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

Intra-team Comparison Report for CZECH REPUBLIC, POLAND, SLOVAKIA

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Intra-team comparison on Polish, Slovakian, and Czech tenancy law

1. The current housing situation

1.1. General Features

The current housing situation cannot be understood without the knowledge of some essential historical and statistic data. The three countries to be compared are Poland, Slovakia and the Czech Republic. Poland is the biggest country of the three (38.53 mil. inhabitants (2013)), the Czech Republic is the second largest (10.52 mil. inhabitants). Slovakia is the smallest, with 5.4 mil. inhabitants. Slovakia and the Czech Republic were parts of former Czechoslovakia until 31 December 1992, which is why the historical evolution of the housing system, as described below, was similar for both these countries. Obviously, the differences between the two became much stronger after the breakup of Czechoslovakia.

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

Despite numerous legislative differences the historical evolution looked similar in all the three countries under comparison, especially in the communist period – with regard to the administrative system of housing allocation.¹ After 1989 also the processes of decentralisation and privatisation looked alike.

In Poland, the years 1944-49 were a period of intense restoration and construction. The following stagnation in the early 50's can be attributed to unnecessary centralization. Decisions made on the high level of governance could simply not be efficient. In 1957 a new policy was implemented. Once again, the state started to support initiatives launched by local administration, co-operatives and, predominantly, industrial employers. Tenements could be subject to individual property, however, rental housing was organized by a system of administrative allocation rather than freely concluded contracts. After the collapse of communism, the legislator had to find a way to make a shift from the administrative system to contractual freedom and solutions best suited to the needs of the free market. In the first years of the transformations, the construction market and housing economy were controlled by mechanisms worked out under the previous political regime. Already at the turn of 1992 and 1993, however, the change of the economic system led to a reorientation of the housing policy. At that time, housing premises ceased to be treated as welfare goods and became marketable. In 1994 the Residential Tenancies and Housing Benefits Act 1994 was adopted. It prescribed compromise solutions which were called for since a long time. Finally, the current Tenants Protection Act was adopted in 2001.

¹ See e.g. Z. Radwański, *Najem mieszkań w świetle publicznej gospodarki lokalami* (Warszawa: Państwowe Wydawn. Naukowe, 1961).

The ownership structure of the housing stock at the beginning of the nineties reflected the policies of previous governments. Private ownership became the preferred form of satisfying the housing needs of the population. Housing cooperatives played a dominant role in construction investments since the early seventies. At the turn of the centuries cooperative premises made up nearly 1/3 of the entire housing stock in Poland. Throughout the nineties, the private construction sector was gradually growing in significance to finally become the major actor. Since the mid-nineties the portion of developer investments has also gradually grown. The legal position of a developer was not entirely clear, and even up to the present day vital questions concerning basic elements of development agreements have not been sufficiently answered, although the contract as such has now been defined in the so called Developers Act 2011.² In 1995, a new type of tenancy for households with low incomes (in Social Building Associations) was introduced by the Act on Certain Forms of Support for the Building Industry.

The Czech Republic and Slovakia had been a part of the former Czechoslovakia until 31st December 1992. Therefore the legislation in the field of civil law and housing was common for both these countries. The great amendment of the Civil Code was still enacted before the division (which instituted major changes, such as reintroduction of the contract of lease, replaced by the so called personal use of a flat during the communist period). Private ownership of flats was reintroduced already in the 1960's when the Ownership of Flats Act was adopted. There were, however, many limitations on such ownership (citizens were allowed to own only one flat). As usual in communist countries, protection of tenants was set on a very high level. The landlord's position was very weak (e.g. the automatic transfer of the tenancy agreement to people living together with the tenant upon his death). In the area of property law, a significant amendment was made in 1951 – the communist government introduced the *superficies non solo cedit* principle, which brought back divided ownership of land and buildings.

After the Velvet Revolution (1989), other major legal changes were adopted. From now on, the Constitution offered the same level of protection to all sorts of owners (state, private, municipal, etc.).

The Slovak Republic, which became independent in 1993, adopted the Flat Ownership Act in 1993. The Czech Republic introduced its own Flat Ownership Act a year later. This was the beginning of separate legal regimes of housing in both countries. In Czech Republic, the new act led to massive privatization of the municipal stock. Czech Rent control was abolished in 2012. It is still partly in force in Slovakia. Finally, in 2012, the New Civil Code (in force since 2014) was adopted in Czech Republic. Slovakia still uses the "old" one, which has been multiply amended. On the whole, this makes the position of a tenant generally stronger in Slovakia.

1.1.2. Current situation

According to the data of the Polish Central Statistical Office (2011) there were 12,525 thousand housing units in Poland. Out of this total, 2,288 thousand belonged to housing cooperatives, 1,089 thousand were municipal property, 204 thousand were staff units

² Ustawa z dnia 16 września 2011 o ochronie praw nabywcy lokalu mieszkalnego lub domu jednorodzinnego (Act of 16 September 2011), Official Law Journal 2011 Nr 232 poz. 1377.

owned by employer companies, 196 thousand belonged to the State Treasury, 84 thousand to Social Building Associations. The number of dwellings owned by private individuals amounted to 8,025.³

The total number of dwellings in Slovakia (2011) amounted to 1,994,897 units located in 1,070,790 houses. Owner-occupied housing in Slovakia was apparently the most prevalent form of housing, as 84.9% of occupied dwellings were owner-occupied. This number consisted of 41.8% of dwellings in family houses and 43.1% of dwellings in blocks of flats.

Based on the data from the 2011 census, the housing stock in the Czech Republic included 4,756,572 dwellings. 4,104,635 dwellings were occupied, 35,8% of which were family houses and 55% in blocks of flats. Rental apartments accounted for 22,4% of all permanently occupied dwellings. 55.9% of Czech households lived in their own house or flat, 17.6% of them lived in rented premises.

1.1.3. Types of housing tenures

In all of the three countries owner-occupancy, often within condominiums (communities of owners) is the prevalent type of tenure. The role of cooperatives is generally decreasing, although they keep managing the properties where private flats are situated. The social rentals regimes vary from none in Czech Republic to an extensive legislative framework in Poland.

Intermediate tenures in Poland comprise predominantly the cooperative stock. Condominiums, as such, are communities of owners, however, common parts of the building and the underlying plot of land are co-owned, which requires special procedures of governance. Cooperatives, although well developed in pre-war Poland, are now regarded by many as relics of communism whose significance should gradually decrease. Large cooperatives are often divided to form smaller entities.⁴ To some extent condominiums and cooperatives have become competing structures, since the owners of units bought from cooperatives have the option to either retain cooperative governance of the common property or manage its common parts in the form of condominium. Transition from large cooperatives to smaller condominiums is gradual. In the nineties, social preferences on the primary housing market began to gradually divert from cooperatives. Units belonging to state enterprises made a significant portion of the market before the political transformations. Most of them have been transferred to housing cooperatives ever since.

Condominiums remain a common form of housing in Czech Republic and Slovakia. Cooperatives play a very significant role in managing the housing stock in Czech Republic (63%) and Poland (50%). In Slovakia the same figure makes only 14%. Company law schemes are not present in the three countries. In Slovakia, the public rental sector serves primarily to ensure social housing. In Czech Republic, individual municipalities fulfil this task. Central legislation on social housing is absent in Czech

³ The Polish Central Statistical Office does not differentiate between flats in multi-family buildings and detached or semi-detached housing. See e.g. H. Dmochowska (ed.), *Statistical Yearbook of the Republic of Poland 2012*, (Warsaw: Central Statistical Office 2011).

⁴ H. Cioch, *Prawo spółdzielcze* (Warszawa: Wolters Kluwer, 2011), 146.

Republic, where only some minor regulations are in force (e.g. the VAT Act provides a lower rate of VAT (15%) on new social housing construction).

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

According to officials from the Polish Ministry of Infrastructure, Transport and Regional Development, there are about 85 active tenant associations. None of them functions as a registered lobbyist under the Lobby Activities in the Legislative Process Act 2005. Private landlords have begun to associate as well. The Polish Residential Landlords' Association "Mieszkanicznik" is a new initiative on the national scale formed in 2012.

In Czech Republic there is no legislation on lobby activities. In spite of this, many lobby groups are present, e.g. the Civil Associations of Owners of Houses, Flats and Other Real Estate in Czech Republic (supporting rights of landlords) or the very powerful Association of Tenants of the Czech Republic. Similarly in Slovakia, there are many lobby and umbrella groups such as the Association of Communities of Flat Owners representing landlords, the Slovak Union of Housing Cooperatives established to support the interests of housing cooperatives.

In Poland, vacant units do not seem to pose any significant problem. Many of them are new premises built by developers and yet unsold. Quite contrarily, Poland is coping with a situation of housing deficit, sometimes estimated at over 1 million of housing units.⁵

According to the 2011 census data, there are approximately 13.7% vacant dwellings in Czech Republic. The highest number of vacant dwellings could be found in central Bohemia. Vacant dwellings appear mainly in regions with high levels of unemployment. Slovakia has a quite similar rate of vacant dwellings (10.3%).

In all three countries the major black market phenomenon is evasion of income taxes by private landlords. People do not register their rental agreements with tax authorities. Czech Republic, however, is facing a new problem. Low income individuals receive special subsidies from the state to ensure accommodation. There is no limit on the amount of accommodation payments per single room. As a result, there emerged so called "social housing entrepreneurs" who provide hostel accommodation for low income individuals. This leads to a situation in which several people share small rooms and the entrepreneurs are paid excessive "rents" with the direct subsidies.

1.2 Economic factors in comparison

1.2.1. Comparative view of the housing market

Despite similar history, the problems faced in the three countries do not seem the same. This follows from the numbers of available housing premises and extent of privatization of municipal resources.

⁵ A. Mościcka, 'Ile naprawdę mieszkań brakuje w Polsce' <<http://rynekpierwotny.pl/wiadomosci/rynek-mieszkaniowy/ile-naprawde-mieszkan-brakuje-w-polsce/1678/>> last accessed in January 2015.

The major problem of housing in Poland remains to be the scarcity of housing. Despite the increased investment activeness of developers, municipalities and Social Building Associations, in the last decade no drastic improvement could be observed. The roots of this situation can be traced to the scarcity of funds available for investment, insufficient spatial planning and dilapidation of the oldest stock.

At present (2013), the real estate market in the Czech Republic stagnated, or even found itself in decline, as has been manifested in the decrease of apartment prices. This is due to several factors, the main reason being the overall decrease caused by the economic crisis. While in 2007 approximately 40,000 new apartments a year were built, this number has halved by the present day.

A characteristic feature of the Slovak housing market, and a consequence of the privatization programme initiated in the early 1990s is the virtual absence of the private rental market. The absence of a well-functioning rental market has been recognized as one of the key housing issues that need to be approached in terms of availability and affordability of rental dwellings. By international standards, Slovakia has rather high regional disparities. There are significant divergences on the regional markets of residential dwellings, which impacts the rental market as the whole.

1.2.2. Comparative view on price and affordability

The respective figures in the three countries seem generally comparable.

The average monthly gross salary in Poland in 2011 was EUR 810. Taking as a basis the data of the Institute for Urban Development, the average rent in the private housing stock for a 60 m² housing unit was low and amounted to PLN 412.2 (approx. EUR 100) in 2010. This figure, however, did not include charges for utilities. In addition, average rents went up in 2011, mainly as a response to stricter credit policies of commercial banks, which shifted the demand from the property market to tenancies.

The average rent for a 60m² apartment is 346 EUR (December 2013). The average income in the Czech Republic is 980 EUR (1st quarter of 2013). The rent-to-income ratio is 35.4%

According to the data provided by the Statistical Office of the Slovak Republic, in 2011 the annual level of rent per one person in a household averaged 119.21 EUR, whereas expenditures for housing, water, electricity, gas and other fuels in total amounted to the average yearly sum of 778.14 EUR per person. Annual net income per capita averaged 4,341.27 EUR in this period.⁶ These figures, however, do not distinguish clearly between various types of tenure, social and market rentals. As a result, it seems pertinent to indicate the data for market rentals in Bratislava. Here, rents in the first quarter of 2012 spanned from 12.40 EUR/m² per month for a garconnière to 7.64 EUR/m² per month for a flat of over 4 rooms, whereas the average income in 2012 was 1159 EUR (881 EUR nationwide).

⁶ See TENLAW: Tenancy Law and Housing Policy in Multi-level Europe, the National Report for Slovakia, available at <http://www.tenlaw.uni-bremen.de/reports.html> (hereinafter: "TENLAW: The National Report for Slovakia), Section 2.2.

1.2.3. Tenancy contracts and investment

In general, rental investments are slowly beginning to be viewed as profitable option, however, investors on the housing market prefer to sell newly erected apartments.

The rate of return on investment in Poland averages 5.5% for the whole country. It makes 4.5% In Warsaw, 6.5% in Katowice and Gdańsk, 5.5 in Poznań. The most significant investors in the rental sector are municipalities, which have to replace their old tenements with new premises in order to fulfil their statutory duties.

Real estate had been a popular investment option before the beginning of the global financial crisis in the Czech Republic. Many small investors had bought property or an apartment and watched the growth of its market value. The rate of return on investment in Czech Republic averages 5.6% (but there are cities like Česká Lípa where the ROL is over 10%).

Gross return on investment for rental dwellings in Slovakia is generally estimated at 4-5%, which is not particularly attractive when compared to other investment opportunities, taking into account the current yearly inflation rate of 3.6% (2012).

1.2.4. Other economic factors

Real estate agents are present in all the three countries under comparison, and the role of this profession is gradually growing in importance.

Real estate agency arrangements are hardly at all regulated in Poland. Until 2012 the Real Estate Management Act 1997 comprised an whole chapter on this profession, yet, most of these provisions have now been repealed. By the contract of real estate agency, an agent undertakes to carry on activities leading to the purchase or sale of immovable property, acquisition or disposal of a freehold or tenancy cooperative right, conclusion of a lease contract referring to an immovable property or its part. The agent does not have to guarantee that his activities are going to result in the desired transaction. His efforts involve the pursuit of the purchaser, communication of information offers, preparation of the contract (verification of the legal and factual status of the property, negotiating the terms of the transfer, etc.), inquiry of the property's defects, possible development of the land, soliciting loans necessary to finance the transaction.

Since the law does not prescribe compulsory membership of estate agents in any professional association, their organizations cannot issue rules binding on all practitioners. In consequence, there is no readily applicable price-list.

Real estate agents do not have a good reputation in the Czech Republic due to the vague legal regulation of their activities. They fall under the category of so-called free (notifiable) trades that require no special licence. It is prudent to distinguish well-established real estate agencies adhering to their internal codes of ethics or the rules issued by the Czech Chamber of Real Estate Agencies. Real estate agents are usually paid a fee for brokerage of contract for sale or lease. The brokerage fee is usually equivalent to one monthly rent in the leased property.

The role of estate agents in Slovakia and their specific rights and duties vis-à-vis their clients are not regulated *expressis verbis* in any particular provisions of law. Hence, their position and duties regarding sale, lease or purchase of immovable property would fall

under general contract law. The contractual and related activities of agents are performed under specific trade authorization. Details of their performance can only be obtained from marketing materials and publicly available feedback from clients willing to share their experience.

1.2.5. Effects of the current crisis in comparative perspective

In all the three countries, the crisis has been felt on the market, although the scale of its results may differ.

Already in 2007, first symptoms of the crisis became evident. Capital positions of commercial banks led to exacerbation of crediting conditions in the last quarter of that year. Polish banks were prone to fund their loans with deposits, yet, the mortgage boom considerably narrowed the gap between loans and deposits on the balance sheets. Indeed, this gap vanished by the end of 2007 for households' assets and liabilities. The financial crisis in 2008 and 2009 brought the previous construction boom to a halt, and demand fell significantly. Since 2011, however, economy has started to speed up once again. New investments on the market have appeared all over the country. Although the number of transactions on the primary market plummeted in 2008 and 2009, relative stabilization of prices was observed in 2010.⁷

Mortgage credit prices have fallen considerably in the Czech Republic in the wake of the financial crisis. It is not uncommon for mortgage to be available at 2.5-3% interest rates. This is a result of discount rate cuts by the Czech National Bank. The rate was reduced to as low as 0.05%. The banks, expecting growing interest rates in the future, are recommending fixation of interest rates for the period of three years. Increased availability of mortgages should generally influence the growth in numbers of mortgaged households, which, however, has not been the case in practice. The rental sector has not been markedly influenced, and rents tend to stagnate. Monthly mortgage instalments are about 30 per cent above the rent for a comparable apartment.

