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

National Report for

HUNGARY

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1. Housing Situation

1.1 General Features

This section presents a general introduction of the housing stock, tenure structure, and general aspects of the housing situation in Hungary. The country's population of 9.9 million is dispersed in 4.1 million households. The full housing stock consists of 4.4 million housing units; and as some households coexist in the same dwelling, nearly 12% of all dwellings are vacant. The quality of the housing stock has been constantly increasing in the past decades; new constructions on the other hand have slowed down gradually; and nearly vanished after the Great Financial Crisis, and the subsequent recession.

The vast majority of housing units are owner-occupied. While 23-24% of the total population lived in rental dwellings in the early 1980s, the current owner occupation rate has risen to 92%, while private rental housing accounts for 4%, public rental for 3%, and 'other tenure types' for the remaining 1% of the full housing stock. (CSO, Census 2011) We consider this a distorted tenure structure: the lack of a well-functioning rental sector steers households towards ownership. This is partly a result of the massive privatization of the formerly state owned rental stock in the 1990s, but state backed mortgage subsidies also contributed to the current housing situation.

1.2 Historical evolution of the national housing situation and housing policy

- *Please describe the historic evolution of the national housing situation and housing policies briefly.*
- *In particular: Please describe briefly the evolution of the principal types of housing tenures from the 1990s on. Explain the growth and decline of the different tenures and the reasons why that happened (e.g. privatisation or other policies).*
- *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)*

Housing policy in Hungary, as an example of the East-European housing model[1], went through several stages after World War II. The share of urban population in 1949 was 36.8%, and the majority of the urban housing stock belonged to the private rental sector, although the sector was strictly regulated. The origin of the regulation dates back to World War I interventions (in 1916 and 1917), when a coercive-restrictive private rental policy was introduced with two important regulative elements: (a) rent control, and (b)

[1] See Hegedüs J. - I. Tosics: Disintegration of East-European Housing Modell in: Housing Privatization in Eastern Europe (Clapham,D. -Hegedüs, J. Kintrea, K.-Tosics I.) 1996 Greenwood, pp. 15-40

limitations to the termination of the rental contract.[2] The details of intervention varied between the two World Wars, but the main elements remained intact until the introduction the second Housing Codex in 1956.[3]

One of the most important changes was the nationalization of private houses and apartments with more than 6 rooms in 1952. Moreover, all rented houses and apartments built before 1 April 1953 that had more than three rooms were moved under direct council control. As a consequence of these changes, 36% of the housing stock was rented by 1960, a majority of which was owned by the state and managed by the councils and other state organizations, and a smaller part was forced private rental (controlled by the councils, but owned by private persons). Although precise large scale statistics were never prepared, a statistical survey in 1983 estimated that 76% of the one million rental units was owned by the state and managed by the local council; 14% was owned by the state and managed by state institutions; and around 10% was private rental (both forced and free private rental).[4] The share of the sublets was substantial as well: in 1970 6% of the inhabited housing units had sublets;[5] in Budapest their share was estimated at 10%.

Table 1. Inhabited dwellings by tenure types, 1949-1990 (1,000 units)

	1949	**1960**	**1970**	**1980**	**1990**
Owner occupied	1519	1686	2017	2435	2714
Tenancy	855	973	993	964	958
Co-tenancy	43	36,3	16	16	2
Other	7,5	14,6	8	8	14
Total	**2424,5**	**2709,9**	**3034**	**3423**	**3688**

Source: Central Statistical Office 1990

The share of the rental sector decreased to 28% by 1990, because the share of state rental was only around 25% in new construction. However, the housing policy in Hungary changed in the beginning of the 1980s, due the fiscal pressure on the government caused by the energy price increase as well as macroeconomic reasons, such as the socialist-capitalist arms race. Hungary tried to move a more market friendly economic policy, while maintaining the one-party system, one important result of which was early stage privatisation at the last phase of socialism. Privatisation of state owned housing was legally possible from 1966, but early attempts were curbed by opposing political will. However, by the end of the 1980s (before the political changes of 1990),

[2] Bódy Zsombor: Kislakás, társasház, családi ház (Lakásépítkezés és az otthon ideáljának változása Budapesten az első világháború körül) Századvég, 9. évf. 34. sz. / 2004 p. 27- 58 downloaded: http://www.szazadveg.hu/files/kiadoarchivum/body34.pdf, Oláh Gábor: Lak-hatóság (Az I. világháború hatása a budapesti lakáskérdésre), Korall 40. 2010. 146–162. PM Ordinance 3787/1916. on the termination of, and limitations to, tenancy contracts, and prolongation of tenancy contracts concluded on behalf of public institutions (November 1916); Ministry Ordinance 8133/1917. On rent committees and their regulation (10 February 1917).

[3] Governmental decree 35/1956 (IX. 30) and implementing Governmnet decree of 15/1957 (III.7.)

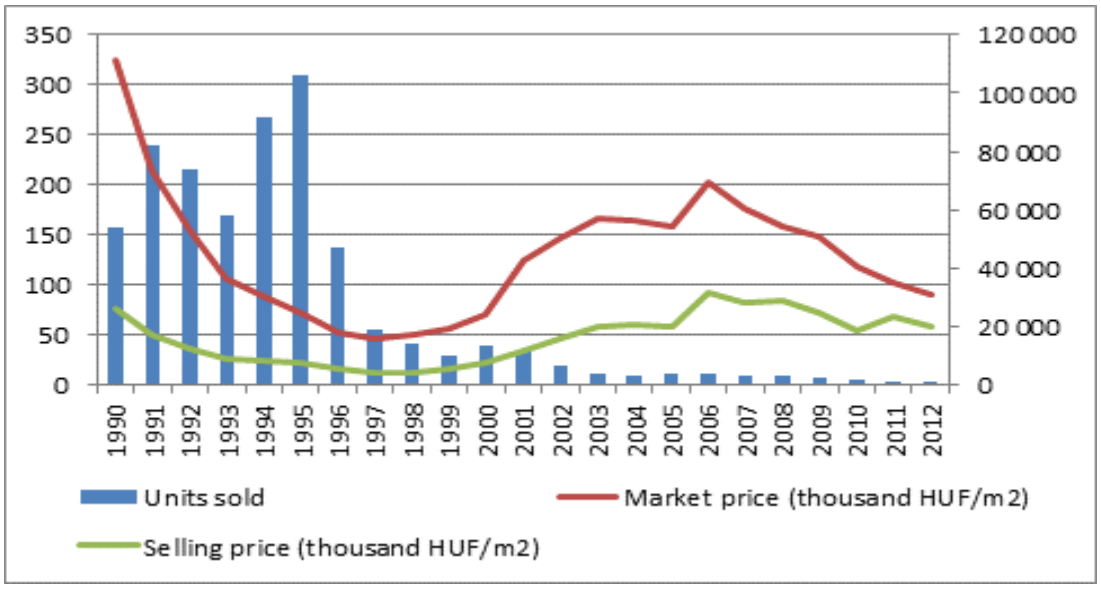
[4] Information about the national housing survey (Tájékoztató az országos lakásfelmérés adataiból) 1983 Ministry of Construction and Urban Development (Építésügyi és Városfejlesztési Minisztérium) p.6

[5] Census 1970 Volume 26 Houses and Buildings I.(1970. évi népszámlálás 26. Lakás és Lakóépület adatok I.) Central Statistical Office1973 p. 15.

privatisation was kick-started by individual requests and gradually more liberal local council ordinances. By 1990 already 50,000 units (out of 767,000) were designated for privatization.[6]

After the transition, the privatisation process accelerated. The housing stock managed by local councils was transferred to the ownership of the municipalities in 1990. Most of the municipalities supported privatisation,[7] but the Housing Law of 1993 gave right to buy for the majority of the sitting tenants (meaning the municipality was obliged to sell the dwelling if the tenant expressed the intention to buy). They had the right to buy till 1995, but the tenants' pre-emption right was valid until 2000, meaning that the municipality did not have the right to sell the dwelling to a third party without the tenant's agreement. The privatisation has not stopped entirely after 2000, as the municipalities still had an interest to selling the social housing stock, the maintenance of which puts a burden on the local budget.

95% of the privatised stock was sold between 1990 and 2011. As demonstrated in Figure 1, the average price of privatised housing units kept decreasing between 1990 and 1997, suggesting that the quality of the apartments decreased continuously (we controlled for overall average real estate prices and inflation). The best quality housing units were sold out by the period 1997-2007, so the fall of prices stopped temporarily. Municipality owned houses were being privatised at a much lower rate in this period, and a stronger selection had to be made: the open market only absorbed the relatively high quality housing units. From 2008, real estate prices were pushed down by the recession, and they were still influencing Hungary's housing markets by the second semester of 2013; accordingly, gap between the market price and the municipal units' selling price is narrowing.



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[6] Hegedüs J. - Tosics I.: Housing Privatization (Privatizáció a lakásrendszerben) in: Esély, 1991/3, 60-67

[7] Hegedüs J.- Mark K. - Struyk, R - Tosics, I. (1993): Local Options for the Transformation of the Public Rental Sector: Empirical Results from Two Cities in Hungary, In: Cities, 1993 August, p. 257-271

Figure 1. Privatization of the municipal housing stock and the average market price and selling price in HUF 1,000/m^2 in real value (measured in HUF of 2012)

The main goal of housing policy before the regime change was to alleviate the quantitative housing shortage, which – due to intensive urbanisation throughout the 20th century and the population boom of the socialist period – often forced multiple families to live in shared, overcrowded housing. The share of urban population increased from 38,6% of the total population in 1949 to 61,8% by 1990. Before the regime change, Hungarian housing policy focused on terms like 'quantitative and qualitative housing shortage'. Quantitative housing shortage meant the difference between the number of households and the number of housing units; qualitative housing shortage referred to the inadequacy of housing units in terms of size and quality. Quantitative housing shortage dominated in the socialist era, and housing policy strove to maximise the number of newly built housing units. The target of a 15-year housing program started in 1960 was to build 1 million housing units, and the following 5 year plans also emphasized new construction. This trend persisted until the second half of the 1980s, when the demographic pressure eased and the rate of the urban population growth slowed down. This enabled political leaders to accept less new construction and envisage urban reconstruction in major cities. New construction reflects not only demand, but also, among many other factors (supply of land and building materials, capacity, and so on), the possibilities of the economy. Ageing society is a further factor with a strong effect on housing demand that housing policy cannot neglect.

Statistical figures illustrate the new trend quite clearly. Between 1970 and 1979, 900,000 housing units were built, as compared to 630,000 in the following decade. However, the proportion of housing units with three rooms or more (a measure of quality) grew from 20% to 38% in the 1980s, nearly doubling their share in new construction.

Demographic circumstances, and the size and composition of housing investments, determine the quantitative indicators of housing conditions. The number of housing units grew from 3.5 million to 4.3 million between 1980 and 2008, reaching 4.4 million in 2011, while the proportion of urban population only increased by 4 percentage points (from 65% to 69%). Urbanization therefore only put moderate pressure on the urban housing market.

The paradigm of quantitative and qualitative housing shortage can only provide a rough demonstration of the basic underlying pattern, since the housing problem is also closely related to the uneven distribution of the population and the housing stock. Regional issues must be considered in the analysis of quantitative housing shortage, as housing shortages are typical of fast-developing regions, while declining regions show a surplus. Quantitative housing shortage is therefore still a problem in developing regions, whereas underdeveloped regions are 'inflicted' with a housing surplus. The spatial distribution of the shortage is apparent in the divergence of housing prices, which hinders mobility.

The share of urban population is approximately 70%.[8] Population figures decreased in all settlement types, but the decline affected the villages to a larger extent. Besides natural demographic movements, the nature of regional migration has also changed in Hungary: both direction and scale have altered since the transition (1990), which mostly

[8] Central Statistical Office Census data (2011b; 2011c): Népszámlálás 2011: Előzetes adatok [*Census 2011: Preliminary data*]; Népszámlálás 2011: A népesség és a lakásállomány jellemzői [*Population and housing data*].

meant a flow of residents from villages to towns and large migration to the capital city, until the mid-1990s. Around 2007, internal migration decreased to a very low level, around the same rate that was observable around 1994, when in the after-transition period serious job cuts restructured the labour-market. Around 475,000 people moved their residence in 2011 on a permanent basis.

The bulk of migrants are usually younger adults in their twenties and thirties, and more than half of them are women and singles. The targets of the internal migration are Central and Western Hungary. The outflow from the capital city of Budapest stopped in 2007; nevertheless, a wave of suburbanisation that lasted for almost two decades after the transition caused a large population loss for the city. The targets of migration are generally regions, counties, and settlements where the economy is comparably flourishing, and GDP per capita, activity rate, and gross monthly income levels are higher.[9] Accordingly, there are very divergent levels of pressure on selected housing markets.

The migration to Hungary has had different patterns in the past 20 years. There were three waves of refugees (from Eastern Germany, Romania, and the Western Balkans) up to the first half of the nineties. At the end of the nineties the approaching EU accession raised the attractiveness of immigrating to Hungary, so there were some outstanding years in terms of the number of immigrants. On January 1, 2004, there were slightly more than 140,000 foreigners living in Hungary, 1.4% of the total population. The number of immigrants has stabilized around 15-20,000 per year, which – in view of the population falling slightly short of 10 million – is quite low in a European comparison.

Based on Census 2001 data, all counties (19 administrative units and the capital) of Hungary had a positive migration balance. Most migrants arrived to the counties Pest, Borsod-Abaúj-Zemplén, Csongrád, Bács-Kiskun, Szabolcs-Szatmár-Bereg and Hajdú-Bihar. This shows that border regions (besides Pest, situated in Central Hungary and around the capital) are the most likely to attract the largest migration. Budapest, the capital city has an immigrant population of about 40,000, around 2.5% of its overall population.

Data from labour market surveys show that most immigrants from the European Union and other developed countries are employed, have higher than average education, and they hold down a position in the tertiary sector. Due to the scarce data, the regional distribution of property acquisitions in Hungary by foreign citizens is only available for 2001-2002. The number of transactions is around 5,000 per year; these, however, do not only derive from the immigrants' acquisitions, but also from investment oriented transactions. In the years of 2002-2006 the demand of foreigners for newly constructed housing in Budapest represented a measurably high ratio: despite the decline of foreign housing acquisitions in Budapest, yearly 900 units were bought by foreigners; more than half of these by Irish and British citizens. The target area of these acquisitions is the historic downtown and its immediate surroundings.

The Central Statistical Office's official figures on external migration rely on 'mirror statistics', that is, how many Hungarians are there in selected countries. Their conclusion was that around 2008 approximately 120,000 Hungarian citizens were living in other EU member states. The UK figure – where people have/had to register in order

[9] CSO (2012a): Statisztikai tükör – A belföldi vándorlás főbb folyamatai, 1990-2011 [*Statistical gazette – Internal migration trends, 1990-2011*], 8 November 2012.

to obtain a job - is around 33,000. Some 100,000 Hungarians live in the United States. To sum up, despite the EU accession's possibilities to offer greater opportunities for labour migration, only a small fraction of the labour force actually moved by the end of the 2000s.[10]

In the meantime, according to TÁRKI statistics in 2012, every fifth adult in Hungary was considering applying for a job outside Hungary, which means that the intention to migrate have now risen to the levels of the early nineties. 7% of all adults would consider migrating to a foreign country permanently. A particularly large portion of the people below 30, the unemployed, and the Roma, are motivated to migrate. Primary target countries are Germany, Austria and the UK.[11]

1.3 Current situation

- *Give an overview of the current situation.*
- *In particular: 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?*

In Hungary, the size of the housing stock has reached 4.4 million units by 2011, of which 3.9 million units are used as a place of residence ('inhabited' in the Hungarian Census' terms, Census, 2012). As indicated in the summary table *"Tenure structure in Hungary (inhabited units) 1980-2011"*, the vast majority of housing units are owner-occupied; with a roughly 90% owner occupation rate, Hungary can be considered one of the "super home-ownership' states. As we already mentioned, intensive privatization of public housing stock has led to the heavy depletion of this sub-sector, leaving it around 3% of the entire housing stock.

The growth of the private rental is limited by legal and financial factors, a presentation of which will be attempted throughout Part 1 and Part 2. In the meantime, the official tenure statistics, as measured on the national Censuses, are not considered fully reliable by the pollsters themselves: private rental is recorded to be around 4% of the full housing stock, while pollsters believe that many of the residences reported as 'vacant' are in fact privately let, but go unreported towards tax authorities.

According to the Census the share of owner occupied units is 92%, private rental is 4%, public rental is 3%, and 'other tenure types' account for 1%. In Hungary, owner-occupation is the dominant tenure form, but as we already mentioned, available tenure statistics are not fully accurate. The share of private rental sector is unanimously considered underestimated due to tax avoidance by practically all actors and professionals in the field of housing (be it real estate agents, social housing providers, notaries public or policy analysts). Based on smaller size surveys, we can adjust Census data to an estimation to obtain a more realistic picture: the share of private rentals is more likely to be around 8% of the inhabited housing stock, and the owner-occupied sector probably does not surpass 88%. Another source of information for

[10] CSO (2010): A vándorlási veszteség Magyarországon az elmúlt évtizedben – avagy hányan is vagyunk valójában? [*Migration loss in Hungary in the past decade – or, how many exactly are we?*], Demography newsletter of the Central Statistical Office; 2010/3.

[11] Source: http://www.magyarhirlap.hu/belfold/kulfoldre_vandorolnanak_a_fiatalok.html

comparison is the EU-SILC data for 2012, according to which 90.5% of the families in Hungary live in owner occupied housing, and around 10% live in other tenures including social rental, private rental, and a mixed category of 'rent free tenure'.[12]

The quality of the housing stock has improved in the last two decades: the share of housing units with 'full comfort'[13] increased from 40% in 1990 to 62% in 2011, and the number of inhabitants per 100 dwelling units decreased from 274 to 251. There has not been quantitative housing pressure on the market, as demonstrated by the share of vacant housing units in urban as well as rural areas,[14] which increased from 4% to 12% between 1990 and 2013. These figures show that there is no housing shortage in Hungary, although new housing construction has decreased from the 1980s, and hit a record low in 2013.

Table 2. Number of housing units in Hungary, 1980-2011

	Inhabited dwellings					Total number of dwellings (millions)	Share of vacant dwellings as a % of total dwelling stock	Average floor size per dwelling (m^2)	N of habitats per 100 dwellings
Year	Full 'comfort'	'Comfort'	No or half 'comfort'	Total	(N) (millions)				
1980	18%	32%	50%	100%	3.4	3.6	4%	0	313
1990	40%	31%	30%	100%	3.7	3.9	4%	0	281
2001	52%	30%	18%	100%	3.7	4.1	9%	74	274
2011	63%	30%	7%	100%	3.9	4.4	12%	77	257

Source: CSO, 2012

Housing construction substantially decreased from 1990, partly because of the economic recession of the 1990s, and partly because of the dampening demographic pressure. Between 1990 and 2000, the number of housing units increased by 458,000, 46% less than a decade before. Construction activity increased thanks to the economic cycle starting from 1998 and ending 2008, but it never reached 50% or more of the level of the 1970s and 1980s. Nonetheless, the composition of the housing stock improved

[12] Eurostat (SILC) - Distribution of population by tenure status, type of household and income group, 2012.

[13] Dwelling with **'full comfort'** comprises dwellings with a living room of at least 12 m^2 floor space, cooking premises, bathroom and flush toilet (in the bathroom or separately), with public utilities (electricity, water, sewage disposal), with hot water supply (district-, block-, or central hot water supply or from electric or gas boiler or bath-stove), and with central heating system (district-, block-, individual central, level heating). Dwellings with **comfort** are dwellings with a living room of min. 12 m^2 floor space, cooking premises, bathroom and flush toilet, public utilities, hot water supply, individual heating (gas heating, solid or fuel based stove, electric heat storing stove). Dwellings with **'semi-comfort'** have a living room of min. 12 m^2 floor space, bathroom and flush toilet, public utilities (at least electricity and water), and individual heating. Dwellings '**without comfort'** are the ones that cannot be classified as semi-comfort dwelling, but have a living room of min. 12 m^2 floor space, cooking premises with possibility of toilet (latrine) usage outside of the dwelling, individual heating, and potable water are available.

[14] Farkas, János; Kovács, Zoltán; Székely, Gáborné (2004): A magyar lakáspiac területi jellemzői az ezredfordulón (CD-vel) [*Hungarian Housing Market at the Turn of the Millennium*] (Budapest). The share of vacant housing was 7-8 % in Budapest and most settlement types, with a slightly higher rate in towns with less than 500 inhabitants, and nearly 25% in very small villages (less than 200 people).

both terms of size and comfort level of the housing stock. From 2008, the construction activity declined substantially because of the economic crisis. The housing standard increased in the last two decades thanks to massive infrastructure investment projects (e.g. in gas supply services, water and sewage networks), and households' renovation and upgrading activities: the number of housing units with full comfort was increased by 1 million between 1990 and 2012. Housing consumption has not reached the European average in terms of space and comfort level: although the overall housing situation cannot be considered low relative to the GDP level of the country, it lags far behind the EU15 level.[15]

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 privatised ownership in Eastern Europe*

Before 1990, half of the urban housing stock was public function (state owned) affordable rental; nearly all of it was privatised to sitting tenants or other bidders within a decade. Owner-occupation is currently considered to be cheaper than rental, especially with the present very limited access to affordable rental; and home ownership has quickly become a major goal of households.

The onset of transition found Hungary's housing system bankrupt due to long-term, low interest (1-3%) state backed loans issued in the 1980s.[16] According to a World Bank study, the total budget and off-budget subsidies to the sector amounted to 7.5% of the GDP in 1989. The two most important measures were interest rate subsidy and (direct and indirect) subsidies to the public sector. Through the consolidation of the banking sector and "old loans" and by privatising the public rental stock the housing subsidies decreased to 1.2% of the GDP by 1998. Meanwhile, by the middle of the 1990s a deep crisis surfaced in the housing sector. New construction diminished greatly, the deterioration of the housing stock accelerated; housing finance essentially vanished and housing loans practically disappeared: while outstanding loans amounted to 16-17% of the GDP in 1989, they fell to around 1-1.5% in the 1990s. Social rental decreased to about 4% of the total housing stock, and several social problems emerged in the management of the housing stock, of which newly appearing and accumulating arrears were perhaps the most salient.

State supported housing mortgages were introduced as part of a government subsidy programme in 2000. Two interest rate subsidies were introduced beyond the already existing demand side construction grant for families with children:

[15] EU Housing Statistics 2010: *Housing Statistics in the European Union*, Ed. Kees Dol & Marietta Haffner, (OTB Research Institute for the Built Environment, Delft University of Technology).

[16] Hegedüs, József & Eszter Somogyi (2005): An Evaluation of the Hungarian Mortgage Program, in: Hegedüs, J. and Raymond Struyk (eds.).

(a) an interest rate subsidy to mortgage bonds (also supported by financial banks); and
(b) an interest rate subsidy for loans connected to new construction (supported by the 'construction lobby');
(c) the third element in the subsidy programme was the Personal Income Tax (PIT) mortgage payment allowance. In the original proposal (in 2000) the size of the mortgage subsidies and the PIT allowance were at a low level, which gave a fiscally manageable impetus to the development of mortgage finance. However, the government was under constant pressure by various lobby groups, and the conditions and eligibility criteria for the two interest rate subsidy schemes were relaxed between 2000 and 2002. Additionally, in the spring of 2002 (before the election) the personal income tax deduction was expanded to loans for buying existing housing units, opening up a huge market for mortgage banks. By the end of 2002 the volume of housing loans was increasing sharply, thanks to the subsidies. In 2002 the outstanding loans more than doubled and reached 4.5% of the GDP.

The mortgage support programme had two adverse effects: undesirable fiscal consequences and the equity effect. Firstly, the fiscal effects of the mortgage programmes had been substantially underestimated, the actual cost being three times higher than projected.[17] The subsequent socialist government (2002-2006) kept postponing decisions to cut the subsidies in order to avoid the political consequences of cutting them off. The leading political parties got into a vicious circle of promising more and more support to the housing sector, without understanding the fiscal and social consequences of the proposed programmes. Secondly, the social consequence of the housing subsidy program was regressive income redistribution. The net value of the mortgage subsidy in 2002-2004 was 50-70% of the loan (taking into calculation the two interest rate subsidies and the PIT allowance), which could be accessed without means-testing. The regressive equity effect of the mortgage programme is shown clearly by the allocation of the PIT allowance in 2004, where the highest income quintile of households in the income distribution got 60% of the total subsidy, and the highest two quintiles received 80%.[18]

After a long political debate the government changed the conditions of the mortgage program in 2004. The interest rate subsidies were decreased and PIT exemptions for mortgage repayment were first cut severely, and then abolished in 2007. Housing credit grew very quickly in Hungary between 2000 and 2004, and the cut in subsidies did not halt the expansion of the market, because relatively cheap foreign exchange (FX) loans successfully replaced the subsidized Hungarian Forint (HUF) loans: their share went from close to zero in 2004 to 90% of new lending in 2008. There were no direct fiscal burdens in relation to the loans issued in FX. The availability of cheap funds and the exceptionally high spread gave a high motivation for the banks and mortgage brokers to expand the market to the consumer loans.

Political decision makers ignored the risk of FX indebtedness for the economy. Presumably there were no regulations on FX loans because of the strong connections

[17] Hegedüs, 2011, p. 119
[18] Hegedüs and Somogyi, 2005, pp.199-202

between the government and financial sector ('bank lobby'). Regulatory agencies – the Hungarian National Bank (HNB), the Bank Supervisory Agency, and the Consumer Protection Agency - did not have the political support to intervene, but from time to time they indicated the possible risk of FX loans. Even the opposition party would not support restrictions on economic growth.

The most important driving force of the over indebtedness in FX loans was the loose fiscal policy which resulted in a huge difference between the FX loan interest rates and those on HUF loans. Because of the high deficit the HNB had to keep the interest rate high to give incentives to finance government debt. The competition was high among banks, but instead of price competition, the risk-based competition dominated the market and led to a worsening credit portfolio. "Strong loan expansion made the banking systems vulnerable: the ratio of FX denominated loans, the banks' loans/deposit ratio and their dependence on foreign funding all increased significantly. These accumulated imbalances increased the vulnerability of these countries to the coming crisis".[19] The "innovative" role of the banks, with no substantial control by the HNB and the Bank Supervisory Agency, was an important factor in explaining the expansion of retail lending (new products, aggressive advertising, and the important role of the individual mortgage brokers).[20] However, in Hungary no house price bubble developed; although real estate prices were increasing in the last 10 years, they were far from those in countries with a similar mortgage expansion.

No real restitution took place in Hungary, in either the legal or the technical sense; instead, pecuniary compensation was offered to former owners or their successors, which eventually turned out to be rather modest in comparison to the real value of the property. The primary compensation tool was state issued 'compensation notes' (securities issued by the state), which devaluated significantly within a few years.

On the other hand, privatisation of formerly state and then municipally owned dwellings was a universal phenomenon, leading to the depletion of public function rental, from more than one quarter of the full housing in 1980 stock to barely 3.6% of it in the early 2010s (see later). As a consequence of the fast give-away privatization of the 1990s, and its continuation afterwards, the Hungarian housing system can be characterized as a 'super-home ownership' housing sector, which has a distorted tenure structure.[21]

- *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*

We assume that the tenure called 'rent free' is a mixed category, which includes cases when successors move to their parents' former home; or when the parent buys a new home, but because they want to save on inheritance tax, they give it as a 'gift' to their

[19] Banai et al., 2011, p 12.
[20] Csányi, 2007.
[21] Central Statistical Office, 2011a.

children, while keeping the right of use. Thus these cases are closer to owner occupation than to the rental sector. However, there are cases in the private rental sector where the owner reports an apartment as rent free (with the aim of tax evasion, in cooperation with the tenant), whereas in reality it is privately rented. Also, in some cases the owners do permit a tenant to live in the property free of rent, in return for paying utilities and providing upkeep and maintenance of the apartment; especially in areas where renting is low, or when the landlord does not trust tenants coming from the open market (e.g. had negative experience, financial loss because of non-cooperating tenants).

In the privatization of the public housing stock, the individual tenants had the right to buy their rented flats; so a mixed ownership structure was often formed in multi-unit buildings, where in most cases the municipality owned only the minority of the units. The precondition of the privatization was the creation of a condominium structure in the building, in which each owner had a voting right according to its share in the total property. The management of the public stock was provided by the state companies (Real Estate Management Companies) before the transition. The newly formed condominiums typically moved into the private sector. By 2007, 40% of the public housing stock was within a condominium of mixed ownership.

Condominiums represent an ownership form, the ownership of the common parts of the buildings, like roof, staircase, corridors, basement, elevator, chimneys, and pipes in the walls. The owners of the dwellings in a multi-unit building are obliged to form a condominium (in case there are more than 4 dwellings in a house), and have to perform tasks related to the management and maintenance of the building as a common responsibility. In case of non-payment of co-owners, the condominium may act as a natural person, and for example sue non-payers.

In Hungary, today's cooperatives in the housing sector mean basically a management form. Housing cooperatives offer housing management services to condominiums, or to the few cooperatives that have not been transformed to condominiums. The latter are regularly the arrangements for the original builders' associations. The share of cooperatives in Hungary is marginal – according to estimates, in 2008 there were only 300,000 dwellings under the maintenance (and a small fraction of them in ownership of) housing 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)*

In Hungary, rentals with and without a public task are clearly distinguished. As described earlier, official statistics show public rental to be around 3% and private rental at around 4% of the inhabited housing stock, although complementary information suggests slightly different percentages. In the last 20 years the social rental sector has changed from a 'universal' to a 'residualized' sector.

As accidental landlords are the typical providers in the private rental sector, there is no targeted public finance resource allocated to their financing. As for the public rental sector, the municipalities are the main social landlords. They were not given any

targeted assistance besides the period of 2000 to 2004 (which will be described in detail under *2.2 B. Hosing Policy*); or, if there were any central financing options, they did not provide sufficient financial or political incentives, and predominantly remained unused by the municipalities.

While home ownership is the predominant tenure form, private rental is dominant within residential leases. However, residential tenancy is relatively low on an EU-28 comparison; furthermore, reliable statistical data on the private rental sector is scarce due to tax avoidance, and the related underreporting of rentals. The most typical form of private rental tenure is an individual landlord contracted to an individual tenant (or multiple individuals, e.g. a family). The term of the contract is typically short, one or two years, or even less, with students only staying for 10 months being a preferred "safe" option among many landlords.

One of the most important elements of Hungary's current housing situation – and part of the reason for the inevitable role of private rental – is the chronic shortage of social rental housing, which is largely the consequence of mass housing privatization. Due to housing privatization during the 1990s and the incentives related to taxation and the subsidy structure, the proportion of public rental housing had decreased from 22% to 4% by 1994, and has been stagnating ever since. Private rentals make up 4% of the housing stock, giving the entire rental sector a total share of 8%, which is a 'conservative' estimate (but still an experts' estimate, not appearing in official statistics e.g. Censuses). By contrast, the proportion of rentals in old member states of the European Union (EU15) is typically between 20-40% (EU, 2010). As the municipal housing stock contracted (on which social housing policy has traditionally relied), it did not serve as a comprehensive social housing system for low-income households.

In the course of the privatization process, which began in the late 1980s, better quality housing has disappeared from the public housing stock. Flats remaining in public (municipal) ownership were in a worse state of repair, and tenants were often coping with multiple social problems. The remaining social rentals were often concentrated in worse parts of the cities, and the allocation system also contributed to the residential segregation of disadvantaged households. A new element in the public sector is the growing number of vacant municipal apartments, because neither the municipalities, nor the tenants have the resources to renovate them to a habitable level. (In Szombathely, around 300 units out of 2,200 are empty due to the lack of resources for renovation)[22].

The municipality (the owner) has the right to set the rent according to the framework of the Housing Law. Public housing rents are much lower than in the private sector, usually reaching 20-40% of market (private) rents. This ratio varies from settlement to settlement. The size of the gap between demand for social housing and available social housing stock is growing. A conservative estimate puts demand at 300,000 apartments (8% of total housing stock), that is, the living situation of this many households would justify their need for accommodation in social housing.[23]

[22] MRI (2013): *Introducing Social Rental Agencies in Hungary*. Field work for a research project undertaken with the support of the Open Society Institute, in cooperation with Habitat for Humanity, Hungary; ongoing research.

[23] MRI (2009): Housing Needs in Hungary. Commissioned by Habitat for Humanity. MRI, May 2009. Accessible at http://www.habitat.hu/hu/tudaskozpont/lakhatasi-szuksegletek-magyarorszagon?id=10.

The 2011 Census figures show an even lower share of municipal housing (3%). There is no statistics on the distribution of outright owners and owners with mortgage in the owner-occupied sector, but we can estimate that 26-30% of the households have mortgages.[24] (This share decreased by the end of 2011, due to the 'early repayment' program. See later in this study.)
The share of municipal tenants is the highest in the first income decile (11%), and it decreases to 4-5% in the second and third deciles; but above this income level, there is no further decrease. The role of private rentals shows no such systematic change, but we need to underline that survey-based information on the private rental sector is not entirely reliable.

Table 3 Tenure structure according to income deciles (2010)

Income deciles	Owner occupied	Private rental	Municipal Rental	Other
1.	83.4	3.0	11.0	2.6
2.	88.2	4.4	5.5	1.8
3.	91.0	3.9	4.4	0.7
4.	92.2	3.4	3.1	1.3
5.	93.7	2.9	2.6	0.7
6.	94.2	3.1	2.0	0.7
7.	93.2	2.3	3.6	0.9
8.	93.5	2.2	2.8	1.5
9.	92.9	3.0	3.0	1.1
10.	89.5	6.9	2.2	1.5
Total	91.6	3.6	3.6	1.2

Source: SILC, 2011

As regards the financing of rental housing construction, there are no aspects that are any different from new construction in general. In fact, there have barely been any new constructions for rental purposes since the regime change, neither did support for rental housing ever emerge as a policy priority, and – other than inconsistent subsidies for the improvement of the municipal housing stock – no substantial measures were taken to address this issue. In the end, support for the development of municipal rental was the most important target of all subsidies that differ from new private construction (see in detail under *2.2 B Housing policy*).

- *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 meters 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 organisations, etc.)?*

[24] The banks statistics record the number of contract, but one family may have more than one contracts.

Table 4 Tenure structure in Hungary (inhabited units) 1980-2011

	1980	1990	2001	2011
Owner-occupied	71%	74%	92%	92%
Private rental	3%	3%	4%	4%
Public rental	26%	23%	4%	3%
Other	0%	0%	1%	1%
Total	100%	100%	100%	100%

*CSO Census data for 1980, 1990, 2001 and 2011

Although owner occupation has been the dominant form in most of the country before the regime change, rental, and especially state owned public rental, was still above 54% in the capital, and around 45% in major cities in the decades preceding the transition and the mass privatisation that accompanied it. Since the regime change, the rental sector as a whole drastically lost its significance: public rental has been stagnating around 3% in recent years, but only as public actors realised its importance and started to actively counteract its further depletion; and private rental has been showing at around 4% in official statistics. Rental sector still plays a much larger role in the capital and other cities, and the smaller the size of settlement, the more marginal it becomes.[25] 721,000 housing units were municipally owned at the beginning of 1990, 85% of which were privatized to sitting tenants. In the following 17 years, municipalities bought or built no more than a total of 36,000 housing units. Taking housing demolition into account, there were barely 140 thousand housing units in the public rental housing stock at the end of 2007 in Hungary (see table below).

Table 5. Changes in municipally owned housing stock, 1990-2007

		Municipal housing, thousand apartments	Source of information
Housing stock, beginning of 1990		721.3	1991 Census
Sales	1990 - 2007	605.6	CSO regular housing statistics
Housing construction		12.7	
Housing demolition		10.8	
Purchases		23.8	CSO estimate
Housing stock, end of 2007		140.9	CSO municipal real estate asset statistics

Source: Central Statistical Office

The share of occupied dwelling stock by type of building in 2003 was:

- 10% urban tenement buildings;
- 19% high rise (industrially built) housing estates
- 5% condominium buildings in “green belt” areas and another 2% “other condominiums”

[25] CSO, 2011b; 2011c.

- 47% single storey, detached or twin family house (this particular type showed the most significant increase in share since the transition; its share grew from 40% to 46% between 1999 and 2003 only)
- 7% multi-story detached family house;
- 8% traditional rural building, typically from before 1945;
- And 2% farmhouse, located outside of the administrative area of towns and settlements. (CSO 2005)

The tenure form does not correlate with the building type so much as it does with the settlement type, as mentioned earlier: the larger the town or settlement, and the more employment opportunities it has, the larger the share of the rental sector. Their ownership structure is similarly homogeneous: although some signs indicate a mild raise in the role of institutional developers as owners and landlords, ownership by private individuals (home ownership) is predominant. Private real estate management companies are active on the market, but they only ensure the management and maintenance of property, which is particularly important in the case of cooperatives and condominiums (e.g. where coordination among a multitude of individuals is needed). However, contracting a private real estate management company is not a legal obligation, condominiums and cooperatives can freely opt for this solution.
Public rental housing is concentrated in the cities: 69% of the stock is to be found in Budapest and in cities with county rights.[26] There is next to no rental housing in villages, with only 1% of that housing stock owned by the municipality.

Table 6 Municipal housing stock according to settlement type, January 1 2009

	All housing units	Municipal apartments	
		number	proportion
1 Budapest	881 000	51 284	5,8%
2 Cities with county rights	881 345	44 577	5,1%
3 Cities	1 237 807	27 573	2,2%
4 Villages	1 302 675	13 346	1,0%
Total	4 302 827	138 451	3,2%

Source: CSO Housing Statistics 2010

1.5 Other general aspects of the current national housing situation

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

There are no strong lobby groups or organizations on either the landlord or the tenant side. In the early 1990s, a National Association of Tenants (founded in 1989) played

[26] Cities with a population exceeding 50,000 and county capitals enjoy a special legal status in Hungary.

quite an active role representing the interests of tenants in the public sector, but it lost its significance with the privatisation process. There are no strong advocacy or lobby groups on the landlord side either. Municipal housing companies do have a strong professional association (under a larger professional umbrella of public sector associations), but their membership covers only a small part of all property managers, and the association has no real influence. The typical private landlords are not professionals; they own 1-3 apartments, which makes it very difficult to organize lobby groups. Wide spread tax evasion on behalf of individual landlords is another obstacle in front of forming effective advocacy groups.
Interestingly, one of the most active proponents of the rental sector is the Society for Housing Construction and Renovation; an association of construction and building material companies,[27] which made great efforts for developing state subsidies for the construction of rental homes. In the 2000s several policy proposals were made for the adoption of the Austrian tenant cooperative model, but they did not succeed. Although it would have received strong support from the construction sector (to some extent, the construction 'lobby'), there were no companies that were interested in undertaking their long term operation without a central government guarantee for their sustained subsidy.

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

The number of vacant housing units, presented in the Census data every ten years, is an important indicator for housing statistics. 4.07 million housing units were registered in the 2001 Census, of which 341,000 were empty at the time of the survey. This means that the proportion of uninhabited housing units had doubled since 1990, going from 4% to 8% of the total housing stock by 2001. As for municipal housing, the proportion of vacant housing units was around 6%. In 2011, the number of vacant housing units increased to 511,000, 12% of the total stock.

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

Tax evasion was a typical strategy for households to manage hardships caused by the transitional recession. The informal economy was estimated to be as large as 25-33% of GDP between 1990 and 1997.[28] Informal transactions have been widely accepted by the population: consumers pay and accept payments for service without invoices (VAT tax evasion); and employers pay wages or part of the wages in cash directly to employees

[27] See http://www.lakasepitesert.hu/, in Hungarian.
[28] Laczkó, M. 2000. 'The hidden economy and its effect on the post-socialist economy on the basis of the household energy consumption. An analysis of the role of the hidden economy in Hungary. Joint research program of Economic Institute of Hungarian Academy of Science and TARKI.' (Egy rázós szektor: a rejtett gazdaság és hatásai a poszt-szocialista országokban a háztartási áramfogyasztásra épülő becslések alapján. Elemzés a rejtett gazdaság magyarországi szerepéről. MTA KTK és Tárki közös kutatási program.

(income tax evasion), just to mention the two most pervasive examples. According to a study,[29] 25% of all jobs are affected by such transactions.

The existence of the informal economy cannot be ignored from the point of view of social exclusion. The total social expenditure which includes pension, family support, housing allowance and social assistance is 19% of the GDP (2006), which is around the size of the informal economy. Because the majority of the informal economic activities involve tax evasion, the loss of tax revenues radically constrains the possibilities of public policy. There are two sides of the problem from the point of view of social exclusion. First, because of the limited public resources, social assistance payments are not sufficient to cover the living costs of families; consequently, households eligible for social benefits have to find jobs in the informal economy. 15% of the working age population is retired or inactive, which indicates the potential size of informal employment. Furthermore, many employees are registered with minimum wage to avoid higher taxes (both on the side of employees and employers) and receive additional salary illegally, in cash. Second, the economy is already overtaxed, and at this share of informal economy the government cannot raise taxes in order to increase social benefits. Black or 'grey' market phenomena (especially full or partial tax evasion) permeate many sectors of the Hungarian economy. They define many low income households' access to housing consumption in general; while some more direct black market issues are also present on the housing market. Building without a valid building permit is one typical issue, especially on less salient rural areas. Purchasing building materials and building and refurbishment services without reporting to tax authorities is another issue, further encouraged by the EU's highest VAT rate at 27%.

The rental market is informally treated as a relatively safe terrain for grey market: a very widespread issue – and source of conflict – is that private landlords rarely pay income tax after their rental income. While market rent rates are fairly expensive for tenants and provide a solid income for landlords, the latter always face significant risks, especially non-payment, damage in their property, or the tenant accumulating utility arrears. Landlords will, accordingly, hide their income to raise their margin, in order to balance these risks. As no representative statistical surveys were taken on this particular issue, only anecdotal evidence can be obtained on this phenomenon, according to which the tax authority did allow this to happen until recently, as a form of respect for private property, and for income stemming from self-employment and entrepreneurship. Some findings of a parallel research project conducted by MRI suggests that landlords who do report their income has been on the rise in the past few years: in the East Hungarian town of Nyíregyháza, the rate of fully legally operating landlords grew from 10% to around 50%; which, again, is no representative data, but indicates the development direction of the private rental market. (*Interview 7, 11, 24 – see Annex 9*)

29 Semjén, A., Tóth, I.J., Medgyesi, M., and Czibik, Á. 2008. "Tax evasion and corruption: population involvement and acceptance." ("Adócsalás és korrupció: lakossági érintettség és elfogadottság.") Discussion Papers Institute of Economics, Hungarian Academy of Sciences. 2008/13. Budapest.

Summary Table 1. Tenure structure in Hungary 2011

Home ownership	Renting			Intermediate tenure	Other	Total	Notes
		Renting with a public task, if distinguished	Renting without a public task, if distinguished				
92%	7%	3%	4%	-	1%	100%	2011 Census
88%	11%	3%	8%	-	1%	100%	MRI estimation

Note: 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.

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?*

After 1990, market mechanisms replaced state control in the housing sector. As discussed earlier, in 1990, 23% of the housing units were in state ownership. The housing privatization was started in 1986, and it accelerated in the course of the transition, partly because the ownership of housing units and social housing responsibilities were transferred to the local municipalities throughout the early 1990s, with no adequate resources from the state that would have been necessary for their proper management. (The artificially low "socialist" rent level did not cover the actual asset management costs, whereas the income level of inhabitants did not allow for the necessary drastic raise.)

By 2000 only 4% of the housing stock was owned by local governments. The housing management of multi-unit buildings (typically housing estates) had been transformed, and private management companies dominated the market. However, this market was very volatile: condominiums frequently changed the maintenance and management companies because of their unsatisfactory quality and price.[30] State housing construction companies were privatized or went bankrupt, and land policy was taken over by the decentralized local governments, while the majority of urban land was transferred to private ownership. The housing finance system had become technically bankrupt by 1990 because of the long-term state housing loans issued in the 1980s with a fixed low interest rate (1-3%). As a consequence, by the end of the 1990s, the housing sector was in deep crisis. New construction diminished to 20 per cent of its 1980s levels, around 0.5% of the existing stock, and the deterioration of the housing stock accelerated. The housing mortgage market basically vanished: while the outstanding loans were 16-17 per cent of GDP in 1989, they were reduced to 1-1.5% by the end of the 1990s.

The economy stabilized by the early 2000s, and by 2001, gross domestic product surpassed the 1989 level. The political transition had an enormous effect on macroeconomic trends. As a result of the transitional recession, the GDP fell by 15% in the first part of the 1990s. Structural reforms (privatization and bank reform) were accompanied by a strong fiscal stabilization package (1995-98), and the maintenance of sound macroeconomic policies.

The housing market changed dramatically after September 2008. The weakening of the Hungarian currency (HUF) increased the mortgage repayments for borrowers with foreign currency loans. On average, such loan repayments grew by 30 to 60%. The majority of Hungarian mortgage loans were adjustable rate loans, 85-93% of which

[30] Gerőházi et al. 2011

issued between 2006 and 2008. According to the Financial Stability report of the HNB (2011), the average loan payment/income ratio increased from 19% to 32% overall, but for the income group under medium income level the increase was much higher, from 20% to 40%.[31] Consequently, the payment burden increased not just because of the change in the exchange rate, but also because the banks increased adjustable interest rates. These two developments inevitably increased the likelihood of payment arrears.
The housing consequences of the financial crisis were very much like the symptoms elsewhere;[32] however, the decline in Hungary seems to have been steeper than in most other countries:

- Housing construction: New housing construction decreased from 36,200 to 12,700 between 2007 and 2011; the decline was more severe measured by the building permits (from 44,300 to 12,500).
- House prices: The year-by-year decrease in house prices between 2008 and 2009 was 8% in nominal values and 12% in real values. The process continued in 2010 and 2011 as well, and by 2011 the real house price was 25% lower than in 2008.
- Housing market transactions: Housing transactions decreased by 42% and housing construction by 65% from 2008 to 2011, while the number of building permits dropped by 72% in the same period.
- New housing loans: housing loan issue decreased by 68% by 2011 (Q3 compared to the 2005-2008 average). The early CHF repayment scheme had a temporary effect (see later).
- NPL ratio: The stock of the non-performing mortgage loans portfolio (i.e. loan payments overdue by more than 90 days) increased from 2.6% to 6.3% of the total outstanding balance between 2008 and 2009, and the trend continued and reached 12.3% by 2011 (Q1). The number of clients in Hungary's Central Credit Information System (KHR) increased from 290,000 (2007) to 850,000 (2011).
- Housing Cost Arrears: Housing arrears have increased between 2009 and 2012. In electricity, gas service and district heating the total outstanding arrears increased from HUF 43 billion to 143 billion. The number of households with arrears increased as well.

- *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?*

The population in Hungary is expected to decrease, because of the low fertility and emigration. Huge immigration is improbable, because of the geographical location and economic position of the country.

[31] Hungarian National Bank, 2011: *Report on Financial Stability*. November 2011.
[32] Scanlonet al. 2012. Post-crisis mortgage and housing markets in Europe: a comparative review; Deloitte (2012): 2012 Property Index (Overview of European Residential market).

- *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?*

As pointed out in more detail in other parts of the report, the private rental sector is quite fragmented: a fraction of it is clearly at the high end of the market, and beside it there is a fairly wide medium level, and an also quite wide spectrum of low end renters. The poorest households do depend on rental housing; either on social rentals, or on the private rental market. Although the latter is overburdening their available budget, they often have no other tenure options. Again, it is not easy to give estimation for the number of households depending on rental housing, but we can safely say that an important share of the lowest two income deciles is within this group.
In a European comparison, immigration is very low in Hungary. There are no statistics about the tenure structure of the immigrant population; neither do they occupy a statistically significant percentage of the housing stock.

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?*

As for the private rental sector, the lack of reliable statistics again limits our insight to expert estimates' and our field experience. We know from field experience (mainly from interviews) that the private rental sector is heavily segmented: its top layer – the high end of the market – is quality inner city apartments, run entirely legally, and for a high price (comparable to, although slightly lower than, private rental in EU15 capitals). However, there is a fairly wide medium range of private renters, whose landlords may or may not pay income tax after their income, and whose rent-to-income ratio may well be around or even higher than 30%; but they may also not necessarily consider themselves part of the "housing poor", as they manage a (lower) middle-class lifestyle. (Again, this is a qualitative approach, and is limited to a Central and East European transition context.) There would, however, be a low range of renters, who can barely afford renting, but have no alternatives due to a severe lack of social housing. Some of our interviewees, especially social workers and local municipality staff members, suggested that some social housing applicants spend up to 60% of their monthly income on rent and utilities combined.

Housing affordability in terms of access to housing has changed over the last two decades. According to the housing affordability indexes,[33] house price to income ratio decreased in the 1990s, because the real house prices increased faster than incomes: from 1999 to 2003 the house price/income ratio rose from 4.1 to 6.2. However, housing became more affordable on the market, as mortgages became more accessible with the decrease of interest rates from 23% to 6% between 1999 and 2003 (taking into account mortgage subsidies as well). Thus the Housing Affordability Index improved from 40% to 78%, which means that the average households were capable to 'buy' (under the condition defined in footnote 14) a house, which had a value of 40% and 78% respectively, of the average house price.

Table 7 Housing affordability indexes

	1992	1999	2003	2012
Average mortgage interest rate (%)	32	23	6	12
Average house price (million HUF)	1.8	3.7	9.3	6.7
Average household income (million HUF/year)	0.4	0.9	1.5	2.1
House price/income ratio	5.1	4.1	6.2	3.2
Housing Affordability Index	23	40	78	92

Source: MRI calculations

Housing affordability indexes changed in a very peculiar way after the GFC. Because of the house price decline, housing seems to be more affordable, both in terms of the house price to income ratio, and in terms of the Housing Affordability Index. However, everyday experience is that housing is not more affordable, because housing costs (utility costs) are increasing, job security is on the decline, and banks are reluctant to issue mortgage loans.

The affordability of housing expenses poses a serious problem for low-income social groups. Over 20% of Hungarian households spend a greater than 30% share of their income on housing.[34] In 2003, around 500,000 households were in arrears endangering their security of tenure, but only 150,000 households received a housing allowance, covering app. 10-15% of their housing costs. The number of households with utility cost arrears has been increased between 2008 and 2012 to 15-20% of the households.[35]

[33] House price/income ratio (HP/I): The house price/income ratio is the most frequently applied indicator comparing the price (average or median) of a given flat with the annual income of a given household (average or median). Housing affordability index (HAI): The affordable house price/average house price ratio indicates what percentage of the value of an average home is the value of the home affordable by way of a loan for which one with average income is eligible. The index compares the average household's income to an 'ideal income level', which is high enough to purchase an average home. Typical loan criteria include 20% cash, 30% debt service/income ratio on a 25-year term.

[34] Székely, 2011.

[35] There is no reliable statistics. According to the statistics based on reports by utility companies the sum of the arrears (electricity, gas and district heating) has increased from 43 billion HUF to 143 billion HUF between 2009 and 2012, the number of the consumers with arrears increased by 2-3 times. (Herpai, 2010; NFM, 2012) Although there is no accurate data in respect of the number of indebted households, 15-20 % seems to be a realistic estimate.

Table 8 Average rent in the public and the private rental sector, 2010 (HUF and EUR/m^2/month)[36]

Region	Public rental sector		Private rental sector	
	HUF	EUR	HUF	EUR
Central Hungary	260	0.90	1 038	3.60
Central Transdanubia	229	0.80	658	2.30
Western Transdanubia	361	1.25	639	2.20
Southern Transdanubia	175	0.60	569	1.95
Northern Hungary	261	0.90	521	1.80
Northern Great Plain	305	1.05	520	1.80
Southern Great Plain	213	0.75	485	1.65
Total	**262**	**0.90**	**736**	**2.55**
From total: Budapest	247	0.85	1 144	3.95

Today, following modification of the housing allowance scheme, around 350,000 households receive it. Housing allowances and rent allowances are structurally separate entities on both the central and the local levels, and their significance is marginal for the time being. Their weight is around 2% of governmental housing expenses, while this ratio is around 30-50% in Western European countries.

Access to an affordable housing unit with acceptable standards is a critical issue. "Acceptable standards" in this context mean dwelling size, existence of a functioning bathroom inside the dwelling, and a location from where jobs and services are accessible. Although the general affordability situation has been varying since the transition, access to acceptable housing was not affordable for the majority of households, neither in the owner-occupied sector nor in the private rental sector. The public rental sector offers affordable housing, but the demand is several times higher than the supply (see later). In the private rental sector the rental costs are too high to be considered affordable, partly because of the legal uncertainties (leading to risks on both the supply and the demand side) and the inappropriate subsidy and tax policy. Owner occupation is the main tenure form, where affordability has been varying according to the macroeconomic situation: it improved in the first part of the 2000s, and has been worsening since 2008.

In the public rental sector, average rent is HUF 262/m^2/month (approx. EUR 0.9), which means that for an average flat in a multi-unit building (57 m^2) an average income household pays 8.6% of their monthly income for rent. In the private rental sector the rent/income ratio is 24.2%. However, the rent level both in the private and public sector varies regionally.[37]

[36] Székely, Gáborné (2011): Társadalmi helyzetkép, 2010 – Lakáshelyzet [*Social Report, 2010 – Housing situation*], Central Statistical Office, Budapest

[37] Average household income: HUF 2.1 million (or approx. EUR 7,250) annually; average family: 2.6 persons. Source: MRI calculations. Exchange rate: 290 HUF/EUR, 9 January 2012.

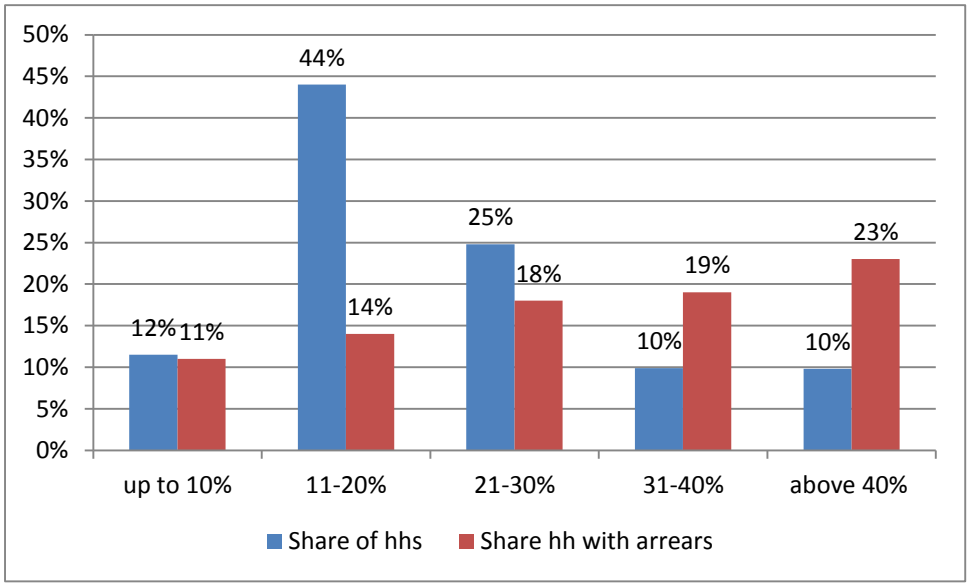

Figure 2. Share of all households and households with arrears according to household groups based on the housing cost/income ratio, 2006 (Source: SILC, 2007). I.e., 12% of households pays up to 10% of household members' total income on housing costs; and 11% of these households have arrears (first two bars on the left). 44% of households spend 11-20% of their full income on housing costs, and 14% of them have accumulated arrears; and so on.

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?*

There are basically no institutional developers on the rental market. Technically, existing institutional landlords are "accidental" landlords in the sense that they did not originally intend to enter the market, which did not look financially attractive in the first place. Instead, they usually manage and rent out an inherited rental stock (for example by the privatization of the state companies); or they are developers who could not sell their property on the market, and they decide to rent it out temporarily, until the market – hopefully – regains its impetus. (*See interviews 11 and 13 in Annex 9*). Consequently

tenancy contracts are not relevant from the perspective of professional and institutional investors.

Nonetheless, interviews suggested that after 2007 the rental market gained importance, although no empirical evidence is available to underpin these statements. (See the full list of interviews under 9.29.2 Cases) Rental market actors are generally on the opinion that many developers turned to renting when their investment proved unmarketable; and some real estate agents believe that families move in together more often to rent out a second home in order to make up for household budget losses. A massive state programme for buying out the real estate of defaulted mortgages is important: the National Asset Management Company is the first truly large scale central intervention into the housing market since the regime change. (See later, e.g. under Housing policies and Regulatory types of tenure.)

However, as even with this rise rental contract are insignificant from an investor's point of view, there are no well-developed financial instruments built around rental sector financing.

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?)?*

There are different insurance products on the market. Most importantly, both the landlord and the tenant may insure the apartment and the movables found in it. It is typically the landlord who insures the apartment, and they charge its cost on the tenants.

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

The most typical form of private rental tenure is an individual landlord contracted to an individual tenant (or family). The term of the contract is typically short, one or two years. The real estate agents may have a more important role for finding and selecting tenants; they typically do a first selection (selecting the 'good tenants'), but they seldom share any risk with the landlords. Payment of utility costs is a high risk factor for the landlords. Typically the agents ask one month's rent for the matching the tenant and landlord. They usually provide a first check of the tenants or/and the landlord, and filter potential tenants who have too high a risk of non-payment or antisocial behaviour; in some of cases this leads to discrimination against Roma people and foreigners (not coming from EU member states) by the agent or the landlord.[38]

Very few real estate agents undertake the management of the property, the collection of fees and control of utility payments; they usually do not guarantee the revenues or the non-damage of the property either, nothing beyond putting the tenants and landlord in contact. The few companies that do specialise in rental property management charge between 15-20% of the rent.[39]

[38] Interview with a real estate agent (Appendix 9)
[39] http://www.alberletfelugyelet.hu/, in Hungarian.

