65%.

<sup>97</sup> In Greece, in similar cases, the possibility of having the contract renegotiated by the judge, in accordance with good faith, is in theory possible, but no relevant case law can be found: Konistis, Greece, 83 et seq.

Thus Italy has the most protective approach towards tenants, while Greece has the most liberalized (i.e. pro-landlord) approach. The ordinary regime in Cyprus resembles the Greek policy, but where the Rent Control Law applies, protection becomes stricter.

In all three countries deposits seem to be the most widespread form of guarantee required by landlords. Its amount is not fixed by mandatory rules, but it generally corresponds to one or two months' rent.

No other particular provisions can be found. As already mentioned in Sect. 3.2.1, some debate still regards the payment of interests on the sum by the landlord<sup>98</sup>.

With regard to utilities, the common principle in the three countries is that these expenses shall be usually paid by the tenant as they derive from the use of the dwelling. However these provisions are dispositive.

As for repairs, the common principle emerging from the regulations in the three countries is that the landlord is normally responsible for repairs. The Italian law (Arts 1576 and 1609 ICC) specifies that the tenant is responsible only for 'small repairs', such as replacement of window glasses, locks, lamps broken as a consequence of use etc., while repairs deriving from the age of the dwelling or from fortuitous events are always the responsibility of the landlord<sup>99</sup>. Similarly, in Greece, Art. 592 GCC states that the tenant is not liable for damages or alterations that result from the agreed use of the dwelling, but only for repairs due to improper use.

However these rules are also dispositive, thus the tenant's responsibility may be extended by the parties. In Italian law, a limit is represented by the fact that, in case of 'assisted tenancies', such provisions cannot be used to increase the burden for the tenant and subsequently to derogate the legal rent ceiling.

In Italian law, provisions specify the sharing of some 'additional costs' between tenant and landlord, in the absence of an agreement to the contrary: Art. 9 and 10 Law no. 392/1978 or Intermin. Decree 30 December 2002 (Enclosure G) for 'assisted tenancies'. In addition there is also a Table of Additional Costs arranged between some associations representing landlords and tenants, which can be voluntarily adopted by the parties<sup>100</sup>. These provisions are useful as they take into consideration various problematic examples of repairs and utilities.

In Greece and Cyprus no 'registration tax' or 'stamp duty' exist and, more generally, there is no tax burden on the tenant.

In Italy, tenants and owners are jointly and severally liable for payment of a 'registration tax' (2% of the annual rent, every year) and a 'stamp duty'; thus these sums tend to be split in half between the parties. In addition, the tenant has to pay *TARI* every year, which is a tax paid to municipalities for waste collection. They also have to pay a percentage between 10 and 30%, depending on each municipality's choice, of *TASI*, a tax for 'indivisible public services' such as lighting, road, repairs, maintenance of public gardens, security services and so on.

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<sup>98</sup> For further details about the regulations on deposits in the three countries, see Konistis, Greece, 75 et seq.; Konistis, Cyprus, 68 et seq.; Bianchi, Italy, 135 et seq.

<sup>99</sup> However the landlord cannot be required to rebuild the dwelling if it has been totally or partially destroyed: in both cases, the supervening impossibility of performance can be invoked.

<sup>100</sup> See Bianchi, Italy, 133.

Subsidies to tenants provided by the countries at issue have already been described in Sect. 2.5.

### 3.2.2. Stability

In Cyprus there is a wide case law of the Supreme Court that distinguishes between a tenancy and license for use. This suggests that licenses are quite often used to avoid tenancy regulations, which is quite strict when the tenancy becomes statutory. In Italy the most common alternative to a tenancy contract is a commodatum or loan for use. This contract is often used to simulate a gratuitous agreement or to derogate the minimum legal duration of tenancy contracts. In Italy loans for use represent about 7.4% of all tenures.

In Greece the use of alternative contractual agreements seems to be less widespread, probably as a consequence of a much less regulated tenancy law.

In Greece tenancy contracts can be validly executed without particular formalities, so validity problems are connected to omitted registration, as described below.

In Cyprus, the written form is widespread, as it is necessary for all tenancies of immovable dwellings lasting more than one year. Without this, the contract is null and void.

In Italy since 1998 a written form has been required for all kinds of residential tenancies<sup>101</sup>. More significantly the legislator introduced a specific discipline, derogating the normal rules on the invalidity of contracts. This was aimed at a particular deterrent and punitive effect, when the lack of a written form is the landlord's fault. In this case, the contract is valid, but its content is modified by the court in accordance with legal provisions. The rent cannot exceed the amount established for 'assisted tenancies'. If the tenant previously paid a higher rent, he/she has the right to have the difference refunded (Art. 13, subs. 5 Law no. 431/1998). In order to obtain the judge's corrective decision, evidence that the landlord did not want to sign a written agreement is required, in addition to evidence that the tenant was actually provided with the dwelling. Although not expressly governed by the law, it is deemed as reasonable that the duration of the contract, if lower, will also automatically be fixed at the minimum legal level<sup>102</sup>.

This shows once more that some of the most typical Italian legal solutions in the field of tenancy law, which do not exist in the other two countries, are meant to counteract the black market, as the lack of a written form normally implies tax evasion. Cyprus has a more traditional approach to the lack of a written form. Finally Greece still has a very liberalized approach, which is compensated for by the rules on tax registration described below.

Two different kinds of registration exist in the juridical systems of the three countries. There are tax registers only in Greece and Italy.

In Greece, legislation imposes a special registration duty on tenancy contracts "*of urban immovable properties*". In the absence of registration, tenancy contracts "*are deprived of any probative power and cannot be taken into account by the courts and the public authorities in general*" (Art. 77 Law no. 2238/1994 "Tax Income Code"). However, the well-established opinion of the Greek Court of Cassation is that the

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<sup>101</sup> Discussions only regard the application of this rule to particular categories of residential dwellings: see Bianchi, Italy, 103.

