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

National Report for

SLOVAKIA

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1. Housing situation

1.1. General features

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. privatization or other policies).

The Slovak Republic had been a part of Czechoslovakia until 31st December 1992. Therefore, its legislation in the field of civil law and acts regulating housing were common for both federative republics. Although the great amendment of the Civil Code (see below) and restitution laws were common, their impact was different in each Republic, because of different roots and legal background, as well as different ownership structure in pre-war Czech Republic and Slovakia (*e. g.* differing numbers of blocks of flats in big cities).

Formerly a part of Austria-Hungary, the Slovaks joined with the closely related regions of Bohemia and neighbouring Moravia to form Czechoslovakia in 1918. The legal order of Slovak part of Czechoslovakia, namely in the area of private law, was based on the customary case law of Hungarian roots and more or less prevailed in Slovakia up to 1950. Historical reasons for such development were partly set out by a constitutional transformation of Habsburg domain into the dual monarchy of Austria-Hungary as a result of the Austro-Hungarian Compromise of 1867. The territory of present-day Slovakia was included into the Hungarian part of dual Monarchy dominated by the Hungarian legal order. On the contrary, the territories nowadays creating the Czech Republic belonged to the Austrian part of Monarchy. In the chaos of World War II Slovakia became a separate republic in 1938, tightly controlled by Germany. Post World War II in 1945 with the Warsaw Pact Czechoslovakia has become a communist state within a Soviet-ruled Eastern Europe. With the collapse of the Soviet influence in 1989 Czechoslovakia became a sovereign state. In 1993 the Slovaks and the Czechs agreed to separate peacefully. In 2004 Slovakia became a member of the European Union and the NATO.[1]

One of the most important acts enacted shortly after “the Velvet Revolution” in 1989 by the Federal Assembly of the Czech and Slovak Federal Republic was the constitutional Act No. 100/1990 Coll. amending and supplementing the Constitution of the Czech and Slovak Federal Republic. Its provisions: “The right of ownership and other property rights of citizens and legal persons are protected by the Constitution and laws. The State shall provide equal protection to all owners. An owner is bound by ownership and ownership may not be used to prejudice the rights of other persons or society”[2], supplied

[1] <http://www.nationsonline.org/oneworld/slovakia.htm>, 15 December 2013.

[2] Articles 7, 8 of Constitutional Act No. 100/1960 Coll. Constitution of Czecho-Slovak Federal Republic.

a legal basis for further economic and legal development in the former Czechoslovakia. Moreover Article 9 (2) stated that "the law enacted by the Federal Assembly of the Czech and Slovak Federal Republic shall regulate the conditions of transferring state property into the ownership of citizens or legal persons". This article created a basis for restitution and privatization in following years. The National Council of the Slovak Republic enacted the Constitution of Slovak Republic on 1 September 1992.[3] Slovakia pursued EU membership since its establishment; in May 2004 Slovakia entered the European Union.

Owner - occupied housing in Slovakia has become the most prevalent form of housing at the beginning of 1990s. Apart from villages, where citizens mostly live in family houses and apart from people who live in family houses in the towns, the primary reasons for the increase of owner - occupied housing were:

i) the provisions of the great amendment (Act. No. 509/1991 Coll.) of the Civil Code (CC),[4] which came into force on 1 January 1992. This act brought back the lease contract to the Slovak legal order. Moreover, in the transitional provisions for this legislation a right to the personal use of a flat and a right to the use of other habitable rooms and non-residential rooms, established under laws that were in force until the above mentioned CC amendment,[5] had been transformed into leases as of the amendment's entry into force. Joint use of a flat and joint use of a flat by spouses had been transformed into a joint lease. The right to the use of a part of a flat had been transformed into a sublease and could not be terminated before one year after the Act came into effect. The personal use of flats serving as permanent accommodation for the employees of an organization had been transformed into leases of a service flat (*služobný byt*)[6] if such flat fulfilled the criteria set out for service flats by law; if such conditions were not fulfilled, such personal use had been transformed into a lease (paragraph 871 CC).

ii) An important role in the regulation of housing tenures should also be assigned to other transitional sections of the previously mentioned CC amendment. According to these provisions, the right to use a plot of land established under previous legislation and existing at the date of the CC amendment's entry into force was transformed into ownership of a natural person on the effective date of this amendment. Nevertheless, the provisions of the restitution acts[7] were not affected by this regulation and the law preserved the protection of interests of the previous owners of immovables. If a right to the personal use of the same vacant plot of land was jointly established for several citizens (joint users), they became co-owners with equal shares. If the right to the personal use of the same developed plot of the land was jointly established by several persons, they became co-owners. Similarly, if a citizen acquired a right to make an agreement on the personal use of a plot of land but that agreement had not been concluded by the effective date of the amendment, he/she acquired a right to conclude a

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3 Act No. 460/1992 Coll. as amended.

4 Civil Code (No. 40/1964 Coll as amended).

5 See further Chapter 5 *infra.*

6 The service flat is a flat, where the lease is bound to the employment of the tenant. See section 1 of the Act on the Regulation of Some Conditions Associated with Rental Dwellings and Replacement Housing (No. 189/1992 Coll., as amended) (RDaRH 1992).

7 Regulation of Relations of Ownership of Land and Other Agricultural Property Act (No. 229/1991 Coll.).

sale contract as a buyer in relation to the plot of land to which a decision on the allocation of the plot of land for personal use had been issued.

iii) If under the conditions, stated in the Personal Ownership of Flats Act 1966 (No. 52/1966 Coll. as amended by the Act No. 30/1978 Coll.) (POF 1966) a citizen acquired personal ownership of a flat, then on the effective date of Act No. 509/1991 Coll., that personal ownership had been transformed into an ownership of a natural person. The rights to joint personal use of a plot of land on which a block of flats with flats in ownership of citizens was located were transformed into co-ownership by natural persons. If conditions stipulated by POF 1966 were met, flats and non- residential units could also be acquired by legal persons as their ownership from 1st of January 1993.[8]

iv) The great amendment of the Civil Code in 1991 also repealed the Act No. 41/1964 Coll. on Housing Management and substantially changed POF 1966 by cancelling fundamental parts of its regulation. This Act was soon replaced by the Ownership of Flats and Non- residential Premises Act 1993 (No. 182/1993 Coll.) (OFNP 1993). This Act governs the manner and conditions for the acquisition of ownership of flats and non-residential premises in a block of flats, the rights and obligations of owners of the block of flats, rights and obligations of owners of flats and non- residential premises, their relationships and the right to property.

This Act - effective from 1 September 1993 - provided that the owner of the block of flats may transfer ownership of the flat only to the tenant, if tenant is a natural person. The price of the flat in the block of flats, appurtenances[9] and land was determined by an agreement between the seller and the buyer, but it was regulated and limited, so it could not exceed an amount determined pursuant to section 5 and section 18 para. 1 of OFNP 1993.

Consequently, one may state that in 1993 the process of transforming housing tenures in Slovakia had begun. Firstly, the right of personal use of flats was transformed into a lease, secondly, the tenants acquired a right to buy the flats and the adjacent plot, as well as the plot under the block of flats in the frames of following laws:

- Prices Act 1990 (No. 526/1990 Coll.);
- Transfer of State Property to Other Persons Act (No. 92/1991 Coll., as amended);
- Governmental Decree No. 273/1991 on exception from section 45 of Act No 92/1991 Coll.; [10]
- Municipalities' Property Act 1991 (No. 138/1991 Coll.);[11]

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[8] The meaning of this provision should be understood with reference to the legislation in force before the Constitutional Act in 1990 was adopted. Before this act had entered into force, the legal system differentiated among: state, co-operative, personal and private ownership. The legal protection of owners differed according to the type of ownership.

[9] section 2 para. 6 of OFNP 1993 defines appurtenances of the block of flats (*príslušenstvo bytového domu*) as common parts of the block of flats and appurtenances that are exclusively designated for the joint use with this block of flats, but do not create the building components of this block, i.e. fenced gardens and buildings, in particular fences, sheds and fenced yards situated on the plot adjacent to the block of flats.

[10] By this exception state enterprises may sell flats in their ownership to previous tenants.

[11] By this Act, from 1 May 1991 every residential house in the property of the state under the management of a corporation of housing stock passed to the ownership of a municipality.

- Act on Modification of Property Relations and Settlement of Property Claims in Cooperatives (No. 42/1992 Coll., as amended), this act tackled the specialties of cooperative housing;[12]
- OFNP 1993.

The conditions for the acquisition of ownership were in favour of former tenants, mainly because of mandatory rules on the calculation of prices.[13] The common parts of the block of flats and the common facilities and appurtenances are co- owned by the owners of the units in the block of flats except where the owners agree otherwise. The transfer of ownership of units in the block of flats is also connected with co-ownership of the common parts of the block of flats, common facilities and appurtenances, as well as the co-ownership of other rights to common property, or other rights and obligations of the ownership of units. The size of the share in the common parts and in the common facilities of the block of flats, the appurtenances and the land is calculated as the ratio between floor space of the unit and the total floor area of all units in the block of flats. It should, however, be noted that tenants who became owners according to the described provisions did not realize that such acquisition of property is closely linked to various responsibilities, such as future costs of reconstruction and repairs of the block of flats.

Moreover, it is imperative to point out that from 1950 the principle of *superficies solo cedit* has not been applied in Slovakia. Therefore, the ownership of land under the block of flats and ownership of the block of flats, or the ownership of units together with the ownership of common parts, facilities and appurtenances, and the co-ownership of other rights to common property may belong to different persons. This creates a very complicated legal situation, basically solved in section 23 of OFNP 1993.[14]

- 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)

As far as migration is concerned, its role within the country has not yet proven to be a significant factor in the development of the housing market. Except for the generally recognized fact that the capital of Slovakia provides more labour opportunities and therefore the demand for new flats (for sale or for rent) is larger than in other parts of the country, the influence of migration does not have a great impact on the housing tenures in Slovakia. Immigration or emigration has not influenced the situation at a significant

[12] This act, in force from 28 January 1992; enabled to sell flats in the ownership of co-operative to the previous tenants.

[13] Compare section18 of OFNP 1993.

[14] Section 23 of OFNP 1993 presupposes more ways how to deal with the ownership of land under the block of flats. Provided that stipulated conditions are fulfilled, the owners of unit (flats or non-residential premises) in the block of flats acquire a share of the land in the form of co-ownership. Otherwise OFNP 1993 establishes the easement registered in cadastre (If the ownership of land did not belong to the same person as the ownership of the block of flats). This extract from the local newspaper informs about the sale of the land in the capital of Slovakia: “Applications for sale of land under the blocks of flats are numerous; by the end of 2007, the city registered a 19-some thousands of them. Throughout the period during which Bratislava is selling the land under the blocks of flats there was 15,828 transfers of co- ownership shares on land approved.” See 'Predaj pozemkov komplikujú nejasné vlastnícke vzťahy', *Bratislavské noviny*, 17 January 2008, <http://www.bratislavskenoviny.sk/najnovsie-spravy-z-bratislavy/vystavba/predaj-pozemkov-komplikuju-nejasne-vlastnicke-vztahy.html?page_id=74312>, 18 January 2013.

rate, as the numbers of emigrants or immigrants in Slovakia are very low[15]; e.g. there are only 22,000 foreign workers registered in 2011 in Slovakia. In the previous year the number was 16 600. The increase was caused by the workers from Romania, Czech Republic, Poland, Hungary and Germany. Neverthless, the foreign workers do not play an important role in Slovakia. Their share on the labour market was 1.1 % in 2011 in comparision to 2010 where it was 0.8%.[16] At the end of 2012 the numbers of all immigrants amounted to **72,925** foreigners with registered stay, out of which **55,909** were EU citizens **(76.7 %)**. The fact that the majority of immigrants were at the age of between 25 to 64 indicates that a labour-driven immigration prevails in Slovakia.[17]

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?

Results of the Censuses of Population and Housing conducted in 2011 have discovered that the total number of dwellings in the Slovak Republic amounts to 1,994,897 units situated in 1,070,790 houses (either family houses or blocks of flats).[18] Moreover, out of the total number of occupied dwellings, owner-occupied housing in Slovakia is apparentely the most prevalent form of housing as 84.9% of occupied dwellings were owner- occupied[19]. This number consist of 41.8% of dwellings in family houses- "*rodinné domy*" (744,203) and 43.1% of dwellings in blocks of flats -"*bytové domy*" (764,100).

Figures 1 and 2 show that across the country in each region, majority of houses are family houses. Altogether it is 969,360 houses, i.e. 90.5% of all houses in Slovakia. In comparison to their number, there is 64.846 blocks of flats in Slovak Republic and their share on available houses is 6.1%.

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15 cf. section 2.1 *infra* (dealing with immigration and rental housing).

16 Information provided by the Ministry of Foreign and European Affairs o the Slovak republic. See 'OECD o migračných trendoch', 13 June 2013, <http://www.foreign.gov.sk/servlet/content?MT=/App/WCM/main.nsf/vw_ByID/ministerstvo&NCH=Y&OpenDocument=Y&LANG=SK&TG=BlankMaster&URL=/App/WCM/Aktualit.nsf/%28vw_ByID%29/ID_6BAECA4E0794ABDCC1257B89004CAB1D>, 10 February 2014.

17 <http://portal.statistics.sk/showdoc.do?docid=79012>, 10 February 2014.

18 Population and Housing Census 2011; partial results published as Statistical Office of the Slovak Republic, 'Koľko nás je, kde a ako bývame', May 2013, <http://www.scitanie2011.sk/wp-content/uploads/SODB2011_domybyty_el.pdf>, 30 December 2013; english version available at: <http://www.scitanie2011.sk/wp-content/uploads/byvame_en.pdf>, 30 December 2013. Cf. figures "T1" and "T6" therein.

19 see *ibid*., fig. "T7", p. 12; cf. summary table 1 *infra*.

Figure 1 (Family houses and blocks of flats in regions of the SR in %, SODB 2011) [20]

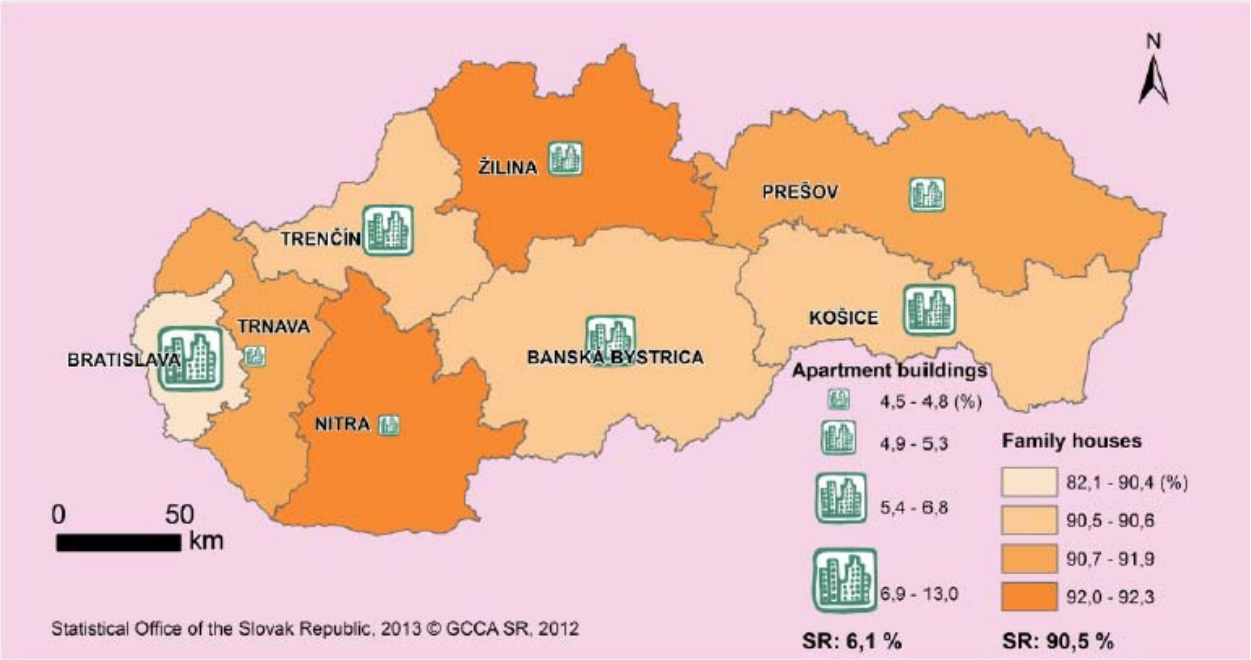
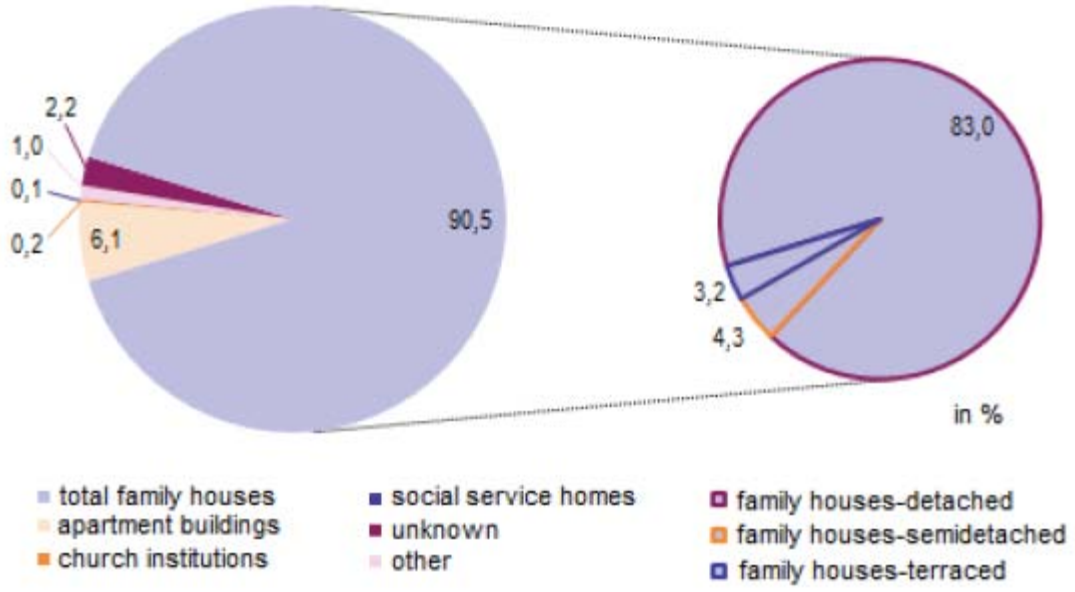


Figure 2 (Type of housing in the SR in %, SODB 2011) [21]



Owner-occupied housing is generally intended for housing of middle and higher income groups. According to Census 2011, the occupied housing stock in Slovakia consisted of approximately 1,776,698 dwellings.[22]

[20] *Ibid*., fig. "M1", p. 6. Note that the Statistical office uses the notion "apartment buildings" for a type of building referred to as "block of flats" in this report.

[21] *Ibid*., fig. "G1", p. 6.

The basic legislative Act for ownership of units is OFNP 1993. Since its adoption, that Act has been often revised, yet it still includes provisions concerning the transfer of ownership of municipal rental housing, which occurred in the early nineties. At present, however, the provisions on compulsory transfer of ownership in municipally rented flats under conditions stipulated by law, also with regard to their price, have lost their substantive justification. They cause problems in practice and decrease the availability of rental housing. The provisions relating to a change of ownership of cooperative housing should be maintained in force, as they are stipulated by the current legislation in OFNP 1993. Considering these facts, it is therefore necessary in the law on ownership of flats and non-residential premises to establish the conditions and the date of completing the transfer of ownership of flats to the original rental housing tenants. This proposal is fully in line with the recommendations in the OECD document of February 2009: "Economic Survey of the Slovak Republic", according to which this legislation should be repealed or selling prices should reach the level of market values. At the same time it is necessary to improve the legislative framework for the liability for the technical condition of the block of flats as well as the law creating an obligation of the unit owners to do repairs respecting the fact that certain activities will need to contract with an authorized person with adequate technical qualifications.

Another prerequisite for ensuring the effective management of the block of flats is set in the law: the obligation of the community of unit owners, respectively of the block of flats manager, to prepare a long-term recovery plan of the block of flats including the financial plan of the obligations and to negotiate it with their owners.

In connection with the management of the block of flats there is a need to clearly define in the law the conditions and technical requirements for both natural as well as legal persons to perform activities in the field of managing real estate. The above mentioned legislative changes are proposed to handle both the current version of the amendment to the law on ownership of units, as well as the preparation of a new law on the management of housing. As the current situation indicates, the lack of professional experience of representatives of unit owners in providing secure and responsible management of the block of flats creates a need for future collaboration with interest groups to introduce their continuing education and training, including the provision of methodological assistance.

Rental housing in Slovakia is one of the key issues that needs to be addressed, both in terms of its technical state and affordability. According to the Census 2011 1.8% of the flats was owned by municipalities. In countries of the European Union, the share of rental housing ranges from 19% to 62%, while the public rental sector represents 18% of the housing stock. These facts clearly indicate that access to rental housing in Slovakia is very limited, so it is necessary to pay attention to its development, both in the public rental sector as well as in the private rental sector.

Public rental sector should serve primarily to ensure social housing, and therefore should be available to such people who cannot satisfy their housing needs on the open market. For this reason, this sector should operate on the principle of non-profit management, so that such housing is affordable. Rents in this sector should cover all

[22] *Ibid.*,fig. “T6”, p. 11.

costs associated with the acquisition and operation of rental housing, while respecting the principle of the lowest possible cost.

The private rental sector is underdeveloped, mainly as a result of the previous application of the rental price regulation, as well as of over-protecting tenants under existing civil tenancy arrangements. This sector should ensure the supply of housing especially in terms of labour mobility and flexibility for those people who need more short-term solutions to their housing needs. Rents in this sector should be regulated in the future by setting a price ceiling. The creation of new housing units should be supported by the state mainly by indirect economic instruments.

In this context, in the coming period, there is a need to completely resolve the issue of the relationship of private owners and tenants of flats, which denotes the introduction of a regulated rental price, in accordance with the principles of 'Proposal concepts in the arrangement of relations between private owners of block of flats and tenants of the flats and the deregulation of rent "discussed by the Government and approved by the Government Resolution No. 640/2009".

The future form of rent regulation must resolve not only the levels of rent but also the range of eligible tenants. While respecting the principles set out above in characterizing the public and private rental sector, the benefits of living in a price regulated sector should only be available to those tenants who meet the criteria related to the amount of their income, or property.

Legislation on the relations of owners and tenants plays an important role in the development of the rental sector. From this perspective, it is necessary in the upcoming season of the new codification of the Civil Code to maintain the institution of a protected tenancy, but with a balance in the position of owners and tenants. The changes in the intentions of the Government, approved in "The Legislative Intent of the Civil Code," should enable a flexible operation of the housing market. The legislator should also create a legal basis for the temporary use of the unit rendered to another person in return for payment.

According to the "Concept of State Housing Policy until 2015" approved by the Slovak government on 3rd February 2010 changes in the intentions of the Government approved Legislative Intent of the Civil Code should primarily tackle the transfer of the lease in the case of lessee's death, replacement housing, housing allowances and termination of tenancy by landlord's notice. These factors limit the owner's freedom in the disposal of his/her property and allow the persistence of the negative effects of the previously applied, untargeted social regulation of rental flats. The mentioned principles have to be respected while drafting the legislative framework in the area of rental housing and they should be fully consistent with the relevant recommendations of the OECD contained in the document "Economic Survey of the Slovak Republic" in February 2009.[23] The low availability of rental housing in Slovakia is also mentioned in the OECD "Economic Survey of the Slovak Republic" of February 2009.

For these reasons, the Ministry of Transportation, Construction and Regional Development had previously proposed to support the creation of a public rental sector

[23] 'Koncepcia štátnej bytovej politiky do roku 2015' (Res. of the Government of the SR No. 96 of 3rd February 2010).

through direct subsidies from the state budget as well as favorable loans through the Housing Development Fund (the "Housing Development"). Subsidies for rental housing are currently provided by the Subsidies for Housing Development and Social Housing Act (SHDaSH 2010) (No. 443/2010 Coll.). This Act replaced the previous standard prescription of the Ministry in this area. The Act defines the scope, terms and methods of providing subsidies, which can be obtained for the acquisition of rental flat procurement of technical equipment and the removal of block of flats defects. In the case of acquisition of rental flats SHDaSH 2010 establishes the conditions for the formation of a lease contract. In a separate section of the SHDaSH 2010 the term social housing is defined and SHDaSH 2010 also sets out the conditions relating to the social housing flat.

The Concept also points out the task of preparing a draft legal framework for the implementation of new economic instruments to stimulate state investors in the development of the private rental sector. A small and an insufficient number of affordable rental housing is a serious obstacle to the mobility of labour and there is a lack of housing solutions, especially for young families. In the current situation, the Ministry proposes to address this area by introducing the ability to provide effective construction loans to legal entities for the construction of rental housing in the forthcoming State Housing Development Fund Act.[24]
An important role in this field is assigned to the Re-codification Commission working on the new Civil Code.

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)

Currently, there is a system of support tools to satisfy the housing needs of inhabitants that is differentiated by the income structure of households in Slovakia. The middle income earners have the possibility to acquire ownership of flats in block of flats or houses with the support of the state through the State Housing Fund loans, building savings and mortgages.

In accordance with the State Housing Development Fund Act 2013 (No. 150/2013 Coll.), an annual transfer of funds to this fund occurs. Funds are primarily used for loans provided mainly for rental housing and housing reconstruction. In 2010, the State Housing Fund provided support in the form of loans and non-repayable grants in the total amount of EUR 136.108.713,97, in 2011 amounting to EUR 140.628.785,36. Providing support focused primarily on the acquisition of rental housing and housing reconstruction. In 2010, the Housing Development Fund supported the construction of

[24] State Housing Development Fund Act 2013 (No. 150/2013 Coll.) – in force since 2014, which replaced the original State Housing Development Fund Act 2003 (No. 607/2003 Coll., as amended).

3,063 flats and the renovation of 9,199 flats, in 2011 the acquisition of 2,056 flats and the renovation of 16,820 flats.

In accordance with the Building Savings Act 1992 (No. 310/1992 Coll., as amended), and the Bank Act 2001 (No. 483/2001 Coll., as amended), there are also annually allocated funds to provide bonuses to state building savings and the state contribution to the mortgage loan. In 2010, 41.614.050,81 EUR were provided for state premium on building savings and 23.467.842,06 EUR to the state contribution to the mortgage loan. In 2011 43.156.131,19 EUR for state premium on building savings and 25.357.326,73 EUR to the state contribution to the mortgage loan.

Funds provided as grants under the Housing Development Programme or in the way of loans and non-repayable grants were directed only to households with lower income including those groups of population at risk of social exclusion (e.g.persons brought up in orphanages or social services institutions). These grants were subject to compliance with the specified standard of floor space of the unit in the block of flats and the cost of compliance with the limit.

Construction of owner housing and renovation of existing housing stock was principally financed by individuals, usually from the banking sector. The development of the residential segment was stimulated by the building savings plan and mortgages mortgages plus financing by the above mentioned indirect forms of state support.[25]

- Restituted and privatized ownership in Eastern Europe

The legal order of the Slovak Republic has a number of laws governing restitution proceedings related to various assets, which may be classified into different areas. In this context, it is necessary to point out the lack of comprehensive specifications for these laws. The need to make restitution in individual areas led to the stratification of legal regulation, *e. g.* the area of agricultural land and forestry;[26] legislation relating to church property and also that closely linked to the laws aiming at reparation of property wrongs – rehabilitation (*e. g.* Extrajudicial Rehabilitations Act 1991 (No. 87/1991 Coll.), that reduces consequences of certain property injustices incurred by individual civil and employment acts taken in the period from 25 February 1948 to 1 January 1990; Judicial Rehabilitations Act 1991 (No. 119/1991 Coll.); Mitigation of Certain Property Injustices and Scope of the Government Bodies of Extrajudicial Rehabilitation Act 1991 (No. 319/1991 Coll.).
In the field of household assets the most interesting piece of legislation is the Mitigation of the Effects of Certain Property Grievances Act (MECPG 1990) (No. 403/1990 Coll., as amended). The Act consists of five parts; the first one defines the scope of restituted assets, which were taken from persons on the grounds of the Governmental Decree No.

[25] 'Správa o plnení zámerov Koncepcie štátnej bytovej politiky do roku 2015' (Resolution of the Government of the SR No. 326 of 6th July 2012).

[26] Act No. 229/91 Coll. to Modify the Ownership of Land and Other Agricultural Property, as amended. This act was altered by twelve amendments (the last 549/2004 Coll.) and mitigated the effects of certain property injustices that have occurred to owners of agricultural land and forestry in the period 1948 to 1989. The Return of Land Ownership Act (No. 503/2003 Coll.) changed by Act on Some Measures for Land Ownership (No. 180/1995 Coll. as amended). This Act regulates the reversion to land that has been issued under a special regulation Act No. 229/91 Coll.

15/1959 Coll., of regulation of the Act No. 71/1959 Coll. and of sectored instructions of ministries issued after 1955, which were based on the nationalization legislation of 1948.

MECPG 1990 redresses the wrongs that have been committed by the state, if the state's activities were contrary to the principles of law which were then in force but applied wrongfully. Even during the relevant period, the property of citizens had been protected by the Constitution, and this property could be limited only to the necessary extent, according to the law and with compensation. The laws contained provisions that ownership may be expropriated only with compensation. Nevertheless, the question of compensation remained open and previous interference with property rights conflicted with the Civil Code. The very concept of restitution, which is found in the law of restitution and which is based on *restitutio* in Latin, means putting into the original condition. Latin terminology recognizes the variation of the above mentioned term, and restitution may be translated by words "to replace, restore, give back, return." In legal terms, the concept of restitution is restoring property rights that have been confiscated and nationalized for political and other reasons. Restitution laws are special laws to other legal regulations.

The issue of household assets and the sphere called "tertiary" has been solved, as we already mentioned, by the MECPG 1990. The Act was amended by Act. No. 458/1990 Coll., 528/1990 Coll., 137/1991 Coll. and 264/1992 Coll. The object of MECPG 1990 was to remove injustices done to physical and some legal persons by depriving them of ownership of movable and immovable assets. Act No. 71/1959 Coll. covered so called "*činžové domy*" (the block of flats). If the block of flats needed repairs, the tenants required repairs to be made and the owner was not able to bear the financial costs, the municipality would organize repairs to be undertaken by a socialist organization and would require cost reimbursement from the landlord. If the landlord had not paid the cost of work, the municipality created property liens with priority over all burdens concerning the immovable. If the cost of the work had exceeded 2/3 of the block of flats' estimated price before repair the state would acquire the ownership of almost all tenant flats.

Persons, authorized by MECPG 1990 to re-acquire ownership, were natural persons or private legal persons deprived of ownership by the title listed in this Act. The authorized persons were entitled to receive the object of restitution *in natura.* Only if this form of restitution had been impossible, the person received financial compensation. The authorized person was a citizen of Czechoslovak Republic and a permanent resident within its territory. If the previous property owner died or had been declared dead, the right was assigned to other authorized people, testamentary heirs, owner's children and a spouse that lived with the owner at the effective date of MECPG 1990, siblings living at the date of the MECPG 1990.

The obliged entities were the organizations managing or owning property. They were mostly government organizations, national committees, housing corporations, consumption and production cooperatives and other legal entities – i.e. persons that had control over the thing at the date of the force of the MECPG 1990. Exceptions were companies with foreign capital and companies whose owners were solely natural persons. The law was not utilized in practice. The authorized person was bound to prove eligibility under MECPG 1990 and it usually became too complicated. They were not able in a short time to ensure evidence and thereby justify eligibility of the claim. MECPG 1990 came into force on 1st November 1990 and the time for filing a claim

elapsed on 30th April 1991. Consequently, it was necessary to make new restitution laws. It was the Act No. 229/91 Coll. and Mitigation of Property Injustices Done to Churches and Religious Communities Act 1993 (No. 282/1993 Coll.).[27]

Restitution of the block of flats has opened problems on how to deal with tenants and to balance the interests of owners and tenants. In these block of flats the regulation of rent had been applied. In 2010 - 2011 the Ministry responsible for housing policy had been preparing a draft resolution, which was adopted in 2011 by two laws approved by the National Council of the Slovak Republic:
- Act on Termination of Certain Leases Related to Flats and Amending Prices Act (No. 260/2011 Coll., as amended) (TCL 2011), and
- Act on Provision of Subsidies for the Purchase of Replacement Rental Housing (No. 261/2011 Coll., as amended).

TCL 2011 regulates the legal relations between tenants and landlords and the way of terminating a lease of the flats in the block of flats returned by restitution to their original owners.
The essence of the approved solution is that:
a) owners of rental flats have a limited time to terminate a flat lease by notice without any ground;
b) after giving notice the owners of flats may agree with the current tenants on a new lease agreement or may rent flats to other interested parties, or otherwise freely dispose of their property,
c) if the tenant and landlord agree on the terms of the new lease, they will be able to enjoy a continued lease,
d) those former tenants, who are themselves able to provide their own housing or already have other residential property (*e. g.* own house or flat), have to leave the currently rented flat and move out,
e) tenants who meet the statutory requirements of housing emergency, have the right to ask for compensation in the form of a replacement lease and for the reimbursement of the moving costs, paid from public funds up to 100% of the incurred costs.

Municipalities will be required to provide replacement rental housing by the end of 2016.

Act No. 261/2011 Coll. in force since 1st September 2011 addressed substantively and procedurally the acquisition of replacement rental housing through targeted subsidies for the area, as well as the essential characteristics and standards of these flats. Grants may be given to those applicants who create associations and acquire not only replacement rental housing, but also the corresponding technical equipment and the land under the block of flats. The Act regulates the amount of subsidies, the conditions for granting them, the procedures and requirements for the application for the grant and the conclusion of the grant. The essence of the proposed solution is that it creates the conditions for the performance of municipality's obligations imposed by the TCL 2011 in connection with the provision on replacement rental housing.

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[27] R. Jablonovský, 'Genéza právnej úpravy reštitúcii na území Slovenskej republiky', in *Dny práva – 2010 – Days of Law*, ed. R. Dávid, D. Sehnálek & J. Valdhans (Brno: Masaryk University, 2010), <http://www.law.muni.cz/sborniky/dny_prava_2010/files/prispevky/08_promeny/Jablonovsky_Roman_(4783).pdf>, 18 January 2013.

Documents of the Ministry of Construction and Regional Development indicate that by 20 January 2009, registration forms for replacement rental housing had been submitted by tenants in respect of 923 flats where rent control was applied. 2,311 persons lived in those flats, the average surface area of which was 71.38 square metres. The documents indicate that it was envisaged that substitute accommodation would be made available to the persons concerned by the planned reform so long as this was justified by their social situation. 76.5% of the tenants thus registered lived in flats located in Bratislava. On the basis of those data, the authorities estimated that the rent-control scheme concerned approximately 1,000 flats, that is, 0.24% of rented flats in blocks of flats that existed in 1991 and 0.06% of the inhabited housing facilities which were available in Slovakia in 2001.[28]

Overall statistics of restituted or/ and privatized dwelings is not available.

- 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

A *condominium* in Slovakia is defined as the ownership of a single unit in a block of flats and common, non-divisible co-ownership of common parts. Thus, it is a real property right, which is not an intermediate form of tenure. Legal framework is provided for by OFNP 1993.

Company law schemes are not present in Slovakia.

In 2001, within the total number of flats in the Slovak Republic, 14.9% flats were owned by *housing cooperatives*. One may presume that during the last ten years this market share of flats owned by co-operatives has decreased due to the fact that most tenants have used the possibility to buy a flat. As the results of the 2011 Census show, only 3.5% of flats are now owned by housing cooperatives[29]. Nowadays, many housing co-operatives operate partially as managers of block of flats and partially as owners of blocks of flats. Legal regulation of cooperatives is included in the Commercial Code (Act No. 513/1991 Coll., as amended).

- 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?

[28] See ECtHR Case *Bittó and Others v. Slovakia* (App. no. 30255/09).

[29] Statistical Office of the Slovak Republic, 'How many of us are there, where and how we live (Housing and Dwellings)', October 2013, fig. “T7”, p. 12, <http://www.scitanie2011.sk/wp-content/uploads/byvame_en.pdf>, 30 December 2013.

Public rental sector should serve primarily to ensure social housing. The category of social housing may include:
• rental flats in the public rental housing sector, including small flats (*e. g.* first housing for young families that qualify for such housing only up to certain level of household income);
• housing and other forms of housing for low-income households and groups with specific needs, such as housing for people in social distress, with severe disabilities, single parents caring for young children, families with many children, citizens after institutional or protective care, people with problems of social exclusion and homeless citizens;
• lower standard housing for marginalized groups;
• residential flats for the elderly.

The issue of housing provided in the form of social services relates to specified, socially vulnerable or excluded groups. This type of housing may be classified as retirement homes, social services homes, shelters, *etc*.

The private rental sector is underdeveloped, mainly as a result of the previous application of the rental price regulation. The obstacle to private rental is the excessive protection of tenants through leases for an indefinite period. The over-protection of tenants is evident particularly in relation to the termination of the lease by notice of the landlord and related generously applied right of the tenant to ask for the replacement housing.[30]

Within the framework of the existing tools, the construction of rental housing in the public rental sector by municipalities, using direct subsidies from the state budget and favourable loans from the Housing Development Fund, is targeted for people with low incomes. The National Council of the Slovak Republic adopted SHDaSH 2010. This Act, in addition to determining the conditions for the granting of subsidies in this area, has defined the social housing as well as the conditions for its provision. According to the Report on the fulfillment of the tasks of the Concept: "the state budget has annually allocated funds to provide grants for the acquisition of rental housing, the acquisition of equipment and technology related to the elimination of system failures in residential homes for the legislative and regulatory provisions governing subsidies for housing development. In 2010, 40.373.119,19 EUR were allocated for this purpose, in 2011 35.016.939,19 EUR. In 2010, these funds were used for the acquisition of 2,344 rental flats for the underprivileged populations and for the elimination of system failures in 8,353 dwellings in block of flats. In 2011, 1,589 rental flats were acquired and the elimination of system failures was carried out in 16,636 dwellings."[31]

- 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;

[30] See further sec. 6.6 *infra*.

[31] 'Správa o plnení zámerov Koncepcie štátnej bytovej politiky do roku 2015' (Resolution of the Government of the SR No. 326 of 6th July 2012).

number of rooms, number of square metres or average number of rooms or average useful floor area per dwelling and per person; availability of bath/shower, hot running water and/or central heating, etc.)

The total number of occupied dwellings amounts to 1,776,698 units, out of which:

Owner-occupied dwellings take 84.9% of occupied housing stock. Out of these:

- flats in the blocks of flats 764,100
- flats in family houses 744,203

Rented dwellings are probably:

- Municipal flats 32,239
- Service flats 5,216
- Cooperative flats 62,873
- Privately rented dwellings 46,451

Gratuitous use of dwelling 18,926

Unspecified housing tenure[32] 26,917[33]

(for market share of each, see summary table 1 *infra*)

The average age of a housing stock constitutes 45,2 years.[34] Figure 3 gives account of the age of available housing stock in the regions of Slovakia.

Figure 3 (Occupied houses by period of construction and average age of houses in the SR and regions, SODB 2011) [35]

Territory	Occupied houses											Average age of houses (years)
	total	*of which* by period of construction										
		till 1919	1919 – 1945	1946 – 1960	1961 – 1970	1971 – 1980	1981 – 1990	1991 – 2000	2001 – 2005	2006 – 2009	2010 and later	
Slovak Republic	905 815	37 136	96 538	176 753	166 448	147 026	102 128	52 776	30 457	24 890	4 480	45,2
Bratislava Region	74 199	2 810	8 309	10 254	9 660	10 248	6 315	4 929	5 132	5 098	813	41,1
Trnava Region	113 300	3 652	11 510	20 508	21 799	18 697	12 619	7 127	4 967	4 550	905	43,1
Trenčín Region	101 197	4 264	11 599	20 298	18 332	17 340	11 762	5 584	3 016	2 271	437	46,0
Nitra Region	147 112	5 802	17 028	30 222	30 019	23 143	16 112	7 076	3 640	3 077	580	46,7
Žilina Region	120 788	3 908	11 863	23 781	21 831	21 343	14 062	7 733	4 440	3 365	543	43,9
Banská Bystrica Region	112 285	7 737	15 592	23 244	19 796	16 886	10 944	4 995	2 086	1 509	262	50,3
Prešov Region	123 771	3 979	9 026	24 313	22 435	21 559	17 300	9 069	4 666	3 161	596	42,3
Košice Region	113 163	4 984	11 611	24 133	22 576	17 810	13 014	6 263	2 510	1 859	344	46,6

An average number of dwellings in a family house in Slovakia is 1,9 dwellings. An average number of flats in blocks of flats constitutes 14,4 flats.

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[32] i.e. tenures other than the above mentioned, which had not been specified in the questionnaire of the 2011 Census.

[33] Statistical Office of the Slovak Republic, 'How many of us are there, where and how we live (Housing and Dwellings)', fig. “T7”, p. 12.

[34] *Ibid*., fig. “T4”, p. 9.

[35] *Ibid*.

As far as the floor area of the housing stock is concerned, 5.7% of dwellings have up to 40 m², 40.8% of dwellings have a floor area between 41 to 80 m², 37.8% of dwellings have between 81-120 m² and 14.7% of dwellings have more than 120 m². The average floor area per dwelling in Slovakia is 90,3 m².

The majority of occupied dwellings count among bigger flats with 3 or more rooms. The biggest share of dwellings (43.6% (775,159)) constitutes 3- roomed flats, followed by 5-roomed flats (17.6% (312,954)) and 4 roomed flats (16.7% (297,009)) out of occupied flats in Slovakia.

The most frequent type of heating in Slovak dwellings is distant central heating (657,307, i.e. 37%) and local central heating (610,560, i.e. 34.4%). 6,819 occupied dwellings (0.4%) have no heating whatsoever.

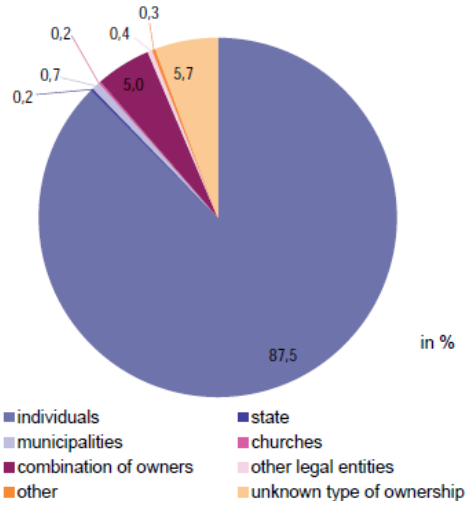
78.9% of housing stock has a communal water supply, 10.8% of housing stock enjoys their own source of water, 0.6% of them has water supply only outside, out of dwelling and 1.4% has not water supply available to their dwelling.[36]

47% of dwellings have an internet connection.

- Which actors own these dwellings (private persons, profit or non-profit organizations, etc.)?[37]

This data is only available with regard to houses (family houses plus blocks of flats). There are 905,815 occupied houses in the Slovak Republic, out of which 792,997 are owned by natural persons (87.5%), 2,009 by state, 6,583 by municipalities, 1,767 by churches, foreign subjects, 44,908 mixed ownership, 3,737 other legal persons, 2,200 unspecified subjects. Figure 4 shows the respective share of each of these actors on the occupied housing stock.

Figure 4 (Occupied houses by type of ownership in the SR in %, SODB 2011)[38]



[36] *Ibid.*, fig. "T9", p. 14.
[37] *Ibid.*, fig. "T3", p. 8.
[38] *Ibid.*, fig. "G3", p. 8.

1.5. Other general aspects

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

There are various lobby and umbrella groups active in representing the causes and assisting the stakeholders for various tenure types in Slovakia.

Združenie spoločenstiev vlastníkov bytov (ZSVB) – Association of Communities of Flat Owners is focused on the issue that the owner of the flat has constitutional rights, but also obligations to the co-owners of common parts of the block of flats. This association of persons, registered under the provisions of the Civil Code, brings together unit owners' associations from Slovakia. ZSVB is entirely financed from membership fees paid by flat owners, professional members, and cooperating partners of ZSVB, income from consulting and sale of own publications and written materials. ZSVB received additional funding from grant programs to develop and support the non-profit sector (NPOA, PHARE, *etc*.) ZSVB's activity is aimed at the target group of flat owners and end-users of services associated with the use of flats, which results in specific forms: providing advice and consultation, organizing open days for people, seminars on current issues, organizing training for members and accountants, an internal issue of the magazine for members, other professional publications, *etc*.[39]

Združenie bytového hospodárstva (ZBHS) – Association of Housing Economy in Slovakia was established on 21 March 1990. It follows that ZBHS has been implementing its activities for 24 years, which means that this association is undoubtedly one of the oldest and longest-operating associations in Slovakia. Its primary mission is to provide services and systematic assistance to its member organizations – legal persons active in the field of home and heat production and supply.[40] The basic mission of the association is to help to develop their businesses and to ensure a continuous distribution and mediation, methodological assistance and guidance of member organizations within the existing legal legislation. The irreplaceable role of ZBHS lies in its participation in commenting on amendments to existing legislation, but also the creation of new legislation in the form of proposals and comments on the proposed amendments to the laws, regulations and directives, especially in terms of practice.[41]

Združenie pre podporu obnovy bytových domov - the Association to Promote Renovation of Block of flats. Along with numerous other associations that exist in the construction and renovation of block of flats, this association aims to bring together experts in its ranks from among: manufacturing or supplying companies that provide various types of building materials and construction technologies, construction companies - implementers of housing renovation, university teachers focused on different issues of partial recovery of block of flats, management companies, housing associations and communities of flat owners, representatives of government dealing with issues of housing, financial institutions providing for the construction sector to

39 See <www.zsvb.sk>, 15 December 2013.

40 Art. 3 para. 2 of the Statute of Association of Housing Economy in Slovakia.

41 See <http://www.zbhs.sk>, 15 December 2013.

support the development of various products in the construction and housing, design companies and designers.[42]

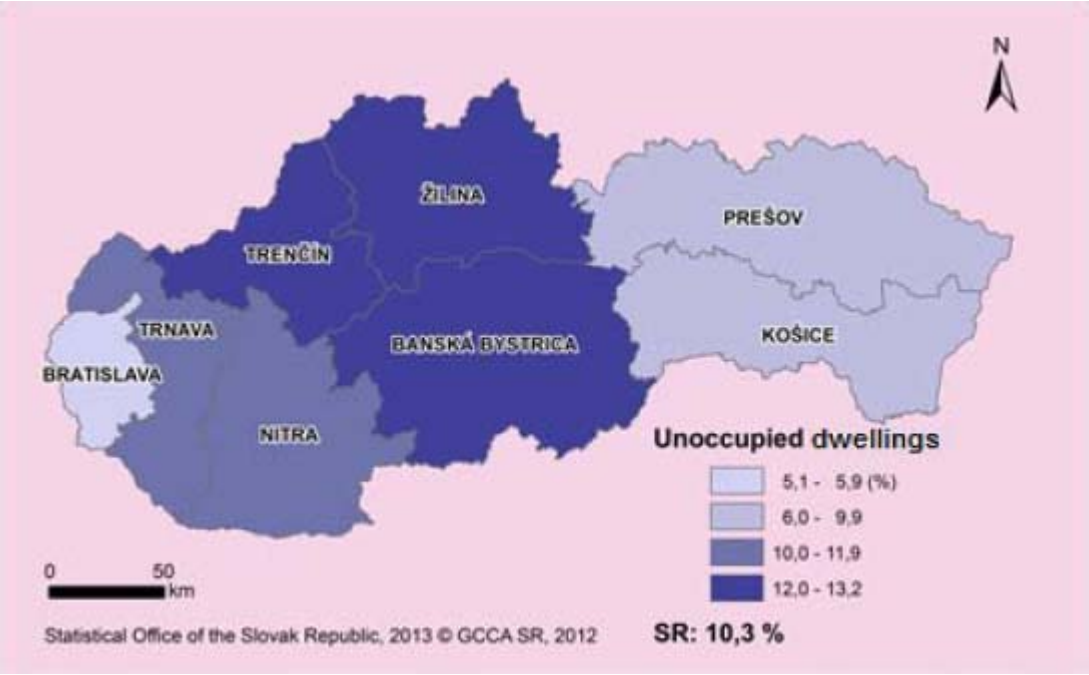
Slovenský zväz bytových družstiev – the Slovak Union of Housing Cooperatives is a legal person, the Interest Association of Legal Entities that associates about 40 housing cooperatives from Slovakia to protect their interests and educate members and to represent them in negotiations with state authorities, State housing fund, *etc.*[43]

There are also other associations dedicated to furthering a specific cause of the landlords and tenants of *flats in restituted blocks of flats*. Although this matter concerns less than thousand flats in the whole country, activities of these groups are publicly noticeable and thus are further expounded on in part 2, section 2 (h).

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

According to Census 2011, there are about two million dwellings in Slovakia (1,994,897), out of which 1,776,698 are permanently occupied (89.1%). The Census 2011 has also shown that there are 205,729 vacant dwellings in the country, i.e. 10.3% of housing stock (Occupancy has not been detected in 11,675 dwellings, i.e. 0.6% of the housing stock).[44] Figures 5 and 6 demonstrate the distribution of unoccupied housing stock within the country and discovered reasons of their vacancy respectively.

Figure 5 (Unoccupied dwellings in regions of the SR in %, SODB 2011)[45]



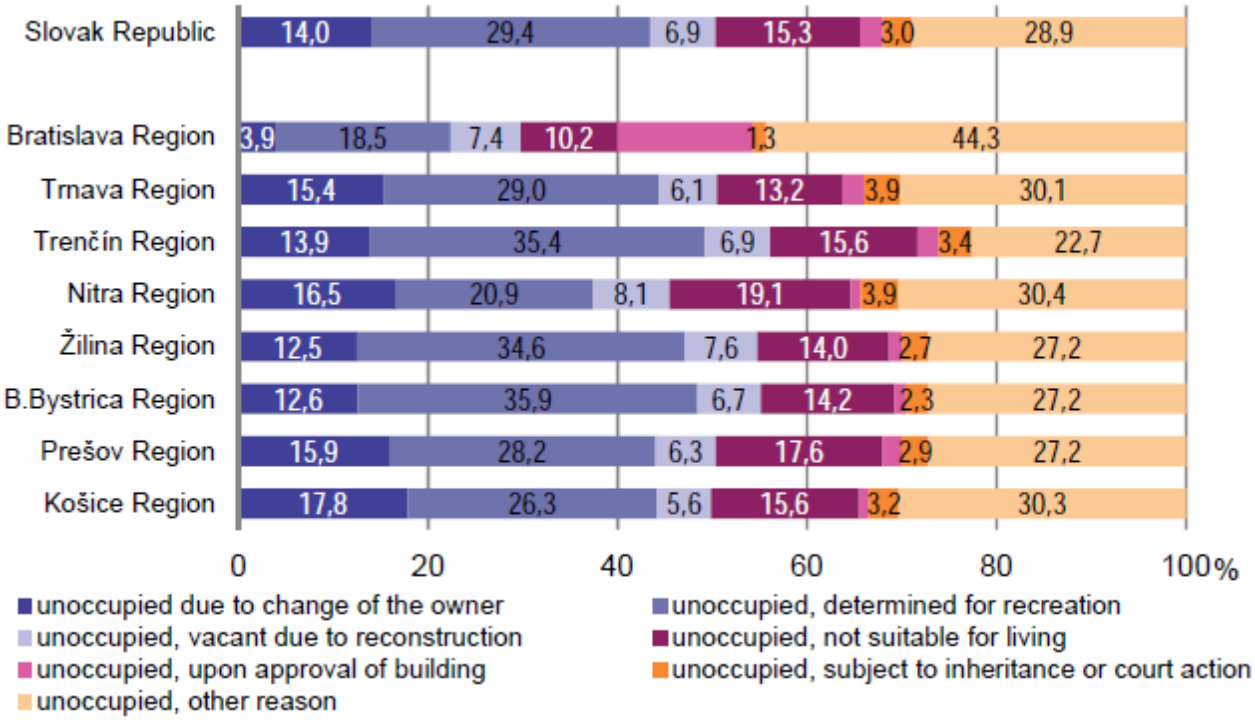
[42] See <www.obnova-domov.sk>, 15 December 2013.

[43] See <www.szbd.sk>, 15 December 2013.

[44] Statistical Office of the Slovak Republic, 'How many of us are there, where and how we live (Housing and Dwellings)', fig. "T6", p. 11.

[45] *Ibid*., fig. "M8", p. 11.

Figure 6 (Unoccupied dwellings in the SR and regions by reason of unoccupancy in %, SODB 2011)[46]



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

The question about the important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market) will be more thoroughly answered in the part on taxation. The introduction of the obligation to pay taxes on rental income from leases of flats a few years ago led many persons to conceal the lease of flats in order to avoid taxation. Moreover as the rules on taxation of this income are expected to be stricter in the forthcoming year it may be expected that the level of tax evasion will rise.

From the legal point of view, the virtually absolute *avoidance of the lease of flat for an indefinite period* as a contractual type by the parties in private rental sector can be deemed a phenomenon causing irregularity. Given the extent of rules on this very tenure type, it should be the preferred one as understood by the legislator. However, above-mentioned overprotection of the tenant leads to landlords opting for renting under another schemes, mostly through lease of flat for a specific period or a sublease.[47]

[46] *Ibid*., fig. "G5", p. 11.

[47] See more for this phenomenon in sec. 6.8 *infra* (problems in tenancy law and its enforcement).

Summary table 1 Tenure structure in Slovakia (occupied dwellings 2011)

Home ownership		Rental housing units				Other use		
Home ownership (family house)	Flat ownership Block of flats	Municipal Flats (renting with a public task)	Cooperative flats	Service flats	Privately rented (without a public task)	Gratuitous use	Other	Total[48]
764,100	744,203	32,239	62,873	5,216	46,451	18,926	26,917	1,776,698
43 %	41.89%	1.81%	3.54%	0.29%	2.61%	1.07%	1.52%	100%

[48] The aggregate of single types of tenures as well as the respective percentages do not actually amount to the stated number of dwellings (100%). This is, however, a feature of official statistics disclosed by the Statistical office of the SR and with the publication of complete results (envisaged in 2014) with comprehensive methodology and results explanation, the discrepancy will probably be overcome. Cf. Statistical Office of the Slovak Republic, 'How many of us are there, where and how we live (Housing and Dwellings)', fig. “T 7”, p. 12.

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?

A characteristic feature of the Slovak housing market, and a consequence of the privatization programme initiated in the early 1990s, is the virtual absence of a private rental market.[49] The absence of a healthy rental market has been recognized as one of the key housing issues that need to be approached in terms of availability and affordability of rental dwellings.[50]

Looking beyond rental housing, Slovakia is in need of affordable rental (or otherwise available housing) for lower- and middle- income class of its citizens. Especially in populated urban areas the actual supply of housing units is theoretically sufficient; however, the supply of newly built housing units gradually falls short of the requirements on floor area, number of rooms and locations as perceived by the demand side of the housing market.[51] The outstanding housing stock is in need of anti-aging measures in all regions of the country as already demonstrated in figure 3 *supra*. Reasons and context of insufficiency is expounded on in the following question with the outlook of future developments.

Slovakia is perceived to have rather high regional disparities by international standards.[52] In line with that, it has significant divergences in the regional markets of residential dwellings, which naturally implies comparable divergences in the rental market.

Taking into account the average prices of residential housing units for instance, there have been long established differences in market prices[53] spanning from 602 EUR/m^2 in the Nitra region to 999 EUR/m^2 in the Košice region, in the third quarter of 2012, with typically significantly higher prices in the Bratislava region (1662 EUR/m^2 in the mentioned period). This trend carries over to contemporary market situation as illustrated in the Figure 7.

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49 See OECD, *OECD Economic Surveys: Slovak Republic 2009*, (OECD Publishing, 2009) 99-102.

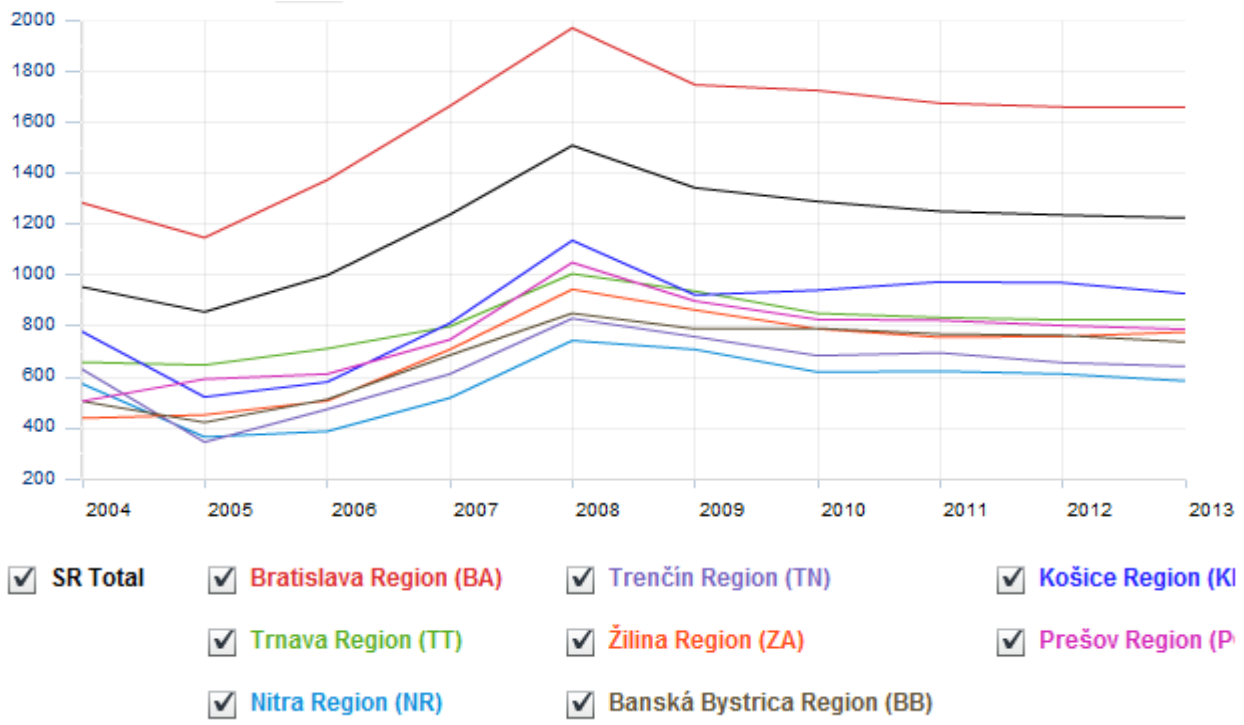
50 See 'Koncepcia štátnej bytovej politiky do roku 2015' (Res. of the Government of the SR No. 96 of 3 February 2010) 6.

51 See e.g. 'V Bratislave začína byť nedostatok nových bytov', *Pravda*, 24.01.2013, <http://byvanie.pravda.sk/realitny-trh/clanok/256909-v-bratislave-zacina-byt-nedostatok-novych-bytov/>, 15 December 2013.

52 OECD, *OECD Economic Surveys: Slovak Republic 2012*, (OECD Publishing, 2012) 8.

53 See National Bank of Slovakia, <www.nbs.sk>, 15 January 2013.

Figure 7 (Residential property prices by regions, Average prices in EUR per m^2)[54]



A study of market prices of residential dwellings in regional autocorrelation of local units showed that there are 3 coherent areas significantly interrelated in terms of prices of residential units in their neighbouring counties: Bratislava (west), with very high prices, Lučenec (centre) and Stropkov (east) both with very low prices of residential dwellings, and the rest of the country with standard apportionment of prices based on regional development.[55]

Similarly, the Bratislava region comprises 24.8% of all finished dwellings built in Slovakia in 2011, followed by Trnava (17.9%) and Žilina (13.1%) regions[56], i.e. areas with high regional GDP and higher incomes. Paradoxically, with a more developed construction market and infrastructure there seems to be a higher potential for interruptions of development projects, which could be inferred from the highest yearly decrease rate of finished residential dwellings in the country for Bratislava (30.5%).[57]

Conversely, the regulated rent prices in the public rental sector seem not to have fully copied the price map of residential housing units, or the map of regional economical

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54 *Ibid*., 10 February 2014.

55 B. Stehlíková & M. Pánik, 'Priestorový a časový aspekt cien nehnuteľností určených na bývanie v Slovenskej republike', *Nehnuteľnosti a Bývanie,* no. 2 (2012): 8.

56 'Informácia o bytovej výstavbe v Slovenskej republike za rok 2011' (Ministry of Transport, Construction and Regional Development of SR, 2012) 2, <www.telecom.gov.sk/index/open_file.php?file=vystavba/bytovapolitika/dokumenty/informacie/info_byt_vystavba_sr_2011_komplet.pdf>, 15 December 2013.

57 See *ibid*., 3.

development,[58] which creates slight market distortions, though not particularly relevant as the regulated rents are below market prices by definition.

Consequently, regions of growth, signified by higher employment rates and higher income rates, have experienced a wider range of construction and development of residential housing, yet its higher prices may undermine its general affordability and thus discourage the mobility of workforce[59] as mentioned above.

- 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 concentration of households and citizens in common households had risen between 1991 and 2001.[60] In 1991, there were 11.7% of households without their own dwelling, i.e. family units who shared their dwellings with another household(s), whereas in 2001 the ratio of shared households was already 19.6%.[61] These households may be thus considered to be the ones in need of a dwelling – in order to satisfy their housing needs. Taking into account the number of members in a household and the rise of the number of single-member households, only 69.5% of the inhabitants were living in an unshared household as opposed to the 30.5% of inhabitants in shared households. The scarcity of dwellings caused by the transformation of state housing development policy, the increased number of young families pertaining to the populous generation of the 1970s, wanting to form independent family units, as well as other factors, were feared to lead to further deterioration of the household to inhabited dwelling ratio. [62]

This data is based on the number of permanently inhabited dwellings. Rationalization of vacant dwellings use (11.6% of housing stock in 2001) could, along with boosted residential construction, improve the ratio, the latter being unlikely without a general economic development in rural areas of shrinkage,[63] with high unemployment rates and high in-state migration.

In 1999, it had been estimated that Slovakia was in need of approximately 180,000 new housing units[64] and in 2003 the estimate was already at 255,000.[65] On top of that, a

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58 Cf. 'Analýza úrovne nájomného za byty v podmienkach regiónov SR' (Ministry of Construction and Regional Development of SR, 2005) 11, <http://www.telecom.gov.sk/index/open_file.php?file=vystavba/bytovapolitika/dokumenty/vseobecne/Analyza_urovne_najomneho.PDF>, 15 December 2013.

59 See B. Stehlíková & M. Pánik, 'Priestorový a časový aspekt cien nehnuteľností', 9.

60 For comparative analysis of this data from 1991 and 2001 censuses see: Ministry of Construction and Regional Development of SR, *Analýza úrovne bývania v Slovenskej republike a regiónoch Slovenskej republiky, podľa výsledkov sčítania obyvateľov, domov a bytov v roku 2001* (Bratislava, ÚEOS – Komercia, 2003) 38-58. After completion of processing of the data off the 2011 census by the Statistical Office of the SR, new information should be available in 2014. For latest developments cf. <http://www.scitanie2011.sk/> and <http://www.scitanie2011.sk/>, 30 December 2013.

61 *Ibid*., 45.

62 *Ibid*., 57.

63 Cf. *Ibid*.

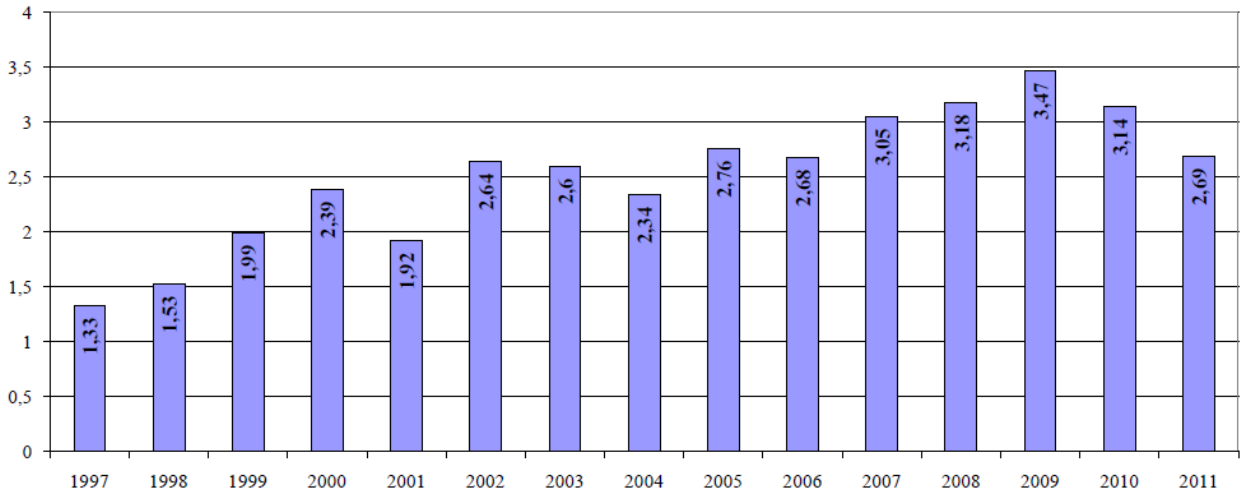
64 'Profily krajín v sektore bývania - Slovensko' (Bratislava: MVVP SR, 1999), v-7.

65 'Aktualizácia Koncepcie rozvoja bytovej výstavby' (Res. of the Government of the SR No. 952/2003, October 2003) 2.

significant part of the country's housing stock was in need of anti-aging measures. As of 2005, the whole housing stock built prior to 1983 (583,118 dwellings) had to undergo complex renovation, and further 195,168 dwellings have been in need of routine maintenance services.[66] Based on projected state support of reconstruction and development of housing stock and standard conditions of the economy, it is estimated that the existing housing stock will be fully renewed by 2043.[67]

Up until 2009, housing development in Slovakia recorded long-term positive trends characterized mostly by the increase of the number of started as well as finished dwellings.[68] Thereafter these tendencies slowed down, which is represented by a decrease of the index of housing construction, i.e. represented by the number of finished dwellings per 1000 inhabitants per year, from 3,47 in 2009 to 2,67 in 2011 (Figure 8).[69] An important observation with regard to the development of rental housing is that in 2011 the number of finished blocks of flats decreased by a yearly ratio of 40.4% out of which only 937 finished dwellings (45%) numbered among newly built municipal housing.[70]

Figure 8 (Index of housing construction, number of finished dwellings per 1000 inhabitants per year)[71]



Given the current state of quantity and quality of the housing stock, it is clear that the supply of residential rental dwellings corresponding to the potential long-term housing needs of households is insufficient. The supply of privately owned rental dwellings

66 'Správa o stave a potreby finančných zdrojov na obnovu bytového fondu v rokoch 2007 - 2013' (Ministry of Construction and Regional Development of SR, 2005) 11, <www.telecom.gov.sk/index/open_file.php?file=vystavba/bytovapolitika/dokumenty/vseobecne/obnova.zip >, 15 January 2013.

67 *Ibid*., 15.

68 From 14.444 finished dwellings in 2006 to 18.834 in 2009. See 'Správa o plnení zámerov Koncepcie ...' (2012) 2 and Annex 1.

69 'Informácia o bytovej výstavbe v Slovenskej republike za rok 2011' (2012) 2.

70 *Ibid.*

71 *Ibid*., Annex 11.

especially in urban areas is mainly oriented towards fixed period leases susceptible to higher fluctuation of tenants seeking ownership of their own housing units.

According to the Eurostat study of 2009,[72] 39.7% of the total population of Slovakia was living in overcrowded dwellings,[73] and 58.3% thereof was at risk of poverty. These figures complement the issue of rental housing demand with the observation that merging households into a single dwelling, which is one of the reasons for overcrowding, entails the deterioration of a household's housing conditions.

Accessibility of long-term leases of residential dwellings is a key element of the supply side of the housing rental market in Slovakia. Its scarcity is a recognized obstacle for the mobility of workforce and the satisfaction of housing needs of predominantly young families,[74] which is being approached with state housing policy measures.

- 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?

Following the findings of the 2011 Census (SODB 2011) approximately 8.25% of occupied dwellings pertain to the (idiosyncratically defined)[75] rental housing category, which could be a straightforward answer to the issue. To depend on rental housing, however, would imply that this tenure type is not the tenure of choice for a tenant, who may not satisfy his or her housing need in a different – preferable manner. Given the rather limited supply of non-for-profit or subsidized rental housing units, persons with limited sources would be usually dependent on other subjects' housing (parents, relatives etc.), rather than rental housing.

With this in mind, the actual percentage of families who indeed depend on rental housing should be identified at 1.81% of the occupied dwellings in Slovakia, i.e. the number of municipal rental dwellings, which specifically relate to provision of affordable housing to those dependent on one (public task).

As of May 2011 the number of foreign citizens living in Slovakia, amounted to 0.5%[76]. With a long term yearly rate of immigration into Slovakia per 1 000 inhabitants of around

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72 Eurostat (online data code: ilc_lvho05a).

73 A person's living conditions are considered as overcrowded if the household does not have at its disposal a minimum number of rooms equal to: one room for the household; one room per couple in the household; one room for each single person aged 18 or more; one room per pair of single people of the same gender between 12 and 17 years of age; one room for each single person between 12 and 17 years of age and not included in the previous category; and one room per pair of children under 12 years of age. A. Rybkowska & M. Schneider, 'Housing conditions in Europe in 2009', *Eurostat: Statistics in Focus,* no. 4 (2011): 3.