2.5 Effects of the current crisis

- *Has mortgage credit been restricted? What are the effects for renting?*

The mortgage market changed dramatically after September 2008. The weakening of the Hungarian currency (HUF) increased the mortgage repayments for borrowers with foreign currency loans. On average such loan repayments grew by 30 to 40%.[40] The majority of Hungarian mortgages were adjustable rate loans, with 85 to 93% of them being issued between 2006 and 2008. Consequently, the payment burden increased not just because of the change in exchange rate, but also because the banks increased the adjustable interest rates. These two developments inevitably increased the likelihood of payment arrears.

The number of clients in Hungary's Central Credit Information System (*Központi Hitelinformációs Rendszer* – KHR) more than doubled in 2008 and 2009. The stock of the non-performing mortgage loans portfolio (i.e. loan payments overdue by more than 90 days) increased from 2.6% to 6.3% of the total outstanding balance between 2008 and 2009. By the end of 2009, there were 46,225 properties representing a 120% increase over 2008 on which foreclosure proceedings had been started, or which had been sold to companies specializing in the management of non-performing loan portfolios. More recently, the number of foreclosures has declined because the Hungarian real estate market has nearly collapsed and barely recovered since, with transactions on a historic low in early 2012. Hungarian banks made their lending criteria stricter. The year-on-year decrease in house prices between 2008 and 2009 was 8% in nominal values and 12% in real values. Housing transactions decreased by 42% and housing construction by 11% during 2008 and 2009, while the number of building permits dropped by 36% in the same period.

- *Indicate the current figures on repossession (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?*

478,000 repossession procedures were initiated in 2012, which surpasses the figure for 2011 by 10%; as a result, 1% of all defaulted debtors lose their home or important movables, according to data published by the Hungarian Court Bailiff Chamber.[41] In 2011, 39,500 dwellings were seized for foreclosure. Most judicial executions are not initiated for defaulted mortgages, but for smaller financial obligations; and financial institutions only launch the procedure in about 20% of the cases.

[40] The most popular foreign currency was the Swiss franc (90-95% of the foreign currency loans were issued in CHF). In 2005 and 2006 CHF 1 was equal to HUF 150-160 (Hungarian forints). By 2009 this exchange rate had increased to HUF 220. Thereafter, the exchange rate for Swiss francs varied between HUF 180 and 220; however, in 2013 it varied around 240 HUF/CHF.

[41] Press announcement of the Hungarian Court Bailiff Chamber, published on 6 May 2013 (in Hungarian). http://os.mti.hu/hirek/85763/a_magyar_birosagi_vegrehajtoi_kamara_kozlemenye_ last viewed: 11 May 2013.

2,792 evictions were implemented between 2008 and 2011 from municipal rentals, the vast majority of which took place due to rent and utility arrears. Tenants in delay with payments towards the municipality tend to accumulate other – sometimes smaller – debts as well, either towards the utility service providers, financial institutions, or telecommunications providers.
According to the former Hungarian Financial Supervisory Authority, mass foreclosures as a result of the GFC began in the last quarter of 2011, after a moratorium period prolonged for years. Following a centrally determined quota, 13,600 foreclosures were finished by the end of 2012.

- *Has new housing or housing-related legislation been introduced in response to the crisis?*

After the GFC, the banks improved their workout departments, and offered different forbearance options for the borrowers who had financial difficulties, like increasing the modification of loan terms, payment reduction, capitalizing the arrears, etc. Between 2008 and 2010 the government put forward different suggestions and even (very cautious) subsidies to give incentives to the borrowers and banks to reach an agreement, which would have been easier to manage.
The government introduced a program in early 2009, which offered households in loan repayment difficulties due to unemployment the option of paying reduced instalments on their mortgage loans for up to two years. Thereafter, borrowers would have to cover the costs of their increased debt. The repayment of deferred instalments to lenders is guaranteed by the government. However, very few borrowers were eligible due to the strict criteria. In 2010, only 3,000 of the 24,000 restructured loans qualified for this government program. However, the banks reacted to the government model by developing their own solutions, which were administratively simpler and financially more advantageous for them. Consequently, the banks persuaded their clients to choose their (rather than the government's) restructuring products.
The government put a moratorium on foreclosures from 1 September 2009 to 15 April 2010, and later extended this freeze to the end of June 2010, and thereafter to 31 December 2010. In September 2009, Hungarian banks adopted a Code of Conduct in conformity with government guidelines, in which they introduced more consumer-friendly procedures, such as abandoning the abusive practice of unilaterally changing loan contract conditions, giving defaulting borrowers 115 days to sell their home before foreclosing on it, improving the information given to borrowers, etc. The two-year series of moratoria have posed a risk to the steadiness of the financial system, since borrowers in financial stress had less incentive to meet their loan payments, experiencing that non-payment had no consequences. The moratoria, and the parallel expectations that government would help the defaulted households, increased the share of non-performing loans.[42]
The foreclosure moratorium will be phased out gradually: banks will be allowed to sell foreclosed properties that are worth over HUF 30 million and carry a mortgage of HUF 20 million. In the fourth quarter of 2012, the quota was 3% of all foreclosed homes. It

[42] HNB, 2010: *Report on Financial Stability*. November 2010.

was raised to 4% in 2013, and to 5% in 2014. The actual foreclosures have reached 80-85% of the quota in the first two quarters in 2012.[43]

In 2002 and 2003, the Hungarian government started a loose fiscal policy, which led to an increase in household consumption by 9.8% (2002) and 7.9% (2003), much above the level that the productivity increase would have justified. While GDP grew by 4.4%-4.7% between 2002 and 2004, the postponement of austerity measures resulted in a high level of public debt, peaking at 9.3% of GDP in 2007, and a high government debt to GDP ratio reaching 73% in 2008. Due to the high public deficit and large gross foreign debt, the global economic crisis had a severe impact on the economy, and consequently Hungary had to take emergency loans from the IMF. The interim Hungarian government of 2009-2010 introduced an austerity program that consolidated the budget, and brought down the deficit to 3.8% of the GDP by 2009.[44]

The Hungarian government's response to the crisis focused on managing the fiscal deficit, which was one of the conditions of the IMF loan. The government cut housing subsidies drastically as part of the fiscal adjustment program, under which both the interest subsidy and the homeownership down payment grants were abolished. The government also introduced several 'mortgage rescue' programs.

In the framework of a program introduced in early 2009, the Hungarian government offered the option of paying reduced instalments on their mortgages loans for a maximum of two years for households which experienced loan repayment difficulties due to unemployment. Thereafter, borrowers would have to cover the costs of their increased debt. The repayment of deferred instalments to lenders was guaranteed by the government. However, the criteria for qualifying for this program are so strict that very few borrowers proved eligible. The government was very cautious in determining the eligibility criteria, in order to avoid being left responsible for too much of the 'bad loans' issued by Hungarian banks in the past. Of the 24,000 restructured loans, only 3,000 qualified for this government program. However, the banks reacted to the government model by developing their own solution, which is administratively simpler and financially more advantageous for them. Consequently, the banks persuaded clients to choose their (rather than the government's) restructuring products.

Additional initiatives aimed at easing the hardship caused by the global economic crisis were also implemented. One of them was the establishment of a crisis fund, to which well-off individuals and companies could contribute. The crisis management fund would provide one-off assistance to some 30,000 of Hungary's most disadvantaged families whose members had lost their job after 1 October 2008, or for whom loan repayment instalments had increased by more than 20%. The program was stopped in 2010, because it proved to be costly and ineffective.

Mortgage rescue programmes were at the heart of the practical housing policy measures, as the politicians of the new government promised to help families who became trapped in CHF loans. The volume of the CHF loan stock presented a high risk for the economy, so from the beginning one of the primary aims of the mortgage rescue programs was to convert the CHF loans to HUF loans, but without a huge fiscal cost.

The 2008-2010 government also launched a mortgage-to-rent scheme that offers preferential loans to local governments so that they can buy repossessed homes and let

[43] PSZAF, 2012a: Gyorselemzés a végtörlesztésről [*Flash analysis on discount early repayment*].
[44] Hegedüs, 2010.

the original owner remain in the property as a tenant. However, many local governments have refused to participate in this scheme, because there is no long-term guarantee that central government will continue to support this newly created rental stock.

The national government has also imposed stricter regulation of the mortgage market since March 2010 through setting the maximum loan-to-value ratio for local currency loans at 70%, for loans in EUR at 60%, and for other foreign currency loans at 45%. The strategy of the new government elected in 2010 was to put the burden of the crisis on banks, service providers, and multinational companies (energy, telecommunications, and retail sector). The first step of the government was the complete ban on foreign currency mortgage loans and a strict regulation of bank borrowing practices, such as securing the option for borrowers to extend their loan repayment period by five years without incurring a penalty.[45]

The Early Repayment Scheme (ERS) ran from September 2011 till the end of February 2012, allowing borrowers to fully repay their CHF mortgages at a reduced exchange rate of HUF 180 to the Swiss Franc, when the Franc was trading at HUF 235-250. As a result 23.3% of the mortgage loans – HUF 984 billion (or EUR 3.3 billion) – were repaid at discounted exchange rate, and HUF 1,355 billion (about EUR 4.6 billion) was repaid at the current exchange rate.[46] New loans provided 30% of the source of the early repayment; the remaining 70% was households' savings (life insurance, securities, etc.), which clearly indicates this opportunity was mostly only feasible for wealthier families. (Of course the interest rate increased as the early repayment scheme started, but it was justified with the increased risk.) In the end, ERS and most of the similar 'mortgage rescue' efforts can be summarized as a bailout measure for higher income households in a temporary difficulty.

According to expert estimates, 15% of the repaid sum was connected to the informal economy. The so-called 'Home protection law'[47] did, in fact, stipulate that the Tax and Customs Administration cannot check the source of early repayments in connection with the untracked wealth increase. The banks had to make up for the cost of the discount, writing off a gross loss close to HUF 400 billion (0.5% of the GDP). According to the agreement between the banks and the government, financial institutions will be able to write off 30% from the special Tax on Banks, so the cost of the program will eventually be shared at 70%-30% between the banks and the government. This implicit subsidy was offered to the households who could finance the repayment (either from saving or loans), which had a regressive effect on income distribution.

As a consequence of the ERS, the quality of the remaining stock will worsen as a recent report on K&H Bank demonstrated: the share of NPL in the stock of mortgage loans increased from 10.7% to 13.4% in the last there years.[48]

In 2012, a program was announced that put an exchange rate cap on repayments, and opened a special account for the exchange rate differential. Clients can apply to participate in the exchange rate limit scheme by the end of 2012 at the credit institutions disbursing their loans. The program is available for clients who took out CHF loans up to

[45] HNB 2010, p. 24-25.

[46] PSZAF, 2012b: PSZAF. 2012b. Kényszerértékesítésre kijelölt ingatlanok adatai [*Parameters of real estate selected for foreclosure*].

[47] Act CXXX of 2011 on the amendment to Act CXII of 1996 on Credit Institutions and Financial Enterprises in relation to the expansion of home protection measures

[48] See HNB, 2011 for detailed analysis.

HUF 20 million, are behind with their payments by no more than 90 days, and are not part of a repayment-assistance program. Banks will temporarily apply an exchange rate of HUF 180 to the Swiss Franc, HUF 250 to the Euro and HUF 2.5 to the Yen during the scheme. The balance compared to market rates will be booked on a special buffer account. The interest component from the part of the monthly repayment above the exchange rate limit will be paid by the bank and the government (in a ratio of 1/3-2/3), borrowers will only have to repay the principal part, including interest on the latter, according to the rules related to the buffer account loan. Above a set top exchange rate level (HUF 270 for the Swiss Franc, HUF 340 for the Euro, HUF 3.3 for the Yen), the part of the repayment exceeding the top exchange rate will be paid by the state. The preferential rate period will last a maximum of five years, but until June 2017 at the latest. Clients can initiate termination of the exchange rate limit after the expiry of three years.

The new government (2010 to date) announced the introduction of the National Asset Management Company (NAMC) in 2010: according to its original goal, it was going to buy the homes of defaulted borrowers, and rent these back to them. However, soon after the announcement, the government realized that they do not have the resources to buy out the debts on a mass scale. However, the law was not accepted until the end of 2011, and the NAMC started to work in the middle of 2012. NAMC has been buying a limited but growing number of defaulted loans – the number of initiated transactions was near 500 in the summer of 2013, although contracts in force were still only around 1500 – and offer the option of renting out to the debtor. In the beginning, 5,000 units were planned to be bought, but later the maximum number of units was modified to 8,000 in 2012, and a total of 25,000 by 2014. (Portfolio, 2012) NAMC will pay 55% of the value given in the original mortgage contract in Budapest, 50% in county seats, and 35% in other settlements. The budget resources of the program are not yet secured in June 2012; whereas its cost was estimated at HUF 125 billion. Transactions have to be initiated by both the bank and the debtor; however, there are strict eligibility criteria, which have been changed several times already. The Company is very active, open to innovative solutions; in October 2013 the possibility of exchange between rented apartments and leasing unused units with a social purpose was being considered. Should the NAMC reach is goal of acquiring and renting back 25,000 housing units, it would become the largest scale social rental programme in Hungary since the transition.

2.6 Urban aspects of the housing situation

- *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?)*

As we already mentioned, public rental housing is concentrated in the cities; 69% of the stock is in Budapest and in cities with county rights.[49] There is almost no rental housing in villages, with only 1% of village housing stock owned by the municipality. This difference according to type of settlement is striking, as compared to differences in regional or county distribution. From 3,152 settlements only 833 settlements have more

[49] Cities with a population exceeding 50,000 and county capitals enjoy a special legal status in Hungary.

than 10 public rental units, 1,900 settlements have less than 10 and around 800 have no rental units at all.
The private rental sector has several problems that are related to its illegal (unreported) nature. The biggest problem is the high risk for both the tenant and the landlord. For the tenant it means that they can be evicted in any moment if they do not have a contract. Very often they cannot register themselves to the address. Even if they do have a legal rental contract, it can be terminated any time by the landlord, and the tenant be given only 3 months to move out from the apartment. The risk on the landlords' side is that if the tenant does not pay the rent and bills, or the tenant causes damage in the unit, there is no opportunity to seek legal remedy. These facts provide incentives to legalize the sector, but the tax burden is quite high. Looking at housing conditions from the point of view of tenure, we can find that private and municipal rentals were of lower quality than units in the owner-occupied sector.[50]

- *Are the different types of housing regarded as contributing to specific "socio-urban" phenomena, e.g. ghettoization and gentrification*

There is no strong gentrification process in Hungary, although there are some clear issues in Budapest that could be characterised as gentrification. Even in the latter case, policy makers' intention on using gentrification as a city renewal and development tool is probably more alarming than the actual rate of gentrification (with the exception of a couple of development areas that were already radically changed with the aim of gentrifying the neighbourhood). Some rehabilitation programmes in downtown Budapest did result the change of the inhabitants in the renewed part of the districts.[51]
Ghettoization is a relevant phenomenon in Hungary both in urban and rural settlements particularly hitting the Roma population. Ghettoization is a result partly of spontaneous segregation process due to the affordability hardships of impoverished households who move to lower status areas, often in marginalised places, but partly of deliberate measures of municipalities who often move lower status and/or indebted families to municipality outskirts in the framework of rehabilitation programs. In urban context the ghettoization process primarily affects the so called traditionally built urban neighbourhoods both with multi-unit buildings and single family houses, and some of such areas consists of municipal social housing. Rural ghettos (including entire villages) derive from a two-way migration process when the better-off households leave the settlements while impoverished households who could not maintain their housing in cities/towns move into such settlements because of the low housing prices.

[50] Farkas, János & Székely, Gáborné (2001): A lakosság lakásépítési és -korszerűsítési tevékenysége [*Housing construction and renovation activities of residents*] in: Satisztika Szemle, Vol 79, no. 12, December 2001; pp. 970-983. Accessible at http://www.ksh.hu/statszemle_archive/2001/2001_12/2001_12_001.pdf
[51] Csanádi Gábor, Csizmady Adrienne, Olt Gergely (2011): Urban Renewal and Gentrification in Budapest City Center. In: Szirmai V (szerk.) Urban Sprawl in Europe: Similarities or Differences? Budapest: Aula Kiadó: 209-252. Gábor Csanádi - Adrienne Csizmady - Gergely Olt (2011): Social sustainability and urban renewal on the example of Inner-Erzsébetváros in Budapest Society and Economy 33 (1): 199-217

The latest survey on ghettos[52] shows that there are 1,633 ghettos inhabited by poor or Gypsy people located in 823 settlements and in 10 districts of the capital city, i.e. in one fourth of all settlements. 60% of the ghettos are located in (large) villages. A total of 280-315,000 people (3% of the total population of the country) live in those ghettoes. Two thirds of the ghettos are located on the periphery of settlements and 14% of them in areas which defined as non-residential area by the given local governments. 75 or more persons live in 50% of the ghettos, and 1,000 or more people live in 49 ghettos.[53] The survey did not dealt with the so called ghetto villages, where altogether 36,000 Roma people (6 % of the total Roma population) lived at the first half of the 2000s.[54]

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

Squatting does exist in Hungary, but only to a limited extent; it is a temporary solution of persons in a marginalised situation. Its scale is statistically insignificant, and the cases are marginal (homeless persons moving into unused buildings); which is further limited by fairly strict law enforcement in private property violation cases. There are virtually no legal cases for squatting; people resorting to this option are not in a position to enter into litigation, and very often they are not aware of their rights and available legal remedies.

2.7 Social aspects of the housing situation

- *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)*

The general attitude toward different tenure forms has been a preference for home-ownership: 'conventional wisdom' holds that 'it is cheaper to buy than to rent'. Consequently, private rental is chosen by families who have no other options. The public sector has very few new tenants; it is not an available option for the majority of the households.
In the last 20 years the social rental sector has changed from a 'universal' to a 'residualized' sector, but as the whole social rental sector has shrunk, even 80% of households in the first income decile (by net equivalent household income) live in their own home. Generally, we can state that households below median income are over-

[52] Veronika Domokos, 2010: Analysis of locations and infrastructure circumstances of ghettos inhabited by poor and Gipsy people, and segregates in cities. Ecotrend Bt. Commissioned by NDA KOR IH LHH Development Program Office. (The survey did not dealt with the so called "ghetto villages".)
[53] Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in Hungary. Date of access: 08/01/2013. http://romadecade.org/cms/upload/file/9270_file8_hu_civil-society-monitoring-report_en.pdf
[54] Kemény I. – Janky B. (2004): Települési és lakásviszonyok. (Settlement and housing) *Beszélő,* 2004/4, http://beszelo.c3.hu/04/04/13kemeny.htm

represented in the rental sector (in each subtype), which means that they typically have no choice.[55]

Another dimension of housing poverty is homelessness. Homelessness was basically a new social phenomenon after the transition. Today experts estimate the number of homeless people to 20,000-30,000, whereas the total accommodation capacity in all types of homeless provisions was approximately 10,700 in December 2012.[56] According to the last yearly homeless count (by the 'February 3 Working Group', as it is always carried out on this date, for the 15th time in 2013), app. 19,600 people were registered in larger cities as rough sleepers staying in the streets, other public places, or other places not meant for habitation. Homeless shelters run with full capacity during the winter. The typical reason for homelessness, according to research, is personal circumstances, but structural causes (such as the weak housing allowance system, the inflexible housing market, especially the low share of affordable housing, the low number of social housing units, and so on) also play an important role, and explain why is it so difficult to re-integrate homeless people.

'Hidden homelessness' covers some more excluded housing situations (see also the ETHOS categorizations of FEANTSA)[57]. Many households whose housing situation became uncertain, who lost their housing because of the accumulated arrears, move out to remote settlements or to areas in the vicinity of cities or small towns. These areas are not designated as residential areas according to official zoning, and therefore often lack basic infrastructure (e.g. piped water).

The residualized social rental sector was depleted to barely more than a 100,000 habitable housing units by 2013; with another approximately 20,000 which are too dilapidated to accommodate applicants. According to MRI estimates' (2009), there are around 300,000 households in Hungary who would technically be eligible for social housing, but have no access to a vacant social rental unit because of their scarcity. Many of these households took on mortgage loans they could not afford after the crisis, and end up in private rental; and many of them had to resort to alternative solutions on the lowest end of housing consumption (e.g. moving out to the outskirts or rural areas, to a home with a very low one-off cost, but no access to goods and services or the job market).

[55] Gerőházi, É.; Hegedüs, J. & Somogyi, E. (2010): Study on Housing and Exclusion: Welfare policies, housing provision and labour market (Country Report for Hungary). Budapest, Hungary: Metropolitan Research Institute, May 2010.

[56] Győri, P. et al. (2012): Gyorsjelentés a hajléktalan emberek 2012. Február 3-i kérdőíves adatfelvételéről [Flash report on survey among homeless people on 3 February 2012].

[57] FEANTSA (2005, 2007): *ETHOS – European Typology of Homelessness and Housing Exclusion*, downloaded from http://www.feantsa.org/code/en/pg.asp?page=484, last viewed: 8 January 2012.

Summary Table 2. Attitudes toward different tenures

	Home-ownership	Municipal Housing	Private rental	Comments
Dominant public opinion	Main tenure form	Typically poor households are 'trapped' in the sector	Households who have no access to home-ownership	Source: Gerőházi et al. 2010
Contribution to gentrification?	No significant gentrification process in Hungary			No reliable data
Contribution to ghettoization?	Low end of the owner occupied sector is at risk	High risk of ghettoization	Typically not concentrated geographically	Source: Somogyi- Teller, 2011

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 regime change in transition countries created an entirely new situation, in which real and frequently unregulated market forces and democratic political institutions have radically changed the society. In Hungary, the regime change brought about a complete dismantling of the socialist welfare state; however, the newly emerging elements cannot be characterized as fitting one specific welfare regime model.

There are *three main features* of the new emerging welfare regime until 2010: (1) the weak state[58], (2) a substantial role of the informal economy, and (3) intra- and inter-generational transfers (role of the family). Nevertheless, because of the continuous structural changes in different sectors, it would be too early classify the post socialist welfare regimes as a combination of the conservative and the family based South-European systems. As we concluded in an earlier paper:[59]

> Changes in welfare regime, 'while they have been the direct consequence of the economic and political transformations, have been manifold, and it would be difficult to characterise all of them pointing in one direction, let alone put the new Hungarian welfare regime into any category of the famous typology introduced by Esping-Andersen.[60] Rather, the welfare policies evolved in reaction to the social conflicts and tensions, and, step by step, through loosely coordinated measures in the various areas of social life (income benefit programs, education, pension system, etc.) that the new welfare regime built up. There is not a consistent model that would guide the policy solutions in various areas; there is no master mind of the welfare regime builders. This type of 'trial and error' or 'scrambling through' approach was more or less a general phenomenon in the region, resonating with the view

[58] 'The government's reform policies are constrained and influenced by private interests, and influential social groups can prevent the enforcement of laws without consequences. These phenomena are referred to as 'weak state'. The 'weak state' is a product of young democracies and a response to the totalitarian control of the former socialist system. As a consequence, for instance, the state control over energy prices is less strict than in other European countries, which contributes to larger housing expenditure and housing poverty. Another example is the banking sector where, the bank competition did not lead to a lower spread and housing loan contracts reflect the dominance of banks over consumers.

[59] Hegedüs, J. and Szemző, H. : Shaping the new welfare regime in transition countries: the interplay of public policies and households' strategies (case of Hungary), Conference: Comparative Housing Research - Approaches and Policy Challenges in a New International Era, 24-25 March 2010; TU Delft, The Netherlands. p. 1

[60] Esping-Andersen, G. (1990): *The Three Worlds of Welfare Capitalism*, Cambridge: Polity Press.

of Kasza[61], who argued that it is not possible to find a consistent welfare system.

Intergenerational (interfamily) transfers are a widely used option for helping households or household members in economic hardships. In Hungary close to 50% of families with children use intergenerational transfer and these transfers tend to be more beneficial for poor households. Due to the low level of income benefit payments, households that have access neither to the formal, nor to the informal economy (e.g. remote settlements in underdeveloped regions) sink into deep poverty.[62] Low-income households that solely rely on the formal economy are also facing difficulties. Households without recourse to the family network – as a result of family split ups, feuds or deaths - that only have the official low income supplemented with income benefits tend to live in deep poverty. Without help from relatives, they are unable to pay the cost of housing, and they will be forced to rely on illegal income sources (informal income).

The social effect of the informal economy[63] cannot be ignored in the analysis of households' behaviour. Total social expenditures, which include pension, family support, housing allowance and social assistance, reach 18.9% of the GDP, which is around the size of the 'informal economy'. Because the majority of the informal economic activity is tax evasion, the loss of the tax revenues radically constrains the possibilities of public policy. There are two sides to this problem. First, because of the limited public resources, social assistance payments are calculated in a way that they do not cover the living costs of families in need. Consequently households eligible for social benefits have to find jobs in the informal economy. 15% of the working age population is retired or inactive[64] – therefore living fully or partially on social benefits – which indicates the potential size of informal employment. Second, the government's hands are also tied: at that level of informal economy no tax raises can be introduced in order to increase the scope and size of the benefit programs for the poor, as the economy is already overtaxed. There remains, of course, some leeway for incremental changes, such as improving targeting; cutting regressive subsidies, and so forth, but it is limited.

[61] Kasza, G.(2002):'The Illusion of the Welfare 'Regimes", *Journal of Social Policy* Vol. 31, Issue 2: 271-287.

[62] Hegedüs, József & Eszter Somogyi (2005): An Evaluation of the Hungarian Mortgage Program, in: Hegedüs, J. and Raymond Struyk (eds.): Housing Finance. New and Old Models in Central Europe, Russia, and Kazakhstan. Budapest: Open Society Institute p. 202

[63] The informal economy (tax evasion, corruption, etc.) has an enormous effect on the behaviour of households. According to a recent research report (Buehn and Schneider, 2009) in new member states the size of the informal economy can reach up to 25% of the GDP (Hungary 23.4%, Slovenia 26.7%). In Hungary, the informal economy was estimated to be as large as 25-33% of the GDP between 1990 and 1997 (Laczkó, 2000). Informal transactions are widely accepted today by consumers (receiving no receipt for a cheaper price, which is a VAT tax evasion), by employees (wages paid directly into 'pocket'; 25% of all employees are affected), by service providers (tax evasion), etc. (Semjén et al., 2008) We know little about the income effect of the informal economy, but most of the studies support the hypothesis that it increases the income inequalities and poverty (Rosser et al., 2000).

[64] The rate of working age (19-64) people who remain inactive or live off early retirement due to medical reasons is particularly high in Hungary. 11.4% of this population, or 700,000 people, claim to be unemployed. 30% of this population was unemployed at some point in time. CSO (2012b): Statisztikai tükör – Munkanélküliség által érintettek [*Statistical gazette: People affected by unemployment*], http://www.ksh.hu/docs/hun/xftp/stattukor/ munkanelkuliseg12.pdf. Official statistics state 500,000 people were registered as unemployed within this age range.

Furthermore, the share of the informal economy also makes general tax cuts difficult, as the government has to rely on the relatively high taxes from its 'secure' taxpayers.[65]

Changes in politics support the argument for the lack of a stable welfare system. Post-transition governments prior to 2010 had the intention to introduce structural changes in welfare provision (e.g. health, education) but invariably failed to realize them, since they could not manage conflicting institutional interests in connection with the economic transition process (different lobbies in the new private sector, municipalities in decentralized system, trade unions with strong political party connections and so forth). Political competition prompted governments to apply irresponsible economic policies, characterized by short term thinking; and financed them with international loans instead of real economic performance. This raised the government's deficit and Hungary's external debt, and rendered the economy even more vulnerable to external shocks (such as the GFC of 2008). The current government, assuming office in 2010, built on the deficiencies of the previous 'weak state'.

The new government – having two-third majority support in the parliament – moved to a political system where the role of the state has been changed. Its economic policy was characterized as 'unorthodox': it put extreme fiscal burden on the bank sector and the typically foreign owned energy sector; the government confiscated the private pension fund, centralized the health and education system, and decreased the responsibilities of the municipalities. In turn, traditional austerity measures (like transaction tax, tax on mobile phone use etc.) had to be strengthened indirectly, in order to keep control over the central budget's debts. At the same time, pro-middle class reforms were passed as well. The latest instance of these interventions is the flat tax rate on personal income introduced in 2011, and a universal cut in utility costs (2013), a provision benefitting every household, regardless of their needs.

'Orthodox economic policy' in this context can be characterized as 'strong state'. In a political sense, this means strong government control over the legislative sphere, the media, and other spheres of public life; as well as the two-thirds majority government's ability to introduce a new constitution. Further characteristics of the new regime are the aim to enhance the role of (middle class or upper middle class) families, hence strengthening the role of intergenerational transfers (demonstrated in the government's tax policy, and in cancelling inheritance tax). Fostering family relations have been playing an important role in the past 20 years, becoming an ever more important resource and replacing functions of the public safety net, but it has now become a central aim of the public policy.

Measures against the informal economy are not clear: on the one hand, the government tried to correct the mistakes of the old system, making efforts to get rid of the vested interest of certain professions, to reconsider the early retirement system, and so on. On the other hand, transparency in public procurement has not been improved. Although the current administration communicates the need for structural changes in the welfare system just as much as the previous governments did, their actions lead to a contradictory model, where these changes are still financially unsustainable. Although this approach shows results in keeping deficit under control, it is not yet clear whether the expected economic growth will be realized and the financial crises can be avoided.

[65] J. Hegedüs and H. Szemző: Shaping the new welfare regime in transition countries: the interplay of public policies and households' strategies (the case of Hungary), 2010.

The political environment had an important effect on the development of the housing system, because the changes have to be interpreted in the context of the adaptation of main actors under fiscal, financial and political pressures. The 'tenancy relations' consequently were formed in this contradictory transformation process, due to the conflict of the simultaneously existing old and new models.
In the adjustment process of the transition, the 'rule of law' was not always respected, and solutions to social problems were either not codified at all, or only at a later stage. There has always been a complex and dynamic relation between the social reality and the law making process, which can be followed in the Housing Law,[66] Law on Condominiums and Cooperatives,[67] Banking Law,[68] etc. (This relation will be studied in Part 2 Questionnaire.)
There is no fundamental "right to housing" in Hungary; it was not included in the Constitution in force until 31 December 2011, neither does it figure in the new Fundamental Law, in force since 1 January 2012. This question is answered in the report for Part 2 of the Questionnaire: The Fundamental Law of Hungary, which took effect on January 1, 2012 declares in its 22nd provision that Hungary uses its best efforts to secure human living conditions and the access to public utilities for everyone; however, housing is not a fundamental right; this provision does not create an explicit obligation of the State to provide housing.[69]

3.2 Governmental actors

- *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 National Government is responsible for national housing policy making, including the provision of the legislative framework for social housing. Local Governments are responsible for local housing policy making, which in practice consists of rent setting, allocation of housing according to the framework law, managing the municipal housing stock, and operating local subsidy schemes such as local rent allowance, housing allowance and utility fee subsidy, housing construction subsidy etc. County governments have no responsibility in housing policy. Budapest has a special organizational structure: the Municipal Government is responsible for the framework regulation (for example, specific rules for all rentals in the ownership of Budapest or any of the

[66] Act LXXVIII of 1993 on Residential and Commercial Leases
[67] Act CXXXIII of 2003 on Condominiums
[68] Act CXII of 1996 on Credit Institutions and Financial Enterprises
[69] However, the 22nd provision also contains the controversial measure regarding illegalising „habitual dwelling" in public spaces; this led to somewhat of a public stir due to the discrepancy between homeless shelter capacity and the number of rough sleepers, see under *'B. Social Aspects'*, pp. 33.

districts), but the district local governments are responsible for the social housing stock, and for defining all concrete details of allocation and rent setting.

Housing policy related decision-making mechanisms are very fragmented in the government, as at least four ministries have important housing policy roles: Ministry of Interior, Ministry of Human Resources, Ministry of National Development, and Ministry of National Economy. There is very little coordination among the ministries, and it is almost impossible to identify the institutions where the decisions are made (although, allegedly, the most important ones have to be approved by the Prime Minister in person).

The 1990 Act on Local Governments[70] established a new, decentralized system of local governments with strong basic rights and responsibilities in social and public service delivery. There are 3,152 municipal governments and 19 county governments, which are independently elected tiers of government. The capital city of Hungary, Budapest has a special status: it consists of 23 district municipalities and a city level Municipal Government, without a hierarchy among them. Apart from Budapest, Hungary has 23 cities with county rights, of which 18 are the administrative centres of counties and 5 are other cities; these are legally considered to be separate entities, not parts of the respective county.

In 2011 there were only 119,000 units owned by municipalities (accommodating around 3.1% of the inhabitants of the housing stock), the majority of which is social rental (local governments may have units rented at market conditions as well, but it is rare.)

As a consequence of the housing privatization, 15-20% of the total housing stock moved from state ownership to the owner occupied sector. In the Hungarian housing system the state rental sector had a 22% share before the transition. Its role was decisive in urban areas, where privatization caused a dramatic change in the tenure structure. Privatization was basically a 'give away' privatization where the actual price was around 10-15% of the market value. As a consequence, in 2000 the estimated share of the rental sector was 8%, of which 4% was public.

Table 9 Changes in the figures if the municipally owned housing stock, 1990-2007

<table>
<tr><th colspan="2"></th><th>Municipal housing, thousand apartments</th><th></th></tr>
<tr><td colspan="2">Housing stock, beginning of 1990</td><td>721.3</td><td>2001 Census</td></tr>
<tr><td>Sales</td><td rowspan="4">1990 - 2007</td><td>605.6</td><td rowspan="3">Central Statistical Office regular housing statistics</td></tr>
<tr><td>Housing construction</td><td>12.7</td></tr>
<tr><td>Housing demolition</td><td>10.8</td></tr>
<tr><td>Purchases</td><td>23.8</td><td>Expert estimate</td></tr>
<tr><td colspan="2">Housing stock, end of 2007</td><td>140.9</td><td>Central Statistical Office municipal real estate asset statistics</td></tr>
</table>

Source: Central Statistical Office, yearly housing stock data, MRI data collection

The privatization process slowed down after 2000, but between 2000 and 2010 local governments sold 56,082 units.[71] There has been a general consensus among housing

[70] Act LXV of 1990 on Local Governments

[71] Housing Statistics, 2011, Hungary: Hungarian Central Statistical Office.

experts and policy makers that the social housing stock has to be increased, but due to fiscal consequences and lack of institutional interest, this has not materialized. There is a limited number of social housing owned and managed by NGOs or Public Companies, therefore not included in municipal housing sector. (For example, the Hungarian Railway Company has about 1,000 rental units not yet privatized.) No statistics are available, but the total stock managed by NGOs is estimated to be not more than 1-2,000 altogether.

Social rental units are owned by local governments, but they are managed in very different ways. The typical solution is that the stock is managed by companies (joint stock company or limited liability company) owned by the local governments. (These are private companies and not 'municipal companies'.) The companies may have other responsibilities beyond housing management, such as operating city markets, managing non-residential units, etc. The property right decisions (rent setting, allocation of tenancy rights, rehabilitation or renewal) are in the hands of the social or housing committee of the municipalities (in cooperation with the housing or social policy department of the municipality), but technical tasks are carried out by the companies (e.g. collection of fees, managing arrears, maintaining waiting list, etc.). There are examples when all the tasks are assigned to one department at the municipality (typically in small cities with a limited number of units), or when the municipality contracts out the service provision to the private sector. There is no data for the breakdown according to management form, although our estimate is that 80% of the stock is managed by municipality-owned companies. Public housing rents are much lower than in the private sector, usually reaching 20-40% of their level. This ratio varies from settlement to settlement.

The gap between the demand for social housing and the available social housing stock is growing. A conservative estimate puts demand at 300,000 to 500,000 apartments (8-11% of the total housing stock); that is, the living conditions of this many households would justify accommodation in social housing.[72] By contrast, no more than 1,000-2,000 municipal flats are allocated nationally per year; and a mass of applications is submitted to municipalities when a municipal flat becomes vacant, reflecting the overwhelming demand.

Municipalities employ a variety of methods to allocate social housing, the two main techniques being waiting lists and special bidding systems. There is generally an income criterion, which is offset by assorted other criteria (no private assets owned by the applicant, minimum period of stay in municipality, etc.). In the bidding systems, solvency is the most authoritative criterion, and solvent applicants are generally at an advantage.

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)?*

[72] MRI: Housing Needs in Hungary, 2009. 'Living conditions' here mean the household's monthly income as well as a number of other factors, e.g. number of children, elderly or seriously ill family members; substandard housing conditions; long term unemployment, especially for households in depressed areas etc.

The housing subsidy system and Hungarian tax policy gives strong incentives for home-ownership. The popular ambition is to buy an apartment, which has not been a realistic option for majority of the households. The public rental sector is very narrow, partly because of the privatization in the 1990s (right to buy policy) and partly because of the lack of interest of municipalities in expanding or even maintaining a public housing sector. The public renal sector has been 'residualized', housing mainly the low income families; although only 7% of poor households live in the public rental sector, 80% of them live in owner occupation.[73]

Housing policy in Hungary, after the privatization and consolidation of the 'old loans' had four main pillars:

- Subsidies in support of home-ownership;
- Programs to promote increase of the rental stock;
- Housing programs and regional interventions in support of renovation and modernization;
- Housing allowances and arrears management programs.

It is necessary to investigate the relationship between housing subsidies and other income benefit programs. General welfare subsidies theoretically cover housing expenses, at least partially. However, the existence of separate housing subsidies is justified by the fact that housing expenses are not proportional to income: households with relatively high income can also end up in a grave situation if their housing expenses are outstandingly high. Such high expenses are not due to overconsumption dependent on the households' decision, but to the rigidity of the housing market. Housing subsidies thus largely take the form of rent allowances (in Western Europe), heating subsidies (Eastern Europe) or a gas price subsidy (Hungary).

We can define four housing policy regimes after 1990, which can be characterized by different housing measures, reacting to the changing macroeconomic environment.

Period of 1989-1994

After the political changes at the end of the 1980s, three stages of housing policy development can be outlined. In the first period (1989-1994) the Hungarian government tried to manage the housing crisis related to the economic decline and the unsustainable subsidy system of the socialist period. The government backed out from the housing sector, decreasing the subsidies and diminishing its direct role. Decentralization was part of this process, as local governments were assigned to manage housing allowance programs partly financed from their own resources. The housing policy of this period could be characterized basically as crisis management: the two major programs were the privatization of the state rental sector and the consolidation of the 'old loans'.[74] Both measures had a regressive social effect: the financial gains of privatization and early repayment of the loans were proportional to the households' wealth, thus low income

[73] EU-SILC (2007): Statistics on Income and Living Conditions.

[74] 'Old loans' mean the long term (30 years) and low interest rate (1.5-3 %) loans issued in the 1980s, which become unmanageable under an inflationary environment. The rate of the outstanding housing loans was around 20%. As a response, special program was introduced, in which 50% of the loan value was forgiven, while the other 50% could be repaid as a market loan. In the 1990s, 20% of the households with no cash to pay back the loan faced huge difficulties paying the mortgage. In 2004, a special program was launched to help consolidate the situation of these households.

households were trapped in the residualized social rental sector or were not able to pay back their mortgage at a discount price. The Housing law regulating the rental sector[75] and the Social Law[76] made it clear that the government does not take responsibility for housing, but leaves it open for a future intervention. In the 1990s the officially measured housing subsidies reached 3.7% of the GDP, and in 1990, more than two thirds of the total home-owner subsidies were spent on the interest subsidy of the 'old loans'. In 1993-94 the subsidies related to borrowing were reduced substantially, to less than 1% of the GDP.

Period of 1995-2000

In the second period (1995-2000) new institutions were set up and the legal background improved. Meanwhile, the level of subsidies gradually declined as a consequence of the decreasing housing output. Two basic housing financial institutions were established: contract savings banks[77] and mortgage banks. The Law on contract savings banks[78] was very controversial, as the subsidies given to savers made the housing subsidy system even more regressive, and there was no direct relation between the subsidies and the increase in housing investments.

The change of the subsidy system which was intended to compensate the termination of the VAT exemption for new construction in 1994 – and especially the increase of the construction subsidy to families with two or more children – had a temporary effect on housing output: housing investment was more sensitive to cash subsidies, which led to a surge in construction, particularly in depressed areas.

The government's housing policy papers adopted the recommendations of the World Bank and other international agencies, and laid down the principles of separation of the subsidy system from housing finance and the principle of targeting subsidies to households in need. From 1998 (when a new right-wing government took office), a new rhetoric was introduced in housing policy, namely the expression of the need to support middle-income households, although for two years no substantial changes happened. In spite of different approaches in housing policy papers, no real changes in the subsidy system and housing programs took place in this period.

Period of 2000-2008

The third period started after 2000, when the Hungarian government started an active program backed by the positive macroeconomic changes. The government housing program of 2000 targeted three housing areas: 1. emergence of the mortgage market; 2. expanding local government owned social housing; and 3. renewal of the housing stock (especially the urban housing estates built in the 1970-1980s). A new subsidy system was introduced for housing mortgage ('dual' interest rate subsidy, tax exemption after mortgage payment, and so on), which resulted in an unprecedented increase of housing loans from 2001. A grant program was initiated for local governments' social housing investment, which covered 75% of the costs for social housing developments. Preferential loans were offered for renovation of housing estates as well. Because of

[75] Or 'Housing Law': Act LXXVIII of 1993 on Residential and Commercial Leases
[76] Act III of 1993 on Social Governance and Social Benefits
[77] Contract saving banks are special purpose financial institutions, based on the Bausparkasse model.
[78] Act CXII of 1996 on Home Savings and Loan Associations

their fiscal costs, the new socialist-liberal government in 2002 tried to slow down these programs, but it took almost 3 years to make substantial changes in the subsidy schemes. From 2005 the interest rate subsidy was cut, the grant program for social housing stopped, but the housing estate renovation expanded. Against expectations, the mortgage market did not collapse because of these changes, as competing banks offered cheap unsubsidized foreign currency loans, sustaining the growth of the mortgage market. This led to serious problems after the GFC of 2008.

The investment grant for social housing programs was replaced by a rent allowance program, which did not produce results. However, the renewal of housing estates, the less expensive program for the government, became very successful, and in the years 2005-2008, 15% of the stock was involved in it. From the early 2000s, the urban development dimension of housing policies has regained impetus, in part because development policy measures and comparably large resources have been directed towards it. Despite the fact that home-ownership as such could not be developed and financed from EU Structural Funds, several measures have radically impacted either the planning of urban interventions, or – in some other cases – the outcome of developments at the local level. For example, some HUF 35 billion was made available for the so-called social rehabilitation projects, that could potentially incorporate the refurbishment of social housing (along revitalization of public places and community services),[79] with the condition that the municipalities had previously assessed the needs and the spatio-social conditions, and evaluated the consequences of their investments in an Integrated Urban Development Plan.

After 2008

As a consequence of the 2008 financial crisis, the housing market was hit as well. Borrowing stopped, the quality of loans deteriorated, mortgage payment arrears appeared en masse, and so on. The government issued announcements and initiated a program to help households. In 2009 most of the housing subsidies were suspended. But it is yet to be seen how deep the crisis will be, and how effective the government assistance package will turn out.

A housing subsidy is thus simultaneously a housing policy tool and a social policy subsidy. The overlap between housing and other welfare subsidies makes it difficult to tell the proportion of housing subsidies within the welfare system, or in the GDP.

Summary: change of housing subsidies

The four periods represented four different housing regimes. In the first period, the policy objective was consolidation; the two main programs can be interpreted as crisis management efforts, but from the social point of view, they both contributed to the polarization of the society. In the second period, the goal of the economic policy was still consolidation; however, a special low-cost housing program was launched as a reaction to the 'state failure', with very questionable results. Its main achievement was the emergence of the basic institutions of the housing finance system. In the third period, focus was on the growth of new investment, and the mortgage market was supported by huge state subsidies, which again contributed to the polarization of the society, as higher income groups had a better chance to obtain subsidies. The social rental

[79] Approximately 30% of this was spent on housing purposes (MRI calculations, 2013)

program had a limited effect, which contributed to the stabilization of the distorted tenure structure: it only reinforced the already overly dominant owner occupied sector, accounting for almost 90% of the full housing stock, and gave poor support or incentives to renting. As an interesting outcome of this period, upper middle class households started investing into a second home, which might in turn become a basis for the development of the private rental sector. However, statistically this trend is not proven.[80]
The cost of the subsidy program is very difficult to measure. The municipal rental sector had not been a priority, while mortgage support for housing transactions (mobility) was the highest priority up to 2008. After the GFC, the subsidies started to diminish, but less so than the total investment or housing transactions, because most of subsidy programs included long term commitments.

Table 10 Priorities of housing policy in different regimes after 1989

	1989-1994	1995-1999	2000-2008	2009-
Rental housing policy			XX	
Home ownership – investments		XX	XXX	
Home ownership - mobility			XXX	
Housing allowances		X	X	XX
Other sources	XXX			XXX

Low priority – X; high priority – XXX.
* Privatization and 'old loan' program
** Early repayment mortgage rescue sources

The share of housing subsidies within the central budget fell to from 0.9% to 0.4% of the GDP between 2007 and 2012. All kinds of housing purpose subsidies are included here, among which assistance to incentivize new building and stimulate purchase heavily outweighs rent support, or even housing maintenance and utility support. Budget subvention of contract saving schemes – largely aimed at the middle and higher consumption classes – accounted for 16% of all housing assistance in 2010; while the largest slice was bank loan and mortgage interest rate subsidies, which took up 65% of all housing subsidies.[81]

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

Currently in Hungary there are no measures in place to sanction vacancies or incentivize the utilization of vacant units; nor are there any plans to introduce such measures in the near future.

[80] The DEMHOW research gives some insight in the process through qualitative research (Hegedüs-Szemző, 2010b)
[81] Hegedüs, József - V. Horváth (2013): Annual Report about Housing Poverty. Habitat for Humanity Hungary, Budapest.

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

In the early 1990s, ethnic Hungarians who emigrated from Transylvania (Romania) in 1990-1991 were accommodated, among other dwellings, in emergency units which were either vacant or the leasing expired.

Housing construction allowance was first introduced in 1971, and its function was modified several times. It is a cash grant which helps homebuyers to deliver the down payment. The size of the subsidy depends on the number of children in the household, it is not means-tested, and only buyers of newly built homes or 'self-builders' are eligible (the latter meaning those who build or organize the building themselves). A further criterion is that applicants at the moment of applying for the grant do not own a dwelling of their own, and the standard of the new home is below a centrally determined standard size and cost limit. In 1995, the amount of the grant was increased in the case of families with two or more children, which made it possible for low-income households to build new 'low-cost' housing without substantial savings or loans. Interestingly enough, without the intention of policy makers, this subsidy scheme was used by large poor families (for example, the Roma population) with the help of intermediaries (builders, lawyers, contractors, and Roma NGOs). It was particularly significant in less developed regions, where the grant covered almost the total cost of the construction. Private developers emerged who specialized in using the advantages of this scheme.[82] The program had several shortcomings. Many of the homes built in this manner were of low quality. Furthermore, much of the construction took place in less developed regions with higher unemployment (also, limited access to employment opportunities). According to some estimates, 10,000 homes were built using the allowance between 1995 and 1997; it was the largest, albeit unintentional, Roma housing program after 1990.

At the beginning of 2005 the government launched a guarantee program for young couples and public servants ('key workers'). The government further increased the housing construction subsidy, and expanded its use to the market of existing units at 50% of the subsidy level. These program elements were a reaction to criticisms, namely that the mortgage subsidy program had helped the relatively wealthier households, as its loan to value ratio was around 50-60%, and households without intergenerational transfer and substantial savings had no realistic chance to make use of the program.

As a partial compensation to the mortgage subsidy cut in 2004, a new program was introduced in 2005 in order to promote access to home-ownership for young, lower-middle income groups. The program built on both already existing and new subsidies: it raised housing construction allowance (cash grant helped families with children to buy new homes); introduced 'half construction allowance' (which enabled families with children to enlarge their homes); and a housing purchase allowance (a cash grant amounting to 50% of the housing construction allowance), which enabled young families with children to buy a used apartment. For low-income families with children, a rent allowance scheme was introduced, which was unsuccessful because of the overly strict eligibility criteria. (The aim was to help low-income families to pay their rent in the private rental sector.) By the end of 2005, 7,658 families benefited of state guaranteed

[82] Zolnay, J. (2002): *A Housing Program of the Social Housing PBC set up by the Nation-Wide Roma Self Government*. http://www.romaweb.hu/romaweb/cikk.jsp?p=7

loans through the Fészekrakó ('Nesting') program, which amounted to HUF 38.1 billion (8% of yearly housing loans). The number of participants grew to 14,813 families in 2006, who took out loans worth HUF 82 billion (14% of yearly housing loans). By the end of 2007, state guarantees had helped 24,062 families taking out loans worth HUF 130.4 billion. The goal of state guarantees was to increase the proportion of loans to housing value, which is currently very low (around 50-60%) by international standards. Many young people have the income to pay their instalments on mortgages, but not to raise the down payment. Increasing the weight of the state guarantee for certain target groups could greatly help develop a more effective mortgage loan system.

3.4 Urban policies

- *Are there any measures/ incentives to prevent ghettoization, in particular*
- *mixed tenure type estates*[83]
- *"pepper potting"*[84]
- *"tenure blind"*[85]
- *public authorities "seizing" apartments to be rented to certain social groups*
- *Other "anti-ghettoization" measures could be: lower taxes, building permit easier to obtain or requirement of especially attractive localization as a condition to obtain building permit, condition of city contribution in technical infrastructure.*
- *Are there policies to counteract gentrification?*
- *Are there any means of control and regulation of the quality of private rented housing or is quality determined 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?)*
- *Does a regional housing policy exist? (in particular: are there any tools to regulate housing at regional level, e.g.: in order to prevent suburbanization and periurbanization? Is it possible to distribute local taxes so that villages can afford the limitation of housing areas?)*

[83] 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 homogenized communities, and to strengthen diversification of housing supply.

[84] 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.

[85] 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.

Hungary introduced the Integrated Urban Development Plan (IUDP) as a compulsory element for cities tendering for EU funds for the purpose of urban rehabilitation. As the tenders for urban rehabilitation (mainly the market oriented programme of it) were very popular, cities started to prepare the documentation for medium term integrated plan each following a strict thematic structure[86] prepared by the Ministry for National Development and Economy. The plans contained the overview of the situation of the whole city and defined all the potential areas for development – not only regeneration of urban areas, but green field developments as well.

The task for planners was to define quarters and the development goals of each urban quarter concerning all horizontal issues – including housing, education etc. They also had to identify 'action areas' that would be objects of regeneration or new development and prepared an initial financial plan for financing their goals. Plans were – to a basic extent - discussed with the residents and local civil society. Another interesting element of the IUDP was the 'anti-segregation' chapter that aimed at identifying the segregated areas and drafted the strategy to start solving their problems. The detailed outline of these chapters – that was compulsory to follow – and the mentoring system that was provided by the Ministry for Social affairs in order to support and control the proper standard of these chapters ensured that these chapters were the most developed ones inside the IUDP - sometimes causing serious political tensions between the local political leaders and the experts of the ministry. On the other hand most of the anti-segregation strategies remained 'written dreams': the full strategies were usually so complex that their full implementation was very unlikely in the first place,[87] but even their partial implementation and integration into the local policy environment was only undertaken where politically powerful actors backed them up, showing strong enough political will to make use of the funds that were provided for these purposes. (Like ERDF funds for social rehabilitation or ESF funds for dealing with social and labour market inequalities.)

From 2007 about 200 cities prepared their IUDP (out of the 250 Hungarian cities). In 2009 the creation of Integrated Development Plan became an option for all settlements (regardless of EU funds) by the modification of the Law on the Built Environment. However, as there was no financial assistance tied to it, it remained optional. The implementation decree of the Law provided a guideline concerning the outline of the Integrated Plan containing also the anti-segregation chapter.

Meanwhile the future of the Integrated Development Plan and also the anti-segregation chapter is uncertain. The national rules for distributing the EU funds of the 2014-2020 period are not finalised yet. It is unknown whether the Integrated Development Plans will be a compulsory part of the planning activities or not, including their anti-segregation chapters. On the other hand it seems to be sure that the emphasis on the treatment of the segregated parts of the urban and rural settlements will remain important (or might become increasingly emphatic). Two operational programmes contain measures that support the improvement of the segregated urban and rural neighbourhoods and the demolition of the most segregated ones. As a new phenomenon not only the

[86] The required thematic structure and the guidelines in applying the proposed structure was written down in details in the 'Handbook on Urban Development' prepared by the Ministry for National Development and Economy

[87] To optimize their chance to obtain funding, applicants very often proposed unrealistic goals, which were never very closely monitored after implementation.

refurbishment but the replacement of the housing stock located in marginalised neighbourhoods becomes an option resulting in newly built or purchased social housing for the most vulnerable.

As per more specific anti-ghettoization policies, such as 'pepper potting', 'tenure blind' support etc., they do not play a significant role in Hungary's urban policies on any level. The measures subsequently suggested are not in place in Hungary to date either.

In the urban development wave of the 1980s and 1990s, some urban renewal efforts included clearance of Roma settlements in central urban areas. The former residents were moved to scattered dwellings, which technically led to their de-segregation, while the cleared downtown area was renovated, and gave place to new developments (either commercial or residential, but without any aim at keeping the old residents in place). However, these practices were dependant on local urban development practices; they were not centrally encouraged, and were eventually ceased thanks to EU accession and integration ambitions. No reliable surveys were prepared on these measures or their possible impacts.

Currently, there are no policies in Hungary that explicitly counteract gentrification. Quite the opposite: a number of local development and renewal plans endorse gentrification as a means of renewal either explicitly or implicitly. A very prominent example of this is Corvin Szigony development in Budapest's District 9, which was launched in the mid-2000s, openly aiming at clearing slum-like areas near Budapest's downtown, and exchanging residents through removing old, low income residents to new dwellings.[88] On a technical level, this project can be considered anti-ghettoisation, albeit the underlying logic was basically to remove a low income population from a possibly advantageous area. The end result was a municipally planned new neighbourhood with the new, attractive residential blocks, a new shopping mall, and the redesign of the surrounding close areas in a style that might cater to young urban professionals.

A number of other urban development projects also openly use gentrification as a means to renew and improve their administrative areas, especially Budapest's District 8. This is probably the lowest prestige district of the capital due to its history of slums and low per capita GDP compared to the capital's average (otherwise way ahead of national average). However, a large part of District 8 is close to the downtown and well connected to main transport lines, so it could successfully improve the position of relatively large areas with the gentrification as a support tool. Criticism towards such mechanisms is still mellow in a country where large parts of the population are unenthusiastic about more narrowly addressed social policies due to the grip of a lasting recession. Such criticisms have still been gaining impetus, so while gentrification as a development tool is still actively in use, by 2012 it was expected that policy makers at least do not state it explicitly, or imply measures that suggest keeping in place at least some of the original residents.

[88] Aczél, G- Guta, B.: Social effects of the rehabilitation in Middle-Ferencváros (Közép-Ferencváros rehabilitációjának társadalmi hatásai), 2006, manuscript, http://www.varosrehabilitacio.net/new/pdf/Rehabilitacio.pdf; Locsmándi, G.: Urban regeneration in Ferencváros, 2005, manuscript, http://www.varosrehabilitacio.net/media/files/Varosrehabilitacio/varosrehabestarsadalomcikkek/9Locsm-ndicikk.pdf

3.5 Energy policies

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

Energy policies affecting the housing sector influence profoundly the energy consumption of the entire country, given that the residential sector is the biggest energy consumer in Hungary. With regard to electricity it is approximately one third of the entire consumption that happens here, and more than half of the heat consumption also takes place in the sector.[89] There are many ways the state can influence the energy consumption of the residential sector in hope of encouraging a more rational use by households. However, these regulations also influence the housing market.

Through regulating the consumer price in the residential sector, household consumption can be influenced. Consumer price regulations have been changing rapidly in the course of the last year, as a result of a strong governmental intention to cut utility costs for households. In 2012, energy providers were forced to cut utility prices by 10%, presumably for political gains (government rhetoric was "to cut extra profit, weighing on the people"). The effect of the price decrease on household consumption remains to be seen, but it is unlikely to foster investments into energy efficiency.

One important aspect of consumer price regulations is that they influence households' preference for certain energy types. Precisely this preference can lead to households choosing certain building/dwelling types.

In case of Hungary, district heating, a relatively environmental friendly way of heating, became not only the costliest way of heating as a result of the regulatory framework. Furthermore, the system became too rigid to allow households to regulate their individual energy consumption, so in spite of its environmental potential, it has become a wasteful way of using household energy. As a result, dwellings equipped with district heating started to have a disadvantaged position on the housing market. This negative position also contributed to the fact the pre-fabricated housing stock that makes up approximately 20% of the entire Hungarian housing stock and is largely equipped with district heating, started to lose its value considerably. In 2008-2009 funding was made available for the modernization of the district heating systems ("Öko program") and in 2010 a special 5% VAT rate was introduced for district heating (as opposed to the EU's highest 27% general VAT rate of Hungary), aimed at making it more affordable for the average household. Neither program did much to change the position of pre-fabricated buildings on the housing market, but their lack of effect can also be in connection with the real estate crisis starting from 2008.

It was actually through subsidizing energy efficient investments that the renewal of the pre-fabricated housing stock was mostly promoted. Introduced by the governmental decree 12/2001, the subsidies were aimed at improving the insulation, the heating system and the entire engineering system of all buildings constructed with industrial technology. The exact content and energetic requirements have changed over the years, and with the time passing there was a growing preference for more complex refurbishments. Financed mutually by the state, the local governments and the residents

[89] Benigna Boza-Kiss, Anne-Claire Loftus, Aleksandra Novikova, Victoria Novikova, Maria Sharmina and Diana Ürge-Vorsatz, *Influence of end-users' behaviour on energy consumption patterns in the Hungarian domestic sector: results of the REMODECE project*

themselves, the program was a success, contributing to 350 000 different interventions into dwellings. The exact number of affected dwellings is less, as different interventions could apply to the same dwelling. Although no new tenders have been published since 2009 and no new funds have been allocated, in the period between 2002 and 2012, 350 billion HUF has been spent by the state for the refurbishments.[90] The continuation of the program, which is currently under preparation with a prospective tender in February, 2014, will partly be financed from the selling of the CO_2 quota of Hungary.[91] Besides the decreasing energy consumption of these dwellings, the most important contribution of the program has been that it helped to renew the living environment within and outside of the affected buildings, playing a role in their improving position on the real estate market. The latter achievement however has been partly diminished by the ongoing real estate crisis.[92]

Finally, through regulating the energy standards both for new and refurbished buildings, the state sought to influence (without specific subsidies) the energy efficiency of the buildings. Whereas the standards for new buildings have increased over the years in Hungary, much less has happened with regard to old ones. In this respect, the influence of the European Union should be highlighted: as it is spelt out in response to Questionnaire Part 1, it was a result of an EU regulation that the system of energy certificates for all buildings was introduced in 2008. The effect of certificates on the real estate value has been sparsely studied until now not only in Hungary, but in an international context as well. It has been assumed that a good certificate contributes to higher prices. However, the exact amount of contribution is hard to guess.[93] For example the study of a refurbished pre-fabricated building complex in District 3 of Budapest[94] found that increased energy efficiency does not raise the prices enough to pay for the cost of investment.