<sup>102</sup> For more details, see Bianchi, Italy, 103.

court legally takes into account any unregistered tenancy contract when Art. 650, subs. 1 GCCP applies: *“The court also takes into account evidence that does not fulfil the requirements of the law”*<sup>103</sup>.

In Italy all contracts for properties lasting more than thirty days a year are subject to tax registration. In 2004, it was established that non-registered contracts were null and void. This provision is unusual as fiscal irregularities, such as non-registration, should not affect the validity of a contract, according to traditional civil law rules<sup>104</sup>. Nullity means that the contract is retroactively without effect and cannot be legally enforced before the court, which could also be counter-productive for the tenant. For this reason in 2011 the possibility of a validation of the contract was introduced. This solution, on the one hand, provides a deterrent and punitive effect on the landlord (as in the above-mentioned lack of the written form) and on the other, encourages the tenant to claim registration of the contract<sup>105</sup>. However in 2014, the 2011 rules were declared unconstitutional because the government adopted them without respecting the boundaries authorized by parliament. Thus in the following months it will be clear whether the government is going to propose the same rules again following the correct procedure<sup>106</sup>.

There are land registers, on the other hand, in all three countries with a very similar content. They are not necessary for the validity of the contract but to prevent the new owner from lawfully terminating the tenancy contract if the dwelling is transferred. The registration requirement in all three countries is provided only for tenancies exceeding a certain duration: nine years in Greece and Italy, fifteen years in Cyprus<sup>107</sup>.

Landlords may be motivated to enter into non-registered contracts as a way of circumventing the mandatory rules of tenancy law and taxation. This situation seems to be common to all three countries. A minimum legal duration is provided in Greece and Italy, but also in Cyprus ‘statutory tenancies’ create, for certain aspects, an even more rigid regulation. Taxation of the income from rent is equally common to all three countries.

Regarding the protection of the tenant against unilateral termination by the landlord, the three countries follow different approaches.

In Cyprus, in accordance with the Supreme Court, open-ended contracts are not allowed but parties must always indicate a term. Despite this, legislation does not provide a minimum or maximum legal duration for tenancy contracts and not even particular rules for termination. Thus normally parties stipulate in each contract reasons, terms and modalities for termination. This completely liberalized approach is compensated for by the provision of ‘statutory tenancies’ in a wide number of cases,

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<sup>103</sup> See Konistis, Greece, 56 et seq.

<sup>104</sup> For this reason some authors and court decisions do not consider it as invalidity but simply as unenforceable until the contract is registered: see Bianchi, Italy, 104 et seq.

<sup>105</sup> Art. 3, subs. 8 Leg. Decree no. 23/2011 established that if the tenant registered a contract that was not previously legitimately registered, the content of this contract automatically changed: the duration became four years from the moment of registration, upon expiration the contract was automatically renewable for another four years according to the conditions of Art. 2, subs. 1, Law no. 431/1998 and the rent was reduced to three times the cadastral rent (a particularly low value in comparison to current market prices, which in the country are on average eight times the cadastral rent). For further details, see Bianchi, Italy, 88 et seq. and 104 et seq.

<sup>106</sup> Regarding the relationship between tax registration and rent increase, see Bianchi, Italy, 148 et seq.

<sup>107</sup> See respectively, Konistis, Greece, 57; Bianchi, Italy, 105 et seq.; Konistis, Cyprus, 55.

which prevents eviction and *de facto* renews the contract until the tenant leaves the dwelling of his/her own accord, or one of the reasons for eviction provided by the law is met<sup>108</sup>.

In Greece open-ended contracts can be stipulated, but the law provides a mandatory minimum duration of three years for primary house tenancies. The law also indicates various minimum terms that the landlord has to respect in order to give ordinary notice, but they can be derogated by the parties. The landlord is, in any case, entitled to terminate the contract, even during the mandatory term of three years, in extraordinary cases indicated by the law: the bad use of the dwelling<sup>109</sup> or rent in arrears<sup>110</sup>. In the latter case, the law provides that termination can be prevented if the tenant pays the delayed rent and the notice expenses before the term of the notice expires. In ordinary termination notices, the tenant can object that the landlord's termination was illegal, because it went against the limits set by good faith, good morals, or the economic and social purpose of the right (Art. 281 GCC). An application of this principle might be that the landlord gives notice to a tenant who is late in paying the rent, without claiming his/her rights from the guarantor who would be able to fulfil the obligation<sup>111</sup>.

Other exceptional circumstances concern termination of tenancies exceeding 30 years, which is always possible after this term<sup>112</sup>, and termination for 'outstanding reasons'. The latter is accepted by courts and legal doctrine in accordance with the principles of good faith, for example when some facts render the continuation of the contract particularly onerous for the party invoking them<sup>113</sup>.

Finally, it is worth remembering that pursuant to the provision of Art. 612A GCC "*when the dwelling is used as a family house and such use has been notified to the landlord, the latter's termination is void, if the relevant notice is not also addressed to the tenant's spouse*".

In Italy stability for the tenant is carefully protected by Law no. 431/1998. Contracts regulated by this statute can be terminated by the landlord only after three or four years from the beginning of the contract (depending on the kind of tenancy: 'free-market' or 'assisted'), with at least six months' notice. Termination in these cases is possible only for one of the reasons indicated by Art. 3, lett. a) to g)<sup>114</sup>. At the end of

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<sup>108</sup> For further details on 'statutory tenancies', see Sect. 3.1.2 and *amplius* Konistis, Cyprus, 82.

