Tenancy Law and Housing Policy in Slovenia

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Chapter One

Housing Situation

1.1 General Features

The current housing situation in Slovenia is a consequence of numerous economic and social circumstances occurring during the last two decades.[1] It is characterized by a high proportion of homeowners, although the rental sector plays a substantial role as well. The high proportion of homeownership could be attributed to the processes of privatization and restitution of denationalized housing stock in the beginning of the nineties. In addition, the shift to market economy, the public investments into the housing declined. The provision of housing, sponsored by state subsidies and incentives, was transferred to the hands of private investors (legal and natural persons). Certain endeavours were taken in order to provide also units in the non-profit rental stock. However, the ambitious plans were executed only to a certain extent. As a result, the supply of the non-profit rentals today is modest, leaving a substantial part of families in need without an affordable housing solution.

The crisis has nearly destroyed the construction sector due to the speculative practices of investors during the period 2004–2007. Majority of construction business are bankrupt. A few housing projects remained unfinished. Some of the other finalized projects are subject to deterioration, since many units are still vacant due to the high prices of properties.

The new housing and taxing policies are expected in the near future. The old housing programme expired in 2009. The new one has still not been enacted, due to the lack of political consent. The same can be said for the taxing policy. Within the course of three months, the long announced Real Property Tax Act was finally put to force in 2013. Since then, the act was already amended and was sent to the Constitutional Court RS for the constitutional review.

[1] The monograph was completed in March 2014. Legal documents, analysis, national programmes and policies, laws and regulations, case-law and similar, adopted or published after march 2014 have not been taken into account and are not reflected in this monograph.

1.2 Historical Evolution of the National Housing Situation and Housing Policy

Former Yugoslav socialist countries (Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia[2]) put major priority on collective rights instead of individual ones, considering housing and property as social requisites and not economic goods. The right to adequate housing was emphasized, putting lesser importance on the right to property in the sense of civil right. The housing policy of the former Yugoslavia was explicitly oriented towards the social aspect of housing. The legislation and policies regarding housing had some unique characteristics that were introduced during the socialist era. The 'social ownership' was developed as a Yugoslav specific kind of ownership right and special legal institute. Unfortunately, it was greatly misunderstood and often simplified in meaning as 'state ownership.'[3] Apart from the government, important actors were also self-managing organizations of workers, especially after 1960s.

Slovenian housing system and policy have their roots in the beginning of twentieth century. Up to the beginning of 1950s, the main role in managing housing policy was centralized and assigned to the Federation. The year 1953 was an important year for the housing system, since the process of decentralization diminished the role of the Federation and transferred the competencies for the housing to the republics and municipalities.[4] The new approach eradicated monopoly of the government and founded specific non-state institutions (some sort of social-political communities). This model of social self-governance also established the institute of social ownership that became the prevailing form of tenure in Yugoslavia. Social property was owned by all citizens ('all the people') of the Yugoslav society. The society then transferred the right of disposal with the socially owned property to the Federation. Nevertheless,

[2] The six states comprised a federation named the Socialist Federal Republic of Yugoslavia (hereinafter SFRY) during the period 1963–91. After the World War II until the 1963 the federation was known under the name the Federal People's Republic of Yugoslavia (hereinafter FPRY).

[3] P. Nelson, ed., *Housing and Property Rights: Security of Tenure in Post-Conflict Societies* (Nairobi: UN-Habitat, 2005), 13.

[4] S. Mandič, *Stanovanje in država* (Ljubljana: Znanstveno in Publicistično Središče, 1996), 137.

in practice, the 'state exercised the bulk of the rights of ownership other than the rights of use, and in fact ultimately controlled rights of use also directly or indirectly.'[5] Social ownership was comparable to 'the common good' of all Yugoslav citizens. The institutions that were in charge of acquiring and allocating dwellings to tenants were enterprises, the Self-Managing Interest Communities for Housing (*Samoupravne interesne zajednice stanovanja*), as well as municipalities and different state agencies.[6]

It must be acknowledged that Yugoslav socialism also considered private ownership as an existing necessity, whereas the restrictions on private property were mainly imposed in order to prevent capitalist exploitation.[7] Therefore, private renting of houses was not forbidden, but was also not a prevailing form of tenure.

It must be stressed that in socialism, real estate items were legally differentiated (for instance, the ownership of land, the ownership of means of production, the ownership of dwellings). Some of the items were intended for personal use, such as individual dwellings or cars. Other items may not at all or may only be used individually with some restrictions (such as a multi-unit building, where individual units could be rented; land[8] or a bus), since they were intended for the generation of capital.[9]

Further reforms were introduced in 1965, when the responsibility for the housing policy shifted from state to non-state organizations. The main role was given to banks and enterprises, which granted commercial loans and housing loans, respectively. During this period, the main focus was in establishing republic funds for building dwellings, and, in addition, the nationalization of multi-apartment

[5] P. Marcuse, 'Privatization and its Discontents: Property Rights in Land and Housing in the Transition in Eastern Europe,' in *Cities After Socialism: Urban and Regional Change and Conflict in Post-Socialist Societies*, ed. G. Andrusz, M. Harloe, and I. Szelenyi (Oxford: Blackwell, 1996), 134.

[6] S. Mandič, 'Housing Tenure in Times of Change: Conversion Debates in Slovenia,' *Housing Studies* 9, no. 1 (1994): 29.

[7] Nelson, *Housing and Property Rights*, 13.

[8] Land farmed by a state enterprise or cooperative, was treated as a means of production. Therefore, it could not have been privately owned, since it belonged to the state (the society). The restriction of land use was imposed with the maximum area owned by an individual, as well as with the constitutional requirement on the 'rational use.'

[9] Marcuse, 'Privatization and its Discontents,' 134.

buildings and building lots. Important was also the year 1972, when some new legal acts were introduced, regulating housing issues. One of the most significant ones was the Resolution on Further Development of Housing Economy (*Resolucija o nadaljnem razvoju stanovanjskega gospodarstva*).[10] It enacted purposive collection of funds for the construction of dwellings from workers' own funds, enterprises' funds and funds of social communities.[11]

In 1980, after almost twenty years of preparations, the Basic Ownership Relations Act (*Zakon o temeljnih lastninskopravnih razmerjih*)[12] was enacted on the federal level, trying to regulate all ownership relations in one comprehensive legal document. It was intended to incorporate some European continental civil law elements into the concept of social ownership. The privilege was mostly given to social ownership, whereas some of the rules were completely contrary to traditional western civil law institutes. Some examples included acquisition of things, which was not possible through adverse possession, and cessation of ownership rights with transfer of a good into social ownership.[13]

Social ownership over housing property was transferred into 'the housing right' ('*stanovanjska pravica*') as a specific tenure type. Comparing to civil law, the housing right holder could be described as 'a beneficiary of rights, which go beyond those of a protected tenant, but which do not include all those of a private owner.' The housing right holders were subjected to concrete legal protection which, at least until the dissolution of SFRY, was regarded as secure tenure.[14]

In general, during the socialist era, the real property regime of Yugoslavia was marked by two tenure systems: private ownership and social ownership. The latter was characterized by housing rights, which represented legal base for users of socially owned apartments. Due to the ever growing industrialization and urbanization in the 1960s and 1970s, the housing rights were prevailing

[10] *Uradni list Socialistične Republike Slovenije*, no. 5/1972.
[11] D. Gorenčič, *Financiranje stanovanjske gradnje z vidika nacionalne stanovanjske varčevalne sheme in evropske izkušnje s pogodbenim varčevanjem* (Ljubljana: Ekonomska fakulteta, 2005), 12.
[12] *Uradni list Socialistične federativne republike Jugoslavije*, no. 6/1980.
[13] Nelson, *Housing and Property Rights*, 18.
[14] Ibid., 19.

in urban areas. Rural areas and houses therein, on the other side, remained privately owned. However, the land of owners in rural parts was subject to rigorous restrictions.[15] [16]

The housing right was a sui generis right of a socialist law. Its genuine nature is still discussed among the legal scholars: was it closer to the ownership or the tenancy right? One side of scholars argues that the only difference with the tenancy right was that housing right was transferable.[17] Thus, they argue that the holders of the housing right were no more than the regular tenants. For instance, the holders were obliged to obtain the permission from the owner for any alternation of the dwelling, sub-renting a part of the dwelling or pursue of commercial activity in a part of the dwelling; the housing right ceased to exist, if the holder failed to use the dwelling for more than six months (except in cases, determined with the law), etc. Others,[18] on the other hand, claim, that the nature of the housing right was closer to the ownership right, since the legal entitlements of the housing right holders were quite extensive. In addition, the decision of the Constitutional Court RS (*Ustavno sodišče Republike Slovenije*)[19] supported this view.

There were two 'types' of this right. One could have been obtained on the dwelling, which was in common ownership. Other type, with the equal contents and rights, was obtained on the dwellings owned by the individuals – (non-state owned) legal or natural persons. The latter was characterized as an acquired right and was available for acquisition until the enactment of the republics' and provinces' Housing Relations Acts (*Zakon o stanovanjskih razmerjih*).[20]

This right stems from the post-war housing legislature and was developed from the regular rental contract. The contracts were at

[15] The maximum area of land that could have been owned by a single household was determined as maximum ten hectares of agricultural land. In addition, there was a maximum imposed on the number of housing units that could have been owned by an individual.

[16] Nelson, *Housing and Property Rights*, 20.

[17] To a limited circle of statutory determined rightful holders (spouse, children, etc.).

[18] L. Ude, *Zakon o stanovanjskih razmerjih s komentarjem in sodno prakso* (Ljubljana: Gospodarski vestnik, 1984).

[19] Decision Up-29/1998 from 26 November 1998, section 9.

[20] D. Hiber, *Prestanak stanarskog prava na stanu u svojini građana* (Beograd: Pravni fakultet, 1979), 1.

first limited by determining of the maximum rent price and duration of the rental period. Moreover, the duration of the contracts outgrown to permanent contract with below market rents, leaving owners of dwellings with *nuda proprietate*. The characteristic that contributed to the permanency of contracts was the restriction of reasons for termination of contracts. Along with this, there was a process of nationalization of housing buildings and housing units, with the legal basis in the Nationalization of Rental Buildings and Building Lots Act (*Zakon o nacionalizaciji najamnih zgrada i građevinskog zemljišta*).[21] The former law set the maximum housing assets owned by the individuals: a family or multi-apartment building with maximum two or three smaller apartments, maximum two apartments as special parts of a building, two family buildings with maximum two housing units and one small, or one family housing building and one housing unit as a special part of a building.[22] The housing right was established with the conclusion of contract on the use of the dwelling and actual moving in.[23] This contract was an obligation contract characterized by force conclusion (i.e. forced determination of contractual parties), force contents and form, and determined reasons for termination.[24]

Yugoslav housing policy had also a category of 'solidarity apartments' ('*solidarna stanovanja*') for low-income citizens that were unable to settle their housing needs on their own. The beneficiaries were usually employees, who suffered some work related accident or families with only one employee. This meant that the organizations of associated labour and labour communities (as well as employees and citizens in their municipal communities, self- managing interest communities for housing, housing cooperatives, etc.) allocated a portion of the finance (which was provided for through compulsory deductions from employees' gross incomes) to construct these apartments. The eligible candidates then obtained a housing right on the apartments. Other possibility was to decrease the rent to eligible candidates, if they already had a housing right. The

[21] *Uradni list Socialistične federativne republike Jugoslavije*, no. 52/1958 and later amendments.
[22] Hiber, *Prestanak stanarskog prava na stanu u svojini građana*, 2–3.
[23] Ibid., 6.
[24] Ibid., 7.

'subvention' (the difference between the full rent and the decreased rent) was then paid by these organizations. Enacted legislation allocated the responsibility of determining the eligibility of candidates for solidarity apartments to centres for social work. It is important to stress that, apart from Slovenia, none of the other former Yugoslav republics had passed such a law.[25]

When comparing Slovenia to other socialist republics in more details, it is worth mentioning that there was an early formation of market actors. Supply was represented by building (state) enterprises, while demand was represented by other state enterprises and individuals. Enterprises were mainly buying the dwellings in order to allocate them to their employees based on the housing rights. There had been no institutionalized economic activity of gathering and renting during this period, but it was rather a part of collective consumption.[26]

As far as rental sector was concerned, it was composed of 220,000 rental units with the following ownership status: 30% was owned by municipalities, 2% by government and 68% by enterprises. The private rental sector was virtually non-existing. Since the rents were low and controlled, the demand for housing was higher than its supply.[27]

The Act on Housing Economy (*Zakon o stanovanjskem gospodarstvu*)[28] defined managers (organizations of associated labour and labour communities, municipal communities, self-managing interest communities for housing, housing cooperatives, etc.) and sources of funds for ensuring housing. Housing cooperatives were also an important factor in the housing supply. Pursuant to Article 103 of the Act on Housing Economy, employees and citizens were able to establish a cooperative with self-management agreement. Their role was to provide housing to its members, either through construction or purchase. These cooperatives were a part of the self-management socialist system and are not to be confused with the modern cooperatives. Policies, particularly about home build-

[25] Nelson, *Housing and Property Rights*, 23.
[26] Gorenčič, *Financiranje stanovanjske gradnje*, 12.
[27] J. Mencinger, 'Privatization in Slovenia,' http://www.pf.uni-lj.si/media/mencinger_.e_privatization.pdf, 18.
[28] *Uradni list Socialistične republike Slovenije*, no. 3/1981.

ing, home planning and securing funds were determined by social agreements on assimilation of assets.[29]

Towards the end of 1980s there had been decay in housing supply predominantly due to the growing inflation, decrease of economic power of enterprises and interest rate, which diminished the value of collected assets. This affected mostly the construction of social housing, whereas the construction of individual houses remained almost the same throughout all periods. The reason for this can be found in the fact that individual construction usually depends on individuals' own activity and maybe neighbourhood help.[30]

After the process of dissolution of the former Yugoslavia in the early 1990s and the independence of Slovenia, new legislation brought much needed change. The basis for the new housing legislation is to be found in the Constitution of Slovenia (*Ustava Republike Slovenije*),[31] Article 78. It specifies that it is the state's responsibility to create possibilities for the citizens to obtain an appropriate housing. This article introduces two important implications of housing policy. One is that the housing policy is rather complex and it is intended to the entire population (and not just the underprivileged). Further implication is that this policy is defined as supportive – it supports other actors of housing policy.[32]

A set of financial acts finally abolished previous forms of funding the house-building activities. The process of privatization of housing stock was initiated, bringing also a new system of housing supply. An important shift occurred regarding the role of the state: from the role of supplier to the role of supporter. The state was no longer responsible for supplying the citizens with the housing (directly through construction or through allocation of housing rights), but it became merely responsible for providing proper conditions for housing supply. The main role of state institutions was to define the conditions for market operation, which would ensure that there is sufficient number of dwellings available.[33]

In October 1991 The Housing Act (*Stanovanjski zakon*)[34] was

[29] Gorenčič, *Financiranje stanovanjske gradnje*, 12.
[30] Ibid., 13.
[31] *Uradni list Republike Slovenije*, no. 33/1991.
[32] Mandič, *Stanovanje in država*, 153.
[33] Gorenčič, *Financiranje stanovanjske gradnje*, 13.
[34] *Uradni list Republike Slovenije*, no. 18/1991.

enacted, defining the housing policy furthermore. The basic principle of the act (and following acts) is that every individual must see to settle one's housing situation on his own, whereas the state must arrange a system to help those citizens that are unable to do so by themselves. Since the previous system of funding was abolished, there had been no other form of finance and home building decreased.[35]

Apart from this, the 1991 Housing Act initiated the process of privatization of dwellings. It abolished social property over dwellings.[36] Prior to this process, there were 652,422 dwellings (among which there were 400,066 individual houses (66.9%) and 225,000 social rental apartments (33.1%)). At the end of the process the ratio of individuals' dwellings to rental ones was 88%:12%. Out of these 12%, there were 23,652 municipal dwellings: 17,224 defined as non-profitable and 5,236 defined as social.[37] [38]

The responsibility for the execution of the national housing programs was put in the hands of: the Housing Fund of the Republic of Slovenia (*Stanovanjski sklad Republike Slovenije;* hereinafter: HFRS), municipal housing funds and non-profit housing organizations. This act defined the Republic of Slovenia, municipalities, enterprises and the Retirement Fund (*Pokojninski sklad*) as owners of the former social apartments. In addition, as part of the privatization process, it allowed the selling of the apartments to the ex-tenants and holders of the housing right. The only exceptions were apartments that needed to be denationalized. The purchase price was distributed among the owner (70%), the HFRS (20%), and the Slovenian Damage Fund (*Slovenska odškodninska družba,* SOD) (10%). The idea behind the distribution was to revive investments into housing supply. However, the real use of the collected capital was rarely as intended, since the actors had other financial problems (liquidity problems of enterprises, supply of social housing, etc.). Since there was little long-term borrowing, the main role of the HFRS was to finance the house construction by giving the

[35] A. Polanc, *Inštrumenti stanovanjske politike v Sloveniji* (Ljubljana: Ekonomska fakulteta, 2003), 8.

[36] Gorenčič, *Financiranje stanovanjske gradnje*, 13.

[37] Difference between the non-profit and social dwellings is described in section 3.1.

[38] J. Šinkovec and B. Tratar, *Komentar Stanovanjskega zakona* (Lesce: Oziris, 2003), 33–4.

favourable long-term housing loans. This was done usually through public tenders. HFRS gave funds to non-profitable housing organizations, which enabled appropriate number of non-profit rent and social apartments. In addition, it enabled favourable funds to citizens to purchase, build or adapt houses and apartments.[39]

In spite of the fact that the Housing Act in 1991 stipulated that it is immensely important to enact a national housing program, this was not done until May 2000. The national housing program defined responsibility and assignments of the state in the field of housing and was in compliance with the Habitat Agenda, Carigrad Declaration and European Social Charter. Its provisions were written in accordance with public interest, social, urban and development programs of Slovenia. The fundamental role was to enable a good use of space, quality of dwelling and broader environment.[40]

In order to increase favourable long-term housing loans, the government passed the National Housing Savings Scheme (*Nacionalna stanovanjska varčevalna shema*, NHSS for future reference) in March 1999. The main idea behind the scheme was to stimulate long-term savings for housing. Main characters in the scheme were the state, represented by the Ministry of Environment (*Ministrstvo za okolje*), and private savers. The main responsibility of the Ministry was to secure state premiums and execute the program through the HFRS and commercial banks.[41] All savers received equal interest rates for long-term housing loans, depending on the savings period or instalment plan. Commercial banks had obligation to double the value of their loans compared to savings with fixed interest rate.

The conditions for saving and loaning were further defined in the Act on NHSS (*Zakon o nacionalni stanovanjski shemi*).[42] Every year there was to be a tender for the savings in the NHSS. There were clear definitions of range of savings, conditions, rate of and conditions for premium, conditions for the usage of loans and premiums, as well as conditions for housing loans.[43]

[39] Gorenčič, *Financiranje stanovanjske gradnje*, 13–4.
[40] Ibid., 15.
[41] P. Gosar, *Možnosti financiranja stanovanj v Sloveniji* (Ljubljana: Ekonomska fakulteta, 2007), 26.
[42] *Uradni list Republike Slovenije*, no. 86/2000.
[43] Gorenčič, *Financiranje stanovanjske gradnje*, 17–8.

Since the conditions in economy have drastically changed over the years (due to the entrance of foreign banks, lower inflation, etc.), the NHSS had not been as favourable as it used to had been at the very beginning. This was the reason for amending the Act on NHSS in 2006. The new act, The National Housing Saving Scheme and Housing Grant for Young First-Time Homebuyer Families Act (*Zakon o nacionalni stanovanjski varčevalni shemi in subvencijah mladim družinam za prvo reševanje stanovanjskega vprašanja*)[44] implemented some new features. To name but a few: the savings period was now flexible, ranging from five to ten years, whereas the old scheme determined fixed either five or ten years; instalment plan was changed, new fixed interest rate was determined, 3.20% (the old scheme had two different rates, depending on the savings period), premiums were set to be purposive (only for housing purposes). The new scheme emphasized the purposive objective of the scheme, hence shifting its main goal towards addressing the housing problem of citizens.[45] Due to the even lower demand for the scheme, the Government cancelled it altogether in 2012.[46]

In 2003 an amendment of the Housing Act (*Stanovanjski zakon* (SZ-1))[47] was passed that completely substituted the 1991 statute. This act broadened responsibilities of the HFRS. Along the years, the HFRS has become the most significant provider of housing loans with favourable interest rate. Its function has been expanded to financing housing program, promoting home building, adaptation and maintenance of houses. The functions also include giving long-term loans with favourable interest rate to individuals and entities for obtaining non-profitable renting, social and individual houses by purchasing, building and adaptation, investments in building houses and lots, real estate business, responsibility for premiums and other lawful tasks. Its funding is provided from state's budget, funds from selling the common dwellings, purpose donations, rent-

[44] *Uradni list Republike Slovenije*, no. 44/2006.

[45] M. Staniša, *Analiza financiranja nakupa stanovanj v obdobju od 2. svetovne vojne do danes* (Ljubljana: Faculty for Construction and Geodesy, 2009), 26–7.

[46] 'Nacionalni stanovanjski program 2013–2022,' Ministrstvo za infrastrukturo Republike slovenije, accessed 9 March 2014, http://www.mzip.gov.si/si/zakonodaja_in_dokumenti/pomembni_dokumenti/stanovanja/nacionalni_stanovanjski_program_2013_2022/, 7.

[47] *Uradni list Republike Slovenije*, no. 69/2003.

ing the HFRS's bonds, revenues from disposing with the HFRS's and state's assets and revenues from own business activities.[48]

Currently, there is only a draft version of the new National Housing Programme (NHP for future reference) for the period of 2013–22. This act was not enacted during the year 2013. Therefore, the Government is preparing a new draft for the period 2014–22.[49] The new NHP will significantly interfere with the existing approach regarding housing issues. However, the enactment is not to be expected in near future, since its execution depends on adopting new legislation. Objectives of the new act are: increased number of rental units, greater security of tenants and landlords, decreasing the number of empty dwellings, simulative taxing and rental policy, assuring enough number of housing units, renovation of housing stock and housing additions. According to Ombudsman, the new NHP will improve the current housing policy, since the policy, which stemmed from the previous NHSS, was designed to increase the range of construction, but failed. The main problem of the previous documents was the lack of funds intended for the program. Due to the favourable conditions on loaning market and small scale of bank loans available, the scheme itself became unattractive and was not broadly accepted by savers. The new NHP emphasizes generation of rental apartments. The novelty is that there will be no subsidies for non-profit rents. Instead, every household with lower incomes will receive housing benefit. The most important novelty is that there will be no differentiation of types of rental dwellings (non-profit, market, employment based), since the rent for all three will be unified. The only differentiation will be made according to ownership: public rental and private rental dwellings.[50]

The period after the independence of Slovenia was marked by a major decrease in home building. Privatization and denationalization had much to do with the above-mentioned situation. Since the main focus of the households was to buy out the apartments that were already in their possession as occupiers, there was little

[48] Gorenčič, *Financiranje stanovanjske gradnje*, 20.

[49] This is evident from the official web page of the Ministry for Infrastructure and Spatial Planning, http://www.mzip.gov.si.

[50] Republic of Slovenia, *Seventeenth Regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2011* (Ljubljana: Republic of Slovenia, 2011.)

necessity for new dwellings. Furthermore, the households were not interested in investments into new dwellings. The interest rates for loans were high, next to high rate of inflation and unemployment rate.[51] Such situation continued for several years, up until the economic situation improved, increasing the incomes of workers and at the same time decreasing the inflation and interest rates. However, parallel to this, there was an increase in housing prices as well. Another reason for decrease in home building after the dissolution of the SFRY was also the level of real interest rates for housing loans, which were as high as 20%. The HFRS stepped in and decreased the rates, enabling the access to more favourable loans. The interest rate decreased from base interest rate +20% to base interest rate +4% and less. The base interest rate was abolished in June 2003 with the enactment of the Statutory Default Interest Rate Act (*Zakon o predpisani obrestni meri zamudnih obresti*).[52] [53]

Slovenia, as opposed to the other former Yugoslavian republics, did not have such a massive influx of individuals from the other republics. Indeed, there was a problem with the so-called 'Erased persons' (*'Izbrisani'*); however, the problem did not affect housing situation to a larger extent. The problem of migrants from other EU countries has not affected the housing situation (since Slovenia is a rather small scale country and thus not economically desired).

On the other hand, the problem of working migrants from non-EU countries does influence housing issues. Many of them live in terrible conditions, from overcrowded singles homes to other unsuitable individual houses and sub-rented rooms. The issue was especially addressed on the assembly of the Inspectoral Council of Slovenia in December 2008. The problem was arising especially due to the fact that there was no legal act regulating the situation. Accordingly, there were no minimal standards on housing and hygienic conditions. A working group from the Ministry of Work, Family and Social Affairs studied the issue and prepared a draft of an act.[54] This act was enacted in form of rules on 9 September

[51] Gorenčič, *Financiranje stanovanjske gradnje*, 23.
[52] *Uradni list Republike Slovenije*, no. 56/2003.
[53] Gorenčič, *Financiranje stanovanjske gradnje*, 23.
[54] 'Vlada RS sprejela odgovor na pobudo v zvezi z vprašanjem neprimerne nastanitve tujih delavcev,' Racunovodja.com, 18 September 2009, http://www.racunovodja.com/clanki.asp?clanek=4056.

2011: the Rules on Setting Minimal Standards for Accommodation of Aliens, Who are Employed or Work in the Republic of Slovenia (*Pravilnik o določitvi minimalnih standardov za nastanitev tujcev, ki so zaposleni ali delajo v republiki sloveniji*).[55] The act defines the duties of employers and organizations, which employ the workers. However, due to the economic crisis in majority of sectors employing these workers, it is questionable whether the conditions have improved. These workers are confronted with delays in the paying of salaries, social contributions, with possibilities of dismissal, therefore many of them are not prepared to invoke housing as an issue.

With better overall situation on the rental market (e.g. more affordable rental accommodation), the problem of these workers could be reduced.

1.3 Current Situation

The current housing situation in Slovenia stems from the above described circumstances from its past. At the end of 2010 there were a little more than 844,000 dwellings.[56] The latest known data is from 2011, stating that there are 849,825 dwellings in Slovenia.[57] From these, 518,127 are owner occupied, whereas 61,113 are rented ones. Other forms of tenure (e.g. the residents of the house are not its owners nor they pay rent) account for 93,480 dwellings. The abovementioned data is from the 2011 survey of the Statistical Office of Republic of Slovenia (*Statistični urad Republike Slovenije*, hereinafter SORS).[58]

The survey included all dwellings in Slovenia: occupied, unoccupied, for rare use (vacation houses). It referred mainly to dwellings

[55] *Uradni list Republike Slovenije*, no. 71/2011.

[56] The number of dwellings differs a lot amongst the municipals in Slovenia. As expected, the most dwellings can be found in Slovenia's capital, Ljubljana. Namely, every seventh dwelling is in Ljubljana, which makes around 121,000 dwellings. On the other hand, municipal Hodoš, which is a rather small one, has as little as 148 houses.

[57] 'Naseljena stanovanja, Slovenija, 1. januar 2011 – končni podatki,' Statistični urad Republike Slovenije, 21 June 2012, http://www.stat.si/novica_prikazi.aspx?id=4771.

[58] 'Naseljena stanovanja, Slovenija, 1. januar 2011 – začasni podatki,' Statistični urad Republike Slovenije, 29 December 2011, http://www.stat.si/novica_prikazi.aspx?id=4420.

that were completed. However, this excluded dwellings such as hall of residence, retirement homes, etc. Attics, basements, shacks, business premises and common dwellings were also excluded, as well as dwellings that are owned by foreigners and those with a touristic purpose. The methodology used in the survey was registration survey of households, dwellings and population, meaning that data is collected from administrative sources and not from the field. Definition of dwelling referred to every building with a purpose of residing and has one or more rooms including auxiliary areas (kitchen, lobby, toilet, bathroom, pantry) or not and has at least one separate entrance.[59]

1.4 Types of Housing Tenures

As far as the financing of home ownership is concerned, there are several ways in which funds can be obtained. One is through own savings and purchase price from already sold properties. The help of close relatives (parents usually) is also an important source of financing. The help from relatives is especially seen for obtaining building lots and constructing additions to buildings.[60] Usually relatives bestow some other property, which is then sold, or they give cash. A considerable part also comes from inheritance. Other forms of financing include loans, commercial bank or mortgage, financial leasing and savings into the NHSS. Loans were generally less present throughout the middle of the previous century, as well as immediately after independence of Slovenia, up until 1997. This was due to the high nominal interest rates. On the other hand, loans were highly preferable between 1972 and 1990. The reason was the integration of the collective funds for housing, which made loaning from former workers and housing organizations favourable. Another favourable period for loaning has been from 1998 since, due to the decrease in interest rates. Moreover, banks have started to offer mortgage housing loans. The rivalry amongst banks has led to further lowering of the interest rates, whereas the inflation was

[59] 'Ocena stanovanjskega sklada, Slovenija, Metodološka pojasnila,' Statistični urad Republike Slovenije, 11 October 2012, http://www.stat.si/doc/metod_pojasnila/19-071-MP.htm.

[60] A. Cirman, *Analiza finančnega vidika in stanovanjskih preferenc kot dejavnikov odločitve o stanovanjskem statusu v Sloveniji* (Ljubljana: Ekonomska fakulteta, 2003), 3.

TABLE 1.1 Sources of Funding for Purchase, Construction or Addition of a Dwelling According to the Period of Obtaining the Current Dwelling (% of Households)

Period	(1)	(2)	(3)	(4)
Until 1955	95.0	47.5	13.6	23.1
1956–1971	93.6	56.6	14.8	32.9
1972–1990	92.4	62.9	22.7	44.8
1991–1997	95.5	55.2	30.6	51.8
1998–2005	93.2	65.2	36.5	54.6
Average	93.3	60.6	24.7	44.5

NOTES Column headings are as follows: (1) own funding, (2) loan, (3) financial help of the relatives, (4) building lot or building for addition. Adapted from S. Mandič and A. Cirman, eds., *Stanovanje v Sloveniji 2005* (Ljubljana: Fakulteta za družbene vede, 2005), 65.

in constant decline, making loans more attractive. However, prices of homes started to go sky-high, hence nullifying the implications of lower interest rates. This is another reason for larger percent of inter-family help with securing the dwelling.[61]

The main reason for so marked difference between percentages of owned versus rented dwellings is to be found in the beginning of nineties, which brought two processes: privatization and denationalization. Both of them consequently resulted in increased number of home-owners. The available number of dwellings, which was to be privatized, amounted to 30% of the housing stock. The remaining was privately owned also in the socialist era.[62]

Privatization in particular meant that one was able to afford a home under very favourable conditions, since it was possible to buy out the dwelling, in which one was residing based on the housing right. The price was usually 10–20% of a fair market value, which made the purchase extremely favourable. Exceptions to this were the cases of dwellings that were subject to denationalization. Hence, any holder of housing right was given an option to buy his home at a moderate price. Other option was to become a regular tenant.

The process of privatization of the housing stock started with al-

[61] A. Cirman, *Strategija rabe stanovanj mora biti usklajena s strategijo gospodarskega razvoja: stanovanjska raba* (Ljubljana: Ekonomska fakulteta, 2005), 4–5.

[62] Mencinger, 'Privatization in Slovenia,' 17.

locating the dwellings to the following owners: the Republic and municipalities (for social dwellings, for which state organs and organizations previously had disposal rights or the dwellings were obtained with solidarity and mutual funds or those that were common property), enterprises (for dwellings on which they had disposal rights), Community of housing and invalidity insurance (for dwellings that were build with the funds of the Community, purpose apartments for retired and for tackling the needs of Union of Association of Soldiers), citizens, who rearranged or extended the common areas in multi-house buildings and did not have property rights. Afterwards, these owners had a legal duty to sell the dwellings to the holders of housing rights[63] upon their request.[64]

It is not surprising that a vast majority of rightful claimants decided to purchase the dwellings. The average redemption price was 200 DEM for square meter. This was 60% less than the real market price of the dwellings (especially after taking into account the location). This deduction was introduced only for whole payments, whereas the price for instalment payments was decreased up to 30%.[65] At the end of the privatization process (in 1994), there were 60.7% of dwellings sold, whereas 5.7% was denationalized. Other 33.6% remained unsold.[66]

On the other hand, the 1991 Housing Act did not give the users of denationalized dwellings (usually apartments in multi-apartment buildings) an option of buying the apartments, since the apartments were (in most part) returned to the denationalized rightful claimants.[67] Hence, users of denationalized dwellings could only become tenants, though they did have a special regime of protection[68] and were subjected to special non-profit rents.[69] However,

[63] The right to purchase the dwelling was given also to certain close family members, under the condition that the holder of the disposal right agreed.

[64] B. Zalar, *Privatizacija in človekove pravice* (Ljubljana: Fakulteta za družbene vede, 1999), 156.

[65] Ibid., 158–9.

[66] Cirman, *Analiza finančnega vidika*, 105.

[67] Zalar, *Privatizacija in človekove pravice*, 161.

[68] They could not be evicted.

[69] T. Kerestes, 'Slovenia,' http://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/TenancyLawProject/TenancyLawSlovenia.pdf.

this solution was constitutionally questionable.[70] This led to a collision of two equally powerful rights: property right according to the Housing Act and right to restitution of denationalized property according to the Denationalization Act (*Zakon o denacionalizaciji*).[71] There were suddenly two housing rights: one that gave legal base for the purchase of dwellings and one that did not. The legislator gave an advantage to the right to restitution, at least from the point of view of property right. Even though the rightful owners obtained the property right, they could not execute it, since the previous users have had the right to be tenants.