The market situation in Slovakia was predominantly influenced by the attitude of the banks that started to impose stricter criteria for loans. However, partly due to the falling prices of flats, the demand for housing loans remained high. Interestingly, in the crisis year of 2009, the volume of housing loans increased by 15%. Therefore, the banks in Slovakia did not have to decrease their interest rates on mortgage loans. In the year 2010, the volume of mortgages increased by over 10%, which means that the strong demand for housing loans persevered. Hence, unlike the rest of the euro-zone, Slovak banks did not lower the mortgage interest rates so rapidly.

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

1.3.1. Urban aspects in comparative perspective

⁷ J. Ryszewski, A. Nierodka, 'Polish Country Report' in Hypostat 2010. A Review of Europe's Mortgage and Housing Markets, November 2011, 46.

The most severe common problem in the three countries is the localisation of many housing investments in the communist period which a contemporary observer might call random. The prevailing factor at the time was localisation of state run factories whose workers basically needed to be accommodated. Now that these factories are no longer operating, no particular patterns can be observed with regard to location of housing areas in general and rental premises in particular. Later investments were realized at sites where building land was available.

There is little data about the distribution of private rental housing in Poland, whether on the municipal or regional scale. As far as location on the regional scale is concerned, public and semi-public rented housing is hardly present outside cities. As a rule, no location policy for Polish public rental housing has been followed on municipal scale. Public rented housing, mainly municipal, is usually located on cheap, peripheral or unattractive building lots. Semi-public rented housing, built by Social Building Associations, is usually located on building lots which were already held by municipalities at the time of their erection.

The situation is similar in Czech Republic - there are no specific regularities in the distribution of different types of housing on municipal scale. Following privatisation in the 1990's, old buildings in city centres are now mainly in private hands - owner occupied or rented on free market basis. When comparing the situation between big cities and villages, we can assume that more rentals are located in the cities. Municipal housing is also frequently found in the suburbs, where land is generally cheaper. More rental houses can be found in and around big cities, fewer in villages.

The data about the distribution of housing types in Slovakia on a city scale is not available.

Currently, an ongoing process of suburbanization has been identified in several regions of that country. This affects suburbs of the largest Slovak cities which are the centres of administrative regions. Closed new communities (gated communities) are occasionally created for newcomers. As regards opinion polls, settlement of urban residents in suburban areas, according to the results of research in Slovakia, is rated as positive or neutral (neither positive nor negative).

In Poland these are luxury housing units, both rental and owner-occupied, especially lofts constructed in former worker neighbourhoods, that mostly contribute to gentrification. As far as ghettoization is concerned, there are two different types of the phenomenon: (1) gated communities, consisting mainly of owner-occupied housing, which contribute to voluntary ghettoization of its residents, and (2) social housing with its peripheral location and poor technical condition. The latter involves social exclusion and ghettoization of whole neighbourhoods.

Czech rentals with a public task are the only buildings which contribute both to ghettoization and gentrification. Neither private rented housing nor owner-occupancy contributes to these phenomena according to the Czech national report.

Homeownership is the only type of tenure which contributes to gentrification in Slovakia.

		Home ownership	Renting with a public task	Renting without a public task
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Contribution to gentrification?	PL	New condominium buildings are sometimes constructed in former worker neighbourhoods	no data	Luxury housing units for rent, especially lofts, may contribute to gentrification
	CR	no	yes	No
	SK	marginally	no	no
Contribution to ghettoization?	PL	The phenomenon of gated communities refers only to modern condominiums	Social stock with its peripheral location and poor technical condition is connected with social exclusion	No
	CR	no	yes	no
	SK	no	rarely	no

In all the three countries squatting, although present, is not a serious phenomenon.

Squats are observable in Poland, particularly in major cities, but are not widespread. Squatters are generally evicted, although some cultural/artistic potential of squats is sometimes appreciated – e.g. in „Free Dom” community in Wrocław.⁸

In Czech Republic squatting also plays a very marginal role – there have been no more than 30 squats on the whole recorded in the last 20 years. The existing ones are usually located in the Prague region. Squatting in Czech Republic makes a criminal offence, and squatters are not only evicted but also may be sentenced to 2 years of imprisonment or a fine.

In Slovakia, squatting has not been considered a significant or persistent problem. Rather than squat in empty flats and buildings, certain Romani groups illegally occupy abandoned, polluted, devastated plots, which makes both a social and legal issue.

1.3.2. Social aspects

⁸ P. Żuk, *Spółeczeństwo w działaniu. Ekolodzy, feministki, skłotersi*, (Warszawa: WN Scholar, 2001), 223.

		Home ownership	Renting with a public task	Renting without a public task
Dominant public opinion	PL	Preferred option	Insufficient supply	Insecure option for both sides of agreement
	CR	The best variant but not available to everyone	Small public stock. It leads to ghettoization of those localities	No controversy
	SK	Preferred option	Attitudes similar as in Slovakia	No controversy
tenant opinion	PL	New condominium buildings are sometimes constructed in former worker neighbourhoods	n.d.	Most expensive option
	CR	n.d.	n.d.	n.d.
	SK	n.d.	Insufficient stock	Most expensive option

2. Housing policies and related policies in comparison

2.1. Introduction

As pointed out above, the concept of welfare state and the right to housing has been captured differently in the three analysed jurisdictions. Particular differences pertaining to allocation of social housing can be spotted between Poland and Czech Republic.

In Poland, the concept of welfare state is manifest in legal provisions protecting tenants against their landlords (Tenants Protection Act), the latter considered the stronger party of tenancy arrangements, and in the Social Welfare Act, which sets forth the terms for supporting less affluent families and individual households in their efforts to satisfy their basic needs and live under conditions worthy of human dignity.

The Czech attitude is that the state should not stand in the way of the free housing market. Instead, it has to offer assistance and cooperate with people who cannot satisfy their housing needs by themselves, due to social, economic and other reasons. If the loss of housing (caused by eviction or loss of employment) is related to material need,

the state is obliged to provide assistance. Public support involves programs financed from the state budget through the Ministry for Regional Development and the State Housing Development Fund. Also municipal activities are important. Certain social services connected to housing are provided directly by local authorities and non-profit organizations.

Slovakia, as enshrined in its Constitution, is a socially and ecologically oriented market economy that respects and protects people's fundamental rights and freedoms, including economic and social rights. The aim of the state housing policy is a gradual increase in the overall quality of housing so as to provide housing opportunities to the population.

In general, constitutional provisions set a guideline for public authorities in the three countries. Their realization, however, depends almost entirely on the available funds.

In Poland, the right to housing has been dealt with in art. 75 of the Constitution. According to this provision, public authorities pursue policies conducive to satisfying the housing needs of citizens, in particular by combating homelessness, promoting the development of low-income housing and supporting actions aimed at acquisition of a dwelling by each citizen. Under the same provision, protection of tenant rights is to be developed in statutory law. In the Polish context, one cannot speak of the right to housing which would enable individuals to assert a claim against the state. Rather than that, Polish constitutional law only defines general directions concerning state policies.

According to official housing policy documents in Czech Republic, the state must not hamper the free housing market. On the other hand, however, it must offer help and cooperate with people who cannot meet the housing needs by themselves, due to social, economic and other reasons.

In Slovakia, it is considered necessary to integrate the housing sector in national economic programs and policies and give it a high priority. The right to housing has not found any direct expression in the Slovak constitutional framework of human rights. Many of its aspects are, however, traceable in and inferred from other fundamental rights enshrined in the 1992 Constitution of the Slovak Republic, international law and further national legislation. The Constitution guarantees everyone in need the right to such assistance as necessary to ensure basic living conditions.

In none of the three countries is the right to housing actionable.

2.2. Policies and actors

2.2.1. Governmental actors

Czech Republic, Poland and Slovakia are unitary, rather than federal, states. As a result, most policy decisions are taken by the central government and only implemented locally or regionally.⁹

The official actors involved in housing policy-making in Poland include primarily the government, responsible for formation of the central housing policy, and municipalities,

⁹ See. E.g. J. Zapart, *Polityka mieszkaniowa w Polsce: zarys przemian* (Wrocław: Wydawnictwo Akademii Ekonomicznej im. Oskara Langego, 1999), 15

responsible for its pursuance and local policies. Apart from municipalities, there are two other levels of self-government in Poland: regional (voivodeship) and another local (powiat). At the level of voivodeship, strategic plans are enacted with regard to transport, location of certain public facilities and investments of major significance to the region as a whole. Poviats, in general, have not been entrusted with any significant responsibilities related to housing.

The Slovak government strives to create a framework for all actors participating in the housing industry and entrusted with specific subtasks. Public authorities are to create room for their participation at all levels of decision-making and strengthen the partnership between the public, private and NGO sectors.

In all the jurisdictions, the duties are distributed and balanced between the central government and local authorities, which can adjust governmental policies to the local circumstances.

The criticism faced by the Polish government, as far as the central policy-making is concerned, refers to insufficient funding of municipalities (the government delegates the responsibility for housing to the local level without designating proper funds) and poor selection of goals for housing policies, frequent changes of legislation. The criticism of individual municipalities differs in each specific case. It usually relates to the absence of any conscious housing policy, e.g. in terms of spatial planning.

In Czech Republic, formulation and financing of housing policies is the responsibility of the Ministry for Regional Development but other ministries are also involved. On the local level, municipalities pursue their own policies in addition to governmental actions. The main task of municipalities is to secure land and technical infrastructure for construction of new residential premises, improve conditions for the renewal of the housing stock, ensure affordability of information and methodological assistance, and keep information systems concerning housing and dwellings in the country. The common goals of municipal housing policies are twofold: municipalities are the owners of the housing stock; and b) municipalities are the co-creators of the social and housing policies within its territory. The State is not entitled to interfere with independent municipal competences and has no instruments at its disposal in matters reserved for the self-government by which it could enforce centrally adopted measures. In addition, the state does not have any comprehensive and coherent system of aid to the people in need, apart from housing subsidies.

The aim of the central housing policy in Slovakia is a gradual increase in the overall quality of housing so as to make housing available to the population and make it adequate to the household needs. In consequence, the government finds it necessary to create a framework for engagement of all the actors on the market in addressing specific subtasks. All semi-public initiatives, however, must be controlled by municipal authorities in order to obtain public funding.

2.2.2. Housing policies

General objectives set for national housing policies look largely alike in the three countries under comparison.

Public authorities in Poland launch policies which lead to satisfying the housing needs of citizens, in particular by combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a housing unit by each

citizen. Municipalities are obliged to meet the needs of low income families within the limits envisaged by law. In particular, they arrange social and replacement housing. Municipal councils adopt multi-annual management programs for the municipal stock and principles under which their units are let.¹⁰

The main goal of the housing policy in the Czech Republic is to ensure a sufficient level of housing available to all groups of inhabitants. Currently, the main task of municipalities is to secure land and technical infrastructure for the construction of new residential premises, and create conditions for the renewal of the housing stock.

In Slovakia, the aim of the central housing policy is a gradual increase in the overall volume and quality of housing. The Housing Development Fund is a key governmental actor which distributes funds allocated for housing and implements housing policies on various levels by means of central subsidies. The most recent governmental activities in the area of housing suggest that it is desirable for the state to support the development of the private rental market for the sake of smoother labour mobility within the country. Apart from the investment measures, a completely new regulatory regime for a short-term leases in the private rental market, introduced in 2013, lifts the legal disincentives for private renting of dwellings. Similarly, the grants and subsidies afforded to municipalities for development of public rental housing suggests a sway in policy preferences towards rental housing. However, since the prospects of further deterioration of the available housing stock (mostly owner-occupied) are considered a threat for the whole housing sector in the country, there are still numerous policy measures (subsidy programs) which make owner-occupation the preferred type of tenure. Rehabilitation of the housing stock continues to be viewed as a priority.

The favoured type of tenure in Czech Republic and Poland is owner-occupancy. Public rentals are generally treated as a necessity, and the private rental tenancy sector has been generally left to itself, apart from certain steps encouraging landlords to report their leases to tax authorities.

The Polish program of supporting mortgage loans suggests that the central authorities prefer ownership to tenancy. In Czech Republic, most state aid in the area of housing has so far been directed to owner-occupancy. The most recent Slovak governmental activities in the area of housing demonstrate that it has now become desirable for the state to support the private rental market.

In Poland, there are no special housing policies on the central level targeting any specific ethnic groups or immigrants. Such measures are, however, possible locally, especially in cooperation with non-governmental organisations.

The Czech government and municipalities are obliged to facilitate housing opportunities to all people in need, especially young families. The older generation must be guaranteed that lower income will not deprive them of the roof over their heads. Therefore, municipalities prefer to satisfy housing needs of low-income families and socially disadvantaged households. One of the governmental programs refers to renovation of apartment buildings, revitalization of the residential environment in a selected group of cities. Such activities are focused around problematic areas selected

¹⁰ See art. 21 of the Tenants Protection Act of 21 June 2001, Official Law Journal 2001 Nr 71 poz. 733, as amended.

in cooperation with the Council of the Government of the Czech Republic for Roma Community Affairs.

Special housing policies targeted at specific groups of the population that require special attention have also been adopted. These include a separate policy pertaining to “socially excluded” groups of people, with special emphasis on the Roma population. The policy instrument lays down the current housing situation of Roma people, issues they have to cope with in a broader social context, and provides models for addressing their housing needs (subsidized construction of rental housing of usual and lower standard and grants for renewal of the housing stock and technical infrastructure, financed from the EU operational programmes).

2.3. Urban policies

Throughout the three countries urban policies are generally undertaken mainly in larger and richer cities. As depicted below, such policies still seem underdeveloped.

Neither measures nor incentives against fencing off residential areas have been introduced in the three jurisdictions. In Poland, the problem refers specifically to the so called temporary premises owned by municipalities, which sometimes still include container-houses. Neither “pepper potting” nor “tenure blind” are present in urban policies. Combination of private housing with social rentals is not a goal envisaged in central housing policies. Gentrification leads to changes in the social structure, yet, it has not been considered a serious problem. Even though the phenomenon is observable, no measures have been taken to address it.

Control of the quality of rental housing differs in the three compared jurisdictions.

In Poland the rules on the quality of housing are to be found in the Construction Law Act which sets forth basic standards for all newly constructed buildings.

Since 2006 Czech flats of substandard quality (e.g. without central heating or with shared amenities) have been legally regulated. Other questions concerning the quality of privately rented housing are determined by free market mechanisms.

In Slovakia, quality standards are a collection of minimal rules and procedures that must be followed so that the consumer can receive adequate utilities for the price he is paying for electricity, gas, heat and water. A special agency controls the stock and imposes penalties for any deficiencies in quality. In order to ensure public safety and public health, provisions of public law additionally lay down technical, architectural and hygienic requirements for housing.

2.4. Energy policies

Polish, Czech and Slovak policies and legislative measures in this respect generally follow European legislation and are adjusted to match the latest UE directives

In all of the three countries, alternative sources of energy are subsidised. In the context of housing, this refers predominantly to solar panels. However, the procedures for granting the subsidies may prove excessively complicated. To avoid such difficulties,

there are governmental agencies which provide all necessary information to willing investors.

Emphasis throughout the region is generally put on thermal modernisation.

The Czech energy policies involve revitalization of existing buildings and the development of new ones with subsidised weatherization and thermal insulation of elevations, as well as installation of new windows. At regional levels, subsidies such as the CZK 60 million "Furnaces" programme in the Moravian-Silesian Region aim at reducing the energy intensity of heating as well as protecting the environment in areas threatened by pollution.

In Poland, thermal modernisation involves insulation of buildings, sometimes in conjunction with replacement of windows or/and heat-pipes. Such investments have now been supported by public authorities for over fifteen years. The Thermal Modernization Support Act was enacted in 1998.¹¹ Ten years later, thermal modernization was structurally linked to renovation of the oldest housing stock.

The current Support for Thermal Modernization and Repairs Act¹² entered into force on 19 March 2009. Along with the premium for thermal modernization, the legislator now envisaged grants for repairs. This encompasses assistance to tenement owners in the repayment of loans taken for the improvement of technical condition of buildings and combating their deterioration.¹³ This support is afforded only to investments in the oldest multi-family residential buildings put into use before 14 August 1961, owned by natural persons, condominiums with a majority share of private individuals, cooperatives and Social Building Associations.