74 'Správa o plnení zámerov Koncepcie ...' (2012) 5.

75 It is important to note that the SODB 2011 questionnaire lead to some overlapping between ownership structure and tenancy of a given dwelling. Moreover, a significant portion of the figure (3.54%) is taken by housing cooperatives, which legally are in a lease relationship with the tenant (member), yet economically the tenancy rather resembles ownership of a dwelling. Cf. Summary table 1 *supra*.

76 although 7.3% of the population are of unidentified citizenship under the Census 2011. See Statistical Office of the Slovak Republic, 'Koľko nás je, kde a ako bývame', September 2012,

1,[77] this category of population is statistically neglectable and neither precise data nor a policy concept of satisfying the housing needs of immigrants through rental market is currently at hand.

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 300EUR per month and disposable household income 1000EUR per month, the rent-to-income ratio is 30%).

As far as the actual cost of rent in Slovakia is concerned, the preference is in general given to contractually agreed values based on market indicators.[78] Nevertheless, there is still a class of rental dwellings where price ceilings on rents declared by the Government apply. On one hand, these are dwellings owned by municipalities, the state or state-owned entities (the public rental sector), where regulation of rents is declared to be desirable and is meant to form the backbone of social housing[79] and by the year 2016 should be the only domain of rent-regulated residential renting.[80] On the other hand, there are privately owned dwellings as a result of restitution or privatization, where rents are still regulated. As mentioned above, this issue is being gradually solved,[81] and the rents may be raised yearly by 20% until 2015 after which year full de-regulation of this type of rents is anticipated.[82] Distinguishing these categories of dwellings is relevant as there are significant differences in the levels of market rent and regulated rent.

According to the latest statistics published by the Statistical Office of the Slovak Republic, in 2011[83] rentals for housing per person in a household per year averaged to 119,21 EUR, whereas expenditures for housing, water, electricity, gas and other fuels in

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<http://www.scitanie2011.sk/wp-content/uploads/kolko_nas_je_el..pdf>, 30 December 2013, fig. "T5"; english version available at: <http://www.scitanie2011.sk/wp-content/uploads/kolko_nas_je_eng.pdf>.

77 Ľ. Benkovičová et al. (eds), *Statistical Yearbook of the Slovak Republic 2011* (Bratislava: Štatistický úrad Slovenskej republiky, 2011), Table T 3–6.

78 Cf. e.g. section 4a Regulatory measure of the Ministry of Finance of SR of 23 April 2008 No. 01/R/2008 on regulation of the rents of flats as amended as of 20 December 2011.

79 See 'Koncepcia štátnej bytovej politiky' (2010), 6 et seq.

80 Cf. section 4 TCL 2011, as of 23 November 2012.

81 The regulatory framework for this process is provided for in the TCL 2011. The solution is however criticised by tenants (cf eg <www.staromestan-ba.sk>) as well as the landlords (cf eg <www.regulovanenajomne.sk>) and full reconciliation of the issue of restituted rented dwellings and its actors is still unresolved. See generally 'Koncepcia spôsobu usporiadania vzťahov súkromných vlastníkov bytových domov a nájomcov bytov dotknutých dereguláciou cien nájmu bytov' (Res. of the Government of the SR No. 640 of 16 September 2009).

82 Cf. section 4 TCL 2011.

83 H. Súkeníková et al., *Income, Expenditures and Consumption of Private Households in the Slovak Republic 2011* (Bratislava: Štatistický úrad Slovenskej republiky, 2012). The 2011 data were collected in 4.705 randomly selected households from the whole SR, which were willing to offer information about their budgets.

total amounted to 778,14 EUR per person in a household per year.[84] The net money income in a household in this period averaged to 4.341,27 EUR per person per year.[85] Weighing these figures would indicate that the rent-to-income ratio in 2011 may be estimated in average as 2.75 % and housing expenditure-to-income ratio would average 17.92 %.

The statistics of household budget surveys from the preceding years[86] show that the household expenditures on housing, water, electricity, gas and other fuels account for a stable average of 20% of a household's net money expenditure of which the rent itself is gradually gaining a higher ratio. One should keep in mind that rentals in the public rental sector are price-regulated with much more affordable rents than the open-market rents. Figures from the developing private rental sector are not publicly accessible for precise statistical evaluation. Yet for the sake of comparison, it may be instructive to state the average price of housing rents as regularly summarised off the real estate agents' data for Bratislava.[87] The rents in the first quarter of 2012 spanned from 12,40 EUR/m^2/month for a garconniére to 7,64 EUR/m2/month for a 4+ room flat.[88] Another recent study of housing market in Bratislava revealed the correlation between the monthly rent and average mortgage instalment for a purchase price of a similar dwelling. The average montly rent in Bratislava in the last quartile of 2013 was 600 EUR, whereas a an average mortgage instalment for a newly built purchased dwelling amounted to 781,12 EUR as opposed to 515,61 EUR in case of a secondary market dwelling.[89]

The yearly Eurostat analysis of household income figures and housing expenditures concerning the housing cost overburden rate[90] shows that in 2011[91] the ratio in Slovakia amounted to 12.9% among tenants paying a market price for rents and to 8.9% among tenants paying rents at reduced price or occupying a dwelling free of charge, which is below the EU average in both cases.

In addition, some supplemental data on specific issues may put the finishing touches to the picture of real renting costs in Slovakia. According to another survey (EU-SILC)[92] of

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84 *Ibid*., 19. International classification of individual consumption by purpose was applied in the Household Budget Surveys (HBS) as required for HBS by Eurostat (COICOP - HBS).

85 *Ibid*., 12. In case of income items, the survey followed Regulation (EC) No 1177/2003 of the European Parliament and of the Council concerning Community statistics on income and living conditions (EU–SILC).

86 For years 2006 – 2010 see Ľ. Benkovičová et al. (eds), *Statistical Yearbook of the Slovak Republic 2011*, Table T 5–4.

87 See <www.trh.sk>, real estate web portal, summarizing data on rentals of flats in Bratislava and its districts. The prices of rents are stated in EUR per sq metre per month, based on offers supplied by the landlords, cleared of extremes and without specification of the actual content of the service paid for.

88 See <www.trh.sk/clanky/byvanie-a-reality/vyvoj-ponukovych-cien-bytov-na-prenajom-za-r-2007-2008-2009-2010-2011-a-2012-505.html>, 15 December 2013 (detailed statistics broken down to districts and years).

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

90 The housing cost overburden rate is the percentage of the population living in households where the total housing costs ('net' of housing allowances) represent more than 40% of disposable income ('net' of housing allowances).

91 See Eurostat (epp.eurostat.ec.europa.eu, online data code: ilc_lvho07a).

92 See Y. Kováčová & R. Vlačuha, *EU SILC 2011 Zisťovanie o príjmoch a životných podmienkach domácností v SR* (Bratislava, Štatistický úrad Slovenskej republiky, 2012). The survey as a part of EU-SILC statistics, included around 5200 households in Slovakia.

2011, the total disposable income of a household averaged 1.074 EUR per month[93]. Though of an older date, there are rather precise figures on the prices of rents available, from targeted surveys performed by the former Ministry of Construction and Regional Development of SR. As of 2004, the monthly rent in a municipal flat built prior to 2001 averaged 37,57 EUR as opposed to newly built flats, where the monthly rent amounted to 78,34 EUR.[94] Similarly, monthly rents in older state-owned flats averaged to approximately 62,07 EUR and 68,71 EUR in newer flats in the same period.[95] The study implies that the actual rents in these respective dwellings had been always below the price-rent ceilings applicable thereto and based on prior experience a relatively steep rise in the rents of rent-regulated dwellings was to be expected. Yet the rent-ceilings as such have not been changed since 2003.[96] A targeted survey of tenants of privately owned flats with regulated rents indicated that as of 2009 the average monthly rent in this category of dwellings amounted to 85,82 EUR[97]. It is noteworthy that the vast majority of these dwellings are located in Bratislava, where market-price rents exceed this figure several times.

- To what extent is home ownership attractive as an alternative to rental housing

As already stated above Home ownership is the prevalent form of residential housing in Slovakia. According to the 2001 population and housing census[98] 75.9% of dwellings in the Slovak Republic had been owned by private citizens, 14.9% by housing cooperatives and further 9.2% of dwellings had been owned by other subjects. Statistics of ownership structure of dwellings as of 31.12.2008 estimated that home ownership represented approximately 94.5% of permanently inhabited dwellings.[99] This assumption has proven right and it thus illustrates a long term trend, as under the recently published results of the 2011 Census, out of all inhabited dwellings, as already mentioned, owner occupation of flats in blocks of flats reached 43% of the housing stock, owner occupation of family houses 41.89% and occupation of housing cooperative flats[100] 3.54%, whereas typical rentals (municipal - social, private and service – employment based combined) amount to only 4.71% of the occupied housing stock. Moreover, analysts argue that home ownership is typically elected by the middle- and upper-income class citizens.[101]

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93 *Ibid*., 13 (table 6).

94 'Analýza úrovne nájomného ...' (2005) 9.

95 *Ibid*., 15.

96 'Správa o plnení zámerov Koncepcie štátnej bytovej politiky do roku 2015' (Res. of the Government of the SR No. 326 of 6 July 2012) 6.

97 'Informácia o údajoch zistených z prihlasovania nájomcov bytov v bytových domoch súkromných vlastníkov' (Ministry of Construction and Regional Development of SR, 2009) 4, <http://www.telecom.gov.sk/index/open_file.php?file=vystavba/bytovapolitika/dokumenty/informacie/i_bdsv.pdf>, 15 December 2013.

98 The data of the latest population and housing census pursued 21 May 2011 is yet to be processed by the Statistical Office of the SR. See <www.scitanie2011.sk>, 15 December 2013.

99 'Správa o plnení zámerov Koncepcie ...' (2012) 4.

100 Although legally speaking the title of the user of a cooperative flat is a contract of a lease with the housing cooperative, the tenant owns equity in the cooperative itself, therefore economically, his standing sways more towards the one of the owner.

101 'Správa o plnení zámerov Koncepcie ...' (2012) 4.

The reasons for this state date back to the post-communist era of transformation in the tenure structure. In 1991 nearly all state owned dwellings were transferred to municipal ownership.[102] The privatization programme that started in 1993 allowed tenants in the municipal housing stock to purchase their home under very favourable conditions (right-to-buy legislation).[103] This right-to-buy legislation, although amended several times, is still in effect today and it applies only to specific kinds of flats built prior to 1998,[104] yet it has been portrayed as one of the reasons for underdevelopment of the rental housing market in Slovakia as well as its availability and affordability.[105]

Additionally, as pointed out by OECD, the fiscal treatment of housing is geared heavily towards supporting owner-occupation. Subsidisation remains substantial, real estate taxes are low and capital gains on housing are tax free for residents after two years.[106] Consequently, with accessible loans and the instalments of mortgage payments, which are advantageous to buyers when compared to the monthly rents of non-subsidized, privately owned dwellings with deregulated rents, as well as with the common perception of the advantages of home ownership, it is not considered an alternative to rental housing in the private market, rather the primary and desirable form of residential housing, supplemented by rental housing afforded by the municipalities.

- What were the effects of the crisis since 2007?

The crisis in the financial and real-property sector culminated in 2008 in Slovakia, but its effects on the rental sector are indirect. Firstly, rents in the public rental sector are regulated and do not exceed affordable amounts even in newly built dwellings. The payment discipline of these tenants was assessed as unsatisfactory as early as 2005, as only 77% of due payments of rent had actually been paid.[107] Secondly, the ability to pay the rent seems to be a function of unemployment rate, as the payment discipline had been much worse in regions with a higher unemployment rate. However, tenants of newer dwellings in the public rental sector seem to be able and willing to pay their rents properly even though the rent levels are higher.[108] Thirdly, the consumer price indices of actual rents for housing show that from 2006 to 2010 the rents were rising yearly by 2.3% in 2006, 5.4% in 2009 and back to 1.7% in 2010.[109] The figures of 2006, however, formed 215.2% of actual rentals for housing in 2000.[110] As mentioned above, higher rents amounted to 1.7% of net household expenditures in 2006 with steady rise of the ratio to 2.9% in 2010.[111]

The problems that tenants may have encountered in paying the rent, therefore, seem to have carried over in the same extent from the pre-crisis period and were not triggered by

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102 Cf. Municipalities' Property Act 1991 (No. 138/1991 Coll., as amended).
103 OECD (2009) 99; See section 27 et seq OFNP 1993.
104 section 29a OFNP 1993.
105 'Správa o plnení zámerov Koncepcie ...' (2012) 4; similarly: OECD (2009) 100.
106 OECD (2009) 94.
107 'Analýza úrovne nájomného ...' (2005) 17.
108 *Ibid*.
109 Ľ Benkovičová et al. (eds), *Statistical Yearbook of the Slovak Republic 2011*, Table T 13–11, .2nd continuation.
110 *Ibid*., Table T 13–11.
111 *Ibid*., Table T 5–4.

the financial crisis itself. The crisis effects, especially the scarcity of funding for the development of social and subsidized rental housing[112] mostly affected the supply side of new and affordable rental dwellings.

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?

Experts of the UNECE in terms of a study in 1999 found that Slovakia was practically missing a private rental sector and that the regulation of rents and the obligation of the landlord to provide replacement housing for an evicted tenant make the investment in private rental sector an unattractive one.[113] Notwithstanding the gradual construction and development of residential housing until recently, this pronouncement on investment habits partly still holds true.

In Slovakia, the standard model of investment in residential real property by private investors is the development of residential or semi-residential construction projects with the majority of units allocated for sale rather than long-term renting for housing purposes. Until 2008, the real property market was booming, with culminating prices of residential property and rather accessible financing.[114] At that time the sale prices of dwellings in Bratislava, for instance, were approximately 50% higher than the investor's aggregate construction costs.[115] However, since May 2008 the demand side of the real estate market has been falling and so have been the prices of dwellings.[116] Due to these significant market changes and the inability to perform, in accordance with anticipated circumstances and assumptions, a lot of constructed dwellings remained unsold. Subsequently, developers decided to rent some of these dwellings. Such rentals are considered an interim measure until the market of residential real estate recovers, rather than a rental investment itself.

Gross return on investment for rental dwellings is (without available comprehensive data) estimated at 4-5%[117], which is not quite viable as an investment opportunity, taking into account the current yearly inflation rate of 3.6% (2012).[118]

A slightly different situation concerns investments of municipalities in the construction of rental housing units (state-subsidised construction) built after 01 February 2001. Such an undertaking is not considered a mere investment-for-profit, but the exercise of state housing policy of accessible rental housing. As mentioned earlier, the rent here is

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112 'Správa o plnení zámerov Koncepcie ...' (2012), 3.

113 'Profily krajín v sektore bývania - Slovensko' (Bratislava: MVVP SR, 1999), 16.

114 See eg D. Špirková & P. Rakšányi, 'Príčiny a dôsledky hypotekárnej krízy', *Nehnuteľnosti a Bývanie,* no. 2 (2011): 5.

115 *Ibid*., 6.

116 From average 1619 EUR/m^2 in 2008 to 1298 EUR/m^2 in 2012. See National Bank of Slovakia <www.nbs.sk>, 15 December 2013.

117 F. Glasa, 'Prečo neinvestovať do nehnuteľností?' (04 June 2012), <http://ako-investovat.sk/index.php/nehnutelnosti/59-nehnutelnosti/353-preco-neinvestovat-do-nehnutenosti>, 15 December 2013.

118 Statistical Office of the SR (14 January 2013), <www.statistics.sk>, 15 December 2013.

regulated with a price ceiling set at 5% of the aggregate construction costs of the dwelling per year.[119] This would indicate the desirable percentage of yearly returns; however, such rentals may often entail the tenant's right-to-buy at affordable conditions after a certain period of a lease.

- 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?

Tenancy contracts may also become relevant for **professional and institutional investors**, as the rental revenue may constitute significant portion of profit of rent-oriented development projects. However, as mentioned earlier, in Slovakia the private residential rental market scarcely exists. In line with that, investments into real property rental projects are prevalent in connection with rentals of commercial premises. The other important real estate-related investment opportunity (and the one producing dominant percentage of developers' cash-flow)[120] would be investment into retail-oriented development projects of commercial or residential buildings.

Slovak capital market offers several possibilities for the investors to partake at real estate projects. First, they can acquire corporate stock of real estate firms that finance their activities through public offerings of corporate stock.[121] Second, investment into corporate bonds issued by real estate businesses[122] and last, investments through locally based real property unit funds is a publicly available alternative since May 2006.[123]

The section 73a - section 73j of Collective Investment Act 2003 (No. 594/2003 Coll., as amended), provides for small Slovak investors the possibility to pool their investments in real estate in order to get the same benefits as might be obtained by direct ownership, while also diversifying their risks and obtaining professional management, through acquisition of units of a "*special real property unit fund*". It is a special vehicle fashioned as a mutual investment fund with portfolio consisting of real estate of any kind (eg office spaces, logistics centres, retail centres, residential buildings and hotels) including its appurtenances, for purposes of its management and retail; shares in real estate companies[124]; and other assets economically tied with the real estate market. These funds can be open- or closed-end mutual funds. A specific feature of these unit funds compared to capital unit funds is that they can invest directly into real property, however,

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119 Cf. section 2 Regulatory measure of the Ministry of Finance of SR of 23 April 2008 No. 01/R/2008 on regulation of the rents of flats as amended as of 20 December 2011.

120 F. Glasa, 'Realitné fondy – čas na výhodný nákup?' (01 June 2008), <http://blog.etrend.sk/filip-glasa/2008/06/01/realitne-fondy-cas-na-vyhodny-nakup/.>, 15 December 2013.

121 See eg <http://www.tmr.sk/about-tmr-shares.html>, 15 December 2013.

122 See eg P. Kremský, 'Realitné dlhopisy pomôžu Ipecu' (13 July 2010), <http://reality.etrend.sk/realitny-biznis/realitne-dlhopisy-pomozu-ipecu.html>, 15 December 2013.

123 See generally A. Adamuščin, 'Špeciálne podielové fondy nehnuteľností,' *Nehnuteľnosti a Bývanie*, no. 2 (2008): 1 et seq.

124 Pursuant to section 73e of the Collective Investment Act 2003 (No. 594/2003 Coll., as amended), a real estate company is a corporation with its business oriented at acquisition and retail of real property, its management including rentals and provision of related services as well as real estate agency services.

value of a single immovable (or functionally connected immovables) cannot form more than 20% of the fund's aggregate asset value. Additionally, not more than 25% of the fund's asset value can be comprised of immovables that cannot be valued by estimated yields (usually non-rental assets determined for retail). Finally, at least 10% of the portfolio's value shall comprise liquid assets,[125] to safeguard effective negotiability of the fund's units. Functioning of special real property unit funds underlies to careful supervision of the National Bank of Slovakia.[126] It is thus obvious, that the development of private rental market and commercially interesting tenancies are a prerequisite for high turnover in tenancy investment and if attained, it could be easily utilised by existing means of investment through changing portfolios of real property unit funds.

As of 2013 five special real property unit funds were established in Slovakia, altogether with the net asset value of 504,174 mil. EUR (31.12.2012), which formed 11.51% of the net asset value of all open unit funds in the country. This ratio has been steadily rising (from 3.17% as of 31.12.2008) and so was the net asset value of these funds (119,325 mil. EUR in the same date).[127] The figures indicate that collective investment into real property assets is becoming more appealing to the investors especially with regard to the fact that all but one of these funds predominantly concentrate on national real estate investment.

- 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?

As far as securitization of tenancy contracts is concerned, it should be noted that Slovak law provides for regulation of issuing of corporate bonds and other negotiable instruments that can be also issued by real estate oriented businesses that may specifically gain revenue from tenancy contracts.[128] However, corporate bonds that may be issued in such a manner would not be exclusively tied to tenancy incomes. The bonds would be issued by the issuer with a set calculation of the yield on the investment out of which only a part can be left to be determined by the share on profit of the issuer.[129] This share on profit naturally may be contingent upon the tenancy contract proceeds, but the bond itself would represent the issuer's obligation to repay the owed amount of money, not limited to the rights and obligations ensuing from tenancy contracts. The securitization system in real estate is mainly related to gaining leverage for existing or future development projects[130] rather than speculative utilisation of tenancy incomes in form of securitisation. Conclusively, the virtual absence of private housing rental market is the crucial obstacle to development and establishment of a market of rent-related securities.

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125 For details see section 73a cl. 7 of the Collective Investment Act 2003.

126 See section 99 et seq. of the Collective Investment Act 2003.

127 Figures calculated on the data of the Slovak association of asset managers. Cf. <www.ass.sk>, 15 December 2013. (2009: NAV of SRPUF 139,389 mil. EUR, 3,38% NAV of all open unit funds; 2010: 197,081 mil. EUR, 4,32%; 2011: 357,01 mil. EUR, 9,32%).

128 See especially Securities and Investment Services Act 2001 (No. 566/2001 Coll., as amended); Bonds Act 1990 (No. 530/1990 Coll., as amended).

129 Cf section 10 cl. 2 Bonds Act 1990.

130 See eg Kremský, 'Realitné dlhopisy pomôžu Ipecu' (13 July 2010).

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?)?

Under the Slovak legal order it is possible to insure, *inter alia*, property for its impairment, destruction, loss, theft or other form of damage. Insurance companies which provide their services on the territory of the Slovak Republic offer following insurance products relating to dwellings:

- insurance of buildings, i.e. the insurance of a house, of a flat or non- residential premises. It is possible to insure not only a building, but also future buildings – buildings under construction. *Via* an insurance contract a building can be insured against many risks, e.g. fire, flood, explosion, lightning, tree falling down, windstorm, vandalism, burglary or crash of a car. The risks against which the immovable property is actually insured and the respective insurance coverage depends on the policy of the particular insurance company and on its portfolio.
- insurance of a block of flats; in this case the owner or the administrator of the whole building insures the apartment house for risks connected with the burst of a water pipe, against vandalism, against loss suffered by a pedestrian or a thing (*e. g*. a car standing under the edge of the roof) when snow falls from a roof, or in case somebody hurts himself/herself on an uneven, wet or snow-covered pavement attached to the apartment house;
- insurance of a household; such insurance covers all items which form part of a household. They can cover also e.g. historical objects or works of art. The items covered by the insurance conditions can be insured e.g. against theft or against natural disasters. Generally speaking, a household can be insured against e.g. fire, flood, hail, explosion, lightning, tree or mast falling down, windstorm, vandalism, burglary, crash of an aeroplane, earthquake, landslide, lava slide, supersonic or ultrasonic waves, smoke, weight of snow or water running out of burst water pipes. It can also be insured against specific risks, e.g. electricity outage; insurance of glass in the households, insurance of washing machine or insurance of bicycles when out of household; prolongation of the guarantee period of electric appliances is also common. Insurance of a household may also cover items which are not placed directly within the household but which are placed in the premises adjacent to the household (basement cubicle, garage, fenced plot pertaining to a house) or even an accessory building located at a separate address.
- insurance for liability of household members; this insurance protects all the people living in the household in cases when these persons cause damage to somebody else. It covers basic activities, e.g. taking care of the household and activities in the household;
- insurance for liability caused by the immovable property, covering the liability of an insured owner of a building for losses incurred in connection with exercising

his/her ownership rights (or the failure in their proper exercise) mainly to third persons (failed maintenance, inadequate state etc.);

- insurance of glass; here the insured event is any breakage of glass by accident. This insurance may cover windows, door panels, aquariums, furniture glass, mirrors, solar panels, glass-ceramic hobs etc.
- insurance of buildings connected with the insured building; such insurance covers *e. g.* garages, pools, summer houses, gazebos, water wells, fences and even construction material, tools for maintenance or heating material;
- rent guarantee insurance, *via* this insurance the landlord is protected against the loss of rent.

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

The role of estate agents or their specific rights and duties *vis-à-vis* their clients are not regulated *expressis verbis* in any particular legal provisions. Hence, their position and duties as regards sale, lease or purchase of immovable property would fall within general contract law. The contractual and related activities of agents are performed as under specific trade authorization. Details on their performance can only be obtained from their marketing materials or activities,[131] as well as from publicly available feedback of clients willing to share their experience.[132]

Thus it can be concluded that the primary obligation of a real estate agent is to:

- serve as an agent/broker for sale, purchase and lease of immovable property (apartments, houses, land, non-residential premises);
- advise the client on the economically feasible price;
- monitor and search for immovable property which would correspond to the wish of a specific customer;
- take part in immovable property site visits with potential clients and conduct business meetings with them;
- monitor the newest trends and novelties on the immovable property market;
- post offers relating to sale, lease or purchase of immovable property on the websites;
- create databases of clients and of immovable property;
- be in charge of all bureaucratic work relating to sale, lease or purchase of immovable property.

Owing to the fact that the real estate market grew very fast prior to the financial crisis there are many real estate agents present nowadays. During the crisis their number

[131] See e.g. details on real estate agents' activities structure as marketed on internet recruitment portals (e.g. <www.profesia.sk> or <www.kariera.sk>, 15 December 2013).

[132] It should also be noted that a great portion of the content of the contractual relationship between an agent and his client forms a protected trade secret and the available information is usually not supported by officially issued statistics.

declined but it can be assumed that it is still quite high.[133] This results in a situation when many real estate agents are perceived as being not professional enough and as aiming solely or predominantly at their own profit and not at the wishes and financial possibilities of their clients.[134] That is why many people who are searching for immovable property or who try to sell or lease it attempt to succeed on their own, without the interference of a real estate agent or a real estate company. Another reason for such behaviour is that the fees and commissions[135] of the real estate agents are still perceived as too high and inadequate when compared with the provided service.

2.5. Effects of the current crisis

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

In general, Slovakia has recovered well from a deep recession and at a more rapid pace than most other OECD countries.[136] The impact on the tenants or buyers in the residential housing market was not overwhelming and was rather indirect.[137] Due to the financial crisis it has become more strenuous to gain financial leverage on the side of potential buyers of real property, as well as the developers constructing residential housing units. In line with the pre-crisis development boom, even in the beginning of 2008, the banks required only 15 % of the developer's co-financing in order to provide credit to a project. A rather considerable change occurred at the end of that year, when a conservative and cautious attitude was implemented by the banks, which began to require 30-50% of developer's co-financing of a project.[138] This is when the prices of new buildings started to fall. Due to these reasons it was not viable for development investors to pursue extensive construction projects at inflated anticipated prices, which lead to the interruption of construction. This process has been, paradoxically, viewed as contributing to the exclusion of speculative development actors from the market.[139]

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133 It is also assumed that the financial crisis forced not skilled real estate agents out of the market, *e. g.* <http://www.fliega-remax.sk/ako-vybrat-kvalitneho-maklera/441>, 15 December 2013.

134 <http://reality.etrend.sk/nehnutelnosti/predaj-nehnutelnosti/realitny-makler-a-jeho-jednanie.html>, 15 December 2013.

135 These fees are generally estimated at 3% - 7% of the realised sale price of the real property. The banks require to decrease the marketed/realised sale price of property, which has been valued, specifically by this ratio (the agent's commission) for the purposes of granting a loan secured on it. See e.g. 'Odporúcané požiadavky na znalecké posudky o všeobecnej hodnote nehnutelností, podávané externými znalcami pre úcely zriadenia záložného práva v súvislosti s úvermi poskytovanými v OTP Banke Slovensko, a.s.' (1 February 2012). However, the actual fees of the agents may vary and go way beyond the stated percentage. In 2008, at the peak of the real property boom, the fees of the agents as declared by anonymous statements of the brokers could have amounted even to 20% of the sale price with a fixed lowest fee of around 1.700,- EUR regardless of the kind of property sold, although the officially declared fees were still at 3%-6%. Cf. P. Jamrichová, 'Realitné kancelárie bohatnú na províziách' (21 July 2008), <http://living.hnonline.sk/clanky/hnreality/realitne-kancelarie-bohatnu-na-proviziach>, 15 December 2013.

136 OECD (2012) 11.

137 See eg M. Turancová, 'Finančná kríza verzus realitný trh' (13 January 2009), <www.asb.sk/biznis/developeri/financna-kriza-verzus-realitny-trh-2547.html>, 15 December 2013.

138 Špirková & Rakšányi, 'Príčiny a dôsledky hypotekárnej krízy', 6.

139 See eg Turancová, 'Finančná kríza verzus realitný trh'.

The market situation was predominantly influenced by the attitude of the banks that started to require stricter criteria for provision of capital. However, partly due to the falling prices of flats, the demand for credit for housing remained. Interestingly, in the crisis year of 2009, the volume of housing loans increased by 15%, therefore the banks in Slovakia did not have to decrease their interest rates on mortgage credit.[140] In the year 2010, the volume of mortgages increased by more than 10%, which means that the strong demand for housing loans persevered. Hence, unlike the rest of the euro-zone, Slovak banks did not lower the mortgage interest rates so rapidly.[141]

No specific upshot of the financial crisis on renting has been encountered, other than the lack of construction of affordable rental housing connected with the general mitigation of construction investment activities.

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

No actual data on **repossessions, foreclosures or evictions** of residential dwellings due to buyer's default is being collected or published in Slovakia. It is, however, possible to evaluate the ability of mortgage debtors (or of other similar credit products for housing purposes) to repay their outstanding debt based on the percentage of failed loans for housing.[142] Since 2009[143] until November 2012 the volume of failed debts for housing formed a constant of roughly 4% of the aggregate volume of outstanding debts on housing (3.83% in 2009 – 4.12% in 2012). The yearly increase of the amount of failed debts on housing is declining from 121% in 2010 to 104% in 2012. The amount of failed debt for housing purposes as of November 2012 was 684,291 mil. EUR. It can be inferred that the progressing crisis did not have a substantial impact on the ability of the debtors to repay their obligations. True, this may be also caused by the policy of cautious research of the bank's clients, prior to granting a loan, yet the year by year constantly rising amount of credit provided for housing purposes indicates that the debtors' payment discipline remained relatively unchanged.

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

Legislation introduced in recent years was specifically aimed at overcoming long-term issues of the Slovak housing sector. One of the main problems to be tackled in the coming years is the process of renewal and development of the housing stock in the country. It is partly due to the crisis that sufficient capital is not available for private

[140] F. Glasa, 'Objem hypoték a úverov na bývanie' (17 April 2011), <ako-investovat.sk/index.php/rast-objemu-hypotek-na-slovensku>, 15 December 2013.

[141] Mortgages: 6.37% (2007) – 5.40% (2010); Housing loans (mortgage-like personal loans): 6.79% (2007) – 6.45% (2010). See National Bank of Slovakia <www.nbs.sk>.

[142] Under section 73 regulatory measure of NBS No. 4/2007 of 13. March 2007 a failed loan is a loan where according to the bank's judgement the debtor will probably not repay its debt without e.g. foreclosing against him; or if the debtor is in delay with payment of his significant debt by more than 90 days. Here only 4 classes of credit for housing purposes are accounted for.

[143] All figures calculated from source data of the National Bank of Slovakia <www.nbs.sk>.

investors, which shall be supplemented by public subsidisation[144] of the construction of housing stock on the one hand, and the provision of social housing and related subsidies on the other (a description of these policy measures is provided separately).

In addition, it has been a long debated issue whether or in what way to increase property taxes that would make affluent housing habits more costly and would thus increase revenue income. Raising property tax is even a policy recommendation of the OECD towards Slovakia in order to address the fiscal consolidation needs.[145] Should this tax legislation be passed, it may have indirect effects especially on the preferences of buyers or developers of new housing units or, depending on the bulk of legislation, may make rentals more appealing to the residents and thus incentivise measures to overcome the so called lock-in effects.[146]

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?)

In the countries of Central Europe and in Slovakia the process of suburbanization has come significantly later, it occurred in the 90s of the twentieth century. Unlike the 1970s and 1980s, when the population had moved from rural areas to the cities, in the nineties the concentration trends in population migration began to change to a more pronounced de-concentration. Currently, in several regions of Slovakia an ongoing process of suburbanization has been identified. A number of communities, which can potentially move to suburban municipalities, are located in the suburbs of the largest Slovak towns, which are now the administrative centres of the region. The process of suburbanization and processes of creating densely populated areas in Slovakia are the strongest in the Slovak capital Bratislava. Overall, 26 urban centres were officially identified as growing potentially through a process of suburbanization. The process of suburbanization in Slovak towns is more pronounced in the western part of the country (where there are also larger cities) and retreating towards the east. First there are the western and northern regions of Slovakia, which are the most urbanized. Urbanization and suburbanization may be clearly identified along the Považie strip. With the advent of the urban population, closed new communities (gated communities) are occasionally created. Overall, however, the arrival of urban residents in rural communities, according to the results of research in Slovakia is rated as positive or neutral (neither positive nor negative). Mainly young families with children migrate to rural villages in the suburbs of towns in Slovakia. They have a higher social status, which is characterized by higher educational attainment and higher incomes than the native population of rural villages in the suburbs of towns. A part of the population moving to suburbs are persons who had previously lived there. Some are the descendants of former residents, who had moved

144 See 'Správa o plnení zámerov Koncepcie ...' (2012) 2 et seq.
145 OECD (2012) 13.
146 Cf OECD (2009) 100.

to cities at the strongest stage of urbanization trends. Persons who move to rural communities give the following reasons for their decision: a good location of the village with regards to the location of the town (good road access), housing reasons (housing affordability), and a healthier environment than in the city.[147] Suburbanization is linked to the rise in ownership housing.[148]

In the recent period the share of population living in cities and villages has not changed significantly (54.4% of inhabitants living in cities in 2011 in comparison to 56.2% of them in 2001 and 56.8% in 1991) .On the other hand, number of villages has increased from 2689 in 1991 to 2752 in 2011 (this may be also partly influenced by the administrative changes of territory)

State Housing Policy sets out the basic aims and objectives of housing policy and housing development. Along with economic instruments to support housing development conditions for housing affordability may be created for the Slovak population. Some smaller parts of the population, however, due to its economic and social level are not able to obtain appropriate ownership or rental housing. It is a social category which, for various reasons, is unable to enter the labor market or is completely excluded from it and gets into a position of socially marginalized and vulnerable groups.

Within groups at risk of social exclusion, we include: people who, due to low levels of education and capable of performing only occasional, odd jobs, eventually become unemployed; people with physical or mental disabilities; youth from institutional or protective care; the elderly; families with many children; single parents with children who find themselves in need of social help because of loss of family environment. Without the help of the society, this social category of people may become marginalized groups.

Marginalized populations are threatened with total exclusion due to factors such as loss of residence, long-term unemployment, drug dependency, lack of social adaptability, membership of a particular ethnic group in regions with high unemployment, marginal position. In terms of all social indicators, including housing, the most numerous and specific marginalized group in Slovakia comprise socially excluded Romani (Gypsy) communities.

Addressing the housing of socially excluded Romani communities in terms of quantity as well as the scope and complexity of the problem is very difficult and it is not possible to associate it with an effective solution of the problems of other marginalized groups. These problems have different causes and require different approaches to solving.

The long-term concept of housing for marginalized groups is basically aimed at solving the housing problems of socially excluded communities. Its aim is to design principles and solutions; to support tools that ensure an adequate standard of living of these communities depending on local socio-economic conditions. The concept is defined by the government-adopted "Basic Theses of the Government's Policies for the Integration

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147 P. Gajdoš & K. Moravanská, 'Suburbanizácia na Slovensku', <http://www.sociologia.sav.sk/cms/uploaded/1242_attach_suburbanizacia.pdf>, 15 December 2013.

148 See also P. Gajdoš, K. Moravanská & Ľ. Falťan, *Špecifiká sídelného vývoja na Slovensku. Typologická analýza sídiel* (Bratislava: Sociologický ústav SAV, 2009), <http://www.sociologia.sav.sk/cms/uploaded/1228_attach_APVV22-GP.pdf>, 15 December 2013.

of Romani communities' in housing" and by a special addendum to the concept of state housing policy.[149]

In order to achieve a reasonable standard of living, including housing, members of socially excluded communities and social integration must be able to work and secure sufficient revenue. However, the possibility of employment is directly affected by educational attainment, obtained qualifications, the level of personal hygiene, which is subject to adequate housing, as well as the overall level of employment in a region and the level of its development. Creating conditions for social and community development of socially excluded communities can be achieved by preparing them to change their housing. Providing the initial conditions for the development of housing for these people is a matter of a comprehensive approach by the government in cooperation with involved sectors. Educational work and social assistance should be carried out continuously, and be based on long-term cooperation with local associations, churches, schools and community social workers who are trained in this field.

The educational activities of community centers should also familiarize citizens of the village communities with plans for improvements in housing and the need for pro-active people - future tenants. In particular, community centres have to provide them with information on how the construction or reconstruction with the participation of citizens will be organized as well as on the principles and conditions for the allocation of housing. They must create conditions for active participation of citizens in the construction and operation of community centre activities. It is also vital to obtain information about the needs and perceptions of future tenants on housing. When selecting future tenants it is also inevitable to take into account the opinions and knowledge of community social workers in the locality. Citizens should be informed in advance of: the obligations related to housing in new or renovated housing, the estimated amount of rent and other charges associated with the use of the flat, how to obtain housing allowance and follow the necessary administrative procedures, etc. The determined rent should reflect the real income level and future statutory housing allowance for tenants. Future tenants should, as far as it is possible, actively participate in the construction of new housing and the investor must ensure that the constructor, if possible, will be employing future tenants of these newly built communities in their construction.[150]

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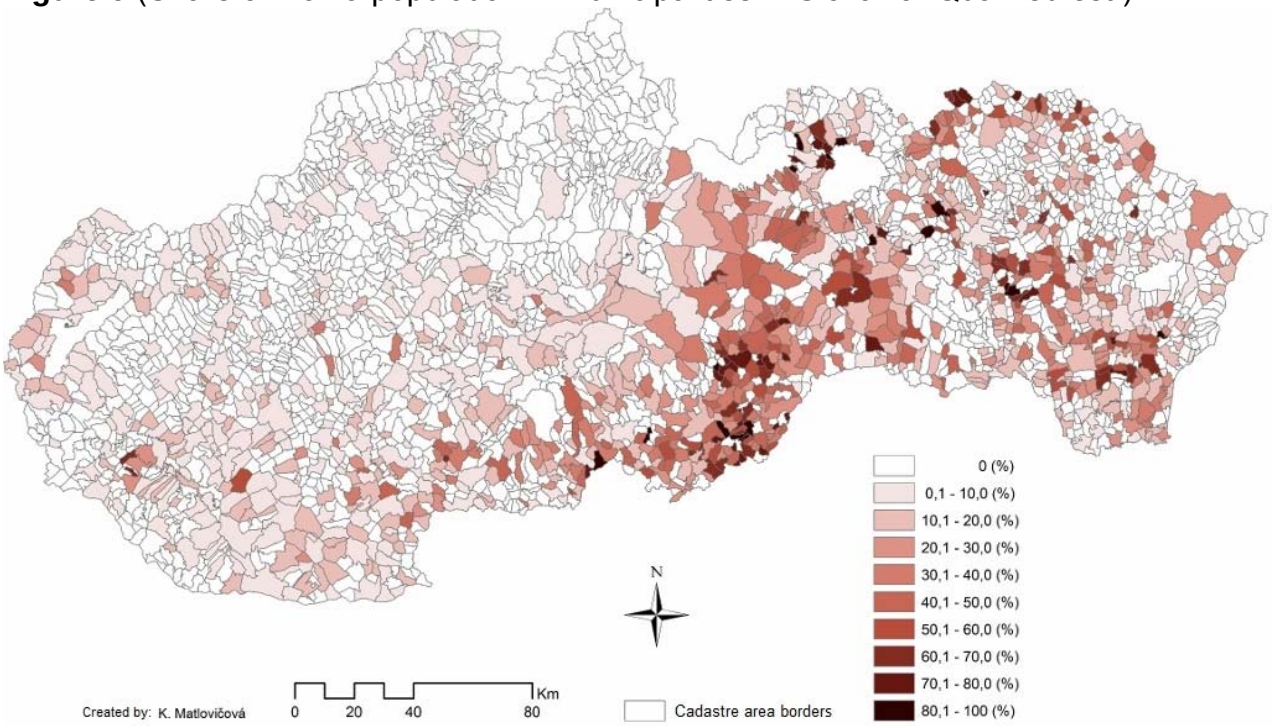
149 The concept is based on the following documents:
- Basic Positions of Government Policy in the Integration of Romani communities
- Priorities of the Government in the Integration of Romani Communities in 2004
- National Action Plan for Social Inclusion 2004 - 2006
- Comprehensive Development Programme for Romani Settlements
- Sociographic mapping of Roma in the Slovak Republic (hereinafter referred to as "mapping").

150 'Dlhodobá koncepcia bývania pre marginalizované skupiny obyvateľstva a model jej financovania' (Res. of the Government of the SR No. 63 of 19 January 2005) 4.

- Are the different types of housing regarded as contributing to specific, mostly critical, “socio-urban” phenomena, in particular ghettoization and gentrification

According to the census of population and housing censuses on 2011 the Slovak Republic had 5,397,036 permanent resident population, of which 105,738 people have declared to be Romani, i.e. 2.0 %[151]. Due to the methodology of the census, population figures of the Romani minority do not represent the real situation; the results of the socio-graphic mapping of Romani settlements from 2013, a substantial mapping method provided by the Office of the Government’s Plenipotentiary for Romani Communities, inform that the estimated number of Romani people in Slovakia is close to 402,840 Their share on population is therefore approximately 7.45 %; out of which187,285 (i.e. 46.5%) Romani live included in the community, others are mostly living in segregated settlements.[152] Figures 9-11give account of these findings with regard to individual municipalities in the country.

Figure 9 (Share of Roma population in municipalities in Slovakia. Qualified est.)[153]



[151] Statistical Office of the Slovak Republic, 'Census 2011 Tab. 10 Obyvateľstvo SR podľa národnosti – sčítanie 2011, 2001, 1991', <http://portal.statistics.sk/files/tab-10.pdf>, 10 February 2014.

[152] 'Atlas of Roma Communities in Slovakia 2013', <http://www.minv.sk/?atlas_2013>, 10 February 2014.

[153] 'Atlas of Roma Communities in Slovakia 2013', <http://www.minv.sk/?atlas_2013&subor=180024>, 10 February 2014.

Figure 10 (Municipalities with Roma population saturated. Qualified est.)[154]

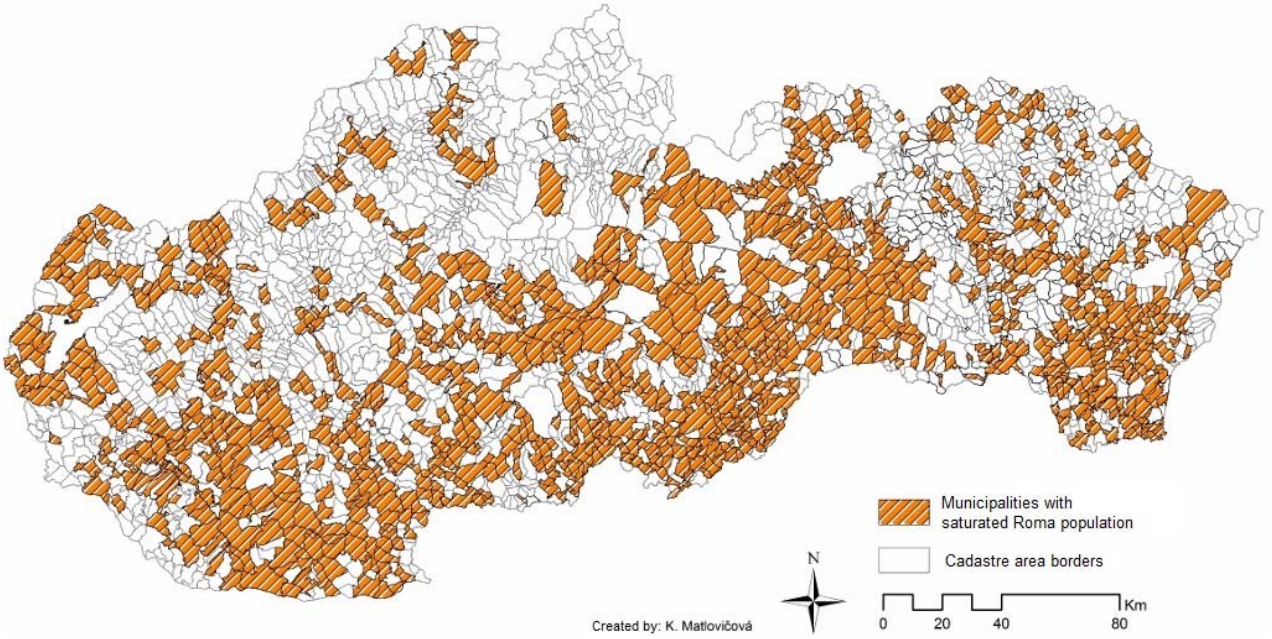
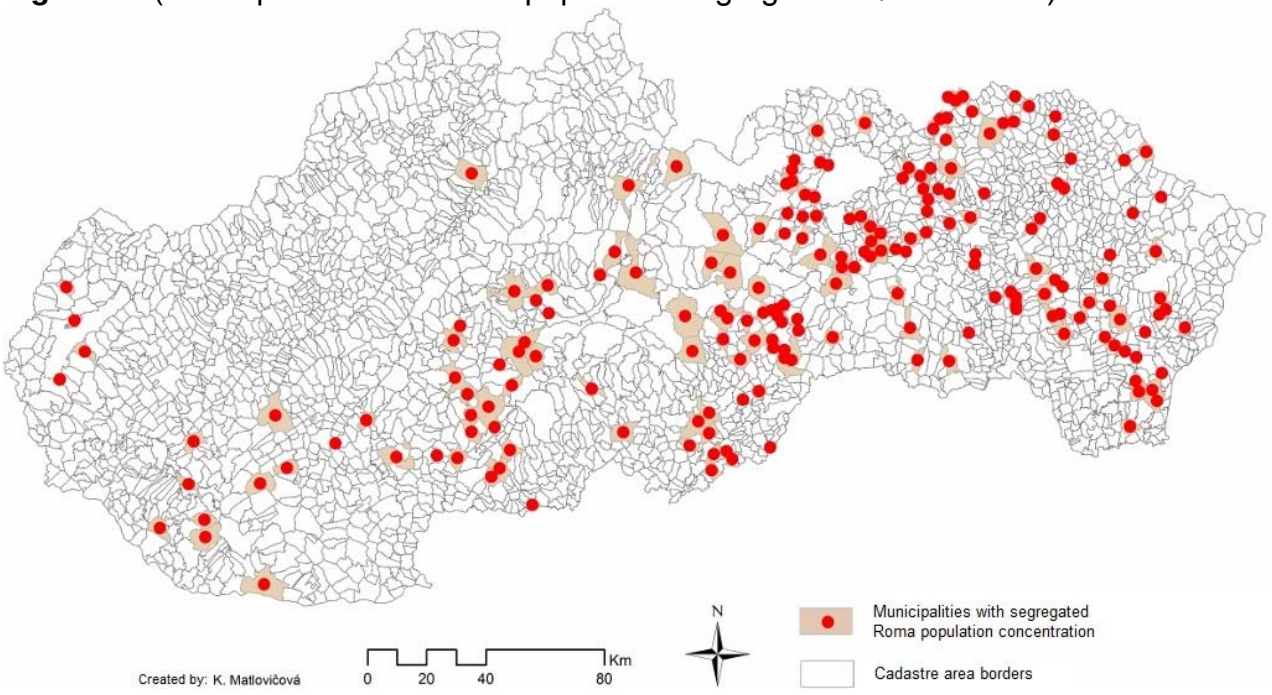


Figure 11 (Municipalities with Roma population segregated. Qualified est.)[155]



[154] 'Atlas of Roma Communities in Slovakia 2013', <http://www.minv.sk/?atlas_2013&subor=180025>, 10 February 2014.

[155] 'Atlas of Roma Communities in Slovakia 2013', <http://www.minv.sk/?atlas_2013&subor=180032>, 10 February 2014.

- Municipal concentrations

- Settlements located on the outskirts of a town or village

- Settlements that are geographically distant from the city or town or separated by a natural or an artificial barrier.

The Romani community is defined as a group of people who are subjectively defined as a majority of the Romani population on the basis of anthropological characters, cultural affiliation, lifestyle, type of living space and also subjectively perceived as a distinct group.

Spatial distribution of socially excluded communities that are perceived as Romani in Slovakia is uneven: the highest concentration is in eastern Slovakia and southern districts of central Slovakia. Members of socially excluded communities are actually a very diverse group of people, which cannot be approached as one whole. Different segments of the population face different problems, which are subject to the state of the region, the type of segregation they are facing, levels of concentration and the frequency ratio of Roma population in relation to the majority. Addressing this aspect of social inclusion seems particularly urgent.[156]

Town and local concentration, i.e. "Urban ghettos" are now almost ethnically homogeneous neighbourhoods whose residents are living in a confined geographical area separate from the rest of the population. Town and local concentrations are sometimes separate streets or clusters of houses, which are an integral part of the urban village, but from the socio-cultural point of view they create a separate unit..

The latest statistical sources indicate that 51, 998 (12.9% share of Romani in Slovakia) Romani people live in town and local concentrations inside the towns and villages; 95,971 of them live in the settlements located on the outskirts of a town or village (23.8%).[157]

With regard to towns, particularly Košice, the population there lives in about 5,000 flats in blocks of flats of mostly normal standard, owned by municipalities, mainly in the dated tower block of flats. A part of this population lives in houses and other dwellings. Inappropriate usage, failure to comply with Civil Code obligations related to leases of a flat and the non-payment of rent by the tenant who is heavily indebted, cause the lessees and the owners to have no adequate funds for repair and maintenance. For these reasons, a sizeable proportion of degraded housing does not meet the technical and sanitary regulations, and there are fears that there may be a threat to the safety of the occupants. Almost all block of flats are in need of repair or of comprehensive reconstruction.[158]

System measures have to prevent further occurrence of default on rent, devastation of flats and other cases of non-performance of obligations related to the lease of the flat. There is a need to create a vertical, bi-permeable system of housing with different standards of living, while the tenants using social work and other activities will be supported to move forward from the lower standard of housing to the higher one. The

156 'Dlhodobá koncepcia bývania pre marginalizované skupiny ...' (2005), 4.

157 'Atlas of Roma Communities in Slovakia 2013', <http://www.minv.sk/?atlas_2013>, 10 February 2014.

158 'Dlhodobá koncepcia bývania pre marginalizované skupiny ...' (2005), 5.

system would include a social hostel with a gatehouse and janitor service, lesser standard of housing and municipal rental housing. Residents who have duties and are actively involved in the community should have the opportunity for a trial period to get a higher quality type of housing. Such a system would support real efforts of citizens to improve their housing conditions, it acts as an incentive. New leases with tenants renovated flat community concluded for a fixed period.

In cases where people have a legal right to buy a flat, it is necessary to provide them, in collaboration with community social workers, with information about this option, as well as to assist them in the establishment of the community of flat owners and the management of the block of flats.

As far as spatially separated and segregated settlements are concerned, according to the latest data in Slovakia there are currently 804 of these settlements and the majority of them are inhabited by Romani people. Of these, 327 are located on the outskirts of towns and cities - and 231 are separated spatially, i.e. are distant from the town or city, or are separated by a natural or an artificial barrier (river, rail track, road and so on, the average distance of the segregated community is about 900 metres, maximally 7 km). The number of inhabitants of remote, totally separated settlements or villages is 68,540 Romani (17.0 % of the Romani population).[159]

Meeting the housing needs of socially disadvantaged people living in the Romani settlements is an open problem, as the quality level of their dwellings is far below the standard of living. A significant portion of houses in these settlements are shacks - simple shelters built of wood, clay, metal, which do not conform to technical standards and sanitary regulations. Most of the population is struggling with problems of the lack of technical infrastructure - poor water quality, lack of sanitation, electricity and gas supply, poor quality of roads, lack of public lighting, electrical and civil facilities.

If there is an intention to reduce the current average number of inhabitants in houses in these settlements from 8,24 to 7 people and replace substandard dwellings and flats with ones that will meet the basic living requirements, it would be necessary to build about 4,327 new flats. Due to the need to protect health it is essential to focus on the establishment of basic infrastructure (water, electricity, communication network, garbage collection, etc.) in spatially separated and segregated settlements and on the improvement of sanitary conditions of families living in substandard living conditions. The need for restoration or removal of substandard housing and improvement of living conditions must be a compulsory part of community development plans.[160]

Tackling the housing of socially excluded communities generally exceeds the financial, land, investment options and administrative possibilities of communities. Some settlements are located in an unsuitable ecological environment and must be eliminated in order to protect the population. It is therefore necessary for the solution to be based on the development plans of municipalities, housing, community development programs, economic development programs and social community development, housing development plan of region, regional land use plan, the economic development and

[159] 'Atlas of Roma Communities in Slovakia 2013', <http://www.minv.sk/?atlas_2013>, 10 February 2014.

[160] 'Dlhodobá koncepcia bývania pre marginalizované skupiny ...' (2005), 8.

social development of the region and other development documents of autonomous regions and municipalities.

According to the latest data, 46 settlements in Slovakia have almost no technical infrastructure, i.e. no water supply, sewerage, gas and asphalt road. The most accessible utility is electricity (91% of population), and the least accessible utility is sanitation (81% of population has no sanitation at all). Water supply is connected to 39% of the dwellings; gas is used by 15% and 20% of the residential settlements have paved access roads.[161]

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

Many Romani settlements unlawfully occupy plots, causing problems for the legalization of the development of these residential areas. Some are located near various sources of pollution or areas of impaired environment, where there is no prospect for development. At present it is not possible, in view of the large number of people in spatially separated or segregated settlements, to be fully integrated into their communities. Removing the settlements will require a lot of work on the construction of new housing, basic amenities and infrastructure, but also social, economic and cultural integration of the people.

Transfer of unlawfully occupied plots and location of plots for building of social housing shall be realized in the frames of Land Consolidation, Land Ownership, Land Offices, Land Fund and Land Communities Act (No. 330/1991 Coll., as amended). The Ministry of Agriculture and the Office for Geodesy, Cartography and Cadastre shall harmonize their activities in the legalization of land ownership in settlements, according to the priorities set by local authorities. The location of construction may deepen spatial and social segregation, but it must be a means of integrating people of affected communities. This is directly affected by the distance of the settlement from the village and its access to public services provided both for majority and minority communities in the village.

In connection to flats the phenomenon of squatting has not been considered a significant or persistent problem in Slovakia.

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 or economically unsound in the sense of a “rental trap”?) In particular: Is only home ownership regarded as a safe protection after retirement?

In the commentary to the Ownership of Flats and Non – residential Premises Act, their authors expressed a view that probably reflects the dominant Slovak opinion on the

[161] ‘Dlhodobá koncepcia bývania pre marginalizované skupiny ...’ (2005), 9-10.

general preference of ownership to renting "…from the perspective of the owner of the flat, who is not an entrepreneur, motifs and definite solutions of their housing situation associated with family formation prevail, and also the possibility of realization of commercial and business activities, *etc*. An owner's title to the flat or house is in comparison to the lease, generally regarded as preferable. This is especially true with regard to the stability of housing that is not guaranteed on such level in rented houses. Ownership also provides greater certainty regarding the costs of housing that cannot be achieved in the rental relation. There is also a possibility of obtaining a bank loan secured by a mortgage on the unit. Compared to rental houses, housing based on property rights is generally less disturbed and more up to-date. In case of disputes, one may expect a better chance of settling the problems among the collective owners of flats, than among tenants in rental houses."[162] In addition, ownership of a house seems to pertain to the traditional value-orientation of Slovak citizenship, as symbolizing one's basic societal status.[163]

Home ownership provides a better protection of interests in comparison to living in rented flats. There is always the possibility to sell the flat or to exchange it for a smaller one.

- What is the typical attitude of tenants towards different forms of tenure (e.g. owners of privatized apartments in former Eastern Europe not feeling and behaving as full owners)

Summary table 3

	Home ownership	Renting **with a public task**	Renting **without a public task**	Etc.
Dominant public opinion	++	+	--	
Tenant opinion	+	+	--	
Contribution to gentrification?	+			
Contribution to ghettoization?		--		
Squatting?				

[162] J. Cirák, 'Basic Provisions', in M. Valchovič, K. Grausová & J. Cirák, *Zákon o vlastníctve bytov a nebytových priestorov. Komentár.* (Praha: C.H.Beck, 2012), 8.

[163] see A. Suchalová & K. Staroňová, *Mapovanie sociálneho bývania v mestách Slovenska* (Bratislava: Ústav verejnej politiky a ekonómie, FSEV UK, 2010), 11.

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?

Satisfaction of housing needs takes a prominent place in the structure of goals society is striving to attain. Not only does it relate to the increase of the living standard and a certain quality of lifestyle, but also to the aggregate cultural and socio-economic evolution. Quality of housing has multilevel influence on physical and psychical state of a human being and the quality of housing environment activates creativity and initiative of the members of society.[164] It has therefore always been of utmost importance for a state to introduce such a policy that would provide tools for this need to be effectively and well satisfied and constantly protected.

Slovakia inherited from the communist era an inadequately controlled housing system. The system was based on low housing prices, centralized production and allocation of housing. Ownership of blocks of flats in major cities was not allowed. Land was valueless, interest rates, rents and services were highly subsidized. Rents were strictly controlled in 1988 represented an average of 2.7% of income. Housing had been a political priority and was generally affordable through subsidies and strong macro-economic regulation of prices. The emphasis had been laid on the need to produce large number of new flats. Prefabrication technology, offering a limited number of flat types, economy without a scale and large number of mass-produced housing dominated the production of housing in urban areas.[165]

Lack of housing market led to low mobility of labour and excessive number of dwellings used at the end of a family's life cycle. Extensive tenant rights, including the right to housing in perpetuity (transferable to family members), the right to lease and exchange leases of flats, the obligation of the landlords to find comparable replacement housing for tenants in the event of termination of a lease, all lead to a lack of housing, particularly in Bratislava and large industrial cities. Socialist housing system was in many ways less effective even though in the 1980s housing stock grew annually by 1.6%, while the population grew by 0.5% per year. From 1970 to 1991, housing conditions improved.[166]

Today's Slovakia is constitutionally established as a socially and ecologically oriented market economy that respects and protects people's fundamental rights and freedoms, including economic and social rights.[167] Decent housing is a people's basic need, yet costly to cover in its entirety, often beyond the funding abilities of single citizens. Therefore, it is necessary for the state to step in, in order to create conditions for

164 J. Zeman, I. Jankovich & J. Lichner, *Bytová výstavba na Slovensku* (Bratislava: Alfa, 1990) 7.
165 'Profily krajín v sektore bývania - Slovensko' (Bratislava: MVVP SR, 1999), 7.
166 Cf. *ibid*.
167 See art. 55 para. 1, art. 12 and art. 35 et seq. of the Constitution of the SR 1992.

adequate housing and living environment for its inhabitants and especially for low-income and socially weaker class of the population.[168] During the transition period, however, housing was not considered a political priority in Slovakia. Successive governments have failed to carry out a systematic and perfected reform of the housing policy aimed at development of housing construction and effective functioning of the housing market. Despite substantial progress in the privatization of housing sector as well as the deregulation and liberalization of the supply of housing market conditions, housing problems are still evident in the form of (a) unfinished housing construction, (b) lack of housing at affordable prices in urban areas, (c) deterioration of the existing housing stock in all types of tenure and (d) lack of adequate investment mechanisms to maintain the quality and vitality of the residential sector. It is understood that a comprehensive and effective state housing policy needs to recognize housing investment as a driver of economic growth and social development. It is also necessary that the economic and environmental considerations will have become a central part of this policy.[169] Consequently, it is necessary to integrate the housing sector in national economic programs and policies and give it a high priority.

Currently, Slovak government addresses these issues on a central level through a set of programme-conception documents, out of which the current 'Concept of State Housing Policy until 2015' takes the central role, and by measures of its implementation - mainly through subsequently passed legislation and targeted allocation of public financial resources. According to the Concept it is the government's responsibility to indicate the direction of the state housing policy in relation to the broader context of socio-economic, institutional and technological development in the country. From this perspective, the material develops and updates the roles adopted in previous concepts reflected in the current state of development of the society and economy.[170]

The aim of the state housing policy is a gradual increase in the overall quality of housing so that the housing will be available to the population and adequate housing will be affordable for every household. In line with that, the government finds necessary to create a framework for the involvement of all actors of the housing development process in dealing with pertinent subtasks, to create space for the participation of all levels of decision making and strengthen the partnership between the public, private and non-governmental sector on both horizontal and vertical level, while respecting the principles of sustainable development, energy and economic efficiency and social solidarity.[171]

- What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)

Obviously, the state functionally declares to be striving for satisfaction of people's right to housing. Right to housing is not *expressis verbis* established in the Slovak constitutional framework of human rights. Many of its aspects are, conversely, traceable in, and relied upon from different fundamental rights anchored in the Constitution of the SR 1992, international documents and further national legislation.

168 Cf. 'Koncepcia štátnej bytovej politiky' (2010), 1.
169 'Profily krajín v sektore bývania - Slovensko' (Bratislava: MVVP SR, 1999), v-1-2.
170 See 'Koncepcia štátnej bytovej politiky' (2010). 1.
171 See *ibid*.

Pursuant to the art. 7 para. 5 of the Constitution, international treaties on human rights generally take precedence over the national law[172] and so does the EU law.[173] One therefore cannot omit internationally guaranteed human rights with respect to the Slovak constitutional framework of housing. A prominent place among them belongs to the Universal Declaration of Human Rights of 1948, respecting a specific right for adequate housing derived from the right to an adequate standard of living;[174] furthermore, to the International Covenant on Economic, Social and Cultural Rights of 1966 vividly formulating a right to housing,[175] which is respected as a substantial fundamental right in international law, as well as other international treaties addressing protection of rights in specific situations that relate to housing.[176] Moreover, Slovakia as a party to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (ECHR) and its protocols, which warrant one's right to respect for his private and family life or his home; the right to peaceful enjoyment of one's possessions; the right to liberty of movement and freedom to choose one's residence.[177] Another important document in this area is the revised European Social Charter (as of 1996), where the significant yet problematic article 31[178] Slovakia, along with other countries, did not ratify (including the Additional Protocol to RESC, which provides a mechanism of collective complaints). Notwithstanding this absence of ratification, it does not mean that people are helpless in cases of infringement of their housing rights provided therein.[179] Ultimately, since 01 December 2009, the Charter of Fundamental Rights of the EU became part of the EU Treaty explicitly, and although it does not contain the right to housing,[180] its other provisions could be invoked in the event of a breach of the right to housing.[181]

Apart from international or European sources of law, the Constitution of the SR of 1992 also provides for protection of fundamental rights closely linked to exercise of one's

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172 Art. 7 para. 5 of the Constitution of the SR 1992 reads: 'International treaties on human rights and fundamental freedoms and international treaties, the implementation of which is not required by law and international treaties which directly confer rights or obligations of natural or legal persons and which were ratified and promulgated in the manner determined by law take precedence over the laws.'

173 See art. 7 para. 2 Constitution of the SR 1992.

174 Cf. art. 25 (1) Universal Declaration of Human Rights of 1948.

175 Cf. art. 11 (1) International Covenant on Economic, Social and Cultural Rights of 1966.

176 See eg International Convention on the Elimination of All Forms of Racial Discrimination of 1965 (arts. 3 and 5); The Convention on the Elimination of All Forms of Discrimination against Women of 1979 (art. 14(2)(h)); The Convention on the Rights of the Child of 1989 (art. 27 (3)); The Convention Relating to the Status of Refugees of 1951 (art. 21); etc., all of which are binding on Slovakia.

177 See art. 8 (1) of the Convention of 1950, art. 1(1) of the Protocol to the Convention, art. (1) of the Protocol No. 4 to the Convention.

178 The art. 31 reads: 'With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: (1) to promote access to housing of an adequate standard; (2) to prevent and reduce homelessness with a view to its gradual elimination; (3) to make the price of housing accessible to those without adequate resources.'

179 The European Social Charter of 1961 (in its entirety together with supplementary documents) became indirectly part of the EU law, as in the Preamble to the Treaty of the European Union the member states declare their adherence to it. In addition, arts. 16, 19, 23 and 30 that are explicitly binding on Slovakia and art. 4 of the Additional Protocol to RESC contain further rights connected to the exercise of the right to housing.

180 With the exception of art. 29 reflecting also specific housing needs of the handicapped.

181 See eg art. 1 guaranteeing human dignity; art. 4 prohibiting torture and inhuman or degrading treatment; art. 21 prohibiting discrimination based on *inter alia* social origin; art. 17 guaranteeing property rights. It should be noted that the applicability of the charter is limited to the implementation of EU law.

housing needs. Namely, art. 39 cl. 2 guaranteeing anyone who is in need, the right to such assistance as is necessary to ensure basic living conditions; Art. 16 guaranteeing one's inviolability and privacy as well as prohibiting anyone's torture or cruel, inhuman or degrading treatment or punishment; Art. 19 maintaining one's right to dignity, and to protection against unjustified interference in private and family life; Art. 20 giving everyone the right to own property and art. 21 establishing general inviolability of one's home.

Rightful protection of these rights as declared by constitutionally fundamental sources should amount to formation and implementation of such policy measures that would steadily increase the availability of housing, make necessary legislative and economic framework for its development and maintenance as well as measures that would create favourable conditions and acceptable financial schemes for the housing development as an integral part of the fiscal, credit, and subvention policy of the government.[182]

3.2. Governmental actors

There are various subjects involved in the housing development sector that are working in cohesion - each one within its specific scope, namely the citizen, the state, municipality, regions and the private sector. The primary responsibility to provide housing for oneself in a socially and ecologically oriented market economy lies in the hands of a citizen who is the user of the housing stock.[183]

- 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?

On the **state level**, the competence of governmental actors in the housing development policy is aimed mainly at coordination of supportive measures of various governmental actors and perfection of tools of support of the housing development as well as transformation of the relevant legislative framework.

The Ministry of Transportation, Construction and Regional Development (hereinafter "MTCRD") is the key governmental actor in creation and implementation of the housing policy on the national level.[184] Above all, it develops housing policy documents which are subsequently approved by the Government of the Slovak republic. Currently, the

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[182] Cf 'Pravidelná národná správa o rozvoji bývania v európskych krajinách – Slovenská republika' (Ministry of Construction and Regional Development of SR, 2004), 2, <www.telecom.gov.sk/index/open_file.php?file=vystavba/bytovapolitika/dokumenty/vseobecne/spravaorozvojibyvania.pdf>, 15 December 2013.

[183] See 'Správa o plnení zámerov Koncepcie ...' (2012) 1.

[184] See section 8 of the Act on Organisation of Activities of the Government and Central Government (No. 575/2001 Coll., as amended). The name of the respective ministry as well as the level of competence conferred thereupon varied over the past years and are settled in the current manner since 2011.

principal document on housing policy is the "Concept of State Housing Policy until 2015", which indicates the direction of state housing policy in relation to the broader context of socio-economic, institutional and technological development in the country.[185] There are also sectional conceptual policy documents being adopted by the ministry, some of which have been by its content incorporated with the main line of state housing policy and others then further explicate some of its issues, e.g. the "Concept of Development of the Housing Construction"[186], "The Concept of Building Reconstruction, Focusing on the Recovery of the Housing Stock"[187], "The Long-Term Concept of Housing for Marginalized Groups and Model of its Financing"[188], "The Concept of Settlement of the Relations of Private Residential Home Owners and Tenants of the Apartments Affected by the Deregulation of Rents"[189]. The ministry in cooperation with other agencies prepares drafts of relevant laws implementing chosen policies.

As far as other agencies responsible for implementation of partial aspects of the state housing policy are concerned, Ministry of Justice of the SR is responsible for preparation of proposal of changes to the current legislative framework of the landlord-tenant relations with the aim of making the rental market more flexible, in terms of the "Legislative Plan of the Civil Code"[190]. Ministry of Labour, Social Affairs and Family of the SR exercises subsidization policy of development of social services, which includes various subsidies aimed at reconstruction and development of housing and its facilities as well as support in material need. Ministry of Finance of the SR creates secondary legislation pertaining to the regulation of rents, prospectively only in the public rental sector. Ministry of Economy of the SR disposes of competence in setting the frames of energy supply for households and in taking measures for optimization of energy and water consumption and increase of use of renewable sources of energy. As energy prices, energy supplies and calculation of the costs of delivery thereof are major factors concerning housing policy, an important governmental actor addressing them is the Regulatory Office for Network Industries[191]. Its mission is *inter alia*, to ensure fairness in price regulation in network industries; so to say to be the arbiter of two mutually conflicting stakeholders in utilities, i.e. manufacturers and suppliers of energy on the one hand and consumers on the other. Another agency, the Office of Geodesy, Cartography and Cadastre of SR should participate in creation of a project of a functional and regularly updated register with the basic indicators of existing residential buildings in the SR.[192] Finally, the Housing Development Fund[193] is a key governmental actor for

185 'Koncepcia štátnej bytovej politiky' (2010) 1.

186 'Koncepcia rozvoja bytovej výstavby' (Res. of the Government of the SR No. 1026 of 25 November 1999); revised in October 2003 by Res. of the Government of the SR No. 952/2003.

187 'Koncepcia obnovy budov s dôrazom na obnovu bytového fondu' (Res. of the Government of the SR No. 1088 of 8 December 1999).

188 'Dlhodobá koncepcia bývania pre marginalizované skupiny obyvateľstva a model jej financovania' (Res. of the Government of the SR No. 63 of 19 January 2005).