The Denationalization Act was enacted in order to deal with injustice that took place after the World War II and to introduce the principle of justice. It is important to mention that this act did not physically return the dwellings (and other real estates), but it rather gave a legal base for introducing the processes of restitution. After the process was done, the claimant was entitled only to property right and not the actual possession of the dwelling.[72] [73]

However, since the legislation was constantly changing, the users of denationalized apartments were put in difficult position. This refers especially to those that remained in the dwellings, some of them having genuine problems with the new owners. The new owners were persistently trying to evict the users, often using dishonest pressures. Afterwards, the amendment of the Housing Act included also the users as rightful buyers, giving them additional deadline to claim their right: five years from the final order on denationalization. They were given following options: to buy the home in which they were living (for which they needed consensus from the owner), to buy some other dwelling or to build a new one. In all of the cases they were entitled to a substitute privatization: 36% from the value of the dwelling in cash and 25% from the value of the dwelling in bonds of Slovenian Damage Fund.[74] [75]

The two processes brought several unpleasant consequences. The

[70] Zalar, *Privatizacija in človekove pravice*, 162.
[71] *Uradni list Republike Slovenije*, no. 271/1991 and later amendments.
[72] Money restitution was also possible, though it was an exception.
[73] Zalar, *Privatizacija in človekove pravice*, 175.
[74] According to the 2003 Housing Act they were entitled to additional 13% of the value of the house. However, these were given in cash and not bonds.
[75] Gorenčič, *Financiranje stanovanjske gradnje*, 14–5.

first one is that the percentage of privately owned dwellings versus rented is very high, leading to underdevelopment of tenancy law in Slovenia. Prior to the privatization, the ratio of owners to tenants was 70%:30%. Immediately afterwards, with around 140,000 dwellings sold, this ratio went up to 92%:8%.

Furthermore, this model of privatization was criticized for being unfair, since it put the same category of citizens in unequal position. Another consequence has showed its implications only after the purchases were done: it was (and still is) the problem of maintaining the buildings in which the apartments are situated. Since the apartments were also bought by people with lower incomes, it has been difficult for them to cover the expenses of buildings' maintenance.[76]

The Law of Property Code (*Stvarnopravni zakonik*)[77] defines condominium (*etažna lastnina*) in Article 105. It is based on the German definition of condominium, which stems from the dualistic approach, meaning the ownership of a single unit in a building and co-ownership of common areas.[78] However, this is a real property right, which is not an intermediate form of tenure. Company law schemes are not present in Slovenia.

As far as cooperatives are concerned, Slovenian legislation is familiar with the institute of cooperative. The Cooperatives Act (*Zakon o zadrugah*)[79] was first enacted in 1992 and amended on several occasions since. The statute does not distinguish among different types of cooperatives (health, constructional, housing, etc.), but regulates cooperatives in general. Article 1 defines cooperative as an organization of previously undefined number of members with a purpose of promoting economical benefit of its members and is based on voluntary access, free withdrawal, equal collaboration and management of the members. Slovenian housing cooperatives have limited liability, having thus the acronym 'w.l.l.' (or 'with limited liability,' '*z omejeno odgovornostjo*' or '*z.o.o.*').[80] However, the con-

[76] Kerestes, 'Slovenia.'
[77] *Uradni list Republike Slovenije*, no. 87/2002.
[78] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 105.
[79] *Uradni list Republike Slovenije*, no. 97/2009.
[80] I. Zobavnik, 'Stanovanjske zadruge' (Republika Slovenija, Ljubljana, 2011), 4–5, http://stanovanjskekooperative.si/media/Stanovnaske-zadruge-raziskovalna-naloga-DZ-RS.pdf.

temporary institute of cooperatives in Slovenia has different role in housing policy than typical cooperatives. The main purposes of cooperatives are dealing with maintenance of buildings and property market, and not renting the apartments or connecting a group of shareholders. Thus, cooperatives have preserved merely legal status from the previous system, albeit the fact that their role is now different. What is more, cooperatives were known also in the former Yugoslavia, although their primary role was in helping their members to obtain a dwelling through construction and not rent.[81]

However, there are some institutions advocating the establishment of housing cooperatives in Slovenia in the future. One of them is Tovarna, which has presented a project draft named Enforcing Housing Cooperatives.[82] The goal of the project is to introduce Slovenian society with an alternative form of non-profit rental, designed according to Swiss model Codha. These housing cooperatives would be established as non-governmental organizations. At least three establishers are needed for the establishment of a cooperative, who also pass a statute. Number of members (legal or natural persons) is not limited. Organs of the cooperative decide on the acceptance to membership. In addition, the members must pay their compulsory share. An annual membership fee is also paid by the members. This project is still in the introductory stage and is yet to obtain approval from the legislator and public.

There is a distinction between rental tenures with and without a public task. Out of those dwellings, which are for renting, there are 70% or 42,666 dwellings with non-profitable rent (inhabited by 102,913 residents in 47,288 households), 20% with market rent, 7% are employment based[83] and 3% with purpose.[84] [85] It could be

[81] S. Mandič, 'Trendi v najemnem sektorju srednje in vzhodne Evrope,' in *Stanovanjske študije*, ed. S. Mandič and M. Filipović (Ljubljana: Fakulteta za družbene vede, 2002), 139.

[82] 'Stanovanjske kooperative,' accessed 20 October 2012, http://stanovanjskekooperative.si/stanovanjske-kooperative.

[83] According to Article 83(1/3) of 2003 Housing Act, employment based dwellings are intended for renting to employees for meeting the employment requirements.

[84] According to Article 83(1/4) of 2003 Housing Act, these dwellings are intended for institutionalized care of elderly citizens, retired and special categories of adults.

[85] 'Naseljena stanovanja, Slovenija, 1. januar 2011 – začasni podatki,' Statistični urad Republike Slovenije.

said, that non-profitable and purpose dwellings have a public task, whereas the other two do not.

The 2003 Housing Act does not precisely define what non-profit and market rentals are. It stipulates in Article 83(1/1) that non-profit dwelling is the dwelling, which is rented for the non-profit rent and to the eligible claimant for the on-profit rental. Article 83(1/2) reads that market rentals are dwellings, which are rented freely on the market. The 2003 Housing Act does not distinguish between social and non-profitable dwellings. For both categories there is only one rent, non-profitable one.[86] It states that the rent for market, employment and purpose dwellings is to be determined on the market. There is no restriction for the price range. However, this act clearly defines the so called 'usurious rent' ('*oderuška najemnina*'),[87] which is 50% higher than the average market rent in the municipality with the similar category of dwellings, accounting for the location and furnishings of the dwelling.[88]

Since renting as a commercial activity is not present in Slovenia (for instance, owning a special building only for market rental purposes) there are also no data on the matter of financing the construction of such buildings.

Statistics from the 2011 Census done by the SORS indicate that there is 77% of owner occupied dwellings, 9% of rented ones and 14% of other.[89] [90] The main difference comes from the fact that the Housing Europe Review's data were a mere approximation, whereas SORS's data are obtained thorough the REN methodology.[91]

[86] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 154.

[87] For the implications of usurious rent, see section 6.4.

[88] Gosar, *Možnosti financiranja stanovanj*, 19.

[89] Category 'Other' refers to 'Dwellings in which none of the residents is the owner, but the dwelling is not rented. In these cases the owners may be relatives, friends or others.' ('Metodološka pojasnila v področju "Življenjska raven" – vplivi načina zbiranja podatkov na določene spremenljivke v popisu 2011,' Statistični urad Republike Slovenije, accessed 10 March 2014, http://www.stat.si/metodologija_pojasnila.asp?pod=8). Important to note is that the owners of these dwellings are natural persons and not legal persons.

[90] 'Naseljena stanovanja, Slovenija, 1. januar 2011 – začasni podatki,' Statistični urad Republike Slovenije.

[91] This means that the source of data for the 2011 Census was the Registry of Property (which includes also the data from other administrative registries – Tax Office, Cadastre, etc.). This is why there are different delays in registering the data. For

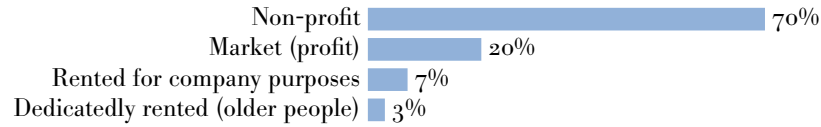

FIGURE 1.1 Rental Tenures According to Their Share in the Housing Stock (based on data from SORS, http://www.stat.si)

In total there are 813,531 households in Slovenia.[92] In general, the quality of housing provided in Slovenia can be evaluated as more well-developed amongst the newer members of EU and less well-developed than the older ones.[93]

The vast majority of dwellings were built after the year 1971.[94] The largest number of these can be found in bigger and more densely populated areas. The majority of dwellings possesses three rooms and is followed by houses with two rooms. This data are in accordance with the structure of households in general.

Considering the number of dwellings in relation to thousand residents, it can be seen that some municipalities have larger number of dwellings per thousand residents than Slovenia itself. For example, there are 412 dwellings per thousand residents in Slovenia, whereas municipality Kostel has 899 dwellings per thousand residents. In addition, some of the dwellings in the municipalities with smaller number of dwellings per thousand residents are amongst the largest in Slovenia when considering their area in m^2.

An average three persons reside in a dwelling, in one or more households. There are on average 1.2 households per inhabited dwelling. An average usable area of a dwelling is 27.4 m^2 or 1.1 rooms (excluding the kitchen area; with included kitchen area, the average number of rooms per inhabitant is 1.4 rooms).[95]

instance, such delay may arise in inheritance procedures, when inheritors do not update the data in the Land Registry promptly.

92 'Gospodinjstva in družine, Slovenija, 1. januar 2011 – končni podatki,' Statistični urad Republike Slovenije, 30 June 2011, http://www.stat.si/novica_prikazi.aspx?id=4029.

93 S. Mandič, *Razvojno raziskovalni projekt, stanovanjska anketa* (Ljubljana: Fakulteta za družbene vede, 2006), 5.

94 'Ocena gradnje stanovanj,' Statistični urad Republike Slovenije, accessed 5 October 2012, http://pxweb.stat.si/pxweb/Database/Ekonomsko/19_gradbenistvo/05_19069_graditev_stan/05_19069_graditev_stan.asp.

95 'Naseljena stanovanja, Slovenija, 1. januar 2011 – začasni podatki,' Statistični urad Republike Slovenije.

TABLE 1.2 Average Usable Area per Inhabited Dwelling and Inhabitants

Avarage usable area per inhabitant (m²)	Inhabited dwellings		Inhabitants	
	Number	Percentage	Number	Percentage
< 10	23.249	3	129.686	7
10 ≥ 15	63.513	9	287.507	14
15 ≥ 20	94.060	14	371.679	19
20 ≥ 30	178.337	27	594.605	30
30 ≥ 40	115.154	17	294.646	15
40 ≥ 60	111.365	17	204.287	10
60 ≥ 80	48.678	7	65.488	3
> 80	35.729	5	41.158	2
Total	670.085	100	1.989.056	100

TABLE 1.3 Area of Dwellings

No. of rooms	Area (m²)
One	3,781,100
Two	11,776,726
Three	16,330,546
Four	13,956,360
Five or more	22,110,186

TABLE 1.4 Quality of Dwellings

Characteristic	No. of dwellings
Central heating	669,534
Electricity	829,329
Availability of bathroom	789,582
Availability of toilet	795,080
Kitchen	829,020
Public sewerage system	470,966
Water distribution system	828,203

In 27% of dwellings (or 178,337) there was 20 to 30 m² of the usable area, inhabited by 30% of the total number of inhabitants in Slovenia. Less than 10 m² of usable area was in 3% (or 23.249) of dwellings, inhabited by 129,686 inhabitants of Slovenia (out of cca. 2 million). More than 60 m² of the usable area per inhabitant was in 12% of dwellings (or 84,407). There resided 106,646 inhabitants.[96]

Dwellings differ among themselves also in relation to the quality of the utensils. Central heating is found in 80%, whereas bathrooms are found in 93% of homes in Slovenia. The largest percentage of dwellings without central heating is found in Coastal-karts statistical area (31%) and Goriška statistical area (30%). On the other hand, the largest percentage of dwellings without bathroom is found in Pomurska statistical area (31%) and Spodnjesavska statistical area (30%).

[96] Ibid.

TABLE 1.5 Typology of Housing Buildings

Type of dwelling	Percentage
Multiunit buildings with more than 5 floors	14.8
Multiunit buildings with more 4 or less floors	21.5
One unit individual houses	36.9
Two to four-units individual houses	19.5
Other multiunit houses	6.9
Non-housing objects	0.4

As much as 61% (510,915) housing units are found in one- or two-house buildings. There are 481,462 buildings with one- or two-units. The number of units in multi-apartment buildings is 36% or 307,286, the number of buildings being 23,435. Only 3% or 26,455 units are located in buildings, which are intended for non-housing purposes. These buildings are defined as buildings in which areas for non-housing use are bigger than the areas for housing use. There are 18,940 such buildings.

It must be noted that the stock of non-profit housing is considered as very good, usually having all the necessary utilities. As far as typology of dwellings in the housing stock is concerned, a survey done in 2005 brought the results, presented in table 1.5.

However, the survey was not done on the entire housing stock in Slovenia, thus some methodological constrains must be taken into account. Absolutely prevailing are one unit individual houses, which is in accordance with statements of several authors, for instance Dimitrovska Andrews[97] and Kos, Mandič, and Filipovič.[98]

On 1 January 2011 there were 175,000 empty dwellings, which is approximately 12 million m². This data includes also vacation houses and dwellings which do not posses some of the infrastructural elements (bathroom, toilet, heating, electricity, water supply). Excluding the latter two groups, there are 102,110 empty dwellings, which is a bit less than 60% of the entire stock of empty dwellings.

However, some methodological considerations must again be

[97] K. Dimitrovska Andrews, 'Urbanistično-arhitekturna dimenzija kakovosti stanovanja in stanovanjskega okolja,' in *Stanovanje v Sloveniji 2005*, ed. S. Mandič and A. Cirman (Ljubljana: Fakulteta za družbene vede, 2006), 111.

[98] D. Kos, S. Mandič, and M. Filipovič, 'Prostorski vidiki stanovanja,' in *Stanovanje v Sloveniji 2005*, ed. S. Mandič and A. Cirman (Ljubljana: Fakulteta za družbene vede, 2006), 106.

taken into account. As mentioned before, the register survey in 2011 was conducted based on administrative data. For residence, the data were collected from the Central registry of residents, which is part of the Ministry of Internal Affairs. If the individual resided in a dwelling, but had no registered residence there, either permanent or temporary, the dwelling was considered to be empty. Thus, the number of empty dwellings is merely an upper limit.

The largest percentage of empty dwellings (deficient and dwellings for vacation excluded) is in multi-apartment buildings, 51,432. The remaining 50,678 are in one-house buildings. As much as 25,000 empty one-house buildings are situated in non-urban areas and have no house number. Thus, this is why no one can be registered here, since the decision of registering the house number is left to the owner. If the owner lives in the dwelling nearby, it can be concluded that the unregistered house is an extension of another house and most likely habituated. The number of such units is between 10,000 and 20,000.

As much as 90% or 761,300 of all dwellings are privately owned (mostly by natural persons). Public sector owns 6% or 47,348 units (municipal and other non-profit housing organizations). Other legal persons own 3% or 27,798 of units, whereas for 1% or 8,210 dwellings the ownership is unknown.[99]

1.5 Other General Aspects

There is only one interest group in Slovenia working on the behalf of tenants, the Association of Tenants of Slovenia (*Združenje najemnikov Slovenije*). It is a non-governmental organization, established in 1991. Its fundamental function is to protect the rights of tenants, by offering help, information about their rights and duties, legal help, etc. The association is actively engaged into discussions on housing issues, proposing different solutions and changes of the Housing Act. The work is organized in forms of committees (e.g. committee of janitors, committee of tenants of denationalized apartments). Financing is done through memberships. The fee amounts to 40 EUR per year and is not paid by the residents of Ljubljana (since the municipality gives a certain portion of funding to this or-

99 'Stanovanja, Slovenija, 1. januar 2011 – končni podatki,' Statistični urad Republike Slovenije, 21 June 2012, http://www.stat.si/novica_prikazi.aspx?id=4771.

ganization). The association is a member of the International Unit of Tenants and the FEANTSA.[100]

This organization instituted a proceeding against Slovenia through the FEANTSA due to alleged infringement of the European Social Charter (hereinafter: ESC) in front of the European Committee for Social Rights.[101] The complaint requested:

> [...] the Committee to find that Slovenia is not in conformity with Articles 16[102] and 31[103] of the Revised European Social Charter, taken separately and in conjunction with Article E,[104] on the ground that Slovenia has failed to ensure an effective right to housing for its residents, especially families. In particular, it submits that by exempting the public entities which had previously been the administrators and became the transitional owners of dwellings that had been transferred to public ownership through nationalization, confiscation or expropriation from the obligation to sell their flats to former holders of the Housing Right (which was abolished), without offering the tenants security of tenure equivalent to the option to buy on advantageous terms, the Slovenian Act of 1991 placed some 13,000 families in an extremely precarious position.[105]

Further reproaches included increase of the non-profit rent for 613% in the twelve-year period, the introduction of new statutory grounds for eviction, and the introduction of very rigorous conditions for transfer of the tenancy relation to the heirs of the main tenant, upon his or her death. Due to the stated reason, FEANTSA argued that the well-being of many individuals in Slovenia deteriorated, since the number of homeless increased. In addition, many were denied the access to the affordable housing.[106]

[100] 'O Združenju najemnikov Slovenije,' Združenje najemnikov Slovenije, accessed 23 October 2012, http://www.zdruzenje-najemnikov.si/index.html.
[101] European Committee of Social Rights, Fédération européenne des Associations nationales travaillant avec les Sans-abri (FEANTSA) v. Slovenia, Complaint no. 53/2008, 8 September 2009.
[102] The right of the family to social, legal and economic protection (added by the author).
[103] The right to housing (added by the author).
[104] Non-discrimination (added by the author).
[105] Paragraph A. 6. of the Complaint no. 53/2008, 2.
[106] Ibid., 3.

The Government sustained that the apartments could not have been awarded to the tenants, since these were subject to the restitution and were to be returned to the owners, denationalization claimants. However, as of 1994 the Government did arrange mechanisms in order to allow these tenants to buy out their or another apartment. As a result, more than half of the claimants settled their housing situation – 2,566 out of 4,700. As far as the provisions on eviction are concerned, the Government contested the accusations and submitted that the provisions from the Housing Act are legitimate and safeguarded. The non-profit rent was increased for only 128% and accounted for merely 16.5% of the average income in 2008. The Committee concluded that there were violations of Article 31(1) of the Revised ESC, of Article 31(3) of the Revised ESC, of Article E of the Revised ESC taken in conjunction with Article 31(3), of Article 16 of the Revised ESC and of Article E of the Revised ESC taken in conjunction with Article 16.

The Government took into consideration both the conclusion of the Committee and the proposals for future measures on the session from 19 February 2011. It issued an opinion in which it pronounced itself on the accusations, denying them. As far as the continuation of the procedure is concerned in front of the Committee of Ministerial Deputies of the Council of Europe in Strasbourg, the competent Ministries prepared a report based on the decision from the European Committee for Social Rights. The position, taken in the report, is based on the decision of the Constitutional Court of RS on the matter. It also emphasizes that the tenants in question are not homeless or socially endangered. If they were, adequate measures, available in the system for preventing such situations, could have been taken on the behalf of the tenants. Ministry of the Environment and Spatial Planning was obliged to prepare changes of the rules governing awarding of the non-profit apartments. The Ministry was to establish an inter-departmental working body, comprised of state secretaries, whose task would be to analyze the situation and prepare possible actions.[107] The

[107] 'Seznanitev Vlade RS z informacijo o odločitvi Evropskega odbora za socialne pravice glede kolektivne pritožbe FEANTSA,' Ministrstvo za delo, družino, socialne zadeve in enake možnosti Republike Slovenije, 4 April 2011, http://www.mddsz.gov.si/nc/si/medijsko_sredisce/novica/article/12106/6623/.

body was established only recently and is yet to publish its suggestions.

On the behalf of the landlords and owners, there is one association, the Association of Owners of Real Properties in Slovenia (*Združenje lastnikov nepremičnin v Sloveniji*, ZLAN). It is a non-governmental and non-party organization. It is organized as a society representing common interests of owners of dwellings and building lots, rental dwellings, business premises and agricultural land and forests. The key purpose of the organization is to give unofficial comments on the legislation, which regulates the matter of real property taxes and other fees, commerce, obligations of co-owners, construction acts, insurances, etc. Moreover, it is a part of the International Union of Property Owners (UIPI) and cooperates with other international associations and unions. However, this organization has no real practical effects on the work of legislative or administrative branch.[108]

Official data from the SORS state that there were 175,000 empty dwellings on 1 January 2011. However, this number includes also secondary homes. In addition, these data are deduced on the basis of administrative calculations from official records on residence.[109] One must bear in mind that many individuals do not have their residence officially reported with the Administrative Office. Thus, it is possible that some dwellings are not actually empty, but rather occupied with an individual, who has been reported residing on some other location.

Some estimation indicates that 100,000 dwellings are in fact empty. Thus, these dwellings are not available on the housing market. The reasons for this are various. One is certainly the fact that they are not completed or are ill-equipped. Another reason is the very location of the dwellings (either they are distant from towns or are located on unattractive sites). In addition, many owners are reluctant to rent these dwellings, since rental relations are very rigid: the taxing policy is far from simulative for landlords, since they have to pay the tax, but have no other relieves in return. Hence, the majority of the rental sector is executed through the unofficial market,

[108] 'Predstavitev,' Združenje lastnikov nepremičnin, accessed 23 October 2012, http://www.zdruzenjelastnikovnepremicnin.si/default.htm.

[109] See explanation on REN methodology in section 1.4.

TABLE 1.6 Tenure Structure in Slovenia, 2011

Type of tenure	Percentage
Home ownership	77
Renting with a public task, if distinguished	6
Renting without a public task, if distinguished	3
Other	14
Total	100

with very little officially registered contracts with the Tax Office of Republic of Slovenia (*Davčna uprava Republike Slovenije*).[110]

There are no other important black market or otherwise irregular phenomena and practices on the housing market.

[110] S. Kodrič, 'Luksuz praznih stanovanj,' *Pravna praksa* 30, no. 48 (2013): 34.

Chapter Two

Economic Factors

2.1 Situation of the Housing Market

According to the SORS, at the end of 2011 there were 849,825 dwellings and 813,531 households. Additionally, 77% of the households reside in their own home. Hence, one could be tempted to assume that there are no families in need of a rental homes in Slovenia.

However, as much as 100,000 dwellings are estimated as being empty. In addition, many households own more than one dwelling, while there are many households owning none. This has been a raising issue, especially in recent years. Individuals, who purchased their homes in early nineties in the process of privatization, had children, who were then young. Now, most of them are adults, having their own households or families. Thus, they themselves are in need of a home. On the other hand, the number of smaller households has been rising, leading to the increase in the entire number of households. From year 1991 to 2002 the number of three or more member households had decreased. The same tendency has been seen from 2002 to 2010. During the same period the number of one-member households has considerably increased. The main reason for this is the ageing of the population and the fact that many adults decide to set up a family later than it was the case in the past decades.

The demand for rental dwellings is greater in bigger municipalities and towns, as well as in their inner parts, due to possibilities for employment, schooling and road networks.

The number of inhabitants in Slovenia has been constantly rising and is expected to rise until the year 2020, according to projections from the EUROPOP2008. Afterwards, a decline is predicted. Life expectancy has also been increasing and is predicted to be around eighty-four years for women in 2030. Moreover, the 'healthy years' after the year sixty-five are increasing too. In 2007 it was ten for

TABLE 2.1 Dwelling Occupancy in Relation to the Size of the Households

Size of the households	1991	2002	2010
One member (%)	18.6	21.9	32.8
Two members (%)	21.5	23.0	24.6
Three members (%)	21.4	20.9	18.3
Four members (%)	24.7	23.1	15.7
Five members (%)	8.4	7.2	5.4
Six or more members (%)	5.5	3.9	3.2
Total number of households	632,278	684,847	813,531

NOTES Adapted from 'Nacionalni stanovanjski program za obdobje 2012–2021: osnutek,' Trg nepremičnin.

women and nine for men.[1] Thus, these data must be taken into account when considering future housing policies, since more purpose apartments are going to be needed, as well as smaller regular apartments.

Apart from the demand for market rental houses, there is a large demand for non-profit rentals. The demand for non-profit housing has been somewhat reduced by introducing subventions for market rents in 2009. In spite of this, according to municipal data, there are around 8,300 households in need of non-profit dwellings. As far as housing of the most underprivileged individuals is concerned, there is a demand for around 600 housing units. These are intended for addressing the housing issue of the most vulnerable individuals, as temporary solutions. The goal is to offer a makeshift shelter for protecting families or members of families in need, especially children, who are not able to cover the costs of housing on their own. These are not dwellings *per se*, but rather housing units in buildings for special purposes. The housing standard is accordingly lower, since they are merely temporary solutions. The funding of such buildings is responsibility of municipals and the Ministry of Work, Family and Social Matters (*Ministrstvo za delo, družino in socialne zadeve*).[2]

According to data from the Eurostat, the population of the im-

[1] S. Mandič, 'Blaginja v starajoči se družbi,' in *Blaginja pod pritiski demografskih sprememb*, ed. S. Mandič and M. Filipovič Hrast (Ljubljana: Fakulteta za družbene vede, 2011), 17.

[2] 'Poslovna politika 2012–2016,' accessed 15 December 2012, http://stanovanjskisklad-rs.si/si/738/predstavitev/poslovna-politika-ssrs-2012-2016.html.

migrants accounts for 3.4% of the entire population, 0.2% from EU members and 3.2% from other countries. The prevailing are immigrants from Bosnia and Herzegovina (47.3%), followed by Serbs (20.1%) and Macedonians (10.9%).[3] Some of these are subjected to discriminatory treatment (covert or open) from landlords and other individuals (employees in real estate agencies), when searching for housing. Examples of covert discriminatory practices include stereotypes and prejudice about other ethnicities, races and religions, difficulties with obtaining information, etc. Amongst open discriminatory practices, the most common are formal and explicit obstacles due to their status.[4] According to Slovenian legislation, one of the basic conditions for obtaining non-profit or social apartment or housing loan of the HFRS is the citizenship of the individual. Thus, he or she must be of Slovenian citizenship or citizenship of some other EU member country. In addition, the individual must have a permanent residence in the municipal, in which he or she is applying for the dwelling.[5] Many of immigrants do not meet the demands of the legislation immediately after immigration, since obtaining both citizenship and permanent residence is related to the longer periods of residing in the country. Therefore, many of them are in housing distress, even though there are no precise data on the number of immigrants in need.

For instance, in Ljubljana there are two major groups of immigrants:[6] those, who are predominantly home owners, and those that are not. The first group is encompassed from Croats, Montenegrins, Serbs and Macedonians, who are mostly owners or co-owners of dwellings (76%, 74%, 71% and 60% respectively). The remaining individuals are residing with parents or relatives (4%) or in non-profit rentals: 7% of Croats, 10% Montenegrins, 9% Serbs and 7% Macedonians. In market rentals, the percentages range between

[3] 'V Sloveniji največ priseljencev iz Bosne in Hercegovine,' MMC RTV Slovenija, 19 December 2009, http://www.rtvslo.si/slovenija/v-sloveniji-najvec-priseljencev-iz-bosne-in-hercegovine/219531.

[4] A. Kralj, 'Priseljenke in priseljenci v mestu,' *Časopis za kritiko znanosti* 34, no. 226 (2006): 15–28.

[5] A. Kralj, 'Ekonomske migracije in delavci migranti v ogledalu javnega mnenja,' *Annales, Series historia et sociologia* 21, no. 2 (2011): 285–96.

[6] However, these are predominately individuals with dual citizenship, who immigrated to Slovenia in the past.

3 and 8. As much as 14% of Macedonians live in other tenures, whereas percentage of Serbs, Croats and Montenegrins is lower, between 3 and 5 percents. Other group is represented by Albanians, Bosniaks, Bosnians and Muslims. The percentage of home-owners in this group is below 50% (30% of Albanians, 46% of Bosniaks, 48% of Bosnians and 40% of Muslims). In non-profit tenure there are between 8 and 14% individuals, while in market rentals the percentages vary between 6 and 12%. In other forms of tenure the percentages are much higher compared to the first group: 23% of Albanians, 27% of Bosniaks, 33% Muslims and 10% Bosnians. In social apartments there is only 1% of Bosniaks, Bosnians and Muslims.[7]

Local market divergences play a role mostly when considering the size of the demand for market rental and purchases. Internal migrations are not as influential as they were in previous periods, e.g. periods of urbanization and industrialization, when there were a considerable number of individuals migrating from rural to urban parts in search for an adequate employment. Recent development has brought a reverse process, in which the suburbanization is predominant. One of the reasons for this is certainly substantiated with the situation on the housing market. Namely, since the prices of dwellings are lower in the suburbs, many young families decide to purchase their dwelling there and not in the town centre. In addition, the price of the rentals is also somewhat lower in the suburbs, leading to higher demand there. The process of suburbanization is not in accordance with satisfactory infrastructural planning, causing pressure on terrain usage, communal equipment and traffic.[8]

On the other hand, there is a larger influx of students (and consequently larger demand for room and apartment rentals) in town centres, especially in late August through the end of September. This can mostly be seen in university centres and towns hosting faculties and high schools, for instance Ljubljana, Maribor, Koper, Celje, and not so much in other smaller municipalities.

Since the crisis has hit Slovenia, the rent prices of dwellings

[7] Kralj, 'Priseljenke in priseljenci v mestu,' 21.

[8] 'Socialno-ekonomski položaj prebivalcev se je do leta 2008 v povprečju izboljševal, zaskrbljujoče pa je slabšanje položaja nekaterih skupin prebivalstva,' Urad RS za makroekonomske analize in razvoj, 19 May 2009, http://www.umar.gov.si/index.php?id=62&tx_ttnews%5Btt_news%5D=939&cHash=bab79bf03f.

have decreased by roughly 30%. Some analysts presume that the increase of rent prices in 2008 was provoked by the increased supply of dwellings and false idea of the price range (the presumption is that the landlords overestimated the rent prices, since there was no official database on the price range). Many home owners that wanted to sell their dwellings were not able to, due to the crisis. Thus, they decided to offer the dwellings for rent, however with somewhat higher prices, hoping for higher revenues. Due to the increased supply and smaller demand in the last two years the prices started to decrease.[9]

Another issue is the situation of non-profit renters. The crisis has also affected those in such rentals, causing delays in payments. At the end of 2011 around 830 renters in such apartments were in debt regarding their rent, amounting to approximately 400,000.000 EUR altogether.[10]

According to several real estate agents in Slovenia, the market rent prices have decreased by around 30–40% since 2008. One of the reasons is the increased supply of the rental apartments due to the economic crisis, new foreseen taxation and reduced emigrations of foreigners to Slovenia (especially diplomats and representatives of multinational companies).[11]

2.2 Issues of Price and Affordability

According to Article 115(2) of the 2003 Housing Act, the rental price of the market, purpose and employment based apartments is to be determined freely on the market, whereas the rent for the non-profit apartments must be determined in accordance with Article 117 of the 2003 Housing Act with a special methodology.

There is no official information on market rental prices in Slovenia. The amendment of the Real Property Mass-Appraisal Act (*Zakon o množičnem vrednotenju nepremičnin*),[12] enacted in November

[9] 'Najemnine stanovanj v ljubljani za tretjino nižje kot pred krizo,' *Dnevnik*, 15 August 2011, http://www.dnevnik.si/ljubljana/1042465616.

[10] 'Kriza udarila po najemnikih neprofitnih stanovanj,' *Slovenske novice*, 5 May 2012, http://www.slovenskenovice.si/novice/slovenija/kriza-udarila-po-najemnikih-neprofitnih-stanovanj.

[11] V. Tomaževič and J. Tomažič, 'Najemnik je postal kralj,' *Finance.si*, 17 August 2013 http://www.finance.si/8345562/%28hiti-tedna%29-Najemnik-je-postal-kralj.

[12] *Uradni list Republike Slovenije*, no. 87/2011.

TABLE 2.2 Advertised Rental Prices in EUR per Month of Apartments in Ljubljana, September 2009

Type	Lowest	Highest	Average
Only room	65	1,190	193
Studio apartment	100	1,190	374
One room	145	1,190	419
Two room	120	1,800	579
Three room	185	3,500	902
Four room	160	5,000	1,348

2011, puts an obligation for all landlords to inform the Geodetic Office of Republic of Slovenia (*Geodetska uprava Republike Slovenije*, hereinafter GORS) about the concluded contracts and the rent price. The GORS has nevertheless given some approximate calculations based on a sample of advertisements. In Ljubljana the average advertised rental price was 10,8 EUR for a square meter per month. In Koper it was 9,7 EUR, in Kranj 7,2 EUR, in Novo mesto 7 EUR. The lowest price was in Celje, 6,7 EUR, and Maribor, 6,4 EUR a square meter per month.[13]

According to Slonep,[14] the rental price of individual houses is prone to fluctuations. In Ljubljana prices have moderately decreased in relation to previous periods. The lowest advertised price was 500 EUR per month, while the highest was 7,000 EUR per month. In Central Slovenia, on the other hand, the prices have shown a slight increase. The lowest price was 220 EUR per month and the highest 6,600 per month.[15] The rental price of apartments in Ljubljana has reached peak in the end of 2008, the average being 948 EUR per month. Since then, a decrease has been noticed for all types of apartments, except for four-room apartments.

[13] B. Križnik and M. Bizovičar, 'Neprofitne najemnine se niso bistveno spremenile,' *Delo*, 5 June 2012, http://www.delo.si/gospodarstvo/makromonitor/neprofitne-najemnine-se-niso-bistveno-spremenile.html.

[14] Slonep is Slovenian internet site, which offers advertisements about real estates in Slovenia and region (http://www.slonep.net). This data base offers at least 8.000 to 50.000 active real estate advertisements at all times. Advertisements are given by real estate agencies and individuals, enabling thus a comprehensive view of the supply.

[15] 'Cene SLONEP September 2011: Najemnine Hiš v Ljubljani in Osrednji Sloveniji,' Slonep, 17 October 2011, http://www.slonep.net/info/cene-nepremicnin/novice/cene-slonep-september-2011-najemnine-his-v-ljubljani-in-osrednji-sloveniji.