3.6 Subsidization

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

[90] László Csíder, *Épületek energetikai felújításának tapasztalatai Magyarországon*, *2002-2012* (Lessons from the energy efficient building refurbishments in Hungary, 2002-2012). Presentation held at the Energy Efficiency Workshop Series (Energiahatékonysági Rendezvénysorozat) hosted by the Chamber of Industry and Commerce of Győr-Moson-Sopron County, April, 2013.

[91] http://www.portfolio.hu/vallalatok/energia/nfm_2020-ra_az_osszes_hazai_panel_megujulhat.192821.html

[92] József Hegedüs, Péter Makara and Hanna Szemző, "A panelprogram egészséghatás vizsgálata" (The health impact study of the pre-fabricated building program), *Népegészségügy*, 87/1, 2007, p. 40-46.

[93] Horváth, Á. et al., "Hat-e a lakóingatlanok árára az energiahatékonyság?" (Does energy efficiency influence the price of residential dwellings?), in *Közgazdasági Szemle*, vol 60/9., 2013, p. 1025–1042.

[94] The Faluház (Village house) is a giant pre-fabricated building in the heart of the III. district of Budapest. It derives its name from its size, alluding to the fact that it houses enough people that would make up an entire village. In fact the building, which was constructed in 1970 is the largest residential building in Hungary with its 884 apartments. For more about the building and the refurbishment project see http://faluhaz.eu/

means of investment loans, tax privileges). Which level of government is competent to assign the subsidies? Is there a subjective 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)?*
- *Summarize these findings in tables as follows:*

As pointed out earlier, home ownership has traditionally been subsidized much more generously than other tenure forms, presumably as a result of the reinforced ambitions and respect for property rights and private ownership. Loan and mortgage interest rate subsidies have been accounting for two thirds of all housing related support for housing; and contract saving schemes for another 16%.[95] Although the share of housing related subsidies fell sharply since 2007, their proportion did not alter substantially.

Private sector tenants do not receive central subsidization. The only housing benefit available for private tenants is the local rent support, offered by only a handful of local municipalities. The aim of these is to help low income inhabitants in the face of a chronic lack of municipally owned social housing. Tenants of rentals with a public task may receive various forms of benefit, although in their case it is often allocated with a view to their overall social and income situation, instead of being specifically targeted at their rental spending.

In Hungary's post-socialist legal environment, private rental is considered business, and private landlords do not receive any targeted support. The largest social landlords, municipalities, on the other hand, are almost always offered some sort of financial support. But – as we pointed out earlier – the available support tools are not necessarily well adapted to the municipalities' needs, opportunities or capacity.

As part of the housing program launched in 2000, a grant programme for local governments was launched, which supported five housing areas: rental sector, energy saving renewal, rehabilitation programs, land development, and renovation of housing owned by churches.

The most important element of the grant programme was the support of the public rental sector. The government operated a programme between 2000 and 2004 to increase the social rental stock, which resulted in approximately 10,000 new units (which include pensioner homes and units bought on the market as well). The programme gave an investment grant to local governments covering up to 75% of the investment costs for various purposes: social rental, cost based rental,[96] young family housing, retirement homes, etc. Between 2000 and 2004 several hundred local governments took part in the program. The total investments amounted to 60 billion HUF (about 200 million EUR).

[95] Hegedüs-Horváth, 2013.

[96] Cost based rental was allocated according to the locally defined procedures (typically by social criteria), and basically forced the local governments to charge minimum 2% of the investment cost per year.

Table 11 Results and cost of the rental program in 2000-2004

	Tenders by local governments	Established units	Total subsidies
	number	number	Million HUF
Social rental	313	5,729	26,093.4
Cost rental	228	3,188	16,386.1
'Homes for young couples'	44	909	3,639.2
Elderly homes	100	2,287	13,410.9
Pension homes	27	710	3,799.2
Total	712	12,823	63,328.8

Source: Housing Office of the Hungarian Government, 2007

In addition to the social housing scheme, a 'cost based' option appeared as well, with the aim to ensure long-term cost recovery in the sector. This implies an introduction of a rent level which is higher than the existing social rent, but lower than the market rent, thereby producing cost recovery. The regulations set the rent as a minimum of 2% of the construction cost. Although this cost rent approach did not give a guarantee for long-term cost recovery, in the first years the actual operational and maintenance cost of new rental was considered to be lower than the rent. This 'cost rent' is at 40-60% of the market rent.

High interest in the rental sector program was an indication of the commitment of local governments to solving housing problems. (The demand was much higher than the budgetary capacities: only 45% of the applications for funding was approved throughout the whole program period.)

After 2004, expansion of municipal stock remained a priority in the housing policy of the government, but the subsidy schemes (rent allowance program) introduced in 2005 did not prove successful. The program aimed to use the private rental sector for social purposes. Local governments could apply for a rent allowance for the low-income families with children who have a private rental contract. The rent allowance paid by the central government could be maximum 30% of the rent, or EUR 25-30 per month, and the local government had to contribute with at least the same amount as the central government. Local governments could apply for 3 years. The program was a failure: very few local governments put forward a proposal. One reason for this was that the program expected the landlords to be registered with the Tax Authority. The majority of the private landlords do not pay tax, and they did not change their behaviour for the sake of participating in this program. The income limits used were another important constraint that led to the program's failure: the upper income limit is approximately 180 EUR per capita per month, which includes the lowest quintile. Families with such low income have only limited opportunities to enter the private housing market; they are not able to afford the rents even with the help of the subsidy.

In 2006, a new loan program was launched for local governments, through which they have access to a subsidized loan for investment in the public rental sector offered by the Hungarian Development Bank.

In 2012, the government re-introduced some of the subsidy programs that existed before the GFC. A law on new programs was accepted, but the actual implementation has not yet started, partly because of the low demand, and partly due to the lack of institutional interest (the negotiation with the banks to manage the programs is currently ongoing).

The main subsidy programs currently in force are:

- Construction allowance for households with children who buy or build new housing. Both the size of the subsidy and its conditions have recently been modified. According to the proposed budget, the estimated number of the eligible household will be 4,000, and the total budget cost will be HUF 5.2 billion. (This amount is 10-15% of the level of the similar subsidy used in 2008.)
- Interest rate subsidy for buying new flats or building new homes by young people (under 35) and households with children has been modified as well. (This measure was introduced in 2009, but the conditions were overly strict, so very few household could benefit.) The proposed budget estimated that 3,000-5,000 households could use the program, and the expected cost will be HUF 1.3 billion.

However, the most important subsidy is, to date, the central support of contract saving schemes,[97] which have not been modified because of the GFC 2008.

In the next two tables we organized the information related to the subsidy programs for the tenants (both public and private) and for the owner occupation. The landlords in the public sector (municipalities, and churches) were eligible for interest rate subsidy for rental investment before 2009, but this kind of investment was not realized in practice (hence, subsidy programs for landlords are not applicable in Hungary).

Summary Table 3. Subsidies for the tenants in private and public rental

	Public rental	Private rental
Rent subsidy 1	Lower rent level than in private rental market. The aim is to guarantee the affordability of the public rental sector, but the rents are set by municipalities.	
Rent subsidy 2	Different municipalities launch rent allowance schemes, to introduce a rent increase but give a safeguard for low income households. (Very different from national subsidies, and exclusively managed by municipalities.)	
Rent subsidy 3		Special subsidy financed either from EU funds or the municipal budget for supporting tenants in the private rental sector; these are very diverse schemes, depending on the specific program design, and local government policies; their scope is very limited.
Housing Allowance	National program for low income households to pay their housing cost. This is a targeted subsidy which depends on the households' income. (Social Law[98])	

[97] Home Savings and Loan Associations (contract saving schemes) offer savings accounts for housing purposes, where clients are granted a 30% state funded interest subsidy, with a HUF 72,000 (approx. EUR 250) ceiling per year, regardless of income level.

[98] Act III of 1993 on Social Governance and Social Benefits

Summary Table 4 Subsidies for owner occupations

Subsidization	Explanation
Contract saving schemes	Introduced in 1996, supports the housing saving of the households and the condominiums/cooperatives. The subsidy is 30% of the deposits, but the ceiling is HUF 72,000 per year.[99]
Housing construction subsidy	The social construction allowance can be used for construction of new homes and purchase of existing homes. First time buyers under 35 can apply. The amount of the subsidy depends on the number of children eligible for child benefit. The eventual value of the home must remain under HUF 30 million. Other eligibility criteria include: at least energy label 'B' (and the higher the rating, the larger the subsidy); at least one parent must have held employment for over 6 months; tax authority certificate proving that the claimants have no public debt; compliance with housing condition regulations. The subsidy can be used for purchase of existing homes as well, where the value of the apartment should be under HUF 15 million.[100]
Interest rate subsidy	Government decree on housing interest subsidies concerning the purchase and construction of new homes and the purchase and renovation of resale homes. The subsidized home loans will be available for the purchase or construction of homes worth maximum HUF 30 million (this does not include the price of the land on which the homes are built). In the case of resale homes, the ceiling for the purchase price is HUF 15 million, while renovation may not cost more than HUF 15 million. The loan amount can be maximum HUF 10 million for purchases or construction of new homes, and maximum HUF 6 million for resale home purchases or renovation. An interest rate subsidy is available if the bank charges an interest rate no higher than the government securities yields of the Government Debt Management Agency plus 3 percentage points. For new homes, the interest rate subsidy is 60% in the first year and 'in the case of a maximum of two children', and 70% in the case of more than two children. From this level on, the interest rate subsidy will be reduced by 5 percentage points every year until the fifth year, when it is eliminated. In the case of resale homes, the interest rate subsidy here is 50% in the first year, which is then reduced by 5 percentage points every year until the fifth year, regardless of the number of children.[101]

3.7 Taxation

- *What taxes apply to the various types of tenure (ranging from ownership to rentals)? In particular:*
- *Tenants: Do tenants also pay taxes on their rental tenancies? If so, which ones?*
- *Homeowners:*
- *Income tax of homeowners: is the value of occupying a house considered as a taxable income?*
- *Is the profit derived from the sale of a residential home taxed?*

[99] Act CXIII of 1996 on Home Savings and Loan Associations
[100] Government Decree 256/2011 (6 December 2011) on the home-building subsidy.
[101] Government Decree 341/2011 (29 December 2011) on the home-creation interest rate subsidy.

- *Is there any subsidization via the tax system? If so, how is it organized? (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?*

The rental sector has several disadvantages in the tax system: the rent revenue is taxed, and the rent is paid from the taxed income, while the owner occupiers enjoy rental income tax free (no imputed rent). The other taxes (capital gain tax, stamp duty) are typically the same in the rental sector and owner-occupied housing, while the property tax/communal tax can passed on to the tenants.
The tax-rates and the detailed rules have been changed frequently. The main tax is the rental income tax, which is added typically to other incomes (in the case of individual landlords).

Summary Table 5 Taxation and tenure forms

TAX	TYPE OF TENURE			
	Private rental - individual	**Private rental – institution**	**Public rental**	**Owner-occupied**
VAT (Value Added Tax)	no	typically no, but VAT option can be selected	no	n.a
Rental income	Personal Income Tax (plus legally utility cost is taxed as well), cost deduction is possible	Corporate Income Tax	no	no imputed rent
Capital gain tax	same rules			
Stamp duty	same rules			
Property tax	local government tax, typically not introduced for residential property		no	typically not used for residential building
Communal Tax	local government tax, typically the landlord pays it		no	yes

Tax schemes:

Value Added Tax
As a rule, the lease of immovable properties for housing purposes is VAT-exempt, which means that the lessor shall not pay VAT on this activity, and does not have the right of VAT deduction either. The lessor has the right, subject to the prior notification of the Tax

Authority, to opt for VAT taxation, which ensures them the right of VAT deduction.[102] If a taxable lessor chooses to pay VAT, their choice binds them until the end of the fifth calendar year. The lessor shall register with the tax authority through the 'T101' form, and apply for a tax number.[103]

Private rental sector – individual landlord

If a private person in Hungary leases out property within the framework of an activity in compliance with the VAT Act, this activity may be pursued as of August 16, 2010 without a tax number. Rental income, derived from leasing real estate, is part of the Personal Income Tax base of private persons; it is taxed at a flat rate of 16%.[104] If the annual income that is part of the consolidated tax base surpasses HUF 2.424 million, the part above this sum shall be subject to tax base addition, the rate of which is 27%. The taxable income can be calculated either by deducting expenses actually incurred and documented in the renting process, such as utilities, maintenance, administrative costs, amortization/depreciation, etc.; or by applying a 10% notional deduction from the gross income (10% expense ratio), where the taxable income is 90% of the revenues, consisting of rent fee and reimbursed utility costs.

A 14% health contribution tax is to be paid after the full income, if the annual income exceeds HUF 1 million (EUR 3,400 approx.); however, this contribution is payable up to HUF 450,000 per year.

Separate regulation applies to individual landlords letting their property to a municipality[105] as of 1 January 2005; in which case the rent revenue is exempt of tax.[106] However, property owners hardly ever chose this option in practice. The conditions of tax exemption are:

- valid occupancy permit;
- the tenant is the municipality of the corresponding administrative division, or an office/department of the local municipality;
- fixed term contract of at least 36 months (if the owner terminates the contract before end of term, they must pay income tax, and penalty for delay, retroactively);
- the municipality uses the property to ensure the housing of private individuals;
- the lease contract makes references to the municipality decree identifying the means test to be applied to sub-tenants

Private rental – institution / professional landlord

Hungarian **Corporate Income Tax** is payable if property is purchased through a company and is calculated at 19% (16% prior to 2010); this rate is set to be reduced to 10% in 2013. Additional taxes such as Solidarity tax at 4% and Local Business Tax at

[102] Act CXXVII of 2007 on Value-Added Tax
[103] NAV, 2012a & 2012b.
[104] Act CXVII of 1995 on Personal Income Tax
[105] Please note that this arrangement is not the same as a Social Rental Agency: it simply refers to a private individual letting a residential unit where the tenant is the local municipality. The tax exemption is provided as an incentive so that municipalities can extend their limited available rental housing stock.
[106] NAV, 2012b.

2% also apply. Full deductions will be given for eligible costs incurred in connection with the property. Taxes due must be paid by December 20th and a tax return must be submitted by May 20th the following year. The Hungarian corporate income tax rate is due to change to a flat 10% from the 01.01.2013. [107]

Capital gain tax

Net capital gains realized by non-resident individuals on sale of real estate are taxed at a flat rate of 16%. Acquisition costs and related expenses, improvement costs, and cost of transferring the property can be deducted from the revenue to arrive at the net capital gains. If the deductible expenses are not documented and if the acquisition costs are not substantiated, the 16% rate will be applied to 25% of the gross proceeds.

The taxable gain is reduced by 10% every year after the fifth year, so that in the fifteenth year after acquisition, the taxable gain is reduced to zero (i.e. 10% reduction in the 6th year after the year of acquisition, 20% in the 7th year, 30% in the 8th year, 40% in the 9th year, 50% in the 10th year, etc.).

Hungarian Capital Gains Tax rate is at 25%. CGT deductions will apply considering the amount of time the property registered as residential was owned as follows:

- If the Property to be sold is owned for 5 or more years then there is no obligation to pay CGT.
- If the Property to be sold is owned between 4 and 5 years then the CGT will be paid for the amount corresponding to 30% of the CG.
- If the Property to be sold is owned between 3 and 4 years then the CGT will be paid for the amount corresponding to 60% of the CG.
- If the Property to be sold is owned between 2 and 4 years then the CGT will be paid for the amount corresponding to 90% of the CG.
- If the Property to be sold is owned for less than 2 years then the CGT will be paid entirely.

A seller is exempt from CGT if s/he re-invests the gain back into a room, an apartment in a retirement home in Hungary or any European member state. This is not explicitly an anti-speculation measure; but rather an incentive to reinvest the revenue from asset sales into the housing sector.

Stamp duty

Hungarian Stamp Duty is payable on the purchase of property. As of 1 January 2013, duty tax is levied at a flat 4% rate, regardless of the value of residential unit. Before this date, the rate was 2% for housing units worth less than HUF 4 million (approx. € 13,700), above it the rate was to 4%. For newly built housing, no stamp duty to be paid under the value of HUF 15 million (approx. € 51,500); 4% rate between HUF 15-30 million, and 6% for housing value higher than HUF 30 million. The highest, 10% rate only applies to non-residential property. Duty tax discount is provided to young people buying their first home: when people under age 35 buy their first residence, they are granted 50% duty reduction for housing under the value of HUF 15 million. The discount used to have the limit of HUF 40,000 in total; this limit was annulled from 1 January 2013.

[107] NAV, 2012c.

Local property tax – building tax

Tax Authority (NAV) website on building and land tax states that municipalities levy local tax, building and building site taxes. Taxable subjects are the owners. The annual maximum rate of building tax is HUF 1,100 per square meter, up to a maximum 3.6% of the market value of the real property. The annual maximum rate of the land tax is HUF 200 per square meter or 3% of the market value. The above taxes can be deducted from the corporate tax base.

Inheritance tax

Hungarian Inheritance Tax (IHT) is payable by non-resident beneficiaries on certain transferred assets. The tax rate depends on the relationship between the beneficiary and the donor as well as on the value of the property. The rates vary from 2.5% - 40%. Any inheritance below HUF 20 million, in the case the inheritor is child/parent/spouse or nephew without parent as legal guardian will be stamp duty exempt.

Employee accommodation as a non-wage benefit

The Hungarian non-wage benefits module system gives an option to employers to provide housing to employees in workers' hostels, exempt of taxes. The exemption only applies to accommodation in workers' hostels, as defined by the Act on Personal Income Tax[108]; the deriving costs are considered deductible expenses of the company. Other forms of supporting employee housing (e.g. rent assistance) are considered part of the wage, and tax is levied accordingly.

Tax evasion

The informal economy (tax evasion, corruption, etc.) has an enormous effect on the behaviour of households. In Hungary, the informal economy is estimated to be as large as 25-33% of the GDP; informal transactions are widely accepted today by consumers (e.g. receiving no receipt in return for a cheaper price, which is a VAT tax evasion), by employees (wages paid directly in cash), by service providers (tax evasion), and so on. While the informal economy may be an important source of income to the poorest groups, the income effect of the informal economy tends to increase income inequalities and poverty: first, it is small and medium entrepreneurs who can make the most out of tax evasion, and second, private persons working in informal jobs receiving 'envelope payments' risk their future pension payments. Since the majority of the informal economic activity evades tax, the loss of tax revenues radically constrains the realm of possibilities of public policy.

According to anecdotal information, tax evasion in the private rental sector is quite general, however due to the possible risk that non-cooperating tenants will report tax-avoidance, this situation could decrease tax evasion in private residential renting in the future.

[108] Act CXVII of 1995 on Personal Income Tax

4. Regulatory types of rental and intermediate tenures[109]

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 three main tenure types in Hungary: owner-occupied, rental with a public function, and private rental (rental without a public function). However, there are several tenure sub-types where the 'pure' tenure type is modified, and the legal relation between the owner and the tenants (and intermediary organizations in some cases) has some specific features.

The legal background of general and special residential tenancy types can be found in different laws and regulations. Tenancy relations and other arrangements functionally similar to residential tenancy can be based on four basic sources of law:

1. In the first case, residential lease is only regulated under the contract law regulations of the Civil Code. Despite its residential nature the contract is a lease contract (written or oral), and does not fall under the effect of the Housing Law.
2. In the case of most residential leases, the Housing Law provides the legal basis of the contract (with the Civil Code serving as a higher level framework) although they can be modified by other laws and regulations to the extent the Housing Law regulations are dispositive.
3. The third option is to provide rental housing in the form of "accommodation services", under the regulations of the Commercial Law. Under this type there are important arrangements that are functionally similar to tenancy, but they lack the safeguards provided by the Housing Law. This is a fully legitimate option, however, it is preferred by housing agencies as it helps circumvent the Housing Law's strict regulations, which do provide very strong tenant protection in many regards, and raise unmanageable risks to the agency.
4. The fourth area is rental accommodation provided on a social basis, which primarily falls under the effect of the Social Law. In terms of its social implications, these contracts often do not differ from some municipal social rental solutions (under the Housing Law). These include homeless shelters as well as home institutions and emergency housing, which provides a short term housing solution. Their rationale is indeed to provide temporary shelter for vulnerable persons, which is why they are regulated separately from the Housing Act.

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

While this is the big picture that follows from the scrutiny of public and private rental sectors in Hungary, there is no reliable statistical information on the rental sector, neither on the scale of these four legal sub-types. As we already emphasized on multiple accounts, even the size of the private rental sector can only be gauged by expert estimates. We can safely state that the vast majority of residential leases will be regulated by the Housing Law; but at the same time we will have to underline that the other three legal sub-types provide legal basis for important forms of rental contracts as well; however, their exact scale or social significance would be hard to estimate correctly. Furthermore, we have to keep in mind that while the Housing Law remains the main source of law for residential leases, its effect takes place only to the extent it can be enforced in practice.

The table below presents the regulatory typology of rental tenures based on the main source of law, and on their public or private function. The Civil Code provides a framework for the other three acts as well, but as we pointed out, it is the single main source of law in some cases.

Table 12 Regulatory typology

	Main source of law			
	Civil Code	Housing Law	Commercial Law	Social Law
Leases without public function	- Tenancy for free - Tenancy based on usufruct - Tenancy after mortgage foreclosure - Reverse mortgage situation	- **Individual private rental**	- Workers' hostels - Nurse hostels	- Home for pensioners (private)
Leases with public function		- Forced tenancy; 'quasi renters' after foreclosure - Private rental with municipal subsidy - Private rental intermediated through social agency **Municipalities:** - **social rental** - **cost rental** - **youth home** - **market rental**	- Halfway house (former 'Trambulin house') - BMCSPI[110] - Social accommodation in Szombathely	- Homeless shelters - Special homes for homeless families - Mothers' homes

[110] BMCSPI: Budapest Methodological Centre of Social Policy and Its Institutions (*BMSZKI*)

Based on the Law providing the main framework of the tenancy relation in question, and its private or public function, we can distinguish seven main regulatory tenure categories (as there is no public function tenancy which falls exclusively under contract law).
Each type mentioned in Table 12 may have very different regulations based on not only the main source of law, but also other by-laws and regulations. (See general introduction under the Questionnaire Part 2.) Tenants enjoying free tenure in return of tax free services (e.g. house sitting, paying for utilities) may have a very different legal status than reverse mortgage tenants, for example, and inhabitants of Baptist Aids Halfway House have a different status than the persons accommodated in BMCSPI's home for room renters.
Finally, there are 'general' and 'special' tenancy types in both private and public function residential leases. The general types are the ones that are the most wide spread, and fall under the effect of the Housing Law: individual private rental contracts (no public function), and rental dwellings owned and let by a public body, most typically a municipality (public function). [These two types are indicated with a bold font in Table 12.]
In Hungary, intermediary tenures are typically arrangements where the tenants receive assistance to rent on the private market. Low income households receiving housing benefit from the local municipality are the most common form. However, affordable accommodation provided by some charity organisations could also be considered an intermediary tenure. Baptist Aid's Halfway house for rough sleepers could be such an example: the home has a clear social goal, while it is technically a hostel rented by Baptist Aid from a private company, and it needs to collect enough in monthly rents for the home to break even. Accordingly, rent levels are only slightly below market levels. The reason beneficiaries prefer it strongly to open market rental is the significantly higher tenure security compared to individual tenancy conditions. Although the rules of the house are stricter than what the Housing Law would allow for a residential tenancy, its tenants believe that they are less likely to end up on the streets again as long as they play by the rules.
There is a multitude of special tenure types besides these basics, falling under various regulations, the most prominent ones of which will be presented under 3.2 and 3.3.

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.*[111]
- *Different types of private rental tenures and equivalents:*
    - Rental contracts
- *Are there different intertemporal tenancy law regimes in general and systems of rent regulation in particular?*

[111] 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.

- *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*
- *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*

The most typical form of private rental tenure is the classic residential lease, where an individual landlord establishes a contract with an individual tenant (or family), following the regulations of the Housing Law. As a small part of public function tenancies may have market or near-market rent levels, tenancy relationship on the private market should probably be considered 'private rental housing'. The term of the contract is typically short, one or two years, with a possibility of prolongation if the parties are mutually satisfied. Some of the mixed tenure types mentioned above could also be included in the private rental category, as the dwelling itself is provided by a private entity.

Intertemporal private tenancy regimes do not have any particular significance in current day Hungary, nor do rent regulation systems: private tenancy is an essentially liberal business, where all the conditions necessary for the establishment of a contract are left to the discretion of the contracting parties.

Professional landlords are a small minority within the rental sector: as described in earlier chapters, the typical landlord is an individual actor or a household with one or two apartments to rent besides their primary home. Professional residential renting is most often developed as a side activity of larger investors, often ones that were stuck with an initially unwanted stock due to the recession, only to minimise costs. The clearest regulatory difference between individual and professional landlords are probably the ones in their taxation regimes: small scale landlords are VAT exempt, and have only to pay the 16% personal income tax, while professionals also pay VAT (27%) and possibly other taxes and contributions, depending on their size, situation and other conditions.

Besides these general settings, a number of special arrangements also exist between private institutions and/or private persons, such as rent-to-own schemes, informal (sub-letting in low income neighbourhoods; condominium rentals with special conditions and so on. The following paragraphs describe some of the more prominent ones of these special arrangements. Please note that while an estimated 8% of households are accommodated in private rental, only a fraction of them live in the following sub-types. There exact number or even the scale would be hard to guess. Statistical data is as deficient here as elsewhere, if not more so.

Private ownership with usufruct right:

The ownership and the right of the use of the property are separated. The person enjoying the right to use may live in the property (the owner of which is the

landlord and the person having the usufruct right is the tenant, or the person who control the usufruct right may lease the property to a third person). Typically, in Hungary, this solution is used in order to minimise the inheritance tax, so parents buy their apartment with usufruct rights till end of their life, but the ownership is transferred to their children.

Another recently developed similar form is the legal background of the reverse mortgage: a financial institution offers monthly payment against the collateral of the property until of the death of the owner (an elderly person living on pensions). Usufruct right comes about in the process of inheritance: when the widow inherits the usufruct of the home where the couple used to live.

From a housing policy point of view, this tenancy type is closer to owner-occupation, and its legal background is provided by the civil code. (If the housing unit is rented by the person who own the usufruct rights, the case will be a simple landlord-tenant relation).

Private rental for free

This is a typical way of managing the risk of the private rental, and is also a tax avoidance method. The owner usually rents the apartment to a family member or acquaintance, and expects the tenant to keep the dwelling in a decent state of repair, while paying for utilities, hence assuming the costs of deterioration and basic utility fees.

Rent free tenancy is not regulated by the Housing Law, but falls under the sole effect of Civil Law, using the rules of a general lease contract.

Private rental – forced private rental sector

The origin of the "forced private rental tenure" dates back to World War I regulations (in 1916 and 1917), when a coercive-restrictive private renter policy was introduced with two important regulative elements: (a) rent control, and (b) limitations to the termination of the rental contract.[112] The private rental sector accounted for 30% of the housing stock at the end of the 1940s was nationalized in 1952 (four years after the regime change), and even at the end of this process 6% still remained in private ownership, because the nationalization law only applied to properties with 6 or more rooms. The remaining private rental sector was under the control of housing agencies in terms of tenant-landlord relations, rent setting, assigning tenants, extension of the tenancy contract, and so on. The tenants in the private rental sector enjoyed a high security of tenure. This sector was called "forced private rental" sector. After 1990, the government aimed to liquidate this sector, but this was a complicated process The size of the sector was still around several thousand units in the early 1990s.

Private tenancy with a right to buy option (similar to rent-to-buy schemes)

This is used by private landlords who intend to sell the property, but there is no demand (no sufficient purchasing power on the clients' side) to buy the whole

[112] PM Ordinance 3787/1916. on the termination of, and limitations to, tenancy contracts, and prolongation of tenancy contracts concluded on behalf of public institutions (November 1916); Ministry Ordinance 8133/1917. On rent committees and their regulation (10 February 1917).

property. This is in fact an innovative approach on the otherwise very traditional Hungarian market, created by private companies that never intended to develop a housing stock in the first place, but could not sell their property in the post-crisis years when the housing market crashed and did not gain real impetus ever since. On the other hand, a 5 year central assistance is available for build-to-rent schemes, which gives an obvious incentive for investors to create a rent-to-buy scheme with the same maturity period. The scheme is based on a higher than market rent fee: the additional payment is used as a down payment at the end of the scheme's maturity. At this point, the ownership is transferred to the former tenant, who becomes owner of the apartment, and their previous rent payments become loan repayment instalments.

An example for this special arrangement is a private property development company in Nyíregyháza (eastern Hungary). As it could not sell its apartments, the company decided to turn two of their blocks into rental housing. The landlord operates the dwellings in accordance with legal requirements (pays taxes), and the municipality supports the rent of the tenants in a local housing assistance scheme. Initially, the municipality allocated the tenants from a waiting list to the private landlord, but because of the risk of low income tenants, the scheme was not attractive to landlords. (See Interview 11 – real estate developer in Nyiregyhaza).

Tied accommodation: tenancy relation limited to the period of employment by a specific organization.

An organisation or company has the option to provide housing to its employees; it could either provide its own housing, or gain the right to assign tenants in apartments owned by the municipality or by private organisations. Article 75 of the Housing Law mentions this option, although the Law does not describe its detailed regulation: instead, it is expected to be laid down in the tenancy contract. The contract usually lasts as long as the tenant has a valid employment contract with the landlord (although this is not always the case). Military homes, service homes for Condominiums or Housing Cooperatives, homes owned by Church or non-profit agencies are typical examples for this solution. In principle, tied accommodation is regulated under the Housing Law.

The most salient intermediary type between the private and the public sector[113] is when the municipality provides housing assistance to low income households. Some municipalities give rent subsidies to tenants (e.g. Kecskemét, Szombathely) as a support to poor households who can find accommodation only on the private rental market, because of the shortage in municipal social housing.

- Szombathely (a city with population of 80,000 people) introduced the rent subsidy system in 2008 and provides support for around 100 households with a budget of HUF 20-25 million annually. The maximum support is

[113] Please note that 'intermediary type' here is used in the sense of intermediary field between the private and the public sector, and not as an intermediary between ownership and rental tenure, as it is mentioned in the Tenlaw glossary.

HUF 20,000 per household (about EUR 70). The municipality sees the rent subsidy to private rentals to be a more effective solution to meet social housing needs than refurbishing the empty rundown units, amounting to 300 units out of the total municipal stock of 2,200.

- Another city providing rent subsidy is Kecskemét, a town with a population of 110,000. The average number of supported households is 80-100 per year, while the municipal housing stock is about 1,600 units. The subsidy is provided for one year, after which it has to be claimed again. The municipality checks whether the household applying for the subsidy actually lives in the apartment.
- Both cities require the rental contract as a condition, but they do not check whether the landlords are registered with the tax authority, which seems to be a key factor of the success of the rent subsidy in terms of involving private landlords in the system. Similar programs can be found in other cities.[114]

Summary Table 6 Rental housing without a public task

	Description of the type	Significance*
Rental housing **without a public task**		
Occasional owner	Widespread in Hungary: individual families inherited or bought second homes, which they do not need in the short run. In some cases, families make a living on the ownership of several (3-5) units.	XXX
Condominium/ cooperative	Households unable to pay the utility costs are forced to sell their apartment. The condominium or cooperative buys the apartment and rents it out. (The revenue from rent decreases the condominium fee of the owners.)	X
Construction companies	Companies that cannot sell the apartment they built rent them out temporarily. (Example: Nyiregyhaza, see above.)	X
Special arrangement: rent free tenants, usufructuary etc.	Tenants who live in an apartment owned by relatives, friends etc., who offer the flat below market rent or rent free – like a 'house sitting' arrangement. ('House sitting' tenants are quite general, which might be covering tax-evasion.) In cities with low demand, houses are rented for free, but the common costs and utility cost are paid by the tenants, so they do not burden the owner.	XX

[114] http://gyor.hir24.hu/gyor/2013/01/08/harmincot-hajlektalant-juttattak-alberlethez-gyorben/

Professional landlords	Professional landlords are active on the higher end of the market.	X
Workers' hostel arrangements	There are landlords who operate their property like a workers' hostel; it is a special arrangement, since they operate under the Commercial Law, and not the Housing Law, despite the residential nature of their services.	XX

4.3 Regulatory types of tenures with a public task

- *Please describe the regulatory types of rental and intermediary tenures with public task (typically non-profit or social housing allocated to need) such as*
  - *Municipal tenancies*
  - *Housing association tenancies*
  - *Social tenancies*
  - *Public renting through agencies*
  - *Privatized 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*
  - *opportunities of subsidization (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"?*

There are several tenancy subtypes within ***rental contracts with a public task***; partly under the state and municipality owned housing stock, and under other different agencies.
The most typical version of the public rental is when the landlord is the municipality itself, regulated by the Housing Law[115] and related regulations of housing subsidy programmes. Municipally owned housing is by far the largest segment of the public function housing stock, in spite of accounting for a mere 3% of the full stock. The general types of municipally owned rental housing include

1. social rental,

[115] Act LXXVIII of 1993 on Residential and Commercial Leases.

2. cost-based rental, and
3. municipal rental for a market price.

Cost-based means that the rent level should cover the price and maintenance costs of the unit. However, in practice this would be way above market level; and accordingly, municipalities usually opt for a discount price that is between social housing and market rental levels. In the case of municipal rental on a market price, profit is normally used to cover the losses that inevitably accrue from social and cost based rental.

Beside these differences the Housing Law defines specific tenancy schemes like apartment buildings for room-renters or young couples, houses for pensioners; all of which may have specific rule in terms of the rent, expected home equity savings, duration of the tenancy, allocation rules of the flats, etc.

Some of the more specific sub-types include

- "Old" social rental, with more restrictive rules and outstandingly strong tenant protection, where the contract was signed before 1989;
- Rental units for specific groups of workers (e.g. teachers, engineers and physicians, social workers or municipality employees);
- Rental units for young couples with no financial help from their families; typically couples under 35 with no family help, and an obligatory home equity savings account, for a limited period (e.g. up to 5 years);
- Art units;[116]
- A special case within municipal rental is when a tenant refuses to move out of a unit once the contract was terminated by the municipality (because of non-payment, for example). In this case, the tenant has to pay a user charge – a monthly payment that is usually higher than social rent – until his situation is settled: either the tenant clears all debts towards the municipality, and a new contract is concluded; or the eviction procedure can be commenced.
- "Social accommodation" is an innovative solution launched in the western Hungarian municipality of Szombathely. In order to prevent homelessness among the poorest municipal tenants who accumulated substantial rent arrears, the town gives run down, low comfort units to tenants who are unable to pay even for the low social rent and utility payments of their apartment. Although the original idea was to help out households until they manage to overcome their (supposedly temporary) problems, it seems that some of the households simply prefer to stay in the lower quality but more affordable unit in the long run. From the legal point of view it is a question of which law regulates the rule of this tenancy. Our interpretation is that basically this belongs to the Commercial law, because the Housing Law does not know contract types the m municipality is using. However, the municipality housing decree deals with this type of the contract as it would belong to the Housing Law.

The regulation of state owned housing is similar to that of the municipally owned stock, although the number of units owned by ministries and state entities is much smaller. In many cases, ministries or other entities do not own units, but have a right to assign tenants to municipal units.[117] Some typical arrangements include

[116] http://www.alkotok.hu/hu/faliujsag - swapping market for state owned or supported Art Studios (in Hungarian).

[117] Interviews suggested that such units are far from being used to full capacity.

- Military residential tenancies;
- The properties purchased by the National Property Management Company;
- Units created under the Social Housing Construction Programme (part of the mortgage rescue programmes), etc.
- Besides local and central government agencies, a number of other state owned organisations may also have their own housing stocks (like the Railway Company housing stock, one of Hungary's largest).

The most important of these forms is most certainly the National Asset Management Company (NAMC), introduced in 2010 (although it only became active on the market in 2012). The goal of this institution was to purchase the property right of the defaulted borrowers from the banks. The transaction takes place at a centrally determined price; it annuls all remaining debts towards the financial institution; and it is automatically applicable to all households that apply and respond to the legal criteria (meaning that a fairly large number of defaulted borrowers can rid themselves of their debt burden, in case their home is designated for foreclosure). Former owners become tenants in a state owned property. They have the option of buying back their property within 5 years. NAMC was set up by the Hungarian government in the framework of its 'Home Protection Action Plan', with the goal of assisting foreign currency mortgagors whose housing situation was put at risk by CHF soaring against HUF. In 2013 NAMC went on to purchase defaulted homes *en masse*, and was allocated funding to buy a total of 20 000 housing units. In case it ever reaches this magnitude, NAMC will be the largest scale social housing programme launched ever since the regime change.

The Hungarian National Railway Company disposed over 5 000 dwellings in 2004, 80% of which was located in station buildings and attached constructions. Rent levels were kept at approximate 25% of the market price. Half of all dwellings were inhabited by former workers, which meant that their rights and rent levels were different from the actual employees' arrangements. Dwellings could be privatized at 35-50% of their market value to sitting tenants, but many dwellings could not be sold, e.g. because of their locations (within station buildings). Besides the 5 000 dwellings in the railway company's ownership, the company also had allocation rights in about 1 000 municipal dwellings (Hegedüs-Teller, 2004).

Ócsa Social Housing Construction Programme is an entirely new tenure form, created by the government in a quick response to the FX mortgage crisis. The original idea was to build new, state owned housing for households who lose their home due to the radical rise in FX loan instalments, in an attempt to 'save' mortgagors while also boosting the construction sectors. However, the selected site was 40 km south of the capital, at the external area of a small town, with no viable connections to the labour market (unless the defaulted mortgagors could keep and maintain their cars). The construction was meant to be economical, yet result in very energy efficient buildings to allow for low utility costs – none of which worked out according to plan. Finally, the intended 500 buildings were never built; 80 houses were finished by 2013, and defaulted families moved into 40 of them. The remainder was suggested to be used as emergency dwellings for the times of natural disasters (although this objective is also quite counterintuitive given the isolated location of the site). At the moment it seems that Social Housing Construction Programme has come to a halt, and its future is uncertain.

The Budapest Methodological Centre of Social Policy and Its Institutions (BMCSPI), the largest homeless provision facility of the capital, does not only run shelters, but also steers externally supported housing and integration projects, and various other forms of

homeless accommodation and provision. The Centre manages a "home of room renters", an affordable rental facility able to accommodate 2-300 households. Their internal regulation is much stricter than that of the Housing Law, which has led to criticism; however, considering their very low income target groups, a more liberal approach could financially ruin the Centre. The home evicts tenants with more than one month's delay in payment; accordingly, the rate of defaulters is very low. Even with the current conditions the price is lower than in a commercial workers' hostel, and the demand highly surpasses the available units: the average applicant has to wait for a year to get in.[118]

In a special case of the public rental scheme, a 'public company' assumes the role of the landlord on the basis of the Civil Code[119] (with some specific social mission). These companies can be owned by the local or central government, or can be NGOs (for example the Hungarian Baptist Aid). They have special tenancy models, with special terms, rent setting, allocation criteria, utility arrangements etc.

Again, there is no systematic, large scale statistical information about these forms, but some examples include:

- NGOs in housing provision: In the framework of the Roma Settlement Integration Program running between 2005 and 2010, besides municipalities that purchased or constructed social housing for Roma who moved out from segregated areas, some NGOs became landlords of social housing that accommodated very poor Roma families. The moratorium for selling or privatizing these units was 5 years, and the sitting tenants had the option to buy the units after this time. Some of the participating NGOs, the Maltese Charity Service for instance, rented these units to the beneficiaries at very low rent or rent free, and also assumed the responsibility for the payment of utility bills. After the expiration of the 5 year moratorium, sitting tenants obtained the ownership right of these dwellings. This transfer was more widespread in areas where social housing hardly exists, and the municipalities or NGOs do not have sufficient capacities to manage and maintain the dwellings.
- Public tenancy with a contract to a third party (typically a person) who will have the right to continue the contract in the case of the death of the tenant in response to the maintenance (in kind or financial). The maintenance ("life-support") contract was a quite general way to support the income of the poor elderly public sector tenants who could not rely on the support of family members. Public authorities generally accepted this solution. To some extent, it still exists today, although not entirely without controversies.

A very special form of residential tenancy is regulated by the Commercial Law of 2005, namely its regulations on accommodation services. Some institutions with a clear public task (affordable workers' hostels, some homeless and family shelters) legally function by the terms of commercial accommodation services to go around bureaucracy and the risks inherent in residential leases, but they provide rental housing based on social needs. So again, in spite of their obvious residential nature, they fall outside of the competence of the Housing Law.

[118] Interview with BMCSPI Managing Director Péter Győri, January 2014.
[119] Act IV of 1959 on the Civil Code of the Republic of Hungary

The Halfway House (formerly 'Trampoline' house)[120] of the Hungarian Baptist Aid (HBA) is an excellent example of such an arrangement. HBA deals with people in need, including homeless provision programmes. The organisation established an affordable accommodation service block, based on the model of old worker hostels. They rented and renovated a former worker hostel in an outer district of Budapest, and then announced that it offers one, two and three bed rooms (with shared bathroom facilities) to rough sleepers. The hostel became very well known, very quickly, among people who cannot have access to affordable housing: its 158 bed capacity was fully used within one month. The rent, which includes the costs of using facilities, is EUR 107 for single accommodation (1 person/room), EUR 61 for a two-bed and EUR 47 for a three-bed accommodation per person. The hostel is operated on market base: HBA pays a monthly rent to the owners from the rents collected from the dwellers, and they do not receive any public finance. The staff consists of four persons working at the gate service and 2 cleaners. No social worker is employed.

Summary Table 7 Rental housing with public task

	Description of the type	Significance*
Rental housing **with public task**		
1. Municipal rental homes: social rental	Widespread rental arrangement, some of them originate before the 1993 Housing Law; typically especially strong tenant rights. The new contracts are shorter term (3-5 years), although with an implicit possibility of continuation.	XXX
2. Municipal rental homes: cost rental	A special arrangement, introduced in 2000. The rent should cover the 'cost' of the investment, although typically it is 2% of the construction cost, which is in between the social rent and the market rent.	XX
3. Municipal rental homes: market rental	Market rent scheme is working in cities, typically in downtown areas. Very few units belong under this category; the rents are typically under market level, but much higher than the cost rent.	X
4. Municipal social accommodation	Municipalities may enter into a special contract with households that accumulated high rent arrears. The households have to join a debt management program, which works like a 'private bankruptcy' scheme.	X

[120] Later renamed 'halfway house'; expression the Foundations aim to use the facility to move the homeless towards self-sustaining private rental. This goal is rarely met though;

5. Municipal social arrangements	'Nest house' dwellings in municipal ownership provides housing to young families (normally below 35), who commit themselves to accumulate certain amount of savings during the period of the rental agreement (i.e. 5 years); or special dwellings for (young) single persons (normally multiple persons in one building, called 'room rentals').	X
6. National Asset Management	This is a special program launched in 2012, when the State Agency buys the defaulted mortgages from the banks, and the ex-owner becomes a tenant in the same unit. The new special housing construction program in Ócsa belongs to this category as well. (See later in this chapter.)	XXX
7. Rental housing of large state owned companies or ministries	The Railway company housing (see later), or the 'gallery' rental for artists allocated by the Ministry for Cultural Affairs or its Public Foundation belong under this category.	X
8. Social housing by NGOs	Churches and NGOs own a limited number of housing units, which are used according their specific programs (independently of the Housing Law).	X
9. Social rental agency	There are NGOs who play an intermediary role in the tenant-landlord relation, especially in programs supporting exit from homelessness.	X

- For which of these types will you answer the questions in Part 2; which regulatory types are important in your country?
  - 1)
  - 2)
  - Etc.

In Hungary, currently there are two *main* types of tenancy relationships:
1) private lease; and
2) public lease,
which are basically regulated by the Civil Law and the Housing Law. However, as we already discussed in detail, there are different legal relations, which cannot be considered 'real' tenancy relations from a legal point of view, but from a social and economic point of view they in fact represent a version of landlord-tenant relations. For example, leases and sublets for free, or living in a flat based on usufruct rights, are not legally considered as a tenancy relation. Moreover, the accommodation service type rentals (workers' hostels, certain homeless shelters) are regulated under the Commercial Law of 2005; and emergency social accommodations (homeless shelters, temporary homes for families, etc.) are regulated under the Social Law of 1993.

Under the Housing Act, three categories are distinguished: dwellings belonging to the exclusive property of municipalities, dwellings belonging to the exclusive property of the Hungarian State, and “other dwellings”. The latter category concerns private lease, in the property of any natural or legal persons other than exclusively the municipalities or the State: private individuals, enterprises, foundations, cooperatives, churches, etc.[121]
The tenancy relations under the regulation of the Civil Law and Housing Law are structured according to the ownership of the flat, type of the landlord, the rent settings etc.
The Housing Law pass over wide responsibilities to the Municipalities to regulate the use of their housing stock. According to the type of the rent they have market, cost based and social submarket; they may have contract with or without time limit, they may have special purpose homes like flats form young couples, homes for pensioners, emergency homes, which all have some specific elements in preparation, conclusion, content or implementation of the contract.
The Government, State and Quasi-state institutions (for example Universities) may have special regulations in respect of the use of their housing stock which has to be in consent with the Housing Law, but may have specific rules in terms of the access to homes, rent regulation etc. (But student homes are under the regulation of the Commercial law.) Recently, as a consequence of the financial crisis in 2008, a special lease was introduced managed by the National Asset Management Company, a state owned entity (see earlier).
Among these categories, the most common forms of tenancy are private lease and municipal lease. State lease concerns a relatively small part of apartments, which remained in State property, mainly serving as service accommodation. Lease by the National Management Company is limited to a specific situation of foreign currency debt as described above.

[121] Rakvács, J.: The lease of apartments and premises (*Lakások és helyiségek bérlete*), HVG-ORAC, Budapest, 2006, p. 30.

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)?*

The legal regulation of tenancy relationships in Hungary did not follow a linear development. In line with the historic context, several periods of regulation and policy may be distinguished.
Historically speaking, the first regulation of tenancy contracts, as a form of lease agreements was contained in the Austrian General Civil Code (ABGB), promulgated in Hungary in 1853.
In 1867, Hungary regained its legislative power with the Austro-Hungarian compromise. Several drafts of a potential civil code were prepared, but not adopted by the Hungarian Parliament. The most important draft was the Hungarian Private Law Act of 1928. In practice, Hungarian courts applied these draft laws until the enactment of the Hungarian Civil Code in 1959.
In addition, tenancy relationships were regulated by special ordinances (such as the Ordinance of the Prime Minister 3787 of 1916 on the termination and limitations to tenancy contracts and on the prolongation of tenancy contracts concluded on behalf of public institutions, as well as the Ministerial Ordinance 8133 of 1917 on rent committees and on their regulation, Ordinance of the Prime Minister 8000 of 1946, Governmental Decree 31 of 1956, Governmental Decree 1 of 1971 as modified in 1982).
After the democratic change of regime in 1989, the Civil Code was first amended to reflect the transition to market economy. The Civil Code specifically mentioned tenancy contracts as a type of lease agreements. However, it did not contain any specific provisions in this respect. The rules regarding tenancy contracts were laid down in a specific law: Act 78 of 1993 on Residential and Commercial Leases, hereinafter referred to as "Housing Act", in force to date.
Furthermore, in 2013, a new Civil Code (Act 5 of 2013) was adopted by the Hungarian Parliament, to enter into force on 15 March 2014. The new Civil Code contains a number of provisions regarding tenancy contracts.

- *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)*

The different periods of the regulation and policy concerning tenancy relationships were characterised by different driving forces, philosophies and objectives.
The first policy interventions in the field of tenancy relationships date back to World War I regulations (in 1916 and 1917), when a coercive-restrictive private renter policy was introduced with two important regulative elements: (a) rent control, and (b) limitations to the termination of the rental contract.[122] The details of the intervention have been varied

[122] PM Ordinance 3787/1916. on the termination of, and limitations to, tenancy contracts, and prolongation of tenancy contracts concluded on behalf of public institutions (November 1916); Ministry Ordinance 8133/1917. On rent committees and their regulation (10 February 1917). Bódy Zsombor: Kislakás,

between the two World Wars, but the main elements remained intact until the introduction the second Housing Codex in 1956.

The next period in the history of tenancy relationships was determined by the socialist housing policy. Under the socialist period in Hungary, four housing regimes can be distinguished[123]; these represent modifications of the basic Eastern European socialist housing model under the economic and political pressure caused by "cracks" (systemic errors that necessarily emerge, as principles of the socialist housing ideal clash with social and economic realities) and shortage. In the first period (1949-1956) there was an attempt to introduce a total control of the housing system. In 1952, a large-scale nationalization was carried out: private houses and apartments with more than 6 rooms were nationalised; all houses and apartments built before 1 April 1953 that had more than three rooms were moved under the direct council control. In the second period (1957-1969) the housing system was based on a compromise between the state and the private sector. In the third period (1970-1983) the role of the state had been reinforced based on the new housing industry ("age of the housing estates"); and in the fourth period (1983-1989) market elements were introduced under the control of the party (including slow privatization, state backed mortgage system, etc.).[124] Each period had its basic housing laws: Office of the PM Ordinance 8000/1946; Governmental Decree 31/1956 (20 Sept.); Governmental Decree 1/1971. (8 Feb.) and its modification in 1982.

The private rental sector accounted for 30% of the housing stock before the large scale nationalization of 1952 (four years after the regime change), and even at the end of this process 6% still remained in private ownership, because the nationalization law only applied to properties with 6 or more rooms. The state strictly controlled the private rental sector (through local councils under communist party rule), in terms of tenant-landlord relations, rent setting, assigning tenants, extension of the tenancy contract, and so on. The tenants in the private rental sector enjoyed a high security of tenure. This sector was called "forced private rental" sector.

According to housing and property law under the socialist regime, private property was not to be used for "exploitation";[125] it was only acceptable for personal use, and only to the extent that it was justified by a person's housing needs. Owning private property in order to make profit was considered to disintegrate the social fabric of communist society.

However, even in the socialist period, the public rental sector (the nationalized housing stock and the newly built state owned housing) was not under total state control. Tenants had the right to sublet parts of the state owned rented apartments. The formal

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társasház, családi ház (Lakásépítkezés és az otthon ideáljának változása Budapesten az első világháború körül) Századvég, 9. évf. 34. sz. / 2004 p. 27- 58, Oláh Gábor: Lak –hatóság (Az I. világháború hatása a budapesti lakáskérdésre), Korall 40. 2010. Pp. 146–162.

[123] Hegedüs J. - Tosics I. 'Housing classes and housing policy: some changes in the Budapest housing market.' *International Journal of Urban and Regional Research*, (1983) Dec 7:467-494; Hegedüs J. - I. Tosics: *Disintegration of East-European Housing Modell* in: Housing Privatization in Eastern Europe (Clapham,D. -Hegedüs, J. Kintrea, K.-Tosics I.) 1996 Greenwood, pp. 15-40

[124] Each period had its basic housing laws: Office of the PM Ordinance 8000/1946; Governmental Decree 31/1956 (IX.20.); Governmental Decree 1/1971. (II.8) and its modification in 1982

[125] Marcuse, P. 1996. "Privatization and its Discontents: Property Rights in Land and Housing in the Transition in Eastern Europe." Andrusz, G., Harloe, M. And Szelenyi, I. eds. Cities After Socialism: Urban and Regional Change and Conflict in Post-Socialist Societies (Studies in Urban and Social Change) 119-192.

law of course regulated the conditions for subletting including the rent, etc. However, the effective control of the sector was not enforceable: shortage in housing forced the state to let private incentives work on the sub-let markets. Another major characteristic of the public rental sector was the possibility to swap the tenancy right among private persons with the permission of the housing department of the local council, which had led to an uncontrolled secondary market of the public rental units due to the lack of capacity of the housing offices to control the legal and social conditions of the exchanges. Governmental Decree 1/1971 was an important turning point in the tenancy regulation in Hungary, and some of its impact prevails even today.

After the transition a new political system emerged, committed to market liberalization and respect for private property, multi-party democracy, and the rule of law. The new regime abandoned the main integrative role of the state: free market and a transparent legal system were presumed to become the new key integrative mechanisms of society. However, the legal system reflected the compromises of the transition process. Another important element of the transition was the conflict of different forces, particularly of specific interest groups, structured around parties and influential economic groups, in a free market environment.

In the housing sector, transition involved two main trends: (1) the privatization of the state owned rental sector (85-90% of which was privatized to sitting tenants), and (2) the secession of the state from the housing sector, and especially from the direct support of the housing finance system. Both trends had an important effect on development the housing market. On the one hand, local governments became responsible for housing provision on the local level, but because of the extensive privatization they did not have adequate resources for local social policy.[126] For example, the number of units to allocate to needy households decreased sharply, due to low levels of housing investment and the quickly depleting stock of vacant units to reallocate.[127]

In the same time, the typical developers of the housing regimes of the socialist period (the state owned banks and large construction companies) disappeared from the system, and most of the subsidies were withdrawn, which led to a deep recession of the housing market in the 1990s. Housing became unaffordable, the price/income ratio rose above 4, and Housing Affordability Index was 23% in 1992, slowly rising to 40% in 1999, and 70% 2003, as opposed to the 120-140% ratio of developed countries.[128]

It was presumed that these phenomena will contribute to the expansion of the private rental sector, especially considering the increasing income differences.[129] We could

[126] Hegedüs, J.: Social housing in Hungary: Ideas and plans without political will in Hegedüs-Lux-Teller (ed): *Social Housing in in Transition Countries*, pp. 180-194 Routledge 2013.

[127] In 1980s 15-20 000 units became vacant annually; in the 1990s new vacancies fell to about 1 500 a year. The social housing programme between 2000 and 2004 did not bring about a significant change; the number newly built units was less than the number of housing unit sold during the same period.

[128] Hegedüs, J. – E. Somogy (2005): Evaluation of the Hungarian Mortgage Program 2000-2004, in Housing Finance: New and Old Models in Central Europe, Russia and Kazakhstan (edited by J. Hegedüs and R.J. Struyk) OSI/LGI, p 177-208

[129] Income differences among the lowest and highest earning income groups rose sharply after the transition, and kept growing for most of the last two decades, albeit at a more moderate pace. Based on the survey data of TÁRKI Social Research Institute, the difference between the average per capita income of the lowest and highest income decile grew from less than five-fold before the transition to around nine-fold in 2012 (see Szívós et al., 2013). As for the demand versus supply in social rental housing in Hungary, housing experts estimate the number of households in need of – and legally qualified for – social

reasonably expect that with the growing prominence of the free market and state backed incentives to entrepreneurship, a new middle class of potential landlords would emerge. However, judging from official statistics, such a class did not appear, which can be explained by two main factors: economic reasons (user cost), and legal uncertainties (tenancy law relations). Indeed, the development of the "self-regulated market" went down a rough path, as not only the behaviour and attitudes of the actors have been changed, but a new operating legal system of the market economy was being developed as well.

At its conception, the Housing Act of 1993 had a twofold objective: resolve the privatization of the public housing stock and bring about a clear distinction of rental and ownership relations after the quasi-ownership character of the socialist tenant position. In both respects, the Act opted for a fundamentally liberal approach.[130] On the one hand, it encouraged the general privatization of the housing stock, ensuring a right for tenants to buy their rented apartments, at a discounted price. On the other hand, the regulation of the tenant-landlord relations – in particular as regards private rental - was based on the civil law principle of contractual freedom of the parties.

Accordingly, tenancy relationship is the result of the free agreement of equal parties, and only the basic conditions are laid down by law. This underlying concept is well illustrated by the fact that initially, the Housing Act did not foresee an obligation for the parties to lay down the rental agreement in writing. Although the Act did define the basic rights and obligations of tenants and landlords, it did so with the objective of defining this form of legal relationship, rather than with the ambition to ensure the development of a well-functioning private rental market.

- *What were the principal reforms of tenancy law and their guiding ideas up to the present date?*

The major reform to the socialist housing system was brought by the adoption of the 1993 Housing Act. As mentioned above, this act carried out the massive privatization of the socialist housing stock and laid down the foundations of a market-based tenancy regulation, based on the freedom of agreement of equal parties. The main guiding idea was a liberal, market-oriented approach to tenancy relationships, however, the law respected the "vested interest" of the tenants, and the property rights of tenancy were limited gradually. For example, the forced private tenancy disappeared only in 2005. The tenancy contract concluded before 1993 could be inherited according to the rule if the Housing Law before 1993.

Since its adoption, the 1993 Housing Act has been amended several times (till 2010 27 times). However, the vast majority of these amendments were merely technical modifications.

By way of exception, the 2005 amendment contained certain substantial modifications. The amendment was triggered by the so-called "housing mafia" cases, a typical criminal phenomenon of the post-communist era, essentially consisting in organized fraud in connection with public or private housing, for example by means of fictive changes or

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housing to be around 300,000, while the number of available units is roughly the third, with a very low number of housing units becoming available annually.