In all of the three legal systems proper legislation has been adopted to implement the EU energy efficiency standards in the housing sector.

2.5. Subsidization

As subsidies are one of the most significant instruments of central housing policies, in Poland, Czech Republic and Slovakia they are generally used so as to pursue specific goals. As a result, most subsidies in our three countries are object-oriented. One obvious exception are housing benefits, which were of much use to many less affluent families in early transition years in the 90's. They are still helpful the poorest groups of population. In addition, certain forms of subsidisation are of a mixed type, e.g. the Polish program "Housing Units for the Young," addressed to people under 35 covers purchases of a first dwelling.

It appears that most subsidies in all the three countries are generally destined for owner-occupied housing. Since home-ownership is the preferred type of tenure in Poland, Czech Republic and Slovakia, significant attention has generally been paid to partial repayment of mortgage loans. In Czech Republic, this primarily covers refund of a

¹¹ Act of 18 December 1998, Official Law Journal 1998, no. 162, item 1121.

¹² Act of 21 November 2008, Official Law Journal 2011, no. 106, item 622 as amended.

¹³ Official Law Journal 2001, no. 168, item 1006.

certain portions of interests on the loan.¹⁴ In Slovakia, the percentage value of such allowance was reduced to 0% in 2005.¹⁵ Instead, the Slovak legislator provided for direct loans by State Housing Development Fund for procurement of flats (home ownership) by eligible target groups of natural persons, i.e. young married couples (as in the case of Polish subsidies, aged up to 35). In Poland the pertinent subsidy within the program “Housing Units for the Young” is paid by a lump sum.

As regards subsidies for the rental sector, these predominantly refer to social and other municipal housing. Because of the aging or scarce municipal stock, an important form subsidy is addressed at municipalities and paid in the form of grants for construction of rental flats. In Slovakia, this legislative solution has recently been attached to the problem of restitution of ownership. Municipalities may obtain grants from the central budget for the construction of new housing intended to accommodate former tenants in such restituted properties.

As pointed out above, housing benefits destined for the poorest groups of population can be found in each of the analysed jurisdictions. In Czech Republic, they seem of particular significance, because of the system of direct benefits paid to low income households, implemented instead of actual distribution of social housing by public authorities. Czech Republic is facing a strange phenomenon resulting from poor adjustment of the special social benefit by official actors. This benefit is paid directly to the owners of social premises and the overall amount for a landlord is not limited for a single housing unit (room). As there is no actual limit on the amount of such payments. It is not uncommon for several people to live in small overcrowded rooms for which excessive “rents” are paid by means of the subsidies.

One particular type of subsidies absent in Poland but found both in Czech Republic and Slovakia refers to building saving funds offering special accounts where individuals may deposit funds intended for a housing purposes.¹⁶ In the Polish context, such saving and construction funds were established in the 90's of the previous century, yet, they proved ineffective from the very start.¹⁷

In all the countries, green investments, repairs and thermal modernisation of the older stock are subsidised from public funds – central, local, and European – allocated by various agencies.

Subjective rights to subsidies are rare. In all the three jurisdictions they are practically limited to housing benefits, in which case pertinent criteria have been laid down in central legislation.

Other than that, especially in reference to object-related subsidies, the criteria for granting specific subsidies are evaluative.

¹⁴ Ministerstvo pro místní rozvoj ČR, Státní fond rozvoje bydlení: Koncepce bydlení ČR do roku 2020 (Praha, KPMG Česká republika s.r.o., 2011), p.20, available on : <http://www.mmr.cz/cs/Stavebni-rad-a-bytova-politika/Bytova-politika/Koncepce-Strategie/Koncepce-bydleni-CR-do-roku-2020>.

¹⁵ cf. <https://www.slovensko.sk/sk/agendy/agenda/_hypotekarny-uver1/>, 30 December 2013.

¹⁶ See TENLAW: Tenancy Law and Housing Policy in Multi-level Europe, the National Report for Czech Republic, available at <http://www.tenlaw.uni-bremen.de/reports.html> (hereinafter: “TENLAW: The National Report for Czech Republic”), Section 3.6.

¹⁷ See TENLAW: Tenancy Law and Housing Policy in Multi-level Europe, the National Report for Poland, available at <http://www.tenlaw.uni-bremen.de/reports.html> (hereinafter: “TENLAW: The National Report for Poland”), Section 1.4.

The levels of governance involved in particular subsidy programs generally differ. As regards investments involving construction and repairs, the volume of works necessitates central funding. The same refers to various forms of assistance relating to mortgage loans and acquisition of housing units. Subsidies only exceptionally come from the municipal pocket. Such is generally the case of housing benefits for the poor. In Poland, certain subsidies for energy efficiency initiatives are launched on regional level by Regional Funds of Environmental Protection and Water Management.

As far as housing benefits are concerned, in all the three jurisdictions they are paid to low income households, regardless of the tenure actually held in the unit. In consequence, both tenants and owner-occupiers qualify as long as household incomes are below the threshold provided in appropriate legislation.

In Czech Republic, certain types of subsidies have been criticized by the opposition, housing associations and similar entities. The main reason for the criticism is the alleged discrimination and preferential treatment of certain groups of the population.¹⁸

In Slovakia, building saving funds are subject to criticism for their high costs encumbering the state budget, dubious targeting and alleged unjustified support for private bankers.¹⁹

In Poland, the system of subsidising new rental constructions of Social Building Associations has practically been paralysed in the absence of necessary secondary legislation. This gives rise to much criticism. The lump sums paid as mortgage loan subsidies are criticized for unjustified support for developers.

Other than that, the systems implemented in the jurisdictions under comparison seem efficient. Naturally, one must bear in mind that the available funds are not exorbitant.

Subsidization of tenant / owner-occupier	Poland	Czech Republic	Slovakia
Subsidy before start of contract (e.g. voucher allocated before find a rental unit)	Mortgage Credit Allowance (owner-occupancy only)	Building savings funds (owner-occupancy only)	Mortgage Credit Allowance (owner-occupancy only) Building savings funds (owner-occupancy only)
Subsidy at start of contract (e.g. subsidy to move)	N/A	N/A	N/A
Subsidy during tenancy (in e.g. housing benefits, rent regulation)	Housing benefit	Housing benefit	Housing benefit

2.6. Taxation

¹⁸ See TENLAW: the National Report for Czech Republic, Section 3.6.

¹⁹ J. Franek, 'Prečo treba dotovanie stavebného sporenia zrušiť' IFP Komentár no. 14 (2011), <<https://www.finance.gov.sk/Default.aspx?CatID=7926>>, 30 December 2013.

Levies relating to rentals predominantly include income tax and property tax. When a real property is sold, the tax on civil law transactions (property transfer tax) usually comes into play. Building materials and services are taxed with VAT.

Technically speaking, no tax obligations have been directly imposed on tenants. The taxes payable by landlords, however, influence the value of rent.

In all the three jurisdictions, proceeds from lease are considered taxable income. Depending on the status of the landlord, provisions on PIT or CIT apply. Sale of residential premises is generally taxed as well. Exceptions in this matter can relate to natural persons who lived in the sold dwelling or use the income from sale for their own housing needs.²⁰ Apart from the income tax, in all the three systems transactions transferring ownership of immovable properties are themselves taxed. In Poland the rate of such tax makes 2% of the purchase price.²¹ In Czech Republic, the corresponding rate is currently twice as high.²²

There are tax exemptions for individual landlords who earn little income on rental. In Slovakia, for instance, they can be discharged from their obligation to pay tax on their immovable property if their income resulting from such a property oversteps 500 EUR per year.

Other than that, individual non-professional landlords are taxed on income on general terms. In Poland, it is now possible for landlords to pay a lump sum tax on registered revenue if, for some reason, they do not wish to tax their incomes in accordance with the progressive tax scale. It may seem an attractive solution, as the lump sum makes only 8.5% of the income, however, this form of payment is beneficial only to landlords with high proceeds and moderate expenses, which is quite rare in practice, taking into consideration the poor technical condition of the private tenement stock. This is the case as the landlord who elects payment by lump sum cannot deduct any expenses from his actual proceeds, and the lump sum entirely depends on the gross rather than net income.²³

As regards property tax, its value is determined by reference to the area of the property. Although there have been certain attempts to introduce ad valorem taxation, especially in Poland, they proved unsuccessful.

The national legislators generally attempt to motivate individual landlords to register the lease with tax authorities. Examples of such incentives have been provided above, i.e. the Slovak tax free amount or Polish lump sum. Such measures are relatively new and only partly successful. Although more tenancies are now reported to tax offices, many individual landlords still prefer not to do so.

There are also legislative interventions to the contrary. In Slovakia, for instance the cap on deductible expenditures has been lowered in 2013.²⁴

²⁰ See art. 10(1) item 8 letters a)-c) of the Polish Private Income Tax Act.

²¹ Art 7(1) of the Tax on Civil Law Transactions Act of 9 September 2000, Dziennik Ustaw 2010, No. 101, item 649, as amended.

²² Under the Act No. 500/2012 the rate of taxation increased from 3% to 4% of the tax base (since 1.1.2013).

²³ Act of 20 November 1998, Official Law Journal, no. 144, item 930 as amended.

²⁴ See TENLAW: the National Report for Slovakia, Section 3.7.

In the case of individual landlords, tax evasion in all the three jurisdictions is a common practice. In Poland, however the problem of black market seems more complex. Due to the extensive protection of tenants afforded by the Tenants Protections Act, it is inconvenient for the landlord to report the contract to any authorities. Although no special form is required for tenancy contracts, not many tenants are aware of their rights, or, even if they are, prove able to evince their status as tenants in the absence of a written contract. By omitting to inform tax authorities, landlords not only avoid taxes but their position is bolstered, and, in practice, it is easier to terminate the contract or increase rent.

The major legislative construction implemented to combat black market in Poland is, so called, incidental lease. This institution lifts certain Tenants Protection Act (TPA) instruments protective of the tenant. Such benefits may now be enjoyed both by natural person and corporate owners. Under the new provisions, it is easier to terminate the lease and evict the unpaying tenant. These advantages, however, have been made contingent on the registration of the tenancy with the tax office.²⁵

In general, the legislative interventions mentioned above were simple corrections aimed at reducing avoidance of taxation by landlords. In general, it is the owner that pays majority of taxes in all the three countries.

In summary, the taxes in the three jurisdictions do not seem particularly burdensome. As a result, they do not seem to pose any significant obstacle to development of the market. In the case of individual landlords of single apartments tax evasion is common as it is generally difficult for tax authorities to detect unreported rental arrangements if neither party is willing to pay the taxes (whether directly or indirectly).

3. Comparison of tenures without a public task

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 Poland and Slovakia, the standard model of investment in residential real property by private investors involves residential or semi-residential construction projects with the majority of units destined for sale rather than long-term rentals. This retail oriented housing investment model was very popular in the Czech Republic until the beginning of the global financial crisis, even among individual investors. The crisis brought about substantial losses to actors used to the previous boom, high prices of residential property and rather accessible financing. In 2008, the sale prices of dwellings in Bratislava, for instance, were approximately 50% higher than aggregate construction

²⁵ See art. 19b of the Tenants Protection Act.

costs borne by investors. Due to these significant market changes and inability to perform in accordance with earlier expectations and assumptions, a lot of newly constructed dwellings remained unsold. Therefore, in Slovakia, developers decided to rent some of these dwellings. Such rentals are considered an interim measure, adopted temporarily – until the recovery of the ownership market – rather than independent rental investment. In contrast, Polish developers were initially unwilling to let, as long as the mortgage market could finance their business activity – partly because of the protective legislative framework (provisions of the Tenants Protection Act). Corporate renting, however, appeared as one of the options at a later stage of the crisis. In response to this new tendency, the Polish lawmaker offered the benevolence of incidental lease (special statutory regime which lifts much of the tenant protection), previously available only to natural person lessors, also to corporate landlords. The situation in the Czech Republic suggests positive prospects, since the prices of real property are expected to be regaining their original values.

Considering purely rental investments, the gross return on investment for rental dwellings spans from the estimate 4-5%, in Slovakia, where such investments are not generally viewed as a particularly interesting opportunity – taking into account the yearly inflation rate of 3.6% (2012), to 5.5% in Poland (nationally the rates vary: 4.5% In Warsaw, 6.5% in Katowice and Gdańsk, 5.5% in Poznań). The Czech investor can buy real estate on the market, financed by a mortgage with affordable 3.5% interest rate, and rented with 5 to 10 per cent yield per annum.

Taking the structure of the rental investors into account, the most significant investors in the rental sector in Poland are municipalities, which have to replace their old tenements with new premises in order to fulfil their statutory duties. Slovak municipalities, which invest in the construction of rental housing (state-subsidised construction) may also be considered investors after 01 February 2001. However, Polish and Slovak municipalities are not acting for profit. Rather than that, they fulfil public housing tasks to make rental housing available and affordable. The rent in the new Slovak municipal stock has been capped at the annual level of 5% of the aggregate construction costs. Such rate assures desirable return and does not seem to make an obstacle given the special goals it serves.²⁶

The situation in all three states – mainly owing to the financial crisis – shows that investments in tenancies are currently not particularly profitable, however, rent regulation is not considered troublesome for landlord investment plans. The only qualification to this statement may be the Slovak gradual deregulation of rents in respect of a minor class of landlords (owners of restituted buildings). This exception is to be completely eliminated by 2017.²⁷

Income from rents is taxed similarly in all the three countries although the specific tax regulations vary. It appears that tax legislation in Slovakia and Poland provides for certain privileges, either in the form of partial discharge of taxation, in the former case,

²⁶ See section 2 of the Regulatory measure of the Ministry of Finance of SR of 23 April 2008 No. 01/R/2008.

on regulation of the rents of flats as amended as of 20 December 2011..

²⁷ See the discussion of the Act on Termination of Certain Leases Related to Flats and Amending Prices Act (No. 260/2011 Coll., as amended) in Section 1.4 of TENLAW: the National Report for Slovakia.

or exemptions and a simplified lump sum regimen, in the latter. In addition, Czech tax privileges involve deductions from the tax base.

The Slovak rules on taxation of income from lease of a flat make it relevant whether or not the lessee pays for the utilities to the landlord. If so, the landlord's taxable income comprises the rent along with the cost of the utilities. The payments which the landlord transfers afterwards to the energy suppliers can be deducted as evidenced expenditure.

If the landlord is a party to the contract with the energy supplier and the utilities are paid directly by the lessee, such payments transferred by the lessee to the supplier are still considered the landlord's income liable to tax as the landlord's non-pecuniary income. Even in this situation, the landlord can deduct the sums paid by the lessee directly to the energy supplies as his evidenced expenditure. However, if the utilities are paid for directly by the lessee who is a party to the contract with the energy supplier(s), these payments are no longer the landlord's taxable income. In addition, any expenditure on technical maintenance and repairs of the leased immovable property met by the lessee would also be considered non-pecuniary income subject to taxation.

The Slovak legislation, as it stands now, discharges natural persons who lease their immovable property from their duty to pay income taxes on the lease of such property if the rental income does not exceed the sum of 500 EUR per annum. If the income is higher than 500 EUR, only the remaining part is taxed. This 500 EUR exemption makes an incentive provided by the Slovak legislator to the landlords to legalize their incomes from tenancy.

In the Czech legal order, income from rentals is taxed at a flat rate under the Act No. 586/1992 Coll. on Income Tax, similarly as other financial income reported by natural persons (15% rate), companies (19% rate) or other legal entities. Income tax is divided into personal income tax and corporate income tax. Taxpayers of the natural income tax are natural persons only.²⁸

Tax privileges for the landlord include (1) the possibility of deduction of related outlays from the income tax basis in the case of lease of immovable property used for residential purposes, as well as (2) the option to deduct the interest paid on the housing acquisition loan (mortgage loans, building savings scheme loans) from the income tax basis. The maximum amount that a taxpayer may deduct from his/her tax basis is currently 12.000 EUR per annum. Obviously, the latter privilege is not exclusively afforded to a landlord but to just any owner of a housing unit.