As far as non-profit rent is concerned, the price is specifically determined. The base is calculated according to administratively determined value of the dwelling. Newer and more modern apartments have more value points, meaning also higher rent price. This can be drastically different when comparing different regions in Slovenia. In Central and some larger parts of the country, including also touristic regions, they are rather devalued. On the other hand, in Pomurska region, they are even higher than the market ones. Nevertheless, the rental price of non-profit apartments has remained the same since 2005. Every five years, tenants or landlords are entitled to revalue the apartments and decrease the rent.

In Ljubljana the average price of the square meter is 3.5 EUR per month. This adds up to 180 EUR for an average two-room house per month.[16]

The rent for purpose apartments is separately determined for every public notice. According to the Real Estate Fund of Retirement and Invalidity Insurance's tender from May 2011 for Ljubljana area, the rent was equal to the non-profit. The value was 4.68% annually from the value of the apartment. This sums up to approximately 2.72–3.52 EUR for a square meter per month, depending on the age and quality of the apartment. The price did not account for the price of utilities.[17] The Rules on granting the purpose apartments of the above-mentioned institution stipulate in Article 4 the methodology for determining the rental price in general. The value is equal to the non-profit rent. The exception is considered for newly built apartments, and encompasses the value, which is determined with the approved investment plan. Another exception represents the situation when not entire stock of the purpose apartments is given. In that case, it is possible to consider finding tenants on the market and determine a market price, depending on the demand for the apartments, location and quality of the building.[18]

Taking into account that the average net salary in June 2013 was

[16] Križnik and Bizovičar, 'Neprofitne najemnine.'

[17] Taken from the public notice for the rent of special purpose rental dwellings, accessed 16 October 2012, http://www.ns-piz.si.

[18] Nepremičninski sklad pokojninskega in invalidskega zavarovanja, 'Pravila za oddajanje namenskih najemnih stanovanj v najem' (Nepremičninski sklad pokojninskega in invalidskega zavarovanja, Ljubljana, 2015), http://www.ns-piz.si/files/3614/4065/3645/Pravila_NNS__s_prilogami.pdf.

around 985 EUR per month[19] and the average cost of market rent was cca. 550 EUR per month for a two-room dwelling, a household with two average salaries in such dwelling would have rent-income ratio 0.28 or 28%. This does not encompass the cost of utilities, which are on average 212.3 EUR a month. According to the SORS, housing costs in 2011 represented a great burden for 40% of households. Merely 10% of households declared that these cost were not a burden for them. Even greater percent of households, which were renting, declared that they are greatly burdened with the housing costs – 59%.[20]

Considering that the threshold for acceptable housing expenses are 30%, it must be noted that in Slovenia a large percentage of households in rentals exceeded this amount. According to a survey from 2005,[21] the threshold is exceeded by 67% of households in non-profit apartments, 39% in employment based and 54% in market rented dwellings.[22] According to the EuroStat, the housing cost overburden rate (households spending 40% of the disposable income on housing) of households in Slovenia is 4.7% of the total population[23] (whereas in Euro area it is 11,4%). Considering the different tenure statuses, it can be noted that the most overburdened with housing costs are the tenants in market rentals, 18.3%. Tenants in owner-occupied dwellings with mortgage or housing loan are on the second place, with 10.5%. Percentage of overburden tenants with non-profit rents is 5.6, whereas only 2.8% of owner-occupied households without mortgage are overburdened.[24]

The different data on the overburden with housing expenses derive from the different methodology used by the conductors of survey. Survey from 2005 followed the official tenure structure accord-

[19] 'Povprečne mesečne plače, Slovenija, junij 2013 – začasni podatki,' Statistični urad Republike Slovenije, 16 August 2013, http://www.stat.si/novica_prikazi.aspx?id=5670.

[20] 'Anketa o življenskih pogojih,' Statistični urad Republike Slovenije, 28 June 2012, http://www.stat.si/novica_prikazi.aspx?id=4810.

[21] A. Cirman, 'Strategija rabe stanovanj mora biti usklajena s strategijo gospodarskega razvoja: stanovanjska raba' (paper presented at the Conference on the Different Purposes of Use of Houses, Ljubljana, 31 May 2007).

[22] Ibid.

[23] Both renters and homeowners.

[24] 'Housing Statistics,' Eurostat, accessed 7 March 2014, http://ec.europa.eu/eurostat/statistics-explained/index.php/Housing_statistics.

ing to the 2003 Housing Act, while the EuroStat differentiated only non-profit and market renters, neglecting the other two groups.

The data from the SORS for 2010 indicate that burden of housing costs[25] is different among the tenures. The burden of housing costs was large for 36% of owners occupying their dwelling, for 30% of other users and 59% of renters. The costs were not a burden for 11% of owners, 14% of others and only 5% of renters. The remaining individuals claimed that the cost were not too burdening. Thus, more than a half of renters experience a financial hardship regarding housing costs. A somewhat larger percentage of home-owners, who consider their costs as a burden, indicate that many home-owners are indeed less financially stable.[26]

There is an extremely high preference of home-ownership over renting in Slovenia. Many reasons have contributed to this fact. One is certainly the process of privatization and its described implications.

In terms of affordability, according to Cirman, there is a relatively weak affordability of ownership of homes. Furthermore, it is highly dependable on the individual regions in the country. In 2006, the affordability was by far the weakest in coastal area (*Obalno-kraška regija*) and central part (*Osrednjeslovenska regija*). According to her calculations, it was not possible to purchase even a half square meter of a dwelling with an average net income. In some other regions (*Spodnjesavska, Zasavska, Pomurska, Koroška*) the situation was even two times better. Moreover, Cirman calculated the net income required in 2006 to obtain a mortgage based loan with maturity period of fifteen years for the 60% of the value of the home. The net income needed was around 1,500 EUR per month in coastal and central regions, whereas it was around 500 EUR per month in Koroška region and 600 EUR per month in Spodnjesavska.[27] Considering the fact that the real net income is currently not much higher than it was in 2006 (due to the economic crisis), whereas the prices

[25] Housing costs include costs of mortgage and other loans, alongside rent, insurances, utilities, etc.

[26] 'Življenska raven,' Statistični urad Republike Slovenije, accessed 5 October 2012, http://pxweb.stat.si/pxweb/Database/Dem_soc/Dem_soc.asp#08.

[27] A. Cirman, 'Dosegljivost stanovanj v Sloveniji se slabša: kako ukrepamo?' (paper presented at the conference 'Država, državljani, stanovanja – poslovanje z nepremičninami,' Portorož, 15–6 November 2007).

of dwellings decreased negligibly, the above calculations are relevant for appraisal of current affordability of home ownership.

With longer maturity periods, the net income, needed for the purchase, decreases. Theoretically, it can be almost equated as the monthly rent (especially in Ljubljana or coastal towns). Thus it is understandable why many households would rather opt for mortgage loan instead of rent, especially considering the legally unsettled circumstances[28] in rental sector.

The effects of crises are described above in section 2.1. There are no data which would indicate that the preference regarding home-ownership of the inhabitants has been influenced by the economic crisis and outcomes thereof.

2.3 Tenancy Contracts and Investment

There are limited data on the return on investments. Some data are available on the non-profitable apartments. The average rent prices of these apartments, which are owned by municipal and state housing funds, are 3.7 EUR/m² for newer and 2.7 EUR/m² for older ones per month. In order to cover all the expenses of the owner, which include maintenance, amortization, financing and managing, the rental price should be around 4.7% of the market price of the apartment. This does not include the earnings of the investor. Thus, the rental price should be higher than 9.8 EUR/m² for newer and 6.2 EUR/m² for older apartments per month in order for the owner to have some earnings.[29] Since the non-profit rent is not sufficient for covering the basic costs of the construction, investors are not interested in building such apartments.[30]

A study done by Petelin has shown that the return of investments depends on the type of the dwelling and its location. In spite of the fact that most would expect that the highest return would be in Central Slovenia (where the capitol is), the data showed different. The most return would be on one-room and one-and-a-half-room dwelling from Savinjska region.[31]

[28] Such as inappropriate legislation, rules dispersed in several acts and ordinances, court backlogs, etc.

[29] Križnik and Bizovičar, 'Neprofitne najemnine.'

[30] 'Nacionalni stanovanjski program za obdobje 2012–2021: osnutek,' 11

[31] M. Petelin, *Tveganje in donosnost v stanovanjskih investicijah* (Ljubljana: Fakulteta za gradbeništvo in geodezijo, 2012), 155.

Director of one of the Slovenian real estate agencies, Vlado Petek, argues that the return on investments depends much on the location of the dwelling. For instance, in Ljubljana it is more profitable to rent a dwelling and invest capital in some other form of investment, since the return from renting purchased dwelling is around 3 to 4 percents annually. On the other hand, in Maribor it would be more profitable to purchase a dwelling and rent it, since the purchase price of dwellings can be even three times lower than in Ljubljana, whereas the rent price is somewhat similar.[32]

There is no information on the REITs or similar instruments. Securitization system is in no connection to the tenancy contracts.

2.4 Other Economic Factors

Many insurance companies and banks in Slovenia offer insurance for dwellings, parts of multilevel dwellings (condominiums and equipment), as well as garages, garden sheds, pools, etc. Nevertheless, according to unofficial data, there are yet around 25 to 30% non-insured individual houses and 15 to 20% non-insured apartments in multi-apartment buildings. Amongst insured ones there are many, which are insufficiently insured.[33]

The prices of the insurances are markedly different. According to newspaper articles, the lowest price of the insurance can be even three times lower than the highest one, considering all of the discounts.[34] The insurances are mostly in the form of a package, with several hazards included. It is also possible to add a hazard or increase the insured amount. The above mentioned insurances can be concluded on behalf of landlord, which is more common, or on behalf of the tenants. Thus, there are no separate insurances only for tenants.

The work of the estate agents is regulated with the Real Estate Agencies Act (*Zakon o nepremičninskem posredovanju*).[35] In order

[32] A. Vučina Vršak, 'Zadnji cent za štiri stene,' *Dnevnik*, 22 September 2012, https://www.dnevnik.si/1042553185/v-objektivu/1042553185.

[33] B. Škaper, 'Zavarovanje nepremičnine in stanovanjske opreme – pasti, težave in rešitve,' 15 October 2010, http://blog.i-svetovanje.com/2010/10/15/zavarovanje-nepremicnin-in-stanovanjske-opreme-pasti-tezave-in-resitve/.

[34] A. Basle, 'Lahko vas olupijo,' *Žurnal24*, 16 July 2011, http://www.zurnal24.si/lahko-vas-olupijo-clanek-129609.

[35] *Uradni list Republike Slovenije*, no. 42/2003 and its amendments.

for an individual to be registered as real estate agent, he must apply for registration with the Ministry of Infrastructure and Space. Prior to the application, the individual must pass the prescribed exam.

The intervention of the real estate agent in conclusion of the contract is not obligatory. It is also possible to engage only the services of a lawyer. Many individuals decide to use the services of agents only when they themselves are not able to sell the dwelling or find the adequate one. According to some experts, the work of the real estate agencies has no tradition in Slovenia, since the establishment of the first ones can be traced back only to the beginnings of the nineties.[36] The value of the agent's commission is set by the law as maximum 4% of the contractual price. However, in Slovenia it is usually between 2 and 4% of the price, depending on the quality and array of services offered. The commission is not in force when the value of the contract is lesser than 10,000 EUR. For other transactions, the value of the commission is set with the contract. For instance, for rental contracts it is usually set as the value of the one-month rent.[37]

The commission can only be charged to the client, who signed the brokerage contract, unless there is some other arrangement between the seller and the buyer. If the contract specified that both sides are to pay the commission, the value is divided. According to Cirman, the commission is in accordance with other countries. However, since prices of real estates in Slovenia are relatively high compared to other countries, the commission can be regarded as rather high.[38]

2.5 Effects of the Current Crisis

The financial and economic crisis that started in 2007 in the USA had an effect on the housing market in Slovenia. However, experts in economy and real estate do not agree whether the changes on the

[36] 'Nepremičninski agent kupca obvaruje pred zgrešenim nakupom,' *Finance*, 16 July 2012, http://www.finance.si/359358/Nepremičninski-agent-kupca-obvaruje-pred-zgrešenim-nakupom.

[37] 'Višina posredniške provizije,' Slonep, accessed 25 October 2012, http://www.slonep.net/storitve/agencije-in-posredniki/vodic/visina-posredniske-provizije.

[38] K. Cah, 'Nepremičninski agentje 000: hvala za nič,' *Delo*, 27 February 2012, http://www.delo.si/gospodarstvo/makromonitor/nepremicninski-agentje-000-hvala-za-nic.html.

housing market were caused by the crisis or by regular economic cycle.

During the period of economic expansion, Slovenia had greatly inflated the construction sector. The real estate market was especially developing during the period 2004–7 (however, only on the grounds of speculations[39]). This was a period of conjuncture in Slovenia, during which it was rather easy for the investors to obtain the loans from the banks. Many of the investors set high prices on the apartments, whose quality is low. One such example is the Celovški Dvori complex in Ljubljana. The starting price of a square meter was more than 2.500 EUR, although the construction is of very low quality.[40] In addition, the economy was marked with economic growth, increased productivity, decreasing unemployment rate, relatively low inflation and interest rates. Accordingly, there was an excess demand for dwellings, causing the prices to rise.[41]

After the crisis has begun, as far as individuals were concerned, there were no significant effects. The only shift was in the mentality of people, who became more conscious about their investments into real properties. However, financing of the supply has gone through major changes, since banks have not been prepared to give loans for new property investments. This situation can be immensely dangerous in the future, when the number of empty dwellings decreases. The supply will be restricted, leading to even higher prices of available dwellings. Due to the fact that the number of smaller households (one member or only two generation, as opposed to current state, in which many couples live with their parents) is higher in Slovenia, the demand for new dwellings is likely to increase in the years to come.

According to Cirman, before the crisis, the situation on market was not normal. There was an all-pervasive wave of enthusiasm about the real estate among constructors, investors, as well as buyers. In addition, Cirman stresses that the housing bubble in Slovenia did not pop, albeit the fact that it was very inflated. After the crisis, from 2008 onwards, the situation has normalized. Thus, there

[39] R. Sendi, 'Druga stanovanjska reforma: ustanovitev Direktorata za stanovanja,' IB *revija* 46, no. 1 (2012): 21–9.

[40] U. Marn, 'Preživeli bodo samo najboljši.' *Mladina*, 22 October 2010, 56-60.

[41] Geodetska Uprava Republike Slovenije, *Poročilo o slovenskem nepremičninskem trgu za leto 2007* (Ljubljana: Geodetska uprava Republike Slovenije, 2008), 6.

has been some activity, however intermediary.[42] The most noticeable shift has been seen in the demand for dwellings.

The prices of large portion of real estates in Slovenia have continued to fall also in 2011 compared to the period post crisis. This refers especially to the biggest five municipalities in the state. In spite of that, the prices have not fallen as much as it was expected. Moreover, the National Bank of Slovenia's data show that the scale of new housing loans has dropped for the first time since the crisis has started. The number of construction permissions has been dropping fourth year in a row.[43] Thus, there were some changes in the investment environment. Evident was the wave of compulsory settlements of construction businesses that were building before and during the crisis. The scale of planned new constructions was in decline due to the high prices of construction material, high prices of construction lots, unavailability of bank loans, etc. The decline can especially be seen in the area of home constructions. Comparing 2007 to 2011, it can be observed that the area of planned dwellings has decreased for more than 60%.[44] The stock of newly-constructed unsold apartments was around 4,000 at the beginning of 2011. Considering the fact that there were around 6,000 built dwellings all together in the period 2009–10, 4,000 newly built available apartments after 2009 is enormous. There are also a lot of projects, which are to be finished or selling of which was stopped. Nevertheless, due to the lower construction, the stock is gradually reducing. The main reason for large stock is in the prices of the dwellings.[45] Many of the investors have withdrawn their dwellings from the selling market, since the prices are somewhat lower than the expected ones.[46]

However, one must bear in mind the constrictions when talking about the fallen prices of the dwellings. The data are usually presented as an average, not talking into account the age of the con-

[42] Marn, 'Preživeli bodo samo najboljši.'

[43] 'Zlomi nepremičninskih trgov se že dogajajo: kako kaže pri nas?' Skladi.com, accessed 20 October 2012 http://www.skladi.com/splosno/2535-2518-zlomi-nepremicninskih-trgov-se-ze-dogajajo-kako-kaze-pri-nas.

[44] Geodetska Uprava Republike Slovenije, 'Poročilo o slovenskem nepremičninskem trgu za leto 2007,' 4.

[45] Ibid.

[46] Sendi, 'Druga stanovanjska reforma,' 22.

struction, location, quality, etc. It can be that due to the increased supply of newly built dwellings, there was larger decrease in the prices of older dwellings and not newer ones.

According to preliminary data for the first half of 2012, the trend of decreased construction of new dwellings continues, since there is no new capital available. In addition, almost all larger domestic construction businesses have failed, while there is no interest from foreign investors. Potential new investments are hamstrung due to the credit crunch of banks.[47]

The actual number of repossessions is not publicly known. According to newspaper article from February 2012, the number of repossessed dwellings due to the value of the principal (which was less than 100 EUR) in Ljubljana alone was 67. However, many of the court procedures last for a long period of time and are going to lead to increased number of repossessions in the future.[48] The impact on the rental sector has been insignificant.

From year 2004 until 2008, the share of housing loans among all loans was constantly rising. In 2005 the number increased for 71.5%. Since 2008, the demand for housing loans has been gradually decreasing.[49] In 2012 the share of housing loans has been still in decrease. The conditions on the loaning market have become strained since the crisis has begun, especially for the individuals, since banks are confronted with difficulties in obtaining new capital.[50]

It is estimated that 95% of the committed households have mortgage based loans. However, merely owning a property has not been enough for the loan. Some of the banks are demanding more than 100% insurance. For instance, NKBM (*Nova* KBM) demands 170%, whereas the factor usually ranges from 1 to 1.5%.[51]

47 Geodetska Uprava Republike Slovenije, 'Poročilo o slovenskem nepremičninskem trgu za leto 2012,' 4.

48 J. Predanič, 'Samo v ljubljani zaradi manj kot 100 evrov glavnice 67 rubežev nepremičnin,' *Delo*, 27 February 2012, http://www.delo.si/novice/kronika/samo-v-ljubljani-zaradi-manj-kot-100-evrov-glavnice-67-rubezev-nepremicnin.html.

49 'Posojila bank nedenarnemu sektorju,' Globalna konkurenčnost, accessed 9 November 2012, http://www.globalna-konkurencnost.si/index.php?option=com_content&view=article&id=67&Itemid=104.

50 J. Bratanič, 'Kriza na posojilnem in nepremičninskem trgu,' *Dnevnik*, 14 August 2012, http://www.dnevnik.si/slovenija/v-ospredju/1042546617.

51 'Stanovanjskih posojil vse več, utegnejo se tudi podražiti,' MMC RTV Slovenija, 21

Even though the GORS finished the mass appraisal of the real estates in Slovenia, the banks are reluctant to consider their real estates' estimations when determining mortgages, since many of the owners were not satisfied with the estimations.[52]

The recent trend is that the instalment plan for returning the loan has been extending, reaching 15,5 years in February 2011. More than 50% of the newer loans have reached the twenty year long instalment plan. Moreover, further increase can be seen in housing loans, which are defined by variable interest rate (prevailing are those defined by EURIBOR), 95% of all loans.[53]

There are no marked effects on the rental sector. However, the effects are to be expected in the upcoming years, since there are some speculations that the HFRS and municipalities are going to purchase the vacant non-sold dwellings and offer them as part of the non-profit, social, long-term and market rentals. However, the main condition is the decreased price of these dwellings and financial capabilities of the state.[54]

One of the statutes enacted in response to the crisis was the Act on the Natural Persons Guarantee Scheme of the Republic of Slovenia (*Zakon o jamstveni shemi* RS *za fizične osebe*).[55] This act has enabled more lenient conditions of loaning for those individuals, who were unable to obtain it before (for both housing and consumer loans). In addition, it facilitated new bridging loans or reprogramming of old loans to those that were affected by crisis and cannot repay their obligations from the already obtained loans.

The purpose of the act is to alleviate the consequences of the crisis for temporarily employed persons, young families, individuals settling their housing issues for the first time, non-employed persons due to the crisis, who are in temporal social anguish.

February 2011, http://www.rtvslo.si/gospodarstvo/stanovanjskih-posojil-vse-vec-utegnejo-se-tudi-podraziti/251453.

[52] K. Svenšek, 'Gursovega vrednotenja nepremičnin banke pri najemanju hipotekarnih posojil še ne bodo upoštevale,' *Dnevnik*, 7 October 2010, http://www.dnevnik.si/slovenija/v-ospredju/1042393534.

[53] Banka Slovenije, *Poročilo o finančni stabilnosti, maj 2011* (Ljubljana: Banka Slovenije, 2011), 14.

[54] 'Černač o možnostih za odkup tržnih presežkov stanovanj,' Planet Siol.net, 16 April 2012, http://www.siol.net/novice/gospodarstvo/2012/04/cernac_odkup_trznih_presezkov_stanovanj.aspx.

[55] *Uradni list Republike Slovenije*, no. 59/2009.

Thus, the act has enabled individuals to obtain state guaranteed loans. The provisions of the act stipulate that temporarily unemployed persons and young families can obtain loans ranging from 5,000 to 100,000 EUR for maximum twenty-five years instalment period. The loans are to be safeguarded with mortgage or land debt on an immovable property. The state obliged itself to provide for 300 million EUR of guarantees for those settling their housing issue for the first time. Temporarily unemployed can obtain loans of 10,000 EUR with ten years instalment plans.

The payment of the debt is guaranteed with the salary of the commitments, which is to be received in the future, when the economic situation is expected to improve. The state is offering 50 million EUR of guarantees for those loans.

The scheme is executed by the Slovenian Export Company (*Slovenska izvozna družba*, SID). This company had obtained the offers from commercial banks through public tender. Afterwards, it distributed the quotas amongst the banks. The share of quotas depended on the level of the interest rate: the smaller it was, more quotas the bank received. The guarantees of the state were available until the end of 2010. The first loans were approved in autumn of 2009.[56]

The Government demanded from the Housing Committee of the Government to prepare measures for decreasing the costs of the managing of the housing stock owned by the state. In addition, the measures must also address the efficiency of the housing stock usage. The same measures must be prepared by the Ministries of Internal Affairs and Defence. The three institutions were also obliged to prepare possibilities for merging of the three housing funds.[57]

2.6 Urban Aspects of the Housing Situation

During the last decade in Slovene towns and urban areas several processes of social transformation have been present. Suburban-

[56] 'Kaj je prinesel Zakon o jamstveni shemi za fizične osebe? Komu je ukrep namenjen?' Vlada Republike Slovenije, last modified 7 January 2011, http://www.vlada.si/si/teme_in_projekti/arhiv_projektov/aktivno_proti_financni_in_gospodarski_krizi/vprasanja_in_odgovori/vprasanje/?tx_evropafaq_pi1%5Bq%5D=769&cHash=0913e0fb179311e8d9b8061fb86a6fcc.

[57] 'Sprejet drug paket protikriznih ukrepov,' Racunovodja.com, 20 February 2009, http://www.racunovodja.com/clanki.asp?clanek=3360.

ization and moving out of population from inner parts of urban areas has started already in the previous century. These days it is intensified and causes the concentration of higher income groups of population in certain suburban areas.[58]

Since the building lots have been scarce and the prices of real estates in urban areas quite high, there was a higher influx of population into rural areas around larger municipals and towns with good transport accessibility. Rebernik ascertains that 'in the last three decades areas of suburbanization around Slovene towns widened to locations up to thirty or even forty kilometres from the centre of urban region.' As an example, he lists some former settlements of second homes around Ljubljana, which have been transformed into residential areas.[59]

Similar is ascertained by Kos, Mandič and Filipović. They name this phenomenon 'contra-urban housing preferences' and state several reasons for it: widespread informal individual construction, unrestrictive spatial policy, traditionally powerful anti-urban ideology, which later on transmuted to 'postmodern' movement 'back to nature.'[60] Such data can be misleading. It is not said that the majority of population lives in genuine villages and is engaged in some form of farming or other agricultural activity, but rather that majority lives in outskirts of larger municipalities. According to the above mentioned authors, as much as 40% of urban inhabitants live in suburban or provincial types of settlements.

Hočevar supports these statements, arguing that one half of the entire housing stock in Slovenia is outside the urban areas. There are approximately 6,000 settlements in Slovenia and only 200 (or 3%) have the status of an urban settlement and are inhabited by roughly half of the total population in Slovenia.[61] In addition, this anti-urbanism phenomenon in Slovenia is far from being typically differentiated, for instance that only conservatives or liberals live there, or only urban or rural residents.[62]

[58] D. Rebernik, 'Recent Development of Slovene Towns – Social Structure and Transformation,' *Dela*, no. 21 (2004): 139–44.

[59] Rebernik, 'Recent Development of Slovene Towns,' 143.

[60] Kos, Mandič, and Filipovič, 'Prostorski vidiki stanovanja,' 85.

[61] M. Hočevar, 'Dispersed Settlement in Detached Houses: Attitudes Over the Residential Space Consumption in Slovenia,' *Sociologija* 54, no. 1 (2012): 123–52.

[62] Ibid., 133.

Rented units are mainly situated in the centres of bigger municipalities, whereas owner occupied are mainly in the suburbs and smaller municipalities. There are several reasons for the described situation. One is certainly the fact that the prices of dwellings are lower in the suburbs and smaller towns. For example, squared meter of a house in Ljubljana in the last quarter of 2011 was 2,420 EUR, while in Kranj, which is relatively near Ljubljana, but has fewer inhabitants (around 41,000 compared to Ljubljana's 260,000), it was 1,804 EUR.[63]

Furthermore, there is a larger influx of students in university centres and towns hosting faculties and high schools, for instance Ljubljana, Maribor, Koper, Celje. These are all larger towns in Slovenia. Consequently, there is a higher demand for room and apartment rentals in town centres of these municipalities, since students usually do not possess a car or are reluctant to cover the costs of petrol driving long distances from residence to the schooling area.

The data from 2011 Census of the SORS indicate that in urban areas there are 977,953 residents and 370,928 dwellings. On the other hand, the number of residents in non-urban areas is 1,011,388 and the number of dwellings is 299,199. Owner-occupied dwellings in urban areas account for 264,968 (compared to total 370,928), whereas the number in non-urban areas is 257,704 (compared to total 299,199). The number of rented dwellings in urban areas is 52,208, in non-urban yet 9,944. Other tenures account for 53,752 dwellings in urban areas and 31,551 dwellings in non-urban areas.[64]

The process of social segregation of population can be observed in Slovenia due to the general social transformation in transitional period. It has been influenced mostly by increased social differentiation in general, development of housing market, privatization of housing and increased interurban mobility of population.[65]

Throughout the nineties of the previous century, the market construction of dwellings was widely spread, making residential mobility easier. The most numerous housing units in Slovenia's urban

[63] 'Cene stanovanj v mestih,' Nepremičninske novice, accessed 12 November 2012, http://www.nepremicninske-novice.com/vsebina/cene-stanovanj-mestih.

[64] 'Naseljena in nenaseljena stanovanja,' Statistični urad Republike Slovenije, accessed 12 November 2012, http://pxweb.stat.si/pxweb/Database/Dem_soc/Dem_soc.asp#08.

[65] Rebernik, 'Recent Development of Slovene Towns,' 141.

TABLE 2.3 Number of Dwellings and Residents in Urban and Non-Urban Areas

Areas	Residents	Dwellings	Type of occupancy		
			(1)	(2)	(3)
Urban	977,953	370,928	264,968	52,208	53,752
Non-urban	1,011,388	299,199	257,704	9,944	31,551
Total	1,989,341	670,127	522,672	62,152	85,303

NOTES Column headings are as follows: (1) owner-occupied dwellings, (2) rental dwellings, (3) other dwellings.

areas are high-rise multi-apartment buildings. The social segregation and degradation is mostly seen in such buildings, especially in older and larger ones. In these, there is a concentration of lower income, older and ethnical minority's households. However, the degree of social degradation in Slovenia is in general less obvious than in some other transitional countries. These parts of urban areas are far from similar ones in other countries, where there are higher crime rates, concentrations of marginal social groups and underprivileged, lowering the housing prices and making these parts less favourable. Rebernik attributes this to the fact that most of the high-rise buildings 'were relatively small, accessible, well connected and integrated with the rest of urban space.' He considers the quality of life in these buildings 'good and in certain elements even better than in some other residential areas.'[66]

It is rather difficult to define some parts of urban areas as being gentrificated, even though they exhibit some typical signs of gentrification. For instance, some older residential districts with good accessibility and favourable living conditions are attractive for the population with higher incomes. This is particularly the case in Ljubljana (for example Murgle and Rožna dolina neighbourhoods), Maribor and some other larger municipalities. However, only small areas are part of this process, for example, some parts of old medieval centres, older working class neighbourhoods and industrial areas, which are being replaced by new housing.[67]

Mandič also supports such statements, arguing that the trend of more well-off individuals moving from the central parts of the towns to the edges continues. According to her article, these individuals

[66] Ibid.
[67] Ibid., 143.

are in search of better living space, due to the degradation of living surroundings in some larger neighbourhoods, caused by the lack of government spatial management.[68]

As far as ghettoization is concerned, it can be said that genuine ghettos are not present in Slovenia. Some social groups that are unable to obtain housing on market or in social sector are indeed segregated on specific locations. They are forced to construct shacks, illegal houses or other forms of dwellings. Apart from Roma population, such situation is present among immigrants from former Yugoslav republics. Their settlements can be seen in Ljubljana, for instance Rakova Jelša and Tomačevo, which are located at the outskirts, and Nove Fužine in Ljubljana and Jelendol in Tržič, which are in the inner part of the towns. Prices of both rentals and purchases of dwellings are somewhat lower on these locations, further segregating these social groups.[69] However, such settlements do not correspond to the widely excepted definition of a ghetto (according to which forcibility of settlement in the segregated area is *condition sine qua non*), since it is questionable whether the inhabitants are forced to live in these settlements or decide to inhabit them willingly.

Valid Criminal Code (*Kazenski zakonik* (KZ-1-UPB2))[70] does no longer define squatting as a criminal act, while the previous code[71] did in Article 228. Unauthorized moving into someone's home or other areas was penalized with a fee or was sentenced to one year of prison. Attempt was as well penalized. Alongside the penalty, courts were able to order removal from the home or areas. The only Article regulating unlawful entry is Article 141 of the valid code, which provides that an individual who enters foreign dwelling or other premises or does not leave upon the demand of the owner or otherwise prevents the use of the dwelling, is punished with a fee or is imprisoned for a period of one year. However, this Article is aiming at unlawful entry of officials and police rather than squatters.

In general, such phenomenon is not very common in Slovenia.

[68] S. Mandič, 'Dostopnost stanovanj in stanovanjska politika v Ljubljani, primerjalna perspektiva,' *Urbani izziv* 18, no. 1 (2007): 48–54.

[69] K. Ajdič, *Romska naselja kot primer prostorske segregacije v sloveniji* (Ljubljana: Fakulteta za družbene vede, 2008), 41.

[70] *Uradni list Republike Slovenije*, no. 50/2012.

[71] *Uradni list Republike Slovenije*, no. 95/2004.

Nevertheless, it is worth mentioning that even if an individual is to unlawfully seize a dwelling, he is not able to prescript either the dwelling or the land in accordance with Article 43 of the Real Property Code, since the individual is not in a good faith regarding the ownership (he is aware that the dwelling was not handed over from the owner). The good faith is necessary for obtaining ownership right. Since squatters are aware of the fact that they are occupying property that is not theirs, they do not fulfil conditions for prescription.[72]

The phenomenon was more present in the period after the independence of Slovenia, when many former officials of Yugoslav army moved into apartments that were assigned to them by the Yugoslav People's Army (JLA) in 1991. Afterwards, the former Yugoslavia dissolute and Slovenian courts decided that the orders on the allocations were illegal. In 1995 Slovenian state organs started evicting tenants. The Slovenian Ombudsman took measures against evictions, proposing to the Government to determine conditions for continuation of residence in the apartments. The Government indeed brought to a hold the courts' decisions on evictions and determined the conditions for eligibility.[73]

2.7 Social Aspects of the Housing Situation

A study done by Cirman indicates that Slovenians prefer homeownership over rental to a great extent. Some of the preferences are caused by the financial attractiveness of homeownership to the households and the lack of adequate alternative. Moreover, the housing policy in Slovenia has been greatly supporting the homeownership, while discriminating against rental sector. Therefore, the main question of many households is merely when the household will be able to afford a home of their own.[74]

Consequently, rentals are considered as temporary solution to housing situation. According to Mandič, renters are often stigmatized and seen as 'poor persons,' which need assistance or, on the

[72] L. Cvikl, 'Skvoti,' *Pamfil*, accessed 12 November 2012, http://pamfil.si/prispevek/skvoti/.

[73] *Varuh*, no. 4 (2004).

[74] A. Cirman, 'Housing Tenure Preferences in the Postprivatisation Period: The Case of Slovenia,' *Housing Studies* 21, no. 1 (2006): 113–34.

contrary, as those who try to benefit from others.[75] A survey done by a post-graduate student in Slovenia has confirmed the hypothesis that a large percentage of Slovenians prefers ownership over renting. When confronted with a question, what are the advantages of ownership, a majority choose the answer: 'The dwelling is mine.'[76]

According to Lavrač, Slovenians see renting as merely temporary solution, rather than a permanent and perspective one. In addition, he considers this opinion to be a part of Slovenian culture. Another issue is that individuals are not very well informed about the costs of owning a home.[77] This preference of owning a home is probably influenced by the process of privatization, since many individuals were able to afford their own home. According to a survey conducted by institution Tovarna, which advocates establishment of housing cooperatives in Slovenia, majority of individuals do prefer home ownership over renting. However, the main argument for this was seen in the security of residence.[78]

Homeownership of real estates in general has an important role for securing protection after the retirement in Slovenia. As much as 96% of elderly are homeowners, whereas in non-profit rentals there is a mere 1%.[79] According to a survey done by Mandič, when specifically asked to value the financial significance of the homeownership, many respondents agreed that their own home serves as equity, as a reserve. The respondents stressed the:[80]

> […] possibility of selling and moving to a smaller unit or entering a home for the elderly, while the equity would be covering its costs in excess of their pension; renting out a room or part of the house; the option of selling and moving to a rented dwelling was never mentioned.