[130] Baar, K. 1993. Residential landlord tenant law for privately-owned flats, manuscript, Urban Institute

purchases to the detriment of tenants and owners. In an attempt to increase the guarantees of tenancy relationships, the amendment introduced the obligation to conclude tenancy contracts in written form and increased the guarantees regarding the exchange of municipal dwellings. In addition, the following changes were introduced:

- The parties became entitled to create a pledge over a bank account and/or cash deposit as security for non-payment;
- The renovation obligation was split between the parties, the major renovation works became the duty of the landlord (prior to this amendment, all renovation works within the dwelling belonged to the competence of the tenant);
- The possibility to require permanent living in municipal dwellings was introduced;
- The currently existing three types of pricing methods of municipal dwellings were introduced: pricing based on social situation, cost based and market based rental. At the same time, the amendment confirmed that any municipal rent increase requires the amendment of the relevant municipal decree.
- The possibility of an ordinary termination of indefinite lease agreements for municipal dwellings was enacted (with the exception of social leases), upon offering an exchange dwelling.

Furthermore, in 2011, Hungary enacted special rules with the aim to ensure housing of citizens unable to pay their foreign currency debt (Act 170 of 2011 on ensuring the housing of natural persons unable to fulfil their obligations under their credit agreements, hereafter "the National Asset Management Act"). The newly created National Asset Management Company (NAMC, *Nemzeti Eszközkezelő Zrt.*) has twofold activities. On the one hand, it is entitled to buy the properties of foreign currency mortgage debtors, if their home is already designated for foreclosure, up to a certain value (HUF 20 million in Budapest and the cities with county status, and HUF 15 million elsewhere)[131] and to rent them back to the original owners. Debtors retain the right to purchase their property back. On the other hand, the National Asset Management Company is managing the newly constructed state dwellings in Ócsa, leasing them to ensure social housing of eligible debtors.

The basic law of tenancy agreements concluded by the National Asset Management Company is the Housing Act, which applies unless specified otherwise in the National Asset Management Act and the implementing regulations. In reality, the National Asset Management Act and the Decree 128/2012 on certain rules concerning the functioning of the National Asset Management Company (hereinafter "the implementing decree to the National Asset Management Act") contain a set of specific rules to these lease agreements, resulting in a specific new category of tenancy relationships.

- *Human Rights:*
- *To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in*
- *the national constitution*
- *international instruments, in particular the ECHR*

[131] About EUR 67,000 and EUR 50,000 on January 2014 exchange rates. It can be considered a relatively liberal approach, as the average price of properties purchased by NAMC was HUF 3 million, or EUR 10,000.

- *Is there a constitutional (or similar) right to housing (droit au logement)?*

The development of tenancy regulations in Hungary was not directly influenced by fundamental rights. In the socialist period, tenancy relationships represented a means to combine centralisation of resources and provision of housing. The 1993 Housing Act aimed principally to restore market driven tenancy relationships and freedom of agreement of the parties. The overwhelming majority of dwellings were privatised, and the dwellings in the property of the municipalities were only partly devoted to social considerations, upon discretion of the municipalities.

Housing is not a fundamental right in Hungary, there is no explicit obligation of the State enshrined in the Hungarian Constitution to provide housing. However, the new Fundamental Law of Hungary, which took effect on 1 January 2012, takes a step in this direction, declaring that "Hungary shall strive to ensure decent housing conditions and access to public services for everyone" (Article 22 of the Constitution).[132]

Previously, with regard to housing, the Hungarian legislation regarding fundamental rights only referred to the protection of private homes. The 1989 reform to the previous Constitution of Hungary (Act No. 20 of 1949) introduced the principle of protection of private homes.

This principle is also foreseen in the Hungarian Civil Code. The new Civil Code entering into force on 15 March 2014 provides that – among others – the disturbance of private home represents a breach to the inherent rights of the person concerned (Article 2:43 point b) of the new Civil Code). On this basis, the person may ask the court to have the infringement discontinued and file charges for punitive damages, among other options (Articles 2:51, 2:52 of the new Civil Code).

The European Convention on Human Rights (ECHR) was implemented in Hungary in 1993 (with the adoption of Act No 31 of 1993). Article 8 of the ECHR provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". In addition, Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (Paris, 20 March 1952) provides for the Protection of property.[133] Hungary must comply with these provisions and Hungarian citizens may seek remedies for the breach of the ECHR in front of the European Court of Human Rights. However, no direct impact of these provisions on tenancy law can be shown.

[132] As a rather controversial measure, this article was later completed by two more paragraphs, on the state and local municipalities' contribution to decent housing conditions by ensuring accommodation to "persons without a dwelling"; and on banning said persons to use public spaces as a dwelling: "(3) In order to protect public policy, public security, public health and cultural values, an Act or a local government decree may, with respect to a specific part of public space, provide that staying in public space as a habitual dwelling shall be illegal."

[133] "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties"

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))*

In line with the current legislation, all tenancy agreements must be concluded in writing. In the case of private tenancy relationships, this requirement applies only as of 2005. There is no requirement to register lease agreements, nor is any stamp duty applicable In the case of private tenancy relationships, the main guiding principle is the contractual freedom of the parties. The 1993 Housing Act defines the main rights and obligations of the parties, and the cases of termination of the tenancy agreement, but leaves a large scope for individual agreement. For example, parties are free to determine the amount of rent and agree on the rent increase. The Housing Act contains no provision in this regard, other than the possibility for the parties, in the absence of common agreement, to request the court to determine the amount. The landlord is entitled to terminate the tenancy contract concluded for an undetermined period by means of ordinary termination. In addition, such right is also generally accepted and provided for in lease agreements in the case of contracts concluded for a determined period. Furthermore, the landlord is entitled to extraordinary termination in the case of non-payment of the rent, other forms of important breaches of the contract, unacceptable behaviour of the tenant, and damages by the tenant.

In the case of municipal leases, the Housing Act contains the basic rules, but municipalities retain the right to regulate the details of their lease agreements by means of municipal decree. In line with the Housing Act, there are three types of lease agreements in function of the rent: lease based on social situation, cost-based and market-based lease. The Housing Act defines the criteria, on the basis of which the amount of rent is determined in the relevant municipal decree, just like the provisions concerning rent increase. In the case of municipal dwellings, the right of the municipality to exercise ordinary termination for contracts concluded for undetermined period is more limited. As a rule, it may only be exercised by offering an appropriate dwelling in exchange at the same settlement, or – upon agreement with the tenant – by appropriate payment. In the case of lease based on social situation, ordinary termination may only be exercised for the purpose of the transformation, modernisation, or demolition of the building (the apartment therein) or for the termination of co-tenancy.

Although tenancy law in Hungary comprises certain social elements, such as in particular the category of municipal lease based on social situation or the special lease agreements construed for those unable to repay their foreign currency debt, it cannot be regarded to have a social orientation as a whole. As a matter of fact, after the change of regime, the social rental sector was transferred to municipalities and has mainly been left to the market.

Tenancy law in Hungary does not contain an explicit requirement regarding the habitability of dwellings. Such a requirement may only be inferred from the definition of dwelling in the Housing Act. The Housing Act defines the dwellings by the degree of their comfort. The lowest category of dwelling (emergency dwelling, *"szükséglakás"*) must be at least 6 square metre (per person), have external walls at least 12 centimetre, built out of bricks or equivalent, have a window or glass door, some possibility of heating, and the possibility to use toilet and to obtain water nearby must be ensured.

- *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)*

In most cases, the rules of Hungarian tenancy law are provided by state laws (the Civil Code, the Housing Act, sectoral laws, specific legislation, government and ministerial decrees, see the reply to following question). In the case of municipal dwellings, however, the applicable regulation has two levels: besides the provisions of the Housing Act, the municipalities are entitled to regulate certain aspects of residential lease by means of municipal decree.

In Hungary, local municipalities have competence to regulate their matters by the issuance of municipality decrees. Such decrees are Hungarian legal sources, but they are only applicable to the matters of the municipality concerned. In the field of tenancy law, this power is subject to certain limits: municipalities may not deviate from the provisions of the Housing Act and are only entitled to enact rules in this regard to the extent explicitly empowered by the Housing Act.[134] The areas where municipalities are entitled to enact specific rules contain for example the conditions of the lease of the dwelling, the content of the agreement of the parties regarding the rights and obligations of the landlord, the amount of rent differentiated according to the category of lease, the amount and the conditions of rent increase, etc. (a full list of these areas is provided in Annex 1).

The provisions of the municipal decree are binding on the persons concerned as well as on the law enforcers. This is the case even if these provisions are contrary to the provisions of the Housing Act. In this case, in order to set aside the provisions in question, a specific procedure is needed. As of 2012, in line with the provisions of the new Constitution of Hungary, the Curia is entitled to review the conformity of municipal decrees with the applicable legislation in a non-litigious procedure, upon initiative of a judge in a concrete litigation or of the governmental office exercising supervision over the municipality in question. Previously, the review of the lawfulness of municipal decrees was in its entirety the prerogative of the Constitutional Court. As of 2012, the competence of the Constitutional Court is limited to the control of the compliance of municipal decrees with the Constitution itself, without the examination of the conformity of the decrees with other applicable legislation (Article 37 paragraph (1) of the Act 149 of 2011 on the Constitutional Court, hereinafter the "Act on the Constitutional Court").

An important difference between the control by the Constitutional Court and the procedure in front of the Curia is that the Constitutional Court can also act upon individual complaint, including if the legal harm was caused outside of litigation (Article

[134] Commentary to the Housing Act

26 paragraph (1)-(2) of the Act on the Constitutional Court). Indeed, the lack of possibility of an individual concerned to initiate the review of the legality of a municipal decree is currently a loophole in the legal protection of individuals, also in the opinion of the judges of the chamber competent for municipalities in the Curia.[135]

Over the years, a significant number of decisions were adopted concerning the control of conformity of municipal housing decrees with the provisions of the Housing Act. In these decisions, the most typical problem area is that municipalities go beyond the specific empowerments provided in the Housing Act and enact additional conditions influencing the conclusion and the content of tenancy agreements. Despite the fact that already in 1999, the Constitutional Court declared, as a matter of principle that *"the regulatory method of the Housing Act is such that instead of giving a general empowerment to municipalities to regulate the content of tenancy relationships concerning the dwellings in its ownership, it concretely defines those regulatory subject matters that may be regulated in the decree of the municipality"*[136], this practice has not disappeared. Examples include local provisions concerning mandatory deposit as a condition of tenancy agreements prior to the enactment of such a possibility in the Housing Act in 2005,[137] an obligation to conclude the tenancy contract in front of a notary public, including an obligation to evict the dwelling in case of termination,[138] additional conditions concerning the exchange of the lease right of municipal dwellings,[139] or increased amount of usage fee in the case the tenant stays in the dwelling following the termination of the tenancy relationship.[140] It is also not uncommon that a provision previously declared unlawful is re-enacted in the new municipal decree on the lease of local dwellings.[141]

- *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?*

The right of the tenant is principally a personal (obligatory) right, arising from the lease agreement with the owner. When defining the rules of lease agreements, the Hungarian Civil code is fundamentally based on the lease model already known in Roman Law. Accordingly, as a matter of principle, lease right and the position of the lessee do not have a material value in itself, as the rent paid by the lessee represents the consideration for the use of the property.

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[135] The functioning of the Municipal Chamber of the Curia, see Municipal Financial Journal, Issue 4/2012

[136] Decision 3/1999 (III.24.) of the Constitutional Court regarding certain provisions of the municipal decree 14/1997 of district XVII. of Budapest regarding the local provisions on the lease of dwellings and premises and on their sale

[137] Decision 3/1999 (III. 24.) of the Constitutional Court, see footnote 10 above

[138] Decision 90/2009 (24 Sept.) of the Constitutional Court concerning certain provisions of the municipal decree 23/2006 of District 7 of Budapest regarding the lease and the conditions of lease of dwellings in its property, Decision 5.075/2012/4. of the Municipal Chamber of the Curia concerning certain provisions of the municipal decree 12/2012 of district 7 of Budapest regarding the lease and the conditions of lease of dwellings in its property

[139] Decision 5.075/2012/4 of the Municipal Chamber of the Curia, see footnote 18 above

[140] Decision 5.017/2013/3. of the Municipal Chamber of the Curia concerning certain provisions of the municipal decree 23/2006 of the city of Nagyatád regarding the lease of municipally owned dwellings

[141] Decision 5.075/2012/4 of the Municipal Chamber of the Curia, see footnote 18 above

There are however two aspects nuancing this position. On the one hand, in the socialist times, the state monopoly regarding real estate properties capable of being rented led to a monopoly position of the tenant on the dwelling, which had a material value. As of 1971, this was also recognized in the legal provisions. Although the 1993 Housing Act transformed housing relations in line with the market requirements, tenancy rights have conserved their material value even after the change of regime and the transformation of the economy.[142] In the legal framework, this is reflected to some extent in the provisions enabling the exchange of tenancy rights. Moreover, in practice, it remained common to sell the tenancy right of municipal dwellings. Due to their low level of rent and the security of the tenancy relationship, the tenancy right of these dwellings may be attractive for low-income people, and – according to certain sources - the price of the tenancy right may reach one third of the market price of the dwelling. (Please note that municipal tenancy right can only be legally allocated on a social or normative basis; see BOX A – based on interview T1 – on the informal exchange of a municipally owned dwelling's tenancy right.)
On the other hand, further to the obligatory right, the tenant can be considered to enjoy a real property right due to fact that he/she is entitled to the protection of his possession under the Civil Code (Article 5:5 of Act 5 of 2013 on the Civil Code, hereinafter the "new Civil Code"). This protection is available against anybody, with the exception of the person from whom he has acquired the possession by illicit power (Article 5:5 paragraph (2) of the new Civil Code). The protection is also available against the person from whom the possession originates, i.e. against the owner. The sub-possessor (such as the tenant) is entitled to the protection of his possession according to his title against the main possessor (Article 5:5 paragraph (3) of the new Civil Code).
The protection of possession can be enforced by means of a non-litigious procedure, in front of the notary public ("*jegyző*") of the relevant municipality. This procedure is focusing on factual rather than legal questions and is meant to protect the actual possessor against any disturbance of his possession. This is of particular relevance in the case of tenancy relationships as the tenant may request protection against the landlord in case of disagreement over the rightful termination of the tenancy agreement by the landlord.

- *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?*

Tenancy law in Hungary is defined in very different laws and regulations. The main sources of tenancy law are the Civil Code and the Housing Act.
The Hungarian Civil Code (Act 6 of 1959, also referred as previous Civil Code, replaced on 15 March 2014 by Act 5 of 2013, latter also referred to as new Civil Code) and its contract law part provide the basis of private tenant-landlord relations.
The detailed provisions regarding tenancy agreements are defined by separate law, the Housing Act (Act 78 of 1993 on Certain Rules of the Lease and Alienation of Residential and Non-Residential Premises). The law respected the vested interest of the pre-transition regulation, the contract concluded before 1993 might continue with the same

[142] Commentary to the Hungarian Civil Code, Complex

conditions (for example the condition of the continuation of the contract has not been change in these cases.)[143] The Housing Act contains provisions regarding the conclusion of tenancy contracts, the rights and obligations of the parties, the termination of tenancy, the continuation of tenancy, subletting, as well as the determination of rent in the case of municipality owned apartments. The Housing Act provides that regarding the issues not addressed therein, the provisions of the Civil Code apply.

The relationship between the provisions of the previous Civil Code and the Housing Act was unproblematic, because the previous Civil Code only contained a general article about tenancy contracts, and declared that the rules regarding the establishment of tenancy relationship, the rights and obligations of the parties, and the termination of tenancy are provided by separate law. The new Civil Code, on the other hand, enacted a number of specific provisions concerning tenancy contracts which were not fully in line with the provisions of the Housing Act (e.g. regarding the cases of termination and the relevant deadlines). In order to remedy this inconsistency, an amendment of the Housing Act is foreseen to be enacted by the Parliament before the entry into force of the new Civil Code. This amendment deletes those provisions of the Housing Act that are regulated in the new Civil Code. This resolves the problem of inconsistency but creates a system where certain aspects of tenancy relationships are contained in two different acts. This adds to the complexity of the legal regulation of tenancy relationships and makes the oversight more difficult for non-lawyers.

A further factor of uncertainty is the different character of the rules contained in the Civil Code and in the Housing Act, respectively. Whereas the rules of the Civil Code pertaining to the content of contracts are dispositive, the Housing Act does not provide for the dispositive character of its provisions. One could conclude that this means that the provisions of the Housing Act are mandatory, only allowing deviation in case explicitly allowed. As mentioned above, this is certainly the case for the provisions concerning municipalities. However, with regard to private parties, the question is more complex.

The practice of the Hungarian Courts has been controversial on this issue for a long time. In 2007, the dispositive interpretation of the Housing Act was confirmed by the opinion of the Civil Department of the Supreme Court (in the present judicial system, the Curia) with respect to the rules regarding the termination of lease of premises. In its opinion issued in 2007, the Supreme Court considered that *"the provisions of the Housing Act need to be interpreted in conformity with the Civil Code, the fundamental source of civil legal relationships in all cases, except if the Housing Act provides for a different meaning of a legal notion. In case the Housing Act does not prohibit deviation from its provisions, the interpretation of the provisions of the Housing Act in conformity with the Civil Code can only have as a result a dispositive interpretation of the provisions of the Housing Act."*[144] Although the opinion does not have a mandatory character, it is nevertheless expected to have a unifying effect on court practice, At the same time, it does not provide a guarantee for the parties in a tenancy agreement, especially that it was adopted specifically concerning the validity of termination in the case of the lease of premises. Nevertheless, probably in line with the civil law culture, the general practice

[143] See court decision BH2010. 215.

[144] Opinion 2/2007 of the Civil Department of the Hungarian Supreme Court on certain questions of the litigations concerning the lease of premises

seems to follow the dispositive interpretation of the provisions of the Housing Act. Notwithstanding this practice, the lack of full clarity in this respect remains a weakness of the regulatory framework and a factor of uncertainty.

In addition to the Civil Code and the Housing Act, tenancy relationship is regulated by a large number of other acts. Important aspects of the landlord-tenant relations (especially dealing with communal services) are defined by sector laws, like Act on Water Management, Act on District Heating, Act on Gas Supply etc.; particularly regarding the contractual relations between service provider companies (whether it is the landlord or the tenants who enters into a contractual relation with the service provider, and its consequences to potential arrears and bails).

Furthermore, based on the Housing Act, municipalities and members of the Government may regulate the conditions of the lease of dwellings owned respectively by the municipalities and by the state by means of decrees. As mentioned above with regard to the enactment of municipal decrees, the Housing Act determines the areas of municipal regulation which are shown in Annex 3. Similarly, in the case of state owned dwellings, the Housing Act provides for those aspects to be regulated by means of ministerial decree, listed in Annex 4. The conditions set forth in these decrees are mandatory with regard to the dwellings belonging to the municipality or ministry in question.

The characteristics of municipal regulations are described above. With regard to state owned dwellings, the relevant rules concern the lease of dwellings necessary for the housing of civil servants and other personnel under the competence of the relevant ministries. There are at present more than ten ministerial decrees regarding this category of dwellings (for a list of these decrees, please refer to Annex 3).

In addition to the above, the Housing Act contains a number of empowerments for the adoption of Governmental and ministerial decrees complementing the rules of the Housing Act on specific issues. These decrees currently in force are the following:

- 15/1995. (29 Dec) decree of the Minister for Education and Culture MKM on certain rules concerning the lease of art studio apartments (hereinafter ministerial decree 15/1995 on art studios);
- 12/2001. (31 Jan.) Government decree on State subsidies for housing;
- 176/2008. (30 June) Government decree on the certification of the energy characteristics.
- 217/2009 (2 Oct.) Governmental decree regarding the designation of the supervisory authority for real estate undertakings;
- 23/2013 (28 June) decree of the Minister for National Development on the professional conduct of condominium and property management; real estate intermediary and valuation services and the detailed rules of their registration.

Further to the above, a number of specific provisions apply to the lease back of dwellings to natural persons unable to repay their foreign currency debt. This mechanism was laid down in the National Asset Management Act. This created a special legal institution, the National Asset Management Company, which manages the purchase of residential units of defaulted mortgage debtors, and their lease back to their former owners. The lease agreements concluded between the National Asset Management Company and the former owners fall under the Housing Act, however, its provisions apply subject to the differences provided in the National Asset Management Act.

In our opinion, currently, the rules applicable to the tenancy relationship are not sufficiently clear and complete. The main sources of uncertainties may be summarised as follows:

- There is a lack of clarity as regards the dispositive or mandatory character of the provisions of the Housing Act;
- The provisions regarding tenancy relationships are contained in a large number of different acts;
- With the enactment of the new Civil Code, even the basic conditions will be split between two different acts,
- In the case of municipal dwellings, the conditions of the lease differ from one municipality to another,
- The relevant municipal decrees are not part of the official compilations of applicable legislation and can only be accessed via the relevant municipality,
- In case the relevant municipal decree is contrary to the Housing Act, it remains mandatory and can only be set aside by means of a special procedure,
- The current legislation is based on the contractual freedom of the parties and fails to address a number of typical conflict situations between landlords and tenants,
- Judicial enforcement is lengthy and eviction is hard to obtain.

- *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?*

Hungarian ordinary courts are competent in disputes affecting the tenancy relationship. The procedure is carried out in line with the general rules of civil procedure (Act 3/1952 on Civil Procedure, hereinafter "the Civil Procedure Act".) At the first level, applications may be submitted to the local courts (*járásbíróságok*) in the country or district courts in Budapest. Any of the parties, the intervening party or any other person concerned by the decision may appeal the first instance decision, or the relevant part of the decision. Appeal may be lodged on any grounds and the deadline is 15 days from the date of communication of the decision. The appeal needs to be introduced at the first instance court and is handled by the tribunals. The appeal automatically suspends the execution of the obligation contained in the decision. In case the appeal is rejected by the tribunal, the first instance decision becomes final with its initial content. In case the tribunal changes the first instance decision, the second instance decision becomes final and may be executed.
The final decision may be challenged by means of extraordinary redress, i.e. by means of review procedure ("*felülvizsgálati eljárás*") or by means of renewal of procedure ("*perújítás*"). Both procedures needs to be lodged at the first instance court and are handled by the highest judicial instance, the Curia. A review procedure may be lodged on the grounds of the unlawfulness of the decision (no review procedure may be launched if the first instance decision became final without appeal, or if the party concerned did not appeal and the second instance confirmed the first instance decision following the appeal of the other party). A renewal of the procedure may be initiated on

the grounds of a fact or a proof which could not be invoked in the course of the procedure, of the decision being the result of a crime committed by the judge, the other party or another person, of a previous binding decision regarding the same right, of not having been able to participate or to appeal due to the unlawful delivery by means of hanger, of the annulment by the Constitutional Court, following a complaint of constitutionality ("*alkotmányjogi panasz*"), of a material legal act or of a provision applied in the procedure.
With regard to the renewal of the procedure, the Civil Procedure Act contains – among other exemptions - certain restrictions relevant for tenancy disputes. Accordingly, no renewal may be initiated with regard to the main subject matter of the proceedings in the case of decisions confirming a request for eviction and declaring the validity of the termination of a tenancy relationship.

- *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)*

In the Hungarian system, there is no duty to register contracts or tenants.
There is merely an obligation for each individual to register a new address (permanent address or place of residence) within three days of moving to a new place. Registration does not entail new rights or affect existing ones regarding the use of the dwelling, and it cannot be used to compile lists of tenants.
The address card issued by the local authorities is necessary for handling the majority of the tenant's administrative issues, including the request of allowances or local services. For example, the inscription of children in local nurseries and schools is only possible with a local address card.
The general practice of private landlords has been not to support the registration of tenants, for multiple reasons. First, widespread tax evasion leads to landlords trying to avoid any kind of formal declaration of the tenancy relationship. Second, landlords were afraid of the administrative proceedings that might ensue if the tenant refuses to change registered address once the tenancy contract is terminated.[145]
As of the beginning of 2013, the rules regarding registration were amended. The new rules foresee that the agreement of the landlord is not necessary if the tenant can prove by means of an appropriate act (e.g. the tenancy contract) that he is entitled to the use of the dwelling. The modifications also foresee that the registered address is invalid if the right to use the dwelling no longer exists by virtue of the relevant agreement, thereby easing the burden of proof of landlords in case of expiry or termination of the tenancy agreement.

[145] Indeed, the burden of proof imposed on the owner of the dwelling in order to cancel a fictive registration on his address was subject to an examination of the ombudsman in 2010, concluding that a more effective system of protection of owners was needed. In addition to the administrative difficulties and even more importantly, probably due to the relevance of address registration in the socialist era, there is a general misbelief that registration may in itself entitle the tenant to use or enter the dwelling.

- *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.*

Hungarian law does not explicitly foresee mandatory requirements for habitable dwellings which may be rented. As mentioned above, such requirements may be inferred from the definition of dwelling, and in particular the different comfort categories provided in the Housing Act. The lowest category of dwelling (emergency dwelling, *"szükséglakás"*) must be at least 6 square metre (per person), have external walls at least 12 centimetre, built out of bricks or equivalent, have a window or glass door, some possibility of heating, and the possibility to use toilet and to obtain water nearby must be ensured. However, the Housing Act does not contain an explicit limitation or prohibition of the lease of dwellings not meeting these standards.

Under Hungarian law, technical criteria for buildings are only defined in the context of the rules on construction. The technical criteria for the construction of a new dwelling are defined in a specific governmental decree (Government decree 253/1997 (20 Dec.) on the national settlement planning and construction requirements, hereinafter "Settlement planning and construction decree" see also below under "d) Contents of tenancy contracts"; a. Description of dwelling). This decree defines the conditions that need to be fulfilled by a newly constructed dwelling in order to receive a construction permit.
In particular, it provides that *"the dwelling is an independent unit serving lasting residence, the living premises (room for living, dining room etc.), cooking premises (kitchen, kitchenette, etc.), sanitary premises (bathroom, lavatory, shower, toilet), transit premises (entrance hall, entrance space, entry, wind-shield, hallway, corridor) and storage premises (larder, wardrobe, store-room, household premise etc.) need to be construed in a way to ensure:*

a) resting and the conduct of home activities;
b) cooking, dish-washing and eating;
c) bathing, washing and toilet use;
d) the storage of necessary products and objects in accordance with the planning program (e.g. storage of food, possibility to place a fridge, placing of washing machine, storage of clothing, of the devices necessary for the maintenance of the dwelling, of other tools and of sport equipment.)" (Article 105 paragraph (1) of the Government decree).

Moreover, it provides that the room for living needs to have direct natural light and ventilation as well as heating, be at least 8 meter square and enable resting and the conduct of home activities and the placing of the necessary equipment (Article 105 paragraph (2) of the Government decree). The dwelling needs to have heating and all premises need to have the necessary ventilation and natural light (Article 105 paragraph (4) of the Government decree).

- *Regulation on energy saving*

Currently, there are no mandatory rules in force in Hungary which limit the rentability of a dwelling based on its energy saving capacity, or which impose energy saving targets. At present, there is only a system of monitoring the energy saving characteristics of buildings.

Hungary introduced the system of monitoring of real estates from the perspective of their energy saving capability in 2008. Government Decree No. 176/2008 (30 June) on the certification of the energetic characteristics of buildings (hereinafter "Energy Saving Decree") regulates the obligation to prepare an energy certificate among others for each leased dwelling. The energy certificate classifies the real property's energy saving characteristics. Such a document serves as evidence and thus influences the price/rent of the dwelling.
Currently, the preparation of an energy certificate is only mandatory for the landlord if the entire building is leased. However, as of 31 December 2015, the conclusion of a lease agreement of a part of a building (more precisely, of a so-called "independent unit serving a specific purpose", such as an apartment or a garage, for instance) will also be subject to the preparation of an energy certificate. .

6.2 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).*

Preparation and negotiation of tenancy contracts

	Main characteristic(s) of **private rental**	Main characteristic(s) of **public rental**
Choice of tenant	- is subject to the agreement of the parties - freedom of choice is limited by prelease right in the case of common property	- the conditions are set forth in ministerial and municipal decrees, in the National Asset Management Act, as well as in the actual calls for interests (eligibility conditions such as residence in the area of the municipality, for a specific period of time; low amount of income per family member, value of property below a certain amount; in the case of state dwellings, being employed by the relevant state organ, in the case of lease agreements with the National Asset Management Company, being in risk of losing housing because of foreign currency loan mortgage). In the case of certain state and municipal dwellings, the free choice of the landlord is limited by statutory or contractual right to select and designate the tenant
Ancillary duties	the parties must cooperate (general civil law duty to cooperate)	the parties must cooperate (general civil law duty to cooperate)

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

Tenancy law in Hungary is based on the Civil Code and, more specifically, on its provisions concerning property right and lease agreements.

The owner, as one of the main attributes of his property right, has the right of disposition of the property. Article 5:30 paragraph (1) of the Civil Code provides that *"the owner has the right to surrender the possession, use or usufruct of a thing to another person, to use it as security or encumber it in another way, and, furthermore, to transfer or abandon ownership."*[146]
The main underlying principle is the contractual freedom of the parties in the agreement.

- *Private rental:*

In line with the principle of freedom of contract, in the case of private rental the landlord is entirely free to decide whether to enter in a rental contract. A specific legal institution limiting the freedom of the owner to select the tenant is the prelease right. Pursuant to a right of pre-lease, the owner of the dwelling must offer the lease of the dwelling to the beneficiary of such right upon the terms and conditions of a bona fidae offer from a third party. The beneficiary may exercise such right by accepting the third party offer in a unilateral declaration. The lease agreement with the third party may only be concluded if the beneficiary explicitly waived his/her right to exercise the pre-lease right or failed to give a declaration to this effect within the reasonable deadline set by the landlord. Under Hungarian law, for example joint owners have a statutory pre-lease right for the portion of dwellings owned by their co-owners.

- *Public rental:*

In the case of public rental, while the owner state entities and municipalities also enjoy wide discretion as regards the lease of their dwellings. At the same time, they are under a duty to exploit their property in line with the rules governing the management of national wealth (Article 38 of the Constitution of Hungary, Article 7 of the Act 196 of 2011 on national wealth).
Furthermore, freedom of contract in the case of public dwellings may be limited by the right of certain State organs to designate or to select the tenant. According to the Housing Act, such right may be based on a legal act or on an agreement. In this case, the lease agreement must be concluded with the person designated by the State organ in question. The organ entitled to designate the tenant also decides on whether the contract is concluded for determined or undetermined period, or until the occurrence of a condition. In addition, it may impose further conditions regarding the content of the contract (Article 3 paragraph (3) of the Housing Act). In the case of the city Z., the Ministry of Defence bought the right to assign the tenants some apartments owned by the municipality; which will have a special contract tied to the job of the tenants. (*Source: interview M12*)

[146] In line with paragraph (2), the ownership of immovable may not be abandoned.

Art studios are an example of municipal dwellings where the Minister for Culture enjoys statutory right to designate the tenant. (There is only a few of hundreds of these; their key significance is the separate treatment they enjoy under the Housing Law.) The conditions for the exercise of this right are defined in a specific decree (Ministerial decree 15/1995 on art studios). Furthermore, other organs such as the Ministry of Interior and the National Security Office are also entitled to designate the tenant for municipal dwellings. In the past years, the Ministry of Interior was actively soliciting municipalities to consider the possibility to transfer the right to designate and to select the tenant of a number of dwellings in their ownership to the Ministry of Interior, in order to ensure the housing of the members of armed forces.
Further to the above, the lease by the National Asset Management Company represents a case on its own. As mentioned above, the objective of this construction is to ensure the housing of individuals unable to repay their foreign currency debt. In the case of the purchased apartments (based on the permission both the bank and the defaulted borrower), the National Asset Management Company must lease back the apartment purchased from the defaulted mortgagee to the debtor. Therefore, in this respect, it is not entitled to exercise discretion.

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

- *Private rental:*

In view of the uncertainties involved in a tenancy agreement, in particular the difficulty to enforce rights and obligations via litigation and the difficulty to evict a tenant, an significant proportion of landlords prefer to find tenants via family and friends. In case landlords are willing to lease to an unknown tenant, the most usual way to find a tenant is by means of rental advertisements in newspapers and on the internet. The role of real estate agents is increasing in the market, but there is no reliable statistics related their market share. The agents usually match the parties for a fee equal to one or two months' rent, but they do not assume any responsibility in the transaction. There are companies which also undertake rent (and utility cost) collection, and manage the maintenance of the property, but the risks remain on the landlords. Agents do an “informal underwriting” of the potential tenants, and try to filter the potentially risky tenants.

- *Public rental:*

In the case of municipal dwellings, the conditions of the lease and the type of rental (rental based on social grounds, cost based, and market based rental) are typically defined in municipal decrees. The municipality has the right to categorize the vacated or new apartment in one of the sub-categories. According to article 80, para (1) of the Housing Law, the municipality may regulate the lease of the residential properties by its own budgetary institution (for example school) or companies (for example Water and Sewage Company) in a special way (different from the regulation set in the Housing Law). In this case, the selection of tenants is the competence of the municipality in question, and is generally done by two methods: a, public calls for application; and b, through a waiting list (or, in some cases, with the combination of the two methods).

In the case of state owned dwellings, the conditions are defined by decrees issued by different government agencies (for example Ministry of Defence, Hungarian Railway Company, etc.). As mentioned above, these dwellings typically serve as housing of the personnel under the competence of the entity in question (for example the housing of the members of armed forces). Therefore, the tenant is selected within the organisation, by internal calls for interest in line with the eligibility criteria laid down in the decree.
In the case of art studios, a category of dwellings belonging to the municipalities and to which the relevant state body (the Non-profit Public Purpose Llc. for Hungarian Creative Art) is entitled to designate the tenant, the selection is made by means of public calls for application (Article 3(2) of the Ministerial decree 15/1995 on art studios).
In the case of the state owned dwellings managed by the National Asset Management Company (e.g. the social housing estate in Ócsa, or NAMC owned housing that becomes vacant), the National Asset Management Company is selecting the tenants based on public calls for application, in line with the eligibility criteria defined in the implementing decree to the National Asset Management Act.

- *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?*

There are no official information sources available to landlords concerning the personal and financial status of tenants. Hungary operates a Central Credit Information System, which the banks and other financial institutions must supply with data concerning individual credit performances. However, apart from the borrower, only banks and other financial institutions have access to the data stored in the system. Therefore, the landlord can only obtain such information directly from the prospective tenant.

- *Private rental:*

In the case of private rental, it is not common to carry out checks of the personal and financial situation of the tenant. However, in theory, it is up to the landlord to decide – subject to the agreement of the tenant – which documents to request in the contract preparation phase. More and more real estate agents ask for references, tax document of the tenants before concluding a contract. At the same time, they check the legal title of the landlord as well; but this is not a general practice yet.

- *Public rental:*

In the case of public dwellings, the eligibility conditions are defined in the pertaining legal acts (municipal decrees, ministerial decrees, the implementing decree to the National Asset Management Act) and the calls for interests issued for identifying possible tenants (in particular in the case of municipal dwellings, and the state owned dwellings managed by the National Asset Management Company).
In the case of municipal dwellings, the typical eligibility conditions include residence in the area of the municipality for a specific period of time; low amount of income per family member (typically an income lower than the minimum amount of pension, currently HUF 28,500, approximately EUR 96); value of property below a certain amount. In order to substantiate the application, the municipalities would typically ask for certificates such as

proof of employment by the employer; income certificate; documents regarding childcare allowances, municipal, social or state allowances; certificates regarding potential handicap in the family etc.
In the case of state dwellings managed by the National Asset Management Company, the eligibility conditions are the following:

- the debtor have lost the ownership of dwelling or will foreseeably lose it by the date of the decision on the application;
- the value of the former dwelling shall not exceed HUF 25 million (approximately EUR 84,120) at the time of concluding the mortgage contract;
- the debtor's registered residence shall be at the same dwelling;
- the debtor has no other legal title ensuring their housing, or the dwelling does not correspond to the legitimate housing needs of its household (as defined in Article 3 of Government decree 12/2001 on state support for the purpose of housing);
- there is at least one child in the household qualifying for family allowance or a child under 25 years of age studying in a training or higher educational institution (Article 3/A of the decree implementing the National Asset Management Act).

In order to substantiate the application, the debtor needs to submit ownership certificate from the real estate register, as well as relevant certificates issued by the creditor (Article 4/C paragraph (4) of the decree implementing the National Asset Management Act). Furthermore, as part of the selection procedure, the National Asset Management Company is carrying out a study on the social, economic, educational, and personal situation of the applicant (Article 4/D paragraph (5) of the decree implementing the National Asset Management Act) .

- *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?*

There were several attempts on behalf of real estate agency organizations as well as of private individuals to introduce a blacklist of "bad tenants". In 2011, a website was launched on bad tenants (www.rosszberlo.hu), and similar pages are also being started on social media (e.g. Facebook). However, the publication of such lists violates privacy law and in particular the protection of personal data. Therefore, lists of bad tenants remain informal, limited to a number of agents or individuals who share their negative experience regarding a set of former tenants. Real estate agencies are often advertising that their services include the verification of tenants based on constantly updated black lists – but there is no reliable information on the completeness of these lists.
In addition, as mentioned above, the Central Credit Information System could play a role in this regard, but access to its data is limited to the loan holder and certain financial institutions.

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

There is no set practice concerning the checks of landlords. It depends on the tenant whether or not he/she compiles publicly available information on the landlord, for

example information found on the internet. However, the validity of such information is questionable.
In addition, tenants may check the court of registry data in case the landlord is a corporation. However, the registry data only allows to verify the basic data, the name of owners, and to see whether the corporation is still operating. Therefore, it does not supply information on the reliability of the corporation.

- *Services of estate agents (please note that this section has been shifted here)*
- *What services are usually provided by estate agents?*

Real estate agents are important actors in the market. In the beginning they were present in the high-end market (typically for foreigners), but their role seems to have expanded. (Though there is no reliable information available on their weight in the market.)
According to the decree 27/2012 (27 Aug.) of the Minister for National Economy on the professional and exam requirements of the professional qualifications falling under the competence of the Minister for National Economy (hereinafter "the professional qualifications decree"), qualified real estate agents act as intermediaries in the sale and exchange of properties, in the lease of flats other buildings, searches for real estate and makes value estimates, and collects and prepares the documentation necessary for the completion of the transaction.
Based on interviews with real estate agents, we can conclude that they typically do not take formal responsibility for the risks entailed to tenant selection. Therefore if the selected tenant does not pay under a contract of one year, they do not compensate the landlord. They could, nonetheless, feel a kind of personal responsibility (although strictly on an informal level), and might consequently offer a new tenant without compensation.

- *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?*

In Hungary, the regulation concerning real estate agents concern the conditions for the conduct of a commercial activity as a real estate agent. There is no regulation concerning the actual provision of the services of real estate agents, nor on their professional behaviour.
The conditions for exercising a real estate agency activity are laid down in decree 23/2013 (28 June) of the Minister for National Economy on the professional conduct of condominium and property management, real estate intermediary and valuation services and the detailed rules of their registration (hereinafter "the decree on real estate services"). In order to exercise real estate agency activities, the applicant needs to submit a request for licence to the supervisory authorities of real estate enterprises (according to the Government Decree 217/2009 on the designation of the supervisory authorities of real estate enterprises, hereinafter "the decree on real estate supervision", the local government offices). A license may be granted if the real estate agent complies with the qualification requirements: participates in the training corresponding to the requirements defined in the professional qualifications decree and passes the qualification exam foreseen therein; is a private entrepreneur or is participating in a

company with registered real estate agency or management activities and has no public debt in relation with the real estate agency activity.

- *What is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?*

The applicable regulations do not contain any restriction or guidance concerning the commission that may be charged by real estate agents. Typically they charge one month's rent, but they do not offer any other services than matching the partners. They do not share any risk with the landlord; although some agents indicated that if the tenants terminate the contract in less than one year (which is the typical length of the contract), they might help finding another tenant for free. There are very few companies who offer full services (which include the rent collection, monitoring etc.); one of these charges 20% of the monthly rent.[147]

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

As mentioned above, the freedom of contract of the parties, in line with the principles of the Civil Code, is the main underlying principle governing the conclusion of tenancy agreements. Accordingly, tenancy relationship is the result of the free agreement of the parties, and only the basic conditions are laid down by law.
The provisions of the Civil Code govern the duties of the parties in the phase of contract preparation as well. As a general principle of contract law, the Civil Code provides that the parties have a duty to cooperate and to inform each other. As compared to the previous Civil Code, the new Civil Code provides for a more detailed description of the cooperation and information duty, as well as an explicit reference to the liability in case of non-compliance. Accordingly:
"(1) Parties shall cooperate during the negotiations to conclude a contract, when concluding the contract, in the course of the duration of the contract and during the termination of the contract and inform each other regarding the essential circumstances in relation to the contract.
(2) A party may not invoke the breach of the duty to inform with regard to rights, facts and data which were known to him/her or which he/she should have known from an official registry or from another source.
(3) In case the contract is concluded, the party who breaches the duty provided in paragraph (1) is obliged to compensate for the damages of the other party in line with the rules concerning liability for extracontractual damages.
(4) The parties are not liable for damages for the lack of conclusion of the contract.
(5) If the contract is not concluded, the party who broke the duty provided in paragraph (1) in the course of the negotiations to conclude the contract is obliged to compensate for the damages of the other party in line with the rules concerning liability for extracontractual damages." (Article 6:62 of the Civil Code).

[147] http://www.alberletfelugyelet.hu/

In line with the above, any breach of the cooperation and information duty is unlawful. Thus, in theory, a party to an agreement may seek remedies from his non-cooperating counterparty if such non-cooperation or lack of information caused damage. However, enforcement of the duty to cooperate is difficult due to difficulties of evidencing the matter and the relativity of the obligation. Hungarian courts have not developed set jurisprudence on the lack of cooperation of the parties as ancillary duty with respect to rental agreements.[148]

6.3 Conclusion of tenancy contracts

Conclusion of tenancy contracts

	Main characteristic(s) of tenancy type 1/ private rental	Main characteristic(s) of tenancy type 2 public rental.
Requirements for validity	written form	written form
Regulations limiting freedom of contract	- the freedom of contract of the parties dominates - the essential terms of the contract must be agreed upon (designation of the dwelling, starting date and duration of the contract, the principle of rent payment) - the provisions of the Antidiscrimination Act need to be observed when making an open offer or publicly asking for an offer - the general provisions of the Civil Code concerning invalidity apply (e.g. in the case of flagrant disproportion between the service and the consideration) - the Civil Code defines the maximum amount of deposit that may be agreed by the parties	- the rights and obligations of the parties are defined in the Housing Act and in the relevant decrees - the provisions of the Antidiscrimination Act need to be observed - the Housing Act contains mandatory provisions regarding certain aspects of state and municipal lease agreements - the Housing Act defines the issues of the tenancy relationship which need to be addressed in the relevant municipal decree - the conditions of the contract are defined in the relevant decrees (in the case of municipal dwellings, in the relevant municipal decree, in the case of state dwellings, in the relevant ministerial decree, in the case of lease agreements with the National Asset Management Company, in the National Asset Management Act and the implementing decree to the National Asset Management Act)

[148] Cases when the mere lack of cooperation of parties is the sole source of conflict rarely result in damages serious enough to make it to court, hence the lack of a set jurisprudence on this particular issue.

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

Lease agreements are the basic type of contracts for the transfer of use, where – based on the contract – the user does not intend to acquire the ownership of the good, but merely intends to secure the undisturbed use of the good for him/herself. Lease contract is a contract type specifically regulated in the Civil Code. The main category is the lease contract of objects, a sub-category of which is the lease of dwellings.[149]

Based on the tenancy agreement, the landlord is obliged to transfer the dwelling to the use of the tenant, and the tenant is obliged to pay a rent (Housing Act, Article 2 paragraph (2)).

In certain respects, usufruct, right of use, free use, provision of accommodation services, and the services of social homes may be considered similar arrangements.

Usufruct is similar to lease in the sense that it is also a title to use the property in question. However, it allows for a significantly wider range of rights to the beneficiary. By virtue of usufruct, the beneficiary may *"possess, use and collect the proceeds of a property owned by another person"* (Article 5:147 paragraph (1) of the Civil Code). The beneficiary may also surrender the right to exercise usufruct (Article 5:148 paragraph (1) of the Civil Code). Usufruct shall be granted for a determined period of time, not exceeding the lifetime of the beneficiary in case the beneficiary is a natural person (Article 5:147 paragraph (4) of the Civil Code). Further differences include, regarding the conclusion of usufruct agreements, that usufruct of real properties enters into effect upon the usufruct being registered in the real estate register (Article 5:146 paragraph (1) of the Civil Code).

A similar title enabling the use of the property is the right of use. By way of difference to usufruct, in this case, the right holder may only use the property and collect the proceeds to the extent not exceeding his/her own and his/her family members' needs (in the case if a legal person, in line with the objectives and the activities provided in the constituting act). Furthermore, in this case, the exercise of the right of use may not be transferred. In all other respects, the rules of usufruct apply to the right of use. In fact, the right of use may be considered as a limited version of usufruct. In the case of dwellings, the right of use may for example arise as a result of the family relationship (for example, the child has a right of use to the common marital dwelling).

A similar institution established by virtue of agreement is the free use (*szívességi lakáshasználat*, free use or literally translated, "the right of use of a dwelling as a favour"), which is a form of commodatum contract (*haszonkölcsön szerződés*) not specifically addressed in the Civil Code. The difference as compared to tenancy agreements is the free character of the use. In practice, this type of agreement is often used to dissimulate tenancy agreements in order to avoid the payment of income tax (sham contract).The provision of accommodation services is the provision of accommodation in general not on a lasting basis, including staying for night and resting, as well as of directly related services in the context of a commercial activity (Article 3 point 23 of the Act 164 on Commerce, hereinafter "the Act on Commerce"). In line with

[149] Hidasi, G., Horváth G., Kőszegi G., Urbán A., The handbook of real estate law (in Hungarian), 2007.

the implementing regulation, the transfer of the use of a dwelling for the purpose of lasting stay in the form of lease of dwellings, of houses, sub-letting or the lease of bed does not belong to this category (Article 1 paragraph (2) of Government Decree 239/2009 on the detailed conditions on the conduct of the provision of accommodation services and the procedure for issuing a permit for operating an accommodation, hereinafter "decree on the provision of accommodation services").
Social homes include institutions providing attendance and care, institutions for rehabilitation, living homes, institutions for temporary accommodation (Article 57 paragraph (2) a)-d) of Act III of 1993 on social administration and social allowances, hereinafter "the Social Act"). Institutions providing attendance and care ensure full care and housing of people unable to take care of themselves on their own. These institutions include homes of elderly people, of psychiatric patients, of addicted people, of people with disabilities and of homeless people (Article 67 of the Social Act). The institutions for rehabilitation aim at developing or restoring the capacity of independent conduct of life. This category includes rehabilitation institutions for psychiatric patients, for addicted people, for people with disabilities and for homeless people (Article 72 paragraph (1) of the Social Act). Living homes ensure supported housing for the same categories of people (Article 75 of the Social Act). The institutes for temporary accommodation ensure full care and housing of elderly people and the other categories of people mentioned above for a duration of less than a year (Article 80 of the Social Act). These institutions do not only ensure housing of the people concerned, but also provide care and assistance to the conduct of life as social services. The Social Act explicitly excludes from its scope housing arrangements based on the ownership, usufruct, use or tenancy right of the beneficiary of the service (Article 3 paragraph (8) of the Social Act).

- *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.*

The Housing Act specifically provides that the term "dwelling", for the purposes of the Housing Act, includes all types of apartments, including apartments or part of an apartment in houses of room tenants, pensioner's homes, studio houses (together called home houses), and emergency dwellings (Article 1 paragraph (1) of the Housing Act).
The category of so-called home houses originates from the previous housing legislation (Government Decree 1/1971 (8 Feb.) on the distribution of apartments and on the lease of dwellings, hereinafter "the former housing decree"). Although the former housing decree was repealed by the Housing Act, in practice, because of the lack of general legal definitions, the terms studio house and house of room tenants are used in line with the former housing decree. Accordingly, studio house is a building serving to accommodate single persons and married couples without children (Article 141 of the former housing decree). The house of room tenants is a building, an independent part of a building, or a part of a building with own staircase containing habitation units for the temporary accommodation of individual persons and young married couples without apartment (Article 144 of the former housing decree).
The Housing Act only contains one article concerning homes ("home houses", which include pensioners' homes or youth homes as well as other institutional living quarters),

introduced as of 2006 (Article 88/A of the Housing Act). In the case of pensioner's homes, the Housing Act provides that if the tenant terminates the tenancy contract and returns the apartment in a state suitable for the use for its intended purpose, the tenant may be entitled to pecuniary compensation or an apartment in exchange, at least corresponding to the apartment originally transferred to the landlord (Article 88/A paragraph (2) of the Housing Act). The rationale behind this provision is that in the case of tenancy agreements with regard to an apartment in a pensioner's home, at the conclusion of the contract, the tenant normally makes a significant one-off payment or transfers the ownership or the lease of his own dwelling to the owner of the pensioner's home.

With regard to studio houses and houses of room tenants, the Housing Act contains a specific rule limiting the persons who may be accommodated by the tenant. Apart from the spouse and the child of the tenant, the landlord's consent is needed for the permanent accommodation of all other persons (Article 88/A paragraph (3) of the Housing Act).

Apart from this distinction and the differentiation of municipal and state owned dwellings, the Housing Act does not foresee any further differentiation among specific types of dwellings. It does not contain any specific provision for contracts for furnished apartments or student apartments or for apartments in the houses where the landlord lives him/herself. Regarding the lease of part of an apartment (room rental or bed rental[150] for instance), the Housing Act does not apply. In the case of such lease on a lasting basis (i.e. not qualifying as accommodation service as described above), merely the provisions of the Civil Code apply and the parties are entirely free to define the terms of their agreement.

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

Regarding the formal requirements for the valid conclusion of tenancy contract, initially, the Housing Act did not foresee the requirement to conclude a private tenancy agreement in written form. This requirement was introduced as of 2006 (Article 2 paragraph (5) of the Housing Act).[151] At present, this requirement applies irrespective of the private or public ownership of the dwelling. At the same time, private lease contracts concluded orally before 15 March 2006 continue to be valid.

In line with the civil law practice, the requirement for written form is considered to be met, if the declarations of the parties are signed by the corresponding party. Thus, it is not necessary that the declarations of the parties are contained in one document. The mutual and concurrent declaration of the parties' will, necessary for the conclusion of the contract, may also happen by communicating the contractual declarations to each–other. Furthermore, agreement by postal correspondence, telegrams and telefax may

[150] As opposed to renting a room in a 'house of room tenant' (which is a special construction with a public task), a room rental or a bed rental is a private transaction (a low cost solution on the private market). However, sub-letting of a room in a municipally or state owned apartment also exists; and this, too, is a private relationship. 'Bed rental' practically does not exist anymore.

[151] Act 132 of 2005 concerning the amendment of the Housing Act, which entered into force on 15 March 2006.

also be recognized as a contract concluded in writing. Electronic correspondence by email, however, may only be considered as written form, if accompanied by the party's electronic signature with increased security.
With regard to the consequences of the lack of written form, the new Civil Code introduced a new rule. Before March 2014, in line with the provisions of the previous Civil Code, the tenancy contract which was not concluded in writing was null and void (Article 217 paragraph (1) of the previous Civil Code). As the courts' case law indicated, from the point of view of applying the consequences of invalidity, it was irrelevant, on whose side the reason for the lack of written form occurred (BH 2004/1/9).[152]
By way of difference, the new Civil Code provides that the lack of written form may be remedied by performance: *"The contract which is null and void in reason of the breach of formal requirements becomes valid with the acceptance of the performance, to the extent of the part accomplished. It is only in case the contract needs to be concluded in the form of a public document or a private (substantiative) document with full probative effect ("teljes bizonyító erejű magánokirat"), or if it concerns the transfer of the ownership of an immovable property that the lack of formal requirements cannot be remedied by performance."* (Article 6:49 paragraph (1) of the Civil Code) The same way, the amendment and the termination of a contract in breach of the requirement for written form is equally valid, if the corresponding actual condition was established by common agreement of the parties (Article 6:49 paragraph (2) of the Civil Code).

- *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.

Apart from the written form, the Hungarian legislation does not provide for further formal requirements for the conclusion of the tenancy contract. There is no fee stamp required and contracts do not need to be registered.
At the same time, it is of course in principle mandatory for the landlord to declare the incomes from the tenancy contract in the context of the regular tax declarations. According to the legal provisions in force, the income from renting is subject to the general personal income tax (16%). Furthermore, above a yearly income of HUF 1 million (approximately EUR 3,450), the landlord is bound to pay a health security contribution of 14%.
However, this requirement is largely disregarded in practice as the large majority of landlords avoid tax payment. In certain cases, they do so despite the conclusion of a tenancy contract, in other cases by pretending that they are subletting their apartment for free. Both options entail risks and act against the expansion of the market of private lease. In September 2013, the National Tax Authority issued a press release claiming that a great number of tax avoiding landlords were denounced (presumably by tenants and/or neighbours), and encouraging the declaration of lease revenues.

[152] „The reason for the lack of the written form of an orally concluded agreement and the attributability of such lack are irrelevant." Journal of Court Decisions (BH 2004/1/9.)

- *Restrictions on choice of tenant - antidiscrimination issues*
- *EU directives (see enclosed list) and national law on antidiscrimination*

Regarding the issue of antidiscrimination, the Housing Act does not contain specific requirements. However, the provisions of the general legislative act on antidiscrimination (Act CXXV of 2003 on equal treatment and the promotion of the equality of chances, hereinafter "Antidiscrimination Act") applies in the case of tenancy contracts as well. The Antidiscrimination act provides that *"natural persons and groups of persons residing in the territory of Hungary, legal persons and organisations without legal personality need to be treated with the same respect and diligence, and with equal considerations for the individual perspectives"* (Article 1 of the Antidiscrimination Act).
According to the Antidiscrimination Act, among others, the State and the municipalities are bound to respect its provisions when establishing legal relationships, in the course of their procedures and when adopting measures (Article 4 of the Antidiscrimination Act). This makes it clear that when entering into lease agreements, the State and the municipalities are bound to respect the requirement for equal treatment.
In addition, the Antidiscrimination Act contains specific provisions to promote equal treatment in the area of housing (Article 26 paragraph (1) of the Antidiscrimination Act). In line with these provisions, it is in particular a breach of the principle of equal treatment, if certain persons or a group of persons, based on their real or perceived characteristics (in particular their gender, race, colour, nationality, belonging to a nationality, mother tongue, handicap, health situation, religious or political belief, marital status, motherhood (pregnancy) or fatherhood, sexual orientation, age, social origin, financial situation, part time work or determined work contract, belonging to a representative body/advocacy group, etc.)[153] are:

a) directly or indirectly discriminated against regarding housing subsidies, reductions or interest subsidy by the State or the municipalities;
b) discriminated against in the course of the sale or lease of State or municipality owned dwellings and building plots.

In addition, the Antidiscrimination Act provides that the definition of the conditions for access to housing may not aim at artificially isolating certain groups, not out of the own will of the group, in a given settlement or part of a settlement (Article 26 paragraph (3) of the Antidiscrimination Act). Such an intentional isolation may take place by means of artificially classifying the land and the immovable of a settlement into cheaper and more expensive categories.[154]
Furthermore, in line with the Antidiscrimination Act, private individuals are also bound to respect the requirement of equal treatment among others when making an open offer for the conclusion of a contract (i.e. an offer to persons not determined in advance) or asking for an offer (Article 5 letter a) of the Antidiscrimination Act). In line with the Civil Code, Article 5 letter a) of the Antidiscrimination Act includes two types of actions. On the one hand, an offer for the conclusion of the contract means a declaration inviting to

[153] Article 8 of the Antidiscrimination Act
[154] Dr. Kárpáti József, D. Bihary László, Dr. Kádár András Kristóf; Dr. Farkas Lilla: Commenatry to Act No. 125 of 2003 on the Promotion of Equal Treatment and Equal Opportunities, Foundation Másság Budapest 2006, p. 108.

the conclusion of an agreement, which contains at least the elements considered essential by the legislation and which clearly shows an intention to conclude the contract, and – in case of acceptance - to recognise the terms of the declaration as binding for him or herself.[155] On the other hand, asking for an offer includes the intention to sale or buy in a newspaper, the sending of a list of products or a price list to several addresses, etc.[156] This latter case may have a wider application and, according to some authors, would also include the conclusion of tenancy contracts, in case a newspaper or internet advertising is placed by the landlord to find a tenant.[157]

Therefore, in this case, a procedure for the breach of the principle of equal treatment could be brought against the private landlord, just like against the State or municipalities. In practice, the real estate agents indicated the existence of the discrimination of the Roma families and foreign citizens. (*Source: interview M12*) Upon complaint, the Antidiscrimination Agency examines the matter and enforces the obligation of equal treatment as provided in the Antidiscrimination Act. The Antidiscrimination Agency has already condemned municipalities several times for the breach of the principle of equal treatment in relation to tenants. For example, it ruled that not granting an appropriate dwelling to a family with five children, three of them handicapped, represented a breach of the equal treatment principle (case 628/2009). In this case, the municipality in question granted a municipal dwelling to the family which was smaller than the dwellings granted to families in a comparable situation, was considered damaging for health and the educational institutions were difficult to access. The same way, the refusal of a municipality to sell the municipal dwelling to the tenant also constituted discrimination in a specific case (case 233/2008). The municipality in question repeatedly refused the requests of the tenant of a municipal dwelling to discuss the conditions of purchase of the dwelling, without providing any explanations. At the same time, the municipal dwelling next to the dwelling in question was sold directly, without call for applications.

- *Limitations on 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*

Private rental:

The provisions of the Housing Act in force do not define mandatory minimum requirements of a tenancy contract. Previously, the Housing Act provided that the parties need to agree on the payable rent at the time of the conclusion of the contract. This provision was however repealed by the 2013 amendment intended to bring the provisions of the Housing Act in line with the new Civil Code.

As a matter of fact, the relevance of this provision was already before relativized by another provision of the Housing Act, which foresees that in case of a lack of agreement between the parties regarding the amount of rent or a change in the amount of rent, they may ask the court to determine the rent (Article 6 paragraph (2) of the Housing Act). In practice, Hungarian courts accept the disagreement of the parties on the amount of the

[155] Complex: Commenatry to the Hungarian Civil Code

[156] Eörsi Gyula: Contracts – General part, Nemzeti Tankönyvkiadó, Budapest, 1996., 81. o.