In Poland, individual non-professional landlords are taxed on income on general terms - with private income tax. Among many other sources of the taxable income, the Private Income Tax Act 1991²⁹ points to proceeds from lease and sublease. It is possible for landlords to pay a lump sum tax on the registered revenue if they do not wish to have their incomes taxed in accordance with a progressive tax scale. On general terms, they have to calculate and prepay monthly sums to the tax office until the 20th day of each calendar month. Where the landlord elects to pay by lump sum, no expenses can be deducted from virtual proceeds, so that the lump sum depends on the volume of gross rather than net income. The sums due may be paid either monthly or quarterly. The

²⁸ Further information can be found in TENLAW: the National Report for Czech Republic, Section 3.7.

²⁹ Act of 26 July 1991, Official Law Journal 2010, no. 51, item 307.

possibility to select this model is not contingent on whether the tenancy contract institutes the general type of lease or the so called incidental lease. Taxation by lump sum must be expressly opted in before the 20th day January or any other month following the month of the first proceeds received. It may seem an attractive solution as for the calculation of the lump sum the 8.5% tax rate is applied, however, this form of payment is beneficial only to landlords with high proceeds and moderate expenses, which is quite rare in practice, taking into consideration the poor technical condition of the private tenement stock. Landlords who carry on a business activity pay the income tax as professionals.

Tenancy incomes become taxable if they have been actually collected by the landlord. If the tenant runs late with rent, the overdue sums are not taken into account until duly paid. Only where the lease is taxed as a business activity carried on by a professional, the overdue sums are also taken into account. It is presumed that professionals acting diligently are able to enforce and execute any receivable debts. The tax rates applying to non-corporate professionals are either the general ones (18% and 32%) or the flat-rate 19% if the taxpayer opts for the latter choice.

Corporate tenants pay corporate income tax (19%), however housing cooperatives, Social Building Associations, municipalities and condominiums are exempt from income tax in respect of proceeds from rentals inasmuch as they cover maintenance costs.³⁰

In all the types of Slovak lease of habitable dwellings – general lease (house) and lease of flats, whether short-term or open ended, the contract shall prevail as far as the extent, distribution of costs and person liable for repairs and maintenance are concerned. For tenants who are members of a housing cooperative, these issues may be specifically regulated in the statutes of the respective cooperatives.

By default, the landlord's and tenant's responsibility for repairs has been divided in accordance with the duty of the landlord to convey the object of lease to the tenant in a condition fit for its purpose – habitation – and to maintain it in such condition at the landlord's cost for the whole duration of the lease. Consequently, the landlord is liable for any repairs that make the premises fit for the agreed use (major repairs) unless legal provisions expressly shift the responsibility to the tenant. In contrast, the tenant is under the duty not to damage the premises he is inhabiting and, thus, would be liable for repairs necessitated by himself or his co-habitants.

The tenant is also generally obliged to bear costs of “minor repairs”, i.e. repairs that would not make the dwelling unfit for its use. The tenant would be liable for their coverage, as well as the costs associated with routine maintenance of the flat.

Under the Czech Civil Code, the expenses for maintenance and basic repairs of the house have to be borne by the lessor since he is obliged to meet them *ex lege*. On the other hand, minor home repairs are required to be made by the tenant - unless specifically agreed otherwise. These repairs have not been defined in legislation. Among these repairs, we can rank e.g. replacement of handles, locks, blinds, circuit breakers, bells, lights, faucets, sinks, etc. On the other hand, radiator repairs, or the replacement of a gas cap for an apartment (not cooker) are not classified as minor repairs.

³⁰ See art. 17(1) item 44 of the Corporate Income Tax Act of 15 February 1992, Official Law Journal 2011, no. 74 item 397.

When the lessor performs construction works during the term of the lease which permanently improve the utility value of the leased apartment or the overall living conditions in the house, or bring permanent savings of energy or water consumption, he can agree with the lessees on a raise in rent but only up to the amount of ten per cent of the yearly expenses.³¹

Under the Polish legislation the landlord is obliged to assure smooth operation of installations and equipment in the building enabling the lessee's access to running water, gaseous and liquid fuels, heating, electricity, elevators, as well as other installations and equipment in the unit and the building, as specifically defined in legal provisions. The obligations of the landlord comprise in particular:

- maintenance in due condition, assurance of order and cleanliness to spaces and equipment in the building destined for common use of all occupiers, as well as the building's vicinity;
- repairs to the building, its spaces and equipment referred to in item 1, restoration of previous condition if the building has been damaged, regardless of cause to the damage; the lessee, however, has to indemnify losses inflicted by his culpable behaviour;
- repairs to the unit involving maintenance or replacement of installations and elements of technical furnishing to the extent that they do not encumber the lessee, in particular:
 - repairs to and replacement of internal installations of running water, hot water and gas supply - without fittings and accessories, as well as repairs to and replacement of the internal sewage system, central heating together with radiators, electrical wiring, and diversity antennas,
 - replacement of heaters, window frames and door joinery, floors, flooring, carpets and plaster.

It can be, therefore, concluded that all the legal systems at stake conceptually provide for a distinction between fundamental repairs that relate to the overall functioning of the unit and minor ones, which are to be borne by the tenant. The Czech and Slovak legal systems apparently favour freedom of contract when setting the border between those two. The Polish legislation, on the other hand, is rather oriented towards legal certainty and offers a higher level of protection by specifying landlord's responsibilities.

In Slovak law, there is no clear obligation under which the landlord would be responsible to bear the costs of utilities. It is the contract of lease which governs the extent of utilities that will be charged from the tenant by the landlord (later reconciled with the supplier/manager etc.) or some other entity (supplier – as may be the case with electricity or gas supply; house managing entity – as may be the case with the services pertinent to the lease of a flat). However, once the volume of the provided (and billed) utilities has been set, neither of the parties may unilaterally decide to stop providing or

³¹ The Lessor's expenses for maintenance and basic repairs of the house are not included in these expenditures, since the lessor is obliged to incur them ex lege (§ 2257); see TENLAW: the National Report for Czech Republic, Section 6.4.

paying for them.³² The tenant may always be charged for the “pertinent utilities”, as these are generally considered a prerequisite for habitability of the premises and assurance of their provision is the landlord’s utmost duty. Subject to concrete contractual arrangements, the tenant may be charged as well for the supply of power (electricity, gas).³³

According to Czech law, the lessor provides for the necessary services throughout the duration of lease. These necessary services include water supply, sewage collection and disposal, including septic tank cleaning, heating, garbage collection, lighting and cleaning of the shared parts of the house, access to radio and TV broadcast, chimney sweeping, and lift servicing.

Once the landlord provides the supply of utilities, he is obliged to charge all their costs in accordance with a special piece of legislation (act no. 67/2013 Coll.). These costs form a part of the rent paid by the tenant.

Polish law prescribes that when the lessor enters into the contract for the supply of utilities, such lessor is in a position to charge the lessee with payments for the supply of energy, gas, water and disposal of sewage, solid and liquid waste. In a situation when the lessee enters into a contract with the provider, the lessee pays the charges for the utilities directly to their provider.

The lessor may not bother the lessee with "charges independent of the lessor" if they are not mentioned in art. 2(1) item 8 Tenants Protection Act.³⁴

Furthermore, real property owners are obliged to pay property tax to the municipality in which the property is located.

As regards utilities, their payment in Slovakia is guided by the contract itself. In Czech Republic and Poland the cost of utilities makes a part of the rent to be paid by the tenant. However, in Poland, also the tenant may pay for the utilities directly to the provider – where he is the party to the contract with the latter.

All of the countries provide for various schemes and financial stimuli for housing construction, procurement and renovation, specifically aimed at the targeted groups of addressees, which have been discussed in section 2.5 above. These programs, however, are not specifically destined for landlords but refer to all home owners, or even prospective home owners.

It may be added, as regards the Slovak tax legislation, that only recently (2013) the Slovak lawmaker has abolished the previous simplified form of taxation – very widespread among non-professional landlords in the country, namely, the possibility to deduct the flat 40% rate of the total income from tenancy (the so called flat expenditures). This step is generally considered to have a negative impact on the Slovak rental market because the taxpayers are now able to prove less expenditure than they were presumed to have spent under the former rule. They would also have to elect a much more burdening (thus costly) method of accounting for the expenditures.

³² The court held, for instance, that if the tenant decides to turn-off the radiators of the central heat distribution, it does not prejudice him from the duty to pay for the service. See the case R 29/1982.

³³ TENLAW: the National Report for Slovakia, Section 6.4.

³⁴ Such opinion is represented e.g. by M. Olczyk, *Najem lokalu mieszkalnego*, (Warszawa: LexisNexis, 2008), 46; E. Bończak-Kucharczyk, *Ochrona...*, 61-62.

The fact that the Slovak legislator has abolished the possibility to deduct flat tax expenditures as well as the possibility to prove costs as far as income from lease is concerned will decrease the taxpayer's income even in those instances where the taxpayer exercises the right to deduct provable expenditures. As a result, in order to avoid any lessening of their income, taxpayers will endeavour to evade the law.³⁵

3.1.2. Property rights respected *de iure* and *de facto*

Under Slovak civil law, the default on rent payment results in the duty to pay a financial sanction. Different tenancy regimes should, however, be distinguished. Under the Civil Code tenancy regime, a *tenant of a flat* defaulting with rent and payments for pertinent utilities for up to five days is obliged to pay the late payment fee of 0.5‰ (i.e. 0.05%) of the sum due for each day of arrears, and at least 0.83 EUR for each started month of arrears.³⁶ It is unclear whether the parties have any discretion to agree on any additional penalties for late payment. In practice, most private-market lease contracts provide for an additional contractual penalty³⁷ payable by the tenant in the event of delayed rent payment.³⁸ In the event of *lease of a house*, the delaying tenant would be obliged to pay the statutory late payment interest,³⁹ currently 5.25% p.a. starting from the initial date of the arrears. In addition, the parties may agree on a contractual penalty in the form of a lump sum or periodic payments, either as a fixed amount or a certain percentage of the due debt or in any other determinable manner.⁴⁰ Long-term non-payment of rent and pertinent payments opens up the possibility of termination (or avoidance) of the contract.

In Czech Republic, a lessor who has met all contractual and legal duties will be able to demand from a lessee who runs overdue with any amounts the interest on late payment unless the lessee is not responsible for the delay. Under the Section 1970 CC the interest rate can be determined by an agreement between the parties. Otherwise, a default rate set by a governmental order would apply. Moreover, the landlord may cancel the tenancy agreement if the tenant grossly violates his obligations stated in the tenancy agreement, in particular by defaulting with rent and services connected with the use of the apartment in the amount of triple monthly rent.⁴¹

In Poland, delay in the payment of rent entails the obligation to bear interest. The interest rate may either be agreed by the contracting parties or follow from statutory provisions. Additionally, late payment of rent provides grounds for the lessee's liability for the loss incurred by the lessor. Should the lessee's arrears stretch over at least two

³⁵ See TENLAW: the National Report for Slovakia, Section 3.7.

³⁶ See section 697 CC and section 4 Reg. 87/1995.

³⁷ Contractual penalty under section 544 et seq. CC. It is payable on the top of any statutory late payment fees and is usually set at ca 0,05 % of the due sum per day of delay.

³⁸ Interestingly, the original draft of the newly introduced short-term lease of flat regime left this issue specifically open for the parties' agreement, but this provision did not translate into the adopted text of the act. Cf. sec. 4 of the Short-term lease of flat Act (no. 98/2014 Coll.).

³⁹ It is a yearly interest rate calculated as the main interest rate of the European central bank (main refinancing operations - fixed rate) valid in the first day of delay, increased by 5 %. See section 517 para. 2 CC and section 3 Reg. 87/1995.

⁴⁰ see further section 545a CC.

⁴¹ See TENLAW: the National Report for Czech Republic, Section 6.4 and 6.6.

full periods of payment, the lessor may terminate the contract without observing a notice period. However, under the tenant protection regime, wherever the tenant is entitled to use the unit for consideration, termination by landlord (which must be notified in writing and include proper justification) may be effected at one month's notice communicated at the end of a calendar month if the tenant defaults with the rent or other fees charged for the use of the unit for at least three full periods of payment, The tenant must be notified in writing about the landlord's intention to terminate the legal relationship and given additional monthly deadline to clear all the outstanding liabilities. As held by the Supreme Court,⁴² this applies as well to leases of a fixed duration, even if concluded before the entry into force of the Tenants Protection Act, and even if the contract does not by itself provide for early termination in situations of rent arrears.

It can be concluded that the legal orders of Slovakia, Czech Republic and of Poland all provide for pecuniary sanctions once the rent has not been paid on time and also for the possibility to end the contractual relationship, either by way of termination or avoidance.

All the analysed legal systems take into account various possible uses of the flat, usually setting a limit on abusive and non-abusive conduct through general notions (excessive, abusive and the like), whereas the details may be set in internal regulations of the housing block. In order to prevent abusive subletting as is concerned, the Slovak and Polish law require landlord's consent is missing. Under Czech legislation, any permanently residing tenant would be free to sublet.

In Slovakia, the tenant, as well as any other persons living with him, are obliged to use the flat, common premises and facilities of the building duly and to ensure an environment which enables exercise of the rights of other tenants in the building. They may not interfere with the enjoyment of flats by such other residents. More specific duties may be set forth in the house rules and regulations of the block of flats. Some examples of problematic issues may involve: keeping animals; disbursing smells; receiving guests. Interim use of a flat (or a part thereof) for commercial purposes does not, in general, constitute an abuse. Even an official business licence for running a business in the rented dwelling does not make a sufficient proof of its actual conduct, and thus cannot be invoked as a ground for termination of the lease. Also using a dwelling for the purposes of business correspondence does not amount to a disallowed use of flat enabling termination of the contract and, hence, does not make an abuse on the part of the tenant. However, the absence of the lessor's written consent to a sublease invalidates the sublease contract.

Furthermore, the Slovak legislation requires the tenant to repair any defects or damages he or she caused. Failing this, the landlord shall have the right to rectify the defects upon prior notification of the tenant and to claim reimbursement from him. The tenant also remains responsible for the persons who occupy the flat when he moves out without terminating the lease.⁴³

Under the Polish law, there are several typical ways in which the tenant may abuse the contract, i.e. by violating the house rules and regulations, usually rules on keeping animals, leaving one's personal property in the common parts of the building, failing to keep appropriate cleanliness in the room and causing, e.g., appearance of insects; use

⁴² SC resolution of 7 June 2006, III CZP 30/06, Biul. SN 2006, no. 6.

⁴³ See TENLAW: the National Report for Slovakia, Section 6.5.

of the unit in a manner contrary to the contract or its normal purpose (e.g. by carrying on a business at the premises); enjoying the unit and the common property in an abusive way (e.g. causing serious damage to the unit, devastation to the common parts); or sublease unauthorized by the contract and legislation or the unit's delivery to a third party under a different type of arrangement, whether gratuitous or for consideration.

The situation in Czech Republic suggests that the tenant is generally obliged to use the apartment in a regular manner unless a specific use of the rented apartment or house was primarily agreed on. In particular, the lessee is allowed to have an animal in the apartment unless this would cause unreasonable inconvenience to the lessor or other inhabitants of the building. Should the presence of the animal affect the costs of cleaning the common areas within the building, the lessee must reimburse the lessor for such additional costs (section 2258 CC). The lessee may work or run a business in the apartment or house unless this causes any increased strain on the building (section 2255 para. 2 CC), yet, any non-residential uses of the flat necessitate that the contractual relationship is regulated by provisions on the lease of commercial premises serving, which offer a slightly lower level of protection to the lessee. If the lessee does not reside in the apartment on a permanent basis, he may sublet the apartment or its part only upon the lessor's written consent.

Omission to use the apartment would not amount to abusive conduct of the tenant. If the lessee knows in advance of his absence from the premises which is to last longer than two months during which the apartment will be difficult to access, he must notify the lessor in a timely manner. If necessary, he should also designate a person who, during his absence, will provide access to the apartment. Where no other person is available to the lessee, that person will be the lessor.

Naturally, the Slovak, Czech and Polish legislative regimes provide for the possibility of eviction. All of them incorporate some socially mitigating measures that may render the eviction of a tenant particularly burdensome to the landlord (in terms of time and additional duties).