189 'Koncepcia spôsobu usporiadania vzťahov súkromných vlastníkov bytových domov a nájomcov bytov dotknutých dereguláciou cien nájmu bytov' (Res. of the Government of the SR No. 640 of 16 September 2009).

190 'Legislatívny zámer Občianskeho zákonníka' (Res. of the Government of the SR No. 13 of 14 January 2009).

191 See Regulation in Network Industries Act 2012 (No. 250/2012 Coll., as amended); Energy Act (No. 656/2004 Coll., as amended); Thermal Energy Act (No. 657/2004 Coll., as amended).

192 See 'Správa o plnení zámerov Koncepcie ...' (2012) 32. The project is envisaged to be developed by the end of 2013.

distribution of funds allocated for housing development and implementation of the housing policy on various levels through its financial subsidization.

The role of the state, in addition to creation of the legislative framework, includes also adequate allocation of financial resources for housing development in the state budget. Policy decisions displayed in various concepts are therefore regularly also reflected in the requirements for funding from the state budget for the next period.

On the **regional level**, as a form of self-administration, the self-governing regions in accordance with section 4 para. 1 lit. i) of Self-Governing Regions Act[194], procure and approve development programs in the field of provision of social services and cooperate with municipalities and other legal entities and individuals in the construction of facilities and social housing. More generally, the self-governing regions in the SR may procure and approve a Housing Development Programme, a strategic document, which builds on existing urban-planning documentation and is a prerequisite for a planned addressing of housing development issues in a respective area. All eights self-governing regions of the SR have elected to include the housing development issues into more complex Programme of Economic and Social Development of the Region[195]. These documents are methodologically based on guidelines passed by the former Ministry of Construction and Regional Development of SR[196].

On the **local level**, according to section 4 para. 3 lit. j) of the Municipalities Act 1990 (No. 369/1990 Coll., as amended), municipalities are required to adopt a Housing Development Programme. It is a strategic document for the purposes of local government, fashioned for the specific conditions of a municipality. Its contents are based on the same methodological fundaments as the aforementioned regional programme; however, lack of a housing development programme in a municipality would disqualify[197] it from the subsidy scheme of the SHDaSH 2010 for procurement of rental dwelling for the purpose of social housing or for procurement of technical equipment. Therefore, most municipalities in the SR dispose of such a policy instrument. The goal of the Housing Development Programme is to:

- analyse the state of housing in the municipality, identify strengths and weaknesses of the hitherto development including its wider context of housing beyond the given area;

- highlight the matters of risk in housing development of the unit, based on the observed trends of development and to anticipate needed corrections to eliminate those risks;

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193 See State Housing Development Fund Act 2013 (No. 150/2013 Coll.).

194 Act on the Government of Higher Territorial Units 2001 (No. 302/2001 Coll., as amended).

195 See e.g. <vucbb.sk/portal/urad-bbsk/dokumenty/odbor-regionalneho-rozvoja/oddelenie-rozvoja-hospodarskych-aktivit/program-hospodarskeho-socialneho-a-kult-0>, 15 December 2013 (for Banská Bystrica region); <unsk.sk/showdoc.do?docid=1666>, 15 December 2013 (for Nitra region); <region-bsk.sk/clanok/program-hospodarskeho-a-socialneho-rozvoja-na-roky-2007-2013-892123.aspx>, 15 December 2013 (for Bratislava region); see generally <telecom.gov.sk/index/index.php?ids=93566>, 15 December 2013.

196 Methodological Guidelines of the Ministry of Construction and Regional Development No. 4/2006 of 19 May 2006 on the Housing Development Program of a Municipality and a Region, <telecom.gov.sk/index/open_file.php?file=vystavba/legislativa/usmernenia/MP_rozvoj.pdf>, 15 December 2013.

197 Cf. section 10 para. 2 SHDaSH 2010.

- propose a method of short-term and medium-term solutions to critical issues of housing development in the municipality, in terms of the community development objectives pursued, in accordance with the intentions of the urban planning documents relating to the area and taking into account the expected development of the factors affecting the housing development.

The document usually consists of[198]:

- the analytical part comprising:

A. Analysis of the current level of housing

B. Demographic trends and forecasts

C. Economic conditions of housing development

D. Balancing the needs for housing development

E. Evaluation of options for area development plans.

- the programme part comprising:

A. Framework objectives for housing development for 10 years

B. Housing development programme for 5 years.

Apart from the strategic planning in local housing policy, an important task of the local government is its implementation through involvement in the subsidized construction of social housing and also the municipality's competence in provision of replacement housing following termination of certain types of tenancies.[199] A general task related to the aforementioned competences of municipalities is the coordination and provision of land and construction of technical equipment for the construction and improvement of management of the municipality's housing stock.

3.3. Housing policies

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

The aim of the state housing policy is a gradual increase in the overall housing standard, so that the housing is available for the population and that every household would be able to dispose of adequate housing. In this light, it deems necessary to create a framework for the involvement of all actors in the process of housing development, in addressing its subtasks, to create room for the participation of all levels of decision making and to strengthen the partnership between the public, private and NGO sector on both horizontal and vertical levels, while respecting the principles of sustainable development, energy and economic efficiency and social solidarity.

Decent housing counts to the basic needs; it is, however, also a costly affair, which is often beyond the means of the population. Therefore, the state housing policy's other objective is to create conditions especially for suiting housing needs of lower-income- and underprivileged populations.

198 See art. 6 of the Methodological Guidelines (2006).

199 See section 12 of TCL 2011, as amended; section 5 para. 2 of RDaRH 1992.

In the field of the quality of housing, the primary task is to improve the technical condition of the existing housing stock and by using appropriate recovery tools to contribute to prolongation of its life span and to the reduction of its energy consumption. The quantitative side of housing development policy is aiming mainly to achieve the objective of a gradual increase in population-equipment with housing units.[200]

Broken down to the levels of governance, the function of **the state** in addressing the housing policy includes in particular:

- setting housing development as a priority in national strategies and concepts in relation to economic, social and environmental policy of the state;

- developing and updating the state housing policy;

- creation of a system of economic instruments in the area of grant, loan and tax policy to ensure implementation of the objectives of the state housing policies and concepts;

- allocation of the financial resources for housing development in different years (in particular, to participate in the financing of housing construction in the public rental sector, revitalisation of boroughs, housing stock renewal);

- creation of a legal environment stimulating housing development and ensuring timely amendments of those laws that affect unsystematically - and create barriers to - the housing development;

- creation of favourable conditions for private sector and banking sector participation on all activities related to the housing development and the functioning of the capital market;

- maintenance of a housing situation database and monitoring the housing needs at national and regional level;

- creation of conditions for boosting the economy performance, reduction of unemployment and increase of real household income as preconditions for improvement of the quality of housing, its accessibility to the population and shortening the lead-time required for one's acquisition of proper housing.[201]

On the local level, for **the municipalities**, it is necessary in particular:

- to procure, approve and update the spatial planning documentation of communities and zones;

- to process housing community development programs, including housing stock renewal programs in accordance with applicable spatial planning documentation that may be part of a program of economic and social development of the community; and to create favourable conditions for their realisation;

- to coordinate the parties of the process of housing development in securing land and construction of technical infrastructure for the construction of dwellings;

- to create conditions for renewal of housing stock and restoration of residential environment and to play an active role in raising public awareness of responsibility for the condition and appearance of housing and of the living environments;

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200 'Koncepcia štátnej bytovej politiky' (2010), 1.

201 *Ibid*., 2.

- to maintain a database on the state of housing, the housing stock and the need for housing in the municipality;

- to make provision the particular needs of its population in terms of the housing development, as measured by surveys based on real demand for housing in the municipality;

- to improve the administration and management of the municipal housing stock;

- to establish specialized departments of the municipal offices especially in larger cities, which will be responsible for pursuing of housing development and provision of information and methodological assistance related to the management of the housing stock.[202]

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

The analysis of the adopted national policy instruments and measures **favour rented housing** over owner-occupation, notwithstanding the current ownership and tenancy structure of the housing stock in Slovakia. The most recent governmental activities in the area of housing tenures suggest that it is desirable for the state to support the development of the private rental market for the sake of a smooth labour mobility within the country, which would provide adequate housing possibilities for the workers. The Deputy Prime Minister for investment was assigned with the task to coordinate and prepare an analysis of a proposal to a solution of the rental housing issue with a focus on increasing the share of private-market rental housing in the Slovak Republic by the end of October 2013,[203] with possible feasibility studies and its involvement in the strategy for economic development of Slovakia. Apart from the investment measures, a fully new regulatory regime for a short-term lease in the private rental market is envisaged by the end of 2013, which should overcome the legal disincentives for private renting of dwellings.[204] Similarly, provision of grants and subsidies to the municipalities for the development of public rental housing suggests the sway in policy preference towards rental housing. However, as the further deterioration of the available housing stock (mostly aging and owner-occupied) is perceived as a looming threat for the whole housing situation in the country, there will still be numerous policy measures (subsidy schemes) present that make the owner-occupation still the preferred type of housing tenure, because renewal of the housing stock is still the priority.

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

There are no specific **measures against vacancies** adopted in the SR, as vacancies occur either due to lacking demand in areas of economic decline or due to minor purchasing power of possible tenants/owners, in which forced tenancy would not be

202 *Ibid*., 3.

203 Res. of the Government of the SR No. 81 of 11 February 2013.

204 The proposal is being worked on under auspices of the Ministry of Justice of SR.

permissible, as the rents in the private rental market could not be commanded. The state housing policy, however, encourages the local authorities of a municipality in their capacity as construction administration office and administrator of the tax on immovables, to initiate processes of reconstruction of unused non-residential premises and use of dwellings exempted for various reasons from the housing stock. It is a potential source of extension housing stock, cheaper than new construction, due primarily to the possible use of existing infrastructure.[205]

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

Special housing policies reaching beyond the scope of the very Concept of State Housing Policy targeted at groups of the population that require special attention were also adopted in Slovakia. As expounded on earlier,[206] this includes a separate policy on "socially excluded" groups of people, with specific emphasis on the Roma population.[207] It lays down current state of the housing situation of Roma people, issues they challenge in broader social context and sets out models for addressing their housing needs with appropriate financial coverage (subsidized construction of rental housing of usual and lower standard; grants for renewal of housing stock and technical infrastructure; financing from the operation programmes of the EU).[208] The long-term concept includes strategic policy solutions for further specific socially threatened and marginalized groups of people.[209] As a result of restitutions of blocks of flats to their owners following the transformation of social establishment after 1989, two classes of people with specific requirements on the housing policy ensued. Namely the tenants, who, unlike the majority of citizens of SR, could not obtain ownership of the dwelling they have been renting and the owners, who have not been able to use their property at liberty and in an economically just manner. The government addressed this specific issue also with a special housing policy,[210] which is now being implemented through two separate acts and connected measures.[211]

3.4. Urban policies

An important tool of rational use of land is the spatial planning. Pursuant to the Building Act 1976 (Act no. 50/1976 Coll. on Territorial Planning and on Building Order, as amended), towns and villages with more than 2000 inhabitants are obligated to have a substantial spatial plan adopted. Other municipalities are obliged to have this spatial

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205 See 'Koncepcia štátnej bytovej politiky' (2010), 5.

206 See sec. 2.6. *supra*.

207 See 'Dlhodobá koncepcia bývania pre marginalizované skupiny ...' (2005) and strategic documents preceding its adoption.

208 See *ibid*., 17-19.

209 I.e. severely disabled, elderly, youth after institutional or protective education, people with problems in social inclusion, single parents with children. Cf. Annex 1 to 'Dlhodobá koncepcia bývania pre marginalizované skupiny ...' (2005).

210 'Koncepcia spôsobu usporiadania vzťahov súkromných vlastníkov ...' (2009).

211 Cf. sec. 1.4, question „Restituted and privatized ownership in Eastern Europe", *supra*.

planning documentation under special circumstances. The tools of spatial planning set optimal spatial layout and functional use of an area. In 2001 the Government of the SR adopted a Conception of spatial development 2001, which addresses the development of the SR in relation with its international ties, nation-wide stakes and with regard to directing the regions. In 2006 the guiding part of this nation-wide spatial planning documentation was updated.[212] The documentation forms a framework basis for all spatial planning measures within the country.

- Are there any measures/ incentives to prevent ghettoization, in particular
- mixed tenure type estates[213]
- "pepper potting"[214]
- "tenure blind"[215]
- 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.

Recent studies have proved that disparities in the development of cities and regions have deepened and this process is ongoing, or rather stabilized on the existing biased base. The problem how to solve these disparities has been shifted to the cities and municipalities. Unfortunately the research showed that limited regulative measures of municipalities, regions and state in the process of the global societal transformation may lead and it has already led to the prevalence of previously existing trends of the spatial and social segregation The segregation brings about stagnation or regress of the region, concentration of poverty etc.[216] The studies on social housing show that measures to prevent ghettoisation, namely pepper potting play an important role in the development of area and may also help persons at the edge of social exclusion.[217] On the other hand, such measures will be probably not very well accepted and approved by the other part of inhabitants, i.e. those living on the higher position in the societal scale.

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212 'Správa o plnení zámerov Koncepcie ...' (2012) 8.

213 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.

214 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.

215 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.

216 P. Gajdoš & K. Moravanská 'K výsledkom analýzy zmien v sídelnej situácii na Slovensku', in P. Gajdoš, K. Moravanská & Ľ. Falťan, *Špecifiká sídelného vývoja na Slovensku. Typologická analýza sídiel*, 175.

217 A. Suchalová & K. Staroňová, *Mapovanie sociálneho bývania v mestách Slovenska*, 61.

The Slovak Republic has enacted laws to tackle some of these problems. The Act on Support of Regional Development [218] and its predecessor[219] were aimed at removing the disparities in the economic, social and spatial development of regions by providing the subsidies to support sustainable growth and to support the employment and the living conditions of the inhabitants. The support should be implemented in three levels (state, region and municipality) and it included the programs of economic and also of a social development of the municipality. *Coplak* points out the importance of proper relation between spatial and strategic planning in the development of a region and a municipality.[220] Until now we may assume that municipalities failed to solve above mentioned problems. The partial reasons may lay in the fact that the transformation period of the last twenty years have provided other challenges and more urgent problems to solve (e.g. to provide spaces for building of new block of flats or commercial, industrial and business facilities, to improve transport, etc.). As *Falťan* already argued[221], the Slovak urban development is belated in comparison to the Western Europe, therefore, now (after selling, building and moving euphoria sobered down and stabilization has come about) is probably the time where such nuances may be tackled. The latter does not apply to Romani problem, in which special attention has been paid for last twenty years to improve their situation and to prevent their segregation and remove already existing ghettoization. The Principal of the Slovak Government for Romani Community and his Office is the central body responsible for this agenda, among others also for the implementation of the EU Framework for national Roma Integration strategies.[222] The further steps will be done according to the Strategy of the Slovak republic for Integration of Romani until 2020.[223] The key policies are education, employment, health, housing and non-discrimination. The primary goal in housing agenda represents the struggle with segregation by removing shelters, repairs of housing stock, public social services, providing technical infrastructure from public funds etc.

National Strategy of Regional Development until 2020[224] prepared at the Ministry of Agriculture and Rural Development identified as priority in the area of human resources the agenda of housing and social infrastructure. Measures in this area should support housing and social infrastructure for stabilization of families and growth of population in the regions. In many regions this strategy identified insufficient investments to the rental housing, to the reconstruction of housing stock and lengthy reconstruction of historical buildings caused by insufficient funds.[225]

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218 Act on Support of Regional Development 2008 (No. 539/2008 Coll., as amended).

219 Act on Support of Regional Development 2001 (No. 503/2001 Coll., as amended).

220 J. Coplák, *Strategický manažment a plánovanie pre urbanistov Strategický manažment a plánovanie pre urbanistov. Učebná pomôcka k predmetu Územný manažment a marketing* (Bratislava: Ústav urbanizmu a územného plánovania FA STU v Bratislave, 2013), 44, <http://www.fa.stuba.sk/docs//uu/dokum/stratman.pdf>, 15 December 2013.

221 Ľ. Falťaň 'Historické kontexty vývoja sídelnej štruktúry Slovanska – sídelno priestorová a sociálno kultúrna rovina', in P. Gajdoš, K. Moravanská & Ľ. Falťan, *Špecifiká sídelného vývoja na Slovensku. Typologická analýza sídiel*, 21.

222 See <http://www.minv.sk/?romske-komunity-uvod>, 15 December 2013.

223 Res. of the Government of the SR No. 1 of 11 January 2012.

224 <http://www.telecom.gov.sk/index/index.php?ids=93254>, 15 December 2013.

225 *Ibid*., 42.

The important measures have been implemented by the Rural Development Programme of the Slovak Republic 2007 – 2013, among them those aimed at basic services for the economy and rural population (reconstruction and modernization of local infrastructure; of buildings and facilities of social importance; investments in premises supporting leisure activities; investments in broadband infrastructure)

Other measures financed in the frames of this programme were those targeted at the Village renewal and development, among them mainly:

- Improving the condition of water mains and sewage systems;
- Creating broadband infrastructure;
- Providing better facilities for artisans and crafts manufacturers active in rural areas;
- Establishing conditions for improving the quality of public services, facilities for civic associations, facilities for Internet usage, for education activities etc.);
- Carrying out other activities related to the improvement of the living conditions for rural population (recreational zones, amphitheatres, market areas, bus stops, biking routes etc.)
- More reliable and safe access to rural areas.[226]

The majority of various measures implemented in the urban policies agenda have been realized in the frames of the Regional Operational Programme approved by the EC on 24 September 2007.[227]

- Are there policies to counteract gentrification?

Gentrification as well as suburbanization are the processes that only recently begin to express and externalize in the Slovak society. Therefore the need to implement special measures to prevent them has not been acknowledged yet. One may argue that only in last five- six years the original inhabitants of the area aggrieved by this phenomena started to realized its negative impacts. Therefore it is hard to expect the sound measures to counteract the gentrification in this stage of development because as it was already stated there are more serious problems to struggle with.[228]

- 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

[226] Rural Development Programme of the Slovak Republic 2007 – 2013, see <http://www.mpsr.sk/en/index.php?navID=7&id=30>, 15 December 2013.

[227] See <http://www.nsrr.sk/en/operational-programmes/regional-operational-programme/>, 15 December 2013.

[228] See P. Gajdoš & K. Moravanská, *Suburbanizácia a jej podoby na Slovensku* (Bratislava: Sociologický ústav SAV, 2011), see also P. Gajdoš, 'Zmeny v bývaní v meste a na vidieku', in P. Gajdoš, K. Moravanská & Ľ. Falťan, *Špecifiká sídelného vývoja na Slovensku. Typologická analýza sídiel*, 10-16.

consumption, access to communal services such as garbage collection. If so: how are these factors verified and controlled?)

There are manifold aspects to the regulation of quality of the housing unit, usually pertaining to different branches of law and regulation.

Due to the need of protection of consumers and most of all the vulnerable class thereof – the households – the Regulatory Office for Network Industries[229] has enacted ordinances on standards of quality. Regulation of quality of services is a relatively novel issue. Slovakia now counts among those countries of the EU that has adopted such measures. The quality standards are a collection of minimal rules and procedures that a regulated subject must follow, in order for the customer to receive adequate quality for the price he is paying for electricity, gas, heat and water. The office is dedicated to controlling and punishing deficiencies in fulfilment of quality standards as a new method of regulation that shall gain in importance. It is therefore necessary that the users of the network industries market require these standards to be met and inform competent institutions of the breaches of this duty.[230]

In order to ensure public safety and public health, public law does regulate technical, architectural and hygienic requirements for housing. Building Act 1976 stipulates not only the definition of a flat but also other vital conditions for the construction of a building. The ordinance of the Ministry of Health (No. 259/2008 Coll.) serves as an important safeguard in setting the requirements for internal environment of building and the minimal requirements for flats of lower standards, as well as other housing facilities.

The Public Health Authority of the SR (Úrad vereného zdravotníctva SR) plays an important role in relation to verifying and control of drinking water supply,[231] the internal environment of buildings[232], flats of lower standards and other accommodation facilities,[233] protection of health against noise, infra- noise, vibrations and electromagnetic radiation.

It is a budgetary organization of the state with jurisdiction on the territory of the Slovak Republic with the registered office in Bratislava. The Public Health Authority is managed by and its activity falls under the responsibility of the Chief Hygienist of the Slovak Republic who is also the director of the office. The Public Health Authority is the supreme office for the regional public health authorities. It manages, controls and coordinates the execution of state administration, namely state supervision carried out by regional public health offices.[234]

- Does a regional housing policy exist? (in particular: are there any tools to regulate housing at regional level, e.g.:

229 see section 2 lit. a) Regulation in Network Industries Act 2012 (No. 250/2012 Coll., as amended). See generally <http://www.urso.gov.sk/?language=en>, 15 December 2013.

230 'Správa o plnení zámerov Koncepcie ...' (2012), 9-10.

231 Section 17 of Act No. 355/2007 Coll.on Protection, Support and Development of Public Health.

232 Section 20 of Act No. 355/2007 Coll.on Protection, Support and Development of Public Health.

233 Section 21 of Act No. 355/2007 Coll.on Protection, Support and Development of Public Health, see <http://www.uvzsr.sk/docs/leg/355_2007_en.pdf>, 15 December 2013.

234 <http://www.uvzsr.sk/en/>, 15 December 2013.

in order to prevent suburbanization and periurbanization? Is it possible to distribute local taxes so that villages can afford the limitation of housing areas?)

As far as spatial planning documentation is concerned, on the regional level, all higher territorial units have regional special plans at hand, which, pursuant to Building Act 1976 are maintained in an up-to-date condition. The most important documentation for the placement of a concrete activity in settlements is the municipal spatial plan, whose procurement is the municipality's competence. The Ministry of transportation, construction and regional development since 2005 provides grants for setup of spatial planning documentation of municipalities and since 2011 it does so according to a separate Act on provision of grants for setup of spatial planning documentation of municipalities (No. 226/2011 Coll.).[235] On the top of that, the Ministry procures also information and guidance for the municipalities in order to adopt efficient territorial use measures, for instance in the form of a handbook: "Standards of minimal amenities in municipalities, 2009", which comprises recommendation of rules and principles for spatial planning and development, in order to secure optimal functioning of municipalities.[236]

As far as the accessibility of housing and approaching of whole range of measures contributing to the increase of housing quality are concerned, it is important to incentivize local governments to create complex plans of development of a territory and by means of these to increase the availability of rental housing. These measures should also aim at contribution to the integration of marginalized groups of population, to limitation of social exclusion and to elimination of formation of urban ghettos, by furthering a suitable population mix.[237]

In addition, in connection to the provisions of the Local Tax and Fee Act 2004 (No. 582/2004 Coll., as amended) the municipalities, as tax authorities for the immovable property tax, may use this measure as an efficient tool of regulation of the land and urban use. Under this act the municipalities may, through passing generally binding regulations, increase or decrease the local property tax for various types of land or various cadastre areas, according to local conditions in the municipality or a part thereof. The government in its policy planning strategies, encourages the municipalities to utilize this competence for progressive taxation of those plots that are, according to the adopted municipal spatial plan determined for further development and owners of these plots do not use their property to this end.[238]

Finally, we would also like to emphasize the role of non-governmental organizations that engage themselves in the good governance and development of regions. Some of them may play also an important role in urban policy planning, provided that their proposals will be executed in cooperation with municipalities.[239]

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235 'Správa o plnení zámerov Koncepcie ...' (2012), 8.

236 <http://www.telecom.gov.sk/index/index.php?ids=75272>, 15 December 2013.

237 'Koncepcia štátnej bytovej politiky' (2010), 4.

238 'Správa o plnení zámerov Koncepcie ...' (2012), 8.

239 R. Bauer et al., *Dobré spravovanie rozvoja regiónov – výzva pre Slovensko* (Košice: Karpatský rozvojový inštitút, 2010).

3.5. Energy policies

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

Energy poverty becomes a serious problem in Slovakia where not only low-income households in the country are in a situation, in which a household must spend a substantial part of their income on energies. The Regulatory Office for Network Industries is a body responsible for the ongoing work on the Concept for protection of consumers that fulfil the condition of the energy poverty.[240]

The preference and prevalence of owner occupied housing to rented premises has become a clear outcome of Census 2011. Therefore, the owners of family houses and of blocks of flats tend to observe the energy performance of buildings recommendations in their own interest. An important role may play the subsidies for alternative sources of energy. However, the subsidies are limited and the administrative procedure is so demanding and the share of subsidy on the overall budget is so low that many of respective recipients of subsidy feel discouraged by these external factors. Slovak Innovation and Energy Agency provides consultations regarding the development of regional energy concepts and local sustainable energy action plans (SEAP) for higher territorial units and municipal authorities[241] This agency is also expected to provide a free expert consultancy for households, investors, energy service companies and public sector in the field of energy efficiency and renewable energy sources. Local energy policies should be based on presumption that global goals need local action and they guide consumers to save energy at home.

To conclude with, the final decisions of investors and private persons in housing market may be influenced by the energy policy, in particular by subsidization. The tax allowances connected to the innovation in this area probably should not be anticipated in the coming years, where tax income seems to be crucial for the state budget of Slovakia. [242]

Last, but not least we would like to point out that the climate changes that may play an important role in the urban policy in future.[243].

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240 <https://lt.justice.gov.sk/Material/MaterialDocuments.aspx?instEID=-1&matEID=6864&langEID=1>, 15 December 2013.

241 See also <http://en.siea.sk/>, 15 December 2013. SIEA has been established by the Ministry of Economy of the Slovak Republic as a professional state subsidy organization which makes an important contribution in the achievement of governmental energy policy objectives, principally by promoting energy efficiency.

242 See 'Daňové úľavy na inovácie nie sú na programe' (19 June 2013), <http://www.euractiv.sk/fondy-eu-investicia-do-buducnost/clanok/danove-ulavy-na-inovacie-nie-su-na-programe-021207>, 15 December 2013.

243 A. Šteiner & L. Hegyi, *Klimatická zmena – výzva pre lokálny rozvoj na Slovensku* (Košice: Karpatský rozvojový institute, 2012).

Summary table 4

	National level	2nd level (regional) higher territorial units	3rd level (local) Municipalities
Policy aims 1) 2) Etc.	1) creation and implementation of housing policy 2) regulation of energy prices, energy supplies and calculation of the costs of delivery 3) preparation of separate policy on "socially excluded" groups of people, with specific emphasis on the Roma population 4) strategic policy solutions for further specific socially threatened and marginalized groups of people	1) procurement and approval of development programs in the field of provision of social services and construction of facilities and social housing	1) procurement and approval of development programs in the field of provision of social services and construction of facilities and social housing; 2) involvement in the subsidized construction of social housing 3) provision of replacement housing following termination of certain types of tenancies 4) coordination and provision of land and construction of technical equipment for the construction and improvement of management of the municipality's housing stock 5) spatial planning 6) disparities in city and regional development
Laws 1) 2) Etc.	2) Regulation in Network Industries Act 2012 (No. 250/2012 Coll., as amended); Energy Act (No. 656/2004 Coll., as amended); Thermal Energy Act (No. 657/2004 Coll., as		6) Act on Support of Regional Development

	amended)		
Instruments 1) 2) Etc.	1) “Concept of State Housing Policy until 2015”, “Concept of Development of the Housing Construction”, “Concept of Building Reconstruction, Focusing on the Recovery of the Housing Stock”, "Long-Term Concept of Housing for Marginalized Groups and Model of its Financing”, “The Concept of Settlement of the Relations of Private Residential Home Owners and Tenants of the Apartments Affected by the Deregulation of Rents”; 3) Strategy of the SR for Integration of Romani until 2020 4) ‘Long-term concept of housing for marginalized groups’ (2005), ‘Concept of ways of settlement of relationships with private owners’ (2009).	1) Housing Development Programme; Programme of Economic and Social Development of the Region	1) Housing Development Programme; 5) Conception of spatial development 2001 6) National Strategy of Regional Development until 2020, Rural Development Programme of the SR 2007 – 2013

3.6. Subsidization

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

The subsidization of housing in Slovakia is effected under several schemes and by various measures. The dominating schemes relate to subsidized credit to eligible subjects (state subsidized loans offered directly by a state agency; partial subsidization of otherwise private mortgage credit; subsidization of private building savings plans (with subsequently beneficial credit). Ever more increasing is direct support of housing causes, most notably (social) rental flats procurement, through direct grants.

In 2013, the amount of state subsidies in housing development reached 274,51 mil. EUR. The subsidies were structured as follows[244]:

Soft loans (SHDF)	60%
Grants for housing development (MTCRD)	9.1%
Premium to the building savings plans	14.6%
State bonus to the mortgage credit	11.3%
Grants for replacement housing rental flats (TCL 2011)	4.9%

Clearly, the dominating amounts of subsidies are targeted towards the supply side of the housing stock (owners/landlords), who then offer the available dwellings to the private or public rental market, or it remains owner-occupied. As far as the demand side of the correlation is concerned, the tenants may only be eligible to a direct payment subsidy in form of a housing allowance, which is paid to them by a state agency along with the allowance in material need. At the same time, since procurement of housing with the assistance of public funding increases the supply of rental flats with affordable (usually below the market-price) rents, regulated by an administrative ceiling, the tenants possibility to only pay this regulated rent in order to satisfy his or her housing need may be considered means of subsidization as well.

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

[244] cf. <http://www.sfrb.sk/sites/default/files/2013-08-20%20TS%20Podpora%20b%C3%BDvania.pdf>, 30 December 2013.

Subsidization of availability of housing (landlord/owner)

- *Grant for procurement of rental flats*.[245] Under this scheme, an eligible applicant, i.e. a municipality, a higher territorial unit and newly also a non-for-profit organization with dominant managing power vested in a municipality or a higher territorial unit, may receive a direct grant to partially cover the costs of procurement of social rental flats. This may be done through purchase, construction, re-construction or rehabilitation of various premises and turning them into social rental flats. The applicant shall also undertake to rent majority of the flats to statutorily stated target groups of tenants and the flats should retain their rental character for at least 30 years. [246] The direct grant may amount to 30% - 40% of the cost of procurement of an average-standard rental flat (up to 60 sq. metres of floor area) or 70% - 75% of the cost of procurement, if it is a low-standard rental flat (up to 55 sq. metres). Since rent-control applies (non-profit, cost of procurement-based rent) in these flats, availability of such housing stock is thus triggering further subsidization possibility of an eligible tenant. There is no subjective right to either of the mentioned grants of the Ministry; [247] the conduct of the Ministry is subject to review on a declined applicant's motion. Affording of grants underlies the availability of funds attributed to the respective purpose by the state budget.

- *Grant for procurement of rental flats as replacement housing* for tenants of flats in restituted houses.[248] Due to the extraordinary situation brought about by adoption of TCL 2011 and its accompanying legislation, under which the municipality is obligated to provide replacement housing for tenants of flats that had been returned to their previous owners and the leases have been terminated, the state is covering the cost of this solution, implemented by the municipalities. The municipalities as the sole eligible applicant will be covered by a grant of the MTCRD of up to 100%[249] of not only the procurement cost of the replacement rental flats (purchase, construction or other), but also of procurement of the pertinent technical amenities and the plot on which the residential building should be situated. The statue provides for specific limits for on the extent of the subsidy and specifics of the adequate replacement rental flat that may be supported.

- *Loan by State Housing Development Fund*, for *procurement of flats* (home ownership) for eligible target groups of natural persons,[250] i.e. young married couples (up to 35 years of age), or couples with young children, household members with a handicapped or a fosterling. The loan is provided under favourable conditions with limits on interest rate, duration of the loan as well as the amount, as specified by an executory ordinance of the Ministry.[251] A young couple, for instance, would be able to apply for a loan of up to

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245 section 4 SHDaSH 2010.

246 cf. section 11 SHDaSH 2010; the duty to retain rental character of the social housing shall be secured by a charge (mortgage) of the granting ministry to the housing unit.

247 cf. section 15 para. 15 SHDaSH 2010.

248 see Act on Provision of Subsidies for the Purchase of Replacement Rental Housing (No. 261/2011 Coll., as amended).

249 However, only up to 1000 eur/ m^2 of the procurement price. Cf. section 3 para. 2 Act on Provision of Subsidies for the Purchase of Replacement Rental Housing (No. 261/2011 Coll., as amended).

250 sections 6 para. 1 lit. a) and 10 para. 5 – 6 State Housing Development Fund Act 2013 (No. 150/2013 Coll.).

251 Ordinance of the Ministry of Transport, Construction ans Regional Development on details of support by the State Housing Development Fund (No. 284/2013 Coll.).

55.000 EUR (maximum of 75% of the procurement price of the flat), for the duration of at most 20 years, with an interest rate of 2% p.a. As is the case with all the loans provided by the SHDF, the applicants have no subjective right to be afforded a subsidized loan.[252] The applicant approaches the SHDF with his application through a municipality of the respective district.[253]

- *Loan by State Housing Development Fund*, for *procurement of rental flats* for municipalities, higher territorial units or any legal person that has been operating for at least five years.[254] These loans are aimed at broadening accessibility of rental flats to target groups (low-income groups), i.e. the same target groups as rentals under SHDaSH 2010, with the enhanced possibility of private entities to lease the procured flats to tenants with income of up to 4 times of the subsistence minimum. The rental housing stock procured through such scheme, similarly, has to retain its rental character for at least 30 years and the rent-control would apply for the tenancies thereupon. A municipality or a higher territorial unit may, hence, be afforded a loan of up to 60.000 EUR, which should be good for 80% of the procurement price of the flat, with an interest rate of 1% for the duration of up to 40 years. Private entities, on the other hand would have to repay the loan under the same terms within up to 30 years.[255]

The State Housing Development Fund may also provide soft loans *for procurement and renovation of social services facility* (which may provide housing).[256]

State bonus to a mortgage credit[257] ought to be provided to any natural person, who is a debtor of a mortgage credit loan for selected housing purposes[258]. It afforded as a percentage bonus to the interest rate of a mortgage credit that is covered by the state. The amount of the bonus is set by the state budget for each year, within statutory limits. This subsidy is subjective-right based and is applied for through the respective mortgage bank as intermediary, therefore mortgage banks would offer separate banking products named as subsidized mortgage loans. However, since 2005 the amount of this bonus has been limited to 0%[259], which makes this subsidy scheme obsolete as of now. Instead, a similar scheme for a more limited targeted group has been in place. *State bonus to a mortgage credit for the young*,[260] is afforded to debtors of mortgage credit loans for the said purposes, as a bonus to the interest rate in such a manner that the state covers certain percentage of the interest rate (for 2013 it was 2% p.a.) and another part has to be covered (forfeited) by the mortgage bank (for 2013 it was 1% p.a.). In

252 section 4 para. 5 State Housing Development Fund Act 2013 (No. 150/2013 Coll.).
253 section 15 para. 1 State Housing Development Fund Act 2013 (No. 150/2013 Coll.).
254 section 6 para. 1 lit. b) State Housing Development Fund Act 2013 (No. 150/2013 Coll.).
255 see section 2 para. 2 Ordinance of the Ministry of Transport, Construction ans Regional Development on details of support by the State Housing Development Fund (No. 284/2013 Coll.).
256 section 6 para. 1 lits. d) and e) State Housing Development Fund Act 2013 (No. 150/2013 Coll.).
257 see section 84 et seq. Bank Act 2001 (No. 483/2001 Coll., as amended).
258 i.e. a loan with the payment duration of 4 to 30 years secured with a charge on a domestic immovable that is being financed to at least 90% through issuance of mortgage bonds by a mortgage bank. The loan may only serve the purpose of purchase, reconstruction, change or maintanance of housing units (immovables) or to repay a past debt of the debtor to the same end. see section 68 Bank Act 2001.
259 cf. <https://www.slovensko.sk/sk/agendy/agenda/_hypotekarny-uver1/>, 30 December 2013.
260 see section 85a et seq. Bank Act 2001.

addition, the bank shall undertake to enable the debtor to postpone the repayment of the debt and an extraordinary instalment payment for no additional cost. Only natural persons of 18 – 35 years of age, who meet income ceilings criterion[261], are eligible for such a bonus and it can be provided for the maximum duration of five years. Obviously, the aim of such subsidy reaches beyond procurement of housing, but concentrates both on affordability of purchase and reconstruction of residential housing for the young.

Building savings plans were introduced in 1992 and ever since have remained a popular way of saving funds for housing development purposes, although with the decreasing levels of interest rates and caps on the state premium, the feasibility of such a scheme, as implemented nowadays is being questioned on multiple grounds.[262] The subsidizing of housing rests in eligibility of building savings customer, who is a natural person or a community of owners of block of flats, for a *state premium* on their own yearly savings deposits, which is paid to the customer upon a request of the building savings bank by the state (MTCRD).[263] The amount of premium is calculated as percentage of yearly savings (5% - 12,5%) with a cap of 66,39 EUR. An indispensable part of building savings plans is the availability of affordable construction and reconstruction loans by the building savings bank. Although, the savings are aimed primarily at financing of housing needs and needs linked to housing,[264] since the customer is entitled to obtain and to retain his or her savings along with the state premium after expiry of 6 years of saving, even if he or she does not use the funds for housing related purposes,[265] the targeting of the subsidy is questionable as well as its contribution to the housing development in Slovakia.

It is important to note that it is usually possible for a beneficiary to combine manifold subsidy schemes (such as grants with soft loans etc.).

Subsidization of quality of housing (landlord/owner)

- *Grant for procurement of technical facilities*, [266] a direct grant to cover partial costs of procurement of technical facilities may be provided to the same eligible applicants as a grant for procurement of rental flats. It can only be afforded with correlation to procurement of rental flats, either along with a grant to that end or for increasing of the socio-cultural level of a Roma settlement.

- *Grant for eradication of systemic deficiencies of blocks of flats*[267] A grant scheme of the Ministry of Transportation, Construction and Regional Development allows municipalities, housing cooperatives, managers of blocks of flats or communities of

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261 i.e. 1,3 times the average gross income of an employee as published by the Statistical office of the SR; see section 85a para. 3 lit. a) Bank Act 2001.

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

263 see section 10 Building Savings Act 1992.

264 cf. section 1 Building Savings Act 1992.

265 section 10a para. 2 lit. b) Building Savings Act 1992.

266 i.e. public water mains, public sewage, logal communication, including pertinent facilities. See sections 5 and 13 SHDaSH 2010.

267 section 6 SHDaSH 2010.

owners of blocks of flats to apply for direct subsidy of partial costs of setting aside various deficiencies of blocks of flats, peculiar to the outdated construction features applied in their construction and following inefficiency and swifter aging, as enumerated by the statute.[268]

- *Subsidization of ecological sources of energy use in housing* (subsidizing the use of biomass and solar energy as a source of heat)[269]. On one hand, a grant under this scheme of the Ministry of Economy of the SR may be provided for owners of flats in a block of flats (through a manager of block of flats or the community of owners as a separate entity) for an installed solar panel. On the other hand, an owner of a family house may apply for a subsidy either for an installed solar panel or a purchased and installed biomass boiler in a family house. There is no subjective right of the applicant to this grant. [270]

- *Loan by State Housing Development Fund, for renovation of a residential building*[271] (mostly blocks of flats), including modernization of blocks of flats, eradication of a systemic failure of a block of flats or thermal insulation of a residential building. A wide variety of applicants are eligible for such loans, most notably any legal person, and usual applicants tend to be owners of the blocks of flats through their managers (or community of owners) for eligible target groups of individuals. As far as sources of financing of these schemes, they are contingent upon availability of the state budget funds, however, for the thermal insulation subsidies, a broad funding scheme from the EU funds (co-initiative of European Commission and European Bank for Reconstruction and Development, has been implemented - JESSICA (Joint European Support for Sustainable Investment in City Areas) - which is operated by the SHDF under the same conditions as the applications for the same purpose funded by the state budget.[272]

Subsidization of affordability of existing housing (owner/tenant)

Housing allowance is granted under the Help in Material Need Act 2003 (No. 599/2003 Coll., as amended) (in effect until 31 December 2013, *lex ferenda*: Act. no. 417/2013 Coll., effective as of 1 January 2014), i.e. to those, who are in material need. Material need is characterized as a state when income, property and the claims that can be staked are lower than existential minimum (set by Act. no. 601/2003 Coll., as amended).

Sum of the housing allowance depends on number of persons sharing one household. It is either 55,80 EUR (one member of household) or 89,20 EUR (more members of household). It is paid on a monthly basis and can be granted to the owner or to the tenant of the house/flat, where applicable.

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268 cf. annex 1 to the SHDaSH 2010.

269 see section 2 lit. c) Ministry of Economy Grants Act (No. 71/2013 Coll.). For details on eligible grantees, amounts and limits of the grants and terms of the scheme, cf. section 5 Ministry of Economy Grants Act (No. 71/2013 Coll.).

270 section 12 Ministry of Economy Grants Act (No. 71/2013 Coll.).

271 section 6 para. 1 lit. c) State Housing Development Fund Act 2013 (No. 150/2013 Coll.).

272 for details on the initiative, the project and first feedback on it cf. <http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-148729?prefixFile=m_>, <http://www.sfrb.sk/sites/default/files/2013-08-20%20TS%20Podpora%20b%C3%BDvania.pdf>, <http://www.sfrb.sk/eu-fondy/eu-fondy30>, 30 December 2013.

There are several conditions which must be met in order to be eligible for housing allowance. At least one member of the household must be the owner or co-owner of the flat/house or tenant therein and (very importantly), the household has to pay for services and energy supplies provided and relevant taxes as well.

The rent regulation measures[273] that apply mostly in public and social rental housing sectors, also contribute to affordability of rental housing for (predominantly) lower income tenants, as the amounts of regulated rents are below the market rent levels. Details of these measures will be discussed thoroughly in part 2 section 2 (d) *infra*.

- Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?

Neither of the subsidy schemes has been challenged on legal grounds so far, yet, the rules on competition and state aid law do also apply, and especially with regard to the fact that private legal entities are eligible for soft loan schemes of the State Housing Development Fund, the respective provisions have to be reconciled with appropriately. The statute reckons with such eventuality.[274] Building savings are subject to criticism on political as well as professional level as to their apparent high level of burdening of the state budget, dubious targeting and alleged subsidization of high yields of private bankers.[275] However, no legal (constitutional) proceedings have been employed thus far, in order to abolish any of the subsidies.

- Summarize these findings in tables as follows:

Summary table 5

Subsidization of landlord	Private rentals	Social housing rentals
Subsidy before start of contract (e.g. savings scheme)	*Building savings plan* - additional premium on persons savings for housing need satisfaction purposes (purchase, reconstruction etc.); *Loan by the SHDF* - soft loan for young married couples, or people with young children, household members with a handicapped or a	*Grant for procurement of rental flats* - partial grant for procurement of flats that will be operated as rental flats mostly to tenants on social merit (low-income, fosterling etc.); *Grant for procurement of rental flats as replacement housing* - full grant municipalities

273 Regulatory measure of the Ministry of Finance of SR of 23 April 2008 No. 01/R/2008 on regulation of the rents of flats as amended as of 20 December 2011.

274 section 9 para. 4 State Housing Development Fund Act 2013 (No. 150/2013 Coll.).

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

	fosterling; to further their housing need; *State bonus to a mortgage credit for the young* - partial coverage of the interest rate for housing related mortgage credit by the state and the bank	procuring replacement housing for tenants of flats in restituted houses, which will be attributed on a housing need merit; *Loan by State Housing Development Fund* - soft loan for procurement of rental flats for municipalities, higher territorial units or legal persons that shall be used predominantly as social housing rental flats
Subsidy at start of contract (e.g. grant)	*Grant for eradication of systemic deficiencies of blocks of flats* - partial grant aimed at covering enumerated construction-based features of (older) blocks of flats; *Grant subsidizing the use of biomass and solar energy as a source of heat* - partial grant for procurement of solar panels or biomass boilers *Loan by State Housing Development Fund* - for renovation of a residential building - soft loan for enhancing the quality of residential buildings	*Grant for procurement of technical facilities* - partial grant for enhancing the quality of procured rental flats, or in connection therewith; *Loan by State Housing Development Fund* - for renovation of a residential building - soft loan for enhancing the quality of residential buildings
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee)	(*see supra*: loan schemes carry over to this period)	(*see supra*: loan schemes carry over to this period)

Summary table 6

Subsidization of tenant	Private rentals	Social housing rentals
Subsidy before start of	n/a	n/a

contract (e.g. voucher allocated before finding a rental dwelling)		
Subsidy at start of contract (e.g. subsidy to move)	n/a	n/a
Subsidy during tenancy (in e.g. housing allowances, rent regulation)	*Housing allowance* - targeted direct payment to persons in material need	*Housing allowance* - targeted direct payment to persons in material need *Rent-control measures* (rent ceilings)

Summary table 7

Subsidization of owner-occupier	
Subsidy before purchase of the house (e.g. savings scheme)	*Building savings plan* - additional premium on persons savings for housing need satisfaction purposes (purchase, reconstruction etc.); *Loan by the SHDF* - soft loan for young married couples, or people with young children, household members with a handicapped or a fosterling; to further their housing need; *State bonus to a mortgage credit for the young* - partial coverage of the interest rate for housing related mortgage credit by the state and the bank
Subsidy at start of contract (e.g. grant)	*Grant for eradication of systemic deficiencies of blocks of flats* - partial grant aimed at covering enumerated construction-based features of (older) blocks of flats; *Grant subsidizing the use of biomass and solar energy as a source of heat* - partial grant for procurement of solar panels or biomass boilers *Loan by State Housing Development Fund* - for renovation of a residential building - soft loan for enhancing the quality of residential buildings

Subsidy during tenure (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee, housing allowances)	(*see supra*: loan schemes carry over to this period) *Housing allowance* - targeted direct payment to persons in material need

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?

According to Slovak law there are three different types of taxes relating to immovables other than land, i.e. tax on buildings, tax on flats and tax on non-residential premises within non-residential buildings. All of these taxes fall under the scope of the Local Tax and Fee Act 2004 (No. 582/2004 Coll., as amended).

As far as buildings are concerned, the taxpayer is the person who owns the building. In case of buildings owned by the state or by a municipality (village/city or a district-higher territorial unit) the taxpayer is the administrator of this building. As far as leased buildings which are administered by the Slovak Land Fund are concerned the lessee is the taxpayer. Tax on flats and on non-residential premises within non-residential buildings shall be paid by the owner of the unit. If the unit is administered by the state or by a municipality, the administrator is under the duty to pay the tax.

Generally, tenants do not pay taxes on their rental tenancies. Only the lessee of a leased building which is administered by the Slovak Land Fund pays taxes.

- 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)

As far as natural persons are concerned, they can be discharged from their obligation to pay tax on their immovable property if their income resulting from such a property is no more than 500 EUR per year. Any income exceeding 500 EUR will be taxed. In order to establish the tax base, the taxpayer can show the existence of the provable tax

expenditures as stated in his bookkeeping or in the records. The 2012 was the last taxation year when the taxpayers could take advantage of the flat tax expenditures.[276]

If a natural person has a taxable income and if he/she shows the provable taxable expenditures, he/she can decide to make this immovable property part of his/her commercial property, i.e. consider it in the bookkeeping or in the records. He/she can also decide not make it part of the commercial property and hence not incorporate it in the bookkeeping or in the records. If the taxpayer incorporates the property into commercial property within the relevant taxation period, he will be able to include the following within his tax expenditure:

- expenditure relating to the procurement of leased immovable property (*via* depreciation);
- expenditure relating to the technical appreciation of the leased immovable property;
- expenditure relating to the reparation and maintenance of the leased immovable property as well as other expenditure concerning the use of such property (e.g. electricity, gas and water, i.e. utilities, energy expenditure, insurance of the leased property, interest on the loan taken by the taxpayer in order to the buy the property *etc*.)

If the taxpayer does not incorporate the immovable property within commercial property for the relevant taxation period, i.e. there is no bookkeeping on it nor is it stated in the records, all the expenditure relating to the acquisition of the leased immovable property, to its reparation or to its technical appreciation is considered as personal expenditure of the taxpayer. In such case, the taxpayer can include within his tax expenditure only that expenditure which relates to due operation of the immovable property, *e. g.* costs of energy consumption or costs for other services. However, the expenditure relating to the insurance of the immovable property as well as the tax levied on the property cannot be included within the tax expenditure of the taxpayer.

Until the end of year 2012, taxpayers had the possibility to take advantage of flat tax expenditures provided the relevant taxpayer had income ensuing from the lease of immovable property, he was not a VAT payer and he was not taking advantage of provably spent tax expenditure. In such case the taxpayer could take advantage of 40% flat expenditure. Owing to the fact that this was abolished as of the 1st January 2013 it can be expected that this will lead to tax avoidance or even to tax evasion.

As far as taxation of income ensuing from the lease of a flat is concerned the following rules apply:

If the lessee pays for the utilities to the landlord, the landlord shall consider these, together with the rent, as his income which is liable to tax and hence has to be taxed. The payments which the landlord transfers afterwards to the energy suppliers can be used as proven expenditure.

[276] A measure of simplified administration of bookkeeping available to certain categories of taxpayers, where the taxpayer does not have to keep record of real expenditures that would decrease his tax base, but only deducts a fixed percentage of his income, notwithstanding the amount (or even existence) of his expenditures that would otherwise be deductable from the tax base.

If the utilities are paid directly by the lessee to energy providers, even if such payments are agreed upon separately and the landlord is the party to the contract concluded with the energy suppliers, such payments transferred by the lessee to the supplier are still considered as landlord´s income which is liable to tax. The Slovak legal order considers it as landlord´s non-pecuniary income. Even in this situation the landlord can use the sums paid by the lessee directly to the energy supplies as proved expenditure.

If the utilities are paid for directly by the lessee who is also a party to the contract concluded with the energy supplier(s), these payments are not considered as the income of the landlord and hence are not liable to tax on the side of the landlord.

Another part of non-pecuniary income is also the expenditure on the technical maintenance and on reparations of the leased immovable property conducted by the lessee.

- In what way do tax subsidies influence the rental markets?

The Slovak legislation as it stands now discharges natural persons who lease their immovable property of their duty to pay income taxes resulting from the lease of such property. If the income does not exceed the sum of 500 EUR per annum, the taxpayer is exempted from the payment of these taxes. If the income is more than 500 EUR, only the exceeding part of the income is taxed.

Consequently it should be noted, that the Slovak legislator tries to motivate the landlords to legalize their incomes ensuing from tenancy, since they are granted the 500 EUR exemption. Therefore this can be considered a tax measure which affects the rental markets in a positive way.

However, the fact that the Slovak legal order has abolished the possibility to deduct flat 40% of the total income from the tenancy (the so called flat expenditures), can be perceived as a negative influence on the Slovak rental market. This measure took effect on the 1st January 2013 and will presumably increase the tax due by the taxpayers. The reason behind this is that as of 2013 the taxpayers will be able to prove less expenditure than they were presumed to spend under the formerly applied rule or it will be much more difficult for the taxpayers to prove their spending of flat expenditures. Therefore their taxable income will be higher.

All in all, this measure may result in a fictitious increase in tax expenditures or, on the other hand, fictitious decrease of taxable income, thus leading to lessening of the state income ensuing from taxes, which is the exact opposite to what the Slovak legislator intended to achieve *via* this legislation.

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

As the Slovak law stands now the strengthening of the tax conditions relating to tenancy and imposition of rules resulting in the increase of tax burden may have negative consequences for the rental markets. The increase in tax burden will lead to a situation where people will tend to lease their immovable property illegally. Hence also the state will be deprived of its tax income resulting from legal lease of immovables.

The fact that the Slovak legislator has abolished the possibility of deducting flat tax expenditures as well as the possibility of proving of tax loss as far as lease income is concerned even in those cases when the taxpayer will exercise his right to provable expenditures will, at the end of the day, decrease the taxpayer´s tax income. Hence, in order to avoid any lessening of the income the taxpayers will endeavour to evade the law.

Summary table 8

	Home-owner (not renting)		Landlord		Tenant	
Taxation at point of acquisition	no name under the Slovak legislation	Does it contain an element of subsidy, if any? If so, what? not established by the Slovak legislation	n/a	n/a	n/a	n/a
Taxation during tenure	tax on immovables;	Discharge of payment of tax, reduction of tax;	tax on immovables; tax on income ensuing form the leased immovable property	Discharge of payment of tax, reduction of tax; Limited sum of income is discharged from the payment of the tax	n/a	n/a
Taxation at the end of occupancy	not established by the Slovak legislation	Not established by the Slovak legislation	n/a	n/a	n/a	n/a

4. Regulatory types of rental and intermediate tenures[277]

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)?

Housing law (or residential lease law) in Slovakia is generally not distinguished as a separate branch of law (leading to somewhat separate development and regulation of contractual issues as opposed to subsidization of tenancies and other public law conditions in tenancy relationships). The Civil Code provides for the general regulatory framework for landlord and tenant relations, distinguishing "*lease of flat*" from other leases (incl. e.g. *lease of a whole building*, such as a family house). Lease of flat is "protected", and is characterized with predominantly mandatory regulation[278]. Special and executory legislation sets forth provisions on certain aspects of tenancy relations (details on provision of replacement housing upon eviction, in certain instances rent regulation, additional provisions for specific tenure forms), rules on the management of state-owned or municipal property come into play within "public" leases[279] Municipalities specify prerequisites for establishing a tenancy and the manner in which a tenant is let a flat within their own housing stock through ordinances.

Hence, definitions of tenures may be to some extent overlapping and presentation of a market share percentage would sometimes be impossible or imprecise, especially if we are to account only for the "rental market", therefore, we would be summarizing shares of the tenancy with respect to the occupied housing stock. For instance, the most relevant differentiation in legal terms (lease of a flat as opposed to the lease of a house), is not accounted for properly in the statistical structure of available data, as this either concentrates on ownership structure (distinguishing dwellings in houses from dwellings in blocks of flats) or tenure structure (where the object of lease is distinguished only to a limited extent), whereas the legal peculiarities would require a combination of these two factors.[280]

Nevertheless, we may conclude that under Slovak law, a person can satisfy its housing needs by various types of housing tenures[281] that are accounted for in multiple sections of this report, from various aspects[282].

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277 I.e. all types of tenure apart from full and unconditional ownership.

278 see 6.1 *infra*.

279 see sec. 6.2 *infra*.

280 cf. Population and Housing Census 2011; partial results published as Statistical Office of the Slovak Republic, 'Koľko nás je, kde a ako bývame', May 2013, <http://www.scitanie2011.sk/wp-content/uploads/SODB2011_domybyty_el.pdf>, 30 December 2013; english version available at: <http://www.scitanie2011.sk/wp-content/uploads/byvame_en.pdf>.

281 - ownership of a dwelling in a block of flats (OFNP 1993);
- ownership of a house in which the dwelling is situated (Section 123 et seq. CC);
- lease of a flat (Section 685 et seq. CC, RDaRH 1992 and further legislation on various regulatory nuances of a lease);
- lease of a service flat (as a subtype of a lease);

However, there is only a single and uniform notion of a *lease of flat*, the regulation of which (in the Civil Code) embraces all kinds of rentals of flats (including e.g. the relationship between the member of a housing cooperative who uses certain flat and the cooperative). Distinctive features of various types of tenancies are accounted for only in very concrete rights and duties of the parties pertaining to the peculiarity of each tenancy (e.g. the rent regulation, limitations on choice of tenants, rights after termination of a lease). Therefore, unlike some other legal systems, these peculiar leases do not have a specific name and complex specific regulation. Notion of these types, that we will return to in secs 4.2 and 4.3 *infra*, is to some extent functional. A lease of flat relation is always created upon conclusion of a contract of lease of flat, it can be transferred to co-users of a flat upon the tenant's death and there are certain leases (remaining leases) that ensued by operation of law[283].

As far as rights and duties of parties to a lease are concerned, probably the most relevant differentiation of leases of flats relates to their **duration**:

Lease of flat for an indefinite period – basic regulatory type of a lease, affording strong protection of the tenant, termination on the landlord's notice only permissible under limited circumstances, broad right of the tenant to replacement housing upon termination of the lease;

Lease of flat for a fixed period – usual type of a lease of flat in practice (incl. private as well as public actors) – the level of protection during the exercise of the lease does not differ, but the right to replacement housing upon termination is only exceptional and no direct right to extension of the lease or protection from eviction upon termination can be inferred;

Lease of flat for duration limited by subject matter –leases of certain flats (a service flat, a special purpose flat, a flat in a special purpose block of flats) are subject to existence of additional prerequisite on the tenant's side, such as employment with the landlord, disability, foster parenting etc. upon extinguishment of which the lease may be terminated on the landlord's notice with only exceptional right to replacement housing. Sublease of a flat may be counted in the same category, as it is contingent upon the lease of flat from which it is derived.

One way to systematize the types of rental tenures is by evaluating **whether** the rental **fulfils any public task** (in a wider sense) or it is a realization of commercial interest of the landlord. The main distinguishing point in this regard, beside the subject of the

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- sublease of a flat (Section 719 CC);
- lease of a habitable room in facilities designated for permanent housing (Section 717 et seq. CC);
- real right of habitation ensuing from an easement of a dwelling (Section 151u et seq. CC);
- membership in a housing cooperative that concludes a lease of flat with its member (Section 221 et seq. Commercial Code 1991 (No. 513/1991 Coll. as amended), Sec. 685 et seq. CC etc.) and other arrangements.

[282] cf. sec. 1.4 *infra* (quantitative statistics on housing tenures); Part 2, section 2 (a) (general legal features of rentals and their regulation); sec. 6.3 *infra* (legal features of functionally similar arrangements to rentals).

[283] By transformation of former „right of personal use of flat" into a lease of flat in 1991's amendment of the CC.

landlord, is the applicability of rent regulation (rent ceilings) and specificities of the process of conclusion of the contract as well as of its content.

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.[284]

The ***private rental contracts*** (or contracts with no public task) *stricto sensu* comprise only contracts of a lease of flat that arise between private parties and the parties are free to decide on the default rules they include into the lease contract.

The "core" commercial *rental contracts* are regulated by the Civil Code and freedom of contract. No rent regulation applies. It is a standard for-profit activity and is taxed accordingly. The commercial practice to a large extent uses short fixed-term leases (1-3 years) or subleases, in order to avoid restrictions on termination and eviction. The sector tends to be part of the black market. All sub-types of a lease of flat can be subsumed under this category if private parties are involved and no additional public law regulation applies.

Rentals of restituted and privatised dwellings (transferred also to descendants of original restitution-beneficiaries and descendants of original tenants), although existing among private parties (notably private landlords) are partially fulfilling a public task towards the tenants, as the rent regulation applies and only gradually will be abolished (right of the landlord to unilaterally increase the rent, yearly by 20%). The tenants do not have a pre-emption right with regard to the dwellings they are inhabiting. Under new legislation of TCL 2011, this highly topical issue should be resolved until 2016 through termination of these "inherited" leases and provision of replacement housing (including a pre-emption right) to the tenants based on need, who will continue to form a separate category inclining to the "social housing leases".

Rare cases of *municipal or state housing stock, where no rent-control applies*, relates to situations, where no public task can be identified, unless the commercial profit of a public entity is considered a public task. This is the situation if the dwelling was not constructed through public funding and the final approval was issued after 1 February 2001; or the building was constructed without any public funding and is free of any lying tenants; or a dwelling is rented to a tenant, who is a legal entity seated outside of SR, a natural person being not a permanent resident of the SR, or it is a foreign embassy or diplomatic mission. No rent-control would also apply if the flat is rented for an entrepreneurial purpose (or partly) as well as in the event of a state housing stock, this is rented out as redundant and free of lying tenants.[285]

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[284] 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.

[285] see section 4 Regulatory measure of the Ministry of Finance of SR of 23 April 2008 No. 01/R/2008 on regulation of the rents of flats as amended as of 20 December 2011.

Provision of accommodation in habitable premises for interim or leisure purposes (hotels, time-sharing etc.) is not considered a "protected lease" and has a completely separate regulation.

- 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?

Although the Slovak law underwent several changes even with regard to the lease of flat regulation over the years since 1991 when the more or less contemporary look of the rules had been adopted (e.g. the abolishing of the necessity of court's consent with the termination of a lease of flat), these were signified by imperfect retroactivity, under which the new claims of the existing lease (or other legal act) are subject to the novel regulation as opposed to the assessment of the conditions of originating of the contract.

As far as temporary legal regimes are concerned, the abovementioned regime of temporary (lying) tenants of the restituted houses, should be mentioned, as their standing is unsystematic within the tenancy law and with the provision of replacement housing by 2016 should be propelled to the obsolete norm realm.

- Are there regulatory differences between professional/commercial and private landlords?

Generally, there are no regulatory differences relating to the legal standing of the landlord and the tenant. If any, these would reflect the position of general contract law towards professionals (notably, consumer protection[286], taxation etc.). A business licence for a lease of flat will only be necessary, if other services along with the basic services pertaining to a lease are provided by the landlord. The explanatory memorandum to the Small Business Act 1991 explains that the notion of "basic services" should encompass a range of services that ensure (qualify) the possibility of use of the asset by the lessee. E.g. the supply of heat and hot water, electricity, gas, disposal of municipal solid waste, disposal of waste water or sewage disposal, chimneysweep services, cleaning of common areas, etc.[287] Hence, entrepreneurial renting without a licence is not really an issue, since only a minor part of housing rentals fall within the category of entrepreneurial renting.

- Briefly: How is the financing of private and professional/commercial landlords typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)

[286] cf. also section 26 of Consumer Protection Act 2007 (No. 250/2007 Coll., as amended), stating that all the duties must be observed also by a supplier in breach of his duty to have a respective business licence.

[287] cf. Section 4 para. 1 Small Business Act 1991 (No. 455/1991 Coll., as amended).

Commercial investment in rentals highly concentrates on rentals of commercial premises and development of housing units is retail-oriented. If, however, a residential project is to be financed, it would be through bank credit, secured through a mortgage[288] on the property in question – extending to the building (and units thereof) as it becomes gradually constructed. "Rent to buy" schemes are not wide spread option of development investors.

- Apartments made available by employer at special conditions

As we already mentioned, a lease of a service flat, i.e. a lease of a flat pertaining to a particular employment, which the tenant performs, is along with similar arrangements (a special purpose flat, a flat in a special purpose block of flats) a purpose-oriented lease of flat regulatory regime, specific only to that extent, that separate grounds for termination on the landlord's notice is provided for, namely the end of employment (and respective reasons in similar arrangements), with only an exceptional right to replacement housing. A special regulation of RDaRH 1992 deals mostly with defining of what should be understood under a service flat[289] and the default rule that the tenant of such a flat should not have other tenure in the place of employment.[290] As a typical employee benefit, other provisions of such arrangement may bee agreed upon by the parties.

- Mix of private and commercial renting (e.g. the flat above the shop)

Such contractual agreements are neither specifically regulated, nor usual in the Slovak legal environment, however, under the prevailing principle of freedom of contract, it may be concluded by the parties. It is, yet, important to keep in mind that lease of flat enjoys a protected status in the system of contract law, and therefore separate regulation (especially the grounds for termination of a lease) would have to be applied with regard to the "residential" part of the contractual relationship.

- Cooperatives

We already established that the legal title of the user (tenant) of a cooperative flat is a contract of a lease with the housing cooperative as the landlord. The tenant, as a member of the cooperative, owns equity in the cooperative itself, therefore his ties with the housing unit are stronger than the one of a regular tenant. Still, the regulation of rights and duties is the (general) one of the lease of flat, with only minor, differences peculiar to the tie of the tenant to the asset in cooperative ownership, especially his freedom to dispose of the cooperative rights *inter vivos* and *mortis causa*[291]. In addition,

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288 Note that most of these mortgages do not fall within the definition of a "mortgage credit" under the section 68 Bank Act 2001.

289 see section 1 paras 1-3 RDaRH 1992.

290 see section 1 para. 4 RDaRH 1992.

291 cf. the possibility to inherit the tenancy right along with the membership in a cooperative flat, as opposed to the transfer of tenancy upon death of a tenant. See section ; cf. also the general non-interference of the cooperative into the dispositions of the member (tenant) with his or her rights in a cooperative. See sections 230 and 232 para. 2 CommC.

the Civil Code empowers the cooperatives (members thereof) specifically, to establish additional terms for a lease of a cooperative flat.[292] The corporate and self-administration part of the housing cooperative relationships is governed by the provisions of the sections 221 et seq. Commercial Code (Act No. 513/1991 Coll.).

- Company law schemes

The Slovak law does not lay down any statutory obstacles for creating company-law schemes of residential tenancies, however, given the lacking tradition of such arrangements and no apparent advantages as opposed to existing regimes, these are absent in the practice.

- Real rights of habitation

A real right (an easement[293]) can be created by an agreement between the owner of the dwelling and the beneficiary, which requires specific formal procedures, [294] or may ensue by law (positive prescription).[295] The regulation of such arrangement is rather less complex than the one of the lease of flat and in practice is used predominantly as a means of safeguarding a place to live for the original owner of the dwelling for the duration of his or her life, while making dispositions with the same. Its specifics are covered in part 2 section 2 (c) *infra*.

- Any other relevant type of tenure

A common feature of the following arrangements (tenure types), is their residual character as far as the share in occupied housing market is concerned, the statistics would encompass those within "other" forms of tenures, and the level of regulation as well as the tenant's protection is far less comprehensive than the one of a lease of flat.[296]

In cases where an owner or a tenant of a dwelling permits a subject to use and inhabit a dwelling without the intention of the parties to conclude a tenancy contract, such use would be considered a lawful **licence**, however, with only a legal basis derived from the right of the licence provider. It is fully contingent upon the continuation of the consent of the owner/tenant with the use.

There are then further arrangements where there is *de iure* no continuing lease between the owner (landlord) and the tenant, however the law allows the rules on **lease of flat** to govern **by analogy** situations similar to a lease by their nature (Section 853 para. 1 CC). Most of all, it is the former tenant's right of habitation of a dwelling - limited in time and scope, existing from the point of termination of a lease up to the elapsing of a period necessary to clear out a dwelling or until a replacement housing has been provided.

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[292] see section 685 para. 2 CC.

[293] The Slovak law uses a uniform notion of an easement, without prividing for a specific regulation (or notion) of a servitude.

[294] See section 151n et seq. CC.

[295] Section 151o para. 1 and section 134 CC. The law requires ten years of use of the dwelling by the beneficiary who has to be in good faith as to the existence of the easement throughout the period.

[296] For specifics of these tenure types and their distinguihing from a lease of flat, see sec. 6.3 *infra*.

A **gratuitous loan** (*commodatum*) as a special contractual type[297] is a contractual agreement in which an owner of a dwelling provides the use of a dwelling to another party gratuitously and the parties intend to be bound by such an arrangement. Its regulation is vastly governed by free will of the parties as to its content and typified with default rules.

Lease of a habitable room in facilities designated for permanent housing is formally left out as a separate contractual sub-type of a lease.[298] It should be understood as a separate kind of a lease satisfying the permanent housing need of an individual, which is taking place in permanent housing facilities, such as lodging houses, pensions, houses of flatlets, quarters.

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.

The *public rental contracts* (or contracts with a public task) are predominantly a domain of the municipalities, whose capacity is to assist the citizens in fulfilling their housing needs. We may differentiate:

Under **municipal housing**:

Social housing rentals – rentals of flats developed for a specific purpose rentals (income-based or other disadvantage social housing) with state funding included, provided under the SHDaSH 2010. The beneficiaries of such subsidies may be municipalities or self-governing higher regions. Starting from 1 January 2014 it also may be non-profit organizations providing public services in housing, management, maintenance and restoration of housing stock, founded by a municipality or a higher territorial unit, or if their share in the entity amounts to at least 51% and it has a managing majority in the board of the non-profit organization[299].

Rentals of flats developed with subsidies from public funds *prior to enactment* (or outside the scope) of the SHDaSH 2010. Based on the year of finishing the development (pre 2001 and post 2001), various levels of rent ceilings would apply.

297 See section 659 et seq. CC.

298 Secs 717-718 CC.

299 see section 7 lit. a, b, and c and section 11 para. 1 SHDaSH 2010.

Additionally, various targeted groups may be specified by the municipality's legislation to be selected as tenants of those dwellings (young couples, lower-income groups, etc.).

Rentals of flats following the legal transformation of personal use of flat to the lease of flat (rent regulation and pre-emption right of the tenant applies). This class is negligible nowadays due to the favourable pre-emption right of the tenants that has been utilized already by the majority.

Replacement housing rentals for the tenants of restituted dwellings, construction of which is subsidized from the state budget.[300]

Rentals of housing constructed without public funding after the year 2001 or free from previous lessees. In these cases the rent-regulation generally does not apply and the municipality (or other public flat owner) is free to decide on e.g. the target group of the rental.

Under other actors' housing:

State-owned housing rentals relate nowadays mostly to the provision of service flats or special purpose flats to the employees of respective governmental agencies. The abovementioned conditions for rent-regulation holds true also in state-owned rental housing. Special rules on management of state property apply, yet do not extend to the landlord-tenant relationship.

Non-for-profit private housing rentals – rentals for targeted groups of people gradually starting to be provided by private, non-for-profit organisations (NGOs, religious organizations). These projects would normally be part of the private rental sector, however, the owners themselves attribute the public task to their rentals.

The dubious public/private task nature of temporary rights of use (or rentals) of *tenants in houses restituted* (or privatized) by original owners was already approached in the previous section.

It follows from the abovementioned enumeration that the notion of municipal housing is to a large extent overlapping with the social housing. Although, social housing is now defined in a law,[301] it is provided mainly by the municipalities and the remaining housing stock of the municipalities, outside the scope of SHDaSH 2010 is, similarly, rented on a temporary basis to targeted classes of tenants with regulated (or cost-based) rents[302].

Neither *housing associations* nor *agencies* are active as landlords in the rental sector with a public task. Although initially the partial goal of new social housing legislation was

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[300] see Act on Provision of Subsidies for the Purchase of Replacement Rental Housing (No. 261/2011 Coll., as amended).