[157] Dr. Kárpáti József, D. Bihary László, Dr. Kádár András Kristóf; Dr. Farkas Lilla: Commenatry to Act No. 125 of 2003 on the Promotion of Equal Treatment and Equal Opportunities, 2006.

rent, or the non-acceptance by the tenant of rent increase as causes for court contract amendments (see cases EBH 2001.535 and BH 2001.223).
In the absence of mandatory minimum requirements foreseen in the Housing Act, the provisions of the Civil Code apply to the minimum content of the tenancy contract. In line with the civil law principles and practice, for the valid conclusion of a contract, the parties need to agree in the essential terms of the contract, as well as in all questions that one of the parties considers essential. In addition, the new Civil Code specifies that the agreement in questions considered essential is a condition to the conclusion of the contract if the party clearly expresses that without agreement in the given question, he/she does not intend to conclude the contract (Article 6:63 paragraph (2) of the Civil Code). The new Civil Code also provides that if the contract is concluded but the parties did not define clearly the amount of consideration, or referred to the market price, the amount to be paid is the mid-market price corresponding to the place of accomplishment, at the time of accomplishment (Article 6:63 paragraph (3) of the Civil Code).
In line with the above, at present, the agreement of the parties regarding the specific amount of rent does not seem necessary for the valid conclusion of the contract. In this respect, it seems sufficient that the parties agree in the principle that in consideration for the use of the apartment, the tenant is bound to pay a rent.[158] Furthermore, the essential elements of a tenancy contract also seem to include the precise designation of the dwelling as well as the duration of the contract. This latter was declared by the Budapest Court on the basis of the provisions of the previous Civil Code (in particular Article 205 thereof) in relation to the lease of other premises, but the same principle applies to the lease of dwellings.[159]
Finally, it is important to note that with the valid conclusion of the tenancy contract, the tenancy comes directly into effect. Neither the actual occupation of the dwelling, nor the transfer of the use or the rent payment is necessary for this purpose.[160]

- *Public rental:*

The Housing Act does not define mandatory minimum requirements for lease contracts of municipal and state dwellings either. In these cases, the relevant municipality or ministerial decrees contain detailed provisions influencing the content of lease agreements. In the case of lease agreements concluded with the National Asset Management Company, the relevant legislation foresees a number of specific provisions regarding the content of the lease agreement. For example, the National Asset Management Act provides that in the lease agreement, the tenant needs to agree that the National Asset Management Company may request information on payment arrears of the tenant from the utility companies (Article 23 point k) of the National Asset Management Act).

[158] Hidasi et al. 2007.
[159] Decision No. 3.Gf.75.228/2000/3. of the Municipal Court: “As regards the conclusion of the lease agreement, the term of the agreement is an important circumstance and the parties must reach an agreement in this regard.”
[160] Hidasi et al. 2007.

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

The Housing Act does not provide for a specific procedure for the control of tenancy contracts. Therefore, in accordance with the general reference to the Civil Code provided for in the Housing Act, the provisions of the Civil Code apply in this regard (Article 1 paragraph (3) of the Housing Act). It is equally the provisions of the Civil Code which define the conditions for invalidity of tenancy contracts.
Hungarian law recognizes two types of invalidity. An agreement or a contractual provision may be null and void ("*semmis*") or challengeable ("*megtámadható*").
An agreement or a provision is null and void for example if it is unlawful or if it was concluded by circumvention of a legal act (Article 6:95 of the Civil Code); if it is immoral (Article 6:96 of the Civil Code), or if a party requested, exploiting the situation of the other party, a flagrantly disproportionate advantage at the conclusion of the contract (usury contract, Article 6:97 of the Civil Code). If the tenancy contract or certain provisions thereof are null and void, the contract is invalid from the date of its conclusion. There is no need for a specific procedure for establishing nullity, the nullity of a contract is detected ex officio by the court (Article 6:88 paragraph (1) of the Civil Code). As a general rule, the nullity of the contract may be invoked and a litigation concerning the nullity of the contract may be initiated by a person having legal interest or being empowered by a legal act (Article 6:88 paragraph (3) of the Civil Code). This is a change as compared to the previous Civil Code which provided that any person may rely on the nullity without deadline and without any special procedure. In addition, the public prosecutor may also initiate proceedings to establish the nullity of the contract or to apply its legal consequences in the case of harm in the public interest or in the case of usurious contracts (Article 6:88 paragraph (4) of the Civil Code).

Reasons for challengeability include the error, deception, or threat of a contracting party. If a party was in error concerning an important circumstance at the time of the conclusion of a contract, he/she may challenge the agreement, provided that the error was caused by the other party or the other party may have realised such error. An error is related to an important circumstance if having knowledge of the circumstance, the party would not have concluded the contract or would have concluded it with a different content (Article 6:90 paragraph (1) of the Civil Code). If at the conclusion of the contract, the parties were in the same erroneous assumption, the contract may be challenged by any of the parties (Article 6:90 paragraph (2) of the Civil Code). The contract may not be challenged by the party who could be aware of its own error who assumed the risk of error (Article 6:90 paragraph (3) of the Civil Code).
The person who was deliberately misled or kept in error by the other party may challenge the contractual declaration made due to the deception (Article 6:91 paragraph (1) of the Civil Code). A person who was induced to conclude the contract by unlawful threat of the other party may challenge his/her contractual declaration (Article 6:91 paragraph (2) of the Civil Code). The same provisions apply if the deception or threat was exercised by a third party and the other party knew or should know about these circumstances (Article 6:91 paragraph (3) of the Civil Code). Furthermore, the contract may be challenged by the harmed party if there is a striking disproportionality between the value of the service and of the consideration at the time of the conclusion of the contract, without one of the parties intending to give a present. The contract may not be

challenged by the person who could recognise the striking disproportionality or who undertake its risk (Article 6:98 paragraph (1) of the Civil Code).
If the contract is challengeable, as a consequence of a successful challenge, it becomes invalid from the time of its conclusion (Article 6:89 paragraph (1) of the contract). Challengeability may be invoked by the party harmed and the person having a legal interest therein (Article 6:89 paragraph (2) of the Civil Code). The right to challenge the contract may be exercised within one year from the conclusion of the contract by a legal declaration addressed to the other party or directly by judicial enforcement. If the contract was challenged by legal declaration addressed to the other party and the challenge was unsuccessful, the party may turn to court within one year of the conclusion of the contract (Article 6:89 paragraph (3) of the Civil Code). The person entitled to challenge the contract may exercise this right in the form of an objection to a contractual claim even if the deadline for challenge elapsed (Article 6:89 paragraph (4) of the Civil Code). The right to challenge ceases if the person entitled to challenge knowing the reason for challenge, after the start of the deadline for challenge confirms its contractual will or renounces the right to challenge (Article 6:89 paragraph (5) of the Civil Code).
In case the contract is invalid, no right can be based on the contract and the fulfilment of the contract may not be claimed. The court applies the other consequences of invalidity upon request of the party concerned, in the boundaries of prescription and of usucaption ("*elbirtoklás*") (Article 6:108 paragraph (1) of the Civil Code). As a consequence of invalidity, any of the parties may request the reestablishment of the situation preceding the conclusion of the contract, if he/she also returns the service received in kind (Article 6:112 paragraph (1) of the Civil Code). At the same time, it is also possible to declare the contract valid by retroactive effect to its conclusion. This may be done by will of the parties, if they eliminate the reason for invalidity or if the reason for invalidity is eliminated for other reasons and the parties confirm their contractual will (Article 6:111 paragraph (19 of the Civil Code). The court may also declare the contract valid with retroactive effect if the reason for invalidity may be eliminated or was eliminated for other reasons (Article 6:110 paragraph (1) of the Civil Code). In case the contract cannot be declared valid and the reestablishment of the situation preceding the conclusion of the contract is not possible, the court order the payment of the price of the service without consideration, The same solution may be applied if the reestablishment of the original situation is contrary to the important legal interests of one of the parties (Article 113 paragraph (1) of the Civil Code).
If invalidity only concerns a specific part of the contract, the consequences of invalidity need to be applied, as a rule, to this part of the contract. A partial invalidity of a contract leads to the invalidity of the entire contract if the parties would not have concluded the contract in the absence of the invalid part (Article 6.114 paragraph (1) of the Civil Code).

- *statutory pre-emption rights of the tenant*

In the case of previously (i.e. before privatisation) State owned municipal dwellings and State dwellings, the Housing Act provides for the pre-emption right of the tenant (Article 49 paragraph (1) letter a) of the Housing Act). Furthermore, in addition to the individual tenant, the Housing Act provides for the pre-emption right of joint tenants, the co-tenant, as well as to their lineal relatives and adopted children (Article 49 paragraph (1) b)-d) of the Housing Act). In line with Act IV of 1952 on marriage, family and guardianship (hereinafter "the Family Act"), lineal relatives are directly descendant family members (Article 34 paragraph (1) of the Family Act). Pre-emption rights may therefore be exercised by the children – including adoptive children – and the parents of the tenant. In line with the Housing Act, the pre-emption right may be exercised by joint tenants in equal proportions, by the co-tenant tenant with regard to the part of the dwelling in his or her exclusive use. The linear relatives of tenants, joint tenants and co-tenants may exercise their pre-emption right subject to the agreement of the latter (Article 49 paragraph (1) letter d) of the Housing Act). The Housing Act also specifies that in the case of joint tenancy, the common areas of the dwelling need to be taken into account in proportion of the exclusive parts of the dwelling as mentioned above (Article 49 paragraph (2) of the Housing Act).

As mentioned above, this right applies solely to previously State owned municipality dwellings and State dwellings. In case the ownership of these dwellings has been transferred, the pre-emption right no longer exists, notwithstanding the fact that the tenancy right may continue.[161]

In line with the relevant civil law practice, the existence of the pre-emption right implies that in case the municipality or the State intends to sell the relevant dwelling, it has to communicate the offer received from a third party in full to the tenant, joint tenant or co-tenants, who may accept the offer of the third party within a given deadline. In case the tenant does not make a declaration or accepts the offer with a different content, the owner is entitled to sell the dwelling to the person having made the offer. In case the tenant makes a declaration to accept the offer, the contract is concluded between the tenant and the owner. If the sale of the dwelling is made without taking into account the pre-emption right, the right holder may initiate proceedings against the parties to the contract in order to establish that the contract has no legal force in this regard (see Supreme Court statement PK 9).[162]

In case the building is sold as a whole, which happens often in practice, the offer for the building as a whole needs to be communicated to the right holders. The right holder may only accept the content of the offer as a whole. If it makes a declaration concerning the dwelling to which his/her pre-emption right relates, it qualifies as a new offer to the landlord. In the absence of agreement between the landlord and the tenant, the sale and purchase contract is only established if the sale of the entire building represents a misuse of a right in line with the provisions of the Civil Code (Supreme Court Opinion 2/2009 (24 June)). The courts' case law also clarified that the pre-emption right may also

[161] Horváth Gyula: Commentary to the Housing Act, Complex.

[162] Horváth Gyula: Commentary to the Housing Act, Complex, additional sources: FIT-H-PJ-2010-501 Exercising of the pre-emption right for dwellings in mixed ownership. FIT-H-PJ-2010-711 the relationship of the pre-emption rights of co-tenants and co-owners.

be exercised in the event of a sale and purchase agreement combined with an exchange, if it can be established that the exchange element has been included to circumvent the pre-emption right. In this event, the court qualifies the agreement as a sale and purchase agreement and establishes the conclusion of the sale and purchase agreement between the beneficiary of the pre-emption right and seller (Supreme Court decision of principle EBH 2010.2133).

In practice, the exercise of the joint tenant's pre-emption right with regard to the proportion of the dwelling in his or her exclusive use may create difficulties if the other co-tenants do not wish to exercise their pre-emption rights. According to certain authors, in this case, the co-tenant may exercise pre-emption right with respect to the whole dwelling.[163] In case only one co-tenant makes a declaration to accept the offer, this qualifies as a new offer to the owner and the owner retains the right to sell the entire dwelling, save when it would qualify as an abuse.[164] Of course, if all joint tenants are exercising their pre-emption rights, they will have a collective ownership in proportion to the parts of the dwelling respectively in their exclusive use.

In line with the provisions of the Housing Act, the pre-emption right of the tenant precedes all other pre-emption rights (Article 49 paragraph (1) of the Housing Act). This means that the tenant has priority with regard to other persons entitled to pre-emption by virtue of other legislative provision or contract. The pre-emption right also applies in the situation where due to construction works, the tenancy is interrupted (Article 18 of the Housing Act).

However, the tenant may not exercise the pre-emption right if, at the time of the conclusion of the contract, he has a public debt (tax or similar public debt, social security debt) (Article 89 paragraph (4) of the Housing Act).

The Housing Act also provides that the ownership of State and municipality dwellings and other premises to which the pre-emption right applies may not be transferred as non-pecuniary contribution in a an undertaking (Article 61 of the Housing Act).

Finally, the Housing Act also foresees that in the case of tenants entitled to pension benefits, if they do not use their pre-emption rights, the dwelling in question may only be sold to a third party with their written consent. In line with the case practice, this provision aims to protect pensioners from a situation where, following the sale of the dwelling, they would be obliged to pursue their tenancy right on market conditions. The Housing Act guarantees this protection irrespective of the financial situation of the tenants in question, and independently from their motivation not to use their pre-emption right.[165]

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

There are no restrictions in Hungarian law regarding rental in the case of mortgage.

[163] By analogy to the court guidance: Supreme Court opinion PK 2/2009. (24 June), point 9. referred to above, in: Horváth Gyula: Commentary to the Housing Act, Complex

[164] Horváth Gyula: Commentary to the Housing Act, Complex

[165] Horváth Gyula: Commentary to the Housing Act, Complex,:
LB-H-PJ-2009-709 The veto right of a pensioner tenant based on para. 50 of the Housing Act.

6.4 Contents of tenancy contracts

Contents of tenancy contracts

	Main characteristic(s) of tenancy type 1/ private rental	Main characteristic(s) of tenancy type 2 / public rental
Description of dwelling	- No mandatory provision in the legislation, part of the agreement	- No mandatory provision in the legislation, part of the agreement
Parties to the tenancy contract	- landlord: the owner or the usufructuary of the dwelling - Tenant: any person	- landlord: municipalities, trustee undertakings of municipalities in the case of municipal dwellings, the organisation entitled by ministerial decree or by law (in the case of the National Asset Management Company) to dispose of the stately owned dwelling in the case of state dwellings - Tenant: any person meeting the criteria set forth in the relevant decrees or the National Asset Management Act and its implementing regulations
Right to move in with the tenant	- Minor child and grandchild born during cohabitation of the child with the tenant (for others, the agreement of the landlord is needed)	- Municipality dwellings: the tenant's spouse, child, the accommodated child's child, the tenant's parent (for others, the agreement of the municipality is needed, subject to the conditions defined in the municipal decree) - State dwellings: defined in ministerial decree - National Asset Management Company: spouse, and/or unmarried couple, child, mortgagee, debtor (others subject to the written approval of the National Asset Management Company
Divorce	- Shared or individual use (termination of the tenancy right of one of the parties) upon agreement of the parties or decision by the court	- Shared or individual use (termination of the tenancy right of one of the parties) upon agreement of the parties or decision by the court
Subletting	- Possible upon agreement of the landlord, in written form, for the entire dwelling or part of it	- In general limited in line with the relevant ministerial or municipal decree

Multiple tenants in the agreement	- Possibility for joint tenancy and co-tenancy upon agreement of the parties	- Possibility for joint tenancy and co-tenancy upon the agreement of the parties
Duration	- Limited or unlimited term	- Limited or unlimited term
Prolongation options	- If provided for in the tenancy contract	- Depending on the provisions of the relevant ministerial or municipal decree, or the National Asset Management Act and its implementing rules
Rent	- Subject to the agreement of the parties - If the parties cannot agree, they may request the court to determine the amount of rent	- Set forth in the relevant decree
Rent increase	- Subject to the agreement of the parties: provided for in the initial tenancy contract or by an amendment of the contract - If the parties cannot agree and the general conditions for court intervention in civil law relationships are met, the court may determine the amount of rent increase	- Provided for in the relevant decree (e.g. in the case of the National Asset Management Company, the implementing decree to the National Asset Management Act provides for a yearly indexation of the rent), or adopted by means of an amendment to the
Set off and retention rights of the tenant	- No set off and retention rights	- No set off and retention rights
Replacement of rent payment by performance	- Upon agreement of the parties	- Upon agreement of the parties, with the exception of municipal dwellings rented on the basis of social situation, where the amount of rent needs to be decreased correspondingly
Deposit	- Subject to the agreement of the parties, up to three months' rent	- Set forth in the relevant decree, up to three months' rent
Utilities	- Subject to the agreement of the parties, with the liability of the landlord	- To be paid by the tenant in line with the provisions of the relevant municipal or ministerial decree - the National Asset Management Act explicitly excludes the liability of the National Asset Management Company for utility arrears
Repairs	- Subject to the agreement of the parties	- Subject to the provisions of the relevant decree

	- If the parties do not agree otherwise, the landlord needs to ensure the maintenance of the building, the continuous running of the central devices of the building and the fitting of defects in the premises in common use and in their equipment; and bear the costs of replacement and exchange of the floors and tiles, doors, windows and the equipment of the dwelling	- If the decree does not provide otherwise, the landlord needs to ensure the maintenance of the building, the continuous running of the central devices of the building and the fitting of defects in the premises in common use and in their equipment; and bear the costs of replacement and exchange of the floors and tiles, doors, windows and the equipment of the dwelling - In the case of municipal dwellings rented based on social situation, the costs of replacement and exchange mentioned above are born by the tenant, in exchange for appropriate lowering of the rent

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

In Hungarian law, there are no mandatory provisions regarding the description of the dwelling in the tenancy contract.
The Housing Act contains a definition of dwellings falling under its scope and classifies the dwellings into four comfort categories (full comfort, comfort, half comfort, without comfort, see Article 91/A point 1 of the Housing Act). The criteria for the different degrees of comfort are listed in Annex 5. This differentiation serves the classification of dwellings and its use is widespread for the identification of the main characteristics of the dwelling for lease. The provision of wrong data, in line with the provisions of the Civil Code referred to above, may qualify as misleading of the other party and therefore lead to the challengeability and – if successful – the invalidity of the lease contract.

- *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)*

Besides the rules concerning the lease of dwellings, the Housing Act also provides for the commercial lease of premises (i.e. non-residential lease). To these contracts, the provisions concerning the lease of dwellings apply with certain exceptions (provided in Part Two, Articles 36 to 44 of the Housing Act). However, the Housing Act does not address the issue of mixed residence and commercial contracts.
In light of the other provisions of the Housing Act, the use of the dwelling – entirely or partially – for commercial purposes would not be precluded. In this case, when

concluding the contract, the provisions regarding the lease of premises would also need to be taken into account and the commercial use would need to be specified in the contract.
In practice, this is not likely to create a difficulty as according to the case law, legal relationships for the lease of commercial premises belong to the area of free entrepreneurship and therefore, the principle of freedom of contract is decisive. In line with this principle, the legal provisions regarding the lease of commercial premises are fundamentally dispositive, i.e. they are applicable to the extent the parties have not decided otherwise.
Furthermore, in case the tenant would intend to use the dwelling, or part of it, for commercial purposes after the conclusion of the tenancy contract, the agreement of the landlord would be needed. Otherwise, the change in the form of use may qualify as an improper use and may serve as a basis for the termination of the tenancy contract.[166]
Mixed use tenancy is not very widespread in Hungary. Rental contracts are usually either concluded with the purpose of residing in the dwelling, or a company/entrepreneur rents a whole housing unit where he undertakes commercial activity.

- *Parties to a tenancy contract*
- *- Landlord: who can lawfully be a landlord?*

- *Private rental*

Any person may be in the position of landlord, who may legally dispose of the property. It may be a natural person, a legal person or an undertaking without legal personality.
The landlord is primarily the owner of the dwelling, who is entitled, by virtue of the Civil Code, to transfer the use of the dwelling to another person by means of a lease agreement.
Furthermore, the landlord may be the usufructuary of the dwelling, who is entitled, by virtue of the Civil Code, to transfer the possession, the use and the exploitation of the object of the usufruct (Article 5:148 paragraph (1) of the Civil Code). Pursuant to the Civil Code, the use of the object of usufruct may only be transferred in exchange of payment, if the owner does not claim the use of the property under the same conditions (Article 5:149 paragraph (2) of the Civil Code). This means that in these cases, the owner has a form of pre-emption right, needs to be notified of the draft tenancy contract to enable him to decide whether he intends to enter into the contract under the terms provided therein.[167]
It is also possible for more than one person to figure in the position of the landlord. The most common case is if the dwelling is in common property. In this case, they are jointly and severally entitled to exercise the rights of the landlord.[168]

- *Public rental*

[166] Dr. Hidasi Gábor: Residential Lease
[167] Dr. Hidasi Gábor: Residential Lease, http://www.hidasi.hu/index.php?option=com_content&task=view&id=58&Itemid=5 (Dr. Hidasi Gábor, Dr. Horváth Gyula, Dr. Urbán András, Dr. Kőszegi Gábor: The handbook of real estate law, Complex 2007)
[168] Dr. Hidasi Gábor: Residential Lease

In the case of State owned dwellings, the landlord may be the relevant State entity disposing of the dwelling, as well as an organisation (trustee or asset management company) entitled to the management of the real estate. In these cases, this organisation exercises the rights and obligations of the owner in civil law relationships.
In the case of municipalities, it is equally general practice to empower their "trustee companies" to the handling, maintenance and exploitation of the real estate. There are different views regarding the right of the trustee to lease the property in its own name and to the exercise of the rights of the landlord in such cases.[169]
In case the owner has transferred the exercise of the right to lease entirely to the trustee, the landlord will be this person. However, the owner may, at any moment, decide to take back the right to exercise the right to lease the property or to terminate the lease.[170]
In the context of the rules intended to ensure housing of those individuals who are unable to repay their foreign currency debt, the landlord is the National Asset Management Company, specifically created for this purpose.

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

The Housing Act does not provide for specific rules in case of the change in the position of the landlord. Therefore, these questions need to be answered in light of the provisions of the Civil Code and the Judicial Execution Act.
The death of the landlord, in line with the civil law principles and practice does not affect the position of the tenant in itself. The Civil Code provides that the privity ceases if the obligor dies or ceases without legal successor in case the obligation concerned a service that needs to be provided personally (Article 6:3 letter c) of the Civil Code). It follows that in case of a contract concerning a service of another type, e.g. a tenancy agreement, the death of the obligor does not terminate the contract.
In Hungarian law, a tenancy contract may also be concluded by the usufructuary of the dwelling. In this case, the case law specified that the termination of the usufruct because of the death of the usufructuary does not lead to the termination of the tenancy contract either.[171]
In itself, the sale of the dwelling does not affect the tenancy relationship either, unless it is specified in the tenancy agreement that the sale of the dwelling entails termination of the tenancy relationship. Without such a clause, in case of a valid tenancy contract, in principle, the dwelling may only be sold with the tenant. However, the market price of an inhabited dwelling is significantly lower and therefore, in this case, landlords are seeking to terminate the tenancy contract. As a matter of fact, this situation arises more and more often. With the low performance of the property market, the sale of dwellings becomes more difficult and landlords are looking for a way to exploit their property while seeking to sell. In this case, landlords would seek to terminate the tenancy agreement prior to the sale of the dwelling, potentially agreeing with the tenant in an amount of compensation for earlier leave. At the same time, in view of the long litigation periods

[169] Dr. Hidasi et al., 2007
[170] Dr. Hidasi et al., 2007
[171] Dr. Horváth Gyula: Commenatary to the Housing Act, Complex.

and the difficulty to obtain the eviction of the dwelling, renting out to unknown tenants in this situation entails significant risks to the landlord. If the landlord is unable to vacate the dwelling, the sale would only be possible under unfavourable conditions.
As a matter of principle, the sale of the dwelling by means of public auction does not terminate the tenancy right either. As a main rule, the property needs to be auctioned fit for occupation. However, the relevant legislation provides that in case a tenant is living in the dwelling based on a valid tenancy contract concluded before the start of the execution procedure, the dwelling needs to be auctioned in an inhabited state. An important exception is if the case of a lien, the debtor and the mortgagee ("*zálogkötelezett*") agreed earlier in the sale of the dwelling fit for occupation and the tenancy contract was concluded despite this agreement.

- *- Tenant:*
- *Who can lawfully be a tenant?*

- *Private rental:*

In principle, the tenant may be any person capable of holding rights.[172] According to certain authors, only a natural person may occupy the position of the tenant in a residential tenancy contract. However, there is nothing in the applicable legislation prohibiting a legal person to conclude a tenancy agreement.

- *Public rental:*

The same rule applies to public function (state of municipality owned) residential leases. Furthermore, in the case of municipality and State owned buildings, only the selected person may become tenant. As mentioned before, for dwellings where the State has the right to designate the tenant, the tenancy contract can only be concluded with the designated person.
Municipalities regulate the criteria for the selection of the tenants in municipal decrees. Similarly, in the case of dwellings in the exclusive property of the State, the Housing Act empowers the member of the Government to define the eligible tenants concerning the State owned dwellings and premises, and the exercise of the right to designate and select the tenant, necessary for the accommodation of persons employed by the ministry or central budgetary organ under his competence.
Tenants of the tenancy agreements concluded with the National Asset Management Zrt. can be the defaulted debtors, whose flats have been purchased by the National Asset Management Institute or who have lost their housing.

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

The Housing Act defines the persons who may be accommodated by the tenant with or without the agreement of the landlord or the other tenants.

[172] Dr. Horváth Gyula: Commenatary to the Housing Act, Complex

- *Private rental:*

In line with the general rule provided in the Housing Act, the tenant may accommodate his or her minor children, and the grandchildren born during their cohabitation without the agreement of the landlord. For other persons moving in with the tenant, the written consent of the landlord is needed (Article 21 paragraph (1) of the Housing Act).
In the case of joint tenancy, with the exception of the minor child and the grandchild born during the cohabitation, the written consent of the other joint tenant is also needed (Article 21 paragraph (3) of the Housing Act).
In the case of the co-tenant, for accommodating other persons than the spouse, the child, the accommodated child's child, and the parent in his or her part of the dwelling, the written consent of the other co-tenant is needed (Article 21 paragraph (4) of the Housing Act).

- *Public rental*:

In the case of municipal dwellings, the tenant may accommodate without written consent of the landlord his or her spouse, child, the accommodated child's child, as well as his or her parent (Article 21 paragraph (2) of the Housing Act). In all other cases, the consent of the municipality is required and the conditions for the consent are provided in the relevant municipal decrees (Article 21 paragraph (6) of the Housing Act).
In the case of state owned dwellings, the member of the government is entitled to define the persons accepted to move in with the tenant and the conditions thereof in state owned dwellings in the relevant ministerial decree applicable to the tenancy (Article 87 paragraph (1) letter e) of the Housing Act). The tenant should however in any case be able to accommodate his or her minor children, and the grandchildren born during their cohabitation (Article 21 paragraph (1) of the Housing Act, referred to above).
With regard to the joint tenant and the co-tenant, the same rules apply to public dwellings as to private dwellings as described above.
In line with the National Asset Management Act, the tenants of the flats which are leased by the National Asset Management Company may only accommodate his/her spouse or unmarried partner, the child qualifying for family allowance raised by the tenant or by his/her spouse or companion, the child taken into account for the purpose of calculating the amount of family allowance, the mortgagee and the debtor. In all cases, the accommodation of these persons is subject to the prior written approval of the National Asset Management Company (Article 23 letter a) of the National Asset Management Company).
The persons accepted to move in with the tenant are lawful users of the dwelling. Their right to use the dwelling is an ancillary consequence of the contract between the landlord and the tenant. They are themselves not in the position of the tenant and are not in a legal relationship with the landlord. Therefore, their right to use the dwelling depends on the terms of the tenancy contract. Most importantly, with the termination of the tenancy contract, their right to use the dwelling is also terminated – with the exception of those who are entitled to the continuation of the tenancy by law.[173]

[173] Dr. Hidasi Gábor: Residential lease

- *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*

Changes in the position of the tenant may take different forms, also depending on the number of tenants. A change in the position of tenant may happen in particular because of the death of the tenant, the exchange of the tenancy right, and the sale of the municipal tenancy right.

By way of difference to the death of the landlord, the death of the tenant results, as a general rule, in the termination of the tenancy, except if there is a person entitled to continue the tenancy (Article 23 paragraph (1) letter d) of the Housing Act).

The persons entitled to continue the tenancy include, in line with the Housing Act, the maintainer[174] under certain conditions (Article 32 paragraph (1) of the Housing Act), i.e. if the landlord agreed in writing to the maintenance contract, the maintainer fulfilled his or her contractual obligations and at least one year elapsed between the consent of the landlord and the death of the tenant. Furthermore, in the case of municipality dwellings, those who have the right to move in with the tenant and have lived in the dwelling at the time of the death of the tenant may continue the tenancy: the spouse, the child, the child of the co-habiting child and the parent of the tenant, in this order (Article 32 paragraph (2) of the Housing Act). The maintainer has priority over the other right holders (Article 32 paragraph (6) of the Housing Act). However, the person continuing the tenancy is obliged to ensure the use of the dwelling for those who lived rightfully in the dwelling at the time of the death of the tenant (Article 32 paragraph (7) of the Housing Act).

In the case of lease agreements concluded with the National Asset Management Company, the tenancy may be continued by the spouse or unmarried partner of the tenant having lived together with the tenant, the child of the tenant or of his/her spouse or unmarried partner qualifying for family of allowance, the child of the tenant having lived together with the tenant, the mortgagee and the debtor.

Apart from the death of the tenant and the continuation of the tenancy, specific cases of change in the position of the tenant include the exchange of the tenancy right and the sale of the tenancy right of municipal dwellings.

According to the Housing Act, the tenant may exchange his/her tenancy right with the consent of the landlord. The exchange contract needs to be concluded in written form (Article 29 paragraph (1) of the Housing Act).

The exchange of the tenancy right is particularly relevant in the case of municipal dwellings. The Housing Act contains detailed provisions in this respect. In this case, the tenancy right may only be exchanged for the tenancy right or the ownership of another dwelling (Article 29 paragraph (2) of the Housing Act).[175] The consent to the exchange of

[174] Maintainer („*eltartó*") is a person who concludes a maintenance contract with and elderly tenant, according to which he undertakes the care of the elderly tenant until the latter's death, after which the maintainer receives the tenancy right. "Maintenance" is in kind, as opposed to an annuity contract, when the contractual party with regular income provides financial support to the elderly party. Maintenance contracts – as well as annuity contracts – are most often concluded with a housing purpose, although the content of the contract may vary according to the agreement of the parties; while most of them regards the ownership right of a dwelling, they also play an important role in the tenancy right of municipal dwellings.

[175] This latter may be a privately rented dwelling as well as a municipally owned one; the law does not specify this particular detail.

municipal dwellings may not be denied, if any of the parties is doing the exchange for health reasons, because of a change of workplace, or because of a change in his/her essential personal conditions, for example because of a change in the number of persons co-habiting with the tenant (Article 29 paragraph (5) of the Housing Act). The same way, the consent has to be given if the health reason or the change in the workplace affects one of the persons co-habiting with the tenant (Article 29 paragraph (6) of the Housing Act). In addition to the consent of the landlord, if relevant, the consent of the holder of the right to designate the tenant and of the maintainer is needed (Article 29 paragraph (7) of the Housing Act). In case the landlord needs to give consent, as a general rule, the conditions of the new tenancy contract following the exchange may not be less favourable than the conditions of the previous tenancy contract, except with the agreement of the new tenant, and in case the new tenant falls in another category regarding rent payment (Article 29 paragraph (8) of the Housing Act.

By way of difference to the lease of premises for non-housing purposes , the Housing Act does not allow for the transfer of the tenancy right in any other form. Nevertheless, in practice, as mentioned earlier, there is an "informal market" for the "sale" of municipal tenancy rights in Hungary. In this case, in practice, in the process of the swapping, the tenancy relationship of the former tenant is terminated and the municipality concludes a new tenancy contract with the new tenant. Technically two tenants exchange their tenancy rights. (See BOX A)

With regard to an apartment shared among students, Hungarian law does not contain any specific rules. The Housing Act contains merely general rules regarding the establishment of a new joint tenancy relationship which will be dealt with below.

Divorce is a specific case of change in the position of tenants. The relevant rules are laid down in detail by family law (previously regulated in the Act 4 of 1952 on marriage, family and guardianship, integrated in the new Civil Code as of March 2014.. The entry into force of the new Civil Code did not alter the principles governing the settling of the use of the dwelling of the married parties. A significant difference is that as part of the new chapter on the family law impact of civil partnerships, the new Civil Code introduced a chapter on settling the use of the dwellings of non-married couples.

This represents an important step forward, as in the absence of relevant legal provisions, the judicial practice has so far not recognised any right resulting from the unmarried partnership with regard to the use of the dwelling. In particular, the case law considered that if the couple is staying in the dwelling based on the tenancy right of one of the parties, the partner has no independent right to use the dwelling, qualifies as a free user of the dwelling ("*szívességi lakáshasználó*") and no justification or formality is legally required to move him/her out of the dwelling (see Court decision BH 2001.221). The new Civil Code, however, regulates the use of dwelling of unmarried along the principles defined in the case of marriage. The legislation does not specify the sex of the partners and may therefore be applied irrespective of the sex of the unmarried partners.

With regard to the use of the dwelling in the case of divorce or separation, the rules of the Civil Code give priority to the agreement of the parties. The agreement may take the form of a formal contract concluded before or during marriage or partnership, or of a simple agreement after the end of the life union of the parties. In the absence of prior contract or other agreement after the end of the life union, upon the request of any of the parties, the Court decides upon the further use of the common marital dwelling (Article 4:80 paragraph (1) of the Civil Code). The main criteria for the decision of the Court provided for in the Civil Code may be summarised as follows:

- The right of use of the dwelling of the minor child of the parties needs to be ensured in principle in the former common marital dwelling, except if his/her appropriate housing is ensured (Article 4:80 paragraph (1) of the Civil Code);
- As regards the housing of the parties, the decision of the Court depends on whether the parties have joint tenancy right over the dwelling, or if only one of the parties is tenant.
- In case of joint tenants, the main rule is the sharing of the use of the dwelling among the parties, which means that the parties may use certain rooms and other premises of the dwelling exclusively, others jointly. (Article 4:81 paragraph (2) of the Civil Code). However, the Court may not share the use of the dwelling if it is not necessary for the housing of the parties, for example if at least one of the parties has another dwelling which may be occupied, if one of the parties already left the dwelling (Article 4:81 paragraph (3) of the Civil Code), or if the other party offers an appropriate alternative dwelling (Article 4:82 paragraph (1) of the Civil Code). Shared use cannot be ordered if in view of the wrongful behaviour of one of the parties, it would seriously harm the interests of the other party or of the minor child (Article 4:81 paragraph (4) of the Civil Code). In case the use of the dwelling is not shared, the Court terminates the tenancy right of one of the parties and obliges him/her to leave the dwelling ((Article 4:82 paragraph (1) of the Civil Code).

- In case one of the parties has an individual tenancy right over the common marital dwelling, the main rule is that the Court grants this party the right to use the dwelling (Article 4:83 paragraph (1) of the Civil Code). The shared use of the dwelling may nevertheless be ordered if parental custody of a minor child was granted to the parent not holding a right over the dwelling or or if the leaving of the flat by this party – based on the duration of the marriage and the circumstances of this party – would be seriously unequitable to him/her (Article 4:83 paragraph (2) of the Civil Code). In the case of unmarried couples, the shared use in this case is possible if the partnership lasted at least one year and it is justified in order to ensure the right of use of the dwelling of the common minor child of the unmarried partners (Article 4:94 paragraphs (1)-(2) of the Civil Code).
- The party obliged to leave the dwelling is, as a matter of principle, entitled to compensation corresponding to the value of his/her previous right to use (Article 4:84 paragraph (1) of the Civil Code).
- An interesting, quasi-tenancy situation arises if, in an exceptionally justified case, the Court entitles one of the parties to the exclusive use of a dwelling in the exclusive property or usufruct of the other party. This situation may arise if this parent is entitled to the parental custody over the minor child and the housing of the child cannot be ensured in another way. In this case, the party is in the legal position of a tenant, with the proviso that his/her right to use the dwelling can be terminated by the ex-partner with ordinary termination upon proposing an appropriate other dwelling in exchange (Article 4:83 paragraph (3) of the Civil Code).

- *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)?*

Subletting takes place under the same legal conditions as tenancy, and, as a consequence, the legal protection of subtenants is essentially identical with the legal protection of tenants (which is not particularly strong on an EU comparison). Accordingly, there is no point to offering a tenant a sub-tenancy position instead of a tenancy contract.

- *Private rental*

The Housing Act provides that the tenant may sublet the dwelling or part of it with the consent of the landlord. The rent is determined freely by the parties (Article 33 paragraph (1) of the Housing Act). In order for the subletting to be valid, a written contract is needed (Article 33 paragraph (2) of the Housing Act).
Regarding the termination of the sublet, the Housing Act provides that the subtenant may terminate the sublet with a notice period of 15 days for the 15th day or for the last day of the month (Article 33 paragraph (5) of the Housing Act). The tenant may terminate the sublet for the last day of the coming month (Article 33 paragraph (4) of the Housing Act.

- *Public rental*

In the case of municipal dwellings, the same provision applies. Furthermore, the Housing Act provides that the conditions for the consent of the landlord are provided in the relevant municipal decree (Article 33 paragraph (3) of the Housing Act). There are cases of illegal subletting, i.e. done without the landlord's consent.

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

Yes, it is possible to conclude a contract with a multiplicity of tenants. In the case of tenancy contracts, there may be more than one person both in the position of the landlord and in the position of the tenant.
Under Hungarian law there are two types of agreements with a multiplicity of tenants. The main difference lays in the liability of the tenant. In the event of a so-called joint tenancy, tenants are jointly and severally liable towards the landlord. It the event of co-tenancy, each tenant is severally liable for the performance of its obligations.
According to the Housing Act, a dwelling may be rented by several tenants jointly (joint tenants) (Article 4 paragraph (1) of the Housing Act). Joint tenancy may be established at the time of the conclusion of the contract, or by new tenants joining the tenancy after the conclusion of the initial tenancy contract.
As a general rule, in case of individual tenancy, joint tenancy may be established upon agreement of the landlord, the tenant and the future joint tenant (Article 4 paragraph (2) of the Housing Act). However, in the case of municipal dwellings – unless the holder of the right to designate the tenant decides otherwise - a joint tenancy contract has to be concluded upon common request of the married couple (Article 4 paragraph (4) of the Housing Act). Otherwise, the rules regarding the conclusion of joint tenancy contracts for municipal dwellings are defined in the relevant municipal decrees.
As regards the legal position of the joint tenants, their rights and obligations are equal and they may exercise their rights jointly. They are jointly and severally responsible for

the fulfilment of their obligations vis-à-vis the landlord (Article 4 paragraph (5) of the Housing Act).
Another form of tenancy relationship with a multiplicity of tenants is co-tenancy, In this case, by way of difference to joint tenancy, the tenants are entitled to use a given room of the dwelling and certain specific pieces individually, others jointly. Co-tenants are individual tenants of the same dwelling (Article 5 paragraph (1) of the Housing Act).
The individual character of the co-tenancy relationship means that it is established by means of individual agreement with the landlord, without necessitating the agreement of other co-tenants. Individual co-tenants may exercise their co-tenancy rights independently.
The Housing Act provides that in the case of municipal and State dwellings, if one part of the dwelling falling under co-tenancy becomes vacant, it may not be rented again as an individual tenancy (Article 5 paragraph (2) of the Housing Act). This means, in practice, that the State or the municipality is bound to conclude a tenancy contract to the entire dwelling with the remaining co-tenant or with another person. The conditions of renting the part of the municipal dwelling that has become vacant to the remaining co-tenant are provided in the relevant municipal decree (Article 5 paragraph (3) of the Housing Act).

- *Duration of contract*
- *Open-ended vs. limited in time contracts*
- *- for limited in time contracts: is there a mandatory minimum or maximum duration?*

In line with the main governing principle of freedom of contract, the Housing Act leaves it entirely to the parties to decide upon the duration of the contract. The tenancy contract may be concluded for a determined or an undetermined period of time, or until the fulfilment of a condition (Article 2 paragraph (1) of the Housing Act).
The Housing Act does not provide for mandatory maximum or minimum duration, and there is no provision on the prolongation of tenancy contracts either.
The main difference between fixed-term and undetermined contracts lay in the possibilities for termination foreseen by law. Whereas in the case of tenancy contracts concluded for undetermined period, the Housing Act and the new Civil Code provide for the right for both parties to terminate the contract with an appropriate notice, this option is not foreseen in the case of contracts concluded for a determined period. However, this may not hinder the parties to provide for such a possibility in tenancy contracts concluded for determined period too, thanks to the dispositive nature of the pertaining regulations.
As it will be explained below in the section dealing with the enforcement of tenancy agreements and evictions, the enforcement of the termination of contracts for an undetermined period may entail significant risks for the landlord. Therefore they typically prefer to conclude short term tenancy contracts, usually for one year. This way, they minimize the risks of lengthy legal proceedings to terminate the contract and to evict the tenant in the case of non-compliance. However, this means that the interest of long-term tenants to have a multi-year contract cannot be asserted. Indeed, on the side of the tenant, the practice of short-term tenancy contracts implies a considerable uncertainty and an impossibility to consider tenancy as a stable and reliable housing option for a mid- to long-term perspective.

- *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.*

There are no applicable regulations for periodic tenancies. As described above, landlords have a preference for short term contracts and therefore, it is common for the same parties to conclude several short-term contracts one after the other. However, in Hungary, the position of the tenant is not significantly more favourable under a long term tenancy agreement. The decisive element is the content (and, as it will be explained below in the section concerning enforcement) and the form of the contract. Therefore, there is no practice of qualifying these contracts as contracts concluded for a longer duration or for undetermined period.

The Hungarian legislation does not address prolongation options either. Such provisions may be foreseen in the tenancy contract concluded between the parties.
In the Hungarian legal system, there is no specific category of tenancy contracts concluded for life. In principle, tenancy contracts may be concluded for an undetermined period, for a determined period or until the occurrence of a condition. Taking into account that the death of the tenant terminates the tenancy contract with the tenant in any case, in practice, there would be no rationale behind concluding such a contact, which would qualify as a contract for an undetermined period.

- *Rent payment*
- *- In general: freedom of contract vs. rent control*

- *<u>Private rental:</u>*

In the case of private dwellings, the parties are free to determine the amount of the rent. As mentioned before, if the parties cannot agree in the amount of the rent or of the rent increase, they may request the court to determine it (Article 6 paragraph (2) of the Housing Act). However, such cases are not typical at the beginning of a tenancy relationship as in practice the parties would not enter into the tenancy agreement without an agreement on the price.
Previously, the Act 87 of 1990 on the determination of prices (hereinafter "the Act on the determination of prices") provided that local municipalities acted as price fixing authorities not only in relation to municipal dwellings, but also with regard to the so-called forced private rental ("*kényszerbérlet*") and the private tenancy agreements concluded before 1 January 1989. The relevant provisions were however repealed (in 1997 regarding forced private rental and in 2005 regarding both the rent of municipal dwellings and of private tenancy agreements from before 1989. As the explanations to the 2005 amendment of the Housing Act expressed, the municipality is entitled and obliged to determine in the municipal decree the amount of rent with regard to its own property and not as an authority. Furthermore "it is fully unjustified to maintain the possibility for the municipality to set an upper limit to non-municipal property. In the case of tenancy agreements of this type, the parties are entirely free to agree upon the amount of rent – under the influence of the actual market conditions (…)".

At present, the free agreement of the parties regarding the rent is only subject to the general safeguards of the Civil Code against striking disproportionality between the value of the performance and of the compensation. In accordance with the relevant provisions, if at the time of conclusion of the contract, there is a striking disproportionality between the value of the service and of the compensation without one of the parties being driven by the intention to provide free benefit, the party having suffered harm may contest the contract. The contract may not be contested by the party who could recognize the striking disproportionality or undertook such risk (Article 6:98 paragraph (1) of the Civil Code). In this case, the courts have the right to declare the agreement invalid and to lower the rent. In practice, a rent exceeding the market rent by 20-25% would qualify as strikingly disproportionate.

- *Public rental:*

In the case of public dwellings, the amount of rent is determined as a rule by the public entity entitled to dispose of the dwelling.
In the case of municipal dwellings, the Housing Act provides that the municipal decree regarding the lease of municipal dwellings regulates the amount of rent differentiated according to the type of tenancy: social lease, lease based on cost principle or market based lease (Article 13 paragraphs (1)-(2), Article 34 paragraphs (1)-(2) and (4)-(5), Article 86 with respect to municipalities of the capital and the Budapest districts). Albeit considered unlawful by the Constitutional Court[176], certain municipalities are still auctioning the tenancy right of the dwellings with the so-called market-based rent, offering the tenancy right to the person submitting the highest bid.
In the case of state owned dwellings, the amount of the rent is defined in the relevant ministerial decree, together with the regulation of the type of dwelling to which the personnel is entitled depending on their circumstances.
In the case of lease from the National Asset Management Company, the basic amount of the rent is determined in the implementing decree to the National Asset Management Act.

- *- 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*

In accordance with the previous answer, rent control in Hungary only exists in the case of public rentals (municipally and state owned dwellings).

- *Municipal rental:*

In the case of municipal dwellings, the Housing Act contains the basic rules concerning the determination of the rent by the municipalities. In particular, it defines the different categories of municipal dwellings from the point of view of the amount of rent and defines the criteria for determining the actual amount of rent.

[176] Constitutional Court Decision 78/1995.(XII.21.) see Report of State Audit Office of Hungary No. 359

As mentioned above, the Housing Act provides that the municipal decree needs to determine the amount of the rent taking into account the following categories:

- lease based on social situation;
- lease based on cost principle;
- market based lease.

The Housing Act also provides for the main aspects to be taken into account when determining the amount of rent in the case of municipality and State dwellings. These aspects are:

- for lease based on social situation and State dwellings: essential features of the dwelling, in particular the comfort category, surface, quality of the dwelling, the state of the building and the situation of the dwelling within the building and the settlement; the services provided by the landlord in the context of the maintenance of the building, the continuous running of the central devices of the building; the fitting of defects in the premises in common use and in their equipment, and the other obligations concerning the premises and area in common use (Article 10 paragraph (1)-(2) of the Housing Act); as well as the costs of the maintenance, renewal and replacement, exchange of the overlay, doors, windows and the equipment of the dwelling (Article 13 paragraph (1) of the Housing Act) (Article 34 paragraph (2) of the Housing Act);
- for lease based on cost principle: the essential features of the dwelling, the services provided by the landlord and the additional costs mentioned above in a way to ensure the return of the landlord's expenses regarding the building, the central devices of the building, the dwelling, and the equipment of the dwelling (Article 34 paragraph (4) of the Housing Act).
- for market based lease: the aspects mentioned regarding cost based leased above, in a way to ensure that the resulting income of the municipalities also includes a benefit (Article 34 paragraph (5) of the Housing Act).

In the case of tenants entitled to lease on social grounds, the municipal decree also needs to define the amount of municipal rent subsidy, the conditions of eligibility and the procedural rules. The landlord reviews the fulfilment of the eligibility conditions on a yearly basis and terminates the provision of rent subsidy if the conditions are no longer met (Article 34 paragraph (3) of the Housing Act). In this case, the municipality may change the amount of rent to be paid, taking into account the income and wealth situation of the tenant, in accordance with the higher rent amounts provided in the municipal decree (Article 34 paragraph (6) of the Housing Act).
In line with the provisions of the Housing Act, the municipal decrees provide for the determination of the amount of rent.

- *State rental*

In the case of State owned dwellings as mentioned above, the rent is fixed in the relevant ministerial decrees. In the case of lease by the National Asset Management Company, the basic amount of rent is determined by the implementing decree to the National Asset Management Act.

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

The rent is due in the amount and at the date fixed in the tenancy agreement. In case the parties did not agree in the due date of the rent, the tenant is obliged to pay the rent monthly in advance, at the latest until the 15th day of the month (Article 12 paragraph (1) of the Housing Act).
Any delayed payment under Hungarian law qualifies as a breach of contract, in which case the non-breaching party is entitled to certain remedies. The Housing Act provides that if the tenant does not pay the rent until the fixed date, the landlord has to request the tenant to fulfil the payment obligation, with a warning on the consequences. If the tenant does not comply with the request within eight days, the landlord may terminate the contract within further eight days (Article 25 paragraph (1) of the Housing Act).

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

Set-off and retention is a general right under Hungarian civil law which applies in general in the absence of their exclusion in the contract. In case of a dispute, however, it is difficult to prove that the withheld/set-off amount corresponded to the value of the breach of the other party.
In the field of tenancy contracts, however, the Hungarian court practice does not recognise the general offset and retention right of the tenant. The courts argue that in the lack of a specific enabling set-off provision of the Housing Act, the general rues of the Civil Code are not applicable. Although this court interpretation is arguable, at present, in Hungarian law, the tenant can only be sure to be entitled to set-off against the rent if specifically provided for by the parties in the tenancy agreement.

For example, Hungarian courts did not recognize the possibility to set-off the costs of a repair by the tenant against the rent, even if such cost, by virtue of law, should be borne by the landlord (see case BDT 2003.817). This decision explicitly states that in the absence of a payment by the tenant due to a claimed set-off right, the landlord may lawfully terminate the agreement for the breach of the obligation to pay the rent. Pursuant to another court decision, the tenant may not retain an adequate portion of the rent due to a valid warranty claim against the landlord either (see case LB-H-PJ-2009-569).

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

The Housing Act does not address this issue. In the absence of a specific provision in this respect, the general rules of the Civil Code are applicable (Articles 6:193 to 6:201 of the Civil Code). Accordingly, with the exception of personal claims, any claim from an existing legal relationship may be assigned to a third party. The parties may exclude such possibility in their agreement, this is however not valid against third parties. The obligor (in this case, the tenant) must be informed of the assignment by writing or by means of the document of assignment. Furthermore, the tenant needs to receive an order of performance from the assignor (in this case, the landlord) specifying the

assignee and his/her address or bank account number. Following the receipt of such order, the tenant may perform its payment obligation to the assignee.

The assignment is a contract between the landlord and the assignee, whereby the assignee becomes the legal successor of the landlord and acquires the rights arising from the lien and the surety securing the obligation, as well as the claim for interests.

- *- 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 paid for his performances, e.g. improvements to the house, e.g. § 648 BGB)*

The Housing Act does not specify that the rent needs to be a pecuniary payment. Therefore, the duty of rent payment may be replaced by a performance in kind upon the agreement of the parties.
Furthermore, in the context of the renovation and maintenance obligations of the landlord, the Housing Act itself provides that in case the tenant takes over an obligation of the landlord, the parties need to agree upon the corresponding amount of reduction of the rent (Article 10 paragraph (3) of the Housing Act).
However, as described above concerning offset and retention rights, the Hungarian court practice does not recognise a statutory offset and retention right of the tenant against the rent. Therefore, even if the tenant incurs costs in relation to the fulfilment of obligations normally belonging to the landlord's sphere, in order to replace rent payment by a performance in kind, in all cases, the specific agreement of the parties is needed.
The Housing Act also provides that in the case of municipal dwellings rented based on social situation and in the case of state dwellings, the maintenance, renovation and replacement, exchange of the panelling, doors, windows and the equipment of the dwelling is carried out by the tenant. However, this needs to be taken into account at the time of the conclusion of the contract, when determining the amount of rent to be paid (Article 13 paragraphs (1)-(2) of the Housing Act).

- *- 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?*

Yes, in line with the provisions of the Civil Code concerning lease agreements, the landlord has a statutory lien over the property of the tenant in the dwelling. The lien of the landlord secures the payment of the rent and the costs. As long as such lien exists, the landlord may prohibit the transportation of such property from the dwelling. In the event that the tenant disputes the existence or the scope of the lien or claims that the landlord prevented transportation of assets further to the assets providing full coverage of his/her claim, the landlord must seek judicial remedies to enforce his/her lien within eight days. In the absence of judicial action, the lien terminates by virtue of law. Should the tenant transport the property subject to the lien without the consent of the landlord, and fail to provide other appropriate security, the landlord my claim the re-transportation

of the assets on the tenant's costs. The re-transported property becomes subject to the lien again (Article 6:337 of the Civil Code).

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

- *Private rental:*

The Housing Act does not contain any specific rule on rent increase. Regarding private dwellings, where the amount of rent is freely determined by the parties, the rent increases are also subject to the parties' agreement.

With regard to the agreement on the rent increase, the same possibilities apply as mentioned above with respect to the determination of the rent. If the parties cannot agree in the amount of rent increase, they may request the court to determine the rent increase (Article 6 paragraph (2) of the Housing Act). In line with the Court practice, however, this possibility may only be used if the general conditions of contract amendment by the Court provided in the Civil Code are met (see case EBH 2001. 535.). With the new Civil Code, this possibility of the courts was more narrowly framed. In line with the provisions entering into force on 15 March 2014, the Court may amend a contract upon the request of one of the parties if the following conditions are met:

- the parties have a lasting legal relationship;
- the circumstances have changed since the conclusion of the contract;
- the contract without being amended affects the essential and rightful interest of one of the parties;
- the possibility of change in the circumstances was not foreseeable at the time of conclusion of the contract;
- the change in the circumstances was not caused by the party;
- the change in the circumstances does not belong to the category of normal business risk. (Article 6:192 paragraph (1) of the Civil Code)

In line with the above provisions, in order to apply the possibility to decide on the rent increase, the Hungarian courts require in particular that the lack of amendment affects the essential interests of one of the parties. The Hungarian courts also made clear that this provision cannot be used to obtain a minor rent increase, as in this case, no harm of essential interests may be claimed (see LB-H-PJ-2010-500).

By contrast if all the above conditions are met, the Court may amend the contract from a date set by the Court, at earliest from the date of enforcing the claim to amend the contract before the Court, in a way to ensure that the essential legal interests of the parties is not harmed as a result of the change in the circumstances (Article 6:192 paragraph (2) of the Civil Code).

In the field of tenancy law, the court practice has traditionally been to determine the new rent retroactively, with effect from the date of initiating legal action. The rationale behind this practice has been to protect the interests of the landlords taking into account the excessive duration of tenancy disputes. This practice is however contrary to the provision of the Housing Act foreseeing that until the final decision of the Court, the previous rent, or in lack thereof, the rent communicated by the landlord needs to be paid

(Article 6 paragraph (2) of the Housing Act). Certain authors argue that in view of the current reasonable length of the procedures, the practice of the courts should be adapted to the text of the Housing Act.[177]

In addition to the possibility for the courts to intervene in case of change in the circumstances as described above, in accordance with civil law and practice, the court may also be seized if the increase results in a striking disproportion between the value of the performance and of the compensation (see above in the section concerning the determination of the rent).

These possibilities to seize the civil courts are however not suitable to guarantee smooth adaptation to the parties' interests. The lack of any provision or established practice regarding the amount of rent and of rent increase results in a very flexible market, but depending on the market situation, the incomes or the costs related the tenancy are very unpredictable. This is more critical for the tenants, whose transaction cost (the cost of moving apartment) may be substantial, and it in itself would decrease the demand for private rental. Furthermore, the lack of predictability also affects the interests of the owners. No solutions are provided as regards the landlord's interests to provide for gradual increases corresponding to the inflation rate either. In the case of a unilateral increase and a disagreement, it is likely for the tenant to terminate the tenancy agreement.

In Hungary, the lack of regulation and the unpredictability of the future rent may thus affect the stability of tenancy relationships. We would not argue for rent regulation (like in the "first generation of rent regulation"), but some intervention, for instance regarding the indexation of the rent, may contribute to the predictability of the future rent and favour longer-term tenancy relationships.

- *Pubic rental:*

In the case of dwellings where the amount of rent is fixed by law, i.e. for State and municipality dwellings, the conditions of rent increase are also defined in the relevant decrees.

In line with the Civil Code, if a legal act defines one of the elements of the content of the contract in an obligatory manner, the contract is concluded with the content foreseen by the legal act (Article 6.60 paragraph (1) of the Civil Code).

In the event the municipality or state organ would decide to change the rent in a way to amend the content of the contracts already concluded, the tenant could ask the court to amend the contract or desist the contract in case the rent increase affects his/her essential legal interests (Article 6:60 paragraph (2) of the Civil Code).

- *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*

The usual utilities that can be considered "basic" are the supply of gas, electricity, water and sewage services, district hearing and waste management (the latter two may qualify

[177] Commentary to the Housing Act, Complex.

as communal services); and the maintenance of the building (condominium fee). Additional services may include phone (mobile phone), television, radio and internet services, postal services, etc.
In Hungary, there is no unified legal framework regulating the system of public services. Therefore, there is no general definition or categorization of these services either. The utility service relationships are to be found in the different laws regulating the provision of utilities[178] and in the rules of procedures of the service providers as well as in the utility service provision agreements. Furthermore, the provisions of the Civil Code, the Act 133 of 2003 on condominium (hereinafter "the Condominium Act") and the Act 155 of 1997 on consumer protection (hereinafter "the Consumer Protection Act").

The utility service providers use non-negotiable service agreements, the provisions of which may be challenged due to their unlawfulness and/or unfairness in front of the Consumer Protection Authority and courts.
As a result of the fragmented regulation, there are also differences among the different utilities as regards the position of consumer. In the case of gas and electricity, the consumer is the direct user of the services. In the case of drinking water supply, district heating and waste management, the consumer is the community of inhabitants of the dwelling, and the owner of the flat is the "separate user" or "fee payer".
Responsibility for utility arrears (namely delays in the payment of electricity, gas, heating, water service fees) is a crucial element of the tenancy relationship. However, the issue of the payment of utilities in the case of a tenancy relationship is not addressed in the Housing Act. With the exception of the District Heating Act, the utility acts do not explicitly address the possibility of the tenant to be party of the agreement with the service provider and the issue of responsibility for arrears either. In practice however, as it will be shown in the following section, the owner is held liable in most cases.