[75] S. Mandič, 'Učinki tranzicijskih politik na stanovanjsko oskrbo v socialnem/neprofitnem sektorju,' in *Stanovanjska reforma, pričakovanja, potrebe, realizacija*, ed. R. Sendi (Ljubljana: Urbani izziv, 2007), 17–34.

[76] P. Ropret, *Model za pomoč pri odločanju o investicijah v najemna stanovanja* (Maribor: Fakulteta za organizacijske vede, 2007), 64.

[77] Vučina Vršnak, 'Zadnji cent za štiri stene.'

[78] 'Zaključki spletne raziskave do 10. julija 2012,' Stanovanjske kooperative, 13 July 2012, http://stanovanjskekooperative.si/zakljucki-spletne-raziskave-do-10-julija.

[79] Mandič, 'Blaginja v starajoči se družbi,' 91.

[80] S. Mandič, 'Households' Views on the Security in Old Age and the Role of Housing Assets in Slovenia,' *Teorija in praksa* 47, no. 5 (2010): 1020.

Many of them saw owning a home as a most valuable asset they own.[81] Therefore, it can be argued that Slovenians see homeownership as a secure investment after the retirement, which is by far more preferable than the rented dwelling.

The main issue concerning the attitude of tenants arose from the previous housing situation. During the period of socialism, the largest part of the rental housing stock (multi-unit buildings) was owned by the state actors or the state had the disposal right (on nationalized properties). The main part of the maintenance work was in the hands of the state, i.e. state enterprises. After the privatization, the former holders of housing rights purchased the dwellings, becoming owners of individual apartments, as well as co-owners of the common areas in the building. However, for many of them it was difficult to grasp the notion of what an owner of a housing unit in a multiunit building means. They did not invest in the renewals and maintenance. Therefore, many buildings have been neglected in terms of the common areas.

Furthermore, the purchased apartments were in some cases larger than the real needs of the households. These owners are now relatively old, living thus in oversized apartments. Larger areas of units are linked to higher costs of residing in these, which are usually above income standards of the older owners, making it difficult for them to cover the costs.

[81] Mandič, 'Blaginja v starajoči se družbi,' 102.

Chapter Three

Housing Policies and Related Policies

3.1 Introduction

After the dissolution of the former SFRY, the shift from socialism to capitalism was an inevitable process for newly established republics. In Slovenia the shift was somewhat gradual and smooth, with minor implications regarding social policy and the housing policy remaining an important issue within the overall social policy.[1]

Article 2 of the Slovenian Constitution defines Slovenia as a legal and social state. However, after the shift to capitalism, more individualistic approach to social hazards was promoted instead of the previous collective.[2] Housing policy was no exception. This can be illustrated can with analysis of Article 78 of the Constitution. This Article obliges the state to create possibilities for the citizens to obtain a suitable housing, i.e. to provide for appropriate conditions for the citizens regarding housing. In addition, the housing policy as a supportive means measure is intended for the entire population and not just the underprivileged.[3] The Constitution has no provision on the fundamental right to housing.

After the previous NHP (for the period 2000–9) was terminated, Slovenia has had no other document concerning the housing policy. Dragoš stated that there is 'no appropriate social policy' and that the present social legislation is a product of economic situation in the country and not deliberate execution of social policy.[4]

The NHP has been one of the most important documents regarding housing policy in Slovenia, in addition to the Constitution and the Housing Act. However, due to several reasons, its execution

[1] Š. Mežnar and T. Petrović, 'Housing Policy in Slovenia – a Political Decision or Coincedence?' *Lex Localis* 11, no. 3 (2013): 583–600.

[2] 'Družbena blaginja in socialna država,' radio broadcast on Radio Val 202, 17 November 2011, http://tvslo.si/predvajaj/druzbena-blaginja-in-socialna-drzava/ava2.121193738.

[3] Mežnar and Petrović, 'Housing Policy in Slovenia,' 584.

[4] 'Družbena blaginja in socialna država.'

failed to fulfil expectations. The NHP was prepared in accordance with Article 77[5] of the 1991 Housing Act and was enacted in May 2000. Its main aim was to provide comprehensive program for long-term development of housing sector.

This document proposed several goals for the period 2000–9. Amongst others, one goal was the increase in the scale of construction of dwellings, as well as the construction and renewal of at least 10,000 dwellings annually in the ten-year period. The program determined measures that were supposed to be taken by the state and local communities. Direct measures included legislative, organizational and financial ones, while indirect included taxation, social and spatial measures. Measures by the local communities included generation of social housing stock, subventions, co-financing the generation of non-profit housing stock by means of providing construction lots and infrastructure.[6] The goal of building social housing was far from satisfactorily executed. In the period 2000–7 the estimated construction included 62,250 dwellings, 13,950 in public sector (non-profit apartments) and 48,300 in individual (market dwellings). However, the actual construction was as following: 57,128 dwellings (or 92% of the estimated construction): 32% of set goal for public and 109% for the market dwellings. The failure of the NHP can be contributed mostly to the lack of financial possibilities of the HFRS, as well as changing legislation, higher prices of construction lots and extremely low non-profit rents. During the entire period of the NHP, the realized scale of new construction of non-profit apartments was around 22%, whereas the stock of non-profit apartments in general decreased, probably due to the selling from the municipalities and non-profit organizations.[7] According to Kopušar, the planned budgetary funds for the period 2000–4 were 34.6 billion SIT (approximately 146 million EUR), whereas actually provided were 2.9 billion SIT (approximately 12 million EUR), corresponding to mere 8.2% of the planned funds.[8]

The amendment of the 1991 Housing Act in 2000[9] introduced the

5 *Uradni list Republike Slovenije*, no. 81/1991.
6 'Nacionalni stanovanjski program za obdobje 2012–2021: osnutek,' 11
7 Ibid., 6.
8 R. Sendi, ed., *Stanovanjska reforma, pričakovanja, potrebe, realizacija* (Ljubljana: Urbani izziv, 2007), 157.
9 *Uradni list Republike Slovenije*, no. 1/2000.

subsidization of the non-profit rents in the form of the lower rent. The lower rent was assigned by the municipal authorities on the basis of the means-test. The same means census was valid for both rent subsidy and awarding of the rental social apartments. These conditions were afterwards altered, with some new features introduced. The novelty was that the subsidy was awarded only for the area of the dwelling, which is recognized as appropriate in relation to the size of the household. In addition, the amount of the subsidy was set from 0.1% to 80% of the non-profit rent.[10]

The National Housing Savings Scheme (hereinafter NHSS) was introduced in order to promote individual savings for addressing housing issues. The National Housing Saving Scheme Act was also enacted in 2000. At the time, it represented a novelty, since banks offered no favourable loans. On the other hand, the scheme offered two times larger value of the loan available after the savings period expired. In addition, it offered in advance set interest rate. In 2006 and 2007 the Act[11] was amended, lowering the premium and tiding it to the actual consumption of the loan for the housing matters. Afterwards, many commercial banks started offering favourable conditions of loaning and the NHP's popularity fell. For instance, until 2006 the number of schemes was 85%, whereas the number in 2007 was 32% of the available. Even though there were some positive effects of the scheme (e.g. the scale of savings was higher), the overall potentials were not used.

The same amendment of the NHSS Act introduced another novelty in the housing policy, the subsidy for young families addressing the housing situation with purchase, construction, reconstruction or change of the purpose of existing buildings.[12] However, due to the crisis and austerity measures, these were abolished in the beginning of 2012. Such measure has influenced the welfare in the state, since these families are amongst the most venerable groups in the country.

Municipal housing programs were also enacted with delay or were not enacted at all.[13]

[10] 'Nacionalni stanovanjski program za obdobje 2012–2021: osnutek,' 8.
[11] *Uradni list Republike Slovenije*, no. 14/2006, 60/2007.
[12] 'Nacionalni stanovanjski program za obdobje 2012–2021: osnutek,' 9.
[13] Mandič, 'Učinki tranzicijskih politik,' 26.

The 2003 Housing Act[14] altered the system of non-profit housing, by abolishing social apartments. Instead, it consolidated public housing under unique category, the non-profit sector. Non-profit housing is available for those that are unable to afford market rent. Instead of the previous social apartments, it is possible to obtain a non-profit unit, but without any financial participation[15] by the prospective tenant. This category is reserved merely for the most vulnerable population. Non-profit rent, on the other hand, is considerably lower than the market and can be also subsidized up to 80%. Non-profit housing is the responsibility of the municipalities and is awarded in public tenders. The eligibility for non-profit apartments depends on several conditions.

Priority conditions for obtaining such apartment are given according to the income and assets census of the applicant, area normative, participation on previous tenders and ability to participate with own funding. Applicants must not be renters of non-profit apartment or (co-)owners of a house or other asset, which exceeds 40% of the value of the adequate home. Basic conditions include Slovenian citizenship and permanent residence in the municipality, in which applicants apply. Points are given on several grounds: present housing conditions, overcrowding and number of minor children. Additional points are given for young family status, family with more children, invalidity, domestic violence victims, education level of the applicants, years of residence in the municipality.[16] Moreover, for obtaining an apartment without own participation one must apply for an order from a local centres for social work that he is a socially disadvantaged person. Municipalities must be particularly careful when preparing for the allocation, since the allocation must be evenly distributed between those that are able to cover the non-profit rent and those that are not. The

[14] *Uradni list Republike Slovenije*, no. 69/2003.

[15] The financial participation by non-profit tenants is a payment, which must be paid upon the allocation of the apartment. The purpose of this payment is to allow for further investmnets into the construction of the non-profit housing stock. The funds are returned to the tenant in ten years with 2% interest rate. More on this, see section 4.3.

[16] K. Nemanič, 'Prosilcev veliko več kot neprofitnih stanovanj,' *Delo in dom*, 20 February 2011, http://www.deloindom.si/prosilcev-veliko-vec-kot-neprofitnih-stanovanj.

benchmark is set as a relationship between income of the applicant and members of his household and the average net salary in the country. The decision of the tender must be brought in general administrative procedure in six months from the notice on the tender. The rental contracts are concluded between the rightful claimant and the landlord.[17] According to the data from municipal housing funds, the apartments are usually allocated merely to 10 or 20 percent of applicants. This implies that the non-profit sector must be set as a priority in the near future, especially in the larger municipalities, where there is far more applicants as in the smaller ones. For instance, in Ljubljana 88% of the applicants are left without the non-profit apartment, even though the largest stock of non-profit apartments is in this municipality – 3,306 apartments. The majority of these are rented for undetermined period. The last tender was in December 2011, offering 450 apartments. The number of applicants was 3,983, which is the highest recorded number. The similar situations are observed also in Celje, Kranj and Maribor.[18] The Ombudsman in his report for 2011 has criticized this situation, as well as the quality of the stock available.[19]

The 2008 amendment[20] of the 2003 Housing Act introduced subsidy for renters in market rented dwellings, which was a tremendous step for increasing the welfare in Slovenia. The subsidy is reserved for claimants, who fulfil both income and assets censuses, as they are set for the subsidies of non-profit rentals. The claimant must have applied for the non-profit apartment in order to be eligible for the subsidy, but was not allocated with it. The eligibility is possible also, if there was no tender in their municipality for more than one year.[21]

The National Program of Social Security for 2011–20 is another important program intended for increasing the welfare situation.

[17] 'Dodeljevanje neprofitnih stanovanj v najem,' Javni stanovanjski sklad Mestne občine Ljubljana, accessed 18 December 2012, http://www.jssmol.si/dodeljevanje-stanovanj-za-upravicence/dodeljevanje-neprofitnih-stanovanj-v-najem/.

[18] Nemanič, 'Prosilcev veliko več kot neprofitnih stanovanj.'

[19] Republic of Slovenia, *Seventeenth Regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2011* (Ljubljana: Republic of Slovenia, 2011.)

[20] *Uradni list Republike Slovenije*, no. 57/2008.

[21] Mežnar and Petrović, 'Housing Policy in Slovenia,' 590.

However, the program addresses the development of the overall system of social security, including housing policy. The program has not been enacted in 2012. Nevertheless, its enactment is to influence the future situation regarding housing policy and tenancy law.[22] The program provides for fundamental principles of the social security system, the objectives and strategies. In addition, it allocates management of the program to certain subjects.[23] One of the main points in the program concerning housing is that rental housing sector is under-developed and influences many other aspects of social life in Slovenia. For instance, it is affecting the mobility of the citizens and consequently the employment policy. Socially vulnerable groups (e.g. homeless, convicted persons after serving jail, victims of domestic violence, mentally impaired, elderly, etc.) are also affected, since the non-profit sector is deficient.[24]

More importantly, the new NHP for the period 2012–21 has not been enacted yet. The new programme is especially focused in four goals for creating efficient and balanced housing supply, with precise measures for achieving the goals. Alongside the NHP, also planned is an action plan for the execution of the programme.[25] The NHP follows four objectives: obtaining sufficient number of dwellings (especially rental ones and those intended as temporary solution to housing problem), better affordability of dwellings (particularly forming rent that is in accordance with the value of the dwelling, housing benefit, mechanisms for providing the youth with housing), improvements of housing stock (by integration of funds) and improved mobility of citizens (especially enabling usage of dwellings that is more suitable for tackling the needs of households and relocation of households within housing stock due to higher optimization of use). Additionally, the program focuses on issues of social security for more vulnerable groups of citizens. Accordingly, it is to establish 'fair' rent of public dwellings, provide the first housing for youth and adequate number of housing units,

[22] Ibid., 587.

[23] 'Gradivo za javno razpravo: Nacionalni program socialnega varstva za obdobje 2011–2020' (Ministrstvo za delo, družino, socialne zadeve in enake možnosti Republike Slovenije, Ljubljana, 2011), http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/npsv_11_20_pr_080711.pdf, 1.

[24] Mežnar and Petrović, 'Housing Policy in Slovenia,' 588.

[25] Ibid.

housing benefits and pre-emption for purchases of publicly rented dwellings for youth. The tasks and obligations of the state and local authorities, the HFRS and other relevant institutions are also defined.[26] The novelty for the housing sector is the housing benefit, intended for households with lower incomes. The process of obtaining the benefit is left to the households themselves. They must obtain the dwelling on the market, which would suit their needs and especially possibilities. Hence, it is in household's interest to obtain a dwelling that is not too big or expensive, since the benefit is unique and does not vary. What is more, the program proposes a new categorization of dwellings: public rental (comprised from previous non-profit, public rent and employment based apartments and with sole rent) and market rental dwellings.[27]

Overall, Slovenian tax policy in regard to housing and tenancy law is inadequate. The major critic is directed towards the support of homeownership instead of promoting rental sector. For instance, until 1 January 2011, according to the provision of the Value Added Tax Act (*Zakon o davku na dodano vrednost*),[28] there was a taxing relief for construction of individual market apartments, as a part of social policy. Thus, the tax rate for newly built objects for housing purposes was 8.5%. After the termination of the period, the tax rate for apartments that are not for social uses is again 20%, whereas it remains unchanged for the apartments, which have social purpose. Hence, the dwellings, which are intended for permanent residence and are a part of social policy, as well as housing buildings intended for special purposes, are still taxed with the lower rate. There is a condition for listing a dwelling as a 'social:' it does not exceed 120 m^2 in multi-apartment buildings or 250 m^2 in a single-unit building of usable area.[29] [30]

[26] 'Struktura nacionalnega stanovanjskega programa za obdobje 2012–21,' accessed 18 December 2012, Skupnost občin Slovenije, http://www.skupnostobcin.si/sos/aktualne_novice/aktualna_novica/article/nacionalni-stanovanjski-program/396/neste/6/index.html?cHash=de16cfa892bf06a7bfe99b58a8565770.

[27] 'Nacionalni stanovanjski program za obdobje 2012–2021: osnutek,' 10.

[28] *Uradni list Republike Slovenije*, no. 117/2006.

[29] Which is defined as a sum of total residential areas.

[30] 'Na pragu izvajanja sprememb po ZDDV-1,' RS biro, accessed 19 December 2012, http://www.rs-biro.si/component/content/article/1-zadnje-novice/60-na-pragu-izvajanja-sprenemb-po-zddv-1.

In addition, income tax also supports homeownership. The tax is imposed on the landlords, who rent their dwellings. The tax base until the end of 2012 is the level of the rent decreased for 40% for the amortization or the value of the actual cost of reconstruction.[31] The tax rate depends on the tax bracket in which the tax payer is situated. Thus, until the end of 2012, the income from the renting of dwellings was a part of the entire income generated. In December 2012 an amendment of the Personal Income Tax Act was introduced.[32] According to the new provisions, landlords can deduce only 10% from the rent price due to the costs of maintenance. In addition, the income from renting is no longer part of the entire income generated by an individual, but is rather taxed with a schedular rate of 25%.[33] This is why many landlords are reluctant to conclude official contract with the renters, leading to the rental relations less legally secure and done through black market.[34]

The proposal of the new Real Property Tax Act initially anticipated higher tax rate for vacant dwellings (0.45% from the value of the dwelling, while the same occupied dwellings are to be taxed with 0.15% of the value).[35] Due to harsh criticism that such regulation is not to contribute to the higher rate of registration of contracts, but rather to the conclusion of fictional contracts or contracts with only symbolic rent price,[36] this proposal has recently been withdrawn. The latest proposal of the new Real Property Tax Act foresees universal tax rate of 0.15% for vacant and occupied dwellings alike.[37]

Apart from the inadequacy of official documents regarding the social and housing policy, ongoing crisis has brought further im-

[31] Article 77 of the Personal Income Tax Act, *Uradni list Republike Slovenije*, no. 117/2006 and its amendments.

[32] *Uradni list Republike Slovenije*, no. 94/2012.

[33] K. Fidermuc, 'DURS že opozarja na najemnine,' *Delo*, 30 November 2012, http://www.delo.si/gospodarstvo/finance/durs-ze-opozarja-na-najemnine.html.

[34] Mežnar and Petrović, 'Housing Policy in Slovenia,' 589.

[35] Article 6 of the proposal, http://e-uprava.gov.si/e-uprava/zakonodajaIskanje.euprava?naziv=&min=436&vrsta=2&podrocje=&status=&leto=2013.

[36] A. Motl, 'Obdavčitev stanovanj ne bo napolnila,' *Delo*, 27 July 2013, http://www.delo.si/gospodarstvo/potrosnik/obdavcitev-stanovanj-ne-bo-napolnila.html.

[37] 'Omerzel: vlada je odločena izpeljati spremembe nepremičninskega davka,' MMC RTV Slovenija, 20 March 2014, http://www.rtvslo.si/slovenija/omerzel-vlada-je-odlocena-izpeljati-spremembe-nepremicninskega-davka/332413.

plications for the housing policy and welfare. Due to the harsh austerity measures by the Government, many rights and benefits have been restricted or cancelled, not just regarding housing, but also affecting other social policies in the country. For instance, the above-mentioned subsidy for young families addressing the housing issue for the first time has been cancelled, leaving these families to the ruthless market conditions.[38]

Due to the development of economic situation in the recent years and the influences on the Slovenian housing market (high prices of dwellings and rentals, scarcity of non-profit apartments, cutbacks in social assistance due to the budgetary deficits, reluctance of banks to lower the prices of vacant newly-built dwellings and maladjusted taxing policy), the welfare of the citizens was greatly affected. The implications are also seen on other features of welfare and social state, for instance, mobility of the citizens, population growth, care for the elderly, etc. Hence, reforms are an urgent feature of future public policy, in order to improve the welfare in the country.

3.2 Governmental Actors

The 2003 Housing Act states that housing policy is responsibility of both national and local government (since meso-level of government in Slovenia has not been introduced yet).

According to Sendi,[39] there are four major actors, one on national[40] and three on local level. On national level there is the National Housing Fund (*Nacionalni stanovanjski sklad*,[41] HFRS for future reference). On local level, we can indentify municipal public housing funds, the Department of Urbanism and Environment (*Oddelek za urbanizem in okolje*) and the Department of Building Lands (*Oddelek za stavbna zemljišča*).

Obligation of the Parliament (*Državni zbor*) is to enact the NHP. The managing of the NHP is in the hands of the HFRS. The HFRS also provides financial support to the NHP. Moreover, it promotes

[38] Mežnar and Petrović, 'Housing Policy in Slovenia,' 592.

[39] R. Sendi, 'Uvedba načela omogočanja,' in *Stanovanjska reforma, pričakovanja, potrebe, realizacija*, ed. R. Sendi (Ljubljana: Urbani izziv, 2007), 106–8.

[40] In his article he does not consider Parliament as one of the actors in housing policy.

[41] Another name can also be found in the literature, the Housing Fund of Republic of Slovenia (abr. HFRS).

housing construction, renewal and maintenance of houses and buildings.

On local level, the municipal assemblies enact municipal housing programs. They promote various manners of obtaining ownership and rental dwellings, provide conditions for development of different types of construction and reconstruction in accordance with land and normative policies, enact measures for more suitable usage of municipal dwellings, enact directions for planning, construction and renewal of dwellings and promote development of housing infrastructure.

Municipalities are also obliged to provide non-profit housing for the inhabitants on their territory. For that and other obligations, a municipality can establish a public housing fund. Alongside the provision of non-profit housing, these funds are concerned with promoting housing infrastructure in the municipality and managing the dwellings and building lands.[42]

In addition, the municipal assemblies establish councils for protection of tenants' rights on the level of each individual municipality. The Act also determines that the councils for protection of tenant's rights can establish an organization of the national level, which would represent tenants in front of the national authorities.

The main tasks of the Department for Urbanism and Environment are the preparation of spatial plans and executive acts alongside the procedures for enactments of these acts, preparation of location information, administrative tasks and preparing urbanity solutions. The Department for Building Lands has tasks in obtaining real properties, managing municipal land, concern for land register and cadastre, concern for equipping the building lands with communal equipment and carrying out geodetic works.[43]

Since Slovenia is unitary state, with only national and local levels of government, all general laws and other acts (e.g. rules, directives and orders) that are passed by the national parliament are in force on the entire territory of the state. Local government is in charge of passing acts that are in force merely on the territory of their municipality.

[42] Ibid., 108.
[43] Ibid., 109.

3.3 Housing Policies

The main objective of housing policy pursued at the national level is the general concern for the housing situation in the state. Many experts[44] are very critical of the housing policies passed by governments from the early nineties until now, stating that they have favoured homeownership and owner occupancy, while neglecting the rental sector.

Especially since the start of the financial crisis, there have been debates on the possibilities of state's redemption of the newly constructed vacant housing stock. The Government has been discussing this scenario with the representatives of banks and construction sector. With this measure, the Government would revive both construction sector and financial situation for banks, which have large active debts towards contractors. However, there is no mutual agreement among ministries on whether this measure is sensible for taxpayers. Therefore, there has been no formal agreement concluded yet. The governmental Office for Macroeconomic Analysis and Development stressed that redemption of apartments would not influence the economic growth, since the banks would seize the majority of purchase price. Cirman ascertained that redemption in general could be an adequate solution to enlarged need for non-profit apartments since the beginning of the crisis (from 5,000 to at least 7,500 apartments state wide). Nevertheless, some conditions must not be overlooked: the adequacy of the apartments for non-profit rental (not too big), the location of the buildings (where the need is urgent), the transparency of the redemption (with public tenders or auctions) and the lowest price as possible. The similar opinions are shared by Hegler.[45] On the other hand, Mandič is rather sceptical regarding the redemption, since the apartments in question are below standard (since they are on inadequate locations, are of weak materials, etc.) and expensive. Therefore, it is not in accordance with public interest to purchase them for renting. The same opinion is offered by Simoneti and Lavrač. They consider as a better measure a housing benefit, which would be given to households for subsidizing market rents.

44 Such as Sendi, Mandič, Cirman, etc.

45 U. Marn, 'Je državni odkup stanovanj smotrn,' *Mladina*, 10 February 2012, http://www.mladina.si/53122/je-drzavni-odkup-stanovanj-smotrn/.

Higher tax rate for vacant dwellings is considered as a possibility for future, as discussed in section 3.1. No special housing policies targeted at certain groups of the population are present.

3.4 Urban Policies

Since genuine ghettoization is not an issue in Slovenia, there are no corresponding measures to avoid it.

As far as Roma settlements are concerned, the Government has taken several measures to improve their position and housing standards. There are 105 so-called Roma settlements, apart from some twenty to twenty-five hamlets inhabited by Roma population, accounting for some 9,000 individuals all together. Only one fourth of the settlements are able to arrange their legal status, whereas for others some further formal arrangements must be done (e.g. change of the purpose of the building lots). For some, the relocation is the only feasible solution.[46] One of the measures taken includes defining the areas of Roma settlements into the new municipal spatial plans (determining the developmental areas and the legalization of existing ones). Others include preservation of the existing locations, active cooperation of Roma when addressing their housing issues, structural adjustments of their settlements, systematic help, etc.[47] In addition, the Government has set to finance the measures from the national budget for development of areas, which are inhabited by Roma.[48]

There are no measures preventing gentrification, since the very phenomenon is not widely spread in Slovenia.

There is no control of the quality of privately rented housing. There is no special registry of rented dwellings in Slovenia, hence the Housing Inspection has no formal means of supervising these dwellings, unless the contracts are concluded and reported to the Tax Office.

As of 1 July 2013 there is an obligation imposed on all landlords (private and commercial) to register the rental contracts with

[46] Urad za narodnosti Republike Slovenije, 'Nacionalni program ukrepov za Rome Vlade Republike Slovenije za obdobje 2010–2015' (Urad za narodnosti Republike Slovenije, Ljubljana, 2010), http://www.arhiv.uvn.gov.si/fileadmin/uvn.gov.si/pageuploads/pdf_datoteke/Program_ukrepov.pdf.

[47] Ibid., 10.

[48] Ibid., 11.

the Geodetic Office RS pursuant to declaratory decision of the Ministry of Infrastructure and Space[49] and the Real Property Mass Valuation Act.[50] A new Real Estate Market Registry (*Evidenca trga nepremičnin*) has been established to cater this registration. All the existing rental contracts are to be registered by 15 December 2013, while the contracts concluded in July 2013 are to be registered by 15 August. In general, every rental contract must be registered by the fifteenth in the month following the month of conclusion of the contract, change of the parties or change of the rent price.[51] Otherwise, a fine between 1,000 and 10,000 EUR[52] for legal persons or 200 to 1,200 EUR for natural persons may be imposed. Competent Ministry is the Ministry of Infrastructure and Space.

The fundamental purpose of the Real Estate Market Registry is to systematically monitor purchasing prices and rents on the property market due to the assessment of market property values and to ensure transparency in the Slovenian real estate market.

Landlords, managers of state properties, in charge of renting the properties, and managers of multi-unit buildings, who rent areas commonly owned by the condominium owners are obliged to register the tenancy contracts.

The Real Estate Market Registry is an administrative registry, intended for different purposes (such as statistics, taxing, monitoring the real estate market) and is not connected to the Land Registry or Cadastre. The access to the registry is publicly available. There are two types of access: for registered individuals (expert public) and unregistered individuals. The first one is intended for legal persons (under public or private law), and private entrepreneurs. The latter access is intended for all individuals, free of charge. Data available refer to the prices and rents, as well as the circumstances on the real estate market.[53]

[49] *Uradni list Republike Slovenije*, no. 51/2013.

[50] *Uradni list Republike Slovenije*, no. 50/2006 and later amendments.

[51] Official explanation provided by the Tax Office RS, accessed 19 August 2013, http://www.durs.gov.si/si/davki_predpisi_in_pojasnila/dohodnina_pojasnila/dohodek_iz_oddajanja_premozenja_v_najem_in_iz_prenosa_premozenjske_pravice/dohodek_iz_oddajanja_premozenja_v_najem/obveznost_porocanja_o_najemnih_pravnih_poslih_v_evidenco_trga_nepremicnin_po_1_juliju_2013/.

[52] Article 26(4) of the Real Property Mass Valuation Act.

[53] Geodetska uprava Republike Slovenije, *Evidenca trga nepremičnin* (Geodetska uprava Republike Slovenije, Ljubljana, n. d.).

Up to now, one of the informal approaches could have been to arrange the meetings with landlords that advertised the rent in local newspapers or classifieds. However, such doings would have been rather time-consuming. With the new register of the rental contracts, the work of the Inspection will be eased. For now, the verification of quality of rented dwellings is not anticipated.

There is no regional housing policy in Slovenia. A part of the problem was discussed in section 2.2.

According to Hočevar:

> In the socialist period, permanent structural suburbanization of Slovenia was not politically considered a developmental problem in the society's modernization process. On the contrary, and in line with the preceding periods, the condition was affirmatively abused for ideological purposes – as evidence of the humane, high quality and natural conditions of living (quality of life) of the majority population in the countryside – in small settlements or isolated.

He adds that the urbanity has been seen as 'a negative consequence of industrial development.'[54] Considering all of this, it is understandable that there is no regional housing policy against suburbanization and peri-urbanization.

3.5 Energy Policies

The primary legal document regarding the energy policy is the Energy Act (*Energetski zakon*).[55] This statute is in accordance with EU principles of energy policy: sustainability, security of supply and competitiveness. Article 9 of the Energy Act specifies the objectives of the energy policy: a reliable and quality energy supply, long-term balance of the development of energy economy in respect to the energy trends, systematic diversification of the various primary energy sources, promotion of the use of renewable energy sources, ensuring the benefits of effective energy consumption and exploitation of renewable energy sources instead of non-renewable sources of energy, environmental acceptability of the extraction, production, transportation and consumption of all types of energy, promotion

54 Hočevar, 'Dispersed Settlement in Detached Houses,' 136.

55 *Uradni list Republike Slovenije*, no. 79/1999 and later amendments.

of competitiveness on the energy market, consumer protection and the promotion of flexible energy consumers.

Pursuant to Article 13 of the Energy Act, the Parliament is to enact the National Energy Program (*Nacionalni energetski program*, hereinafter: NEP), prepared by the Government. The new NEP is yet to be passed. At the moment there is only a draft version (the NEP for the period until 2030), which is in the process of coordination among the ministries and public. The draft of the NEP is concerned with the adequate renovation of the housing stock, in order to decrease the energetic consumption of the households. The goal until the year 2020 is that entire stock of newly-build and renovated buildings are energy friendly. Starting from the year 2014 the objective is to renew 3% of all buildings in the public sector annually. These actions are to be financed with the help of the EU funds.[56]

Other measures include financial incentives, tax reliefs for energy-friendly buildings and dwellings, private-private partnerships, introduction of smart counters, etc. A special set of measures is provided for the vulnerable group of citizens. This set of measures is to be executed in the cooperation with the local self-government units and the Ministry for Family, Work and Social Matters.[57]

Each municipality or several municipalities jointly must plan its/their energy consumption and the energy supply scheme in the development documents at least every ten years. This document is called 'local energetic concept.' Municipalities, which do not have local energy concepts adopted, must set in their municipal acts such heating system, which is based only on the renewable energy sources or cogeneration of electricity and heat with high efficiency, for areas, which lack a pipeline. If the local energetic concept is adopted, the priority must be given to the heating based on the renewable energy sources and cogeneration of electricity and heat.[58]

For example, Kočevje municipality enacted its local energetic

[56] Ministrsvo za infrastrukturo Republike Slovenije, 'Poročilo o javni obravnavi predloga NEP: 1. del' (Ministrsvo za infrastrukturo Republike Slovenije, Ljubljana, 2012), 172.

[57] Ibid., 173.

[58] Urad Vlade Republike Slovenije za komuniciranje, 'Evropska in slovenska trajnostno energetska politika' (Urad Vlade Republike Slovenije za komuniciranje, Ljubljana, 2010), http://www.se-f.si/uploads/f1/d6/f1d605150c141729f29df53e74b7006f/ukom-lizbonska.pdf, 40.

concept in 2009. It also executed several projects with a goal of improving energy consumption in the region. One of the projects included replacing fuel oil with wood biomass in the district heating system. The aims of the project are broader, encompassing improvement of air quality in the area, reduction of CO_2 emissions, enlargement of district heating system, connection of existing heating plants into a network, exclusion of old and over dimensioned fuel oil boilers, improvement of heat supply, improvement of operation, reduction of prices of heating energy supply and modernization of the district heating area.[59]

Amendment of the Energy Act from the year 2010 brought two novelties. One of the novelties is concerned with the public buildings (i.e. buildings owned by state or municipal authorities).[60] The managers of public buildings, larger than 500 m², are obliged to keep energetic accounting, encompassing information on types, prices and quantities of energy consumed. The Government may determine annual goals of energy efficiency. If the building recorded savings with the heating costs amounting to more than 10% compared to the previous year, the building receives an efficacy dividend.[61]

The second novelty is contained in Article 68. It imposes an obligation on the manufacturers and importers of devices to clearly state the consumption of fuels or energy during the running of the device under standard conditions. The statement may be given in the form of a label on energy efficiency, containing the description of the energetic efficiency characteristics of the device.

Article 68a obliges the investors and architects to prepare a feasibility of alternative energy supply systems study for any new building or building, whose energy supply system is to be renewed, and which are larger than 1000 m².[62] This study is a prerequisite for obtaining a building permit.

[59] Javno komunalno podjetje Komunala Kočevje, 'District wood biomass heating system – Dolb Kočevje, Slovenia,' (Javno komunalno podjetje Komunala Kočevje, Kočevje, 2009), http://www.energy-cities.eu/db/kocevje1_577_en.pdf.

[60] For instance, residential buildings owned by municipalities or non-profit housing funds.

[61] Articles 66 c and č of the Energy Act.

[62] The only exception is available for the buildings in municipalities, which have enacted local energetic concepts and determined the system of energy supply.