[301] Housing, procurement of which was subsidised through public funds and is determined for use by a class of tenants limited by the law. See further Sections 21-22 SHDaSH 2010. It also includes housing or accommodation financed by public funds and provided as a social service (e.g. night shelter, refuge, midway home, emergency housing, social service of housing for elderly, handicapped etc.) See further sections 12 et seq. Social Services Act 2008 (No. 448/2008 Coll., as amended).

[302] cf. the broader definition of social housing applied by A. Suchalová & K. Staroňová, *Mapovanie sociálneho bývania v mestách Slovenska*, 19.

to include private, non-profit sector, into eligibility criteria for procurement of rental dwellings for social housing purposes, in the original text of the SHDaSH 2010 these ideas did not appear due to negotiations in the parliament.[303] However, pressure on extending the availability of affordable rental housing translated into change of the law and starting from 1 January 2014, the non-profit organizations will also become eligible for subsidies for procurement of social rental housing.[304] Still, it only concerns organizations with municipal (or regional) managing power and other than public based entities are thus required to create joint ventures with public – regional – subjects or resort to other sources of funding than direct subsidies[305].

At the same time, it should be distinguished that some municipalities, in their aim for more efficient management of their property, assign the management thereof to their budgetary or contributory organization, or a legal entity created by it. The rules relevant for a municipal housing rentals (if any) apply also to these subjects.

Municipalities do not *take over private contracts* for tenants in need, in order to prevent their homelessness. They are bound by the legislation on effective use of the public funds[306], if it was to be an extraordinary at-will measure, on one hand, and if it was to be a provision of socially oriented public service, the municipality would be limited by the scope of the Social Services Act 2008, which is the proper legislative tool that would be applied in those cases.[307]

- Specify for tenures with a public task:
  - selection procedure and criteria of eligibility for tenants

Since the selection procedure of tenants in the municipal housing sector is basically created by the municipality's legislation (generally binding regulations)[308] notwithstanding whether it falls within the scope of the SHDaSH 2010 or not, the processes employed by single municipalities are quite differentiated and manifold across the country. Usually a separate collective body, such as housing commission, social commission or a city council of a municipality decides (or makes a factually decisive recommendation to the mayor) upon selecting a tenant. As a recent empirical study of the practices of municipalities shows, most municipalities while attributing housing to the applicants for tenancy employ a system of waiting lists, followed by individual assessment of the eligibility of the applicant, a lottery, and a few resort to a point score system setting prioritized factors, and an auction (usually mutually combined, taking into account relevant criteria of eligibility).[309] As far as criteria of eligibility are concerned,

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303 cf. <http://www.1snsc.sk/clanok-22_52-1475/Neziskove_organizacie_nebudu_ziadatelom_o_dotaciu_na_obstaranie_najomneho_bytu_na_ucel_socialneho_byvania_.html>, 30 December 2013.

304 see section 7 lit. a, b, and c and section 11 para. 1 SHDaSH 2010.

305 e.g. favourable loan by the State fund of housing development. Cf. section 8 State Housing Development Fund Act 2013 (No. 150/2013 Coll.).

306 Municipalities' Property Act 1991 (No. 138/1991 Coll., as amended); Local Government's Budget Act (No. 584/2003 Coll., as amended).

307 i.e. based on eligibility of the person in need and actual availability of the service, the municipality would provide (or fund provision) of night-shelter or dormitory etc. See section 24 et seq. Social Services Act 2008 (No. 448/2008 Coll., as amended).

308 see Section 12 RDaRH 1992; for a full explanation of these procedures cf. sec. 6.3 of this report.

309 cf. A. Suchalová & K. Staroňová, *Mapovanie sociálneho bývania v mestách Slovenska*, 68.

following criteria have been accounted for by the municipalities recently (with percentage of municipalities employing respective criterion)[310]:

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

If the rental flat belongs to the housing stock procured by the public funding pursuant to SHDaSH 2010 (*social housing*), however, the municipality is obliged to observe the eligibility criteria set forth by the act, basically applicants' income ceilings according to Section 22 para. 3 SHDaSH 2010, or the person's standing of a recent inmate of institutional care of foster care under 30 years of age, or in case of lease as a replacement housing provided to tenants of restituted houses.[311]

An additional set of eligibility criteria, assessed in frames of administrative proceedings contestable in court by the applicant, has been introduced by the TCL 2011 for applicants for *replacement housing leases for former tenants of resitituted houses*, under this act. In order to be eligible, the applicant must suffer from a "material housing need" as specifically defined by this act. The tenant is only eligible for such a replacement housing, if he or she and neither of persons assessed with the applicant in common,[312] dispose of housing or valuable immovables of certain specifications. The applicant is required to provide a property declaration to the municipality to this end.

- typical contractual arrangements, and regulatory interventions into rental contracts

310 *ibid*., 67.

311 Section 22 para. 3 SHDaSH 2010.

312 i.e. persons living in a common household with the tenant, who are his descendants, parents, siblings, children-in-law, who had been registered for permanent or temporary residency in the flat for the past three years and do not dispose of their own flat or tenancy, on one hand or other persons taking care of a common household with the tenant or being dependent with subsistence on the tenant, under the same additional requirements. Section 2 para. 3 TCL 2011.

In case of *social housing rentals* observing the SHDaSH 2010, the contractual arrangements are set forth by the provisions of the act, most of all, it is important to agree upon a fixed term of the lease, generally for 3 years,[313] with the compulsory possibility to renew the lease and the monthly rent – pursuant to rent-control legislation.[314]

The *replacement housing leases for former tenants of resitituted houses* under TCL 2011 also have to meet certain statutory prerequisites of their content.[315] The most significant feature of these, is that they have to be concluded as open-ended leases, with applicable rent-control regulation (the same as the abovementioned) with a pre-emption right of the tenant to buy the flat.

Other forms of leases with a public task attributed to them do not boast with other regulatory interventions into their contents than the ones of the general contract law (protection of consumers, mandatory provisions on lease etc.). However, in the public rental sector (with municipalities or the state as tenants), rent-control measures would generally apply, depending on the time of construction (final approval) of the housing stock, the fact whether public funds had been used for its construction, whether it is free from any lying tenants as well as depending on the person and reason of the tenancy. Calculation of the rent ceiling is also contingent upon the time of construction of the building.[316]

- opportunities of subsidization (if clarification is needed based on the text before)

From the perspective of the *tenant*, the applicability of rent regulation may be considered a form of subsidizing the housing of the eligible person, however, a specific subsidy is only available in the form of a housing allowance, provided other conditions are met.

Landlords of public-task housing units are eligible for subsidies for its procurement, however, direct grants are only available to municipal landlords, higher territorial units, and their non-for-profit organisations.

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313 see further 6.3 *infra*; see also 12 SHDaSH 2010.

314 Other mandatory contents of the contract include: statement of (a) start of the lease; (b) duration of the lease (which is limited in these cases to three or eventually ten years); (c) monthly rent; (d) the condition of the tenant's right to prolongation of the tenancy; (e) the amount of payments for services pertaining to the use of flat (utilities) or the method of their calculation; (f) the description of the condition of the flat and the description of the accessories of the flat; (g) the term that the flat should remain in the original condition and with original facilities; (h) termination of the lease; (i) list of persons the tenant's household comprises.

315 i.e. (a) identification data of the landlord and the tenant; (b) list of persons the tenant's household comprises; (c) information on the object of the lease; (d) start of the lease; (e) duration of the lease (indefinite period); (f) amount of monthly rent; (g) amount of payments for services pertaining to the use of flat (utilities) and method of their calculation; (h) description of the condition of the flat and the description of the accessories of the flat; (i) identification and status record of the electric, gas and water supply meters; (j) detailed conditions for pursuing changes of the condition and facilities of the flat; (k) terms for termination of the lease; (l) pre-emption right of the tenant under favourable conditions. See Section 13 para. 2 TCL 2011.

316 See generally Regulatory measure of the Ministry of Finance of SR of 23 April 2008 No. 01/R/2008 on regulation of the rents of flats as amended as of 20 December 2011.

- from the perspective of prospective tenants: how do I proceed in order to get “housing with a public task”?

In order to obtain the tenancy an applicant must follow the procedure adopted by the municipality in question. This would usually require filling in a standardized form asking for specific information pertaining to the eligibility criteria for provision of social housing (in a broader sense). Along with documentation supporting the information provided (usually proof of employment, income statement, property declaration, etc.) the applicant should file the material with the respective municipality’s office and wait for the decision on the attribution of the rental flat (commission’s decision, lottery etc.). Municipalities usually offer consultation services on the process of provision of social housing. Making use of these services may be crucial in order to meet all the bureaucratic idiosyncracies of the application procedure properly.

- Summary table 9:

Rental housing **without a public task** (market rental housing for which the ability to pay determines whether the tenant will get the dwelling); for example different intertemporal schemes of different landlord types with different tenancy rights and duties	Main characteristics • Types of landlords • Public task • Estimated size of market share within rental market • Etc.
1) General lease (lease of a building, e.g. house)	- any landlord - no rent-control - less protective rules favouring tenants than the lease of flat
2) Lease of a flat (private rental tenancy)	- any landlord - no rent-control - protective rules favouring tenants (protected lease) - encompasses regulation of various other subtypes of leases of flats with singular specificities - 1) and 2) together up to ca. 3% of the occupied housing stock
3) Rentals of flats in restituted and privatized houses	- temporary arrangements of private landlords, who had been returned ownership of housing in use by lying tenants - partial public task (temporary residual rent-control) - otherwise a lease of flat relationship - ca. 0.056% of the occupied housing stock

4) Cooperative tenancies	- landlord: a housing cooperative - generally a lease of flat regime - power to decide on certain features of the lease an the corporate level - functionally, unlike legally, close to home ownership arrangements - 3.54% of the occupied housing stock
Rental housing for which a public task has been defined (provision of housing that is not determined by the free market, but any form of state intervention)	
5) Municipal tenancy (general)	- municipality or its entity (rare: higher territorial unit or its entity) - provision of housing not for profit (generally rent regulation) - special selection procedures and eligibility criteria - along with social tenancies under SDHaSH 2010 taking 1.81% of the occupied housing stock
6) Social tenancy	- municipality (rare: higher territorial unit or non-for-profit organisation of either) - provision of rental flats to applicants on social/income merit - procurement of the housing with state funding - rent-control, fixed-term leases, with possible prolongation
7) Municipal tenancy (replacement housing lease under TCL 2011)	- municipality - provision of rental flats to lying tenants of restituted houses, on “material housing need” merit - selection procedure through administrative proceedings - procurement of the housing with state funding - rent-control, open-ended leases, pre-emption of the tenant
8) State-owned housing rentals	- state (or managers of its property – organizations, agencies, ministries etc.) - rules on management of state property apply - usually service flats (employment based) of governmental employees

9) Non-for-profit private housing rentals	- rent-control, usually purpose based lease - regulation as in non-public task leases - rules dependent on the entity's standards - rent-control may apply, if public funds had been used for procurement of the housing stock (outside of the scope of SHDaSH 2010). - currently negligible

- For which of these types will you answer the questions in Part 2; which regulatory types are important in your country?
  - 1) General lease (lease of a house)
  - 2) Lease of flat
  - 3) Social housing lease
  - 4) Replacement housing lease under TCL 2011

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)?

Lease of a dwelling is mostly an institution of modern age. Roman law did not recognize lease as a special contract for use of a thing for consideration, as the concept of *locatio conductio* was broader. It "involved a complex net of social relations, relations which would have been classified in legal terminology as contract of lease, contract for services or contract for work." As Zimmermann argues there was no particular need to make further distinctions beyond the hybrid nature of *locatio conductio*.[317]

If we concentrate on Slovakia, we may argue, that lease and sublease of flats had not been comprehensively regulated until 1950. Tenancy was regulated mainly by common case law of Hungarian origin. This customary case law of Hungarian roots more or less prevailed in Slovakia up to 1950, although from 1918, after its separation from the Austro-Hungarian Empire and integration into Czechoslovakia, in its application by Slovak courts, the law was greatly influenced by the *Allgemeines Gesetzbuch der Republik Österreich* (ABGB), which had been in force in Czech territories before Czechoslovakia was established. In the first Czechoslovak Republic, a codification draft based on the ABGB was drawn up. The Slovak side was critical of it, and after the disintegration of Czechoslovakia just before World War II its adoption was blocked.[318] Nevertheless, the lease legislation was enacted also at the beginning of the twentieth century. Legal protection of tenants in situation of contract termination was laid down by the Hungarian Litigatin Order (*Uhorský sporový poriadok* (Act No. 1/1911)). Regulation of rent, the manner of its increase and modification were also regulated by the ordinances of bigger cities.[319] Laws adopted after creation of the first Czechoslovak Republic (1918) gradually deregulated rent and weakened protection of tenants. In 1920, the grounds for termination of lease were broadened (Act No 130/1922 Coll.). Act No 130/1922 Coll. provided that disputes whether an increase of rent is rightful should be left to judicial evaluation. Courts were allowed to reasonably modify rent according to the circumstances of each case. More complex regulation of tenancy law was comprised in the Protection of Tenants Act (No. 44/1928 Coll. *Zákon o ochrane nájomníkov*).[320] In 1950, the first common Czechoslovak Civil Code was adopted. It was framed for the period of transition from capitalism to socialism, and its legal and political task was to destroy the foundations of bourgeois civil law. This Civil Code did not regulate specifically lease of flats, but contained a general regulation of lease (Sections 387-409).[321] The tenancy law had been laid down in the Code of Civil Procedure 1950 (Act

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317 R. Zimmerman, *The Law of Obligations: Roman Foundations of the Civilian Tradition* (Oxford: Oxford University Press, 1996), 351.

318 M. Jurčová, 'The Influence of Harmonisation on Civil Law in the Slovak Republic', *Juridica International*, no. 1 (2008): 166-172.

319 V. Fajnor & A. Záturecký, *Nástin súkromného práva platného na Slovensku a Podkarpatskej Rusi* (Šamorín: Heuréka,1998), 303.

320 I. Fekete, 'Nájom a podnájom bytu', in D. Dulaková, I. Fekete, A. Dulak et al. *Zmluvy o prenechaní veci na užívanie. S komentárom.* (Praha: C.H.Beck, 2012), 207-208.

321 Act No. 141/1950 Coll. Civil Code. See also D. Dulaková, 'Nájomná zmluva – všeobecné teoretické východiská', in D. Dulaková, I. Fekete, A. Dulak et al. *Zmluvy o prenechaní veci na užívanie. S komentárom.* (Praha: C.H.Beck, 2012), 51.

No. 142/1950 Coll.) as well. This Code differentiated between „unprotected“ and „protected“ leases.

Protected lease (lease of a flat or a part thereof) could be terminated only for important reasons, in which assent of a court was required. In 1964, the Civil Code based on the socialist conception of property was adopted. It was far detached from the traditional institutions of the law of obligations and considerably distant from the European private law tradition.[322] At the time of its adoption, it was to epitomize completion of the transition to socialism.[323] Rules on lease of flats were omitted and substituted by the institution of a personal use of flats.[324] As compared to other socialist countries, it was unique to Czechoslovakia. Personal use effectively replaced rentals of flats. It made a permanent and hereditary right to use someone else's flat while the protection was comparable to protection of ownership. Creation of a personal use right required an administrative decision followed by conclusion of an agreement concerning the process of handing the flat over to the tenant.[325] The rent for such flats did not correspond to real costs of maintenance and its value was fitted to social/political expectations Management of the housing stock was unprofitable. Once a substantial Civil Code amendment came into force in 1992[326], personal use of flats was converted into a regular lease contract.[327] In spite of its socialist character, the Civil Code from 1964 in its original version would totally ignore the existence of economic relations between private parties, therefore its fifth part "Rights and Obligations arising out of Other Legal Acts" referred to contracts between natural persons that were known as “citizen’s support” (občianska výpomoc), among them also relinquishing of a flat in a family house for use, relinquishing of other room in family house for use, relinquishing of a part of a flat for use and finally relinquishing of immovable or part thereof for use. Virtually, these agreements had a character of a lease contract, but they had to be supplemented by administrative decision, at least in the form of approval or notification.[328]

As explained above, the Slovak Republic had been a part of Czechoslovakia until 31st December 1992. Therefore, its legislation in the field of civil law was common for both federative republics and also Civil Code of 1964 remained in force until now and has been subject to amendments in the last 20 years in the Slovak Republic. This is the reason why we sometimes refer to decisions of the Supreme Court of the Czech Republic if there is no judicial interpretation of the relevant provision in the Slovak legal praxis and the relevant provision has not changed in the recent years after dissolution of Czechoslovakia. It is very important to point out the fact that there is a new Czech Civil

322 Civil Code of 1964 in its “purported progressivism” has exceeded also Soviet Civil Code, see J. Dvořák, 'Kodifikace občanského práva v České republice (včera, dnes, zítra)', in *Kodifikácia, europeizácia a harmonizácia súkromného práva – Kodifikation, Europäisierung und Harmonisierung des Privatrechts. Dies Luby Iurisprudentiae No. 8.*, ed. P. Blaho & J. Švidroň (Bratislava: Iura Edition, 2005), 242.

323 J. Švidroň, 'Hodnotové zakotvenie slovenského občianskeho práva', in *Vzťahy a interakcia vnútroštátneho práva, medzinárodného práva a európskeho práva z hľadiska krajín Vyšehradskej štvorky po ich vstupe do Európskej únie*, ed. N. Štefanková (Žilina: PP Poradca podnikateľa, 2007), 71 (in Slovak).

324 *Ibid*., 1048.

325 O. Planková, 'Osobní užívaní bytu', in *Československé občianske právo*, ed. V. Knapp & Š. Luby (Praha: Orbis, 1974), 395.

326 Act No 509/1991 Coll.

327 Section 871 Civil Code.

328 Sections 390-398 of Act. No 141/1950 Coll. Civil Code.

Code (Act No. 89/2012 Coll.) effective from the 1 January 2014 in the Czech Republic[329], therefore this common link will be broken for the future.

The current CC does recognize a general lease and certain specific types of lease, among them: lease of a flat, lease of habitable rooms in facilities designated for permanent housing, sublease of a flat (a part of a flat), lease and sublease of non-residential premises, professional lease of movables, as well as lease of agricultural land, agricultural enterprises and forest land.

This list makes it clear that CC or other acts in Slovakia do not recognize special regulation of residential lease. Therefore, for our purposes, we have to stress the need to differentiate between lease of a flat and lease of other residential premises, e.g. a family house of a part of thereof. The main reason why we regard this fact as substantial is that legal protection provided for the tenant of flat does not extend to the tenant of a family house. If the object of lease is a family house, provisions of the CC are more liberal and a tenant in a family house does not enjoy the same level of protection as a tenant of a flat. Reasoning behind this solution may boil down to the generally accepted idea that lease of a house is regarded as a luxury. However, this is not true in all cases. Legislative Concept of the New Civil Code approved by the Government of the Slovak Republic in 2009[330] proposes to establish a special regulation of lease of a family house that might reflect demand for this type of housing tenure. Meanwhile, in this report we have to distinguish between lease of a flat and lease of a family house and explain the basic differences in their regulation.

- 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)

We may argue that in the process of transformation of personal use of a flat to the lease some socialist remains were left. Extensive protection of a tenant and the practical impossibility for a landlord to get rid of a tenant may be regarded as such. The same applies to the right to unilateral rent increase which has been almost excluded. Therefore the market lease of a flat for longer period of time has become a rarely used institution of the Slovak private law. These deformities may be the reasons why in everyday legal practice private landlords prefer to conclude lease agreements only for specific and very short period of time.

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

The most important reform has been already mentioned - the transformation of the personal use of the flat into lease of a flat. This substantial change, followed by the widely opened possibility to buy a flat by the tenant, resulted in the fact that lease of a

[329] The reporters are not persons qualified to estimate and explain the novelties incorporated in new Czech civil and particularly tenancy law.

[330] 'Legislatívny zámer Občianskeho zákonníka' (Res. of the Government of the SR No. 13 of 14 January 2009).

flat has become less important as housing tenure and ownership has become the preferred option on the housing market. Slovakia needs to enhance the rental sector of housing, mainly for the reasons of flexibility of employees. Until now, these efforts have failed. A new regulatory regime for a short-term lease in the private rental market has been expected by the end of 2013. The proposal, however, is still being worked on under auspices of the Ministry of Justice of the SR. Among other improvements, new regulation should introduce a construction of a deposit, until now only practically used but not regulated. One of the major changes that should be expected is the introduction of the register for short term leases. One may ask whether adoption of new law is aimed at improvement of the situation in the private rental sector or simply aims at strengthening state control over tax incomes from landlords.

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

Economic, social and cultural rights are socio-economic human rights, such as the right to education, right to housing, right to adequate standard of living, and the right to health.[331] Economic, social and cultural rights are recognized and protected in international and regional human rights instruments. Member states have a legal obligation to respect, protect and fulfil these rights, and are expected to take "progressive action" towards their fulfilment. The Universal Declaration on Human Rights recognizes a number of economic, social and cultural rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR)[332] and European Social Charter[333] and European Social Charter (Revised)[334] are the primary international legal sources of economic, social and cultural rights.[335] The Convention on the Rights of the Child[336] tackles housing problems in Article 27. The Convention on the Rights of Persons with Disabilities[337] also prohibits all discrimination on the basis of disability, including refusal of reasonable accommodation enabling full enjoyment of economic, social and cultural rights. SR is bound by these conventions[338]. Moreover, proposals for housing politics of SR are based on the fundamental principles of program documents of the UN in the area of housing (Vancouver Declaration of 1976, Global Housing Strategy 1988, the

331 See also sec. 3.1 *supra*, Constitutional framework of housing, where constitutional aspects are explained more thoroughly.
332 Ordinance No. 120/1976 Coll.
333 Announcement of Ministry of Foreign Affairs No 329/1998 Coll.
334 Announcement of Ministry of Foreign Affairs No 273/2009 Coll.
335 <http://en.wikipedia.org/wiki/Economic,_social_and_cultural_rights>, 15 December 2013.
336 Announcements of Ministry of Foreign Affairs Nos 104/1991 Coll., 424/2004 Coll., 256/2009 Coll.
337 Announcements of Ministry of Foreign Affairs Nos 317/2010 Coll., 318/2010 Coll.
338 Article 7 of the Constitution 1992.

Habitat Agenda of Istanbul 1996, Ministerial Declaration of 2006 on social and economic challenges in urban areas), the strategic objectives formulated in the framework of the European Union (Lisbon Strategy in 2000, the Leipzig Charter of 2007), as well as internal documents of the SR, namely, policy papers of state housing policy and energy performance of buildings adopted in the previous periods. State housing policy intentions for the next period take into account the principles of national housing development, international development and experience in particular are close to accepted principles of the European Union (EU).[339]

Fekete argues that **protection of a tenant of a flat** is expressed in the CC in the following rules and requirements:

a) provisions regulating lease of a flat are mostly mandatory,

b) an unilateral termination of lease by landlord is allowed only for reasons stipulated by the CC,

c) a tenant may claim the invalidity of a notice for termination before a court,

d) a tenant has right to replacement housing in many cases of termination,

e) termination by notice of a landlord is restricted if the tenant is in a material need,

f) if a tenant dies, lease passes to the tenant's legal successors,

g) a change of a landlord does not influence negatively the duration of lease or rights and obligations of the tenant,

h) in some cases the rent increase is regulated,

i) an unilateral increase of rent is not generally allowed,

j) until the appropriate replacement housing has been provided for, former tenant is not obliged to move out of a flat (right of habitation of a dwelling),

k) in some cases the tenant has the right for reimbursement of moving costs.[340]

Moreover, Section 685 of CC expressly states: "The lease of a flat shall be protected; unless an agreement is reached to the contrary the lease may only be terminated for reasons stipulated by law."

[339] 'Koncepcia štátnej bytovej politiky do roku 2015' (Res. of the Government of the SR No. 96 of 3rd February 2010).

[340] I. Fekete, 'Nájom a podnájom bytu', in D. Dulaková, I. Fekete, A. Dulak et al. *Zmluvy o prenechaní veci na užívanie. S komentárom.* (Praha: C.H.Beck, 2012), 224.

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))

Law does not generally impose any special requirements on parties to the lease contract. However, renting in the public sector does have more strict regulation. Contract for lease of a flat and lease of a dwelling in a family house does not have to be concluded in written form, but if the contract for lease of a flat is oral, the record on the contract has be to made in writing and the law prescribes the basic issues to be covered by this record.

Social orientation of tenancy law in regard to the lease of flat is expressed by the strict rules on termination by the landlord, restriction or exclusion of unilateral rent increases, legally guaranteed transfer of the lease, etc. The landlord may terminate the lease of the flat only on basis of specified grounds by written notice and in some cases the tenant has the right to replacement housing. Notice period amounts to three months, and where the tenant is in material need it is extended by additional 6 months, i.e. its length is nine months. The sole instance when lease may be terminated by notice of the landlord without any ground is covered by the TCL 2011 and the scope of this act is restricted to restituted dwellings. Unilateral rent increase is also allowed only within the frames of this act.

The legislation does not contain any specific provisions on habitability of dwellings. CC determines only that the landlord must hand over the dwelling in a condition fit for the agreed use and to secure full and undisturbed exercise of the tenant's right connected with the use of the flat. The Building Act 1976 and the regulatory measures bound to the dwellings of the lower standard should be also taken into account.[341]

- 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)

The current tenancy law is centralised, the acts are adopted by the National Council of the SR, other legislation lies mainly in the competence of the Ministry of Transport, Construction and Regional Development of the SR. [342]

Self-regulatory competence of municipalities is targeted only on restricted issues (disposal of flats in public sector).

- 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?

[341] See also this section *infra* (Regulatory law requirements) and sec. 6.5 *infra*.

[342] See also sec. 3.2 *supra*.

Tenancy is considered as a **personal obligatory right**. Subsumption of a tenancy in Part 8 (Law of Obligation) of CC also affirms this classification as the correct one. On the other hand, one may argue, that if under CC "a person entitled to posses a thing shall enjoy the same right to protection as an owner"[343] *(rei vindicatio, rei negatoria*), some aspects of a real property right are imminently present also in tenancies. The problem lies in the fact that according to the Slovak legal literature possession is only a factual state recognized and protected by law, and not a real property right. Same applies to detention and the tenant is only a detainer.[344] Detainer – which in our case refers to a tenant - is one who exercises factual authority over a thing with the permission of or on behalf of another person. Detention is also known as *possessio naturalis* in civilian sources.

- 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?

General regulation of lease (Section 663 et seq.) and lease of a flat (Section 685 et seq.) is contained in the CC. Some aspects of lease of a flat are given in implementing regulation (4 Regulation of the Government of SR Executing Provisions of the Civil Code (No. 87/1995 Coll., as amended) (Reg. 87/1995)).

The Act on the Regulation of Some Conditions Associated with Rental Dwellings and Replacement Housing (No. 189/1992 Coll., as amended) (RDaRH 1992) tackles also special types of lease (a service flat, a special purpose flat, a flat in a special purpose block of flats.)

Membership in a housing cooperative which concludes a lease of flat with its member is regulated in Commercial Code (Section 221 et seq. Commercial Code 1991 (No. 513/1991 Coll. as amended), Sec. 685 et seq. CC etc).

TCL 2011 and the Act on Provision of Subsidies for the Purchase of Replacement Rental Housing (No. 261/2011 Coll., as amended) refer to a specific list of flats. As already stated, TCL 2011 regulates the legal relations between tenants and landlords and the manner of ending a lease of the flats in the block of flats restituted to their original owners.

In the area of social housing, these questions are covered by: the Municipalities Act 1990 (No. 369/1990 Coll., as amended), the Act on the Government of Higher Territorial

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343 Section 126(2) CC.

344 Possessor is defined as a person who holds a thing as his own or who exercises a right for himself. Two elements of possession may be distinguished:

a) corpus posessionis – the factual possession of a thing and

b) animus possidendi – the possessor's will to hold it as his own.

Possession requires both elements, i.e. both the factual possession of a thing and the possessor's will to hold it as his own. If the second element (will) is missing, the holder of a thing is a detainer and his holding (detaining) of the thing is characterized as detention. Unlike a possessor, a detainer holds the thing not as his own, but as someone else's (e.g. a lessee). See M. Jančo et al., *Introduction to Slovak Civil Law* (Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2010).

Units 2001 (No. 302/2001 Coll., as amended), SHDaSH 2010 and other ones specified in the relevant parts of this report.

The CC does not contain any enumerative list of mandatory provisions. Parties may modify or exclude provisions of the CC, save for those rules that are imminently inherent to the needs to procure the basic interests and protection of private individuals. Such mandatory rules comprise majority of provisions on lease of the flat. This conclusion is based on the fact that a tenant is considered to be the weaker party of a contract in a need of protection. General regulation of the lease, under which label lease of the house should be analysed, is not considered mandatory. One may argue, provided that housing needs of a natural person are covered by renting a house, that the same protection should by awarded by way of analogy. For this solution, however, there is no supportive legal literature or court judicature. On the other hand, provided that a lease contract is a consumer one under general definition of a consumer contract in the CC[345], rules of the CC may not be modified or excluded to the detriment of a consumer.

One may argue that the relation between general and special rules is clear. The lack of the explicit regulation on residential lease however raises disputes. Does the tenant of family house enjoy same level of the protection as the tenant of the flat? On one hand, with regard to the nature and purpose of the lease of the dwelling in family house one may tend to give a positive answer. On the other hand, lease of a dwelling in a family house is regulated by the general provisions on lease and application of provisions of protective nature included in the specific part on lease of flats to such rentals may be doubtful. These doubts should be solved by future legislation.

- 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?

Tenancy law is not linked to any special court structure. Civil Procedure Code (Act No. 99/1963 Coll., as amended) (CPC) makes the basic legal regulation in this field. At the first instance the district court *(okresný súd) is* competent, appeal is generally admissible and decisions are taken by the court of the second instance – the regional court *(krajský súd*). Extraordinary remedies (*dovolanie, obnova konania*) are allowed in specified cases that are not specifically related to tenancy law, but have been defined in general terms. Administrative jurisdiction also belongs to common courts, as it is nowadays not separated and its regulation is also covered by the CPC. This may be relevant in relation to municipalities. The Act on Arbitration (No. 244/2002 Coll., as amended) does not exclude arbitration as the way of solving disputes in tenancy law. Enforcement of tenancy law is regulated by the Execution Order 1995 (No. 233/1995 Coll., as amended).

- 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)

[345] Section 52 CC: Any contract regardless of the legal form that is concluded between a provider and the consumer constitutes a consumer contract.

As regards regulatory law requirements influencing tenancy contracts, firstly we would like to stress that the duty to register lease contracts does not exist. However, as it was already mentioned, the draft of a new act on short term lease of a flat envisages introduction of this new obligation.

- 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.

In order to secure the public safety and public health, public law does regulate technical, architectural and hygienic requirements for housing. The Building Act 1976 stipulates not only the definition of a flat but also other vital conditions for construction of a building. The Ordinance of Ministry of Health (No. 259/2008 Coll.) serves as an important safeguard in setting the requirements for internal environment of building and the minimal requirements for flats of lower standards, as well as other housing facilities.

The habitable space in a flat of lower standard must be at least 12 m^2 for one inhabitant and plus 6 m^2 for every other member of the household. An overall space of a flat (*úžitková plocha*) has to be at least 15 m^2. Minimal requirements are set in regard to drinking water, technical possibilities to install cooking facilities, heated water, hygienic facilities, etc.[346]

- Regulation on energy saving

Slovak legislation on regulation of energy saving is based on the EU's Third Energy Package. The key role in the field of the energy efficiency and protection of consumers as the recipients of the relevant performances belongs to the Office for Regulation of the Network Energies.[347] Transposition of the aforementioned EU legislation has been executed under its supervision.

The Act on Energy Efficiency (No. 476/2008 Coll., as amended)[348] lays down obligations to be performed with regard *to* the *use* of energy and the requirements concerning efficiency in the use of energy. In relation to our topic, its Section 6 sets out obligations of owners or managers of blocks of flats.

Energy Performance of Buildings Act 2005 (No. 555/2005 Coll., as amended) in its newly defined provisions effective from the beginning of 2013 sets out the obligations of owners of buildings and other persons involved pursuant to the Energy Performance of Buildings Directive (Directive 2010/31/EU). An owner of the building where certification is required is obliged to have an Energy Performance Certificate also on the day of conclusion of the sale or lease contract relating to a bulding or part thereof (block of flats, flats included). This obligation is in some cases excluded (buildings inhabited for less than 4 months a year or where performance of energy is lower than one fourth of

346 Section 8 of Act No. 259/2008 Coll.

347 <http://www.urso.gov.sk>, 15 December 2013.

348 The latest amendment No. 69/2013 Coll., in force from 1 June 2013.

yearly energy performance, specified historical buildings).[349] For our purposes, it is relevant that the obligation to introduce Energy Performance Certificates for lease of flats or parts thereof is postponed until 31 December 2015.[350]

6.2. Preparation and negotiation of tenancy contracts

- Freedom of contract

Lease of a dwelling notwithstanding of its type or parties thereto is foremost a contractual relationship. Under Slovak law, contractual relationships are governed by a private law principle of private autonomy, a part of which is the prevailing freedom of contract.[351] The contractual parties are thus allowed to mutually agree on terms diverting from the law's default rules, unless it is explicitly forbidden by law or the nature of the law's provision suggests that diverting from it would be impermissible.[352] Clearly, as the distinction between mandatory and default rules in the Civil Code is laid down in a rather broad manner, susceptible to interpretative discrepancies, it may not always be evident which rules of tenancy law are not to be modified or avoided. As the rules are characterized by the social function of tenancy law as expounded on in sec. 6.1 *supra*, and the legal practice sees the landlords' willingness to overcome or mitigate protective regulation favouring the tenant, the clash of these stakes has to be addressed by creative interpretation of those rules.[353] Yet, the general view is that majority of the rules on the lease of flat should be considered mandatory.[354]

Apart from the constraints on the parties' freedom of contract embodied in the mandatory rules reflecting the *protected nature of tenancy*, further constraints may rest in other matters. E.g. the fact that the construction (or purchase) of a dwelling that is being leased out had been *funded by the public funds* entails a duty for a landlord to include certain provisions anticipated by the law into the contract for a lease,[355] i.e.

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349 See also <http://magazin.reality.sme.sk/c/6677991/predavate-dom-alebo-byt-v-inzerate-ma-byt-novy-udaj.html>, 15 December 2013.

350 'Povinnosť mať vypracovaný energetický certifikát budovy', <http://www.energeticky-certifikat.com/legislativa>, 15 December 2013.

351 See e.g. J. Lazar, in J. Lazar et al. *Občianske právo hmotné.* Vol. 1 (Bratislava: IURA EDITION, 2006), 16-19; O. Ovečková, in O. Ovečková et al. *Obchodný zákonník. Komentár.* Vol. 2 (Bratislava: IURA EDITION, 2005), 14.

352 Cf. Section 2 para. 3 CC; For discussion on mandatory/default rules in context of Slovak and European private law see K. Csach, 'Opt-in, opt-out and setting aside: the concept of mandatory and non-mandatory rules in CESL', in *Proposal for a Regulation on a Common European Sales Law – A New Legal Regime for Domestic and Cross-Border Trade*, ed. M. Jurčová & J. Štefanko (Trnava: Typi Universitatis Tyrnaviensis, 2013), 86-87.

353 E.g. such a vital branch as is the permissibility of termination of a lease in a way not provided for by the law, yet not expressly excluded (such as avoidance of a lease by landlord's unilateral act under agreed circumstances), is looked at differently by the parties and although such arrangements clearly circumvent tenants' protection of a lease (which would invalidate them pursuant to the Section 39 CC) they are found in numerous lease contracts, furnished even by municipalities as landlords. See e.g. a contract of lease of flat of Bratislava-Staré Mesto. Available at: <http://zmluvy.egov.sk/data/MediaLibrary/86/86984/Zml_1412_Zverejnen%C3%A1_SM_Z_2013_203_Stromajer_NZ.pdf>, 15 December 2013. Cf. Case of the Supreme Court of the Slovak Republic rep. R 64/2004.

354 See e.g. I. Fekete, 'Nájom a podnájom bytu,' 223.

355 Cf. Section 12 SHDaSH 2010; Section 13 TCL 2011.

instances of social housing and replacement housing for tenants of restituted dwellings. In addition, specific requirements for conclusion and contents of lease contracts result also from the requisite that *public assets* (community or state) shall be managed and distributed in an efficient and transparent manner.[356]

Hence, in preparation of a contract for lease of a dwelling in Slovakia, the options of the parties to negotiate and creatively design their agreement are rather limited by the prevalent mandatory rules of the CC, and these limitations are greater in the public rental sector, where the lease contract usually has to conform to a specific legal standards and sometimes to standards set by municipalities in their self-regulatory competence. The fundamental terms of a lease contract (duration, rent, peculiar duties of the parties), however, are generally open for negotiations of the parties in the private rental sector.

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

Unlike in cases of non-residential premises,[357] the law generally does not envisage a forced assignment of a tenant to a landlord. Private property, be it a dwelling, a room in a flat or a house, enjoys constitutional protection, part of which is generally the owner's own discretion how to use this property.[358] Extraordinary circumstances can, however, justify forced use of one's property – available housing unit – provided it is caused by an emergency situation or acute public interest, it is conducted only for a necessary period, to a necessary extent, if the pursued goal cannot be attained otherwise and compensation is provided.[359] Special legal regulation may provide for justification of limitation of the exercise of a subject's ownership rights in public interest (and we cannot exclude limitation in form of forced assignment of an inhabitant), but these cases would also pertain to rather extraordinary situations such as natural disasters, accidents, catastrophes, great danger to public health, terrorist attack etc. requiring massive evacuation, shelter or emergency accommodation.[360] Such measures would be constitutionally warranted[361] interim solutions, yet have not been used with regard to forced use of habitable dwellings in the recent decades.

Although landlords of dwellings do not have a specific duty to enter into a lease contract in Slovakia, an effect of "forced tenancy" can be nevertheless traced, with regard to

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356 It includes e.g. requirements (and self-regulation) of process of selection of a tenant, form and contents of the contract as well as its necessary publicising. Cf. Municipalities' Property Act 1991 (No. 138/1991 Coll., as amended); State Property Management Act 1993 (No. 278/1993 Coll., as amended); RDaRH 1992; Section 47a, 490 para. 2 and 582a CC; Section 5a et seq. Free Access to Information Act 2000 (No. 211/2000 Coll., as amended) etc.

357 Cf. Section 4 Lease and Sublease of Non-residential Premises Act 1990 (No. 116/1990 Coll., as amended) and Competence of Municipalities in Lease and Sublease of Non-residential Premises Act 1991 (No. 500/1991 Coll., as amended).

358 See Art. 20 paras. 1 and 4 Constitution 1992; Section 1 para. 1 and Section 123 CC. As was mentioned in sec. 6.1 *supra*, the protection is even more far-reaching, if the property is the subject's housing unit.

359 Section 128 CC.

360 See Section 128 para. 2 CC and Section 3 paras. 1 and 2, Section 16 para. 9, Section 21 and 22 of Citizens' Civil Protection Act (No. 42/1994 Coll., as amended).

361 Cf. Art. 20 para. 3 Constitution 1992.

continued leases of tenants of dwellings restituted after the transformation of the era of socialism to their original owners.[362] On one hand, the current private landlords were neither able to terminate these leases until the adoption of TCL 2011, nor could they modify the terms of the lease (esp. the rent) so as to make it at least a feasible venture. On the other hand, the future landlords of most of such tenants, i.e. municipalities as public owners of dwellings that shall be provided to such tenants as replacement housing, have a legal duty to conclude a specific contract of a lease with them.[363] Clearly an extraordinary solution resulting from necessity to settle distorted proprietorial relationships in the country after 1989, it is an exception that proves the rule that tenants cannot be forced onto a landlord in contractual relationships.

- Matching the parties

Given that the lease of a dwelling is protected, an element of which protection is the impossibility of the landlord to terminate the lease at will, and rather limited gamut of options for its termination by landlord in general, the phase of choosing the tenant plays a crucial role in safeguarding a smooth future pursuit of the contractual relationship and in preventing inextricable discords of the parties, leading, not infrequently, to long-lasting eviction litigation. The process of finding a tenant specifically differs in private rental sector, driven solely by market mechanisms, as opposed to the public rental sector, where specific procedures are prescribed or at least anticipated by law.[364] There are also different stakes in the tenant selection process in either rental market, both of which call for wariness of the future landlord. The public rental market is characterized with scarcity of available dwellings, as these are provided under much more favourable conditions (especially with regard to the amount of rent, usually regulated with a price ceiling below the market value) and the demand exceeds supply. Therefore public rentals are very often afforded upon selection procedures favouring citizens in higher need (income limits, social status, young families, etc.) laid down by generally binding regulations of the municipalities,[365] as the predominant owners of public rental housing. Nevertheless, the number of qualified applicants still exceeds the supply. As a result, basically every municipality disposing of a rental dwelling creates lists of potential tenants usually quite long to satisfy majority of them. Some municipalities have even resorted to lottery schemes[366] as a second step in the selection procedure, in order to address the issue of scarcity. In addition, municipalities usually retain a right of the

362 For details of the process and its legal consequences see part 1.4 *supra* (Restituted and privatized ownership in Eastern Europe).

363 See Section 12 para. 1 and 13 para. 1 TCL 2011.

364 See Section 12 RDaRH 1992; cf. Section 9a para. 9 Municipalities' Property Act 1991; Section 13 State Property Management Act 1993.

365 Based on Section 12 RDaRH 1992. See e.g. 'Gen. binding regulation No. 1/2006 of the City of Bratislava', available at: <http://www.bratislava.sk/vismo/dokumenty2.asp?u=700000&id_org=700000&id=77361&p1=52000>, 30 December 2013; 'Gen. binding regulation No. 61/2002 of the City of Košice', available at: <http://kosice.sk/includes/docuStore_getByID.asp?id=1901>, 30 December 2013.

366 See e.g. D. Kráková & M. Kadvanová, 'Byty sa vraj môžu dávať aj inak', *SME*, 6 October 2010, <http://bratislava.sme.sk/c/5579855/byty-sa-vraj-mozu-davat-aj-inak.html>, 30 December 2013 (Discussing the fairness of various selection procedures).

mayor or a special commission to select certain number of tenants by their own discretion[367] disregarding respective lists of applicants.

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

In the *private rental sector*, changes of tenants occur relatively frequently, as a result of the fact that long-term tenancy or tenancy for an indefinite period is normally not an option. As the first measure of wariness, the landlord usually approaches initially relatives and friends to offer the lease of a dwelling to them or people they would recommend, with whom an eventual consensus with regard to maintenance, termination of lease and vacation of the dwelling is conceivable. However, as this way of finding a tenant has a limited scope and is not really apt for commercial leases, the landlords mostly resort to usual marketing tools such as newspaper or internet advertisement,[368] leaflet campaigns,[369] or seek assistance from real estate agents. The law[370] also provides a framework for public (community) assistance in finding a tenant. Landlords may cooperate with municipalities when renting flats; in particular they give a notice to the municipality of availability of dwellings that could not be rented for at least three months. The municipality then has a legal duty to help landlords in finding suitable candidates for an apartment, which is pursued through public communication typical for a given community (information boards, local announcements, direct communication to subjects seeking housing). However, municipal assistance is only effective in smaller settlements. The law, on the other hand, does not address the costs of such assistance, from which it can be inferred that the statutory obligation shall be fulfilled by the municipality free of charge (at least within its minimal standards).

In the *public rental sector*, on the other hand, procedures set forth by the municipalities, as the major rental dwelling owners, must be followed.[371] If a lease of a flat is at stake, according to these municipal regulations, an applicant for a municipal rental dwelling has to file a written application form with the respective municipality, in which he or she generally has to provide information acknowledging he or she meets the municipality's criteria. Usually these include requirements that the applicant

- does not dispose of other housing unit (causation conditions may apply);

- has been inhabiting the municipality for a given period;

- meets certain income limits (minimum and/or maximum);[372]

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[367] Such prerogatives incorporated in a municipality's generally binding regulation are very often subject to public criticism, and with the advance of public access to information on management of the municipalities' property, officials are using such a right seldom lately.

[368] E.g. <http://www.podnajmy.sk/>; <http://www.bezrealitky.sk/>; <http://www.avizo.sk/reality> and many more.

[369] Usually centred around places where potential tenants tend to dwell, such as universities, offices, public spaces surrounding the dwelling.

[370] Section 11 RDaRH 1992.

[371] As mentioned *supra*, it is based on Section 12 RDaRH 1992. Municipalities having at least 5000 inhabitants or ones that are a seat of a district office are empowered to adopt generally binding regulations establishing list schemes of selection. The remaining municipalities, provided they dispose of rental dwellings, have to follow general rules on management with municipal property.

[372] E.g. minimal monthly income of 237,70 EUR in Bratislava (1,2 times the subsistence minimum), see Gen. binding regulation No. 1/2006 of the City of Bratislava; maximum monthly income of 594,27 EUR

- meets specific criteria, if an addressed municipality housing project housing is being applied for (certain social groups, age limit, marriage, children, handicap etc.);

- meets specific requirements of laws, which is especially the case of renting of social housing whose construction or purchase had been funded by state subsidies or grants.[373]

After examination and correction of the application, respective municipality's office enlists the applicant to one of various lists of applicants for a suitable housing project and proceeds with approval and provision of a lease with the applicant (usually based on availability, degree of fulfilment of given criteria, urgency of need, discretion of the mayor etc.).

We have already mentioned that the lease of a house (a building rather than one of more dwellings therein) has a slightly different legal regime.[374] Although *public rental residential family houses* are more of an exception, if a municipality owned such a unit, it would have to follow stricter selection procedure with a municipal council involvement, namely a public tender, auction, direct public lease or a qualified vote of the municipal council in extraordinary circumstances.[375]

- 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?

The law on lease of flat, be it in the public or private rental sector, strictly speaking does not envisage any personal or financial checks on the status of the potential tenant. Yet in private rental practice it is a highly recommended[376] and used conduct of the landlord to perform such checks in order to preventively test the fitness of the potential tenant for a smooth lease relationship.

It is thus generally recommended before signing a contract to make sure that a potential tenant is trustworthy and responsible, that he would be prone to observing the terms of the lease, e.g. that he would neither damage nor destroy the dwelling or its equipment.

It is essential and usual that the landlord verifies the identity of the future tenant and gathers all his contact information (name, date of birth, permanent address, phone and e-mail contact), which are then included in the contract. The landlords ask the potential tenants to present provable documents with this aim in view, such as ID cards. Verification of the official ID card occurs virtually in every pre-contractual negotiation. Everything beyond this may be considered inappropriate as there is no legal obligation of the tenant to furnish any information about himself. As a result, further inquiries are contingent upon the negotiation skills and assertiveness of the parties.

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in Košice (3 times the subsistence minimum), see Gen. binding regulation No. 61/2002 of the City of Košice.

373 I.e. basically applicants' income ceilings according to Section 22 para. 3 SHDaSH 2010.

374 See section 6.1 *supra*. for the discussion of a dwelling in house or block of flats as opposed to a building.

375 See Section 9a paras. 1-3, 5-7 and 9 Municipalities' Property Act 1991; Cf. Section 13 State Property Management Act 1993 for lease of state-owned buildings.

376 See Z. Kollárová 'Prenajímate byt? Pred podpisom preverujte', <http://trading.etrend.sk/trading-poradna/chcete-prenajimat-byt-najskor-preverujte-a-az-potom-podpisujte.html>, 15 July 2013.

Cautious landlords, however, usually make further inquiries into personal status of the tenant, i.e. his or her marital status or employment status from which directly follows tenant's solvency and his or her ability to properly and timely pay the agreed rent and related payments.[377] Moreover, the landlords are recommended to interview the tenant on his other plans. For instance, duration of the tenant's planned residence in the town, study or working plans, number of persons occupying the flat, i.e. information that would help the landlord avoid potential tenants who would prefer economically unfeasible short-duration leases. Landlords tend to be cautious with regard to the way tenants are willing to pay the rent; banking transfers seem to indicate regularity of the tenants income, hence his solvency, as opposed to cash payments. Housing management companies or real estate agents also offer commercial performance of personal checks of tenants based on inquiries and references.[378] Such services are, however, not usually asked for by potential landlords. With the advent of information technologies into everyday business of people in Slovakia, internet research (google, social networks, public registers) into the person of prospective tenant is gaining importance, yet does not occur as a rule in the pre-contractual stage.

In the rental sector with public task, where certain aspects of a person's private and financial status are prerequisites for conclusion of a lease contract, the prospective tenants are required directly by the municipal regulations to provide sufficient proof of their status that contains sensitive personal data by standardized forms[379] and supporting documentation or affirmations (usually personal data, data of family members, reasons for the housing need, proof of income, absence of criminal record). Applicants for such housing are also required to provide their consent with processing of their personal data[380] to the municipality.

- 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?

In the recent years Slovak legislator made a strong move towards liberalization of public access to information on a subject's payment discipline, especially with regard to debt ensuing from public duties, where publication of such information has been specifically made legal. Nowadays, it is therefore quite easy for a landlord to make online research into the existence of a prospective tenant's outstanding debt from social security insurance[381], medical insurance[382], state or local taxes[383]. The extent of such information

377 Even though such inquiries are not considered polite. See *ibid*. (Discussing legal practice and recommendations in such cases).

378 E.g. <http://www.iqit.sk/property-management-specialists/en/property-management.html>, 15 December 2013.

379 See e.g. <http://www.banm.sk/obecne-byty-a-nebytove-priestory/>, 15 December 2013 (for Bratislava-Nové Mesto).

380 Pursuant to the Personal Data Protection Act 2013 (No. 122/2013 Coll.).

381 See Section 171 Social Security Insurance Act 2003 (No. 461/2003 Coll., as amended) and the black-list at: <http://www.socpoist.sk/zoznam-dlznikov-emw/487s>, 15 December 2013.

382 See Section 25a Medical Insurance Act 2004 (No. 580/2004 Coll., as amended) and the black-lists at websites of medical insurance companies, e.g. at: <http://vszp.sk/platitelia/platenie-poistneho/zoznam-dlznikov.html>, 15 December 2013.

is limited according to these acts to statement of the name, address or seat of the debtor and the amount of outstanding debt. In addition, thorough information on bankruptcy proceedings of legal and natural persons is also publicly available in the Business Journal of the SR[384]. Similarly, freely accessible public registers of land[385] and pledges[386] can give a good insight into one's financial solvency based on existing mortgages or debt secured by personal property. Moreover, there are also privately run commercial web-portals[387], allowing their users to register a commercial debtor on one hand, and merging their data with aforementioned public databases into a single searchable database capable of giving a rather complex view of a person's financial status.

Specifically with regard to "bad tenants" in terms of non-payment of their rent, it should be mentioned that certain municipalities[388] have adopted and maintain lists of debtors in their stock (on top of lists of commercial and tax debtors). This activity, however, is rather controversial in terms of legality and ensuing possibility of encroachment on the publicly denounced tenant's rights safeguarded by the data protection legislation as well as private law protection of personality. Data identifying rent payment defaulters (for example by stating their name, apartment number and amount of debt) is personal data reflecting mainly the economic identity[389] of the person. In general, personal information may be disclosed either with the consent of the person in question or by special law (national, international or directly effective act of the EU) that would expressly permit such disclosure.[390] Disclosure of personal data without legal basis (whether in agreement or special law) is thus contrary to the Personal Data Protection Act and as such impermissible and may render sanctions from the Office for Personal Data Protection of the Slovak Republic. As far as rent payment defaulters are concerned, there is no special act that would directly empower a landlord to process tenants' personal data without his or her prior consent. Protection of this act is afforded only to natural (non-commercial) persons[391], hence legal entities as well as entrepreneurs may be generally enlisted in a publicly available form. However, in both cases, inclusion of a "bad tenant" into a list may lead to denunciation of the subject concerned and affect its dignity, honour, reputation and commercial goodwill in cases of entrepreneurs.[392] It is therefore not excluded that tenants, even if rightfully enlisted in a black-list would be

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383 See Section 52 Tax Procedure Code 2009 (No. 563/2009 Coll., as amended) and the black-lists at: <http://www.financnasprava.sk/sk/finsprava/statistiky/zoznamy.html>, 15 December 2013. and on various municipalities' websites for the local tax debts.

384 See Business Journal Act 2011 (No. 200/2011 Coll., as amended) and the journal at: <https://portal.justice.sk/PortalApp/ObchodnyVestnik/Web/Zoznam.aspx>, 15 December 2013.

385 <http://www.katasterportal.sk>, 15 December 2013.

386 <http://www.notar.sk/Úvod/Notárskecentrálneregistre/Záložnépráva.aspx>, 15 December 2013.

387 See e.g. <http://dlznik.sk/; <http://www.registerdlznikov.sk/>, 15 December 2013.

388 E.g. Bratislava-Staré Mesto, <http://www.staremesto.sk/index.php?rain=sk/content/zoznam-danovych-dlznikov>; Podolínec, <http://www.podolinec.eu/clanky-detail/zoznam-dlznikov-najomneho-a-inkasa-za-sluzby-voci-mestu-podolinec/>; Nové Mesto nad Váhom, <http://www.msbp-nm.sk/aktuality/>; Handlová, <http://www.msbp-ha.sk/dlznici.phtml?id3=78170> etc.

389 See Section 4 para. 1 Personal Data Protection Act 2013; Similarly the opinion of the Office for Personal Data Protection of the Slovak Republic, available at: <http://www.dataprotection.gov.sk/buxus/generate_page.php?page_id=994>, 15 December 2013.

390 Section 9 Personal Data Protection Act 2013.

391 Section 1 lit. a) Personal Data Protection Act 2013.

392 Sections 11, 19b, 420 et seq. CC.

able to seek moral or pecuniary satisfaction in civil proceedings from the compiler of the list.

Clearly, a landlord has a rather broad opportunity to legally verify a possible tenant's solvency, yet compilation of lists of bad tenants be it on grounds of rent payment default or other misuse of its rights, would be deemed illegal, since vast majority of tenants of dwellings are non-commercial natural persons protected by the data protection legislation and the Civil Code's personality protection regulation.

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

All information that has been said with regard to the publicly available information relating to the trustworthiness of the tenant applies with appropriate adaptations to the check available on the landlord by the tenant. However, far more than the issue of solvency of the landlord, his actual right to dispose of the dwelling is of the essence to the tenant. The only legally relevant check that the tenant may do is to verify the ownership of the premises in the land registry. The registry is publicly available on the internet[393] and the tenant is able to prove online, at no cost and without presenting any legitimate interest the subject owning the building or a flat he or she is about to lease, as well as any eventual rights in rem of third parties encumbering the property (mortgage, easements). In case of a longer commitment and making any advance payment, a wary tenant should also check that the person listed in the land registry is in fact the negotiating partner offering the premises. This would be performed easily by verification with the official identification card of the alleged landlord, or in case of a legal entity, the ID card of the authorized representative thereof[394]. The person is under no legal obligation to present the ID card to the enquiring potential tenant, yet declining thereof, would probably indicate dubiousness of the intentions of the landlord. Sophisticated swindler-landlord may, of course, have counterfeited the ID card with the real owner's details at hand. For such an event, the real estate agent's practice recommends to support the ID with presentation of other actual documents pertaining to the flat (utility bills, property tax payment attest etc.).[395]

On the other hand, there is no way for the tenant to discover by himself any undisclosed obligations (contractual rights of third parties) pertaining to the dwelling, such as prior leases that may be still in force. Only interviewing of neighbours or thorough check on the trustworthiness of the landlord may suggest his failure in this regard. It is, however, not usual for an average tenant to perform such an investigation.

- Services of estate agents
  - What services are usually provided by estate agents?

393 <http://www.katasterportal.sk/kapor/>, 15 December 2013.

394 The subjects of authorised representatives of a corporation can be, again, easily verified through online checking of the corporation in the companies' register at: <http://orsr.sk/>, 15 December 2013.

395 cf. <http://www.living.sk/living_new/clanky/zbystrit-pozornost!>, 15 December 2013.

The usual demesne of a real estate agent, as far as his or her obligations toward his or her clients are concerned is to:

- serve as an agent/broker for sale, purchase and lease of immovable property (apartments, houses, land, non-residential premises);
- advise the client on the economically feasible price;
- monitor and search for immovable property which would correspond to the wish of a specific customer;
- take part in immovable property site visits with potential clients and conduct business meetings with them;
- monitor the newest trends and novelties on the immovable property market;
- post offers relating to sale, lease or purchase of immovable property on the websites;
- create databases of clients and of immovable property;
- be in charge of all bureaucratic work relating to sale, lease or purchase of immovable property.

- 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?

The role of estate agents or their specific rights and duties *vis-à-vis* their clients are not regulated *expressis verbis* in any particular legal provisions. Hence, their position and duties as regards sale, lease or purchase of immovable property would fall within general contract law. The contractual and related activities of agents are performed as under specific trade authorization. Details on their performance can only be obtained from their marketing materials or activities,[396] as well as from publicly available feedback of clients willing to share their experience.[397]

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

There is a wider data on the commission of the real estate agents with regard to sales of property, which is their primary business plan. These fees are generally estimated at 3% - 7% of the realized sale price of the real property.[398] In case of leases the usual

[396] See e.g. details on real estate agents' activities structure as marketed on internet recruitment portals, <e.g. www.profesia.sk> or <www.kariera.sk>, 15 December 2013.

[397] It should also be noted that a great portion of the content of the contractual relationship between an agent and his client forms a protected trade secret and the available information is usually not supported by officially issued statistics.

[398] The banks require to decrease the marketed/realized sale price of property, which has been valued, specifically by this ratio (the agent's commission) for the purposes of granting a loan secured on it. See e.g. 'Odporúcané požiadavky na znalecké posudky o všeobecnej hodnote nehnutelností, podávané externými znalcami pre úcely zriadenia záložného práva v súvislosti s úvermi poskytovanými v OTP Banke Slovensko, a.s.' (1 February 2012). However, the actual fees of the agents may vary and go way

commission of the real estate agent amounts to the sum of one month's rent of the respective property, and only one of the parties is paying it.[399] Some clients (landlords) confer the real estate agent the whole management of the rental relationship for a regular monthly fee. The real estate agent then finds the landlord and procures the whole course of the relationship including maintenance of the premises and satisfaction of the tenant's additional demands. In such a case the commission ranges between 10 to 20 percent of the monthly rent.[400] The commission is under no specific statutory limitation, only the invalidity of extensive commission due to its conflict with good morals may come into play[401], however, given the level of competition between the real estate agents nowadays and the market-economy nature of this segment, too extensive commissions should not be a major problem in the lease segment. Similarly, the question of who should be paying (or be obligated to pay) the commission is not a topical issue in Slovak legal discourse, since economically – directly or indirectly – the costs will most probably be borne by the tenant or buyer.

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

As mentioned earlier, generally the doctrine of freedom of contract prevails. Pre-contractual negotiations do not incur specific stricter duties of care towards parties preparing a contract for a lease of a dwelling. In particular, Slovak law does generally not make distinction in legal consequences or procedural position of the parties when considering contractual or delictual (tortious) liability. Hence, an overarching doctrine of pre-contractual liability (*culpa in contrahendo*) that would cover aspects of desirable behaviour in the pre-contractual stage is not anchored in the law, yet such a doctrine is gradually being developed in the last decade[402] and is gaining recognition in courts[403] as well. Although we do not recognize a denominate institution of culpa in contrahendo,

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beyond the stated percentage. In 2008, at the peak of the real property boom, the fees of the agents as declared by anonymous statements of the brokers could have amounted even to 20% of the sale price with a fixed lowest fee of around 1.700,- EUR regardless of the kind of property sold, although the officially declared fees were still at 3%-6%. Cf. P Jamrichová, 'Realitné kancelárie bohatnú na províziách' (21 July 2008), <http://living.hnonline.sk/clanky/hnreality/realitne-kancelarie-bohatnu-na-proviziach>, 15 December 2013.

399 Z. Handzová, 'Ako (si) výhodne prenajať byt', *Pravda*, 21. 06. 2010, sec. Bývanie, <http://byvanie.pravda.sk/peniaze-a-paragrafy/clanok/20040-ako-si-vyhodne-prenajat-byt>, 15 December 2013.

400 *ibid*. The experience of real estate agents shows that this latter form of service (complete management of the lease) is more of an exception in contemporary Slovakia.

401 see section 39 CC.

402 See K. Csach, 'Doktrína culpa in contrahendo v obchodnom práve - reakcia na článok', *Bulletin slovenskej advokácie* 12, no. 5 (2006): 36-46; J. Štefanko, 'Culpa in contrahendo alebo zodpovednosť za zavinenie v predzmluvných vzťahoch', *Právny obzor* 91, no. 3 (2008): 170-189; J. Mitterpachová, 'Culpa in contrahendo v slovenskom práve a nároky z jej porušenia', *Bulletin slovenskej advokácie* 19, no. 3 (2013): 16-25.

403 Initially only in Czech courts (exerting much influence on the legal developments in Slovakia), see e.g. K. Csach, 'Zodpovednosť za culpa in contrahendo podľa Najvyššieho súdu Českej republiky - nasledovaniahodné riešenie?', *Justičná revue* 61, no. 1 (2009): 48-56; and in Slovak courts, see Case No. 4 M Cdo 23/2008 of the Supreme Court of the Slovak Republic, available at: nsud.sk (although employing rather dubious definition limiting the doctrine to caused invalidity of a contract).

provisions of the private law codes provide for limits for ruthless conduct of negotiating parties that would render liability[404] of the wrongdoer.

The parties negotiating a lease agreement, thus, according to the general provisions of prevention, must not exercise their rights (freedom of contract etc.) infringing the legitimate interest of others or in a way contradictory with good morals.[405] While formatting a contract, they have to avoid everything causing potential dissent[406] and avoid causing invalidity of their agreement.[407] In their actions, they have to prevent infliction of any damage.[408] This duty (of delictual nature) pursuant to Section 420 CC imposes liability on the basis of culpability and covers also the liability of auxiliaries (e.g. employees or agents of a potential landlord). A person is also liable, if he or she caused damage by an intentional act *contra bonos mores*[409]*,* which is not limited to pre-contractual relations and is conceivable in tainted landlord-tenant relationships. Abridgement of such damages by court would be impossible.

It is noteworthy that specific landlord-tenant pre-contractual duties rendering liability are neither set forth in the law, nor have they been subject to any reported litigation, and thus subject to court interpretation of these duties. Nevertheless, in the aforementioned legislation and related case law, we may observe certain classes of duties present in lease of flat pre-contractual relations. First, there is a rather broad duty of care, including prevention of occurrence of physical damage to the property or health of the negotiating party. The landlord would thus be liable e.g. for injuries suffered by shabby condition of the dwelling during its preliminary inspection. Second, the duty of care imposes on the parties also the obligation to give at least some regard to the reasonable expectations of the other party. I.e. situations of breaking off negotiations without reasonable grounds,[410] already mentioned avoidance of grounds for invalidity of the future contract, prohibition of misuse and disclosure of confidential information gained during the negotiations of a lease, notwithstanding conclusion of the contract.[411] Third, the parties should avoid making fraud or misrepresentations that would render the contract voidable[412]. The legal

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404 In the Slovak legal environment, majority of such concrete cases would underlie the regime of liability pursuant to Section 415 in connection with Section 420 CC.

405 Section 3 para.1 CC.

406 Section 43 CC.

407 Section 42 CC.

408 i.e. damage to property, life, health of any person or to the environment. See Section 415 CC.

409 Section 424 CC; cf. also Section 450 CC.

410 Making up for most of case-law related to these situations. See e.g. Supreme Court of the Czech Republic Rcz 82/2007 (establishing test of illegal breaking-off of negotiations, i.e. the negotiations (1) have reached a stage where one of the parties in the contracting process was in good faith that the supposed agreement will be concluded, (2) this supposition had been reached due to the behaviour of the other party and (3) other party has broken-off the negotiations without having had a legitimate reason.).

411 In Slovakia, the protection of confidential information in the pre-contractual stage is expressly accepted in the commercial legal relations (Sec. 271 CommC). A contractual party has to make clear the confidentiality of the information, without a need of a specific form. The wrongdoer is obliged to compensate for the damage pursuant to Sec. 373 et seq. CommC (liability regardless of culpability). This duty can be analogically accepted in pure civil relations, as well, with the liability and remedy provisions of the CC (Sec. 420 CC) as stated above. If the information is considered a commercial secret according to Secs. 17-20 CommC, the protection is stricter and the remedies are the same as provided for in unfair business practices (see Secs. 51, 53-55 CommC). See J. Štefanko, 'Culpa in contrahendo alebo zodpovednosť za zavinenie v predzmluvných vzťahoch,' 184-185.

412 I.e. substantial error, which the other party caused or should have been aware of. See Secs. 49a, 42 and 420 CC.

consequences of misrepresentations of non-substantial nature, are a debated issue,[413] nevertheless remedy in form of damages arising from the general duty of prevention cannot be excluded.

Finally, as conclusion of a contract for a lease of flat is very often pursued with involvement of subjects of lesser social and economical capacity, usually a consumer, further duties and bans following from the general contract law and private law consumer protection duties should not be disregarded. The parties, namely, may not misuse various kinds of distress of the other party and thus conclude an obviously disadvantageous contract.[414] Paradoxically, in lease of flat cases, this protection is more relevant if the landlord is the disadvantaged party, because, notwithstanding the circumstances and the content of the contract thereupon concluded, there are hardly any terms disfavouring the tenant that could be validly agreed, due to prevalent one-sided mandatory nature of the lease of flat regulation.

Summary table b) "Preparation and negotiation of tenancy contracts"

	General lease *lease of a building*	Lease of flat *(including municipal and public housing stock)*	Lease of flat *social housing lease (SHDaSH 2010)*	Lease of flat *replacement housing for lying tenants of resitituted buildings (TCL 2011)*
Choice of tenant	*generally:* free-market based (high level of publicly available data may be utilized) *public housing stock* (rare): public tender, auction, direct public lease or a qualified vote of the municipal council	*generally:* free-market based (high level of publicly available data may be utilized) *municipal housing stock*: procedures adopted by generally binding regulations of the municipalities (long lists, higher	procedures adopted by generally binding regulations of the municipalities (long lists, higher demand, merit based), statutory selection criteria of SHDaSH 2010 have to be respected (income merit, social merit, availability).	subject of tenant very specific (time-limited regime), timely application needed; municipal administrative procedure assessing the housing need of the applicant followed by a decision

[413] J. Gyárfáš, 'Inštitút „representations and warranties" v slovenskom práve' *Bulletin slovenskej advokácie* 19, no. 3 (2013): 28 et seq. (discussing various aspects of the common law concept of representations and warranties in the Slovak contractual practice).

[414] See Section 49a CC. This would render the contract voidable.

		demand, merit based) *state housing stock* (rare): statutory proposal process (redundant stock)		
Ancillary duties	no specific regulation (general delictual duty of care)			

6.3. Conclusion of tenancy contracts

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

In cases where an owner or a tenant[415] of a dwelling permits a subject to use and inhabit a dwelling without the intention of the parties to conclude a tenancy contract, such use would be considered a lawful **licence**, however, with only a legal basis derived from the right of the licence provider. It is fully contingent upon the continuation of the consent of the owner/tenant whether the use persists, and due to the fact that such an arrangement lacks the fundamental will[416] of the parties to be bound by it in a manner similar to a lease. No rights and duties between parties to such licence can be derived or extended from the regulation on lease of flat in the CC. The courts[417] do not even allow such extension of lease regulation *per analogiam legis* (Section 853 para. 1 CC) and specifically not with regard to the necessity of replacement housing as a prerequisite of eviction.

In terms of conclusion of such agreement/arrangement no formal or material conditions are set forth by the law, but no specific protective rules for the licensee are provided for either.

If, on the other hand, a user occupies a dwelling **without any specific permission** of its owner or tenant (squatting-like situations), or the alleged lease has been void *ab initio*, the use of a dwelling is short of any legal basis whatsoever, no lease-like rights or duties

415 Tenant's conduct, which would enable a third party occupy a leased dwelling in breach of the lease agreement could constitute a gross breach of the lease contract and could be risen as grounds for its termination. Cf. Section 711 para. 1 lit. c) CC.