The main provisions of the basic utility laws may be summarized as follows:

- *Gas:*

The legal background for the supply of gas is Act. 40 of 2008 on Natural Gas Supply (hereinafter "the Gas Supply Act"). The gas supply of households qualifies as so called universal supply. Universal gas suppliers have an obligation to supply households and conclude the relevant supply agreements. The details of the conclusion, termination and breach of the gas supply agreement are regulated by the government and each universal supplier's code of conduct. The price of gas supplied to households is subject to state regulation and control; it is periodically determined by ministerial decrees.

- *Electricity:*

The supply of electricity is regulated by Act 86 of 2007 on Electricity (hereinafter "the Electricity Act"). Similarly to the regulation of gas, electricity supply of households qualifies as so-called universal supply. Universal suppliers have an obligation to supply households and conclude the relevant supply agreements. The details of the conclusion,

[178] These include Act No 86 of 2007 on Electricity; Act No. 40 of 2008 on the Supply of Gas; Act No. 209 of 2011 on the Provision of Water Utility Services; Act No. 185 on Waste Collection; act No.100 of 2003 on Electronic Telecommunication; Government Decree 38/1995 on the Provision of Water and Sewage Public Utilities; and Act No 18 of 2005 on District Heating.

termination and breach of the supply agreement are regulated by the government and each universal supplier's code of conduct. The price of electricity supplied to households (so-called universal supply) is subject to state regulation and control, and it is periodically determined by ministerial decrees. The principle used in the price determination is the cost based principle.
Based on social grounds or handicap, people may be entitled to pay in arrears or use a so-called prepaid meter. Handicapped persons, whose life or health is endangered by the disconnection of electricity, cannot be disconnected even in the event of non-payment or delayed payment.

Protected consumers

The "Electricity Act" and the "Gas Supply Act" defines the protected consumers of two categories: social vulnerable groups and the disabled groups. Household who are eligible special low income benefits programs (old age allowance, housing allowance, nursing fee, regular child protection allowance, etc.) belong to the socially vulnerable groups. These households are eligible for discounts in payments and may ask for the pre-paid meters. The service providers have limited rights to cut the services in the case of these two protected consumers. See Act 86/2007 on Electricity, and its implementing order (237/2007, para (30-37); and Act 150/2008 on Natural Gas Supply, and its implementing order 19/2009 (para (56-60)).

- *Water and Sewage:*

The supply of water is regulated in Act 209 of 2011 on Water Public Utility Supply (hereinafter "the Water Act"). The price of water supplied to households as well as the sewage fee is subject to state regulation and control; it is periodically determined by ministerial decrees. Pursuant to Article 55 of the Water Act, a dwelling must be connected to the water utility if the dwelling is regularly used.

- *District heating:*

The supply of district heating is regulated by Act 18 of 2005 on District Heating (hereinafter "the District Heating Act").
Pursuant to Article 52 of the District Heating Act, the detailed rules of the legal relationship among the district heating supplier, the user and the payer of the fee are set forth in the District Heating Utility Bylaws, which shall be approved by a government decree. In addition, municipalities may also define detailed rules in their decrees. Furthermore, each district heating provider may regulate the details of district heating provision in its code of conduct and must make such code of conduct available for users. The tenant may only be party to the district heating agreement upon a three-party agreement among the landlord, the tenant and the district heating provider. However, the District Heating Act specifically provides that in case of private dwellings, the owner of the dwelling is liable for the payment of the tenant in accordance with the rules of direct surety.
The fee for the connection to the district heating is subject to the regulation of the relevant municipality. However, the fee setting of the municipality is controlled by the Hungarian Energy and Public Utility Regulatory Authority. Any change in the district heating connection fee is subject to the pre-approval of the Office. The fee shall be based on the minimum cost principle and shall secure a profit necessary for the operation.

- *Waste:*

The rules of waste collection and management are to be found in Act 185/2012 on Waste Collection (hereinafter "the Waste Collection Act"). Ensuring the collection of residential waste is the task of the relevant municipality. Municipalities must regulate the contents of the waste collection agreements in accordance with the relevant ministerial decree. Each municipality must engage a waste collection company following a public procurement procedure.

Pursuant to Article 52 of the Waste Collection Act, any unpaid waste collection fees shall qualify as unpaid public duties and shall be collected as taxes. If the late payment exceeds 30 days, the waste collector shall issue a written payment demand to the user. If within 45 days from the due date no payment has been made, initiates the collection of the fees with the National Tax Authority.

- *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?*

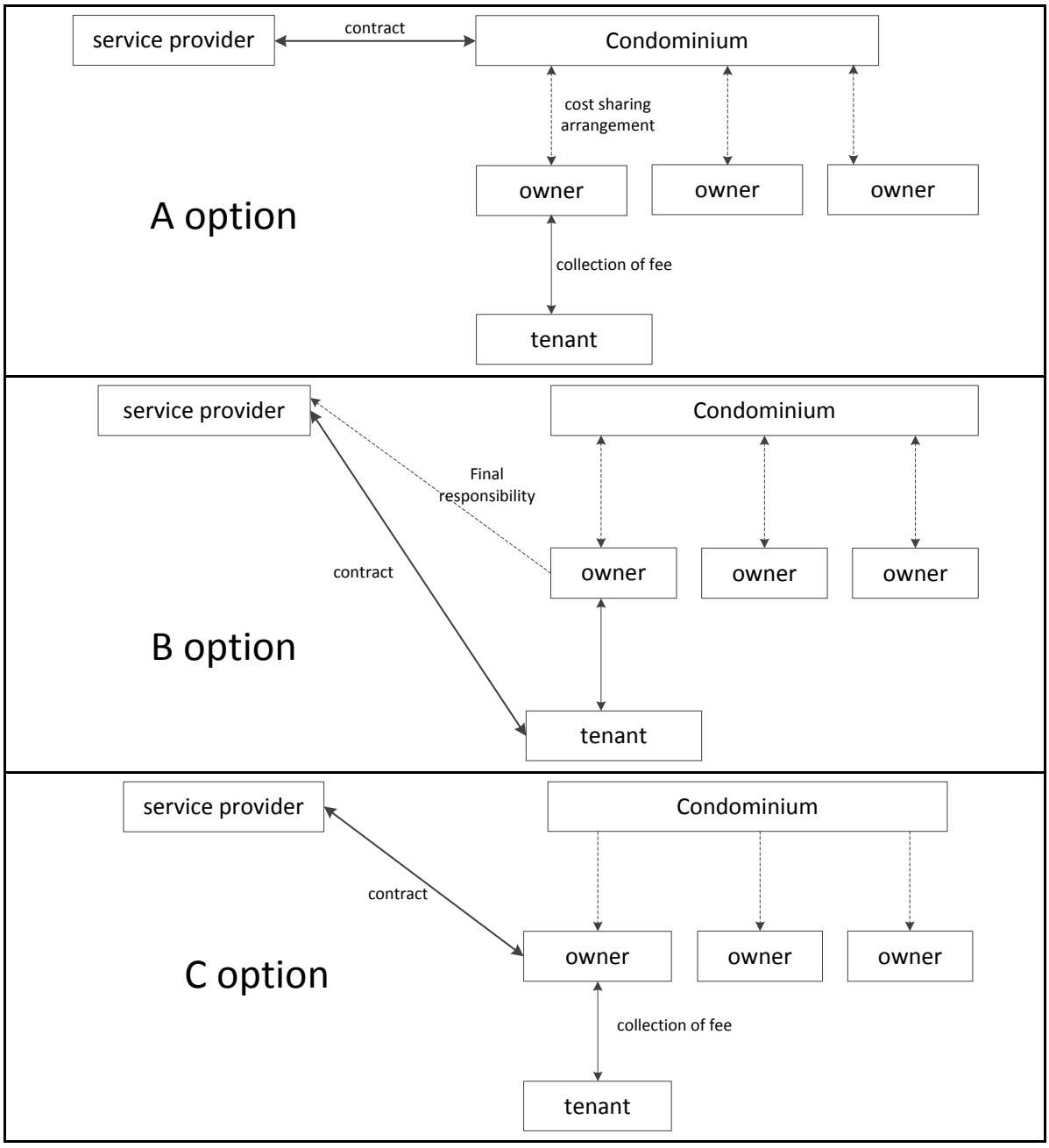
As mentioned above, among the different utility acts, only the District Heating Act addresses specifically the position of the tenant. The District Heating Act provides that the tenant may only be party to the district heating agreement upon a three-party agreement among the landlord, the tenant and the district heating provider. At the same time, the District Heating Act also specifies that in case of private dwellings, the owner of the dwelling is liable for the payment of the tenant in accordance with the rules of direct surety.

Despite the lack of clear provisions in this regard, in practice, the owner would also be held liable in the cases of the other utilities. The Waste Collection Act specifically refers to the owner of the dwelling as the person entering into contract with the service provider, which in practice would have a similar effect. In addition, although the Water Act does not provide for such rules, the practice of the service providers is the same in this field. Similarly, the Gas Supply Act and the Electricity Act are silent on this issue, but the practice of service providers would be to enforce payment from the owner. This may even be done without explicit contractual provision, for instance if the service provider refuses to make a change in the position of the user (i.e. to recognize the owner as the user instead of the tenant) as long as the arrears remain unpaid.

In the case of the tenants in the residential stock managed by National Asset Management Agency (households whose debt was bought by the state), the National Asset Management Act explicitly excludes the liability of the state and the municipalities in the case of utility arrears. This modification was made because the increasing arrears problem of the new tenants of the mortgage rescue program. (*Source: interview LW4*).

In view of the lack of appropriate regulation, in most cases, the agreement of the parties is decisive regarding the management of utility costs and risks. In line with the case-law of the court, in the absence of an agreement of the parties, the quasi tenant of a dwelling cannot be obliged to pay the common costs of the condominium. For the lack of payment of such costs, no termination may be initiated and no eviction may be requested (see case BH2008. 64.).

Figure 3: Utility payment options



The basic dilemma for the parties is who will have a contractual relationship with the service provider (see Figure 3). The party to the contract could be the condominium (in case of a multi-apartment building); the landlord; or directly the tenant. In the first case, the condominium bears the responsibility of payment towards the provider; the owner collects the service fee from the tenant, and pays its costs to the condominium. In the second case, the landlord and tenant agree to establish direct contract between the tenant and the service provider, which could ease the responsibility on the landlord-owner. Very often, however, the landlord will end up having secondary liability for the payment of the utility costs. And finally (in most cases in our experience) the landlord will be in direct contractual contact with the service provider, and will also have to arrange

collection of fees with the tenant. In either of these cases, as mentioned above, the final liability will most likely fall on the owner of the apartment.
Taking into account that as a rule, the owner is held liable in the case of utility arrears, changing the contracts with the service provider may entail more risks than advantages for the landlord. This way, the landlord loses control over the regularity of the payment by the tenant, while maintaining secondary liability in the case of non-payment.

- *How may the increase of prices for utilities be carried out lawfully?*

Because the prices of household utilities are subject to government control, the prices are reviewed annually and publicized in ministerial decrees. (Until 2012, the water fee, district heating charge and the waste collection fee were decided by the municipalities following the specific procedure defined in the Law on Prices. However, the government decided to centralize the setting of utility prices.)
Article 65 of the Water Act defines the procedure for the determination of the fee for water and sewage supply. Each year, the utility suppliers must provide data to the Hungarian Energy and Public Utility Regulatory Authority, which makes a recommendation to the minister in charge for the determination of the fees. The recommendation of the Office must reach the Ministry by 15 October each year and the new fees shall apply from 1 January of the subsequent year.

The fee payable for the collection of waste is annually determined by the responsible minister, taking into account the recommendation of the Hungarian Energy and Public Utility Regulatory Authority. The recommendation of the Authority must be sent to the minister by September 30 each year.

Similar procedures are to be found in the Gas Supply Act (Article 107 paragraph (3)), the Electricity Act (Article 140 paragraph (2)) and the District Heating Act (Article 57/A paragraph (7). In all instances, the responsible minister annually determines the price of these utilities based on the recommendation from the Hungarian Energy and Public Utility Regulatory Authority. The market players must provide the Hungarian Energy and Public Utility Regulatory Authority with data necessary for the setting of the price.

- *Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?*

No, the supply of utilities is strictly regulated and the right of suspension or disruption of supply is not linked to the payment of rent. Therefore, the non-payment of rent may not lead to the termination of utility supply agreement. By way of contrast, the non-payment of the utility fees may qualify as a serious breach of the tenancy contract, which may give raise to the extraordinary termination of the tenancy agreement.

- *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?*

The Housing Act does not contain any specific rules regarding deposit in relation to tenancy contracts. However, this has been standing practice in the case of private dwellings, based on the general provisions of the previous Civil Code regarding security deposit ("*óvadék*"), a security allowing for direct compensation of the right holder (in this case, the landlord) in case the obligor (the tenant) fails to fulfil a contractual obligation.
In line with this practice, the new Civil Code contains a specific provision on deposit, as a security of the rent. According to this provision, if based on the agreement of the parties, the tenant needs to pay a specific amount as a security of his or her obligation under the tenancy contract, and if this amount exceeds three times the amount of the monthly rent, the court may moderate the excessive amount of the security upon request of the tenant (Article 6:343 of the Civil Code).
The function of the deposit remains the same: to provide a security in case the tenant cannot or is unwilling to fulfil the contractual obligations. The landlord may dispose of the deposit in the case of breach of contract by the tenant (in most cases, the non-payment of the rent or of the utility costs), and may directly deduct the amount due.

- *How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant?)*

In accordance with the rules of the Civil Code, monetary deposit may be granted by handing over the amount to the landlord, transferring to the account of the landlord or to a new account. Furthermore, a pecuniary claim on the account of the obligor may also be the object of deposit, by means of an agreement between the obligor, the right holder and the bank. In this latter case, the bank may only accept instructions regarding the use of the deposit from the obligor with the consent of the right holder, whereas the right holder is entitled to dispose of the deposit without the obligor's consent.
The form of granting the deposit is subject to the agreement of the parties. In the case of tenancy agreement, the monetary deposit is used in practice. In lack of a specific legal provision regarding the management of the deposit, the parties are free to agree or in lack of specific agreement, the landlord is free to decide on the management of the deposit, subject to the rules on the safeguard and/or replacement of the deposit. Hungarian law is also silent on the beneficiary of the interests; the agreement of the parties in this regard shall be applied.

- *What are the allowed uses of the deposit by the landlord?*

In the period between the granting of the deposit and the opening of the set-off right of the landlord, as a main rule, the landlord is bound to safeguard the deposit in accordance with the rules of deposit escrow ("*letét*"). However, in line with the rules of atypical deposit escrow ("*rendhagyó letét*"), the parties may entitle the depositary (in this case, the landlord) to use the object of the deposit and to dispose of it. In this case, the depositary acquires the ownership of the object of the deposit and is bound to give back the same type of object, of the same quality and in the same amount to the depositor (Article 6:367 of the Civil Code).
This means that whether the landlord is entitled to use the deposit before the opening of the offset right depends on the agreement of the parties. If they do not explicitly provide for this right, the landlord will not be entitled to dispose of the amount of deposit.

In any case, in the absence of the opening of the set off right, the deposit must be given back to the tenant upon the termination of the lease agreement. This means that if the landlord disposed of the amount of deposit, he needs to substitute for the lost deposit.
In the context of the exercise of the set off right, as mentioned above, the landlord is as a rule entitled to use the deposit for offsetting the non-fulfilled obligation of the tenant. These obligations typically include the payment of the rent or of utilities, but may equally cover other costs incurred as a result of the breach of the obligations of the tenant, such as for example to repair damages.
In addition to the setting off of specific obligations, the parties may agree on further uses of the deposit. Previously, the Civil Code did not allow to the parties to provide for uses of the deposit other than the set off right and declared any such agreement null and void. However, this restriction was repealed. Therefore, the parties may for example agree that in case the contract is terminated upon the initiative of the tenant before the agreed date, the deposit remains with the landlord as a form of indemnity.

- *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)*

According to the Housing Act, the landlord needs to ensure:

- the maintenance of the building;
- the continuous running of the central devices of the building; and
- the fixing of defects in the premises in common use and in their equipment (Article 10 paragraph (1) of the Housing Act).

The distribution of the other obligations concerning the building, the premises and areas in common use is subject to the agreement of the parties, or in the case of municipal decrees, to the provisions of the relevant decree (Article 10 paragraph (2) of the Housing Act).
According to the explanations to the Housing Act, the obligations of the landlord mentioned above may not be transferred on the tenant. Accordingly, the parties could only agree for the tenant to carry out those works concerning the building which involve less effort and costs (such as for instance maintaining the garden and the watering system, fixing the garden furniture), cleaning and lighting of the building and of common premises, household waste disposal, etc.)
By way of contrast, according to the commentary to the Housing Act, nothing prevents the parties to agree on the tenant to assume any of the above obligations of the landlord. This possibility was also recognised by the courts with regard to the lease of premises.
According to the Housing Act, if the tenant assumes obligations from the landlord, the parties also need to agree on the amount of the corresponding rent reduction (Article 10 paragraph (3) of the Housing Act).
Regarding the costs of the maintenance, refurbishment and replacement of the floors and tiles, doors, windows and the equipment of the dwelling, the agreement of the parties, or in the case of municipal dwellings, the relevant decree applies. In the absence of such agreement or provision, the costs concerning maintenance and refurbishment are born by the tenant, the costs of replacement and exchange by the landlord (Article 13 paragraph (1) of the Housing Act).

In the case of municipal dwellings rented on the basis of social situation, these works need to be carried out by the tenant. However, at the time of the conclusion of the contract, the amount of the rent needs to be fixed in accordance. This is also the general rule for state owned dwellings. However, in this latter case, the parties may agree otherwise (Article 13 paragraph (2) of the Housing Act).

- *Connections of the contract to third parties*
    - *Rights of tenants in relation to a mortgagee (before and after foreclosure)*

The Hungarian legislation does not contain rules regarding the relationship of tenants to the mortgagee.
As mentioned above, in case a tenant is living in the dwelling based on a valid tenancy contract concluded before the start of the execution procedure, the dwelling needs to be auctioned in an inhabited state, except if the debtor and the mortgagee in the case of a lien agreed earlier in the sale of the dwelling fit for occupation and the tenancy contract was concluded despite this agreement. (In this sense, the mortgagee *is* subject to the tenancy agreement.)

6.5 Implementation of tenancy contracts

Implementation of tenancy contracts

	Main characteristic(s) of tenancy type 1/ private rental	Main characteristic(s) of tenancy type 2/ public rental
Breaches prior to handover	- the tenant may seek the performance or may rescind the agreement and shall be compensated for its damages	- unless the relevant decrees do not contain different rules, the rules for private rental apply
Breaches after handover	the tenant may seek the following remedies: • reparation of the defect • rent reduction • correction of the defect on the costs of the landlord • termination In addition, the tenant may ask for the compensation of damages	the tenant may seek the following remedies: • reparation of the defect or exchange of the dwelling • rent reduction • correction of the defect on the costs of the landlord • termination In addition, the tenant may ask for the compensation of damages
Rent increases	- Subject to the agreement of the parties: provided for in the initial tenancy contract or by an amendment of the contract	- Provided for in the relevant decree (e.g. in the case of the National Asset Management Company, the implementing

	- If the parties cannot agree and the general conditions for court intervention in civil law relationships are met, the court may determine the amount of rent increase	decree to the National Asset Management Act provides for a yearly indexation of the rent), or adopted by means of an amendment to the
Changes to the dwelling	subject to the agreement of the parties	unless the relevant decrees do not contain different rules, the rules for private rental apply
Use of the dwelling	- Subject to the agreement of the parties and the rules of the condominium (if applicable)	- subject to the provisions of the relevant decree and the agreement of the parties

- *Disruptions of performance (in particular "breach of contract") prior to the handover of the dwelling*

The Housing Act does not address the possible disruptions of performance of the parties prior to the handover of the dwelling. Therefore, the relevant disputes may be settled based on the general rules of the Civil Code concerning disruptions of performance.
In this regard, it is important to note that in Hungary, the handover of the dwelling is not a precondition for the conclusion of the tenancy contract. With the written agreement of the parties in the essential terms, the contract is concluded and the tenancy relationship is established.

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- *In the sphere of the landlord:*
- *- Delayed completion of dwelling*

As mentioned above, the Housing Act does not contain any provisions regarding delayed handover by the landlord. The Housing Act merely foresees that the landlord is bound to hand over the dwelling together with the equipment according to the comfort category of the dwelling under the conditions and on the date defined in the contract, in a state enabling proper use (Article 7 paragraph (1) of the Housing Act).Therefore, the consequences of the delayed completion of the dwelling need to be assessed in line with the general rules of the Civil Code regarding delayed performance. In line with these provisions, the obligor is in delay if he/she does not perform the service at its due date (Article 6:153 of the Civil Code). In this case, the right holder may request performance, or if in reason of the delay, his/her interest to the performance of the contract ceased, may rescind the contract. There is no need to prove the ceasing of interest for the right holder to rescind the contract if the contract was set to be performed according to the agreement of the parties or to the recognisable function of the contract at the determined performance date or if the right holder set an appropriate additional deadline for performance which elapsed without result. Furthermore, the Civil Code provides that the obligor is bound to compensate the right holder for the damages incurred as a result of the delay, except if he/she can justify the delay (Article 6:145 paragraphs (1)-(3) of the Civil Code).

In line with the rules concerning liability for damages caused by breach of contract, the party causing damages to the other party by breaching the contract is bound to compensate for the damages. The party is exempted from the liability if he/she can prove that the breach of contract was caused by a circumstance outside his/her control, not foreseeable at the time of concluding the contract and it could not be expected to avoid the circumstance or to avert the damage (Article 6:142 of the Civil Code).
This means that in the case of delayed completion of the dwelling, the tenant may demand handover, or if handover no longer serves his/her interests, he may rescind the tenancy contract. Given that tenancy agreements specify the starting date of the tenancy relationship, the tenant would foreseeably not need to show the ceasing of an interest in the performance. In addition, the tenant could also the landlord to compensate for the damages incurred as a result of the delay, except if the conditions regarding exemption from liability mentioned above are met.

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

According to the Civil Code, if one of the parties refuses the performance of the contract without valid reason, the other party may choose between the legal consequences of delay (see above) or the impossibility of the service (Article 6:138 of the Civil Code).
In case performance of the contract becomes impossible due to the actions of one of the parties, the other party is liberated from its obligation to perform the contract and may request the compensation of the damages he/she has suffered as a result of the breach of the contract (Article 6:180 paragraph (2) of the Civil Code).
This means in practice that the tenant would be able to demand performance or consider the tenancy contract terminated and in both cases ask for compensation of his/her damages.
In addition, in the case of double lease, if in order to acquire unlawful advantage, the landlord misled the tenant and thereby caused damages, the tenant may initiate criminal proceedings for fraud (Article 373 paragraph (1) of Act 100 of 2012 on the Criminal Code, hereinafter "the Criminal Code").- Refusal of clearing and handover by previous tenant
In this case, in the relationship between the new tenant and the landlord, the consequences of delayed performance would apply. Therefore, the tenant could demand handover or rescind the contract if handover at a later stage no longer serves his/her interests. If the problems were foreseeable or the landlord did not do everything that can be expected to liberate the dwelling, the new tenant could also claim damages from the landlord. At the same time, the landlord could claim damages from the previous tenant in line with the general rules of contractual liability.

- *Public law impediments to handover to the tenant*

In certain cases, it is conceivable that public intervention makes the handover to the tenant impossible. This could be the case if the dwelling is declared unsuitable for habitation (e.g. it is in a life threatening state of repair), or if the dwelling is expropriated prior to the handover.

In case public law impediments make the handover impossible, the rules of the Civil Code concerning impossibility of performance apply. Accordingly, the contract ceases. The landlord needs to inform the tenant about the impediment without delay and is liable for any damages incurred as a result of the lack of notice (Article 6:179 paragraphs (1)-(2) of the Civil Code).
The Civil Code provides that "if none of the parties is liable for the impossibility to perform the contract, the value of the service provided before the date of termination of the contract shall be paid. If the consideration for the pecuniary service already paid has not been performed, the pecuniary service shall be reimbursed" (Article 6:180 paragraph (1) of the Civil Code). It follows that in case the contract ceases because of public law impediments, the payment already made by the tenant (e.g. in the form of deposit or advance rent payment) shall be reimbursed.

- *In the sphere of the tenant:*
- *refusal of the new tenant to take possession of the house*

Under Hungarian law, the taking into possession of the dwelling is not necessary for the commencement and the validity of the lease agreement. Therefore, in the event of a valid agreement, the tenant must pay the rent even if he/she is in delay in moving in or if the tenant failed to move in the dwelling.

- *Disruptions of performance (in particular "breach of contract") after the handover of the dwelling*

At present, the Housing Act does not contain any provision regarding the liability of the parties to the tenancy agreement. Previously, it contained a general article concerning the warranty of the landlord. This article was however repealed with effect from 15 March 2014, taking into account the relevant provision in the new Civil Code which regulates the warranty of the lessor as follows:

> "6.332. § *[Warranty of the lessor]*
> (1) The lessor warrants that the leased object is suitable for proper use ("*rendeltetésszerű használatra alkalmas*") during the entire duration of the lease and corresponds to the provisions of the contract. To this warranty, the rules regarding warranty for defective performance have to be applied with the difference that instead of rescission, the lessee is entitled to terminate the contract, and he/she is not entitled to ask for replacement.
> (2) The lessor warrants that a third person does not have a right concerning the leased object which would limit or prevent use by the lessee. To this obligation, the rules concerning warranty of title ("*jogszavatosság*") apply with the difference that instead of rescission, the lessee is entitled to terminate the contract.
> (3) If the leased object is a dwelling or other premises serving the purpose of human residence and it is in a state that its use is dangerous for health, the tenant may terminate the contract even if he/she was aware or had to be aware at the time of concluding the contract or taking possession of the object. The tenant cannot give up this right validly."

It follows that the landlord is bound to ensure, in line with the rules on warranty that the state of the dwelling correspond to the legal obligations and to the terms of the contract,

and is suitable for proper use. On the other hand, the tenant is liable for any damages caused by breaching his/her contractual obligations in line with the general provisions of the Civil Code regarding contractual liability.
The relevant provisions of the Civil Code are dispositive. This means that the parties may deviate from these rules and may also exclude the warranty of the landlord in their agreement.

- *Defects of the dwelling*
- *Notion of defects: is there a general definition?*

There is no general definition of defects in Hungarian law. A mentioned above, the landlord needs to warrant that the dwelling correspond to the legal obligations and to the terms of the contract, and is suitable for proper use.
In addition to the general provisions of the Civil Code mentioned above, the Housing Act provides that the landlord is bound to hand over the dwelling together with the equipment according to the comfort category of the dwelling under the conditions and on the date defined in the contract, in a state enabling proper use (Article 7 paragraph (1) of the Housing Act). Furthermore it explains what is understood under "dwelling suitable for proper use" ("*rendeltetésszerű állapotra alkalmas lakás*"): if the parts of the central devices of the building located in the dwelling and the equipment of the dwelling are functioning (Article 7 paragraph (2) of the Housing Act).
In lack of a definition of the notion of defect, it necessitates a case by case analysis to decide whether the problem in question is contrary to the legal or contractual provisions, or whether it affects the proper use of the dwelling.

- *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?*

There is no set practice in Hungary regarding these cases. These issues would be assessed on an individual basis by the competent courts.
If the level of noise would affect the proper use of the dwelling, in particular if it goes beyond the limits of acceptable noise defined in the joint decree 27/2008 (3 Dec.) of the Minister for Environmental Protection and the Minister for Health on the determination of the limits of environmental noise and vibration load (hereinafter "Noise Load decree"), it would be considered as a defect. The Noise Load decree contains specific limits depending on the time of the day and the type of dwelling (in family house area, during the day 50dB, during the night 40 dB, in a city townhouse or mixed area 55 dB during the day and 45 dB during the night). Moreover, the Noise Load decree determines specific limits for construction works, depending on the length of the construction, the type of dwelling and the time of the day (in family house area between 40 and 65 dB, in a city townhouse or mixed area between 45 and 70 dB).
In the case of damages, the situation would need to be assessed depending on the circumstances and primarily, the person responsible for the damages. In case the damages are caused in the sphere of interest of the tenant, the landlord may seek correction or compensation from the tenant. In this respect, the Housing Act provides

that if damages occur in the dwelling, the equipment of the dwelling, the building, the central equipment of the building as a result of the behaviour of the tenant or the persons living with the tenant, the landlord may ask the tenant to correct the defect or to compensate for the damage (Article 13 paragraph (3) of the Housing Act). In case the landlord or a third party other than the persons living with the tenant is responsible for the damage, which affects the proper use of the dwelling or the resulting situation is contrary to the legal provisions or the terms of the contract, the warranty of the landlord applies. In case of damages caused by a third party, the landlord may in turn seek compensation from this third party in line with the general rules of extra contractual liability in the Civil Code.
In the case of the occupation of the rented dwelling of third parties such as squatters, the tenant would be entitled to demand protection of possession in a non-litigious procedure.

- *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*

As mentioned above, the landlord is liable in line with the general rules of warranty of the Civil Code. These rules provide for the following:

"Article 6:159 Warranty rights" (…)

(2) Based on his/her warranty claim, the right holder may ask for, according to his/her choice

a) request reparation or exchange, unless the performance of such warranty claim is impossible or, taking into consideration the performance of another warranty claim by the obligor, would cause disproportionate additional costs for the obligor, with special regard to the value of the service without the deficiency, the degree of the breach of contract and the inconveniency caused to the right holder with the breach of warranty.
b) may claim an adequate lowering of the consideration, may correct the defect at the cost of the obligor him/herself or by a third person, or may rescind the agreement, if the obligor did not undertake the repair or the exchange, cannot fulfil the obligation in line with the provisions of paragraph (4), or if the interest of the right holder to ask for repair or exchange has ceased.

(3) The right holder may not rescind the contract because of an unimportant defect.

(4) The repair or the exchange – taking into account the characteristics of the object and its function reasonably expected by the right holder – need to be carried out within appropriate deadline, with consideration to the interests of the right holder."

Taking also into account the specific provisions of the Civil Code with regard to the warranty in the case of lease agreements, this means in practice that the tenant may ask for repair, request an appropriate lowering of the rent payment, correct the defect on the cost of the landlord or terminate the tenancy relationship.
As a general rule, the warranty does not apply if the right holder knew or had to know of the defect at the time of concluding the contract (Article 6:157 paragraph (1), second sentence of the Civil Code). By way of exception, however, in the case of tenancy

agreements, the Civil Code provides that if the dwelling is in a state dangerous for health, the tenant preserves the right of termination irrespective of his/her knowledge at the time of conclusion of the contract (Article 6:332 paragraph (3) of the Civil Code).
As concerns the correction of defects in general, it is worthwhile to note that the Housing Act lists "the fitting of defects in the premises in common use and in their equipment" among the obligations of the landlord (Article 10 paragraph (1) of the Housing Act). The new Civil Code provides that the fitting of defects is part of the maintenance obligation of the landlord, which needs to be carried out:

- in the case of life threatening defects, defects endangering the condition of the building, and the defects practically impeding the proper use of the dwelling or of the neighbouring dwelling without delay,
- in the case of other defects at the time of the maintenance or renewal of the building.

With regard to the correction of the defect by the tenant, the Housing Act provides that the tenant may carry out the works necessary for the fitting of the warranty defects instead of the landlord and on the landlord's expenses, if the landlord does not ensure the fitting of the defect within the appropriate deadline specified by the tenant in the written notice to the landlord (Article 9 paragraph (2) of the Housing Act).
Therefore, as underlined by the court case law, the tenant first needs to request the landlord to repair the defects. In case this is unsuccessful, the tenant may correct the defects on his place and on his expenses. If he does not proceed this way, he may not shift the consequences of his action on the landlord, neither in the form of rent reduction, nor in the form of compensation of damage caused by deficient fulfilment.[179]
As referred to above, the parties may agree otherwise and provide that the correction of the defects is the responsibility of the tenant. The Housing Act specifically provides that the landlord and the tenant may agree that the tenant carries out the necessary works to ensure that the dwelling is suitable for proper use, and provides the dwelling with the equipment corresponding to its comfort category. In this case, the agreement needs to provide for the reimbursement of the relevant costs and the conditions thereof (Article 9 paragraph (1) of the Housing Act).
However, in case in the tenancy contract, the tenant undertakes the obligation to repair the defects and he fails to do the repair, this may give the right to the landlord to terminate the tenancy contract (Article 24 paragraph (1) letter b) of the Housing Act). Otherwise, the tenant is entitled to a rent reduction, the amount of which must be agreed upon by the parties. In the absence of such agreement, the court shall decide on the applicable remedies.
In addition to the warranty for the defects of the dwelling, as mentioned above, the landlord also bears warranty of title, i.e. that a third person does not have a right concerning the leased object which would limit or prevent use by the lessee.
In line with the provisions of the Civil Code, the warranty of title extends to the obstacles to the acquisition of a right (in case the acquisition of right is prevented by the right of a third party) and to limits to the acquisition of a right (in case the exercise of the right is limited or the value of the right is lowered by the right of a third party). In the case of the obstacle to the acquisition, the right holder is obliged to call upon the obligor to avert the

[179] LB-H-PJ-2009-87, in: Commenary to the Housing Act, Complex.

obstacle or to provide appropriate security. After the expiry of the deadline without success, the right holder may rescind the contract and ask for compensation (Article 6:175 paragraphs (1)-(2) of the Civil Code).
In the case of warranty for limited acquisition, the right holder may ask for the elimination of the encumbrances within an appropriate deadline. In the case of the expiry of the deadline without success, the right holder may carry out the clearing ("*tehermentesítés"*) on the costs of the obligor. If the elimination of the encumbrances is impossible or would entail disproportionate costs, the right holder may rescind the contract and ask for compensation, or in exchange for taking over the encumbrance, may ask for the appropriate lowering of the compensation. The right holder is entitled to these rights even if the deadline determined for eliminating the encumbrances expired without result and the right holder does not wish to eliminate the encumbrances of the object. The right holder is not entitled to these rights if he/she knew or had to know at the time of the conclusion of the contract that he/she may not acquire an unlimited right, except if the obligor undertook explicit warranty for the limitedness of the right or claim (Article 6:176 paragraphs (1) to (5) of the Civil Code).

In the case of tenancy agreements, this means that:

- if the tenant cannot acquire the tenancy right (e.g. because the dwelling is already rented out), the tenant first needs to call upon the landlord to aver the obstacle or to provide appropriate security. After the expiry of the deadline without success, the tenant may terminate the contract and ask for compensation

- if the exercise of the tenancy right is limited because of the right of a third party, the tenant may ask the landlord to clear the property within an appropriate deadline. In the case of the expiry of the deadline without success, the tenant may carry out the clearing ("*tehermentesítés*") on the costs of the landlord. If the clearing is impossible or would entail disproportionate costs, the tenant may terminate the contract and ask for compensation, or in exchange for taking over the charges, may ask for the appropriate lowering of the compensation.

- *Entering the premises and related issues*
- *Under what conditions may the landlord enter the premises?*

In line with the Housing Act, the landlord controls the proper use of the dwelling and the performance of the obligations provided in the tenancy agreement at least once a year, or according to the terms of the contract, several times a year, without causing any unnecessary disturbance to the tenant. The tenant is obliged to ensure entry to the dwelling at an appropriate time and to tolerate the control. This provision is also applicable if the entering of the premises is necessary due to an extraordinary harmful event, or in case of danger, in order to ensure the correction of a defect in the dwelling (Article 12 paragraph (3) of the Housing Act).
In the case of municipal dwellings, the frequency of the above mentioned control within one year needs to be determined in the municipal decree (Article 12 paragraph (4) of the Housing Act).It follows that the landlord is both entitled and bound to control proper use once a year. However, in the case of private lease, the parties may agree in a more

frequent control in the tenancy contract. In the case of municipal lease, the periodicity of control is determined in the municipal decree.

- *Is the landlord allowed to keep a set of keys to the rented apartment?*

This matter is not regulated by the relevant laws. In practice, nothing prevents the landlord to keep a set of keys and keeping keys is the general practice of landlords. However, it follows from the right to privacy and from the rules concerning the protection of possession that during the term of tenancy, the landlord may not enter the rented apartment without the consent of the tenant.

- *Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?*

No. The tenant is entitled to the protection of its possession against everybody, even against the landlord. Therefore, the landlord cannot lock out the tenant and even in the case of a legally binding court decision, eviction may only be ordered by the courts and enforced by the judicial executor.

- *Rent regulation (in particular implementation of rent increases by the landlord)*
- *Ordinary rent increases to compensate inflation/ increase gains*

As described earlier, the Housing Act does not contain any rule on rent increase. Regarding private dwellings, where the amount of rent is determined by the parties, the rent increases are also subject to the parties' agreement. If the parties cannot agree and the relevant conditions described earlier are met, the parties may request the Court to determine the amount of rent increase. If the agreement contains provisions on automatic increase, such clauses are valid and enforceable. However, typically the private contracts are fixed short term, typically one or two years, the rent increase does not cause a problem, because a new contract need to be concluded for the continuation of the contract. Earlier in the 1990s, when the inflation was high the contract included automatic increase of the rent according to the Consumer Price Index published by the Central Statistical Office, but in the last decades it was not typical. (Interview 11, 21)

In the case of dwellings where the amount of rent is fixed by decree, i.e. for state and municipality dwellings, any change in the basic amount of rent necessitates an amendment of the relevant decree. Furthermore, the relevant decree may also contain an automatic mechanism for rent increase. In line with the provisions of the Civil Code, if a rent increase is adopted by law and it affects the essential and rightful interests of the tenant, he/he may turn to the court to request the moderation of the rent or may terminate the contract.[180] .

- *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?*

[180] Commentary to the Housing Act, Complex

There are no specific rules or procedures in these cases. In these events, the general rules described above apply. This means that in the case of private lease, a rent increase is only possible upon agreement of the parties or upon request, by decision of the Court, if all relevant conditions are met. In the case of state and municipal lease, any such rent increase necessitates the amendment of the relevant decree.

- *Rent increases in "housing with public task"*

In Hungary, a clear cut category of "housing with public task" does not exist. We define the category broadly, considering each tenure type that belong here based on one or more attributes, where public agency (municipality, government, state owned company) or agency with public mission is involved (like a Church, NGO etc.). Housing with social or cost-based rent is provided by the municipalities, in the framework of the lease of municipal dwellings based on social situation. There are no unified conditions regarding the rent and rent increase of these dwellings. The Housing Act only defines the criteria and principles for the determination of the amount of rent. Fixing the actual level of rent and the mechanism for rent increase is under the competence of the relevant municipality.
In the case of state owned dwellings leased by the National Asset Management Company, which may be considered as a specific form of social lease, the conditions for the rent increase are defined in the implementing decree to the National Asset Management Act defines the amount of rent for the different categories of dwellings under the Act (dwellings under mortgage, dwellings constructed to ensure the housing of persons having lost their dwelling due to foreign currency mortgage, dwellings in reserve), as well as the amount of rent increase. With regard to the latter, the implementing decree to the National Asset Management Act provides that the National Asset Management Company increases the rent on a yearly basis, in line with the general consumer price index of the previous year as published by the Central Statistical Office.

- *Procedure to be followed for rent increases*

There is no statutory procedure to be followed in private rentals. Rent increase depends on the agreement of the parties, or upon request, on the decision of the Court. As mentioned above, in state and municipal rentals, a change in the basic amount of rent necessitates an amendment of the relevant decree. At the same time, the decrees may also provide for an automatic mechanism a for rent increase (e.g. the implementing decree to the National Asset Management Act contains provisions for the indexation of the rent).

- *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])?*

In Hungary, there is no official orientation at the market rent. Municipalities are free to determine the amount of rent of the municipal dwellings rented on a market basis, provided that the resulting income of the municipality covers the costs of the landlord concerning the building, the central equipment of the building, the dwelling, the

equipment of the dwelling, and also includes an amount of return (Article 34 paragraphs (4)-(5) of the Housing Act).

In case the courts are asked to determine whether the rent indicated by the parties corresponds to the market rent, according a decision of the Supreme Court in 2010, the data of contracts concluded for similar dwellings is decisive (see case LB-H-GJ-2010-34).

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

In Hungarian law, there is no formalised possibility for the tenant to object to the rent increase. As mentioned earlier, in the case of private rental, if the initial contract does not provide for the rent increase, any change in the rent necessitates the agreement of the parties. Furthermore, if the parties cannot agree and the other relevant conditions mentioned earlier are met, they may request the court to determine the rent increase (Article 6 paragraph (2) of the Housing Act).

In the case of state and municipal dwellings, as referred to above, in line with the general provisions of the Civil Code, the tenant may turn to the court if the increase of the rent adopted by amendment of the relevant decree affects his/her interests. According to the Civil Code, "if a legal act amends the content of contracts concluded before its entry into force, and the amended content of the contract affects the essential legal interest of one of the parties, this party may request to the court the amendment of the contract or may rescind the contract" (Article 6:60 paragraph (2) of the Civil Code). It follows that in this case, the tenant may request the court to lower the rent or terminate the contract.

- *Alterations and improvements by the tenant*
- *Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?*

With the exception of defects requiring immediate intervention, the tenant is not entitled to make changes to the dwelling on its own initiative, without the agreement of the landlord.
The Housing Act provides that the landlord and the tenant may agree that the tenant transforms, modernises the dwelling. This agreement also needs to specify which party is bound to cover the costs of carrying out these works (Article 15 paragraph (1) of the Housing Act).

- *Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?*

The Housing Act defines the works which should normally be borne by the landlord. In case upon agreement of the parties, the tenant carries out these works, he/she needs to be compensated.
For example, ensuring that the dwelling is suitable for proper use is, as a matter of principle, the obligation of the landlord. However, the Housing Act specifically provides that the landlord and the tenant may agree that the tenant carries out the necessary

works to ensure that the dwelling is suitable for proper use, and provides the dwelling with the equipment corresponding to its comfort category. In this case, the agreement needs to provide for the reimbursement of the relevant costs and the conditions thereof (Article 9 paragraph (1) of the Housing Act).
Similarly, the maintenance of the building, ensuring the permanent functioning of the central equipment of the building, the repair of the defects in the condition of the premises for common use and in the equipment of these premises belongs to the obligations of the landlord. The bearing of the costs of maintenance, reparation, renovation and/or exchange of tiles, doors, windows and equipment in the dwelling is subject to the agreement of the parties. In the absence of such agreement, the maintenance and renovation obligation rests with the tenant, and the obligation to exchange or supplement rests with the landlord (Article 12 paragraph (1) of the Housing Act).
In the case of municipal dwellings rented based on social situation, the maintenance, reparation, renovation and/or exchange of tiles, doors, windows and equipment in the dwelling must be performed by the tenant, but this must be reflected in the determination of the amount of rent (Article 12 paragraph (2) of the Housing Act). As a general rule, the landlord needs to carry out the works necessary in the dwelling in reason of the renovation of the building or the defect of the cable system.
In line with the Housing Act, in case the tenant undertakes an obligation from the landlord, the parties also need to agree on the corresponding rent reduction. However, as mentioned earlier in the absence of a specific provision in the tenancy contract, pursuant to the court interpretation, such cost may not be set-off or withheld against the rent.
Furthermore, the Housing Act specifies that the tenant is entitled to the reimbursement of the costs if he/she carried out a work requiring immediate intervention, provided that it does not cause an inequitable burden on the landlord. In the case of defects not requiring immediate intervention, if the landlord does not carry out the necessary works – at the time of maintenance or renovation of the building – despite the request of the tenant, the tenant may ask the court to oblige the landlord to repair the defect, or may carry out the works instead and at the expense of the landlord.
As mentioned above, the tenant is also entitled to carry out the works necessary to repair the defects covered by the warranty of the landlord on the costs of the latter, if the landlord does not ensure the repair of the defect within the deadline set in the written request of the tenant (Article 9 paragraph (2) of the Housing Act).

- *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)?*

As mentioned above, with the exception of defects requiring immediate intervention, the tenant is not entitled to make changes to the dwelling on its own initiative, without the agreement of the landlord.
Government ordinance 12/2001 (I. 31) on housing subsidies provides for a specific support for accessibility, a non-repayable state subsidy to a person with serious physical disability in order to construct or buy an accessible apartment, or to cover the additional costs to ensure accessibility. In case of existing dwellings, this subsidy may be granted among others if the disabled person is the tenant of a municipal dwelling for an

undetermined period or the tenant's close relative living in the same household or the tenant's life partner. Also in this case, however, the written consent of the owner is needed, in the form of a private document with full probative effect *("teljes bizonyító erejű magánokirat"*, e.g. a document signed by two witnesses). The available sums are modest in comparison with the possible costs involved (approximately EUR 480 in the case of existing dwellings).

- *fixing antennas, including parabolic antennas*

In line with the above, the tenant may not install any equipment without the consent of the landlord, if it requires alterations to the dwelling or to the building.

- *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?*

Initially, the Housing Act foresaw an extensive obligation of the tenant to tolerate works concerning the dwelling. In line with the provisions of the Housing Act before 15 March 2014, the tenant is bound to tolerate the works concerning the maintenance, renovation, reconstruction, transformation, expansion and modernisation of the dwelling, as well as the works to be carried out by the landlord and by other tenant, if these works did not result in the destruction of the dwelling
The new Civil Code, however, and the corresponding amendment to the Housing Act, substantially changed this obligation to tolerate. Accordingly, as of 15 March 2014, the tenant is obliged to tolerate the works carried out by the landlord in order to preserve the condition of the dwelling.
The tenant is however not obliged to tolerate the works necessary for the modernisation of the dwelling, except if – taking into account the work to be carried out, the architectural consequences and the expected expenses of the tenant – these works do not considerably limit the use of the dwelling (Article 6:346 paragraphs (1)-(2) of the Civil Code).

- *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)?*

Both the Housing Act and the new Civil Code provide for the obligation of the landlord to inform the tenant in advance.
In line with the Housing Act, the landlord must perform the necessary works, to the extent possible, without the unnecessary disturbance of the proper use of the dwelling and of other dwellings. The interested tenants must be informed of the commencement of the works and their expected duration in advance (Article 16 paragraph (1) of the Housing Act).
Similarly, the Civil Code provides that before the commencement of the modernisation works of the dwelling, the landlord needs to inform the dwelling in due time about the envisaged works and about their expected duration. In this case, the Civil Code enables the tenant to terminate the contract until the last day of the month following the receipt of

the notice (Article 6:346 paragraph (3) of the Civil Code). Somewhat differently from the provisions of the Civil Code, instead of termination, the Housing Act provides for the suspension of the tenancy relationship if any work in connection with the maintenance, renovation, repair, reconstruction, extension and modernisation of the building may only be performed following the temporary liberation of the flat by the tenant. The suspension and its term shall be decided by the parties or in the event of a dispute by the court (Article 18 paragraph (1) of the Housing Act). In the case of such a suspension, the Housing Act provides, as a general manner that the landlord must ensure a substitute flat for the temporarily moved tenant in the same settlement, in Budapest in the area of the capital. The costs of the move as well as the storage of the movable of the tenant shall be borne by the landlord. The tenant must accept a substitute flat with fewer rooms or of lower comfort category if – taking into account the number of persons living together with the tenant – it complies with the requirements of a dwelling (Article 18 paragraphs (2)-(3) of the Housing Act).

- *Uses of the dwelling*
- *Keeping animals; producing smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside.*

The tenant and the persons living together with the tenant must use the dwelling in a proper manner and in line with the contract (Article 12 paragraph (2) of the Housing Act). The above mentioned cases would need to be examined individually on this basis. In the case of state and municipal dwellings, the content of the relevant decree would also need to be taken into account.
In general, keeping animals and using the dwelling for commercial purposes (including prostitution or medical clinic) would only be possible upon agreement of the landlord. Similarly, as mentioned above, the tenant may only make changes to the dwelling (e.g. to remove an internal wall) with the consent of the landlord.
In the case of receiving guests, in lack of specific contractual provision, it would need to be assessed whether it goes beyond the proper use of the dwelling. Producing smells may also go beyond proper use and be contrary to the requirements of cohabitation, in which case the contract may be terminated by the landlord. The fixing of pamphlets seems less problematic; however, depending on their content it may also disturb the neighbours and qualify as improper use.
In case the dwelling is in a condominium, these communities of inhabitants may enact rules to exclude disturbances of the inhabitants of the building. The organisational and operational rules of the condominiums may contain rules regarding the keeping of animals, the rules for producing smells, the possibility to use a dwelling for commercial purposes, and may even contain behavioural rules on receiving guests. If this is the case, these rules are also binding on the tenant.

- *Is there an obligation of the tenant to liver in the dwelling? Are there specificities for holiday homes?*

In the case of private dwellings, there is no such obligation in the Housing Act. However, in line with the freedom of contract, the parties may provide so in the tenancy agreement.

With regard to municipal dwellings, the Housing Act provides that the municipal decree may provide for the obligation to live in the dwelling. In this case, the tenancy agreement must contain this obligation with the condition that any leave from the dwelling which is longer than two months must be notified to the landlord in writing, including the length of the leave. During any notified leave, including for health reasons, for reason of change of workplace or of the conduct of studies, the tenancy agreement cannot be terminated due to the leave. The tenancy agreement cannot be terminated due to the leave either if the tenant failed to notify the leave for excusable reasons and upon request, , informed the landlord in writing thereof (Article 3 paragraph (2) of the Housing Act).
In Hungarian law, there are no specific provisions in this respect for holiday homes. In fact, the provision of holiday homes may be done by means of short term tenancy agreements, or by means of accommodation services. The latter services, as mentioned earlier, qualify as commercial services. The relevant legislation contains detailed requirements for the conduct of this activity, but does not regulate the exact content of the service or the duties of the beneficiary of the service.

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

Act No. 133 of 2005 on private investigation (hereinafter "the Private Investigation Act") contains the rules of operating electronic surveillance devices. In line with the Private Investigation Act, any surveillance of the building requires the written informed consent of the tenants.
The use of video surveillance must be suitable for its aim (which is the protection of private property) and the potential breach of privacy must be proportionate to the interest to the protection of private property. It follows from the proportionality principle that video surveillance can only be used if the protection of private property cannot be secured by other means.
In addition, any visitors must be alerted to the fact of the surveillance. Pursuant to the applicable rules, in public areas, clearly legible written information must be available to any person who enters the surveyed area. Such information must contain the scope of the camera as well.
In the event of visitors, the consent is deemed to have been given if a visitor, having read the information, enters the public part of the building and stays there without raising any objections.
Video surveillance cannot be used in places where it could breach the right to human dignity, especially in bathrooms. Any recorded videos must be deleted within three days from recording.
In practice, video surveillance of residential flats is not usual in Hungary; usually only high value real estate is protected by this means.

6.6 Termination of tenancy contracts

Termination of tenancy contracts

	Main characteristic(s) of tenancy type 1 / private rental	Main characteristic(s) of tenancy type 2 / public rental
Mutual termination	- the parties may terminate the	the parties may terminate the

	tenancy contract at any time with mutual agreement.	tenancy contract at any time with mutual agreement.
Notice by tenant	- if the parties do not agree otherwise, in the case of contracts for undetermined period, both parties may terminate the contract until the 15th day of the month, to take effect on the last day of the following month.	- in the case of contracts for undetermined period, both parties may terminate the contract until the 15th day of the month, to take effect on the last day of the following month
Notice by landlord	- ordinary termination: if the parties do not agree otherwise, in the case of contracts for undetermined period, both parties may terminate the contract until the 15th day of the month, to take effect on the last day of the following month - extraordinary termination: in the case of non-payment of the rent, if the tenant or a person living with the tenant behaves in a way flagrantly contrary to the requirements of cohabitation with the landlord or the neighbours, or if they use the dwelling or the area for common use improperly or contrary to the content of the contract	- ordinary termination: in the case of contracts concluded for an undetermined period for state and municipal dwellings (with the exception of municipal dwellings rented based on social situation), if the landlord proposes an alternative dwelling for the tenant that is appropriate and fit for occupation - extraordinary termination: in the case of non-payment of the rent, if the tenant or a person living with the tenant behaves in a way flagrantly contrary to the requirements of cohabitation with the landlord or the neighbours, or if they use the dwelling or the area for common use improperly or contrary to the content of the contract - in the case of municipal dwellings, if the tenant is absent from the dwelling on a lasting basis, the landlord may terminate the contract.
Other reasons for termination	- destruction of the dwelling - death of the tenant - expulsion of the tenant from the territory of Hungary - termination of the tenancy relationship of the tenant by the court - termination of the tenancy relationship of the tenant by	- destruction of the dwelling - death of the tenant, in case there is no other person entitled to continue the tenancy relationship - exchange of the dwelling by the tenant - expulsion of the tenant from the territory of Hungary

	means of administrative decision - at the end of the time period or at the supervening of the condition in the case of tenancy rights for a determined period or until the supervening of a condition	- termination of the tenancy relationship of the tenant by the court - termination of the tenancy relationship of the tenant by means of administrative decision - termination by virtue of law (Article 23 paragraph (1) point i) of the Housing Act, introduced as of December 2013), in case of municipal and state dwellings located in the area of realisation of an investment of particular importance from the point of view of the national economy - at the end of the time period or at the supervening of the condition in the case of tenancy rights for a determined period or until the supervening of a condition

- *Mutual termination agreements*

In line with the principle of freedom of contract, the parties may terminate the tenancy contract at any time with mutual agreement. In line with the provisions of the Civil Code, because the conclusion of the tenancy contract necessitates written form, in principle, its termination also needs to be put in writing.[181] However, if the corresponding factual situation has been established out of common will of the parties, the termination of the contract without the required form is also valid (Article 6:94 paragraph (2) of the Civil Code).

In itself, the lasting discontinuation of the use of the dwelling does not represent an expression of the tenant's will to terminate the contract. Under specific circumstances, it is however not excluded that among others, such conduct indicates the intention to terminate the contract. If this is expressly formulated and the landlord also clearly agrees, the tenancy is terminated by mutual agreement. On the other hand, the lack of the use of the dwelling may also constitute a breach of the contract on the side of the tenant, in particular in case the lack of use endangers the condition of the dwelling. In

[181] Lakástörvény kommentár, Complex

the latter case, it may serve as a basis for the termination of the contract by the landlord.[182]

- *Notice by the tenant*
  - *Periods and deadlines to be respected*

In the case of contracts concluded for undetermined period, the new Civil Code provides that both parties may terminate the contract until the 15th day of the month, to take effect on the last day of the following month. In case the termination does not respect this deadline, the tenancy relationship shall be regarded terminated on the last day of the second month following the termination. (Article 6:347 of the Civil Code)
Previously, the Housing Act provided that the tenant may terminate the contract concluded for undetermined period at any time in writing (Article 8 paragraph (1) of the Housing Act). Accordingly, termination could take effect on the last day of the month, but the termination period could not be shorter than 15 days (Article 28 paragraph (2) of the Housing Act).
In order to eliminate the inconsistencies of these acts and to avoid duplication, the Act 207 of 2013 on the amendment of certain act in connection with the entry into force of the Civil Code (hereinafter "the Amending Act in view of the new Civil Code") repealed the relevant provision of the Housing Act. Therefore, the regulation of the conditions for ordinary termination is to be found in the section of the Civil Code concerning tenancy contracts. In view of the dispositive nature of the provisions of the Civil Code regarding specific contracts, parties are free to agree otherwise in the tenancy contract.

- *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)?*

In the case of contracts concluded for a determined period, the Housing Act and the Civil Code do not regulate the right of the tenant to terminate the tenancy contract before the agreed date of termination. However, as already mentioned earlier, the general practice is to consider the rules of the Housing Act as being dispositive, just like the rules of the Civil Code. Therefore, the parties may provide such a right to the tenant and may foresee a right to compensation for the landlord.

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

The applicable legislation does not provide for this type of precondition. In practice, if the contract provides for compensation to the landlord in the case of earlier leave, the tenant may try to find another tenant to be able to leave earlier and to avoid extra payment, subject to the negotiation of the parties.

- *Notice by the landlord*

[182] Lakástörvény kommentár, Complex

- *Ordinary vs. extraordinary notice in open-ended or time-limited contracts; is such a distinction exists: definition of ordinary vs. extraordinary (= normally related to fundamental breaches of the contract, e.g. in cases of massive rent arrears or strong antisocial behaviour)*

With the entry into force of the new Civil Code and of the Act in view of the new Civil Code, the regulation of tenancy contracts and in particular of cases of termination has two levels. The Civil Code defines certain basic rules of termination, which were consequently repealed from the Housing Act as of 15 March 2014. However, other rules regarding termination which were not completely overlapping remained in the Housing Act. In particular regarding the issue of termination, there are doubts whether this solution of combined regulation guarantees adequate legal certainty.
Regarding the terms ordinary v. extraordinary notice, the Housing Act does not contain this distinction. In the previous set of rules applicable until 15 March 2014, a distinction could be made between ordinary termination by the landlord irrespective of the tenant's behaviour, and cases where termination is based on the non-compliance or inappropriate behaviour of the tenant.
According to the provisions of the Housing Act applicable until 15 March 2014, the landlord could terminate the tenancy contract in writing in the following cases:

- the tenant does not pay the rent by the deadline specified in the contract;
- the tenant does not fulfil an important obligation undertaken in the contract or provided by law;
- the tenant or the persons living with the tenant behave in a way contrary to the requirements of cohabitation, in a scandalous, intolerable way with the landlord or the inhabitants;
- the tenant or the persons living with the tenant impair the dwelling, the premises or area for common use, or use them improperly;
- in the case of contracts concluded for an undetermined period for private dwellings, with a notice period of three months.