Under Slovak law, removal of a tenant as a self-help remedy is generally not allowable and doing so may expose the landlord to administrative liability or criminal prosecution, along with possible claims for damages from the evicted tenant. As a result, in virtually all eviction cases an execution title (a judicial decision, which in practice may be replaced by notary's record of the tenant's consent)⁴⁴ would be required, and only a bailiff acting within execution proceedings is entitled to enforce the removal. The Civil Code regime of an open ended lease of a flat prescribes extensive tenant protection as regards termination of a lease of flat (certain conditions may result in prolongation of the notice period) and replacement housing (replacement tenancy) to which the evicted tenant may be entitled on objective social grounds (e.g. taking care of a minor child or a paralysed person who is a member of the evicted tenant's household). Provision of replacement housing must be proven before commencement of the execution. Objections against the replacement housing unit furnished during the proceedings may

⁴⁴ This, however, is from the legal point of view dubious an enforceable title. See section 6.7 of the Slovak report and also D. Mihálová, 'Exekúcia na nepeňažné plnenie - vypratanie', *Spravodaj SKE*, no. 2 (2008): 1, <<http://ske.sk/Download/?bulletinArticleId=29>>, 15 December 2013.

⁴⁴ cf. eg. contracts for a lease of flat by the city of Trnava available at: <<http://egov.trnava.sk/>>, 15 December 2013.

also protract the whole procedure. In contrast, the regime on the lease of a family house does not set forth such detailed protection in respect of termination, nor a right to replacement housing. One should also mention that courts, in individual cases, have already afforded protection on the grounds of immorality of a lawful eviction (extraordinary measure, social/family grounds, etc.) under both regimes, and thus the claims for eviction were dismissed. The newly adopted regime of the Short-Term Lease of a Flat Act addressed this issue in a way favourable to the landlord. Under this piece of legislation, no right to replacement housing has been offered to the former tenant, and, on top of that, the tenant's objection to the termination of the contract and ongoing court proceedings do not effect the enforceability of eviction.⁴⁵

Czech law envisages⁴⁶ that if the tenant stays in the apartment after the expiry of the period of notice, an action for eviction shall be filed against the tenant and thus a court decision must be sought in order to evict the former tenant. If the occupier keeps on refusing to move out, then it becomes a matter of a bailiff to open the apartment by force and evict things, ensure the physical removal of the tenant and hand over the apartment to the owner. Fundamentally, a bedridden tenant is protected from eviction as it is unacceptable due to his/her medical status. The same refers to a woman during her puerperium or at the later stage of pregnancy, when the eviction could seriously endanger the health of such person. Both conditions must be met simultaneously and the person to be evicted must evince that these conditions have been fulfilled by presenting a medical certificate. Moreover, the tenancy agreement cannot be terminated or withdrawn from by the landlord after the declaration of the tenant's bankruptcy based on his delay in paying the rent or other charges that occurred before the declaration of bankruptcy or deterioration of the debtor's financial situation.

Under the Polish legal order, the eviction procedure may be initiated where the lessee is in default with rent for at least three full periods of payment, usually expressed in months. In such circumstances, the debtor is called on to pay the whole debt along with the currently accruing liabilities. The request for payment must, under the pain of invalidity, be made in writing, name the amount of debt and deadline in which it is to be paid. In the written request, the landlord must also warn the tenant that in the absence of timely payment the contract may be terminated. Should the lessee fail to pay off the arrears, the lessor may terminate the contract. Respective notification of the termination should at the same time call on the debtor to voluntarily vacate the leased premises before a specific deadline. The debtor ought to be given a month to comply with this request.

Official proceedings are to be brought against the tenant who continues to occupy the unit despite expiration of the term assigned for vacation, and the uniform regime of 1046(4) of the Polish Code of Civil Procedure (PCCP) applies to all tenancy regimes. In such cases, the landlord files a suit before a district court having jurisdiction over the area where the premises are located, seeking an eviction order against the tenant and his household members. Landlord petitions most frequently additionally move for examining the case and passing the eviction judgment despite the possible non-appearance of the lessee at the trial. Evicted tenants may be entitled to a municipal social lodging. The court's duty to decide on that matter does not extend to tenants

⁴⁵ See section 9 Short-term lease of flat Act (no. 98/2014 Coll.).

⁴⁶ See TENLAW: the National Report for Czech Republic, Section 6.7.

under the contract of incidental lease (art. 19e) or squatters, and generally tenants in the private stock.⁴⁷ Under the current legislation, sidewalk eviction is possible in relation to individuals not entitled to social housing if temporary premises are not afforded to them within 6 months from the date of submission of the bailiff's motion for designation of a temporary lodging. On expiry of that deadline, under art. 1046(4) PCCP, the bailiff shall evict the debtor to a hostel, shelter or other centre offering overnight accommodation to the homeless – as indicated by the home municipality. The number of temporary premises in municipal resources is always deficient. In consequence, evicted persons often remain in the units occupied without any valid tenure. The landlord may quicken the procedure by furnishing the replacement lodging himself. Ultimately, Polish law provides for a general winter ban on eviction lasting from November to March.

In Slovak law, financial deposits have been expressly regulated only in relation to social housing leases and recently to short-term leases of flats. They are practically used also in general lease-of-flat arrangements. The deposit serves as security for payment of the agreed rent, charges for utilities and possible tortious claims.⁴⁸ As the deposit is a sum limited by purpose, its permissible use on the part of the landlord is delimited by the claims it secures. Thus, subject to the lease contract, the landlord would be entitled to set off his claims pertaining to the lease. Moreover, an average contract for lease of a flat in the private rental sector specifically states that the deposit may be used to offset the claims arising from any damage caused to the flat by the tenant or anyone whom he allowed to dwell in the premises, the tenant's outstanding debt on rent or utilities, or payment of the previous months' rent. Under the "short-term lease of flat" regime, the amount cap on deposits is set at the level of three months rent and charges for pertinent utilities for the same period. With no regulation of this institution for other rental arrangements, in practice only the standard of good morals confines the amounts of deposits. The usual contractual practice generally requires the tenant to pay a deposit in the amount of six, three or one month's rent.⁴⁹

Under the Polish legal order, the deposit makes a single monetary provision, which cannot be spread over time. It is to be paid before the commencement of lease. Its function is to secure lessor claims relating to the contract of lease (and only lease). In Poland, deposit may amount to even twelve monthly rent instalments. With regard to incidental lease, the admissible amount has been reduced to the equivalent of three months' rent.

The new Czech Civil Code introduces an institution of deposit. The parties can stipulate that the lessee should furnish the landlord with a financial deposit which ensures that he will pay the rent and meet other contractual obligations. The deposit shall not be more than six times the monthly rent. At the end of the lease the landlord will be obliged to refund the deposit to the tenant. The lessor may set off a sum of money which the lessee owed to him as rent. The lessee is entitled to interests on the deposit at least at

⁴⁷ R. Dzięczek, *Ochrona praw lokatorów. Dodatki mieszkaniowe. Komentarz. Wzory pozwów* (Warszawa: LexisNexis, 2002), 117; in the case of squatters the issue was settled in the SC resolution of 20 May 2005, III CZP 6/05 (OSNC 2006, no. 1, item 1).

⁴⁸ In addition, in social housing leases the due date for payment of the deposit may not exceed 30 calendar days prior to signing of the lease contract. If the lease contract was for some reason not concluded, the landlord would have to return the deposit obtained without undue delay.

⁴⁹ TENLAW: the National Report for Slovakia, Section 6.4.

the statutory rate. In spite of this regulation, it is usual to pay one month's rent as deposit.

The deposit is legally constructed as a guarantee to cover future claims of the landlord. It can be set off against the rent which is owed after the termination of the contract.

The usual and lawful amount of deposit is one month's rent.⁵⁰

In summary, all three jurisdictions view deposit as a payment separate from rent which is to guarantee that the landlord's claims and obligations that might emerge under the tenancy will actually be met.

The Slovak and Polish legislations share a rather similar regulation of the statutory lien on the tenant's movable items as a means of securing his obligations. All three countries subsequently provide for a version of a lien or retention of movable things to secure the directly endangered rent.

The Slovak law establishes lien on the tenant's movables belonging to the tenant or to persons living with him in a common household under just any tenure in order to secure claims for the payment of rent. The lien only extends to movables situated in the rented premises with the exception of the property exempt from execution by legal provisions,⁵¹ such as usual clothing, equipment necessary in a household, pets for non-commercial use, wedding rings, etc. The lien is created upon bringing the property into the household and generally extinguishes when the items are removed from the premises.⁵² The lien will persist if they are enlisted in an inventory drawn up by a court official or, where the movables have been removed upon official order, if the landlord applies for such remedy within eight days of the removal. The pledge may be enforced and the claim it is securing settled through general ways of execution of charges, which is, if nothing else is agreed between the parties, a private auction performed by a licensed subject⁵³ or execution following a court's final judgement awarding rent, enforced by a bailiff.

The law, furthermore, provides for a statutory retention lien, separately for the Civil Code regime of lease and the short-term lease of flat. In the former case, only if tenant is moving out of the leased property or the movables are being removed, the landlord will be allowed to retain the movables as security, and obliged to apply within eight days for drawing up of an official inventory of the retained assets by a court official.⁵⁴ Under the latter regime, the landlord may retain the movables upon termination of the lease and upon expiry of the prescribed period. The lien would be illegal if the deposit the outstanding debt of the tenant could be covered from the deposit.⁵⁵

Polish law provides that in order to secure the rent and other provisions in which the lessee defaults for no longer than one year, the landlord has a statutory lien on the tenant's movables brought into the housing unit, unless these things as such are exempt from attachment. The statutory lien refers to movables, whether owned or co-owned by the lessee. Pursuant to art. 671 CC, the statutory lien is extinguished when the pertinent

⁵⁰ TENLAW: the National Report for Czech Republic, Section 6.4.

⁵¹ For a complete list see sections 114-115 EO.

⁵² K. Plank, in P. Vojčík et al. *Občiansky zákonník*, 850.

⁵³ See sections 151j et seq. CC and the Voluntary Auctions Act 2002 (No. 527/2002 Coll., as amended).

⁵⁴ See section 672 CC. An executor can also serve as the delegated court official.

⁵⁵ See section 8 para. 2 and section 10 para. 2 Short-term lease of flat Act (no. 98/2014 Coll.).

things are removed from the rented object. The lessor may object to such removal and retain the movables at his own risk until the overdue rent has been paid or secured. By doing so, the lessee might become exposed to compensatory liability towards the lessee.⁵⁶ If the pledged things are removed under an order issued by a state authority, the landlord still retains his statutory right of pledge if, within three days, he reports it to the authority which ordered the removal (art. 671(3) CC).

The Czech Civil Code does not envisage the lessor's lien on the lessee's movables. Nevertheless, it gives the lessor the right to recover debt by means of retention of movables belonging to the lessee left in the leased premises (Section 2234 CC). The new Czech Civil Code does not allow retention of movables belonging to persons other than the lessee. It follows from the wording of the regulation that the lessor's right of retention also applies to the settlement of debts other than rent arrears.

In neither of the compared countries is there a specific regime of sureties securing the payment of rent or other pertinent debts. It has to be assumed therefore that the parties are free to employ a surety as a personal security of the landlord's claims.

Under the Slovak law, it is possible to insure a property against its impairment, destruction, loss, theft or other form of damage. Insurance companies which provide their services on the territory of the Slovak Republic offer the following insurance products relating to dwellings: insurance of buildings, i.e. the insurance of a house, of a flat or non-residential unit; insurance of a block of flats; insurance of a household; liability insurance for household members; insurance for liability caused by immovable property; insurance of glass; insurance of buildings connected with the insured building; and rent guarantee insurance.

In Poland, compulsory insurance in the housing sector refers to entire buildings and covers damages following from mishaps such as fire, pipe leaks, hurricane, electrical surge or dilapidation. For additional premium, insurance may be expanded to cover floods. The obligation to buy the insurance rests upon the owner of the house.⁵⁷ Other types of insurance are generally available but optional.

In the Czech legal system, dwellings can be insured in two ways: by real estate insurance – usually paid by the owner (lessor); and by household insurance.⁵⁸

Apparently, in all of the scrutinised countries there are insurance products relating to the property owned by a landlord. Only in Poland the owner of the building is under a duty to do so. Neither of the reports suggests that the choice or scope of insurance is insufficient for the market needs.

Under the Slovak Civil Code regulation of the lease of a flat, the contract may be terminated if the landlord needs the flat for himself, his spouse, children, grandchildren, son in law or daughter in law, parents or siblings; or – with public interest in view – if it is necessary to dispose of a flat or the block of flats in a manner that renders the use of the flat impossible, or if the flat or the block of flats requires such repairs that it is impossible to use the flat or the block of flats for at least six months, i.e. where it is not a mere commercial decision of the owner. In contrast, an open-ended lease of family house

⁵⁶ R. Doliwa, *Prawo mieszkaniowe. Komentarz* (Warszawa: C.H.Beck, 2012), 51.

⁵⁷ TENLAW: The National Report for Poland, Section 2.4.

⁵⁸ TENLAW: The National Report for Czech Republic, Section 2.4.

would not require any special reason for the landlord's termination, just observance of the prescribed notice period. Similarly, leases for definite period do not permit termination on the grounds provided in default provisions, which also holds true for the novel regime of short-term leases of a flat.

According to the Polish legal order, the landlord may terminate the contract at six months' notice given at the end of a calendar month if he wishes to live in the unit himself or pass it over to his major descendants, ascendants, or persons entitled to alimony against him and the tenant is authorized to use another unit which meets the minimal requirements for replacement premises. The notice period would be three years if the tenant could not be provided with adequate replacement premises. Furthermore, termination is possible if the tenant occupies the unit which has to be vacated because of the need to demolish or restore the building.

The Czech law gives the landlord the option to terminate the contract when he requires the apartment for himself, his spouse, children, grandchildren, a son-or daughter-in law, their parents or siblings; if it is necessitated by a public interest that the apartment cannot be used or the apartment or house requires renewal in the course of which this flat or house cannot serve its purpose for a longer time; if it is an apartment architecturally inscribed in areas intended for business or other entrepreneurial activities. On the other hand, tenancies concluded for a limited period automatically expire at the end of this period.

It thus becomes clear that Slovakia, Czech Republic and Poland provide for the possibility to terminate the contract when the property is needed for the family members of the landlord, and that the provisions on furnishing of replacement housing have to be observed. Moreover, all the three legislations enable termination of the contract once major changes to the property have been introduced. The Czech and Slovak laws additionally suggest that leases of flats for definite period allow to adjust the lease period to the commercial or family decisions of the owner.

In Slovakia, there are virtually no special alternative dispute resolution schemes to be applied in the residential tenancy sector. Although mediation, as a progressive and efficient concord-driven framework, is ever more developed and available, the parties to housing disputes generally resort to court proceedings. At the same time, the parties are also discouraged from suing by the popular opinion on the general inefficiency of official law enforcement. Landlords are, thus, willing to avoid court proceedings through stringent contracting (through e.g. fixed-term leases, subleases, notary's reports of tenant's consent to eviction, etc.). Tenants, on their part, may be discouraged by the generally feared cost of the proceedings. Due to the Civil Code regulation of the lease of a flat, usually favouring the tenant even in the procedural context,⁵⁹ and the willingness of courts to account for extraordinary circumstances of the parties under general principles of law, the tenants usually have the upper hand in the process.

⁵⁹ This involves: survival of the lease until the issuance of final judgement on (in)validity of landlord's termination notice (section 711 para. 6 CC); the right to habitation of the tenant until ensuring replacement housing, if applicable (section 712c para. 1 CC).

The average length of a civil procedure was 11,6 months in 2012, which seems to be a stable expectancy.⁶⁰ This, however, refers only to first instance proceedings. Appellate trials and enforcement of the judgement could prolong the actual process. Tenants admit being afraid of the long duration and unpredictability of judicial proceedings, which, along with the fear of harassment on the part of the landlord, is a significant disincentive for seeking enforcement of their rights in court. Most of these deficiencies are expected to gradually become side-lined by the implementation of the short-term regime for lease of a flat, which would still require an eviction order to be delivered, but in this case invalidity of termination, even if challenged at the court, would not prejudice or postpone the eviction.

In Poland, there are principally two types of housing matters that are frequently considered in court proceedings, i.e. eviction cases (vacation of a unit by its previous occupier) and actions for payment of overdue rent along with other chargeable fees. Apart from these two, one could easily notice cases relating to:

- return of the deposit paid by the lessee; such disputes, however, do not generally relate to the refund itself, but to the grounds for and the manner of valorisation of the deposit;
- disputed legitimacy of a rent increase;
- return of the outlays on the unit made by the lessee and repair of the damage inflicted by the lessee in the leased premises;
- indirect nuisance involving noise, littering, animal husbandry, etc. in the unit.