<sup>109</sup> Art. 594 GCC "*The lessor is entitled to terminate the lease agreement, and in addition to claim compensation for damages, where the lessee, notwithstanding the protest of the lessor carelessly uses the property and in a manner inconsistent with the agreement or if he/she does not behave appropriately towards the other tenants*".

<sup>110</sup> Art. 597 GCC "*If a lessee has delayed payment wholly or in part of the rent, the lessor is entitled to give notice of termination of the lease at least one month if it is about a lease whose duration was agreed for a year or more, and before ten days in the other leases. A lessor's claim for damages due to the premature dissolution of the lease contract is not excluded. The notice of termination is ineffective if the lessee pays the delayed rent before the time period passes with any expenses relating to the notice*".

<sup>111</sup> In this sense, see Konistis, Greece, 93.

<sup>112</sup> Art. 610 GCC: "*If a lease is entered into for a period longer than thirty years, or for the lifetime of one of the lessor or the lessee, either party may after thirty years give notice of termination of the lease according to the provisions of the lease of non-fixed duration*".

<sup>113</sup> See Konistis, Greece, 90.

<sup>114</sup> The reasons are the following: "a) when the landlord wants to use the dwelling for himself or for his spouse, parents, children, relatives within the second level for a residential, commercial, craft or professional activity; b) when the landlord is a public, cultural or religious legal entity which wants to use the dwelling for its own purposes, provided that it provides the tenant with another adequate and fully available dwelling; c) when the tenant has at his disposal a free and adequate dwelling in the same municipality; d) when the building is seriously damaged and needs repairs which are prevented by the presence of the tenant; e) when the building shall be integrally repaired, or destroyed or

the legal term (five or eight years, depending on the kind of tenancy), the landlord is free to terminate the contract without justification, with at least six months' notice. These rules are considered unilaterally mandatory, which means that they cannot be derogated in favour of the landlord, but only in favour of the tenant.

In addition tenancies can always be terminated in accordance with the general provisions of contract law, when these are not expressly derogated. This means that it is possible to rescind the contract or to discharge the same for breach, for supervening impossibility of performance or for supervening hardship. In a breach for non-payment of rent, there are some special rules which specify the term beyond which the contract can be terminated, which at 20 days is not particularly long. However, they also grant the tenant the possibility of avoiding termination by paying rent, interests and expenses before a court<sup>115</sup>. These rules are also unilaterally mandatory in favour of the tenant.

The overall impression is thus that Cyprus provides, on the one hand, a very strict protection of stability through 'statutory tenancies', which is limited to dwellings built before 1999 and in 'controlled areas'. In addition it has a very liberalized system for the remaining tenancies: parties always fix a term for the contract and possible cases of earlier termination both by the landlord or by tenant have to be expressly agreed between the parties in the contract.

Greece has a more homogeneous system, which is based only on one mandatory rule, regarding the minimum duration of three years for primary house tenancies.

Italy has a more articulated legislation, which limits the autonomy of parties to a greater extent than the Greek legislation, but in a more homogeneous way than the Cypriot system.

It is necessary to consider that both in Greece and Cyprus tenants seem to have fewer difficulties in finding alternative housing solutions in the case of evictions. This explains, at least in part, the smaller attention by the legislator in guaranteeing stability through mandatory rules. In Cyprus this tendency over the last decades has conflicted with 'statutory tenancies', which are the legacy of the Turkish invasion in the 1970s but no longer seem to correspond to present housing needs.

In Italy, the greater attention on stability reflects a situation which has not drastically altered over the decades. There is a more difficult housing market, especially in the largest cities, where supply barely meets demand and prices remain generally high. Consequently, there is a more conflicting situation between tenants and landlords in terms of keeping the dwelling or having it returned. However, such legislation might be not only the consequence but, to a certain extent, also a cause of these conflicts. The protective legislative approach and above all the very lengthy judicial procedures induce some tenants to stay in the dwelling even after termination of the contract, aware that the actual eviction will take months or years.

In the three countries, it does not seem that fixed-term leases are used to circumvent the protection of the tenant in the case of open-ended leases.

In Cyprus the Supreme Court requires that every tenancy has a fixed term so that parties are aware that the contract will last until that term, save exceptional cases of earlier termination that must be decided on between the parties.

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*elevated (in the latter case, the tenant must be living on the top floor and the building needs to be evacuated); f) when the tenant does not occupy continuously the dwelling without a legitimate reason, save cases of succession in the contract; g) when the landlord wants to sell the dwelling, provided that he does not own other residential dwellings, in addition to his own house; a pre-emption right is granted to the tenant in such cases".*

<sup>115</sup> See Bianchi, Italy, 129.

Both in Greece and Italy, legislation indicates mandatory minimum terms of duration of residential tenancies, as this is considered as a more effective protection than open-ended contracts, where landlords have much more freedom to terminate the contract at any time.

It has already been mentioned how protected periods differ in Cyprus, Greece and Italy and also in the same country, depending on the applicable rules. These measures range from the indefinite extension of 'statutory tenancies' in Cyprus, from five or eight years in Italy, to three years in Greece and to a complete contractual freedom, especially in Cyprus.

All three countries also occasionally introduced legal prolongation of tenancy contracts, but these measures are not used anymore. In Italy such a function is now played by rules granting the possibility to delay or suspend evictions in particular conditions. So even in the absence of prolongation rights of the contract, actual eviction can be greatly delayed.

In Greece and Cyprus prolongation depends only on the initiative of the parties, which may include an option right or a prolongation clause in the contract, as well as renewing the contract before its expiration<sup>116</sup>.

In Greece and Italy the principle 'emptio non tollit locatum' has a similar formulation in the Civil Code, deriving in both cases from the German model of BGB.