Article 68b directly influences housing policy and tenancy relations. It demands that owners of buildings show their potential buyers or tenants energy performance certificate of the building[63] before the conclusion of the contract. This certificate encompasses information on the energy consumption in the building. The newly-constructed buildings must also have the energy performance certificate, indicating compliance with the regulation on the efficient energy consumption. The energy performance certificate is valid for ten years. Apart from the certificate, the owner must also have recommendations for cost-effective improvements of energy efficiency.[64] We should stress that the energy performance certificate of the building is only needed for owners, who intend to sell (unless the dwelling is sold in the enforcement procedure or given in the expropriation procedure) or rent their dwelling for more than one year.[65]

Article 94 introduced a mandatory distribution and billing of heating costs in multi-apartment buildings by the actual consumption. This refers specifically to buildings, which are supplied with heat through common heating system (for instance, common heating appliance or central heating system).

Rules on Efficient Use of Energy in Buildings (*Pravilnik o učinkoviti rabi energije v stavbah*)[66] determine technical requirements for the efficient use of energy in buildings. The Rules address the heating isolation of the building, heating and cooling mode, ventilation system, hot water supply, lightning and methodology for calculation of energetic characteristics of the building. According to the Rules, the approved energy consumption on one square meter of heating area is 45 kWh/m^2 annually. Investors are obliged to design the building so that it is energetically appropriate. In addi-

[63] This is a document that provides key indicators of energy use in the building and classifies the building in one of the classes according to the energy consumption. The main purpose of the certificates is to inform the purchaser or tenant of a building on its energy efficiency, indicating, thus, the expected level of the costs and the potential investments, needed for energy modernization of buildings and facilities therein. The energy performance certificate is proof of the quality of the thermal properties of the building.

[64] 'Evropska in slovenska trajnostno energetska politika,' 40–1.

[65] Article 68 b of the Energy Act.

[66] *Uradni list Republike Slovenije*, no. 93/2008 and later amendments.

tion, its space must be distributed in an energy efficient manner. Construction material, building elements and the exterior must allow efficient management with energy flows. The Rules also oblige the investors to install renewable energy sources for heating and hot water supply, which must encompass at least 25% of the total energy consumption.[67]

The 2013–22 National Housing Program (which is yet to be enacted) anticipates the renewal of the local housing stock in accordance with the energetic standards, so to provide for efficient use of energetic sources.[68]

3.6 Subsidization

Different types of housing are subsidized in Slovenia. The largest part of subsidies is intended for rental sector (both market and non-profit). Other subsidies include those for renewal and restoration of dwellings and for green houses. Until recently, there were subsidies available for young families settling their housing issues for the first time and for savings into the NHSS.

There are several different subsidies for the rental sector. Some are available for tenants, whereas others are intended for landlords.

Tenants oriented are regulated in the Exercise of Rights to Public Funds Act (*Zakon o uveljavljanju pravic iz javnih sredstev*).[69] Due to the economic situation in the state, the statute was amended with the Fiscal Balance Act (*Zakon za uravnoteženje javnih financ*),[70] influencing the housing subsidies to a large extent. These changes have been in force since 1 January 2012. None of the subsidies was decreased in value. However, as a novelty, in order to decide whether claimant is entitled to subsidy, the value of his property is taken into account, making the subsidy smaller or not afforded at all.[71] Another novelty is that the application is filed with the centre for social work (and not administrative office), which is in the local

[67] 'Evropska in slovenska trajnostno energetska politika,' 42.

[68] 'Nacionalni stanovanjski program za obdobje 2012–2021: osnutek,' 1–2.

[69] *Uradni list Republike Slovenije*, no. 62/2010 and its amendment no. 40/2011.

[70] *Uradni list Republike Slovenije*, no. 40/2012.

[71] 'Osnovne informacije glede uveljavljanja pravic iz javnih sredstev po 1. 1. 2012,' Ministrstvo za delo, družino, socialne zadeve in enake možnosti Republike Slovenije, accessed 19 December 2012, http://www.mddsz.gov.si/si/uveljavljanje_pravic/nova_socialna_zakonodaja/zupjs_osnovno/#c18038.

self-governed unit in which the claimant has permanent residence or majority of individuals from the household genuinely resides.[72]

The subsidies are divided into five categories, for: non-profit rentals, residential units (for temporary solution of socially underprivileged), special purpose rental apartments (for elderly, invalids, etc.), market rentals and janitor's apartments. The eligibility for the subsidy depends on the income census of the claimant and number of individuals living in the household.

The value of the non-profit rent is calculated based on the real area of the claimant's rented dwelling. The subsidy is awarded only for the appropriate area in accordance with the number of individuals determined in the Rules. If the landlord charges lesser rent price, the subsidy is calculated based on the smaller amount. The subsidy is determined as a difference between the non-profit rent and determined income, decreased for the minimal income of the individuals in the household and 30% of the determined income. The subsidy can be awarded for the maximum value of 80% of the non-profit rent. It is paid out the next month, after the claim has been filed and can be awarded for the maximum period of one year (unless the very rental contract is concluded for shorter period).[73]

The subsidy for non-profit rent is paid directly to the landlord, whereas the tenant pays the remaining part of the rent.

The subsidy of market rent can be awarded to tenants in market rentals, which fall into the income census for subsidies in non-profit apartments and have applied for obtaining the non-profit apartment in the municipality of their permanent residence, but failed to obtain it. The exception is recognized, if there was no call for the application for non-profit apartments in the municipality for more than one year. This subsidy is paid out to the tenant, while he pays full value of the rent to the landlord. The monthly value of the subsidy is the difference between the market rent and the recognized non-profit rent. The calculation of the recognized market rent is

[72] 'Nova socialna zakonodaja,' Ministrstvo za delo, družino, socialne zadeve in enake možnosti Republike Slovenije, accessed 19 December 2012, http://www.mddsz.gov.si/si/uveljavljanje_pravic/nova_socialna_zakonodaja/.

[73] 'Subvencija za najemnine,' Ministrstvo za delo, družino, socialne zadeve in enake možnosti Republike Slovenije, accessed 19 December 2012, http://www.mddsz.gov.si/si/uveljavljanje_pravic/nova_socialna_zakonodaja/subvencija_za_najemnine/.

based on the value of the highest rent for the square meter of housing area in twelve different statistical regions (from 4 EUR/m² to 7 EUR/m² per month). If the paid rent is lesser than the recognized, the value of the actually paid rent is taken into account.

Subsidy for janitor's apartment is given to janitors, who concluded rental contract for the apartments before the 1991 Housing Act came into force (before 19 October 1991) and have been still residing therein. The subsidy is given to janitors, who are still employed in that manner or are retired or do not have this employment for reasons that are not their fault. Condition, though, is that they are paying market rent. The subsidy is calculated in the same manner as the subsidy for market rentals.

Apart from the two subsidies, there is also subsidy as it is determined for the non-profit rent (as 80% of non-profit rent), which can be awarded simultaneously with the other two. This is intended for individuals in special social distress, who cannot cover the cost of the rent, but also failed to obtain the non-profit rent without participation.[74] The non-profit rentals without participation of the rightful claimant are also considered as subsidies. However, the percentage of such individuals is extremely low and is awarded only to individuals in severe social distress.

The Fiscal Balance Act has also interfered with the NHSS and subsidies for young families settling their housing issue for the first time. This Act has entirely nullified the provisions on awarding the subsidies to young families and market rents (also to the families that have already been receiving the subsidy in period 2006–11). The savings into NHSS is still valid, however, only until all savings contract, concluded before the Fiscal Balance Act was enacted, are actualized. Thus, new savings contracts are not available in the future.[75]

There are also subsidies for students, who reside in market rented dwellings. These are awarded to students, who fulfil conditions for residing in the student residential halls. In order to receive the subsidy, both student and landlord must fulfil the set upon conditions.

The conditions for landlords are: equipped room, maintenance

74 Ibid.

75 'Subvencije,' Stanovanjski sklad Republike Slovenije, 13 June 2012, http://stanovanjskisklad-rs.si/si/609/subvencije.html.

of the building, utilities and gear, electrical installations, warm and cold water and heating according to standards. Conditions for students are: Slovenian citizenship, status of student (regular or irregular with some further conditions) that is not employed, average gross income of the individuals in the household must not exceed 150% of average gross salary per individual in Slovenia, has permanent residence more than twenty-five kilometres away from the institution, has not been excluded from a residence hall. The subvention is awarded for the period of ten months[76] and is currently 32 EUR per month. It is paid out directly to the landlord.[77]

Slovenian Eco Fund (*Eko sklad, j.s.*) offers non-returnable funds for the intended renewal and reconstruction of dwellings, which contribute to more eco friendly and green houses. The value of the subsidy is 25% of the value of the investment. As examples of the renewals, there are installations of solar heating system, heating pumps, heating isolation on the façade, etc.[78] Claimants can be individuals that are not legal persons, which are investors and owners of the dwellings or his closer member of the family. It is also possible for renters to apply, however, only if they have a written consensus from the owner. The investments must be executed on the housing building and not business premises, sheds, etc.[79]

None of the subsidies have been challenged on legal grounds.

3.7 Taxation

Slovenian tax system addresses tenure with several different taxes: the Value Added Tax, the Income Tax, the Property Tax, the Tax on Inheritance and Gifts, the Tax on Real Property Transaction, the Tax on Capital Income and the Compensation for Use of Housing Land. The former are imposed only on landlords and owners, since tenants do not pay any taxes on their rental tenancies.

Ownership is taxed with the Value Added Tax, the Property Tax

[76] The duration of the schooling semester.

[77] 'Subvencije za stanovanja,' Student.si, 24 June 2012, http://www.student.si/preberi-si/aktualno/subvencije-za-stanovanja.html.

[78] J. Bratanič, 'Subvencije za okolju prijazna stanovanja ukinjene do novega leta,' *Dnevnik*, 6 September 2012, http://www.dnevnik.si/slovenija/v-ospredju/1042550413.

[79] 'Eko sklad razpisi,' Eko sklad, accessed 19 December 2012, http://www.ekosklad.si/html/razpisi/main.html.

and the Tax on Inheritance and Gifts. Landlords are taxed only with the Income Tax. Natural persons, who became owners of dwellings after 1 January 2002, must also pay the Tax on Capital Income upon sale of their dwellings. A new Tax on Real Estate (*Davek na nepremičnine*) is to be imposed as of 1 January 2014.

Tax on Real Property Transaction allocates certain reliefs to tax payers. The tax is not paid by: diplomatic and consular branch, under the condition of reciprocity, the international organizations (when the multilateral contract specifies it), expropriation beneficiary, seller of cultural monuments, transferor in the process of land consolidation, transferor in the process of forced recovery, transferor in division between partners upon the divorce, transferor after the contract on transfer has been cancelled, transferor in the process of winding-up of the company, statutory changes and capitalization of legal persons.[80] The tax is also not paid, if the ownership right is transferred for the first time and the Value Added Tax was paid.[81]

Tax on Inheritance and Gifts is not paid by the inheritor or receiver, who is in the first inheritance order, according to the Inheritance Law (*Zakon o dedovanju*).[82] The first inheritance order inheritors are descendents and partner (marital, domestic, same-sex), as well as in-laws and stepchildren. For other inheritors or receivers there is a progressive tax scale. Other reliefs include 100% subsidy for received temporary or permanent usufruct. In addition, the tax is not paid by the person, who is considered as a farmer, if he obtains farmer's land. The tax is not paid by the person, who gives away the received property to the state, municipality or other humanitarian legal persons without reimbursement.[83]

The Property Tax (which is going to be replaced in years to come alongside the Compensation for Use of Housing Land) is not paid for the value of 160 m^2 of housing area, if owner and his family members (partner, children, step-children) have permanent residence in the dwelling in the year, for which the tax is calculated.

[80] Ministrstvo za finance, *Nepremičnine in davki* (Ljubljana: Ministrstvo za finance, 2007), 5–6.

[81] Article 4 of the Real Property Transaction Tax Act, *Uradni list Republike Slovenije*, no. 117/2006.

[82] *Uradni list Socialistične republike Slovenije*, no. 15/1976 and its amendments.

[83] Ministrstvo za finance, *Nepremičnine in davki*, 10–2.

The tax also allows a temporary relief for a period of ten years for the first owners of new dwellings. Dwellings that obtained more than 50% of value due to the reconstruction or renewal are also considered as new dwellings. The tax payer with more than three family members (partner, children, step-children, parents in those that the owner must support according to the law), has a right to 10% relief for fourth and other family members, if they have permanently resided in the dwelling in the year, for which the tax is calculated. The tax is not paid for: farmer's outbuildings, business premises used for the business purposes, cultural monuments, buildings that are unusable due to the objective reasons and housing buildings of tax payers of farming taxes and his family members.[84]

The Compensation for Use of Housing Land is not a tax per se, but rather an obligatory payment. It is paid by the actual user of the housing land (owner, renter, housing right claimant). The relief can be given for the period of five years to the user, who bought a new home or reconstructed/renewed an old one, if he paid the costs of communal infrastructure along with the price of the dwelling. The period is calculated from the day that the claimant started living in the dwelling. The municipality can also determine a partial or whole exemption from this payment for the residents with lower incomes and residents, who in an organized way invested common funds into the construction of communal infrastructure.[85]

The tax rate of the Tax on Capital Income is decreased every five years for the amount of 5% from the original 20%. Thus, after twenty years of capital ownership, the tax is not paid anymore. Another important relief is given for the capital income from the sale of dwelling, in which the owner had had permanent residence and actually resided for at last three years before the sale.[86] Value Added Tax is not paid from the sale of used dwellings and for renting of the same.

The Government has planned a new tax, which unites the Property Tax, the Compensation for Use of Housing Land and Fee for Preservation of Forest Roads – the Real Property Tax. The Real

[84] Ibid., 15–7.
[85] Ibid., 19.
[86] Ibid., 15.

Property Tax Act (*Zakon o davku na nepremičnine*)[87] has been put to force on 1 January 2014. However, the Constitutional Court RS issued a temporary junction[88] on the enforcement of the act due to the filed motion for its constitutional review. Therefore, the Tax Office RS may not issue any decisions on the assessment of tax duties, until the Constitutional Court RS renders the decision in this matter. The new tax is to be a regular income of municipalities. The subventions prescribed include only reliefs for public goods, diplomatic and consular branch (with the exception of honorary consul's premises), religious premises and cultural premises. The relief for owner occupied dwellings are abolished.

Subject to taxation is all real estate that is recorded or qualify to be recorded in the registry of real estate on 1 January of the year of assessment. The tax base represents a generalized market value as attributed to each property in the registry on 1 January of the year for which the tax is imposed (for the year 2014 on 1 April 2014). The tax base for housing premises for the years 2014 and 2015 is decreased – 80% and 90% of the generalized market value respectively. Tax rates vary from 0,07% (for forests lands) to 0,75% (for commercial and industrial real estate). Initial draft of the Real Property Tax Act differentiated between the residential and non-residential dwellings. Tax rate for residential housing premises was set as 0,15% (0,4% for premises, whose value exceeds 500.000,000 EUR). Tax rate for empty dwellings was 0,5% (0,75% for premises, whose value exceeds 500.000,000 EUR).[89]

However, due to the wide public disproval, the Government is preparing an amendment of the act. It is expected that the new tax rate will be unified and set as 0.15% for all dwellings (residential and non-residential).[90]

[87] *Uradni list Republike Slovenije*, no. 101/2013.

[88] Decision of the Constitutional Court RS, no. U-I-313/13-21 from 6 February 2014, *Uradni list Republike Slovenije*, no. 11/2014.

[89] Residential housing premises are dwellings in which the taxpayer has his residence registered on 1 January in the year, in which the tax is imposed. Also residential are the dwellings, for which there is a rental contract concluded in the preceding year for at least six months for either non-profit or market rent. 'Nepremičnine in davek,' Vlada Republike Slovenije, accessed 23 December 2013, http://www.vlada.si/teme_in_projekti/nepremicnine_in_davek/.

[90] 'Pojasnilo, kako bodo vladne odločitve vplivale na izračun vrednosti oziroma na

Certain taxpayers are entitled to lower tax base: 50% lower tax base for taxpayers, who are receive financial social assistance *ex officio*, and 30% lower tax base for taxpayers, who are entitled to a larger housing area due to their disability (for instance, taxpayers or their household members in wheelchairs).[91]

The tax subsidies negatively influence the rental market, since owners are better off, if they register the dwelling as owner-occupied rather than rented, since subsidies are given mostly for owner-occupied homes. However, now that the new Real Estate Tax is introduced, there is likely to be an effect on the rental sector, since many of the owners are going to be motivated to rent their dwellings, since they are no longer going to receive the owner-occupancy relief. Other view is discussed in section 2.2.

The problem of tax evasions is a rather topical issue in Slovenia, which has grown over the last few years due to the economic crisis. Since the Inspection Office is not too restrictive with the inspections of landlords, many rental contracts are not registered and consequently the Income Tax is not imposed. Accordingly, the rental market is affected in the sense that renters and landlords are without legal protection in the case of a problem. However, due to the newly imposed obligation of registration of the contracts (from 1 July 2013), the situation may change, especially if appropriate inspection surveillance is conducted.

izračun davka in kako lahko davčni zavezanci sami ugotovijo, kakšen bo njihov davek, ko bo sprejeta spremenjena zakonodaja,' Geodetska uprava Republike Slovenije, 4 March 2014, http://www.gu.gov.si/si/medijsko_sredisce/novica/article/4971/5541/452489686e23ca52e48f0f87914ac75c/.

[91] Ibid.

Chapter Four

Regulatory Types of Rental and Intermediate Tenures

4.1 Classifications of Different Types of Regulatory Tenures

The types of rental tenure that are regulated in Slovenia are non-profit rentals, market rentals, employment-based rentals and special purpose rental housing. Their share in the rental dwelling stock are: 70% for non-profit, 20% for market, 7% for employment based and 3% for special purpose rental apartments.[1] The rental dwelling stock encompasses 9%[2] of the total dwelling stock in Slovenia.[3] Once the registry of rental contracts (as part of the Real Estate Market Registry (Evidenca Trga Nepremičnin)) is successfully launched and operating, there are likely to be more precise data on this matter.[4]

4.2 Regulatory Types of Tenures Without a Public Task

Market rentals and employment based rentals do not have a public task. Market rentals are regulated in the legislation. However, great proportion of the activity in this sector is done through unofficial market due to the inadequate inspection and non-existing registers. The landlords are usually persons having more than one empty housing unit or an empty room. Therefore, they rent them out in order to obtain some extra earnings. The period for which the house in this sector is available for rent can be either open-ended or limited in time. It depends on the needs and preferences of renters and landlords. There are no regulatory differences between professional

[1] E. Miklič, 'Registrski popis 2011 – stanovanja, Sosvet za statistiko gradbeništva' (paper presented at the 8th Slovenian Real Estate Conference, Ljubljana, September 2012), 27.

[2] This is official number, not encompassing unregistered rental relations.

[3] 'Naseljena stanovanja, Slovenija, 1. januar 2011 – začasni podatki,' Statistični urad Republike Slovenije.

[4] More on this registry in the section 2.2.

and private landlords, probably since the number of professional landlords in Slovenia is insignificant.

Employment based rentals are provided by the employer. They are more commonly awarded in the public sector (public administration, officials, electives, etc.) than in the private sector. Every employer (state or municipal authorities, ministries) determines the conditions and criteria for the eligibility of individuals. The conditions are publicly announced in the call for application. Other features are also set with the call, for instance procedure, period for which the apartment is rented, the rent and security price, cancelation of rental relations and time limit for emptying the dwelling. Every employer enacts its own rules on allocation of dwellings for rent. However, the rules are quite similar, containing only slight differences.[5]

The following description is based on the Rules of Žalec municipality.[6] The applicants must usually be employees of the owner or other public officials. The eligibility is conditioned with the Slovenian or EU citizenship[7] (in addition, Rules of certain employers require that all of the family members residing with employee, must also have these citizenships), importance of the employee for the employer and that the applicant (or some of his closer family members) does not own or rent an adequate dwelling near the place of the employment. The other criteria (social situation, number of dependent household members, invalidity, education and other conditions, etc.) can be scored and the eligibility can then be awarded according to the number of points achieved. The documentation for applying includes: employment contract, certified statement on the ownership of other dwellings, current housing situation, recommendation from the superior, evidence on education and employment status and other documents from the call for application. The process of selection is led in accordance with the general administrative procedure, in which appeal is possible. After the decision on selection is final, the rental contract is concluded with the selected employee. In some exceptional cases, the dwelling can be awarded to other employee without the adherence of the procedure (for in-

5 For instance, the citizenship of employee and his family members.

6 *Uradni list Republike Slovenije*, no. 46/2011.

7 Only in exceptional cases may the dwelling be awarded to the non-citizen.

stance, employee is prevented from executing his obligations due to the housing distress). If there is no need for renting the apartments to the employees or none of the applicants is eligible, it is possible to rent the apartments as non-profit rent to individuals fulfilling the conditions.

Prior to the start of the residence, security deposit is needed, which is afterwards returned or calculated in the value of the rent. During the period of renting, it is possible to exchange the apartment due to the changed circumstances. It is possible to cancel the contract prior to the expiry of the rental period. Rental relation can be cancelled in the following cases, if: the employment is terminated, the employee is retired, he obtains some other dwelling and from other culpable reasons. The rental contract is not transferable to other household members.

Cooperatives, company law schemes, real rights of habitation or any other type of tenure are irrelevant in Slovenian housing system.

4.3 Regulatory Types of Tenures with a Public Task

Non-profit rentals and purpose rentals do have a public task. The rights of tenants in restituted and privatized apartments are also regulated similar to non-profit rentals. However, their function is not public in the strict sense, but they do have some social function.

Non-profit rentals are dwellings awarded by a municipality, state, public housing fund or other non-profit housing organization. They are intended for individuals with very low incomes, limited property and poor housing conditions. The procedure of awarding these apartments is based on a public notice, which is published in the media stating all necessary documentation that is to be submitted by the applicants. The landlords establish special committees for forming the lists of eligible applicants. Incomplete applications are to be completed in the time limit set by the committee. The decision is obtained based on the rules of the general administrative procedure within six months from the end of the public notice. After the list of prioritized rightful claimants has been formed, rental contracts are concluded.[8] The decision is subjected to the appeal to the mayor or other body in charge (steering committee). General conditions of eligibility are: Slovenian or EU citizenship, permanent

[8] Article 87 of the 2003 Housing Act.

residence in the municipality or the territory on which the landlord is operating, that the applicant and his family members have not already rented a non-profit apartment for indefinite period of time or (co)own a dwelling, that the applicant and his family members do not own a property in the value of 40% of an adequate dwelling and the value of determined income census of the household. Every notice sets out a particular target group, which is more prone to obtain an apartment. The fulfilment of conditions is assessed with points, whereas landlords are able to determine additional conditions. However, landlords must be careful to set conditions in a manner that the apartments are available for all social groups.

The rental contract for non-profit category must be concluded for indefinite period of time. The contract must minimally include the following: description of the apartment, its location, structure, communal equipment, the year of construction, manners of use, identifiable sign from the cadastre, personal details of both landlord and tenants and individuals residing with him in the apartment, reasons for termination of the contract, type of the rental tenure, provisions on mutual obligations, rent price, deadlines and manners of payment, manners and scale of other cost not included in the rent price, manner of transfer of the apartment into the possession of tenant.[9]

Landlords have a right to request from the tenants to submit evidence on eligibility for non-profit rental every five years. If the tenant is no longer eligible, the contract can be changed to market rental contract. This means that the tenant is not longer eligible to a lower rent. He also cannot obtain the subvention of non-profit rent, but would have to apply for the subvention of market rent. The landlord requests the data on the incomes of the tenant, declaration on the ownership of property and the official tax declaration from the Tax Office.[10] If the social circumstances of the tenant deteriorate again in the future, he has a right to request non-profit rent again.[11] As far as income census is concerned, it must not exceed certain percentage of average net salary[12] in the country in

[9] Article 91 of the 2003 Housing Act.

[10] Article 30 of the Rules on Renting Non-Profit Apartments and Article 90 of the 2003 Housing Act.

[11] Article 90 of the 2003 Housing Act.

[12] For 2012 the average net salary was around 990 EUR per month (the data are ob-

the calendar year preceding the year of the notice. The percentage depends on the number of household members: 90% for one member, 135% for two members, 165% for three members, 195% for four members, 225% for five members, 255% for six members. Households, which exceed these quotas,[13] must pay in addition the participation and security. The participation is invested into landlord's funds for generating new non-profit apartments. The amount is limited to 10% of the value of the non-profit apartment without the consideration of its location and is returned to the tenant in ten years with 2% interest rate. These relations are regulated with a special contract between the tenant and landlord. If the selected applicant does not conclude the special contract or fails to provide the amount by the set date, it is considered that he does not fulfil the conditions for selection and is denied the non-profit apartment.[14] [15] The security is paid in the maximum value of three-months rent. In some cases, if there is such an agreement, the security is calculated instead of the last few rents.[16]

Tenants, who do not exceed certain percentage of income census per household member, are acquitted from paying the own participation, as well as the security deposit. The percentages are: 90% for one member, 135% for two members, 165% for three members, 195% for four members, 225% for five members, 255% for six members.[17] These categories are considered as social renters. Landlords must specify how many dwellings are intended for this category of applicants within every tender. Nevertheless, tenders can define own participation of tenants as an advantage for the eli-

tained from the notice of municipality of Kranjska gora, available at http://obcina.kranjska-gora.si/razpisi/stanovanja/razpis%20oratece.pdf, retrieved on 20 August 2013.

[13] The percentages are: 200% for one member, 250% for two members, 315% for three members, 370% for four members, 425% for five members, 470% for six members. If households' incomes exceed these percentages of average net salary in the country in the calendar year preceding the year of the notice, the applicant is not eligible for the non-profit housing.

[14] As example of the value of the participation, for a 55m², the participation is around 4,600 EUR (http://www.jssmol.si/pogosta-vprasanja-in-odgovori/stanovanjska-dejavnost/#vpr_1, accessed 27 February 2013).

[15] Article 11 and 12 of the Rules on Renting Non-Profit Apartments.

[16] Article 5 of the Rules on Renting Non-Profit Apartments.

[17] Article 9 of the Rules on Renting Non-Profit Apartments.

gibility, though only for maximum one half of all apartments available in a particular tender.[18] The list of eligible applicants, who do not pay the participation, is announced separately from the list of other rightful claimants.[19]

The size of the apartment that is to be awarded is also determined *a priori*. It depends on the number of household members (in brackets are values for apartments with own participation): 20–30 m² (20–45 m²) for one member, 30–45 m² (30–55 m²) for two members, 45–55 m² (45–70 m²) for three members, 55–65 m² (55–82 m²) for four members, 65–75 m² (65–95 m²) for five members, 75–85 m² (75–105 m²) for six members. The tenant could be awarded with a smaller apartment than the prescribed. The reverse situation is also possible. However, for the surplus size of the apartment, the tenant must pay market price based rent. Therefore, in both cases, the tenant must agree with the smaller or larger apartment.[20]

The manner in which the non-profit rent is calculated is regulated with the Government Decree on the Methodology of Determination of Rents for Non-Profit Housing and the Criteria and Procedure for the Implementation of Subsidised Rents (*Uredba o metodologiji za oblikovanje najemnin v neprofitnih stanovanjih ter merilih in postopku za uveljavljanje subvencioniranih najemnin*).[21] Some elements of the non-profit rent include: costs for maintenance of the apartments and common areas, costs of managers of the buildings, amortization for sixty years, costs of financing the apartment, building and land. The rent is calculated annually, but paid in monthly instalments.[22]

Article 121 of the 2003 Housing Act also provides for the possibility of subsidization of the non-profit rent. The condition for eligibility is set as an income census of the renter and household members residing with him. The total income of the household must not exceed value of their minimal income[23] increased for 30% of their

[18] Article 87 of the 2003 Housing Act.
[19] Article 23 of the Rules on Renting Non-Profit Apartments.
[20] Article 14 of the Rules on Renting Non-Profit Apartments.
[21] *Uradni list Republike Slovenije*, no. 131/2003.
[22] Article 118 of the 2003 Housing Act.
[23] According to the Decision on Revalorizated Basic Amount of Minimum Income from July 2013, the value of the minimal income is different for each appli-

determined income and the value of the non-profit rent. The calculation of the household's income is determined in the same manner as the income for the needs of social protection procedures. The subsidy is set as the difference between non-profit rent and the determined income, decreased for the minimal income and 30% of the determined income. The value of the subsidy could be maximally 80% of the non-profit rent. When calculating non-profit rent, the actual size of the apartment is considered, though not larger than the size that is considered to be adequate according to the Decree. The subsidy does not include the running costs. If the rent actually paid is lower than the set value, the subsidy is calculated from the lower value. Tenants are eligible for the subsidy for the maximum of one year, while the value of the rent is unchanged throughout that year. The exception is anticipated in the case that the non-profit rent is increased during that year, in which case the tenant can apply for the increase of the subsidy as well. Providing that the income circumstances of the tenant do not change in that year, he can apply for the subsidy also in the following year. The decision on subsidy is given by the municipal organ in thirty days from the submission of the complete application. The possibility of appeal to the ministry in charge of housing matters is available.

Hence, in order to be awarded with a non-profit apartment, individual must apply to the public notice, when the former is publicly announced. He must submit necessary documentation. Apart from the application, the applicant must submit documents on incomes, statement on ownership of property,[24] the present rental contract, the last decision on calculations of income tax and other documentation set by the public notice.[25] Afterwards, the decision is rendered by the housing committee in charge. In the case that the applicant is not satisfied with the decision, he has a right to appeal to the second level authority.

Special purpose rental housing is designed to sooth the needs of

cant, depending on the number of members and their age. The value of basic value of minimal income for 2013 is 265,22 EUR per month. *Uradni list Republike Slovenije*, no. 63/2013). Afterwards, this value is multiplied by 0.7 for each adult and 0.3 for each child in the household.

[24] With this statement, the applicant and his household members allow the organ to inquire on their personal data.

[25] Article 19 of the Rules on Renting Non-Profit Apartments.

elderly citizens, who are not longer able to supply themselves or to care for themselves. Nevertheless, they are capable of living a relatively autonomous life with rare help of the professional stuff. Apart from rental purpose apartments, there are also purpose apartments intended for purchases.

The institutional care in the purpose apartments is regulated with the Rules on Norms and Standards of Social Services (*Pravilnik o standardih in normativih socialno varstvenih storitev*).[26] The apartments are constructed in the manner so to sooth the functional needs of elderly. For instance, the dwellings do not have doorsteps, have wider halls, larger bathrooms, adjusted equipment, etc.

The basic care encompasses assistance with residence (cleaning), organized nourishment and assistance with laundry. Social care refers to assistance with personal hygiene and assistance with social relations. The residents have constant emergency help available. In addition, the health care and assistance system is accessible. The scale of care for the individual resident depends on his capability of autonomous life. The standards of construction of these apartments are regulated in the Rules on Minimum Technical Requirements for The Construction of Residential Care Homes for Elderly and on Ensuring Conditions for Their Operation (*Pravilnik o minimalnih tehničnih zahtevah za graditev oskrbovanih stanovanj za starejše ter o načinu zagotavljanja pogojev za njihovo obratovanje*).[27] The Rules determine minimal technical requirements for the construction of the purpose apartments. For instance, the number of park spaces is determined, as well as access, entry, common areas, elevators, etc. The size of rooms is prescribed. The size of bedrooms must not be narrower than one half of their length and no less than 220cm. The width of the passages must be at least 100cm after the equipment is installed. The buildings have a caretaker (legal or natural person), who is responsible for twenty-four hour assistance to the residents.[28]

The largest investor in these apartments is the Real Estate Fund

[26] *Uradni list Republike Slovenije*, no. 45/2010.
[27] *Uradni list Republike Slovenije*, no. 110/2004.
[28] 'Oskrbovana stanovanja,' Ministrstvo za delo, družino, socialne zadeve in enake možnosti Republike Slovenije, accessed 23 December 2012, http://www.mddsz.gov.si/si/delovna_podrocja/sociala/izvajalci/oskrbovana_stanovanja/.

of Pension and Invalidity Institution (*Nepremičninski sklad Pokojninsko invalidskega zavoda*), whose owner is the Institution for Pension and Invalidity Security of Republic of Slovenia (*Zavod za pokojninsko in invalidsko zavarovanje Republike Slovenije*). The Fund is the owner of 170 apartments in nine municipalities across Slovenia.

The residents can be elderly, who are psychophysically capable of autonomous life, but require some assistance with everyday work. Additionally, eligible are individuals, whose present residence is inadequate in some manner (too far from the urban area, inadequately equipped regarding their invalidity), then partners of the eligible residents and individuals younger than sixty-five years, who fulfil other conditions. The applicants must have enough finance to cover the expenses of the rent and other costs. The condition of Slovenian citizenship is a requirement only for awarding the apartment with non-profit rent.

The procedure for obtaining one of these housing units is the following.[29] The Fund announces the tender for renting the apartments. Outside the tenders, it is possible to obtain these apartments through individual applications, when there is an available unit. The application is available on a special form. The advantage is given to the Slovenian elderly, who need assistance from a professional; then to those, who reside in inadequate dwellings or areas and to those, who have a permanent residence in the municipal, in which the dwellings are located. In addition, advantage is given to individuals, who have no relatives, who would be able to take care of them. If there is excessive number of applications, the Fund could establish additional conditions for eligibility. If the supply of apartments is larger than the demand, the former can be rented also to individuals, younger than sixty-five years, if they fulfil other conditions.

The tender is publicly announced in media only when the former regards the first rent of the newly-build or renewed dwellings or there are no satisfactory applications. The announcement encom-

[29] The following procedure refers only to the houses available through the Real Estate Fund of Pension and Invalidity Institution, according to Rules for Renting Special Purpose Rental Housingses (*Pravila za oddajanje oskrbovanih stanovanj v najem*).

passes: the description of the housing unit, conditions for eligibility, criteria for the election, procedure, as well as anticipated costs, date of occupancy, etc.

Apart from the special form, applicants must submit opinion on the fulfilment of the conditions from their personal physician. The opinion must not be older than one month. Additionally, certificate on capability of paying the expenses, certificates on citizenship and permanent residence must be submitted. The application is submitted to the legal person that is determined in the tender. A special committee is formed on the behalf of the Fund and legal person, who is responsible for the care in the dwelling. The responsibility of the former is to elect rightful claimants. The non-elected applicants have a right to appeal to the Fund in eight days from the notice. After the election is final, rental contracts are concluded with the rightful claimants. The contract is concluded for the indefinite period of time. Prior to the conclusion of rental contract, a prepayment contract is concluded and prepayment paid. This has a function of a security for possible unsettled debts or maintenance works.