All the types of cases set out above are examined in civil litigation. Non-litigious proceedings, generally reserved for matters expressly selected by the legislator, do not apply to the disputes mentioned above. Within litigation, most tenancy law cases are heard under the so called summary proceedings.

In the area of housing law, the legislator has not provided for obligatory mediation or any other conciliatory proceedings. Instead, the general regulation included in the Polish Code of Civil Procedure applies. In light of the above, it depends on the parties if they are willing to use the mechanisms of amicable dispute resolution or simply go to court. Among all conceivable forms of amicable dealing, special attention should be paid to two specific types. First, a possible claimant may initiate judicial conciliation,⁶¹ whereby a judge induces the parties to settle the case by themselves and does not resolve the dispute authoritatively. As it turns out in practice, this procedure is applied only exceptionally rarely in housing law disputes. Second, the parties may resort to voluntary mediation,⁶² based on mutual agreement. As a rule, mediation is commenced before the action is brought to court, but it is also admissible to refer the case to mediation (by court) in the course of pending judicial proceedings.

In Czech Republic, the number of lawsuits pertaining to housing is relatively large and enforcement proceedings are common. The parties may agree to arbitration, but there are certain restrictions following from consumer regulation. Access to courts is not

⁶⁰ See <<http://www.justice.gov.sk/Stranky/Sudy/Statistika-priemerna-dlзка-konania.aspx>>, 15 December 2013.

⁶¹ See arts. 184 – 186 PCCP.

⁶² See arts. 183¹ – 183¹⁵ PCCP.

restricted and verdicts are based on law. Recent amendments to procedural law introduced the obligation to invite the counterparty to seek amicable solution.

In Czech Republic, the average length of judicial proceedings in private law matters (about 60,000 per year) has decreased since 2005, when it was 453 days, to 284 days in 2011, but even so the average length of judicial proceedings in Czech Republic is twice as long as in Western Europe. Courts are too slow and there is no effective way of solving tenancy disputes. In practice, it is important to solidly prepare the contract and carefully select the tenant/landlord.

In general, all three jurisdictions allow for the possibility of judicial proceedings in housing matters, which appears to be by far the most popular mode of resolving disputes. As regards other manners of dispute resolution, the three countries have appropriate procedural frameworks for their implementation and, apparently, there are no legal obstacles as to their utilization in housing disputes. Nonetheless, alternative dispute resolution is only rarely embarked on.

In Slovakia, there is a system of support for the housing needs of inhabitants which is underlain by the income structure of Slovak households. Middle income earners have the possibility to acquire ownership of flats in blocks of flats or houses with the support from the state through the State Housing Fund loans, building savings programs, and mortgages.⁶³ In Bratislava, for instance, an average mortgage instalment for a newly built and purchased dwelling in the last quartile of 2013 amounted to EUR 781.12 as opposed to EUR 515.61 in the case of a secondary market dwelling. Such difference corresponds more or less to monthly mortgage rates.⁶⁴

In Czech Republic, construction of new housing units is mainly financed by mortgage loans. Banks usually insist on a minimum equity requirement (15% of the value of the loan). It is not uncommon for mortgage to be available at 2.5-3% interest rates. This is a result of discount rate cuts by the Czech National Bank, the value being reduced down to 0.05%. Banks, expecting a growth in interest rates in the future, embark on fixed rates only for a three year period. Greater availability of mortgages should influence the growth in the number of mortgaged households, which, however, is not the case. The rental sector is thus not markedly influenced and rents tend to stagnate. Monthly mortgage instalments are usually about 30 % above the rent for a comparable apartment.⁶⁵

In Poland, mortgage market was underdeveloped in the nineties. The market took off around the year 2000 and kept expanding very rapidly until late 2000's. In the aftermath of the financial crisis a recommendation was issued by the Polish Financial Supervisory Authority which set an upper limit for monthly instalments to 50% of the borrower's income in order to assure his solvency.⁶⁶

⁶³ TENLAW: the National Report for Slovakia, Section 1.4.

⁶⁴ See further: M. Jančura, 'Reality v Bratislave', <<http://www.bencontinvestments.sk/app/cmsFile.php?disposition=a&ID=893>>, 10 February 2014.

⁶⁵ TENLAW: the National Report for Czech Republic, Section 2.5.

⁶⁶ Financial Supervisory Authority, 'Rekomendacja T dotycząca dobrych praktyk w zakresie zarządzania ryzykiem detalicznych ekspozycji kredytowych', Warsaw February 2010 <http://www.knf.gov.pl/Images/Rekomendacja%20T_tcm75-18474.pdf> January 2013..

Financing of immovable property acquisitions in all three states is possible through mortgage loans, which generally seem to be accessible.

As mentioned in section 2.5 above, all the countries apply mostly object-oriented subsidies, which allows to subsidize construction and rehabilitation of the housing stock. However, as far as private investors are concerned, these subsidies do not apparently lead to any significant increase in the rental market.

In the Slovak Republic, such subsidies take the form of a grant for procurement of a rental flat. Under this scheme, an eligible applicant, i.e. a municipality, a higher territorial unit and recently also a non-for-profit organization with a dominant share of a municipality or a higher territorial unit, may receive a direct grant to partially cover the costs of acquisition of social rental flats. This may be done through purchase, construction, re-construction or rehabilitation of various premises and turning them into social rental flats. Secondly, grants for acquisition of rental flats as replacement housing for tenants who left their flats in restituted houses are available. Thirdly, there is system of loans for procurement of rental flats granted by the State Housing Development Fund to municipalities, higher territorial units or any legal persons that have been operating for at least five years. Clearly, these programs are mostly oriented towards housing with a public task.

Fourthly, The State Housing Development Fund may also provide soft loans for construction and renovation of social services facilities (which may provide housing). Fifthly, state subsidies for mortgage loans and state subsidies for mortgage loans for the young are available. These stretch beyond mere acquisition of housing, but concentrate both on the affordability and reconstruction of dwellings for the young.

Furthermore, there are grants for construction of technical facilities; grants for eradication of systemic deficiencies in blocks of flats; subsidization of ecological sources of energy in housing (subsidizing biomass and solar energy as a source of heat and loans by the State Housing Development Fund for renovation of residential buildings (mostly blocks of flats)).⁶⁷

In Czech Republic, there are also numerous subsidies which are oriented toward renovation and panel housing estates, provision of new technical infrastructure, development of shelter flats, building savings etc., i.e. the supply side of the rental market. The largest part of the subsidies goes for owner-occupied housing.⁶⁸ For example, the Ministry for Regional Development of the Czech Republic offers the programme of "Support for the Renovation of Panel Housing Estates", "Construction of Technical Infrastructure", "Subsidised Loan Interest Payments for Young People Aged up to 36," just to name a few. The most widespread arrangement for funding housing investments in Czech Republic is the "Promotion of Building Savings Scheme," which is a direct non-payable subsidy. This subsidy is remitted to the account of the client in a home building savings bank in the amount laid down by law.

In Poland, there are a variety of subsidization schemes oriented toward construction, spanning from preferential credit to targeted groups (e.g. "Family in Its Own Home", recently succeeded by the program "Housing Units for the Young"). As far as renovation

⁶⁷ Further information to be found in TENLAW: the National Report for Slovakia, Section 3.6.

⁶⁸ See further in TENLAW: the National Report for Czech Republic, Section 3.6.

is concerned, in 2009 the Support for Thermal Modernization and Repairs Act entered into force. It expanded the previous regulation on supporting thermal isolation investments. Along with the premium for thermal modernization, the legislator now provides grants for repairs of the old housing stock. Compensation premium is available for landlords of tenements with formerly regulated rent.

All three legal systems respect the nature of lease as a contract for consideration, whereas the compensation (rent) does not necessarily have to be paid in money. In line with the principle of private autonomy, other types of consideration are possible, including provisions in kind. Such arrangements, however would be uncommon.

Under Slovak law, although the Civil Code uses the expression “payment of rent,” in light of the principle of contractual autonomy of the parties, the commentators agree that the rent may as well be agreed upon in a form other than monetary, or even as a corresponding right of use of some other property or any other performance, provided that the stipulation is clear or determinable as to the scope of the transfer or performance.

Since 2014, the Czech Civil Code expressly allows for payment of rent in forms other than pecuniary. Should the rent, under the parties’ agreement, be non-pecuniary, the value of the provided rendition expressed in money is decisive.⁶⁹

Finally, also the Polish law allows rent to be designated in money or renditions of some other type. It is thus admissible to honour rent e.g. by provision of a specific service (e.g. repair, retrofitting), or transfer of a given object (e.g. TV equipment, household appliances, a car).

3.2. Important evaluative criteria for the tenant

3.2.1. Affordability

As far as rent is concerned, the private law principle of freedom of contract applies in fact to the vast majority of tenancies in all the compared legal orders. This freedom is almost unrestricted in Czech republic, where rent control has now been fully abolished, and it is possible to impeach contracts on the grounds of excessively high rate of rent only by recourse to the legal institution of usury or excessive reduction. In Slovakia price regulation is effected under the provisions of the Prices Act 1996, but in reality it is limited to certain tenancies almost exclusively within the public (i.e. mostly municipal) rental sector, especially to flats that had been built or otherwise procured through public funding. Rent regulation on the private rental market applies solely to the rare cases of flats (blocks of flats) owned by persons who have regained ownership under restitutionary legislation and inhabited by “existing tenants.” Nowadays, rents in this class of leases would be slightly higher than the general rent ceiling regime in public housing.

In Poland, rent is not centrally regulated although certain statutory guidelines have been provided for municipalities. Restrictions on the amount of rent are more definite in the case of Social Building Associations. Rates of rent for 1m² of usable floor area of a unit are set, in the former case, by municipal councils which follow statutory guidelines of the Tenants Protection Act (depending on the location of the building and its general

⁶⁹ See section 2217 para. 2 CC.

technical condition, and furnishing of the dwelling). In Social Building Associations, the aggregate of rental incomes in the Association should allow to cover maintenance and repair costs relating to the stock, as well as refund of the loan taken for construction. Moreover, yearly rent in the Associations may not exceed 4% of a unit's replacement value. Otherwise, parties to tenancy contracts may freely determine the amount of rent. To sum up this part of the comparison, the Czech regime seems to be the most liberal.

The new Czech CC introduced a detailed regulation of rent increase and the possibilities for unilateral rent increase including the right to seek judicial determination of what makes an admissible increase. Similar provisions are in force in Poland. It is discussed in more detail below in the section on tenancies with a public task. At this point, it should be indicated that they are equally valid for the free market stock. On the contrary, Slovak law regulates rent increase only in respect of flats in blocks returned by restitution to their original owners or their legal successors. Otherwise, unilateral rent increase is possible and allowable only in cases where the landlord and the tenant permit such proceeding in the lease contract. In each case, the rent increase has to be mutually agreed. The contractually stipulated right of the landlord to a unilateral rent increase and its execution must be in line with the general requirements of Slovak law.

The Czech Civil Code introduces the institution of deposit in § 2254 CC. The deposit shall not be more than six times the monthly rent. In Polish law it may even correspond to twelve monthly rent instalments (6 in the case of incidental lease). The use and return of deposit after valorisation (Poland) or inclusive of interests (Czech republic) seems more thoroughly regulated in these countries than in Slovakia, where deposit has for the first time been introduced in 2014 by the Act on Short Term Lease of a Flat. This regulation is, however, restricted only to the general statement on admissibility of a deposit, its maximal amount (3 rent instalments), the use of deposit and the obligation to return it after the end of the lease minus rightful deductions (damages, due rent). In particular, it does not explicitly regulate valorisation of the deposit. Given the short term character of such lease, most probably, this will not be a serious problem.

Regulation of expenses is based on almost the same principles in all compared legal orders. Two models are in general use: it is either the landlord or the tenant to enter into contracts with providers of the utilities. As mentioned in the reports, in short term leases the landlord usually reserves the right to stay in the contractual relation with the utility providers and then the landlord charges the bills from the tenant. The landlord would then present the tenant with a yearly balance of the actual consumption, advance payments and settle the outstanding account. It is also not uncommon and legally acceptable for the rent to encompass all possible charges for the agreed services, direct payment of which would be the sole responsibility of the landlord. In case of long-term leases and leases for an indefinite period, the standing practice is that the tenants usually conclude a separate supply agreement and are charged directly by the electricity or gas supplier.

Distribution of responsibilities concerning repairs and outlays on the unit is similar in the compared jurisdictions. The landlord should deliver the agreed thing to the tenant in a condition fit for the agreed use and keep it in such condition throughout the term of the contract. Minor repairs that are connected with the use of the housing unit and the costs of routine maintenance are borne by the tenant. In Slovakia, the definition of minor repairs and the costs associated with routine maintenance have been set forth by default in a governmental regulation. In Czech republic these repairs are not defined in any piece of legislation. In Poland, the legislator has rendered in a casuistic way the

scope of repairs and outlays imposed on the landlord and on the tenant. There is, however, one notable difference: the list of tenant's obligations is exhaustive, whereas the catalogue referring to the landlord is open.

There is no registration fee or tax to be paid by the tenant in any of the compared jurisdictions.

In Poland and Slovakia there are housing benefits for low income households. In Czech Republic housing allowances are destined for persons in material need.

3.2.2. Stability

Although lease is a merely obligational right, in all the three jurisdictions entitlements of a tenant are specially protected and provisions on the protection of ownership apply as appropriate to the protection of tenant rights to enjoy a rented unit. This refers to remedies available to an owner *erga omnes*, which means that the tenant is likewise protected against the owner (art. 690 of the Polish Civil Code and art. 126 of the Slovak Civil Code).

No specific licence schemes have been recognized in these countries.

In Czech republic, the Civil Code provides that the lease contract must be made in writing in order to be valid. However, the landlord may not claim invalidity of the contract against the tenant on the grounds of formal deficiencies. The CC protects the tenant even if the statutory written form of the agreement has not been observed. Under §2237 and §2238, if the tenant has used the apartment in good faith for a period of three years, the lease contract shall be presumed to have been duly signed.

In Slovakia, the rules on the lease of a flat in the Civil Code generally do not prescribe any formal requirements for valid conclusion of a contract. It may be concluded orally, implicitly, or in writing. The latter form is recommended as the lease contract is normally meant to regulate long-term relations. Section 686 para. 1 CC requires the parties to prepare a written record of the content of the contract, if not concluded in writing. The absence of such a record does not, however, invalidate the lease, but is of great importance in potential court or other proceedings. As far as general lease (lease of a building, e.g. family house) is concerned, the Civil Code requires neither a written contract, nor a record of its content.

In Poland there are no particular formal requirements for a lease contract in the private sector. Contracts for a fixed term longer than year should be made in writing lest their duration be deemed indefinite. Departure from the principle that a contract for lease may be concluded in any form makes one of the distinctive features of incidental lease. For successful conclusion of an incidental lease contract, art. 19a(6) TPA requires the written form. This provision imposes the same form for any amendments to an incidental lease contract. Non-observance of the formal requirement precludes incidental lease. In such situations, the contract itself is valid but does not qualify under the special regulation.

In Poland, registration of residence is only an administrative requirement (valid until 2016). Non-registration does not affect the lease contract as such. Only in the case of incidental lease, it is necessary to report the contract to tax authorities. Otherwise the landlord forfeits his preferential position. The same applies under the newly enacted regulation on short term leases in Slovakia. Generally, in Slovakia registration of the rental agreement with the tax authority is a sole responsibility of the landlord, with potential administrative law or criminal law consequences for its omission. The tenant

usually does not even know about the performance of the landlord's tax duties. Tenants are also subject to a public law duty to register their permanent or temporary residence with the respective municipality. In Czech Republic it is not necessary to register lease agreements. However, the owner of the apartment or the lessee (with the owner's approval) may request that the lease be registered in the Land Registry (§ 2203 CC). Incentives for the landlord to conclude an unreported "black market" contract providing less stability to the tenant have been discussed above.

In Poland, as long as the tenant is entitled to enjoy the rented dwelling for consideration, termination by landlord may take place only for reasons specified in the TPA. Under the pain of nullity, the landlord's termination must be notified in writing. The letter must specifically name the reason for termination. More on the relevant Polish regulation can be found below in the section on tenancies with a public task.

