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

National Report for

CZECH REPUBLIC

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- Please describe the historic evolution of the national housing situation and housing policies briefly
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Czech Republic is a former socialistic country and many difficulties occurring in present times have its roots in the totalitarian history. There were several breakpoints in the postwar history that should be mentioned. In the former Czechoslovak Republic there were many problems with the shortage of dwellings after the Second World War. This lead to massive house construction provided mainly by the state or cooperatives. Around 50% of the housing stock was owner-occupied in1989.

Due to its practical importance, it is necessary to explain the problem of tenancy law in a broader sense. Historical consequences, the development of the legal system as well as other non- legal elements play a significant role in flat ownership legislation. The situation of rental or owner-occupied housing is considerably shaped by state housing policy.

Housing is one of the basic necessities of life and its provision plays a key role in a person's existence. The right to housing, as a part of law which protects an adequate living standard, is a basic human right.[1] Nevertheless it is not expressly mentioned in The Charter of Fundamental Rights and Freedoms or in any other law[2]. The fact that the right to housing is a basic human right represents a finding of the Czech Constitutional Tribunal published as No. 231/2000 Collection where it is stated that a revised European Social Charter of 1996[3] defines an explicit right to housing in article 31. Moreover, housing is considered a part of the protection of the most vulnerable groups of people (disabled people, ethnic groups, old people).

1 J. Spáčil, *Ochrana vlastnictví a držby v občanském zákoníku*. 2nd. (Praha : C.H.Beck, 2005), p. 201.
2 Nevertheless this factor does not disqualify the constitutional relevancy of that law grounded in the International Convention for the Protection of Human Rights. In accordance with a settled principle, the constitutional and contractual catalogues of human rights are complementary and function in mutual harmony. (For more detail see a comparison referred to in footnotes below).
3 Identically article 60 - the Convention for the Protection of Human Rights and Fundamental Freedoms.

History shows[4] that the problem of housing is a multidisciplinary one[5]. It is not only a legal regulation of flat ownership, or rather of rental housing, but more importantly a complex relation of various social factors. The obsolete housing stock in the Czech Republic has not fully recovered from the non-conceptual, centrally planned, state organized development,[6] which remains a burning issue that needs to be resolved. Its solution lies within the state housing policy. The present study focuses mainly on the legislative area and the analysis of concrete legislation. However, it is not possible to omit non-legal aspects which significantly influence the legislation on housing.

After 1948, Czechoslovakia´s economy shifted to central planning and housing construction began to be controlled and financed by the state. This lead to a massive expropriation of private residential buildings which become the property of the state. The lease was abolished and replaced with the right called the "personal use of apartment". The level of "rent" for the mentioned personal use right was controlled and set at a very low level. The real costs of maintaining the property had to be subsidized from the state budget. As an example, it may be noted that the level of "rent" remained unchanged from 1964 up until 1990.[7]

Flourishing housing development that started after WWII brought about a number of different views on urbanism, architecture[8] and the manner of utilizing the housing stock as well as various views on the desired shape of housing legislation. The institution of flat ownership was established in the Czech legal system in 1960s with the Law on Private Ownership of Flats Act (no. 52/1966 Collection) about a personal

[4] E.g. JEMELKA, M. *Lidé z kolonií vyprávějí své dějiny*. Ostrava : Repronis, 2009. p. 527.

[5] Low social mobility of inhabitants; unsatisfactory level of community facilities; underrating the role of housing as a forming element for a socialization of human relations; change in understanding the term "traditional" family (so called two-generation demographic structure); pathologies in housing developments; unnatural social stratification of community; the absence of an attitude towards the ownership of one's own housing; the acceptance of owners' responsibility for maintenance and the quality of the housing stock etc. In more detail see a comparison by e.g. Olga Poláková & Luboš Průša, *Vybrané otázky z rodinné a bytové politiky*, (Praha : VŠE, 1993), p. 133-145. Also M. Lux et al. *Bydlení – věc veřejná*, (Praha : Slon, 2002), p. 13. or J. Musil, *Sociologie bydlení* (Praha : Svoboda, 1971), p. 303.

[6] Standardized buildings; small sanitary rooms (6m^2 on average); structural errors in construction (heat insulation, building work quality, etc.) Even countries without the experience of state central management suffer from a criticism of state housing policy. For instance US Federal Government was criticised as early as the 1960s, when Welfeld euphemistically said that the Cabinet had played the main negative role in that "drama" (about state housing policy). For more details see I. H. Welfeld, "The Condominium and Median-Income Housing", *Fordham Law Review 31*, (1963): 457.

[7] M. Lux & P. Sunega. " Private Rental Housing in the Czech Republic", Czech Sociological Review, 3, (2010): 359.

[8] After the 9th ÚV KSČ congress, socialist realism became an official leitmotif, following the Soviet model, where it had already functioned as an official doctrine since 1932 (replaced constructivism). This political and artistic doctrine, celebrating the victories of the reigning regime and the success of individuals, influenced real life also in the area of constructing residential buildings. New towns were built in accordance with socialist realism values (Havířov, Ostrava-Poruba town district, Kladno). An example from abroad may be the infamous and hated by the Polish people Palace of Culture and Science (Palac Kulturi i Nauki) in Warsaw. In architecture, socialist realism was connected to amortized functionalism and complied more with the taste of masses. See e.g.P. Bělina& J. Pokorný, *Dějiny zemí Koruny české* (Praha, Litomyšl: Paseka, 1998), p. 266.; or. L. Zeman, *Architektura socialistického realizmu (*Ostrava : Národnípamátkovýústav, 2008), p. 115.

flat ownership. Until that time, the division of a building into separate units which could be objects of ownership was not admitted.[9] The truth is that the mentioned provisions catered to conditions of a socialistic state in a way that does not comply with the modern concept of this institution[10]. First of all, only the acquisition of ownership by natural persons was accepted (at that time natural persons were referred to as „citizens")[11]. It was possible to acquire only one flat or a family house. Until the 1978 amendment[12] of flat ownership came into force, it was possible to acquire a flat only in those tenement buildings, where all flats had already been sold[13]. According to contemporary literature[14] only about 8 thousand flats were „privatized" using this form and about the same number of flats had been built. Until the beginning of the 90s only 30 thousand flats were held as a form of personal ownership which, according to the Czech Statistical Office accounted for only 0,8 % (!) of the entire stock of available flats. According to Census 1991 data, 36,9% of the full housing stock was owner occupied, detached houses; 39,5% were rental housing, and 18,8% were cooperative housing (with some remaining in the "other" category).[15]

Moreover the legislator still assumed that law was supposed to allow flat ownership only exceptionally[16]. This phase of a flat ownership development is unjustly omitted, even though current problems of flat ownership have their roots right at that time. First of all, the low number of „denationalization" of the socialist housing stock was the reason for its extensive privatization in the 90s through the sale of single units, followed by the flat ownership regulation, or sale of whole buildings to legal entities consisting of original tenants.

The typical interpretation of substantive law, known from the Roman times, was abandoned in the Czech legal tradition, together with the so called Middle Code introduced in 1950.[17] A Soviet-like legal code was completely detached from the traditional civil law doctrine and denied the dualism of private and public law. One of many the manifestations of this adverse premise were the introduction of different

[9] Compare court ruling No. R 91/56 "(…) the subject of the purchase contract cannot be an independent, indivisible part of a whole (such as a flat within a house)." This interpretation is still followed in judicature; see SPÁČIL, J. Supreme Court of the Czech Republic: Separation of a part of a building in co-ownership. Applying opinion of procedural relations as a consequence of a mare change in a substantive relationship before execution of law no. 30/2000 Coll. *Právní rozhledy*, 2012, No. 2, p. 72-75

[10] Comp. e.g S. Zdobinský, *Osobní vlastnictví v ČSSR*, (Praha : Orbis, 1965), p. 113 – chapter *Perspektivy vývoje osobního vlastnictví*.

[11] The chance of acquisition by a legal person was not put into practice until the Civil Code amendment in regulation § 872 paragraph 8 (with execution since January 1, 1992).

[12] Law No. 30/1978 Collection.

[13] In the case of sales of some flats executed after this amendment, the state became their owner and could further transfer the ownership to other people. In cases when state property was transferred into the ownership of communities, on the basis of regulation No. 17/1991 Collection about the transfer of selected things from state ownership to community ownership, there were no restrictions concerning the community's power to sell a share in the land on which the house was erected to a purchaser. See the resolution of the Regional Court in Ústí nad Labem of January 18, 1994, file No. (Rc) 15 Ca 649/93.

[14] M. Zuklínová, "Několik úvah o osobním vlastnictví bytů", *Právník, 5* (1979): 479.

[15] Martin Lux, in "Social Housing in Transition Countries", 2013, ed. Hegedüs et al.

[16] M. Zuklínová, "O vlastnictví bytů (s úvahami o možné právní úpravě)". *Právník 3,* (1994): 215.

[17] F. Pěcha, "K rozdělení věcných břemen na služebnosti a reálná břemena", *Právní rozhledy* 9, (2009): 327.

forms of ownership: socialist (state and cooperative), personal and private. Socialist ownership was by all means preferred and protected to a disproportionally higher degree than the other two forms. This was particularly visible after the adoption of the Criminal Code of that time. Socialist property was treated as a source of the state's wealth and of its unbreakable power[18]. Also, an explanatory memorandum did not deny that the source of this wealth was nationalized property.

The attempts to increase the standard of living were accompanied by the recognition of a wholly new form of ownership, labeled as personal. In the spirit of a planned economy, the base for its development was full employment and rising salaries. The source of personal property was allowed to be only a fair (i.e. permitted by a state) job (not a business). Running a private enterprise was completely forbidden until 1988.

Personal ownership was existentially connected with socialist ownership. The link between these two is that a natural person's labor creates national income. Simultaneously, the payment for fair work is a source of consumer personal property[19]. The property in the form of personal ownership was not allowed to be utilized for purposes other than meeting the needs of the owner or his/her family. Personal property included: income and savings connected with employment, social security allowances, household equipment and personal items, family houses, flats and cottages[20]. Until the adoption of Law on Private Ownership of Flats Act (no. 52/1966 Collection), personal property could only include family houses. Private property represented a kind of „ a tolerated relic" that had a contextual impact only for small businessmen, producers and citizens. It was assumed that this form of ownership is decreasing[21] and should completely vanish during the transition towards a socialist society.[22] Unlike Poland, Hungary or Romania, the Czechoslovak civil law sought to eradicate the „capitalistic relic" and „bourgeois case law"[23]. A similar situation could perhaps be found only in East Germany which adopted its Zivilgestezbuch[24] (ZGB-DDR) in 1975. In other socialist countries it was possible to retain typical civil law institutions and legal patterns.

For the interpretation of law regulating personal property it was important to remember that this new form of property was to reflect a harmony of interests of working people (individuals) and of the interests of the society as such, which, unlike in capitalist countries, were not supposed to be conflicting.[25]

The proposal concerning the private ownership of flats, as is its exact title, was created thanks to the activity of a Legal Commission of the Slovak National Council. Proposers were mainly concerned with flats in buildings build by citizens to satisfy their housing needs. The original proposal advocated including the mentioned

[18] Speech given by the Minister of Interior Dr.ŠtefanRais in October 25, 1950 at National Assembly plenum.
[19] A similar structure was also known in the East-German Zivilgesetzbuch: § 22: *"(…) the source of property in personal ownership is work for the society."*
[20] Z. Madar, *Právnický slovník, A-O*. (Praha: Orbis, 1978), p. 640-641.
[21] Rolenc, *Právnická příručka*. (Praha : Orbis, 1954), p. 240.
[22] J. Spáčil, "Osobní vlastnictví, restituce a judikatura", *Soudní rozhledy* 3, (1998): p. 15 an.
[23] K. Eliáš, "Rekodifikace občanského práva v postmoderní době", *Právní rozhledy* 1, (2008): 1.
[24] Do not confuse with the Swiss one.
[25] A. Dressler, *Politicko-ekonomický význam nového občanského zákona*. Praha : Orbis, 1951, p. 69.

regulation within the Civil Code, but this was rejected in the last stages of work. The Department of Justice carried out a research of political and economic factors which focused mainly on the relation of cooperative development to the individual development of family houses. The result of the research summarized advantages of personal ownership of flats in an individual and a social context. The former ensures a higher interest of the owners for the condition of the building and the flat, which is similar to an individual ownership of a family house. The latter assumes visible savings with respect to the land stock, and a decrease in the demand for scarce building plots[26]. There are also other advantages – such as avoidingthe allocation power of a National Committee contained in the regulation of excessive buildings. The latter cannot be applied to flats in personal ownership[27]. A flat that was held as private property could have up to 5 rooms and not exceed the area of 120 m^2.[28]

Even with all the above achievements, personal ownership of flats was still not common. The reasons that led to that situation were clearly summarized by V. Cepl.[29] One of the many reasons, due to which the institution could not be passed, was the above stated limitation of flat transfers. Cepl further made a very sophisticated and at the time, a very courageous, analysis of reasons for the collapse of the institution. Transferring flats into personal ownership was possible only from socialist state ownership[30]. It was not possible to transfer a flat in a house owned by a housing association (public or building), or a flat in a family house. Other reasons for an infrequent use of this institution were the poor quality of the legislation, supplemented with numerous administrative elements. The whole system was very rigid and as such obstructed an effective redistribution of flats.

An important reason for the unpopularity of personal ownership of flats was the institution of a *personal use of flats*[31]. Compared with other socialist countries, it was unique to Czechoslovakia. Perhaps only East German law contained a similar instrument[32]. Personal use effectively replaced renting a flat[33]. It represented a permanent and a hereditary right to use someone else's flat while the protection was comparable to the protection of ownership. Dissimilarity in comparison with leases can be seen in:

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[26] J. Štěpina, "Byt jako předmět osobního vlastnictví", *Socialistická zákonnost* 1, (1966): 15-20.

[27] Regulation § law 23 No. 52/1966 Collection referred to an adequate use of those regulations of a law No. 41/1964 Collection, about the flat management regulating family houses.

[28] E.g. in Poland it was 110 m^2, in specific cases 140 m^2, see R. Strzelczyk & A. Turlej, *Własnośćlokali.* 2nd (Warszawa : C.H. Beck, 2010), p. 19.

[29] V. Cepl, "Osobní vlastnictví k bytům a jiné právní formy bydlení", *Právník* 11, (1984): 1030-1048.

[30] The Soviet legal code recognised several types of ownership based on the object of the right and the extent of protection. The strongest protection was awarded to *social society ownership* followed by *personal ownership*. The lowest level of protection was granted to *private ownership*, which was strongly limited since it represented a relict of the capitalistic legal system; e.g. a permit issued by the National Committee to transfer buildings in private ownership was needed. Naturally, this pattern was not applied when transferring property into social ownership. An absence of the permit led to the absolute invalidity of a legal transaction (comp. R 22/1975, p. 103). For more details see e.g. Spáčil, *Osobní vlastnictví, restituce a judikatura*, 15,., *F.Pěcha* "K zásahům veřejné moci do smluvních převodů nemovitostí"*, Právní rozhledy* 17, (2009): 625.

[31] Ibid. p. 1048:

[32] Compare private usage (*persönliche Nutzung*) of land and buildings (family houses) used for living and relaxing purposes: §284 an. ZGB-DDR.

[33] However the East-German legal system recognised leases of flats.

- defining the *object* (personal use applied only to flats in socialist, state owned buildings with the exception of experimental buildings (prefab buildings build on unusual projects; using different materials, different shapes);[34]
- *duration* (while the concept of a lease is based on its temporary nature, personal use lasts until legally relevant facts identified in the legislation occur).

The creation of a personal use right required an administrative decision followed by the formation of an agreement concerning the process of handing the flat over to the tenant.[35] The right of personal use could be compared to that of ownership, although it could have been argued that the former was actually better than ownership. The right of personal use is a hybrid institution of a lease and ownership. It combines the main advantages of both. The state loses its disposition authority of the flat after the handing over of such a flat and that right may be transferred to cohabitants or heirs. Although it may now seem incomprehensible, during socialism the mentioned right neatly fitted the within the legislation.

The establishment of the right of personal use of a flat was in reality very close to its donation and as such was fully inadequate as it unfavorably influenced the legal awareness and attitudes of inhabitants[36]. The tenant was obviously not motivated to satisfy his/her housing needs, if he/she were offered something much better, i.e. an easier and cheaper[37] personal use right. The rent for such flats did not correspond to the real costs of maintenance and had a mostly political/social value. Management of the housing stock was unprofitable, which was soon reflected in its technical condition[38]. Subsequently, this system promoted a waste of resources and caused the dilapidation of the housing stock. Once a substantial Civil Code amendment (no. 509/1991 of Coll.) came into force, the personal use of flats was converted into a regular lease contract.[39]. An intermediary regulation of flat ownership was included in an: Alteration of Property Relations and the Settlement of Property Claims in Associations Act (no. 42/1992 Collection). This regulation mainly concerned the transfer of housing cooperative flats.

After the political changes in 1990, the first step in the transformation that affected housing was the restitution of the housing stock. The process began in April 1991 and applied to the property that was expropriated between February 1948 and January 1990. By 1993 most of the property transfers were completed. For instance over 70% of the housing stock in the centre of Prague was restituted.[40]

[34] A. Málek, *Občanský zákoník,* (Praha : Orbis, 1968), p. 105.
[35] Madar, *Právnický slovník.A-O,* 636.
[36] V. Cepl, "Osobní vlastnictví k bytům a jiné právní formy bydlení", *Právník* 11, (1984): 1030-1037.
[37] The payment was very low and directly fixed, while billions of worth of subsidies were regularly flowing into housing. See Poláková, *Bydlení a bytová politika,* 255-256.
[38] K. Frelichová, "Exkurz do zákona o přechodu některých věcí z majetku ČR do vlastnictví obcí", *Aplikované právo* 2, (2007): 113.
[39] § 871 Civil Code
[40] M. Lux & P. Sunega. " Private Rental Hosing in the Czech Republic", Czech Sociological Review, 3, (2010): 359.

Ownership of apartments was introduced with Law on Ownership of Flats Act (no. 72/1994 Collection), which regulates flat ownership and a particular kind of co-ownership of a building (more precisely - a house).[41] The co-owner of a house is an owner of a flat or a non-residential unit, which is a spatially defined part of the house. The unit owner has a share in the common parts of the house. Such ownership may be established only in buildings with at least two units. While the law on personal property of flats was based on a monistic concept, ZoVB (flat ownership law) is built on a dualistic concept in a co-ownership model.[42][43]

At the time of its creation, this legislation was already the subject of heated, mainly political, debates. Its original version passed by Parliament was, however, drafted by MPs rather than lawyers, which was visible in the ambiguous provisions of the original version[44]. The confusion of the lay as well as the professional public over the new Act in its original version cannot be described better than by the comment of MP Vyvadil: „.... *I looked through the law on flats. I do not understand what I have passed*."[45] This legislation became the tool for privatizing the housing stock (see below) but also for the transformation of housing associations (which was unnecessary)[46]. While assessing the Act, some authors have argued that it should have also considered other matters, such as the elimination of housing cooperatives viewed as a possible „relict of socialism"[47].

The whole first decade of the third millennium was a vain effort of the Ministry for Regional Development and of some MPs to pass essential changes in the field of flat ownership. At the last moment, the proposers abandoned the concept of a separate law on flat ownership that they had promoted for such a long time[48]. In a proposed version of the Code a new title has been added, namely: *Flat Co-ownership*. The new Civil Code finally came into force on the 1st of January 2014.

This particular situation (the adoption of a new Civil Code during working on the current report) had complicated work on the report. Consequently, we distinguish the old and new civil code and make remarks when there is something different in the new code as compared to the old one.

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[41] T. Dvořák, "Spoluvlastnictví bytů a nebytových prostorů jakožto akcesorické spoluvlastnictví a o některých otázkách s tím spojených", *Právní rozhledy* 7, (2010): 229.

[42] Š. Luby, *Vlastnictvo bytov,* (Bratislava: Vydavatel'stvo Slovenskej akadémie vied, 1971), p. 200.

[43] This was also confirmed by the Constitutional Court in its verdict of March 3, 2001, file No. P1 ÚS 51/2000, where it was stated: „Valid legislation is based on the co-ownership concept where the main object is a building and the secondary object is a flat or a non-residential unit that are utterly separated parts of a building, and the co-ownership of the building is then approached as ownership of units (the dualistic theory of flat ownership in co-ownership model).

[44] The heated atmosphere of passing and the expectations concerning the Act were described by J.Fiala in an expressively entitled article J. Fiala, "Nad zákonem o vlastnictví bytů aneb „spoluvlastnictví je vynálezem ďábla", *Časopis pro právní vědu a praxi* 4, (1994) : 7-17. The criticism of the original bill was also voiced by M. Zuklínová, *Zákon o vlastnictví bytů*, 18-27.

[45] J. Fiala, *Bytové vlastnictví v ČR*, (Brno: iuridica Brunensia, 1995), p. 150.

[46] Comp. Fiala, *Nad zákonem o vlastnictví bytů aneb „spoluvlastnictví je vynálezem ďábla,* 7.

[47] P. Baudyš, *Katastr nemovitostí.* 2nd edition, (Praha: C.H. Beck, 2010), p. 223. The Author defends housing associations and correctly emphasizes, that they could not be the relicts of socialism since they had already existed during the time of the First Republic (1918-1938). Concerns about the future of housing cooperative development had already been well known during the era before the November. Comp. Štěpina, *Byt jako předmět osobního vlastnictví*, 18.

[48] Comp. K. Eliáš, & M. Zuklínová, M. *Principy a východiska nového kodexu soukromého práva* (Praha: Linde, 2001), p. 150.

Taking into consideration the speed accompanying the planned inclusion of flat co-ownership into the Civil Code, it is appropriate to briefly explain the reasons for its incorporation. Proposals for the inclusion of flat ownership into the Civil Code were known already in the 1960s, at the time of passing the law on personal ownership of flats. From the point of view of lawyers, the inclusion was approved by e.g. *V. Cepl* who stated that flat ownership undoubtedly belongs in the general code.[49] The same opinion was also expressed by *Š. Luby*, who argued that ownership of flats as a new institution requires special legislation of a permanent nature.

- In particular: What is the role of migration within the country, immigration or emigration from/towards other countries inside and outside the EU (including war migration as in Ex-Yugoslavia)

Migration and emigration do not play a key role in housing policy in the Czech Republic. Nevertheless, there are regions that are influenced by this problem more than others. These are poorer areas (north Moravia, north Bohemia) that are touched by the interstate migration much more. People usually move after work to the capital city.
Emigration of a part of inhabitants, especially to countries like Great Britain, the Netherlands, or Canada, was accompanied by the interest of media because it appeared in connection with a Roma people minority. It was usually an economical emigration and some members made an effort to misuse the local social system. The situation was gradually resolved in 2010 by the introduction of visa requirements for Canada (abandoned as late as the end of 2013). It cannot be forgotten that in some cases the exodus was caused by discrimination.

The increase of immigration cannot be exactly defined,[50] because the data concerning international migration is inaccurate. It is stated though that yearly migration could be approximately 2-3000 people or higher. There was a government project in 2009 to support legal immigrants to return back to their countries (in case they lost their job due to reasons connected with the economic crisis, of course only if they wanted to travel back home but did not have the money to pay for travel expenses). The help was aimed towards a one-time financial support for travel costs and providing an emergency accommodation.

Unlike in other countries (Great Britain, Canada, South Africa, Australia) where there is a rising number of migrating pensioners, in the Czech Republic this trend does not reach any serious values, although it is predicted to increase.[51]Probably the most significant trend is represented by interstate migration of young, economically active and educated people into metropolis (especially Prague). This migration is not, however, accompanied by a logical counterbalance of older people moving into villages. People usually live in bigger apartments together and share the costs.

[49] Cepl, *Osobnívlastnictví k bytům a jiné formy bydlení*, 1030-1035.
[50] Olga Poláková et al. *Bydlení a bytovápolitika*, (Praha : Ekopress, 2006), p. 195.
[51] Ibidem.

1.3 Current situation

- Overview of the current situation
  - What is the number of dwellings? How many of them are rented vs. owner-occupied? What would be the normal tenure structure (see summary table 1)? What is the most recent year of information on this?

Housing may be characterized in definition as a legal right to use a flat or a dwelling. Together with other characteristics one may identify five sectors of housing (tenure)[52]:

- *public rental sector* (social function, rent below the market level, extensive rights of tenants, frequent participation of tenants in a management of the housing stock);
- *non-profit rental sector* (originally or still functioning social functions; usually rent at cost level; provided by non-profit organizations or local governments);
- *private rental housing* (market rent, often low protection of tenants);
- *cooperative sector* (participation and extended use rights of tenants; according to existent legislation concerning mainly the marketability of shares, this housing resembles the rental of owner-occupied housing);
- *ownership sector* (the owner and user of the dwelling are the same person, almost unlimited execution of property rights).

The above mentioned forms are only theoretical models, some of them could be found in Czech housing system, others not (see further chapter 4).

It is owner occupied housing that is preferred by the state since the fiscal expenses are minimal. It also denotes a high social status of an owner. The disadvantage of this form is the phenomenon called *negative equity*. This occurs when the value of mortgaged properties decreases before the mortgage has been paid off and consequently the debt balance exceeds the value of real estate. This subsequently has a negative impact on the owners' financial position[53].

State housing policy regulation has been present since the end of the XIXth century.[54] It was also regulated by rental offices which had the authority to issue rent increase decisions, namely no more than 20% of the pre-war rent level. A particular measure was enforced in the area of contractual agreements where it was forbidden to advertise (*invitatio ad offerendum*) a rental price and this was secured by penal law

[52] Ch. Donner, "Housing Policies in the European Union. 2000", <http://www.mmr.cz/Bytova-politika/Statistiky-Analyzy/Analyzy-a-odborne-texty-z-oblasti-bydleni-(1)/Bytove-politiky-v-zemich-Evropske-unie---Christian>, 30 January 2012.

[53] Insolvency of the debtor; activation of pledgee's rights according to §163 paragraph 2 of Civil Code; thread of monetization of pledge, etc.

[54] Compare e.g. Minister of Social Welfare and Minister of Justice regulation No. 83/1918 Coll., protection of tenants or act No. 275/1920 Coll. protection of property.

which allowed to issue a penalty of no more than a six month sentence of imprisonment[55].

The most common manner of holding flats is ownership and the cooperative sector (65,3%). The Czech Republic has currently registered 1,730,938 units[56] defined according to the flat ownership act (this is a narrower group within owner occupied housing (approximately 55,9%); cooperative sector owns 9,4% of the inhabited housing stock). The number rises about 40 thousand flats per year[57]. When calculating the number of flats per one thousand inhabitants, the Czech Republic is within the European average. The results of a national census (December 2011) revealed that during the last ten years the number of flats owned by natural persons increased by 150.8%, while the number of rental buildings decreased by 37.3%. The normal tenure structure should have a higher number of rented dwellings as well as a higher level of flats owned by municipalities to provide for the currently non existing system of social housing.
The quality of buildings increased as well, toilets in the flats exist in 96.5% and a separate bathroom exists in 97.4% of flats. Both had risen since the last census. The data presented in the National Census 2011 significantly differs from data evident from land registers; the difference is more than 600 thousand.[58.] That may be the result of low legal awareness of respondents. We assume that the number in the registry is more credible, because census answers are provided by non-lawyers who often do not understand the precise form of legal title they have to an apartment.

Levels of rent differ widely. The basic parameter of rent is the location of the flat. Rent levels in flats in towns are usually higher than rents in villages. Rent levels in Prague (capital city) are higher than in other metropolitan areas (Brno, Ostrava). Rent levels in flats situated in cities are more expensive than in flats located on the outskirts. Rent levels in small flats are usually lower than in big ones, even considering the rent per square meter. However, the rent level of a small flat in Prague is twice the level of rent in a big flat in Ostrava. There are special price maps of cites available from the Ministry for Regional Development.[59]When comparing cities of the above mentioned metropolitan areas one may see the following monthly average rents: Prague (549-766 EUR), Brno (367— 428 EUR), Ostrava (231 — 256 EUR). There is an economic link between the price of flats in ownership and the level of rent. It is currently cheaper to rent a flat than to buy one. On the other hand the economic availability of flat ownership has increased, because of decreasing interest rates in the bank sector (3.17 percent in January 2012).

Rent consists of two components – the rent itself and utility costs (heating, hot and cold water supply, common areas service charges). There are also common costs in a multi-apartment building (e.g. condominium or cooperative), which are similar to

[55] J. Salač, Zamyšlení nad vývojem legislativních řešení bytových potřeb in *Pocta Sentě Radvanové*, (Praha: ASPI – Wolters Kluwer, 2009), p. 447.
[56] D. Šustrová, "Ovlivní superficiální princip veřejný seznam nemovitostí?" *Právní forum 7, (*2011): 24. (Manuskript).
[57] Out of which 75% are new buildings; 25% are additional storeys.
[58] 1,057 452 flats.
[59] <http://www.mmr.cz/cs/Stavebni-rad-a-bytova-politika/Bytova-politika/Prechod-na-smluvni-najemne/Mapa-najemneho>

utility costs, although in many cases they include further costs, e.g. a renovation fund or insurance payments of a multi-apartment building.
If there is a delay in paying rent and utility costs for at least three months, it is possible to terminate the lease (even without a court consent) (see article 2291 of the new Civil Code;). If there is a delay of at least 5 days in utility costs, the lessor can charge a special late charge instead of interest for delay.

1.4 Types of housing tenures

- Describe the various types of housing tenures.
    - Home ownership
        - How is the financing for the building of homes typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)
        - Restituted and privatized ownership in Eastern Europe

The construction of new housing stocks is mainly financed by mortgages. Banks usually insist on a minimum equity requirement (15% of the value of the loan). A quarter of the housing stock was privatized (a privatization *lato sensu*, see further) under the Apartment Ownership Act. Restitutions of apartments were usually handled by payment in kind instead of financial compensation of the owners.[60]

    - Intermediate tenures:
        - Are there intermediate forms of tenure classified between ownership and renting? e.g.
            - Condominiums (if existing: different regulatory types of condominiums)
            - Company law schemes: tenants buying shares of housing companies
            - Cooperatives

    - Rental tenures
        - Are rental tenures with and without a public task distinguished? If so, how are they called and what is their share in the housing stock?
        - How is the financing for the building of rental housing typically arranged?

    (Please be brief here as the questionnaire returns to this question under 3)

An intermediate form of tenure is the accommodation contract. This contract is an agreement between the provider of accommodation services (with a special licence) and the client (a person who wants to use a room, apartment or even a house for temporary period). This contract is used by hotels, hostels and some charity organizations to secure a temporary living. The main difference between the

[60] Martin Lux & Martina Mikeszová. 2011. „Restituce majetku a transformace soukromého nájemního bydlení v České republice.“ Pp. 7-18 in Martin Lux (ed.). *Standardy bydlení 2010/2011: Sociální nerovnosti a tržní rizika v bydlení.* (Praha: Sociologický ústav AV ČR, v.v.i.). 205 p.

accommodation contract and lease contract is that the client isn´t protected against eviction. The provider should terminate the accommodation from day to day with no compensations to the client. The client doesn´t have to pay the utility costs so as they are already included in the price of the accommodation.
A lease agreement is always based on the same principle according to the Civil Code no matter if the owner is a natural person, municipality, private company or a cooperative. There are some differences in renting an apartment owned by a cooperative (e.g. the lessee is always a shareholder in the cooperative). It is not usual for the tenant to buy a share in a housing company (other than cooperatives). Living in cooperatives is widespread in the Czech Republic. The essence of securing housing needs through cooperative form of housing is based on individual property of a cooperative share, which is linked with exclusive right to live in particular apartment under a lease contract conducted between the shareholder and the cooperative.

- What is the market share (% of stock) of each type of tenure and what can be said in general on the quality of housing provided?
  Please consider the following criteria: type of building (single family versus multifamily versus high-rise; plus definition); construction period; number of rooms, number of square metres or average number of rooms or average useful floor area per dwelling and per person; availability of bath/shower, hot running water and/or central heating, etc.)
  - For EU-countries, Housing Statistics in the European Union would be a possible source, although more updated data would be preferred, if available
- Which actors own these dwellings (private persons, profit or non-profit organizations, etc.)?