The basic rule of Arts 615 GCC and 1599 ICC is that the tenancy binds the new owner of the property when the contract had a certified date before the transfer of ownership<sup>117</sup>. In both cases, 'certified date' requires a public document or a private document that is somehow certified by a public authority (a notary public, a public register, etc.). It is also the same principle for which tenancies of nine years or more, in order to be valid for the new owner, should be registered in the land registry.

Differences arise with regard to tenancies without a certified date. In Greece the legislator grants only a term to send notice of termination and the right of compensation for the tenant against the landlord<sup>118</sup>. In Italy, in contrast, further ways to prevent termination are provided: when the tenant can provide evidence of his/her possession of the dwelling before the sale and when the purchaser agreed to respect the tenancy in the contract<sup>119</sup>.

Another important difference is the role of private autonomy. In Greece, the tenancy agreement can contain a stipulation that in the case of alienation of the property, the tenancy is discharged (Art. 615, subs. 1 GCC). In Italy a similar provision is provided in the Civil Code (Art. 1603 ICC), however its practical role is extremely limited, as

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<sup>116</sup> See Konistis, Greece, 68 and Konistis, Cyprus, 64.

<sup>117</sup> In both countries the rule equally applies in the case of constitution or transfer of a real right over the property.

<sup>118</sup> Art. 615 GCC: *"In the lease of a piece of land which is not executed in a deed bearing a certified date, or contains a stipulation that upon alienation of the property or concession of real right which excludes the use from the lessee, the new owner is entitled to terminate the lease on a month's notice if the term of the lease is a year or less, or on two months' notice if it exceeds a year. In the event of termination by the new beneficiary, the right of the lessee to compensation as against the lessor shall be fully preserved"*. See for further elements, Konistis, 62 et seq.

<sup>119</sup> Art. 1600 ICC - *If tenancy does not have a certain date but detention by the tenant is before the sale, the purchaser shall not respect the tenancy for more than the duration established for open-ended tenancies.*

Art. 1599, subs. 4 ICC – *The purchaser is in any case bound to the tenancy if this duty towards the seller was accepted.*

such an agreement is forbidden for the wide majority of dwellings by Art. 7 of the Fair Rent Act both for residential and professional tenancies.

The situation is very different in Cyprus, as in this field the Supreme Court ruled that common law and equity apply, qualifying the relationship between the purchaser and the tenant as 'constructive trust'<sup>120</sup>. The decision was that anyone purchasing a dwelling who is aware that a tenancy contract has been signed on this dwelling is bound to respect the obligations of his/her predecessor.

In comparison with the Greek and Italian systems, the Cypriot system protects the purchaser to a greater extent but it is much more uncertain for the tenant, as it is only based on the effective knowledge of the purchaser. It is worth considering that in Cyprus such a solution in accordance with equity is more favourable for the tenant than a solution pursuant to immovable property rules (Chap. 224), which would not provide any protection for tenancy agreements in similar cases<sup>121</sup>.

None of the three countries provide the right of first refusal of the tenant when selling the house to a third party. Italy is the only country providing a pre-emption right of the tenant in particular conditions: when the landlord terminates the contract after three or four years (depending on the kind of tenancy) in order to sell the dwelling (Art. 3, subs. 1, lett. g) Law no. 431/1998)<sup>122</sup>.

The use of massive rent increases to force the tenant to leave the dwelling should be prevented by the fact that unilateral rent increases during the tenancy are not allowed in any of the three countries.

Parties could instead agree to a substantial increase in the rent after a certain period of time. According to the prevailing opinion, in Italy it is forbidden to increase the rent during tenancy if this was not agreed on at the beginning of the contract.

Finally, the rent can be increased after termination of the contract. Only Cyprus provides some limits: when the tenancy after termination becomes statutory, the rent cannot be increased by more than 14% of the previous rent.

No additional "social defences" against eviction are available in the three countries. The articulated defences against evictions provided in Italy and Cyprus have been already described above and in the two countries are represented by suspensions or prorogations of evictions and statutory tenancies respectively. In Greece, no particular measures on this point can be found.

### 3.2.3. Flexibility

Both in Greece and Cyprus private autonomy still plays an important role in termination by the tenant because only a limited number of mandatory rules can be found.

In Cyprus, when tenancies are concluded for a specific period of time, the criteria for earlier termination depends on the parties. Instead, when tenancies are concluded for an indefinite period of time, according to the prevailing case law, they are considered as month-to-month, year-to-year or even day-to-day, depending on the periods when the tenant owes the rent, and are automatically renewed for the same

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<sup>120</sup> See Konistis, Cyprus, 59 et seq.

<sup>121</sup> Konistis, Cyprus, 60.

<sup>122</sup> See Bianchi, Italy, 111.

period. In these cases the opinion is that notice can be given one full period in advance, but this rule can be derogated by the parties.

The tenant seems to have a statutory right to terminate the tenancy agreement when the landlord breaches the contract, but no terms are specified (Art. 39, Chap. 149).

In Greece, Art. 609 provides that the tenant can give notice of termination of an open-ended contract under the same conditions as the landlord. For example, in the case of a tenancy which has been established for more than a month, notice has to be given at least three months in advance and is effective only in certain periods of the year. Terms and periods indicated with this rule are also dispositive.

In addition, the tenant can terminate the contract in some exceptional cases provided by the law. In the case of non delivery of the use of the dwelling or real or legal defects, the tenant has to set 'a reasonable time' for reinstatement before termination, save when the tenant is no longer interested in the performance of the contract (Art. 585 GCC). In important, direct and forthcoming risks to the tenant's health, the setting of a time period for termination is not necessary (Art. 588 GCC). In the case of a necessity to move, public civil servants can send notice of termination "*in accordance with the provisions of the lease for an indefinite duration*" (Art. 613 GCC).