416 Usually no legal act in terms of Section 34 CC, entailing anticipated legal consequences.

417 See Case No. 26 Cdo 320/2005 of the Supreme Court of the Czech Republic and cases referred to therein. Available at: nsoud.cz.

between the owner and the user are construed by law and potential eviction cannot be deferred by a request for a replacement housing.[418]

In addition, the relevant case law suggest that not even tacit non-conduct of an owner of a dwelling, nor a mere fact that a user lives in a dwelling and the landlord (owner) requires "rent" for use of the dwelling, which is then paid and accepted by the owner, should be deemed an implied conclusion of a lease contract. The term "rent" is often used by such parties also to denote payments equivalent to settlement of unjustified enrichment of the user of a dwelling without legal grounds.[419]

Finally, as under the Slovak law lease is considered a personal obligation, not a real right (such as an easement), long term use of a dwelling of a good-faith user cannot amount to positive prescription (*usucapio*) of a lease.[420]

There are then further arrangements where there is *de iure* no continuing lease between the owner (landlord) and the tenant, however the law allows the rules on **lease of flat** to govern **by analogy** situations similar to a lease by their nature (Section 853 para. 1 CC). Most of all, it is the former tenant's right of habitation of a dwelling - limited in time and scope, existing from the point of termination of a lease up to the elapsing of a period necessary to clear out a dwelling or until a replacement housing has been provided.[421] Not a full lease is thus created, it is an obligation right, it does not enable the user (tenant) to dispose of the dwelling and the transfer of a lease upon tenant's death is also excluded. Similar rights (analogy to a lease) are afforded by the case law[422] to various instances in which a subject was enshrined with an original right of use of a dwelling, which was later extinguished (and replacement housing is anticipated); e.g. one of co-tenants whose common tenancy had been repealed;[423] former co-tenant of a dwelling in a cooperative, who does not inherit a membership share in the housing cooperative;[424] former co-owner upon extinguishing of co-ownership of a dwelling;[425] former spouse upon divorce from the owner of an inhabited dwelling.[426]

Clear dividing line should be drawn between a lease and a **real right of habitation** of a dwelling, which may functionally resemble a lease, as under such arrangement the ownership and use of a dwelling is also distributed to different subjects. Such a real right (an easement) can be created by an agreement between the owner of the dwelling and the beneficiary, which unlike a lease has to be executed in writing and registered in a land register to ensue;[427] or through its long-term factual performance by a good faith beneficiary (positive prescription).[428] Generally the rules on lease are not used for such an arrangement. The beneficiary merely takes over a complex part of the owners rights, namely ius utendi et fruendi of the dwelling and if no specific arrangements are provided

418 Cf. Case of the Supreme Court of the Slovak Republic rep. R 89/1998.
419 I. Fekete, 'Nájom a podnájom bytu,' 228-229.
420 Cf. Ibid., 219.
421 See ibid., 222.
422 See generally Case No. 26 Cdo 320/2005 of the Supreme Court of the Czech Republic.
423 Rcz 55/1998.
424 Case No. 26 Cdo 1285/2000 of the Supreme Court of the Czech Republic.
425 Rcz 35/1994, Rcz 22/1999.
426 Case No. 26 Cdo 839/2000 of the Supreme Court of the Czech Republic.
427 See section 151n et seq. CC.
428 Section 151o para. 1 and section 134 CC. The law requires ten years of use of the dwelling by the beneficiary who has to be in good faith as to the existence of the easement throughout the period.

for in the contract, he or she has to cover also the costs of use and repair of the dwelling.[429] Unlike lease, such a right cannot be transferred upon death of the beneficiary to another person and can extinguish or be abolished only under specific circumstances.[430]

Last, a contractual agreement in which an owner of a dwelling provides the use of a dwelling to another party gratuitously and the parties intend to be bound by such an arrangement is to be distinguished from a lease. Such a **gratuitous loan** (*commodatum*) as a special contractual type[431] has much less comprehensive rules in the Civil Code, virtually no extensive protective provisions for the continuation of the use as compared to a lease of dwelling and it would hence be up to the parties to construct specifically the terms of their agreement.

- 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.

Distinctive contractual types recognized by the Slovak private law should be distinguished from the lease of a dwelling, as these other types do not generally serve the purpose of satisfying the permanent housing need of an individual or due to their characteristics (space, rights towards the use of the habitable premises etc.) create a weaker personal tie of the inhabitant to those premises.

Lease of a habitable room in facilities designated for permanent housing is formally left out as a separate contractual sub-type of a lease.[432] It should be understood as a separate kind of a lease satisfying the permanent housing need of an individual, which is taking place in permanent housing facilities, such as lodging houses, pensions, houses of flatlets, quarters. It relates to a room designated to the tenant. Despite the lack of express regulation, such a lease is also a protected tenancy in terms of a lease of dwelling.[433] The regulation of such lease is rather concise and is limited to aspects that distinguish it from the lease of a dwelling, i.e. (1) if there are more persons enabled to use a single room, no co-lease or marital co-lease ensues[434]; and (2) in case of eviction, the tenant may only be entitled to replacement lodging.[435] For all other features of the tenancy regulation on a lease of flat should be, with appropriate adaptations, applied by the analogy of law.[436]

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429 Section 151n para. 3 CC.

430 Section 151p CC.

431 See section 659 et seq. CC.

432 Section 717-718 CC.

433 K. Plank, in P. Vojčík et al. *Občiansky zákonník. Stručný komentár.* (Bratislava: IURA EDITION, 2008), 939 (inferring this from Section 718 CC); cf. chapter 1 *supra* for the features of "protected lease".

434 See Section 717 para. 2 CC.

435 See Section 718 CC.

436 K. Plank, in P. Vojčík et al. *Občiansky zákonník*, 939.

Contract of accommodation[437], on the other hand, is an arrangement under which a housing provider (e.g. innkeeper) for a fee provides temporary accommodation to client for an agreed period or for a period contingent on the purpose of accommodation and the accommodation is offered in facilities determined for that purpose (i.e. hotels, dormitories, hostels and other facilities). Unlike a lease of dwelling, under this contract the client is not satisfying his or her permanent housing need, rather a short-term commercial service. The housing is not "protected", as rules on lease of a dwelling are not even applied by analogy and its legal regulation is mostly dispositive (default). Depending on the agreement, the housing provider, along with housing, ensures connected services (cleaning, heating, water, electricity supplies, internet connection etc.) that may go way beyond having a "place to stay"[438]. As the object of such contract as well as the definition of "facilities" subject to this regulation are purpose oriented, this regime would cover wide range of establishments, even those that are fit for general letting, e.g. rooms in private houses offered for commercial recreational accommodation, notwithstanding whether the housing provider is occupying such establishment, too.[439]

Time sharing contract, as transposed to the Slovak legal order is a contract under which a trader undertakes to provide a consumer with the right to use of one or more overnight accommodation facilities for more than one period of occupation and the consumer undertakes to pay the agreed price. The contract is concluded for a duration of more than one year.[440] It is understood as a subtype of a lease contract,[441] yet with completely separate legal regulation that follows the provisions of the Directive 2008/122/EC. Clearly, such arrangement is not protected as lease of dwelling, its purpose lies in recreational needs of an individual addressed in tourism and it is thus similarly as contract for accommodation aimed at commercial provision of a service. By virtue of historical use or economic relevancy of time sharing contracts, these arrangements are negligible in Slovak legal environment, as yet.[442]

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

The rules on lease of flat in the Civil Code generally do not prescribe any formal requirements for a valid conclusion of a contract. It may be concluded orally, implicitly or in writing, which is recommended, as the lease contract is normally meant to regulate

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437 Secs. 754 et seq. CC. See also R. Dobrovodský, 'Zmluva o ubytovaní – komentár', in D. Dulaková, I. Fekete, A. Dulak et al. *Zmluvy o prenechaní veci na užívanie. S komentárom.* (Praha: C.H.Beck, 2012), 583-587.

438 E.g. meals, service, social/cultural establishments, transportation etc.

439 See generally K. Plank, in P. Vojčík et al. *Občiansky zákonník*, 1009 et seq.

440 Section 4 para. 1 Consumer Protection in Provision of Certain Services of Tourism Act 2011 (No. 161/2011 Coll., as amended); cf. Art. 2 (1) a) Directive 2008/122/EC.

441 See L. Tichý, 'Právne formy užívania cudzej veci', in *Návrh legislatívneho zámeru kodifikácie súkromného práva*, ed. J. Lazar (Bratislava: Ministerstvo spravodlivosti SR, 2008), 209. The time sharing regulation is envisaged to by systematically included into the regulation of a lease in the developed new Civil Code.

442 For thorough analysis of time-sharing in Slovakia, see A. Dulak, 'Timesharingová zmluva', in D. Dulaková, I. Fekete, A. Dulak et al. *Zmluvy o prenechaní veci na užívanie. S komentárom.* (Praha: C.H.Beck, 2012), 662-771.

long-term relations.[443] Section 686 para. 1 CC anticipates the parties to generate a written record of the content of the contract, if not concluded in writing. The absence of such a record does not, however, invalidate the lease, but is of great importance in potential court or other proceedings.[444] If a party to an oral lease contract would refuse to afford cooperation in generating the record of the content of the lease, the other party would be entitled to sue for performance of its duty. This regime of informal contracting holds true for subtypes of lease of flat (service flat, special purpose flat, flat in a special purpose block of flats as well as flat in a cooperative ownership), as expounded on earlier.

As far as general lease (lease of a building, e.g. family house) is concerned, the Civil Code requires neither a written contract, nor a record of its content.

However, as most of the landlords are public entities (usually municipalities) rules on management of public assets and its transparency have to be taken into account. Thus, flats in municipal ownership[445], ownership of a higher territorial unit or state have to be in writing, with the consequence of invalidity of such a contract. The laws are even more articulate specifically with regard to a lease of dwelling in cases of social housing and replacement housing for tenants of restituted dwellings.[446] Written form of the contract in those instances is indispensable also due to the publication requirement in the realm of public contracting.

In addition, a valid sublease of a flat, as a rather common residential housing arrangement requires quite different formal prerequisites,[447] notwithstanding the nature of parties thereto. Although the contract of sublease itself as between the sublessor(tenant) and sublessee need not to be executed in writing, unless a written consent of the landlord has been furnished, the sublease is void *ab initio*.[448]

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

No payments by any of the parties are required by law with regard to the conclusion of a contract for a lease of flat.

- registration requirements; legal consequences in the absence of registration

443 K. Plank, in P. Vojčík et al. *Občiansky zákonník*, 870.

444 See R 29/1968; R 34/1983.

445 Pursuant to Section 6 para. 6 Municipalities' Property Act 1991 (No. 138/1991 Coll., as amended) any legal act whereby a municipality disposes of its assets shall be executed in writing, otherwise it shall be invalid; cf. also Section 6 para. 6 Higher Territorial Units' Property Act (No. 446/2001 Coll., as amended); and Section 13 para. 2 State Property Management Act 1993 (No. 278/1993 Coll., as amended).

446 Section 12 para. 1 SHDaSH 2010; Section 13 para. 1 TCL 2011.

447 See Section 719 para. 1 CC.

448 Cf. Case of the Supreme Court of the Slovak Republic rep. No. 3 Cdo 157/2002. Not only would such contract be void, sublease without the landlord’s written consent would also raise grounds for termination of the lease on landlord’s notice. See Section 711 para. 1 lit. d) CC.

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

There are several governmental information systems that relate to one's tenancy and legal standing of the tenant. The rule is, however, that no registration in any system has any bearing on the validity of the lease contract or the mutual rights and duties of its parties. The land register, for instance, does not keep track of lease of flat arrangements at all.[449] Registration of the landlord renting a flat or other immovable with the tax authority[450] his sole responsibility towards the agency, with potential administrative law or criminal law consequences if omitted, but the tenant usually does not even know about the performance of landlord's taxing duties. A tenant is also subject to a public law duty to register his residence or temporary residence with the respective municipality.[451]

Although not a registration requirement, a specific legal regime to the same effect has been in place since 2011, under which every contract of a public entity, but for a few exceptions, has to be made publicly available, in a central register or at the website of the entity (such as a municipality).[452] Although a valid contract, the Civil Code precludes such mandatorily disclosed contracts from coming into force, prior to their publication. If, within three months of the conclusion of the contract or from the moment a necessary approval of a competent authority was granted, the contract has not been publicised, it is deemed not to have been concluded at all.[453] Since this regime obviously applies to a lease of flat and to numerous public task landlords, virtually every municipality or governmental entity disposing of dwellings discloses a copy of the lease agreement, if they want it to be enforceable.[454]

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

A subject's decision to convey the use of a flat to a different person is a matter reaching beyond mere commercial feasibility of the venture. Landlords may be more susceptible to exerting their view of an apt tenant, as his or her characteristics, in the general meaning of the word, form the environment of the habitable space, the tenants' collective and the whole milieu it is situated in. Conclusion of tenancy contracts is thus a rather discrimination-prone situation. There are rules on various levels relevant for Slovakia striving for effective elimination of all forms of discrimination. Slovakia is a

449 But cf. Section 1 para. 1 Cadastre Act 1995 (No. 162/1995 Coll., as amended), for lease of land for at least five years.

450 See Section 49a Income Tax Act 2003 (No. 595/2003 Coll., as amended).

451 See Sections 3 and 8 Residence Reporting Act 1998 (No. 253/1998 Coll., as amended).

452 For details see Section 5a et seq. Free Access to Information Act 2000 (No. 211/2000 Coll., as amended).

453 Section 47a para. 4 CC.

454 Such broad scope of public disclosure raises the issue of data protection and perhaps personality protection, the Free Access to Information Act 2000, thus, allows to ink out information in the contract otherwise protected by special regulation (such as Personal Data Protection Act 2013). Public disclosure of concrete terms of contracts concluded by public entities was made a vital point of general interest, so the respective provisions of the CC are explicitly promoted to mandatory rules of public law with conflict of laws overriding effect. See Section 853 para. 3 CC.

signatory to all relevant international human rights conventions barring discrimination in exercising one's rights.[455] The protection against discrimination on national level is framed by Art. 12 of the Constitution 1992 guaranteeing equal treatment of all humans with regard to their rights and dignity and their rights shall be guaranteed notwithstanding their sex, race, skin colour, language, faith and religion, political or other views, national or social origin, adherence to a nationality or ethnic group, property, kin or other standing. A direct reflection of the development of anti-discrimination legislation on the EU level, rather than a product of local societal tendencies,[456] Slovakia has been protecting persons from discrimination since 2004 in an umbrella regulation of the Anti-Discrimination Act 2004.[457] It provides for equal treatment[458] and ban with regard to all sorts of discrimination,[459] it calls for use of good morals to extend the definition of discrimination and for a pro-active conduct of relevant subjects to prevent discrimination.

As far as conclusion of a contract of lease of flat is concerned, the restrictions on discriminatory conduct are relevant, as the equal treatment principle shall be under Section 5 para. 2 lit. d) Anti-Discrimination Act 2004[460] applied to access and provision of goods and services including housing, which are provided to the public by legal persons or entrepreneurs. The adherence to this principle specifically with regard to duties of service providers (comprising commercial provision of housing) is emphasized in the Consumer Protection Act 2007.[461] From this follows that the restrictions on discriminatory conduct in the negotiation stage are anticipated only in cases of professional landlords, i.e. any legal persons (including municipalities or managers of state-owned property) or those natural persons that dispose of the relevant business licence[462].

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455 I.e. Universal Declaration of Human Rights of 1948 (art. 2 and 8); International Covenant on Economic, Social and Cultural Rights of 1966 (art. 2 (2)); International Convention on the Elimination of All Forms of Racial Discrimination of 1965; The Convention on the Elimination of All Forms of Discrimination against Women of 1979; The Convention on the Rights of the Child of 1989; Convention on the Rights of Persons with Disabilities of 2006; Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (art. 14 and Protocol No. 12 to the Convention); Framework Convention for the Protection of National Minorities of 1995 (art. 4) etc.

456 M. Čermák (ed.), *Diskriminácia na Slovensku: Hľadanie bariér v prístupe k účinnej právnej ochrane pred diskrimináciou* (Košice: Poradňa pre občianske a ľudské práva, 2012), 17.

457 No. 365/2004 Coll., as amended. Relevant anti-discrimination directives were also partly transposed to further legislation.

458 I.e. irrespective of sex, religion or belief, race, nationality or ethnic origin, disability, age, sexual orientation, marital status, family status, colour, language, political or other opinion, national or social origin, property, lineage or other position. See Section 2 para. 1 Anti-Discrimination Act 2004.

459 The outlawed discrimination conduct includes instances of direct and indirect discrimination, harassment, sexual harassment, an instruction to discriminate, unjustified sanction (victimisation) and, above the EU legislation, also the incitement to discrimination. For definitions of such conduct see Section 2a Anti-Discrimination Act 2004.

460 Cf. e.g. Art. 3 (1) (h) EU Council Directive 2000/43/EC.

461 See Section 4 para. 3 and 8 Consumer Protection Act 2007 (No. 250/2007 Coll., as amended).

462 According to Section 4 para. 1 Small Business Act 1991 (No. 455/1991 Coll., as amended), a business licence for a lease of flat will be necessary, if other services along with the basic services pertaining to a lease are provided by the landlord. The explanatory memorandum to the Small Business Act 1991 explains that the notion of "basic services" should encompass a range of services that ensure (qualify) the possibility of use of the asset by the lessee. E.g. the supply of heat and hot water, electricity, gas, disposal of municipal solid waste, disposal of waste water or sewage disposal, chimneysweep services, cleaning of common areas, etc.

Hence a professional landlord under the anti-discrimination legislation, in the choice-of-tenant stage, must refrain from:

- direct or indirect conduct that would effectively lead to less favourable treatment (most of all choice) of a potential tenant based on discriminatory grounds[463], in comparison to a potential third party proxy in an analogous situation. The practice of NGOs monitoring discrimination in Slovakia has recorded cases of refusal of conclusion of a tenancy contract with a person of African or Roma origin.[464]

- harassment of a prospective tenant on discriminatory grounds, which would include various instances of conduct that creates an invective environment intended or amounting to encroachment of the tenant's freedom or human dignity. Similarly, sexual harassment of a prospective tenant is prohibited. In practice, harassment would occur during viewing of a flat or mutual communication of the potential parties;

- directing or inciting other subjects (agents, employees etc.) to discriminate certain classes of tenants[465];

- unjustifiably sanctioning prospective tenants for realizing their rights pursuant to the anti-discrimination legislation.

Legal remedies available under the Anti-Discrimination Act 2004 to subjects, who have been discriminated against, largely resemble remedies in cases of protection of person in general civil law[466]. Although the act generally states that a plea for protection of breached rights under the Anti-Discrimination Act 2004 can be brought to a court, in fact the turned-down or harassed prospective tenant would specifically be able to seek factual (non-monetary performance) or monetary satisfaction for the breach, unless the discriminatory conduct continues, which would also enable a plea for injunction. If damage has been incurred to the tenant by the landlord's breach of the duty not to discriminate, damages can be sought too. However, no right of a prospective tenant to the conclusion of a tenancy contract can be inferred from the duty of equal treatment in provision of housing services.[467] Breach of this duty can, yet, become costly for landlords, threatening potential tenants' lawsuits. The core of the protective measures against discrimination provided for in the act rests in procedural favouring of the subject claiming to have been discriminated against. The burden of proof of "non-discrimination" would, namely, be shifted to the landlord, if the tenant can present facts that reasonably imply discrimination of the claimant.[468]

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463 See n. 458 *supra*.

464 Cf. <http://diskriminacia.sk/faq/#3>, 15 December 2013; <http://diskriminacia.sk/faq/#4>, 15 December 2013.

465 E.g. Internal ordinance of an entrepreneur in housing services or a municipality that would restrict tenancy to Roma tenants (which is intertwined with direct discrimination). See Š. Ivanco, *Povedzme nie diskriminácii* (Košice: Poradňa pre občianske a ľudské práva, 2010), 29. <http://poradna-prava.sk/dok/manual2010-web.pdf>, 15 December 2013.

466 Section 13 CC; cf. Section 9 Anti-Discrimination Act 2004; i.e. injunction to stop a conduct, (if possible) curing the breach of rights, or seeking satisfaction in form of moral or monetary redress.

467 Theoretically, it would be conceivable to sue for change of contractual terms of a tenancy contract concluded in breach of the equal treatment principle – as a form of "curing of the breach of rights" under the present legislation. However, given the privity of the contractual creation and the general impossibility of replacement of the mutual will of the parties by a court's decision (unlike invalidating the contract or its parts) success of such a claim would be highly improbable.

468 See Section 11 para. 2 Anti-Discrimination Act 2004.

Since large part of the private rental sector is administered through private non-entrepreneurial landlords, we should stress that the above-mentioned anti-discrimination legislation would not apply to their conduct. Non-entrepreneurial landlords (notwithstanding the number of flats they are letting) are under no duty of equal treatment of their prospective tenants. They could still be put under scrutiny with regard to their eventual discriminatory conduct, but only in frames of general Civil Code rules on protection of a person, as through a conduct described above as "discrimination", one's personal dignity, professional, social or personal standing can be harmed notwithstanding the subject of its exercise. Claimants in those instances would be able to seek analogous remedies, but without enjoying the shifted burden of proof or the possibility to be represented in court by an anti-discrimination NGO.[469]

Approaching the matter from the landlord's side, it is similarly not conceivable to scrutinize potential tenant's discriminatory conduct towards a landlord (e.g. the impact of the landlord's gender or race on the tenant's will to enter into a contract) in terms of Anti-Discrimination Act 2004, as there is no service being provided from his side to the landlord. Aforementioned remedies under general civil law would be applicable in such cases alike.

When discussing measures and remedies against discrimination in Slovakia, one should appreciate that the public awareness of discriminatory conduct is gradually rising, yet only a minor percentage of affected individuals resort to legal remedies for such conduct and the anti-discrimination litigation is thus rather scarce. A recent study of an NGO dedicated to the state of discrimination in Slovakia[470] has shown that the ratio of perceived discrimination among general public reached 15.8% in 2010-2012 and only 4.7% of those, who faced discriminatory conduct sought any legal help whereas 92% of the general public did not defend themselves anyhow for various reasons.[471] The ratio of perceived discrimination and actual use of legal remedies was higher among targeted groups of respondents (network of NGOs, Roma community).[472] Furthermore, empirical research also shows that since the enactment of the Anti-Discrimination Act 2004 as of July 2012 only 120 court cases[473] in anti-discrimination matters have been decided with a final judgement and in only one case a court has awarded (with a final judgement) a financial compensation for discriminating persons in their access to housing.[474]

- Limitations on freedom of contract through regulation

469 Cf. Sections 9a and 10 Anti-Discrimination Act 2004.

470 For details, methods and outcomes of the study see M. Čermák (ed.), *Diskriminácia na Slovensku*. Available at: <http://diskriminacia.sk/diskriminacia-na-slovensku>, 15 December 2013.

471 See M. Čermák (ed.), *Diskriminácia na Slovensku*, 27 et seq., especially p. 47.

472 i.e. 59% of perceived discrimination among respondents in the targeted NGOs network with 45,2 % thereof undertaking some protective action; and 78% (24%) in the Roma community respectively. See *ibid*., 33 et seq.

473 This figure is subject to practical constrains on data obtainable from the courts in Slovakia and includes appellate proceedings. See further *ibid*., 59 et seq. and p. 66. As of 2012 there were another 35 anti-discrimination proceedings still pending. *Ibid*., 65.

474 The compensation amounted to 1000 EUR for each of the 8 plaintiffs, who claimed racial/ethnic discrimination. See *ibid*., 97.

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

The Civil Code does not distinguish among various types of a lease of flat contracts with regard to the mandatory provisions (*essentialia negotii*), lack of which would invalidate the contract. Under Section 686 para. 1 CC, a contract of a lease of flat must contain:

- determination of the **object of a lease**, i.e. the flat. The law does not prescribe concrete information that needs to be provided to describe the unit, it is only necessary that the flat is clearly distinguishable from other flats and according to all circumstances it be individualized.[475] The law also directs the parties (yet not in a mandatory provision) to include the description of the accessories to the flat[476] and description of the condition of the flat.[477]

- the **extent of the use** of flat, i.e. an arrangement stating or implying the extent to which a tenant is entitled to use the leased flat and its accessories. If there are no specific restrictions on the use, it shall be understood (and the contract would be valid) that the tenant is entitled to the use of flat without restrictions[478] (i.e. without rights of third persons).

- the amount of **rent** and of **payments for services** pertaining to the use of flat (utilities) or the method of their calculation. A valid contract of lease of flat must contain at least information/data or formula under which a concrete sum of rent and payments for services can be specified in the future with no further negotiation necessary.[479] Mere statement that "usual" or "market" rent should be paid or that "aliquot part" of payments for services would be covered by the tenant would amount to invalidity of the agreement.[480] As the regulation of rent still applies to certain leases in Slovakia, in those cases reference to the respective regulatory measure or even clear determination that specific rent control rules apply, under which the sum of the rent can be calculated, would also suffice for a valid contract.[481]

Commentators add another mandatory provision in a rent contract, namely the determination of the **parties of the lease**.[482]

In the court practice, various deficiencies of lease contracts not specifically enumerated by the law have also lead to their invalidity, such as the pre-existing valid third party

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475 Cf. also Section 37 para. 1 CC: "A legal act has to be pursued freely, seriously, certainly and understandably; otherwise it is void."

476 Pursuant to Section 121 para. 2 CC, accessories to a flat are accessory rooms and premises determined for use with the flat. Depending on the building layout it usually includes (anterooms, balconies, cabinets, basements, attics etc.).

477 See Sections 686 para. 1 and 685 para. 1 CC.

478 See Case No. 26 Cdo 2446/2004 of the Supreme Court of the Czech Republic; Maybe in line with this reasoning Plank does not count "extent of use" to the mandatory provisions of a lease of flat contract. Cf. K. Plank, in P. Vojčík et al. *Občiansky zákonník*, 872.

479 I. Fekete, 'Nájom a podnájom bytu,' 240.

480 Cf. Cases of the Supreme Court of the Czech Republic: No. 26 Cdo 4545/2009; No. 26 Cdo 1102/2006.

481 Cf. e.g. R 41/1970.

482 See K. Plank, in P. Vojčík et al. *Občiansky zákonník*, 872; I. Fekete, 'Nájom a podnájom bytu,' 240. However, determination of the parties of a contract should be considered rather a general feature of any legal act, not lease of flat specifically, absence of which would render it unclear and thus void.

lease on the same flat,[483] impossibility of occupying the flat by the tenant due to illegal inhabitants[484]. Usually, the case for invalidity of such contracts rests in the general rules on formation or content of a contract, most of all initial impossibility of performance of a legal act[485], rather than mandatory provisions in a contract for a lease of flat.

Duration of the lease, although a very common provision, does not have to be specified in the contract compulsorily. In the absence thereof a legal presumption of an agreement on lease for an indefinite period would apply.[486]

Legislation on leases with a public task provides for a special list of provisions that need to be included in a lease contract of that kind. Firstly, lease contract concluded in terms of **social housing**[487] must include statement of (a) start of the lease; (b) duration of the lease (which is limited in these cases to three or eventually ten years); (c) monthly rent; (d) the condition of the tenant's right to prolongation of the tenancy; (e) the amount of payments for services pertaining to the use of flat (utilities) or the method of their calculation; (f) the description of the condition of the flat and the description of the accessories of the flat; (g) the term that the flat should remain in the original condition and with original facilities; (h) termination of the lease; (i) list of persons the tenant's household comprises[488]. Further limitations relate specifically to the person of the tenant and provisions that are not mandatorily included in a lease of social housing flat. Secondly, a lease contract concluded between a municipality as a landlord and a tenant, which is provided as replacement housing for tenants of **restituted dwellings**, also needs to contain specific provisions envisaged by the law[489], which are to some extent different from the aforementioned. Namely: (a) identification data of the landlord and the tenant; (b) list of persons the tenant's household comprises; (c) information on the object of the lease; (d) start of the lease; (e) duration of the lease (indefinite period); (f) amount of monthly rent; (g) amount of payments for services pertaining to the use of flat (utilities) and method of their calculation; (h) description of the condition of the flat and the description of the accessories of the flat; (i) identification and status record of the electric, gas and water supply meters; (j) detailed conditions for pursuing changes of the condition and facilities of the flat; (k) terms for termination of the lease; (l) pre-emption right of the tenant under favourable conditions[490].

Although not specifically stated in the respective acts, derivation from the features of a contract for a lease of flat prescribed by this special legislation with a public task, would not directly invalidate the contract for lease to the detriment of the tenant. In the case of social housing leases, the law constitutes a legal duty only for a prospective landlord[491], who is a beneficiary of public funding of social rental housing development (procurement), to include the aforementioned provisions with their specific content into

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483 See Case No. 26 Cdo 2396/2000 of the Supreme Court of the Czech Republic.

484 See Case No. 28 Cdo 2187/2001 of the Supreme Court of the Czech Republic.

485 Section 37 para. 2 CC.

486 Section 686 para. 2 CC.

487 Housing, procurement of which was subsidised through public funds and is determined for use by a class of tenants limited by the law. See further Sections 21-22 SHDaSH 2010.

488 Section 12 para. 1 SHDaSH 2010.

489 See Section 13 para. 2 TCL 2011.

490 See Section 16 OFNP 1993.

491 Section 11 para. 1 lit. a) rec. 1. SHDaSH 2010.

its future contracts. This duty must be laid down specifically in the grant contract[492], and the failure of the landlord (municipality, NGO etc.) to include peculiarities of social housing lease contract shall be then considered a breach of the grant agreement rather than grounds for invalidity of the lease contract with the eventual tenant. On the other hand, tenants of restituted dwellings, once their right to a replacement housing has been established in an administrative proceedings,[493] have a legitimate right to have a lease contract concluded with the letting municipality in accordance with the terms anticipated by the law and there is very limited leeway for the municipality for any negotiation on the terms of the contract.[494]

As far as a **lease of a building** is concerned, the Civil Code does not require the parties to include detailed information in the contract for lease. It only has to contain information that is essential for the contract as a lease[495], i.e. the object of lease (building/family house) has to be distinctly identified and the rent must be at least determinable.

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

We already explained that prevalent feature of the lease-of-flat provisions is their mandatory nature due to the protective function of the lease of flat. As a result, only a limited range of terms can be derived from by the parties as set forth by the regulation in the Civil Code.

Even stricter regulation relates to the control of contractual terms in consumer leases, i.e. leases of flats (or buildings) by professional landlords[496] to non-professional tenants (consumers)[497]. Consumer leases, in line with the Directive 93/13/EEC on unfair terms in consumer contracts, admittedly underlie the control of unfair contractual terms that would be detrimental to the consumer-tenant in Slovak civil law as well.[498] A consumer lease, hence, cannot contain terms that cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer (tenant), unless the term relates to the main subject matter of the contract (i.e. the object of the lease – the flat) or to the adequacy of the price (rent), if those contractual terms are expressed determinably, clearly and intelligibly or the otherwise unfair terms have been individually negotiated.[499] The general fairness test of a consumer contract term

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492 See Section 16 SHDaSH 2010.

493 i.e. proceedings under Sections 7-9 TCL 2011, the outcome of which is enrolment of the eligible tenant to the list of applicants for replacement rental housing.

494 The parties can, for instance, agree on terms of the rent deposit within the limits of Section 13 paras. 3-5 TCL 2011.

495 C.f. K. Plank, in P. Vojčík et al. *Občiansky zákonník*, 839.

496 In accordance with Section 52 para. 3 CC a professional landlord or supplier of housing services would be any person that is acting within its commercial or other entrepreneurial province while concluding or performing the contract.

497 i.e. a natural person that is not acting within its commercial or other entrepreneurial province while concluding or performing the contract. See Section 52 para. 4 CC.

498 See Sections 52-54 CC; See also I. Fekete, 'Nájom a podnájom bytu,' 210.

499 Section 53 para. 1 CC. Cf. the language of Arts. 3 (1) and 4 (2) Directive 93/13/EEC. The Slovak CC does not refer to the principle of good faith in order to assess the unfairness of a contractual term, as "good faith" does not form an overarching civil law principle in conclusion and performance of contracts, which is rather the domain of good morals. Cf. Sec. 3 para. 1 and Sec. 39 CC. The material and

assessing the material imbalance of the rights and duties of the parties, is followed by a "black list"[500] of terms presumed to be unfair. Generally, the unfairness of a contractual term in a consumer lease contract shall be assessed, taking into account the specific nature of housing or related services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.[501] Such private law protection of consumers – tenants – is fully in line with contract terms control in European Union private law, and for the lease contract conclusion it brings about, in practice, the ban on such terms as e.g. limitations on liability of the landlord for damages incurred by him to the tenant, for which he or she would otherwise be liable, various one-sided obstacles for the tenant in procedural asserting his or her rights against the landlord, or one sided privileges of the landlord, such as the possibility to assign the claim for rent to third parties, which would practically disadvantage the tenant.[502] The Slovak consumer contract terms control, however, reaches beyond the limited scope of the Directive 93/13/EEC specifically with the provision of Section 54 para. 1 CC, which is a material corrective, cogent imperative and an operative of good morals,[503] which prohibits the landlord (or any supplier) to agree on such arrangements in the consumer contract that would put the tenant (consumer) to a less favourable position than the one guaranteed by the Civil Code. The consumer, among other things, cannot in advance waive his or her rights guaranteed to him by the Civil Code or otherwise diminish his or her contractual standing. This means that the provisions of the Civil Code preferential to the consumer are one-sidedly mandatory to his or her favour and cannot be derived from in consumer contracts and thus consumer leases as well.

According to Section 39 CC the general consequence of a contract term's conflict with the law or circumvention thereof would be the invalidity of the lease as such (if essential terms of the contract are the point of conflict)[504] or invalidity of the very provision in conflict if, given the content and purport of the contract, that provision can be assessed separately.[505] In effect, neither party would be required to contest validity of the term (or contract) in court and if the contractual relationship should be tested in any regard in court, the validity of the terms and specifically of the non-individually negotiated consumer contractual terms will be scrutinised ex officio by the court. If only a separable provision of the lease would be in conflict with the law (consumer contract terms control for instance), the rest of the contract would remain in force. Neither the court nor the parties are under the duty to replace the void provision with a permissible one and the

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procedural features of the test of "individual negotiation" of a term in the Section 53 paras. 2 and 3 CC do not depart from the pattern of Art. 3 (2) Directive 93/13/EEC.

500 Currently, the "black list" comprises 17 contractual terms that build on the language of the annex to the Directive 93/13/EEC.

501 See Section 53 para. 10 CC; cf. Art. 4 (1) Directive 93/13/EEC.

502 Cf. Section 53 para. 4 CC and also the annex to the Directive 93/13/EEC.

503 <http://www.justice.gov.sk/Oznamyostaznostiach/Prerokovanie%20zmluvn%c3%bdch%20podmienok%20a%20obchodn%c3%bdch%20prakt%c3%adk%20spolo%c4%8dnosti%20E.C/Z%c3%a1ver%20Komisie.pdf>, 15 December 2013, p. 3.

504 See M. Jančo, 'Aktuálne otázky koncepcie absolútnej neplatnosti právnych úkonov podľa § 39 Občianskeho zákonníka. 1. časť', *Bulletin slovenskej advokácie* 14, no. 10 (2008): 31.

505 Cf. Section 41 CC.

courts are generally not empowered to fabricate the will of the parties with a subsequent decision making. With the invalidity of the whole lease, the relationship of use of flat for reward would have to be settled through provisions on unjustified enrichment.[506]

There is a particular legal consequence to a court's ruling on invalidity of a contractual term due to its unfairness in a consumer contract, which is quite novel in Slovak (continental) legal environment. Namely, the third party binding nature of such a decision[507] under which the supplier (landlord) as well as its legal successor would be obliged to refrain from using such unfair contractual term in its future contracts.

- statutory pre-emption rights of the tenant

Generally, the Slovak law does not recognize a statutory pre-emption right of a residential tenant relating to the dwelling he or she is inhabiting. There are, however, no legal obstacles provided for that would hamper the parties to a tenancy contract from agreeing upon one.[508]

Yet, another right, in effect closely related to pre-emption[509] of a tenant, has been of great importance for the whole housing segment of the country since the transformation period (triggered in 1989). It is the right of specific class of tenants to buy the flat in which they reside. It is construed as a legal restriction for the owner of the block of flats[510] to transfer its interest in the single flat therein to other person than the tenant.[511] This restriction, however, relates only to tenancies of natural persons (where a natural person is the party to the lease) for an indefinite period pertaining to a flat in a block of flats[512]. The restriction of the owners has been one of the key rules providing for the privatization of the housing stock in Slovakia, and it is, thus, logically followed by rules that give the prioritized class of tenants[513] the right to buy the flat at a regulated price

506 Cf. R 34/1983.

507 See Section 53a CC.

508 A pre-emption right of a tenant can be agreed upon in accordance with Section 602 et seq. CC. Though a set of provisions pertaining to the contract of sale. The jurisprudence as well as legal practice acknowledges the use of these provisions also to other contractual arrangements.

509 Although certain case-law (Cf. Dissenting opinion of L. Mészáros & D. Šváby in case of the Constitutional court of the SR no. PL. ÚS 26/00, rep. no. 4/2002, p. 32. Available at: <http://portal.concourt.sk/Zbierka/2002/4_02s.pdf>, 15 December 2013) as well as recent legislation calls this right "pre-emption" (Section 13 para. 2 lit. l TCL 2011), which may have ambiguous legal consequences, it is generally considered a legal restriction on sale and a duty to sell, rather than pre-emption. See also discussion in K. Grausová, in M. Valachovič, K. Grausová & J. Cirák, *Zákon o vlastníctve bytov a nebytových priestorov. Komentár.* (Praha: C.H.Beck, 2012), 1005 et seq.

510 i.e. the owner of the whole building, or the former owner of the block and then owner of the hitherto unsold flats once at least one flat in the block has been transferred to a new subject. Cf. Section 5 para. 7 OFNP 1993 and K. Grausová, in M. Valachovič, K. Grausová & J. Cirák, *Zákon o vlastníctve bytov a nebytových priestorov*, 1011.

511 See Section 16 para. 1 OFNP 1993.

512 Cf. the definition of "block of flats" in Section 2 para. 2 OFNP 1993 and the respective provision.

513 i.e. only natural persons, not tenants of flats in a family house. See Section 17 para. 4 OFNP 1993. For further limitations for state-owned flats see Section 29 para. 3 OFNP 1993 (e.g. not applicable to service flats and other flats constructed after 1 January 1995, or flats acquired contractually under OFNP 1993) and Section 29a OFNP 1993 for municipal housing (e.g. only applicable to flats in houses built prior to June 1998).

from block owners[514] who as public subjects were the prevalent housing stock owners and managers in the era of socialism. Those subjects are under duty to conclude a sales contract within two years of the tenant's application for purchase.[515] Clearly, this tenant's right to buy the flat in a block of flats, as a function of state ownership transformation, relates only to the "first acquisition" of flats from the initial state-related owner (if the flat had been built from the "universal public funds") and does not apply to newly built housing units or flats that have already been contractually acquired and are leased on the market thereafter.[516] Given the historically peculiar and unique purpose[517] of this legislation, the jurisprudence[518] holds the legal state when the restriction on alienability of flats affects landlords (owners of blocks of flats), even in cases when the right to buy and the respective price-regulation do not apply, for unwarranted. The Supreme court's understanding of these relations, yet, rests on the position barring the landlord in a lease for indefinite period (block of flat owner) from transferring the interest in the flat to anyone but the tenant, sanctioned with invalidity of a contract that would be in breach.[519]

- 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 rules that would specifically restrict a mortgagor, owning an encumbered flat, from leasing the flat out to a tenant. Pursuant to Section 151i para. 1 CC, a mortgagor is generally allowed to use the charged asset in a usual manner. He is, however, obliged to refrain from any activities that would diminish the value of the charged asset, apart from the ordinary wear and tear, unless otherwise agreed by the

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514 See further Section 17 para. 3 and Section 27 paras. 7-9 OFNP 1993. I.e. the state and state enterprises, municipalities, self-governing regions, corporations with public share, various cooperatives, successors of former trade unions, subjects that have gained ownership of blocks of flats from the subjects under the duty.

515 See Section 29 para. 2 and Section 29a para. 1 OFNP 1993.

516 See also K. Grausová, in M. Valachovič, K. Grausová & J. Cirák, *Zákon o vlastníctve bytov a nebytových priestorov*, 1059. The only exception is the right to buy newly built flats at similarly feasible conditions afforded recently to the tenants of the restituted houses, once they receive municipal replacement housing. See Section 13 para. 2 lit. l TCL 2011.

517 As the Constitutional court of the SR explains: "…housing as one of the basic needs has an irreplaceable value. Dealing with housing needs of the citizens is private as well as public interest, and at this stage (transformation into market environment) it cannot be left to spontaneous effects of the market without the risk of social turmoil. Therefore, the market with flats has to be regulated by the state, at least until a functioning market environment is developed. […] Legislator [was] realising the task of 'ensuring adequate housing stock for greatest number of citizens in a given period and for a price that the citizens would be able to pay' […] The principle of adequate and just equivalence requires that the state of deconstruction of ownership in the years of non-freedom be taken into account, especially with regard to the owners of rental flats, who were discriminated against in comparison to other owners of the housing stock, the owners of family houses specifically." See case no. PL. ÚS 26/00, rep. no. 4/2002, p. 22-24.

518 K. Grausová, in M. Valachovič, K. Grausová & J. Cirák, *Zákon o vlastníctve bytov a nebytových priestorov*, 1009 and 1007. Imprecise and unsystematic legal drafting of the respective provisions over the years seems to lead to constitutionally dubious constraints on the exercise of one's ownership rights and does not follow the very goal of the original privatisation legislation in OFNP 1993.

519 See Case of the Supreme Court of the Slovak Republic No. 10 Sžr/1/2011. Available at: <http://www.nsud.sk/data/att/3445_subor.pdf>, 15 December 2013.

parties. True, leasing a flat may have a significant bearing on its actual value,[520] yet in a positive as well as in a negative sense. The interpretation of the above-mentioned provision does not by itself give rise to a legal constraint on the owner's side, and if he or she should be using the lease as a means of deliberate diminishing of the flat's value (e.g. a subsequent lease with extremely lucrative terms for the tenant), validity of the legal act of the landlord and tenant may be put under scrutiny in terms of the general private law on the formation of contract,[521] and the remedy of damages[522] could be sought. The Civil Code is hence expecting the parties to the mortgage to provide for specific terms on the possible conduct of the mortgagor towards the assets at stake. However, mere contractual prohibition to lease a flat in a contract for mortgage would not bring about invalidity of a possible lease concluded in breach if other conditions of validity have been met.

Summary table c) "Conclusion of tenancy contracts"

	General lease *lease of a building*	Lease of flat *(including municipal and public housing stock)*	Lease of flat *social housing lease (SHDaSH 2010)*	Lease of flat *replacement housing for lying tenants of resitituted buildings (TCL 2011)*
Requirements for valid conclusion	*generally:* no formal requirement *state, higher territorial unit, municipality as a party:* writing compulsory public disclosure	*generally:* no formal requirement (right to require written record of the contract) *state, higher territorial unit, municipality as a party:* writing compulsory public disclosure	*form:* writing compulsory public disclosure *content:* statutory list of required issues to be included	*form:* writing compulsory public disclosure *content:* statutory list of required issues to be included
Regulations limiting freedom of contract	- limitations of general contract law (legality/ morality of a	- limitations of general contract law (legality/ morality of a	on the top of general limitations, statutory requirements on	on the top of general limitations, statutory requirements on

[520] Especially given the mandatory provisions on the lease of flat and the refusal of *emptio tollit locatum* principle, notwithstanding if it is by means of foreclosure. See Section 680 paras 2 and 3 CC.

[521] See Secs 39 and 3 para. 1 CC.

[522] Under Section 420 et seq. CC; possibly also Section 424 CC (liability for damages incurred through deliberate conduct against good morals).

	juridical act etc.), - anti-discrimination prohibitions, - consumer contract control (unilateraliry mandatory in favour of consumer)	juridical act etc.), - anti-discrimination prohibitions, - consumer contract control (unilateraliry mandatory in favour of consumer)	content	content

6.4. Contents of tenancy contracts

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

As mentioned *supra*, the law does not prescribe concrete information that needs to be provided to describe the dwelling - only to make it clearly distinguishable from other flats - and it also directs the parties through a default rule[523] to include the description of the accessories to the flat and description of the condition of the flat.

As a rule, flats in tenancy contracts are, first, identified by data under which it would be traceable in the land registry. Namely the cadastre area, where it is situated, the building identification number (sometimes replaced by the address of the dwelling), the flat number, the floor number as well as the entrance number in a block of flats (house number).[524] For purposes of lease, this data would satisfactorily individualize also a dwelling that has not yet been enlisted (not separated) in the land registry. Second, description of the dwelling (still not compulsorily) should encompass location of the flat in the house (usually the level), floor space area of the dwelling, indication of the number and composition of the rooms in the dwelling, of the furniture and appliances, if the dwelling is let along with such equipment.[525] Cautious contracting would not omit description of the equipment of the dwelling and its condition, specifically in order to prevent possible future arguments with regard to claims for damages and to realization of the landlord's statutory lien[526] on the movable assets of the tenant's household members. Third, indication of the accessories to a flat should also be included; i.e. accessory rooms and premises determined for use with the flat. Depending on the

523 See Sections 686 para. 1 and 685 para. 1 CC.
524 Cf. Section 42 para. 2 lit. c) Cadastre Act 1995.
525 I. Fekete, 'Nájom a podnájom bytu,' 239.
526 Under Section 672 CC.

building layout it usually includes (anterooms, balconies, cabinets, basements, attics etc.).[527]

With regard to the indication of habitable surface in the contract, we should mention that under Slovak law, a flat - as a set of rooms - consists of habitable and accessory rooms.[528] The definition of a habitable room (and thus the indication of habitable surface area) slightly differs between the general regime of a flat[529] and the specific regime of social housing[530], as defined by the SHDaSH 2010, the significant difference being, however, the inclusion of the area of loggias, balconies and terraces to the floor space area of a flat, which is the case only in the latter regime.[531] In practice, the contracting parties would break down the floor space area to habitable surface (area of habitable rooms) and accessory rooms' area, which would be relevant especially in the leases where rent regulation applies, as the formula for the regulated rent calculation[532] uses different figures for these two sorts of areas pertaining to a dwelling in use.

If incorrect information on the habitable surface area had been furnished by the landlord or included in the contract, it only would affect the lease in terms of remedies of general private law. The lease, thus, would be voidable by one party (most likely the tenant) if it was concluded in error caused or known by the other party (landlord) and the mistaken issue (the alleged habitable surface area) had been decisive for conclusion of the contract.[533] Otherwise, if the incorrect data was not substantial for the lease conclusion or the mistake occurred only due to a misprint and it is clear as between the parties, to what dwelling the lease should relate, the contract would be continuously in force.[534] Similarly, if there is no information on the habitable surface or other features of the dwelling whatsoever included in the contract and the dwelling as such is determinable, the lease covers habitable as well as accessory rooms within a flat.[535] If, on the other hand, the wrong data means incorrect indication of the habitability of the premises, an essential matter of the contract would be in question, namely the characteristics of the object as a flat[536]. This determination would imply if a valid contract for a lease of flat is

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527 See Section 121 para. 2 CC; cf. Section 2 para. 1 lit. d) SHDaSH 2010; See also J. Cirák, in M. Valachovič, K. Grausová & J. Cirák, *Zákon o vlastníctve bytov a nebytových priestorov*, 84-85 (discussing the ambiguities and consequences of imprecise definition of the accessory to a flat in Slovak legal order).

528 J. Cirák, in M. Valachovič, K. Grausová & J. Cirák, *Zákon o vlastníctve bytov a nebytových priestorov*, 48.

529 Under Section 43b para. 5 Building Act 1976, a 'habitable room is a room that according to its construction- and technical design and furnishing conforms to the conditions for permanent housing'. Similarly is it defined in the respective technical norm, point 2.11 of STN 73 4301: 2005-06, supplemented by the specific conditions of permanent housing in points 7.2.1 -7.2.11.

530 Under Section 2 para. 1 lit. c) SHDaSH 2010 a 'habitable room is a room directly illuminated and directly ventilated with flooring surface area of at least 8 m^2 that is directly or sufficiently indirectly heated, and that is, with regard to its construction- and technical design and furnishing determined for whole-year housing. […]'.

531 The floor space area of a flat in any case includes the area of habitable rooms along with accessory rooms. Cf. Section 2 para. 1 lit. g) SHDaSH 2010; 2.14 of STN 73 4301: 2005-06; cf. also Section 2 para. 7 OFNP 1993.

532 See Section 1 para. 1 Regulatory measure of the Ministry of Finance of SR of 23 April 2008 No. 01/R/2008 on regulation of the rents of flats as amended as of 20 December 2011.

533 See Section 49a and 40a CC.

534 See Section 37 para. 3 CC.

535 Cf. Case No. 22 Cdo 1455/2008 of the Supreme Court of the Czech Republic.

536 Which generally should not happen, given that the standing of premises as a flat is contingent upon the final building approval from the respective construction administration office. Cf. Section 43b

in place (if the answer is in the affirmative); whether the contract would be voidable (non-habitable premises – mistake of fact) or whether other legal regime should be applied to the relationship.[537] In doubt about habitability of certain room, a court may, in frames of civil proceedings, assess habitability of the premises according to the legal prerequisites, as a preliminary question.[538]

- Allowed uses of the rented dwelling and their limits

In a lease of flat regime, the allowed and anticipated use of a dwelling is housing. It is the tenant's duty to "use the flat properly", which the jurisprudence[539] explains as use for housing (not pursuit of business) in case of the flat and as far as the common areas are concerned it is the related and usual use for the respective room (storage of items, operation of common devices, passing through etc.).

The foremost matter that attributes a legal regime to rentals of premises, reflecting its usual use, is the nature of the premises as a flat (permanent residential housing) or non-residential premises etc. This is a question of fact contingent upon an effective administrative decision (building approval).[540] Therefore, if premises are approved solely for non-residential use a lease-of-flat contract regime would not apply despite the wording of the contract or the actual features of the premises, as the main distinguishing object – the flat – is missing. Similarly, if a residential dwelling is rented solely for non-residential use, which cannot be ruled out, and in fact happens, the lease of flat regime would not apply, rather, the relationship between the parties would fall under the scope of the general lease contract pursuant to Section 633 et seq. CC.[541] Long-term use of a flat for other than housing purposes may, however, render adverse public - law consequences.[542]

On the other hand, interim use of a flat (or a part thereof) for commercial purposes, or precisely for non-residential purposes, whether or not it is exercised for consideration, is in general possible and anticipated by the law, but requires consent of the landlord. Otherwise such conduct of the tenant would give rise to grounds for termination of the lease.[543] A more specific provisions for lease of municipal and state-owned flats, for the case of interim non-residential use of a flat, require specifically an approval of the municipality on the top of the landlord's consent.[544] Only the tenants themselves and

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para. 4 Building Act 1976 and I. Fekete, 'Nájom a podnájom bytu,' 214; Cf. also Section 2 para. 1 OFNP 1993.

537 i.e. general lease contract under Section 663 et seq. CC, or lease of non-residential premises under Lease and Sublease of Non-residential Premises Act 1990.

538 J. Cirák, in M. Valachovič, K. Grausová & J. Cirák, *Zákon o vlastníctve bytov a nebytových priestorov*, 50.

539 I. Fekete, 'Nájom a podnájom bytu,' 256; See Section 689 CC.

540 Section 76 et seq. Building Act 1976.

541 A lease without the protective provisions of the tenant.

542 e.g. building law offence (see Section 105 para. 2 lit. c Building Act 1976); business licensing law offence (see Section 65a para. 1 lit. b Small Business Act 1991); change of taxing regimen – higher property tax for non-residential premises (see Section 14 para. 2 and Section 16 para. 3 Local Tax and Fee Act 2004) and others.

543 Section 711 para. 1 lit. g CC.

544 See Section 9 RDaRH 1992. As currently most of those relevant flats are owned by municipalities this requirement may be met within a single document. It should be understood that the law casts a

members of their household would be allowed to perform non-residential activities in the unit. Yet, the specific approval would not be necessary, if the flat was used as a mixed housing- and other-use unit.

Although the law does not give any details on “non-housing” activities that would require a particular consent of the landlord, the case-law is prone to leniency towards the tenant in breach, if the activity does not interfere with the general housing nature of the use, with due regard towards the neighbours etc. Namely, obtaining a business licence for running a business in the rented dwelling is not a sufficient proof of its actual conduct and thus cannot be invoked as grounds for termination of the lease.[545] Even more, using a dwelling as a registered seat of an entrepreneur, for the purposes of correspondence does not amount to disallowed use of flat for business as a ground for termination of the lease.[546]

- 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)

As indicated supra, mixed residence/commercial tenancy contracting is indeed lawful, the consent of the landlord is present by definition and with municipal and state-owned flat rentals a specific municipality's approval is not necessary, although, given the scarcity of municipal housing stock, virtually all of it is let for housing based on social merit, rather than commercial use. In fact, home-officing is the business model of choice for many starting small enterprises[547], which can be pursued under a lease arrangement. Other than the landlord's consent, there are not many contract law consequences for the relationship. It will be more important to ensure respect of the rights of the other tenants in the block[548] (e.g. if clients are accepted in the tenant's flat or level of noise increases etc.), so the extent of use of the flat and duties of the tenant should be agreed upon in a comprehensive way. Moreover, consensual use of a flat for business purposes would also forfeit the rent-control regime of a lease of flat if it otherwise was applicable.[549]

However, a lawful and feasible mixed use of a dwelling would also call for reconciliation with the public-law regime of the use, i.e. building law approval of the partial change of use of the dwelling, business licensing law registration of the establishment, tax law and accounting administration of the premises as commercial, all of which is anticipated by

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specialised regime on possible use of flats for non-housing purposes to municipal and state-owned landlords only, sanctionable with a fine (Sec. 10 para. 1 RDaRH 1992). Breach of the tenant's duty (not permitted commercial use) would in any case be sanctionable with a contract law remedy – termination by the landlord's notice.

545 See Case of the Supreme Court of the Slovak Republic rep. No. 3 Cdo 129/2011. Available at: <http://www.nsud.sk/data/att/19895_subor.pdf>, 15 December 2013.

546 Cf. Case No. 26 Cdo 1846/2000 of the Supreme Court of the Czech Republic.

547 Cf. <http://www.malepodnikanie.sk/novinky-z-portalu/podnikanie-z-domu/>, 15 December 2013.

548 See Section 690 CC.

549 see section 4 para. 1 lit. f) Regulatory measure of the Ministry of Finance of SR of 23 April 2008 No. 01/R/2008 on regulation of the rents of flats as amended as of 20 December 2011.

the legal order and dealt with by percentage division of commercial and residential use of the dwelling.[550]

- Parties to a tenancy contract

  - Landlord: who can lawfully be a landlord?

Any subject of civil-legal relations can be a landlord: namely, a natural person[551], a legal person (usually municipalities, cooperatives, corporations)[552] or the state. The state renting a flat would be represented in those relations by an entity managing the respective property and be considered a legal person.[553] The landlord may be the owner of the flat or the owner of the block of flats it is situated in, provided it had not been transferred to its first owner as a separate object of law.[554] It is an ambivalent issue, whether a person other than the owner of the unit may be an ordinary landlord (unlike in the case of a sublease). Based on the argument that the CC does not expressly prohibit such arrangements and if there are other legal grounds for a subject's right to rent a flat other than ownership, the practice is conceivable even by the courts.[555]

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

One of key standards safeguarding legal and housing stability of a tenancy is that a change of landlord does not affect the position of the tenant. After the transfer (or transition) of ownership the new owner acquires the legal standing of a landlord by operation of law, with no detriment to the rights and duties of the tenant ensuing from the original lease. On the contrary, the tenant would be entitled to discharge himself of the obligations towards the former landlord upon notification of the change of parties by the former landlord or upon proving the change by the new one, and will have to perform towards the new one.[556] Moreover, upon the change of the landlord, the tenant would be able to terminate the lease by a unilateral notice, if it is furnished in the closest upcoming notice-period, where there is one set forth by the law or the contract,

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550 Used for level of taxing with a property-tax, percentage of deductible expenditures of running of the household as commercial, deductibility of VAT etc. See further Sec. 14 et seq. Local Tax and Fee Act 2004; 76 et seq. Building Act 1976; Income Tax Act 2003 etc.

551 See Section 7 et seq. CC, i.e. any living natural person, notwithstanding its legal capacity, including a begotten child, provided it will be born alive. A person with diminished legal capacity (mental, under-age) would generally have to be represented by a legal custodian. Cf. Section 9 CC.

552 Section 18 et seq. CC.

553 Section 21 CC; See also Section 2 para. 2 State Property Management Act 1993.

554 I. Fekete, 'Nájom a podnájom bytu,' 216; K. Plank, in P. Vojčík et al. *Občiansky zákonník*, 869.

555 See I. Fekete, 'Nájom a podnájom bytu,' 218 and the Cf. Case No. 32 Odo 359/2005 of the Supreme Court of the Czech Republic (although dealing with business assets leasing). This issue is common to any lease relationships, as there are no specific provisions for a lease of flat in the CC in this regard. However, the high level of tenant protection should not be put at stake by conditioning the lease of flat by an “upper level” lease, otherwise such tenant's standing would not differ from the one of a sub-tenant. See also J. Bárta, 'Ke vztahu nájmu nemovitosti a nájmu bytu nebo nebytového prostoru v téže nemovitosti', *Bulletin advokacie*, no. 10 (2001): 22-29 (discussing letting flats to tenants by lessees of blocks of flats – buildings – as an arrangement differing from a sublease).

556 Section 680 para. 2 CC; see also K. Plank, in P. Vojčík et al. *Občiansky zákonník*, 862.

regardless of whether the lease was a fixed-term or open-ended one.[557] These rules cannot be used by the landlord (*emptio tollit locatum* is not given effect) and hold true for tenants of flats and (family) houses alike.[558]

- Tenant:
- Who can lawfully be a tenant?

The Civil Code does not state a specific restriction as to the person of tenant of a flat or of a house. Hence, it apparently could be any subject of law (natural persons as well as legal entities). This undoubtedly holds true for leases of buildings, under the regime of a general lease. However, as far as lease of flat is concerned, given the specific underpinnings of this legal regime (i.e. its main goal being the satisfaction of an individual's housing need; highly protective rules that only make sense if utilized by an individual; historical background of the institution as the successor of the former right of personal use of flat), the issue whether a legal person may be lawfully a tenant is debated and still not finally resolved.[559] The courts are inclining to the conclusion that only a natural person may be a tenant of a flat, that is, a contractual party to a relationship determined by its goal of satisfying one's personal housing need.[560] In line with this reasoning, a legal person would only be able to lease a flat as common asset – under the general lease regime.[561] The jurisprudence, on the other hand, does not unanimously accept this solution and among others points out that legal persons already may conclude contracts of rather personal character, such as buying a package travel service[562] and are afforded protection of right to respect for their home[563] as a right of rather personal nature, too.

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

Only the tenant himself has a direct right ensuing from the lease to use the flat and services connected therewith. The law, however, anticipates other persons to be living with the tenant in the flat as well, who dispose of an indirect vicarious right of use of the flat and cannot, for instance, by themselves use legal remedies from the lease that pertain to a tenant. Unfortunately, the Civil Code does not give a crystal-clear definition

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557 Section 680 para. 3 CC.

558 See ibid. It also follows from the interpretation of Section 3 para. 2 OFNP, see also J. Cirák, in M. Valachovič, K. Grausová & J. Cirák, *Zákon o vlastníctve bytov a nebytových priestorov*, 99.

559 For the debate see I. Fekete, 'Nájom a podnájom bytu,' 217-218.

560 See ibid.

561 i.e. pursuant to Section 663 et seq. CC. See ibid.

562 See Section 741a et seq. CC and art. 2 (4) Directive 90/314/EEC on package travel, package holidays and package tours.

563 Under art. 8 (1) Convention of 1950; See *Société Colas Est and others v. France* (App. no.37971/97), §41, ECtHR 2002-III; Case C-94/00 *Roquette Frères SA v. Directeur général de la concurrence, de la consommation et de la répression des fraudes* [2002] ECR I-9011, para. 29. The Czech supreme court thus concludes that even a legal entity may become a member of a housing cooperative and at the same time its tenant. See Case No. 21 Cdo 4498/2008 of the Supreme Court of the Czech Republic.

of their identity or the level of landlord's permitted inclusion into their choice. For one, the members of the tenant's household are expressly permitted co-users of the flat.[564] The household, by a legal definition of Section 115 CC, consists of natural persons, who live together permanently and together cover costs of their needs. The language of the CC also refers to "persons living with the tenant"[565]. Clearly, the enumeration of permitted co-living persons has to be inferred from these provisions and read through specific contract terms (and duty not to breach those, punishable by termination of the lease) and private-law rules prohibiting misuse of the law.[566] Hence, any member of the tenant's household (as defined above) is allowed to live with him, notwithstanding their marital status, sex or kind of relationship they enjoy. Usually this would include spouses, children, non-marital partners, relatives or non-relatives, taking care of the tenant or being in the tenant's care. Other persons would apparently be also allowed to move in to the flat with the tenant and enjoy the vicarious right of use, however, if it was in breach of the contract with the landlord or without his consent, based on the actual facts, the landlord would be able to seek remedy. Yet, the courts[567] have long established that it is usually not to be deemed a sufficient ground for termination of a lease of flat on the landlord's notice, if the tenant accepts a third person in the flat without the landlord's consent in terms of a short-term visit or in order to establish a common household with the tenant. Whether or not the landlord's consent was demonstrated, a person's long term use of the flat along with the tenant would bring about important legal consequences, specifically the household member's right to become a tenant of the flat upon the death of the original tenant.[568]

A particular regime of spouses should also be mentioned. Namely, if a tenant of a flat marries during the tenancy, not only is his or her spouse allowed to move in to live with the partner, they also assume the legal standing of a "marital co-tenant of a flat". And similarly, if one or both of the spouses conclude a contract of a lease of flat during the marriage, they will become marital co-tenants of a flat, provided they live together permanently.[569]

- 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

Under Slovak family law, only a bond of a single man and a single woman may enjoy the formal acknowledgement as matrimony.[570] Non-married and same sex couples may form a common household and may derive the right of use of a flat one from the other, yet the **separation** of such partners (as a factual conduct without genuine legal

564 See Section 688 CC; See I. Fekete, 'Nájom a podnájom bytu,' 216.

565 See Section 693 CC (referring to the tenant's liability for damage incurred on the flat by those co-living persons).

566 Cf. Sections 3 para. 1; 711 para. 1 lit. d) CC

567 See reported case of the Supreme Court of the Czech Republic, Rcz 7/1994.

568 Section 706 paras. 1-2 CC.

569 Section 703 paras. 1 and 3 and Section 704 para. 1 CC. Cf. Section 703 para. 2 and 704 para. 2 for the regime of the lease of flat in a housing cooperative whose member is one of the spouses.

570 Cf. Art. 1 and Section 1 para. 1 Family Act 2005 (No. 36/2005 Coll., as amended).

consequences) does not bring about rights or duties for neither of the parties. The partner, who is a tenant of the flat, would be able to continue the use of the flat without the need to provide replacement housing or other duties towards the co-habiting ex-partner. If, on the other hand, the partners are using the flat as (non-marital) co-tenants, the mere fact of their separation does not lessen their individual rights of the lease contract and, with the exception of extraordinary circumstances[571], they both would be able to continue the lease and only to reach an agreement on the future use of the flat, while relying on the general rules on termination of a lease of flat if one of the co-tenants would be meant to end the lease. If one of the co-tenants (partners) left the flat without reconciliation with the rights and duties of the lease contract, they would still be considered parties to the contract and would be, for instance, obliged to pay the appropriate portion of the rent.[572]

The legal standing of spouses upon their **divorce**, i.e. further legal developments of the marital co-tenancy, depends on the tenancy type with lease of flat on the one hand and lease of flat in a cooperative (of which one or both of the spouses are members) on the other.

The right of use of a flat by divorced partners does not extinguish by mere fact of the divorce, as far as a *lease of flat that is not in a cooperative ownership* is concerned. The law anticipates the ex-partners to conclude an agreement on the lease of flat to that end that they decide who will continue the lease of flat as a tenant and who will leave. Coming into force, the agreement of the divorced couple would end the marital co-tenancy. Such agreements cannot be concluded prior to closing the divorce proceedings upon a final judgement.[573] If, however, the divorced partners cannot reach an agreement, either of them may apply for a court decision to terminate the right of co-tenancy, in which it would select the future tenant of the flat. In deciding, the court may be lead by various considerations, including the reasons of the divorce, yet the judicial practice shows that the remaining tenant would generally be the one who was granted the custody of their children[574]. The other former spouse would generally be eligible for a

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[571] See Section 702 para. 2 CC. If extraordinary circumstances arise, one of the co-tenants may apply to the court for termination of the co-tenancy, if the situation was not caused by the plaintiff and it hinders the continuation of the co-use of the flat by the co-tenants. The court would also determine, which of the co-tenants shall be using the flat onwards. This provision has not yet been adjudicated with regard to separation of a couple as the reason for terminating the tenancy. At the same time, its language makes a solid legal basis for interpretation of "extraordinary circumstance" that would include separation of partners as co-tenants and give them an adequate procedural remedy for an equitable decision upon the future use of the flat. The prerequisite of the decision – the court's scrutiny of the "causation of the extraordinary circumstances" – may be seen as a disincentive for parties not willing to undergo emotionally demanding procedures in the court. See also: I. Fekete, 'Nájom a podnájom bytu,' 298-301.

[572] Cf. Case No. 26 Cdo 1313/2002 of the Supreme Court of the Czech Republic. Cf. also Sections 708 and 707 para. 3 CC.

[573] Section 705 para. 1 CC; See R III/1965; See also I. Fekete, 'Nájom a podnájom bytu,' 311-312.

[574] See ibid., 313 and 317. The other considerations would include mainly the interest of under-age children and the landlord's statement. See Section 705 para. 3 CC.

replacement housing,[575] which means that they would not be obliged to clear the premises until a replacement housing unit of a particular kind[576] is provided for them[577].

Divorce of partners that are *marital co-tenants to a flat in a housing cooperative*, brings about different legal consequences if the spouses had both been also co-members of the housing cooperative[578] as opposed to just one of them being a member and the other enjoying only the marital co-tenancy right of use. In the former case, the rules similar to the ones on non-cooperative lease apply, under which either the divorced spouses agree upon their future tenancy- and housing cooperative membership status, or the court decides thereon, taking into account all aforementioned considerations. In the latter case, since the housing cooperative co-membership had not arisen at all, the marital co-tenancy would extinguish by operation of law upon the effectiveness of the divorce. The spouse, who originally had the equity in the cooperative would thus remain the sole tenant of the flat.[579] The other spouse would only be eligible for a replacement lodging and for reasons worthy of extraordinary concern the court may as well attribute a right to a replacement flat[580] to the said partner.

In addition, a special regime applies to leases of *service flats, special purpose flats* as well as *flats in a special purpose block of flats*, where no marital co-tenancy arises[581] and the spouse, who is not the tenant, holds only a vicarious right of habitation. Upon divorce, such ex-spouse will be able to inhabit the flat until an adequate replacement flat is provided for him.[582] Under applicable circumstances, a court may decide on a lesser tier replacement housing, similarly to the above-mentioned considerations[583].

If a **flat** is **shared** by several subjects, their student or other status does not come into play and copies the situation of co-habiting partners, with the exception that students usually do not form a common household. The deciding issue is whether they are all co-tenants,[584] which would normally be the case. The law does not generally give right to some co-tenants to effectively move for a change in a person of one of them. All the parties would have to reach an agreement in order to change the terms of the lease, or

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575 See Section 712a para. 8 CC; cf. K. Plank, in P. Vojčík et al. *Občiansky zákonník*, 930 and I. Fekete, 'Nájom a podnájom bytu,' 411 (both giving concurring interpretation of the ambiguously drafted provision, to the indicated end).

576 Generally it would be a replacement flat (see lit. in previous note); for reasons worthy of extraordinary concern the court may attribute only a right to a replacement lodging or a shelter to the party to be moved out. If, however, the divorced spouse did exercise physical or psychological violence towards the other spouse or towards a person close to the spouse living in the common premises (either before or after the divorce), the court would decide that no replacement housing shall be attributed to the culprit. See Section 712a para. 8 CC.

577 See Section 712c para. 1 CC.

578 i.e. if one or both of the spouses acquired the right to conclude a lease of flat in the cooperative after the marriage. See Section 705 para. 2 CC in fine.

579 See Section 705 para. 2.

580 Section 712a para. 7 CC.

581 Section 708 CC.

582 Section 713 CC. Interestingly, by analogy of law to this provision, the courts provide similar protection to ex-spouses inhabiting an ex-partner□s family house. Cf. Case of the Supreme Court of the Slovak Republic rep. No. 3 Cdo 43/1999.

583 See I. Fekete, 'Nájom a podnájom bytu,' 436-437.

584 See infra. One should also keep in mind that students may also use habitable premises within other legal framework than the lease of flat, esp. contract for accommodation or a lease of a habitable room in facilities designated for permanent housing as described in sec. 6.3 *supra*.

otherwise the parties would have to meet the legal requirements for a termination of the lease of flat. The right to change a party to a co-lease may be included in the contract, and it occurs in practice that the landlord would be willing to approve a change of parties (i.e. agree on an amendment, waiving a notice-period etc.) if a party (a student) can present an acceptable replacement tenant. The only direct legal means students (or any other co-tenants) – willing to cancel the co-tenancy of one of their peers – have, is to sue for termination of the lease due to extraordinary circumstances.[585]

Death of tenant may be grounds for extinguishing of the lease, narrowing the number of tenants or for transfer of the tenancy to one or more subjects.

First, death of a tenant cancels the *marital co-tenancy* and the surviving spouse will become the sole tenant of the flat upon his or her spouse's death[586]. Similarly to the divorce regime, the law would treat differently leases of flat in a housing cooperative, if the deceased spouse was the sole member of the housing cooperative. In such a case, the tenancy would be attributed to the heir of the membership share in the cooperative,[587] following the inheritance proceedings. The same applies to the death of a single tenant of a flat in a housing cooperative notwithstanding the persons that may be living with him in the flat.[588]

Second, the death of one of two or more *co-tenants* would narrow the number of co-tenants (and proportionately change the internal distribution of rights in the co-tenancy) to the remaining subjects.[589]

Third, if a *single tenant* of a flat *dies*, the lease would be transferred to other eligible subjects by operation of law, who would then become co-tenants if there is more than one of them. The pool of eligible subjects includes: the children, grandchildren, parents, siblings, sons- or daughters-in-law, who lived with the tenant in a common household at the day of his death, provided they do not have their own housing[590]. Moreover, other persons would also be eligible to become tenants if they had been taking care of a common household of the deceased tenant or if they had been dependent on his alimony, provided they had been living together for at least three years prior to the tenant's death and they do not have their own housing.[591] Given that this transfer of a lease causes direct changes in the tenants' structure without any intervention of the landlord, the law provides a procedural protection of his interests to the latter. The landlord may, namely, apply to the court to determine that the transfer of the lease did not take effect if he does it within three months from the day he acquired knowledge of facts precluding the transfer, but not later than three years from the death of the tenant.[592] These cases gain significance especially with regard to leases of flats with regulated rents.