Based on the data from the 2011 census the housing stock included 4.756.572 dwellings. There are exactly 4.104.635 occupied dwellings of which 35,8% were flats in family houses and 55% in block of flats. Rental apartments accounted for 22,4% of the permanently occupied dwellings. 55.9% of the Czech households live in their own house or flat, 17.6% of them lived in rental flats

The data demonstrates the increase in the proportion of owner-occupied dwellings housing, especially at the expense of rental housing. Regionally, the smallest proportion of households living in their own house is in Prague, the highest in the Central Region (Středočeský kraj). 9,4 % of households in the Czech Republic live in cooperative housing, which is by its nature close to owner occupation. 35% of all households live in rental flats in Prague. 3,4% of flats are used for free (usually by relatives).

Finally, the proportion of all occupied dwellings equipped with a bath or a shower (or both) increased from 95.5% to 97.4%. Availability of flush toilets in occupied dwellings increased from 93.7% to 96.5%. This data shows that the neglect of housing stock has declined in recent years, but even so the Czech Republic still ranks the 10th among European countries. The average age of flats is 42.5 years. It is

estimated that further 21.6 billion EUR worth of funding is required for repairs. The housing stock is owned predominantly by natural persons and developers. The developers do not own the apartments for long time since their objective is to sell them to individual owners.

Summary table 1 Tenure structure in Czech Republic, most recent year

Total dwellings	Pernamently occupied	Owner occupied		Rented	Cooperatives	Free usage	Not occupied	Share of recreation houses
		Family houses	Block of flats					
4.756.572	86%	35,80%	55%	22,40%	9,40%	3,40%	13,70%	26%

Source: Selected Data on Housing 2012; The Ministry of Regional Development[61]

The assumption is that the overall tenure structure is based on the stock of non-vacant principal dwellings. If this is not the case in your country, please specify what type of accommodation the numbers include (think of holiday dwellings, second homes, collective homes, hotels, caravans, ships, vacant dwellings, non-permanent habitation). Moreover, please mention if the numbers are not based on dwelling stock, but on households.

For EU-countries Housing Statistics in the European Union would be a possible source, although more updated data would be preferred, if available.

1.5 Other general aspects

- Are there lobby groups or umbrella groups active in any of the tenure types? If so, how are they called, how many members, etc.?

Lessees as well as lessors, or rather owners of dwellings have their lobbying groups pushing through their interests. On the lessors´ side they are especially Civil associations of owners of houses, flats and other real estate in the Czech Republic. The Civil association of owners of houses, flats and other real estate in the Czech Republic (OSMD) was founded in the Czech Republic in 1990 and is currently joined by 6000 members. The members are primarily owners of family and rental houses of natural persons, legal persons with a possession of their own housing fund and some villages and towns. The subject of their association activity is mainly enforcing the interests of real estate owners connected with providing rental housing. OSMD is a consulting place of new and amended legal regulations in the area of housing. Members of OSMD are provided an access to all needed information connected with problems of rental housing, law and duties of a lessor towards state authority, lessees and third parties. The organization is appreciated mainly for its knowledge of legal regulations, exchange of experiences among members and a high level of knowledge concerning precedent solutions of various situations affecting owners – lessors of apartments and houses.

[61] See https://www.mmr.cz/getmedia/6035d611-ac2b-4de4-9e4b-580d1f6e10cf/vybrane-udaje-bydleni-2012.pdf

Some activities pursued by the association are:

- the so called "pavement act" (2009) – concerning the problem of pavement cleaning responsibility, where the pavement (sdewalk) is not owned by the owners of houses located next to it;
- proposals of law principles concerning social housing (2008),
- participation in disputes between the Czech Republic and some house owners by the European Court for Human Rights (2005)
- the question of rent control (initiated by a case Hutten-Czapská vs. Poland) - for more data see the Polish report.

The Association of Tenants of the Czech Republic (SON) specializes in representing tenants' rights. The SON aims at implementing goals connected with their membership in the International Association of Tenants. It cooperates with state authorities of all levels, self-government authorities, natural and legal persons sharing similar goals. SON endeavours to enforce justified requirements of tenants and flat users and emphasizes the importance of rental housing for inhabitants in negotiating with state authorities and self-government authorities. It submits its own proposals and suggestions for solving problems in the area of housing, comments law proposals, ordinances and regulations. SON is a civil association and functions on the basis of the principle of human solidarity and non-profitability. Information is provided in the advisory centres only to members of SON and, after authorization, also to labour union members it has concluded a collaboration contract with. Conditions of providing service in advisory centres are regulated by SON organisations that run the advisory centres.

Additionally, the Consumer Protection Association (SOS) helps in tenant protection. SOS is a non-state, non-profitable organisation founded to help consumers and enforce their rights. It helps the consumers free of charge since 2003. It runs a net of regional advisory centres.

Along with other organization, there an Association of Housing Associations and Community of Owners of the Czech Republic provides legal and advisory activities for flat owners. It focuses on consumer protection in the construction industry, methodology activity in the area of housing, and advisory centre activities.

Another institution is the Czech Association for Housing Development (ČSRB) founded in December 1995. The goal is a long term balance of offer and supply for flats in connection with economic, social and demographic development. ČSRB set a goal to contribute to solving the housing situation in the Czech Republic, individual regions, towns and villages by a positive approach. The members areprofessionalsof various backgrounds (economists, sociologists, lawyers, demographists, builders, technologists of various specialization, urbanists, and others). The activity of ČSRB is based on active search for possible cooperation with governments and non-governmental institutions, universities, funds, research centres, including foreign ones concerned with the problem of housing.

- What is the number (and percentage) of vacant dwellings?

- Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?

According to the 2011 census data, there are 651937 vacant dwellings (2011 Census, the Czech Statistical Office) which represent approximately 13,7% of the housing stock. There are over 461 thousand vacant dwellings in family houses and approximately 176 thousand in apartment buildings. The highest number of vacant dwellings could be found in the central Bohemia. Vacant dwellings appear mainly in regions with high levels of unemployment - especially in the regions of Czech borderlands. But there is a huge amount (169468) of dwellings that are vacant because they are used for recreation only. There are no data on the reason of vacancy of 399 thousand of vacant dwellings. According to Martin Lux[62] there are also new apartments left vacant due to the pre-crisis construction boom which had started in 2007. There is a so-called apartment redundancy. The reasons for vacancy are often not very well known as only a few of them are statistically covered (dwellings used as holiday houses represent 25% of the vacancies, uninhabitable dwellings another 10%, the reason for vacancy in the rest is unknown).

Until recently the biggest black market type problem was the illegal renting of municipal apartments which had controlled (i.e. below market value) rent and a sale of lease contracts of municipal flats, that is an illegal sale of lease entitlements. The reason for the above was mainly controlled rent, very low control of the housing stock and its actual use by the municipality, and the mentality of lessees inherited from communism to act in opposition to the owner (i.e. the municipality). This practice has vanished after the rent control was abolished.

Currently a new problematic black market phenomenon has arisen. It is connected with the intermediate tenure (based on the accommodation contract). Low income people receive subsidies from the state to ensure an accommodation. There is no limit on the amount of the accommodation payments. This culminated into a practice, where groups of so called "social housing entrepreneurs" provide living in hostels for low income people. Several people live in a small room and pay the entrepreneurs excessive “rents” with the subsidies.

There is also a black market phenomenon connected with subleasing. If a person wants to rent out an apartment, there are two legal ways to do it. One is based on a lease agreement, the second on the sublease. A sublease requires a lessee who is a party to a lease contract with a third person, the owner. What happens in practice is that the home owner pretends to have signed a lease agreement with a lessee (who is usually a person related to the lessor in some way, e.g. a sister, brother, or a friend), but such a lessee does not in fact pay any rent to the owner and serves only to further sublease the apartment to another person. The reason behind this deception is to secure more favourable terms to the original home owner, since the sublessee is in a legally weaker position than a lessee (i.e. the one who signed a proper lease agreement). The sublease contract is more favourable to the lessor in comparison with a proper lease agreement (it is easier to terminate the contract, etc).

[62] Martin Lux and Petr Sunega. *Jak dobře investovat do bydlení*, (Praha: Slon, 2006), p. 33.

Another phenomenon is a repeated fixed period contract conclusion (usually one year) and its regular renewing, as well as frequent subleases of municipal flats not used by their original lessees.

A huge problem, especially in the 90´s and in the first decade of the new millennium, was the misuse of transferring a lease from a deceased tenant to a fellow resident person. A grandchild would formally move in with his/her grandparent and "inherit" a lease after the death of the grandparent. Such a practice triggered a Civil Code amendment making this situation more difficult by setting clear rules for the termination of a lease.

2 Economic urban and social factors

2.1 Current situation of the housing market

- What is the current situation of the housing market? Is the supply of housing sufficient/ insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)? What have been the effects of the current crisis since 2007?
- How is the demand for housing expected to develop? What is the expectation about the growth and decline in number of households in the future in a scenario of average economic development? Is there a year forecasted where growth in number of households will stabilize or will start declining?
- What is the number/percentage of families/households depending on rental housing (vs. owner-occupancy and other forms of tenure)? What is the number/percentage of immigrants among them?

At present (2013), the real estate market in the Czech Republic stagnates or is in decline, as manifested in the decrease in apartment prices. This is due to several factors. The main reason is the overall drop in prices caused by the economic crisis. While in 2007 approximately 40,000 new apartments a year[63] were built, today the number has halved. Prague, Central Bohemian and South Moravian regions have been the most active areas in terms of construction of new apartments. Paradoxically, the use of the partially-built apartments portfolio has increased due to the crisis and in 2010 it dropped by 4.4% (from 187,937 to 179,630) in comparison with the previous year.

The shift away from home ownership entailed a transfer of demand towards rental housing, which has led to an increase in its rents. The decrease in apartment prices depends on the locality. Based on the findings of the Czech Statistics Office (ČSÚ) the prices of apartments have decreased significantly in 2012. Apartments outside Prague have seen the sharpest decrease (10.7%) whereas the decrease of prices in Prague has been modest (3.8%). Forecasts for Q1 2013 predict a yearly decrease of 6.2% outside of Prague and 1% decrease of new apartments prices in Prague. A two-thirds decrease in market prices of apartments situated in socially excluded localities such as the Most area was recorded.

[63] Specifically, it was 30,190 (2006); 41,649 (2007); 38,383 (2008); 38,526 (2009), 36,442 (2010) a 28,628 (2011) according to ČSÚ data.

Forecasting the development of the Czech economy is difficult regardless of the fact the country has its own currency and central bank. The interest rate is the lowest in history; this rate determines the prices of mortgage credit which represent the main instrument for securing home ownership or for financing investments aimed at providing rental housing. Whereas in 2007 the ČNB (Czech National Bank) discount rate was at 2.5%, the current rate of 0.05% is the lowest in Czech history. Despite the bank's interventions in the economy (such as the recent weakening of the Czech crown), its forecasting has not proven accurate. The economic growth in Q3 was 0.3% lower than the ČNB had predicted in comparison with the last quarter and 0.5% lower in a year-to-year comparison.

The number of households which have decided to invest in home ownership is growing in the Czech Republic. According to ČSÚ data, almost 35,8 per cent of households now live in their own house and a further 55 per cent in their privately owned apartments. About 22,4 per cent of households occupy rented housing and 9,4 per cent live in apartments owned by housing cooperatives. In 1990s, only 2 per cent of households lived in privately owned apartments; the number of house owners has grown, whereas the number of families living in rented apartments has decreased considerably.[64]

2.2 Issues of price and affordability

- Prices and affordability:
  - What is the typical cost of rents and its relation to average disposable income(rent-income ratio per household)? (Explanation: If rent is 300€ per month and disposable household income 1000€ per month, the rent-to-income ratio is 30%).
  - To what extent is home ownership attractive as an alternative to rental housing
  - What were the effects of the crisis since 2007?

The average rent for a 60m2 apartment is 346 EUR (December 2013). The average income in the Czech Republic is 980 EUR (1st quarter 2013). The rent-to-income ratio is 35.4 %.[65]

The flat prices had a rising tendency up to 2008. The rapid decrease was detected right in the first and second quarter of 2010, the flat prices dropped for more than 15% all around the country. The decrease in real estate prices in the last two years has been stopped by lowered interest rates and an effort by the banks to keep on lending. The prices of land will definitely keep dropping and family house prices will stabilize without any further significant decrease. We expect an overall market stabilization; the prices will definitely not increase, except in some specific offers.

[64] According to the data provided by the Association of Czech Building Savings Banks.
[65] Czech stastical office data.

Considering the short-term horizon (approximately one year), we expect a stagnation of prices, especially of residential housing, namely flats. This was already visible in the period of the past six months. On the other hand, building sites may notice gradual price increase. E.g. there is a slightly rising tendency in the area of building sites for family housing; this category was not really touched by recession.

The cease of a long-term drop of real estate prices is also shown by data of the Euro Net Media, who for over five years have devoted their activities to the prices of flats in the Czech Republic. Statistics say the price of an average flat increased in the last year from 66.685 EUR to 69.462 EUR. It is a first year-to-year increase since 2008.The stabilization of a slight positive household and company loans dynamics was influenced by a gradual decrease of rates by the Czech National Bank (ČNB); increases of the interest rates, as ČNB stresses, are very slight. The reason for this, apart from others, is the significant tightening of loan conditions – solvency bank criteria. The household loans grow steadily, the volume of Czech crown loans to non-financial companies has started to increase.

The crisis attacked mainly the real estate market. The prices of a flat dropped by about 10 % within last two years.

The number, quality and other features of flats in the Czech Republic are usually connected with the housing stock. The term housing stock is usually applied to denote all housing units designated to satisfy residential needs in a given area. The age, level and quality of the housing stock is a reflection of the wealth of a certain region. At the same time it is also an indicator of the social position of owners or users. It may be further divided according to the owner: i.e. state, local government, and private housing stock. Important owners of housing stock are also housing associations.

The current situation on housing market is rather consistent. The supply of housing is sufficient, even oversupplied in large cities. The current crisis has impacted the structure (shifting the focus of housing investments from owning to rental investments) and has reduced the number of newly constructed dwellings. The tenancy contracts strongly protect the tenant (sometimes even against his/her will),but the landlord is allowed to secure the amount of his rental income only through the inflation clause.

2.3 Tenancy contracts and investment

- Is the return (or Return on Investment (RoI)) for rental dwellings attractive for landlords-investors?
  - In particular: What were the effects of the crisis since 2007?
- To what extent are tenancy contracts relevant to professional and institutional investors?
  - In particular: may a bundle of tenancy contracts be included in Real Estate Investment Trusts (REITS) or similar instruments?

- Is the securitization system related to tenancies in your country? Are commercial (or other) landlords allowed to securitize their rental incomes? If yes: Is this usual and frequent?

Real estate had been a popular investment option until the beginning of the global financial crisis. Many small investors had bought property or an apartment and watched its market value grow. The crisis has put an end to it as real estate prices collapsed and many investors suffered considerable losses. However, provided they have not been forced to sell, it is just a matter of time until the prices of real property reach the original purchasing price.

Speaking about the profitability of rental investments after the crisis, we should say that the investment pendulum has swung in the opposite direction and the investors are now avoiding real property. However, this situation is not likely to last forever; even today a good piece of real estate can be bought on the market, financed by a mortgage with 3.5% interest rate, and rented with 5 to 10 per cent yield per annum.

In 2013, rent control was abolished in most major towns and cities. On the other hand, rental yields have grown throughout the economic crisis, especially due to falling real estate prices. This trend is not sustainable and therefore either the real estate prices must start increasing again, which is unlikely at this point, or the rental rates will go down, which is far more likely. Many young families will be able to reach a considerably lower rent at market prices due to its deregulation. However, it is to be expected that rates on small apartments will decrease more slowly or stagnate due to the lesser profitability of rental.

The real estate market is hard to predict and what today appears to be a loss can lead to considerable profits in 5 to 10 year period. To illustrate the point, 10 years ago the average price of apartments in the Prague-East district was 218 EUR per square metre. The price today is, even after the price slump caused by the crisis, more than four times as high.

REITS (Real Estate Investment Trusts) or similar instruments are currently not allowed by the Czech legal system. Trusts will be possible to establish with accordance to Section 1400 et seq. of the new Civil Code which comes into force in 2014. It is currently difficult to predict the role they will play on the real estate market.

A trust is a new feature of the Czech law designed by the new Civil Code adopted under article 1400 and further. It is not a legal entity, but rather an agreement whereby property is held and controlled by someone on behalf of someone else. The money (profit) is held in the name of beneficiaries. The administrator of the trust is not an owner of the trust but is responsible for the maintaining and expanding of assets assembled in the trust. It is inspired by the "trust" part of the civil code of Quebec. It is very hard to foresee how it will apply to real estate so as the new Civil Code is in force for just a few months.

2.4 Other economic factors

- What kind of insurances play a role in respect to the dwelling (e.g. insurance of the building, the furniture by the landlord; third party liability insurance of the tenant?)?

- What is the role of estate agents? Are their performance and fees regarded as fair and efficient?

Dwelling units can be insured in two ways:

a) real estate insurance – usually paid by the owner (lessor). It covers damages to the property such as natural disasters, vandalism and destruction of property including e.g. structures built on the property, trees in the garden, etc.
b) household insurance – usually paid by the lessee. Household insurance covers damages such as flooding the neighbour's apartment, fire or other unfortunate occurrences (e.g. theft, vandalism). The insurance covers not only the apartment itself but also the garage and basement, if available.

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

Clients sometimes face excess of real estate agents, lack of their professionalism (invalid contracts) or fraudulent finance practices. Two examples for all - there was a regional real estate company (Rekin Rental ltd.) with widespread advertising. Many people believed that it is a large and trusted company and entrust their money to them for deposits on contracts. The owners embezzled all the sources they had. The damage was estimated at 1,4 mil EUR. Another real estate company (Prolux Consulting ltd.) was providing exclusive contracts on real estate activities using well trained staff with the only purpose - to induce the client to sign this exclusive contract, while making the client believe that the contract is not exclusive. The agents of this company even attempted to collect also the client's copy of the contract, so as to avoid subsequent complaints. The contract provides a special provision, that the real estate company has the right to a fee in the amount of 6% of the selling price even if the apartment was sold entirely due to the client's own endeavours. The Czech Commercial Inspections issued the company with the fine in the amount of 200.000 EUR.

2.5 Effects of the current crisis

- Has mortgage credit been restricted? What are the effects for renting?
- Indicate the current figures on repossession (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?
- Has new housing or housing related legislation been introduced in response to the crisis?

Mortgage credit prices have fallen considerably in the wake of the financial crisis. It is not uncommon for mortgage to be available for 2.5-3% interest rates. This is a result of discount rates cuts by the ČNB, which were reduced to as low as 0.05%. The banks, expecting growing interest rates in the future, are recommending fixation[66] of interest rates in a three year horizon.

A greater availability of mortgages should influence the growth in numbers of mortgaged households, which is not the case. The rental sector is thus not markedly influenced and rents tend to stagnate. Monthly mortgage instalments are about 30 per cent above the rent for a comparable apartment.

According to ČNB data, in March 2011 people owed about CZK 20 billion in unpaid mortgage instalments. The number before the crisis was four times lower. Since the average mortgage in the Czech Republic is about CZK 1.6 million, this translates into 12 thousand clients who failed to pay their monthly instalments in over 90 days. The three-month limit is generally considered as a line separating small problems with mortgage from the really serious ones.

Credit default is not usually followed by foreclosure and resale of the apartment, but further negotiations with the bank concerning interest rate cuts, postponement of payment or restructuring of payment schedule. The growth in unpaid mortgages in the Czech Republic has not been very dramatic. Considering the economy has had problems since the outbreak of the crisis 5 years ago, the numbers are not alarming. The overall amount of unpaid loans in 2012 reached CZK 45.7 billion according to the Czech Credit Bureau. Of this number over 20 billion were unpaid mortgages. Legislative solutions to the housing situation with respect to the economic crisis have not yet been introduced.

It may be noted that mortgage credit banks have too much liquidity (cash money) and they want to "sell" it to clients. This is reflected in low rates. Despite this fact, banks had tightened lending conditions because of lower creditworthiness of clients.

2.6 Urban aspects of the housing situation

- Urban aspects
  - What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)
- Are the different types of housing regarded as contributing to specific, mostly critical, “socio-urban” phenomena, in particular ghettoization and gentrification

As far as we know there is no specific trend that could by find in the distribution of housing types in the city scales. According to massive privatization (1990´s) many formerly rented apartments are now owner occupied by former tenants. The city centres were impacted with restitution in early 1990´s, that´s why apartments in older

[66] When the fixation period expires a new loan is concluded using a new (current) interest rate.

houses in centres are owner occupied. But comparing the situation between big cities and villages, we can assume that more rented apartments are in cities.

The absence of conceptual and systemic solutions pertaining to social housing designated for the socially weakest groups of the population means that individual municipalities, limited by the available resources, have to solve these problems. Unfortunately, they are often in control of unsuitable premises which can hardly be described as full apartments and that most likely does not comply with the provisions of construction law, enactments protecting public health, fire and safety regulations, etc. Municipalities manage such stock, or (increasingly) enter into contracts with private entities for the purpose of providing housing for the socially weakest groups of the population in facilities located in the suburbs.[67] Rented houses are located mainly in the city centres and owner occupied in the suburbs. More rented houses are in the big cities, less in the villages.

The situation on the open housing market, limited access to municipal housing and the lack of other alternatives to provide accommodation for socially weak groups lead to the fact that the Romani (Roma families) are moving into apartments rented by other members of their families. It happens, for example, that two-person apartments are occupied by ten to twelve people. In some cases, they try to resolve the difficult housing situation by occupying space which is not designed for living.[68] In the Czech Republic, one may find several regions where the Romani problem exists (Most, Ústí nad Labem, Ostrava, Karviná etc.). Romani citizens in such places are mostly living in illegal and unhygienic settlements. The Czech Government is working to solve the problem, but there are no visible results yet.

The concept of social housing[69]denotes housing intended for households not able to satisfy their housing needs for market prices. It is by far not a case of one universal approach. It includes a variety of programs for different target groups, a number of actors organizing such housing (more and more also private lessors), various types of housing (including half-property right or shared ownership) and many tools (including those motivating private developers to build a certain number of social housing within their projects of a private building). The basic feature of social housing is its aim towards those truly in need, social inclusion and economy of public resources. Social housing should not compete with the private sector but rather cooperate with it. The concept of a mass, state control construction of uniform social housing blocks of flats was abandoned. This theoretical form does not exist in the Czech housing system.

Among the basic tools of a social granted housing is the housing benefit. It is understood as a full-bodied tool of housing policy. The endangered groups are especially young families, socially excluded groups (Roma people, homeless people, people returning from imprisonment) and seniors.

The trend in the Czech Republic is to provide successive, multistage housing. The scheme can be drafted as follows: Crisis (provisory) housing – training housing –

[67] <http://www.helcom.cz/view.php?cisloclanku=2009042106> (last visited 9 Dec. 2012).
[68] <http://www.helcom.cz/view.php?cisloclanku=2009042106> (last visited 9 Dec. 2012).
[69] Martin Lux & Martina Mikeszová & Milan Poledník & Petr Sunega*, Inovace v české bytové politice číslo jedna: Sociální a grantové bydlení in Bytová politika*, (Praha: Slon, 2011), p. 93-94.

granted housing. The concept of social housing participation e.g. asylum houses and reception centres is implemented according to Act No. 108/2006 Coll., about social services provided by charitable organizations (Salvation Army, citizen associations, etc.). The basic condition for providing suitable conditions for bringing up a child in a family is a “roof above head”. For families living in conditions of social exclusion it is not easy to find or keep suitable housing due to the lack of finances, improper household economy or the discriminative approach of lessors. The loss of housing significantly endangers a child by placing it apart from its family. There are up to 50% of cases of a child removal due to economy or housing reasons according to the Ministry of Labour and Social Affairs. Despite the fact the Czech Republic is criticized by the European institutions for such procedure (e.g. European Court for Human Rights verdict in a case Walla, Walsová vs. Czech Republic of 2006), the Czech Republic so far did not form a sufficient system of a safe net housing for low-income groups of inhabitants.

A significant role in social housing is performed by a government Agency for Social Integration, supporting communities in integrating inhabitants from socially excluded locations. It helps the communities with mapping and detail recognition of a problem of socially excluded locations and their inhabitants, with preparation and setting long-term processes and their realisation, and with obtaining finances for such procedures. It connects local subjects (towns and villages and their authorities, but also non-profit organisations, schools and school facility, labour office, employers, police, and public) to cooperate with social integration. It cooperates with ministries, it brings information from a communal level towards state authorities, it takes part in forming social integration state policy and its coordination. The Agency currently cooperates with 26 towns and villages from the whole Czech Republic.

The Agency for Social Integration is one of the branches of the Human Rights section of the government office of the Czech Republic. The goal of the multistage housing is to create a motivation tool for clients to get better housing. The key factor is defining standards of the legal level in the form of law. That is still missing.

The socially excluded Roma people location is considered an area with a concentration of socially excluded people labelling themselves as Gypsies or the society labels them so, while this location shows characteristics such as: a high level of unemployment exceeding national average, harder access to legal form of subsistence, low level of education, bad public facilities, non-functional infrastructure, higher occurrence of risky forms of behaviour.

There are some regions (north Bohemia, north Moravia) and areas (Most, Šluknov, Karviná) which are socially excluded and this lead to their ghettoization. The government faces a criticism after the Sluknov spur area disorder (strikes of people in Sluknov area because of the lack of the state´s approach to solving problems with socially excluded groups of people, together with growing right-wing extremism in those areas).

- Do phenomena of squatting exist? What are their – legal and real world – consequences?

The phenomenon of 'squatting' plays only a very marginal role. Squatting in the Czech Republic has its roots in the early 1990´s when a group of young people occupied the so-called Strange Man's House (Dům u divého muže). The actual onset of squatting is connected with the so-called Ladronka Squat, which was followed by the Milada Villa Squat and Papírna Squat. There were over 30 squats recorded during the last twenty years in the Czech Republic. Most of them occurred in Prague (the last in 2013), a few in Brno, and a single one in Teplice, Trutnov and Bohumin.[70] Over 350 people took part in squatting in the Czech Republic. Most of this data comes from unknown authors or anonymous websites made by the squatters themselves.[71]

Squatting is not considered an alternative to social housing. In fact, it is classified illegal according to § 208 of the Penal Code as the crime of unjustified interference with the right to a house, apartment or residential premises. A person who breaks this law may face a punishment of two years imprisonment or can face a fine. In cases when committing this crime as a member of an organized criminal group, an offender could face a stricter punishment (up to 5 years of an imprisonment).

2.7 Social aspects of the housing situation

- Social aspects
  - What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (e.g. is renting considered as socially inferior?) In particular: Is only home ownership regarded as a safe protection after retirement?
  - What is the typical attitude of tenants towards different forms of tenure (e.g. owners of privatised apartments in former Eastern Europe not feeling and behaving as full owners)

Privatization represents transfers of state property to other legal or natural/physical persons. In the case of the housing stock it may take two main forms. The first one is undoubtedly a transfer of a property right to flats in apartment buildings[72] based on the Law on Transfer of Some Objects of the Czech Republic Property to the Property of Local Governments Act (no. 172/1991 Collection)[73]. The second one represents transfers of ownership of single flats based on the Flat Ownership Act. The two forms may seem to be identical, but this is not so. The real privatization, in the sense of denationalization, is the first form (privatization *stricto sensu*). This form may also apply to flats transferred by the state on the basis of the act on unit ownership. Rather than privatization, the second form is a „decommunalization" of the housing stock. Comparing these two forms we inevitably come to the following conclusion: in the first case a legal person (eg. cooperative or corporation) is the owner of the apartment building (but not of individual flats in it). In the second case, an individual

[70] Vlastimil Růžička, *Squaty a jejich revoluční tendence.* (Praha: Triton. 2006), p. 18.
[71] See e.g. http://praha.squat.net/
[72] Frelichová, *Exkurz do zákona o přechodu některých věcí z majetku ČR do vlastnictví obcí*, 114. Or rather Supreme Court verdict of February 8, 2001, file No. 30 Cdo 950/2000.
[73] In this case it is privatization *stricto sensu*.

natural or legal person is the owner of a given unit (as defined by the act)[74]. A unit is a term applied only in the regime of unit ownership law.

In connection with the privatization of the first type it was a relatively large transfer of property[75] to local governments. The transfer also concerned other objects that could be divided into three categories[76]:

- the right of management (former state institutions and organizations e.g. housing management companies); the key aspect was not who exercised the right but who possessed it[77]
- historical property of the community (based on so called restitution paragraph leading to correcting errors caused by nationalization of community property to January 1, 1950 towards which local governments had a right of disposition)[78],
- the housing stock.

Buildings approved as residential[79] were transferred into the possession of local governments, however, hotels, hostels, garages, building amenities and the like were not transferred to them.

It is necessary to understand the privatization of the housing stock at that time. The goal was to raise the quality of the abandoned housing stock. From an economic point of view, privatization was the only possible manner of ensuring the proper maintenance of apartment blocks. It cannot be forgotten, however, that local governments frequently offered priority sales of whole buildings under the condition that a purchaser would be a legal person established by the tenants of the building offered for sale. Buildings offered for sale were mainly ones in poor technical state. Academics argued whether the application of the flat ownership law to the mentioned sales of buildings amounted to circumventing the law. Eventually, doubts were solved by judicature. *The law is not broken or anyhow circumvented if an owner of an apartment building transfers that building to other people as co-owners. The co-*

[74] That covers flat ownership (as a defined unit) and at the same time co-ownership of common parts of a house and land.

[75] It is stated it reached up to ¼ of the housing fund, see HALBICH, V.; J. Herda, *Majetek obcí. Komentář k zákonu o přechodů některých věcí z majetku ČR do vlastnictví obcí,* (Stará Boleslav: DAPOS, 1991) p. 14.

[76] Frelichová, *Exkurz do zákona o přechoduněkterýchvěcí z majetku ČR do vlastnictvíobcí*, 105.

[77] Comp. the Czech Republic Supreme Court verdict of April 4, 2001, file No. 30 Cdo 1665/2000.

[78] In case of the transfer of property to the local government on the basis of an official decision before December 31, 1949, the community possessed no rights in the meaning of §2 paragraph 1 letter c) of Law on Transfer of Some Objects of the Czech Republic Property to the Property of Local Governments Act (no. 172/1991 Collection), on transition of particular objects from the property of the Czech Republic to the property of communities; see Supreme Court decision of August 30, 2004, file No. 28 Cdo 154/2004.

[79] According to §59 cancelled law No. 41(1964 Collection, on flat management, the building is residential if at least two thirds of the total floor area of all the rooms in the building constitute flats, also including flats and parts of flats used for other than residential purposes as well as side rooms and outbuildings belonging to the flats. Comp. the Czech Republic Supreme Court decision of February 8, 2001, file No. 30 Cdo 950/2000.

owners occupy the position of the previous owner as landlord towards flats that are occupied by current tenants who have not become owners[80]*.*

The chosen form of privatization is fully in the hands of the owner. The same applies to a decision not to sell the flats or not to define them as units in the buildings. The exception to this principle applies only to some housing associations. According to *J Fiala,*[81]When considering the above one may distinguish three forms of privatization (*lato sensu*):

- sale of the ownership of a whole house to legal persons established by current tenants - mainly cooperatives (other forms e.g. private limited companies are not suitable for this purpose),
- sale of the whole house to current tenants who become co-owners[82] (this form is connected with problems concerning different shares of co-owners, which could result in problems on paying gains and losses)
- privatization based on the provisions of Law on Ownership of Flats Act (no. 72/1994 Collection).

The process of privatization shown above implies several problems of the privatized housing stock. The owners obtained apartments for a fraction of the market value and they didn´t realize that the "rest" of the market price they will have to spend through years on repairs and maintenance of the house in which their apartment is situated. Instead of rent they will have to pay some service payment to accumulate sufficient funds for the repairs of roof, windows, exterior etc. Public opinion to individual ownership was shaped in its present form through twenty years. This process was accompanied with sometimes a painful understanding (paying losses, suing neighbors who don´t contribute to the repairs of the house, personal bankruptcy, taking out mortgage loans to ensure repairs, learning about the responsibility for ownership etc.) of the role of the owner in a market economy.

Sale of buildings to current tenants as co-owners

While choosing this form of privatization, it is not necessary to establish a separate legal person, which appears to be biggest and probably the only advantage. For the original owner it is again sufficient to enter into a single sale contract in order to transfer his property. The new owner of the house here is not a separate legal entity. The house is transferred under the contract of sale to its current tenants as co-owners in shares.

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[80] Comp. the Czech Republic Supreme Court verdict of September 4, 2002, file No. 22 Cdo 2656/2000.

[81] J. Fiala, *Bytovévlastnictví v ČR,* 9-11.