In Italy, the Civil Code provides a similar regulation to the Greek regulation, with regard to termination due to risk to tenant's health (Art. 1580 ICC), of defects of the dwelling (Art. 1581 ICC) and for public civil servants (Art. 1613 ICC). However, after the introduction of special statutes, the fundamental rule for residential tenancies is that the tenant has the right to terminate the contract at any time with six months notice in the event of 'serious reasons' (Art. 3, subs. 6 Law no. 431/1998). This rule grants the tenants a certain flexibility and is justified by the rather long and mandatory minimum duration of tenancy agreements; however it also protects the landlord in requiring 'serious reasons'. It is obvious that the exact range of this expression depends on the interpretation of the courts, which generally means that they are unpredictable, supervening to the execution of the contract, not depending on the tenant's responsibility and making the continuation of the contract particularly burdensome<sup>123</sup>.

Six months' notice by the tenant (or by the landlord) is also necessary to avoid the contract being automatically renewed after the end of the legal term of five or eight years.

Unlike Cyprus, in Greece there is an express provision regarding subletting. However, the rule is identical in both countries: subletting is allowed provided that the parties do not stipulate otherwise in the contract.

In Italy, the Civil Code contains an identical provision but for almost all residential tenancies this has now been supplemented by the 1978 Fair Rent Act, which distinguishes between total subletting, which is allowed, and partial subletting, which is not. 'Partial' refers only to some rooms in the whole dwelling and not for example, to total subletting for a limited period of time. In any case, these rules are dispositive, and parties can always agree to limit or extend the right to sublet the dwelling.

Both in Greece and Italy direct rights of the landlord over the sub-tenant are recognized, even in the absence of a contractual relationship. This means that the landlord can demand the rent or seek the rented property from the subtenant.

Cyprus follows a different rule: "*In the event of judgment or order for repossession against any tenant of a residence or a shop, such judgment does not have effect*

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<sup>123</sup> For a further analysis, see Bianchi, Italy, 162.

against the sub-tenant unless the Court is persuaded that, pursuant to the terms of the initial tenancy contract, the tenant did not have the right to grant a sub-tenancy, or if the sub-tenant made illegal or immoral use of the dwelling” (Art. 28 Rent Control Law). In other words, the landlord has direct rights only if subletting was not allowed or “the sub-tenant made illegal or immoral use of the dwelling”.

## 4. Comparison of tenures with a public task

### 4.1. Generalities

One of the most significant differences between the three countries concerns tenures with a public task.

Italy, since the early 1900s, has developed a public housing sector, like other industrialized European countries, which reached its highest levels in the decades after WWII. The sector was subsequently downsized through the progressive sales of dwellings to the occupants and funds to build new dwellings were cut. However it still plays a considerable role in housing policies, representing about 5% of all the tenures in the country and about 20% in the rental sector.

Neither Cyprus and Greece, on the contrary, have ever created a system of public or social housing, instead focusing on different forms of subsidies to the private sector, which means funds to help the construction or purchase of houses and to help the payment of rents. At most some land is provided by the State for construction purposes.

One exception is the particular form of subsidy adopted in Cyprus after the partial occupation by Turkey and targeted at expatriated people. This measure has provided dwellings in specific Expatriated Housing Blocks to low-income families in which at least one of the spouses holds an expatriated identity card<sup>124</sup>. However the figures on this policy are very limited, and no further data are available on its current mode of operation.

Thus a comparative analysis of tenures with a public task is not possible between Cyprus, Greece and Italy. In terms of the Italian situation, the National Report for Italy includes a more detailed analysis of tenures with public task<sup>125</sup>.

### 4.2. Evaluative criteria for public/social/private subsidized landlords

As already explained in the preceding section, given that there is no proper system of tenancies with a public task in either Greece or Cyprus, this section only analyzes the Italian situation.

In Italy tenures with a public task can be summarized with the definitions *Edilizia Residenziale Pubblica (ERP)*, i.e. ‘public housing’) and *Edilizia Residenziale Sociale (ERS)* i.e. ‘social housing’).

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<sup>124</sup> The other requirements for this subsidy are: the expatriated person should permanently reside in Cyprus; neither the applicant nor any member of their family should possess any other housing unit or immovable property of substantial value; the annual income of the individual or the family should not exceed 20,500 euros (the sum of 1,280 euros is added to this for every dependent family member).

<sup>125</sup> See Bianchi, Italy, in particular 73 et seq. and Chap. 6.

a) 'Public housing' is represented by the offer of dwellings for rent, owned directly by the state or more often by other public entities such as municipalities.

The main national legislative benchmark for this is still Law 18 April 1962, no. 167, which regulates the building of public housing. The most significant reforms were carried out with Law 22 October 1971, no. 865, which introduced the concept of *ERP* and entrusted further competences to each municipality. In addition Leg. Decree 31 March 1998, no. 112, entrusted the main competence in the field of public housing to the regions. If we consider that the state now only has the power to indicate the general principles concerning this sector, it is clear how differentiated and fragmented the situation in Italy is.

In general terms, *ERP* controls about 900,000 dwellings that are usually owned by municipalities and managed by specific public agencies operating in every province. This kind of housing is assigned to the weakest part of the population through selective procedures carried out by each municipality.

b) 'Social housing' groups together a variety of different programs that all have in common the idea of establishing various forms of partnership between public authorities and private investors in order to offer dwellings for social purposes with different forms of tenure.

These programmes are generally classified as follows:

- *Edilizia agevolata* or 'assisted housing' can be promoted by private investors, cooperatives or public agencies, and is partially based on a variety of different public funds (for example, sums of money, but also fiscal discounts and easier access to credit), which cannot exceed 50% of the total investment. The aim is to offer dwellings for rent or sale at lower rates than the market price.