As far as purchases of purpose apartments are concerned, they are available for every legal or natural person, who is otherwise eligible for the purchase of a real estate in Slovenia. Thus, the owner has the unit on his disposal and can rent it, until he himself needs it.

The relations in the denationalized apartments are regulated with Articles 173 to 180 of the 2003 Housing Act. The rental contract between the housing right holder and the previous[30] holders of ownership rights are still valid, regardless of the restitution of the ownership right to the denationalization claimant.

The housing right holder was able to purchase the apartment with the consent of the owner. If not, the holder could purchase other dwelling or construct a new one in five years from the enforcement of the 2003 Housing Act. In such case, the holder obtained a right to compensation of 36% of the value of the apartment in money and 25% in bonds from the Slovenian Compensatory Fund (*Slovenska odškodninska družba*), whereas 13% of the value in stocks was provided by the Republic of Slovenia. Moreover,

[30] Prior to the two processes.

the holder was able to obtain a housing loan from the Slovenian Compensatory Fund. The value of the compensations was determined on the behalf of the Ministry in charge of housing matters with an order. The right to administrative procedure against the order was possible. If the holder opted for the purchase of a new dwelling or construction, he was obliged to leave the apartment in one year from the awarding of the compensation. After that period, the owner was able to calculate a market rent or demand eviction with a lawsuit on the Court.

The holders of the housing right that were unable or did not want to buy another dwelling, but were prepared to empty the apartment, were able to apply for non-profit apartment, providing they fulfilled the conditions.

Article 176 stipulates that holder of the housing right, who had a right to an open-ended rental contract, had a pre-emption right on the apartment, unless the co-owner also used his pre-emption right.[31] Other pre-emption claimants are:[32] other condominium owners in that multi-apartment building, municipal, municipal housing fund, HFRS. The owner, who wished to sell his apartment, was obliged to send the offer with a delivery receipt to the claimant or to send the application to the Court. If the offer contained provision on the purchase price being paid entirely or in parts in cash, the offer was accepted only, if the amount was paid concurrently. If the pre-emption claimant did not accept the offer in sixty days from the offer, the seller was able to sell to the next pre-emption claimant. The next claimant was offered to buy the dwelling only under the same conditions or conditions, harsher for the buyer. If the holder of the housing right did not use his pre-emption right, his status had to remain the same. The pre-emption claimant was entitled to the registration of his right into the Land Register. If the sale was done without the offer to the rightful claimant or under more lenient conditions, the claimant had a right to lawsuit in order to annul the selling contract. This right was at this disposal for sixty days from the day that he had an insight into the selling contract.

[31] The sequence of preemption right claimants, in the case that the holder of the housing right did not use it, was also determined: other condominium owners in the building, municipal in which the house is located, the Housing Funds of RS.

[32] In that particular order.

If he did not have a possibility of seeing the contract, the right to lawsuit was given for sixty days from the day that he found out about the contract. However, the lawsuit was possible in one year from the registry of the ownership right into the Land Register. Upon the filing of the lawsuit, the plaintiff was obliged to submit the value of the purchase price or the security for it.

The right of pre-emption has been given to the janitors on the janitor's apartments in multi-apartment buildings with the amendment of the Housing Act in 2011.[33] The right was given to the janitors that were executing the duties of janitors prior to the enforcement of the Housing Act in 1991 and in other cases, determined with Article 175. (a) of the 2003 Housing Act, introduced in 2011.

[33] *Uradni list Republike Slovenije*, no. 87/2011.

Chapter Five

Origins and Development of Tenancy Law

Slovenian tenancy law originates from the beginnings of nineties.[1] Prior to the independence of the country, tenancy law had a minor importance for the citizens and the society as such, since the predominant type of tenure during socialism was based on the housing right. [2]

The period before the World War II was marked by a strong protection of the housing as a measure of social policy. The protection was especially intended for the employees and socially underprivileged citizens. There was a temporary requisition of the excessive, as well as empty dwellings from the citizens (natural and legal persons). The requited dwellings were then rented to the employees and socially underprivileged citizens in the housing distress. Special municipal bodies were established, Housing Offices (*stanovanjski uradi*). Rents were maximized. It was also prohibited to rent more than one dwelling. Sub-lease was also prohibited. Such a severe protection was somewhat remedied in 1921. The newly built dwellings were then exempt from the requisition, allowing the owners a free use of their property. Nevertheless, the old dwellings were still subject to protection.[3] Such circumstances (with varying degree of protection) remained until the World War II and introduction of socialism.

One of the first statutes enacted in this regard was the 1991 Housing Act (*Stanovanjski zakon*). Regardless of the fact that the Act enforced some ground provisions for the tenancy law, its main purpose was to regulate the process of privatization of the public housing stock.[4] Apart from the 1991 Housing Act, the rental (lease) contract

[1] Kerestes, 'Slovenia,' 1.

[2] For more, see section 6.1.

[3] F. Kresal, 'Stanovanjska zaščita po prvi svetovni vojni v Sloveniji,' *Arhivi* 28, no. 2 (2005): 165–173.

[4] Ibid., 2.

has been regulated in the Code of Obligations (*Obligacijski zakonik*, hereinafter: CO).[5]

In 2003 the new Housing Act was enacted (*Stanovanjski zakon* (SZ-1)).[6] The new statute was needed in order to regulate property relations in multi-apartment buildings, which were changed after the privatization.[7] Due to the transformations in the housing sector, the new structure of tenure had been hindering the management of the multi-apartment buildings. Some of the new owners of units were reluctant to take over their responsibilities as the owners and to arrange legal relations among themselves. The 2003 Housing Act regulated these issues, while addressing also some other questions (non-profit and social housing, for instance).[8]

There are two statutes regulating tenancy law in Slovenia. The general provisions are contained in the CO, whereas special provisions are regulated in the 2003 Housing Act.

The case law as such has had no major influence on the tenancy legislation, since Slovenia is defined as civil law system country, where case law is not officially binding. As far as the case law of the Constitutional Court is concerned, there have been numerous judgments challenging provisions of the 1991 Housing Act. However, almost all Constitutional Court decisions have dealt with the processes of privatization or denationalization, and not the tenancy law per se.[9]

Liberal democracy, pursued by the largest political party at the time, Liberal-Democrat Party, can be regarded as influential for the tenancy law and the Housing Act. At the time of the dissolution, there were two omnipresent opinions in the political circles: that the housing stock must be privatized in order to increase the efficacy of its management and that the ties with the socialism must be broken. The latter opinion was implicitly expressed in the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (*Temeljna ustavna listina o samostojnosti in neodvisnosti Slovenije*).[10] The act emphasized the fact that the

[5] *Uradni list Republike Slovenije*, no. 83/2001.
[6] *Uradni list Republike Slovenije*, no. 69/2003.
[7] Kerestes, 'Slovenia,' 2.
[8] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 34–5.
[9] Kerestes, 'Slovenia,' 2.
[10] *Uradni list Republike Slovenije*, no. 1/1991.

SFRY 'does not function as a state governed by law and that within it human rights, national rights, and the rights of the republics and autonomous provinces are grossly violated . . . .'

Moreover, the Housing Act had a task of regulating prospective situations regarding housing, which were not present or were less exposed during the period of socialism in Yugoslavia.[11] Due to the fact that prior to the independence Slovenia was a part of the socialist political system, some of the provisions of the 2003 Housing Act and secondary legislation governing tenancy law are still influenced by the socialist times.[12]

Some of the most important turns in Slovenian tenancy law were observed immediately after the independence from the SFRY in 1991. The state was eager to break off the ties with the socialism; therefore it introduced some novelties in its legislation. The first reform was brought about with Article 78 of the 1991 Constitution. This Article shifted the responsibility for housing issues from state to individuals. The role of the state was curtailed to merely creating possibilities for the citizens to obtain an appropriate dwelling. Compared to the former system, in which housing was primary concern of the self-governed units and state enterprises, the reform was major. It must be noted, however, that the described development was based on the Recommendation of the General Assembly of the UN from the 1980s, which encouraged the introduction of the 'principle of enabling' regarding access to the housing. The 1991 Housing Act further defined the reform regarding the role of the state. Article 79 offered a legal base for the establishment of the Housing Fund of Republic of Slovenia (HFRS), which was to take the responsibility for the housing policy from the state.[13]

Another reform was initiated in 1991 – the privatization of the public housing stock. The main idea behind the privatization was that the private sector is usually a better manager than the state. The housing stock shall be allocated among the citizens and private legal persons. Together with the privatization, the restitution of the denationalized property was conducted. As a consequence of the

[11] For instance, non-profit housing, market rentals, etc.

[12] For instance, regulation of rights of protected tenants in restituted apartments, who had housing right on the apartments in private ownership.

[13] Sendi, 'Druga stanovanjska reforma,' 22.

two processes, Slovenia has become the country of home-owners with neglected rental sector.

The Housing Act was amended in 2003 (when the new Housing Act was enacted). The primary concern of the 2003 Housing Act was regulation of relations among owners in multi-apartment buildings.[14] The Act also pursuit the 'principle of enabling' concerning the housing.

Further reforms were mostly introduced in the sector of savings and loans for the purchases of dwellings. The Government introduced the National Housing Savings Scheme (NHSS) in 2000 with the purpose of encouraging long-term savings for solving one's housing issue. However, due to the various reasons (described in section 1.2), the NHSS was not broadly accepted and had a little effect on the housing situation in Slovenia.

The construction boom during the period 2004–7 overwhelmed the housing market with new apartments and individual houses. Due to the increased supply on the market, the prices of both newly built and old dwellings began to increase, predominately due to the speculative practices of investors and other actors on the market.[15] After the market collapse and economic crisis, the construction sector experienced a downfall. Contrary to the predictions of economists and other experts, the prices of dwellings have not decreased. There is still shrinkage in this sector and some serious measures from the Government are yet to be taken. There is an abundance of uncompleted apartments and empty completed ones. On the other hand, the need for non-profit housing is ever growing. The new National Housing Program is in the process of enactment, which is most likely to bring some further reform of the housing and tenancy in Slovenia. It sets four long-term goals: balanced supply of suitable dwellings on the housing market, facilitating affordable housing for all residents, ensuring quality and functional housing, and encouraging the citizens to greater residential mobility. It also determines priority area for implementation of the NHP – provision of adequate and efficient supply of housing within period 2013–22. In this regard, the NHP proposes the following measures: creating conditions for easier management of the existing housing

[14] Kerestes, 'Slovenia,' 2.
[15] Marn, 'Preživeli bodo samo najboljši.'

stock, improving the stock in the sense of greater usefulness and lowering living costs and resolving the housing issues of the most vulnerable groups of citizens.[16] [17]

The Constitution of Slovenia does not contain a right to housing or any other similar right. The only provision concerning housing is enshrined in Article 78, specifying that it is the state's responsibility to create possibilities for the citizens to obtain an appropriate housing.

The ECHR did not have a significant influence on the tenancy law, since at the moment of enactment of the Housing Act Slovenia was not a Signatory State of the ECHR.[18] Nevertheless, there have been several cases related to tenancy issues.

One of the cases addressed the obligation of the landlord to conclude tenancy contract with the user after the death of the tenant and the discrimination thereof.[19] [20] The applicant claimed that he was discriminated against, since he was prevented from concluding a contract when the tenant, with whom he resided and took care, died. The main argument of the applicant was that the relationship between him and the tenant constituted a long-term life community as required by Article 56 of the 1991 Housing Act. At the same time, he argued that they were not emotionally involved. The Constitutional Court RS[21] has concluded that this is a mere economic community, to which Article 56 does not apply. Long-term life community referred to in Article 56 shall only be interpreted as a cohabitation of two individuals of opposite sex. It stressed that, even if the long-term life community were interpreted as a cohabitation of same sex individuals as well, the community of the applicant and the deceased was not such a community. As the community in which the two lived was a long-term community within the mean-

[16] For more on the anticipated changes, see section 1.2.

[17] 'Nacionalni stanovanjski program 2013–2022,' Ministrstvo za infrastrukturo Republike slovenije, accessed 9 March 2014, http://www.mzip.gov.si/si/zakonodaja_in_dokumenti/pomembni_dokumenti/stanovanja/nacionalni_stanovanjski_program_2013_2022/, 4.

[18] Kerestes, 'Slovenia,' 2.

[19] The case referred to Article 56 of the 1991 Housing Act, which is similar to Article 109(1) of the 2003 Housing Act.

[20] *Korelc v. Slovenia*, Application no. 28456/2003, judgement rendered on 12 May 2009.

[21] Decision no. Up-259/01 from 20 February 2003.

ing of Article 56, regardless of whether they were heterosexual or homosexual, there was no discrimination.[22] The ECHR upheld such argumentation. It stated that the domestic courts did not reject applicant's claim because of his sex, but because the community in question was merely economic one and not a long-term life community, as required by the law.[23]

Both courts have indicated that different approach to heterosexual and homosexual communities regarding transfer of tenancy contracts may lead to unlawful discrimination.[24]

At the moment, there is a complaint against Slovenia pending for the final decision in front of the European Court of Human Rights regarding the rights of denationalization rightful claimants and previous holders of housing rights (Complaint no. 14717/04, Cornelia Berger-Krall and others against Slovenia). In addition, there are another 430 complaints of the same type, administered under no. 55728/11 (Abdić and 418 others against Slovenia).

The applicants (former holders of housing right or their lawful successors) have asserted violations of: peaceful enjoyment of property contained in Article 1 of the Protocol I to the ECHR, in conjunction with Article 14; Article 8 (right to respect for private and family life) and Article 6 (right to a fair trial). The violations are allegedly the result of the regulation of applicants' legal status, enacted with the Housing Act (both the 1991 and 2003 Housing Act) and the Denationalization Act. The applicants were in distress due to: the loss of housing rights, discrimination regarding buying out the dwellings in the process of privatization in relation to other holders of housing rights, rent prices, which have been increasing to the level of market rents, jeopardizing applicants' social status, inability to participate in the process of denationalization. All the allegations have already been unsuccessfully asserted in front of the Constitutional Court of Slovenia (case U-I-00172/02). The ECHR declared the application admissible on 28 May 2013, stressing that the 'complaint raises serious issues of fact and law under the Convention, the de-

[22] Ibid.

[23] This was the main argument for distinguishing this case from *Karner v. Austria*, Application no. 40016/98, judgment from 24 July 2003.

[24] K. Zidar-Al-Mutairi, 'Prenos najemnega razmerja s pokojnega na osebo istega spola,' *Pravna praksa* 28, no. 21 (2009): 25–6.

termination of which requires an examination of the merits.'[25] The decision of the Court tends to be especially relevant since it will finally resolve the issue of the nature of housing rights, as well as future legal position of protected tenants.

The decision of the European Committee of Social Rights in the complaint FEANTSA *v. Slovenia* (described in section 1.5) has had certain effects, as well. The Government established the working group for addressing this matter. However, the results are yet to be seen.

[25] Decision of the ECHR (Fifth Section), Application no. 14717/04, from 28 May 2013.

Chapter Six

Tenancy Regulation and its Context

6.1 General Introduction

Central rules regulating tenancy are to be found in the section VI of the 2003 Housing Act. Issues not regulated by this Act are subsidiary regulated within the CO – in the chapter on the lease contract.

The landlord and tenant are obliged to conclude a written rental contract for definite or indefinite period. Contracts for non-profit rent must be concluded for indefinite period. The principle of the autonomy of parties applies also to tenancy; therefore, the contract is the result of mutual agreement of the parties. If the parties do not agree upon a certain question, the provisions of the 2003 Housing Act (and subsidiary the CO) are applicable.

The legal conditions for termination of tenancy contracts are predominately mandatory, in order to protect tenants' weaker position. The requirements for termination on part of the tenant are more lenient than those for landlord. Landlord and tenant are able to agree upon the requirements for termination by the tenant (for instance reasons for termination, the procedure, notice, etc.). The provisions of the 2003 Housing Act are applicable only when there is no agreement by the parties on specific matter.

Tenant may terminate the contract without any valid reason[1] at any time. The only requirement is a written ninety days notice.[2]

Landlords of non-profit dwellings may terminate the contract only due to one or more reasons exhaustively enlisted in the 2003 Housing Act. Other reasons for termination cannot be agreed upon.[3] Article 103 of the 2003 Housing Act states twelve reasons for termination of contracts. Eleven are applicable to all tenancy re-

[1] Unless the parties determine the reasons in the contract, due to which the tenant may terminate it.

[2] Shorter notice period is also possible, if the parties agreed on this in the contract.

[3] A. Vlahek, 'Najem neprofitnega stanovanja,' *Pravna praksa* 27, no. 4 (2008): 24–5.

lations (also market, employment based and purpose apartments), whereas one of the reasons is applicable only to non-profit relations.[4] [5]

Landlords and tenants in market dwellings (as well as employment based and purpose apartments) may agree on additional reasons for termination of the contract.[6] These reasons do not need to be limited to liability based reasons, but may encompass also other situations – for instance, the contract may be terminated if the landlord's son returns from the abroad.[7] If the additional termination reasons are not determined in the contract, the landlord may only terminate the contract may for the reasons stated in Article 103.

The non-profit rental relations can be established only upon special administrative procedure,[8] described in section 4.3.

As a minimum requirement, the contract must include: description of the dwelling, its location, communal equipment, the manner of use, identification number, information on the landlord and tenants, reasons for termination, the type of rental relation, mutual obligations and maintenance of the dwelling and the building, the rent price, the manner of paying and the scope of running costs, the period of tenancy, the manner in which the dwelling is handed over.

The legislation does not contain any provision on habitability of dwellings. The 2003 Housing Act determines only that the landlord must hand over the dwelling in a condition allowing normal use of the dwelling in accordance with the standards and norms. These are regulated by the Rules on Minimum Technical Conditions for the Construction of Apartment Buildings and Apartments (*Pravilnik o minimalnih tehničnih zahtevah za graditev stanovanjskih stavb in stanovanj*).[9]

The competent authority for assessing whether the maintenance

4 Providing the authority with false data in order to benefit from the subsidized rent.

5 Vlahek, 'Najem neprofitnega stanovanja.'

6 Ibid.

7 A. Vlahek, 'Odpoved stanovanjske najemne pogodbe,' *Podjetje in delo* 32, no. 7 (2006): 1235.

8 There are some exceptions, for example in the case that there is a weather disaster and the household is in emergent need of a housing solution.

9 *Uradni list Republike Slovenije*, no. 1/2011.

of the dwelling and common parts provides for the normal use of the dwelling in accordance with the standards and norms is the Housing Inspection (*Stanovanjska inšpekcija*). This authority is the part of the Ministry for Infrastructure and Space (*Ministrstvo za infrastrukturo in prostor*) and is in charge of housing matters. The main legal base for conducting its tasks is to be found in the 2003 Housing Act and the Protection of Buyers of Apartments and Single Occupancy Buildings Act (*Zakon o varstvu kupcev stanovanj in enostanovanjskih stavb*).[10] Its tasks must be conducted in accordance with the public interest and include: intervention when a single unit (being owner-occupied or rental) or common parts of multi-unit buildings are not maintained appropriately and represent a threat to the public interest, issuing orders in that regard and determining deadlines for elimination of deficiencies; ordering removal of an equipment installed by some of the condominium owners without the needed consent of other condominium owners; naming a temporary manager of the building, if the owners did not appoint one, etc.

The Supreme Court has reached a decision[11] on how 'normal use' is to be interpreted by the Inspection. The normal use should provide for the safe use of the dwelling or common areas. More importantly, the legal standard must be interpreted narrowly. For instance, the Housing Inspection may issue an order against the owner due to the failure to provide for the normal use of the dwelling in accordance with Article 125 of the 2003 Housing Act. The inspector may impose elimination and repair of only such deficiencies, which prevent safe use of the dwelling and/or common areas.[12]

The 2003 Housing Act states that the housing policy is responsibility of both national and local government (since an intermediate level of government in Slovenia has not been introduced yet). However, the competencies of the state and local level are divided.

The competencies of the state include: determining the housing policy in the developmental and spatial plan of the state, enacting NHP and providing the finance for its execution, concern for the

[10] *Uradni list Republike Slovenije*, no. 18/2004.

[11] Decision of the Supreme Court RS, no. U 1304/94-4 from 28 November 1996.

[12] The same was upheld by the Administrative Court in the Decision no. U 1623/2000 from 15 January 2003.

research in the housing sector, monitoring the level of (non-profit) rent in the country, establishing the Housing Council (*Stanovanjski svet*), keeping registers and statistical data for the housing sector and establishment of National Council for the Protection of the Rights of Tenants (*Nacionalni svet za varstvo pravic najemnikov*).

While the obligation of the Parliament is to enact NHP, the managing of NHP is in the hands of the HFRS. The HFRS also provides financial support to the NHP. Moreover, it promotes housing construction, renewal and maintenance of houses and buildings.

The local level is concerned with the enactment and execution of municipal housing programs. Its further competencies include providing finance for construction, obtaining and renting of non-profit dwellings and dwellings for the needs of socially endangered individuals, promoting different types of tenure, providing finance for subsidies of rents and exceptional help with housing, providing conditions for development of different types of construction and reconstruction with adequate land and normative policies, monitoring standards for planning, construction and reconstruction of dwellings on its territory, determining legal activities done in a part of a dwelling and keeping the registry of dwellings.

For the providing of non-profit housing and other obligations, a municipality can establish a public housing fund. Alongside the provision of non-profit housing, these funds are concerned with promoting housing infrastructure in the municipality and managing dwellings and building lands.[13]

In addition, the municipal assemblies may establish councils for protection of tenants' rights on the level of individual municipality. These can establish an organization of national level, which would represent tenants in front of state authorities.

Tenants have a mere personal (obligatory right) and not a real property right. The tenancy contract is regulated by the Housing Act and the CO, whereas the Real Property Code regulates only ownership and other real property rights.

However, the Land Register Act (*Zakon o zemljiški knjigi*)[14] lists several obligatory rights, which can be registered in the Land Register; tenancy is listed as one of the rights, for which the registration

[13] Sendi, 'Uvedba načela omogočanja,' 108.
[14] *Uradni list Republike Slovenije*, no. 58/2003.

is allowed. The registration does not have any real property effects. Its effect in general is merely publicity of the legal fact. This registration may be important for a prospective buyer of the dwelling, for instance, if there is an open-ended or very long limited in time tenancy contract concluded. In such case, he may not invoke the fact that he did not have knowledge of the tenancy contract.[15] Nevertheless, tenancy contracts have an *erga omnes*. Pursuant to Article 610 of the CO, the new owner enters into the legal position of the previous owner and must comply with the contract (for instance, he may not terminate the contract unless the contractual or lawful conditions are fulfilled), if the dwelling was handed over to the tenant before the sale.[16] However, if the dwelling was handed over to the buyer before the tenant moved in, the tenancy contract is effective only, if the new owner was aware of it. If the contract was registered in the Land Registry, the new owner could not state that he was unaware of it, due to the publicity effect of the registration.[17]

There are two principal statutes regulating tenancy law in Slovenia. General provisions are contained in the CO, whereas more specific provisions are to be found in the 2003 Housing Act.

The generalities of lease contracts (and not just the rental contracts for dwellings) are regulated in the CO in the chapter X. The provisions include: the definition of lease contracts, obligations of lessor and lessee, lessees' rights, sub-lease and cancellation of contracts.

The 2003 Housing Act regulates contents of rentals for dwellings. Its provisions govern in most part the relationship between the landlord and the tenant. It also defines the types of rental dwellings, rights and obligations of landlords and tenants, contents of rental contracts, non-profit housing, termination of rental contracts, rent prices, subventions, inspection, etc. Thus, the 2003 Housing Act regulates rentals in more detailed fashion than the CO.

The provisions of the CO are in principle dispositive, since it regulates civil relations between two equal parties. Hence, there is no need for a greater level of protection. On the other hand, provisions

[15] M. Tratnik and R. Vrenčur, *Zemljiškoknjižno pravo v teoriji in praksi* (Maribor: Inštitut za nepremičninsko pravo Maribor, 2008), 423–4.
[16] Ibid.
[17] Article 612 of the CO.

of the 2003 Housing Act contain a number of mandatory rules, since the basic premise is that the tenant is a socially weaker party in relation to the landlord. This demands a greater level of protection for tenants.[18]

In general, the relationship between the general and special rules provides sufficient legal certainty for parties. There are no legal constrains widely present in the case law, which would serve as an indication that legal certainty is not secured.

Cases of tenancy disputes are brought to trial in front of ordinary local courts on the first instance. These courts have jurisdiction in criminal and civil matters of smaller significance (for instance, in civil matters for the disputes, whose value does not exceed 20,000 EUR). There is no special jurisdiction of the courts in the tenancy disputes. The 2003 Housing Act specifies which matters are to be dealt with in the non-contentious proceedings and which ones in the contentious proceedings. For instance, disputes among the condominium owners are settled in the non-contentious proceedings, whereas disputes between the landlord and the tenant are settled in the contentious proceedings.[19]

Parties may appeal to the higher courts (the second instance). The possibility of extraordinary remedies is also available in front of the Supreme Court RS. However, some rather strict conditions are set in order for a decision to be rendered to the Supreme Court.

Although tenancy disputes have priority, the actual solution of the dispute is usually given a few or more months after the start of the proceeding. The average length of the proceedings in front of the first instance courts is 13.2 months, while the length of the appeal process is 4.6 months.[20] Thus, the dispute may actually be resolved in almost eighteen months after the initiation of proceedings. Slovenia has been faced with court delays for years, due to the overburdening of the courts.

[18] For instance, provisions on conditions for the termination of the rental contract.

[19] The termination of the tenancy contract, use of the dwelling without the legal basis, etc.

[20] Ministrstvo za pravosodje Republike Slovenije, 'Zaveza za izboljšanje stanja v sodstvu med Vlado Republike Slovenije in Vrhovnim sodiščem Republike Slovenije, 4. junij 2013' (Ministrstvo za pravosodje Republike Slovenije, Ljubljana, 2013), http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/PDF/131002_podpisana_ZAVEZA.pdf.

The possibility of alternative dispute resolution is available, although there are no specific procedures developed precisely for the tenancy matters.[21] Instead, a court-annexed mediation is usually offered to the parties.

No special public law duties or requirements influencing tenancy contracts had been in force prior to 1 July 2013. As of this date, there is an obligation for all landlords (natural persons, public and private legal persons) to register the rental contracts with the Geodetic Office of RS (Geodetska uprava Republike Slovenije).[22] Every new rental contract, as well as any change in the parties of the contract or the rent price, must be registered with the GORS by fifteenth of the following month. The contracts concluded before 1 July 2013 must be registered by 15 December 2013.

The legislation does not determine whether dwellings for renting are to be equipped and furnished. The 2003 Housing Act determines only that the landlord must hand over the dwelling in a condition allowing normal use of the dwelling in accordance with the standards and norms.[23]

There are only rules regulating the standards of construction of dwellings, the Rules on Minimum Technical Requirements for the Construction of Apartment Buildings and Apartments. This act regulates the standards for construction of dwellings and not tenancy per se.

Prior to the amendment of the 2003 Housing Act in 2008, the municipal organs kept a rental registry. Landlords were obliged to register rental contracts. This obligation (as well as the registry) was abolished in 2008.

6.2 Preparation and Negotiation of Tenancy Contracts

In general, landlords in market rentals are free to conclude rental contracts with any tenant they want/choose. However, Article 109 of the 2003 Housing Act imposes obligation on landlords to conclude the contract with certain individuals in the case of death of

[21] Kerestes, 'Slovenia,' 6.

[22] The GORS is the surveying and mapping authority in Slovenia, working under the Ministry of Infrastructure and Spatial Planning. The Office is not to be confused with The Land Register, for which Local Courts are competent.

[23] A. Vlahek, 'Pohištvo v najemnem stanovanju,' *Pravna praksa* 26, no. 27 (2007): 18–9.

TABLE 6.1 Preparation and Negotiation of Tenancy Contracts

Item	(1)	(2)	(3)
Choice of tenant	Through media advertisements or real estate agencies	Final priority list after the concluded public tender	Non-profit; market
Ancillary duties	Optional; upon the agreement	Regulated in the Rules	Non-profit; market

NOTES Column headings are as follows: (1) main characteristic(s) of market rentals, (2) main characteristic(s) of non-profit rentals, (3) ranking from strongest to weakest regulation, if there is more than one tenancy type.

the tenant. If the tenant dies, the landlord must conclude rental contract under the same conditions with the following individuals: tenant's spouse or extramarital partner, or one of the closer family members. In order to have such right, these individuals must actually have had resided in the dwelling with the deceased tenant, they must have had their residence registered on that address and they must have been enlisted in the rental contract as users alongside the tenant. A written request for the conclusion must be passed to the landlord in ninety days following the death of the tenant. In case of a disagreement between relatives regarding the issue of who is entitled to conclude the contract, the Court is competent to decide on the matter in the non-contentious procedure.

As far as non-profit sector is concerned, the obligation to conclude the contract with the certain individual stems from the nature of the non-profit rental relations, since the non-profit sector is closely related to the social and housing policy in the country. The selection procedure for tenants is regulated in detail. After the procedure is finished and the final list of priority rightful claimants is announced, the competent authority is obliged to conclude the contracts. The authority cannot freely choose the tenants, but is bound by the strict rules enacted in the Rules on Renting Non-profit Apartments.

More restrictions on the freedom of contracts were present in the 1991 Housing Act. Article 124(1) imposed an obligation on the owners of apartments to conclude tenancy contracts with former holders of housing rights, who opted for purchases of apartments, but were no longer able to cover monthly instalments. The buyers were entitled to request the dissolution of purchase contracts in such case and to request conclusion of tenancy contracts.

Article 147 obliged owners of dwellings to conclude open-ended tenancy contracts with holders of housing rights, residing in these dwellings (those who did not opt for purchase and those, whose dwellings were privately owned). Both of these Articles are out of use. However, in practice, there are still such tenancy contracts, which were concluded on the basis of these Articles.[24]

In order to find a tenant in market rentals, landlords usually submit an advertisement in the local newspapers, ad networks or proceed to one of the numerous real estate agencies for the services. Real estate agencies offer a wide range of services regarding renting: from finding potential tenants, passing the information on the landlord, to conclusion of contracts.

Selection of tenants in the non-profit sector, on the other hand, is done through series of regulated procedures, starting with a formal announcement on the allocation of available dwellings in the media. The announcement must enlist all the necessary documentation to be submitted by the applicants. The landlords establish special committees to prepare the lists of eligible applicants. The decision is based on the rules of the general administrative procedure and shall be passed within six months from the expiry of the public notice. When the list of final rightful claimants has been made, rental contracts are concluded. General conditions of eligibility are: Slovenian or EU citizenship, permanent residence in the municipality or the territory on which the landlord is operating, the applicant and his family members have not already rented a non-profit apartment for undetermined period of time or (co)own a dwelling, the applicant and his family members do not own a property in the value of 40% of an adequate dwelling and the value of determined income census of the household. Every notice sets out a particular target group, which is more prone to obtain an apartment. The fulfilment of conditions is assessed with points, whereas landlords are able to determine additional conditions. However, landlords must be careful to set conditions in a manner that the apartments are available for all social groups. Landlords have a right to request from the tenants to submit evidence on eligibility for non-profit rental every five years.

Market landlords usually question the potential tenants on their

[24] For more on this, see section 1.4.

incomes, financial situation, their employment, etc. No special requirements are prescribed in the legislation. Landlords may ask for a salary statement; however, there is no legal obligation on the tenant to provide one. Referring to the credit reference agency is not usual practice.

In non-profit sector there is a list of evidence that must be enclosed upon the application. The list includes, apart from the application form: the information on the income (salary statement), statement on the property status in accordance with the social protection statutes,[25] current rental or sub-rental contract (unless the applicant is in kinship with the owner), the last decision on the income tax, other documents required with the public announcement on the social and financial conditions, documents regarding invalidity (if he is a disabled person).

There are no lawful possibilities of gathering information on the potential tenants, nor are there blacklists of 'bad tenants.'

In order to check the potential landlord, tenants may carry out the following actions, depending on the fact whether the landlord is a legal or natural person.

There is a public database of all legal persons, registered on the territory of Slovenia, AJPES (The Agency of the Republic of Slovenia for Public Legal Records and Related Services, *Agencija Republike Slovenije za javnopravne evidence in storitve*). There is a possibility of obtaining a business record (financial situation) of legal persons, although the information is available upon the (free of charge) registration.

As far as natural persons are concerned, the GORS has enabled an access to different data, kept by the GORS, on real estate in Slovenia. There are four types of access: public access to data on real estate, personal access to data on own real estate, access to data on real estate for registered users and public access to the Registry of Real Estate Market. Both public accesses (to data on real estate and to the Registry of Real Estate Market) are available to all individuals, without registration. The public access to data on real estate encompasses access to all public data from the Land Regis-

[25] With these statements, given by the applicant and adult members of his household, they allow an access to the authority organ to their personal data in database of other state authorities.

ter, Cadastre, Registry of Real Estate, etc. Thus, tenant may find out if the property is registered, its intended use, manager of the property, its location, area, etc. However, pursuant to the decision of the Constitutional Court,[26] the data on the owner, who is a natural person, may not be public. The public access to the Registry of Real Estate Market is intended for the prospective buyers and tenants to check the prices of dwellings and rents in the neighbourhood before deciding on the purchase or renting.

Personal access to data on one's own real estate provides the access to graphical and descriptive data. This access allows an owner to verify the data as registered by the GORS in the Land Registry and Cadastre. In case of any mistake, the individual may refer to the GORS for the elimination of errors. Also important is the access to data on real estate for registered users. This is available to all individuals, who are pursuing registered activity, for which they need information on the real estate (for instance, real estate agents, court appraisers, etc.).[27]

The Real Estate Market Registry[28] has yet to be fully established. Once the registry is fully operating, it will be possible for the tenants to see if/how a dwelling or a building is registered (as residential, business, non-residential) and what its value is. In addition, the rent price for the dwelling (as well as for other nearby dwellings) will be available, as well as information on the area of the dwelling, start and duration of the rental relation.[29] Therefore, it should be more difficult for landlords to get a better value than the registered in that neighbourhood.