[82] Comp. e.g. The Czech Republic Supreme Court decision of June 13, 2000, file No. 33 Cdo 817/99 where it was stated that: „If is a house sold to current tenants who become co-owners, such a scenario must follow regulation § 137 – 142 of the Civil Code. The tenants **are not the owners of the flats** in the building, as this is possible only with the transfer of a housing unit according to the Flat ownership law"; also see the Czech Republic Supreme Court decision of September 4, 2002, file No. 22 Cdo 2656/2000, where we can find that: „*The law is not broken or anyhow circumvented if an owner of an apartment building transfers that building to other people as co-owners. The co-owners occupy the position of the previous owner as landlord, towards flats that are occupied by current tenants who have not become owners*."

From a tenant's viewpoint, significant changes occur upon the transfer. As of the date of the transfer of the title to the house (after the entry in the register or, more precisely, once the entry of the transfer in the register becomes effective), the new co-owner ceases to be a tenant. One of the grounds for the expiry of the obligational relationship. Where the house is sold to the current tenants who become co-owners in shares, their mutual relations and principles of governance follow the rights and duties mentioned in the civil code. Accordingly, they are not owners of particular flats in a particular house, as would be the case with the transfer of a residential unit according to the Law on flat ownership[83]. A co-owner may not be the tenant of a unit in a house he co-owns[84]. The co-owners have to define themselves mutually as holders of each flat. Votes are weighed by the size of each co-owner's share (the so called majority principle). This procedure may even result in an eviction of a co-owner from a flat.

Privatization under housing law

In connection with the transfer of property (building or unit) from a community to natural or legal persons, the question of how to bring the whole process to a successful end arises. Local governments, as public corporations whose position is regulated by a Local Establishment Act[85], follow special procedures governing the disposal of their property. First of all, the right to dispose of the property is a right reserved for the local government (see § 85 letter a) of the Law on Municipal Establishment Act (no. 128/2000 Coll.), while the process of a sale consists of several phases.

The first phase comprises the announcement of the intention to sell. The announcement, always required of a public law entity, ensures that the offer reaches the general public. The absence of the announcement of the intention to sell on an official board or in customary places leads to the invalidity of the transaction (see § 39 of the Law on Municipal Establishment Act (no. 128/2000 Collection)). The so called interest exploration[86] usually precedes the announcement. Tenants are questioned about their will to purchase their flats. The questionnaire is tailored for the tenants and sufficiently detailed (it usually contains a description of the flat, and a formula for the calculation of the price), it does not, however, constitute a binding offer on the local government nor even a *pactum de contrahendo.*[87]

In the second phase an individual offer on the part of the community, approved by the local government council, or, more precisely, signed by a major (city mayor), since he is the only one with the right of representation[88]. Contract must contain a

[83] Supreme Court decision of June 13, 2000, file No. 33 Cdo 817/99.
[84] Supreme Court decision of June 21, 2001, file No. 22 Cdo 2104/99.
[85] Law No. 128/2000 Coll., on communities (local establishment).
[86] P. Schödelbauerová & J. Čáp, *Zákon o vlastnictví bytů. Komentář,* (Praha : WoltersKluwer, 2009), p. 298.
[87] Comp. the Czech Republic Supreme Court decision of July 27, 2005, file No. 28 Cdo 184/2005.
[88] Comp. e.g. the Czech Republic Supreme Court decision of June 14, 2006, file No. 30 Cdo 3130/2005: Acts in law performed by a mayor require the approval of a municipal council (or possibly a municipal board); without prior approvals such acts are invalid from the onset. The right to approve acts in law is law divided between the municipal board and the municipal council. None of these authorities have a right to represent the local government; this is an exclusive right of the mayor.

supplement confirming fulfillment of the abovementioned phases. This fact is examined by the Land Registry[89].

Summary table 3

	Home ownership	Renting **with a public task**	Renting **without a public task**	Etc.
Dominant public opinion	The best variant, but not available to everybody.	Socially oriented variant, but lack of sources to support it. It leads to ghettoization of those localities.	No controversy.	
Contribution to gentrification?	no	yes	no	
Contribution to ghettoization?	no	yes	no	

No data available in Czech Republic. Data shown in table are filled according to personal observation of the authors.

3 Housing policies and related policies

3.1 Introduction

- How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?
- What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)

The Ministry for Regional Development (MRD) is, on the basis of Law on the Competence Act (no. 2/1969 Collection), "the central body of state administration responsible for housing policy, the development of the housing stock, and leasing residential and commercial premises (...)"[90] A rational housing policy must have a clearly defined target. This is primarily to ensure adequate and affordable housing for all households. The target has to be adequately quantified. The criteria of quantification of the target of housing policy must conform to the economic situation of the country, the situation in the housing market and have to adapt to various changes (in a developed country a "roof over your head" is not enough). The criterion is the availability of housing (dwelling area per capita), the quality of housing in the sense of certain standard amenities, and affordability of housing, expressed as the maximum viable share of household expenditure on habitation.[91]

The quality and availability of housing is the leading indicator of living standards for the majority of our population. In the Czech Republic there is no definition of what exactly the minimal standards of a house should be. Even the Czech Constitution or the Civil Code do not specify any standards in this respect. The lease agreement

[89] J. Fiala et al. *Zákon o vlastnictvíbytů. Komentář.* 4th edition, (Praha : C.H.Beck 2011), p. 275.
[90] Ministerstvo pro místnírozvoj ČR, *Vybraná údaje o bydlení 2011* (Praha, Ministerstvo pro místní rozvoj ČR, Odbor politiky bydlení , 2012).
[91] Ch Donner*, Housing Policies in the European Union – Theory and Practice* (Wien, 2000).

encompasses certain terms whose definitions are scattered across legislation. In particular, the definition of the flat[92] given in § 2. b) Law on Ownership of Flats Act 1994, which provides that a flat is construed as a room or a complex of rooms, which are intended for residential use and approved by the decision of the building Authority. The Charter of Fundamental Rights and Freedoms does not explicitly envisage the right to housing. However, if the loss of housing availability (caused by eviction or loss of employment) induces a state of material need, the State is obliged to provide assistance to anyone who is in this type of situation. The right to housing is included in international instruments ratified by the Czech Republic. At the international level, the right to housing is usually referred to as the right to an adequate standard of living.[93] The State should not stand in the way of the free housing market, but on the other hand must extend help and should cooperate with people who cannot meet the housing needs by themselves, due to social, economic and other reasons.[94] The assistance involves programs financed from the State budget through the Ministry for Regional Development of the Czech Republic, as well as the aid funded from the means of the State Housing Development Fund on the basis of individual Government Executive Orders specifying the terms and extent of particular forms of the assistance.[95]

The concept of housing policy pursued by the Government is co-developed by individual ministries obliged to deliver a strategic document specifying the basic directions of development and specific targets for housing.[96] One of the crucial documents is the Government Resolution no. 524 of 13.7.2011. On that day, the Government adopted a housing strategy for the Czech Republic until 2020. The new strategy for housing policy continues to recognize the State Housing Development Fund (SFRB in further references) as a very important institution for national housing.[97]

SFRB focuses on supporting:

- the construction of new flats (especially rentals),
- the repair of the housing stock (particularly prefabricated buildings),
- the construction of technical infrastructure in municipalities as well as in rural areas.

3.2 Governmental actors

[92] Definition of "flat" is regulated in § 118 Civil Code Act No.40/64 Coll. and arrangement of MRD in Act No.137/1998 Coll., Law on Ownership of Flats Act (no. 72/1994 Collection).
[93] Ministerstvo pro místnír ozvoj ČR, *Státní fond rozvoje bydlení: Koncepce bydlení ČR do roku 2020* (Praha, KPMG Česká republika s.r.o., 2011).
[94] <http://mmr.cz/cs/Stavebni-rad-a-bytova-politika/Bytova-politika> (last visited 11 Dec 2012).
[95] <http://mmr.cz/cs/Stavebni-rad-a-bytova-politika/Bytova-politika> (last visited 6 Dec. 2012).
[96] <http://www.mmr.cz/cs/Stavebni-rad-a-bytova-politika/Bytova-politika> (last visited 8 Dec. 2012).
[97] Ministerstvo pro místní rozvoj ČR, *Vybraná údaje o bydlení 2011* (Praha, Ministerstvo pro místnírozvoj ČR, Odbor politiky bydlení, 2012).

Housing policy is a conceptual and practical area within which the state or authorized territorial administration use legislative and economic tools to regulate the market, which allows to reach the intended goals in the area of housing[98]. 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**[99]**.** In order to reach the goals of the housing policy, it is necessary to clearly describe the housing problem based on macroeconomic indicators as well as on other statistical data. The housing policy of different countries oscillates between the paternalistic and the liberal approach.

- Which levels of government are involved in housing policy (national, regional, local); what are they called; how many are there of each?
- Which level(s) of government is/are responsible for designing which housing policy (instruments)?
- Which level(s) of government is/are responsible for which housing laws and policies?

The MRD is not the only agency supporting housing in the Czech Republic on the central government level. Other ministries are also involved. For example, one may mention the Ministry of Finance (subsidized housing loans, tax relief), the Ministry for the Environment (special government program Zelenáúsporám[100]), the Ministry of Labour and Social Affairs (social benefits of living allowance, housing modifications, subsidized payment for the use of barrier-free apartments), the Ministry of the Interior (integration of refugees). However, housing policy as such (its formation and financing) is the responsibility of the MRD, in fact, most of the funds in this area are channelled through the Ministry of Finance. An important problem lies in insufficient coordination and evaluation of all housing policy instruments. The fragmentation of applicable instruments is particularly contentious, as well as their instability over time. Many programs have been introduced only for a limited period of time to expire prematurely or have been significantly limited in scope due to the lack of funds. Such unstable environment has had an unfavourable impact on potential aid beneficiaries of investment activities, which is detrimental to proper realization of the main concepts of housing policy.[101]

On the local level, the active involvement of municipalities is indispensable along the housing policy pursued at the national level. Their own housing policy should be adjusted by individual municipalities[102] (except for small municipalities). The basic instrument framing the municipal housing policy is the approved and updated spatial planning documentation.[103] The main task of municipalities is to secure land and technical infrastructure for the construction of new residential premises, create

[98] O. Poláková et al. *Bydlení a bytová politika*. (Praha: Ekopress, 2006), p. 28.
[99] *The Conception of Housing Policy* was approved by a Government resolution of the Czech Republic No. 292 in March 16, 2005.
[100] Green Savings - Program administered by the Ministry of Environment and financed by State Environmental Fund of the Czech Republic focused on energy savings and renewable energy sources in family and multi-family houses.
[101] Ministerstvo pro místn írozvoj ČR, *Státní fond rozvoje bydlení: Koncepce bydlení ČR do roku 2020* (Praha, KPMG Česká republika s.r.o., 2011).p.10.
[102] Although, they have their own housing policy, they are not getting involved too much.
[103] Local level housing policy document.

conditions for the renewal of the housing stock, affordability of information and methodological assistance or keeping information systems about housing stock and dwellings in the country. Under the Act on Municipalities „A municipality within its independent scope of authority in its territorial district further takes care of establishing conditions for the development of social care and satisfaction of the needs of its citizens in compliance with local assumptions and local practices. Municipality tasks involve, in particular, catering for the housing needs, the security and development of health care, transport and communication, satisfying information needs, upbringing, education and training, overall cultural development and public security".
The common goals of municipal housing policy represent two different directions: municipality as the owner of the housing stock b) municipality as the co-creator of the social a and housing policy within its territory. Unfortunately the municipal housing policy reduces the question of regeneration to grants and support of social housing apartments construction.

The State is not entitled to interfere with independent municipal competences and does not have any instruments in the matters reserved for self-government, by which it could enforce centrally adopted measures. On the other, hand the State currently does not have a comprehensive and coherent system of aid in the area of housing, which could be used by municipalities to discharge their duties.104

3.3 Housing policies

- What are the main functions and objectives of housing policies pursued at different levels of governance?

  In particular: Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation)?

Housing policy of the State is a collection of main functions and objectives, pursued by the State in the field of housing. This bundle must include basic strategic principles defined by legislation, economic instruments and technical norms.[105]
In the Czech context, the fundamental right to housing is not deemed actionable. Therefore, the role of the State on the housing market is not to provide dwellings directly to citizens, but to strive for a situation in which people either by themselves or with State assistance, gain adequate habitation. The function of the State is to ensure a balance between the operation of the housing market and social equity.[106]The housing policy of the State translates to the main programs and instruments. The State cooperates with Czech households to improve their housing situation. The functioning of the housing market is significantly influenced by the following central administration bodies: Ministry of Regional Development, the State Housing Development Fund, Ministry of Labour and Social Affairs and the Ministry of

[104] Ministerstvo pro místní rozvoj ČR, *Státní fond rozvoje bydlení: Koncepce bydlení ČR do roku 2020* (Praha, KPMG Česká republika s.r.o., 2011). p.11.
[105] L. Baková and J. Hlaváč and J. Rektořík, *Bydlení* (Brno, Masarykova univerzita, 1997).
[106] V Šilhánková a kol., *Koncepce bytové politiky pro středně velká a malá města* (Hradec Králové, Civitas per Populi, 2006) 52.

Finance. The most important tasks of state housing policy are: ensuring a sufficient supply of affordable rental housing for families with average and low incomes, optimizing the use of the existing housing stock, restorative care, reconstruction and renovations with an emphasis on improving the quality of flats, including energy efficiency and environmental protection. The completion of the legal framework for housing, particularly through the new codification of private law (Civil[107] and Commercial Codes) will significantly affect many areas that are now regulated by specific laws.[108] It means that many former special acts are now incorporated in the Civil Code (e.g. the Act on Commercial Space Lease is canceled and adopted by the provisions of § 2302 of the new Civil Code).

By contrast to some cities in which the specific housing policy concept is created, regions do not function this way. However, it does not mean that the regions are not involved in the development of a housing policy at all. The scope of region's activity encompasses economic, social and infrastructural development following a specific regional approach. Even if these ideas do not concern housing directly, they have an indirect impact. Local housing policy plays an irreplaceable role for the overall housing condition in the country, because municipalities are one of the most important actors on the housing market.[109]Therefore, all levels of government are involved in framing the housing policy: national, regional and local. In practice, each of them tries to create a concept of housing policy best suited to their needs.

The State and municipalities must create conditions to facilitate access to housing for all people in need, especially young families. The older generation must be guaranteed that lower income will not deprive them of a roof over their heads. Therefore, municipalities prefer to satisfy housing needs of low-income families and socially disadvantaged population. State aid in the area of the housing policy has so far been headed towards owner-occupied housing.

- Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?

In the Czech Republic there are no direct measures against vacancies. For municipalities, the costs of administration of vacancies are increasing, such as the costs of unnecessary local and state police patrols. A large number of vacancies emerged in conjunction with the construction boom in recent years, when a lot of luxury apartments have been built (especially in big cities). Now, they are empty and difficult to sell. Ghost towns as such do not exist in the Czech Republic, although one can find regions where the phenomenon of summerhouses is widespread. Originally rented, municipal flats are now privatized. According to census conclusions in the Czech Republic, there are 651 937 uninhabited flats (2011 Census, Czech Statistical Office) which stand for approximately 13% of a housing stock.

[107] The New Civil Code will become effective in the Czech Republic as of 1 January 2014.
[108] V Šilhánková a kol., *Koncepce bytové politiky pro středně velká a malá města* (Hradec Králové, Civitas per Populi, 2006) 57.
[109] V Šilhánková a kol., *Koncepce bytové politiky pro středněvelká a maláměsta* (Hradec Králové, Civitas per Populi, 2006) 69.

- Are there special housing policies targeted at certain groups of the population (e.g. migrants, Sinti and Roma etc)?

The Ministry of Regional Development has instruments regarding the financial support of development in the housing sector.[110] One of them is the Integrated Operational Program (Integrovaný operační program /IOP/). IOP includes approximately 200 million EUR from European Funds, which will be channelled through the MRD for renovation of apartment buildings, revitalization of the residential environment and pilot projects in a selected group of towns. The activities are focused around problematic areas (housing estates) in larger towns selected by the Ministry of Labour and Social Affairs in cooperation with the Council of the Government of the Czech Republic for Roma Community Affairs (pilot projects). Regarding the pilot projects for Romani localities, the basic problem is not the condition of residential buildings, but first of all unemployment, crime rate, drug addiction and a low level of formal education.[111] IOP cannot be understood as a measure or incentive, directly designed to prevent ghettoization. However, its application definitely helps to solve at least a part of the problem.

3.4 Urban policies

- Are there any measures/ incentives to prevent ghettoisation, in particular
- mixed tenure type estates[112]
- "pepper potting"[113]
- "tenure blind"[114]
- public authorities "seizing" apartments to be rented to certain social groups

Other "anti-ghettoisation" measures could be: lower taxes, building permit easier to obtain or, in especially attractive localisation - as a condition to obtain building permit, condition of city contribution in technical infrastructure.

- Are there policies to counteract gentrification?

[110] <https://www.mmr.cz/cs/Stavebni-rad-a-bytova-politika/Bytova-politika> (last visited on 12 Jan. 2013).

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

[112] Mixed tenure means that flats of different tenure types: rented, owner-occupied, social, etc. are mixed in one estate, it is the simplest way of avoiding homogenised communities, and to strengthen diversification of housing supply.

[113] This mechanism is locating social housing flats among open market ones, so as not to gather lowest income families in one place. The concept is quite controversial, however in English affordable housing system was used for a long time to minimize the modern city ghettos problem.

[114] This is a mechanism for providing social housing in a way that the financial status of the inhabitants is not readily identifiable form outside. It is used to avoid/minimize stigmatization and social exclusion which could be caused by living in a (openly identifiable) social stock.

There are no special measures to counteract ghettoisation and gentrification in the Czech Republic. Nevertheless, there are many programs prepared in various Ministries. The main common goal is to promote housing. Most of them are financed from the state budget.[115]

- Are there any means of control and regulation of the quality of private rented housing or is quality determined governed only by free market mechanisms? (does a flat have to fulfil any standards so that it may be rented? E.g.: minimum floor area, equipment, access to technical and/or social infrastructure and/or public transport, parameters such as energy efficiency, power/water consumption, access to communal services such as garbage collection. If so: how are these factors verified and controlled?)

In 2006, the government enacted a new regulation on the quality of private rented housing. The Act No. 107/2006 Coll.[116] cancelled the former categories[117] of flats and introduced a new concept. The new concept was based only on one category - flat with reduced quality. Basic amenities for the purposes of the Act No. 107/2006 Coll. are a bathroom or shower enclosure and flush toilet located directly in the house, possibly outside the apartment (for tenant use only). A flat with reduced quality is, according to the new legislation Act No. 107/2006 Coll., an apartment without central heating, with basic amenities which are partial or common, a flat both without central heating and the basic amenities, or, finally, a flat with central heating, but without the basic amenities. Central heating is a source of heat, which is located outside the flat or in a special room provided for this purpose (which also applies to detached buildings), or some other electrical or gas heating system.[118] There are no further regulations on the quality of privately rented housing. Other questions concerning the quality of privately rented housing are determined by free market mechanisms.

- Does a regional housing policy exist? (in particular: are there any tools to regulate housing at regional level, e.g.: in order to prevent suburbanisation and periurbanisation? Is it possible to distribute local taxes so that villages can afford the limitation of housing areas?)

[115] Although housing policy, its formulation and funding, is administered by the Ministry of Regional Development, the majority of funds in fact flow into this area via the Ministry of Finance.
[116] Zákon č.107/2006 Sb. o jednostrannémzvyšováníjmů.
[117] Category of dwelling, which determined amount of rent.
[118] Comments to Act No. 107/2006 Coll., available on : http://www.mmr.cz/getmedia/51cc2978-cd9a-4ff3-98c8-88d26157c36e/Komentar_pro2008.pdf

In 2006 the Parliament enacted the Building Act (Stavební Zákon)[119] introducing instruments which can effectively prevent the formation of suburban zones. In particular: the plan of the municipal territory[120], a regulatory plan or a building prohibition.[121] Unfortunately, they are not in widespread use. This is due to the unclear structure of the legislation and insufficient knowledge on the part of self-governments about the possibility of protection. (e.g. use of powers reserved for the self-governments).

Housing is influenced by the government policy through system tools, e.g. the State Housing Development Fund which supports insulating prefab buildings. The local governments usually provide some fractional supports like limited supports for the purchase of low cost heating engines (e.g. regional government in Northern Moravia (together with the cooperation with Ministry of Agriculture) provided an subsidy program with allocated funds amounting 2400 EUR per household to buy gas boilers.

One of the most visible effects of social exclusion is a formation and existence of locations that are characteristic for their low quality of household and housing fund, inefficient infrastructure, absence of functional connection with a broader urban unit of a village, and the fact that their inhabitants have,for various reasons,lesser chances for successful and long-term integration into the formal labour market. Among the biggest problems we meet in social excluded locations are: the quality of housing stock, crowded flats, inhabiting flats without lease agreements, inefficient legal protection of lessees, and difficult way to enforce the claim of the housing fund owners.
Among steps that are needed to be done in the area of village housing policy is an elaboration of development conceptions and sustainability of housing policy of villages. Such housing policies of villages should, besides other things aim towards increasing the quality and financially accessible housing fund for low-income group of inhabitants, creating a system of passable housing, increasing claim enforcement, enlarging protection tools and helping lessees in relation to the providers of rental housing, revitalization of locations inhabited in high concentration by people facing processes of social exclusions.
Suitable measures:

- Comprehensible, transparent and non-discriminatory rules
- Using the institution of special allowance recipient
- Formation and support of crisis housing
- Creation of a system of satisfactory housing
- Elaboration of background analysis for the formulation of the municipal housing policy conception
- Programs for prevention of loss of housing

Summary table 4 (national level - state, 2nd level - counties (kraje); lowest level - municipalities (obce))

[119] Act No. 183/2006 Coll.
[120] The plan of the municipal territory should operate within a 10-15 year horizon. Its development usually takes 2-3 years. It is associated with laborious compromises and searching for the most appropriate solutions.
[121] Prohibition or limitation in building activities.

	National level	2nd level (e.g. federal or provincial)	Lowest level (e.g. municipality)
Policy aims 1) 2) Etc.	Equal access Subsidization	Methodical guidance and direct payments	Knowledge of environment; direct support
Laws 1) 2) Etc.	Constitution Acts	County notice	Municipal notice
Instruments 1) 2) Etc.	Finnancial sources and methodological guidance	Methodic support	Street work

3.5 Energy policies

- To what extent do European, national and or local energy policies affect housing?

The national energy policy concerns predominately the area of energy efficiency in housing. It favours revitalization of existing building and the development of new ones using the existing programmes (such as the Green Savings) which subsidize weatherization and thermal isolation of houses and installation of plastic 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 pollution-threatened areas.

Another important measure is the duty imposed on house owners to supply energy labels in the same way household appliances are furnished with energy labels giving the customer an overview of their energy requirements.

3.6 Subsidization

- Are, and if yes, to what extent, different types of housing subsidized in general (give overview)?

In the Czech Republic there are different types of subsidies. The structure of subsidization is complex. The subsidies are created and paid out of the State budget

with the important participation of at least five governmental agencies (e.g. Ministry of Regional Development[122], Ministry of Labour and Social Affairs[123], Ministry of Finance[124], the State Housing Development Fund[125] and the State Environmental Fund). Groups of recipients are very different. There are subsidies for young families, people in "material need", low-income families, elderly people, the homeless, etc. On the other hand, there are subsidies which are oriented toward renovation and panel housing estates[126], the provision of new technical infrastructure, the development of shelter flats, building savings[127] etc. The largest part of subsidies is intended for owner-occupied housing. All subsidies have a legal ground (in particular: Competence Regulation and Budgetary Rules[128]).

- Explain the different forms of subsidies for tenants, (certain) landlords and, if relevant, housing associations or similar entities acting as intermediaries (e.g. direct, by means of investment loans, tax privileges). Which level of government is competent to assign the subsidies? Is there a right to certain subsidies or does the public administration have discretion in whom to assign the subsidy?
- Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?

The Ministry of Labor and Social Affairs administers two types of subsidies in the area of housing (both of them are intended for people in material need). The first one is the „Housing allowance"[129]. Property owners or tenants registered as permanently resident in that property are entitled to a housing allowance if 30% (in Prague 35%) of the family income is insufficient to cover the housing costs and at the same time this 30% (in Prague 35%) of household income is lower than the relevant prescriptive costs set by law.

The prescriptive housing costs are set as average housing costs based on the size of the municipality and the number of members in the household. In the case of rentals, the rent is calculated in accordance with the Rent Act, and similar costs are recognized for residents of cooperative flats and flat owners. Prescriptive costs include additionally the bills for services and energy. They are calculated for reasonable flat sizes for the number of permanent occupiers. The amount of housing allowance is set as the difference between prescriptive housing costs and the actual family income multiplied by the coefficient of 0.30 (in Prague 0.35). The period for which the benefit is granted is limited to 84 months during the last ten calendar years.

[122] < https://www.mmr.cz/cs/Stavebni-rad-a-bytova-politika/Bytova-politika/Programy-Dotace/Programy-podpory-bydleni/Programy-podpory-bydleni-pro-rok-2013> (last visited 16 Jan. 2013).
[123] <http://www.mpsv.cz/en/1603> (last visited 12 Jan.2013).
[124] <http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/stavebni_sporeni.html> (last visited 16 Jan.2013).
[125] <http://www.sfrb.cz/programy/> (last visited on 12 Jan.2013).
[126] From 11 January 2013 the State Housing Development Fund will receive applications to the low-interest loans program for restoration and renewal housing estate.
[127] Act No.96/1993 Coll., Act of Building Savings Schemes.
[128] Act no. 218/2000 Coll., on Budgetary Rules and on Amendment to Certain Related Acts (Budgetary Rules), as amended.
[129] The state social support is regulated by Act no. 117/1995 Coll., on State Social Support, as amended.

An exception applies to households exclusively consisting of people over 70 years of age and the disabled living in flats specially adjusted for them.[130]

"Supplement for housing"[131], the second benefit tackles cases where the income of the person or family, including the entitlement to a housing allowance from the system of state social support, is insufficient to cover the justified housing costs. The benefit is provided to flat owners or tenants entitled to a social benefit and a housing allowance. In exceptional cases, a supplement for housing can be provided to a person not eligible for the housing allowance or to a person using a form of housing other than rental, e.g. an easement. The amount of the supplement for housing is determined with the sum of payment on justified housing costs (i.e. rent, services related to housing and energy costs). An exception applies to households exclusively consisting of people over 70 years and disabled living in flats adjusted for them.[132]

As of 30 November 2012, the Minister for Regional Development of the Czech Republic announced a call for applications for subsidies in the field of housing for 2013. The aid is granted by MRD in four subcategories. The first one is „Support for the Renovation of Panel Housing Estates[133]". The aim of the subprogram is to provide a subsidy for the regeneration of public space in panel house estates to municipalities. The minimal number of flats must be 150. The subsidy is provided up to 70% of the program budget, but no more than 160.000 EUR.[134] The second subcategory has been labeled „Construction of technical infrastructure[135]". The aim of public support is to extend the offer of developed lands for subsequent blocks of flats, family buildings or apartment buildings. The total amount of the subsidy for the local government is 2.000 EUR per 1 flat.

"Construction of shelter flats" is another subsidy program arranged by MRD. Its objective is the creation of shelter flats in the Czech Republic. These flats should provide social housing for people who have a problem with the affordability of housing due to special needs resulting from their unfavorable social situation - age, health or social circumstances of their lives[136]. The aim of the last, fourth, subprogram for 2013 is to reduce lead in drinking water.[137]

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[130] Ministerstvo pro místní rozvoj ČR, *Státní fond rozvoje bydlení: Koncepce bydlení ČR do roku 2020* (Praha, KPMG Česká republika s.r.o., 2011), p.21

[131] Regulated by Act no. 111/2006 Coll., on Assistance in Material Need, as amended

[132] Ministerstvo pro místnírozvoj ČR, *Státní fond rozvoje bydlení: Koncepce bydlení ČR do roku 2020* (Praha, KPMG Česká republika s.r.o., 2011), p.21

[133] Government Executive Order no. 494/2000 Coll., on Terms and Conditions of Granting Subsidies from the State Budget on Support for Regeneration of Panel Housing Estates, as amended by Government Executive Order no. 99/2007 Coll.

[134] <https://www.mmr.cz/cs/Stavebni-rad-a-bytova-politika/Bytova-politika/Programy-Dotace/Programy-podpory-bydleni/Programy-podpory-bydleni-pro-rok-2013/Podprogram-Podpora-regenerace-panelovych-sidlist> (last visited 5 Jan.2013)

[135] Act No. 183/2006 Coll., Building Act

[136] < https://www.mmr.cz/cs/Stavebni-rad-a-bytova-politika/Bytova-politika/Programy-Dotace/Programy-podpory-bydleni/Programy-podpory-bydleni-pro-rok-2013/Podprogram-Podpora-vystavby-podporovanych-bytu> (last visited 5 Jan.2013).

[137] < https://www.mmr.cz/cs/Stavebni-rad-a-bytova-politika/Bytova-politika/Programy-Dotace/Programy-podpory-bydleni/Programy-podpory-bydleni-pro-rok-2013/Podprogram-Podpora-oprav-domovnich-olovenych-rozvo> (last visited 15 Jan.2013).

For young people there is a program entitled “Subsidised loan interest payments for young people aged up to 36[138]“. This aid is granted in the form of an interest subsidy.

The State Housing Development Fund operates with the use of the following instruments.

First of all, there is the „New Panel Program” (comprising interest subsidies, preferential guarantees and consultancy). The target of the program is to allow for broader access to loans provided by banks and home building saving banks[139] and thus to facilitate the financing to repairs and modernization of residential buildings.[140] Furthermore, SHDF provides a loan for construction of rental flats. The goal of the program is to promote not only new construction of rental housing, particularly for certain groups of population, but also to enable the reconstruction and renovation of existing buildings and flats which were not originally designed for living. The loan may be granted up to 70% of the funds budget. This loan is repayable within 30 years and bears the interests of 3 or 5 percent (2 percent in case of elderly, physically or socially vulnerable groups of people) per annum.[141]

The remaining housing subsidies include: loans to increase the volume of repairs and modernizations undertaken by municipalities[142], loan guarantees extended for the construction of rental flats[143]and programs for people affected by floods.[144]Generally speaking, the expenditures of MRD and SHDF on housing can be subdivided according to their purpose. Expenditures are broken down into four major categories, namely: construction of flats and technical infrastructure, repairs of flats, natural disasters and promotion of mortgage loans.

The State Environmental Fund of the Czech Republic has approximately 64 million EUR available within the Green Savings program. This program promotes the installation of heating devices with the use of renewable energy sources, investment in energy savings in the course of renovations as well as new constructions relating to family houses and apartment buildings, and construction in compliance with the passive energy standard[145]. In the case of a serious calamity or flood, there are a special funds granted by the MRD, the SHDF and the MLSA.[146]

The Ministry of Finance grants the following types of housing subsidies.

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[138] 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.

[139] Special form of banks

[140] < http://www.sfrb.cz/programy-a-podpory/bytove-domy/program-novy-panel/> (last visited 9 Jan.2013).

[141]Act No. 284/2011 Coll.

[142]Act No. 396/2001 Coll.

[143]Act No. 370/2004 Coll.

[144]http://www.sfrb.cz/programy/povodnove-programy/ (last visited 7 Jan.2013).

[145]<http://www.zelenausporam.cz/clanek/193/1104/> (last visited 8 Jan. 2013).

[146] < https://www.mmr.cz/cs/Stavebni-rad-a-bytova-politika/Bytova-politika/Programy-Dotace/Statni-pomoc-po-zivelne-nebo-jine-pohrome> (last visited 2 Jan. 2013).

The most widespread arrangement for funding housing investments in the Czech Republic is the "Promotion of building savings scheme[147]" which is a direct non-payable subsidy. The subsidy is remitted to the account of the client in a home building savings banks in the amount laid down by law. The main task of the State program promoting building savings is to reinforce the motivation to save. These funds are used by banks to finance loans (home building saving banks are limited by the law as to possible use of the savings). The Saved funds are not purpose-bound. Loans must be used to for housing purposes.