In Slovakia, rules on termination of lease of a flat by landlord's notice reflect the special character of such lease and its protection by law. Therefore, the landlord may terminate the lease of a flat only if one of the grounds specifically listed in the CC occur. This regulation has a mandatory character. Moreover, as far as consumer lease is concerned, such person cannot waive in advance his rights guaranteed by the Civil Code or otherwise diminish his position. Tenants may claim invalidity of the notice before the court within three months from the date of notice. The notice shall become effective on the date of validation of the court's judgment dismissing the claim to declare invalidity of the termination. The sole exemption from the general rule that the landlord may terminate the contract only on the grounds provided in the Civil Code has been afforded to landlords by the Act on Termination of Certain Leases Related to Flats and Amending Prices Act 2011 (TCL). This special regime for termination of the lease of a flat by landlord's notice does not apply by analogy to leases of a family house.

In Czech republic, the landlord may cancel the contract without court approval if the tenant or his co-habitants: continue to violate good manners in the house despite previous written warnings; the tenants grossly violate their obligations stated in the tenancy agreement, in particular by not paying the rent and not paying for services connected with the use of an apartment in the amount of triple monthly rent; if the tenant has two or more dwellings, except when he cannot be fairly required to use only one apartment.

The common feature of the unilateral termination regimes is the requirement that the grounds for termination should be expressly specified in legislation. Usually, they cover such situations as the housing need of the landlord or / and his/ her close persons, various forms of breach by the tenant, etc.. Additionally, it should be noted that a lessee of a family house in Slovakia does not enjoy the same level of protection as a lessee of a flat.

Application of the Slovak regime of short term leases is restricted to leases which, following possible prolongation, last no longer than 6 years. Reasoned termination by landlord's notice is, however, permissible notwithstanding the duration of lease, and the grounds for termination are same for fixed and open ended leases. These grounds are stricter in the CC framework than in the regulation of short term leases. The distinction between these types of leases is important because when the lease for a fixed term

terminates, the tenant is not entitled to any replacement housing. The same applies to the lease of a family house, where special protection has not been afforded to tenants. In Poland, the same level of protection is offered to tenants for a fixed term and for unspecified term, which makes the latter particularly attractive to tenants. It seems that in Czech Republic there are no differences between short term leases and open ended leases as far as termination is concerned.

In Poland the landlord must withhold eviction if the tenant has been awarded the right to a social unit – until the respective municipality carries out its obligation to provide such lodging. Where the court decides not to adjudge such entitlement, which is usual in the private stock, the bailiff must still wait for the period of six months in which the debtor is to be assured replacement premises. In this additional period the rental contract is already terminated and the occupier has no particular right to the unit, still, he or she may not be ousted from the premises. The same refers to the protective period between 1 November and 31 March in which eviction has been banned.

Polish law is very restrictive on the landlord and protective for the tenant even if the former needs the rented dwelling for himself or his major descendants, ascendants or persons entitled to alimony against the landlord (longer notice periods, protection of special groups of tenants in the public stock exposed to specific risks).⁷⁰

In Slovakia, as far as the lease of a flat is concerned, the reason for termination has an important role in determination whether the tenant, after the termination of lease, has the right to replacement housing or if he is obliged to move out without any form of support. Apart from the reason for termination, the social status of the former tenant and his household members is considered. If the former tenant has the right to replacement housing, he is not obliged to move out of the flat until corresponding replacement housing has been secured to him.

The new Czech regulation seems to be the most liberal out of the compared legal orders, as only a bedridden tenant may be protected from eviction if it is unacceptable due to his/her medical status. The same refers to a woman during puerperium or at a later stage of pregnancy, when the eviction could seriously endanger such person's health. Both conditions must be met simultaneously and the person to be evicted must present an appropriate medical certificate.

In Slovakia, if a change in the ownership of the leased property occurs (irrespective of its ground), the acquirer assumes the legal position of the landlord, and the tenant is relieved from his obligations towards the former owner as soon as the transfer is notified to him or proven by the acquirer. In such cases only the tenant may terminate the lease by notice. The landlord is not entitled to terminate the lease on the grounds of the change of ownership. Also in Poland and Czech Republic succession of the landlord has not been indicated among the admissible legal bases for terminating a tenancy contract.

There is no explicit regulation of the right of first refusal of the tenant in cases of sale of the house to a third party in any of the jurisdictions.

In Poland, the possibility to increase rent has been statutorily restricted (see the section on tenures with a public task below). Even if the increase complies with the statutory

⁷⁰ See R. Doliwa, *Prawo mieszkaniowe...*, 215-216.

limits, tenants dissatisfied with an excessive increase may go to court (art. 8a(5) item 2 TPA). In such cases, it is the court to decide whether or not the questioned increase is justifiable. Alternatively, the tenant may refuse to accept the increase, which results in termination of the contract as a whole (art. 8a(5) item 1 TPA). Under art. 9(1b) TPA, rent increases may not be introduced more often than once in six months. Also in Czech Republic and Slovakia, the tenant may seek court protection in cases of rent increase. Czech regulation is explicit, in Slovakia, the tenants (apart from TCL 2011) may rely only on general provisions of civil law. However unilateral rent increase in this country is generally excluded if it was not agreed in advance in the lease contract.

In Slovakia, extraordinary social circumstances of the tenant and members of his household may actuate certain protective rights of a tenant, such as a longer notice period for termination by landlord and a grace period for the repayment of the debt, or the right to replacement housing to which the tenant would not otherwise be eligible. Moreover, if the strict execution of eviction is likely to cause inadequate harshness, its effects can be mitigated by section 3 para. 1 CC, i.e. by declining (or limiting) the execution of the landlord's right on the grounds of its inconsistency with good morals. In such cases, however, justifications of court decisions dismissing the claim for eviction on the grounds of morality usually contain *dicta* relating to the temporary nature of this extraordinary protection, justified by specific facts. Procedurally, the judgment would still be in force and it would bar any new action or ruling as the matter has been already judged (*res iudicata*). This obstacle will hold until new facts (or new legal grounds), as compared to the original claim, are presented by the claimant

In Poland, eviction (except when justified by acts of domestic violence) is possible in relation to individuals who have not been awarded a social unit if temporary premises are not afforded to them within 6 months from the date of the bailiff's motion for designation of such temporary lodging. Upon expiry of this deadline, in accordance with art. 1046(4) of the Code of Civil Procedure, the bailiff shall evict the debtor to a hostel, shelter or other place offering overnight accommodation to the homeless – as designated by the home municipality. The procedure of eviction has been simplified in the context of incidental lease, in which case the tenant agrees in advance to the possibility of future execution.

3.2.3. Flexibility

In Slovakia, the tenant may terminate open ended lease contracts anytime, however, the three months notice period should be kept. The question whether the lease of a flat may be terminated by notice if it was agreed for a definite time has not been sufficiently discussed in legal literature. The prevailing opinion favours the possibility of termination by notice also in cases of a lease for definite period, but only if this has been explicitly agreed in the lease contract. The Act on Short Term Lease of a Flat lists the special reasons for early termination by tenant (disruption of the flat, loss of employment, claim for social housing, or other just reason agreed in contract).

In Poland, the regime for open ended leases is practically the same as in Slovakia, however, leases concluded for definite periods may not be terminated earlier unless the statutory conditions for immediate termination are met. Also in the Czech Republic there

is no requirement of specific grounds for termination by the tenant. Also in this legal system, the minimal three-month notice period should be observed.

Slovak and Polish regulations of subletting are based on the similar principles:

- subletting requires the landlord's consent (in Slovakia it must be given in writing);
- subletting without the landlord's consent constitutes a sufficient ground for termination.
- If the landlord refuses consent, the tenant may go to court. Should the court find the refusal ungrounded, it may order the landlord to give the consent.

In Slovakia, any sublease contract without the landlord's consent would be void.

The Czech regulation differs for various situations of sublease. The lessee may sublet a part of the apartment provided that he resides there on a permanent basis; this does not require the lessor's consent. In the event the lessee does not reside in the apartment on a permanent basis, consent of the lessor is necessary for a sublease. The request for such consent, as well as the consent itself, must be made in writing. If the lessor fails to give any reply within one month, it is assumed that consent has been given. This does not apply if sublease was expressly prohibited in the rental agreement. If the lessee sublets the flat or its part to a third party in violation of legal provisions, it is considered a major breach of his duties.

4. Comparison of tenures with a public task

4.1. Generalities

In Poland, Slovakia, and Czech Republic, municipalities are primary entities entrusted with the responsibility for social housing. The main difference between these three refers to the size of the available resources. In Poland, the stock controlled by municipalities is rather considerable. According to the latest statistical data, there are about 1,089,000⁷¹ municipal housing units, which makes about 9% of the entire stock. This number, however, is constantly decreasing due to the possibility of buying flats on preferential terms, often offered to the existing tenants.⁷² In Czech Republic and Slovakia, the share of municipal housing does not overstep 2%.

Throughout the nineties of the previous century, there were hardly any new municipal constructions, which is understandable in the context of all the three compared economies in a situation of profound transformations and constant scarcity of available funds. Municipalities had to manage their existing stock and, where possible, gather proceeds from privatisation, usually spent on repair and maintenance of the existing resources.

In Poland, the condition of the stock was rather poor, and the overall increase in the number of permanently occupied units between 1989 and 2002 (8.5%) was even lower

⁷¹ H. Dmochowska (ed.), *Statistical Yearbook of the Republic of Poland 2012*, (Warsaw: Central Statistical Office 2011), 331

⁷² As pointed out below, this depends on housing policies adopted by particular municipalities.

than in the years 1979-1988 (14.9%).⁷³ At the turn of centuries, nearly 30% of units in municipal buildings in the cities still came from before 1918, with only every tenth constructed after 1970.⁷⁴ Czech and Slovak municipalities have never controlled any significant portion of the market, which can only be confirmed by current figures. According to the Slovak Census carried out in 2011, only 1.8% of the flats were owned by municipalities.⁷⁵

Throughout the compared countries, real municipal investments in the whole period following communism have, in fact, been a recent matter.

In Poland, owing to the scarcity of funds, true investments could only start in mid 2000's. Bearing in mind the condition of the ever older stock, it was high time for action. The underlying piece of legislation was the Act on the Financial Support for the Creation of Communal Housing units, Protected Housing Units, Shelters and Houses for the Homeless of 8 December 2006.⁷⁶ It enabled subsidies from a special fund, granted predominantly to less affluent municipalities, which could not afford to support their less fortunate inhabitants in respect of housing.

In Czech Republic, the absence of conceptual and systemic solutions pertaining to social housing for the socially weakest groups of the population means that individual municipalities, limited by the available resources, have to solve these problems on their own. Unfortunately, their rental premises are often unfit for accommodation and fail to fulfil the requirements of construction law, enactments protecting public health, fire and safety regulations, etc.

In all the three countries, effectiveness of the municipal stock is far from optimal. Even in Poland, where the available resources are generally ampler, this effectiveness is undermined by long waiting lists, ranging between 1 month and 18 years.⁷⁷

Housing associations are generally present in the region. Polish Social Building Associations, first established in 1995, were to be active investors in the area of housing destined for households with income below average. For almost fifteen years, they were an active investor on the social rental construction market. By the present day, they have managed to construct 84 thousand units. One of the most controversial political decisions concerning housing in the recent years was liquidation of the National Housing Fund in 2009, which brought new Social Building Associations' investments to a halt.

In Slovakia, associations as such, just as municipalities, may be granted subsidies for replacement housing for former tenants in the reprivatized stock. Other than that, neither housing associations nor agencies are active landlords in the rental sector with a public task. As regards state subsidies for new constructions, they may be granted to municipalities or legal entities controlled by municipalities. Starting from 1 January 2014, the beneficiaries may also be non-profit organizations providing public services in

⁷³ R. Kierzenkowski, 'Bridging the Housing Gap in Poland', *OECD Economics Department Working Papers*, no. 639 (2008), 10.

⁷⁴ *Ibid.*

⁷⁵ See TENLAW: the National Report for Slovakia, Section 1.3.

⁷⁶ Ustawa z dnia 8.12.2006 r. o finansowym wsparciu tworzenia lokali socjalnych, mieszkań chronionych, noclegowni i domów dla bezdomnych, (Act of 8 December 2006), *Official Law Journal* 2006, no. 251, item 1844.

⁷⁷ Supreme Audit Office Report No. 170/2011/P/11/108/KIN: 'Realizacja zadań w zakresie polityki mieszkaniowej przez organy administracji rządowej i jednostki samorządu terytorialnego', 14.

housing, management, maintenance and restoration of the housing stock, established by municipalities or territorial units of higher level, or if the share of the latter in the entity makes at least 51%.⁷⁸

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

In all of the compared legal systems social housing construction is financed from central budgetary funds as well as from municipalities' own means.

In Poland, the central institution allocating state funds is the only remaining state-owned bank, Bank Gospodarstwa Krajowego, acting in pursuance of the legislation cited above. The entities eligible for state subsidies are municipalities and Social Building Associations. NGO's may hope for municipal funding for arrangement of shelter housing destined for specific disadvantaged groups of individuals (e.g. disabled persons).

In Slovakia, subsidies for rental housing are currently provided by the Subsidies for Housing Development and Social Housing Act (SHDaSH 2010).⁷⁹ This Act replaced the previous ministerial regulation in this area. The Act defines the scope, terms and methods of providing subsidies, which can be obtained for the construction or acquisition of rental flats, procurement of technical equipment and removal of defects in blocks of flats. In the case of acquisition of rental flats, SHDaSH 2010 prescribes the conditions for the formation of a lease contract. As pointed out above, public subsidies in Slovakia may only be granted to municipalities or legal entities controlled by municipalities.

In Czech Republic, the question of central funding has remained underregulated. Rather than subsidize municipalities or other entities, Czech authorities concentrate on a system of housing allowances awarded to the poorest groups of the population.⁸⁰

Regulatory interventions into rental contracts vary significantly in the three compared jurisdictions. They are quite extensive in Poland, present in Slovakia, and practically non-existent in Czech Republic.

In the case of the latter, there is no special legislation on municipal or social tenancies. In general, such tenancies involve the same rights and obligations as free market leases. Naturally, municipal authorities pass regulations to safeguard uniform criteria of selection and equal treatment to all tenants, and yet, there are no statutory protective measures which could be classified in terms of a specific type of lease.⁸¹

In Slovakia, the major modification concerns the term of contract. This means that the maximum duration of a social housing lease of flat contract may be:

- 3 years for generally eligible applicants, as based on income thresholds, or persons leaving foster home care;
- 1 year if a municipal unit is provided to a regular tenant (who does not meet the statutory criteria) due to the availability of social housing;

⁷⁸ This restriction was introduced in the Subsidies for Housing Development and Social Housing Act (No. 443/2010 Coll.).

⁷⁹ Act No. 443/2010 Coll.

⁸⁰ TENLAW: the National Report for Czech Republic, Section 4.3.

⁸¹ Ibid.

- 10 years for disabled applicants with reduced mobility.⁸²

Upon expiry, a social housing lease may be prolonged, subject to reassessment of eligibility of the tenant.

Both in Slovakia and in Poland municipal rentals include not only social housing in the strict sense of the word. In Slovakia, the above reservations pertaining to the duration of lease do not concern the general municipal stock, which is not governed by any special regulation – apart from the regulation discussed below. In practice, rents in such general municipal stock are below the market level.

Rentals in the Polish municipal stock are governed by the TPA. As in the case of Slovakia, municipal stock can be subdivided into strictly social and other rentals. However, due to the amount of rent, all Polish and Slovak municipal tenancies could be classified as tenures with a public task.

In the Polish context, the TPA introduces regulatory interventions relating to both types of tenure. As regards the general municipal stock, rental contracts may be concluded only for unspecified duration unless the tenant requests otherwise, which in practice would be very uncommon. Social tenancies in the strict sense of the word, however, may be concluded only for a fixed term. This period, however, has not been provided by the legislator in any definite manner. Instead, the choice has been left to municipal councils. It is often argued that in such cases the period of lease should be long enough to cater for the housing needs of the tenants but sufficiently short to motivate them to raise their financial status and find a more suitable place to live.

Polish law introduces minimal habitability standards for a social housing unit. The term "social unit" means a place fit for living, taking into account the utilities and technical condition, with the usable floor area of minimum 5 m² per person (10 m² in single-person household). Even while a social unit may be sub-standard, tenants must still have the access to basic utilities, for example bathroom and toilet shared with other units in the same building (art. 2(1) item 5 TPA). Such definition does not have any counterparts in Czech and Slovak legislation. The Civil Codes of the latter countries provide only that the landlord must hand over the dwelling in a condition fit for the agreed use and to secure full and undisturbed exercise of the tenant's right related to the use of the flat.