- *Edilizia convenzionata* or 'contracted-out housing' is financed by private investors using their own funds; public authorities (especially municipalities) participate by granting the land for building for free or at discounted prices for ninety-nine years. Alternatively or in addition, they can offer discounts on the sums required to grant authorisation to build.

The main role in such projects is played by regional and local authorities, which makes it even more difficult than in the case of public housing to find an overall evaluation on a national level of the rules adopted and the projects funded and provided. For example, it is not easy to find a recent and precise quantification of the number of dwellings provided for rent using this kind of measure.

Prospective tenants are households that do not have the requisites to receive a public dwelling, but who likewise do not have sufficient income to find suitable housing in the free market.

### **4.3. Evaluative criteria for the tenant**

As already explained in the above subsections, given that there is no proper system of tenancies with a public task in either Greece or Cyprus, the following subsections only analyze the Italian situation.

#### **4.3.1. Access**

The supply of dwellings with a public task is not sufficient in the countries at issue. This can be said both for Italy, where forms of public and social housing exist, but also for Greece and Cyprus, where these forms of public aid do not exist.

In Italy this is evident especially considering that over the last few years, the number of applications for public housing has significantly exceeded (about 650,000 households) the number of available dwellings. Also in Italy in the last decade, only one thousand new public dwellings were built each year.

In Greece and Cyprus, even though dwellings at affordable prices seem to be easier to find than in Italy, a form of public housing would be useful to deal with situations of housing need, especially in the largest cities.

a) Public housing: every municipality is responsible for selecting those entitled to a public dwelling. Although this selection must be carried out in accordance with general national principles and above all with regional rules, it is difficult to examine the procedures and requirements of such a fragmented system in detail.

As a general rule, every year municipalities usually publish notice for those who need a social dwelling, indicating the procedure to follow and the requirements. The notice is published in the municipality's register and since 1 January 2013 it has also been published on the municipal website. The following conditions of eligibility are practically identical in all regions:

- the applicants must have Italian or EU citizenship; other foreigners need a 'residence card' or a biannual 'residence permit' to live in Italy plus a regular job;
- the applicants must have residence or a job in the municipality; in some cases notices also allow applications from people living in neighbouring municipalities, in other cases this possibility is allowed only under special conditions;
- the applicants must be compliant with the fixed economic parameters regarding the household's overall wealth (generally not only income is considered, but also other assets);
- the applicant and his/her family must not already have an adequate dwelling for the needs of the family in Italy or abroad;
- the applicant and his/her family must not have already received public housing for rent or sale, they must not have been evicted from public housing for non-payment of rent, and they must not have illegally occupied such a property.

Lists are drawn up taking into account the personal conditions of the applicants in light of the parameters and other priorities established by the competent public authorities (for example, older people, young couples, families with many children and people in poor living conditions generally have a priority).

A list drawn upon the basis of the applications received is then published. From that moment on it is possible, for a certain period of time, to file a petition against the list. In this case too, the timescale and modalities of opposition are fixed by each region, thus they change from place to place. Available housing is assigned based on the final list and in accordance with tables fixing the useable floor area per number of occupants.

In the event of emergencies connected, for example, to particular kinds of eviction, calamities or serious health problems, municipalities are entitled to assign public dwellings in exception to the list. However, this measure cannot generally exceed a certain percentage of total assignments.

Contracts are executed by the public agencies that manage the dwellings on behalf of the municipalities, following standard contracts approved by the regional government.

b) Social housing: in general terms, the procedure for assigning social houses resembles the procedure adopted for public housing. It is done through public notices concerning available dwellings. The notices indicate the procedure for filing

applications, the requirements for applicants, and the conditions under which dwellings are assigned.

#### *4.3.2. Affordability*

With regard to 'public housing', the rent (called 'social rent') is fixed in accordance with legal parameters established by competent authorities with specific regulations. The amount generally depends on the surface and other relevant characteristics of the dwelling. It is normally very low, although regional and local differences may be quite high; a 70m<sup>2</sup> dwelling is on average rented for less than 100 euros per month (while the market price would be in the range of 800 euros).

Instead with 'social housing', the rent can also be affected by specific agreements with the private investors taking part in the project. Its amount is on average about 430-470 euros per month for a 70m<sup>2</sup> dwelling. This means a sum halfway between the social and market rent, in line with the recipients of these dwellings.

It is generally established that the rent can be increased every year within a percentage of the annual inflation rate as calculated by the National Institute of Statistics (ISTAT).

It is sometimes possible that the landlord has the right to increase the rent whenever the local regulation that fixes its amount changes. This is different from the rules for private rent, which do not allow unilateral rent increases during tenancy. The justifications are, on the one hand, that similar increases are established through regulative interventions and, on the other, that they are normally very low.

The delivery of a sum as a deposit is also usual for housing with a public task. This issue is generally regulated in accordance with rules provided for private tenancies (see Sect. 3.2.1). The amount is often two months' rent.

The sharing of costs for utilities and repairs is normally regulated as for private tenancies (see Sect. 3.2.1).

#### *4.3.3. Stability*

Tenants in public dwellings generally enjoy a much safer and more stable position than tenants in private dwellings, as, once they have obtained the house, they tend to keep it throughout their lives and, in certain conditions, can even bequeath it to their heirs. This is due to the fact that contracts generally do not have a time limit or are automatically renewable. Their duration is only subject to compliance with various established rules.

In terms of the rules that seem to be required in every region, the tenant and his/her family must maintain the necessary requirements for access to public dwellings, the rent must be duly paid and the dwelling must not be damaged, left or given to other subjects.

Stability is further protected granting people the right to stay in the dwelling even though their income may increase over the years. This is because, while the initial income brackets to qualify for accommodation are quite low, they may increase after the dwelling has been awarded.