By the end of 2010, the total amount of contracts within the program was 4.8 million. The total number of loans was almost 1 million by the same date. By the end of 2010, the volume of loans reached the level of 68% of the saved means and the total volume of loans by the end of 2010 made almost 12 milliard Euro. The structure of the new loans under the building saving scheme has been stable for a long time. Most of the loans (80%) are used to repay bridging loans; another 12.5% is designed for reconstruction and modernization. 40% of new bridging loans are intended for modernization and reconstruction, 31% for the purchase of a flat or a family house and 13% for the construction of new buildings or flats. The year-on-year increase in the volume of the loans granted (2010 compared to 2009) amounts to 9.7%.[148]

Other housing subsidies are available in the form of tax privileges:

- reduced VAT for new construction in the category of social housing restricted only by the maximum size of the floor area[149].
- reduced VAT for repairs of existing housing exemption from income tax in case of sale of the property, if the conditions prescribed by law are met. This arrangement does not apply only to natural persons, but also to developers or corporate owners.
- the possibility of deduction of related investments as an eligible cost from the income tax basis in the case of lease of immovable property for residential purposes.
- the option of deduction of 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*[150].

Undoubtedly, the most important tool is the „Promotion of building savings scheme".

There have been no legal objections to subsidies. Certain types of subsidies have been harshly criticized by the opposition, housing associations and similar entities.

[147] Act No. 96/199 Coll.

[148] Ministerstvo pro místní rozvoj ČR, *Státní fond rozvoje bydlení: Koncepce bydlení ČR do roku 2020* (Praha, KPMG Česká republika s.r.o., 2011). p. 17

[149] A flat for social housing means a flat with a total floor area, which does not exceed 120 m2. A family house for social housing means family house with a total floor area, which does not exceed 350 m2.

[150] Ministerstvo pro místní rozvoj ČR, *Státní fond rozvoje bydlení: Koncepce bydlení ČR do roku 2020* (Praha, KPMG Česká republika s.r.o., 2011).p. 17

The main reason why these subsidies are criticized is the alleged discrimination and preferential treatment of certain groups of population.

- Summarise these findings in tables as follows:

Summary table 5 -

Subsidization of landlord	Tenure type 1
Subsidy before start of contract (e.g. savings scheme)	Does not exist
Subsidy at start of contract (e.g. grant)	Does not exist
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee)	Does not exist

Summary table 6

Subsidization of tenant	Tenure type 1
Subsidy before start of contract (e.g. voucher allocated before find a rental dwelling)	Does not exist
Subsidy at start of contract (e.g. subsidy to move)	Does not exist
Subsidy during tenancy (in e.g. housing allowances, rent regulation)	Housing allowance

Summary table 7

Subsidization of owner-occupier	Tenure type 1
Subsidy before start of contract (e.g. savings scheme)	Name of subsidy Aim of subsidy
Subsidy at start of contract (e.g. grant)	Does not exist
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee, housing allowances)	Housing allowance

3.7 Taxation

The tax system in the Czech Republic is, as regards its main features, is very similar to the tax systems of the developed European countries. Tax revenues come from indirect and direct taxes - approximately at the same rate. In the area of housing the State applies direct taxation.

- What taxes apply to the various types of tenure (ranging from ownership to rentals)?
    - In particular: Do tenants also pay taxes on their rental tenancies? If so, which ones?
- Is there any subsidization via the tax system? If so, how is it organised? (for instance, tenants being able to deduct rent from taxable income; landlords being able to deduct special costs; homeowners being treated favourably via the tax system)
- In what way do tax subsidies influence the rental markets?

- Is tax evasion a problem? If yes, does it affect the rental markets in any way?

Immovable Property Tax[151] (Real Estate Tax) is composed of two elements – buildings tax and land tax. Both elements are calculated according to different methods. The obligation to pay taxes is based on the ownership or any particular type of proprietary right, like usufruct of the property. The tax is levied regardless of the owner's income. The taxpayer is usually the owner. Co-owners of a building paid the tax jointly and severally until 2010. Since 2011, each of them could pay their part separately. Co-owners of land can proceed in the same way. The tax base in the case of a building[152] is an area marked on the ground plan in the above-ground part of the building in m2. The tax base of the land is either a pecuniary value (in CZK) or expressed in physical units (m2) - depending on the type of land. The basic tax rate is multiplied by a coefficient set in the legislation.

Another tax relevant to the housing sector is the Immovable Property Transfer Tax[153] (Real Estate Transfer Tax). The transfer of the immovable property means the payable transfer or transfer of ownership of the property from one person to another, including settlements concerning co-ownership shares. The real estate transfer tax is generally paid by the transferor (seller) and the buyer is a guarantor. The tax should be paid also in the case of barter of immovable property. The tax base for an immovable property transfer is the actual price of property or its estimated value (the higher value counts). The tax rate is the same for all citizens and amounts to 4% of the tax base[154]. The legislator provides certain exemptions.[155]

Finally, there is yet another tax of primary importance. Income Tax[156] (15%) is levied on the financial income of natural persons, companies (19%) 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. Taxpayers are persons with permanent or habitual residence in the Czech Republic. The obligation refers both to incomes earned in the Czech Republic as well abroad. Among many other sources, the relevant income may come from rentals. Certain incomes generated in the housing sector are exempt from tax[157](e.g. proceeds from the sale of a house or an apartment if it the seller was its occupant for at least two years directly preceding the sale).

[151] Act No. 338/1992 Coll., on Immovable Property Tax.
[152] Under the term of building is meant: a building, a flat and a separate non-residential premises.
[153] Act No. 357/1992 Coll., on Immovable Property Transfer Tax.
[154] Under the Act No. 500/2012 the rate of taxation increased from 3% to 4% of the tax base (since 1.1.2013).
[155] Paragraph 19 of the Act No. 357/1992 Coll., on Immovable Property Transfer Tax.
[156] Act No. 586/1992 Coll., on Income Tax.
[157] Paragraph 4 of the Law on Income Tax Act (no. 586/1992 Coll.).

Summary table 8

	Home-owner		Landlord of tenure type 1	Tenant of tenure type 1	Landlord of tenure type 2	Tenant of tenure type 2
Taxation during tenancy	Real estate tax	no	Real estate tax/income tax	No tax	Real estate tax/income tax	No tax
Taxation at the end of tenancy	Real estate tax	no	Real estate tax/income tax	No tax	Real estate tax/income tax	No tax

4 Regulatory types of rental and intermediate tenures[158]

4.1 Classifications of different types of regulatory tenures

- Which different **regulatory types of tenure** (different regulation about contracts and tenant security) do you classify within the rental sector? What are their shares in dwelling stock (compare summary table 1)?

There are several types of rental tenures in Czech Republic: Home owner type (public and municipal apartment and house ownership), cooperative type(cooperative rights). There are no significant legal differences between the public and municipal rentals. Cooperative rights are rentals where there is a lease contract conducted between the cooperative and its member. The lessee is more protected than lessees in other forms tenure types, due to the fact he is the member of legal entity which owns the apartment he uses. It is regulated not by the provisions of civil code but under the regulation of Corporation Code. We do not classify regulatory types of tenure within the rental sector.

4.2 Regulatory types of tenures without a public task

- Please describe the regulatory types in the rental sector in your country that do **not** have a **public task**. This category may be called private or market rental housing.[159] Possibly “commercial may also be terms to describe this regulatory type.
  - Different types of private regulatory rental types
    - Are there different intertemporal schemes of rent regulations?
    - Are there regulatory differences between professional/commercial and private landlords?
      - Briefly: How is the financing of private and professional/commercial landlords typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)
    - Apartments made available by employer at special conditions

[158] **I.e. all types of tenure apart from full and unconditional ownership.**

[159] Market rental housing means housing for which the rent price determines the conclusion of contracts and not some social rules of allocation based on need.

- Mix of private and commercial renting (e.g. the flat above the shop)
- Cooperatives
- Company law schemes
- Real rights of habitation
- Any other relevant type of tenure

There are not many differences in the Czech housing law with respect to private law and public law lease of apartments. Each lease of an apartment can only be created based on a private law contract concluded with accordance to the Civil Code. Modification or closure of a lease by municipal ordinance is not allowed according to the established court practice. Rent control in the Czech Republic has been abolished and rent is now based on the agreement of the contractual parties. Should the parties not reach an agreement, they can resort to court action.

According to census data compiled by the Czech Statistical Office (ČSÚ) and the Czech Ministry of Regional Development,[160] a profound shift in the ownership structure of the Czech housing stock has taken place since 2001. This has occurred mostly due to the changes in the purpose of use of apartments, which is related to the sale of municipal-owned apartments to current tenants and transfers of cooperative apartments to individual members' ownership.

Funding for apartment buildings development is in most cases obtained through private loans[161] or from the developer's own resources. Currently there seems to be a trend among the Czech "middle-class" the members of which, after reaching certain age, employment position and financial security, move from their "starter apartments" to houses built in the suburbs of large cities. This is connected with a rise in the number of apartments which are let on lease, since the loans for construction and maintenance of a family house are often funded from the rental income on the apartment, which is usually kept and rented out as a reliable source of income. Based on the data from the 2011 census the housing stock included 4.104.635 permanently occupied dwellings, of which 35,8% were flats in family houses and 55% in block of flats. Rental apartments accounted for 22,4% of the permanently occupied dwellings. The total number of existing dwellings is 4.756.572. 55.9% of the Czech households live in their own house or flat, 17.6% of them lived in rental flats.

Also some employers rent their apartments to their employees under certain conditions adopted in § 2297 of the New Civil Code. It´s usually very similar to a normal lease relation with the possibility to terminate the contract while leaving the employment without a three month notice period. It´s better for the landlord (employer) rather than the tenant (employee).

[160] Available at http://www.mmr.cz/getmedia/6035d611-ac2b-4de4-9e4b-580d1f6e10cf/vybrane-udaje-bydleni-2012.pdf

[161] According to the Czech Ministry of Regional Development data, approximately 74,745 loans totalling CZK 145.5 billion were granted from January to December 2012, which represents a growth of 2.8% in the number of loans granted and 3.0% in their volume (these number cover the data provided by the 9 largest mortgage banks) in comparison with the previous year. The Ministry is most interested in the number of loans granted to individual citizens. In 2012, 73,595 mortgages were granted to the citizens, which is 2,507 (3.5%) more than in 2011. The volume grew by CZK 2.5 billion in comparison with the previous year to the total of CZK 121.6 billion, representing a 2.1% increase. Data available at http://www.mmr.cz/getmedia/6035d611-ac2b-4de4-9e4b-580d1f6e10cf/vybrane-udaje-bydleni-2012.pdf

A usage of an apartment is also possible though an easement (legal title to use someone else's property) for a particular payment or for free (e.g. parents living together with their children in a multi generation house).

The lease agreement is strongly influenced by the former private usage of the flat (see above) and tenant legal protection (ensured mainly by the Civil Code). In theory, there are no legal differences between a private and public task landlord. The differences may, however be observed in practice. They concern primarily the field of provided housing services and stability of the rental relationship. Public landlords usually are not as active as private ones. Cooperatives should be considered the most sophisticated landlords. And again they do not play any role in public task sector.
Private landlords usually finance the flat with the aid of a mortgage. Mortgage credits are currently very cheap (bearing in mind the low central bank interest rate – 0,25% (January, 2013)).

4.3 Regulatory types of tenures with a public task

- Please describe the regulatory types in the rental housing **with a public task** (typically non-profit or social housing allocated to need) such as
  - Municipal tenancies
  - Housing association tenancies
  - Social tenancies
  - Public renting through agencies
  - Privatised or restituted housing with social restrictions
  - Public entities (e.g. municipalities) taking over private contracts, typically for poor tenants to counteract homelessness
  - Etc.

- Specify for tenures with a public task:
  - selection procedure and criteria of eligibility for tenants
  - typical contractual arrangements, and regulatory interventions into, rental contracts
  - subsidization possibilities (if clarification is needed based on the text before)
  - from the perspective of prospective tenants: how do I proceed in order to get "housing with a public task"?

As it was already mentioned there is no public task tenure adopted by the legislator.
There are no material differences between the different types of tenure. For example, legislation on social housing is still not in force. There are no special conditions on lease contracts conducted by municipalities as the lessors. They have same rights and obligations as a normal lessor (e.g. a private owner). There are only political attempts and several drafts and conceptions (made by non-profit organizations[162]). The former proposal (proposed by the Regional Assembly of the Ústí nad Labem

[162] http://www.osmd.cz/zakon-o-socialnim-bydleni-1404036675.html

Region) which included the legal definition on social housing[163] as well as special conditions and requirements on valid lease contract conducted with somebody who is in need. It was refused by the Parliament in 2012.[164] The only support are financial funds held by the state to support the construction of apartments for low-income groups.

Low income people receive subsidies from the state to ensure an accommodation. There is no limit on the amount of the accommodation payments. This resulted in the operation of groups called "social housing entrepreneurs," who provide accommodation in hostels for low income persons. Several persons live in small rooms and use their subsidies to pay the mentioned entrepreneurs excessive “rent” amounts.

The area of social housing is not very developed in the Czech Republic and is based primarily on rent allowance. Larger municipalities usually run programmes aimed at providing housing opportunities to low-income citizens. The conclusion of a lease contract is in most cases conditional on permanent residency in the town or village.[165]

Social housing is also provided by non-governmental, non-profit organizations, charities, reception centres, night shelters, Salvation Army houses and halfway houses aimed at social re-integration of ex-convicts. The main flaws of the Czech approach to social housing are considered to be:

1) the absence of a definition of the target group for social housing;
2) the failure of the government housing policy to sufficiently cover or provide alternative forms of housing other than dormitories.[166]

Table 9

Rental housing **without a public task** (market rental housing for which the ability to pay determines whether the tenant will rent the dwelling); for example different intertemporal schemes of different landlord types with different tenancy rights and duties	Main characteristics • Types of landlords • Public task • Estimated size of market share within rental market • Etc.
1) Private rental tenancy a 2) Housing association tenancy	Home owners and cooperatives 90% of the market
Rental housing for which a **public task** has been defined (Housing for which government has defined a task; often non-profit or social housing that is allocated according to need, but not always)	
3) Municipal tenancy 4) Social tenancy 5)	Does not exist as rental housing. It usually exist as municipal or private or religious or charity associations houses legally based on accommodation contract. 10% of the market

- For which of these types will you answer the questions in Part 2; which regulatory types are important in your country?

[163] Social housing is sustainable, adequate and decent housing provided in the public interest andwith the use of public funds to persons in material need.
[164] http://www.psp.cz/sqw/text/tiskt.sqw?o=6&ct=494&ct1=0
[165] Private lessors are usually reluctant to allow the lessee to establish the apartment as their place of permanent residence. This is mostly due to their fear of a potential distrait on the property of the lessee.
[166] Available at http://socialnibydleni.org/

- 1) Private rental tenancy – based strictly on market rules of supply and demand. The tenant is protected by the Civil Code provisions (three months' notice period to terminate, etc.)
- 2) Municipal tenancy – it is very similar to the previous one, because there is no difference in the lease contract arranged by the municipality or any other person. Some social apartments exist through the state financial funds, but they are very rare. It couldn´t be described as a systematic feature of the housing policy.
- 3) Cooperation tenancy – is based on individual property of a cooperative share, which is linked with the exclusive right to live in particular apartment under a lease contract conducted between the shareholder and the cooperative.

Questions in Part 2 are answered mainly for the rental tenancy (private and municipal), because it is the most frequent manner of creating lease relations and because municipalities are bound by the same Civil Code rules as any other lessors.

5. Origins and development of tenancy law

• What are the origins of national tenancy law and where was and is it laid down (civil code, special statute, case law)?

• Who was the political driving force? Was it based on a particular legal philosophy (e.g. socialism)? Is there a particular philosophy behind the rules (e.g. protection of the tenant's home as in Scandinavia vs. just a place to live as in most other countries)

• What were the principal reforms and their guiding ideas up to the present date?

A change in the Czech society began to take place at the beginning of the industrial revolution when groups of workers were moving to the city in search for work. It was in essence a social revolution.[167] This led to an increase in demand for housing. Given the fact that the demand arose mostly among low-income groups of the population, it was not possible to resolve this situation through private ownership of housing.[168]The most suitable solution seemed to be rental housing. The fact remains that the number of available flats wasn't anywhere near the demanded number, which caused a massive migration of the population at the time.[169]

[167] J. Buriánek, *Sociologie* (Praha: Fortuna, 1996), 113.
168 Pre-war (WWI) legislation did not allow ownership of flats. Due to the limited income, opportunities of the population of owner-occupied housing in houses built on lands were unavailable.
[169] O. Poláková, *Bydlení a bytová politika* (Praha: Ekopress, 2006), 243.

The "housing question" or the "housing problem" was accompanied by a rise in prices of rental housing, which led to the emergence of ghettos in the peripheries where the economically weaker population gathered (workers, clerks, petty craftsmen).[170] Quality as well as the hygiene standard of these flats was low. Overcrowded houses along with the above mentioned deficiencies caused the deterioration of the people's health, especially children. The Chamber of Medical Doctors began to notice this fact. This (among other things) led to the growing interest of the working class and the need to increase the state's interest in solving the problem. Since that time we talk about the residential care.[171]

Together with the problems that were more than evident, developing answers to the housing question brought some benefits. These can include the creation of scientific disciplines that deal with housing issues. Examples involve urbanism[172] and urban sociology represented by Max Weber and Georg Simmel[173], or the Chicago school. From the second half of the nineteenth century onwards, the legislature began to consider the dismal living conditions and the levels of rent. However, impulses that led to the establishment of self-help housing co-operatives[174] were not followed through.

After the International Conference on the Protection of Labour, held in 1890 in Berlin[175], along with the enactment of indirect support[176] for the construction of workers' dwellings in 1892, the situation began to improve slowly. The rate of the rent was to some extent regulated by the legislation.

The creation of the Franz Joseph Fund (1908) marked the real beginning of direct subvention for the construction of residential buildings for working-class housing. The fund provided subsidies for purchase or construction of residential buildings to housing cooperatives of state employees. The State Fund for the care of small flats, which provided guarantees for mortgages as well as granted loans, contributed to the improvement of the situation. This aroused the interest of municipalities, whose share of ownership of the housing stock was rather negligible until the emergence of Czechoslovakia.[177]The housing issue has been resolved at the executive level only in 1908, when the Department of residential care was created at the Ministry of Public Works.[178] The positive trend was suspended by First World War (WWI) during which, in the territory of the Czech lands repressive measures in the field of housing occurred (rent control).

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[170] M. Jemelka, *Lidé z kolonií vyprávějí své dějiny* (Ostrava: Repronis, 2009), 23 et seq.
[171] O. Poláková, *Bydlení a bytová politika* (Praha: Ekopress, 2006), 243.
[172] S. Ferenčuchová, *Meno, mesto, vec* (Brno: MuniPress, 2011), 22–23.
[173] Die Großstadt und das Geistesleben (1903).
[174] The Act no. 253/1852 ř.z., about associations.
[175] V. Krebs, J. Žižková, O. Poláková, *Sociální politika* (Praha: Codex, 1997),12.
[176] It was not the form of subsidies or grants. Built houses – destined for worker housing (flats under 75 m^2 in size) were over 24 years exempted from paying property taxes. See Act No. 37/1892 of Imperial Code.
[177] O. Poláková, *Bydlení a bytová politika* (Praha: Ekopress, 2006), 244.
[178] After the creation of Czechoslovakia – Department of Social Welfare.

The post-war period can be divided into 4 stages:

a) 1919–1924 fluctuations of the national economy, consolidation of housing issues;

b) 1925–1929 stabilization and increase in housing construction;

c) 1930–1938 crisis – reduction of quality of life and activities of home builders;

d) 1939–1945 reduction of quality of housing and stoppage of supporting the construction.

Returning back to the revolutionary year of 1918, we find that the housing policy of the newly created Czechoslovakia was reduced to three main areas: a) the regulation of the housing market, b) the protection of lessees, c) the support of housing construction.

Regulation of the housing market was based mainly on the control of renting flats owned by municipalities. The owners of houses were restricted in the contractual freedom of concluding lease contracts for the benefit of people who had to live in the village (e.g. state officials). Additionally, a new obligation to rent vacant rental units preferably to soldiers and civil servants was introduced.[179] Restrictions of freedom of contract concerned only newly built houses. In old houses (built until 1917) regulation concerned only the rent control. Therefore, two types of lease relationships arose: regulated and unregulated. Consequently, two tenement groups came into existence. Rents could be increased only by the amount, by which expenditures connected with the house administration increased over the years. A maximum amount of rent was set for newly built, subsidized houses.

The protection of lessees mainly consisted of protection against unjustified notice of termination of the lease. Lessors could terminate the lease only on the grounds specified in the Act and with the consent of the court. Act No. 85/1924 Coll. excluded from the sphere of protected leases some groups of lessees – rich (with an annual income of over 1 million CZK), lessees in municipalities up to 2,000 inhabitants or lessees of luxury flats (four or more rooms), etc. The Act for the protection of lessees excluded from the protection also leases that were negotiated for a short period of time (three months). On the other hand, the Act applied to the flats of provosts (civilian employee of the Army) or spare housing.[180]

Support for housing construction was realized mainly through taxation and adoption of the law about the construction industry related to state guarantees on loans for construction.

[179] O. Poláková, *Bydlení a bytová politika* (Praha: Ekopress, 2006), 245.
[180] J. Zelinka, Zákony upravující právní poměry vlastníků a domů a nájemníků, (Plzeň: Vlastní náklad, 1926), 18.

After the Second World War (WWII) in connection with a two-year economic recovery plan[181] the war-ravaged housing stock had been restored. Once again a new phase of housing construction supported by the state began.

The lease contract was regulated directly in the Civil Code[182] (in articles 1090–1121 of the General Civil Code). The law strictly distinguished between leasing and *fruendi* lease.[183] A lease includes the mere use of a thing (*ius utendi*), while the *fruendi* lease also includes the right to take fruits - *usufruct* (*ius utendi et fruendi*).[184] Legislation in the Civil Code was accompanied by special laws to protect lessees (see above). The nature of things was not important, but the stipulated method of use was. In addition to consumable things, the object to be leased could be also the right that allows repeated or permanent use. Rent in kind was also admitted. However, if the rent was determined as a proportion of the civil fruits it was not a lease agreement. The essential elements of the lease agreement were the identification of the subject of the lease and of the rent. The subject matter of the lease could be determined by generic characteristics. The lessor did not have to be the owner of the things, it was permissible that the owner of the thing rented his own thing from the person having the right to use.

Within the Civil Code of 1950 there was a unitary regulation of the lease and the *fruendi* lease in § 387 et seq. The lessee in general, not just the residential lessee, had the obligation to execute minor repairs. The legal regulation of the lease in the Civil Code did not explicitly regulate residential tenancies. Renting flats, however, was subject to the Acts on the management of flats (Act No. 138/1948 Coll., Act No. 67/1956 Coll.). Some other rooms fell under the regime of Act No. 111/1950 Coll., the management of some rooms. The apartments were allocated by a decision of the Local National Committee. National Committees revoked lease agreements of unreliable people and extra-large flats were regulated, etc. Special protection was provided to people renting flats, their parts or individual rooms

After the socialistic Civil Code came into power in 1964 the rent was replaced with the personal usage of apartment. This figure of socialistic law combined the ownership and rent benefits together with the possibility of "inheriting" the rights to particular apartment. It was very convenient for the "tenant" but less for the "landlord". The personal usage fee (rent) was very low and not changed for several years. It was the state to subsidize the socialistic organizations (which administered the housing stock) to get enough money for the housing stock administration.

[181] J. Kuklík, *Znárodněné Československo*, (Praha: Auditorium, 2010), 419 et seq.
[182] On the territory of Czechoslovakia was effective adoptable ABGB. The development of the legal regulation of the lease can be found in M. Hulmák et al., *Občanský zákoník – komentář,* (Praha: C.H.Beck, 2008), 1702.
[183] Srov. např. K. Eliáš, 'Pacht', *Obchodně právní revue* 2 (2013): 34., ev. P. Hajn, 'Chvála pach(t)u, *Právní fórum* 3 (2012): 89 et seq.
[184] J. Sedláček, F. Rouček, Komentář k československému obecnému zákoníku občanskému, (Praha: V.Linhart, 1937), 7.

After the Velvet Revolution events (1989) the new major amendment of the civil code came into power (Act no. 509/1991 Coll.). The so called Big amendment canceled the personal usage and replaced it again with lease. Lease was defined as temporary usage of particular apartment which was compulsorily paid). The apartment was defined under the provisions of building authority ruling (absence of this special ruling lead to invalid lease contract). Because of the fear that the new free market conditions will significantly increase prices of rents, the rent control was adopted.

The rent control epoch lasted over twenty years and had several phases. The strongest impact on rent control attitude was the European Court of Human Rights ruling in the case Hutten-Czapska vs. Poland which said that the state had to, above all, through appropriate legal and/or other measures, secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords, including their entitlement to derive profit from their property, and the general interest of the community - including the availability of sufficient accommodation for the less well-off - in accordance with the principles of the protection of property rights under the Convention (for more data see the Polish report).[185]The attitude of the legislator changed finally in 2011 when the rent control was canceled and replaced by non-regulated market after several years of deregulation of rent (period through which the rents were allowed to be risen under legally adopted conditions.

Year 2014 is very important for Czech Republic because it is the "year of new Civil Code" which came into power on 1st January 2014. It is based on 12 years of hard work on timeless legal masterpiece whose main aim is to move Czech Republic civil law back to European tradition of civil codes (BGB, ABGB, CC). There are many foreign patterns adopted and many improvements introduced (e.g. there is no more construction authority ruling required for a valid civil contract).

•Human Rights:

- **To what extent was tenancy law since its origins influenced by fundamental rights enshrined in**
  - **the national constitution**
  - **international instruments, in particular the ECHR**
- **Is there a constitutional (or similar) right to housing (droit au logement)?**

Housing is a basic human need and its satisfaction is absolutely crucial to the formation of man and his personality. The right of housing as a component of a right to adequate standard of living is a fundamental human right. Although it is not explicitly mentioned in the Charter of Rights and Freedoms or in the Law. The fact that the right of housing is a basic human right is commemorated by the Constitutional Court finding published under No. 231/2000 Coll., which states that the revised European Social Charter of 1996 provides an explicit right to housing in Article 31 and the housing is considered being a part of the protection of the most vulnerable people (disabled, ethnic groups, the elderly).

[185] European Court of Human Rights ruling in the case Hutten-Czapska vs. Poland No. 35014/97, from 19.6.2006 (see http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-75882#{"itemid":["001-75882"]}

The Civil Code provides special protection to the lessee who is generally considered to be the weaker party to a contract. The lessee always has the status of a consumer.[186] Provisions concerning the lease of an apartment or a house do not apply to legal persons since legal persons do not have any housing needs. Should a legal person wish to lease an apartment, the contract shall be regulated according to the general provisions of lease (§ 2201 et seq.) and the legal person as the lessee will not enjoy the levels of protection otherwise extended to a natural person lessee.

Most provisions concerning the lease of an apartment or lease of a house stipulated in § 2235 et seq. of the new Civil Code are mandatory and the parties cannot leave them out of the contract. According to § 2235, no regard is taken of any provisions of the contract which restrict the rights of the lessee as stipulated in the section of the new Civil Code regulating the lease of apartment or a house.[187]

6. Tenancy regulation and its context

6.1. General introduction

- **As an introduction to your system, give a short overview over core principles and rules governing the field (e.g. basic requirements for conclusion, conditions for termination of contracts by the landlord, for rent increase etc.; social orientation of tenancy law in force; habitability (i.e. the dwellings legally capable of being leased)**

The New Civil Code (effective from 1st January 2014) regulates the contract of tenancy in part four (relative property rights), section three (tenancy, §§ 2201–2320). Unlike the previously applied Civil Code, the New Civil Code has new regulations of the *fruendi* lease as a special form of use, which includes the right to use as well as collect fruits that is always temporary and non-gratuitous. The names of the contracting parties also differ in that they are lessor and lessee in case of the lease, or leaseholder and tenant farmer in case of a *fruendi* lease (i.e. the income producing lease).

Both legal regulations, the old and the new, feature a common layout of the provisions. Special provisions concerning apartment tenancy (§§ 685–719; §§ 2235-2300) follow the general provisions concerning the lease, whereas the *lex specialis derogat legi generali* principle is applied. This in reality means that the legal regulation of the constitution of a lease is applied to a lease of any kind of property (including an apartment), whereas the special provision (e.g. termination of tenancy with a court approval) is applied only to a lease of an apartment (or a house according to the new Civil Code). Up to 31st December 2013, lease and sublease of

[186] Only a natural person (not a legal person) can be considered a consumer (see § 419).
[187] The lessor thus cannot prohibit the lessee from having an animal in the apartment, unless the presence of the animal causes unreasonable inconvenience to the lessor or other inhabitants (see § 2258).

non-residential premises were regulated by a special act (Act no. 116/1990 Sb.), which lost its binding force on 1st January 2014.

The need for housing is a pressing issue in the Czech Republic and as such it has traditionally been an object of contention between the left-wing and the right-wing parties in the Parliament, as well as between the rich and the poor and between patrons debating this issue over a pint of beer in pubs. Generally speaking, two opposing viewpoints are at clash here. The proponents of the first view advocate a minimal role of government in regulating the free market, whereas the supporters of the other view expect a clear paternalistic role of the state. In reality, a mixed system is being created which incorporates elements from both these viewpoints according to the current political and societal preferences. With a certain degree of simplification, the current Czech policy concerning tenancy can be described as undergoing a transition from the paternalistic role of the state in the 1990s to the present-day liberal approach marked by the beginning of the second decade of the 21st century.

A lease agreement is a consensual contract which is concluded at the moment when the relevant parties agree on its content. The Civil Code does not specify any particular form or requirements for a general tenancy contract. The general tenancy agreement as a form of contract is regulated only by the Civil Code and its provisions are thus applied to legal relations between business and non-business subjects, legal entities and natural persons, the state and the self-governing territorial entities (municipalities).

There is no obligatory written form for a general tenancy agreement, therefore the contract can be concluded in all generally acceptable manners – written form, oral, or implied. Written form is required for a residential lease agreement according to § 2237.

If the lease agreement has been concluded in a written form, however, all subsequent changes or termination must likewise be done in a written form in accordance with § 564, otherwise such transactions are considered invalid. It is important to note that the Czech legal regulation is based on a duality of invalidity – relative and absolute. While absolute invalidity is applied where the weaker party, public order, or good manners are violated and the court takes this type of invalidity into consideration *ex officio*, "weaker" rules are applied for relative invalidity. In case of relative invalidity, the aggrieved party must seek a declaration of invalidity by court (*vigilantibus iura scripta sunt*) and the court will consider it based on this objection. On average, the court does not have the material instructing duty (that means that the court can´t instruct the participant on his material law rights) and the possible instruction may lead to procedural problems (it may result in an appeal).[188]

Municipalities play a significant role in housing policy. As a public corporation based on democratic principles it is governed by the major and its assembly. To provide the legal framework they issue ordinances. This must be in concordance with legal order and constitution. Those lead to cancelation of several ordinances which were trying to arrange special (as the Constitutional court said - illegal) conditions on municipal apartments lease contracts. It´s the Civil Code to provide equal provisions on renting

[188] According to § 5 of the Civil Procedure Code the courts have duty to instruct participants just about their procedural rights and obligations.

no matter whether the landlord is private individual, company, municipality or even the state.

- **To what extent is current tenancy law state law or infra-national law (if legislative jurisdiction is divided: what is the allocation of competencies and for which subject matters)**

- **Is the position of the tenant also considered as a real property right (and therefore also governed by property law) or (only) as a personal (obligatory) right?**

- **To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?**

The lease agreement is regulated by the Civil Code which is a state law (general provisions on rent should be used where there is not a special legislation on the lease of an apartment or a house (the *lex specialis derogat legi generali* principle). The legislation of the Civil Code is rather complex. No other laws regulate the lease, but there are additional technical public statutes (technical requirements concerning the construction of apartment buildings issued by the government or its ministries).

The right to use an apartment by the tenant who has a valid contract has to be respected until it expires. According to § 2235, the majority of regulations concerning the lease of an apartment or a house are mandatory. It must be respected not only by the lessor, but also the third parties (e.g. state and municipal authorities, neighbours, and other people).

Until January 2014 a special act on leases of non-residential (business) premises had been in force. The coming into force of the new Civil Code has abolished this act. However, this does not change the fact that practically every lease of such premises is still valid and enforceable.

The New Civil Code enables one to establish a lease as a real right (it must be registered by the Land Registry - § 2203). The lease is included in the Land Registry on the owner's request or on the request of the lessee (if approved by the owner). Other further owners of the property are obliged to respect it.

What is the court structure in tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?