In the case of contracts concluded for an undetermined period for state and municipal dwellings (with the exception of municipal dwellings rented based on social situation), if the landlord proposes an alternative dwelling for the tenant that is appropriate and fit for occupation (Article 24 paragraph (1) letters a) – e) of the Housing Act).The new Civil Code however introduces an explicit distinction between ordinary termination and termination because of non-compliance (Articles 6:347 and 6:348 of the new Civil Code).
In the context of ordinary termination, the new Civil Code provides, as mentioned above, that contracts concluded for an undetermined period may be terminated by any of the parties until the 15th day of the months, to take effect on the last day of the following month. In case the termination does not respect this deadline, the tenancy relationship shall be regarded terminated on the last day of the second month following the termination. (Article 6:347 of the Civil Code)
Consequently, the provision of the Housing Act concerning the same right in the case of private dwellings was repealed. However, the provisions concerning municipal and state

dwellings, where the termination right of the landlord may only be exercised upon proposing an alternative dwelling remained in the Housing Act. In this regard, the amendment only introduced a more precise phrasing of these rules (Article 26 of the Housing Act). The alternative dwelling offered needs to be appropriate, in line with the criteria laid down in the Housing Act. [183] In this case, the termination period needs to be at least three months (Article 26 paragraph (1) and (6) of the Housing Act).

In the case of municipal dwellings rented based on social situation, the landlord's right to terminate the tenancy relationship is even more limited. In this case, the landlord may only terminate the contract offering an alternative dwelling, if termination is necessary for the transformation, modernisation, or demolition of the building (or the dwelling located therein), or for the termination of co-tenancy (Article 26 paragraph (7) of the Housing Act).

If the conditions for terminating the tenancy relationship with the offer of an alternative dwelling are met, the landlord may agree with the tenant to pay a pecuniary compensation instead of proposing a dwelling (Article 27 paragraph (1) of the Housing Act). In the case of municipal dwellings, the amount and the conditions of pecuniary compensation are provided in the relevant municipal decree (Article 27 paragraph (2) of the Housing Act).

With regard to termination for non-compliance, the new Civil Code provides that the landlord may terminate the tenancy relationship following prior request to the tenant, with a termination period of at least 15 days, taking effect on the last day of the month following termination, if the tenant or a person living with the tenant behaves in a way flagrantly contrary to the requirements of cohabitation with the landlord or the neighbours, or if they use the dwelling or the area for common use improperly or contrary to the content of the contract (Article 6:348 paragraph (1) of the Civil Code).

In view of this provision of the new Civil Code, the general provision of the Housing Act concerning the right of the landlord to terminate the tenancy agreement as a result of the behaviour of the tenant was repealed. However, the provision repealed from the Housing Act contained two additional important cases of termination for non-compliance: if the tenant does not pay the rent on time and if the tenant does not fulfil an important contractual or legal obligation (Article 24 paragraph (1) letters a)-b) of the Housing Act). Whereas the rules of termination for non-payment of the rent are contained in another provision of the Housing Act (Article 25 paragraph (1) of the Housing Act), the breach of an important contractual or legal obligation in areas outside the proper use of the dwelling is currently missing from the applicable legal framework.

[183] When deciding on the appropriateness of the alternative dwelling, the comfort category, surface, technical conditions, number of habitable rooms, situation in the settlement and the building as well as the rent of both dwellings need to be taken into account (Article 26 paragraph (2) of the Housing Act). Furthermore, if the tenancy was concluded for an undetermined period, this also needs to be taken into account when deciding on the appropriateness of the alternative dwelling. The dwelling proposed is also appropriate if the difference between the dwellings is compensated by another advantage of the proposed dwelling. The tenant is only bound to accept a dwelling with less rooms or smaller surface if it does not entail an important disadvantage for him or for the persons living with him (Article 26 paragraph (3) of the Housing Act). By way of exception, the landlord is not bound to propose an alternative dwelling if the tenant as an appropriate dwelling fit for occupation in the same settlement, or in the case of the capital in the area of the capital (Article 26 paragraph (4) of the Housing Act).

The concrete rules for the exercise of the termination for non-compliance of the landlord are going to be found as of 15 March 2014 partly in the Housing Act and partly in the new Civil Code.
In case termination is based on the wrongful behaviour of the tenant or the persons living with the tenant, the Housing Act foresees that the landlord needs to call for appropriate behaviour before exercising the right of termination.
Accordingly, in the case of lack of rent payment, the landlord first needs to request the tenant in writing to pay, with a warning on the consequences. If the tenant does not comply with the request within eight days, the landlord may terminate the tenancy relationship within further eight days (Article 25 paragraph (1) of the Housing Act).
Similarly, in case the termination by the landlord is based on the behaviour of the tenant or the persons living with the tenant, the landlord needs to request the tenant, within eight days from becoming aware of the behaviour, to stop the behaviour or to abstain from repeating it, with a warning about the consequences. The termination may be communicated within eight days from the continuation or the repetition of the relevant behaviour (Article 25 paragraph (3) of the Housing Act).
By way of exception, the new Civil Code foresees that the termination by the landlord does not need to be preceded by a request to the tenant if the behaviour in question is so grave that the landlord cannot be expected to maintain the tenancy relationship. In this case, the termination needs to be communicated within 8 days of becoming aware of the behaviour. (Article 6:348 paragraph (1) of the Civil Code). Previously, the same provision was contained in Article 25 paragraph (4) of the Housing Act which was repealed in view of the entry into force of the Civil Code.
With regard to the termination period in the case of extraordinary termination, as mentioned above, the Civil Code foresees that it needs to be at least 15 days and take effect on the last day of the month following termination. The Housing Act also provides that in the case of non-payment of the rent, the termination period may not be shorter than fifteen days (Article 25 paragraph (5) of the Housing Act). In this case, termination may take effect on the last day of the month following the deadline omitted (Article 25 paragraph (5) of the Housing Act).
In the case of municipal dwellings, one specific case of termination for the non-fulfilment of legal obligations provided in the Housing Act is the termination by reason of the lasting absence of the tenant. In the case of municipal dwellings, the Housing Act provides that the relevant municipal decree may require that the tenant has to live permanently in the dwelling. If this is the case, the tenant needs to inform the landlord in writing of any absence exceeding two months, as well as the reasons thereof. If the tenant gives notice of the absence – in particular for health reasons or because of the conduct of studies - the landlord may not terminate the tenancy on this basis. The contract may not be terminated either if the tenant has failed to provide notice for acceptable reasons and upon request, he informs the landlord thereof (Article 3 paragraph (2) of the Housing Act). In other cases, however, if the tenant is absent from the dwelling on a lasting basis, the landlord may terminate the contract.
In the case of the existence of a right to designate the tenant, the landlord may exercise the termination rights on the initiative of the holder of the right to designate the tenant, or with simultaneous written notice to the right holder, on its own motion (Article 24 paragraph (3) of the Housing Act).

- *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.*

As described above, in the context of ordinary termination, specific and more restrictive conditions apply for state and municipal dwellings. In their respect, the Housing Act provides that the landlord may only exercise the right to terminate the tenancy contract for undetermined period validly if at the same time he offers another dwelling for lease in the same settlement. The alternative dwelling offered needs to be appropriate, in line with the criteria laid down in the Housing Act. [184] Also in this case, the termination period needs to be at least three months (Article 26 paragraph (1) and (6) of the Housing Act).

- *in favour of certain tenants (old, ill, in risk of homelessness)*

As also mentioned previously, there is an additional restriction in the case of municipal dwellings rented based on social situation, i.e. to particularly low income tenants. In this case, the landlord may only terminate the contract offering an alternative dwelling, if termination is necessary for the transformation, modernisation, or demolition of the building (or the dwelling located therein), or for the termination of co-tenancy (Article 26 paragraph (7) of the Housing Act).

- *for certain periods*

There is no provision limiting the landlord's right to terminate the tenancy relationship over certain periods. Each year, there is however a ban on evictions in the winter months. As also explained in the section concerning the enforcement of tenancy contracts, each year, there is a ban on the eviction of natural persons, usually in the period between 1 December and 1 March (Article 182/A paragraph (1) of the Judicial Execution Act, arbitrarily occupied dwellings are exempted from this provision). In 2013, this period was extended from 9 November 2013 to 31 April 2014 by the Act 158 of 2013 on the amendment of certain acts necessary to help people indebted in foreign currencies (amendment to Article 303 of the Judicial Execution Act). In this period, the eviction of the dwelling may not be executed.

[184] When deciding on the appropriateness of the alternative dwelling, the comfort category, surface, technical conditions, number of habitable rooms, situation in the settlement and the building as well as the rent of both dwellings need to be taken into account (Article 26 paragraph (2) of the Housing Act). Furthermore, if the tenancy was concluded for an undetermined period, this also needs to be taken into account when deciding on the appropriateness of the alternative dwelling. The dwelling proposed is also appropriate if the difference between the dwellings is compensated by another advantage of the proposed dwelling. The tenant is only bound to accept a dwelling with less rooms or smaller surface if it does not entail an important disadvantage for him or for the persons living with him (Article 26 paragraph (3) of the Housing Act). By way of exception, the landlord is not bound to propose an alternative dwelling if the tenant as an appropriate dwelling fit for occupation in the same settlement, or in the case of the capital in the area of the capital (Article 26 paragraph (4) of the Housing Act).

- *after sale including public auction ("emptio non tollit locatum"), or inheritance of the dwelling*

There is no restriction on the landlord's right to terminate the tenancy relationship in case of a change in the landlord's person. However, in lack of relevant contractual provision, the change itself does not entitle the new landlord to termination: the tenancy relationship may only be terminated according to the general rules described above.

- *Requirement of giving valid reasons for notice: admissible reasons*

The Hungarian legislation does not foresee a specific requirement for giving valid reasons for notice. In case of ordinary termination, there is no need to provide valid reasons. Extraordinary termination may only happen in the situations provided by law, and in case the written request to the tenant was unsuccessful.

- *Objections by the tenant*

The Hungarian legislation does not regulate the possibilities of the tenant to raise objections. In case there is a dispute between the parties regarding the termination of the tenancy relationship, they may initiate a civil procedure. However, in practice, taking into account the length and the unpredictability of the legal disputes in the field of tenancy, lawyers are advising their clients to reach an agreement with the other party rather than to file a legal case.

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

The Hungarian legislation does not provide for a prolongation right of the tenant. The Housing Act prescribes the earliest date when the termination of the tenancy relationship may take effect. Apart from this limitation, the landlord is not bound to take into account a request of the tenant to stay for an additional period of time. The Housing Act does not provide for any exception from the obligation of the tenant to hand over the dwelling and its equipment at the time of the termination of the tenancy contract (Article 17 paragraph (1) of the Housing Act).

- *Challenging the notice before court (or similar bodies)*

The Hungarian legislation does not foresee any specific procedure to challenge the notice. The termination of the contract may be challenged before the ordinary courts, in accordance with the rules of civil procedure.

- *in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law*

In principle, these type of disputes may also be initiated before the ordinary courts. However, given that as stated above, the Hungarian legislation does not provide for any

claim for extension of the contract or for granting a period of grace, the tenant would have no chances to win such a legal dispute.

- *Termination for other reasons*

In addition to the cases of termination described above, the Housing Act foresees that the tenancy relationship is terminated in the following cases:

- destruction of the dwelling (Article 23 paragraph (1) point b) of the Housing Act);
- death of the tenant, in case there is no other person entitled to continue the tenancy relationship (Article 23 paragraph (1) point d) of the Housing Act);
- exchange of the dwelling by the tenant (Article 23 paragraph (1) point e) of the Housing Act);
- expulsion of the tenant from the territory of Hungary (Article 23 paragraph (1) point f) of the Housing Act);
- termination of the tenancy relationship of the tenant by the court (Article 23 paragraph (1) point g) of the Housing Act);
- termination of the tenancy relationship of the tenant by means of administrative decision (Article 23 paragraph (1) point h) of the Housing Act);
- termination by virtue of law (Article 23 paragraph (1) point i) of the Housing Act, introduced as of December 2013), in case of municipal and state dwellings located in the area of realisation of an investment of particular importance from the point of view of the national economy ("*nemzetgazdasági szempontból kiemelt jelentőségű beruházás*");
- at the end of the time period or at the supervening of the condition in the case of tenancy rights for a determined period or until the supervening of a condition (Article 23 paragraph (2) of the Housing Act).

According to the Housing Act, if the dwelling was destroyed due to vis maior or for other reasons, or the construction authority has ordered the emptying of the dwelling because of life threat and neither the tenant nor the organisation disposing of the dwelling can ensure the accommodation of the tenant (user), the local municipality according to the location of the dwelling needs to guarantee temporary accommodation (Article 23 paragraph (4) of the Housing Act).
In case the tenant dies and there is no other person entitled to the continuation of the tenancy, the tenancy relationship is terminated. In case the tenant is a legal person, the dissolution of the company without successor is also ending the tenancy relationship.[185]

The tenancy relationship is also terminated in case the tenant exchanges the dwelling. This possibility (also mentioned in the section concerning change in the position of the tenant above) is a remainder of the tenancy relationships in the socialist era, when tenancy right became a pecuniary right on its own, having a material value and capable of being transferred. Furthermore, as also mentioned before, in practice, it is also common to sell the tenancy right of municipal dwellings, by means of a fictive exchange, with the cooperation of lawyers.

[185] Commentary to the Housing Act

According to the Housing Act, the tenant may exchange his tenancy right with the consent of the landlord (Article 29 paragraph (1) of the Housing Act). In the case of municipal dwellings, the Housing Act specifies that tenancy may be exchanged to the tenancy or the ownership of another dwelling.[186] Furthermore, in this case, consent may not be denied if any of the parties is carrying out the exchange for health reasons, because of a change of workplace, or because of a change in his or her essential personal conditions, for example because of a change in the number of persons co-habiting with the tenant (Article 29 paragraph (5) of the Housing Act). The same way, the consent has to be given if the health reason or the change in the workplace affects one of the persons co-habiting with the tenant (Article 29 paragraph (6) of the Housing Act).
The tenancy contract is also terminated if the tenant is expulsed from the territory of Hungary. According to the Act II of 2007 on the entry and stay of third country nationals (hereinafter Immigration Act), the immigration authority may order the expulsion of a third-country national under immigration laws, who:

a) has crossed the frontier of the Republic of Hungary illegally, or has attempted to do so;
b) fails to comply with the requirements set out in this Act for the right of residence;
c) was engaged in a gainful employment in the absence of the prescribed work permit or the permit prescribed under this law;
d) whose entry and residence represents an offence or a threat to national security, public security or public order;
e) whose entry and residence represents an offence or a threat to public health (Article 43 paragraph (2) of the Immigration Act).

When the decision regarding expulsion becomes legally binding, it results automatically in the termination of the tenancy contract.
The tenancy relationship is also terminated by virtue of law in case the municipal or state dwelling concerned is located in the area of realization of an investment of particular importance from the point of view of the national economy as defined by governmental decree, and the maintenance of the tenancy relationship would hinder the realization of the investment. This case of termination was introduced by an amendment entered into force in December 2013 (Act 226 of 2013 on the amendment of the Housing Act), which foresees that in these cases, the tenant must be offered an alternative dwelling, and in case of termination of the tenancy relationship, the tenant is entitled to compensation. In practice, the amendment empowers the government to abolish state and municipal tenancies in case judged necessary for an investment of strategic importance.
The tenancy contract may also be terminated by the court. The Housing Act provides for one specific case where the parties may ask the court to terminate the tenancy contract. This concerns termination of the tenancy relationship of the joint tenant or the co-tenant upon request by the other joint tenant or co-tenant living in the dwelling. This request may be filed if the joint tenant, co-tenant or the person living together with him:

- does not pay his share of the common costs related to the dwelling;
- voluntarily impairs the premises in common use, soils them or does not respect the rules on keeping them clean;

[186] This latter dwelling is not necessarily municipal; the legislation does not specofy this particular detail.

- disturbs the calm of the persons living in the dwelling or behaves in a scandalous way with regard to the persons living in the dwelling, seriously contrary to the requirements of cohabitation;
- accommodates another person in the part of the dwelling despite the prohibition by law (Article 30 paragraph (1) of the Housing Act).

Before filing the application, the joint tenant, or the co-tenant needs to be requested to make the payment or to stop the behaviour, unless the latter is so grave that the party affected cannot be expected to maintain the joint tenancy (co-tenancy) relationship (Article 30 paragraph (3) of the Housing Act).
If the request was unsuccessful, the application to the court needs to be filed within 30 days from the deadline specified for the payment of the cost or for stopping the behaviour in question (Article 30 paragraph (4) of the Housing Act).
These provisions may only be used in the case of spouses or former spouses if their tenancy relationship was settled after the divorce or the end of their marital cohabitation by mutual agreement without judicial procedure, or it was regulated by court (Article 30 paragraph (2) of the Housing Act).
In addition to the above options, the court may equally terminate the joint tenancy relationship of a tenant who has left the dwelling without the intention to return, based on the request of the remaining joint tenant (Article 30 paragraph (5) of the Housing Act).
The tenancy relationship may also be terminated by means of administrative decision. In practice, this case usually refers to the construction authority ordering the emptying of the building, referred to above.[187]

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

As a matter of principle, an execution proceeding against the landlord does not affect the tenancy relationship. As described above, it is also possible to sell the dwelling in auction process while the dwelling is subject to a lease. However, if the auction sale must be effected due to an enforcement of a mortgage and the debtor and the mortgagee have agreed in the mortgage agreement that any possible auction will be effected with respect to an empty dwelling, then the performance of the lease agreement will become impossible and the tenant must leave the dwelling and may claim damages from the landlord.

- *- 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?*
- *The Housing Act regulates one particular issue of renewal: if the construction authority has ordered the emptying of the dwelling because of life threat. In this case, if*

[187] Commentary to the Housing Act

neither the tenant nor the organisation disposing of the dwelling can ensure the accommodation of the tenant (user), the local municipality according to the location of the dwelling needs to guarantee temporary accommodation (Article 23 paragraph (4) of the Housing Act).

In the case of expropriation, the Act 123 of 2007 on expropriation (hereinafter "the Expropriation Act") as amended with effect from 1 July 2013, foresees that the initiator of the expropriation needs to grant appropriate alternative dwelling or premises for the owner or other user of the dwelling, at his/her request introduced at latest at the court hearing. When deciding on the appropriateness of the alternative dwelling, the rules of the Housing Act apply (Article 14 (1) of the Expropriation Act).
By way of difference, no alternative dwelling may be requested if the owner or the user owns another appropriate dwelling in the same city (Article 14 paragraph (2) letter a) of the Expropriation Act).
In case the right holder does not accept the alternative dwelling proposed and considered appropriate based on expert opinion, instead of the alternative dwelling, a decision needs to be made on his/her pecuniary compensation (Article 14 paragraph (4) of the Expropriation Act).
Similarly, the recent amendment to the Housing Act concerning termination of tenancy relationship in case they hinder the realisation of investments considered of strategic importance by the government, the relevant rules foresee the provision of an alternative dwelling and in case of termination, the pecuniary compensation of the tenant.

6.7 Enforcing tenancy contracts

Example of table for g) Enforcing tenancy contracts

	Main characteristic(s) of private rental	Main characteristic(s) of public rental	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Eviction procedure	1. Contracts concluded and authenticated by notary public: contract directly enforceable; 2. Other contracts: two step eviction procedure: (1) litigious procedure, where court declares the lawful termination of the contract; (2) judicial execution procedure for the emptying of the	Same as private rental procedure, except housing units under National Asset Management Company contracts, whose contracts are directly enforceable.	

	dwelling.		
Protection from eviction	Eviction moratorium (autumn to spring; varying dates)	Same as in private rental	
Effects of bankruptcy	Dwelling foreclosed with inhabitants, who become tenants of the new owner.	n/a	

- *Eviction procedure: conditions, competent courts, main procedural steps and objections*

The Housing Act provides that the ordering and the carrying out of execution of the decisions regarding the emptying, the handover and the use of the dwelling or the parts or premises of the building for common use falls under the rules of judicial execution (Article 91 paragraph (1) of the Housing Act). This means that the emptying of the building may only be ordered by the competent courts and carried out by the judicial executors. The reason for this provision is that before 1994, execution could be equally carried out by the housing authority and by official armed bodies (this could be either military or police forces.)

Currently, execution is carried out in line with Act No. 53 of 1994 on judicial enforcement, hereinafter "Judicial Enforcement Act"). The general rules of judicial execution apply to the execution of court decisions in tenancy disputes. At the same time, the Judicial Enforcement Act provides for a number of specific provisions regarding the execution of decisions in housing matters (Articles 181-182/A of the Judicial Execution Act). For example, it introduces a ban (moratoria) on execution between 1 December and 1 March in the case of natural persons[188]. Moreover, the Judicial Execution Act provides for a specific out-of-court execution procedure to illegally occupied dwellings. These provisions allow in principle for a swift launch of the eviction procedure. The Judicial Enforcement Act provides that the same out-of-court procedure is applicable in the case of tenancy agreements concluded for a determined period, after the expiry of the duration of the contract, as well as to lease agreements concluded with the National Asset Management Company, after their termination.

The competent courts are the local courts (*járásbíróság*) of the ordinary court system. The procedure may be lodged in accordance with the general rules on competence before the local court according to the place of residence of the defendant, or according to the situation of the dwelling concerned (Article 29 paragraph (1) and article 35 paragraph (1) of the Act III. of 1952 regarding civil procedure).

In certain cases, judicial execution may be ordered directly after the termination of the tenancy relationship, by way of a non-litigious procedure.

This is the case in particular for tenancy contracts concluded for a determined period.[189] In this case, the landlord may ask for the emptying of the dwelling in the context of a

[188] In 2013 the Parliament modified the dates of moratoria to 9th of November 2013 till 30th of April.

[189] In this case, the local court decides upon the request within 5 days, requesting the executor to initiate the eviction within 3 days from the advancing of the costs. The executor calls upon the emptying of the dwelling within 2 days and in case of disobedience, executes the eviction on that day.

non-litigious procedure before the local court according to the situation of the dwelling (Article 183 paragraph (1)-(2) of the Act 53 of 1994 concerning judicial execution, hereinafter "Judicial Execution Act") within 60 days from the expiry of the determined period.

The conditions are also specified at the Judicial Execution Act. At the submission of the application, the landlord needs to prove that the determined period has elapsed (Article 183/A paragraph (1) of the Judicial Execution Act). Besides the details of the parties and of the dwelling, the application needs to specify the place where the applicant intends to ensure the storage of the movables of the tenant (Article 183 paragraph (2) letter g) of the Judicial Execution Act).

In case the application is complete, the court decides on the emptying of the building within five working days from the date of filing the request. In its decision, the court requests the executor to carry out the emptying of the building within three days from the date of advancing the costs of execution, to inform the head of the relevant police organisation and in case a minor is affected, the custodian office (Article 183 paragraph (3) of the Judicial Execution Act).

The decision of the local court may be executed irrespective of an appeal. The court notifies the decision immediately to the applicant and the executor (Article 183 paragraph (4) of the Judicial Execution Act). The decision is handed over to the obligor (the tenant) on the spot by the executor in the presence of a policeman or a witness and the executor requests him to leave the dwelling, together with all other persons staying in the dwelling, within two days with the emptying of movables (Article 183 paragraph (5) of the Judicial Execution Act). If at the time of the procedure on the spot, no person is at the dwelling or only minors are there, the executor hangs out the decision of the court and the minutes of the procedure on the spot to the door of the dwelling (Article 183 paragraph (6) of the Judicial Execution Act).

If necessary, the executor verifies the fulfilment – with the cooperation of the police – after two days and carries out the emptying of the dwelling. In case a minor person is affected by the procedure, the representative of the custodian office takes part at the procedure (Article 183 paragraph (7) of the Judicial Execution Act).

In case at the time of the second procedure on the spot, no person is in the dwelling, or only minors are there, the executor ensures the transfer of the movables to the warehouse indicated by the applicant and hands over the minors staying in the dwelling to the representative of the custodian office, who takes measures to ensure their temporary accommodation (Article 183 paragraph (8) of the Judicial Execution Act). In this case, the executor hangs out the minutes of the procedure on the spot to the door of the dwelling and specifies the place to take over the movables, and the custodian office to which the minors were handed over (Article 183 paragraph (9) of the Judicial Execution Act).

There is no possibility for the tenant to raise objections on the substance of the execution procedure. Execution may however be suspended one time upon the request of the tenant, for a period up to 6 months.

In all other cases of termination of the tenancy relationship, there is no general possibility to order execution directly, in a non-litigious procedure. In these cases, execution needs to be preceded by a civil procedure for the emptying of the dwelling (*kiürítési per*). Once the validity of the termination was confirmed by non-appealable verdict of the civil court, the landlord may initiate the non-litigious execution procedure referred to above. The civil procedure may however take several years and – as

mentioned above – until the legality of the termination is confirmed and execution is ordered, the tenant may oppose to the emptying of the dwelling.
In fact, the difficulty of enforcing the termination of the tenancy relationship by the landlord is one of the main risk factors for landlords, affecting the development of tenancy structures as a means of housing. This is in particular problematic in view of the protection of the possession of the tenant. As mentioned above, the tenant is entitled to the protection of its possession of the dwelling against everybody, including the landlord. In the absence of a legally binding and enforceable court decision the tenant may prohibit the emptying of the dwelling. Consequently, the landlord is not entitled to take direct action, and risks being convicted for vigilantism if he attempts to assert his right to his property on his own motion, facing imprisonment of 1 to 5 years in case of using any form of force or threat. Despite this risk, not seeing any other alternative, landlords often choose to use direct or indirect forms of threat to convince their tenants to leave the dwelling (like discontinuing the utility services, removing the door or windows of the dwelling, etc.).
Another solution generally advised by lawyers to landlords is the conclusion of the tenancy contract in front of a notary public, including an explicit undertaking on the side of the tenant to empty the dwelling in case the contract is terminated. Acts prepared by notaries public are directly enforceable. This means that upon the expiry of the contract, the notary may provide the act with an execution clause. On this basis, the non-litigious enforcement procedure may be initiated directly. However, due to the costs (notaries public may be charging an amount between HUF 15,000 and the monthly rent) and the administrative efforts required, this solution is not applied on a large scale. Furthermore, this solution puts tenants in a more disadvantaged situation and therefore not suitable to create a balanced tenant-landlord relationship.

- *Rules on protection ("social defences") from eviction*

There are no general provisions on protection from eviction. In addition to the possibility for suspending the execution, each year, there is a ban on the eviction of natural persons in the winter period (arbitrarily occupied dwellings are exempted from this provision), usually in the period between 1 December and 1 March (Article 182/A paragraph (1) of the Judicial Execution Act) (arbitrarily occupied dwellings are exempted from this provision). In 2013, this period was extended from 9 November 2013 to 31 April 2014 by the Act 158 of 2013 on the amendment of certain acts necessary to help people indebted in foreign currencies (amendment to Article 303 of the Judicial Execution Act).
By way of exception to the ban on evictions, the court requests the executor to carry out the emptying in the following cases:

- if the obligor or another person living in his household is entitled to use another dwelling fit for occupation;
- if the applicant ensures the accommodation of the obligor for the period of postponement;
- if the applicant natural person shows that without the occupation of the dwelling to be emptied, his accommodation is not ensured (Article 182/A paragraph (3) of the Judicial Execution Act).

After the expiry of the period of postponement, the executor takes measures to ensure the emptying of the dwelling as a matter of priority (Article 182/A paragraph (4) of the Judicial Execution Act).

- *May rules on the bankruptcy of consumers influence the enforcement of tenancy contracts?*

Hungary enacted several measures with the aim to ease the burdens of citizens indebted in foreign currencies, including means to ensure the housing of those unable to repay their debt.
Besides the enactment of specific rules for the lease agreements concluded with the National Asset Management Company, this objective may have a spill-over impact on the enforcement of tenancy contracts in general. For example, the prolongation of the ban on evictions in 2013-2014 referred to above was introduced by an act aiming at helping the persons indebted in foreign currencies, but applying to all evictions, including those following a rightful termination of an ordinary tenancy agreement.

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.
While the legal framework of residential tenancy obviously shapes both public and for-profit renting, a significant number of issues related to residential renting are managed outside the legal framework. This means both private rental contracts concluded informally, and the management of conflicts in an extra-legal way (there are instances in rentals with a public task as well, due to the high risks and the resulting high costs associated with renting). Accordingly, this section (Tenancy law and procedure "in action") is based on our field research as well as the desk research of tenancy related legislation. We base some of our assessments on interviews conducted in the framework of this project; the list of interviews is annexed under *9.2 Cases*. The interview in question is indicated with serial number (e.g. L1).

- *What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?*

In Hungary, there are no active tenant and landlord associations.
From 1996, a Housing Policy Advisory Committee was set up in order to involve the stakeholders in the preparation of the law and regulation. The Association of Tenants (founded in 1989) was a member of this Committee until 2010, but the new government elected in 2010 did not invite the Association to the Council, which reflected the political weakness of the Association. In 2002, the Association of Tenants had to discontinue the free legal services to the tenants because of lack of financial resources.

On the landlord side, the municipalities (different associations of municipalities) were represented in the committee as social landlord, and two association related to the real estate market, the Federation of Hungarian Real Estate Associations[190] (founded in 2006) and Hungarian Real Estate Association (founded 1991).[191] These two associations have very weak connection to the rental market; they mostly represent the real estate brokers and developers, not the landlords. The committee had not had a real impact on the housing policy as a body, though different lobby groups (banks, construction companies) had informal effect on the decisions not necessary through the Committee, but through their direct connections to the government.

However, the Housing Act provides that before enacting a municipal decree, the municipalities must consult the organizations representing the interests of the tenants and landlords in their territory. This requirement was stated in the Act 11 of 1987 on Legislative Instruments; however, due to the lack of strong tenant and landlord associations, these requirements remain formal. There are no real civil coordination mechanisms on the law neither on the local nor on the central level. The Tenant Association complained in 2002 that municipalities do not communicate the proposed housing legislation changes to them; but in reality they could not have afforded to pay for the legal experts.[192] Municipalities are using the instrument of "public debate" to fulfil the legal requirement, which practically means that they publish the proposed law on the internet, and civil society organizations and private persons may comment. However, the decisions are made by the council of the representatives.

In housing policy discussions, the issue of rental policy was always accorded a lot of attention. However, the strong supporters were the construction (and building material) companies, not the social landlord.[193]

A new civil movement has an effect on public discussion on housing: The City is for All (*A Város Mindenkié*)[194] is a homeless-led housing rights advocacy group in Hungary with a mixed membership of homeless and formerly homeless people and their "allies" (non-homeless civil society activists).

- *What is the role of standard contracts prepared by associations or other actors?*

There are several standard contracts used by certain real estate agents, although their content is not approved or certified by any official central institute. (LW1, LW2) Associations do not have standard contract samples, but prospective tenants and landlords may find sample contracts on legal advisory internet sites, or even on the websites of a number of law offices, with explanations, and advice on managing the risks of the tenancy.

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[190] http://www.magyaringatlantanacs.hu/lang_eng/index.php - Federation of Hungarian Real Estate Associations website.

[191] http://maisz.hu/magyar-ingatlanszovetseg/ - Hungarian Real Estate Federation website.

[192] ALKOTMÁNYBÍRÓSÁGHOZ FORDULNAK A LAKÁSBÉRLŐK ÉRDEKÉBEN (*TENANT ASSOCIATION CONTACTS CONSTITUTIONAL COURT ON BEHALF OF RENTERS*) HTTP://WWW.ORIGO.HU/ITTHON/20020123ALKOTMANYBIROSAGHOZ.HTML – 23 JANUARY 2002; IN HUNGARIAN. LAST RETRIEVED: 6 JANUARY 2014.

[193] Association of Home Builders, http://www.lakasepitesert.hu/

[194] http://avarosmindenkie.blog.hu/tags/english - English posts on the City is for All blog/website.

- *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?*

Tenancy law disputes are solved by agreement of the parties or enforced before Courts. Hungarian law does not recognize any alternative dispute resolution forum with respect to residential tenancy. Mediation is not common either. As ordinary court procedure tends to last for years (see the description of one outstanding case under the next question), lawyers are advising the parties to try to resolve their disputes amicably. The lack of effective dispute resolution is an important impediment and strongly limits the popularity of private tenancy (L2, L6, L7, L9, R9, LW1), but also damps the effectiveness of public rental (M3, M8, M10, M12, M13)

- *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)?*

One of the main problems of the functioning of tenancy relationships in Hungary is the length of litigious procedures. Hungarian court and enforcement procedures are lengthy, and may take several years despite legislative efforts to limit the possibilities to unduly prolong the procedures. Furthermore, there is also an element of uncertainty as the approximate length of the procedure is not predictable for the parties.
As a matter of fact, a large number of cases lodged against Hungary before the European Court of Human Rights concern the violation of the right to trial within reasonable time (part of the right of fair trial, Article 6, §1 of the European Convention of Human Rights). In 2010, from the 66 cases pending, 46 concerned excess of the reasonable time. In 2012, the European Court of Human rights ruled against Hungary in 9 cases concerning the undue prolongation of judicial procedures, involving a compensation of HUF 132 million (approximately EUR 460,000) for the parties affected.
This general phenomenon affects tenancy relationships as well. In 2010, the European Court of Human Rights confirmed the violation of the right to trial within reasonable time in a case brought against Hungary by a landlord concerning proceedings initiated in 1992, in order to declare the invalidity of a contract and carry out an eviction procedure.[195] In this case, the final decision rejecting the applicant's claim was taken by the Hungarian Supreme Court in 2006, nearly 14 years after the initiation of the proceedings.
At the same time, it is important to recall that a tenant who has its registered address in the dwelling is entitled to the protection of its possession, even against the landlord. The possession protection procedure takes place in front of the public notary of the Municipality and is focusing on facts and on restoring actual possession rather than on legal titles. This way, in the absence of a legally binding and enforceable court decision, the tenant may prohibit the eviction of the dwelling if he/she has a valid lease agreement.

[195] Case No. 39382/06., see the Information Bulletin of the International Relations and European Law Office of the Hungarian Supreme Court, I./7. p. 28.

Under these circumstances, the dispute-handling mechanisms cannot be considered effective enough to compensate for the under-regulation of tenancy regulations and favouring long-term tenancy agreements. Indeed, the areas where swift and effective judicial and enforcement procedures would be most needed are the enforcement of the termination of the agreement and the subsequent eviction procedures.

- *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?*

Although the state and municipally owned housing stock provides housing to a large number of households with no other viable options, unfair allocation of dwellings does happen in a large number of cases.
As the municipalities do not usually have sufficient resources to provide adequate housing to the neediest, they often seek solutions even within rental housing to improve their balance. This often means that the municipal asset management company will announce a call for tenders and house a family that will surely be able to pay regularly, instead of providing dwellings to the lowest income residents. They have vested interest in renting our dwellings in a cost based system instead of social renting (although the currently functioning municipal cost based renting only really covers part of the costs of the dwelling), and to ensure rental revenues, they also often demand multiple months' advanced payment for cost based rentals, which again leads to the exclusion of the lowest income households.
Finally, old rental contracts (the ones dating from before 1989) still provide very strong, quasi ownership rights, which means that they can be inherited. As stated earlier, state owned renting was very widespread before 1989, when a large part of the population – and especially the urban population – were renters, and they were not necessarily the poorest either. Some of these tenancies are still held by the same families, without being in need for heavily subsidised housing.
As regards the legal fees, the amount of the stamp duty of a litigation amounts to 6% of the amount claimed, but no less than HUF 15,000 and no more than HUF 1,500,000. The stamp duty payable for an amount of an appeal to the court of second instance is 8% of the amount claimed, but no less than HUF 15,000 and no more than HUF 2,500,000. If the amount claimed cannot be established the basis for the calculation of the stamp duty shall be HUF 350,000 in the event of disputes before local courts and HUF 600,000 in the event of disputes before a court of appeal.
Insurance against legal costs is not common in Hungary. Legal aid services in non-litigious matters as well as in litigations are available to the socially disadvantaged as of 2003 (Act 130 of 2003 on the provision of legal aid). For example, among other situations, legal aid services are available for persons with a monthly income not exceeding the minimum amount of pension, i.e. HUF 28,500 (approximately EUR 91.3).
Generally speaking, financial accessibility issues play a less important role in problems of fairness and justice. Such problems arise essentially because the parties to a tenancy agreement try to avoid turning to courts due to the length of the procedure and the uncertainty of the outcome. Therefore, the outcome of a dispute may depend on the legal knowledge of the parties, their ability to ask expert advice and their negotiating power, rather than on material justice.

- *How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)*

Due to the tendency of avoiding courts as described above (L1, L2, L5, L6, L7, F1, F3), Hungarian courts could not address the topical issues of tenancy, and set jurisprudence is lacking in many relevant areas.

In addition, with the enactment of the new Civil Code, the amendment of the Housing Act became necessary, which did not happen to date. Consequently, the regulation of tenancy law is not free from contradictions and uncertainty. Legal literature in Hungary usually discusses the rules in force and available jurisprudence and therefore does not address certain practical questions either.

- *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)?*

In Hungary, a special type of crime is closely related to housing affordability. Households with high utility arrears (typically struggling with other social problems as well) are deceived by the so called „real estate mafia", which offers an inhabitable home (typically in a dead-end village or slum area of a city) in exchange of the apartment with debt. The registered number of these cases was more than 400 between 2001 and 2003. These cases are suspected to be only the tip of the iceberg; and the downward mobility contributed to the problem of slumification of remote villages and part of the urban areas.

> The so-called housing mafia, which operated nationwide, involved corrupt lawyers, public notaries, police and judges who used their competence to whitewash shady deals in return for a cut of the profits. A parliamentary panel was set up to investigate the housing mafia in 2003.[196] According to experts, more than 700 victims were decoyed into the scam, although real number could be several thousand. The police often refused to investigate, pointing to contracts that appeared to have been signed and sealed properly. Critics contend that often the lawyers involved are crooked; while lawyers deny that they give legitimacy to dubious deals. "We cannot check whether an identity card or other document is real or not, or whether a person was beaten up to make them sign before they entered a lawyer's office," said Janos Banati, president of the Budapest Lawyers Association. [197]

According to interviews (T1, LW5, M1, M12, M13), there really is a secondary market of the public rental contracts.

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[196] Das Haus (real estate agency): Housing mafia cases: when the victim is guilty too (in Hungarian); http://www.dashaus.hu/old/a_ingatlanmaffia.html, 2008.

[197] "Hungary's Apartment Mafia Accused of Home-Eviction Swindle" (Los Angeles Times), http://articles.latimes.com/2003/feb/16/news/adfg-aptmafia16;
Csernák, A.: The role of notaries public in the fight against real estate abuse (in Hungarian), 2005.

- *Are the areas of "non-enforcement" of tenancy law (such as legal provisions having become obsolete in practice)?*

As a consequence of the tendency of avoiding courts, the court jurisdiction applicable to tenancy is obsolete and does not address the topical matters.
There are a number of general provisions of the Housing Law that apply to private lease but have little or no relevance in practice. For example, the rules concerning the provision of a substitute dwelling in the case of modernisation have little relevance in view of the possibility of the landlord provided by law or by contract to terminate the tenancy relationship at his or her convenience. Similarly, the exchange of tenancy rights is not a likely situation for private tenures either.
And finally, one of the most important risks of the rental sector for landlords is that debts (rent and/or utilities) accumulated by a 'disappearing' tenant (who moves out of the rented dwelling without leaving a contact) are often impossible to recover. A professional bailiff may be able to recover enforce the contract through contacting the former tenant's employer, and demand the payment directly from the tenant's salary, and this method does work in a number of cases. However, bailiffs often only manage to track down the former tenant years after they made the debt; and more often the information the landlord has is insufficient for tracing down the tenant. This could happen both in private rental, where a landlord is not careful enough at the conclusion of the contract (e.g. the tenant only provides partial data); or in public rental, where the landlord simply does not have the institutional capacity to manage all problematic cases. (L2, L3, L6, L7, L9, R2, R8, F1, F2, F3, LW1, LW4, M9, M10, M12, M13)

- *What are the 10-20 most serious problems in tenancy law and its enforcement?*

The contracts establishing a legal basis of tenancy relations are regulated by several laws and legislative bodies; there are no clear boundaries of their competencies. There are four "law regimes" dealing with tenancy contracts and functionally similar arrangements: first are contracts (written or oral) directly regulated by the contract law section of the Civil Code, and outside of the competence of special laws (including the Housing Law). One example is the contract for free use of the dwelling ("*szívességi lakáshasználó*"), which in several cases are concluded with the aim of tax evasion. This kind of "contract" is based on trust, but in the case of conflict it is unclear how regulations could be applied. Consequently, the tenants under this contract do not enjoy the same tenure security as tenants under the Housing Law.
Tenancy relations under the Housing Law are very diverse. Municipalities and state agencies have the right to regulate tenancies in their ownership according to their own interest, and can remove their housing stock from under the competence of the Housing Law. (LW4, M3, M9, M10) They can, for instance, move their units under contract law or Commercial Law regulations, re-classifying them as commercial accommodation. (M11) Similarly, the border between housing under the Social Law and under Housing Law is unclear.

The responsibility for utility payment arrears. As we already discussed earlier, in the case of the utility arrears it is not entirely clear how the costs of non-payment are distributed among different actors. Typically the owner has the final responsibility for

utility non-payment, which means that even if the service provider has a service contract with the tenant, and the payment cannot be enforced through appropriate legal procedure (judicial execution), eventually it is the owner who has to pay.[198]
In the case of state ownership, the service provider does not have the option to enforce payment from the state (or its institution e.g. National Asset Management Agency). The reason for this is that (for political reasons) the state can devolve the debt burden on the service company, which has to build its cost into the price of the service. The introduction of the "protected consumer" category has the same logic: it means that the social cost related to the protected costumers are charged on the service provider, through which, on the regularly paying consumers.[199]

Protection of possession. An interesting and practically important feature of Hungarian tenancy law is the protection of possession of the tenant, which applies even against the landlord. In the event of a tenancy dispute, as long as a binding and enforceable judgement does not approve the claim of the landlord, the tenant may seek protection via an administrative procedure and may prohibit his/her eviction. Although in practice the tenants do not make use of this right often, the legal possibility exists, and makes the enforcement of landlords' rights extremely difficult. For the landlord this means loss of rental income as long as the tenant does not move out; plus accumulating debts for the period the tenant refuses to pay utility and service costs, which usually coincides with the tenant's refusal to move. (L2, L6, L7, L9, R9, F2)

Lengthy court procedure. Hungarian ordinary court procedures are extremely long and it can take several years to get a final, binding and enforceable judgement. There is no simplified procedure for small claims; therefore, even in the event of a dispute with a minimal material value, the parties must subject themselves to a lengthy court procedure. (LW1, LW2) Due to this, parties seek to settle their disputes amicably.
As a consequence of the tendency of avoiding courts, the court jurisdiction applicable to tenancy is obsolete and does not address the topical matters. There is no set jurisprudence in respect of many material questions, such as termination rights and deadlines. In many events, courts tend to interpret the tenancy rules rigidly, for example when they dismiss the right to set off certain mandatory costs borne by the tenant against the rent. (LW1, LW5)

Unpredictable tenant-landlord relation in the case of the conflicts. The current legal regulation is rather liberal, not allowing for securing a long-term calculable tenant-landlord relationship. The new Civil Code does not change this tendency either. The legislation gives priority to the agreement of the parties and fails to address the typical conflict situations of tenant-landlord relationships. Furthermore, it tries to take a neutral approach to both parties. This results in a pro-landlord situation in certain cases (e.g.

[198] Interviewees (L2, L6, L9) suggested that some utility service providers refuse to reconnect the apartment into the network unless the owner pays a bribe, even if the meters were registered on the name of the former tenant, once it seems improbably that they will be able to enforce payment from the latter. This procedure is not in accordance with the law; and is only practiced in case of the change of user. If the owner of the apartment changes, the same providers will clear the arrears inflicted on the apartment (meaning that they treat the owner and not the apartment as the final debtor).
[199] The same logic is applied in the current "war on utility cost", see earlier in the study.

there is a lack of protection of tenants against arbitrary termination – L1, F1), and in possibilities of abuse by the tenants in other cases (e.g. the lack of effective mechanism to enforce the rightful termination of the tenancy agreement – L7, L9). Judicial enforcement is slow and there are important differences in the practice of the courts. Therefore, the outcome of litigation is highly uncertain.

Intermediary agencies' (real estate agents') lack of willingness to assume risk. In Hungary, real estate agents are in general not actively involved in the contracting procedure and do not bear any responsibility for matching the parties. Real estate agents do not monitor the financial situation of possible tenants, and if they do so, they are not accountable for their findings. (R1-8)

Tax evasion. If the tenant is a private individual, the costs of tenancy cannot be deducted from any taxes. Although the rental income of private individuals is VAT free up to a fairly liberal limit, their risks are considerable; and many believe the margins available on the market to be too low to compensate for these risks. Consequently, landlords often do not declare the rent as taxable income (R9, LW2, M7); and tenants usually accept the lack of an official invoice in return for the lower rent level. Thus, the entire relationship remains undocumented, making any legal enforcement impossible.

Massive arrears in the public sector; political cost hinders execution. In the public rental sector, rent and utility arrears have been accumulating for a long time, and their management is a serious challenge for most municipalities. The reasons behind this are very complex; some important factors are the inefficiencies in the welfare regime, the labour market, and even the rental market. The majority of households in public rental cannot pay for the housing services due to their low income, while willingness to pay is an important factor in other households. Judicial enforcement (terminating the contract and evicting the non-paying tenant), especially in larger numbers, would raise heavy public awareness, and politicians usually decide avoid these cases, even at the cost of further arrears. Consequently, municipalities have much less eviction cases than what could be expected on the basis of the number of terminated contracts. As a result, non-payment of public rent is much less riskier for tenants than non-payment of other services, which leads to more arrears. (M4, M5, M6, M8, M10, M12, M13)

Unpredictability of public rental tenancy. Municipalities, in order to manage their risks, strive to conclude short term contracts, typically for a definite period of one year, although some consider switching to three month contracts, the shortest option the Housing Law permits. (M4, M10) This on the other hand puts the tenant in an unpredictable situation. Although municipalities often automatically renew contracts if the tenant does not have rent arrears, there is no legal guarantee for this; and the tenants cannot be sure that they will not have accumulated new debts by the end of the contractual period.

- *What kind of tenancy-related issues are currently debated in public and/or in politics?*

The low share of the rental sector has been a central topic of the housing policy discussion. There have been several attempts to increase the share of (both private and

public) rental stock, but the most of them lacked the necessary financial/fiscal and political support. As we already mentioned, the lobby groups tied to the construction and building material were very active on promotion of the rental sector, but they were more interested in construction program, than the management of the rental housing. In the last 3 years, the likelihood for rental construction program is smaller than ever, because of the budgetary issues and the huge problem of the mortgage indebtedness and arrears.

The other public issue is the homelessness programs. The politics were always very sensitive to the homelessness issue. The homeless rights advocacy group the City is for All is very active to advocate for the programs helping the homelessness people including to liquidate unacceptable housing situation, acquire more public housing for homeless people, to use the inhabitant public housing etc.

The Social Housing Agency project, supported by the Open Society Institute and implemented by Habitat for Humanity and MRI has also become an issue in public discussion. In the time of the economic and fiscal crisis, and due to the lack of demographic pressure on the housing stock, the most plausible way to increase the share of social housing is to introduce Social Housing Agency, which would take over the risks private landlord face, and play an intermediary role between the private landlords and low income tenants in need for affordable rental opportunities.

A critical housing related issue is access to affordable housing of low income groups. The traditional municipally owned social housing sector is not able to meet the demands because of its residual nature; and it has become evident that there will be no substantial investments into the social housing sector in coming years because of the financial austerity affecting the central and local governments. However, the considerably high rate of privately owned vacant units (even in high density urban areas) provides a much cheaper solution, which is feasible in the short run. On the basis of existing foreign (chiefly Western European) experiences, experts and civil society organisations came up with a policy recommendation to include private rental units in social housing provision through Social Rental Agencies, which would be established for this specific task. The recommendation also highlights the importance to improve the legal regulation of (private) rental sector in order to increase the landlords' and tenants' security, and to introduce rent allowance to make the scheme affordable for needy, low income households.

However, the biggest issue of the last three year public housing issue is the mortgage rescue programme. (See 2.5. Effects of the current crisis) The increasing burden of housing expenses leads to increasing housing insecurity. Housing expenses represent a growing burden for most families. Close to one third of Hungarian families have trouble paying for housing (rent or mortgage repayment; utilities; renovations and maintenance etc.). The insecurity of housing has become one of the main problems in recent years. More and more people are facing the threat of losing their homes due to various reasons, particularly arrears in (mortgage and other) loans, rent and utilities. The number of such households has grown in the wake of the crisis and the subsequent recession, which is still being felt in Hungary, including the deterioration of labour market

opportunities (in both the formal and informal sectors) and the shortcomings of the social services system.[200]

A summary of the development of the tenancy law

After the privatization in the 1990s, the Hungarian public rental sector has been reduced to 3% of the housing stock. Against expectations, the private rental sector did not undergo a dynamic progress, and its size is also estimated to be around 3% by official statistics (while, because of widespread tax evasion, its actual rate could be 8-10% of the total housing stock). One of the most important features of the rental sector is that, despite the development of a functioning market economy, there are ***no private institutional landlords*** who invest in rental housing.
The authors of this report argued[201] that there are two basic factors explaining the lack of a well-functioning private rental sector: financial disadvantages stemming from the ownership-friendly tax and subsidy systems; and the legal uncertainty of the rental sector. While this national report attempts to provide support for these hypotheses, there is no real empirical, testable evidence to prove them due to a lack of reliable statistical data and/or systematic sociological research. The reason for this is partly that the private rental is basically an informal sector, and partly because the public sector is fragmented: municipal housing companies are under the discretion of municipalities, which may follow very different strategies. However, based on the analyses of tenancy law cases and on the limited field research (using interviews,[202] document analyses, internet research), we have a broader concept of the dynamics of the development of the sector. Due to the limited research resources it does not qualify as a scientific explanation, but still offers some insight in the form of a "story", which helps the reader to interpret the facts described and analysed in the report.

We have two main sub-tenancy sectors: the private rental and the public rental. Both have their own dynamics with different actors, different types of conflict, and different solutions (legal and social) to the problems they face; however, these solutions may have an effect on the other sub-sector.

1. THE EVOLUTION OF THE PRIVATE RENTAL SECTOR REGULATION

The starting point of our understanding the private rental sector is that it would not be profitable for a rational investor to invest in the rental sector, because the present value of the expected profit would be lower than other alternative investments. From the households' point of view, a rational consumer with various options would rather move

[200] Almost 37,000 families are cut off from electricity and more than 100,000 from gas provision. 8 Foreclosures cause serious social tensions even if they do not always end up in an auction or an eviction. In 2011, 395,000 dwellings were designated for auction; only 20% of these were initiated by a bank, the rest were the result of arrears in utilities or phone bills, for example. Forced liquidations had started in the last quarter of 2011, and by the end of 2012 13,600 apartments went under forced liquidation. (Annual report about housing poverty, 2012. MRI- Habitat for Humanity - http://www.habitat.hu/en/tudaskozpont/annual-report-about-housing-poverty-2012?id=23)
[201] J. Hegedüs, V. Horváth and N. Tosics: Landlord tenant conflicts in the private rental sector in Hungary ENHR Conference in Tarragona, 2013
[202] See the full list under 9.2 Cases.

into owner occupation than into the rental sector, because they would realize higher individual "profit" in the owner occupation sector, mostly deriving from the tax and subsidy system. This latter supports ownership against other tenure forms in a number of ways: a. no imputed rent; b. the profit from renting is taxed the same way as other income;[203] c. capital gains exemption and other subventions for owner occupation; d. lack of direct subsidy for rental tenure on the private market. These factors made the private rental sector ***financially unfavourable***. The conclusion is that the main economic factor explaining the low proportion of the rental sector is the financial disadvantages (lack of a tenure neutral subsidy and tax system). Consequently, the private rental sector basically is not an outcome of free choice, but more a coercion; both on the demand and supply side, the actors have no other realistic alternatives. The rent level in the PRS was 2.5 times higher than in public rental; but the cost recovery rent level for a professional investor was 40-60% higher than the market rent.[204] While according to our research this is the main trend, in several cases on the supply side, there were private persons who invested in private rental property partly because the subsidized loans, partly because the thought that they can efficiently manage the risks of the tenancy contracts.

The other general factor is the ***legal uncertainty*** in tenancy regulation, in the sense that in a conflict situation (between the tenant and the landlord) the law and the court procedure do not offer an unequivocal and manageable solution. The parties have to develop their own strategy to manage the risk involved in the tenancy relation, and this make an extra cost on the sector (a kind of transaction cost).

Despite these two factors, the private rental sector exists in Hungary, and according to our field work it is expanding;[205] this trend however does not contradict our hypotheses. On the supply side, the home owner (accidental landlord, professional developers and banks with foreclosed properties) cannot sell their homes. On the demand side, more and more people lose their apartments (arrears in mortgage, public sector rent and utility cost), and more and more people are not able to buy homes (economic crisis, mortgage market); hence the number of potential landlords and tenants is growing, in spite of their obvious disadvantages in these roles.

There are three mains type of risks on the landlords' side, which are related to the tenancy regulation (the fourth type, the risk of low demand, is more a market risk): unpaid rent, unpaid utility cost and damages in the property.[206] The dynamics of the private rental sector can be explained by the different strategies to manage these risks.

To manage the risks, landlords simply do no lease their apartments. The size of vacant residential properties has almost reached 500,000; or 12% of the total housing stock, according to the 2011 national Census results. This indicates that the housing stock is

[203] As described earlier, individual landlords are VAT free, but only to a fairly low income level, hence discouraging larger and institutional investors with the 16% income tax coupled with 27% VAT.

[204] Székely, J. 2011. Társadalmi helyzetkép: lakáshelyzet [*Social conditions: housing*] Budapest: Central Statistical Office, http://www.ksh.hu/docs/hun/xftp/idoszaki/thk/thk10_lakas.pdf last viewed: 14 June 2013.

[205] The expansion of private renting can be partly explained by the upsurge in unemployment and restriction of cash benefits, resulting in the worsening affordability of owner occupied homes; a growing number of persons enter the rental market when they realise they do not have other options. (Source: interviews L1, L3, L10, F1, F2, M7)

[206] There are also risks on the tenants' side, such as short-term contracts, unpredictable rent level and landlords' harassment. We are not analysing these risks in detail.

not used efficiently.[207]However, keeping apartments empty may inflict (utility and maintenance) costs, which, without any special tax, may give incentives to put them on the market. (Some local governments introduced different rates of property tax for empty dwellings, where no inhabitant is registered, but registering a relative to the address of the apartment is not a complicated task for landlords – LW1)

Another strategy to manage the risks is to lease the apartment for free (or under market price) to a relative, a friend or to a friend's friend. This is a typical solution as a small research and case demonstrated.[208] However, in real financial trouble trust and close relatives do not help. On the contrary, it increases the difficulty to initiate harsh procedures (trust is reciprocal). The Housing Law does not deal with the regulation of the lease for free; it is under the Civil Code. (See BOX C, based on interview L6.)

In the case of typical private rental contracts the risks are high, but there is no systematic empirical research on their level or expected costs. MRI estimated the price of individual risk elements, and concluded that the cost of the risk could reach 50% of the market rent. A number of interviews (L2, L6, L7, L9, F1, F2, LW1, LW2) demonstrated that risks or (a part of the risks) is related to the unprofessional housing management (no efficient selection of probably reliable tenants; no regular monitoring of payment; no opportunity to pool risks etc.). Also, because of the lack available reconciliation mechanisms and efficient court procedures, there is a learning process on both the tenants' and the landlords' side, which takes years.

On the tenants' side, there is a number of low income households that specialize in taking advantage of unprofessional landlords; they rent an apartment, pay the deposit, and after a few months they stop paying entirely (both rent and utility cost) and stay in the apartment as long as they can. (L9, R9, F1, F2, F3, M7) These are typically poor people, but necessarily the most destitute ones. They may use the eviction moratoria (case: interview L9); legal tools such as the protection of possession stated in the Civil Code, and the slowness of the court procedure. (Interviewee R9 called them "moratorium tenants", who move in the apartment in August, pay two months' rent, and from November onwards they do not pay until the end of the moratorium in 30 of April.)

In these cases, landlords resort to different strategies. They often have no choice but to accept at least some loss, because they do not have efficient legal support. According to interviewee LW5 (Judge practising in Szombathely, Western Hungary), court practice was systematically biased towards the tenants in the 1990s, and became more balanced after 2000. However, according to most of the interviewees, court procedures are slow and expensive, so private landlords with a non-paying tenant will try to negotiate with tenant informally. There are much less court cases related to private rental than to the public sector (LW5). There is a "learning process"; see for instance BOX D (interviewee L9), where the tenant was very well informed about all the legal possibilities that could permit him to prolong his stay in the apartment for as long as possible.

Possibilities for landlords are limited because of the legal regulations regarding the protection of possession, but there are several informal or quasi legal interventions to force the tenant to leave the apartment:

[207] Owners with bad experience conclude that it is better for them to keep their property empty.

[208] Erdősi Sándor (ifj.): Lakásbérlet baráti áron. Intézmények és személyes kapcsolatok a magánbérleti piacon. (*Rental housing at a friendly price. Institutions and personal relationships on the rental market.*) Szociológiai szemle. Vol. 10. 2000. Iss. 2. pp. 71-80. Also mentioned in interviews L6, LW1.

- **Breaching the law**. For instance, moving into the apartment and changing the lock; moving the tenants' belongings out of the apartment, etc. These are all acts violating the law. Several interviewees indicated that they use force to move the tenant out by not using actual violence, but the threat of violence (L1, L5, L9, F1, LW1). It may, of course, be very risky.[209]
- **Making the apartment unusable**. One typical solution is for the owner to cut the electric services. (Service provider companies have their own procedures and do not cut the services at the request of the owner.) As in the case D.E., (L2), the landlord cut the electric service in the rented apartment illegally, so the tenant who initially refused to move out *and* negotiate with the landlord eventually became open for negotiation. In the end of this case, the landlord did not only incur the loss for non-payment of rent, but offered to pay the tenant an extra two months' rent for deposit, in order to make the tenant move into another apartment. In the case described in BOX D (L9) the landlord was not willing to follow this strategy because she felt that it is unfair with the next landlord, who will have the same issue with her tenant. In another case, the landlord (L7) broke the water pipe and made the apartment uninhabitable.
- **Asking lawyers for special services**. If the lawyer follows the regular legal procedure, s/he cannot speed up the process. However, there is an unusual service company, which undertakes the management and maintenance of private rental apartments as its main profile, but also offers to remove the uncooperative tenant within two months (the legality of which is not fully clear). In the case demonstrated in BOX A (L9), the company's manager (with a former police background) emphasized that they do not use force, but follow a procedure (which he did not share with the client).