Tenants are generally interested in keeping the dwelling as long as possible, as social rents are very low.

A downside of this legislation lies in the fact that it is difficult to check an occupant's circumstances in terms of their continued right to maintain occupancy over the years and that, even when the occupants no longer qualify to keep the dwelling, evictions tend to be difficult and lengthy.

The ultimate effect is that people living in public dwellings consider themselves to be in a situation that is much more similar to ownership than other tenancies.

The sale of public dwellings to occupants has been common practice for many decades and one of the main policies that has increased the share of homeownership in Italy. Nowadays this is less widespread. In addition, the option to buy cannot be considered a right granted per se to each occupant, but rather depends on occasional decisions by regional or other local competent authorities, often in order to deal with budget necessities.

A national law has thus recently established some general rules to follow regarding the option to buy a public dwelling: Art. 8 Law no. 80/2014 grants the possibility to insert in subsequent tenancy contracts of public dwellings the right to redeem the dwelling and the relevant economic conditions, provided that these limits are respected:

- the option cannot be used for the first seven years of the contract;
- the option can be used only by tenants who do not own any other suitable house;
- the purchaser cannot sell the dwelling again before five years.

The law also specifies that part of the rent already paid can be considered as part of the purchase cost of the dwelling.

#### *4.3.4. Flexibility*

The rules for termination of the contract by the tenant in public dwellings depend on each regional government. In some cases the same rule for private tenancies is provided: termination at any moment but only for 'serious reasons' and with six months notice. In other cases, only a term of notice is required, which seems to be more consistent with a national situation where hundreds of thousands of households are waiting for a public dwelling.

Subletting seems to be always strictly prohibited in public dwellings and non-occupation of the dwelling is considered one of the reasons for termination of the tenancy by the landlord. Such behaviour is considered as evidence that the tenant does not really need the subsidized dwelling. Some regional governments even indicate limits to hosting people that do not belong to the tenant's family for long period of times, but it is doubtful whether similar clauses are always lawful.

## **5. Conclusions**

In conclusion we will summarize the most interesting features of the countries under review together with various legal solutions and factual practices that work particularly well or badly.

In Cyprus the most important factor is the sharp distinction between tenancies subject to Rent Control Law and those subject only to contract law. The former are protected by strict eviction and rent increase limitations and are also subject to

special courts. The latter follow a liberal approach, which gives the parties wide power to decide on the rules. The Rent Control Law is applied only in 'controlled areas' and for dwellings built before 1999, which risks creating a not reasonable difference in the regulation.

Regarding the mandatory rules, the written form and the presence of at least two witnesses for any tenancy contract lasting more than one year are among the most important. If the contract does not respect the above rules, a particular form of invalidity results, which means that the contract is considered as a shorter temporary contract that is automatically renewed from time to time. The solution is very similar with open-ended contracts, which, according to the courts, are not valid. This is because contracts must always indicate the term of duration, which is fixed in accordance with the terms of payment indicated by the parties and the contract is considered as being automatically renewed from time to time. This form of invalidity saves the contract by changing its content, in accordance with legal rules. However it does not consider the tenant as a weak party deserving particular protection. The result of invalidity is that the tenant finds himself/herself in a less stable situation, as a shorter contract can be more rapidly terminated.

Greece has an even more liberal approach to tenancy regulation than Cyprus, as rules are still mainly provided by the Civil Code and no particular rent control laws are in force.

Mandatory rules protecting the tenant are therefore very limited. However there is a minimum duration of three years for tenancies of primary residences, and termination is valid only if addressed to both the tenant and his/her spouse, in case the dwelling is used as a family house and the landlord has been notified of such use. The former rule equally prevents earlier termination by the landlord and by the tenant, save for extraordinary reasons, such as breach of contract. The latter rule is not provided for in Cyprus and Italy and seems to represent a useful protective measure.

In this context of limited intervention of the legislator, the Greek courts have adopted a very active role in certain fields, in particular using the general clause of 'good faith' and taking into account the catastrophic effects of the economic crisis.

As for termination, Greek courts recognize the right to terminate the contract for "exceptional reasons", which means facts that render the continuation of the contract onerous for the party invoking them, in view of the special conditions of each case.

As for rent adjustment, recent court decisions have accepted that the agreed rent can be modified when there has been an exceptional change in circumstances since the parties originally executed the agreement. This principle has been considered applicable when, as a consequence of the economic crisis, both the tenant's income and the amount of rents in the area have been significantly reduced. This is considered possible even when the contract was executed after the crisis had already begun.

It is obvious that in the present economic situation, such decisions may greatly affect the tenancy market, and show the particularly active role of the courts that does not apply to the same extent in Cyprus or Italy.

Finally, Italy has a more articulated tenancy legislation than Greece and Cyprus. The original, mainly dispositive Civil Code rules now play a residual role, as they have been largely supplemented by special statutes providing mandatory or at least prevailing rules.

One of the main features of this more regulated approach in Italy is the specific protection of the tenant, regarded as the weak party of the contract. This attitude is testified by several rules:

- the long and mandatory minimum duration of the contracts, in order to protect the tenant's stability;
- the tenant's right to terminate the contract at any time, provided that there are 'serious reasons' and the term of notice is respected, while the landlord has the right to terminate the contract only at certain times and for certain circumstances indicated by the law;
- the procedure which saves the non-written agreement, by modifying its content with rules in favour of the tenant that are punitive for the landlord<sup>126</sup>;
- the possibility to adopt rent ceilings, which are mandatory for particular kinds of tenancies (contracts with a shorter legal duration for particular requirements of the parties and contracts executed by university students for studying purposes);
- the general principle that mandatory rules in the special statutes are 'unilaterally mandatory', which means that they can be derogated only in favor of the tenant.