The Czech Republic has a four-tier system of courts comprising district courts, regional courts, two high courts (seated in Prague and Olomouc) and the Supreme

Court (seated in Brno).[189] There is a two-instance proceedings system, meaning that one can appeal the decision of a lower-tier court in a higher-tier court. Regional courts deal with appeals against decisions of the district courts. First-instance decisions of the regional courts can be appealed against in one of the two high courts.

Unless the law stipulates otherwise, all first-instance proceedings take place before district courts. The Czech system of courts does not include special courts for deciding in the matters of lease.

From the territorial jurisdiction point of view it is necessary to separate the matter into more than one category. If rent or any other performance resulting from the lease is the object of the lawsuit, it is a case of ordinary performance and the general territorial jurisdiction is applied – § 84, § 85 (corresponding paragraphs according to the nature of the defendant – judicial or natural person, etc.) – *forum rei*. If the legal relation of the lease itself is concerned, i.e. its existence and continuation or termination, exclusive territorial jurisdiction according to § 88 letter i) is applied, that is the court in whose district the real property lies – *rei sitae*.

As mentioned above, special "lease" courts do not exist in the Czech Republic. Lease disputes are decided exclusively by a single judge. Lay judges are only used in the court of first instances in cases of labour disputes. The possibility of deciding lease-related disputes by an arbitrator or an arbitration court cannot be omitted.

Parties may agree that property disputes arising from lease will be decided by one or more arbitrators or a permanent arbitration court.[190] A valid arbitration clause is a prerequisite. It cannot be arranged as a part of the lease agreement, only as a special agreement (see below).

According to the Czech law, arbitrable property disputes, with the exception of disputes resulting in judicial execution of a decision and incidental disputes, whose hearings and decision would otherwise be handled by the court, should be decided by one or more arbiters or by a permanent arbitration court.

The arbitration proceedings in relation to the consumers (including lessees) are endowed with certain peculiarities:[191]

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[189] The Constitutional Court is not a part of the system of general courts; it is considered a part of a special system of courts comprising only the Constitutional Court itself.

[190] Arbitrable denotes those legal relations in which the state power did not reserve the right to decide exclusively by state courts (or by its other organs) and thus conceded that some disputes can be judged also by arbitrators if the participants stipulate so. It is an area where the state committed to recognize and enforce arbitration awards in dispute resolution that were achieved in a special procedure, which takes place at the initiative of the parties and with their participation in a way that the state allows–arbitration proceeding. See P. Raban. *Alternativní řešení sporů, arbitráž a rozhodci v České a Slovenské republice a zahraničí. (*Praha: C. H. Beck, 2004), 765.; also A. J. Bělohlávek. *Zákon o rozhodčím řízení a o výkonu rozhodčích nálezů.*Komentář.2nd edition.(Praha: C. H. Beck, 2012), 1776.

[191] Here we would like to thank our esteemed colleague JUDr. Jana Křiváčková for valuable advice and comments on arbitrable litigation and its specifics relating to leases. J. KŘIVÁČKOVÁ, P. PODRAZIL, 'Řešení procesní situace po zrušení rozhodčího nálezu', *Právní rozhledy*, no. 8 (2013): 284–287.

a) the arbitration agreement must be concluded on its own and not as part of conditions in the main contract; otherwise it is invalid.
b) the entrepreneur is obliged to provide, with a sufficiently long period of time in advance, the consumer with an adequate explanation, in order for the consumer to be able to determine, what consequences the arbitration clause may bring about. An adequate explanation is understood as an explanation of all the consequences of the arbitration clause.
c) a concluded arbitration clause must include truthful, accurate, and complete information about:
    1) the arbitrator or the fact that a permanent arbitration court decides,
    2) the way of initiation of the arbitration proceedings and its form,
    3) the reward for the arbitrator and the expected kinds of expenses, which the consumer may incur as result of the proceedings, as well as about the rules for their declaration,
    4) the place where the arbitration proceedings takes place,
    5) the manner of delivering the arbitration findings to the consumer, and
    6) the fact, that a legitimate ruling is executable.
d) Should the arbitration clause entrust the decision in the dispute to a permanent arbitration court, this requirement is fulfilled also by a reference to statutes and regulations of the permanent arbitration courts issued according to § 13 (Arbitration Act).
e) The arbitrator designated by the arbitration clause for settling disputes concerning consumer contracts can only be a person, who is registered in a list of arbitrators at the Ministry of Justice of the Czech Republic.[192]
f) In disputes over consumer contracts, the arbitrators must always adhere to the legal norms concerning consumer protection.
g) Should the case involve a dispute concerning a consumer contract, the arbitrator's findings must always include a statement of reasons and information concerning the right to appeal the decision at the court of law.
h) Before the initiation of proceedings, the arbitrator is obligated to inform both parties, whether he or she issued or took part in issuing an arbitration award or whether he or she is an arbitrator in another on-going proceedings involving one of the parties. The court will repeal the arbitration award on the motion of one of the parties in case:
    1) the arbitrator or permanent arbitration court decided a dispute involving consumer contract in violation of consumer protection norms or in obvious disregard of good manners or public order,
    2) the arbitration agreement concerning disputes over consumer contracts does not include information required by § 3 section 5 or the information is intentionally or in significant extent incomplete, inaccurate, or untruthful. When the repealing decision becomes binding, the court then decides the dispute on its own. In case the arbitration award was issued in a dispute concerning the violation of the consumer contract and the motion to repeal was filed by the consumer, the court will always determine, whether conditions for revocation of the arbitration agreement according to § 31 letter a)–d) or h) of the Arbitration Act are not met.

[192] See <http://portal.justice.cz/justice2/MS/ms.aspx?o=23&j=33&k=5866&d=322233>.

i) If the motion to repeal the arbitration award is filed by the consumer, the court will determine, whether the conditions for postponing the execution of the arbitration award according to § 32 section 2 of the Arbitration Act are not met, regardless of whether the consumer had asked for it or not. The court will decide about the suspension within 7 days of the filing of the repeal; during this period, the arbitration award cannot be executed.

j) Should the court repeal an arbitration award issued in a dispute concerning the violation of the consumer contract in a case decided by an arbitrator registered by the Ministry of Justice, the court will send the Ministry a copy of its final order.

- **Are there regulatory law requirements influencing tenancy contracts**
  - **E.g. a duty to register contracts; personal registration of tenants in Eastern European states (left over of soviet system)**

The tenants do not have any obligation to register their lease contracts at a financial or any other state authority. Likewise the landlords are not obliged to do it. Due to the lack of this obligation it is difficult to track the taxation of those incomes.

The lessee is not obliged to register the flat he leases as his place of residence with an administrative authority.

Contracts need not be written with the assistance of a lawyer or a notary. The Civil Code only provides that a lease for an apartment or house must be in written form; however, the lessor does not have the right to claim invalidity of the agreement based on the lack of the appropriate form. If the lessee uses the apartment in good faith for more than three years, believing the lease is in accordance with law, the lease agreement is to be considered duly concluded.

The protection of good faith included in the New Civil Code presents another strengthening of fair legal relations. In addition to that, it also brings a revolutionary change of the existing practice of the courts. Whereas today an absence of a legally required condition may absolutely invalidate the agreement, the New Civil Code introduces a more reasonable and more 'European' solution. The agreements are to be considered rather valid, not vice versa (*favor negotii*), since it stands to reason that the contracting parties did not intend to conclude an agreement that was invalid.

  - **Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented - e.g. on minimum size, number of bathrooms, other mandatory fittings etc.**

The Civil Code does not stipulate and specific requirements (minimum size, number of bathrooms, etc.) for the area which is to be used as an apartment based on the parties' agreement. The New Civil Code defines the 'apartment' as a room or a set of rooms which are a part of a building, constitute a residential space, and are intended for habitation (§ 2236 section 1). In case the lessor and the lessee agree on a lease of a non-residential space for habitation, both parties are obliged in the same way as if the space leased was of residential nature. The fact that the leased space is not

intended for habitation cannot be to the detriment of the lessee. The legislators thus clearly affirm that private law is exercised independently of public law. The absence of a public law decision stipulating that the apartment is fit for habitation does not mean, however, that the owner of the apartment cannot get into trouble with the authorities; nonetheless this will have no bearing on private law relations.

- **Regulation on energy saving**

No energy requirements are legally regulated in relation to lease agreement. It depends only on agreements between the parties. It´s usually the tenant who is a party of a contract with the energy supplying company.

6.2. The preparation and negotiation of tenancy contracts

Preliminary Note: We suggest that for each section (b through g) and each tenancy type some concluding remarks should be provided in a summary table about the rights and duties of tenant and landlord and the main characteristics (in telegram style).

Example of table for b) Preparation and negotiation of tenancy contracts

	Main characteristic(s) of tenancy type 1
Choice of tenant	No limits
Ancillary duties	Informing tenant about the structure of the rent payment (rent + other payments)

****

- **Freedom of contract**

A tenancy relationship is a legal relationship which is constituted by a contract. Since the tenancy relationship is a contractual legal relationship, the principles of autonomy of will and the freedom of contract will apply to this relationship.[193]

However, the application of these principles is to some extent modified by several factors. The main purpose of a tenancy relationship is to satisfy one of the basic necessities for life – i.e. housing needs. The lessee is generally regarded as the weaker party, who along with other persons, may be pushed into a difficult social situation by an unexpected termination of the lease.

For that reason the legislator strives to provide an increased protection for tenancy relationships which is reflected primarily in the nature of the provisions of the Civil Code that are characterized by their mandatory nature. Mandatory provisions established to protect the tenancy are relative because they are established only for

[193] The nature of the legal relationship of tenancy, including the tenancy of flat, presupposes a maximum space for the exercise of autonomy of will and contractual freedom of the parties. The judgment of the Constitutional Court of the 28th February, 2006, file number IV. ÚS 1106/08.

the benefit of the lessee; the lessor is not specially protected by the Civil Code. This situation leads to the distortion of the formal equality between the parties in order to achieve a balance between the tenancy parties.

The nature of specific provisions regulating the residential lease in the Civil Code was described by the Supreme Court which held that tenancy legislation contains many coercive (mandatory) provisions whose common denominator is the concept of the so called protected tenancy. These provisions, however, limit the autonomy of the will on the other side of the lessor- lessee relationship, i.e. on the lessor's side. If we realize that the lessor is typically the owner of the apartment, it is clear that a high degree of lessee protection reflects on the limitation of property rights of the lessor, particularly in restricting the lessor's right to the disposition of the object of possession and in enjoying its benefits. Outlined facts are set out in § 2235 section 1 of the Civil Code, which provides that no regard is taken of provisions restricting the rights of the lessee.[194]

A specific position within tenancy law is held by a co-owner, who according to judicial decisions cannot establish a tenancy relationship, in which he is a lessee, to a flat in the house which he co-owns. The co-owner has the right to use a flat in such a house on the basis of § 1115 of the Civil Code, the specific method of the use of a flat is determined either by an agreement or by a decision of the majority of the co-owners.[195]

- **Are there cases in which there is an obligation for a landlord to enter in to a rental contract?**

Lessee's or lessor's decision whether to enter into the tenancy always depends on their free will. The lessor and lessee don't have a legal duty to conclude a tenancy agreement and it is only their decision whether they enter into a tenancy relationship or not. However their freedom of contract is in certain areas limited by law. For instance, regardless of the content of a tenancy contract, the lessor may terminate the tenancy only for legal reasons and in some situations only with the consent of the court (§ 2288 of the Civil Code). Furthermore, regardless of the will of a lessor, the residential tenancy shall pass to persons appointed by law in the case of the lessee's death (§ 2279 of the Civil Code).[196]

There are findings of the Supreme Court where it is stated that the legislation of the lease of a flat is based on a contractual basis applied to the conclusion of a tenancy contract. The main principle of contract law is the principle of freedom of contract. This principle can be broken only by explicit statutory regulation or by contractual arrangements. Legal restrictions of freedom of contract are set out by imposing the obligation to conclude a contract, alias by the determination to the legal contracting

[194] The old Civil Code stipulated in § 685 section 3: lease of a flat shall be protected; the lessor may terminate it for reasons laid down by law.

[195] The judgment of the Supreme Court of 21st June, 2001, file number 22 Cdo 2104/99.

[196] Whereas passage of the tenancy of flat takes place on the basis of law and is independent of the will of the lessor, the transfer (assignment) of the ownership of flat is based on a contract and always manifests the will of the lessor.

obligation. The Civil Code (or any other Act) does not lay down in the given context any obligation to conclude a contract on the lessor or for the lessee.[197]

- **Matching the parties**
  - **How does the landlord normally proceed to find a tenant?**

The choice of a party to the contract is fully within the disposal of the interested parties. The principle of contractual freedom and autonomy of will implies the freedom of parties to choose the person with whom they voluntarily enter into a contractual bond. However entering into tenancy relationships is accompanied by the conflict of two constitutional rights – the right of free performance of property rights and the right of non-discrimination in the choice of a lessee. At the legal level, these rights are reflected in the provisions of the Civil Code and the Anti-Discrimination Act.

The landlord has, during the process of finding the potential suitable candidates, basically two options how to proceed. First of all, the lessor may himself try to find a suitable person who will temporarily use the object of the lease. The best way how to address as many candidates as possible is to place an advertisement (for a small fee, if any) on the internet. The advantage of this procedure is that the lessor is in direct interaction with potential lessees. Costs which the lessor must invest during this process are very low and will mostly include only charges for placing an advertisement on a website, or in a newspaper. The disadvantage can be a time-consuming selection of candidates for the lessor (arranging meetings, visitations of the premises, constant contact with the candidates), little experience in selecting suitable lessees and the opportunity to address only a limited circle of persons.

For the lease of the local council flats the same rules as for the lease of privately owned flats apply. The Czech legal system does not provide the citizens with the right to a lease of a local council flat. The tenancy of a local council flat is governed by the Civil Code and both parties have equal status. Unlike private leases, the municipality has an obligation to consult citizens' requests for a lease of a local council flat. This obligation stems from the Municipalities Act. The criteria on the basis of which the community selects the lessee may not be set in a discriminatory manner. Ombudsman's report identifies a number of key principles which the municipalities should for the selection of a lessee of a local council flat follow. These principles include:

1) the need to establish an equal footing that equally applies to all residents of the municipality

2) the assessment of conditions in terms of meeting the elements of discrimination must be done with a thorough knowledge of local conditions

3) any deviations from the specified conditions must be duly justified (rationalized)

[197] The judgment of the Supreme Court of 24th June, 2009, file number 26 Cdo 1186/2008.

4) rules that allow different treatment of the inhabitants of the municipality on discriminatory grounds (age, health status, ethnicity, gender) are regarded to be discriminatory rules

5) in terms of preventing discrimination it is desirable that the housing stock of the municipality is diverse for the purpose of satisfy housing needs of diverse segments of the population

Another way to find lessees is to use the services of real estate agencies. The lessor has the option to conclude with the real estate agency any of the contracts governed by the Civil or Commercial code or agree with the real estate agency on an innominate contract. The most commonly used contract which the lessor concludes with the estate agency is a brokerage contract. This contract has a dual regulation and can be encountered in the provisions of both the Civil Code and in the provisions of the Commercial Code. Considerable disadvantage of this contract for the lessor is the obligation to pay the agreed remuneration (commission) in the event of the conclusion of the lease by endeavour of the broker.

- **What checks on the personal and financial status are lawful and usual? In particular: May the landlord ask for a salary statement? May he resort to a credit reference agency and is doing so usual?**

- **How can information on the potential tenant be gathered lawfully? In particular: Are there blacklists of "bad tenants"? If yes, by whom are they compiled? Are they subject to legal limitations e.g. on data protections grounds?**

The lessor has very limited options how to determine the financial situation of potential tenants. There are no official black lists of bad tenants in the Czech Republic. Personal data is protected by the law on personal data protection.

An important role in the selection of lessees is a recommendation of a person that the lessor knows and trusts. Additionally, the lessor may take a look inside the Central Register of Debtors. However, this register is only a private information system. Data obtained from this register are not recognized by the financial institutions as an acknowledgment of indebtedness.

If the lessor wants to make sure that the rent and other payments associated with the use of the flat by the lessee will be properly paid, he has the option to agree with the lessee on a deposit (§ 2254). Under this provision the parties can stipulate that the lessee gives the landlord a financial deposit which ensures that he will pay the rent and meet other obligations under the lease.

- **What checks may and does the tenant carry out on the landlord (e.g. to avoid being trapped by a swindler landlord)**

- **Services of estate agents *(please note that this section has been shifted here)***
  - **What services are usually provided by estate agents?**
  - **To what extent are estate agents regulated? In particular: are there rules on how an agent should present a house, i.e. on the kind of information which needs to be given?**
  - **What is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?**

What is the role of estate agents? What are the usual services they provide in the area of rental housing?

The range of checks the tenant is allowed to do is quite little. But he can find out whether the landlord is really the owner of the apartment he is offering. There is the cadastre which is opened register to everybody to get data from its records. You can see there also whether there is an execution or other legal handicap (easement etc.) recorded on the apartment. The rest is on the tenant psychological and "detective" skills.

Agreements concluded by estate agents could be characterised briefly as a brokerage agreement. Brokerage is defined by provision § 2245 of the Civil Code, according to which in a brokerage agreement the broker agrees to mediate in concluding an agreement between the client and a third party, whereas the client agrees to pay a commission to the broker.

Brokerage is an agreement in which one party (the broker – usually estate agency which acts by estate agents) is under the obligation to engage in activities contributing to conclusion of an agreement between the other party (the client – lessor who pays a commission to broker) and the third party (potential lessee), and the broker shall have the right to a commission in an agreed sum on an assumption that the conclusion of an agreement was achieved by the broker's endeavour.[198]

The Civil Code doesn´t refer to the opportunity to make an agreement but only to the procurement of conclusion of an agreement. The presumption is that the obligation of the broker lies in the activity contributing to the creation of an opportunity for the client to enter into an agreement with the third party.[199]

Judiciary practice deduced that the extent of broker's endeavour can be different, from the mere acquaintance of the client with the third party to active participation in concluding the agreement between the client and the third party. The broker has an obligation perform an activity in which he provides an opportunity to conclude an agreement for the client. He is not a passive agent but his activity must have an active nature.

[198] Essential elements of the brokerage contract are: identification of parties (the broker and the client), designation of an agreement which the broker has to broker and the amount of brokerage fee. In case of breaching obligations from the brokerage agreement, the provisions of general liability will apply. The judgment of the Supreme Court of 28th February, 2002, file number 30 Cdo 772/2001.

[199] L. Kopáč et al., *Občanské právo hmotné 2. Díl třetí: závazkové právo*. 4. vyd. (Praha: ASPI, 2005), 302.

- **Contract concluded through estate agents**
  - **what is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?**

The right to a commission arises with the achievement of a result, i.e. when the client concludes an agreement in fulfilment of his proposal or demand. There must always be a causal relation between the activity of the broker and the result (conclusion of requested agreement). When the agreement between the client and the third party is concluded without the broker, the right to a commission is not granted. In the situation that the client himself found the purchaser for his immovable, the estate agency doesn´t have the right to commission although the agency made certain efforts in the case. Looking at it from a broker´s side, the contractual penalty could compensate the brokerage fee because the client violated the obligation not to negotiate on his own (without the broker).

Estate agencies try to avoid situations when the client concludes an agreement with the third party without the participation of the broker. Such behaviour of the client deprives estate agencies of a commission which was agreed with the client. Most often the estate agencies try to prevent this result with the implementation of an obligation for the client to pay a contractual penalty to the broker in case of violation of contractual obligations and commitments which are determined by a brokerage agreement. Among obligations under the contract is e.g. the obligation of the lessee not to offer and negotiate contracts concerning his immovable during the duration of a brokerage agreement on his own. Contractual penalty is mostly equal to minimal commission which is derived from an ascertained percentage of the purchase price or from ordinary rent. In the case of sale of immovable, contractual penalty could rise up to hundreds of thousands Czech crowns. The clients, of course, are not willing to pay such heavy penalty therefore increasingly we meet with judicial proceedings. The matter in dispute is the right of the broker for the payment of contractual penalty.[200]

Essential elements of a brokerage agreement are:

1) An obligation of the broker to provide an opportunity to conclude an agreement. It is not an obligation to guarantee the conclusion of an agreement but only an opportunity to enter into an agreement. These activities primarily include person-spotting (obviously those who will be interested in the conclusion of the agreement), obligation to provide information to clients about those persons, informing about other circumstances (significant circumstances that may influence the client's decision to conclude the agreement), etc. Last but not least, the broker has an obligation to provide information to the client about the prospective buyer.

2) An obligation of the client to pay the broker's commission in case of achievement of the result (conclusion of the agreement specified in the brokerage contract) by the activity of the broker. The commission may not be

[200] Accessible on: <http://pravniradce.ihned.cz/c1-20434400-zprostredkovatelska-smlouva-a-praxe-realitnich-kancelari>.

determined in the brokerage agreement by fixed price. The Civil Code does not regulate that the commission must be only in pecuniary form. The Civil Code regulates providing commission but does not mention the payment of commission. This indicates that the commission could be non-monetary. This interpretation corresponds with the principle of the autonomy of will and is fully consistent with the principle “what is not forbidden is allowed” which plays a significant role in private law.

The brokerage agreement should always be concluded in writing and should explicitly define right and duties of both parties. In practice there are two types of agreements which are usually concluded because of cooperation between the client and the estate agency:

1) exclusive brokerage agreement,
2) ordinary brokerage agreement.

An agreement fulfilling the conditions for its validity should include:

1) the designation of parties,
2) subject-matter of a contract (subject-matter is not the immovable itself but the brokerage of its sale or lease),
3) amount of commission (brokerage fee),
4) contract duration,
5) conditions for withdrawal from an agreement.

The brokerage fee from lease agreement concluded by estate agents is very controversial. In particular, this refers to the remuneration and its rightfulness. Society is divided into two parts. One part thinks that the commission is deserved and justified, the other part argues exactly the opposite. In the situation of one-shot brokerage of lease, the ordinary commission is calculated as an amount of monthly rent or as a rent calculated for two months. If the estate agency provides rent collection or other services for lessee, the commission is obviously higher. Without regard to how high the commission is, the estate agency should always exactly specify which services are included (in the Czech legal system it is not regulated what exactly should the services of estate agency include). The most common is that the services include:

1) advertising and the associated demands,
2) looking for a lessee or a purchaser,
3) legal services (e.g. elaboration of lease agreement and a booking contract),
4) costs of selecting the real estate (travel expenses etc.),
5) verification of absence of legal defects (e.g. imposition of execution, pledge, implied easements).

The commission is in the majority of cases reimbursed at the moment of the conclusion of a booking contract. Booking agreements pre-book an immovable for the lessee, this means that this agreement defines the duration within which the lessor must not offer the immovable to another prospective lessee or buyer. In this period of time, the lessee has a possibility to check the factual and legal status of the immovable. A booking agreement relates to a booking fee which is mostly charged as a commission for the real estate agency. A booking contract precedes the lease agreement but it can precede also the preliminary contract. The booking agreement

also contains an announcement in which the lessor and the lessee declare that conclusion of this contract was truly their will.[201]

It is necessary to keep in mind that the broker is not entitled to negotiate or accept something on behalf of the client. For the activities connected with brokerage, the broker needs authorization by the client – the client must delegate full powers to the broker by letter of attorney. The contract specified as the object of brokerage is concluded by the client, not by the broker. The broker can act for both parties of unless their agreement excludes this possibility.[202]

One can come across situations in which brokerage agreement proves invalid for other reasons. In these cases there will be created obligation relationship from unjust enrichment between the parties. Value of unjust enrichment is defined in cash and corresponds to the commission.[203]

- **Ancillary duties of both parties in the phase of contract preparation and negotiation ("*culpa in contrahendo*" kind of situations)**

Unlike the previous legislation, the institution of pre-contractual responsibility is incorporated in the Civil Code. According to the provisions of § 1728 of the Civil Code it is prohibited to conduct negotiations only for appearance's sake (without a serious intent to enter into a contract and be bound by it throughout its duration). Under this provision, everyone may conduct contract negotiations freely and is not responsible for the fact that he does not conclude the contract, unless he begins negotiations or continues in such negotiations without the intention to conclude the contract. When negotiating a contract, the contracting parties shall notify each other of all the factual and legal circumstances about which the party knows or should know, so that each side is convinced about the possibility to conclude a valid contract and that each party manifests its interest to conclude the contract.

The second section of the mentioned provision provides that if the parties reach an agreement during negotiations and the conclusion of the contract seems highly probable, the party who terminates negotiations without having a rightful reason to do so is liable for damages. The party acting dishonestly, shall reimburse the other party for loss, up to the extent that corresponds to the loss of outstanding contracts in similar cases (§ 1729 section 2 of the Civil Code). The provisions of § 1730 aims to the protect the data and communications exchanged between the parties during the contractual negotiation. The legal regulation of the new Civil Code of *culpa in contrahendo* is built on the principle that everyone is free to negotiate a contract and enter voluntarily into contractual relations. At the same time good faith of the other party shall be protected.

6.3 **Conclusion of tenancy contracts**

[201] Accessible on: <http://reality.aktualne.centrum.cz/poradna/clanek.phtml?id=729468>.
[202] B. Havel in M. Holub a kol., *Občanský zákoník. Komentář. 2. Svazek.* (Praha: Linde Praha, 2002), 1174.
[203] The amount of pecuniary compensation in case of unjust enrichment complies with obvious brokerage fee provided for similar brokerage in the place of destination and in the present time. The judgment of the Supreme Court of the 27th November, 2002, file number 29 Odo 805/2001.

Example of table for c) Conclusion of tenancy contracts

	Main characteristic(s) of tenancy type 1
Requirements for valid conclusion	- full legal capacity of contractors - obligation of mentioning the structure of rent payment (rent+other payments) - specification of apartment - specification of usage
Regulations limiting freedom of contract	- impossibility of penalties against tenant - limited deposit (maximum of 6 rent payments)

- **Tenancy contracts**

The lease agreement is validly negotiated at the moment of affirmative expression of will which leads to the conclusion of such agreement. The tenancy agreement is the only legal fact on which basis the tenancy relationship may be constituted and cannot be substituted for example by a legal regulation issued in the form of a generally binding ordinance of a municipality, with the aim to replace the civil law relationship by a public relationship that arises between the municipality and the lessee.[204] It is not possible to regulate rights and obligations resulting from private law relationship between the lessee and the local authority by a generally binding ordinance of a local authority which is considered to be a public act.[205]

- **distinguished from functionally similar arrangements (e.g. licence; real right of habitation, Leihe, comodato)**

- **specific tenancy contracts, e.g. contracts on furnished apartments; student apartments; contracts over room(s) only (e.g. student rooms); contracts over rooms or apartments located in the house in which the landlord lives himself as well. Please describe the legal specificities in these cases.**

There are no specific tenancy contracts (e.g. contracts on furnished apartments; student apartments). Parties of such a contract have to use the general conditions of Civil Code and can make some special arrangements between each other while respecting the statute of a tenant as the weaker party.

The Civil Code includes general regulations of tenancy which support the specific legal regulations: special provisions concerning the lease of an apartment or a house, provisions concerning the lease of premises used for commercial purposes, commercial lease of movable property, and the lease of vehicles. All of these specific regulations contain special provisions in relation to the general regulation (*lex specialis*).

[204] The judgment of the Constitutional Court of 26th April, 1994, file number Pl. ÚS. 27/93.
[205] The judgment of the Constitutional Court of 5th April, 1994, file number Pl. ÚS 29/93.

General legislation of rights and obligations of the participants of the tenancy, which is established in § 2201 et seq. of the Civil Code., therefore also applies to the specific regulations of tenancy. General legal regulation can be applied only if special legislation does not include any provisions of a different nature. This principle should apply also *vice versa*. Assuming that all reasons for the application of the specific regulation are not met, the general legislation of tenancy should be applied.

The above mentioned cases must be distinguished from the accommodation contract. The definitional characteristic of this agreement is providing temporary accommodation which follows directly from the agreement or is included in the scope of business activities of the lodging provider.[206]

In some cases, a sublease may be concluded when the lessee sublets a part of the apartment to a third party. If the lessee lives in the apartment on a permanent basis, the consent of the lessor is not required for the sublease to be made. The lessee needs only to notify the lessor of the existence of the sublease. If the lessee does not live in the apartment on a permanent basis, the lessor's written consent to the sublease is required.

- **Requirements for a valid conclusion of the contract**

  - formal requirements

  - is there a fee for the conclusion and how does it have to be paid? (e.g. "fee stamp" on the contract etc)

  - registration requirements; legal consequences in the absence of registration

  Note: If relevant, please distinguish the various existing registers, e.g. land register, tax register, register of domicile.

The Civil Code provides that the lease agreement in order to be valid must be made in writing. However, the lessor does not have the right to rely on the invalidity of the agreement against the lessee due to the deficiency of its form. The Civil Code provides the lessee with protection even if the statutory written form of residential lease agreement is not observed. The provisions of §2237 and §2238 refer to the fact that if the lessee used the apartment in good faith for a period of three years, the lease contract shall be deemed duly signed.[207]

The law does not specify any special requirements as to the content of the lease agreement. However, it follows that the agreement must include a definition of the premises where the lessee will exercise his housing needs.

The lease agreement may contain also other contractually agreed requirements, e.g.:

1) deposit,
2) extent of repairs carried out by the lessee pursuant to §687section3 of the Civil Code.,

[206] Josef Fiala, Milan Kindl a kol.,*Občanské právo hmotné* (Plzeň: AlešČeněk, 2007), 560.
[207] Michaela Zuklínová, Pavla Schödelbauerová, *Nájemní smlouva, zvláštní ustanovení o nájmu bytu. § 663–§ 719 občanského zákoníku* (Praha: Linde, 2012), 124–125.

3) persons who will live with the lessee in the apartment,
4) approval with building alterations
5) approval with the transfer of flat lease,
6) the notice period longer than three months,
7) term of the lease,
8) consent to a sublease.

There is no necessity to register the lease agreement in the Land Registry. 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).

- **Restrictions on choice of tenant - antidiscrimination issues**

  - EU directives (see enclosed list) and national law on antidiscrimination

In the legislation of the Czech Republic one may find a variety of provisions in which discrimination is regulated. First of all it is possible to find provisions in which the concept of discrimination is mentioned, but not defined. Furthermore the Czech legal system contains provisions which define an act but not the concept of discrimination. Lastly, there are cases in which the law explicitly talks about discrimination and (at the same time) also defines this concept.

The oldest existing provision in the legal system of the Czech Republic, which covers discrimination, is article 14 of the European Convention on Human Rights and Fundamental Freedoms, which states: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

A similar message is expressed in the Charter of Fundamental Rights and Freedoms, which creates a part of the constitutional order. Article 3 of the Charter states that everyone is guaranteed the enjoyment of their fundamental rights and basic freedoms without regard to gender, race, colour of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status.

Both of these regulations relating to human rights define discrimination as the violation of certain guaranteed rights defined by law realized on the grounds that have no rational character. Discrimination is not a situation in which a job seeker is not chosen because of lack of skills that are required for the performance of work(e.g. missing a driving license by a potential truck driver).

The prohibition of discrimination is derived also from the constitutional principle of equality, which refers to the fact that human beings are equal in dignity and rights and that legal curtailment of fundamental rights must apply equally to all cases. Thus, discrimination may also be defined as general inequality or inequality in rights.

The most advanced and most sophisticated group of definitions of anti-discrimination law may be found in the legislation of the European Union. The European legislation

does not contain the definition of discrimination but defines the various types of discrimination.

European anti-discrimination directives define:

1) direct discrimination,
2) indirect discrimination,
3) harassment,
4) advice (instruction) to discriminate (instruction is a part of the definition, but this activity is not further defined)
5) incitement to discrimination,
6) sexual harassment,
7) pursuit.

All definitions mentioned in the acts define discrimination for a particular area of law. Currently, no act contains a general definition. When we indicate the non-discrimination as a general principle of modern law, we reach a general definition of discrimination accepted by legal theory.

The following characteristics will help define discrimination. Discrimination denotes:

1) an action of a person (including the state) towards the other or a treatment of one person towards another,
2) handicap, injury,
3) disadvantage compared with other persons,
4) disadvantage on discriminatory grounds,
5) discrimination in certain specified situations or areas stated by the law.

Discriminatory disadvantages can be determined only by the discriminatory grounds stated by law. Discriminatory reasons are the human qualities or characteristics that are set by law. According to these discriminatory reasons, the discrimination is prohibited.