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585 Under Section 702 para. 2 CC. See "separation" supra.

586 Section 707 para. 1 and 2 CC.

587 Section 707 para. 2 CC.

588 See Section 706 para. 3 CC.

589 See Section 707 para. 3 CC. Cf. I. Fekete, 'Nájom a podnájom bytu,' 331-332.

590 The courts adopted quite a broad understanding of the language of Section 706 para. 1 of "having an own flat", which includes basically any kind of tenure capable of satisfying the persons□s permanent housing needs, including ownership, co-ownership, tenancy, right of habitation with a spouse owning a flat etc. See *ibid*., 333-334.

591 Section 706 para. 1 CC.

592 Section 706 para. 2 CC.

Forth, if there is *no eligible transferee of the lease*, the lease of flat extinguishes and any possible co-habiting persons would be obliged to clear the flat. Similarly, upon death of the tenant of a *service flat, special purpose flat or a flat in a special purpose block of flats*, the lease relationship could not continue. However, the spouse of the deceased tenant or otherwise eligible transferees of the lease would be entitled to use the flat until an adequate replacement housing has been provided to them[593], as mentioned with regard to the divorce.

The said legal consequences of the death of a tenant would also be inflicted by the **tenant's permanent abandonment of the common household**[594], unless the lease pertains to a flat in a housing cooperative, or it is a non-marital co-tenancy.[595]

Finally, **domestic violence** is a phenomenon specifically reprieved by the tenancy law that might not cause a change in the parties to a tenancy contract, yet a court's order may punish the wrongdoer with consequences in fact resembling those aforementioned. Namely, physical or psychological violence of a spouse (or ex-spouse) co-using the flat towards the other spouse or towards a person close to the spouse living in the common premises, which makes further cohabitation unbearable may be grounds for the court's decision limiting the wrongdoer's right of use of the flat or fully excluding him or her from its use.[596] In cases of shared lease (co-tenancy), such behaviour may amount to "extraordinary circumstances" as grounds for termination of the co-lease[597].

- 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)?

Sublease of a flat is an accessory legal relationship to the lease of flat, whereby it requires a valid underlying lease for its entry into force and its continued existence. It is the tenant's right to sublet a flat or a part thereof to a third party. No specific form is prescribed for such an arrangement; however, a valid contract of sublease requires the existence of an express *written consent of the landlord*.[598] Without such consent, the contract for a sublease of flat would be void[599] and the landlord would be able to unilaterally terminate the underlying lease for gross breach of the tenant's contractual

593 See Sections 709 and 713 CC.

594 The courts interpret the "permanent abandonment of a common household" as a conduct of the tenant of the flat that is motivated by the aim to terminate the common household and not to re-establish it. It may be exercised as an express statement of the tenant that he or she is abandoning the common household and does not intend to come back as well as a situation if such a will of the tenant can be inferred from the concrete circumstances. The sign of permanency is presented in such an abandonment that is not limited in time and that is to be deemed final. See R 34/1982 and Case of the Supreme Court of the Slovak Republic rep. No. 2 Cdo 37/2003.

595 Cf. Sections 708 and 713 in fine.

596 Section 705a CC. It should be noted that this legislation lacks on thorough reconciliation with the issue of encroachment upon one's right of use and gives no clear limits for such injunctions, nor anticipates any compensation therefor.

597 Under Section 702 para. 2 CC. See "separation" *supra*.

598 Section 719 CC.

599 Under Section 39 CC; Cf. Case of the Supreme Court of the Slovak Republic rep. No. 3 Cdo 157/2002.

duty[600]. However, the consent of a reluctant landlord may be replaced by a court's decision, provided the tenant himself cannot use the flat for serious reasons for a long time and the landlord does not give serious reasons for his refusal.

Sublease of a flat does not enjoy the level of protection of a the user (subtenant) as broad as in lease of flat, the content of the relationship mainly depends on the contract of sublease, especially with regard to the duration of the sublease, which may be limited in time or open-ended (if there is no specific agreement, terminable by the sub-landlord or the sub-tenant on three months notice)[601] and always extinguishes upon extinguishing of the underlying lease[602]. There is no right of the subtenant for a replacement housing upon termination of a sublease of a flat[603] nor a right of the household members of the subtenant for a transfer of the sub-tenancy on them upon the sub-tenant's death.[604] The law also does not prohibit the landlord from selling the flat to others than the sub-tenant as in the lease of flat for an indefinite period.[605] All these features of sublease of a flat make it indeed, along with a short-term lease, a regime of choice for owners of flats willing to avoid rules seemingly excessively protecting the tenants of flats in an open-ended lease.

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

Co-lease of a flat is a recognized regime of a use of a rental flat by a multiplicity of tenants under Sections 700 – 702 CC. Each of the tenants has a common – shared and not divisible – right of use of a single flat, limited by the same right of use of the other co-tenants. The object of the co-lease is the flat as a whole, notwithstanding the manner of its actual use as agreed among the tenants.[606] This regime should further be distinguished from a vicarious right of use of a household member derived from the tenant's right as well as from a situation when a part of a flat is sublet to a third party under Section 719 CC.[607] Any flat is suitable to be rented by a multiplicity of tenants, with the exception of a flat in a housing cooperative, in which only spouses can be co-tenants.[608]

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600 Section 711 para. 1 lit. d) CC.

601 See Section 719 paras. 1 and 3 and Section 710 para. 3 CC. The law anticipates the "landlord" (in this case meaning the sub-landlord or tenant of the underlying lease) to have the right to terminate the sublease with an agreed or statutory period.

602 Cf. Case No. 26 Cdo 411/2005 of the Supreme Court of the Czech Republic.

603 Section 719 para. 4 CC.

604 In addition, since the sub-tenancy is contingent on the consent of the landlord with the sublease, which, in our view, should be idiosyncratic to certain subtenant, succession of this right to the heirs of the subtenant would also generally be not possible, if not agreed otherwise. Cf. Section 579 CC.

605 Under Section 16 para. 1 OFNP 1993; Cf. discussion of "pre-emption" in sec. 6.3 *supra*.

606 K. Plank, in P. Vojčík et al. *Občiansky zákonník*, 892.

607 J. Lazar, in J. Lazar et al. *Občianske právo hmotné.* Vol. 2 (Bratislava: IURA EDITION, 2010), 192.

608 Section 700 para. 3 CC. Cf. however I. Fekete, 'Nájom a podnájom bytu,' 292 and 355 (arguing the impossibility of a co-lease of a service flat).

The co-lease of a flat can ensue by a multilateral contract or by operation of law.[609] Form and content of the contract for a co-lease of a flat copies the features of a single-tenant agreement. It may be concluded among the landlord and multiple tenants from the outset, or a third party may accede to a lease by an agreement with the landlord and the hitherto tenant[610] by which a co-lease of a flat is created. Moreover, creation of a co-lease by operation of law is a legal consequence of the above mentioned transfer of the tenancy upon tenant's death or his or her permanent abandonment of a common household on one hand and a result of transformation of legal framework of personal use of flat relations upon 1991[611] on the other.

As the rights and obligations of the co-tenants pertaining to the lease of flat are limited by the position of the remaining co-tenants, the Civil Code provides for a framework under which they have to respect mutual rights and still be able to act effectively in relations with third parties. Hence, each of the co-tenants may autonomously act with regard to ordinary matters of the lease, such as minor repairs, payment of rent, insurance of the household etc. In other matters, reaching beyond ordinary, i.e. matters of significant monetary value or touching upon the core of the lease, such as exchange of flats, sublease, termination etc., consent of all co-tenants is necessary. Legal act in breach of this provision would be voidable by any of the remaining co-tenants.[612] In relation to third parties, the rights and duties pertaining to the co-lease are joint and several obligations of the co-tenants.[613] In the event of a discrepancy among the co-tenants, any of them may plea for a court's decision on the issue of controversy.[614]

Some peculiarities relate to the co-lease of a flat by spouses permanently living together (**marital co-lease of a flat**), which, however, are specifically relevant only for the arising of such a lease[615] and its extinguishing and mutual reconciliation of the partners, as already explained above. Due to rather unique purpose the service flats, special purpose flats and flats in a special purpose block of flats serve, no marital co-tenancy arises therein, yet it does in a lease of flat in a housing cooperative with particular regulatory derivations.[616]

- Duration of contract

The Slovak Civil law gives preference to the prevailing freedom of contract principle as to the duration of the contract of a lease of flat, which can be formed as on open-ended one (contract for an indefinite period) or as limited in time (contract for a definite

609 Cf. *ibid.*, 293-294 (introducing an additional way of creation of a co-lease – through merger of separate rental flats).

610 Section 700 para. 2 CC.

611 See Section 871 para. 1 CC.

612 See Sections 701 para. 1 and 40a CC; see also I. Fekete, 'Nájom a podnájom bytu,' 297.

613 Section 701 para. 2 CC.

614 Section 702 para. 1 CC; see also "separation" *supra*, for eventual termination of a co-lease upon a court's decision as a result of extraordinary circumstances.

615 See Sections 703-704 CC; If either or both of the spouses willing to live together permanently become(s) a tenant/tenants of a flat during their marriage – marital co-tenancy arises. The act of marriage would bring about the same result if one of the spouses had been a tenant of a flat before. Note the differences of marital co-tenancy of a cooperative flat in "divorce" *supra*.

616 Sections 709 and 700 para. 3 CC.

period).[617] Lease as such is, however, by definition understood as a right of temporal use of a property (flat), which implies that also leases for indefinite periods may come to an end under legally recognized circumstances. Concrete rights and duties as well as the level of the tenant's protection vary under each of the regimes, aggregate of which is the deciding point of the market popularity of one or the other, rather than just the consideration of the projected duration of the use by the parties. Only rarely the lawmaker gives constraints on permissible agreement on the duration of a lease of flat. Under Section 686 para. 2 CC a lease of flat is presumed to be concluded for an indefinite period if the duration had not been agreed upon by the parties.

Similarly, in a lease of a building (family house), definite as well as indefinite period leases are lawful, with virtually no express additional constraints limiting the agreement of the parties, provided they meet the requirements of the general civil law on validity.

- Open-ended vs. limited in time contracts

Under both modifications the tenant of a flat is afforded protection in that the lease cannot be terminated at will by the landlord, whereas the tenant is allowed to do so.[618] The lease would then extinguish upon elapsing of the notice period set forth by law at three months.[619] In addition, limited in time leases of flat always extinguish upon elapsing of the agreed period, and no implied prolongation of the lease (*relocatio tacita*) applies[620]. Along with rather limited and potentially procedurally painstaking possibility for termination of a lease by the landlord's notice (which is an issue especially in the open-ended leases of flat), the much broader concept of obligation to provide replacement housing to the tenant upon termination of a lease of flat for an indefinite period (usually the landlord's duty) is a distinguishing matter of those two regimes[621]. Furthermore, only in an open-ended lease of flat the landlord would be subject to the prohibition (legal constraint) to sell the flat to anyone but the tenant.[622]

Newly concluded open-ended leases of flats are a rarity nowadays. Most of leases of flats for an indefinite period are remaining relations of the transformation of the former right of personal use of a flat into a lease of flat.[623] In line with this consideration, also current tenants of restituted dwellings whose lease of flat has been terminated under TCL 2011, and who are eligible for a replacement housing pursuant to this act, will have to be provided with a rental flat for an indefinite duration of the lease, as a replacement

617 Section 685 para. 1 CC.

618 See section 710 paras. 1, 2 and 3 CC; N.B. the wording termination by notice "and also" by elapsing of agreed period. But cf. I. Fekete, 'Nájom a podnájom bytu,' 360 (based on the language of Section 582 para. 1 CC arguing that termination of a lease of flat on notice is only possible in leases for indefinite period).

619 The notice-period starts with the beginning of the month following the receipt of the termination notice by either party. The landlord may also provide longer notice-period in his written statement or it may be extended given the extraordinary circumstances surrounding the tenant. See Section 710 paras. 3, 4 CC.

620 Cf. Sections 676 para. 2 and 710 para. 2 CC.

621 Cf. Section 712a para. 9 CC and Section 4 RDaRH 1992.

622 Which is an unsystematic leftover of the privatisation legislation. See Section 16 para. 1 OFNP 1993.

623 Pursuant to Section 871 para. 1 CC.

housing by the future landlords, i.e. municipalities as public owners of those new dwellings.[624]

In leases of buildings (family houses), neither party is allowed to terminate a limited in time contract at will, unless agreed otherwise. Unlike the lease of flat, upon expiry the lease of a building would be prolonged by operation of law under the same terms as the original contract (for a maximum of one year), unless the landlord sues for eviction within 30 days from the extinguishing of the lease.[625] An open-ended contract, on the other hand, may be terminated at will by either party with an agreed or statutory notice period.[626] Generally, the level of tenant's protection in the lease of a building does not compare to the lease of flat arrangement, as a result of which there is no effort by the market actors to circumvent open-ended contracting in a case of rental houses.

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

Generally, no caps or minimal thresholds for the duration of the lease of flat or a building is foreseen by the rules of the Civil Code. Only a special class of lease contracts – social housing leases of flats – concluded according to Section 12 SHDaSH 2010 have to conform to maximum limits of duration of the lease that bind the landlords (municipalities or higher territorial units), who had benefited from a state subsidy scheme while procuring the rental flat, in their contracting with the tenants.[627] Hence, the maximum duration of a social housing lease of flat contract may be:

- 1 year, if due to availability the social housing is provided to a regular tenant, not meeting conditions of need as laid down in SHDaSH 2010[628];

- 3 years, for general eligible applicants[629] under SHDaSH 2010;

- 10 years, for disabled applicants for flats accommodating their limited ability of mobility or for applicants that are members of a household afforded replacement housing for certain restituted dwellings.[630]

Upon expiry, the social housing leases may be prolonged, subject to reassessment of merits of eligibility of the tenant, which is slightly milder compared to the assessment in the first stage.[631]

Apart from these limits anticipated by the law, the absence of a general time-limit on agreement on duration of a lease raises several issues with regard to leases reaching

624 See Sections 5 and 13 para. 1 TCL 2011.

625 Section 676 para. 2 CC.

626 Cf. Sections 677 – 678 CC.

627 As already mentioned, those prerequisites for a lease contract set forth by the SHDaSH 2010 are binding on the landlord (beneficiary/grantee) and failure to meet them in the contract with a third party (actual tenant of social housing) should not result in invalidity of the lease to the detriment of the tenant, rather it should be accounted for by punishing the grantee within its contractual relationship with the respective governmental agency (usually a liquidated damages clause).

628 Section 12 paras. 5 and 6 SHDaSH 2010.

629 i.e. eligibility based on income thresholds, or subject leaving foster home care and similar. See Section 22 para. 3 lit. a), b), c) SHDaSH 2010.

630 Section 12 para. 2 SHDaSH 2010.

631 Section 12 para. 4 SHDaSH 2010.

beyond conceivable “temporary” duration or even lifetime of the tenant. The contractual practice is well familiar with leases for 99 or 100 years. Although virtually all such contracts relate to use of land or buildings, since there are no special provisions for the lease of flat contracts, general considerations on admissibility of such arrangements may be applicable in a similar way. True, prevailing freedom of contract may justify parties’ will to be bound for definite, yet extremely long duration. The judges[632] suggest and the commentators[633] concur that the true intent of the parties to such a contract would more often than not be oriented to circumventing the provisions on transferring the full ownership, on creation of a real right or provisions on an open-ended lease for illegal or immoral reasons. As a consequence, based on the idiosyncrasies of the facts of each case, such a contract might in court be held fully or partially invalid (i.e. void as to the duration of the lease). In the former situation, the parties would be left with no contractual obligation just with the duty of mutual reconciliation of the unjustified enrichment their behaviour had incurred,[634] unless their true will amounting to a valid contract – a lease for an indefinite period – can be unearthed, which would then prevail.[635] A feasible solution to the latter situation is at hand with regard to the lease of flat, which with an invalid stipulation on duration could be deemed open-ended by default.[636] Nevertheless, the non-existence of a clear time cap of an allowed lease for a definite period is seen as an obstacle for predictability of law and true consequences of wary contract-drafting, whereby such a time border is called for.[637]

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

The law expressly does not prohibit the parties to agree on the end of the “definite period” otherwise than by directly setting a time-frame, e.g. by conditioning the duration of the lease[638], yet the commentators employ a rather restrictive understanding of what is a valid determination of definite period of a lease of flat. Agreeing on the duration of a lease *contingent upon certain occurrence*, whereby it is not certain whether or when it may be substantiated cannot be deemed determinable and does not establish a lease of flat for a definite period.[639]

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632 Case of the Supreme Court of the Czech Republic No. 28 Cdo 2747/2008 of 28 March 2007.

633 See a thorough analysis of this issue in J. Gyárfáš & Z. Kolenová, 'Nájomná zmluva na dobu 100 rokov – úvahy v rovine de lege lata a de lege ferenda', *Justičná revue* 61, no. 3 (2009): 424-433; and the discussion it triggered at <http://www.lexforum.cz/242>, 30 December 2013.

634 Building on the argument that the stipulation of the duration of the lease is an inseparable part of the contract, absence of which renders it invalid. This would be specifically on point with regard to the general lease regime (e.g. lease of a family house), given there is no default rule on duration of the lease similar to the one of a lease of flat (section 686 para. 2 CC). Cf. Sections 39, 41, 663, 457 CC.

635 See section 41a CC. This is the path the Czech Supreme Court had taken (n. 632 *supra*) and which seems more plausible in extremely long leases.

636 See section 686 para. 2 CC. *Gyárfáš* & *Kolenová* suggest that by analogy of law this reasoning could be applied to leases of buildings, plots etc. as well. See n. 633 *supra*.

637 See *ibid*.

638 See Section 36 CC.

639 I. Fekete, 'Nájom a podnájom bytu,' 230; Cf. Section 37 para. 1 CC.

Prolongation of limited in time leases of flats should be effected primarily by agreement of the parties, as the general rule on automatic prolongation of a lease (applicable for leases of buildings for instance) does not apply. The language of the CC, however, does not directly exclude contractual prolongation clauses, which would have to meet the general test of validity of a juridical act. The case law indicates, for instance, that a clause in a lease of flat for a definite period contract stating that "if the tenant will duly perform its duties under the contract, the contract shall be prolonged for a definite period", does not amount to automatic prolongation (or re-establishment) of the lease.[640] As a broad prolongation clause may in effect serve as a tool of circumvention of the rules on leases for definite period or any possible selection procedures otherwise necessary for (re-)conclusion of a lease contract, it had been completely ruled out in contractual relationships of municipal or governmental entities.[641] Therefore, municipalities as the major landlords in would not be able to employ such a clause in a lease of flat or a lease of a building[642] contract and the prolongation would have to be based on an amendment or a new lease contract.

As far as "*chain contracts*" are concerned, currently nothing is prohibiting the parties to regularly refresh their lease with a new contract. Re-signing of a lease contract would be generally understood as continuation of an existing lease. This is would not harm the tenant, as an upper limit for a duration of a lease is only exceptional (social housing lease of flat) and the protected interest thereby is to ensure regular reassessment of eligibility of the tenant for such housing scheme, which he or she would be obliged to undergo in every partial contract pertaining to the chain.

The key issue regarding prolongation clauses as well as chain contracting that should be accounted for by the parties and that would be looked into by the court if contested by either party, is the determination of the true will of the parties when concluding the contract, which according to the rules on interpretation of juridical acts should prevail over the mere language of the contract.[643] Hence, if the parties intended to conclude a lease for an indefinite period and the actual text of the agreement is just an illegal circumvention of the rules on open-ended leases of flat (e.g. due to conflict with good morals) the true – legal intent of the parties will prevail. It should also by noted that the courts generally do not have the authority to re-define the content of the contract at bar, so the usual account of a tainted contract would be its invalidity rather than the court's re-formulation of the parties' will.

Formally, *lease of flat contracts for life* are not ruled out by law, they are, however, virtually non-existent, as the will of the parties to this end is usually translated into creation of the user's real right of habitation (easement) encumbering the flat until the beneficiary's death[644]. Moreover, the above mentioned string of case law on contingent

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640 See Cases of the Supreme Court of the Czech Republic No. 28 Cdo 1078/2002 of 27 June 2002 and No. 26 Cdo 3419/2006 of 7 January 2008.

641 See Section 490 para. 2 and Section 47 CC.

642 The *relocatio tacita* rule of Section 676 para. 2 CC would apply nonetheless.

643 Cf. Sections 35, 41a CC.

644 As a typical real right it has different formal requirements written contract with authenticated signature of the encumbered property owner, which needs to be entered into the land register. Such arrangement formally appearing as a "lease for life" would be at risk of invalidity notwithstanding the rule on precedence of the will over appearance of the contract (section 41a CC), because it would fail to meet these further requirements anyhow. Cf. section 39 and 41 para. 1 CC.

duration of the lease of flat indicates that such a contract may not be upheld by a court due to the uncertainty of the actual duration of the lease. If the agreement on the duration of the lease was void, the presumption of lease of flat stipulated for an indefinite period would apply,[645] as indicated with regard to the extremely long duration leases of flats.

With regard to the duration of a lease of flat, we should mention the very recent legislative effort that emerged in Slovakia, taking into account the importance of the lease of flat for definite period in the rental market, its potential as a great taxing source and reluctance of potential landlords to rent flats to tenants under very tenant-protective regime. Hence, a new "short-term lease of flat" tenancy type is to be introduced[646], under which the landlord of a private rental flat can enjoy more lenient regulatory contracting regime[647], provided he or she meets his tax registration duty[648] and the statutory provisions on form and content of this contract are met. Such a lease of flat, however, is envisaged to be only admissible for the duration of two years, with the possibility of its renewal not more than two times (chain contracting ceiling of 6 years). Thereafter, the lease would fall under the scope of the ordinary lease of flat regime of the CC, even if formally concluded as a new short-term lease of flat. Due to the fact that making market rentals more appealing to the landlords is goal in line with the long-term declared state housing policy of incentivising rental housing, it is highly probable that this regime will find its way into the Slovak legal order in the months to come.

- Rent payment

  - In general: freedom of contract vs. rent control

The governing private law principle of freedom of contract applies in fact to the vast majority of leases of flats, as far as the *agreement on rent* is concerned. In contrast, the language of the Civil Code on rent of flat anticipates its regulation by a special law.[649] This authorization of legislation in the Civil Code also anticipates the special law to regulate cases when the landlord would be able to unilaterally increase the rent, the payment for utilities or to change other terms of the lease. In fact, the regulatory measure currently in place, relates predominantly to publicly owned housing especially if the public funds had been invested in its procurement, and in the rare cases of privately owned housing with applicable rent regulation (restituted houses with tenants), with a written agreement of the parties (i.e. mutual consent) a higher rent than the statutory

645 Section 686 para. 2 CC.

646 See the full pre-legislative material open for interdepartmental discussion procedure at: <https://lt.justice.gov.sk/Material/MaterialDocuments.aspx?instEID=1174&matEID=6731&langEID=1>, 15 December 2013.

647 More flexible (or clear-cut) regulation on rent payment and its unilateral increase; deposits; extended options for contractual sanctions of non-performance; flexibility in stipulating grounds for termination of the lease; no replacement housing upon termination; easier eviction procedure; possibility to exclude transfer of the lease upon death or abandonment of the household by the tenant etc.

648 Section 49a para. 2 Income Tax Act 2003.

649 see section 696 para. 1 CC.

one would prevail.[650] Hence, disturbance of the freedom of contract in this matter, as explained earlier[651], is only declared to be desirable in the public housing sector (the backbone of social housing) and by the year 2016 should be the only domain of rent-regulated residential renting.

As far as rent in the housing cooperatives is concerned, as the tenants have equity in the cooperative, the rent serves a different purpose than in renting to third parties. Here the concept of cost-based rent applies, i.e. the rent should cover the whole costs of operation and management of the housing stock of a cooperative.[652] The true decision-making on the amounts of rent is thus shifted to the corporate level according to the articles of the concrete housing cooperative.

Neither a special regulatory measure nor a legal framework for rent regulation of the lease of a house exists.

It is important to appreciate that under every condition, the contractual autonomy and particularly with regard to the amount of rent, is limited by the standard of good morals, breach of which may possibly invalidate the lease of flat or at least the stipulation of the rent.

Apart from the freedom and partial regulation on the stipulation of the amount of the rent, the *manner of rent payment* should also be accounted for, since a newly adopted Cash Payments Limitation Act 2012[653] bars cash payments above 5,000 Euros between entrepreneurs and payments above 15,000 Euros if effected between non-entrepreneurs. It is also relevant for tenancy relations, as the payment limit is calculated as an aggregate of partial payments if it stems from a single legal relationship,[654] and the aggregate rent for the duration of a usual lease may easily reach said limits. Breach of this legal prohibition does not render the stipulation invalid,[655] yet if discovered by the tax authority, it would, as an administrative offence, be punishable by a fine of up to 150,000 Euros. Therefore banking transfers are generally recommended as the agreed forms of rent payment nowadays.

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

The framework provision of section 696 para. 1 CC invites the legislator to adopt **measures that would regulate the rent** of flats and thereto pertinent issues. Price regulation, especially with regard to regulation of rents of flats is effected under the provisions of the Prices Act 1996 (No. 18/1996 Coll., as amended). This act allows, among others, the state or local authorities to adopt price regulation measures in form of

650 see section 4a Regulatory measure of the Ministry of Finance of SR of 23 April 2008 No. 01/R/2008 on regulation of the rents of flats as amended as of 20 December 2011.

651 see part I chapter 1.2 B.

652 I. Fekete, 'Nájom a podnájom bytu,' 279.

653 No. 394/2012 Coll. In force since 2013, it regulates prohibitions on cash payments and sets forth provisos thereto. The general aim of the legislation is to gradually crowd out mostly untraceable cash payments in favour of money flows through banks and the like.

654 see section 6 para. 2 Cash Payments Limitation Act 2012.

655 see section 5 and cf. sections 9 et seq. Cash Payments Limitation Act 2012.

setting a fix price, a price ceiling or a combination thereof with binding rules on calculation of prices.[656] Price regulation is always deemed an extraordinary measure that shall be justified by extraordinary market conditions, threats to the market, protection of consumers or other public interest.[657] At the same time, if adopted, the regulated prices should respect economically rightful costs and adequate profit of the actors subject to regulation.[658] With respect to the regulation of rents of flats, since 1 May 2008 it is carried out by the Ministry of Finance of the SR that adopted a *regulatory measure*[659] to this end that has been amended twice.

This regulatory measure sets forth a *formula* for calculation of rents of flats that serves as a rent ceiling in applicable tenancies. For flats finalized on the 1 February 2001 at the latest the calculation takes into consideration the area of the flat, category of the flat, its age, features of the utility infrastructure, if public funds were invested in its procurement as well as the extent and age of the equipment provided to the tenant along with the flat. For newer flats, on the other hand, the calculation of the rent ceiling is based on the actual cost of procuring of the flat and the yearly rent is set at 5% of the procurement price of the flat.[660] The payments of utilities is not part of the calculation of rents. The regulated rent is build on nation-wide egalitarian principle. It does not reflect the social structure and situation of the tenants or the landlords. As mentioned earlier, especially in urban areas the rent ceiling is well-below the standard market rent levels.

The *applicability* of this regulation is, however, limited to certain tenancies almost exclusively pertaining to the public (i.e. mostly municipal) rental sector, especially to flats that had been built or otherwise procured through public funds.

The price regulation, namely, does not apply to[661]

- flats in housing cooperatives established after 1958, if they had been built under the cooperative housing construction regulation of that time;

- flats owned by natural persons;

- flats free of existing tenants (including continued tenancies based on transfer of tenancy upon death or the change of flat), in blocks of flats built without any public funding or returned to their original owners pursuant to the restitutionary legilation notwithstanding their actual owner;

- flats in blocks of flats built without any public funding with final building approval issued after 1 February 2001;

- flats rented to legal persons seated outside the SR, natural persons with permanent residency outside the SR, foreign representation office or diplomatic mission;

- flats or parts thereof used for business purposes with the consent of their owner;

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656 see secs. 5 – 11 Prices Act 1996.

657 see further section 4a Prices Act 1996.

658 section 2 para. 3 and section 8 Prices Act 1996; see also sections 3 – 5 Ordinance of the Ministry of Finace SR executing the Prices Act 1996 (No. 87/1996 Coll., as amended).

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

660 see section 1 and 2 Regulatory measure No. 01/R/2008 as amended.

661 see in detail sections 3, 4 and 4a Regulatory measure No. 01/R/2008 as amended.

- state-owned flats free of tenants, rented as interim surplus of housing stock;

- leases of privately owned flats[662] in which the landlord and the tenant agree in writing on a rent higher than the regulated one.

Clearly, rent regulation in private rental market applies solely to the rare cases of leases of flats (blocks of flats) owned by subjects who have regained ownership according to the restitutionary legislation, yet inhabited with "existing tenants" and as such has undergone heavy criticism[663] and ultimately lead to government action and adoption of TCL 2011 as described supra. Nowadays, the rents in this class of leases would either be slightly higher than the general rent ceiling regime[664], or - if the landlord of such a flat used its right to terminate the lease under sections 3 and 3a TCL 2011 until the end of 2012 - the regime of possible gradual rent increase with full de-regulation following 2016 would apply.[665]

In determining the *consequences of parties' agreement on rent* above the rent controlled levels, we have to distinguish between private landlords, who can validly exclude the rent regulation by agreeing on higher rents with their tenants in writing, and public landlords who are not allowed to do so (provided the rent control applies). For the public landlords, an agreement on rent inconsistent with the rent regulation would be partially voidable, i.e. the tenant (or other person affected by the voidable stipulation) may raise its invalidity pursuant to section 40a CC *in fine*. No specific form is required for such an act, but it must be made within the negative prescription period (statute of limitations) of three years from the moment of the conclusion of the contract. The party, who caused the voidability of the stipulation may not raise its invalidity; this is, however, usually not the case with the tenant.[666] As a result, the lease of flat contract that has not been contested on these grounds would be valid and enforceable as agreed. If, however, the breach of rent control regulation is raised as grounds for invalidity, the lease of flat would only be valid insofar it does not contradict the rent regulation, i.e. the lease would be *ab initio* in force with the rent at the highest rent ceiling level.

On the other hand, in the prevailing **cases of uncontrolled rent**, only a party with a rightful interest – usually the tenant claiming immorality of the sum of the agreed rent – would be procedurally entitled to contest the validity of the contract on these grounds.[667]

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662 i.e. flats owned by neither of the following: the state, a higher territorial unit, municipality or a corporation established by either of these. See section 4a Regulatory measure No. 01/R/2008 as amended.

663 see J. Grman, 'Problematika regulácie nájomného v podmienkach SR', *Bulletin slovenskej advokácie* 17, no. 4 (2011): 14 et seq.

664 15% above the calculated rent ceiling under the Regulatory measure No. 01/R/2008. See its section 3.

665 cf. sections 4 and 12 para. 5 TCL 2011 as well as discussion of restituted housing supra. See also section 1 para. 5 Prices Act 1996.

666 e.g. the Czech Supreme court held in this regard that "the acceptance of the landlord's requirement for payment of rent in breach with the rent control legislation, does not prejudice the tenant from raising the invalidity of the lease contract." See case no. C – 1735, rep. in *Soubor rozhodnutí Nejvyššího soudu* vol. 24.

667 see sec. 3 para. 1 and sec. 39 CC. Given the meek relevancy of private rental market and voluntary nature of the agreement on rent, such court cases are practically lacking. Yet for the sake of reference cf. e.g. Decision of the Supreme Court of the SR of 26 April 2012, No. 5 Cdo 26/2011 (available

The exact determination of "immoral excess" is to be performed by a judge case-by-case with regard to all peculiarities of the contractual arrangement. Since the amount of rent is one of the essential features of the lease of flat contract, its invalidity would render the whole lease void[668]. The relationship including its past performances should be reconciled between the parties within the frames of rules on unjustified enrichment, in effect meaning that the value of the past use would have to be assessed and paid for by the tenant in the usual amount of rent.[669]

In cases of the *lease of a house*, the stipulation of rent amount is not a prerequisite for a valid lease and can be replaced by the default rule that the usual rent with regard to the value of the rented asset and the manner of its use should be paid.[670] Thus, an immorally extensive rent would generally not invalidate the lease in its entirety.[671]

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

In both lease of flat as well as lease of a house situation, the CC gives no constraints for the contractual agreement of the maturity of the rent payment. If absent, the default rule of section 671 para. 2 CC would prevail, under which the rent is payable on a monthly basis in advance. The two regimes differ in the consequences of the delayed payment.

If a *tenant of a flat* does not pay the rent and the payments for services pertaining to the use of flat (utilities) within five days of their maturity, he or she will be obliged to pay the late payment fee of 0.5‰ (i.e. 0.05%) of the sum due, for every day of arrears, at least 0,83 EUR for each started month of arrears.[672] It is clear that the tenant would not be obligated to pay the statutory late-payment interest, what is not clear, is whether this provision should be deemed mandatory and thus leaving the parties no room for agreement on additional penalties for late payment or on the contrary. In practice most private-market lease contracts provide for additional contractual penalty[673] payable by the tenant in case of delays with rent payment and these cases do not come to judicial scrutiny. Yet, we hold that the language of the provision, read through the prism of the significant social function that the lease of flat serves and the interdependence with the

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at: <nsud.sk>) from the realm of excessive credit interest rates, appropriately applicable also to excessive rents: "When negotiating the interest in money loan, only such creditor is acting in accordance with morality, who requests a reasonable interest rate, notwithstanding the borrower entering into a credit agreement in an unfavourable situation for him. Therefore, offering disproportionate or even usurious interest rate to a borrower in this situation does not correspond with generally accepted relationships among people."

668 see section 37 et seq. CC. Cf. I. Fekete, 'Nájom a podnájom bytu,' 241.

669 see secs. 457 and 458 CC.

670 see sec. 671 para. 1 CC.

671 Pursuant to Section 41 CC partial invalidity of a legal act should take preference, unless its nature, contents or the circumstances under which it was executed, do not imply that its part cannot be separated from the entire contents. The courts should generally be prone to interpret contracts preferably in order to uphold the validity of contractually agreed terms and do otherwise only exceptionally, which still may not be fully excluded. Cf. Decision of the Constitutional Court of the SR of 3 July 2008 No. I.ÚS 242/07, rec. 20 (available at: <concourt.sk>).

672 see section 697 CC and section 4 Reg. 87/1995.

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

provisions on termination of a lease of flat, it should be interpreted as not allowing the parties to extend the monetary punishment of late payment beyond the statutory level. This argumentation is specifically upheld in consumer tenancies by the section 54 para. 1 CC establishing unilaterally mandatory nature of the provisions of the CC that may not be derived from to the detriment of a consumer.

Long-term non-payment of rent and pertinent payments would give rise to grounds for termination of the lease of flat as explained *infra*.

As there are no specific rules on delayed payment of rent for a *lease of a house*, the tenant in delay would be obliged to pay the statutory late payment interest[674], currently 5.25% p.a. starting from the day of arrears. In addition, the parties may agree on a contractual penalty in form of a lump sum payment, periodic penalty payment, either as a fixed amount or a percentage of the due debt or otherwise determinable manner. This agreement has to be executed in writing.[675] Upon a plea, the court may subsequently diminish an inadequately high contractual penalty, taking into account the value and significance of the secured duty (payment of the rent).[676] Long-term non-payment of rent and pertinent payments may, similarly, affect the existence of the lease in allowing the landlord to avoid the lease thereupon.

- 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);

There is no special regulation of set off or withholding the rent payment in the CC for the lease of flat or lease of house (general lease) relations. The general law of obligations would have to be accounted for. It allows for unilateral **set off** of the claims (e.g. by a legal act of the tenant), provided the claims are of the same kind (i.e. monetary debts), between the same parties, both claims would have to be enforceable (unlike claims with the negative prescription period elapsed or the *obligationes naturales*) and not otherwise excluded from the set-off by law or by agreement of the parties. Furthermore, the landlord's claim for rent would have to be mature in order to be eligible for the tenant's offset.[677] The act of set off by the tenant would not require a written form and would be effective to the day of both claims being due.

The section 6.5 *infra*, dealing with the disruptions of performance gives examples of claims that may arise during the implementation of the lease to the tenant. In this regard, we should note that disruptions of performance such as failure to repair a defect that would be the landlord's responsibility generally do not give the tenant a right to stop paying the rent,[678] but he would have to resort to specific remedies available, such as

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

675 section 544 para. 2 CC.

676 see further section 545a CC.

677 for details and conditions of legal set off see section 580-581 CC.

678 cf. Case of the Supreme Court of the Czech Republic No. 26 Cdo 2573/2008 of 16 December 2009.

applying with the landlord for reimbursement of costs of repairs pursued by the tenant in place of landlord (section 691 CC), or for discount of the rent if the use is hurdled by the breach of the landlord (section 698 CC), all of which require, within a fix period of six months, some interaction with the landlord prior to establishing a determinable and due claim as against the landlord. The underlying reasoning behind generally not allowing **withholding** of the rent payment is that the tenant's duty to pay the rent and the landlord's duty to ensure a due and peaceful exercise of the tenant's right of use of the flat do not have a mutually contingent nature (*synallagma*)[679] and hence the tenant may not withhold the rent payment merely on these grounds.[680] On the other hand, the courts have also opined that provided the defects of the flat had been duly notified by the tenant, his notification to the landlord - in which he states that until the necessary repairs are done he will not pay the rent in full – should be deemed an application for the discount of the rent.[681] Consequently, the only instance in which the tenant would be entitled to withhold the payment of rent is if the tenant could not use the rented premises for housing purposes at all due to defects of the unit (house or flat) that the tenant did not himself incur.[682]

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

The landlord is free to assign the claims from the rental agreement even in leases for housing purposes, provided the assignment will not have detrimental effects to the tenant (debtor)[683] and the assignment had not been prohibited by a prior stipulation of the parties. The contractual prohibition of assignment may be construed as relating to any claims or only to qualified ones (time, amount, selected assignees, etc.) or parts thereof. Assignment by the landlord in breach of such prohibition would render the assignment void.[684] Otherwise, the landlord may assign the rental claims to a subject of assignee at will and without the necessity of the debtor's (tenant's) consent, if the formal and material requirements of an contract of assignment pursuant to section 524 et seq. CC are met.

- 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

679 see section 560 CC.

680 see e.g. Cases of the Supreme Court of the Czech Republic No. 26 Cdo 2573/2008 of 16 December 2009, No. 26 Cdo 1056/2002 of 25 July 2003 et al.

681 see Case of the Supreme Court of the Czech Republic No. 20 Cdo 2295/99 of 26 September 2001. Although the regime of a lease of a house (building) applies to the facts of the case the right to discount of rent is built on the same principles in the lease of flat as well.

682 section 673 CC.

683 see sections 525 and 529 CC; cf. J. Ťapák, in P. Vojčík et al. *Občiansky zákonník*, 660. This principle of the assignment law is emphasized with regard to the protection against unfair contract terms in consumer contracts (section 53 para. 4 lit. d) CC), yet the assignment of claim generally should not have detrimental effect on the debtor.

684 cf. section 525 para. 2 and section 39 CC.

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

An indispensable feature of each lease under Slovak law is that the right of use always has to be compensated. Although the CC uses the language of "payment"[685] of rent, in line with the principle of the contractual autonomy of the parties, the commentators agree that the rent may as well be agreed upon in other than monetary form (e.g. in perquisites) or even as a corresponding right of use of other property[686] or any other performance, provided the stipulation is clear and determinable as to the extent of the conveyance or performance. Even in cases where rent control applies the regulatory measure sets a statutory ceiling for the "price of rent", which, in our view, does not by any means prejudice an agreement of the parties as to the form in which the rent should be performed, provided its price, i.e. its value, does not overpass the regulated limits. However, a statutory right of the tenant to require in-kind performance as rent is neither provided for in the relevant legislation nor can it be implied therefrom, as such a performance could not be described as "usual rent"[687]. The regime of reimbursement of improvements to the housing unit is expounded on below.[688] The Slovak law does not attribute a contractor (or any creditor) a statutory lien on immovable property nor could he requires unilaterally creation of any charge over immovables (or flats), except in frames of execution proceedings as a form of enforcement of a court's decision for payment of a claim.[689] On the other hand, the creditor would be able to attach a lien to the movable property (retain the property) of the landlord that had been conveyed to him, e.g. within the lease.[690]

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

In order to secure a claim for payment of rent (not other possible claims of the landlord), the landlord of either a building or of a flat does have a **pledge on the tenant's chattels** belonging to the tenant or to persons living with him in a common household (e.g. not property of the subtenant or a visitor). The pledge only extends to chattels situated in the leased premises with the exception of property exempt by law from execution proceedings[691], such as usual clothing, indispensable equipment of a household, pets for non-commercial use, wedding ring etc. The pledge is created upon bringing the property into the household and generally extinguishes upon its bringing out thereof.[692] The landlord's pledge will pertain if they are enlisted in a record drawn up by an official

685 cf. secs. 671 para. 1, 696 and 697 CC.

686 J. Lazar, in J. Lazar et al. *Občianske právo hmotné.* Vol. 2, 148.

687 cf. section 671 para. 1 CC, applicable to the lease of a house.

688 see part 2, chapter 2, lit. e. *infra*.

689 cf. section 151s para. 1 CC and sections 166 et seq. EO.

690 A valid statutory lien would require the creditor (in this case the contractor – tenant) to be otherwise obliged to return a movable to the person owing him a due monetary debt, provided it had not been seized illegally or fraudulently. See further sections 151s et seq. CC.

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

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

of a court or, if the chattels had been removed upon official order, if the landlord applies for the protection of his right in court within eight days from the removal. The pledge may be enforced and the claim it is securing settled through general ways of execution of charges, which is, if nothing else is agreed between the parties, a private auction performed by a licensed subject[693] or execution following a court's final judgement for payment of a rent through an executor.

If the tenant is moving out of the leased property or the chattels are being removed, although the rent is still unsettled or otherwise secured, the landlord may retain the chattels at his own risk (**statutory retention lien**). He is, however, obliged to apply for drawing up of an official record of the retained assets by a court official within eight days or he would be required to return the property.[694] The statutory lien complements the pledge and rights pertaining to it.

- Clauses on rent increase

Slovak CC does not encompass a general "*clausula rebus sic stantibus*" that would allow unilateral subsequent changes to a contract, and it is neither for the lease of flat, lease of a building nor for the general rules on contract. This general ban of unilateral change of the relationship follows from the provision in section 493 CC under which an obligation cannot be modified without the consent of its parties. Hence, the rent may not be increased unilaterally, unless a special law provides for it, as anticipated by section 696 para. 1 CC, or the contracting parties agree upon such possibility. A rent-increase clause should contain precise (determinable) conditions under which either the landlord or the tenant would be able to increase the rent unilaterally.[695] The contractually reserved right of the landlord to the unilateral rent increase and its execution has to fulfil general requirements of the Slovak law. If content or purpose of the legal act violates or evades law or is inconsistent with good morals, this legal act is invalid.[696]

Moreover, if a lease contract is a consumer one[697], we have to observe that contractual conditions regulated by a consumer contract may not depart from CC to the detriment of the consumer. In particular, the consumer may not waive his rights granted by the Code in advance, or otherwise impair his position under contract. On the basis of this regulation, we assume that an agreement in a consumer lease contract that the landlord may unilaterally increase the rent will probably be invalid, if it does not provide for a restrictive and clear-cut framework for exercise of this right. Nevertheless, rent-increase clauses in lease contracts (especially in commercial leases) are widely used and very

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

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

695 see e.g. O. Jehlička, in J. Švestka et al. *Občanský zákoník. Komentář,* 10th ed. (Praha: C. H. Beck, 2006), 1186.

696 Therefore immorally excessive or arbitrarily one-sided at will increase clauses would be in breach of the general provisions of section 39 CC. Since no specific case law on excessive rent-increase clauses is at hand all the reasoning about excessive rents *supra* applies with appropriate adaptations also for these stipulations.

697 section 52 CC.

popular in private practice[698] given the abovementioned features of Slovak law. Yet, these clauses do not tend to appear in courts.

On the other hand, a statute may provide for a regime of a right to a unilateral rent-increase. The courts have held, however, that neither the Prices Act 1996 nor the Regulatory measure of the Ministry of Finance of SR that forms the rent control legislation cannot be interpreted to this end,[699] i.e. a mere change in the rent ceiling does not enable the landlord to adequately increase the amount of rent.

Currently, there is only a single legal framework allowing for a unilateral rent increase by the landlord and it only reflects a temporary need to ensure a gradual liberalization of rents in the restituted flats with existing tenants. Under section 4 of TCL 2011 the landlords of flats whose lease was terminated pursuant to that act were allowed to raise the original controlled rent by 20% in 2011 and have been allowed to raise the previous year's rent yearly by 20% until 2015, by which year all eligible tenants are anticipated to be provided with replacement housing.

- Open-ended vs. limited in time contracts

Legal regimes of open-ended as well as leases limited in time do not differ with regard to the applicability of rent-increase clauses. Given the above-mentioned general impossibility of one-sided modification of agreed terms, not even due to the change of circumstances, it would be more relevant to consider employing such a clause in a lease for an indefinite period scenario.

- Automatic increase clauses (e.g. 3% per year)

As this method of calculation of new rent is prone to be unjust, disregarding the actual shifting of market factors, it is not used usually. Its employing would be, naturally, justified if it reflected concrete circumstances of the relationship (e.g. tenant's higher costs of reconstruction in the first years of the lease; the peculiar situation of the restituted buildings' owners under TCL 2011 etc.).

- Index-oriented increase clauses

Index-oriented increase clauses, whose effect is usually made contingent upon receipt of the landlord's notice by the tenant are the most widely used forms of calculated increase. Typically, the parties refer to the yearly inflation rate index as regularly published by the Statistical office of the SR and sometimes the parties make it subject to a minimum and/or maximum ratio.

The popularity of these agreements, along with the necessity to reconcile with the dynamic changes of rents in liberalized rental market environment as well as the need of its adequate regulation leads the legislative body to specifically include this possibility of

[698] cf. widely published recommendations to the public in nation-wide print, e.g. Z. Kollárová 'Prenajímate byt? Pred podpisom preverujte', <http://trading.etrend.sk/trading-poradna/chcete-prenajimat-byt-najskor-preverujte-a-az-potom-podpisujte.html>, 15 July 2013.

[699] see R 35/2009.

contracting within the upcoming "short-term lease-of-flat" regime that is anticipated to come into force in 2014.[700] Cases of unilateral changes in rents or payments for services provided along with the use of the flat (utilities) will be admissible upon a mutual consent of the parties and subject to statutory limitation. The only legal reason for the change may be a change in the prices of utilities or expected average annual inflation rate in the coming calendar year. Moreover, the landlord shall be entitled to change the rent and charges for the utilities at most by the ratio of increase in prices or inflation.

- 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 Civil Code gives the tenant specifically the entitlement to enjoy a full and undisturbed use of performances, provision of which pertains to the lease of flat.[701] These performances (also called services), here as utilities, used to be enumerated in an abolished Ordinance No. 60/1964 Coll. on payment for use of flat and for services pertaining to the use of flat, as amended. Services pertaining to the use of flat (utilities pertaining to the lease of flat) as understood nowadays, comprise central heating and supply of hot water[702], cleaning of common areas in the block of flats, elevator use, supply of drinking water through water conduit and its sewerage[703], use of a common laundry room (if there is one), lighting of common areas in the block of flats, chimney control and sweeping, waste and dust collection and disposal[704], sewage disposal and cleaning of cesspit, equipping the flat with a common television or radio antenna for the block of flats, or other services that the landlord and the tenant may agree upon.[705]

Supply of gas and electricity does not count as the above-mentioned "pertinent utilities" furnished by the landlord, as the tenant agrees on their supply directly with the respective distributor and he himself pays the price for this energy, outside of the direct scope of the landlord.[706] Contractual relationships as well as rights of the energy-supply consumer are set forth in a separate regulation of Energetics Act 2012[707]. With establishing a separate end-user spot of electricity supply (by agreement with the

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700 See the full pre-legislative material open for interdepartmental discussion procedure at: <https://lt.justice.gov.sk/Material/MaterialDocuments.aspx?instEID=1174&matEID=6731&langEID=1>, 15 December 2013.

701 see section 687 para. 1 and section 688 CC.

702 cf. Thermal Energy Act (No. 657/2004 Coll., as amended).

703 cf. Public water conduit and sewerage Act 2002 (No. 442/2002 Coll., as amended).

704 see sec. 77 et seq. Local Tax and Fee Act 2004. Waste disposal is procured by the respective municipality or a municipal enterprise. Fee for this service is due by the actual user (i.e. tenant of a flat, house etc.). However, subject to specific municipal regulation (which in fact generally is at hand and also sets forth the rates and calculation specifics), the fee is collected from the user by the owner of the immovable, and in a block of flats is done by the manager or an agent of the owners of the flats in the block. This subject then pays the entire fee for the building to the municipality.

705 I. Fekete, 'Nájom a podnájom bytu,' 255.

706 *ibid*., 255 and 281.

707 see esp. sections 17, 26 et seq. and 47 et seq. Energetics Act 2012 (No. 251/2012 Coll., as amended).

supplier) the consumer (user) is *ex lege* obliged to pay a fee for the public service provided by the national radio and television broadcasting entity.[708]

Unless otherwise agreed, the provision of television service by a cable company, telephone or internet connection is an additional utility that the tenant may easily procure and pay for himself.

- Responsibility of and distribution among the parties:
  - Does the landlord or the tenant have to conclude the contracts of supply?

As far as "pertinent utilities" in blocks of flats are concerned, the contract of supply (heat, water, sewerage) is concluded between the managing entity of the block of flats and the operator of the facility. The concrete payments are collected by this entity from the user of the flat as advance payments and subsequently balanced according to the actual (or computed) use of the service in question. Thus, neither the landlord, nor the tenant conclude a contract to this end by themselves. The legal basis of this common financial management in relation to the owner of the flat is the "contract of community of owners"[709], if the owners of flats do not assign the management of the block to a third party, or the "management contract"[710] if they decide to do so.

On the other hand, the power (electricity, gas) supply is based on a contractual relationship of the user (consumer) and the distributor. The person in a contractual relationship with the distributor is then responsible for payments of deliveries. It is open to the agreement of the landlord and the tenant, who will this contracting party be. In this regard it is important to distinguish between the landlord's duty to keep the object of the lease in a condition susceptible to its undisturbed use, including the upkeep of the facilities that enable the supply of the power by third parties, and the duty to actually supply the power to the tenant. The former is to be performed by the landlord (or on his behalf), whereas the latter is the responsibility of the person, who has undertaken to provide the service (third-party supplier directly, or the landlord, if the lease contract provides for this duty).[711]

- Which utilities may be charged from the tenant?

Similarly, the contract of lease governs the extent of utilities that will be charged from the tenant by the landlord (and then reconciled with the supplier/manager etc.) or by other entity (supplier – as may be the case with electricity or gas supply; house managing entity – as may be the case with the services pertinent to the lease of flat). However, once the extent of provided (and charged for) utilities is set, neither of the parties may unilaterally decide to cease providing it or paying for it.[712] The tenant may always be charged for the "pertinent utilities", as these are generally considered a prerequisite for

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708 see section 3 Radio and Television Public Service Fee Act 2012 (No. 340/2012 Coll.).

709 see section 7a OFNP 1993.

710 see section 8a OFNP 1993.

711 cf. Case of the Supreme Court of the Czech Republic No. 26 Cdo 186/2005 of 26 October 2005.

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

habitability of the premises and ensuring its provision is the landlord's utmost duty. Subject to concrete contractual arrangements, the tenant may be charged for the supply of power (electricity, gas) as well. If the tenant is in a distribution contract relationship with the electricity supplier, he would also be obligated to pay a fee for the public service provided by the national radio and television broadcasting entity, unless a legal proviso to this duty applies[713].

- What is the standing practice?

As a rule, in lease-of-flat agreements for rather short duration, which is the domain of the private rental market, the landlords tend to remain the sole contractual partner of the third-party suppliers of not only the "pertinent utilities" but also the power supply, and on some occasions also the TV or other additional service. The landlord would then present the tenant with the yearly balance of the actual use with the advance payments (if the service is charged in this way) and settle the account with the tenant on these grounds. It is also not uncommon and legally acceptable that the rent would encompass all possible charges for agreed list of services, direct payment of which would be the sole responsibility of the landlord, notwithstanding the actual use of the services of supplies.

In case of long-term leases and leases for an indefinite period, the standing practice is that the tenants usually conclude a separate power supply agreement and are charged directly by the electricity or gas supplier, whereas the "pertinent utilities" are charged by the landlord and paid by him and separately reconciled with the user (tenant).

As far as the method of payment for utilities is concerned, it is very popular to arrange for the payments through joint collection of utility payments,[714] as a payment service offered by the Slovak Post office.

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

If the price for utilities is agreed upon as a flat payment (included in the rent), all considerations on rent-increase clauses would similarly apply and the increase would be generally admissible, provided it is based on predictable and restrictively interpreted data, never to the detriment of a consumer.

In the prevalent framework, anticipated by the Civil Code too, the concrete prices of utilities would be completely outside of the contractual scope of the very parties to the contract of the lease of flat. The payments would, thus, copy the charges of third party providers of the services. It is important to note, that the prices of fundamental utilities underlie price regulation by a governmental agency - The Regulatory Office for Network Industries. Its competencies reach into network industries - electricity, gas, heat and

[713] see section 5 Radio and Television Public Service Fee Act 2012; i.e. a person with a recognized hadicap and selected subjects. Others may be eligible for a discounted fee based on social merit. See further section 6 Radio and Television Public Service Fee Act 2012.

[714] a.k.a. SIPO. It is a service for making multiple household payments by means of one document. A payer can pay the charges for water, gas, electric energy, rent, cable TV, loan repayments etc. See <http://www.posta.sk/en/services/joint-collection-of-utility-payments>, 15 December 2013.

water management sectors[715] and are aimed at protection of end-consumers from abuse of the monopolistic energy suppliers' dominant position, and, at the same time, at ensuring investment return for business entities, so that energy and water supply is reliable and secure. By means of secondary legislation[716] the Office determines the prices and conditions of their application in network industries and also the conditions for the performance of the regulated activities. The basic principle of price regulation approved or determined by the Office is applied by the price cap method. Procedurally, the regulated subjects, most importantly the producers, apply for an approval of a price proposal for electricity, gas, heat, potable water and waste water and the related regulated activities to the Office, or the Office initiates the proceedings upon its own motion. In the course of price proceeding, the Office approves or determines price for the regulated entity by issuing a price decision[717] (setting a price cap or a fixed price for the respective producer and time period). Changes of prices for utilities as against the end-consumers (tenants or landlords) are legal grounds for charging a higher or a lower price, even subsequently if the advance payments are accounted after the decision has come into force.[718]

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

It is vital to distinguish the relationship between the landlord and the tenant, part of which is the duty to provide (or make accessible) services pertaining to the lease-of-flat, as opposed to the contractual relationship between the third party provider of a utility and the user (landlord or tenant).

The landlord is generally never eligible to stop providing services, whose delivery he is liable for. Not even in an instance, where the tenant does not pay the rent. Similarly, he would not be entitled at his will to disrupt the flow of given utility, if the tenant is in the contractual relationship only with the landlord and the latter manages the payment for the utility (electricity, gas) by himself. As mentioned earlier, the tenant's duty to pay the rent and the landlord's duty to ensure a due and peaceful exercise of the tenant's right of use of the flat and to provide the utilities, do not have a mutually contingent nature (*synallagma*)[719]. Therefore, just as the tenant is not generally entitled to stop making payments, the landlord is not entitled to stop providing services as a self-help remedy for non performance of the other party.

However, in cases of "non-pertinent" utilities (electricity, gas, telephone, internet, TV etc.), interruption of delivery of the respective service is a legal and imminent remedy of the supplier for lasting arrears with payment for the service, notwithstanding whether the

715 see section 2 lit. a) Regulation in Network Industries Act 2012 (No. 250/2012 Coll.). See generally <http://www.urso.gov.sk/?language=en>, 15 December 2013.

716 see e.g. Ordinance No. 221/2013 Coll. setting the price regulation in electricity industry; Ordinance No. 222/2013 Coll. setting the price regulation in thermal energy industry; Ordinance No. 193/2013 Coll. setting the price regulation in natural gas industry; etc.

717 <http://www.urso.gov.sk/?q=content/decisions&language=en>, 15 December 2013.

718 cf. also I. Fekete, 'Nájom a podnájom bytu,' 280.

719 see section 560 CC.

responsible subject is the landlord or the tenant.[720] Hence, the provision of e.g. electricity and gas may be legally interrupted if the customer does not pay his outstanding debt after a supplemental period of not less than 10 days from the first written notice.[721]

- 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)?

Deposits, as escrow payments of the tenants to the landlords at the outset of the lease relationship that may - subject to contractual terms - eventually be returned to the tenant or set off by the landlord with his claims ensuing from the lease, are a creation of the legal practice. Until recently there has been no specific mentioning of the possibility of retaining a deposit sum in the lease relationships by the landlord. However, the newly adopted regulation of social housing leases[722] and closely related regulation of leases as replacement housing for the "existing tenants" of restituted dwellings[723] in identical language anticipate the parties to agree on a financial deposit and set restrictions upon its admissible extent, management therof and its eventual use.

For this segment, the financial deposit *expressis verbis* serves as security for payment of the agreed rent, agreed payments for utilites pertaining to the use of the flat and claims arising out of damages to the rental flat in use. Hence, it is a guarantee deposit for future claims.[724] This perception is consistent with the contractual practice outside the scope of social housing, under which the parties agree on a deposit in the same structure.

The envisaged introduction of regulation of financial deposits on purely market conditions within the frames of "short-term lease of flat" tenancy type[725] proves the relevancy of this institution and the need of its regulation even in the private contractual

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[720] Consequently, it actually may occur that the landlord as a customer of the utilities provider would misuse his contractual relationship with the provider by willingly interrupting the supply of the respective service. In such a case, however, the the landlord would have to bear consequences of his non-perfomance towards the tenant (most of all, the liability for damages).

[721] Pursuant to section 17 para. 13 Energetics Act 2012: "If electricity consumer in the household or gas customer in the household fails to pay the advance payment or underpayment of the final invoice to the designated maturity date, the supplier of electricity or gas supplier is obliged to indicate this matter to the household consumer of electricity or gas and to determine a new term of the maturity of the obligation, which shall not be less than 10 days from the notice of liability for the outstanding debt to the household consumer of electricity or gas consumer. The written notice of the supplier of electricity or gas supplier includes also the information on eventual interruptions in the supply of electricity or gas if the household electricity or gas customer fails to fulfil his obligation or within the additional period."

[722] section 12 paras. 7 and 8 SHDaSH 2010.

[723] section 13 paras. 3 and 4 TCL 2011.

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

[725] See the full pre-legislative material open for interdepartmental discussion procedure at: <https://lt.justice.gov.sk/Material/MaterialDocuments.aspx?instEID=1174&matEID=6731&langEID=1>, 15 December 2013.

practice. It ought to serve as a guarantee payment for all above-mentioned future claims of the landlord, and others, if the parties agree so, provided the claims pertain to the lease of flat.

- What is the usual and lawful amount of a deposit?

With lacking regulation of this institution in private contractual relationships, only the standard of good morals confines the admissible from extensive amounts of agreed deposits[726]. However, the contractual practice tends to require the tenant to pay a deposit in the amount of six, three or one month's rent, the latter being the most usual.[727]

In social housing relationships, on the other hand, the respective acts ban agreements on deposits over then six month's amount of rent and, additionally, the deposits are the only admissible payments that can be required from the applicant for social housing (lying tenant's replacement housing) in relation to the conclusion of the contract, which are not directly linked to the use of the rental flat.

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

The contract completely governs the regime of management of the money in the landlord's deposit in private rental relations. Unless otherwise agreed, the landlord does not owe interest on the money in escrow.[728] Landlords under special regulation of social housing leases of flats and leases as lying tenant's replacement housing are under specific duty to keep the sums of deposit on a special account created solely for this purpose in a bank.[729]

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

As the deposit payments are fully purpose-limited payments, the only use thereof to which the landlord would be allowed is determined by the enumeration of the claims it secures. Thus, subject to the lease contract, the landlord would be entitled to offset his claims pertaining to the lease with the account debt. Moreover, the average lease of flat contract in the private rental sector specifically states that the deposit may be used to offset the claims from damage caused to the flat by the tenant or anyone who he let dwell in the premises, with the tenant's outstanding debt on rent or utilities, or as payment of the last month's rent. Hence, the use of the deposit shall always serve to settling claims pertaining to the lease of flat and ensuing from its use. The contract may also provide for a regime of subsequent re-adding of funds if used legally by the landlord

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726 cf. the discussion on section 39 and section 3 para. 1 CC relating to extensive rents *supra*.

727 The legislator anticipates to set an amount cap on deposits for the "short-term leases of flats" in the forthcoming bill to the aggregate of the three month's rent and payments for pertinent utilities for this time. Cf. also Z. Handzová, 'Ako (si) výhodne prenajať byt'.

728 Avoidance of the lease contract or its invalidity may lead to the landlord's obligation to return the money with interest, which is, however, an issue of general contract law. See section 458 para. 2 CC and section 351 para. 2 CommC.

729 See section 12 para. 8 SHDaSH 2010 and section 13 para. 4 TCL 2011.

from time to time from the deposit. The envisaged regulation of short-term leases sets a default term for the tenant to re-add the used funds within one month from his receipt of the landlord's written notice, with possible termination or avoidance of the lease in case of breach of this duty.[730]

- 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)

In both regimes of lease of habitable dwellings – general lease (house) as well as a lease of flats – the contract shall prevail as far as the extent, costs-bearing and person liable for repairs and maintenance works are concerned.[731] Moreover, the rights and obligations of a tenant that is a member of a housing cooperative in respect of minor repairs in a flat and the payment of costs associated with the normal maintenance of the flat are normally regulated, as anticipated by the Civil Code,[732] in the statutes of the cooperatives.

In the event of absent detailed agreement of the parties, the liability for repairs as between the landlord and the tenant is apportioned based on the first and utmost duty of the landlord, i.e. the duty to convey the object of lease to the tenant in a condition fit for purpose of its use – habitation – and to maintain it in such a condition for the duration of the lease at his own cost.[733] Consequently, the landlord is liable for any repairs that make the premises fit for its agreed use (major repairs), unless the tenant does not have to cover for them. In contrast, the tenant is under a duty not to damage the object he is inhabiting and thus would be liable for repairs, the necessity of which he himself, or through his co-habitants, incurred.[734]

The notion of "minor repairs", i.e. repairs that would not make the dwelling unfit for its use and the tenant would be liable for their procurement, is neither set forth nor explained in the lease of a building (general lease) provisions of the CC. Given the language of sections 664, 668, 669 CC, which anticipate the tenant's liability for certain class of (minor) repairs and basically identical goals of the regulation as is the case with repairs of leased flats, it is possible to construct the division of liability (and to distinguish minor from major repairs) by analogy of law[735] on the same fundamentals as the regulation of the lease of flat builds upon.

For the lease of flat, the CC *expressis verbis* states that subject to the contract, any **minor repairs** made in the flat that are connected with the use of the flat and the costs associated with routine maintenance shall be borne by the tenant, whereas the definition of minor repairs and the costs associated with routine maintenance are set forth by

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730 See section 5 para. 2 of the draft proposal. Available at: <https://lt.justice.gov.sk/Material/MaterialDocuments.aspx?instEID=1174&matEID=6731&langEID=1>, 15 December 2013.

731 cf. sections 2 para. 3, 664 and 687 para. 2 CC.

732 section 687 para. 3 CC.

733 sections 664 and 687 para. 1 CC.

734 sections 670 and 693 CC.

735 section 853 para. 1 CC.

default in the implementing governmental regulation.[736] The regulation defines the minor repairs of a flat[737] by the subject-matter on one hand and by the cost ceiling on the other. According to the appendix to the regulation, which gives a clear and lengthy list of what is to be deemed a minor repair, the tenant should be liable for a quite wide variety of failures in the household, ranging from changing of padding in the sanitary equipment to glazier's work or change of door-handles. Moreover, repairs not included in the specific list are also to be deemed minor and to be provided for by the tenant if the cost of such a single repair does not exceed 6,64 EUR. If several mutually related repairs are to be performed on a single item, the aggregate cost of the repairs is decisive with regard to the liability cap.[738] As far as the **costs associated with routine maintenance** of the flat that are equally to be borne by the tenant are concerned, the notion encompasses costs for works that are usually carried out during prolonged use, such as wall decoration, impregnation of a stone-wood flooring, parquet creaming, maintenance of wooden wall panelling, built-in furniture repair (repair and replacement of locks and coatings).[739]

Furthermore, in order to choose the subject liable for repairs or routine maintenance, the time when the necessity of the repair ensued is relevant. If the repair was due already at the time of handing over of the flat, the landlord is liable, notwithstanding the gravity of the defect[740], as this liability pertains to the duty of the landlord to convey the flat fit for the agreed purpose.

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

Although the rights of the tenant relating to a lease of an immovable are not considered rights *in rem* under Slovak law, it creates a strong *in personam* tie of the tenant to the object of the lease, that cannot be unilaterally cancelled or disturbed by the landlord or third parties, not even in the event of change of subject of the landlord (*emptio non tollit locatum*)[741]. In this sense, it is irrelevant whether the landlord sells the property or if it had been foreclosed against by a third party and consequently the ownership structure changed. Foreclosure is, namely, merely a means of change of the owner of the leased flat, house or other property, notwithstanding the manner of its pursuit[742] (contractually agreed alienation - usually a direct selling, public auction or execution by selling the assets through an executor). Similarly, by charging the property with a mortgage, as a limited *in rem* right to the leased asset, the mortgagee does not acquire any more rights

[736] sections 5-9 Reg. 87/1995.

[737] It also covers repairs of non-habitable premises which are part of the flat, of accessories of a flat, its equipment, facilities as well as replacement of maintainence parts thereof. See section 5 para. 1 Reg. 87/1995.

[738] see section 5 para. 2 Reg. 87/1995. Note, that the regulation does not employ a period-based ceiling on minor costs (such as a ceiling on the cost of repairs within one year), but rather uses the notion of a “single” repair or “single-item repairs”.

[739] section 6 Reg. 87/1995.

[740] see section 7 Reg. 87/1995. See also I. Fekete, 'Nájom a podnájom bytu,' 251.

[741] cf. section 680 paras. 2 and 3 CC.

[742] see section 151j para. 1 CC.

to the flat or house than the mortgagor (the landlord) disposed of, and therefore he has to respect all existing rights of the tenants throughout the process.

During the foreclosure process, the tenant, while retaining his rights from the lease, would only be obliged to provide any necessary co-operation to the mortgagee, the auctioneer or the executor in order to proceed with efficient alienation of the asset (e.g. allowing the entrance of interested buyers, handing over any documentation pertaining to the flat in his possession that are necessary for taking, transfer and use of the charged asset).[743]

After the foreclosure has been effected and the ownership of the flat/house transferred to a third party, the acquirerer assumes the legal standing of the landlord, and as already explained, the tenant would be entitled to discharge himself of the obligations towards the former landlord upon notification of the change of parties by the former landlord or upon proving of the change by the new one.[744] Moreover, the tenant would be able to terminate the lease by a unilateral notice, if it is furnished in the closest upcoming notice-period, if there is one set forth by the law or the contract, regardless of whether the lease was a fix-term or open-ended one.[745]

In this regard, the conduct of a mortgagor with looming foreclosure, who decides to rent out the charged dwelling, should be taken into consideration. Such acts may on certain occasions be resorted to and aimed at harming the creditors as retaliatory measure of the debtor. The Civil Code does not contain any specific provisions that would be protective or detrimental to the tenant, who finds himself (wittingly or not) as a contractual partner of the mortgagor in a position of a stumbling block of a secured transaction. Therefore, such instances would always have to be looked at through the prism of general civil law, especially with regard to validity of the contract of lease that would be subject to threat of manifold remedies of the mortgagee.[746]

Summary table d) "Contents of tenancy contracts"

	General lease *lease of a building*	Lease of flat *(including municipal and public housing stock)*	Lease of flat *social housing lease (SHDaSH 2010)*	Lease of flat *replacement housing for lying tenants of resitituted buildings (TCL 2011)*
Description of dwelling	no specific rules	no specific rules		
Parties to the tenancy	no restrictions	no restrictions	*landlord*: municipality, or	*landlord*: municipality

743 section 151m para. 4 CC *in fine*.

744 Section 680 para. 2 CC; see also K. Plank, in P. Vojčík et al. *Občiansky zákonník*, 862.

745 Section 680 para. 3 CC.

746 The contract of lease may be declared void as inconsistent with the standard of good morals or *in fraudem legis* (section 39 CC), or the conduct of the landlord may not be given sanction by the state's force and judiciary as immoral (section 3 para. 1 CC); the mortgagor would be entitled to use a form of *actio pauliana* (section 42a CC) and the landlord in breach of his duty not to devalue the mortgaged asset (section 151i para. 1 CC) would be liable for damages incurred thereby (section 420 para. 1 CC) etc.

contract			higher territorial unit, who received funding for procurement of rental flats *tenant*: income merit social merit other (based on availability)	*tenant*: former lying tenant (or his successor), who applied; based on income and housing need merit
Duration	open-ended fixed (*relocatio tacita* by default)	open-ended fixed (no *relocatio tacita* by default)	fixed (generally up to 3 years, qualified applicants 10 years, non-social applicants 1 year) - right to re-signing of the lease	open-ended
Rent	no restrictions (increases agreement-bound) limit on cash payments	*generally:* no restrictions (increases agreement-bound); *state, higher territorial unit, municipality or their legal entities as landlords:* - regulation – rent ceiling - no regulation (commercial tenants, free of lying tenants, no funding for construction of newer housing stock, redundant state housing stock); *lying tenants of resitituted buildings:*	regulation – rent ceiling (calculated off procurement cost of the housing stock) limit on cash payments	regulation – rent ceiling (calculated off procurement cost of the housing stock) limit on cash payments

		rent ceiling until 2011, unilateral yearly increase by 20% until 2015 possible. limit on cash payments		
Deposit	no regulation (usual 1 monthly rent, up to 6x)	no regulation (usual 1 monthly rent, up to 6x)	if agreed on: - max. 6x the montly rent - limited use - special account	if agreed on: - max. 6x the montly rent - limited use - special account
Utilities, repairs, etc.	Distribution of responsibility between the landlord and the tenant based on the lease contract or the CC and the implementing legislation.			