Another distinctive feature is the particular focus on counteracting the black market, although this problem for tenancy contracts is still huge in Italy. This policy is pursued through contractual and fiscal rules. The former are deterrent and punitive measures against the landlord (the aforementioned rules to validate non-written or non-registered agreements), and an incentive for tenants to report illegal agreements. The latter include a special fiscal regime, which treats income from rent more favourably than other income, together with an attempt to allocate taxes between the State and the municipalities in such a way that the latter are motivated to take a stronger action against the black market.

The protective regulation also plays a role in the extent of the 'black market', most of which is driven by the desire to avoid taxes, but a part of it is due also to the interest in avoiding some mandatory rules. For example the possibility of derogating the mandatory minimum duration of tenancy contracts is quite limited, and regarding this point, contracts are widely regulated by the law.

There is also some rigidity deriving from the regulation on rent increases, which cannot be decided by the parties during tenancies, and for some tenancies not even at the beginning of the contract. Conversely a reduction in rent can also be agreed after the execution of the contract and registered for fiscal purposes.

In contrast, the possibility of having the contract renegotiated by the judge for supervening hardship, as in Greece, is generally considered not possible in Italy. In addition the discharge of the contract for supervening hardship tends to be excluded by the courts when the party simply alleges a general situation of economic crisis.

The most negative impact on the system of tenancies in Italy however is due to the lengthy judicial procedures, in particular to have tenants effectively evicted, when they do not leave the dwelling of their own accord. It is important to note that the latter problem seems to be much more widespread in Italy than in Greece and Cyprus. The wide and protective regulation for tenants introduced by the Italian legislator should be balanced by a rapid and effective judicial procedure, once the tenant is in breach or the contract is in any case legally terminated. Such a countermeasure in Italy has never worked properly and this can, at least in part, contribute to phenomena such as vacancies, the difficulty for 'problematic' tenants to find dwellings and the black market. In some cases landlords prefer not to rent or not to "officially" rent in order to prevent the problems of having the dwelling returned in case of termination.

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<sup>126</sup> A very similar procedure was adopted for non-registered tenancies (and also for tenancies registered with a lower rent and for costly tenancies registered as free loans) but after its declaration of unconstitutionality for procedural reasons in 2014, it is still not clear whether it will be adopted again.

As a conclusion, with regard to Italy, the good practices are as follows.

In the private rental sector, the general principle that the tenant is a weak party deserving protection is a reasonable policy.

The system of 'assisted tenancies', for which the rent is negotiated between local landlords and tenant associations, is abstractly a good rule, even though further public subsidies are necessary in order to broaden its application.

In addition the tenant's right to withdraw at any moment with six months' notice, but only for serious reasons, is a good rule, as it balances the opposite interests of tenants and landlords, and allows a certain degree of flexibility of the tenancies.

As far as the social rental sector is concerned, the protection of stability is worth highlighting. This is pursued through rules that grant the occupants the right to stay in the dwelling in accordance with the legal requirements, without providing a time limit. This solution can also have a negative effect. It could be an incentive for the occupants not to increase the income beyond the legal limits. Thus, regional rules generally state that the income limit can be surpassed by a certain percentage and for a certain period of time without losing the right to the dwelling.

In the public sector there is also a widespread toleration of tenants in arrears, which can be considered as a positive measure when it is ascertained that the breach is 'non-guilty'.

Another positive aspect is the provision of non-renovated dwellings, under the condition that the tenant carries the burden of renovating the dwelling in return for a reduction in rent to be paid up to the value of works undertaken.

The bad practices in Italy are as follows:

In the private rental sector, the right to delay the eviction procedure (Art. 55 Law no. 392/1978, Art. 6 Law no. 431/1998) is definitely a bad example of regulation, as it burdens a limited number of owners/landlords with a problem which should be borne not just by them but by society in general.

Another negative aspect is the excessive rigidity of the contractual length, which does not sufficiently consider the landlord's needs.

The legislation does not pay enough attention to the quality of the rented tenures. The 'certificate of habitability' generally is not a precondition for renting a dwelling under tenancy law, although the landlord may be subject to administrative and criminal sanctions in the case of lack of such a certificate. Defects and reparations of the dwellings are still regulated by the Civil Code rules, which are too old and inadequate.

Finally, the tenancy legislation lacks specific pre-contractual duties of information, which completely depends on general clauses of diligence and good faith; clear duties of allegation would be preferable.

As for the social rental sector, the right-to-buy, widely granted to tenants for many years, is definitely a bad rule, as it has impoverished the system of public housing, favouring a relatively limited number of households in return for a rock-bottom price.

A more stringent control of public dwellings should be developed, in particular introducing more stringent responsibilities for the competent agencies.

Finally, repeated amnesties of unauthorized occupancies are definitely a bad practice.

Considering the most distinctive features of the tenancy systems in Cyprus, Greece and Italy analysed, it is not easy to assess which of these three countries has the most promising solutions in the different fields of tenancy.

Italy seems to have the most developed housing legislation and housing policy, with quite a wide variety of strategies adopted to tackle housing problems. However, these policies in some cases produce weak results and need to be improved (e.g. the fight against the black market). In other cases funds are insufficient to attain the goals indicated by the legislator (e.g. public and social housing projects). But above all, it seems that Italy – for a variety of historical, economic and social reasons – has many more housing problems than Greece and Cyprus. Thus the varying levels of development in housing policies in the three countries reflect originally different situations, which consequently can only be compared to a limited extent.

Although the Greek and Cypriot systems mainly follow a more basic principle of *laissez-faire*, these countries have been experiencing less problematic housing situations, as the general housing context seems to be more balanced than in the most crowded areas of Italy.