Discriminatory reasons are divided as follows:

1) the reasons contained in all mandatory statutes (the so-called basic discriminatory reasons):

   - sex,
   - race (ethnicity, colour of skin, national origin, ethnic minority)
   - religion (faith, religious beliefs, unreligious)

2) the reasons contained in the post-war international conventions that are now not considered as basic reasons:

   - language,
   - nationality or membership of a national minority,
   - political and other thoughts,
   - social origin,
   - possession,
   - origin

3) Newer reasons that are today considered to be the primary reasons for discrimination in the law of EU:

   - health condition or disability,
   - sexual orientation,
   - age

4) Remaining discriminatory reasons:

   - membership in political parties,
   - matrimony or family status,
   - nationality

It follows from the above that the law of the European Union considers the following as the main reasons for discrimination:

1) sex,
2) race and ethnic origin,
3) age,
4) disability or adverse health condition,
5) sexual orientation (the reason is linked to the civil (registered) partnership adopted in most developed European countries),
6) religion, faith or the fact that a person is unreligious.

These six main discriminatory grounds are now more strictly regulated in EU law than the other grounds. By determining the legal areas and situations in which discrimination is prohibited, it is necessary to distinguish between two fundamental spheres of rights. In the first sphere, actions of the state and other entities(by virtue of public authority or in matters of public interest) are included and the other sphere comprises actions of private entities.

Private relations are governed by Article 2 of the Charter, which declares discrimination unlawful only in those areas of law and situations in which the law expressly prohibits discrimination. Private persons have a duty not to discriminate among each other in the areas of access to goods, and services, including housing. The European law considers the provision of housing, including renting apartments and other residential immovables which are not performed by entrepreneurs, as the provision of services. The prohibition of discrimination also applies to providers of housing in relation to their lessees and other accommodated persons.

Discrimination in housing is, next to employment, one of the most problematic areas. Discrimination in housing is usually induced by real estate agents, other brokers and also by the lessors (frequently violators include entities operating in numerous immovables, owners of smaller homes or individual apartments, hostels, housing associations and asylum houses). Discriminated groups are not in most cases able to procure regular, own housing and are forced to use the services of costly hostels (for payment of services these people usually use social benefits– which for many of them represent the only source of livelihood). In the worst eventuality they end in squats or slums, which are considered as localities of social exclusion.

In cases of rental housing, discrimination often occurs towards persons belonging to minorities, and sometimes large families. Important roles present psychological

aspects and deep-rooted prejudices. The problem is that the owners of real property (houses and flats) refuse to accommodate these people. In practice it is also possible to meet with cases in which these members are treated less favourably than other lessees.[208] A much discussed topic in recent years is the discriminatory policy of municipalities in the allocation of council apartments. Municipalities try to choose from a number of potential lessees the most proper candidates. Such procedure is totally unacceptable and discriminatory. With the assistance of ordinances, the municipalities establish a number of conditions for the allocation of apartments, which the applicant for a local council flat must comply with. Randomly, it is possible to give the following examples (conditions): clean criminal record, resided in the village long before the allocation of the apartment, does not use social benefits, is married. The ordinances were considered by the Constitutional Court which has cancelled some of them.

A discriminatory action of the municipality is also a deliberate failure to invest money in repairs, relocation of lessees who do not pay rent and eventually the privatization of the whole houses with all lessees (also with those who fulfil properly their obligations).

Foreigners also face the problem of discrimination. Home owners and flat owners do not want, for various reasons, to lease their property to foreigners. Real estate agents ask the interested person about this information already in the primary stage of the negotiation. Some owners lease apartments to foreigners but charge them higher prices.

Free exercise of property rights means *inter alia* the right to make the apartment available for use to the lessees under the lease agreement. This includes the right of the lessor in accordance with his best consideration to choose the best partner with whom he concludes a lease agreement. The exercise of proprietary right, however, is also regulated by the prohibition of discrimination, which is mentioned in the Charter of Fundamental Rights and Freedoms. Article 3 section 1 of the Charter provides that everyone is guaranteed the enjoyment of his/her fundamental rights and basic freedoms without regard to property. The Anti-Discrimination Act regulates equal treatment and non-discrimination in matters related to access to goods and services (this category includes also housing) if these services are offered publicly.

The mentioned prohibitions of discrimination limit the right of free choice of a lessee because the selection criteria cannot be discriminatory. This means that the advertisements cannot *a priori* disadvantage particular groups of persons. It appears from this that some offers which preclude foreigners or ethnic minorities are contrary to the provisions of law. In this situation, two principles guaranteed by the Constitution come into conflict. These are the principles of: non-discrimination and the free exercise of property right. These two principles are regulated at the legal level by the Anti-Discrimination Act and the Civil Code.

There is a legal defence available against discriminatory treatment. Affected people may sue the violators for the abandonment of discriminatory action. In practice the violator will be obligated to refrain from the discriminatory action. On the other hand,

[208] This discriminatory treatment usually lies in shorter term of lease, duty do deposit money, etc.

we cannot legally compel the lessor to enter into a contract with the discriminated person. This would be contrary to the principle of free exercise of property rights.[209]

Despite the relatively wide discretion which is to the lessor guaranteed by the law, the lessor is not during the process of choosing a lessee completely unlimited and is bound predominantly by the provisions of the Anti-Discrimination Act. His invitation to make an offer (*invitatio ad offerendum*) made through an advertisement published in a publicly accessible journal or on a website may not discriminate the interested persons in any way. In practice, the lessor frequently agrees with using the premises (mostly flats) on the condition that the lessee meets certain criteria. The required criteria usually relate to the issues of nationality, number of children, student status, ownership of animals, smoking, etc. Such procedure of the landlord is contradictory to the provisions of the Anti-Discrimination Act, according to which, the natural person has in the legal relationships to which the Anti-Discrimination Act law applies the right to equal treatment and to ensure that no discrimination against this person will occur (§ 1 para. 3).

Manifestations of discrimination in real estate advertising in the Czech Republic was addressed by the Czech Helsinki Committee, which undertook a closer examination of 500 personal advertisements placed on real estate portals www.sreality.cz, www.bezrealitky.cz in the period from March until April 2012. According to the findings of the Committee, cases of direct or indirect discrimination were found in 23 advertisements (which is about 5% of the total number of advertisements) and covered only the area of flat leases. No violations of Anti-Discrimination Act were found for leases of houses or commercial premises.

Discriminatory rules for access to flats owned by municipalities were captured in a report prepared by the Office of the public defender of rights (ombudsman). For further information, see p. no. 60 *Matching the parties***.**

- **Limitations on the freedom of contract through regulation**

- **mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract**

- **control of contractual terms (EU directive and national law); consequences of invalidity of contractual terms**

The relationship between the owner and the lessee with respect to the apartment is not equal.[210] There is, generally speaking, a tendency typical for modern private law to empower the weaker side, which is not just the consumer, but also the lessee.

In a situation where two sides, whose positions are unequal, are given the same legal powers, their equality is purely formal, since inequality in the initial positions brings about their inequality in result.[211] If the purpose of a protective regulation is to protect the weaker party (lessee/consumer), a non-mandatory regulation would defy

[209] Accessible on <http://byznys.lidovky.cz/diskriminace-zajemcu-o-byt-majitel-ma-pravo-si-najemce-vybrat-pt2-/moje-penize.aspx?c=A120903_104635_moje-penize_rka>.
[210] Comp. the decision of the Constitutional Court of the 18th October, 2001, file number IV. ÚS 96/01.
[211] J. Hurdík, P. Lavický. *Systém zásad soukromého práva.* (Brno: Masarykova univerzita, 2010) 120.

that purpose. The stronger side (owner) would be able to use his/her strength to exclude the use of such non-mandatory regulation in a contract, which would make such protection ineffectual. It follows that this form of protection would be pointless as it would in reality be unenforceable.[212] This type of legal norms can in principle be called *social protective norms*.[213]

The mandatory nature of the provisions concerning the lease of an apartment arises from § 2235 according to which no regard is taken of any provisions in the contract which restrict the rights of the lessee as stipulated in the Civil Code. The law further includes a list of prohibited contract provisions which would restrict the freedom of contractual parties in concluding the lease agreement. According § 2239, no regard is taken to provisions obligating the lessee to pay a contractual fine to the lessor, or provisions imposing duties on the lessee which are clearly unreasonable with respect to the circumstances.

- statutory pre-emption rights of the tenant

The tenant has a pre-emption right to the apartment in case the lot on which the building stands is legally divided into dwelling units. This right only applies to the first transfer (purchase) of the unit from the owner of the lot to a third party. The right of the tenant expires (if not exercised) after six months since the day the owner offered him the dwelling unit for purchase.

- are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?

In case the apartment is mortgaged, the mortgagor must obtain the mortgage creditor's consent for the lease. However, it may be agreed in the mortgage agreement that no such consent will be required. It follows from the nature of the right of lien that it is attached to the thing. In case the mortgagor draws mortgage credit, he may deduct the interest paid from taxes (e.g. he can deduct up to €480 from taxes on a €72,000 loan). He must, however, live in the apartment, which the tax authority does verify.

6.4 Contents of tenancy contracts

- **Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)**

[212] F.Melzer in B. Havel, V. Pihera (eds). *Soukromé právo nacestě. Eseje a jiné texty k jubileu Karla Eliáše*. (Plzeň: AlešČeněk, 2010), 229.
[213] K. Larenz, M. Wolf. *Allgemeiner Teil des Bürgerlichen Rechts*. 8. Auf. (München: C. H. Beck, 1997), 88. § 3, m.č. 111., cited in accordance with F.Melzer in B. Havel, V. Pihera (eds). *Soukromé právo nacestě. Eseje a jiné texty k jubileu Karla Eliáše*. (Plzeň: AlešČeněk, 2010), 229.

Unlike the previous legal regulation, the new Civil Code does not specify the contents of the lease agreement. The agreement is considered as validly concluded when the lessor agrees to provide an apartment or a house to the lessee for him to exercise his housing needs and the lessee agrees to pay rent for the use of said apartment or house. If the agreement is specific enough – i.e. it is clear where the lessee's housing need will be exercised – the law does not set any further requirements as to the contents for the agreement to be valid.

The description of an apartment is a basic requirement stated for the content of the agreement. The specification of the apartment should be madedefinitely and interchangeably. In practice the apartment is usually described by the number of the floor on which the apartment is located, by the residential category, by its composition, by the number of rooms and by its surface area. If the apartment is not numbered, it is necessary to use a different method of locating of the flat (e.g. placed on the floor next to the stairs). Simultaneously it is also advantageous to identify the house where the apartment is located (by the address determined in the Land Registry).

Within the range of the options we can describe also the accessories or the equipment of the flat. Description of the accessories is not a necessary condition for the agreement to be valid. If the accessories are not explicitly described in the agreement, they are understood as the areas that are commonly used together with an apartment (i.e. a cellar, loft, etc.).

The description of the apartment is decisive for the repairs and maintenances of the apartment during the lease (the origin and extent of the rights and obligations of the lessee and the lessor). The agreement should also include a list of residential and other rooms that the apartment is composed of.

The Civil Code requires for all contracts to be valid the certainty of their content. However it is not possible to claim that the contract is invalid if the contract does not state the floor or number of rooms located outside the enclosed space of the apartment.[214] These conclusions apply assuming that the apartment is sufficiently identified by other means about which there is no doubt.[215]

The extent of use of an apartment may be limited by the way of use, time or group of persons.

Example of table for d) Contents of tenancy contracts

	Main characteristic(s) of tenancy type 1
Description of dwelling	compulsory
Parties to the tenancy contract	Landlord vs. tenant
Duration	a) limited period b) unlimited period c) the period of a labour contract

[214] For a sufficient identification of an apartment, it is not necessary to describe the floor in which the apartment is located. File number R 16/2000.

[215] J. Švestka et al., *Občanský zákoník II. §460–880. Komentář.* (Praha: C. H. Beck, 2008), 1787–1788.

	duration
Rent	Rent+other payments
Deposit	Maximum 3 months´ rent
Utilities, repairs, etc.	According to general requirements mentioned in the civil code

- **Allowed uses of the rented dwelling and their limits**
- **In particular: to what extent are mixed (residence/commercial) contracts lawful and usual (e.g. having a shop, a legal office or a doctor's studio in the dwelling)**

The use of the rented apartment or house is primarily agreed on in the lease agreement. In case the allowed use is not specified, the tenant is obliged to use the apartment in a regular manner.

Unless it causes increased strain on the apartment or house, the tenant is allowed to work or run a business there (§ 2255 section 2).

Should the rented apartment predominantly serve other purposes than housing, the contractual relationship must be regulated not by provisions concerning the lease of an apartment, but by provisions concerning the lease of premises serving commercial purposes. The lessee in this case will not enjoy as much protection as if he were a tenant.

- **Parties to a tenancy contract**

- Landlord: who can lawfully be a landlord?

- does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?

- Tenant:

-Who can lawfully be a tenant?

The lessor may be a legal entity or a natural person. With lessees, the situation was more complicated because there were different opinions on whether the lessee may be a legal person. According to the Supreme Court, the purpose of the tenancy right as a specific type of tenancy is to ensure the satisfaction of housing needs, as one of the basic human needs. A legal entity does not have such need and therefore cannot validly conclude a tenancy agreement under the Civil Code as a lessee.[216]

In the event that a legal person enters into a tenancy agreement under the specific provisions of the tenancy, it does not mean that such an agreement would be

[216] The judgment of the Supreme Court of 21st January, 2011, file number 26 Cdo 2080/2009.

automatically void. The treatment of such agreement would, however, be governed by the provisions of a lease under § 2201 of the Civil Code.[217]

Generally, **the lessee** may be any natural person (assuming that this person has capacity to enter into the lease). In some cases, the Civil Code makes the existence of a tenancy relationship conditional on a specific position of a lessee. This situation arises for example with the tenancy which is agreed upon for the period of a providing a given service. Article § 2297, second sentence establishes that the tenancy can be arranged for the period of work the lessee performs for the lessor. In fact, it doesn't have to be always the performance of employment. The tenancy may also be linked to work arrangements other than the labour contract.[218]

If the apartment in which the lessee resides is let on lease, the lessor does not have the right to terminate the lease due to a change in ownership. Contradictory provisions are not taken regard of (§ 2224).

- **Which persons are allowed to move in an apartment together with the tenant (spouse, children etc)?**

The lessee is within his rights to admit any person into his household. If a new member is admitted into the household, the lessee informs the lessor without undue delay of the change in the number of persons living in the apartment. Should he fail to do so within two months of the change, it is to be considered as a serious breach of his duties.

The lessor may reserve the right to approve the admitting of a new member into the lessee's household. This does not apply in case of close persons and other cases warranting special consideration. The lessor's consent with admitting a person other than close as a member of the lessee's household must be given in a written form.

The lessor is within his rights to request that only such number of persons that is appropriate to the size of the apartment live there, in order to make sure all of them live in standard comfortable and sanitary conditions.

Should the number of persons in the lessee's household decrease, the lessee informs the lessor of this fact without undue delay.

- **Changes of parties: in case of divorce (and equivalents such as separation of non-married and same sex couples); apartments shared among students (in particular: may a student moving out be replaced by motion of the other students); death of tenant**

- **Is it possible, and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?**

In the event the lease agreement is concluded between the lessor and a number of other persons, they will become co- tenants in the apartment. A person who, with the consent of the other tenants, accedes to the agreement will also become a co-tenant.

[217] See Jiří Švestka et al., *Občanský zákoník I. §1–459. Komentář* (Praha: C. H. Beck, 2008), 1787.
[218] See Jiří Švestka et al., *Občanský zákoník I. §1–459. Komentář* (Praha: C. H. Beck, 2008), 1789.

That which applies to a tenant also applies to co-tenants, unless the law stipulates otherwise.

Co-tenants have the same rights and duties.

- **Subletting: Under what conditions is subletting allowed? Is subletting being abused e.g. with the aim of circumventing the legal protection of tenants (when the tenant is offered not an ordinary lease contract but a sublease contract only)?**

The lessee may sublet a part of the apartment provided that he resides in the apartment on a permanent basis; this is not subject to the lessor's consent.

In the event the lessee does not reside in the apartment on a permanent basis, he may sublet the apartment or its part only with the lessor's consent.

The request for consent with the sublease as well as the consent itself must be given in written form. If the lessor does not give a reply within a one month period, it is understood that the consent was given. This does not apply if sublease was prohibited in the lease agreement.

Should the lessee sublet the apartment or its part to a third party in violation of the provisions of the law, it is considered a major breach of his duties.

Sublease is terminated with the discharge of the lease agreement at the furthest.

- **Duration of contract**

- **Open-ended vs. limited in time contracts**

  - for limited in time contracts: is there a mandatory minimum or maximum duration?

- **Other agreements and legal regulations on duration and their validity: periodic tenancies ("chain contracts", i.e. several contracts limited in time among the same parties concluded one after the other); prolongation options; contracts for life etc.**

The defining element of the lease agreement is its temporary character. Courts were considering the issue whether it is possible to arrange a lease for the duration of an employment contract. The court has evaluated such contracts as a contract arranged for a fixed period. Time period does not have to be stated in the contract. Then the contract is concluded for an indefinite period.

According to the Civil Code, should the parties not agree on the life of the agreement or the day of termination of the lease, it is a perpetual/open-ended lease. Should the

parties agree on a lease period longer than 50 years, it is considered a perpetual lease with the provision that in the first 50 years the lease can only be cancelled for reasons agreed on in the contract and in a specified period of cancellation.

- **Rent payment**

  - In general: freedom of contract vs. rent control

- Rent control: how is it legally framed; when does it apply; who carries it out; what are the consequences when the parties agree on an excessive rent

The amount of rent is a matter of contractual agreement. Rent control in the Czech Republic has now been fully abolished; the parties are therefore free to agree on the amount of rent. Should they not agree on a specific amount of rent, the lessor is entitled to an amount of rent that is common for a newly concluded similar lease of a similar apartment in the locality at the time the agreement was concluded.

Usual rent is understood as rent at market value, which should reflect rent paid for leases of analogous properties in similar circumstances. The value of the property and the manner of its use are not the only criteria which need to be taken into consideration when determining usual rates of rent. In determining the rate, it is necessary to consider the purpose of the whole contract as a whole. The period of lease and the duty of the lessee to repair the leased property can be of crucial importance.[219]

The lessee is required to pay rent at regular intervals. It is possible, however, for the parties to agree on a lump sum payment of rent (especially in cases of short-term lease, e.g. lease of diving equipment over the weekend). Unless the parties arrange otherwise, it is understood that the rent is paid for one month.

According to the Civil Code it is possible to question agreements on excessively high rate of rent either by recourse to the legal institution of usury or the excessive reduction. § 1796 of the New Civil Code declares a contract invalid if during negotiations one party had abused circumstances of distress, inexperience, mental weakness, anxiety, or improvidence affecting the other party and let itself or somebody else be promised or given benefits whose asset value is in gross disproportion to the consideration.

The legal construction of excessive reduction will apply in situation when the parties comply with mutual obligations, but performance of one of the parties is in gross disproportion to that of the other party. In that case the aggrieved party may seek cancellation of the contract and reinstatement of the relationship, unless the other party offsets disparities in performance with respect to usual market prices at the time and place of signing the contract. This provision shall not be invoked if the disproportion between mutual renditions results from facts the other party did neither know nor was not required to know. The request for cancellation of the contract and reinstatement will have to be filed within a year following inception of the contract, otherwise the right will lapse.

[219] Jiří Švestka et al., *Občanský zákoník II. §460–880. Komentář* (Praha: C. H. Beck, 2008), 1746.

- Maturity (fixed payment date); consequences in case of delayed payment

Under the Civil Code, the lessor who has met all contractual and legal duties will be able to demand from a lessee who is overdue with payment of monetary debt an interest on late payment unless the lessee is not responsible for the delay. The rate of interest on late payment will be set by government order. Where parties fail to provide for the rate of interest on late payment, this order will be applied (§ 1970 NOZ). The rate of interest can thus newly be specified by an agreement of the parties.

- May the tenant exercise set off and retention rights over the rent payment? (i.e. the tenant with holding the rent or parts of it when the landlord does not respect his contractual duties, e.g. does not repair a defect);

-May claims from rental agreements be assigned to third parties (i.e. may the landlord assign his rent claim to a bank?)

- May a rent payment be replaced by a performance in kind (e.g. reparation, renovation)? Does the tenant have a statutory right to this effect? Could a lien of the "tenant-contractor" create problems in that case? (a lien is a statutory right of a contractor to ensure his being pai d for his performances, e.g. improvements to the house, e.g. § 648 BGB)

- Does the landlord have a lien on the tenant's (movable) property in the house (Vermieterpfandrecht as in § 562 BGB, which functions as a guarantee for the payment of the rent by the tenant)? If yes, what is the scope of this right? How is it enforced?

In accordance with § 2217 rent is to be paid at the agreed rate. Should the rate not be specified, it shall be paid at a rate that is usual at the time of the lease contract with regard to rents for analogous properties in analogous circumstances.

The second section of this paragraph then explicitly (unlike the previous legal regulation) regulates the issue of payment of rent in forms other than pecuniary (should the rent as agreed by the parties be non-pecuniary, the value of the provided rendition expressed in money is decisive - § 2217 par. 2).

Should a lease contract signed after 1.1.2014 not include provisions concerning the due date of the rent, the New Civil Code specifies that the rent is payable monthly in arrears.

The Civil Code does not envisage the lessor's legal right of lien. In § 2234, it only gives the lessor the right to recover debt by means of retention of movables belonging to the lessee which are in the leased premises. The 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.

The Civil Code generally bases the possibility of non-payment of rent on the same principles. According to § 2208 of the Civil Code, if the lessee reports a defect of the object of lease properly and in time to the lessor, and should the lessor not rectify the defect without undue delay resulting in the lessee's difficulty to use of the property, the lessee is given the right to proportional reduction in rent. Alternatively, he or she may perform the repair on his or her own and subsequently claim compensation for the accrued costs. Should the defect complicate the use in a fundamental way or make it completely impossible, the lessee has a right to remission of the rent, or he or she may terminate the lease contract without a notice period.

The lessee will be entitled to a reduction or remission of rent only if the lessor does not rectify the defect of the subject of lease despite being obligated to do so by law. The Civil Code also imposes a duty of notification on the lessee. Should the lessee not exercise his or her right for a proportional reduction in rent or the right for full remission of rent within six months as of discovering or being able to discover the defect, the court will not adjudge reduction or remission of rent if the lessor objects on the grounds of expiration of the claim (§ 2208 section 3 of the Civil Code).

The Civil Code differentiates between a defect which makes the use of property difficult, and a defect which makes the use completely impossible. The rights of the lessee to a right for proportional reduction and the right to withdrawal from the lease contract without a notice period are dependent on the nature of the defect.[220] According to section 2 of § 2208 of the Civil Code, the lessee also has a right to charge for what he or she can claim from the lessor according to section 1, up to the sum amounting to monthly rent; or up to the sum amounting to the whole rent, if the lease period is shorter.

The Civil Code includes a special regulation for *fruendi* lease. As with the general lease, in the case of *fruendi* lease, the New Civil Code differentiates between defects of various gravity relating to the property, which give rise to different claims of the tenant. According to § 2337 section 1, should the leaseholder not rectify a defect he is obliged to rectify without undue delay, and this causes the revenue from the leased property to drop below half of the usual amount, the tenant farmer has a right to a reduction in ground rent. Should the tenant farmer rectify the defect at his own expense, he has a right to be reimbursed for these expenses.

If the defect fundamentally complicates or makes it impossible to benefit from the leased property in such a way that the tenant farmer can only achieve minimal revenue, he or she has a right to full remission of the ground rent or termination of *fruendi* lease without a notice period (§ 2337 section 2).

Clauses on rent increase

- **Open-ended vs. limited in time contracts**
- **Automatic increase clauses (e.g. 3% per year)**
- **Index-oriented increase clauses**

[220] It is understood that both remittance of the rent and reduction in rent is related to the period when the lessee could not make use of the property (at all or with difficulty). Kare Eliáš et al., *Nový občanský zákoník s aktualizovanou důvodovou zprávou a rejstříkem* (Praha: Sagit, 2012), 857.

The legal regulation of rent increase and payments for services provided with the use of apartment is based on following principles. The Civil Code regulates the institute of rent and other payments in provision § 2246 *et. seq*. According to § 2246 section 1 the parties of the lease agree on a fixed sum. If the contract does not stipulate otherwise, the law sets a refutable legal presumption according to which it is understood that rent is concluded for one month. Agreement on the rent will not be a necessary element of the contract under the Civil Code. Should the contract not include the exact rate of rent or a method of its determination, the lessor will have the right to ask rent at rates usual at the time and place for a newly concluded rent of a similar apartment under similar contractual conditions (§ 2246 par. 2 of the Civil Code).

Provision § 2248 gives the parties an opportunity to agree on a possibility of yearly rent valorisation. In case the parties fail to incorporate such agreement in the contract or expressly exclude the possibility of rent increase, the lessor may propose in written form an increase in rent. The lessor may propose an increase in rent up to the amount comparable to the rent usual at the given place if the proposed increase, in addition to rent modifications within the last three years, does not exceed twenty per cents.[221] Any proposal made before expiration of the twelve month period in which the rent was not increased, or one which does not include the rate of rent and does not substantiate fulfilment of conditions of this provision, will not be taken into consideration. On the basis of § 2249 section 2, the procedure for determining the rate of a comparable rent that is usual in the given place is specified by a special executive regulation.

If the lessee agrees with the proposal for an increase in rent, he or she will pay the new rate beginning with the third calendar month after the formulation of the proposal. Should the lessee elect not to respond positively in writing to the lessor within two months following delivery of the proposal, the lessor has a right to propose within another three month period that the rate be determined by court. Proposals submitted after the expiry of this period will not be considered. On the motion of the lessor the court will determine rent up to the amount, which is usual at the time and place effective on the date of submitting of the proposal to the court. The same procedure will be applied when the lessee proposes a decrease in rent.

The Civil Code also considers cases, in which the lessor performs such construction works during the course of the lease relationship which permanently improve the utility value of the leased apartment or the overall living conditions in the house, or result in permanent savings in energy or consumption of water. If the lessor incurred expenses[222] for the above mentioned purposes, he or she can agree with the lessees on a raise in rent, but only to the amount of ten per cent of the yearly expenses. Should more than two thirds of the lessees agree to the proposal, the increased rent applies also to the remaining lessees.

If there is no agreement as per section 1, the lessor can propose a substantially lower increase – only 3.5 per cent of the incurred expenses. The law in this case

[221] The limit to increase in rent at 20% as per last three years is set especially to prevent luring lessees by a rent which is significantly lower than usual rents at the given place only to rapidly increase it afterwards. Karel Eliáš et al., *Nový občanský zákoník s aktualizovanou důvodovou zprávou a rejstříkem* (Praha: Sagit, 2012), 856.

[222] 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).

envisages a presumption that the expenses have been used purposefully. Proposal which does not include the rate of rent or does not substantiate fulfilment of the conditions following from this provision will not be taken into consideration (§ 2250 of the New Civil Code).

Due date of the rent and payments for services related to the use of apartment is dependent on arrangements between the lessor and the lessee. Should the contract not include an agreement on the due date, § 2251 will be applied, according to which the lessee pays rent in advance for every month or at other agreed intervals, at the latest on the fifth day of the relevant payment period if a later date had not been arranged. Advance payments and charges for services provided by the lessor are paid together with the rent.[223]

In case a dispute should arise between the parties concerning rent in arrears and the parties prove to be unable to agree on its payment, it will not be possible to repudiate the lease on the basis of non-payment of rent, should the lessee deposit the rent in arrears or its disputed part to notarial custody and inform the lessor about that fact.

- **Utilities**
  - **Describe the usual kinds of utilities (e.g. basic utilities like the supply of water, gas and electricity vs. additional utilities, i.e. services such as waste collection) and their legal regulation**
  - **Responsibility of and distribution among the parties:**
    - **Does the landlord or the tenant have to conclude the contracts of supply?**
    - **Which utilities may be charged from the tenant?**
    - **What is the standing practice?**
  - **How may the increase of prices for utilities be carried out lawfully?**
  - **Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?**

Parties will agree which performances concerning the use of the apartment or related services will be provided by the lessor. In the event such agreement is missing, the lessor will provide the necessary services throughout the duration of the lease.

Necessary services are understood as water supply, sewage collection and disposal including septic tank cleaning, heating, garbage collection, lighting and cleaning of the shared areas of the house, providing for reception of radio and TV broadcasting, chimney sweeping, and lift servicing.

[223] At the same time the lessor cannot demand other fulfilments from the lessee, either in the form of deposit or otherwise, nor a payment of the rent through a cheque bearing a date or by similar means. (§ 2251 section 2 of the New Civil Code).

The landlord and tenant are obliged to expressly state which supplies are arranged by the landlord and which are to be arranged by the tenant.

Itemization of prices and settlements is specified in implementing regulations. If the landlord provides supplies of utility services, he is obliged to charge all the cost on services according to special law (act no. 67/2013 Coll.). The regulations of service supplies providers are adopted by several special law and controlled by the Energy Regulatory Office.

The parties are required to agree on a method of itemization of prices and settlements for other potential services. The method of itemization must be determined before the service is rendered.

If the contract on supplies of utility services between the lessee and the utility services company is followed, a disruption of supply by the external provider or the landlord is not possible even in particular if the tenant does not pay the rent.

- **Deposit:**
  - **What is the legal concept (e.g. is the deposit an advance rent payment or a guarantee deposit to cover future claims of the landlord)?**
  - **What is the usual and lawful amount of a deposit?**
  - **How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant?)**
  - **What are the allowed uses of the deposit by the landlord?**

The Civil Code introduces in § 2254 an institution of deposit. Under this provision the parties can stipulate that the lessee gives the landlord a financial deposit which ensures that he will pay the rent and meet other obligations under the lease. The deposit shall not be more than six times the monthly rent. At the end of the lease the landlord will have the obligation to refund the deposit to the tenant; possibly the lessor will counterbalance a sum of money which the lessee owed to him on rent. The lessee shall be entitled to the interests on the deposit at least at the statutory rate.

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

The usual and lawful amount of deposit is one months´ rent. The landlord is free in disposal with the deposit. He is not obliged to return the amount of deposit together with interest.

At the end of the lease the landlord will have the obligation to refund the deposit to the tenant; possibly the lessor will counterbalance a sum of money which the lessee owed to him on rent. The lessee shall be entitled to the interests on the deposit at least at the statutory rate.

- **Repairs**

- Who is responsible for what kinds of maintenance works and repairs? What kind of repairs or works may lawfully be assigned to the other party (especially the tenant)

The basic duty of the landlord is to hand an apartment over in a suitable condition for proper use (aesthetically, hygienically cf. Court decision R 14/78). The parties may, however, agree that the flat is handed over without the necessary improvements and that the tenant is permitted to execute the necessary repairs - for example, because of his/her skill. In return, the tenant will receive a discount on rent.

Generally, a tenant cannot carry out any construction work in the apartment without the landlord´s consent. The landlord is not obliged to grant him any permission. In the opposite situation (the landlord wants / needs to perform repairs) the landlord must have the tenant´s consent, but the latter may refuse only when a compelling reason (typically an illness) occurs.

Minor home repairs are required to be done - unless otherwise agreed - by the tenant. These repairs are not defined by 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) does not belong to minor repairs.

• Connections of the contract to third parties

- Rights of tenants in relation to a mortgagee (before and after foreclosure)

In case of change in ownership of the apartment, the purchaser enters into the rights of the landlord. He has no right for this reason to terminate the contract (nonetheless an agreement is possible). In this case, the tenant (not the landlord) has the right to terminate the lease contract. If the damage of the dwelling happens (e.g. due to building collapse, or an explosion of gas) the lease expires. If the lease is terminated, then three months before the expiry the tenant must allow a free entry to the landlord and third parties for inspection. The possible establishment of a mortgage does not affect the rent.

6.5 Implementation of tenancy contracts

• Disruptions of performance (in particular “breach of contract”) prior to the handover of the dwelling

Regulation of the Civil Code states: „The lessor is obliged to handover the flat to the lessee in a condition suitable for proper usage and provide the lessee undisturbed execution of his/her rights of using the flat.” This regulation deals with a special alteration of the obligation of the lessor according to the Civil Code. The object of the

lease, that is a flat, should be in a useable condition at the time of handover, and the lessee should not be disturbed during its usage. The mentioned regulation is mandatory with the exception of § 2236 section 2 of the Civil Code, which allows contractual deviation. § 2236 section 2 admits a contractual agreement to handover the flat in an inappropriate condition.

The object of the lease must be handed over in a condition enabling usage for a contractual or usual purpose. It is primarily a factual suitability[224] (e.g. functionality of flat) and legal (e.g. meeting the requirements defined by legislation on flats). If the flat is supposed to be suitable for a proper usage it must be suitable for living. The lessor is obliged to ensure the lessee complete and undisturbed rights connected with their legal position and flat usage.