6.5. Implementation of tenancy contracts

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

    - Delayed completion of dwelling

    - 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)

    - Refusal of clearing and handover by previous tenant

    - Public law impediments to handover to the tenant

The landlord is obliged to deliver the leased property (this regulation applies to lease in general, i.e. also to the lease of dwelling in the family house) to the tenant in a condition fit for the agreed use.[747]

The landlord is obliged to hand over to the tenant the flat in a condition fit for the proper use and to secure full and undisturbed exercise of the tenant's right connected with the use of the flat.[748]

The main difference between the general provisions about lease and specific ones on lease of a flat on passing over of the object of lease lies in stressing the obligation of the

[747] Section 664 CC.
[748] Section 687 para. 1 CC.

landlord to secure full and undisturbed exercise of the tenant's right connected with the use of the flat, i.e. the flat is fit for use if the utilities connected to the use of flat are duly provided (heating, running water, heated water in the bathroom, etc.). However, if the object of the lease is a family house and agreed use of the family house is housing, we may assume that "fit for the agreed use" has to fulfil similar requirements as in the case of the flat.

The question of delayed completion of a dwelling or refusal of a handover by the landlord, respectively of public law impediments to hand over to the tenant should be solved mainly by the general provisions of the law of obligations. First two reasons of breach of contract by landlord constitute its default by debtor. (A debtor who fails to discharge his debt duly and timely is in default (Section 517 CC)). If he or she fails to discharge his/her debt even within an additional reasonable period, the tenant may withdraw from the contract. The tenant has also right to damages. As far as double lease is concerned, we may argue that double lease does not cause the invalidity of a lease contract itself, but the handover of a flat or a house to one of the respective tenants makes other performance impossible. If the performance becomes impossible, the debtor's obligation ceases to exist.[749] The tenant may claim damages. Public law impediments to handover to the tenant may also be reasons for the impossibility of performance. If there was initial impossibility (from the beginning, i.e. it existed already at the time when the contract was concluded and it was not realistic to presuppose that this impediment may be overcome or mitigated), it amounts to the invalidity of a lease contract. If later adopted regulation of public law makes performance of the lease contract impossible in the sense it would be unlawful, Section 575 of CC applies.

Generally, there should be no difference in solution if default of landlord as debtor was caused by the refusal of cleaning and handover by the previous tenant. Previous tenant is in no legal relationship with the prospective tenant and he is not a party to the new lease contract. Law regulates termination of lease contract and rights and obligations of the parties (Section 682 CC: The leased property shall be returned by the tenant in a condition corresponding to the agreed manner of use, and if the manner of such use was not expressly agreed, in the condition in which he took over the property, subject to normal tear and wear). Briefly speaking, non-performance of the previous tenant is not relevant in a new lease relationship and it will constitute a breach by the landlord. However, if at the time of conclusion of lease contract the rented flat is not fit for use because it is occupied by somebody without a valid tenure, a lease contract has to clearly define the future moment when the flat is to be cleared out and prepared for use of the prospective tenant, otherwise the lease contract is invalid.[750]

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

Refusal of handover by the tenant constitutes his default as creditor.[751] Consequences: reimbursement of thereby incurred costs by the landlord, shift of the risk of incidental

[749] Section 575 CC.

[750] Case of the Supreme Court of the Czech Republic No. 28 Cdo 1805/ 2001 of 29 November 2001.

[751] Section 522 CC: A creditor is in default if he fails to accept the duly offered performance or if at the time of performance he fails to provide the assistance necessary to discharge the debt.

destruction of property, claim for other damages. The abovementioned solution is suitable only in those cases where refusal of handover by tenant was not a rightful one, i.e. where the leased property was fit for the agreed or normal use. Otherwise the tenant has the right to withdraw form the contract[752].

Under Section 45 para. 3 of Bankruptcy and Restructuring Act (No. 7/2005 Coll., as amended) (BRA) if a bankrupt concluded a contract prior bankruptcy and none of the parties has performed under this contract yet, the administrator of the bankruptcy assets or other party may withdraw from the contract. Insolvency as such does not create a reason for the termination of the contract.

If the breach of contract prior to handover of the dwelling may be regarded as fundamental in the sense of Section 679 para. 1 CC, the tenant may withdraw from the contract.[753] The tenant is entitled to withdraw from the contract at any time if the property leased was handed over in a condition unfit for the agreed or normal use, or if without a breach of the tenant's obligations it subsequently becomes unfit for such use, or if it becomes unusable, or if such a part of the property is removed that the purpose of the contract becomes frustrated. This rule applies to all types of leases.

- **Disruptions of performance (in particular "breach of contract") after the handover of the dwelling**
  - **Defects of the dwelling**
    - Notion of defects: is there a general definition?
    - Examples: Is the exposure of the house to noise from a building site in front of the house or are noisy neighbours a defect? What about damages caused by a party or third persons? Is the occupation of the house by third parties such as squatters considered as a defect in the legal terms?
    - 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

General definition of the **defects** is given by Section 499 CC: "A person who conveys property to another for consideration shall be liable that at the time of performance the property has qualities that are either expressly stipulated or usual, that it may be used in accordance with the contract's nature and purpose or for what the parties agreed on and

752 See Section 679 CC.

753 **Withdrawal from the contract**. Under 48 CC "A party may withdraw from a contract if such option is set out in this or another Act, or so agreed by the parties. A contract shall become null and void upon withdrawal, unless the law stipulates or the parties agree otherwise." Withdrawal from contract has *ex tunc* effects. In contrast, if t**ermination is executed by notice;** the contractual relationship ceases to exist by the end of notice period.

it has no legal defects." This is only very general provision and therefore if lease of a dwelling is concerned, more specific requirements shall be fulfilled.

Firstly, the important rule is already given **in general provisions on lease**, where Section 679 para. 2 CC states that if the rooms that were leased for inhabitation or accommodation of people are harmful to health, tenant shall have a right to withdraw from contract even if he was aware of this fact upon the conclusion of the contract. The right of withdrawal from the agreement may not be waived in advance.

If the **lease contract of a flat** is not made in the writing, a written record of the content of the contract shall be made. In case of lease of a family house, this explicit requirement for written record is not given, but it may be recommended and it is generally observed by the parties to the contract. Handover by the landlord is usually made in the form of record, where description of the state of the flat is given. A flat is fit for use if the immediate costs are not required for its use, i.e. flat is not in the state of disrepair and it is in habitable condition, i.e. it fulfils the technical and hygienic requirements for housing. All services have to be duly performed (heating, running water, heated water in the bathroom).

Unless the lease contract stipulates otherwise, any minor repairs made in the **flat** that are connected with the use of the flat and the costs associated with routine maintenance shall be borne by the tenant. The definition of the minor repairs and the costs associated with routine maintenance are stipulated in the implementing regulation.[754] The rights and obligations of a tenant that is a member of a **housing cooperative** in respect of minor repairs in a flat and the payment of costs associated with the normal maintenance of the flat shall be regulated in the statutes of the cooperatives.

If the tenant does not fulfil his obligation to implement minor repairs and a routine maintenance of the flat, the landlord may ask him to do so. If tenant fails to perform these obligations, the landlord may execute these repairs at his own expense and demand the reimbursement from the tenant.[755]

On the other hand, this applies also reversely.

If landlord does not fulfil his obligation to remove any defects that hinder the proper use of the **flat** or that endanger the exercise of the tenant's right, the tenant shall have the right to remove such defects to the extent necessary upon prior notification of the landlord and to demand that the landlord reimburse him for any expenses reasonably incurred. The right to such reimbursement shall be exercised at the landlord without undue delay. The right shall expire if it is not exercised within six months of the rectification of the defects.[756]

It is self-evident that landlords sometimes may not know about the need for repairs. Therefore, the tenant is obliged to notify the landlord without undue delay of any need to make repairs in the flat that are to be made by the landlord and to allow their execution. Failing notification or failing the assistance necessary to execute such repairs by landlord (e.g. not allowing the entry to the flat), tenant will be liable for any incurred damage.

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754 Sections 5-9 of Reg. 87/1995.

755 Section 692 para. 2 CC.

756 Section 691 CC.

Special attention should be paid to the **defects caused by the tenant or by the persons who live with him.** The tenant is obliged to repair any defects or damage caused by him and aforementioned persons. Failing this, the landlord shall have the right to rectify the defects upon prior notification of the tenant and to demand reimbursement from him. The tenant remains responsible also for the persons that stayed to live in the flat at the situation when he moved out without termination of lease.[757]

Provided that the tenants are disturbed in the quiet enjoyment of the flat by external elements (other tenants, noise from the building site, etc.), there are more possibilities how he can proceed. Firstly, they may ask the landlord to take care of these defects. Moreover, under Sections 126, 127 of CC they have right to demand protection of the quiet use of flat *(actio negatoria per analogiam).* Section 127 CC covers relations among owners of neighbouring immovables, Section 11 of OFNP regulates the manner in which owners of flats shall use the flat and common premises in order not to disturb other owners, co- owners and co-users in the block of flats. Tenants in flats are also bound by these rules.[758]

The tenant shall have the right to a reasonable reduction in the rent if the landlord fails to rectify the defect in the flat or in the block of flats that impairs its use considerably or for an extended period of time even though the tenant has notified the landlord of such a defect. The tenant shall also have the right to a reasonable reduction in the rent if performance associated with the use of the flat was not provided or was provided defectively and if the use of the flat became impaired as a consequence thereof.

The tenant has also the right to a reasonable reduction in the payment for the performance associated with the use of the flat if the landlord fails to provide such performance duly and timely.[759]

The right for reduction in rent or payments for performances associated with the use of flat shall be exercised at the landlord without undue delay. The right shall expire if it is not exercised within six months of the rectification of the defects. [760]

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

Notwithstanding the type of lease, the landlord is entitled to demand access to the property in order to verify that the tenant is using the property in a proper manner.[761] The

757 Case of the Supreme Court of the Czech Republic No. 25 Cdo 521/2005 of 25 July 2006.
758 I. Fekete 'Nájom a podnájom bytu,' 258.
759 Section 698 CC.
760 Section 699 CC.
761 Section 665 para 1, second sentence CC.

right of the landlord to check the object of lease shall be applied also to the flat. If the agreement between the landlord and the tenant is not reached, the court decides about the manner, frequency and the scope of control.[762] Exceptionally the control of the object of the lease may be not only a right but an obligation of the landlord as well. Under provisions of the Fire Protection Act (No. 314/2001 Coll., as amended) the landlord is obliged to ensure the performance of the obligations set out in this Act for fire protection, unless he agrees otherwise with the tenant.

Breach of these obligations may constitute the grounds for the withdrawal from the contract or for the termination of the contract by the notice of landlord (see following section on termination).

Landlord is not allowed to lock a tenant out of the leased premises, in all relevant cases of breach of tenant's duties, the landlord has to proceed lawfully, self-help is not tolerated and allowed.

The question whether the landlord is allowed to keep a set of keys to the rented flat fully depends on the agreement of parties to the contract. Some landlords reserve this right in order to be able prevent the immediate damages threatening the flat or the block of flats in time when the tenant is not present. Entering the dwelling must be considered as the extraordinary measure and the tenant has to be notified immediately thereof.[763] To prevent misuse of the keys in other situation than in an urgent need, some contracts stipulate that the landlord has the set of the keys at disposal in the envelope sealed by the tenant.[764]

- **Rent regulation (in particular implementation of rent increases by the landlord)**
    - Ordinary rent increases to compensate inflation/ increase gains
    - Is a rent increase after renovation measures, e.g. upgrading the energy performance of the house, or similar lawful and dealt with in a special procedure?
    - Rent increases in "housing with public task"
    - Procedure to be followed for rent increases
        - Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel [= rent statistics for a certain area])?
    - Possible objections of the tenant against the rent increase

762 Case of the Supreme Court of the Czech Republic No. 26 Cdo 2791/2005 of 25 May 2006.

763 E.g. a mandatorily disclosed (cf. n. 453) tenancy contract available at: <crz.gov.sk/index.php?ID=603&doc=139067&text=1>, 10 February 2014.

764 See e.g. the model contract available at: <www.vzory-zmluv-zadarmo.sk/download-59>, 10 February 2014.

The CC[765] stipulates that the method of calculating the rent, payments for performances provided with the use of the flat, the manner of their payment, as well as the cases when the landlord may unilaterally increase rent and payments for performances provided with the use of the flat and the changes to other terms of the lease agreements, shall be stipulated in a special regulation.

In spite of the fact that the implementing legislation on the regulation of the rent has already been in force since 90s of twentieth century, the act for the first time allowing the unilateral rent increase was adopted in 2011. This possibility was given by TCL 2011, but its scope is restricted only to the flats in the block of flats returned by restitution to their original owners or their legal successors.

The efforts to penetrate the existing block of unilateral increase of rent have been repeatedly rejected by courts judgements.[766] Under Section 493 of CC a contractual relationship may not be altered without consent of the parties, unless otherwise provided by this Act. Although CC in its Section 696 para. 1 presupposes the adoption of an act regulating the possibility of unilateral rent increase, such legislation has not been adopted yet. The Prices Act 1996 (No. 18/1996 Coll., as amended) may not be regarded as such piece of legislation, which interpretation has been strictly confirmed by case law. The same applies to the regulatory measures of the Ministry of Finance of the SR[767] that set out the maximal regulated rent. [768]

Therefore we may conclude that unilateral rent increase (except a specific category set out by TCL 2011) is possible and allowed only in the cases where the landlord and the tenant permit such proceeding to realize in the provisions of a lease contract. Otherwise the rent increase has to be mutually agreed.

The contractually reserved right of the landlord to the unilateral rent increase and its execution has to fulfil general requirements of Slovak law. If content or purpose of the legal act violates or evades law or is inconsistent with good morals, this legal act is invalid.[769]

Moreover, if a lease contract is a consumer one[770], we have to observe that contractual conditions regulated by a consumer contract may not depart from CC to the detriment of the consumer. In particular, the consumer may not waive his rights granted by the CC in advance, or otherwise impair his position under contract. On the basis of this regulation, we assume that agreement in a consumer lease contract that the landlord may unilaterally increase rent will probably be invalid.

The practical impossibility to increase rent unilaterally together with the restricted grounds for termination are the main reasons why long-term lease or lease for an indefinite period are not usual in Slovakia.

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765 Section 696 para. 1.

766 Case No. 5 Cdo 138/2009 of the Supreme Court of the Slovak Republic.

767 currently No. 01/R/2008 on regulation of the rents of flats as amended as of 20 December 2011.

768 Case No. 3 M Cdo 6/2008 of the Supreme Court of the Slovak Republic.

769 Section 39 CC.

770 Section 52 CC.

Finally we would like to outline procedure for unilateral rent increase set by TCL 2011. The landlord may unilaterally increase rent by 20% per year starting from 2011 till 2015. The first increase will be calculated on the basis of rent paid to 15 September 2011[771]. A notice on unilateral increase of rent has to be delivered to the tenant only and it has to contain the manner in which the increased rent was calculated. The obligation to pay higher rent is effective from the day set out by the notice; not sooner than on the first day of month following two months after the notice has been delivered. The tenant may claim invalidity of the increase at the court in the same period.[772]

The law does not give any special right to the landlord to increase the rent unilaterally after energy-renovation measures (executed according to the transposition act of the EU-directives on the energy performance of buildings).

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

The problem of changes of a dwelling executed by the tenant is dealt with in general provisions[773] and only one specific provision is on the lease of the flat.[774] This specific provision does not alter the general principle, it only stresses out that the tenant shall not, even at his own expenses, undertake any construction work or any other material changes to the flat without landlord's consent.

It is generally the case that the tenant is only entitled to make changes to the property with landlord's consent. The tenant may only demand reimbursement of any costs associated if the landlord took over the obligation to reimburse. Unless the agreement stipulates otherwise, the tenant is only entitled to demand reimbursement of the costs after the termination of the lease and after deduction of the depreciation caused by the changes made, which occurred in the meantime due to use of the property. If the landlord granted his consent to the change but did not undertake to reimburse the costs, after the termination of the lease the tenant may demand consideration for the increase in the value of the property.

771 This rent was regulated by above mentioned Regulatory Measure of the Ministry of Finance.
772 Section 4 TCL 2011.
773 Section 667 CC.
774 Section 694 CC.

The legal regulation does not expressly deal with the category of changes that may be qualified as improvement.

If the tenant makes any changes to the property without landlord's consent, he is obliged to restore the property to its original state at his expense after the termination of the lease. If the landlord faces considerable damage due to changes made to the property, he is entitled to withdraw from the contract. [775]

If the tenant makes any changes to the property without landlord's consent and the restoration of the property to its original state is not possible, the tenant does not have the right to claim unjust enrichment of the landlord. In this case the tenant may separate what value he added to the property to appreciate it at his own expense provided that it is possible to do so without impairing the substance of the property.[776]

Fekete summarizes possible consequences if the tenant made changes in the flat without previous consent of the landlord as follows: a) landlord approves ex post, b) property is restored to the previous state, c) the landlord claims damages, d) withdrawal from contract by the landlord, e) termination by the landlord's notice provided that additional conditions are fulfilled.[777]

Whether the tenant is allowed to make changes to accommodate his/her handicap (e.g. building an elevator; ensuring access for wheelchairs etc); it is generally the problem of his/ her agreement with the landlord. Act on Rental Dwellings presupposes the existence of the **flats for special purposes,** among them also flat that is by its construction, disposition, situation, facilities and the manner of use intended for the specified circle of persons (disabled persons, diplomats, persons in public offices, etc). Similar functions have flats in the buildings for special purposes.

The owner of the block of flats or owner of the flat is obliged to enable the users of flats (i.e. also tenants) to receive the television signals provided that in that area broadcast signals are transmitted, he also has to enable the establishment of the internal telecommunication distribution, endpoint included. In the case of dispute, the Building Office decides about the scope of this obligation.[778]

- **Maintenance measures and improvements, in particular upgrading the energy performance of the house by the landlord**
  - What kinds of maintenance measures and improvements does the tenant have to tolerate?
  - What conditions and procedures does a landlord who wants to make renovations need to respect (e.g. giving adequate [i.e.

[775] It may be disputable whether pending damage is a ground for the withdrawal from the contract also in the case of the flat or if it only amounts to the ground for notice for termination. This problem will be more thoroughly discussed in the subsection e) termination.

[776] D. Dulaková, 'Nájomná zmluva – všeobecné teoretické východiská', in D. Dulaková, I. Fekete, A. Dulak et al. *Zmluvy o prenechaní veci na užívanie. S komentárom.* (Praha: C.H.Beck, 2012), 142, see also Case of the Supreme Court of the Czech Republic No. 26 Cdo 449/2003 of 5 April 2004.

[777] I. Fekete, 'Nájom a podnájom bytu', 269.

[778] Case of the Supreme Court of the Czech Republic No. 26 Cdo 291/ 2004 of 4 March 2005.

sufficiently long] notice; offer an alternative dwelling; offer a rent reduction to compensate for disturbances)?

There is no general regulation for lease, i.e., no regulation for lease of the family house.

The landlord is only entitled to undertake any construction work in **the flat** and any other material changes to the flat with the tenant's consent. Such consent may be only withheld for serious reasons. If the landlord undertakes such work under the competent authority of state administration (Building Office), the tenant is obliged to allow such work be undertaken, otherwise he shall be liable for any damage arising out of failure to fulfil his obligation.[779]

The tenant shall have the right for a reasonable reduction in the rent if the construction work undertaken in the block of flats considerably or for an extended period of time impairs the conditions of the use of the flat or the block of flats. If the flat or a block of flats require such repairs that make use of the flat impossible for at least six months, the landlord may unilaterally terminate the lease of the flat. In such case the tenants have the right to a replacement flat (see below).

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

The tenant is obliged to use the **flat**, common premises and facilities of the building duly and duly obtain any performance associated with the use of the flat. In addition to the right to use the flat, the tenant of the flat and the persons living with the tenant in the common household shall have the right to use the common premises or facilities of the block of flats and any performance associated with the use of the flat. While exercising their rights, the tenants are obliged to ensure that an environment enabling the enjoyment of other tenants´ rights exists in the building.[780]

Similarly; the tenant of a family house is entitled to use the house in the manner stipulated in the contract, and, unless agreed otherwise, that corresponds to the nature and purpose of the property.[781]

Some examples of the problematic issues that may occur during the tenancy (keeping animals; smells; receiving guests) have to be assessed in light of the aforementioned provisions of the CC,[782] particularly Section 127 CC[783] that regulates the relations among

779 Section 695 CC.
780 Sections 688, 689, 670 CC.
781 Section 665 para. 1, first sentence CC.
782 cf. subsection 'Disruptions of performance' *supra*.
783 Section 127 CC states that 'an owner of a thing shall refrain from everything that disturbs another person above degree commensurate to the circumstances or that seriously endangers the exercise of

the neighbours and Section 11 of OFNP stipulating that any user of a flat may not disturb enjoyment of others´ right to use the flat. The rules for "living" in the block of flats are usually also regulated by the Housing Orders enacted by the owners in the block of flats or by its manager and these rules provide more precise stipulation of the way in which the flat and the common premises should be used. Frequently they stipulate the restriction of a noise in the night, smoking on balconies, keeping animals. The most important principle however stems from the provisions of CC on neighbours and it is based on the reciprocity and reasonableness.[784] Receiving quests is usually not a problematic issue provided that they also respect the rules relevant for other users (owners, tenants and other persons living in their common household).

The statutory text of the CC in force until 1st September 2001 stipulated as ground for the termination also a situation where the tenant of the flat already has one or more flats (provided that it would not be unjust to ask him to use only one flat) or if the tenant of the flat does not use the flat without important reasons. The amendment of the CC[785] thoroughly changed grounds for the termination; the aforementioned grounds were repealed.[786] Nowadays only if the tenant uses the flat for the purposes other than housing without the consent of the landlord (e.g. converting one room in a medical clinic), it constitutes ground for the termination of the lease by the notice.[787]

What if the tenant uses flat also for prostitution? The issue of the prostitution is *tabula rasa* in Slovakia, not only civil law regulations but also penal and/or administration law regulations have been missing. In the former Czechoslovak Socialist Republic, the Police prosecuted prostitution under the Section 203, Criminal Code[788] (parasitism). Currently, prostitution performed on voluntary basis is not punishable in Slovakia.[789] Nonetheless, CC stipulates the violation of good morals in the block of flats as the ground for termination of lease of a flat.[790] And if tenant uses the flat for other reasons than housing, explicitly for prostitution, this could also count as reason for termination.

It generally holds true that the tenant is only obliged to use the property if this was agreed or if the property would be impaired by its non-use more than by its use. *Dulakova* sets out an example of the explicit agreement between the landlord and the tenant of the family house where obligation to use the house is stipulated in order to prevent the detriment to the housing by omission to heat in winter or where the empty house could attract thieves.[791]

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anotheŕs person´s rights … and he shall not annoy his neigboroughs with noise, dust, ash, smoke, gases, vapours, odours, solid and liquid waste, light, shading and vibrations above the degree commensurate to the circumstances.'

[784] R 3/1988 (Report of the Supreme Court of Czechoslovakia of 29 April 1998).

[785] Act No. 261/2001 Coll.

[786] Along with other reasons, adoption of these changes was explained by the need to rule out reasons for termination of a lease of flat that were deemed "outdated" with regard to the period of their introduction. See 'Explanatory memorandum to the proposal of the Act No. 261/2001 Coll.', available at: <http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-15474?prefixFile=m_>, 10 February 2014.

[787] Section 711 para. 1 lit. g) CC.

[788] Criminal Code 1961 (Act No. 140/1961 Coll., as amended).

[789] I. Klorusová, 'Immoral Contracts. Case 1' (Study prepared for the Common Core of the European Private Law Group). Publishing pending, on file with the reporters.

[790] Section 711 para. 1 lit. c) CC.

[791] D. Dulaková, 'Nájomná zmluva – všeobecné teoretické východiská', 133.

Holiday homes are usually rented for very short periods. Transposition of the Directive on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts was accomplished in Slovakia by the Act on Protection of Consumer in Tourism.[792]

Fixing pamphlets outside a flat or a family house is not only a problem in relation to the landlord, but foremost it has to be in accordance with the standards set by municipalities in their self-regulatory competence. Secondly, minimal accord with good morals has to be considered in regard to the content of the pamphlet.

- **Video surveillance of the building**

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

Under Personal Data Protection Act[793] a public space may be under video surveillance only for purposes of a protection of public order and safety of property and health, safety threat for state and the detection of criminality. Generally speaking, such surveillance is allowed only if these space are marked as observed by video. The fact whether data collected (sound or picture) are stored or not is not decisive. Collected data may be used only for purposes of criminal proceedings or in other exceptional cases. Video surveillance has become usual in the recent years, it is usually fixed at the entrance to the block or in the lobby as it proved to be the effective mean to prevent criminality.

Summary table e) "Implementation of tenancy contracts"

	General lease *lease of a building*	Lease of flat *(including municipal and public housing stock)*
Breaches prior to handover	*breaches of the landlord:* - delayed completion of dwelling, - delivery of the leased property in a condition fit for the agreed use, - refusal of handover of the dwelling by landlord (in particular: case of "double lease"), - refusal of clearing and handover by previous tenant, - public law impediments to handover to the tenant; *breaches of the tenant:* - refusal of the new tenant to take possession of the leased property, where the leased property was fit for the agreed or normal use	

792 Consumer Protection in Provision of Certain Services of Tourism Act 2011 (No. 161/2011 Coll., as amended). See also A. Dulak, 'Timesharingová zmluva', in D. Dulaková, I. Fekete, A. Dulak et al. *Zmluvy o prenechaní veci na užívanie. S komentárom.* (Praha: C.H.Beck, 2012), 662-771.

793 Section 15 Personal Data Protection Act 2013.

Breaches after handover	*defects of the dwelling:* - rooms that were leased for inhabitation or accommodation of people are harmful to health, - failure of the landlord to remove any defects that hinder the proper use of the flat, - failure of the tenant to implement minor repairs and a routine maintenance - failure of the tenant to notify or provide the assistance necessary to execute repairs by landlord - failure of the tenant to repair defects or damage caused by him/by a persons who live with him, - disturbtion of quiet enjoyment of the flat by external elements (other tenants, noise from the building site, etc.)	
Rent increases	- only mutually agreed increase of rent	- unilateral rent increase only in the flats situated in the block of flats returned by restitution to their original owners or their legal successors - otherwise unilateral rent increase is possible and allowed only in the cases where the landlord and the tenant permit it via the provisions of a lease contract, - otherwise only mutually agreed increase of rent
Changes to the dwelling	- general rule: tenant shall not undertake any construction work or any other material changes without landlord's consent, i.e. the tenant is only entitled to make changes to the property with landlord's consent	
Use of the dwelling	- tenant of a family house is entitled to use the house in the manner stipulated in the contract, and, unless agreed otherwise, that corresponds to the nature and purpose of the property, - limitations to keeping animals; smells; receiving guests	- the tenant is obliged to use the flat, common premises and facilities of the building duly and duly obtain any performance associated with the use of the flat, -the tenant and the persons living with the tenant in the common household have the right to use the common premises or facilities of the block of flats and any performance associated with the use of the flat, - limitations to keeping animals; smells; receiving guests, - violation of good morals in the

		block of flats is the ground for termination of lease

6.6. Termination of tenancy contracts

- **Mutual termination agreements**

Termination of the lease by the agreement of parties is logically the easiest way of the ending of their relationship. General rules on this agreement do not prescribe any formal requirements. If a flat is concerned a written agreement is required under the sanction of its invalidity. [794]

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

Termination by notice may be executed probably both in a lease for an indefinite period of time as well as if contracts for limited in time are concerned. If a lease agreement is concluded for definite period it shall terminate upon the elapse of the period for which it was agreed, unless the tenant and the landlord agree otherwise.[795] CC generally recognizes the termination by notice only as a way of ending the lease for an indefinite period of time.[796] Only in respect of lease of non-residential premises the law explicitly regulates termination of lease for a definite period of time by notice provided that some of the enumerated grounds envisaged by the special act occur.[797]

The question whether the lease of a flat may be terminated by notice if it was agreed for a definite time is not thoroughly discussed in legal literature. In our opinion, omitting this problem is not the best solution, because the problem is not as straightforward as it may seem on the first glance. Prevailing view favours a possibility of termination by notice also in case of a lease for a definite period, but in this case this possibility has to be explicitly agreed in the lease contract.[798]

Termination by notice is in general provisions of the law of obligations regulated only in relation to the open-ended contracts (Section 582 CC). If we take into regard the general

794 Section 710 CC.
795 I. Fekete, 'Nájom a podnájom bytu,' 360.
796 Section 677 CC.
797 Lease and Sublease of Non-residential Premises Act 1990.
798 Case of the Supreme Court of the Czech Republic No. 26 Cdo 2876/ 2000 of 21 August 2002.

provisions on the change of the ownership of a leased immovable (a house, a block of flats, a flat), where tenant may terminate a lease agreement as an exceptional measure – "even if the agreement was made for a definite period of time" – the answer tends to be negative in relation to the definite period leases. *Dulakova* argues that Section 582 of the CC is not mandatory. Therefore, parties to the contract may permit termination by notice in the contracts for a definite period.[799] Usually this will be based on the occurrence of a special ground and the right for compensation may be provided for by the contract.

General lease (of a family house) may be terminated by a three months notice carried by either party to the contract. No form of a notice has to be observed, but it is highly recommended.

Lease of a flat for indefinite period may be terminated by the written notice of tenant. No special grounds are required. The lease ceases to exist upon the elapse of notice period of three months. The period of notice shall commence on the first day of the month following the months the landlord received a notice.

Court praxis also allows the solution where parties agree on termination by notice, where no notice period should be observed.[800]

Proposing another tenant to the landlord may appear only from a friendly relationship between parties, but after a notice is given (or within three months prior to termination of the lease and the property handover), the tenant is obliged to allow persons interested in the lease to view the immovable property in the presence of the landlord or his representative, unless agreed otherwise. The tenant may not be unduly disturbed by the viewing.[801]

- **Notice by the landlord**
  - Ordinary vs. extraordinary notice in open-ended or time-limited contracts; is such a distinction exists: definition of ordinary vs. extraordinary (= normally related to fundamental breaches of the contract, e.g. in cases of massive rent arrears or strong antisocial behaviour)
  - Statutory restrictions on notice:
    - for specific types of dwellings, e.g. public dwellings; rental dwellings recently converted into condominiums (if there exists a special form of protection in this case as in German law) etc.
    - in favour of certain tenants (old, ill, in risk of homelessness)
    - for certain periods

799 D. Dulaková, 'Komentár k všeobecným ustanoveniam o nájomnej zmluve', in D. Dulaková, I. Fekete, A. Dulak et al. *Zmluvy o prenechaní veci na užívanie. S komentárom.* (Praha: C.H.Beck, 2012), 176.

800 Case of the Supreme Court of the Czech Republic No. 28 Cdo 1313/ 2001 of 25 April 2002.

801 Section 681 CC

        - after sale including public auction ("*emptio non tollit locatum*"), or inheritance of the dwelling
    - Requirement of giving valid reasons for notice: admissible reasons
    - Objections by the tenant
    - Does the tenancy have "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?
- Challenging the notice before court (or similar bodies)
- in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law

As has already been said above, it may be questioned whether termination by a notice is permissible only in the case of lease for indefinite period, otherwise both parties have to respect the agreed period of lease. If either of the parties is willing to terminate their relationship earlier that the agreed period elapses it is highly recommended to enter into negotiations and try to reach an agreement; or if possible already in advance at the stage of negotiations of the lease contract stipulate the right of parties to terminate the contract for a definite time and the respective terms.

Situation is little more complicated in the case of termination by notice of landlord, as this termination (in case the object of a lease is a flat) has to be based on the grounds specified by law. This argument may be slightly in favour of the opinion that reasoned termination by landlord´s notice is permissible notwithstanding the duration of lease of flat as some of the grounds for termination are so fundamental that they require the premature ending of lease as the only possible solution of an exceptional situation.

Rules on termination of lease of a flat by a notice of the landlord represent the legal grasp of the special character of lease and its protection by the legal order. Therefore, the landlord may terminate the lease of a flat only if one of the enumerated grounds in the CC occur. Taking regard of the purpose of the legal regulation on the lease of flat (securing the housing need of the tenant), the majority of the provisions must have a mandatory character. Moreover, as far as consumer lease is concerned, consumer cannot in advance waive his or her rights guaranteed to him by the Civil Code or otherwise diminish his or her contractual standing.

On one hand we may argue that the CC does not differentiate between ordinary vs. extraordinary notice in open-ended leases. From landlord´s point of view almost all reasons for termination by a notice tend to be extra-ordinary. On the other hand, the fact that some reasons for a notice constitute a right of a former tenant for a replacement housing and others do not, may lead to the suggestion that there is certain hierarchy among these reasons.

Notice for termination of lease of a flat is a unilateral juridical act of the landlord aimed at the tenant, it has to be executed in the written form, the general prerequisites of the juridical act have to be observed.

Notice period is three months and it commences on the first day of month following the delivery of notice. The landlord may provide for a notice period longer than three months.[802] The CC also stipulates a longer notice period if the reason for termination was default on tenant's part in payment of rent and the tenant gives proof of his impoverishment (that he is without means of subsistence). In such case the notice period will by prolonged by a protection period of six months.

The notice should be duly delivered and the provisions of the CPC shall apply accordingly to the delivery of the written notice of the flat lease. [803] As far as joint lease of spouses is concerned, the notice has to be given and delivered to each of the spouses. [804]

The landlord may terminate the lease of a flat if:

a) the landlord needs the flat for himself, his spouse, children, grandchildren, son in law or daughter in law, parents or siblings;[805]

b) the tenant ceased to perform work underlying the lease of a service flat;

c) the tenant or a member of his household severely damages the leased flat, its appurtenances, common areas or common facilities in the block of flats, or constantly disturbs the peaceful dwelling of other tenants or flat owners, endangers safety, or violates good morals in the block of flats;

d) the tenant grossly violates his obligations arising from the lease of a flat, in particular by a failure to pay a rent or a payment for performances provided with the use of flat **for more than three months**,[806] or by subletting the flat or a part thereof to a third party without a written consent of a landlord;

e) with public interest in view, it is necessary to dispose of a flat or the block of flats in a manner that makes use of the flat impossible, or if the flat or the block of flats require such repairs that it is impossible to use the flat or the block of flats while they are being undertaken for at least six months;

f) the tenant ceased to meet the conditions for the use of a special purpose flat or conditions for the use of a flat arising from a special-purpose building;

g) the tenant uses a flat for purposes other than dwelling without consent of the landlord.[807] If the tenant uses the flat, besides housing, also for business purposes, it is highly disputable whether this conduct constitutes a reason for termination. The court shall decide whether tenant´s housing need is so urgent that he needs the flat as dwelling or not. As already said above, using a dwelling as a registered seat of an entrepreneur, for the purposes of correspondence does not amount to disallowed use of flat for business as a ground for termination of the lease.[808]

802 Section 710 para. 3 CC.
803 Section 46 CPC.
804 Case Cdon 37/1997 of the Supreme Court of the Czech Republic.
805 This reason is not applicable provided that the landlord is a legal person (R 70/2004).
806 Note that duration of arrears rather than the amount is of the essence.
807 Section 710 para. 1 CC.
808 Case of the Supreme Court of the Czech Republic No. 26 Cdo 1846/2000 of 31 January 2001.

The reason for notice shall be factually defined in the notice to avoid any possible confusion with any other grounds, otherwise the notice is invalid. The reason for the notice may not be additionally changed. Notice for reasons stated in b), e) and f) shall be invalid if the landlord failed to attach a document proving the reason for notice to the notice. Apart from this the notice also has to identify the flat and the notice has to be duly delivered to the tenant.

Where a special-purpose flat or a flat in a special-purpose building is concerned, the lease may be terminated upon prior consent of the person that established such a flat at his expense, or of his legal successor, or the competent authority that recommended conclusion of the lease contract.

If a tenant who is without means of subsistence for objective reasons pays the rent due prior to the lapse of the protective period or agrees with the landlord in writing on the method of payment of the rent, which means that the reason for termination of the flat lease is no longer applicable.

The right of the landlord to terminate the lease by notice is not subject to limitation (prescription), this right belongs to the proprietorial rights of the owner and these rights are not limited by prescription periods. The period between a breach of contract that constitutes the reason for termination by notice and by the notice itself may be important only in judicial discretion whether the execution of notice is not inconsistent with good morals. [809]

The tenants may claim the invalidity of the notice before the court within three months from the delivery of the notice. The notice shall become effective on the day of the coming into effect of the court´s judgement dismissing the petition to determine invalidity of the termination of lease.

The petition of the tenant to determine the invalidity of notice may be based on the following reasons:

a) the notice as the unilateral juridical act of the landlord does not exist,

b) a reason for the notice given by the notice does not conform to legal or factual issues presupposed by the provision of CC on the termination by notice,

c) the landlord has not duly delivered the notice to the tenant.[810]

This special regime for termination of the lease of a flat by the notice of landlord may not be broaden by analogy to the **lease of the family house.** Therefore we may argue that in these cases the landlord does not need any special reason for termination by notice if the lease has been agreed for indefinite period of time as the tenant of a family house does not enjoy the same protection as the tenant of a flat. Same solution has been broadly accepted by courts. '*A lease contract on immovable is not regulated by the special provisions on the lease of the flat (Section 685-716 CC), but the general rules on lease will apply (Section 685 etc. of CC). Therefore "no protected lease" exists, if the object of the lease is an immovable or part thereof. The purpose of a lease is not*

809 Case of the Supreme Court of the Czech Republic No. 26 Cdo 78/2010 of 9 December 2010.

810 I. Fekete 'Nájom a podnájom bytu,' 386.

decisive. The key factor in determination of the applicable regulation is the object of the lease, and not the purpose of the lease.' [811]

As far as the lease of a flat is concerned, the reason for termination has an important role in determination whether the tenant after termination of lease **has right to replacement housing** or if he is obliged to move out without any form of replacement. Apart from reason for termination, the social status of the former tenant and the members of his household is being considered.

When the lease for a definite time terminates, the tenant shall not be entitled to replacement housing. The same applies to the lease of the family house, where the special protection has not been afforded to the tenant.

Replacement housing can take a form of a replacement flat, replacement accommodation or a shelter. A **replacement flat** is a flat that, given its size and fittings, provides decent accommodation for the tenant and the members of his household. **Replacement accommodation** is a one-room flat or a habitable room in a house for single people, lodging house or other facilities for permanent habitation or the sublease of a furnished or unfurnished part of a flat of another tenant. The flat or habitable room may be used by more than one tenant. **Shelter** is a temporary accommodation, in particular in a common dormitory or other facilities designed for such purposes, and a space for storing furniture and other things for the needs of the household or personal needs. [812]

If former tenant has the right to replacement housing, he is not obliged to move out of the flat and vacate the flat, until corresponding replacement housing is secured for him. Joint tenants are only entitled to one replacement housing. A tenant who should vacate the flat is obliged to conclude a contract for replacement housing within 30 days of the delivery of a written declaration on the provision of a replacement housing; if the tenant fails to conclude a lease contract without a reason, his entitlement to the replacement housing shall become defunct.[813]

If a lease relationship is terminated for the reasons stated above lits a), e), f), or under b) for a reason in respect of a tenant who ceased to perform work underlying the lease of a service flat for a reason on the part of an employer or for a reason for which employer is liable under special regulation, the tenant is entitled to a replacement flat corresponding to the flat to be cleared in respect of usable floor area, equipment, location and sum of rent, taking into account the tenants life and work needs.

The tenant shall also be entitled to reimbursement of necessary expenses associated with the move.

If the lease is terminated for a reason stated under lit. c) (incurring damages and *contra bonos mores* behaviour), the tenant shall not be entitled to replacement housing. If the case is worthy special consideration, the tenant shall be entitled to a shelter.

811 Case of the Supreme Court of the Czech Republic No. 26 Cdo 1506/2012 of 2 May 2013.
812 Section 712 CC.
813 Section 712c CC.

If the lease is terminated for a reason under lit. d) – breach of obligations arising from the lease of a flat, the tenant is not entitled to replacement housing. If the tenant is without means of subsistence for objective reasons he will be entitled to replacement accommodation, otherwise, if there is a case worthy of special consideration, he may be entitled to a shelter. Special protection is awarded to the tenant who takes care of a minor child or a paralysed person who is a member of his household. In such a case in relation to previous termination reason the tenant will be entitled to a replacement flat instead of a replacement accommodation if the situation of the landlord so allows. The replacement flat may be of a worse quality and have a lower floor area that the flat to be cleared by the tenant. The replacement flat may be also provided outside the community where the vacated flat is situated. However the distance of the replacement flat shall allow for daily commuting to the place of work.[814] If the lease relationship is terminated repeatedly for the breach of tenants obligations, the tenants who proves to be without means of subsistence for objective reasons shall be entitled only to a shelter instead of a replacement flat or replacement accommodation.[815]

The sole exemption from the general rule that the landlord may terminate lease only by notice based on the grounds provided in the CC has been awarded to landlords by TCL 2011. This stems from the special history of their ownership as explained in the previous parts of this report. In these leases, the landlord may terminate open-ended leases without special ground. This right to terminate the lease belongs to the landlord only in a period restricted by law and therefore it should be assessed only as an exceptional and interim measure to overcome the injustice that takes its roots in an "inherited" legal position of the landlord. The notice period is 12 months and notice has to be delivered also to the municipality.[816] In these cases the municipalities provide former tenants with replacement housing in proceedings specially regulated by TCL 2011. The proceeding is initiated by the tenant´s application for a replacement housing and includes an assessment of his housing need.[817]

- **Termination for other reasons**

Apart from termination by notice, both parties may unilaterally end the lease relationship by executing the **withdrawal.** Rules on withdrawal of the lease are general and they apply to every type of lease (a flat as well as a family house). By withdrawal the relationship ceases to exist from the beginning *(ex tunc).*

The tenant is entitled to withdraw from the agreement at any time if the leased property was handed over in condition unfit for agreed or normal use, or if without breach of the tenant´s obligation it subsequently becomes unfit for such use, or, if it becomes unusable, or where such part of a property is removed that the purpose of the agreement becomes frustrated. If the rooms leased for the purpose of inhabitation or the accommodation of people are in a condition harmful to health, the tenant shall have a right even if he was aware of this fact upon the conclusion of the agreement. The right of withdrawal from the agreement may not be waived in advance.[818]

814 Section 712a para. 4 CC.
815 Section 712a para. 5 CC.
816 Section 3 TCL 2011.
817 Section 7 TCL 2011.
818 Section 679 paras 1-2 CC.

Under general rules on lease, **the landlord** may withdraw from the agreement at any time if, despite a written warning, the tenant uses the property leased or tolerates the use of the property in such a manner that the landlord incurs damage or faces the risk of considerable damage. The withdrawal is effective when it reaches its adressee and the tenant should vacate the dwelling immediately.[819] The application of this provision on the lease of flat may be, however, disputable because of the similarity of this rule to one of the reasons for the termination by notice. On one hand, we may argue that as far as lease of a flat is concerned such behaviour of tenants constitutes only a reason for termination by notice but it does not entitle the landlord to withdraw from the agreement. Court practice, however, confirmed that the grounds for withdrawal of the landlord under Section 679 para. 3 CC are applicable also to the lease of the flat; because a breach of a lease contract in this case is more fundamental, its intensity and danger is higher and more imminent than one that constitutes the ground for termination by the notice under Section 711 para. 1 lit. c) of CC. The outcome of this legal opinion of the Supreme court of the SR approves the withdrawal by the landlord as the reason for *ex tunc* termination of the lease of the flat.[820]

Where property other than flat (e.g. a family house) is concerned, the tenant may also withdraw from agreement if the tenant, despite being warned, failed to pay the rent due before the next rent payment becomes due, and if such period is shorter than three months, then within three months, or if the leased property shall be vacated according to the final decision of a competent authority. [821] In spite of the fact that the withdrawal has ex tunc effect the landlord is not obliged to return the rent already paid. If a contract is terminated by withdrawal, each of the parties is obliged to return to the other party everything they obtained by the contract.[822] As performance provided by the landlord was a non- monetary one (he provided for the tenant use of the dwelling), its return by the tenant is not possible, therefore the landlord has right to monetary compensation that is in the most of the cases equivalent to the rent already obtained.[823]

Fekete outlines also other grounds for the termination of the lease of flat or family house:[824]:

- ✓ **destruction of a leased property**[825]: If the block of flats ceases to exist, the performance of the contract is impossible. This situation caused by the unexpected circumstances (e.g. explosion in the block leading to the total damage) has to be distinguished from the termination ground under Section 710 para. 1 lit. e) of CC[826], as this author argues. In real life this may cause problems in the interpretation of CC. In my opinion the provisions on the destruction of the object of lease may not lead to circumvention of the provisions on lease of the flat

819 cf. n. 753 *supra*.
820 Case of the Supreme Court of the Czech Republic No. 26 Cdo 3083/2007 of 13 August 2008.
821 Section 679 para. 3 CC.
822 Section 457 CC.
823 Case of the Supreme Court of the Czech Republic No. 29 Odo 1344/2004 of 29 September 2005.
824 I. Fekete, 'Nájom a podnájom bytu', 364.
825 Section 680 para. 1 CC.
826 If - with public interest in mind - it is necessary to dispose of a flat or the block of flats in a manner that makes use of the flat impossible (e.g. ordered demolition for the sake of safety) or if the flat or the block of flats require such repairs that it is impossible to use the flat or the block of flats while they are being undertaken for at least six months.

and may not serve the interest of the landlord to evade his obligation to provide a replacement housing in case of a planned demolition.

- ✓ **death of tenant** (not regularly, see above)
- ✓ **tenant permanently leaves common household** (only in a case of a common lease of the flat)
- ✓ **merger** (if a right mergers with the obligation of the same person, i.e. if the tenant becomes the landlord, contract is terminated) [827]
- ✓ the lease of a cooperative flat shall terminate **upon the termination of a person´s membership in a housing cooperative.** The tenant of a cooperative flat is not obliged to move out of the flat until an adequate replacement flat is secured for him. A member may only demand the return of his membership share after he moves out of the flat and within the period set out in the articles of the cooperative. [828]

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

If a change in the ownership of the leased property occurs (notwithstanding its ground) the acquirer shall assume the legal position of the landlord and the tenant is entitled to relieve himself of his obligations towards the former owner as soon as the change is notified to him or proven by the acquirer. In such case only the tenant may terminate the lease by notice. The landlord is not entitled to terminate the lease on the grounds of the change of ownership.

- 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 Building Act 1976 explicitly stipulates that the tenants of flats are not participants in a zoning proceeding (the proceeding where a location of buildings, the usage of the plots of land, the prohibition of construction is dealt with).[829] Same applies to the construction proceeding.[830] Rehousing in case of demolition of rental dwellings is secured by the provisions of the CC which guarantee a right for a replacement flat, i.e. a right to conclude new lease agreement to the lease of the flat comparable to the flat demolished or being renovated.

827 Section 584 CC.
828 Section 714 CC.
829 Section 34 of Building Act 1976.
830 Section 59 of Building Act 1976.

Summary table f) "Termination of tenancy contracts"

	General lease *lease of a building*	Lease of flat *(including municipal and public housing stock)*
Mutual termination	Written agreement	Agreement
Notice by tenant	Admissible in open ended contract, if agreed also in contract for a definite period- no formal requirements	Admissible in open ended contract, if agreed also in contract for a definite period- written form
Notice by landlord	Admissible in open ended contract, if agreed also in contract for a definite period- no formal requirements	Admissible on grounds enumerated by CC, written form
Other reasons for termination	Withdrawal Merger Destruction of leased object	Withdrawal Merger Destruction of leased object Death or permanent dereliction of household Upon the termination of a person´s membership in a housing cooperative.

6.7. Enforcing tenancy contracts

- Eviction procedure: conditions, competent courts, main procedural steps and objections

An eviction procedure, with regard to the tenancy relationships, should be understood as means (realization) of the owner's (landlord's) protection of his property against a person or persons, who occupy the property at stake without rightful grounds, usually after extinguishing of a lease for various reasons.

Realization of this protective measures under Slovak law is conceivable by means of self-help or by means of execution[831] – procedure, in which a state-licensed subject (disposing of state authority) under court's supervision, the executor, realizes an enforceable title (usually a court's decision) and thus removes the non-rightful tenant from the premises.

First, removing of a tenant as a self-help remedy is generally not applicable and doing so would be susceptible to incur administrative or criminal[832] prosecution for the wrongdoer, along with possible damages claim of the evicted tenant. A peaceful state

[831] see generally sections 4, 5, 6 and 126 CC on substantive protection of the owner's rights.

[832] cf. e.g. sec. 194 of Criminal Code 2005 (Act No. 300/2005 Coll., as amended) (violation of house privacy), sec. 218 Criminal Code 2005 (unauthorized interference with the right to a house, flat or non-residential premises), punishable with a sentence of up to two years in prison, subject to peculiarities of each case.

(possession of the flat by the tenant) might be reinstated by an interim measure of the municipality upon the tenant's motion[833]. In rare cases (with neither a valid lease nor a subsequent right of habitation in place) self-help removal of the inhabitant may be admissible, provided the inhabitant directly and illegally threatens the rights of the owner (physical attack, fatal damage to the property; mere fact of expired lease does not amount to a direct threat) and if the removal may be deemed an adequate action (section 6 CC). In addition, due to the bad history of use of self-help removal of inhabitants by extortionary money lenders after the inhabitants' loss of title to the property, the police, who might be sought for help by the tenants, would no longer succumb to the private eviction procedure merely upon being presented with the record of ownership.[834]

Hence, second, in virtually all eviction cases an execution title would be required and only an executor within executionary proceedings would be entitled to pursue the removal.

For an executor, in order to proceed with the eviction, the first and utmost prerequisite is the existence of an execution title, i.e. an official document stating the obligation of the tenant to move out of a specific flat, house etc. Out of the various possible execution titles[835] it would generally be a court order (enforceable decision of a the general court, as the outcome of a court proceedings), which is sometimes in practice replaced by a special notary's record, in which the tenant acquiesces with the future or forthcoming eviction[836] (i.e. through an out-of-court document). The actual admissibility of such arrangements for the eviction is unsettled due to the ambiguous language of the EO[837] and is thus rejected for the purpose of eviction even by some officials of the Slovak chamber of executors[838]. Nevertheless, given the disputable (in)validity of such arrangements and its obvious benefits for the landlords, it is being utilized in the practice and even by public (municipal) landlords as a condition precedent to the in force coming of a lease of flat contract.[839] We hold a court judgement as a due title for execution of eviction order should always prevail and especially in the tenancy-consumer relation (which is the rule). The tenant, by creating the notary's record, namely, forfeits the benefits of the court proceedings, especially the profound assessment of his eligibility for replacement housing and validity of the lease contract, fairness of the consumer contract etc.[840]

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833 see section 5 CC; see generally L. Bizoňová & A. Soldán, *Ako obce používajú § 5 Občianskeho zákonníka* (Svätý Jur: Academia Istropolitana Nova, 2010).

834 see M. Tódová, 'Úžerníci už nemôžu neplatiča vysťahovať', *SME*, 3. 5. 2008, <http://www.sme.sk/c/3858193/uzernici-uz-nemozu-neplatica-vystahovat.html#ixzz0iFk5elaG>, 15 December 2013.

835 see section 41 EO.

836 section 42 para. 1 lit. c EO.

837 cf. section 181 para. 1 EO "If an enforceable decision imposes the liable subject to clear out an immovable...".

838 D. Mihálová, 'Exekúcia na nepeňažné plnenie - vypratanie', *Spravodaj SKE*, no. 2 (2008): 1, <http://ske.sk/Download/?bulletinArticleId=29>, 15 December 2013.

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

840 Although this may be partly cured in the execution proceeding as well. Cf. Case of the Supreme Court of the Slovak Republic No. 6 Cdo 1/2012 of 21 March 2012 (allowing the courts to assess the legality of the execution title even in execution proceedings of consumer contracts); see also C-40/08 *Asturcom Telecomunicaciones SL v. Cristina Rodríguez Nogueira* [2009] ECR I-09579, paras 52-54, 59.

The court judgement, as the desirable execution title, is the final decision of the trial court, which obligates the defendant (non-rightful tenant) to clear off the premises. Unlike in the regime of the lease of a building[841], if a lease of a flat had been terminated, the judgement may also contain a condition for the obligation to move out of the flat that a certain form of replacement housing be provided to the former tenant, i.e. if a right to replacement housing exists.[842] As an extraordinary measure, the court may also consider not to afford the eviction order if it would without a rightful reason contradict to the moral standards as may occur to it case-by-case.[843]

With the final judgement at hand, the landlord (owner)[844] may initiate an execution proceeding, by filing an application for commencement of an execution with whichever executor operating in the SR. If the judgement contains the duty to provide replacement housing for the tenant, the applying landlord would also have to prove satisfaction of this duty. He or she may:

- present a written statement of any subject that it would provide a replacement housing, in which it would undertake to conclude a contract of lease or sublease with the former tenant,

- present a contract of lease (sublease), which he or she concluded in favour of the former tenant,

- present the affirmation letter of the municipality that it has a replacement flat or replacement accommodation ready for the former tenant.[845]

The executor within 15 days (section 44 para. 1 EO) passes the application to the competent execution court[846], who issues a commission of the executor to proceed. The commissioned executor then issues a notification of the commencement of the execution, which is delivered to both the obligated (tenant) and the entitled (landlord) party. The obligated is thus summoned to clear off the premises in question or to file objections against the execution within 14 days of receipt. Those objections would relate matters that may have caused extinguishing of the enforced claim, or that hamper the same, or to reasons which might render the execution impermissible etc.[847] At the same

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841 This conclusion (based mainly on textual interpretation of the law) is still not completely settled and tends to be overruled under extraordinary circumstances of concrete facts by courts. See e.g. Case of the Supreme Court of the Slovak Republic No. 3 Cdo 43/1999 of 27 January 2000 (extending the right to replacement housing beyond lease and beyond a flat, by analogy of law even to an ex-husband obliged to move out off a house, he used to co-own prior to the divorce). But cf. e.g. Case of the Supreme Court of the Czech Republic No. 26 Cdo 1506/2012 of 2 May 2013 (re-affirming the non-applicability of the lease of flat regime to leases of houses) (as of this date, challenged on constitutional grounds). See also P. Kerecman, 'Obmedzenie vlastníckeho práva uložením povinnosti zabezpečiť bytovú náhradu', *Justičná revue* 54, no. 1 (2002): 29-39.

842 see sec. 6.6 *supra* for prerequisites for and forms of replacement housing. Depending on the facts, the replacement housing would have to be supplied by the municipality or the landlord. Cf. section 5 paras. 1-3 RDaRH 1992.

843 see *infra*.

844 the person entitled to sue for eviction and subsequently also to seek execution of the eviction might as well be a person with other right to use the the flat or house, most notable a new tenant. Cf. section 126 para. 2 CC.

845 D. Mihálová, 'Exekúcia na nepeňažné plnenie - vypratanie', 5-6.

846 i.e. generally the district court in the jurisdiction of which the house or flat is situated. See further section 85 and 88 para. 1 lit. h CPC, cf. section 45 EO, cf. also R 24/1981.

847 section 50 EO.

time, if the enforced judgement for clearing off a flat attributes to the obligated subject also a right to a certain replacement housing, the obligated would be entitled to file specific objections against the replacement housing within three days of receipt of the notification, i.e. objections against the fulfilment of the duty to provide one, or against adequacy of the provided one with regard to the duty as laid down in the judgement.[848] The executor may thereupon relinquish the execution proceedings (section 46 EO), otherwise the execution court would decide upon the objections, which may lead to their dismissal or sustaining, or even eventually to termination of the execution.[849] For instance, in the event of sustaining of the objections against the replacement housing, a new notification with an appropriate replacement housing offer would have to be issued by the executor, so the whole process would be restarted.

With no more objections to assess, the executor issues an order for pursuit of the execution, in which he sets a date for the clearing off of the premises and which is delivered to the obligated and entitled party, as well as to the respective municipality[850], in which the house/flat is situated. The municipality has a standing of a subject knowing the local circumstances and thus may, if necessary, resort to other of its competences if unlawful conduct (harming its residents) is discovered during the process. Most of all, however, the municipalities' responsibilities rest in the disposal of unwanted chattels of the evicted person.

In course of the process of the pursuit of the execution, the executor under supervision of a representative of the municipality[851] removes the tenant to replacement housing premises, or, if he is not entitled to any (or not a flat is being cleared off), he only removes the obligated party from the premises. It is still disputed whether the executor has a duty to actually move the persons to the replacement housing[852]. The eviction order concerns all persons who live on the premises, regardless of whether they were named in the claim or not, therefore they have to succumb to the execution. If a person can prove its genuine right of habitation, they would be exempted from the procedure.

The tenant's chattels are removed and given to him or her, or to an adult member of his or her family. If there is no eligible person or they refuse to take over the chattels, they would be handed handed over to the deposit of the municipality, who will keep them at the obligated party's cost. After six months of deposit with the municipality the chattels may be auctioned by the executor.[853]

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848 see section 185 para. 2 EO. Assessment of the adequacy of the replacement housing would include a wide variety of issues to be considered, and – depending on the applicable kind of replacement housing – it would mean accounting for the location, floor area, number of rooms, facilities, rent and utility prices, milieu, peculiarities of the original lease contract etc. And objections may very often be sustained. Cf. e.g. Case of the District Court in Trnava No. 18 Er 729/2012 of 16 October 2013; Case of the Regional Court in Trenčín No. 2 CoE 278/2012 of 04 October 2012.

849 see section 57 et seq. EO.

850 see section 181 para. 3 and section 184 para. 3 EO.

851 The EO only requires to include a "suitable" person, preferably a municipality's representative. The municipality is, however, always notified and it is usually up to their decision, whom they will commission with supervision duties.

852 D. Mihálová, 'Exekúcia na nepeňažné plnenie - vypratanie', 6-7.

853 cf. sections 182 – 183 EO.

- Rules on protection ("social defences") from eviction

We have already explained that in the context of termination of a lease of flat, extraordinary social circumstances of the tenant and the members of his or her household may give rise to protective rights of the tenant, such as a longer notice period for termination on the landlord's notice along with a grace period to repayment of one's debt, or the right to a replacement housing to which the tenant would otherwise not be eligible.[854]

On the top of these in the law expressly stated means of protection of the tenant of the flat, the judicial practice tends to give way to even broader concept of socially, or better say, morally justifiable defence of the inhabitant of habitable premises, where there is clearly no right of further habitation as understood by the black-letter law. The general view concurs that the duty to clear off a flat (or a house) that is used without a rightful title, shall not be contingent upon ensuring a replacement housing.[855] As the strict execution of this standard for eviction of tenants may be susceptible to bring about inadequate harshness, its effects can be mitigated by means of section 3 para. 1 CC, i.e. by declining (or limiting) the execution of one's (the landlord's) right due to its inconsistency with good morals. The eviction would thus be made contingent upon elapsing of a longer period or upon provision of a replacement housing,[856] or the action of the owner or other person entitled to sue for eviction would be dismissed by the court.[857]

The courts are, however, unanimous that employing such an extraordinary measure, which takes into consideration specific needs and circumstances of the tenants and at the same time directly encroaches upon the landlord's (owner's) property right, should always be performed in a sensitive manner after a thorough assessment of the reasons supporting the use of this provision (e.g. family or social conditions of the evicted etc.) as well as all circumstances favouring the claim of the landlord, i.e. reasons that may affect the answer to the question whether it would be reasonable and just to require from the landlord (actor) having his rights temporarily dismissed.[858] It seems to be justifiable to dismiss eviction of a single mother with multiple children, who is late on multiple payments of rent and utilities, but would remain homeless, as opposed to a municipal landlord disposing of housing stock and not in personal need of the housing premises. In its holding of this case the court specifically appealed to the right to housing as a fundamental human right.[859] Similarly, evicting elderly and handicapped persons whose

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854 sections 710 para. 4, 711 para. 5, 712a paras 2-8 CC. See in detail sec. 6.6 *supra*.

855 see I. Fekete, 'Nájom a podnájom bytu,' 421.

856 See e.g. Case of the Regional Court in Nitra No. 10 C 72/2011 of 25 March 2013; Cf. Cases of the Supreme Court of the Czech Republic No. 26 Cdo *3419/2006* of 7 January 2008; No. 26 Cdo 2588/99 of 21 March 2001; No. 31 Cdo 1096/2000 of 14 November 2002 (stating that the evicted person's good-faith belief of a rightful title to use, who inhabits a flat for a long time and did not cause the legal defect, should be accounted for in this regard).

857 See e.g. Case of the Regional Court in Prievidza No. 11 C 15/2012 of 18 December 2012; Cf. Case of the Supreme Court of the Czech Republic No. 2 Cdon 1706/97 of 12 November 1998.

858 Case of the Supreme Court of the Czech Republic No. 26 Cdo 2573/2008 of 16 December 2009.

859 Case of the Regional Court in Prievidza No. 11 C 15/2012 of 18 Decmber 2012. Although further elaboration of this thought is missing in the reasoning.

eviction could have fatal consequences on their health in favour of a municipality, would be morally unjustifiable without provision of any replacement housing.[860]

Although justifications of court decisions dismissing the claim for eviction on the grounds of morality usually contain *dicta* relating to the temporary nature of this extraordinary protection given the specific facts, procedurally the judgement would still be in force and it would amount to a legal obstacle for a new action and decision, as a matter already judged[861] (*res iudicata*). This obstacle will govern until new facts (or new legal grounds) in comparison to the original claim can be presented by the claimant.[862]

- May rules on the bankruptcy of consumers influence the enforcement of tenancy contracts?

Tenants, whether consumers or not, when falling into bankruptcy, along with their contractual partners assume a position in which other goals are primarily sought under respective legal rules than the original will of the parties, namely the most effective alienation of the assets of the bankrupt and reaching as high level of satisfaction of the bankruptcy creditors as possible. Naturally, certain rights of the bankrupt must be respected and at least some amount of its assets ought to remain at his disposal.[863] The effects of the adjudication of bankruptcy are only to a limited extent idiosyncratic to the bankrupt consumer-tenants.

First, the official receiver in the bankruptcy, within his competence to protect the estate and ensure its effective management is given a specific **right to terminate contracts** of the bankrupt for perpetual or repetitive performance with a two months notice-period irrespective of whether it is open-ended or fixed-term contract, which overrules conflicting provisions of other laws or the contract.[864] Lease contracts typically count among such perpetual contracts. Interestingly, the language of the act does not distinguish between a bankrupt landlord and the tenant in this regard.

However, the BRA respects the protected nature of the lease of flat and therefore a lease of flat can be only terminated by the official receiver pursuant to the provisions of the CC.[865] It remains to be derived by interpretation whether the receiver is entitled to terminate the lease of a flat, if the bankrupt is the tenant, or only if it is the landlord.[866] To allow the receiver to terminate one's lease of flat even in cases if the bankrupt is the tenant would mean to strip the tenant of his housing along with the housing of persons

860 Case of the Regional Court in Nitra No. 10 C 72/2011 of 25 March 2013.

861 section 159 para. 3 CPC.

862 cf. e.g. Case of the Supreme Court of the Slovak Republic No.5 Cdo 280/2010 of 20 October 2011.

863 For prerequisites for bankruptcy, procedural steps as well as consequences it brings about see Bankruptcy and Restructuring Act (No. 7/2005 Coll., as amended) (BRA); see generally P. Sojka, 'Konkurzné konanie. Reštrukturalizačné konanie. Konanie o oddlžení', in J. Zámožík et al. *Civilné právo procesné*. (Praha: Aleš Čeněk, 2013), 155-284.

864 see section 45 para. 4 BRA.

865 *ibid*. *in fine*; see also section 710 and 711 CC.

866 Since the official receiver would be especcially interested to act with regard to assets that underlie the bankrupcy (i.e. assets owned by the bankrupt), it would generally be leases where the bankrupt is the landlord and third persons as tenants are in need of special protection provided by the proviso in the section 45 para. 4 BRA.

deriving their right of habitation from the tenant's lease (members of the household). On the other hand, the bankrupt may have leased a flat above adequate standard or multiple flats, as a result of which the bankruptcy estate would be financially heavily burdened.[867] As the right of the official receiver to terminate the lease is textually not limited otherwise than by the provisions of the Civil Code (which means even without giving specific reasons if it is termination by the tenant), the commentators conclude that general legal principles have to be resorted to: It would contradict the good morals if the official receiver would be able to divest the tenant in bankruptcy of his right to habitation, if the living standard therein is adequate. Such conduct of the receiver would be in breach of section 3 para. 1 CC.[868]

Moreover, the discussion on applicability of the provisions of the lease of flat to leases of houses (buildings) for residential purposes is relevant also in respect to the official receiver's right to terminate the lease. Since the express protection (prevailing regime of the CC) relates solely to the lease of flat, in the former case the bankrupt tenant and members of his household could be easily left without a place to live at the receiver's discretion. Therefore, we hold that the above-mentioned resort to general standards of civil law should similarly apply to the lease of a house and the receiver should not have the right to terminate the lease if it is adequate and necessary means of habitation of the bankrupt.

Second, as far as debts of the bankrupt tenant, arisen **prior to adjudication of the bankruptcy** are concerned, the landlord would indeed be partly hampered in their enforcement, as he would be obliged to submit and prove its claim along with other creditors of the bankrupt.[869] It would then have to be settled within the bankruptcy proceedings and most likely the better part of the debt would be forfeited first in the distribution of the proceeds of the estate and finally upon discharge of the bankrupt. The bankrupt, who is a natural person may apply for discharge of its debts after the cancellation of the bankruptcy proceedings, if further conditions are met, most of all his willingness to clear debts and actual participation in (partial) repayment of his debts during bankruptcy.[870]

Third, notwithstanding the contractual regime (lease of flat vs. lease of a house), the BRA attributes a separate regime to the claims of the landlords for payment of rent and pertinent services that have arisen **after the adjudication of the bankruptcy**. These are, namely, considered claims against the bankrupt's estate[871] and as such, they would not have to be separately submitted and shall be paid out regularly during the bankruptcy.[872] The landlord's claims of this nature, therefore, should not be affected by the bankruptcy, provided the estate has sufficient funds to meet them.

Ultimately, the rights and duties of the lease remain mostly unaffected. This also means that the debt of the tenant would be susceptible to be used as grounds for termination of

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867 see M. Ďurica, *Konkurzné právo na Slovensku a v Európskej únii.* 2nd ed. (Žilina: Eurokódex, 2010), 191.

868 *ibid*.

869 section 28 et seq. BRA.

870 see in detail section 166 et seq. BRA.

871 section 45 para. 6 BRA; cf. M. Ďurica, *Konkurzné právo na Slovensku a v Európskej únii*, 193.

872 section 87 para. 4 BRA.

the lease, as no additional protection is awarded to the tenant with regard to the bankruptcy.[873]

Summary table g) "Enforcing tenancy contracts"

	General lease *lease of a building*	Lease of flat *(including municipal and public housing stock)*
Eviction procedure	self-help generally inadmissible; eviction through an executor: - judicial decision required (in practice replaced by notary's record of the tenant's consent), - generally no right to a replacement housing (with leniency judicature), - process with a court's intervention, - objections of the evicted against the execution, - involvement of the municipality, - removal of all the inhabitants, - removal of chattels in the dwelling (municipality's deposit if not taken by the evicted)	self-help generally inadmissible; eviction through an executor: - judicial decision required (in practice replaced by notary's record of the tenant's consent), - based on facts, usually a right to a replacement housing if open-ended lease (with leniency judicature), - process with a court's intervention, - ensuring of replacement housing must be presented prior to notification of the commencement of execution, - objections of the evicted against the execution, - objections against the replacement housing, - involvement of the municipality, - removal of all the inhabitants, - removal of chattels in the dwelling (municipality's deposit if not taken by the evicted)
Protection from eviction	generally no express protection; protection on grounds of immorality of rightful eviction (extraordinary measure, social /family merit etc.): - procedural delaying of the eviction term, - provision of replacement housing, - dismissal of a clam for eviction	general protection within the rules on termination of a lease of flat and on replacement housing; protection on grounds of immorality of rightful eviction (extraordinary measure, social /family merit etc.): - procedural delaying of the eviction term, - provision of replacement housing, - dismissal of a clam for eviction

[873] unlike e.g. entrepreneurs within the composition proceedings. Cf. section 114 para. 1 lit. d) BRA.

Effects of bankruptcy	bankruptcy receiver's right to terminate the lease (apparently not to strip the tenant from an adequate place to live); claims older than adjudication of the bankruptcy – need to submit and prove; claims newer that adjudication of bankruptcy – paid continuously with priority; most rights and duties unaffected

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 our field ("tenancy law in action") is taken into account:

- What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?