However, none of these checks by the tenants are usual in everyday Slovenian practice. The introduction of the Real Estate Market Registry is likely to change the standing practice in the future.

[26] Decision of the Constitutional Court RS, no. U-I-98/11-17 from 26 September 2012, *Uradni list Republike Slovenije*, no. 79/2012.

[27] 'Elektronski vpogled v geodetske podatke,' Državni portal Republike Slovenije, 2 September 2013, http://e-uprava.gov.si/e-uprava/dogodkiPrebivalci.euprava?zdid=1207&sid=869.

[28] For more on this registry, see section 3.4.

[29] Article 9 of the Rules on Keeping the Real Estate Market Register and on the Method of Communication of Data (*Pravilnik o vodenju podatkov evidence trga nepremičnin ter načinu pošiljanja podatkov*), *Uradni list Republike Slovenije*, no. 68/2012.

The services of the real estate agents in tenancy sector are not obligatory, although many prefer to use them, since the level of legal certainty is then usually higher. Another possibility is to engage only the services of a lawyer, once the landlord and tenant have agreed upon essentialities of the contract (the rent price, deadline for payments, etc.).

Many individuals decide to use the services of agents when they are not able to find a suitable tenant or landlord. The advertisements on available dwellings are to be found in the local newspapers or their special issues. Apart from the advertisements published by the real estate agencies, the individuals, who do not wish to pay the commission, also publish their own; thus they make an effort to find a tenant/landlord on their own. Since the black market is widespread, in these cases formal contracts are rarely concluded and no services of real estate agents or lawyers are engaged.

Those, who opt to engage the services of real estate agents, can rely on the agency to provide them with the following services: the viewing of the dwelling, verifying the legal state of the ownership of the real estate and potential rights of others, advertising, mediation with the process of negotiation for the conclusion of the contract, preparation of the tenancy contract[30] and secure keeping of reliability (if earnest money was given).[31]

The value of the agent's commission is set by the law as maximum 4% of the contractual price. However, in Slovenia it is usually between 2 and 4% of the price, depending on the quality and array of services offered. The commission is not in force when the value of the contract is less than 10,000 EUR. For other transactions, the value of the commission is set with the contract. For instance, for rental contracts it is usually set as the value of the one-month rent.[32]

The commission can only be charged to the client, who signed the brokerage contract, unless there is some other arrangement be-

[30] This service must be provided by the real estate agent, who is a lawyer or has passed a bar. Alternatively, the agency must engage services of the lawyer or the individual, who has passed the bar.

[31] 'Delo in dolžnosti nepremičninske agencije,' Slonep, accessed 26 January 2013, http://www.slonep.net/storitve/agencije-in-posredniki/vodic/delo-in-dolznosti-nepremicninske-agencije.

[32] 'Višina posredniške provizije,' Slonep.

tween the seller and the buyer. If the contract specified that both sides are to pay the commission, the value is divided in two, according to the agreed distribution of the value.

As mentioned above in the section on the role of real estate agents, the commission is in accordance with other countries. However, since prices of rentals in Slovenia are relatively high compared to other countries, the paid commission can be regarded as rather high.[33]

The legislation does not prescribe any ancillary duties of parties in the phase of contract preparation and negotiation. This is a matter of arrangement of the parties. For instance, the parties can agree that the landlord is obliged to paint the apartment, acquire a piece of furniture or repair certain equipment prior to the tenant's moving in.

In case the tenant decides not to conclude the contract, the landlord has a general (and rather theoretical) possibility of filing a civil law action for the reimbursement of the damage (culpa in contrahendo as a general civil law principle). However, in practice, it is almost impossible to fulfil the preconditions for such claim as the intent on the tenant's side must be proven (that the tenant never intended to conclude the contract and negotiated in bad faith). In cases of non-profit procedure, the dwelling is rented to the next rightful claimant on the priority list.

6.3 Conclusion of Tenancy Contracts

Other functionally similar arrangements of tenure bear little to no importance in Slovenia. Licence[34] as an arrangement of tenure is not used in Slovenia.

There are certain differences between the lease of a dwelling and the real right of habitation. Real right of habitation is regulated in the Law of Property Code, Section 3, Articles 227 through 248, whereas the lease is an obligatory right, regulated in the CO (*lex generalis*) and in the Housing Act (*lex specialis*). The habitation is defined in Article 247(1) as a personal easement, which gives the right to use other individual's dwelling or a part of it by the holder of the easement and his family members, in such a manner that the

[33] Cah, 'Nepremičninski agentje ooo.'

[34] The definition of licence is given in the Project's Glossary at the end.

TABLE 6.2 Conclusion of Tenancy Contracts

Item	(1)	(2)	(3)
Requirements for valid conclusion	General requirements for conclusion of obligational relationships; contract in writing; Article 158 of the Construction Act.	Public tender with the selection process of eligible applicants; general requirements for conclusion of obligational relationships; contract in writing; Article 158 of the Construction Act.	Non-profit; market
Regulations limiting freedom of contract	Article 91 of the 2003 Housing Act.	Article 91 of the 2003 Housing Act and indefinite term of tenancy.	Non-profit; market

NOTES Column headings are as follows: (1) main characteristic(s) of market rentals, (2) main characteristic(s) of non-profit rentals, (3) ranking from strongest to weakest regulation, if there is more than one tenancy type.

substance of the dwelling is preserved. The Law of Property Code does not define the term 'family members,' whereas the Housing Act determines who is considered as 'closer family member.'[35] In addition, the tenant may share the dwelling with other individuals, who are not his family members. The holder of the easement is entitled to use common parts of the dwelling as well. He may not pass this right onto another individual. On the other hand, the tenant can sublease a part of the dwelling upon the agreement with the landlord.[36]

The habitation is established with a legal transaction or court's decision, while the lease is established with the conclusion of the contract. The legal transaction for establishing habitation is an obligatory or inheritance legal transaction. It is mandatory to register the habitation right in the Land Register (*Zemljiška knjiga*), since this is the legal title (*modus aquirendi*) for the acquisition of the right. In case the right is established with the court's decision, it is valid from the day of the finality of the decision, irrespective of the registration.[37] There is no obligation on the landlord to register the tenancy contract in the Land Register. Article 179 of the

[35] Article 11 of the 2003 Housing Act.

[36] M. Tratnik, *Stvarnopravni zakonik z uvodnimi pojasnili prof. dr. Matjaža Tratnika in stvarnim kazalom* (Ljubljana: Uradni List Republike Slovenije, 2002), 152.

[37] Ibid., 151.

2003 Housing Act stipulates only that the contract, concluded for the infinite period, may be registered in the Land Registry.

Dominant owner (the person to whom the habitation right is given) has the right to use the dwelling in the broadest sense and to extract all natural and civil products of the easement. He is entitled to conclude legal transactions regarding certain rights of use (for instance, to rent the dwelling). The tenant's right to use the dwelling depends on the agreement with the landlord.

Dominant owner must cover all the expenses of the use of the dwelling (running costs and public duties). These must be paid even if the dominant owner does not have any benefits from the dwelling. Unexpected expenses and improvements are paid by the owner of the dwelling.[38] Similarly, the tenant is obliged to cover the running costs even if he does not actually reside in the dwelling. However, he does not have to cover public duties. The only exception is the payment of the compensation for the construction land, paid by the tenants in the non-profit rentals.

The habitation lasts until the death of the dominant owner. Afterwards, the possessor (usually the heir) must return the dwelling to the owner. If the dwelling is returned in a worse condition than it was handed over, the owner can demand the reimbursement for the deterioration. Exempt from this are the cases of deterioration due to vis major and regular normal use. Other manners to terminate the habitation include the cancellation by the dominant owner, destruction of the dwelling or cessation of the dominant owner (if he is a legal person). For the legal effect of the termination, the habitation must be erased from the Land Registry. The owner of the dwelling cannot terminate the habitation.[39]

The lease, on the other hand, is continued with the heirs of the tenant under the conditions from Article 109 of the 2003 Housing Act. In addition, the landlord can terminate the lease under the conditions provided in Article 103 of the 2003 Housing Act or the agreed conditions from the contract.

Neither the CO nor the 2003 Housing Act distinguishes among different types of tenancy contracts. Article 84 of the 2003 Housing Act provides that the tenancy contract can be concluded on a

[38] Ibid., 151–2.
[39] Ibid., 151.

part of a dwelling or on the whole dwelling. The compulsory elements of the tenancy contracts are enlisted in Article 91 of the 2003 Housing Act non-exhaustively, determining merely essential and minimum components of the contracts.[40] The parties are free to include other components as well, for instance: furnish in the dwelling/room, manner of sharing the dwelling with the landlord, etc. There is no such provision in the legislation that the rented dwelling must be furnished or necessarily un-furnished.[41]

The formal requirements for a valid conclusion of the tenancy contract are contained in several provisions of the 2003 Housing Act. Apart from the general requirements for conclusion of the contracts (legal capacity of the parties, absence of the misunderstanding between the parties, etc.), the mandatory requirement is also that the contract is concluded in writing. Otherwise, the contract is deemed to be null and void.[42]

The Construction Act (*Zakon o graditvi objektov*)[43] states in Article 158 that it is illegal to conclude lease contract (and several other contracts) on any building, which has been identified as unauthorized construction by the inspection.

As far as non-profit tenancy contracts are concerned, the formal requirement is also the compliance with the procedure on selection of eligible applicants. Prior to the conclusion of the procedure, it is not allowed to conclude tenancy contracts. The exception is allowed only for certain situation (e.g. when it is urgent to protect the household from unforeseen circumstances).[44]

If the apartment is awarded to applicant with the payment of own participation,[45] the selected applicant is obliged to conclude the special contract on the participation or to cover the amount of the participation prior to the conclusion of the tenancy contract. Otherwise, it is considered that he does not fulfil the conditions of the tender.

According to the 2008 amendment[46] of the 2003 Housing Act,

[40] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 168.
[41] Vlahek, 'Pohištvo v najemnem stanovanju,' 18.
[42] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 156.
[43] *Uradni list Republike Slovenije*, no. 110/2002.
[44] Article 29 of the Rules on Renting Non-Profit Apartments.
[45] For more on the participation, see section 4.3.
[46] *Uradni list Republike Slovenije*, no. 57/2008.

the obligation from Article 92(4) to register the tenancy contract with the Tax Office and municipal organ in charge was abolished.[47] Articles 164 and 165 of the 2003 Housing Act, regulating the municipal authorities in charge of the registration of tenancy contracts, were abrogated as well.[48]

The former registration procedure (no longer valid) was the following: the landlord was obliged to enclose three copies of the contract in writing, copy of the ownership certificate (if the ownership had not been registered in the Land Registry) and written agreement with the co-owners to the municipal organ in charge or via mail. The registration was free of charge.[49]

Slovenia has implemented the EU directives on non-discrimination with the Implementation of the Principle of Equal Treatment Act (*Zakon o uresničevanju načela enakega obravnavanja*).[50] This act regulates general discrimination issues. Article 2(1/8) enforces the anti-discrimination principle especially regarding access to the housing and supply.

The 2003 Housing Act provides in Article 160 that citizens of the EU members, who have a permanent residence in Slovenia and upon the condition of reciprocity, are equalled with Slovenian citizens regarding obtaining non-profit housing, subventions, favourable loans, etc.

The Rules on Renting Non-Profit Apartments contain several provisions on non-discrimination of applicants. Article 3(3) allows disabled persons to apply for the non-profit housing in any municipality in Slovenia, other than the one, in which they have the permanent residence, if there is a higher possibility of employment or health and personal assistance in that municipality. Article 6(1) provides a legal basis for positive discrimination of certain categories: families with more children, young, disabled, women, single parents, etc. Public landlords must take particular care when awarding the non-profit apartment to the disabled applicant or applicant, whose household member is disabled, so to eliminate possible con-

47 Article 14 of the amendment.

48 Article 30 of the amendment.

49 'Registracija najemne pogodbe za stanovanje,' Mestna občina Maribor, accessed 4 March 2013, http://www.maribor.eu/dokument.aspx?id=7888.

50 *Uradni list Republike Slovenije*, no. 50/2004.

strains regarding the accessibility and mobility of the disabled.[51] However, the actual situation is far from satisfactory. The percentage of available dwellings in non-profit sector, which is appropriate for disabled individuals, is small. This number usually depends on the readiness of municipalities to offer appropriate dwellings.[52]

For example, the Fifteenth non-profit tender for Ljubljana (from December 2012) provided ten apartments, architecturally adjusted to sooth the needs of disabled individuals permanently wheelchaired and eight apartments with installations adjusted for the hearing-impaired and blind. The overall number of available apartments was 350, meaning that less than 10% of apartments was appropriate for the disabled. Considering the fact that the number of disabled is higher in large municipalities (such as Ljubljana)[53] due to better employment and health prosperities, this percentage is very small.

In addition, one must not overlook the fact that landlords in market rentals are free to conclude the contract with person they choose. It would be difficult to prove that someone purposely discriminated against another person on any account, by refusing to rent the dwelling. Research conducted by the Institute for Minority Issues and published in 2007 has shown that 23.7% of migrants in Slovenia had been faced with problems when solving housing situation (with purchase or rent).[54] It is difficult to claim that in all of the cases the main reason was the nationality of the individual (although it probably was).

Regardless of the legislation and other documents, anti-discrimination is an inevitable part of housing sector. The relations in the non-profit are less prone to this issue, since the conduct of public landlords is subject to strict regulation, whereas the conduct of market landlords is not.

Mandatory minimum requirements in tenancy contracts are reg-

[51] Article 16 of the Rules on Renting Non-Profit Apartments.

[52] Fakulteta za družbene vede, *Posledice diskriminacije na družbeno, politično in socialno vključenost mladih v Sloveniji: analiza glede na spol, spolno usmerjenost ter etnično pripadnost* (Ljubljana: Fakulteta za družbene vede, 2008), 29.

[53] Ibid., 26.

[54] M. Medvešek, 'Razmišljanja o pojavih nestrpnosti in etnične distance v slovenski družbi,' in *Priseljenci*, ed. M. Komac (Ljubljana: Inštitut za narodnostna vprašanja, 2007), 209.

ulated in Article 91 of the 2003 Housing Act. These include: description of the dwelling; its position, area, structure, communal equipment and year of the construction; manner of use; identification sign from the cadastre; name, surname and tax number of the landlord; name and surname of the tenant and persons, who are to share the dwelling with him; reasons for termination from Article 103 of the 2003 Housing Act; the type of the tenancy; provisions on mutual obligations regarding the use and maintenance of the apartment and common areas; the value of the rent, manner and day of payment; payment of other costs, which are not part of the rent (individual running costs, e.g. electricity, water supply, central heating, etc. and common running costs, e.g. costs of maintenance of the common areas); provisions on the manner of use of the dwelling and landlord's visits; period of tenancy; manner of handing over the dwelling. Other contractual terms, such as the date of landlord's visit, tenant's obligations after the expiration of the tenancy period, permission to sublease, etc., are beneficial to avoid any possible dispute.

These requirements are a mere reminder to the parties of what should be determined with the contract. The view of the theory is that the absence of any of these elements cannot lead to the invalidity of the contract, since the majority of essential provisions can be determined directly through the provisions of the 2003 Housing Act.[55]

Article 91 does not distinguish between market and non-profit tenancy contracts. The only difference between the two is in the period of tenancy, which is *ex lege* set as indefinite for the non-profit rental contracts in Article 90.

There is no special protection for tenants to control the contractual terms in case when the landlord is a private person and not a commercial one. The contract is the result of free will of both parties.

According to Article 136 of the 2003 Housing Act, the Municipal Councils (*Občinski sveti*) are competent to establish Councils for the Rights of Tenants (*Sveti za varstvo pravic najemnikov*) in their mu-

[55] M. Juhart, 'Zakupna (najemna) pogodba,' in *Obligacijski zakonik* (OZ) *s komentarjem*, vol. 3 of *Obligacijski zakonik* (OZ) *s komentarjem*, ed. M. Juhart and N. Plavšak (Ljubljana: GV založba, 2004), 641.

nicipality. Only the Municipality of Ljubljana has established such Council since the enforcement of the 2003 Housing Act.[56] However, it is not in charge of helping individual tenants with their problems, but only for giving general recommendations and opinions on the legislation. For the assistance with individual issues the tenants are instructed to turn to the Slovenian Association of Tenants. This organization offers legal help free of charge, counselling on the rights and obligations, etc.[57]

Directive 93/13/EC was implemented in the Consumer Protection Act (*Zakon o varstvu potrošnikov*).[58] The provisions of this Act mostly apply to the relations between consumers and enterprises. However, Article 1(4) contains a provision stipulating that all obligations from this Act are applied also to the natural persons offering goods and services to the consumers. Private landlords fall within the notion of natural persons providing services to the consumers. The Act determines that the enterprise (or natural person) shall not set contractual terms, which are unfair for the consumer. Such terms would be deemed null and void.[59] Article 24 further enlists the conducts of the enterprises, which are considered as unfair.[60]

The provisions of the Consumer Protection Act encompass also the rules on general contractual terms, set by one party in the form of standard form contracts. These are binding for the consumer only, if he was acquainted with these terms prior to the conclusion of the contract.[61] The unclear terms are interpreted in the consumer's best interest.[62] However, these provisions are more applicable to the commercial landlords (since they usually have in advance prepared contracts) and not so much for natural persons, acting as landlords.

[56] *Uradni list Republike Slovenije*, 41/2007.

[57] 'Svet za varstvo pravic najemnikov,' Mestna občina Ljubljana, accessed 26 August 2013, http://www.ljubljana.si/si/mol/mestni-svet/drugi-organi-mol/svet-za-varstvo-pravic-najemnikov-stanovanj/.

[58] *Uradni list Republike Slovenije*, 14/2003.

[59] Article 23(1) and (2) of the Consumer Protection Act.

[60] For instance, that the enterprise is able to terminate the contract due to any reason whatsoever, that the enterprise is entitled to unilateral change of the essential contractual terms, that the enterprise is given a sole right to interpret the contractual terms, etc.

[61] Article 22(1) and (2) of the Consumer Protection Act.

[62] Article 22(5) of the Consumer Protection Act.

In addition, the CO, as *lex generalis*, contains several provisions controlling the contractual terms.[63] Article 120(1) of the CO states that:

> The general terms and conditions set out by one contracting party, whether contained in a formulaic contract or referred to by the contract, shall supplement the special agreements between the contracting parties in the same contract and shall as a rule be equally binding.

Paragraph 2 of Article 120 of the CO obliges that the general terms and conditions of a contract are published in the customary manner. According to the paragraph 3, these are binding on a contracting party that knew or should have known thereof when the contract was concluded. In the case of any discrepancy between the general terms and conditions and the special agreements, the latter are to prevail.[64] Article 121 stipulates that:

> (1) Any provisions of general terms and conditions that oppose the actual purpose, for which the contract was concluded, or good business customs, shall be null and void, even if the general terms and conditions that are contained therein were approved by the relevant authority.
> (2) The court may reject the application of individual provisions of general terms and conditions that remove another party's right to object or appeal, or provisions based on which a party loses contractual rights or deadlines or that are otherwise unjust or too strict for the party.

However, as stated above, these provisions are less applicable to the private landlords, since the contracts that they offer do not contain general terms and condition. Thus, the practical value of those provisions regarding tenancy contracts is questionable for the time being, since there are only few commercial landlords.

Apart from this, the CO regulates the basic principles governing the obligation relationships in Slovenia, contained in the CO and other acts. These principles are applicable to private parties concluding tenancy contracts as well. Article 5 contains the principle of conscientiousness and fairness:

[63] Kerestes, 'Slovenia.'
[64] Article 120(4) of the CO.

(1) When concluding obligational relationships and when exercising the rights and performing the obligations deriving from such relationships the participants must observe the principle of conscientiousness and fairness.
(2) Participants in obligational relationships must act in accordance with good business custom in their transactions.

Article 6 obliges the parties to act with the diligence required in legal transactions for the relevant type of obligational relationship (the diligence of a good businessperson or the diligence of a good manager).

Article 7 prohibits the abuse of rights. This is especially important provision, since it prevents imposition of excessive obligations on either the landlord or the tenant. Another important principle is the equal value of mutual performance, contained in Article 8. Duty to perform obligations is set with Article 9, stating that the party acting in contrary to this provision is liable for own actions.

The consequences of invalidity of contracts are regulated in the Subsection 4 of the CO. Invalid contracts can be either null and void (Articles 86 through 93) or challengeable (Articles 94 through 99).

The 2003 Housing Act gives the pre-emption right only to a tenant, former holder of the housing right, who concluded the tenancy contract for the indefinite term. He is eligible to this right only, if the co-owner of the dwelling does not use the pre-emption right himself and only in the situations set by the law.[65] [66] Otherwise, the owner must offer the dwelling to other condominium owners in the building, if the Real Property Law Act awarded them with the pre-emption right. If none of them expresses the wish to purchase the dwelling, the owner must offer the dwelling to the municipal housing fund or municipality in which the dwelling is located, or to the HFRS.[67] The owner offers the dwelling via letter with advice of delivery, or with the Court deposit. The offer must contain the purchase price and other purchase conditions. If the offer contains the condition that the purchase price or its part must be paid in

[65] If there is more than one co-owner, they all have a pre-emption right in accordance with their ideal parts. If there are two or more condominium owners, they all have a pre-emption right.
[66] Articles 66 and 124 of the Real Property Law Act.
[67] Article 176 of the 2003 Housing Act.

cash, the acceptance is valid only upon handing over the amount or deposit with the Court. If the pre-emption rightful claimant does not accept the offer in sixty days from the delivery of the offer, the owner is eligible to offer the dwelling to other individuals under the same or conditions less favourable for the buyer. The owner must enclose the contract with the third person in eight days from the certification by the competent authority. If the tenant does not use his pre-emption right, his tenancy position shall not deteriorate.[68] This right must be registered in the Land Registry upon the demand of the tenant. The tenant has the right to file the application for annulment of the contract, if the owner sells the dwelling to the other party or sells it under more lenient conditions. At the same time, the tenant may demand that the dwelling is sold to him under the same conditions. This right is available for sixty days from the day that the tenant saw the contract.[69] If the owner does not enclose the contract with the third party to the tenant, the tenant can challenge the contract in front of the Court in sixty days from the day that he found out about the contract. There is also an objective deadline: no later than one year from the registration of the new ownership right in the Land Registry.[70]

Nothing prevents the mortgagor to lease his apartment, nor are there other similar restrictions preventing the landlords to rent their dwellings. The services of real estate agents for conclusion of contracts are not obligatory. Some prefer to employ only the services of lawyers. The commission is paid only by the party, who signed the brokerage contract. If both landlord and tenant signed the brokerage contract, the value of commission is divided between the two. The usual value of the commission is the value of the one-month rent.[71] The Real Estate Agencies Act (*Zakon o nepremičninskem posredovanju*)[72] sets the maximum level of provision on 4% of the contractual price, if the value of the contractual subject is higher than 10,000 EUR and only for the selling and buying of the dwellings. For other transactions, the value of the commission is set

[68] Article 177 of the 2003 Housing Act.
[69] Article 178(1), (2) and (3) of the 2003 Housing Act.
[70] Article 178(4) and (5) of the 2003 Housing Act.
[71] 'Višina posredniške provizije,' Slonep.
[72] *Uradni list Republike Slovenije*, no. 42/2003.

TABLE 6.3 Contents of Tenancy Contracts

Item	(1)	(2)	(3)
Description of dwelling	Mandatory requirement	Mandatory requirement	Equal
Parties to the tenancy contract	Natural persons	Tenant is natural person, landlord is legal person	Non-profit; market
Duration	Usually definite term, even though indefinite is also possible	Indefinite term	Non-profit; market
Rent	Autonomy of parties	State determined	Non-profit; market
Deposit	One to two monthly rents	Determined by the landlord	Non-profit; market
Utilities	Usually paid by the tenant (landlord subsidiary liable)	Paid by the tenant (landlord subsidiary liable)	Non-profit; market
Repairs	Agreement	Strictly determined with the Rules on Renting Non-profit Apartments	Non-profit; market

NOTES Column headings are as follows: (1) main characteristic(s) of market rentals, (2) main characteristic(s) of non-profit rentals, (3) ranking from strongest to weakest regulation, if there is more than one tenancy type.

with the contract.[73] This value is not subject to limitations other than the general principles of the CO and usurious contract.[74]

6.4 Contents of Tenancy Contracts

Description of dwelling and indication of the habitable surface are both mandatory requirements of tenancy contracts. Apart from the two, Article 91(1) of the 2003 Housing Act enlists (regarding the description of the dwelling) also its structure, position, communal equipment and identification sign of the dwelling from the cadastre.

If the mandatory requirements for the conclusion of tenancy contracts are not provided, the contract shall be deemed null and void according to the general provisions in the CO.[75] The reason behind this is that the subject of the contract is unspecified. It is true that

[73] Article 5(1).
[74] Article 119 of the CO.
[75] Article 35 in conjunction with Article 86(1) of the CO.

the 2003 Housing Act is *lex specialis* in regard to the CO and that its provisions prevail. As stated above, Article 91(1) should be considered as a reminder of the issues that are to be agreed upon between the parties, as well as that the majority of these can be determined directly through the provisions of this Article. However, description of the dwelling and its area cannot be set with the 2003 Housing Act. These are the essential and mandatory contractual terms, apart from the rent price.[76] Omitting them can influence other matters. For instance, the calculation of a rent price of non-profit dwellings is based on, among others, the area of the habitual space. The absence of this data prevents from determining whether the rent price is properly calculated.

On the other hand, if the omitted part is not essential (it can be determined, which dwelling and area is the subject of the contract), the remaining part of the contract is still valid and obliges the parties. Even without the description of the dwelling and indication of the habitable surface in certain cases, the parties of the tenancy contract can still execute their rights and obligations.[77]

In line with this, the absence of description or habitual space of the dwelling shall lead to the nullity of the contract, when dwelling and area can otherwise not be determined.

If the data on the dwelling's description and habitual surface is wrong, the contract is not necessarily null and void. Two situations are possible: that the wrong data was provided by accident or on purpose. The CO regulates the first situation in Article 46, as a significant mistake:

> (1) A mistake shall be deemed significant, if it relates to the essential characteristics of the subject, to a person with whom a contract is being concluded if it is being concluded in respect of such person, or to circumstances that according to the custom in the transaction or according to the intention of the parties are deemed to be decisive, as otherwise the mistaken party would not have concluded the contract with such content.
> (2) The mistaken party may request the annulment of the contract for reason of a significant mistake, unless in concluding

[76] Juhart, 'Zakupna (najemna) pogodba,' 640.
[77] Article 88(1) of the CO.

> the contract the party failed to act with the diligence required in the transaction.
>
> (3) If a contract is annulled for reason of a mistake the party that acted in good faith shall have the right to demand reimbursement for damage incurred for this reason, irrespective of whether the mistaken party was culpable for the mistake.
>
> (4) The mistaken party may not make reference to the mistake if the other party is prepared to perform the contract as if there had been no mistake.

Thus, the mistaken party (usually the tenant), may request the annulment, unless he was negligent when concluding the contract and did not check the data. Additional condition is that the mistake was essential for conclusion of the contract.[78] If the tenant paid excessive amount of rent or costs on the account of the wrong data, he is eligible to claim reimbursement. If the landlord is willing to correct the contract and adjust it, the contract remains valid.

Providing the wrong data on purpose is regarded as Deceit:[79]

> (1) If one party causes the other party to be mistaken or keeps the other party mistaken for the purpose of leading the latter to conclude a contract, the other party may request the annulment of the contract even when the mistake is not significant.
>
> (2) A party that was deceived in concluding the contract shall have the right to demand the reimbursement of any damage that occurs.
>
> (3) Deceit enacted by a third person shall only affect a contract if the other contracting party knew or should have known thereof when the contract was concluded.

Due to the deliberate misleading regarding the description or habitual space, the tenant is entitled to request the annulment irrespective of the significance of the mistake[80] and demand the reimbursement.

[78] M. Dolenc, 'Bistvena zmota,' in *Obligacijski zakonik* (OZ) *s komentarjem*, vol. 1 of *Obligacijski zakonik* (OZ) *s komentarjem*, ed. M. Juhart and N. Plavšak (Ljubljana: GV založba, 2004), 346.

[79] Article 49 of the CO.

[80] This is assessed according to the fact whether the tenant would still conclude the contract, if he knew for the mistake. M. Dolenc, 'Bistvena zmota,' 358.

Neither the CO nor the 2003 Housing Act distinguishes between the residence contracts and mixed (residence/commercial) contracts. Mixed contracts must specify the type of commercial activity, which is undergone in the dwelling or its part. This is regarded as the mandatory requirement of the contract according to Article 91(1) of the 2003 Housing Act.

The municipalities are competent to determine the activities that may be undergone in the dwelling or its part.[81] The administrative authority (state or municipal, in charge of housing matters) is competent to issue a permit for performing these activities.[82] The Housing Inspection (*Stanovanjska inšpekcija*)[83] checks whether the dwelling is used in accordance with the permission. If the use is not in accordance with the permission or the permission was not issued altogether, the Inspection has the power to stop the activity until the proper permission is obtained.[84]

Landlord can be any natural or legal person capable to conclude contracts. Persons with general legal capacity can conclude contracts freely and without limitations. Persons with limited capacity to contract are allowed only to conclude certain contracts, set by the law, without the permission of their personal representative.[85] Other contracts must be approved by the personal representative of the person with limited capacity; otherwise, the contract is deemed challengeable and is valid only upon the approval of the personal representative. The legal transactions, which must be approved by the personal representative of the person with limited capacity, are those, whose subject is vital for that person's property and life conditions after reaching the adulthood.[86] [87] Whether tenancy contracts are to be approved by the personal representative depends

[81] Article 154(1/7) of the 2003 Housing Act.

[82] Article 14(1) of the 2003 Housing Act.

[83] The tasks of this authority are described in section 6.1.

[84] Article 129 of the 2003 Housing Act.

[85] Article 41(2) of the CO.

[86] For instance, according to Slovenian legislation, persons with limited capacity are able to conclude employment contracts without the approval of the personal representative, but they need an approval for selling/purchasing of a real estate.

[87] N. Plavšak, 'Pogodba poslovno nesposobne osebe,' in *Obligacijski zakonik* (OZ) *s komentarjem*, vol. 1 of *Obligacijski zakonik* (OZ) *s komentarjem*, ed. M. Juhart and N. Plavšak (Ljubljana: CV založba, 2004), 330.

on the period for which the contract is concluded. If the contract is a rather short-term and does not affect the person's property and life conditions after reaching the adulthood, the approval from the personal representative is not essential. For long-term contracts, the approval is needed and without it, the contract is challengeable. For instance, if an open-ended tenancy contract is concluded by a seventeen-year old as a landlord, it must be approved by landlord's legal representatives (i.e. parents), since long-term tenancy tends to influence landlord's property and life conditions after reaching the adulthood, especially if the contract offers little protection for the landlord. In certain cases, the landlord must first obtain the permission from the owner in order to lease the dwelling (e.g. in the case of sublease). The non-profit dwellings can be rented only by the landlords empowered by the state: non-profit housing funds, municipal housing funds, the HFRS, concessionaries, etc.

The position of a tenant is not affected by the respective change of the landlord (through inheritance or sale of the dwelling). The new landlord enters into the legal situation of the advance party, with all rights and obligations.[88]

Article 175 of the Enforcement and Securing of Civil Claims Act (*Zakon o izvršbi in zavarovanju*)[89] stipulates that the lease and tenancy relations are not terminated with the sale of the dwelling in an enforcement procedure (when the property is sold in auction and the purchase price used to pay the owner's debtors). The buyer (new owner) enters into obligations and rights of the previous owner.[90] However, if the lease or tenancy relation was concluded after the acquisition of the security right or land debt, the buyer is entitled to terminate the lease or the tenancy with one month termination period irrespective of the provisions of Articles 102 and 103 of the 2003 Housing Act.[91]

For tenants the same rules apply as for landlords. The tenant can be any natural or legal person having required capacity to conclude contracts. Hence, individuals with general legal capacity can conclude contracts freely and without limitations. Tenancy contracts

[88] Juhart, 'Zakupna (najemna) pogodba,' 705.
[89] *Uradni list Republike Slovenije*, no. 3/2007.
[90] Juhart, 'Zakupna (najemna) pogodba,' 643.
[91] Article 175(3) of the Enforcement and Securing of Civil Claims Act.

concluded for longer term must be approved by the personal representative of the person with limited capacity. If not approved, the contract is deemed challengeable and is valid only upon the approval of the personal representative. In practice, the approval is needed for all tenancy contracts (also contracts for shorter period of tenancy), since landlords are reluctant to conclude them with minors.

Regarding non-profit rentals, tenants may be only the individuals, who fulfil certain requirements from the 2003 Housing Act and the Rules on Renting Non-profit Apartments, as stated in section 3.3. (for instance, Slovenian or EU citizenship, permanent residence in the municipality, etc.).[92]

The 2003 Housing Act does not provide the list of persons who are allowed to move in together with the tenant. The only provision in this regard stipulates that the tenancy contract must contain the names and surnames of all the persons, who are to reside in the dwelling alongside the tenant. Tenant's duty is also to obtain landlord's consent, if the dwelling is to be used by a person, who is not enlisted in the tenancy contract, for more than sixty days in a three month's period.[93] The 2003 Housing Act does not precise the persons, for whom the tenant is not obliged to ask for landlord's permission.

Changes of parties are regulated in several different provisions of the CO and the 2003 Housing Act. According to the provisions of Article 618 of the CO and unless the contract provides otherwise, the death of one of the parties (tenant or landlords) does not necessarily result in the termination of the contract.