- **In the sphere of the landlord:**

  - Delayed completion of dwelling

  - Refusal of handover by landlord (in particular: case of "double lease" in which the landlord has concluded two valid contracts with different tenants)

  - Refusal of clearing and handover by previous tenant

  - Public law impediments to handover to the tenant

The regulation of the Civil Code enables contractual agreements about a flat handover in a condition unsuitable for a proper usage. In such a case the lessee and the lessor mutually define their rights and duties resulting from such a situation. These include in particular the amount and the manner of reimbursing expenses of executed repairs. As a part of an agreement between the lessee and the lessor, the following facts should be specified:

- repairs executed by a lessee,
- relations connected with the building code,
- the way of ensuring meeting the requirements of building management,
- the amount of expenses for executed repairs,
- the manner of paying for the expenses,
- the procedure in case of violating the contract etc.

The question that remains is how to deal with a situation where the repairs were made but without previous agreements specifying mutual rights and duties at the handover of the flat. In this case the mutual rights and duties would be judged

[224] NS R 14/78 – p. 127: User has a right for receiving sanitary and aesthetically satisfactory flat, and on the contrary after the end of usage and after emptying the flat the user is obliged to handover the flat in such condition corresponding their duties to do little repairs and look after an usual keeping, in both cases (while handing over by the lessor as well as its emptying after the ease of usage), there must be freshly painted, at least a basic coat.

according to unjust enrichment provisions. This would be the case of an increase in the value of the flat[225].

The agreement on repairs done by a lessee excludes, without doubt, a process according to the regulation of the Civil Code. On the basis of this regulation, the lessee is entitled to rescind the contract for unsuitability of a rented object towards a contractual or ordinary usage.

- **In the sphere of the tenant**
    - **refusal of handover by tenant; insolvency of tenant**
    - A lessee has a right for an adequate rent reduction for the period until the lessor, after lessee's notice, repairs in the flat or a house the problem causing significant or lengthy usage problems of these premises. The lessee also has a right to adequate rent reduction when the lack of services connected with the flat usage or their provisions, and as a result of these the usage of the flat was affected.
    - The regulation commented above concerns rights of lessees and rent reductions and also the right of lessees for a reduction of expenses connected with the rent of the flat. The lessor is obliged to handover the object of the lease in a condition suitable for proper usage. The lessor is also obliged to ensure full and undisturbed execution of rights for their lessees. In a situation these two conditions are not satisfied, the lessee has a right to a rent reduction. The subjective reasons for the situation are irrelevant. We do not distinguish between the right not to pay the rent and the right for a rent reduction. Legislation concerning rents allows, under the adequate conditions, the lessee not to pay any rent or payments for services connected with the flat usage. Nevertheless this is a peculiar situation, the flat would be mainly used at least as furniture storage. It is necessary that the right for a rent reduction and payments for services connected with the flat usage were claimed by the lessee[226].
- **Disruptions of performance (in particular "breach of contract") after the handover of the dwelling**

- **Defects of the dwelling**

- Notion of defects: is there a general definition?

- Examples: Is the exposure of the house to noise from a building site in front of the house or are noisy neighbours a defect? What about damages caused by a party or third persons? Is the occupation of the house by third parties such as squatters considered as a defect in the legal terms?

[225] Michaela Zuklínová, Pavla Schödelbauerová, *Nájemní smlouva, zvláštní ustanovení o nájmu bytu. § 663–§ 719 občanského zákoníku* (Praha: Linde, 2012), 134-135.
[226] J. Švestka et al., *Občanský zákoník II. §460-880. Komentář*. 1st edition (Praha: C.H.Beck, 2008), 1866.

- Discuss the possible legal consequences: rent reduction; damages; "right to cure" (to repair the defect by the landlord); reparation of damages by tenant; possessory actions (in case of occupation by third parties) what are the relationships between different remedies; what are the prescription periods for these remedies

The right for an adequate rent reduction may result from:

1) The problem of worsening conditions of usage – the assumption of a rent reduction is the worsening state of a flat, influencing its usage. These are problems concerning worsening conditions of flat or house usage, that means also the facilities. There may be situations when the lessee will not be able to fully use the flat or common parts of a house or its facilities. To claim a rent reduction these must be problems of a permanent nature. The right for rent reduction can be claimed only for the period in which the problem subsisted. If a lessee claims his/her right, the right for the reduction expires. The problems must significantly worsen flat usage (e.g. mould or leaking into the flat). The emergence of a right for rent reduction requires that the quality of the unit's enjoyment worsens to a certain degree[227]. The type of the problem, the extent of possible usage of the flat, the duration of limited usage and the like would be inspected.

   The intensity of work also influences the extent of a rent reduction and is always examined by a court for the reduction amount[228]. The right for a reduction is created in cases of irreparable problems. The most important factor is that the flat usage worsens for the lessee, and so it is a case of a breach of contract. If the irreparable elements are mentioned during the negotiation of contract, the lessee has a right to back out of the contract according to the Civil Code. In a situation the flat would be permanently excluded from usage, the obligation of the lessor would cease as a consequence of additional inability to provide. A condition for being able to claim the rent reduction is a previous notice to a lessor. The lessee is not obliged to caution the lessor that, in case of no repairs, they would claim their right for a reduction. That arises directly from the act.

2) No provision of utilities connected with a flat usage – a one-time omission of a service provision is not sufficient (e.g. no heating service, no running water) or defective provision (water is not drinking water, insufficient heating), but a

[227] R 14/1964: Regarding question asking if and under what condition has a lessee right for a rent reduction because their flat was equipped with central heating and a supply of hot water or a part of the flat was supplied heating (hot water) constantly under the heating limits, or none, it is important to state at first that the right for a rent reduction claimed based on above mentioned reason is legitimate. Unlike the claim for a reduction for heating payments as a claim for liability for defective work, the claim for a rend reduction is supported of the same act according to which the assumption of this claim is a fact that lessee due to these exceptional situation or connecting problems could use rented objects only in a limited way.

[228] NS R 14/64: While assessing the extend of reduction it is important to consider all facts and circumstances relevant to the reduction amount in such a way, which in a total rate ratio respond to a assets loss the lessee experienced during the inability to use the flat fully.

certain duration is required. The right for a rent reduction is claimed during the whole period of defective supply. Such situation is not a question of paying for the provision of fulfilment or not, but how much the defect reflected in the lessees' rights and a proper usage of the flat. It is based on individual cases causing the limits. Unlike the rent reduction based on the problems in a flat or a house, in this case it is not necessary to give the lessor notice.

3) Building work in a house – significant or long-term flat usage worsening is caused due to building work; the lessee has a right to claim adequate rent reduction. Building work is understood as e.g. renovation of an elevator, wall insulation etc. The lessor does not need to have the building work on the house permitted by the lessees. Such permission is needed only for building work on flats. Building work however does not equal maintenance work. Maintenance work only ensures a good building condition of a flat to prolong its usability and prevent its devaluation. The right for a reduction lasts as long as the worsening of usage of the flat[229].

The lessee has the right to a service price reduction. Such a reduction is provided to the lessee only in the case the lessor provides this service defectively or does not provide it at all. This must cause a worsening usage of flat. Defects or delays must be of a more permanent character. It is not a case of a one-time omission of a service, which can be excused. The claim for a rent reduction may arise independently of the claim for reduction for payments of provided services or along with it. According to the general regulations this does not touch a right for a compensation of damage[230].

Civil Code mentions 2 deadlines:[231]

1) limitation period – law does not define any consequences with the expiration of this period,
2) preclusive period – vain expiration of this period results in a cease of right.

A right for rent reduction or a reduction for service payments connected with the flat usage ceases if it is not pursued up to 6 weeks after removing the default. With regards to the monthly maturity of rent, deadlines for claiming the right run independently for each month[232]. Assertion of the right is a unilateral legal act and it is necessary to address it to the lessor. Law does not dictate a form but suggests a written form. The written agreement is recommended due to the burden of proof carrying by the lessee.

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[229] J. Švestka et al.,*Občanský zákoník II. §460-880. Komentář. 1st edition* (Praha: C.H.Beck, 2008), 1864 - 1867.

[230] Michaela Zuklínová, Pavla Schödelbauerová, *Nájemní smlouva, zvláštní ustanovení o nájmu bytu. § 663–§ 719 občanského zákoníku* (Praha: Linde, 2012), 194.

[231] The law distinguishes between two periods to execute a right we hold. The first one called a preclusive period, the second one limitation. In the first case the right must be executed otherwise it becomes extinct (preclusive period). If the right isn´t executed during the limitation period, it doesn´t extinct, but becomes *a natural obligation* (it can´t be sued, but if it is executed, it doesn´t cause an unjust enrichment).

[232] The decision of the Supreme court, file number 26 Cdo 2716/2005: Not applying the right for a rent reduction in a 6 month period ceases the right for a reduction of these months but not a claim for a reduction of expenses of the months that follow.

If the right for a reduction did not expire (due to vain expiration above stated preclusive 6-month period), the lessee has a right after the claim for a 3-year period of limitation. This period may serve the lessee for claiming their right for a reduction by legal action. In a legal proceeding the lessee proves the existence of defects; worsen conditions for a flat or a house usage, and a causal link. The lessee themselves set the price reduction, which should be confirmed by a court, during the legal proceeding. Every case is judged according to concrete facts[233].

- **Entering the premises and related issues**
    - Under what conditions may the landlord enter the premises?
    - Is the landlord allowed to keep a set of keys to the rented apartment?
    - Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

Without the consent of the tenant, the landlord is not entitled to enter the apartment. The Civil Code therefore contains provisions that allow the landlord entry into the apartment only for serious reasons and with the participation of the tenant. This includes the following cases: the landlord is entitled to request access to the apartment in order to check whether the lessee uses the thing in a proper manner, the tenant must allow the landlord, after written notice, installation and maintenance of equipment for the measurement and control of heat, cold and hot water, and the deduction of the measured values. The number of checks isn´t adopted but if the landlord misuse this right it can be considered as a harassment.

The tenant is also required to provide access to additional technical equipment, if they are a part of the apartment belonging to the landlord tenant must allow the landlord make repairs.

The landlord is also entitled to enter the apartment during the last three months of the contract duration, while showing the apartment to new possible tenants. Also this right is connected to the participation of the actual tenant.

The landlord is allowed to keep a set of keys to the rented apartment. The landlord cannot legally lock a tenant out of the rented premises if the tenant e.g. does not pay the rent. This is this because of the tenant's protection of possessions while they are inside the dwelling. The tenant cannot be locked out for not reason. This has very important implications (the tenant could 'block' the dwelling, and impede the landlord from accessing his rightful property). If he acts like this, it can be considered as a breach of contract and he can be sued (even by the criminal court (see section on squatting).

- **Rent regulation (in particular implementation of rent increases by the landlord)**

[233] J. Fiala, M. Kindl et al., *Občanský zákoník. Komentář*. 2nd volume, 1st edition (Praha: Wolters Kluwer, 2009), 197.

The regulation of rent for apartments has a long tradition in the Czech territories, which is related to the fact that the need for housing has traditionally been considered one of the basic essentials of life, and also due to the Communist party's decades-long rule in Czech (and Czechoslovak) Republic, which promoted social aspects limiting contractual freedom and the autonomy of will of the lessor and the lessee. The initial Czechoslovak legislation regulating rent can nevertheless be encountered much earlier. For example in 1918 a ministerial order no. 83/1918 Coll., on the protection of lessees was issued by the Minister of Social Security and the Minister of Justice consulted with other concerned ministers, which imposed a ban on unilateral increases of rent and specified in which cases rent could be raised without an agreement of both parties.

For the purpose of meeting the goals of this project it is hardly necessary to consider in detail all individual legal regulations which have historically governed this area of law. We shall therefore focus on the evolution of the legal regulation of rent since 1964, when the decree no. 60/1964 Coll., on payment for use of apartments and services related to that use was adopted. For the purpose of calculating payment for use of an apartment, apartments were divided into four categories according to the method of heating and appurtenances.

After 1990, the legal regulation of rent was governed by provision § 696 of the Civil Code according to Act no. 509/1991 Coll, amending, supplementing and regulating the Civil Code. In conformity with this provision, the method of calculation of rent, payments for the use of apartment, and the manner of their settlement, as well as cases in which the lessor could unilaterally raise the rent or payments for the use of apartment or change other provisions of the contract, were specified by a special legal regulation.

This was the decree of 1964, which was in force until 1993 when it was replaced by decree no. 176/1993 Coll., on rent and payments for use of apartments, which took effect as from 1.1.1994. This decree signalled the future development of legal regulations of rent. The 1993 Decree contained several fundamental differences from the 1964 Decree. It was applied to a smaller range of lease relationships, since, in principle, it only limited lease relations which had been created before it came into effect. Lease relationships established after its entry into force were, principally, subjected to rules of market economy, based on free agreement of the parties.[234] A fundamental difference from the previous legal regulation can also be traced to the fact, that the decree did not set a method for calculating rent, only its maximum rate.

The decree was repealed by the ruling of the Constitutional Court effective as of 1.1.2002.[235] The Constitutional Court determined that the Decree was unconstitutional due to discrimination of some owners of apartments subjected to rent regulation, who were required to abide by the stipulations of the decree. According to the article 4 par. 3 of the Charter of Fundamental Rights and Freedoms, legal restrictions on fundamental rights and freedoms must apply the same in all cases where the specified conditions are met. According to the Constitutional Court, this rule was not observed since some categories of owners were forced to abide by substantial restrictions of their ownership rights, while others were not, and this

[234] According to § 2 par. 2 letter b) of the decree, the price control did not apply to apartments leased to a new lessee; with exception of transfer of lease by law, exchange of apartments, apartment compensation, and service apartments of professional soldiers.
[235] The judgment of the Constitutional Court of 21st June, 2000, file number Pl. ÚS 3/2000.

restriction was pursued by the decree in a way which had hardly anything to do with observance of the nature of ownership rights.

The situation ensuing from the cancellation of Decree no. 176/1993 Coll. was dealt with by using price assessments issued by the Finance Ministry of the Czech Republic, which were, however, also cancelled by the Constitutional Court. According to the rulings of the Constitutional Court, the price assessment issued by the Finance Ministry set up a code of conduct of the parties of a lease contract in a manner incompatible with the purpose of price control and which is reserved for regulation by law under conditions specified by the Charter, or is to be left to contractual freedom of the parties in conformity with the constitutional principle of autonomy of will of subjects of private law.[236]

The legal void left in the area of legal regulation of apartment rent previously covered by Decrees no. 60/1963 Coll. and subsequently no. 176/1993 was filled with the adoption of Act no. 107/2006 Coll., on unilateral rising of rent. The Act regulated the possibility of unilateral raise of rent and the maximum rate of its increase. Agreement between both parties was preferred, but in case of its absence the default provisions of law were to apply. The law came into force on 31.3.2006.

With respect to § 3 section 2 of this Act, the lessor was allowed to unilaterally raise rent once per year, beginning with the 1st of January, 2007 and then on every 1st of January or later, but never retroactively for a period of time which had passed since the 1st of January of a given year, unless the lessor and the lessee came to a different agreement concerning the change in rent. The notice of the lessor concerning a unilateral increase of rent had to come in written form and include the substantiation that the rate of rent was properly set on the basis of the maximum increase in the monthly rate of rent. The duty of the lessee to pay the rent was created on the day which was specified in the notice, but not before the 1st day of a calendar month following a 3 month period since the notice's delivery to the lessee. In this period, the lessee was entitled to file an action before the court and request invalidation of the raise in rent. The law was supposed to be in force until 31.12.2010. However, due to Act no. 150/2009 Coll. it was extended in selected towns and municipalities[237] until the end of 2012.

- **Ordinary rent increases to compensate inflation/ increase gains**

- Is a rent increase after renovation measures, e.g. upgrading the energy performance of the house, or similar lawful and dealt with in a special procedure?

- **Rent increases in "houses with public task"**
- **Procedure to be followed for rent increases**

[236] The judgment of the Constitutional Court of 20th November, 2002, file number Pl. ÚS 8/02.

[237] Specifically, it applied to apartments in Prague, in municipalities in the Central Bohemian Region with more than 9,999 inhabitants by the 1st January 2009, and cities of České Buďejovice, Plzeň, Karlovy Vary, Liberec, Hradec Králové, Pardubice, Jihlava, Brno, Olomouc a Zlín. The period in which unilateral increase in rent can be invoked ends on the 31st of December, 2012 (§ 3 section 1, quote from the law).

- **Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel [= rent statistics for a certain area])?**

- **Possible objections of the tenant against the rent increase**

The legislation of the level of rent depends on the law of obligations which came into force on 1 January 2014. Regulation of § 2246 states that the level of rent should be equal to similar ones on the day of the contract formation at the place usual for the rent defined by similar contractual conditions. If it is not stipulated by the parties, defining the rent level would not be an obligatory part of the lease contract. In case of a situation where the rent differs from the usual price, the Civil Code defines the procedure for its alteration. Rent would be negotiated for 1 month and its price would be fixed by the parties to contract (§ 2246).

The annual rent increase will also be the competence of the parties to contract. The rent increase proposal, according to the Civil Code clearly specifies formal and contextual conditions. In case the parties to contract do not stipulate the rent increase or do not directly exclude it, there may come a situation that a lessor suggests in written form a rent increase up to the level comparable to the usual rent in a certain location. This, however, is possible when a suggested increase applied in the last 3 years would not be higher than 20%. A proposal made sooner than 12 months after no rent increase, or proposal not covering the height of rent and not providing evidence of the following conditions of this regulation, such regulation would not be accepted[238]. Implementing legislation § 2249 section 2 would state detains and procedure for finding similar rent usual for a certain location. If the lessee agrees with the rent increase proposal, they will pay the increased rent starting with the third calendar month after delivery of the notice. If the lessee does not agree with the proposal (and does not voice within 2 months after the delivery of the proposal) the lessor has a right during the next 3 months to ask a court for setting the rent height. The court will not take into consideration a proposal (if suggested by a lessee) made after the expiration of this period. The court, based on the lessor's proposal, set the level of the rent. Regulation § 2249 section 3 states that the rent level set by court would be usual for time and location, and in force from the day of the proposal. The procedure is similar in case of the rent decrease[239].

The Civil Code also defines a possibility of a rent increase in connection with building work improving permanently the value in use of the let flat or a general comfort in the house. It also covers building work resulting in permanent water or energy savings. In that case lessor must arrange the work with lessees. According to regulation § 2250 section 1 it is sufficient to have consent of two thirds of lessees in the house for the

[238] Constitutional Court finding No. 117, volume 46: it is a decision of general courts to accomplish their basic function and initiate a proportional protection of subjective rights, and by law protected concerns in a way of not refusing legal action of lessees asking for setting the increased and rent referring to lack of legislation; it is not allowable for the court to refuse a decision justified by silence, ambiguity or deficiency of law; such a case would be a refusal of justice – *denegation iustitiae.*

[239] H. Nováková, *Nájemné, ceny služeb a způsob jejich rozúčtování* (Praha: Bova, Polygon, 2007).

rent increase. The rest of the lessees are obliged to follow such agreement. In a situation where it is not possible to obtain the approval of two thirds of lessees, the lessor has a right to suggest the rent increase based on the above mentioned reasons. The rent increase is equal to 5% of the money spent. Only supposing it served the purpose though. Regulation § 2250 section 2 states that if the suggestion does not set the height of the rent or does not prove meeting the mentioned conditions, it would be considered as ineffective. The court would not consider it.

Parties to contract fix the maturity of the amount rent by agreement. In case such an agreement would not be negotiated the rent would be due in advance for every month or any other period of payment defined in the contract. Only before the 5th day of the certain payment period (only in case that there was not set a later date). The lessor cannot ask the lessee to pay rent several payment periods in advance. It is forbidden for the lessor to demand other payments than rent from the lessee (it also refers to a form of payment, rent payments by a check with a later date or other similar way). Prepayments or service costs arranged by lessor are paid by the lessee together with the rent.

The lessor is obliged to provide a control of service fees for the last calendar year at the request of the lessee. The look is provided no later than 4 months after the statement period. Lessee has a right to make copies or notes for their own needs.[240]

In case he plans to carry out reconstruction or other changes in the apartment, the lessor carries a notification duty of no less than 3 months in advance of the commencement of work. The notification should include the expected date of commencement of work, an estimate of its duration, the length of a necessary period during which the apartment needs to be vacated and advice concerning the consequences of refusing to vacate. Should the lessee not declare to the lessor within 10 days since the delivery of the notification that he will vacate the apartment, it is understood as a refusal to vacate.

If the lessee refuses to vacate the apartment, the lessor can file a proposal at the court to have the apartment vacated; should he fail to file the motion within 10 days following the lessee's refusal, the right to request vacation of the apartment expires.

The lessee is allowed to carry out a change or reconstruction of the apartment or house exclusively with the consent of the lessor (Section 2263 par. 1). Should a need arise for a construction change in the apartment resulting from a physical handicap of the lessee or a member of his household or other people living in the apartment and if the lessor refuses to voice his consent with the changes without serious reasons, the court will substitute consent for the proposal to the lessee.

Had the lessee carried out changes in the apartment without the approval of the lessor, he is required to remove them at the end of the lease, except in cases when the lessor does not request it.

Should the lessee find the apartment a damage or a defect which need to be rectified without undue delay, he will immediately notify the lessor. Other damages or defects which prevent the usual use of the apartment will be reported to the lessor without undue delay.

[240] Michaela Zuklínová, Pavla Schödelbauerová, *Nájemní smlouva, zvláštní ustanovení o nájmu bytu. § 663–§ 719 občanského zákoníku* (Praha: Linde, 2012), 181-182.

- **Alternations and improvements by the tenant**
    - **Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?**
    - **Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?**
    - **Is the tenant allowed to make other changes to the dwelling?**
        - **in particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc)?**

o fixing antennas, including parabolic antennas

From January 1, 2014, construction and other changes to the apartment or house are regulated by Section 2259 *et seq*. of the New Civil Code. In accordance with these provisions the lessee is obliged to suffer a construction change of apartment or house or its conversion only in case it does not reduce the value of dwelling and can be implemented without causing major inconvenience to the lessee. Construction and other changes of the apartment must be suffered by the lessee also when the lessor is implementing them on the order of a public authority, or if a major potential damage is imminent. In other cases changes may be carried out only with the approval of the lessee.

- **Maintenance measures and improvements, in particular upgrading the energy performance of the house by the landlord**
    - **What kinds of maintenance measures and improvements does the tenant have to tolerate?**
    - **What conditions and procedures does a landlord who wants to make renovations need to respect (e.g. giving adequate [i.e. sufficiently long] notice; offer an alternative dwelling; offer a rent reduction to compensate for disturbances)?**

The lessor is required to repair damage or rectify defect in a reasonable period after notification by the lessee. Should the lessor fail to do so without undue delay and properly, the lessee may rectify the problem himself and request reimbursement for the incurred costs or else a reduction in rent, unless the damage or defect are not of substantial nature.

The Civil Code also covers situations, in which the lessee plans to vacate the apartment for a longer period of time (the law speaks of a period longer than two months). In that case he is obliged with accordance to Section 2269 to announce this to the lessor in time and also designate a person who throughout his absence will secure access to the apartment should an unavoidable need arise.

Household members

The lessee has a right to invite and take into his household whomever he chooses. The lessee is fully responsible for damages caused by these members.

Should the lessee accept a new member to his household, he will declare an increase in the number of persons living in apartment to the lessor without undue delay. Should he fail to declare this within two months after the day the change occurred, it is considered a serious breach of his duties (Section 2272).

The lessor can reserve the right for approval of accepting new members into the lessee's household in the contract. This does not apply in case of close persons or in other cases warranting special consideration. Written form is required for the lessor's approval of accepting a person other than close as a member of the lessee's household.

With accordance to Section 2272 par. 3, the lessor has a right to request that only such number of persons that is appropriate to the size of the apartment live there, in order to make sure certain of them live in standard comfortable and sanitary conditions. Practice yet needs to be established as to how many people (with respect to the size of the apartment) can be considered an adequate number.

- **Uses of the dwelling**
  - **keeping animals; smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside.**
  - **is there an obligation of the tenant to live in the dwelling?**

The lessee is allowed to have an animal in the apartment, unless this causes unreasonable inconvenience to the lessor or the other inhabitants of the building. Should the presence of the animal increase the costs of cleaning of the shared areas in the building, the lessee will reimburse the lessor for these costs (§ 2258).

The lessee may work or run a business in the apartment or house unless this causes increased strain on the building.

The lessee is not obliged to use the apartment. If he knows in advance of his absence from the apartment which is to last more than two months during which the apartment will be difficult to access, he will inform the lessor of this fact in a timely manner. He will also designate a person who, during his absence, will provide access to the apartment should that be necessary; if there is nobody available to the lessee for this purpose, the lessor will be that person.

- **Video surveillance of the building**

Is the surveillance of certain parts (e.g. corridors) of the building lawful and usual?

There are usually two approaches on video surveillance of the building. The first one admires that the financial losses caused by the vandals are lower due to the video surveillance. The other approach is warning on impermissible interference in humans privacy. The reasonable approach is a combination of both mentioned above. A

usage of video surveillance should be discussed with all owners and unanimously agreed. There is no reason for taking pictures of people entering individual apartments rather than the main entrance or the common areas.

Also the public law provisions must be fulfilled (e.g. a label with specific warning should be shown, The Office for Personal Data Protection has to be informed about the installation of a video surveillance equipment).

of table for e) Implementation of tenancy contracts

	Main characteristic(s) of tenancy type 1
Breaches prior to handover	no special regulation; adopted through general provisions of Civil Code; a *culpa in contrahendo* may occur
Breaches after handover	According to its relevance. A gross violation may result in notice.
Rent increases	According to Civil Code conditions (see article 2248) or according to a mutual agreement (possible conflict with good manners if to high e.g. 30% a year)
Changes to the dwelling	According to it relevance. e.g. decoration of apartment is permitted; wall breaking is forbidden; usually a permission of landlord is needed
Use of the dwelling	Not a duty, but could cause a fulfillment of one of notice reasons

6.6 **Termination of tenancy contracts**

Example of table for f) Termination of tenancy contracts

	Main characteristic(s) of tenancy type 1
Mutual termination	the most best form of termination (freedom of contract)
Notice by tenant	A three months' notice period
Notice by landlord	A three month notice period; right of tenant that the notice may be checked by the court (see art. 2290) Special provisions (e.g. end of tenancy contract must be written down etc.)
Other reasons for termination	- withdrawal (special conditions) - destruction of apartment

- **Mutual termination agreements**
- **Notice by the tenant**
  - **Periods and deadlines to be respected**
  - **May the tenant terminate the agreement before the agreed date of termination (in case of contracts limited in time); if yes: does the landlord then have a right to compensation (or be allowed to impose sanctions such as penalty payments)?**

- **Are there preconditions such as proposing another tenant to the landlord?**

Although tenancy relations are protected because tenants are weaker parties, it does not mean that the protection granted to them is absolute. The protection applies primarily to the unjust contract termination by the landlord. This does not apply to cases with relevant reason for tenancy termination by landlord (eg non-payment of rent, gross violation of good manners in the house, etc.) The tenant is protected primarily by the duty of landlord to mention the purpose of the notice. The tenant has the right to terminate the tenancy contract unilaterally even without giving any reasons.

Since the foundation of rental relation is a tenancy agreement, the general provisions of the Civil Code concerning termination of obligations will be used to define its termination. Contractual legal relationship may disappear – by fulfillment, agreement, offset, remission, resignation, notice or death of the debtor or the creditor. Concerning rents, an agreement, execution of the contract (elapsed time), withdrawal and notice are taken into consideration. Regarding the death of the debtor or the creditor, contractual relationship does not end but is transferred to the legal successor**.**

The agreement between the parties, conditioned by the law, is the first way to terminate a lease of an apartment. This is fully in line with the principles on which the rules of civil relations are based, in particular that these relationships are initiated and terminated in accordance with the will of their participants. The law requires such action in writing. A valid conclusion of the tenancy termination agreement therefore cannot occur only verbally or even be inferred - rent continues even if the tenant has permanently left the apartment and has moved the belongings and personal property out (and a transitional rent is not agreed) and the landlord is then entitled to the rent until there is a valid termination. The condition of agreement is a specified deadline of the tenancy termination. This deadline can be determined by a specific date, time period, or tied to a particular events occurring in the future. The parties may agree at any time without any time restrictions.

Notice of the tenancy contract may be given either by a landlord or a tenant. The position of the landlord, however, is disproportionately more difficult. While the landlord may give notice of tenancy termination only due to the reasons enumerated by the law, the tenant does not have to specify the reasons for a notice in any way. Written notice shall specify the deadline of the tenancy. Notice period shall not be shorter than three months and shall terminate at the end of the calendar month. The notice period begins on the first day of the month following the month in which the notice is delivered to the second party. If the tenancy is terminated by a notice, the landlord is not entitled to compensation and the tenant is not obliged to seek for a substitution.

- **Notice by the landlord**
  - **Ordinary vs. extraordinary notice in open-ended or time-limited contracts; is such a distinction exists: definition of ordinary vs. extraordinary (= normally related to**

- **Statutory restrictions on notice:**
    - **for specific types of dwellings, e.g. public dwellings; rental dwellings recently converted into condominiums(if there exists a special form of protection in this case as in German law) etc.**
    - **in favour of certain tenants (old, ill, in risk of homelessness)**
    - **for certain periods**
    - **after sale including public auction ("emptio non tollit locatum"), or inheritance of the dwelling**
- **Requirement of giving valid reasons for notice: admissible reasons**
- **Objections by the tenant**

Does the tenancy have "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?

The landlord may cancel the agreement without court approval if the tenant or those who live with him, despite previous written warnings, violate good manners in the house; the tenants grossly violate their obligations stated in the tenancy agreement, in particular by not paying the rent and not paying for services bound with the use of an apartment in the amount of triple monthly rent; if the tenant has two or more dwellings, except cases when he/she can not be fairly required to use only one apartment.

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- **Challenging the notice before court (or similar bodies)**
- **in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law**

- **Termination for other reasons**

- Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)

- Termination as a result of urban renewal or expropriation of the landlord, in particular:

- What are the rights of tenants in urban renewal? What are the rules for rehousing in case of demolition of rental dwellings? Are tenants interested parties in public decision-making on real estate in case of urban renewal?

If the tenant does not use the apartment or uses it only rarely without serious reasons; in the case of special purpose apartment or flat in a special purpose

dwelling and the tenant is not disabled. In other cases, the law requires court approval.

Written notice by the landlord has to be delivered to the tenant. The written notice must specify the reasons for a notice, notice period, an advice for the tenant on how to bring a lawsuit to the court within sixty days of action and challenge the validity of notice. Until recently a tenant could even legally demand a spare apartment, which had to be ensured by the landlord. This was eventually found as unconstitutional by the Constitutional Court.

The landlord may terminate the contract without the consent of the court when the landlord requires the apartment for himself/herself, his/her spouse, children, grandchildren, son-or daughter-in law or their parents or siblings; if the tenant ceased to work for the landlord and the landlord needs the staff flat for another tenant who will work for him; if it is necessary in public interest so that the apartment cannot be used or the apartment or house requires renewal, during implementation of which the flat or house cannot serve its purpose for longer time; if it is an apartment architecturally related to areas designated to operate a business or other entrepreneurial activities and the tenant or owner of the non - residential premises wants to use the apartment.

Tenancy arranged for a limited period automatically expires at the end of this period. Termination of a personal membership in a housing cooperative consequently means the termination of tenancy agreement. Another reason for the termination of tenancy contract is withdrawal from the contract under § 679, while the tenant has the option to terminate the tenancy agreement for defects in rented apartment causing health hazards even if the tenant knew about these defects at the time of conclusion of the contract.

6.7 **Enforcing tenancy contracts**

Example of table for g) Enforcing tenancy contracts

	Main characteristic(s) of tenancy type 1
Eviction procedure	a court decission must be issued. If the tenant doesn´t respect it. another decission must be issued. The executor makes the eviction
Protection from eviction	Just in case of bad medical status (gravity etc.)
Effects of bankruptcy	cannot be terminated by landlord after the declaration of bankruptcy due to the tenants delay in paying rent

- Eviction procedure: conditions, competent courts, main procedural steps and objections
- Rules on protection (“social defences”) from eviction
- May rules on the bankruptcy of consumers influence the enforcement of tenancy contracts?