As the overview of the most relevant associations in the field of housing[874] shows, most of them are active in the housing management sector and with the point of interest being the relationships between the owners of flats and the housing management. The activity of stakeholders also prove that rather than landlord-tenant relationships the issues that have to be approached in the realm of housing nowadays are mostly related to effective reconstruction of the ageing housing stock in private hands and professionalization of management of the blocks of flats. We could conclude that in particular relationship between landlords and tenants, given the negligible relevancy of the rental housing market, the role of associations is insignificant, if any.

In one very specific matter, though, landlords as well as tenants have come together in order to pursue their ideas of rightful settlement of relationships with the state ensuing from the structural transformations after 1990. This refers to reconciliation of landlords (owners) of restituted houses with regard to existing tenants with controlled rent on one hand and reconciliation of claims of the tenants, who, unlike the majority of the population, were not able to buy the flats they were inhabiting under favourable conditions, on the other.[875]

On the tenants' side, a civic association "Right to a Dwelling"[876] has publicly campaigned against the purported rent-control cancelling legislation as well as the now applicable

[874] see sec. 1.5 *supra*.

[875] for background see e.g. J. Liptáková, 'Regulated rents remain a problem', *The Slovak Spectator*, 31. 10. 2011, <http://spectator.sme.sk/articles/view/44356/21/regulated_rents_remain_a_problem.html>, 15 December 2013; see also sec. 1.4 *supra*.

[876] see <http://www.staromestan-ba.sk/index.htm>, 15 December 2013.

TCL 2011. It has communicated its dissatisfaction to local as well as state politicians, it has spread relevant information for upholding their rights to the respective tenants (e.g. against unlawful rent increase by the landlords). It also gives consultations to them as well as issues brochures from time to time. It has also assisted the tenants and participated in filing complaints with the ECtHR against the SR.[877] It is an articulate stakeholder with regard to the public as well as legislative and executive bodies.

Neither this nor other associations of landlords and tenants offer arbitration or other private alternative dispute resolution schemes in tenancy disputes.

On the landlords' side, Civic Association of Owners with Regulated Rentals[878] furthers the case of the owners of returned properties, who believe that their constitutional rights have been violated by their long-lasting deprivation of use of their property and constant losses incurred through rent-control over the years. The association serves as a distributor of information among the respective landlords e.g. on realization of their rights pursuant to TCL 2011, it collects relevant information, procures and gives legal opinions and regularly communicates with governmental agencies to the benefit of its members. Most of all, under auspices of the association, tens of owners of restituted houses have submitted multiple applications to the ECtHR,[879] in which they are seeking payment of damages as well as compensation for losses incurred, i.e. the difference between the market and the regulated rent. Officials of the association claim that these applications actually triggered the deregulation of rent-control along with existing tenants' lease terminating legislation culminating in the provisions of TCL 2011.[880]

Clearly, even with reconciliatory legislation at hand, both of the associations still have relevant reasons to be active fostering the rights of their members.[881]

Although the legal framework of civil procedure offers a rather beneficial standing of associations that would be aimed at protection of consumers[882], also the consumer-tenants, their procedural activities have hitherto never been oriented at protection of tenants in practice, unlike cases of usurious money lenders, security of monetary claims etc.

- What is the role of standard contracts prepared by associations or other actors?

With an underdeveloped private rental market, there are hardly any umbrella-actors that would prepare widely used standard contracts. Private – non entrepreneurial – landlords tend to use contracts either prepared or consulted by real estate agencies. Yet very

877 Tenants of flats in restituted houses filed thus far two complaints with the ECtHR: 1. application of 201 natural persons along with the association of 22 February 2012 (11809/12 *Straka et. al. v. SR*) and 2. application of 55 natural persons of 13 May 2013 (35284/13 *Borodinová et. al. v. SR*). In their applications they claim interference with their human rights and fundamental freedoms under art. 1(1) of the Protocol to the ECHR, art. 14 ECHR as well as art. 8 ECHR.

878 see <http://regulovanenajomne.sk/>, 15 December 2013.

879 Until now, it has been seven applications, the last one of 28 June 2013, No. 46609/13. See <http://regulovanenajomne.sk/main_podaniaEU.html>, 15 December 2013.

880 see J. Liptáková, 'Regulated rents remain a problem'.

881 cf. e.g. K. Straka, 'Žaloby nájomníkov pribúdajú', *Právo na bývanie*, 4, no. 6 (2013): 8, <http://www.staromestan-ba.sk/index.htm>, 15 December 2013.

882 e.g. Exemption from court's fees (section 4 para. 2 lit. c) Court Fees Act 1992 (71/1992 Coll., as amended)).

often contracts prepared for past leases and unsuitable for a particular case are copied by the parties. Therefore unprofessional lease contracts clearly disrespecting certain provisions of the Civil Code (e.g. conditions for terminating or avoiding a lease of flat, contractual penalties etc.) are still present in practice on the market.

- 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?

There are virtually no alternative dispute resolution schemes being applied in the residential tenancy sector. With the recent line of judicature on consumer arbitration, it is very difficult to imagine a legally enforceable arbitration clause in a consumer contract[883], which would generally be the case in flat rentals. Although mediation as a progressive and efficient concord-driven framework is ever more furthered[884] and well available in Slovakia, the parties would generally resort to court proceedings, given the history of in-court dispute resolution, as well as the binding character and substantive legal consequences of proceedings in court. At the same time, the parties are also discouraged from suing by the general perception of inefficiency of law enforcement in Slovakia.[885] The landlords would thus be prone to avoid court proceedings through stringent contracting (through e.g. fixed-term leases, subleases, notary's reports of tenant's consent with eviction etc.). And tenants may be discouraged by the feared cost of the proceedings in the event of loss. Generally, due to prevalent cogent provisions on the lease of flat usually favouring the tenant even in the procedural standing[886] and the willingness of the courts to account for extraordinary circumstances of the parties based on general standards of law, the tenants should have the upper hand in the process.

As far as purely monetary claims are at stake, such as debt on rent (landlord), damages for failure to pursue reparations by the landlord (tenant), no peculiarities in comparison to enforcement of other claims in civil procedure than the tenancy ones can be traced in the practice of Slovak courts.

- 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)?

883 see P. Straka, 'Vymožiteľnosť spotrebiteľského práva', in *Záverečná štúdia „Vymožiteľnosť práva v Slovenskej republike"*, (Pezinok: Justičná akadémia Slovenskej republiky, 2010), 153 et seq.

884 see generally K. Šangalová, 'Mediácia včera a dnes', *Historia et theoria iuris* 4, no. 1 (2012): 76-85.

885 S. Ficová, J. Cirák & I. Fekete, 'Teoretické vymedzenie pojmu vymožiteľnosť práva', in *Záverečná štúdia „Vymožiteľnosť práva v Slovenskej republike"*, (Pezinok: Justičná akadémia Slovenskej republiky, 2010), 9; cf. also other sectoral reports in the cited study.

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

The average length of civil procedure was 11,6 months in 2012 and the trend seems to be stable at this level.[887] This is, however, only the court proceedings. The appellate procedures and enforcement of the judgement could prolong the actual attaining of the desired effect much more. The tenants admit fear of long duration and unpredictability of the court proceedings, which along with the fear of retortion from the landlord's side is a significant disincentive for realization of their rights in court.[888] The duration of the court proceedings is perceived as the utmost problem of the Slovak justice even by the head of the Constitutional court of the SR.[889]

In the process of eviction the most significant peculiarity of tenancy law enforcement comes into play, when the evicted person is eligible for replacement housing. The tenant's objections against replacement housing (quality, adequacy) may prolong the procedure significantly, since a new dwelling would have to be found and the enforcement procedure would be returned to its initial stage. Yet, it forces the landlords to duly respect the provisions on replacement housing and the tenants' entitlements.

- 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?

Access to courts is a constitutionally guaranteed feature of the right to a fair trial.[890] Although there may be multiple fairness issues with regard to the substantive legal distribution of rights between landlords and the tenants, as far as its enforcement within the procedure is concerned, either party of the relationship has a plethora of rights and guarantees that its substantive right may be realized in court.

Though legal fees may be perceived as an obstacle to the access to justice, in fact, a party, who rightfully claims its rights should not be deterred from doing so on these grounds. Generally, the losing party is liable for the costs of the proceedings[891], i.e. the court's fees as well as the basic (regulated) fee of the opposing party's attorney's cost. However, due to extraordinary circumstances, the court is entitled not to impose the duty to cover the cost of the proceedings to the losing party[892]. Apart from that the party, if eligible, based on income and financial standing, may be exempt from the court's fees, the payment duty, and provided with free (or for partial reward) legal assistance from the outset[893]. As majority of the tenants would also be in a position of a consumer, they would be also exempt from the court's fees payment duty by the mere fact of claiming (or protecting) their rights from a consumer (lease) contract[894] and the landlord's attorney's fees that he may eventually be liable fo,r if unsuccessful in the proceedings,

887 cf. <http://www.justice.gov.sk/Stranky/Sudy/Statistika-priemerna-dlzka-konania.aspx>, 15 December 2013.
888 cf. K. Straka, 'Žaloby nájomníkov pribúdajú', 8.
889 cf. <http://www.epravo.sk/top/efocus/ivetta-macejkova-najvacsim-problemom-slovenskej-justicie-je-dlzka-konania-1254.html>, 15 December 2013.
890 art. 46 para. 1 Constitution 1992; art. 6 (1) ECHR.
891 see section 142 para. 1 CPC.
892 section 150 CPC.
893 see section 138 para. 1 CPC; see also section 6 et seq. Act on Legal Aid to Persons in Material Need (No. 327/2005 Coll., as amended); see also section 4 para. 3 Court Fees Act 1992.
894 section 4 para. 2 lit. za Court Fees Act 1992.

would be lower than in a general civil legal proceedings[895]. A nation-wide network of branches of the Centre of Legal Aid[896] and attorneys providing such service is sufficient to overcome any burden on physical accessibility to providers of legal aid to eligible customers (parties to a lease contract).

- How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)

As far as access of the legal community as well as the addressees' of the tenancy law to statutes and the secondary literature (of either professional or popular nature) on tenancy law is concerned, there are no significant obstacles present in the contemporary practice in Slovakia. National statutes are easily accessible online in their actual consolidated versions free of charge,[897] judicature (final decisions) of nation-wide courts is to a rather broad extent accessible over the internet too,[898] reports of most significant cases are published regularly by official as well as unofficial publishers and secondary literature on tenancy law is also at hand.

Nevertheless, the legal certainty may still be considered an issue in tenancy law for several reasons. First, the provisions on the lease of flat in the Civil Code had been fashioned for a slightly different market conditions where there was a predominant class of public landlords disposing of broad supply of housing stock and with good erudition (and responsibilities) in management of housing stock. With the shifting of the landlord's position to the hands of usually non-professional private owners, it may be difficult for such subjects to cope with duties that are laid on them, especially if the tenant's misconduct requires suffering damaging effects for a long time (extended notice periods in the event of default on rent payment, tolerating habitation of the tenant until the court proceedings on invalidity of the lease are finalized, and above all duty to ensure replacement housing). The alternative attitude to replace subjectively inadequate legal framework with creative contracting contributes to the uncertainty of the legal standing of both parties. Although such a conduct may well work in the out-of-court practice, once contested in court, mandatory character of the rules would prevail, which could add an element of unexpected surprise to the relationship. Distinguishing mandatory and default rules on lease of flat is also not self-explanatory for a practising party and usually requires legal interpretation skills (and sense for extraordinary circumstance assessment). Second, the willingness of the courts to take into consideration circumstances worthy of extraordinary concern and to decide cases – in such a sensitive area as the tenancy law undoubtedly is – referring to moral standards and in contradiction with black-letter law should be deemed a crucial and indispensable guarantee of functioning of the rule of law and constitutional governance. However, once

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[895] see section 11 para. 1 lit. b and para. 2 Attorneys' Legal Services Remuneration and Compensation Ordinance (No. 655/2004 Coll., as amended).

[896] a state budgetary organisation established in order to improve the access to justice for people in material need, which operates in 13 regional offices and another consultation centres across the country. Cf. section 5 et seq. Act on Legal Aid to Persons in Material Need.

[897] cf. <http://jaspi.justice.gov.sk>, 15 December 2013.

[898] see *ibid*.; see also <http://portal.concourt.sk/pages/viewpage.action?pageId=1277961>, (cases of the Constitutional court of the SR); <http://www.nsud.sk/rozhodnutia/>, (cases of the Supreme court of the SR); <http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutia.aspx>, (other court's decisions), 15 December 2013.

it is used as a rule (due to absent comprehensive regulation of various situations regularly popping up in the real life) it becomes difficult for the parties to predict the outcomes of their individual actions and thus to understand what is legal and what is not. Third, in a similar note, certain issues are so crucial to be ascertained at the outset of a lease relationship that it cannot be left to court's discretion to be interpreted on a case by case basis, and there should be a predictable hard law regulation. For instance, knowing whether the lease of a house for residential purposes should be governed by the (protected) lease of flat regime or the widely discretionary general regulation of lease is a persistent problem with regard to which conflicting views are presented. Besides the rather thoughtful and soaring interpretative ventures that can be undertaken by the academia and judges' reasoning either way, the parties are in a need for a clear and predictable knowledge of the aggregate of their mandatory rights and duties in order to accommodate their needs and legal limits through valid contracting.

To conclude with, the tenancy law in Slovakia with its predominantly mandatory character is generally predictable if interpreted restrictively in favour of the tenant. However, since the individual provisions and their systematic cohesion on occasions lack interpretative preciseness, many court procedures can lead to extensive conflicting legal reasoning and hence sometimes to unpredictable outcomes.

- 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)?

Appearance of swindlers on the rental market who would gain revenue on fraudulent offers of lease have been experienced in Slovakia, too. However, given the higher level of potential gain, more cases of fraudulent sells of immovables have been recorded.[899] In more populated cities, where the demand for affordable rental flats is higher (such as the capital Bratislava), the risk of dealing with a swindler-landlord is elevated. In May 2013, for instance, an allegedly British manager advertised and offered multiple flats for an intriguingly low rent in the old-town area of Bratislava. With the language and email writing style, he lured 2-month's rent from its victims under time-pressure promising to send the keys thereafter by mail.[900] With regard to rentals, such cases are still perceived as rarity that can be avoided through wary pre-contractual handling of the potential tenants, as more sophisticated schemes are generally not worth the risks of the criminals.

- Are the areas of "non-enforcement" of tenancy law (such as legal provisions having become obsolete in practice)?

The regulation of tenancy law in Slovakia does not reach such level of detail that would make it prone to having left-over provisions obsolete or unenforced any more with the dynamics of the short-term residential rental environment. Only the level of significance

[899] see e.g. <http://www.realitnaskola.sk/predaj-nehnutelnosti-a-realitne-podvody-i/>; <http://hirth-reality.sk/magazin/detail.php?id=5>; <http://reality.etrend.sk/reality-rady-odbornikov/realitni-podvodnici-sa-nestitia-ani-nasilia.html?piano_t=1>, 15 December 2013.

[900] cf. <http://krimi.noviny.sk/cierna-kronika/28-05-2013/lacny-prenajom-nedajte-sa-nachytat-na-inzerat.html>, 15 December 2013.

of various parts of the regulation changes over time. Thus, e.g. the originally dominating open-ended lease is ceasing to be existent in the practice with end of leases originated in pre-1993 period (when the tenant's right-to-buy legislation was adopted). Due to its overly protective features it is not used in private rental conditions and the newly built social housing provided by public landlords procured from public funding, may not be leased for indefinite period as a statutory matter.[901] Another matter whose decline of relevancy is related to the change of structure of flat-ownership and types of leases in use, are the provisions on the change of a flat.[902] With deregulation of rent, most of the housing stock in private hands and significant differences among the value (and rents) of dwellings in various locations, it is more difficult to find comparable rentals in which the mutual change of tenants would be conceivable and desirable. However, since the construction of blocks of flats in municipal ownership is increasing and lease of flat is projected to be an ever more important tenure type, changes of tenants may be anticipated to increase in number again.

- What are the 10-20 most serious problems in tenancy law and its enforcement?

Tenancy law as a set of rules covering rather complex and manifold issues of the society faces diverse challenges that are on occasion not sufficiently approached by the existent regulation. We may identify three classes of deficiencies in the current tenancy law in Slovakia. First, it is the broad dissatisfaction of the attribution of rights and duties in the lease of flat relationships for private rental market environment accounting for (or contributing to) further market-economy failures (insufficient supply, meek mobility of workforce etc.). Second, there are many problems that rest in interpretation issues (or insufficiencies) of existing rules causing predictability of law problems and risk of lengthy court proceedings. Third set of problems arose due to the policy choices the legislator had made, leading to individual injustices (at least subjectively perceived) to certain classes of landlords, tenants or either of them in a peculiar situation.

Avoidance of standard housing rental legal framework is a phenomenon causing irregularity in the private rental market from the legal point of view. It comes about as virtually absolute avoidance of lease of flat for an indefinite period as a contractual type (given the structure of law the standard legal framework for satisfaction of housing needs outside ownership regime). There are manifold features of regulation discouraging landlords from use of open-ended leases of flats, as overprotective of the tenant.[903] The parties thus resort to alternative schemes of renting, i.e. either through lease of flat for a specific period or through a sublease. Interestingly, even legislation on social housing (new leases of flats procured/constructed with state funding) prohibits the

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901 section 12 para. 2 et seq. SHDaSH 2010.

902 section 715-716 CC.

903 i.e. (1) strict rules on termination upon landlord's notice (enumeration of "extraordinary" situations); (2) judicial review of legality of the termination (right to use until the decision will have been passed); (3) broad concept of obligation to provide replacement housing upon termination (usually the landlord's duty); (4) impossibility to change the contractual terms on the go (no clausula rebus sic stantibus in general contract law), particularly with regard to the rent; (5) the landlord's prohibition (legal constraint) to sell the flat to anyone but the tenant (unsystematic leftover of the privatisation legislation).

beneficiary (the municipality) to rent the flats for more than 3 or 10 years[904]. The parties still have to subject themselves to some the regimes at hand, since renting upon unwritten lease contracts would be very tricky for both sides. It may, namely, be deemed a lease for an indefinite period. For landlords, to be on the safe side, it is wiser to have a specific fixed-term lease contract in writing. This argumentation also triggered the legislative initiative for a new "short-term lease of flat" tenancy type that is to be introduced in 2014.[905] The landlord of a private rental flat could thus enjoy more lenient regulatory contracting regime, provided he or she fulfils the tax registration duty[906,] and the statutory provisions on form and content of this contract are met. The more flexible (or clear-cut) regulation shall include issues of rent payment and its unilateral increase, deposits, extended options for contractual sanctions of non-performance, flexibility in stipulating grounds for termination of the lease, no replacement housing upon termination, easier eviction procedure, possibility to exclude transfer of the lease upon death or abandonment of the household by the tenant etc.

With regard to the interpretative deficiencies of the existing legislation, we should, most of all, mention the persisting ambiguity in understanding whether the *lease of a house should or should not underlie the lease of flat regime*, if concluded for residential purpose. We already presented the current view of the courts on this matter, namely that "the purpose of a lease is not decisive. The key factor in determination of the applicable regulation is the object of the lease, and not the purpose of the lease,"[907] hence no protected lease should exist in a house (building). The courts have, however, with regard to a different issue held that "according to the extraordinary-appellate court, there is no reason why a husband who used a flat in a family house should have a worse standing after the divorce than a husband who used a service flat after the death of its tenant or after the divorce with the tenant"[908]. The court thus allowed the use of provisions on the lease of flat for a derived right of use of a house merely on grounds of absence of any reasonable grounds for discriminating a person due to the object in which he or she had been housed. Indeed, a rented house can be just as much the only lodging satisfying his or her housing needs. Unilateral termination of a lease by the landlord would cause him or her just as much trouble as the tenant in a flat. And given its specific purpose, it may serve the same social function as a lease of flat. This inconsistency in the legislative approach is anticipated to be solved in a complex manner in the prepared new Civil Code, the works on which are under-way under the auspices of the Ministry of justice of the SR. According to the official Legislative Plan of the Civil Code, lease of a house should be specifically included as a separate tenancy type, the regulation of which would with appropriate adaptations copy the provisions of a lease of flat, provided it is rented for residential purposes.[909]

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904 rechecking eligibility, etc. see further section 12 et seq. SHDaSH 2010.

905 See the full pre-legislative material open for interdepartmental discussion procedure at: <https://lt.justice.gov.sk/Material/MaterialDocuments.aspx?instEID=1174&matEID=6731&langEID=1>, 15 December 2013.

906 Section 49a para. 2 Income Tax Act 2003.

907 Case of the Supreme Court of the Czech Republic No. 26 Cdo 1506/2012 of 2 May 2013.

908 Case of the Supreme Court of the SR No. 3 Cdo 43/99 of 27 January 2000.

909 see 'Legislatívny zámer Občianskeho zákonníka' (Res. of the Government of the SR No. 13 of 14 January 2009), Part five, title two, sec. 4.1.2, p. 98.

In a similar line, there is the question how far should the *differences of fixed-term as opposed to the open-ended lease* of flat go, or be justifiable. The CC, for instance, allows for ambivalent interpretation of the possibility to terminate a lease of flat for a fixed term with the application of certain notice-period. *Fekete* argues that the lease shall not be terminated in such a case.[910] This would, however, leave the landlord unprotected in the event of defaults by the tenant, which should be remedied only by a termination on grounds specifically enumerated for termination of a lease of flat in section 711 para. 1 CC. If, on the other hand, we would allow the landlord to resort to remedies under the general lease regime instead, the tenant would be denied the protection pertaining to the lease of flat for residential purposes as demonstrated by the limited availability of its termination.[911] The language of section 710 para. 2 CC, textually, suggests that the elapse of time is only an addition to other ways of cancelling the contract mentioned in previous provisions (above all termination) in case of a fixed-term lease. This means that, in line with the protective nature of the lease of flat, the rights and duties of the tenant should not be affected by the fixed-term lease regime in other way than after enjoying the full benefits of a lease of flat within the fixed period (including at will termination of the lease by the tenant), the lease shall be completely extinguished and bound to be re-negotiated. Again, the short-term lease of flat legislation should provide for definite answers (or contractual liberty of the parties) to this issue.

Furthermore, the absence of any regulation of possible *rent increases* combined with the general feature of Slovak civil law, having no over-arching *clausula rebus sic stantibus*, is problematic, since every canny party to a lease contract (i.e. esp. landlord) wants to include such a scheme in the contract, given the unpredictable dynamics of the market in the recent years. Leaving this issue for the negotiation of the parties may seem progressive, but it should be made clear that it is open for negotiation by the parties in the first place. And statutory limits suggesting level of extensive (illegal) increase would be in line with the civil law feature of not allowing for unilateral changes of bilateral agreements. Unilateral rent increase, although agreed upon, may heavily interfere with subsequent rights of parties originally unforeseeable. The projected short-term lease as well as the new civil code envisage coverage thereof. Contemporary parties, however, are left with a certain level of uncertainty in this regard.

Subsequent change of circumstances might be relevant for the decision on the *replacement housing* after the issuance of the final judgement for eviction, enforcement of which is contingent upon provision of a certain replacement housing. It is unclear whether the execution court may take into consideration such a change of circumstances that would, if assessed currently, not render the tenant eligible for a replacement housing, or one of the attributed category, or vice versa.[912]

The significant area of replacement housing awards has other ambiguous points too, which can be generalized as the matter of *applicability of the provisions on replacement housing to other situations* than the ones anticipated by law (eligibility for replacement housing). We already stated that the courts have extended the applicability of the

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910 I. Fekete, 'Nájom a podnájom bytu,' 360 (arguing that termination with notice period is generally only available for open-ended contracts, in line with section 582 para. 1 CC).

911 cf. section 685 para. 1 in fine.

912 see D. Mihálová, 'Exekúcia na nepeňažné plnenie - vypratanie', 10-13.

provisions of the CC on replacement housing, i.e. they have held that the evicted person should be provided with the replacement housing prior to eviction, even though the black-latter law does not confer such a right on them (going beyond the rules on lease of flat or even lease of flat issues). The courts argue that "the relationship of use of a flat in a family house of an ex-wife by the ex-husband after the divorce is a civil legal relation. The Civil Code does not contain an express regulation of existence and terms of eligibility for a replacement housing upon extinguishing of such a title for habitation. It cannot be, however, inferred that attribution of a replacement housing in such cases is excluded."[913] As provision of replacement housing may be a particularly burdensome duty of the landlord upon the end of the lease (or other use) relationship, it should be clear form a hard law formulation to which situations the duty (and right of the tenant) extends. In uses of (legally guaranteed) general standards of morality, though, it is understandable and justifiable if the limits for provision of replacement housing or dismissal of eviction claims are sufficiently broad to account for peculiarities of extraordinary situations an unfortunate tenant may find himself in, and not to be confined by the strict letter of written law.

The *system of selection of tenants of public (municipal) flats* is also seen as in need of legislative addressing.[914] The selection procedures of the municipalities as sophisticated and manifold as they may be[915], without a proper legislative framework, within the sole legislative discretion of a local entity, they may lack on predictability, objectivity, transparency and justice if not implemented correctly.[916]

As far as subjective injustices are concerned, we should mention the right of a court to evict a spouse or ex-spouse upon incurring *domestic violence* if applied for by the other spouse or ex-spouse.[917] It is indeed important to approach such behaviour with vigour and efficiently. The provision, along with its procedural framework, does quite so. However, the law should not left open such a crucial matter as the consequences on the lease of flat relationship, need to cover for expenses of the lease by the evicted subject or possibilities of partial compensation of such a subject.

The *tenants of flats in blocks of flats that had been returned to the original owners* (restitutions) feel discriminated against as opposed to the majority of the population, due to the fact that they could not have bought their flats under favourable conditions. Given the right-to-buy legislation was a measure of transferring state property back to the population, they remain unaccounted for, especially since the rent-control of these flats will gradually cease to exist. At the same time the perceived injustice relates to the fact that the right to replacement housing in such instances under TCL 2011 is assessed on material housing need merit, unlike the broad right-to-buy, which makes the discrimination against them vivid also nowadays. The *owners of restituted houses* accommodating these existing tenants and their successors perceive proprietary injustice against them, since for a long period of time they could not have gained

913 Case of the Supreme Court of the SR No. 3 Cdo 43/99 of 27 January 2000.

914 cf. L. Tichý, 'Právne formy užívania cudzej veci', 207.

915 for a thorough analysis and hands-on research outcomes see A. Suchalová & K. Staroňová, *Mapovanie sociálneho bývania v mestách Slovenska*, 62 et seq.

916 cf. *ibid*., 76 (recommendations for the municipalities based on findings).

917 see section 705a CC; see further sec. 6.4 *supra*.

appropriate income as landlords due to the rent-control measures of the state. Even though the state has approached those issues with a complex policy-document and eventually through substantial legislation, the dissatisfaction with the solution offered persists on both ends of the relationship and the claims of both classes of the subjects of such leases are to be resolved before the ECtHR, with high awards looming against the SR, on top of the expenditures needed to build replacement housing for eligible tenants of such flats.

- What kind of tenancy-related issues are currently debated in public and/or in politics?

Most of the above-mentioned existing issues of the tenancy law, have found its way to the public debate and political efforts of the governing forces, which is represented by the strategic policy documents as well as legislative bills.

Although the *issue of restituted houses* owners' reconciliation with the state as well as of the tenants with the latter used to be a headline topic around the time of passing the legislation of TCL 2011, with the approaching time of deregulation of the rent-control in private rental market and the necessity to provide replacement housing to the affected tenants, the financial burden of these measures is becoming an important issue in the public as well as political debate, especially in the city of Bratislava, where most of those houses are situated.

For a long-time, the underdevelopment of the private rental market and the fact that it is an obstacle for free movement of workers, had been politically declared and found its way in strategic policy documents[918]. However, a concrete measure for making renting more appealing to private landlords has become a very topical issue only in the recent months, when the act on a *short-term lease of flat* was proposed and offered for interdepartmental discussion, which is now closed and the Government of the SR will decide[919] whether to proceed with the bill in the parliament.

The adoption of a *re-codified civil law* in a new code, which, naturally, frames the whole tenancy law, was also object of public and political discussion. But after the authorization of the legislative plan and pursuit of public (yet mostly professional) debate to the contents thereof in 2008-2009, the commission for the preparation of the code did not disclose any concrete materials for public discussion. However, since the works still continue and the text of of the code should be at hand by the end of 2014[920], wide and heated discussions of the general civil law, among professionals as well as laymen, should be ongoing in the years to come. We shall hope that the opportunity to address all identified issues of the tenancy law within the over-arching legislative venture will be

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[918] see 'Koncepcia štátnej bytovej politiky do roku 2015' (Res. of the Government of the SR No. 96 of 3 February 2010)

[919] for current state of the procedure see: <https://lt.justice.gov.sk/Material/MaterialWorkflow.aspx?instEID=-1&matEID=6731&langEID=1>, 15 December 2013.

[920] cf. V. Vavrová, 'Nový Občiansky zákonník urýchli aj dedenie', *Pravda*, 06.09.2013, <http://spravy.pravda.sk/domace/clanok/292097-novy-obciansky-zakonnik-urychli-aj-dedenie/>; for current developments see <http://www.justice.gov.sk/Stranky/Nase-sluzby/Nase-projekty/Obciansky-zakonnik/Obciansky-zakonnik.aspx/>, 15 December 2013.

utilized efficiently and not buried in the plethora of matters pertaining to the resetting of the substantive civil law in Slovakia.

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

7.1. EU policies and legislation affecting national housing policies

SR finances the development of social service facilities *via* EU structural funds. The Regional Operational Programme is used, among other, also specifically for this purpose, since the goal of measure no 2.1 is also to reconstruct, modernize and also establish new social services facilities.

According to the Report on the Fulfilment of Goals of the Concept of State Housing Policy until 2015[921] grants which were awarded in 2009 were used for improvement of energy performance of buildings where social services are provided and for improvement of living and housing conditions of inhabitants (e.g. widening of doors, decline in the number of mass bedrooms).

SR realizes that the allowances which are granted in the field of housing are not addressed sufficiently accurately (e.g. the housing allowance granted under the Help in Material Need Act 2013 (No. 417/2013 Coll.) – can be granted to the owner of a house/flat as well as to its tenant). They are intended for those who are in the state of material need, yet, not to those who work but whose income is not sufficient and are poor. Therefore, the long-standing effort of the SR is to adjust this allowance in such a way that would make it available not only to those who are in material need, but also to employed but poor individuals. The sum of the allowance should also reflect local housing expences.[922]

- consumer law and policy

Currently there are no strategic documents of the SR dealing with the issue of consumer protection as far as tenancy rules are concerned.

- competition and state aid law

Public-private partnerships are not used in the SR as far as building of tenancy flats is concerned. However, the Concept of State Housing Policy until 2015[923] expressly mentions that they are used in other states and thus can serve as a future inspiration for construction of buildings suited for housing purposes in the SR. In such circumstances good account has to be taken of state aid rules. i.e. of rules set by EU primary law (Arts. 107 – 109 TFEU), of relevant case-law of the Court of Justice of the EU, but also of State Aid Act 1999 (No. 231/1999 Coll., as amended).

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921 'Správa o plnení zámerov Koncepcie štátnej bytovej politiky do roku 2015', (Resolution of the Government of the SR No. 326 of 6th July 2012), 28 et seq.

922 'Koncepcia štátnej bytovej politiky do roku 2015' (Res. of the Government of the SR No. 96 of 3rd February 2010), 11. These recommendations were made also by the OECD, which also states, that the sum of housing allowance granted by the SR is low ('Koncepcia štátnej bytovej politiky' (2010), Annex I, 16). It is also highlighted here that the OECD encourages the SR to amend the model of housing allowances in order to support labour mobility together with rental housing.

923 'Koncepcia štátnej bytovej politiky' (2010).

No competition law issues thus far are significant as far as tenancy rules in the SR are concerned.

- tax law

SR realizes that it lags behind as far as number of rental flats as well as financial support related thereto is concerned. Therefore SR has the political will to support the building of rental flats/rental housing (also via amendment of taxation rules[924]) in order to get closer to the level of rental housing established in other Member States of the EU.[925]

- energy saving rules

SR has set as its target the fulfilment of the Economic Recovery Plan adopted by the European Commission in 2008 as such. One of the particular aims is to support ecologic technologies, development of ecology-friendly materials and also to radically decrease the energy consumption and the production of CO2 in new and in revitalized buildings – in line with the Energy-efficient Buildings Initiative.

Hence the Concept of State Housing Policy until 2015 mentions that the energy performance of buildings has to be dealt with by research and development and has to focus predominantly on following topics:

- designation of new constructions and technologies for buildings with low energy consumption on the basis of domestic raw materials,

- decline in energy consumption of structural engineering,

- gradual advancement of so-called intelligent buildings and

- utilization of renewal energy resources.[926]

In the coming future the SR also envisages to increase the use of non-traditional and renewable energy resources for heating of buildings.[927]

SR intends to implement energy saving rules not only to private dwellings (houses and flats owned or rented), but also to other buildings suited for habitation, e. g. dwellings for seniors.[928]

- private international law including international procedural law

No significant influence of EU law and policy in this area.

- anti-discrimination legislation

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924 E.g. <http://www.reality.sk/clanok/novinky/vazny-chce-zvyhodnit-prenajmy-ulavou-dane>, 31 December 2013 (Vice prime minister Ľubomir Vážny intends to make rental flats more popular by introducing tax reliefs).

925 'Koncepcia štátnej bytovej politiky' (2010), Annex I.

926 'Koncepcia štátnej bytovej politiky' (2010), 5.

927 'Správa o plnení zámerov Koncepcie ...' (2012), 11.

928 *Ibid*, 26.

Currently, no relevant strategic documents of the SR dealing with tenancy rules and the principle of anti-discrimination are avilable.[929]

- constitutional law affecting the EU and the European Convention of Human Rights

No influence of legislation and of strategic documents of the SR in this area.

- 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)

The Common European Sales Law, the Common Framework of Reference, but most importantly the Principles of European Contract Law have been recognized as sources of inspiration by the Legislative Concept of the New Civil Code.[930] However, it is expected that rental housing – as it is planned to be dealt with by the new CC (however, the drafting of the text is still on-going) – will not be affected by these sources.

- 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?

Objectives of State Housing Policy of the SR for the next period take account of the principles of national housing development, international development and accept principles of the European Union (EU), i.e. notably that of the Lisbon Strategy.[931] They are not formulated in the fundamental human rights terminology. However, the Concept of State Housing Policy until 2015 as the most influential document highlights that the utmost objective of State housing policy of the SR until 2015 is to gradually improve the overall level of housing in order to ensure that housing is accessible and that every household can afford a proportionate dwelling. It also stresses that dignified housing is a basic human need and also a basic requirement which is not affordable by many individuals. Hence it recognizes that it is necessary to facilitate the housing to those who are socially deprived. Although the document does not expressly mention the distinction between owned, rented and rental housing, it predominantly focuses on the question of acquisition of a house/flat. Nonetheless, the fact remains that the housing needs can be satisfied also via facilitating tenancy and rental housing.

[929] However, some public websites publish materials on housing problems and issues of Roma people (e.g. <http://www.euractiv.sk/rovnost-sanci/analyza/aspekty-porusovania-prav-romov-na-byvani>, 31 December 2013 (The aspects of Infringements upon Roma Right to Housing).

[930] 'Legislatívny zámer Občianskeho zákonníka' (Res. of the Government of the SR No. 13 of 14 January 2009).

[931] 'Koncepcia štátnej bytovej politiky' (2010), 3.

7.2. EU policies and legislation affecting national tenancy law

- EU social policy against poverty and social exclusion

EU as such has no competence to deal with issues with regard to which allowances are granted to those who are socially deprived by Member State(s). Therefore the conditions for granting and the sums of such allowances stay in the hands of the respective national government. However, subsidies which enable to obtain a rental flat intended for social housing can be provided on the basis of SHDaSH 2010.

- consumer law and policy

Time-sharing contract as a contract became part of the Slovak legal order due to the transposition of Directive 2008/122/EC. As such it obliges, a trader to provide a consumer with the right to use one or more overnight accommodation facilities for more than one period of occupation and the consumer undertakes to pay the agreed price. This contract is considered to be a subtype of a lease contract,[932] yet with completely separate legal regulation. Such arrangement is not protected as lease of dwelling and its purpose lies in meeting recreational needs of an individual and it is thus similar to contracts for accommodation aimed at commercial provision of a service. By virtue of historical use or economic relevancy of time-sharing contracts, these arrangements are negligible in Slovak legal environment, as yet.[933]

Some consumer protection issues, although not expressly governed by the EU law, are reflected also in some other legal acts of the SR. E.g. - in order to ensure that the consumer is served with energy supplies and that he pays fair price for this service the SR has adopted Ordinance No. 152/2005 Coll. on time and quality of supply of heat to end-consumer and Ordinance No. 630/2005 Coll., which sets the temperature of hot water supplied to the end-consumer site, rules for recalculation of the amount of heat used for the preparation of heat supply water and rules for recalculation of the amount of provided heat, as amended. It also takes account of different energy demand of premises (i.e. its location). The primary aim of these legal acts is to set rules according to which the sum which is to be paid by a respective household for provision of heat and hot water supply services will be recalculated, i.e. it aims at protecting the consumer, in this case end-consumer of heat services. Via setting transparent and uniform system for recalculation this legislation helps to solve an issue which was previously a rather thorny problem in the SR.

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[932] See L. Tichý, 'Právne formy užívania cudzej veci', in *Návrh legislatívneho zámeru kodifikácie súkromného práva*, ed. J. Lazar (Bratislava: Ministerstvo spravodlivosti SR, 2008), 209. The time sharing regulation is envisaged to by systematically included into the regulation of a lease in the developed new Civil Code.

[933] For thorough analysis of time-sharing in Slovakia, see A. Dulak, 'Timesharingová zmluva', in D. Dulaková, I. Fekete, A. Dulak et al. *Zmluvy o prenechaní veci na užívanie. S komentárom.* (Praha: C.H.Beck, 2012), 662-771.

The core EU private law directive 93/13/EEC on unfair terms in consumer contracts has been transposed in the text of the CC and its peculiarities are thoroughly addressed in sec. 6.3[934] *supra*.

- competition and state aid law

State aid law in the SR is enshrined (besides EU primary law) in the State Aid Act 1999. Since also undertakings (in this case managers of the block of flats and housing cooperatives) can be afforded subsidies by the Ministry of Transport, Construction and Regional Development of the SR aiming at development of housing and of social housing (under SHDaSH 2010), such subsidies can be granted in accordance with state aid rules.

No competition law issues thus far are significant as far as tenancy rules in the SR are concerned.

- tax law

Taxation rates relevant for incomes from tenancy are not governed by EU law. Nor are governed taxes (in the SR so-called local taxes) which the owner has to pay for his rented house/flat. However, they must be in line with EU law as such – e. g. with EU rules on internal market.[935]

- energy saving rules

EU's energy saving rules – i.e. Directive 2010/31/EU on the energy performance of buildings has resulted in its transposition into following Slovak legal acts.

Energy Performance of Buildings Act 2005 (No. 555/2005 Coll., as amended) was amended by Act No. 300/2012 Coll. and a completely new act – act No. 314/2012 Coll. on regular controlling of heating systems and air conditioning systems was adopted as well. The aim of these acts is to completely transpose Directive 2010/31/EU in order to ensure that not only the building as such are energetically effective, but also that the heating and air conditioning systems included therein will contribute to good energy performance of buildings.

Transposition of Directive 2010/31/EU into the above-mentioned acts highlights the long stranding strategic priorities of the SR, i. e. the effort to renew buildings in order to accomplish a gradual decrease in energy consumption.

SR aims at reaching its goal also via amendment of technical norm – STN 73 0540 Thermal characteristics of building constructions. This norm sets thermal and technical requirements which have to be met by building constructions in the SR and also tightens up the conditions and criteria which have to be met by building wraps/housewraps.

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934 see p. 125 et seq. *supra*.

935 E.g. Joined Cases C-197/11 and C-203/11 *Eric Libert and Others v Gouvernement flamand and All Projects & Developments NV and Others v Vlaamse Regering*, judgement of 8 May 2013, not yet published.

- private international law including international procedural law

No significant influence of EU law and policy in this area.

- anti-discrimination legislation

Anti-discrimination secondary law of the EU, i.e. Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services and Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin are relevant in this field. These directives have been transposed by the SR and, as far as the field of tenancy law is concerned, are reflected in Anti- Discrimination Act 2004. Via this act the SR has been protecting persons from discrimination since 2004, i.e. due to an act which also represents an umbrella anti-discrimination regulation.[936] As such it provides for equal treatment[937] and ban with regard to all sorts of discrimination,[938] it calls for use of good morals to extend the definition of discrimination and for a pro-active conduct of relevant subjects to prevent discrimination.

The protection against discrimination on national level is framed also by Art. 12 of the Constitution 1992 guaranteeing equal treatment of all humans with regard to their rights and dignity and their rights shall be guaranteed notwithstanding their sex, race, skin colour, language, faith and religion, political or other views, national or social origin, adherence to a nationality or ethnic group, property, kin or other standing.

- constitutional law affecting the EU and the European Convention of Human Rights

No influence of legislation and of strategic documents of the SR in this area.

- 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)

These documents are thus far not reflected by the Slovak legislation. However, as mentioned above, they may serve as inspiration for the new CC. Still, the influence on the tenancy rules will be most probably only rather marginal.

- fundamental freedoms

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936 Anti-Discrimination Act 2004. Relevant anti-discrimination directives were also partly transposed to further legislation.

937 I.e. irrespective of sex, religion or belief, race, nationality or ethnic origin, disability, age, sexual orientation, marital status, family status, colour, language, political or other opinion, national or social origin, property, lineage or other position. See Section 2 para. 1 Anti-Discrimination Act 2004.

938 The outlawed discrimination conduct includes instances of direct and indirect discrimination, harassment, sexual harassment, an instruction to discriminate, unjustified sanction (victimisation) and, above the EU legislation, also the incitement to discrimination. For definitions of such conduct see Section 2a Anti-Discrimination Act 2004.

- 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?

The Constitution 1992 does not specifically mention the right to housing as one of the fundamental human rights, nor the right to housing assistance. However, it protects dwellings from unfair encroachments (Art. 21 – protection of privacy, protection against house searches and general conditions for house searches and other privacy interferences), as well as from unfair expropriations (Art 20 – expropriation can be conducted only to the necessary extent, for public purpose, on the basis of legal act and for proportionate compensation)

Slovak legal order recognizes no limitations as to the acquisition of housing by nationals of other Member States of the EU.

7.3. Table of transposition of EU legislation

DIRECTIVES	TRANSPOSITION	RELATED SUBJECT
CONSTRUCTION		
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJEU 30.4.2004 Nº L 134/114)	Act No. 25/2006 Coll. on public procurement, as amended.	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) (***NOTE of the AUTHOR:*** This Directive was repealed by Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products).	Act No. 133/2013 Coll. on construction products (this act repeals Act No 90/1998 Coll. on construction products, as amended); Act No. 264/1999 Coll. on technical requirements for products and on conformity assessment, as amended.	General rules on placement of construction products on the market authorisation of legal persons who accomplish technical authorisations; notification of relevant legal persons to the European Commission
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	SR has not yet transposed this directive, nor made public the planned transposition measure(s).	Preparation of long-run strategy for renewal of public, private, residential

2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJEU 14.11.2012 Nº L 315/1).		and commercial buildings; plan for 3% annual renewalof buildings owned by the state.
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).	Thermal Energy Act (No. 657/2004 Coll., as amended); Energy Performance of Buildings Act 2005 (No. 555/2005 Coll., as amended); Act No. 309/2009 Coll. on support of renewable energy sources and on highly effective combined production, as amended; Act No. 314/2012 Coll. on regular controlling of heatig systems and climatisation systems.	Energy efficiency of new and existing buildings.
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).	Act No. 182/2011 Coll. on labelling of energy-related products.	Labelling and provision of information on energy-related products to final consumer.
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).	No transposition measure – direct applicability.	
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). (***NOTE of the AUTHOR:*** This Directive was repealed by Commission Delegated Regulation (EU) No 874/2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of electrical lamps and luminaires as of 31st August 2013).	No transposition measure – direct applicability. (Previously adopted national transposition measures were – Regulation of the government of the SR No. 62/2009 Coll., which sets the particularities regarding energy labelling of household lamps; Regulation of the government of the SR No. 188/2002 Coll., which sets the particularities regarding energy labelling of luminaries for households – both were repealed by Regulation of the government of the SR No 229/2013 Coll.)	

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 No 309/2009 Coll. on support of renewable energy sources and on highly effective combined production, as amended.	Promotion of the use of renewable energy in buildings.
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).	Regulation in Network Industries Act 2012 (No. 250/2012 Coll., as amended); Energetics Act 2012 (No. 251/2012 Coll., as amended).	Conditions for undertakings which are active in electricity sector, rules for access to the market, measures for security of electricity supply and proper functioning of internal electricity market.
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).	No transposition measure – direct applicability.	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).	No transposition measure – direct applicability.	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).	Regulation in Network Industries Act 2012 (No. 250/2012 Coll., as amended); Energetics Act 2012 (No. 251/2012 Coll., as amended).	Basic legislation about natural gas in buildings and dwellings. Conditions for undertakings which are active in natural gas sector, rules for access to the market, measures for security of natural gas supply and proper functioning of natural gas market.

Council Directive 82/885/EEC 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).	Regulation of the government of the SR No 236/2005 Coll. on performance of heat generators for space heating and for preparation of heat supply water in non-industrial buildings.	Legislation about hea generators for space heating and for preparation of heat supply water and on heat distribution systems in non-industrial 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).	No transposition measure – direct applicability.	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).	No transposition measure – direct applicability.	Labelling and information to provide about dishwashers.
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).	No transposition measure – direct applicability.	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).	No transposition measure – direct applicability.	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).	Regulation of the government of the SR No. 199/2002 Coll., which sets the particularities on energy labelling of electric refrigerators, electric freezers and their combinations (***NOTE of the AUTHOR***: This regulation as well as its amendment – Regulation No. 379/2004 Coll. (which also transposed Directive 2003/66/EC) were repealed – but not replaced – by Regulation of the government of the SR No. 311/2011 Coll.)	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).	Regulation of the government of the SR No. 229/2003 Coll., which sets the particularities on energy labelling of household 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).	Regulation of the government of the SR No. 210/2002 Coll., which sets the particularities on energy labellig of household combined washer-driers.	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).	Act No. 264/1999 Coll. on technical requirements for products and on conformity assessment, as amended; Regulation of the government of the SR No. 571/2001 Coll., which sets the particularities on technical requirements and on conformity assessment of lifts, as amended.	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).	Act No 264/1999 Coll. on technical requirements for products and on conformity assessment, as amended; Regulation of the government of the SR No 79/2006 Coll., which sets the particularities on technical requirements on efficiency hot-water boilers fired with liquid or gaseous fuels and on conformity assessment.	Legislation about boilers.
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).	Act No 346/2013 Coll. on the restriction of the use of certain hazardous substances in electrical and electronic equipment.	Legislation dealing with restricted substances in electrical and electronic equipment and setting obligations of producers, distributors and importers who use certain hazardous substances in such equipment.
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).	SR has not yet adopted transposition measure(s). However, it is expected that the transposition measure will take the form of a completely new act – Act on protection of consumers in respect of selling of goods or provision of services on the basis of distance contracts or in respect of selling of goods or provision of services on the basis of contracts negotiated away from business premises. Its provisions dealing with the protection of consumer should come into effect on 13 June 2014.	Information and consumer rights. Legislation referred to procurement of services, car park. Immovables 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 No. 308/2000 Coll. on broadcasting and retransmission, as amended; Act No. 22/2004 Coll. on electronic business, as amended; Act No. 220/2007 Coll. on digital broadcasting of program services and on provision of other services via digital transmission ("Act on digital boradcasting"), as amended; Act No. 351/2011 Coll. on electronic communications, as amended; Personal Data Protection Act 2013 (No. 122/2013 Coll.).	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).	Consumer Protection Act 2007 (No. 250/2007 Coll., as amended), especially its amendment – Act No 301/2012 Coll.	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 (OJEU 01.6.2005 Nº L	Commercial Code (Act No. 513/1991 Coll., as amended); Act No. 147/2001 Coll. on advertisement, as amended; Consumer Protection Act 2007 (No. 250/2007 Coll., as amended); Act No. 8/2008 Coll. on insurance, as amended.	Misleading advertising and unfair business-to-consumer commercial practices.

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). (***NOTE of the AUTHOR***: This Directive was repealed by Directive 2011/83/EU of the European Parliament and of the Council 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).	Act No. 108/2000 Coll. on protection of consumer in respect of doorstep selling and distance selling, as amended.	Contracts relating to immovables 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).	Civil Code 1964 (No. 40/1964 Coll., as amended); Voluntary Auctions Act 2002 (No. 527/2002 Coll., as amended).	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). (***NOTE of the AUTHOR***: This Directive was repealed by Directive 2011/83/EU of the European Parliament and of the Council 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).	Act No. 108/2000 Coll. on protection of consumer in respect of doorstep selling and distance selling, as amended.	Information and consumer rights. Legislation referred to procurement of services. Contracts on immovables 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).	No transposition measure – direct applicability.	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).	No transposition measure – direct applicability.	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).	No transposition measure – direct applicability.	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 of consumer prices (OJEC 13.8.1999 Nº L 214/1).	No transposition measure – direct applicability.	CPI harmonization. Subscript 4: Lease, housing preservation and repair, water and 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).	No transposition measure – direct applicability.	
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).	No transposition measure – direct applicability.	
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).	No transposition measure – not a legally binding act of the European Union (soft law).	Discrimination on grounds of nationality. Equality in granting housing, aids, subsidies, premiums or tax advantatges 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).	Anti-Discrimination Act 2004 (No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination, as amended); Act No 8/2008 Coll. on insurance, as amended.	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 No. 311/2001 Coll. Labour Code, as amended; Act No. 5/2004 Coll. on employment services, as amended; Act No. 400/2009 Coll. on civil service, as amended (together with acts dealing with the civil service of policemen, firefighters, customs officers, soldiers);	Discrimination on grounds of racial or ethnic origin.

	but most importantly – Anti-Discrimination Act 2004 (No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination, as amended).	
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 No. 311/2001 Coll. Labour Code, as amended; Act No. 5/2004 Coll. on employment services, as amended; Act No. 82/2005 Coll. on illegal work and illegal employment, as amended; Act No. 293/2007 Coll. on recognition of qualifications, as amended; Act No. 404/2011 Coll. on residence of foreigners, as amended.	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 (OJEU 30.04.2004 Nº L 158/77)	Act No. 67/1971 Coll. on administrative proceedings, as amended; Anti-Discrimination Act 2004 (No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination, as amended); Act No. 647/2007 Coll. on travel documents, as amended; Act No. 404/2011 Coll. on residence of foreigners, as amended.	Discrimination on grounds of nationality. Free movement for european citiziens and their families.
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 No. 404/2011 Coll. on residence of foreigners, as amended.	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 No. 480/2002 Coll. on asylum, as amended; Act No 404/2011 Coll. on residence of foreigners, as amended.	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).	No transposition measure – direct applicability.	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).	Act No. 429/2002 Coll. on securities stock exchange, as amended; Act No. 566/2002 Coll. on securities and investment services, as amended; Act No. 650/2004 Coll. on supplementary pensionary saving, as amended; Act No. 747/2004 Coll. on supervision over financial market, as amended; Act No. 203/2011 Coll. on collective investment, as amended.	Real estate investment funds

8. Typical national cases (with short solutions)

8.1. "Succession of Leases"

Mr. X was a tenant and lived in a flat. He then died. What will happen to his lease after his death if:

1. He died without making a will
2. He had made a will before he died and decided who he wants to be the successor of the lease
3. He had lived in the flat alone
4. He had lived in the flat together with his wife/children/ foster child/ de-facto spouse/ same-sex partner

Does it make a difference whether the owner of the flat was a private person or a public entity (like a municipality)?

Answer

According to the existing Slovak law a lease cannot be inherited, because it does not belong to the descendant's estate. Nevertheless it can pass to the certain groups of persons. Section 706 para. 1 of the Slovak Civil Code reads:

> *If a tenant dies and the flat is not in the joint lease of spouses, then his children, grandchildren, parents, siblings, son in- law and daughter in law who lived with a tenant in a common household on the day of his death and do not have their own flat shall become the tenants (joint tenants). Also the persons who maintained the common household of the deceased tenants or who depended on maintenance by the deceased tenant shall become tenants if they lived with him for at least three years prior to his death and do not have their own flat.*

And according to the Section 707 para. 1 of the CC,

> *If one of the spouses who were the joint tenants dies the surviving spouse shall become a tenant.*

The only exception to the principle that the lease does not belong to the inheritance is the lease of the cooperative flat, where the lease is bound to the membership in the cooperative. Where a cooperative flat is concerned, the rules of the succession law have to be observed.

Q1 and Q2

According to Slovak law, the existence of a will does not influence a lease of residential premises. Lease does not form a part of the inherited estate and it is not inherited under statutory or testamentary succession (If cooperative flat is concerned, the succession of

a membership in co-operative is possible in both cases (statutory of testamentary succession)

Q3

If a tenant lived alone, the lease expires.

Q4

Only some categories of persons can enter into a tenancy right after the tenant's death. The list of them is exhaustive. In the issue of partnership relations both different- and same- sex partner can enter into the tenancy right provided that they maintained the common household of the deceased tenant or they depended on maintenance by the deceased tenant if they lived with him for at least three years prior to his death and do not have their own flat. This stems only from the general regulation. The partnership is not specifically regulated; i.e. partners have no preference to other co-habiting persons or any advantages comparable to the rights of spouses, e.g. possibility to acquire a joint lease of spouses.

The question of the type of owner (i.e. private or public) is not legally relevant in this case.

8.2. "Tenants as Consumers"

Mr. X concluded a lease contract with a Building Society on the basis of standard contract terms. Is it possible for him to rely on unfair contract terms regulation if the clauses contained in a contract were unfair (for example concerning various payments he is obliged to make)? Would the situation be different if:

- Mr X concluded the contract with a private owner (A)
- Mr X concluded the contract with a public entity (like municipality) (B)
- Mr X is a self-employed plumber whose business was located at his flat (C)

Would it be possible for all the tenants of the apartment building to bring a collective consumer action against the owner?

Answer

According to Slovak law there are no limitations for a tenant to rely on consumer protection rules if the contract is a consumer one. Any contract regardless of the legal form that is concluded between provider and the consumer constitutes a consumer contract. In this case a tenant may claim that a contract term is unfair if: she/he meets the criteria of being a consumer (Section 52 subsection 4 CC), concludes the contract with a provider and the unfairness tests is passed (Section 53 seq. SCC).

As the consumer shall be deemed to be any natural person that does not act within the scope of his business or other entrepreneurial activities when concluding and performing the contract – Mr X can base his claim on consumer protection rules if a lease contract was concluded only to satisfy his personal/private needs or if it was only indirectly connected with his professional activity. In our opinion Mr. X can be considered a consumer not only when he concludes the tenancy agreement to fulfill his personal needs but also in the case described as (C), because the main purpose of the lease contract was evidently the satisfaction of his housing needs.

A tenant may rely on consumer law provisions only if he concludes the contract with an entrepreneur – a provider. A provider is a person that acts within a scope of its business or other entrepreneurial activities when concluding and performing the contract. If Mr X concluded the contract with a private owner, the solution depends on answering the question whether private owner acts a provider or not (see above). If not, there is no protection against unfair terms. In case B (Mr X concluded the contract with a public entity) a just solution requires to award the tenant a same level of protection in the frames of the provisions on consumer contracts.

There are no bans for the tenants to bring a collective claim (class action) against for example the municipality.

8.3. "Leases of Spouses after Divorce"

A and B were married but are now divorced. The lease contract had been concluded during their marriage, when they were under the statutory matrimonial property regime (i.e. property acquired after marriage is common property). The premises were to satisfy the residential needs of the spouses and their son.

Currently the x-spouses are dividing their common property in court proceedings. May these proceedings include the lease? May the court award the lease to one spouse exclusively? If so, how is its value to be determined in order to decide how much of the common estate the other spouse should receive? Does it make any difference if the lease concerns property of a public entity and the rent is regulated/ limited and/or the tenant has the option to purchase the unit on preferential terms?

Answer

The joint lease of spouses does not belong to the matrimonial property regime. Slovak civil law has specific rules how to proceed after divorce with the joint lease of spouses. Section 705 paras. 1 to 3 of the Slovak CC read:

> *(1) If divorced spouses fail to reach an agreement on the lease of the flat, the court shall decide upon petition of one of the spouses that the right of the joint lease of the flat shall expire. It shall also determine which of the spouses continue using the flat as the tenant.*
>
> *(2) If one of the divorced spouses acquired the right to conclude a lease contract for a cooperative flat prior to entering into the marriage, the right to the joint lease of the flat shall expire upon the divorce. The right to use the*

flat shall be retained by the spouse who acquired the right to lease the flat prior to entering the marriage. In other cases of joint lease of a cooperative flat where divorced spouses fail to reach an agreement the court shall decide upon the petition of one of the spouses that such a right shall be terminated and it shall decide which of the spouses continue being the tenant of the flat as a member of the co- operative.

(3) When deciding on the continuation of the lease of the flat the court shall take into account, in particular the interest of minor children and the opinion of the landlord.

The answer is more complicated if a co- operative flat is concerned, because the value of the membership in the co-operative belongs to the matrimonial property. The ex-spouse that after divorce will not remain the member of co- operative has right to be reimbursed in the course of the settlement of the matrimonial property. The ability to provide the financial settlement may also influence the decision of the court which of the former spouses will continue being the tenant. The court proceeding on termination of the joint lease of divorced spouses under Section 705 para. 2 of the Slovak CC is not associated with proceeding on the financial settlement of matrimonial property (Case 3 Cdo 26/2010 of the Supreme Court of the Slovak Republic). Decision on the lease after divorce should precede proceedings on the settlement of the matrimonial property.

When deciding on the continuation of the lease of the flat the court shall take into account also the reasons why the marriage was broken, social situation of ex- spouses, their health, career, how both or one of them participated on the acquisition of the lease. (R 78/1970)

8.4. "Family Violence and Leases"

Spouses A and B live in leased, residential premises. Spouse B is physically and psychologically abusive to his spouse A and his child. May spouse B be evicted from the premises:

- While he is still married to spouse A
- During the divorce proceedings?

Answer

Section 705a of the Slovak CC provides protection in the cases of the domestic violence. If further common dwelling has become unbearable due to physical or psychological violence or threaths by such violence in relation to the spouse or divorced spouse as a sharer of the flat or to a close person co- habiting the flat, the court may, upon the petition of any of the spouses or divorced persons, limit or completely exclude the other spouse´s (or other ex- spouse´s) right to use of the flat.

Claim for an eviction is admissible during the marriage, during the divorce proceedings and also after divorce provided that ex- spouse´s live together and other conditions are met.

8.5. "Eviction"

The owner of the real estate in question wants to remove an x-tenant from his property.

- May he enter the premises, remove the tenant's belongings and then change the locks?
- Does he need special permission to do so: administrative decision/court judgment and what is the procedure of obtaining it?
- How is an eviction order implemented/carried out?
- Do local authorities have obligations with respect to parties being evicted?
- Is it possible to evict a person who has no place to go?
- What happens if the premises were used for residential purposes not only by the tenant but also by other persons (friends, members of family, etc.) who were not listed in the claim brought before the court?
- What is to be done with chattels of the tenant?

Answer

Under Slovak law, removing of a tenant as a self-help remedy is generally not applicable and doing so would incur administrative or criminal prosecution for the wrongdoer, along with possible damages claim of the evicted tenant. Peaceful state (possession of the flat by the tenant) might be reinstated by an interim measure of the municipality upon the tenant's motion (section 5 CC). In rare cases (with neither a valid lease nor a subsequent right of habitation in place) self-help removal of the inhabitant may be admissible, provided the inhabitant directly and illegally threatens the rights of the owner (physical attack, fatal damage to the property; mere fact of expired lease does not amount to a direct threat) and if the removal may be deemed an adequate action (section 6 CC). Hence, in virtually all eviction cases an execution title would be required and only an executor within executionary proceedings would be entitled to pursue the removal.

The execution title for eviction usually would be a court order, which is sometimes in practice replaced by a notary's record of the tenant's acquiescence with the forthcoming eviction (section 42 para. 1 lit. c EO[939]). The actual admissibility of such arrangements for the eviction is unsettled due to the ambiguous language of the EO, and we hold a court judgment as a due title should prevail.

Eviction proceedings have procedural peculiarities, which include the necessity of the court to determine whether the evicted tenant meets statutory requirements for replacement housing and if so, of which category, all of which is based mostly on substantive legal merit and only partly on social need. The court may also consider not

[939] Execution Order 1995 (No. 233/1995 Coll., as amended) (EO).

to afford the eviction order if it would without a rightful reason contradict to the moral standards as may occur to it case-by-case.

The eviction order is implemented via execution proceedings, by the executor. The proceedings may be instigated after replacement housing has been provided, in case where the x-tenant is entitled, or immediately, if no right to replacement housing has been established. Depending on the facts, the replacement housing would have to be supplied by the municipality or the landlord. A tenant, who is to be evicted has to conclude an offered contract for replacement housing (replacement lease or other) within 30 days from the supply of the written offer, otherwise his or her right to the replacement housing extinguishes.

Within several steps of the process the executor under supervision of a representative of the municipality removes the tenant to replacement housing premises, or, if he is not entitled to any, he only removes the x-tenant from the premises. It is still disputed whether the executor has a duty to actually move the x-tenant to the replacement housing. The eviction order concerns all persons who live on the premises, regardless of whether they were named in the claim or not, therefore they have to succumb to the execution. If a person can prove its genuine right of habitation, they would be exempted from the procedure.

The tenant's chattels are removed and given to him or her, an to an adult member of his or her family. If there is no eligible person or they refuse to take over the chattels, they would be handed handed over to the deposit of the municipality, who will keep them at the x-tenant's cost. After six months of deposit with the municipality the chattels may be auctioned by the executor.

8.6. "Rent Increase"

A wants to increase the rent of residential premises. How can this be done and does the tenant have any special rights once a rent increase is implemented?

Answer

The unilateral rent increase (except a specific category set out by TCL 2011[940]) is possible and allowed only in the cases where the landlord and the tenant permit such proceeding to realize in the provisions of a lease contract. Otherwise the rent increase has to be mutually agreed.

The contractually reserved right of the landlord to the unilateral rent increase and its execution has to fulfil general requirements of the Slovak law. If content or purpose of the legal act violates or evades law or is inconsistent with good morals, this legal act is invalid.[941]

[940] Act on Termination of Certain Leases Related to Flats and Amending Prices Act (No. 260/2011 Coll., as amended).

[941] section 39 of the Slovak CC.

Moreover, if a lease contract is a consumer one[942], we have to observe that contractual conditions regulated by a consumer contract may not depart from CC to the detriment of the consumer. In particular, the consumer may not waive his rights granted by CC in advance, or otherwise impair his position under contract. On the basis of this regulation, we assume that agreement in a consumer lease contract that the landlord may unilaterally increase rent will be probably invalid.

8.7. "Squatters"

A has moved into a shed located in an allotment garden without B's, the owner's, knowledge or permission. May such a shed be considered as residential premises and A be treated as a tenant?

Answer

Residential premises have been generally defined as ones suitable for residential use, with the necessary amenities. An allotment shed is generally not seen as fit for satisfying residential needs and the squatter would not be tenant with statutory protection. It should be stressed that the answer will be same if A moved to a flat without a legal ground, he will not be treated as the tenant as well.

8.8. "Short Leases"

A (lessor), who is a physical person and does not conduct a business activity has entered into a lease contract of residential premises with B (tenant), who is also a physical person. The contract was signed for the duration of 2 years and A has reported it to the tax office.

- Does A have stronger protection against tenant's rights?
- Does it matter whether the contract was reported to the tax office?
- Are there different types of residential leases?

Answer

The new legislation on short term leases is being prepared under auspices of the Ministry of Justice of the Slovak Republic.

Meanwhile this case will be ordinary lease for the definite period. In Slovakia, there are more types of residential leases, among them the most important is a lease of a flat and a lease of a family house. Lease of a habitable room in facilities designated for permanent housing is a separate kind of a lease satisfying the permanent housing need of an individual, which is taking place in permanent housing facilities, such as lodging houses, pensions, houses of flatlets, quarters.

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942 section 52of the Slovak CC.

Registration of the lease on the tax office or the breach of this duty does not have any effect in the civil law relationship and does not influence the legal status of the tenants.

8.9. "Sale of an Apartment Building"

A owns an apartment building in which all the apartments are residential and subject to lease contracts. A succeeds in selling the building to B, who would like to terminate the leases and remove the tenants.

- Can B terminate leases by giving notice within statutory notice periods?
- Is the situation different if some leases concern retail premises or offices?
- B is unsure if he can terminate leases but proceeds to shut off water and electricity supplies claiming the installations are hazardous and need major repairs, thus hoping to drive the tenants away.

Answer

The purchaser of a leased immovable (residential premises as well as non - residential facilities included) has no right to terminate lease by virtue of the fact that he is a new landlord. If a change in the ownership of a leased property occurs (notwithstanding its ground) the acquirer shall assume the legal position of the landlord and only the tenant is entitled to relieve himself of his obligations towards the former owner as soon as the change is notified to him or proven by the acquirer. In such a case only the tenant may terminate the lease by notice. (Section 680 of the Slovak CC).

Consequently, in practice, landowners attempt to drive the tenants away by making conditions impossible to live in. Finding a solution to such situations is difficult, because in cases of older buildings it is not difficult to prove that installations are hazardous and need to be shut down, even if this is being done in bad faith. Even if the landlords reach the stage of termination of lease by notice on such a ground (need of reconstruction), they cannot evade the obligation to provide a replacement flat and they know about it. Therefore such cases are not so frequent as it may appear at the first glance.

On the other hand, tenants expect the owner to fully repair the building, but without any rent increases.

8.10. "Registration of Tenants as Residents"

A is a tenant of residential premises and would like B, the owner, to allow him to register the address of leased premises as his place of abode. This is helpful, and sometimes necessary, for official documents, court proceedings, filing for a bank loan, etc. B refuses to do so, because he is afraid that a registered tenant will not want to extinguish registration once he has moved out. Who decides on registration?

Answer

Registration should be done via municipalities' public registers. Whether it is a registration for a permanent or temporary abode, it is only permissible with the written consent of the owner. Until mid 2013 also tenants of premises for indefinite period were allowed to register their residency on their own, it is, however, no longer the case.

B should not be worried much about the upshot of the registration, as it does not denote any right to the premises whatsoever and serves only data capture purpose. The act on registration of citizens' abode[943] articulates this principle in order to avoid usual layman's misconception of rights derived from the registration.

The owner would be entitled to cancel the tenant's registration, if the owner shows, that the tenant no longer has a legal right to occupy the premises, notwithstanding the actual situation of use. However, the owner would not be allowed to seek cancellation against a person who is a co-owner of the premises, against one's spouse or child in one's maintenance. Neither tenant's consent nor his assistance would be needed for successful deregistration of his residence by the owner.

[943] section 3 para. 3 Residence Reporting Act 1998 (No. 253/1998 Coll., as amended).

9. Tables

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9.3. Abbreviations

BRA	Bankruptcy and Restructuring Act (No. 7/2005 Coll., as amended)
CC	Civil Code (unless stated otherwise it refers to the Civil Code 1964 (No. 40/1964 Coll., as amended)
CommC	Commercial Code (Act No. 513/1991 Coll., as amended)
CPC	Civil Procedure Code (Act No. 99/1963 Coll., as amended)
ECtHR	European Court of Human Rights
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms of 1950
EO	Execution Order 1995 (Act No. 233/1995 Coll., as amended)
EU	European Union
HBS	Household Budget Surveys
JESSICA	Joint European Support for Sustainable Investment in City Areas
MECPG 1990	Mitigation of the Effects of Certain Property Grievances Act (No. 403/1990 Coll., as amended)
MTCRD	Ministry of Transport, Construction and Regional Development of the SR
NBS	National Bank of Slovakia (Národná Banka Slovenska)
OFNP 1993	Ownership of Flats and Non- residential Premises Act 1993 (No. 182/1993 Coll., as amended)
POF 1966	Personal Ownership of Flats Act 1966 (No. 52/1966 Coll. as amended by the Act No. 30/1978 Coll.)
R	Reported decision or opinion, published until 1992 in Collection of Decisions and Opinions of the Unitary or Federal Supreme Court and since 1993 published in the Collection of Court Decisions or Opinions of the Supreme Court of the Slovak Republic
Rcz	Reported decision or opinion, published since 1993 in the Collection of Court Decisions or Opinions of the Supreme Court of the Czech Republic
RDaRH 1992	Act on the Regulation of Some Conditions Associated with Rental Dwellings and Replacement Housing (No. 189/1992 Coll., as amended)
Reg. 87/1995	Regulation of the Government of SR Executing Provisions of the Civil Code (No. 87/1995 Coll., as amended)
RESC	Revised European Social Charter
SEAP	Sustainable energy action plan

SHDaSH 2010	Subsidies for Housing Development and Social Housing Act (No. 443/2010 Coll.)
SHDF	State Housing Development Fund
SIEA	Slovak Innovation and Energy Agency
SIPO	Joint Collection of Utility Payments
SODB 2011	2011 Population and Housing Census in the Slovak republic
SR	Slovak Republic
STN	Slovak technical standard
TCL 2011	Act on Termination of Certain Leases Related to Flats and Amending Prices Act (No. 260/2011 Coll., as amended)
TFEU	Treaty on Functioning of the European Union