4.3. Evaluative criteria for the tenant

4.3.1. Access

Unfortunately, availability of social rental housing is problematic in all the three countries under comparison.

According to the Census carried out in 2011, Slovak municipalities own only 1.8% of the housing stock.⁸³ While the access to rental housing in Slovakia is limited, availability of social premises seems one of major concerns of the Slovak housing industry.

In Czech Republic, the system of housing subsidies for the poorest households combined with the scarcity of available resources led to the emergence of so called "social housing entrepreneurs" providing accommodation to low income persons in

⁸² TENLAW: the National Report for Slovakia, Section 6.4.

⁸³ See TENLAW: the National Report for Slovakia, Section 1.3.

hostels, where several individuals are crammed together in small rooms. In addition, only larger municipalities can afford to provide housing opportunities to low-income inhabitants.⁸⁴

Despite the strong position of Polish municipalities in the rental sector, here as well their offer seems unsatisfactory. In the 33 municipalities covered by the survey of the Supreme Audit Office carried out in the years 2008-2010, the municipal stock increased only by 816 newly built units, which made 3,5% of the overall demand. The number of households applying for a municipal unit in these localities totalled 23,293. As a result of long waiting lists, the waiting period in the surveyed municipalities varied between 1 month and 18 years.⁸⁵

The problem seems most burning in the case of social premises (in the strict sense of the word), especially ones awarded by courts. In the years 2008–2010, out of the total number of 12,648 eviction judgments awarding a social unit, only 1,444 were executed, which makes sheer 11.4%.⁸⁶

In Poland, resolutions on the terms of municipal rentals are adopted locally by municipal councils. A council's latitude in this respect is, however, delimited by statutory rules. Art. 21(3) TPA envisages that such resolution is to provide the upper limit of household income which allows for lease, respectively in the social and the general municipal stock, as well as incomes justifying additional reduction of rent. The same article in paragraph (3) item 3 instructs the municipal council to define, within the said resolution, the priority criteria concerning allocation of housing units. In practice, the most fundamental criterion is income. Pursuant to art. 23(2) TPA, contracts for lease of a social unit may only be concluded with a person without any other valid tenure.

As indicated above, social premises are rented not only to those who apply for such assistance, but to individuals evicted from other premises who have been awarded by courts the right to a social unit (art. 14 TPA).

In Czech Republic, priority criteria regarding municipal leases are also determined by municipal councils, however, no statutory guidelines have been enacted in this regard. Since the Czech social housing system is based on subsidies rather than direct allocation of premises, fixed eligibility criteria have been statutorily provided for their beneficiaries. The first type of such subsidy, which can be classified as housing benefit, is addressed to owner-occupiers and tenants registered as permanent residents if 30% (in Prague 35%) of the household income proves insufficient to cover the housing costs and at the same time this 30% part is lower than the relevant prescriptive costs set by law. The other subsidy, "supplement for housing," refers to cases where the income of the person or family, including the housing allowance of the first type, proves insufficient to cover the justified housing costs borne by the family.

In Slovakia, the procedure of selecting tenants eligible for a municipal housing unit is basically set forth in municipal legislation. Processes employed by single municipalities are quite diverse and manifold across the country. Usually a separate collective body, such as a housing commission, social commission or municipal council is responsible for the selection of tenants (or makes a factually decisive recommendation to the mayor).

⁸⁴ See TENLAW: the National Report for Czech Republic, Section 4.3.

⁸⁵ Supreme Audit Office, 'Realizacja zadań...', 14.

⁸⁶ Supreme Audit Office, 'Realizacja zadań...', 14.

As a recent empirical study⁸⁷ of the practices adopted in municipalities demonstrates, most of them employ a system of waiting lists, followed by individual eligibility assessment of the applicant, a lottery, and a few of them resort to a point-score system of prioritized factors or an auction (these methods are often combined). It has been reported that the following criteria have actually been applied by Slovak municipalities:

- permanent residency in the municipality - 95%;
- ability of the applicant to pay the cost of housing - 89%;
- income ceiling of the family (persons in material need) - 63%;
- crisis situation of the applicant - 58%;
- recommendation of an official (e.g. social worker, physician) - 45%;
- unsatisfactory state of current housing (no or substandard housing) - 42%;
- adherence to a particular target group - 21%;
- needs of the municipality - 18%;
- pro-active effort of the applicant to change his or her living conditions - 16%;
- activation of a special acceptant (the municipality) of the subsistence allowance - 13%;
- participation of the applicant in the construction of the housing unit - 11%.

4.3.2. *Affordability*

In all of the three jurisdictions the criteria for determination of the level of rent are similar. Generally, municipalities enjoy some discretion. However, when it comes to the newest stock, emphasis has generally been put on recovery of the investment cost, which can make rent regulation more stringent, as in the case of the youngest Slovak municipal stock or constructions by Polish Social Building Associations.

A Slovak regulatory measure⁸⁸ sets forth a formula for calculation of maximal rents for respective public tenancies. For flats finalized on the 1 February 2001 at the latest, the calculation takes into account the area of the flat, category of the flat, its age, features of the utility infrastructure, if public funds were invested in its procurement, and the extent and age of the equipment provided to the tenant along with the flat. For newer flats, on the other hand, the calculation of the rent ceiling is based on the actual acquisition cost of the flat and the yearly rent is set at 5% of the flat's procurement price.

As regards the stock of Polish municipalities, it is the mayor, within the limits set by resolution of the municipal council adopted under art. 21 TPA, that designates the rate of rent per one square meter, taking into account: location of the building, location of the unit within the building, the unit's and building's furnishing with technical equipment and

⁸⁷ A. Suchalová & K. Staroňová, *Mapovanie sociálneho bývania v mestách Slovenska*, (Bratislava: Ustav verejnej politiky a ekonomie, FSEV UK, 2010), 68

⁸⁸ Regulatory measure of the Ministry of Finance of SR of 23 April 2008 No. 01/R/2008 on regulation of the rents of flats as amended. Adopted pursuant to sections 11 para. 1 and 20 para. 1 and 2 Prices Act 1996.

installations, their condition and general technical standard of the building. The statutory list of criteria envisaged in art. 7(1) TPA does not cross out other factors increasing or decreasing the unit's value in use.⁸⁹

Under art. 7(2) TPA, it is possible to reduce a rent based on household income criteria, as long as the respective municipal council provides for such option in the resolution concerning rent calculation. Reductions may be granted for 12 month periods, although their prolongation for following yearly periods is not excluded.

Municipal authorities in Czech Republic have more leeway than it is the case in the two other legislations. It is the case because rent control in the Czech Republic has been entirely abolished; the parties are therefore free to agree on the amount of rent. If they fail to agree on a specific amount of rent, the landlord is entitled to an amount of rent that is common for lease of a similar apartment in the same area at the time of contract conclusion. Municipal authorities also provide social housing, as a part of their housing stock. In such cases, the amount of rent should be lower than in the rest of their housing, reserved for the market purposes.

The regulation of rent increase differs considerably between the three legal systems under scrutiny. As there is generally little difference in this respect between the private and public stock in all of them, these issues have already been discussed above in the chapter on rentals without a public task.

The regulation of deposit in the public stock generally does not stray from free market rentals. As discussed above, in Czech Republic, the usual and lawful amount is one month's rent. In the Slovak social rental stock, the admissible level of deposit corresponds to 6 months' rent. In Polish municipalities, in general, it may be as much as 12 monthly rent instalments. It has been explicitly provided in the Tenants Protection Act that deposits may not be charged in the social part of the municipal stock.

Regulation of expenses and utilities in the three countries does not differ specifically for private and public rentals (with and without a public task). Some utilities are supplied under direct contracts between the tenant and the provider, others under arrangements in which the landlord acts as intermediary. These questions have been discussed above in the chapter on free market tenancies.

Also in respect of the distribution of responsibilities for repairs, the regimes are uniform for rentals with and without a public task.

Housing benefits are available in all the three jurisdictions. The Czech system has been analysed in this respect while referring to availability of social premises. It was the case because in the Czech context one may speak of a system of housing subsidies to low-income individuals rather than proper allocation of social premises to such people.

In Poland housing benefits are granted to applicants by municipal councils and paid from municipal budgets. They have been geared to household incomes. Their value depends on the number of persons within the household and floor area of a unit.

Slovak housing benefits are paid by state social security agencies along with allowances to the people in material need.

In the case of Poland and Slovakia, the system seems operative and the money goes to those in real need.

⁸⁹ R. Dziczek, *Ochrona praw lokatorów...*, 80.

4.3.3. Stability

Although lease is merely an obligational right, in all the three legal systems the entitlements of a tenant are specially protected because of their importance to families and the society as a whole. According to art. 690 of the Polish Civil Code, provisions on the protection of ownership apply appropriately to protection of tenant rights. This refers to remedies available to an owner *erga omnes*, which means that the lessee is protected even against the landlord if, for instance, the latter wanted to evict him unlawfully. Similar regulation can be found in art. 126 (2) CC of the Slovak Civil Code.

In addition, especially in the context of social rentals, tenancy rights in all the three countries ought to be viewed through the prism of fundamental rights of an individual, in particular art. 31 of the European Social Charter. In addition, the Civil Code lease regulations in all the three jurisdictions are composed of mandatory (or semi-imperative) provisions, which means that they cannot be contractually modified to the detriment of the lessee.

The rules determining the tenant's rights to the premises as long as he respects the contract are generally the same for tenures with and without a public task. The right to stay as long as the duties are observed would basically be considered an overprotection of a tenant which is contrary to the rights of the landlord as the owner, even though in the three jurisdictions there are not many valid reasons for termination by landlord which would be truly independent of the lessee.

Also the rules on termination of contracts are not any different from those applying to market tenancies. Depending on the specific ground, the periods of notice provided for landlords may vary from 1 month to even 3 years.

In Poland, protection from eviction is generally stronger for tenants in the public stock. Here, certain categories of evicted individuals must be awarded a social unit as long as they have no other place to go. This refers to pregnant women, minors, disabled or bedridden persons, retirees and pensioners, and the registered unemployed.

Since the collapse of communism, pre-emption rights have been vested in Slovakia and Czech Republic in holders of the former right of use of a flat. Similar rights have been available to Polish cooperative tenants. Recently, similar construction has been provided for the Slovak stock rented to tenants who formerly occupied restituted premises.

In the absence of respective central legislation, municipalities may sell their housing units to the existing tenants on preferential terms. In practice, this has been one of the methods of streamlining municipal housing policies and generating income for necessary repairs in all the three countries.

It may be added that a statutory right to buy the dwelling has been awarded to tenants in Polish Social Building Associations.⁹⁰ Unfortunately, the terms of sale are in this case not as beneficial to the buyer as it was expected.

4.3.4. Flexibility

Termination by tenants is always possible as far as leases for indefinite duration are concerned. However, since social rental arrangements in all of the compared countries are made for a fixed term, unilateral termination by tenant is in fact problematic.

⁹⁰ As a result of the adoption of the Act of 19 August 2011, Official Law Journal 2011, no. 201, item 1180.

In each jurisdiction, it is assumed that termination by notice is also possible in the case of leases for definite duration, however, this must be explicitly accounted for in the contract.⁹¹ The generally applicable period of unilateral notice by tenant would amount to three months in all the legal systems under comparison.

In Poland and Slovakia, sublease always requires consent from the landlord. Since social premises are granted to people without any other place to live, in this context, the problem of sublease seems purely hypothetical.

In Czech Republic, consent of the lessor is not necessary in open-ended leases.⁹² Still, such arrangements would be extremely rare in the public stock, also in the Czech context.

5. Conclusion

In the second half of the twentieth century, Czech Republic, Poland and Slovakia shared similar history. Most obviously, the links were much stronger between Slovakia and Czech Republic, as for most of that period they were a part of a single state. Until 1993, the two parts of Czechoslovakia had a uniform legal system. After the separation, both had to deal with legislative and social remnants of communism, and both dealt with them in a slightly different way.

The basic Czechoslovak type of tenure, the right of use of a flat, was uncommon for most of the Eastern Block. Under communism, Poland had quite a liberal Civil Code, with the construction of lease preserved, yet, the private law framework for tenancies was topped with an administrative regime of allocation of housing units, which precluded genuine party autonomy. As a result, despite differing legislative solutions, the public centralised system of housing was rather similar.

To some extent, the reforms following the collapse of communism were analogical in the three jurisdictions. The first steps towards a more efficient model of housing were decentralisation and privatisation of the public stock. What initially belonged to the state was now handed over to municipalities, which, in search of funds necessary for proper maintenance of this new acquisition, sold flats to their existing tenants at discount prices.

In Czech Republic and Slovakia, privatisation led to a serious decrease in the size of public housing. On the contrary, Polish municipalities still control a significant portion of the rental stock. This seems partly a result of the extensive legal protection afforded to Polish tenants. The benefits of becoming an owner, even for a preferential price, have been counterbalanced by the extensive tenant protection regime. In fact, municipal leases prove so durable that they often pass from one generation to another. In the nineties, when it was needed to protect less affluent households from the effects of economic transformations, this system of tenant protection seemed an advantage of the Polish model. Later on, however, as the population grew richer, it proved excessively burdensome for landlords. Another problem is that this system does not guarantee tenant mobility.

⁹¹ See e.g. the decision of the Supreme Court of the Czech Republic No. 26 Cdo 2876/ 2000 of 21 August 2002, practically followed as well in Slovakia.

⁹² See TENLAW: the National Report for Czech Republic, Section 6.4.

The demand for rental housing surpasses the offer in each of the compared countries. In Poland, this demand has been satisfied in large measure by the public stock. In Slovakia and, especially, Czech Republic such demand must, for its most part, be responded to by private landlords. Although the situation seems more burdensome to lower-income tenants, return on rental investments is markedly higher in Czech Republic. As a result, reliance on the private sector brings greater potential for new rental constructions.

Rather than direct provision of housing, public support for the needs of the poorest groups of the population in the Czech Republic has taken the form of housing benefits and supplementary subsidies for low income individuals (rather than households). Such subsidies are paid directly to landlords. In this way, the state pumps money into the private rental market. The main disadvantage of such solution is that certain groups of landlords abuse tenants and gather their benefits at the lowest possible cost.

Notably, the Czech and Polish governments promote owner-occupancy as the most desirable form of tenure. This is particularly apparent in the system of subsidies, usually subsidized mortgage loans supportive of young people (aged up to 35) or young couples with children. Recent Slovak policy instruments, on the other hand, seem to favour rentals, as a desirable form of housing from the perspective of labour mobility.

Until recently, there have been hardly any positive forms of support for the private rental sector in the three countries. For many years, it was practically left to itself. Most of this sector was traditionally controlled by individual landlords, tenement owners or persons who acquired a second dwelling (e.g. by inheritance).

The recent legislative interventions, especially in Poland and Slovakia, provide incentives for private landlords to report the contracts to tax authorities and make the rental income taxable. Up to a certain amount of rent, Slovak landlords are exempt from tax. In Poland and Slovakia there is now the possibility available for individual landlords to pay income tax by a lump sum. In addition, the Polish legislator introduced a new type of tenure called incidental lease, which lifts much of the regime of tenant protection and offers more flexibility to the landlord. The benefits of this new solution may be enjoyed only if the rental arrangement is reported to the competent tax office.

In Poland, the opportunity to enter into incidental lease contracts, initially afforded only to natural person landlords, has now been offered also to corporate entities. This is to promote rentals among developers, who were traditionally unwilling to let, and built exclusively to sell. It is the economic crisis and the ensuing shift on the market from owner-occupation to renting that inclined corporate investors to let the unsold parts of their stock. If the growing tendency for corporate rentals persists in a long run, it can only contribute to greater labour mobility in the country.

The report shows the situation on the private and public rental market and legislative frameworks in Czech Republic, Poland and Slovakia. The comparison seems especially interesting in the light of the alleged overregulation in Poland (overprotection of tenants) and underregulation (absence of any specific legislation on public tenancies) in Czech Republic. It seems that both solutions have their advantages and disadvantages. Knowledge of the three legal systems and housing markets, which react to all legislative reforms, sheds light on how the balance can be established between the principle of party autonomy and free market solutions, on one hand, and protection of the weaker party, on the other.