If the tenant stays in the apartment after the expiry of the notice period, an eviction action shall be filed against the tenant and thus an issuing of court decision should be claimed in order to authoritatively impose the eviction by a court decision. If the

tenant still refuses to move out, then it becomes a matter of an executor, who is in charge on the basis of the above judicial decisions and allows the apartment to be opened by force, evicting things off, ensures physical departure of possibly present tenant and hands the apartment over to the owner, who installs a new lock in the door. Particular proceeding is a matter of an executor - he/she decides on different factual steps so that they are in accordance with the law and at the same time are the most efficient ones.

A writ of execution eviction includes not only leaving the dwelling by the mandatory and those who dwell in it by virtue of his/her rights and eviction of all things located there, but also making it available to the person authorized (handover of keys, removing barriers, etc.) so that a new tenant can dispose of the premises freely. Fundamentally, a bedridden tenant may be refrained from eviction as it is inacceptable due to his/her medical status, or a woman during puerperium[241] or in the latter 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 demonstrate a compliance with such conditions by showing a medical certificate. The tenancy agreement concluded by the debtor as a tenant cannot be terminated or withdrawn by the other party after the declaration of bankruptcy due to the debtor's delay in paying rent or other payments that occurred before the declaration of bankruptcy or deterioration of the debtor´s financial situation.

The eviction conditions and process are following: a successful eviction action; the tenant is not respecting it; a call for voluntary fulfillment of this obligation; if not, then an enforcement by the executor.

6.8 Tenancy law and procedure "in action"

Preliminary notice: To the extent that scientific sources are lacking, reporters are welcome to use any evidence (also newspaper articles, online sources, private interviews or even their own experience and opinion) in this section.
The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in this field ("tenancy law in action") is taken into account:

- What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?
- What is the role of standard contracts prepared by associations or other actors?
- How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?
- Do procedures work well and without unreasonable delays? What is the average length of procedures? Are there peculiarities for the execution of tenancy law judgments (e.g. suspensions of, or delays for, eviction)?
- Are there problems of fairness and justice? Are there problems of access to courts especially for tenants? What is the situation concerning legal fees, legal aid and insurance against legal costs?

[241] The first six weeks after the birth.

- How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)
- Are there “swindler problems” on the rental market (e.g. flats fraudulently advertised on the internet as rental offers by swindlers to whom the flats do not belong)?
- Are the areas of “non-enforcement” of tenancy law (such as legal provisions having become obsolete in practice)?
- What are the 10-20 most serious problems in tenancy law and its enforcement?
- What kind of tenancy-related issues are currently debated in public and/or in politics?

Tenant and landlord associations are organizations usually based on a voluntary principle. Their importance lies mainly in the activities of interest lobbies aiming in adoption of the housing issue acts, the creation of housing policy and further (but only marginally) as auxiliary and educational organizations. Municipalities and the Ministry of Regional Development played an important role in housing policy. Contractual parties generally use contracts prepared by a real estate agents. Their level varies depending on the professionalism of an agent. Among them, you can find contracts which are void in terms of law.

From the quantitative point of view, the number of lawsuits on housing is relatively large and enforcement proceedings are common. On the other hand, alternative dispute resolutions are not mandatory. The parties may agree to arbitration, but with restrictions that apply to consumers.

The average length of judicial proceedings in private legal 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 the Czech Republic is twice as long compared with Western Europe. Courts are too slow and no effective way of solving tenancy issues. It´s the better contracts preparation and proper tenant/lanlord choice to solve the lease contract issue problems.

Access to Courts is not restricted and verdicts are based on law. The amendment of the procedural law led to the obligation to ask the counterparty to an amicable solution. If no notice, then the parties shall bear their own legal costs by themselves. Otherwise, only unsuccessful party bears all the legal fees. The parties are not obliged to be represented by lawyers (and there is a sufficient number of them) in the dispute. The number of Czech lawyers has been continuously increasing in the last 15 years as well as the number of law firms.

There were 87 public companies that offer legal services in the Czech Republic at the beginning of July 2013. There were about a quarter less of them in 2002. The number of lawyers has reached 7687 and compared to 2002 has increased by more than a thousand.

In terms of decision-making in legal disputes, private jurisdiction is relatively consistent and therefore the conclusion of the dispute can be assumed with a great probability. It should be noted, however, that it is strongly in favor of the tenant.

Swindler problems almost do not appear. Weaknesses are in the quality of real estate brokers and their services, as well as in the quality of the contracts that landlords provide to tenants, and also in a low legal awareness of tenants.

Among the main problems of tenancy law are the following:

- Non functional market – which has been caused by rent control that is now abolished but existed in previous years
- Differences in economic development of regions
- The low quality and level of real estate agents services
- Low legal awareness of landlords and tenants
- Different level of agreements (the quality of the legal framework - eg. a draft downloaded from unknown web pages, with no warranty of quality or even validity)
- Large rental companies, which dictate price, quality and contract conditions in the regions
- Until recently, housing compensation (insufficiently sophisticated system of benefits, which is easier to exploit)
- Inability to agree on a shorter notice period
- Problems with non-payers
- Permanent residence and execution
- The structure of the housing stock
- Yet more support for home ownership by the state
- Absence of social housing

7 Effects of EU law and policies on national tenancy policies and law

7.1) EU policies and legislation affecting national housing policies

7.1)EU policies and legislation affecting national tenancy laws

a) and b) are supposed to include:

- EU social policy against poverty and social exclusion
- consumer law and policy
- competition and state aid law
- tax law
- energy saving rules
- private international law including international procedural law
- anti-discrimination legislation
- constitutional law affecting the EU and the European Convention of Human Rights
- harmonization and unification of general contract law(sources such as the Common European Sales Law, the Common Framework of Reference or the Principles of European Contract Law may be considered here)
- fundamental freedoms
    - e.g. the Austrian restrictions on the purchase of secondary homes and its compatibility with the fundamental freedoms;

- cases in which a licence to buy house is needed – is this compatible with the fundamental freedoms?

Please insert a summary table.

The influence of European legislation on the area of Czech tenancy law is not overly significant. Rental housing policy is indirectly influenced by EU norms concerning the areas of social, technical and environmental policy.

Technical norms affect predominantly construction materials and goods which according to EU law must meet certain standards and quality requirements. Technical norms exist to protect the health and safety of construction workers involved in construction of apartment houses or flats as well as the health and safety of their future inhabitants. The implementation of technical norms has been positively reflected in increased requirements for modernization of electrical wiring and gas piping and stricter hygienic and thermal insulation standards.

Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings implemented in the Czech legal system through amendment to Act No. 406/200 Sb. on energy management can significantly influence the area of rental housing in the Czech Republic. The directive aims at reducing energy usage and increasing the share of renewable energy in the housing sector. New apartment buildings are required by the directive to fall within the low energy use regime. Such buildings are nevertheless far more expensive to build than ordinary apartment buildings. According to some experts, this might result in significantly reduced opportunities for people to buy their own apartments due to the prohibitively high cost of purchase. Moreover, according to surveys and the available statistical data the Czech citizens' interest in low-energy houses (also called 'passive' houses) is fairly limited.[242]

EU rules concerning consumer protection have only negligible impact on the position of the lessee. The lessee is generally considered to be the weaker contractual party and is therefore awarded increased protection by the Civil Code. Specifically, provisions concerning protection of the lessee are mandatory, i.e. the contracting parties are not allowed to depart from them to the detriment of the lessee.

The most important international treaties for the area of social rights and the right to housing are the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the European Social Charter which regulates the right of families for social, legal and economic protection.

The Charter of Fundamental Rights and Freedoms of the Czech Republic does not explicitly mention the right to housing or an adequate standard of living. The Constitutional Court of the Czech Republic has confirmed that the Charter, as a constitutional law, has not expressly mentioned the right to protection of an adequate standard of living, including the right to housing; this fact, however, does not diminish the constitutional relevance of this right as incorporated in the aforementioned

[242] Available at <http://www.hypoindex.cz/nova-smernice-eu-snizi-dostupnost-vlastniho-bydleni-pro-ceske-domacnosti>

international treaties. With accordance to the established practice, the constitutional and treaty catalogues of human rights are complementary and operate in harmony.

This principle is explicitly expressed by both the international human right treaties and modern national constitutional laws. It follows from the principle that non-mentioning of a certain right (in this case the right for protection of an adequate standard of living, including housing) in the Charter cannot by understood as a restriction of this right as awarded to the individual by the international treaties on human rights and basic freedoms, whereas the individual is given a "favourable treatment" (in this case following the international treaty).[243]

The right to housing is thus unequivocally a right protected by the state. However, it is necessary to mention that the way it is formulated means that it is not absolute. In all the aforementioned documents it is related to specific social groups, such as families, the elderly, etc. It cannot be understood as an obligation of the state to provide an adequate standard of living, including housing, to everybody. The duty of the signatory states lies "only" in the necessity of creating such conditions which will allow the realization of this right.[244]

7.3 Table of transposition of EU legislation

DIRECTIVES	TRANSPOSITION	RELATED SUBJECT
CONSTRUCTION		
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJEU 30.4.2004 No. L 134/114	**Act No. 137/2006 Coll. on Public Contracts as Amended by Act no. 110/2007 Coll., Act no. 296/2007 Coll., Act no. 76/2008 Coll., Act no. 124/2008 Coll., Act no. 110/2009 Coll., Act no. 41/2009 Coll., Act no. 227/2009 Coll. , Act no. 417/2009 Coll., Act no. 179/2010 Coll., Act no. 423/2010 Coll., Act no. 281/2009 Coll., Act no. 73/2011 Coll., Act no. 258/2011 Coll., Act no. 367/2011, Act no. 420/2011, Act no. 1/2012 and Act no. 55/2012 Coll.**	
Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJEC 11.02.1989 No. L 40/12)	**ACT No. 22/1997 COLL. ON TECHNICAL REQUIREMENTS FOR PRODUCTS AND ON AMENDMENTS TO SOME ACTS as amended by Act No. 71/2000 Coll., Act No. 102/2001 Coll., Act**	

[243] Decision of the Contitutional Court of the Czech Republic on June 21, 2000, sp. zn. Pl. ÚS 3/2000.
[244] Available at <http://www.mmr.cz/cs/Stavebni-rad-a-bytova-politika/Bytova-politika/Informace-Udalosti/Koncepce-bydleni-CR-do-roku-2020>

	No. 205/2002 Coll.,Act No. 226/2003 Coll. and Act No. 277/2003 Coll.	
TECHNICAL STANDARDS		
Energy efficiency		
Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJEU 14.11.2012 No. L 315/1).	**Not yet implemented**	**Time until 5th June 2014**
Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 No. L153/13).	**Zákon č. 406/2000 Sb., o hopodaření energií, ve znění pozdějších předpisů (the Act on Energy Management)**	
Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJEU 18.6.2010 No. L 153/1).	**Zákon č. 299/2011Sb., kterým se mění zákon č. 406/2000 Sb., o hospodaření energií, ve znění pozdějších předpisů, a zákon č. 458/2000 Sb., o podmínkách podnikání a o výkonu státní správy v energetických odvětvích a o změně některých zákonů (energetický zákon), ve znění pozdějších předpisů**	
Commission Delegated Regulation (EU) No. 874/2012 of 12 July 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of electrical lamps and luminaires (OJEU 26.9.2012 No. L 258/1).	**Zákon č. 299/2011 Sb., kterým se mění zákon č. 406/2000 Sb., o hospodaření energií, ve znění pozdějších předpisů, a zákon č. 458/2000 Sb., o podmínkách podnikání a o výkonu státní správy v energetických odvětvích a o změně některých zákonů (energetický zákon), ve znění pozdějších předpisů**	
Commission Directive 98/11/EC of 27 January 1998 implementing Council Directive 92/75/EEC with regard to energy labelling of household lamps (OJEC 10.3.1998 No. L 71/1).	**Vyhláška č. 337/2011 Sb. Ministerstva Průmyslu a obchodu, ze dne 11. listopadu 2011 o energetickém štítkování a ekodesignu výrobků spojených se spotřebou energie.**	

Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJEU 5.6.2009 No. L 140/16).	**Zákon č. 165/2012 Sb., o podporovaných zdrojích energie a o změně některých zákonů**	**Zákon č. 180/2005 Sb. o podpoře výroby elektřiny z obnovitelných zdrojů energie a o změně některých zákonů**
Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (DOCE 14.8.2009 No. L 211/55).	**Zákon č. 458/2000 Sb., o podmínkách podnikání a o výkonu státní správy v energetických odvětvích a o změně některých zákonů (energetický zákon)**	
Heating, hot water and refrigeration		
Commission Delegated Regulation (EU) No. 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of air conditioners (OJEU 6.7.2011 No. L 178/1).	**Direct applicability**	**.**
Commission Delegated Regulation (EU) No. 1060/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household refrigerating appliances (OJEU 30.11.2010 No. L 314).	**Direct applicability**	**.**
Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJEU 14.8.2009 No. L 211/94).	**Zákon č. 458/2000 Sb., o podmínkách podnikání a o výkonu státní správy v energetických odvětvích a o změně některých zákonů (energetický zákon)**	

Council Directive 1982/885/CEE of 10 December 1982 amending Directive 78/170/EEC on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings (OJEC 31.12.1982 No. L 378/19).		
Household appliances		
Commission Delegated Regulation (EU) No. 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household tumble driers (OJEU 9.5.2012 No. L 123/1).	**Direct applicability**	
Commission Delegated Regulation (EU) No. 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household dishwashers (OJEU 30.11.2010 No. L 314/1).	**Direct applicability**	
Commission Delegated Regulation (EU) No. 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household washing machines (OJEU 30.10.2010 No. L314/47).	**Direct applicability**	
Commission Delegated Regulation (EU) No. 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions (OJEU 30.11.2010 No. L 314/64).	**Direct applicability**	

Commission Directive 2003/66/EC of 3 July 2003 amending Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJEU 09.07.2003 No. L 170/10).	**Vyhláška č. 442/2004 Sb., kterou se stanoví podrobnosti označování energetických spotřebičů energetickými štítky a zpracování technické dokumentace, jakož i minimální účinnost užití energie pro elektrické spotřebiče uváděné na trh**	**Uveřejněno v: č. 146/2004 Sbírky zákonů na straně 8446**
Commission Directive 2002/40/EC of 8 May 2002 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric ovens (OJEC 15.05.2012 No. L 128/45).	**- Zákon č. 406/2000 Sb., o hospodaření energií - Vyhláška č.442/2004 Sb., kterou se stanoví podrobnosti označování energetických spotřebičů energetickými štítky a zpracování technické dokumentace, jakož i minimální účinnost užití energie pro elektrické spotřebiče uváděné na trh**	
Commission Directive 96/60/EC of 19 September 1996 implementing Council Directive 92/75/EEC with regard to energy labelling of household combined washer-driers (OJEC 18.10.1996 No. L 266/1).	**- Zákon č. 406/2000 Sb., o hospodaření energií - Vyhláška č.442/2004 Sb., kterou se stanoví podrobnosti označování energetických spotřebičů energetickými štítky a zpracování technické dokumentace, jakož i minimální účinnost užití energie pro elektrické spotřebiče uváděné na trh**	
Lifts		
European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJEC 07.09.1995 No. L 213).	**Nařízení vlády č. 176/2008 Sb., o technických požadavcích na strojní zařízení**	
Boilers		
Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (OJEC 22.06.1992, No. L 167). Amended by Council Directive 93/68/EEC of 22 July 1993 (BOE 27.03.1995 No. 73).	**Zákon č. 406/2000 Sb., o hospodaření energií**	
Hazardous substances		
Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJEU 01.07.2011	**NAŘÍZENÍ VLÁDY Č. 481/2012 SB., O OMEZENÍ POUŽÍVÁNÍ NĚKTERÝCH**	

No. 174/88).	**NEBEZPEČNÝCH LÁTEK V ELEKTRICKÝCH A ELEKTRONICKÝCH ZAŘÍZENÍCH**	
CONSUMERS		
Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJEU 22.11.2011 No. L 304/64).	**Zákon č. 367/2000 Sb., kterým se mění zákon č. 40/1964 Sb., občanský zákoník, ve znění pozdějších předpisů, a některé další zákony**	
Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJEU 18.12.2009 No. L 337/11).	**Zákon č. 127/2005 Sb., o elektronických komunikacích a o změně některých souvisejících zákonů (zákon o elektronických komunikacích)**	
Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJEU 01.05.2009, No. 110/30).	**Zákon č. 40/1964 Sb., občanský zákoník** **- § 51a a násl. – spotřebitelské smlouvy** **- Zákon č. 634/1992 Sb., o ochraně spotřebitele** **- § 4 až 6 a § 12 – nekalé obchodní praktiky a povinnosti informovat o ceně**	

Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJEU 03.02.2009, No. 33/10).	**Zákon č. 28/2011 Sb., ze dne 26. ledna 2011, kterým se mění zákon č. 40/1964 Sb., občanský zákoník, ve znění pozdějších předpisů**	
Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJEU 27.12.2006, No. L 376/21).	**ObčZ. ObchZ. Není implementováno**	
Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council (OJEU 01.6.2005 No. L 149/22).		
Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJEC 04.06.1997 No. L 144/19).	**Zákon č. 40/1964 Sb., Občanský zákoník**	**ust. § 53 – 54 OZ**
Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJEC 21.04.1993 No. L 095).	**Zákon č. 40/1964 Sb., Občanský zákoník**	**ust. § 52, 55 a 56**
Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJEC 31.12.1985 No. L 372/31).	**Zákon č. 40/1964 Sb., Občanský zákoník**	**§ 57 OZ**
HOUSING-LEASE		
Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations - Rome I (OJEU 04.07.2008 No. L 177/6).	**direct applicability no transposition**	**Řím I**

Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJEC 16.01.2001 No. L 12/1).	**direct applicability no transposition**	**Brusel I**
Commission Regulation (EC) No. 1920/2001 of 28 September 2001 laying down detailed rules for the implementation of Council Regulation (EC) No. 2494/95 as regards minimum standards for the treatment of service charges proportional to transaction values in the harmonised index of consumer prices and amending Regulation (EC) No. 2214/96 (OJEC 29.9.2001 No. L 261/46).	**direct applicability no transposition**	**.**
Commission Regulation (EC) No. 1749/1999 of 23 July 1999 amending Regulation (EC) No. 2214/96, concerning the sub-indices of the harmonized indices of consumer prices (OJEC 13.8.1999 No. L 214/1).	**direct applicability no transposition**	
Council Regulation (EC) No. 1687/98 of 20 July 1998 amending Commission Regulation (EC) No 1749/96 concerning the coverage of goods and services of the harmonised index of consumer prices (OJEC 31.07.1998 No. L 214/12).	**direct applicability no transposition**	
Commission Regulation (EC) No. 2214/96 of 20 November 1996 concerning harmonized indices of consumer prices: transmission and dissemination of sub indices of the HICP (OJCE 21.11.1996 No. L 296/8).	**direct applicability no transposition**	
Recommendation 65/379/EEC: Commission Recommendation of 7 July 1965 to the Member States on the housing of workers and their families moving within the Community (OJEC 27.07.1965 No. L 137/27).	**soft law - no transposition**	
DISCRIMINATION		

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJEU 21.12.2004 No. L 373/37).	**Zákon č. 198/2009 Sb., o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů**	
Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC 19.07.2000 No. L 180/22).	**Zákon č. 198/2009 Sb., o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů**	
IMMIGRANTS OR COMMUNITY NATIONALS		
Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJEU 18.06.2009 No. L 155/17).	**Zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky a o změně některých zákonů, ve znění pozdějších předpisů**	
Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJEU 30.04.2004 No. L 158/77)	**Zákon č. 326/1999 Sb. o pobytu cizinců na území České republiky a o změně některých zákonů**	
Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJEU 23.01.2004 No. L 16/44).	**Zákon č. 513/1991 Sb., Obchodní zákoník**	**§ 21**
Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJEU 03.10.2003, No. L 251/12).	**- Zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky a o změně některých zákonů (cizinecký zákon) - Zákon č. 325/1999 Sb., o azylu**	
Regulation (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJEC 17.04.1964 No. L 257/2).	**direct applicability no transposition**	

INVESTMENT FUNDS		
Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010 (OJEU 01.07.2011, No. L 174/1).	**Zákon č. 240/2013 Sb., o investičních společnostech a investičních fondech**	

Czech Republic
Case 1 – the concept of apartment

The lessor, Mr. X, signed a lease contract for an apartment with Mr. Y. The subject of the lease was a space accepted by the building authority as non-residential premises (office space).

1. Has the lease contract for apartment been validly concluded?
2. Does the decision by the building authority influence the validity of the lease contract?
3. Will the concept of the apartment change from January 1, 2014?

Q1-Q2
According to the existing regulations and court practice, a lease of an apartment is created by a lease contract. The object of this contract (Section 118 par. 2 of the Civil Code) as stipulated in Section 685 *et seq.* of the Civil Code is an apartment, which is understood as a set of rooms or even a single room designated for habitation by a legitimate decision of the building authority (certificate of occupancy). Rooms not certified as an apartment cannot be considered an apartment in accordance with the provision in Section 118 par. 3 of the Civil Code. An improper object of the contract (e.g. non-residential premises) makes the lease contract void due to the impossibility of performance (Section 37 par. 2 of the Civil Code).
Q3 – *de lege ferenda*
The apartment is defined (Section 1159) as a spatially separated part of a house with which a share in common parts of the property is inextricably linked. Thus from January 1, the legal concept of apartment is not linked with decisions of the building authority. A decision by the building authority will not have a considerable impact on the validity of the lease contract.

Case 2 – in-kind payment of rent
Mr. X, the lessor, has made an arrangement with Mr. Y, the lessee, concerning the payment of rent. The parties agreed that rent will be paid in kind, in the form of necessary repairs of the apartment as well as its maintenance.

1. Is it possible to agree a rent paid in other than monetary form?

Q1
The amount of rent is currently (after years of legislative changes in this area of law) determined by an agreement between the lessor and the lessee, since in accordance to Section 696 par. 1, rent at the time of conclusion of a lease contract or a change in rent during the life of a lease contract is based on an agreement between the lessor and the lessee, unless the Civil Code or a special legal enactment stipulates otherwise. The agreement should include a consensus concerning both the amount of rent at the time of conclusion of contract and a consensus concerning changes in this amount throughout the duration of the lease. According to the present court practice rent for an apartment can only be paid in monetary form. [245] Also in accordance with the provision in Section 2246 par. 1 of the new Civil Code the parties to the contract may agree on a rent paid as a fixed monetary sum.

Case 3 – lease of apartment to a juridical person
Mr. X, the lessor, leased his apartment to the Auto Ltd. trading company (juridical person) for the purpose of:

1. relocation of its headquarters
2. meeting the needs for housing of a natural person working for the company

Can a juridical person in both these cases validly conclude the lease contract?
Q1 - Q2

[245] The judgment of the Supreme Court of 27th January, 2002, file number 26 Cdo 558/2002.

The purpose of lease of apartment as a specific type of lease relation regulated by Section 685 *et seq.* of the Civil Code is to satisfy the need for housing as one of the basic human needs. A juridical person has no such needs and therefore it cannot validly conclude a lease contract for apartment as a lessee within the meaning of the Section 685 of the Civil Code (Section 2201 of the new Civil Code). However, it is possible for the juridical person to conclude a lease contract for apartment with accordance to Section 685 *et seq.* of the Civil Code (Section 2201 of the new Civil Code) thus making the apartment a company apartment, i.e. an apartment used to meet an employee's (natural person) needs for housing (Section 2297 of the new Civil Code).

Case 4 – regulation of lease through municipal ordinance

The local authority of Lhotka issued a municipal ordinance which regulates housing owned by the municipality. The ordinance includes rules for keeping order, management and protection of Lhotka housing stock and sanctions for violations of these rules.

1. Does the local authority have a right to regulate rights and duties related to leases through municipal ordinances?
2. Can non-observance of the ordinance's rule lead to an eviction of a lessee from his or her apartment?

Q1

In accordance with Article 11 par. 1 of the Charter of Fundamental Rights and Freedoms the proprietary rights of all owners has the same legal content. Any restrictions of this right has to have a legal basis and be applied equally to all cases (Article 4 par. 3 of the Charter). All owners of apartments and non-residential premises are thus subject to the same legal regime, regulated primarily by the Acts No. 40/1964 Coll. and No. 72/1994 Sb. on the ownership of apartments. (Beginning with January 1, 2014, this area will be comprehensively covered by Act No. 89/2012 Sb., the Civil Code.)

Rights and duties of the lessor and the lessee are regulated by Section 685 *et seq.* of the Civil Code (Section 2201 et seq. of the new Civil Code). It is a private law regulation, partially non-mandatory. The limits of this legal provision cannot be transgressed by a public law norm (especially one of lesser legal power). It is therefore not permissible (due to being in conflict with the provisions of the Charter and the cited Acts) for a municipal ordinance to specify a special public law regime for an owner of municipal property.

When concluding a lease contract the lessor and the lessee are bound solely by mandatory provisions of the Civil Code. Any further restrictions of rights and duties of each of the contracting parties may be incorporated in the lease contract as a consensual expression of their free will. However, it is not possible to specify the rights and duties through a municipal ordinance, a public law act, since lease falls within private law.

Q2

A lease contract may only be terminated for reasons specified in Section 685 of the Civil Code (Section 2288 of the new Civil Code). The process of eviction on the basis of termination of contract would amount to an unwarranted interference with rights as specified by Article 12 of the Charter; the Czech legal system includes only the legal institution of vacating premises, regulated by Section 340 *et seq.* of the Civil Procedure Code.

Case 5 – rent and payment for performances related to the use of apartment

Mr. X, the lessor, has agreed with Mr. Y, the lessee, that the rent and payments for performances related to the use of apartment will be covered by a total sum of CZK 12,000. The lease contract has not specified the amounts of the constituent items.

1. Have the contracting parties concluded a valid lease contract?

Q1
The method for calculating rent and payments for performances provided along with the use of an apartment must be understood as a process that includes data on the basis of which an objective calculation of the rent and payments is possible, i.e. a specific monetary sum can be reached at the end.
The amount of rent and as well as the amount of payment for performances related to the use of an apartment and their calculation represent two separate legal essentials of a lease contract for an apartment and their expression in the lease contract must correspond to that. If the lease contract does not specify which is rent and which are payments for performances provided with the use of apartment, the lease contract is invalid in accordance with Section 686 of the Civil Code.

Case 6 – a swap of apartments

Mr. A. and Mrs. B. were tenants. Mr A., a young gentleman, wanted a large apartment because he intended to raise a family, while Mrs. B was already old and thus looking for a smaller apartment with a lift. Since both had suitable flats, they agreed to a mutual exchange.
1. Can they swap apartments?
2. What are the legal consequences in respect of the lease?
3. Is this a case of interfering with the landlords´ property rights?

Q1-3
The right to conclude a contract on the exchange of dwellings results from the constitutional rule that everyone can do what the law does not prohibit. In connection with the exchange of dwellings legislature only requires a compulsory/mandatory written consent of the landlords (of the two exchanged apartments) with the exchange. The parties' agreement must be in writing.
§ 715 of the Civil Code originally provided:
With the landlords´ consent the tenants may agree on the apartment exchange. The consent and agreement must be in writing. The lessor may refuse the consent only due to serious reasons. The expression of his will may be replaced by a court at the tenant´s suggestion. Now (after amendment), the last two (obviously unconstitutional) sentences have been omitted. The absence of the landlord's consent leads to the invalidity of contract. Original wording of the Act infringed the landlord´s constitutionally guaranteed rights, when he/she could not decide about the tenant. Swapping apartments leads to a mutual lease contract assignment and it is not necessary to sign a new lease agreement (see the decision of the Supreme Court ref: 20 Cdo 1230/99).
Case 7 – sublease

Mr. A did not have sufficient money, so he wanted to save on rent. He therefore decided to sublease one of the rooms which was in the apartment of which he was the tenant. However, he did not ask the landlord . At the same time the contract was not concluded in writing.
1. Has the lessee got no further right to sublet ?
2. If the tenancy expires, does the sublease expire as well ?
3. Does a sublease contract have to be in writing?
4. Does the absence of the lessor´s consent bear any legal consequences?
5. Can the landlord himself sublet an apartment ?

Q1-5

The lessee is entitled to assign the lease to another, provided, however, that there must be a written consent of the landlord. The sublease contract , however, does not need to be concluded in writing. However, it is advisable to write it for legal certainty. The duration of the sublease is existentially linked to the duration of the lease , so as soon as the lease expires, so does the sublease. The absence of the landlord's consent to a sublease may result in a serious breach of contract , which is a reason for rescinding it. In the case of the termination of the lease (eg, death of the tenant) its tenancy is not transferred to the subtenant . Sublease is not created if is let by the landlord himself , since it is a protected tenancy (Supreme Court No. 26 Cdo 354/2004).

Case 8 – lease transfer

Mr. A. lived in an apartment with his son . Mr A died . Can the son continue to live in the apartment?

1. Does the apartment lease expire or is transferred to the tenant´s cohabitant ?
2. Does it make a difference if the tenant lives in an apartment with his/her son, sibling, daughter/son- in-law or parents ?
3. What if the tenant´s son had a lease contract for another apartment?
4.Can the same rule for a son be applied to a grandson?

Q1-4

In the event of the tenant´s death in accordance with § 706 of the Civil Code the lease passes to persons (children , parents, siblings , daughter/son- in-law) who were living with him at the time of death in the same household and do not have their own apartment . The lease passes to a relatively broad group of people. The status as of the date of death is Crucial (e.g., duration of marriage daughter / son-in-law) and the fact of commonly sharing household, and not having one's own apartment . One's own apartment denotes an apartment owned or leased, but not sublet (see Supreme Court decision R 20/ 01)

If, for example, a son and a daughter-in-law of the deceased tenant were living in the apartment at the time of tenant´s death , they thus become joint tenants of the apartment. If it is a grandson, then there are different rules with regard to the simulated situations of cohabitation caused by formally moving in to live with grandparents. Consequently there were speculative acquisitions of a favourable leases (especially at a time when rents were regulated , e.g. apartments were privatized on preferential terms to tenants) . Therefore, it is now necessary to prove that a grandson was living and paying common costs together with the now deceased tenant. Recently, courts, in particular the Constitutional Court (Decision IV . U.S. 8/ 05), have been demanding for a more precise examination of the reasons for the lease transfer, even when it concerns close relatives, as the transfer highly restricts the rights of the landlord. The purpose for this specific protection is to provide for those, though not due to their personal failure, who can suddenly, from day to day appear to be without a shelter.

Case 9 - statements and excessive consumption of alcohol

Mr. A. lived in an apartment in the house of Mrs. B. under a lease agreement . Every day he came home drunk, disturbing the neighbours, cursing at them, and even attacking one of them, for which he was fined by the town constable . Mrs. B. called him and urged him to move out within a week .

1. Can the landlord terminate the contract ?
2. Does the landlord need the consent of the court?
3. What are the legal requirements for an applicable notice?

Q1-3

The Civil Code defines agreement or notice as the ways of extinguishing the lease . Notices are divided into those which require court approval and those where the approval is not required. Consent is usually not required in a flagrant breach of contract. This is the case of gross violation of good manners in the house (drunkenness , insults , physical assault) ., However, a previous written warning is required, which must be given by the landlord (the warning given by the state authorities would suffice in the past - this, however, caused an undue interference in private relations - cf. decision of the Supreme Court , R 23 / 1965) . The prerequisite for an effective notice is its written form, delivery to the tenant as the recipient, fulfilment of the statutory reasons (e.g. violation of good manners), specification of the reason for notice, in which the Court approval is required (and thus this approval), the explicit declaration of the notice period (cf. Supreme Court decision No. (Rc) 2 Cdo 72/93) and an instruction on how to submit an action for the annulment of the notice within 60 days.

Case 10 - a lease contract, conditions, contractual penalty

Mr. A. and Mr. B. agreed that Mr. A will leave his apartment to the occupancy of Mr. B. The treaty was never done in writing.
Mr. B was only informed that he would be fined for not paying rent in time.
1. Is the contract valid?
2. What are the terms and conditions of the contract ?
3. What if the intended contract period is not specified?
Q1-3
Law § 685 requires an agreement on the object of the lease (apartment description, equipment, the time of usage, the procedure of calculating the rent and other payments for the use - heating, gas , etc.) and the agreement must be in writing. The landlord may require the advance payment of deposit up to the amount of a triple rent. According to the new Civil Code, guaranteeing a Lease Contract by a contractual penalty will not be possible anymore . Unless the duration of the lease is specified, it is understood as agreed for an indefinite period. Not observing the written form may invalidate the contract. The right to have objections to this law, however, is restricted by civil code only to tenants .