Tax evasion is considered to be a widespread practice by the landlords. It's pervasiveness is extremely hard to estimate even for professionals. It was estimated at around 50% of all private rentals by R9 (lawyer and real estate agent), and around 80% by LW2 (deputy notary public). One way is to have a sham contract and pretend that the tenant uses the apartment free of charge. The general problem with this kind of the solution is that in case of dispute both parties may be in trouble. (L6)

There is a learning process on the side of the landlords as well. The real estate agents improve their selection criteria ("underwriting" procedure). The landlord, after some bad experiences, asks for more information about the possible tenants to check the probability of default. As in the focus-group meeting a landlord mentioned, she advertises the apartment above the actual market price to filter the poorest or potentially risky tenants. (F3). There are agents who specialized only in the higher end segments of the market (LW3), for example, diplomats with low non-payment risk, and agents who deal only the student submarket. (R6, R7)

[209] On the internet forums, several cases indicated that the use of a certain level of violence is typical.

There are companies who specialize in full service property management: they conclude the contract, collect the rent and overview the utility payments, etc.; though they do not take the financial responsibility for the risks.
The procedure in case of non-payment can be sped up if a contract is concluded in front of a notary public. However, the interviewees' views were contradictory about its efficiency. It shortens the process, as there is no need for a court decision to start the eviction process, but the length of the eviction process depends on the office of court execution.

2. THE EVOLUTION OF THE PUBLIC RENTAL SECTOR REGULATION

The report has dealt in detail with the development of the public sector, especially with the privatization process. The main conclusion was that municipalities typically tried to sell as much housing as they could, and from 1993 till 1995 the tenants had the right to buy, and from 1995 till 2000 they had a pre-emption right. However, even from 2000 municipalities have not stopped the privatization of housing, though the selling prices increased (more exactly, the discount rate has decreased) and the number of units sold decreased as well. (See 1.2 Historical evolution of the national housing situation and housing policy) However, though we can conclude that the main trend was the continuation of privatization, municipalities behaved in very different ways, as the Housing Law gave a wide discretion to the municipalities in the local tenancy regulation. The rent structure, rent-subsidies, the allocation policy etc. differ considerably across municipalities, and because of the lack of systematic research it is not easy to make general statements about the changes in the sector. However, based on field work, interviews and document analyses, we try to summarize some of the main trends.
First of all, municipalities have lost the better part of their stock in the process of the privatization, thus the majority of their housing stock has lower quality and typically smaller size than the average housing stock. Henceforward, the inhabitants' ability to pay is much lower than that of the average population. This is the process of revisualization (as we argued in the Part 1 of the study.), which had an important fiscal effect. The loss on the public rental sector may be substantial, because of the low rent (typically 20-35 % of the market rent) and the huge arrears.

> There are no exact and detailed statistics of the rent arrears in the municipal rental sector. According to our field interviews in Nyíregyháza 70% of the tenants have arrears; in Szombathely 53%. In Békéscsaba 22% of the tenants have substantial arrears, In Zalaegerszeg in 2011, more than 50% of tenants (711 households) had arrears higher than HUF 50,000. In 2011, the share of public tenants with arrears is 50%.[210] A State Audit Report in 2003 indicated that around 40% of rent is paid with delay to the municipalities.[211] Arrears are commonly considered as one of the most important problems in the public sector, though there is no systematic comparative analysis about their size or scale.

[210] Székely, 2011.
[211] ÁSZ, Report of State Audit Office of Hungary No. 359, p. 18-19

Consequently, one of the most important aims of the municipal housing policy is to decrease the losses related to the municipally owned stock. Moreover, as far as possible within the given legal and fiscal conditions, they would like to use the housing stock and budgetary resources for social purposes, that is, give housing support (rental benefit and other financial support) to needy households. The demand for social housing exceeds the supply several times (new and vacated units).
However, municipalities define their target groups in a very different way. There are tenders for public housing where the minimum income requirement is 3-4 times that the minimum pension; which indicates a lower middle class target population instead of a low income one.
Social landlords face the same risks as private landlords, but their political possibilities and incentives to manage these risks are very different from the risks private (typically accidental) landlords run.
The main problem the municipalities face is managing the arrears, and there are very different municipal policies for this.

1. To decrease the risk of non-payment, municipalities prefer short term (usually one year) contracts, which can be continued in the case of no arrears in payment of the rent and utility fees. Some of the municipalities (for example Pécs, South Hungary) introduced a new rule according which they can terminate the contract after one month rent non-payment.
2. More and more municipalities start a legal procedure against non-paying tenants. In several cases, the tenants pay if they see that the municipality is determined to continue the process. (M4, M5, M6, M10) However, in the case of tenants who are not able or not willing to pay, the contract is typically terminated, after which the process slows down. At that point several municipalities try to negotiate with the tenants. Because of the political cost of eviction, they try to make a special arrangement. (One example is the “social accommodation” arrangement in Szombathely – M1, M3; the pertaining contract is removed from under the effect of the Housing Law.) After the termination of the contract, the tenants are charged to pay a user fee if they continue to reside in the dwelling, which could be two-three times more than the rent, meaning that they will not be able to manage the debt.
3. In the allocation of the vacated (and newly bought) units, municipalities introduce criteria which exclude the lowest income applicants. They define a minimum threshold of income which the candidate has to prove. Municipalities prefer candidates who can pay the rent in advance for 6-12 months, which in principle excludes the very poor people. According to the law, municipalities may decide the share of different type of contracts. In the case of the cost rental, they do not need to use strict social conditions.
4. Municipalities try to exclude the poorest tenants, who often live in overcrowded apartments – some even attempt to drive them away with “soft” methods. For example, one city municipality (Miskolc) limited the number of the people who can move into an apartment through the compulsory address registration system, by

defining the minimum floor area for one person in 6 m^2, regardless of whether another accommodation could be provided to the residents above the limit.[212]

5. More and more municipalities introduce an annual check on the eligibility criteria for the social and cost rental units. If the income of the tenants increases, the rent increases as well. They also forbid sub-tenancy of the whole apartment, which means that the apartment cannot be legally used as a source of income.
6. Some of the municipalities privatize apartments or houses with the tenants living in them, for a lower price. It means that the tenants become private renters, but their legal status (property rights tied to their contract) has not changed. In this case it is the task of the new private owner to have an agreement with the tenants. It is relatively rare, but it happened in the inner city of Budapest (District 6), where buildings before rehabilitation were sold (very expensive land price, rent gap). The other case was in Zalaegerszeg (South Western Hungary), where apartments with tenants without legal title were sold (M12).
7. Municipalities do not have resources for refurbishment (M1, M3, M5, M13), and some of them publish tenders for tenants with the condition that the new tenants have to renew the apartment, the costs of which can be considered in future rent payment. Although this approach is meant to bridge the municipality's inability to provide resources for the adequate management of its housing stock, there is no real demand for this, because prospective applicants for affordable rental do not have the resources either, and those who maybe do lack trust in the stability of the sector.

In the other part of the public sector (state owned housing stock) the institutional incentives were different. The Ministry of the Defence or National Railway Company for example were under different kinds of pressure, but they were undertaking the privatization of their stock basically following the same logic, in a not satisfactorily transparent way. In 2010, a politically motivated court case started because of the reduced price privatization.[213]

Other interesting case was the housing management by the Asset Management Agency of the Treasury. The housing units[214] under the control of the Agency were allocated to the tenants (Agency employees) according to the discretion of the Agency at below market rent, and after 2 years they were privatized at a discount price. When this practice was criticized, the Agency argued that according to the law, they have to manage the stock in a financially reasonable way, and because the rent did not cover the cost of the properties, privatization was an adequate solution.[215]

In the public sector, the most important development is the housing stock managed by the National Asset Management Company (NAMC, see in Part 1, and earlier in this

[212] K. Janecskó, "Living in poverty in overcrowded house is now a crime" (Büntethető a szűk lakásban nyomorgás) http://index.hu/belfold/2012/10/18/buntetheto_a_szuk_lakasban_nyomorgas/; 18.10.2012. (in Hungarian)

[213] Hvg.hu, "Accusation not sufficiently clear in housing case against Juhász and Fapál" (Nem elég pontos a vád Juhász és Fapál lakásügyében); hvg.hu, 16 April 2013. (in Hungarian)

[214] If the owner of a residential property managed by the Agency died without inheritors, the ownership of the property was allotted to the Agency.

[215] G. Miklósi: Housing management at the Treasury Property Management: rooms with a view (in Hungarian), Magyar Narancs, 2007.

report). The law regulating the tenancy relation in this new sector has been changed several times, according to the need of the Agency (LW4). The latest information is that already 15,000 units are in pipeline for purchase; they were expecting 25,000 by the end of 2013; and the program is still on course.[216] If the NAMC purchases are continued as intended at the 2012 launch of acquisitions, it will be the biggest social housing program after the transition in 1989/1990.

BOX A. Buying tenancy rights

In 2007, a university student (T1, age 28) „bought" the tenancy right of a municipal apartment in a downtown district of Budapest.

She found an advertisement on ingatlan.com with a connection to a lawyer who was specialized swapping tenancies in the district. He had a good connection to the housing department of municipality. She agreed to pay HUF 7 million for the tenancy right of a 55 m^2 municipally owned apartment (which had a market price around HUF 18-20 million). The lawyer charged 5-10% of the price, plus a cost for side payment to the official at the municipalities. The seller (the municipal tenant at the time) and the buyer (Zs. G.) negotiated directly, the lawyer just made the paperwork. Technically, this was a swap between a public and a private rental. Zs. G. does not have the right to buy a municipal tenancy, but the renter of a municipal unit is entitled to exchange tenancy right with a private renter. Zs. G. pays HUF 7 million to the former tenant, and the two are supposed to exchange tenancies. However, Zs. G. does not live in a rental apartment: she nominally rents the private apartment of the lawyer; she gets herself registered at his address; and at the time of the swap she moves into the municipal flat (and registers this new address again).

The rent of a municipal apartment is very low, and she has very strong tenure security here, as tenancies dating from before 1989 usually do. By 2009, her impression was that her opportunities will be limited by future municipal measures; e.g. the municipality might decide to raise the formerly very low rent levels. She went back to the same lawyer, and asked him to sell it. In only one day, a buyer showed up, and they agreed in a new price at HUF 7.9 million. Technically, she moved into another apartment as private tenant.

The buyers raised the money to buy the tenancy right by selling their privately owned apartment. In this case, the municipality followed this transaction more closely: the housing department actually called the buyer for an interview to check the "reality" of the property swap. However, this check did not seem very serious either.

Selling the public tenancy right is practiced openly. There companies who advertise themselves specializing selling tenancy right. http://www.ikv.hu/aktualis/ingatlaniroda/berleti-jog.html

[216] FigyelőNet: The state becomes landlord in a growing number of apartments (in Hungarian), 2014.

BOX B. Case of informal solution of non-payment

A typical individual (accidental) landlord (L2; medical doctor with a practice), bought an apartment as an investment in 2001. The flat is 63 sq.m., located in downtown Budapest, and its price was HUF 12.5 million with a subsidized loan of HUF 10 million in 2001. It was in average condition, in need of minor renovations (repainting, some fixing in kitchen etc.) which cost a few hundred thousand HUF, or around EUR 1,000. The first tenant was found through a real estate agency, which asked one month rent as a fee. The rent was HUF 70,000 plus utility cost per month, to be paid to the landlord directly, while the tenant was expected to pay the utility cost directly to the utility service companies. The tenant (a divorced man who lived with his daughter) was a small business entrepreneur, who went bankrupt and lost his house which was collateral against his mortgage loan in Érd, a town close to Budapest, which is why he moved to a private rental flat. The landlord did not check payments regularly, only every now and then. After a year and a half the landlord realized that the tenant did not pay the utility cost at all, and paid the rent irregularly. After checking up on the issue, he realized that the tenant did not intend to pay for his arrears, and was not going to move out of the apartment either. Consequently, the landlord terminated the contract. He asked the tenant to move out, who refused with a reference to the Civil Code's protection of his possession inside the apartment. The landlord's lawyer advised not to start a civil litigation procedure, as it could last for years, and look for an alternative solution instead. The landlord contacted an acquaintance at the electricity provider company, who illegally disconnected the apartment from the apartment block's network. The tenant remained in the apartment without electricity, and argued that he cannot move out as he does not even have enough money for another deposit in another rental apartment. Eventually, the landlord paid the tenant to be able to move out move out from his flat: the deposit of his new rental apartment was HUF 70,000, paid entirely by the old landlord. In the end, the landlord lost 7 months' worth of rent and utility costs, plus the amount he used to help the tenant move out.

BOX C. Accidental landlord – tenant as acquaintance

The apartment was bought by F.B. (L6) and family in 1992; 32 square meter small flat in in a four story pre-fabricated building composed of similarly small one-room buildings only, located in Budapest. The common cost payable to the condominium includes every utility except for electricity, so inhabitants have to pay only two kinds of bills: common costs (covering heating, water and sewage, and contribution to a common renovation fund) and electricity.

The flat was let out to a university student first, who lived there for a year. He did not pay for electricity, and later he stopped paying the rent too. The owner knew him in person from the university, and managed to convince him to move out.

The family paid for his arrears; phone bills were in arrears too, but it the telecommunications contract was on the tenant's name.

The family decided to let the flat out only to people they knew and trusted from then on, to avoid similar complications. A colleague of F moved into the apartment with her family, they paid the rent and common costs (HUF 30,000) and other bills in order, and they had no conflict with the owners. After about a year and a half they managed to buy their own apartment, and moved out.

Next a young man from a small East Hungarian municipality rented out the apartment. F. and her family had a second home in the village, and spent holidays there for nearly three decades, which is how they knew the tenant as well as many other people from the village. He lived there for about three years, and then moved out. He paid the rent to the family via bank transfer, and the common costs to the condominium manager.

After he was gone, the family came to know that he stopped paying the common costs for a while already, and he accumulated nearly HUF 300,000 in arrears. F. managed to find the former tenant, and she managed to convince him to pay, because it would have been very inconvenient for him if the people in his home village (a small municipality where everyone knows everyone) would have come to know that he had left a huge debt on F's family.

The apartment stayed vacant for about a year, and eventually the family sold it in 1998, to buy a larger apartment for a family member who moved into it as owner-occupier.

BOX D. Tenant does not move out

G.I. (L9) bought apartment near downtown Budapest in mid-1990s; family lives in, then moves out in 2007. Apartment let out since 2007 through real estate agent: originally family advertises individually, but low demand + real estate agents apply to ads; they eventually rent through agents. Conditions: HUF 65,000/month; 2 months deposit; 1 month rent fee to agent. Conditions unchanged to date.

Three young women move in in 2007, unproblematic continuous rental until 2011, although tenants keep changing, and three different persons move out in 2011.

Family advertises again; low interest and estate agents show up again; the family lets out the apartment through agents again with unchanged conditions. The first would-be tenant who seems reliable suggests scamming the agent (G: "I should have suspected he will not turn out all right"). Unproblematic rental for nearly two years; G and family initially checks payments every two months, but when things seem to go monthly, they stop visiting the apartment. Last visit in the apartment in Aug 2013, when G orders renovations in part of the flat, and is present during the implementation. Tenant indicates that he lost his job, has to move out, asks permission to use the two months deposit as rent until October, when he intends to move out. The tenant made his last payment in July 2013; not all bills paid, but G and family do not realize, as they had not been following payments very closely for a while then. In August, G promises to tenant that he can use up his deposit as last 2 months rent, and move out in October.

In early October G re-contacts tenant, visits, tells that son would like to move in, so they need the tenant to move out. Tenant tells them he has neither money nor a place to go; he promises to arrange his situation by December and move out then.

He also tries to make a deal, saying he is willing to move out right away if the landlords give him HUF 130,000 for a next deposit.

Later he writes an e-mail to the family, in which he threatens with heavy weight friends and also reporting G at the tax authorities, warns of the protection of his possession while he still lives in the apartment, and wants the landlords to stop "harassing" him.

G and family get a lawyer (not from network; simply go to nearest lawyer's office). Lawyer says they cannot simply remove the tenant. The tenant's oral termination of rental contract was not valid; a rental contract can only be terminated in writing, or in any way that can be used as proof later. The tenants cannot be removed from the apartment by force; he could lawfully go to notary and denounce the family for violation of protection of his possession, and the family would have to pay a fine. On 23 Oct 2013 G wrote a formal termination letter, and posted it to the tenant. The letter was returned after two delivery attempts; at which point it can lawfully be considered delivered, and the termination of the contract is valid by the 15th of next month, which was 15th November 2013. At this point the lawyer talked to the tenant, who did not cooperate (lied about having made the payments, although he could not prove it; pretended not to understand the situation).

The family meets the tenants once more; he politely asks to stay until 10 December, when he promises he will move out all by himself. In the meantime he also says he is willing to move out right away for two months' rent, which the family refuses once again.

On 8th January 2014 the lawyer filed a claim for civil litigation. The court will have to state that the tenant wrongfully stays in the apartment without title.

As this can take years, the family contracted a private company called "Rental supervision", which specializes on the management of rental apartments. They claim to be able to rid the landlord of the tenant within two months with legal tools, for slightly less than two months' rent (HUF 110,000). This should technically be impossible, unless they use threat, which they promise they won't. They suggested to have contacts to the electricity provider, who might be willing to switch off electricity in the apartment (which they did not do at the request of the owner, as she told them there is a person staying in the apartment). This contract was signed in less than a month, no tangible results yet.

7. Analysing the effects of EU law and policies on national tenancy policies and law

- *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?*

7.1 EU policies and legislation affecting national housing policies

EU policies and legislation have so far had little direct impact on tenancy laws in Hungary.

One area where the indirect effect of EU legislation may be identified is the legislation concerning equal treatment, which is also applicable in the field of tenancy relationships. Although the provisions of the Antidiscrimination Act concerning housing, already presented earlier, are not a direct transposition of an EU legislative act, the adoption of the legislation as such was influenced by the equal treatment principle (also provided in the EU Charter of Fundamental Rights) and EU social policy. Basic provisions of the Act are based on the EU legislation promoting equal treatment and the general principle of non-discrimination on the grounds of nationality. By virtue of this legislation, among others, other EU nationals are also entitled to equal treatment in the field of municipal and state tenancy relationships, as well as in open offers or requests for offer concerning private dwellings.

As mentioned earlier, the Antidiscrimination Act also contains a provision against segregation: it foresees that the conditions for access to housing may not be intended to artificially isolate certain groups in a given settlement or part of a settlement (Article 26 paragraph (3) of the Antidiscrimination Act). This provision, together with the provisions

of the Act concerning prohibition of discrimination based on ethnic origin reflects the objectives of EU social policy, in particular the social inclusion and integration of Roma.
In addition to these policies, European State aid policy may also be relevant concerning tenancy relationships. In case the state is subsidizing the renewal of housing estates, the question may arise whether the project contains State aid elements, in particular because of the potential exploitation of the dwellings for example by means of lease.
Furthermore, in contracts concluded between different nationals, private international law, and the EU regulations concerning the law applicable to contractual obligations, jurisdictions and the recognition and enforcement of civil judgements play a role in the procedures for the settlement of disputes.
In Hungary, tenancy relationships are in general contractual relationships between private parties, or between private parties and the state or municipalities. Therefore, the provisions of consumer law, relevant in contractual relationships between the service provider and the consumer, typically do not play a role. Similarly, the impact of EU tax law and the harmonization of general contract law cannot be shown in the field of Hungarian tenancy law.

7.2 EU policies and legislation affecting national housing law

At present, the only EU legislative act that is directly manifested in the provisions of the basic law of tenancy relationships in Hungary, the Housing Act is Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings. As of 2012, the Housing Act provides that the landlord is bound to present the energy efficiency certificate provided by law concerning the building and the dwelling and other premises therein or a copy thereof to the new tenant, and to hand over to the new tenant at the time of the conclusion of the contract. The new tenant recognises by means of written declaration to the landlord the presentation of the energy efficiency certificate at the time of viewing, and the taking over at the time of conclusion of the contract. In case the offer for lease is made based on a commercial communication in the media, the landlord has to ensure the publication in the commercial communication of the energy efficiency index indicated in the energy efficiency certificate (Article 11/A of the Housing Act).

7.3 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 CVIII of 2011 on public procurement	It is envisaged a special allocation procedure for contractors when the target is the construction of social housing (art. 34).
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)	**Remark:** Abrogated by Regulation 305/2011/EU of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing directive 89/106/EEC, directly applicable in the Member States	About construction products: free movement and the certificates required.
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).	Act LXXXVI. of 2007. on Electricity Government Decree CCCIX of 2013. (VIII. 16.) on the certification of origin of electricity produced through high efficiency cogeneration from renewable energy sources	Energy saving targets imposed to the State. It also deals with the Public Administration buildings and others that require greater energy savings.
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).	▪ Act LXXVIII of 1997 on the Formation and Protection of the Built Environment ▪ Act LXXVIII of 1993 on Residential and Commercial Leases (11/A. §) ▪ Government Decree 1246/2013 (IV. 30) on attaining the cost-optimal levels for energy requirements according to Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings ▪ Government Decree No. 176/2008 (VI. 30.) on the Certification of Energetic ▪ Characteristics of Buildings ▪ Ministerial Decree No. 7/2006. (V. 24.) TNM on the establishment of energy characteristics of buildings ▪ 77/2011. (X. 14.) Parliament resolution on the National	Energy efficiency of the new and the existing buildings.

DIRECTIVES	TRANSPOSITION	RELATED SUBJECT
	Energy Strategy ▪ 1307/2011. (IX. 6.) Parliament resolution on the National Environmental Technology and Innovation Strategy ▪ Government Decree 313/2012. (XI. 8.) on the Building Documentation and Information Centre , and on the National Building Register ▪ Government Decree 312/2012. (XI. 8.) on construction and building inspection official procedures and administrative controls, and on construction authority services ▪ Government Decree 105/2012. (V. 30.) a mending certain construction and land use regulations subject government	
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).	▪ Government Decree 309/2013. (VIII. 16.) on the certification of origin of electricity obtained from renewable energy sources through high-efficiency cogeneration ▪ Government Decree No. 193/2011. (IX. 22.) on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products ▪ Act LXXXVI. of 2007 on Electricity	Labelling and basic information for household electric appliances' users.
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).	Government Decree No. 193/2011. (IX. 22.) on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products	
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).	Ministerial decree 4/2002 on the energy efficiency requirements for domestic lighting	
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).	Act LXXXVI of 2007 on Electricity	Promotion of the use of renewable energy in buildings.

DIRECTIVES	TRANSPOSITION	RELATED SUBJECT
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).	Act LXXXVI of 2007 on Electricity	Basic standards for electricity sector.
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).	Decree 88/2003. (XII. 16.) of the Ministry of Economy and Transport on information about energy consumption characteristics of Household Air Conditioning Devices	Labelling and information to provide about air conditioners
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).	Ministerial decree (5/2002. (II. 15.) GM r.) on the energy efficiency requirements for household electric refrigerators, freezers and their combinations	Labelling and information to provide about household refrigerating appliances
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).	Act XL of 2008 on Natural Gas Supply	Basic legislation about natural gas in buildings and dwellings
Council Directive 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).	▪ Act XL of 2008 on Natural Gas Supply ▪ Act LXXXVI of 2007 on Electricity	Legislation about heating and hot water in dwellings and buildings
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).	Decree No. 78/1999 (XII.22) of the Minister of Economic Affairs on the indication by labelling and standard product information of the consumption of energy of household electric tumble dryers	Labelling and information to provide about tumble driers
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).	Government Decree 193/2011. (IX.22.) on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products	Labelling and information to provide about dishwashers

DIRECTIVES	TRANSPOSITION	RELATED SUBJECT
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).	Ministerial decree 6/2002 (II. 15.) on the energy efficiency labelling of household combined washer-dryers.	Labelling and information to provide about washing machines.
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).	Government Decree No. 193/2011. (IX. 22.) on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products	Labelling and information to provide about televisions.
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).	Decree 78/2004. (V. 7.) of the Ministry of Economy and Transport amending decree 1/1998. (I. 12.) of Ministry of Industry, Trade and Tourism with regard to energy labelling of household electric refrigerators, freezers and their combinations.	Labelling and information to provide about household electric refrigerators and freezers.
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).	87/2003. (XII. 16.) of the Ministry of Economy and Transport, providing information on energy consumption of domestic electric ovens	Labelling and information to provide about household electric ovens.
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).	Ministerial Decree 6/2002 (II. 15.) on the energy efficiency labelling of household combined washer-dryers.	Labelling and information to provide about household combined washer-driers.
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).	108/2001. (XII. 23.) FVM-GM joint decree of the Minister of Agriculture and Regional Development and the Minister of Economy about the safety requirements and conformity assessment of lifts	Legislation about lifts.
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).	Decree 20/1998 (IV.17) IKIM of the Minister of Industry, Trade and Tourism on efficiency requirements for hot-water boilers fired with liquid or gaseous fuels and assessment of their conformity	Legislation about boilers.

DIRECTIVES	TRANSPOSITION	RELATED SUBJECT
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 Nº 174/88).	374/2012. (XII. 18.) government decree on the restriction of the use of certain hazardous substances in electrical and electronic equipment	Legislation about restricted substances: organ pipes of tin and lead alloys.
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).	Act V. of 2013 on the Civil Code of Hungary	Information and consumer rights. Legislation referred to procurement of services, car park. Immovable are excluded: lease of housing, but not of premises.
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).	Act C. of 2003 on electronic communication	Consumer protection in the procurement of communication services.
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).	Act CLV. of 1997 on consumer protection	Collective injunctions infringements of Directives Annex I.
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). 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	• Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers • Act XLVIII of 2008 on Essential Conditions of and Certain Limitations to Business Advertising Activity	Misleading advertising and unfair business-to-consumer commercial practices.

DIRECTIVES	TRANSPOSITION	RELATED SUBJECT
(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).	Government Decree No. 17 of 1999 (II.5.) on Distance Contracts	Contracts relating to immovable are excluded, except from lease.
Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJEC 21.04.1993 Nº L 095).	Act CCI of 2003 amending Act LVVI of 1996 on the Prohibition of Unfair and Restrictive Market Practices, and certain statutory provisions relating to procedures of the Hungarian Competition Authority	Unfair terms
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).	Governmental Decree 213/2008 (VIII.29) on consumer contracts negotiated away from business premises	Information and consumer rights. Legislation referred to procurement of services. Contracts on immovable are excluded.
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).		Law applicable (art. 4.1.c and d and 11.5)
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).		Jurisdiction (art. 22.1)
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).		CPI harmonization. Art. 5 includes estate agents' services for lease transactions.
Commission Regulation (EC) Nº 1749/1999 of 23 July 1999 amending Regulation (EC) Nº 2214/96, concerning the sub-indices of the harmonized indices		CPI harmonization. Subscript 4: Lease, housing preservation and repair, water and

DIRECTIVES	TRANSPOSITION	RELATED SUBJECT
of consumer prices (OJEC 13.8.1999 Nº L 214/1).		other services.
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).		
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).		
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).		Discrimination on grounds of nationality. Equality in granting housing, aids, subsidies, premiums or tax advantages to workers who have moved within the EU.
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).	Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities	Discrimination on grounds of sex.
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).	Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities	Discrimination on grounds of racial or ethnic origin.
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).	Act II of 2007 on the Entry and Stay of Third-Country Nationals Act C of 2001 on the recognition of foreign certificates and degrees Act CCIV of 2011. on Higher Education	Equality of treatment with housing (art. 14.1.g.) However, Member States may impose restrictions (art. 14.2).
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	Act I of 2007 on the Entry and Stay of Persons with the Right of Free Movement and Residence	Discrimination on grounds of nationality. Free movement for European citizens and their families.

DIRECTIVES	TRANSPOSITION	RELATED SUBJECT
(OJEU 30.04.2004 Nº L 158/77)		
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).	Act II of 2007 on the Entry and Stay of Third-Country Nationals	Equal treatment in housing (art. 11.1.f.)
Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJEU 03.10.2003, Nº L 251/12).	Act II of 2007 on the Entry and Stay of Third-Country Nationals	The reunification applicant shall prove to have an habitable and large enough dwelling (art. 7.1.a).
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).		Equal treatment in housing and access to the housing applicants' lists (Art. 9 and 10.3).
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).		Real estate investment funds

8. Typical national cases

1. *THE TENANT 'DISAPPEARS'*

In the event that a tenant disappears without paying the amounts due to the landlord, the landlord may terminate the tenancy contract due to its serious breach, respecting the deadlines described above. In addition, the landlord may satisfy its claims from the amount of the caution.
Following a lawful termination of the tenancy agreement, the landlord may take the flat into his/her possession. If there are movables in the dwelling, which are subject to the statutory lien, the landlord may satisfy its claims by validating the lien.
If there are remaining unpaid amounts, the landlord may initiate litigation against the tenant seeking the obligation of the tenant by the court to the payment of the due, but unpaid fees. However, this is a lengthy and costly procedure, the positive outcome of which often fails due to the problems of effective execution.
(Interviews: L2, L3, L6, L7, L9, R2, R8, F1, F2, F3, LW1, LW4, M9, M10, M12, M13)

2. *THE TENANT DOES NOT VACATE THE DWELLING DESPITE NON-PAYMENT OF THE RENT OR OTHER SERIOUS BREACH OF CONTRACT*

Under Hungarian law, the non-payment of the rent and/or other serious breaches of contract specified in the tenancy agreement and in the applicable laws give rise to the termination right of the landlord. The landlord must respect the deadlines described above.
The consequence of the lawful termination of the lease agreement is the obligation to vacate the dwelling. Even if the reason for termination was the non-payment of the rent, the belated payment of such rent does not waive the tenants' obligation to vacate the dwelling. Thus, the claim for vacation cannot be dismissed, due to the misuse of right by the landlord. EBH 2005. 1313.
Enforcement of the vacation may be difficult, due to a special feature of Hungarian law, which protects the possession of the dwelling by the tenant even against the landlord. This means, that the tenant is entitled to seek remedies against the landlord for the protection of its possession, i.e. occupation of the dwelling in an administrative procedure. In this procedure the rights of the tenant to occupy the dwelling are protected, as long as a final, binding and enforceable court decision does not approve the position of the landlord. Since court procedures in Hungary are lengthy, the legal situation of the dwelling may remain uncertain even for years.
A practical solution to avoid the lengthy court procedure and the uncertainty of the legal situation could be that the parties to the tenancy agreement should sign the agreement in the form of a notarial deed. Notarial deeds in Hungary are directly enforceable. Thus, in the event of an evidenced breach of a contract in the form of a notarial deed, the remedies in the contract are directly enforceable, without the need to obtain a final and binding judgement with respect to the breach of contract. Although the preparation of a notarial deed may entail extra cost,(in the amount of several thousand HUF), the

advantages of the possibility of court avoidance and legal certainty may justify such extra costs.
In order to be easily enforceable, exact notice periods must be set forth in the agreement, and the agreement must explicitly contain the obligation of the tenant to vacate the dwelling upon termination of the tenancy agreement. Each party must evidence its contractual performance, by giving invoices and keeping receipts of any utility service charge payments.
(Interviews: L1, L9, R2, R3, F1, F2)

3. THE TENANT OF A MUNICIPALITY OWNED DWELLING DISAPPEARS / THE TENANT OF A MUNICIPALITY OWNED DWELLING DOES NOT VACATE THE DWELLING

Depending on the municipality decree in force, Municipalities may have additional rights to private landlords. However, the main underlying rights and obligations as well as problems are identical with the ones of private landlords.
(LW4, LW5, M2, M3, M4, M5, M6, M10, M12, M13)

4. NON-PAYMENT OF UTILITY SERVICE CHARGES

Under Hungarian law, as a main rule, the obligor of the payment of the utility service charges is the owner of the dwelling. Certain utility service providers enable tenants to conclude directly utility services agreements. However, the rules applicable to district heating explicitly provide for the liability of the owner of the dwelling in the event of a non-payment by the tenant. With respect to other utility services such an explicit legal obligation does not exist. However, according to the non-negotiable general terms and conditions of most utility service providers, such a liability of the owner is applicable. In practice, utility service providers usually require the full payment of any outstanding fees if the owner of the dwelling wishes to enter into the utility services contract in lieu of the non-paying tenant.
In general, tenants pay the utility service charges to the landlords, who ensure the payment of such fees to the respective service providers.
The non-payment of the utility service charges may qualify as a serious breach of contract, which may give rise to the termination of the tenancy agreement by the landlord. However, the obligations of the tenant in the agreement must be specific. According to a recent court decision, BH 2008.64, the landlord is not entitled to terminate the tenancy agreement due to non-payment of the condominium charges by the tenant is the tenancy agreement did not contain the specific obligation of the tenant to this effect.
Even if the tenancy agreement is accurate with respect to the allocation of liability for the payment of the service charges, due to the lengthy legal procedures and enforcement problems, the rights of the landlords are not effectively protected.
(L1, L2, L3, L6, L7, L9, R2, R3, F1, F2, F3, LW4, LW5, M2, M3, M4, M5, M6, M10, M12, M13)

5. ANTISOCIAL BEHAVIOUR

A termination by the landlord may be based on the behaviour of the tenant or the persons living with the tenant. In this event the landlord needs to request the tenant, within eight days from becoming aware of the behaviour, to stop the behaviour or to abstain from repeating it, with a warning about the consequences. The termination may be communicated within eight days from the continuation or the repetition of the relevant behaviour (Article 25 paragraph (3) of the Housing Act).
By way of exception to the rule on advance request, both the Housing Act and the Civil Code foresee that the termination by the landlord does not need to be preceded by a request to the tenant if the behaviour in question is so grave that the landlord cannot be expected to maintain the tenancy relationship. In this case, the termination needs to be communicated within 8 days of becoming aware of the behaviour. (Article 6:348 paragraph (1) of the Civil Code, Article 25 paragraph (4) of the Housing Act).
Whether or not the behaviour of the tenant qualifies as grave due to which the termination may be immediate, must be assessed on a case by case basis.
In addition, we refer to the enforcement problems discussed above.
(L2, L9, R9, F1, M3, M4, M5, M6, M10, M12, M13)

6. USE OF A DWELLING WITHOUT A VALID LEGAL TITLE

Hungarian law explicitly sets forth which persons may be accommodated legally by the tenant without the consent of the landlord. In private dwellings, the tenant is only entitled to accommodate his or her spouse and child in the dwelling. (Article 88/A paragraph (3) of the Housing Act).
According to court decision BH 2001. 221., the unmarried partner qualifies as a user without a valid legal title and is, upon the request of the landlord, obliged to leave without any reason. The request from the landlord does not need to be in a special from either.
In the case of municipal dwellings, the tenant may accommodate without written consent of the landlord his or her spouse, child, the accommodated child's child, as well as his or her parent (Article 21 paragraph (2) of the Housing Act). In this case, the conditions for the consent are provided in the relevant municipal decrees.
(T1, F1, M7, M10, M11)

7. FORCED LEASE

An obsolete feature of Hungarian tenancy law is the so-called forced lease. Prior to April 1, 1953 owners of dwellings had to respect that by way of an authority decision, their property became subject to a lease. This was an alternative to expropriation.
In order to settle the problems, and vacate the dwellings which were subject to the forced lease, Municipalities became obliged to provide an exchange dwelling to forced tenants. Alternatively, in the absence of proper exchange dwellings, Municipalities must offer an appropriate consideration for the forced tenants. Upon the payment of such consideration, the forced tenant must vacate the dwelling. Another option could be the

payment of the consideration to the owner of the dwelling, who must use the funds for solving the vacation of the forced tenant.
In the event that the forced lease could not be terminated by the means described above, the Municipality may extend a purchase offer for the dwelling in question.
The Municipality must apply the above measures within 3 years from the written request of the tenant or the landlord.
If the measures fail, a lease agreement between the owner and the forced tenant is deemed to have been concluded. Municipalities must compensate the owners of the dwelling for the difference of the rent paid by the forced tenant and the market rent. In the event of a dispute, the court must establish the amount of such compensation.
('Typical' in the sense that it is a unique issue; however there are only a handful of cases left in Hungary, which in turn did not come up in interviews.)

8. AUCTION SALE OF THE DWELLING

Hungarian law recognises the concept of an auction sale of an occupied dwelling. Pursuant to the court decision No. LB-H-PJ-2009-508 of the Curia, the former owner of the dwelling, who continues to remain in the dwelling, shall have rights equal to the rights of tenants and the provisions of the Housing Act applicable to tenants shall apply to them. Thus, in line with §2 (2) of the Housing Act, the tenant must pay a consideration for the use of the dwelling which shall equal to the amount that is determined by the court in accordance with § 6 of the Housing Act in the absence of the agreement of the parties.
However, according to another court decision, BH2004. 56., the new landlord (the auction purchaser of a leased dwelling) may only terminate the lease agreement based on non-payment of the rent, if there was an explicit agreement on the amount of the rent or the rent was validly determined by the court.
(This case of the 'quasi renter' is also 'typical' to Hungary in its unique nature, but is not wide spread to the extent that it would be mentioned in interviews.)

9. CONTINUATION OF THE LEASE

The death of the tenant results, as a general rule, in the termination of the tenancy, except if there is a person entitled to continue the tenancy (Article 23 paragraph (1) letter d) of the Housing Act). The persons entitled to continue the tenancy include, in line with the Housing Act, the maintainer under certain conditions (Article 32 paragraph (1) of the Housing Act), and in the case of municipality dwellings, those who have the right to move in with the tenant and have lived in the dwelling at the time of the death of the tenant: the spouse, the child, the child of the co-habiting child and the parent of the tenant, in this order (Article 32 paragraph (2) of the Housing Act). The maintainer has priority over the other beneficiaries Article 32 paragraph (6) of the Housing Act). However, the person continuing the tenancy is obliged to ensure the use of the dwelling for those who lived rightfully in the dwelling at the time of the death of the tenant (Article 32 paragraph (7) of the Housing Act).

10. COSTS OF RENOVATION

The maintenance, reparation, renovation and/or exchange of tiles, doors, windows and equipment in the dwelling is subject to the agreement of the parties. In the absence of such agreement, the maintenance and renovation obligation rests with the tenant, and the obligation to exchange or supplement rests with the landlord.

In municipal rental contracts based on social situation all the above works must be performed by the tenant, but the parties to the tenancy agreement must agree on an adequate rent decrease.

According to the Housing Act, the landlord needs to ensure:

- the maintenance of the building;
- the continuous running of the central devices of the building;
- and the fitting of defects in the premises in common use and in their equipment (Article 10 paragraph (1) of the Housing Act).

The distribution of the other obligations concerning the building, the premises and areas in common use are subject to the agreement of the parties, or in the case of municipal decrees, to the provisions of the relevant decree (Article 10 paragraph (2) of the Housing Act).

According to the explanations to the Housing Act, the obligations of the landlord mentioned above may not be transferred on the tenant. Accordingly, the parties could only agree for the tenant to carry out those works concerning the building which involve less effort and costs (such as for instance maintaining the garden and the watering system, fixing the garden furniture), cleaning and lighting of the building and of common premises, household waste disposal, etc.)

By way of contrast, according to the legal literature, nothing prevents the parties to agree on the tenant to assume any of the above obligations of the landlord.[217]

According to the Housing Act, if the tenant assumes obligations from the landlord, the parties also need to agree on the amount of the corresponding rent reduction (Article 10 paragraph (3) of the Housing Act).

Regarding the costs of the maintenance, refurbishment and replacement of the floors and tiles, doors, windows and the equipment of the dwelling, the agreement of the parties, or in the case of municipal dwellings, the relevant decree applies. In the absence of such agreement or provision, the costs concerning maintenance and refurbishment are born by the tenant, the costs of replacement and exchange by the landlord (Article 13 paragraph (1) of the Housing Act).

In the case of municipal dwellings rented on the basis of social situation these works need to be carried out by the tenant. However, at the time of the conclusion of the contract, the amount of the rent needs to be fixed in accordance. This is also the general rule for State owned dwellings. However, in this case, the parties may agree otherwise (Article 13 paragraph (2) of the Housing Act).

[217] Commentary to the Housing Act, Complex

Hungarian courts do not recognize the possibility to set-off the costs of a repair by the tenant against the rent, even if such cost, by virtue of law, should be borne by the landlord BDT2003. 817. Courts argue that in the lack of a specific enabling set-off provision of the Housing Act, the general rues of the Civil Code are not applicable. A set-off against the rent is only permissible upon the specific agreement on this subject by the parties in the tenancy agreement. The above court decision explicitly provides that in the lack of a payment by the tenant due to a claimed set-off right, the landlord may lawfully terminate the agreement for the breach of the payment of the rent,

Pursuant to another court decision, LB-H-PJ-2009-569 the tenant may not retain an adequate portion of the rent due to a valid warranty claim (obligation to repair the defected part) against the landlord.

(Interviews L3, F1, F2, LW1, M3, M4, M5, M6, M12, M13)

11. RENT INCREASE

Parties to a private lease are free to determine the amount of rent and agree on the rent increase. The Housing Act contains no provision in this regard, other than the possibility for the parties, in the absence of common agreement, to request the court to determine the amount. In the context of tenancy agreements, Hungarian courts accept the disagreement of the parties on the amount of the rent, or the non-acceptance by the tenant of regulated rent increase as causes for court contract amendments. (EBH2001. 535). (BH 2001.223).

As long as a litigation seeking the establishment of the amount of increased rent is pending, the termination right of the landlord due to non-payment of the rent cannot be validly exercised. EBH2001. 427.

In practice, this means that in the event of a disagreement on the amount of the rent increase, the tenant may turn to court seeking the establishment of the new rent and may, for the time of the pending litigation, be free from the termination for the lack of the rent payment, However, upon receipt of a final and binding judgement, all unpaid rent amounts with accrued interest become due.

Any municipal rent increase requires the amendment of the relevant municipal decree.

(L1, L2, LW1, M3, M4, M5, M6, M12, M13)

9. Tables

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BH 2001.223 Set the rent by the court
BDT 2003.817 Set-off the cost of repairs against the rent
BH 2004/1/9 Consequence of the lack of written contract
BH2004. 56. Buying inhabited dwelling
BH2008. 64. Quasi tenant and the condominium fee
BH2010. 215. Continuation of the tenancy after the death of the tenant
EBH2001. 427. Set the rent by the court
EBH 2001.535 Set the rent by the court – non-residential unit
EBH 2005. 1313 Termination the contract and the emptying the dwelling (eviction)
EBH 2010.2133 Swapping the tenancy rights
LB-H-PJ-2009-87 Compensation of repairs done by the tenant
LB-H-PJ-2009-508 Quasi tenant -- conflict of rent increase
LB-H-PJ-2009-569 Termination of the contract
LB-H-PJ-2009-709 Pre-emtpion right of tenant
LB-H-GJ-2010-34 Set the rent by the court
LB-H-PJ-2010-500 Termination of the contract – non-residemntial unit
Decision 3/1999 (III.24.) of the Constitutional Court The legitimacy of the mucipla decree on housing
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Decision 5.017/2013/3. of the Municipal Chamber of the Curia Revision of the municipőal houisng decree (Nagyatád)
Case 233/2008 of the Equal Treatment Authority
Case 628/2009 of the Equal Treatment Authority

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Act LXXVIII of 1993 on Certain rules on the lease of apartments and rooms and the alienation thereof
Act CXVII of 1995 on Personal Income Tax
Act CXII of 1996 on Credit Institutions and Financial Enterprises
Act CXIII of 1996 on Home Savings and Loan Associations

Act CXXXIII of 2003 on Condominiums
Act CXVII of 2007 on Value Added Tax
Act CXXX of 2011 on the amendment to Act CXII of 1996 on Credit Institutions and Financial Enterprises in relation to the expansion of home protection measures
Government Decree 256/2011 (6 December 2011) on the home building subsidy.
Government Decree 341/2011 (29 December 2011) on the home creation interest rate subsidy

List of interviews

All interviews were conducted by MRI staff, between October 2012 and January 2014. Only some of the interviewees insisted on anonymity; the rest is referred with initials. Interviewers did not make a recording of the interview in most cases. Private rental sector in Hungary involves a significant share of semi-legal activities; MRI did not make a record to ensure that interviewees are at ease and speak openly about their experience.

There is a certain level of uncertainty even within the pertaining law. We originally intended to interview judges working on private rental disputes; however, they turned out not to answer interviewers at all, not even anonymously. We did eventually secure a discussion with one, thanks to a personal contact, and with a very strict promise of discretion.

The majority of the interviews were semi structured. As we had no intention of conducting discourse analysis, we did not prepare a full transcript for most of our interviews. MRI staff members only prepared an outline of the key statements; verbatim citations were limited only to sections that we deemed very typical of the overall situation. In the following list, we indicate where a recording and a full transcript of the interview is available. The date of the interview and the title of the project for which it was conducted are also stated.

Actor		**Date**
Landlords, investors and developers		
L1	T.M., real estate manager and developer turned institutional landlord in Nyíregyháza (Eastern Hungary)	12 March 2013; 22 July 2013
L2	D.E., individual landlord (case: managing non-payment)	10 Sept.2013
L3	OTP Bank representatives on the need for rental housing for defaulted mortgagors, 'risk' tenants, and possibility of a financial institutions based Social Rental Agency: D.G., OTP Mortgage Bank; A.B, Association of Hungarian Mortgage Banks; G.K., OTP Real Estate Dpt.	7 March 2013
L4	P.B. and C.B., heads of the two major housing (owners') associations of Szombathely (Western Hungary)	18 March 2013
L5	G.U., manager of institutional landlord and developer company in Kecskemét (Central Hungary)	9 Oct. 2013

L6	F.B., individual landlord (case: non-payment, free use of dwelling)	20 Oct. 2013
L7	A.T., individual landlord (case: managing non-payment)	15 Nov. 2013
L8	L.N., Manager of real estate agency Duna House in Kecskemét	27 March 2013
L9	G.I., individual landlord (case: non-payment, tenant refuses to leave dwelling)	8 Jan. 2014
L10	B.L., managing director of housing association in Békéscsaba (Southern Hungary)	2 Nov. 2013
Real estate agents		
R1	Manager of small real estate agency active in Budapest.	5 Oct. 2012
R2	Manager of medium size agency (leasing about 150 units) active in the Balaton lake region	12 Oct. 2012
R3	Manager of medium size Budapest based agency, managing around 250 rentals at a time	13 Nov. 2012
R4	Agent of large Budapest based agency	20 Nov. 2012
R5	Agent of Budapest based agency, managing around 140 rentals cases at a time	30 Nov. 2012
R6	Agent working for a medium sized company	12 Jan. 2013
R7	Real estate agent working as private entrepreneur	21 Jan. 2013
R8	E.S., local office manager of nationwide real estate agency Otthon Centrum, Békéscsaba	12 Nov. 2012
R9	dr L.S., Real estate lawyer and estate agent in Nyíregyháza	12 March 2013
Tenants		
T1	G.Zs. Tenant, buying tenancy right in municipal apartment	10 Dec. 2013
Focus group interviews with landlords		
F1	Focus group of landlords, Nyíregyháza – mixed focus group of accidental and professional landlords. Record and full transcript available.	25 June 2013
F2	Focus groups of landlords, Békéscsaba. Record and full transcript available.	30 July 2013
F3	Focus group of landlords, Szombathely (Western Hungary) – mixed focus group of accidental and semi-professional landlords. Record and full transcript available.	6 Aug. 2013
Lawyers (private sector)		
LW1	dr. E.B. Real estate lawyer, renter, and landlord of one unit. Record and full transcript available.	15 Nov. 2013
LW2	dr. R.R., deputy notary public	27 Nov. 2013
LW3	dr G. B., SJD candidate, Central European University – Doctor of Judicial Science and Real Estate Lawyer	3 Dec. 2013
Lawyers (public sector)		
LW4	dr. E.V. and dr. K.S., lawyers at the National Asset Management Company.	30 May 2013
LW5	Judge in Szombathely (anonymous interview)	6 Aug. 2013
Municipalities and social/public service providers		

M1	Z.M., deputy mayor; dr Á.K., head of Public Services Dpt. and Á.M., head of Housing Unit of the Szombathely municipality.	21 Nov. 2012
M2	A.V., social service provider, Nyíregyháza.	11 March 2013
M3	Main social service providers of Szombathely: Pálos Károly Social Services & Family Welfare Centre; Savaria Rehab-team – homeless provider, undertaking private renting for very low income former rough sleepers; SZOVA municipal property management company representatives.	18 March 2013
M4	dr. Á.K. Notary of the Municipality of Szombathely	18 March 2013
M5	N. U., Head of Social Department of Békéscsaba	25 March 2013
M6	B.Á., Head of Housing department at the Municipality, Kecskemét	27 March 2013
M7	Group interview with social accommodation providers & intermediaries: P. Gy., head of Budapest Methodological Centre of Social Policy and its Institutions (Budapest's largest homeless provider); M.V of the Hungarian Maltese Charity Service; K. C., head of Hungarian Reformed Church Aid, I.Ny., Hungarian Baptist Aid; and E.T, Lifeline Foundation for the Homeless.	19 April 2013
M8	Á.V.S., head of Social Welfare Dpt., and G.W., head of Housing Unit in the municipality of Győr (Western Hungary)	6 June 2013
M9	B.Á., Head of Housing department at the Municipality, and László Minda, Managing Director of the Property Management Company KIKFOR (Kecskemét, Central Hungary)	24 July 2013
M10	P.P., Legal and Management Director of the Municipal Property Management Company Nyírvv of Nyíregyháza. Record and full transcript available.	28 Aug. 2013
M11	P. G., head of Budapest Methodological Centre of Social Policy and its Institutions	3 Oct. 2013
M12	L.P., managing director, and H.P.V., financial director of the Municipal Property Management Company of Zalaegerszeg (Western Hungary)	10 June 2013
M13	L.K., head of Municipal Property Management Company of Nagykanizsa (Western Hungary)	10 June 2013
M14	Cs.R.J., deputy mayor of District 5 in Budapest responsible for housing	20 Nov. 2013
M15	E.A. and N.S., staff of Housing Office, municipality of Veszprém (Balaton lake region)	6 Oct. 2012

9.3 Abbreviations

BDT	*Bírósági Döntések Tára*, Database of Court Decisions
BH	*Bírósági Határozatok* – Journal of Court Decisions
CompLex	Digital Database of Hungarian Legislation and Court Decisions
CSO	Central Statistical Office
Curia	The name of the Supreme Court of Hungary since 1 January 2012
dB	Decibel
EBH	*Elvi Bírósági Határozat*; Court Decision of Precedence or Principle Decision of the Curia (the Hungarian Supreme Court)
FIT-H-PJ	*Fővárosi Ítélőtábla, Határozat, Polgári Jog*; Civil Law Decision of the High Court of Budapest
HUF	Hungarian Forint
LB-H-PJ	*Legfelsőbb Bíróság, Határozat, Polgári Jog*; Civil Law Decision of the Supreme Court of Hungary
LB-H-GJ	*Legfelsőbb Bíróság, Határozat, Gazdasági Jog;* Business Law Decision of the Supreme Court of Hungary
NAMC	National Asset Management Company
NAV	National Tax and customs Authority
PK	*Polgári Kollégium*, Decision of the Civil Court of Appeal
PM	Prime Minister

Annex 1: Areas of Municipal Regulation[218]

- the conditions of the lease of the dwelling [Housing Act Article 3 paragraphs (1)-(2), Article 12 paragraph (5), Article 84 paragraphs (1)-(2)]
- conditions for the conclusion of joint tenancy contracts, as well as for the lease of the liberated part of the dwelling to the remaining co-tenant [Article 4 paragraph (3), Article 5 paragraph (3)],
- the content of the agreement of the parties regarding the rights and obligations of the landlord [Article 19, Article 9 paragraph (1), Article 10 paragraph (2), Article 15, Article 17 paragraph (2), Article 18 paragraph (1)]
- the amount and the conditions of the rent increase [Article 20 paragraph (3)],
- the persons who may be admitted by the tenant in the dwelling and the conditions for the admittance [Article 21 paragraph (6)],
- in the case of termination by mutual agreement, the rules concerning the lease of another dwelling, the amount and payment of pecuniary allowance [Article 23 paragraph (3)],
- the amount and the conditions of the pecuniary allowance that may be paid – based on agreement – instead of proposing a dwelling in exchange [Article 27. paragraph (2)],
- the conditions for undertaking the obligation to accommodation, including the regulation of the persons covered and of their income, wealth situation [Article 31 paragraph (2)],
- the conditions for agreeing to the sub-leasing of part of the dwelling [Article 33 paragraph (3)],
- the amount of the rent differentiated according to the type of lease – lease on social grounds, cost-based or market-based rental - [Article 13 paragraphs (1)-(2), Article 34 paragraphs (1)-(2) and (4)-(5), furthermore regarding the municipality of the capital and district municipalities in the Article 86],
- the amount of rent subsidy, the eligibility conditions and procedural rules [Article 34 paragraphs (3) and (6)],
- the for the extra service provided by the lessor, if it is not to be determined by the lessor based on another act [Article 35 paragraph (2); Article 9l/A. point 18],
- for a person discharged from a social institution, the conditions for renting another dwelling [Article 68 paragraph (2)],
- the empowerment of the budgetary body (enterprise) of the municipality to lease the municipal premises and dwelling provided for its own tasks as well as the conditions of lease [Article 80 paragraphs (1)-(2)].

[218] Listed in Annex 2 to the Housing Act

Annex 2: Areas of Ministerial Regulation (for stately owned dwellings)

- the eligible tenants and the conditions of lease, including the rules concerning habitual residence and the control of the proper use of the dwelling;
- the possibility to impose a caution according to the provisions of the Civil Code for the State owned dwelling and premises at the time of the conclusion of the contract;
- the conditions for establishing a joint tenancy;
- the amount and the conditions of rent increase;
- the persons who may be admitted by the tenant in the dwelling and the conditions for the admittance;
- the conditions for agreement to a maintenance contract;
- the conditions to the agreement to the exchange of the lease right of the dwelling and premises and to the transfer of the lease right of the premises;
- the conditions of the obligation to accommodate the person remaining in the apartment;
- in the case of the death of the tenant, the possibility to continue the lease (including for the dwelling where the State has the right to designate the tenant), the persons eligible for the continuation of the right and the conditions of the exercise of the right;
- the conditions for the agreement to the sub-renting of the dwelling and the premises;
- the amount of the rent of the dwelling and the premises and the conditions for determining the rent;
- the conditions for the agreement to the sale of the dwelling and the premises (including the premises where the State has the right to designate the tenant). (Article 87 (1) of the Housing Act)

Annex 3: Ministerial decrees in force with regard to state owned dwellings

- 2/1994. (IX. 20.) decree of the Minister for without portfolio regarding the implementation of the Act LXXVIII. of 1993 on certain rules of the lease and alienation of residential and non-residential premises.
- 17/1994. (IX. 29.) decree of the Minister for Justice on the lease of the dwellings under the disposal of the penal organisations;
- 7/1995. (V. 30.) decree of the Minister for Transport, Communication and Water regarding the implementation of the Act LXXVIII. of 1993 on certain rules of the lease and alienation of residential and non-residential premises;
- 7/1996. (VII. 9.) decree of the Minister for Culture and Education regarding the implementation of the Act LXXVIII. of 1993 on certain rules of the lease and alienation of residential and non-residential premises;
- 42/1996. (XI. 29.) decree of the Minister for Welfare regarding the implementation of the Act LXXVIII. of 1993 on certain rules of the lease and alienation of residential and non-residential premises;
- 17/1999. (XI. 18.) decree of the Minister for National Cultural Heritage regarding the implementation of the Act LXXVIII. of 1993 on certain rules of the lease and alienation of residential and non-residential premises;
- 106/1999. (XII. 28.) decree of the Minister for agriculture and rural development regarding the implementation of the Act LXXVIII. of 1993 on certain rules of the lease and alienation of residential and non-residential premises;
- 41/2000. (XII. 12.) decree of the Minister for Interior regarding the implementation of the Act LXXVIII. of 1993 on certain rules on the lease and alienation of residential and non-residential Premises;
- 10/2001. (III. 1.) decree of the Minister for Finance regarding the management of the dwellings, premises under the disposal of the Tax and Customs Authority;
- 19/2009. (XII. 29.) decree of the Minister for Defence on the rent subsidies by the Ministry for Defence; 14/1996. (III. 5.) decree of the Minister for Industry and Commerce regarding the implementation of the Act LXXVIII. of 1993 on certain rules of the lease and alienation of residential and non-residential premises.

Annex 4: Criteria for the different degrees of comfort

A dwelling with full comfort is a dwelling, which has at least:

d) a room over 12 meter square, cooking room (or, in lack of thereof, an area of at least 4 meter square which allows for cooking and has an own ventilation, bathroom and toilet;
e) equipment with public utilities (electricity and water supply, waste water disposal);
f) hot water supply; and
g) central heating (Article 91/A point 2 of the Housing Act).

A dwelling with comfort is a dwelling, which has at least:

h) a room over 12 meter square, cooking room (or, in lack of thereof, an area of at least 4 meter square which allows for cooking and has an own ventilation, bathroom and toilet;
i) equipment with public utilities;
j) hot water supply; and
k) individual heating method (Article 91/A point 3 of the Housing Act).

A dwelling with half comfort is a dwelling, which has at least:

l) a room over 12 meter square, cooking room (or, in lack of thereof, an area of at least 4 meter square which allows for cooking and has an own ventilation, bathroom and toilet;
m) equipment with public utilities (at least electricity and water supply); and
n) individual heating method (Article 91/A point 4 of the Housing Act).

A dwelling without comfort is a dwelling, which does not meet the criteria of a dwelling with half comfort, but has at least:

o) a room over 12 meter square, cooking room (or, in lack of thereof, an area of at least 4 meter square which allows for cooking and has an own ventilation, toilet use;
p) individual heating method; and
q) the possibility to obtain water (Article 91/A point 5 of the Housing Act).

An austerity dwelling is a room (group of rooms) which (or at least one of the rooms):

r) is larger than 6 meter square;
s) has external brick walls or equivalent of at least 12 cm width;
t) has window or glass door;
u) can be heated; and

the use of toilet and the possibility to obtain water are guaranteed) (Article 91/A point 6 of the Housing Act).