The 2003 Housing Act, as *lex specialis*, obliges the landlord to conclude the contract, after the death of the tenant, under the same conditions with either: tenant's spouse, extramarital partner or one of the closer family members, if they have actually resided in the dwelling upon the death of the tenant, have their residence registered on the address of the dwelling and were enlisted in the ten-

[92] However, there is no explicit requirement that the applicant must be an adult in neither Rules on Renting Non-Profit Apartments nor 2003 Housing Act. The analysis of the text of the Rules shows that the only provision regarding adulthood of the applicant is set with Article 19. This Article stipulates that the applicant must enclose data on his and incomes of other adult members of his household.

[93] Article 94(1/7) of the 2003 Housing Act.

ancy contract. This claim must be given to the landlord in writing in ninety days from the death of the tenant.[94] Article 11 determines who is regarded as closer family member for the purposes of the 2003 Housing Act: the spouse or extramarital partner,[95] their mutual children, adoptees, parents, adopters and persons, whom the tenant must lawfully maintain. If the closer family members cannot agree on the matter, the Court is to determine the tenant in a non-contentious procedure.[96]

It is important to note that the 2003 Housing Act does not mention 'heirs' as rightful claimants, but specifies the persons who are entitled to continue the tenancy instead. Although the landlord is obliged to conclude the contract with these individuals, there are strictly determined conditions, under which this provision is enforced: apart from the closed circle of individuals, who can demand the conclusion of the contract, the request must be given within the deadline and in the proper form.

The disintegration of marriage or cohabitation is regulated in Article 110 of the 2003 Housing Act. If the marital or extramarital union is disintegrated, the former partners are to agree upon the next person to become the tenant in the dwelling, while the other must move out. In the case that the agreement is not possible, one of the partners must demand that the Court settles the matter in the non-contentious procedure and determines the deadline in which the other person is to move from the dwelling. The Court considers the housing needs of the partners, their children and others residing with the partners, as well as the other circumstances. When determining the deadline for moving out, the Court must take into account the deadline from Article 112(4) of the 2003 Housing Act: the deadline must not be shorter than sixty and longer than ninety days. The new tenant has no legal obligations, for instance, to provide replacement dwelling.[97] These provisions are used for both market and non-profit rentals, while they are not used for employment based and purpose dwellings.[98]

94 Article 109(1) of the 2003 Housing Act.

95 In accordance with the provisions of the Marriage and Family Relations Act (*Zakon o zakonski zvezi in družinskih razmerjih*), *Uradni list Republike Slovenije*, no. 69/2004 and later amendments.

96 Article 109(2) of the 2003 Housing Act.

97 Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 204.

98 Article 109(3) of the 2003 Housing Act.

It must be noted that in cases of domestic violence,[99] the Court is entitled to grant the tenancy only to one of the marital or extra-marital partners – the victim. The victim may ask the Court to decide that the dwelling, which is co-used (based on co-ownership, usufructus or tenancy contract), is left to her/him.[100] The claim must be filed within three months from the first act of violence.[101] Such measure must be limited to six months and may be prolonged to maximum additional six months upon victim's request, if the victim failed to find other residence.[102] The victim is then regarded as the tenant and bears the running costs for the dwelling.[103] The violent partner may request from the victim to reimburse the costs of the sole use of the dwelling, if this is accordance with the principle of fairness.[104] For instance, in the Decision of the Higher Court in Ljubljana, no. IV Cp 2095/2010 from 9 June 2010, the Court decided that it was contrary to the principle of fairness for the victim (the wife) to pay one half of the rent for the husband (the violent partner). The wife requested for the prolongation of the sole use of the dwelling, since she was financially unable to find other dwelling. The Court argued that the wife was entitled to the sole use without any reimbursement to the violent partner, since she was taking care of the three children, as well as paying one half of the mortgage for the dwelling, in which they resided.

In the case of the student moving out, the replacement by another student as a new user of the dwelling is entirely a matter of the agreement between the tenant and the landlord. There are no special provisions on the subject. In practice, different arrangements are made, depending on the landlords' demands. Some landlords wish to control who is present in their dwelling as a tenant or user. Thus, they would rather replace the student themselves. Others are only concerned that the dwelling is used by a certain number of users and will leave the decision to other users.

The provisions of the CO include the possibility of subletting in general. The tenant is not obliged to use the object himself and is

[99] Family violence prevention act (*Zakon o preprečevanju nasilja v družini*), *Uradni list Republike Slovenije*, no. 16/2008.
[100] Article 21(1) of the Family Violence Prevention Act.
[101] Article 21(7) of the Family Violence Prevention Act.
[102] Article 21(2) and (3) of the Family Violence Prevention Act.
[103] Article 21(5) of the Family Violence Prevention Act.
[104] Article 21(6) of the Family Violence Prevention Act.

entitled to sublease the dwelling, unless the landlord opposes on justified grounds.[105] [106] Similarly, Article 84 of the 2003 Housing Act stipulates that subletting is allowed only with the prior consent of the landlord. Of course, the landlord is entitled to refuse to allow subletting. It is important to note that the 2003 Housing Act does not require justified grounds as a condition for refusing the subletting. The consent (or the prohibition) for subletting may be a constituent part of the original tenancy contract. Pursuant to Article 84(3) of the 2003 Housing Act, when the consent from the landlord is given, the tenant is allowed to sublet 'a part of the dwelling.' We believe, however, that the landlord may give the consent to sublet the entire rented dwelling and not just its part, as the provision on subletting is not mandatory.[107]

The subletting contract is concluded in writing[108] and only for determined period of time. There are no special requirements for this contract. Therefore, the provisions of Articles 94 through 112 of the 2003 Housing Act are applied by analogy, unless otherwise stipulated.[109]

The subletting contract is concluded between the tenant and the subtenant. The period of duration of the subletting contract cannot be longer than the duration period of the tenancy contract. If the tenancy contract is terminated, the subletting contract is terminated *ex lege* as well. Article 113(2) explicitly determines that the subtenant's right to use the dwelling is terminated when the tenancy contract is terminated from whichever reason, regardless of the fact that the period for which the subletting contract is concluded, has not expired. Therefore, the validity of subletting relationship completely depends on the validity of the tenancy contract.[110]

Since a large portion of market rental contracts are not concluded in writing,[111] there are no recordings of the abuse of subletting.

[105] Juhart, 'Zakupna (najemna) pogodba,' 695.

[106] The landlord is protected also with Article 606(1), stipulating that the dwelling can be subleased only if damage is not thereby inflicted on the landlord.

[107] Juhart, 'Zakupna (najemna) pogodba,' 695.

[108] Otherwise, the contract is null and void.

[109] Article 101 of the 2003 Housing Act.

[110] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 156.

[111] Despite the fact that written contracts are required by the law, the parties rarely conclude them due to the fear of tax burden.

There are also no recording of the misuse of subletting in the non-profit sector.

The provisions of the 2003 Housing Act indicate that the tenancy contract can be concluded only with one tenant. All of the provisions use the singular form of the term tenant. When more persons will reside in the dwelling, the contract is concluded with one of them, while the others are enlisted as users of the dwelling. This is also valid for spouses.

For instance, under Article 109(1) in case of the death of the tenant, the new contract is concluded with one of the closer family members, the (extra)-marital partner or other.[112] The family members must agree on who the tenant is to be. Otherwise, the Court is to determine this person.

Although the 2003 Housing Act allows open-ended contracts for market rentals, most of them in practice are limited in time.[113] Landlords in market rentals are usually private persons renting in search of an additional income, until they need the dwelling for other reasons (for instance, until the children are old enough to live by themselves). There are no limitations regarding the minimum or maximum duration of limited in time contracts.

The contracts for market rentals can be concluded for a definite term even when the landlord is a legal person (for instance, the HFRS). However, the duration is then limited on both ends. For example, the Public Notice for Renting the Apartments from 15 February 2013 determined that the contracts are to be concluded for the period of one to five years. When this period expires, the HFRS may prolong the contract.[114]

On the other hand, contracts for non-profit rentals must be concluded for the indefinite period of time.[115] Every five years, the landlord is entitled to verify whether tenants still meet the criteria from the Rules on Renting Non-profit Apartments. Thus, the

[112] The provision does not give priority to marital or extramarital partner of the deceased in relation to other users.

[113] Ibid., 166.

[114] Stanovanjski sklad Republike Slovenije, 'Javni razpis za oddajo stanovanj v najem' (Stanovanjski sklad Republike Slovenije, Ljubljana, 2013), http://www.najem.stanovanjskisklad-rs.si/doc/Splosni_dokumenti/20130215-Javni_razpis_oddaja_najem.pdf.

[115] Article 90(1) of the 2003 Housing Act.

criteria for obtaining non-profit apartment must be fulfilled during the entire period.[116] If a tenant no longer meets the criteria for paying a non-profit rent, the tenancy contract is changed into market rental. If the social circumstances of the tenant deteriorate again, the tenant is entitled to demand verification of the circumstances and change of his profit rent to non-profit once again.[117]

The landlord and tenant in market rental are free to agree upon the duration of the contract. If the contract is concluded for the definite period, this contractual term is regarded as essential.[118] According to the provisions of Article 95 of the 2003 Housing Act, the prolongation of the contract is left to the explicit demand of the tenant. The tenant, who wishes to prolong the duration of the tenancy, is obliged to ask for the permission of the landlord within thirty days before the termination of the contract. If the landlord agrees, the annex[119] to the contract is concluded. Otherwise, the tenant is obliged to vacate the premises within the period determined in the contract. This provision is only enforced in the case of market rentals, since non-profit rentals are always open-ended. A possibility of a tacitly renewed lease, regulated in Article 615 of the CO,[120] does not apply to the tenancy contracts due to the protection of the landlord (but only to leases of movables and real estate other than residential dwellings).[121]

The rent for market rentals is determined freely on the market, depending on the supply and demand. Its value is usually the result of the negotiation between the landlord and future tenant, according to the location, size and equipment of the dwelling. The rent value is an essential contractual term according to Article 91(1/7).

The only restriction on the level of rent is found in Article 119 of the 2003 Housing Act, regulating the usurious rent. This provision

[116] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 166.
[117] Article 90(2) and (3) of the 2003 Housing Act.
[118] Article 90(1/10) of the 2003 Housing Act.
[119] The annex must be concluded in writing, stating the new period, for which the contract is prolonged, Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 175.
[120] Article 615 of the CO: (1) If following the end of the period for which the lease contract was concluded the lessee continues to use the thing and the lessor does not oppose such, a new lease contract for an indefinite period shall be deemed to have been concluded with the same terms and conditions as the previous contract.
[121] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 175.

deems as usurious any rent, which is 50% or more percent higher than the average market rent in the municipality for the equal or similar category of dwellings, taking into account also the location and equipment of the dwelling.[122] Even though systematically Article 119 falls into the section on non-profit rentals, its provisions are also used for other types of rentals.[123] The practical value of this provision is that the tenant is entitled to demand the reimbursement of the excessive rent with the court of general competence (the local court) according to the rules of unjustified enrichment.[124]

Non-profit tenants are entitled to demand from the landlord to check the rent level and then be reimbursed with the excessive amount.[125]

The rent for non-profit rentals is determined with the Decree on the Methodology of Determination of Rents for Non-Profit Housing and the Criteria and Procedure for the Implementation of Subsidised Rents (*Uredba o metodologiji za oblikovanje najemnin v neprofitnih stanovanjih ter merilih in postopku za uveljavljanje subvencioniranih najemnin*).[126] The value of rent is determined for each apartment individually in accordance with the Decree. The methodology of determination of rents is a mere guiding principle for calculation of the maximum value of the rent based on different criteria, while the landlords are free to charge lower rents.[127] Therefore, in the market rentals, the freedom of contracts is (at least in theory) somewhat limited with the provision on usurious rent.

The non-profit rental contracts, which are generally more regu-

[122] For municipalities, in which the number of landlords is smaller than five or the majority of rented dwellings are owned by less than three landlords, the usurious rent is compared to the average rent in the region.

[123] Juhart, 'Zakupna (najemna) pogodba,' 641.

[124] This is not evident from the wording of Article 119, but can be assumed by analogy from similar provisions on usurious clauses, such as Article 18 a of the Consumer Credit Act. According to Article 18 a, if an usurious interest rate is agreed, the provision is null and void, and automatically the highest allowed interest rate applies.

[125] Article 120 of the 2003 Housing Act.

[126] *Uradni list Republike Slovenije*, no. 131/2003 and later amendments.

[127] Article 1 of the Decree on the Methodology of Determination of Rents for Non-Profit Housing and the Criteria and Procedure for the Implementation of Subsidised Rents.

TABLE 6.4 The Structure of the Highest Annual Value of the Non-Profit Rent in Percent

Elements of the rent	Buildings older than 60 years (%)	Buildings younger than 60 years (%)
Maintenance costs	Up to 1.11	Up to 1.81
Management costs	Up to 0.40	Up to 0.40
Amortization	Up to 1.67	Up to 0.97
Financing costs	Up to 1.50	Up to 1.50
Sum total	Up to 4.68	Up to 4.68

lated, leave a certain discretionary right to modify the value according to the social and economic circumstances in the region.

The rent for non-profit rentals is based on the level of costs. The rent is supposed to cover the costs of maintenance, management, amortization and financing of the non-profit dwelling.[128] The rent is calculated on the annual basis, but is paid in monthly instalments for the present month.[129] The calculation of rent prices is the task of the landlords (the HFRS, municipal funds or municipal authorities in charge of housing matters).

Article 3 determines the maximum value of the maintenance,[130] management, amortization and financing costs. The maintenance costs cannot exceed 1.11% of the value of the apartment for buildings younger than sixty years and 1.81% of the value of the apartment for buildings older than sixty years. The management costs are set as maximum 0.40% of the value of the apartment annually. The amortization can amount maximum 1.67% of the value of the apartment for buildings younger than sixty years, while the amortization for buildings older than sixty years is not calculated. Instead, an expense of 0.97% annually is not awarded on the account of investments for the prolonged use of the apartment. The financial costs are set as maximum 1.50% of the value of the apartment annually.

The sum total of all maximum values of the four elements is the upper limit of the non-profit rent and cannot exceed 4.68% of the value of the apartment. The structure is the following:

The Decree in Article 4 stipulates the base for the calculation of

[128] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 217.
[129] Article 118(10) of the 2003 Housing Act.
[130] These include also the costs of insurance of common areas.

the non-profit rent: it is the value of the apartment, determined with the Rules on the Criteria for Assessing the Value of Apartments and Apartment Buildings. The value is determined with the following equation:

> Value of the apartment = number of points × value of point × habitual area × influence of the size of the apartment × influence of the location.

The number of points, habitual area and influence of size of apartments are listed in the records on the determination of the value of apartments regulated in the Rules on the Criteria for Assessing the Value of Apartments and Apartment Buildings.[131] The value of the point is 2.63 EUR.[132] The influence of the location is determined by each municipality with an ordinance. In addition, the municipality can determine different regions within its territory with different values of the influence. The influence can be maximum 30% of the value of the non-profit rent. The quotient cannot exceed 1.3. In the case that the municipality did not regulate the influence with an ordinance, the quotient is 1.[133] For instance, the non-profit housing organization from Ljubljana calculated rent for several different apartments, which all have 320 points. The rent is determined as an average between the older less expensive and newer apartments. Rent per month for: studio apartment of 25 m² is 82 EUR; for apartment for three individuals[134] of 55 m² is 180 EUR; for apartment for five individuals of 75 m² is 246 EUR. Thus, the value of the rent for each rented apartment is set individually and can vary from one municipality to the other, as well as within the municipality itself.

In the case that the excessive rent is agreed, it is essential to determine whether this is deemed as usurious rent: the rent, which is 50% or more percent higher than the average market rent in the municipality for the equal or similar category of dwellings, taking into account also the location and equipment of the dwelling. At this point it is important to note that Article 119 of the 2003 Housing Act sets different conditions for the assessment of usuri-

[131] Article 5 of the Decree.
[132] Article 6 of the Decree.
[133] Article 7 of the Decree.
[134] Important is the area of the apartment and not the number of rooms.

ous rents as Article 119 of the CO, regulating usurious contracts in general. Article 119 of the CO requires two conditions for a contract to be usurious: the subjective (the party acted intentionally to gain some benefit) and objective (obvious disproportion between the executions of each party).[135] The qualification of rent as usurious, on the other hand, is only preconditioned with the objective element: obvious derogation of the rent price from the average rent for 50% or more, as stated above.[136] The injured party has two options: to request the annulment of the tenancy contract or demand that the contract remains valid and the rent price is diminished to the proper amount.[137] The protection is offered to all categories of tenants. However, tenants in non-profit rentals may choose one of these two mechanisms in either case of wrongly determined rent price, whereas market rental tenants must prove the derogation from the rent price for 50% or more.[138] In addition, non-profit tenants would probably opt for decrease of the rent, since it would still be more financially favourable for them than to terminate the contract. In the case that the tenant paid an excessive rent, he is entitled to claim back the overpaid amount of the rent.[139]

The rent for non-profit rentals is paid until fifteenth day of the month for the present month, unless otherwise determined in the contract. If the tenant fails to pay the rent until the set date, default interests on arrears are to be paid firstly, unless otherwise determined in the contract.[140] The tenant makes payments to the landlord, as stipulated in the contract.[141]

The manner and deadline for payment of the rent for market rentals is left to the agreement between landlord and tenant.[142]

Article 103 of the 2003 Housing Act regulates the reasons for termination of the tenancy contract due to tenant's fault for both non-profit and market rentals. Not paying the rent price or other costs (paid in addition to the rent) within the deadline set by the

[135] Juhart, 'Zakupna (najemna) pogodba,' 625–6.
[136] Ibid., 641.
[137] Ibid., 642.
[138] Ibid.
[139] Article 100(1/4) of the 2003 Housing Act.
[140] Article 10 of the Decree.
[141] Article 115(1) of the 2003 Housing Act.
[142] Article 94(1/6) of the 2003 Housing Act.

tenancy contract or in sixty days from receiving the bill, if the deadline is not set by the contract, is one of such reasons.[143] However, the landlord is obliged to firstly warn the tenant about the breach of the contract. The warning must include the breach, the manner of the remedy and additional deadline for payment, which may not be shorter than fifteen days.[144]

The 2003 Housing Act addresses these issues in Article 93. If the condition of the dwelling does not provide for normal use, the tenant may ask the Housing Inspection to order the landlord to perform the required works and provide for the normal use of either the dwelling or common areas of the building.[145] If the landlord does not comply with the order of the Housing Inspection within the set deadline, the tenant may conduct the needed work at landlord's expense. The tenant may set off the expenses, along with the interest, with the rent.[146] The Court[147] also acknowledged the retention right on the dwelling due to the failure of the landlord to reimburse the expenses of investments by the tenant. After the termination of the contract, the tenant has retention right on the dwelling, if the landlord owns him a certain amount on the account of repairs or investments into the dwelling during the course of tenancy.

The set off in general is regulated in Articles 311 through 318 of the CO. These provisions demand that the 'two claims are pecuniary or in other replaceable things of the same type and the same quality' and that 'both have fallen due.' Therefore, the parties (the landlord and the tenant) are able to offset their mutual debts, one being the rent price only, if the other is pecuniary as well (for example, the reimbursement of costs for repairs). If the rent price is paid in nature or in other manner – which happens rarely – the other debt must be of the same type and quality. In order for the set off to be effective, one party must declare so to the other.[148] Thus, it is not necessary that the parties agree on the matter, even though such situation is not excluded. The party, who does not agree that the

[143] Article 103(1/4) of the 2003 Housing Act.
[144] Article 103(3) of the 2003 Housing Act.
[145] Article 93(1) of the 2003 Housing Act.
[146] Article 93(2) of the 2003 Housing Act.
[147] Order of the Higher Court in Koper, no. Cp 826/2011 from 29 February 2012.
[148] Article 312(1) of the CO.

conditions for set off are fulfilled, has a right to contradict.[149] The debts must also be mutual. Unless both debts are of the same kind, mutual and have fallen due, the set off is not possible.

The CO determines the cases when the set off is excluded.[150] These include claims for which the creditor has an interest to receive the fulfilment as it was agreed.[151] [152] The contractual restrictions of the set off are not regulated. However, according to the general provisions, such contractual restriction would not be prohibited (for instance, the parties agree beforehand that a particular debt cannot be set off or that only one party has a right to declare the set off).[153]

The right of retention allows the tenant (creditor) of a due claim to retain any landlord's (debtor's) belongings in the tenant's possession until the debt is paid.[154] In case the landlord becomes insolvent, the tenant has the right of retention, even if the claim has not yet fallen due.[155] Article 262 stipulates the exceptions to this rule:

> (1) The creditor shall not have the right of retention if the debtor demands the return of a thing that against the debtor's will is no longer in the debtor's possession or if the debtor demands the return of a thing that was delivered to the creditor for safekeeping or for loan use.
> (2) The creditor may not retain an authorisation obtained from the debtor, other documents, cards, letters or similar things belonging to the debtor, or other things that cannot be placed on sale.

The tenant has the retention right only if the thing in his possession was obtained with the agreement of the landlord and the

[149] M. Juhart, 'Izjava o pobotu,' in *Obligacijski zakonik* (OZ) *s komentarjem*, vol. 2 of *Obligacijski zakonik* (OZ) *s komentarjem*, ed. M. Juhart and N. Plavšak (Ljubljana: GV založba, 2004), 395.
[150] Article 316 of the CO.
[151] Such claims are those: that cannot be attached, for things or the value of things that were placed in safekeeping or made available for loan for the debtor, or that the debtor rightlessly took or retained, arising through the intentional infliction of damage, compensation claims for damage done with damage to health or cause of death and deriving from a lawful obligation for maintenance.
[152] Juhart, 'Izjava o pobotu,' 407.
[153] Ibid., 409.
[154] Article 261(1) of the CO.
[155] Article 261(2) of the CO.

debt is due. The retention right cannot be established prior to the occurrence of debtor's delay.[156] For instance, in a vice versa situation, if the landlord retains certain tenant's assets from the dwelling by changing the lock on the door or disposition of keys after the termination of the contract, this condition is not fulfilled and the landlord does not have the retention right.[157]

If the landlord offers adequate security for the claim, the tenant is obliged to return the belongings.[158] The adequacy of the security is assessed according to the value of the retained asset and the security. If the value of the security is in accordance with the value of the debt (but smaller than the retained thing), the security is nevertheless adequate.[159]

When the tenant decides to repay the debt from the value of the asset in retention, he must notify the landlord on time regarding his intention prior to such decision.[160] If the retained asset is movable, the tenant must firstly obtain Court order that the asset is sold on a public auction. For the immovable assets, the provisions of the Enforcement and Securing of Civil Claims Act are applicable.[161]

As far as the retention right of tenant on the rent or parts of it, the current Housing Act does not provide such right. Pursuant to the general provisions on retention right from the CO, the right is reserved for things, which have a value and therefore can be sold. Rent, which is expressed in monetary terms, cannot be sold.[162] Therefore, it cannot be retained.

There are no restrictions for the assignment of the claims from rental contracts.[163] Pursuant to Article 417(1), the landlord may conclude a contract with the bank, assigning it the claims from the rental contract. The assignment has no legal effect, if the landlord and the tenant agreed that the landlord may not assign the

[156] M. Juhart, 'Izvrševanje pridržne pravice,' in *Obligacijski zakonik* (OZ) *s komentarjem*, vol. 2 of *Obligacijski zakonik* (OZ) *s komentarjem*, ed. M. Juhart and N. Plavšak (Ljubljana: GV založba, 2004), 275.

[157] Decision of the Higher Court in Koper, no. Cp 103/99, from 23 November 1999.

[158] Article 263 of the CO.

[159] Juhart, 'Izvrševanje pridržne pravice,' 280.

[160] Article 264 of the CO.

[161] Juhart, 'Izvrševanje pridržne pravice,' 282–3.

[162] Article 262(2) of the CO.

[163] Articles 417 through 434 of the CO.

claims.[164] However, if the landlord submits a document proving the existence of the claim, but does not contain the prohibition of assignment, the assignment contract is valid, unless the bank was aware of the prohibition or was expected to be aware thereof.[165] Assignment of the primary claim includes the assignment of the interests.[166] unless the parties agree otherwise.[167]

Tenant's approval of the assignment is not needed; however, the landlord must inform him on such contract. If the tenant pays the debt to the landlord prior to the landlord's information on the assignment, the payment is valid and the tenant is freed from obligation. If the tenant knew of the assignment of the claim to the bank, the payment is not valid, until it is paid to the bank.[168]

If the landlord assigns the claim to more than one individuals (for instance, to two or more banks), the valid assignment is the one, on which the tenant was first informed.[169]

The bank has the same rights towards the tenant, as the landlord had towards the tenant. The tenant may lodge any objections against the bank that stem from their mutual relationship, as well as the objections that he could have lodged against the landlord prior to the information on the assignment.[170]

The landlord must hand over to the bank the acknowledgment of the debt, if he has one and all other evidence on the assigned claim and ancillary claims.[171] If only one part of the claim is assigned, the landlord must enclose a certified copy of the acknowledgment of the debt.[172] The bank may also demand that the landlord issues a certified confirmation on the assignment.[173]

The landlord is liable for the existence of the claim upon the

[164] Article 417(2) of the CO.
[165] Article 417(3) of the CO.
[166] Article 418(3) of the CO.
[167] M. Juhart, 'Stranske pravice,' in *Obligacijski Zakonik* (OZ) *s komentarjem*, vol. 2 of *Obligacijski zakonik* (OZ) *s komentarjem*, ed. M. Juhart and N. Plavšak (Ljubljana: GV založba, 2004), 580.
[168] Article 419 of the CO.
[169] Article 420 of the CO.
[170] Article 421 of the CO.
[171] Article 422(1) of the CO.
[172] Article 422(2) of the CO.
[173] Article 422(3) of the CO.

conclusion of the contract on assignment.[174] The landlord is also liable for the enforceability of the assigned claim, although only to the amount that he received from the bank, as well as for the enforceability of the ancillary duties against the tenant.[175]

The rent payment may be replaced by a performance in kind due to the provision in Article 93(2) of the 2003 Housing Act, in addition to the agreement between the parties. This Article regulates the situation when the landlord does not provide the normal use of the dwelling. In such case, the tenant has a right to propose to the Housing Inspection to issue an order, setting the deadline for the provision of proper conditions for use. If the landlord fails to execute the order within the set deadline, the tenant shall provide the needed repairs himself. The costs of the execution, alongside the interests, can be offset with active debts of the tenant to the landlord on the account of the rent.[176]

The lien is established by the virtue of either a contract, court order or a statute. The tenant may not establish a lien, since he does not have a right to dispose with the dwelling, pursuant to Article 133 of the Law of Property Code.

The landlord does not have a statutory lien on the tenant's (movable) property. However, the landlord and the tenant may establish a contractual lien. Provisions of the 2002 Law of Property Code apply. Pursuant to Article 170 of the 2002 Law of Property Code, non-possessory lien may be established on the movable assets if the assets are not delivered to the creditor (the landlord), but remain in the possession of the debtor (the tenant) or a third person. The contract is then concluded in a form of a directly enforceable notary deed.[177] The agreement must contain: identification of the landlord and tenant (and the lienee, if he is not the tenant), legal basis, description of the asset(s), identification from the registry (if it is possible to register the movable asset in such registry[178]), the amount and maturity of the claim,[179] consent of the tenant on the establishment of the lien and repayment from the value of the mov-

[174] Article 423 of the CO.
[175] Article 424 of the CO.
[176] Article 93(2) of the 2003 Housing Act.
[177] Article 171(1) of the 2002 Law on Property Code.
[178] Such as cars.
[179] Or other information, based on which the amount and maturity can be identified.

able asset(s) after the maturity of the claim.[180] This agreement has an effect of the seizure of the asset in the enforcement procedure.[181]

The tenant may use the movable asset in accordance with their economic purpose or an agreement with the landlord. However, he has no right to sell or encumber the asset without the landlord's consent.[182] If the tenant decreases the value of the movable(s) with his conduct, the landlord may demand that the movable(s) are handed over to him or a third person. The non-possessory lien then transfers to the *pignus* (possessory lien). It is deemed that the parties agreed on the out-of-court sell of the movable(s).[183]

If the tenant does not pay the due rent, he or the lienee (if this is not the tenant) must hand over the asset(s) to the landlord.[184] Through this act the landlord obtains the possessory lien, for which it is deemed that the parties agreed on the out-of-court sell of the movable(s).[185] If the lienee does not hand over the movable(s), the landlord may demand the enforcement for the handing over or enforcement for selling of the movable(s).[186]

The movable asset(s) may be pledged in a non-possessory fashion more than one time. The tenant must inform all the creditors on the new non-possessory lien.[187] The repayment is executed upon the maturity of the first secured claim via one of the creditors or a third (authorized) person that the creditors agree upon. Otherwise, the Court determines the person, who is to sell the movable(s) following the proposal of one of the creditors in a non-contentious procedure.[188] The lienee must hand over the movable(s) to the authorized person for the selling, which is executed pursuant to the provisions of Article 167 of the 2002 Law on Property Code. After the expenses for the sale are deduced, the remaining amount is divided among the creditors, taking into account the order in which the non-possessory liens were established and their matu-

[180] Article 171(2) of the 2002 Law on Property Code.
[181] Article 171(3) of the 2002 Law on Property Code.
[182] Article 172 of the 2002 Law on Property Code.
[183] Article 174 of the 2002 Law on Property Code.
[184] Article 175(1) of the 2002 Law on Property Code.
[185] Article 175(2) of the 2002 Law on Property Code.
[186] Article 175(3) of the 2002 Law on Property Code.
[187] Article 176(1) of the 2002 Law on Property Code.
[188] Article 176(2) of the 2002 Law on Property Code.

rity. Non-matured claims are also repaid with the consideration of the interests.[189]

Article 167(2) of the 2002 Law on Property Code stipulates that if the secured claim is not paid upon its maturity, the landlord may sell the movable(s) at a public auction or at any stock or market price. The sale is executed in eight days from the day that the landlord warned the tenant that he is to sell the asset(s). The landlord must inform the tenant (and the lienee, if he is not the tenant at the same time) on the day and location of the sale in due time. The landlord repays his debt (as well as the interests and the expenses for the sale) from the obtained amount. The remaining amount is handed over to the tenant.[190] If the contract on the possessory lien (or the agreement on the non-possessory lien) contains terms, which stipulate a different manner of out-of-court sale, such provisions are deemed null and void.[191]

The 2003 Housing Act does not regulate the clauses on rent increase in neither open-ended nor limited in time contracts.

The gradual rent increase was enforced in the period from 2004 and 2006 for non-profit rents. Until the enforcement of the 2003 Housing Act, the level of non-profit rent was not unified, since the 1991 Housing Act determined different methodologies for calculation of the rent for different categories of tenants (for instance, former holders of housing right had different level of rent than those, who obtained the non-profit apartment through public tender). Therefore, the Decree on the Methodology of Determination of Rents for Non-Profit Housing and the Criteria and the Procedure for Implementation of Subsidised Rents set the annual percentage of increase of rents, until the value reached 4.68% of the value of the dwellings.

The Slovenian legislation is unfamiliar with both the automatic increase clauses and index-oriented increase clauses. The parties may agree upon the valorisation (e.g. price index or foreign currency exchange rate).[192] Otherwise, the rule of monetary nominalisation applies – the rent remains the same, unless it is explicitly

[189] Article 176(3) of the 2002 Law on Property Code.
[190] Article 167(2) of the 2002 Law on Property Code.
[191] Article 167(3) of the 2002 Law on Property Code.
[192] Article 371 of the CO.

TABLE 6.5 Gradual Increase of Non-Profit Rents

Year	Unamortised rent*	Amortised rent*
2004	3.81	2.54
1 January 2005	3.81	3.81
30 June 2005	4.03	4.03
31 December 2005	4.25	4.25
30 June 2006	4.46	4.46
31 December 2006	4.68	4.68

NOTES *Percentage of value of the dwelling.

agreed that it is valorised. In practice it is unlikely that the parties in the market tenancy contracts agree on the valorisation. This is mostly due to the low inflation rate in the last decades and the fact that most tenancy contracts are concluded for shorter periods of times (for instance one year). Before the enactment of the 2001 CO, the automatic revalorization was foreseen by the legislation in some cases. The obligations, which were explicitly subject to revalorization, were: pensions, social security contributions, taxes, insurance premiums, etc.[193]

Every increase of market rents has to be agreed upon the parties. Increase of non-profit rents must be determined with the amendment of the Decree on the Methodology of Determination of Rents for Non-Profit Housing and the Criteria and the Procedure for Implementation of Subsidised Rents or with formal revaluation of the value of dwellings.

The legal regulation of utilities considers only the maintenance and improvements of utilities. In practice, the conclusion of supply contracts is in the domain of the landlord.

Article 91(1/1) of the 2003 Housing Act enlists communal equipment as one of the essential contractual terms. In majority of cases (especially for the non-profit rentals) the dwellings are offered with all the necessary utilities and supply contracts, such as for electricity, water, central heating or gas supply, garbage removal. Other utilities and supply contracts are a matter of agreement between the parties, for example telephone, internet, television and cable.

[193] S. Cigoj, *Obligacijska razmerja: Zakon o obligacijskih razmerjih s komentarjem Stojana Cigoja* (Ljubljana: Uradni list Socialistične republike Slovenije, 1978), 371.

In case these are not provided at the start of the contract, the tenant is allowed to acquire them.

However, Article 96(1) of the 2003 Housing Act obliges the tenant to obtain a written consent from the landlord in advance when changing the living quarters, equipment and installations, and when carrying out improvements. This consent is deemed as authorisation in front of the competent authority for obtaining appropriate licence.[194] Landlords cannot refuse the consent, if the following conditions are fulfilled: the intervention is in accordance with contemporary technical demands and in tenant's personal interest, the tenant bears the costs, the alteration does not jeopardize landlord's and other condominium owners' interests, none of the common areas of the building or its exterior is damaged.[195] These conditions are deemed fulfilled for certain interventions: improvement or reconstruction of electricity, gas, heating or sanitary equipment; intervention for decreasing the use of energy or increase the functionality; improvements subsidized or financed by loans from public funds; telephone installation, installation of necessary aerial and other appliances for radio and television reception, if the connection to the present installation is not doable.[196] In case that the landlord did not give the consent, the tenant may demand that the Court substitutes the consent by a court order.[197] The landlord may condition the consent with a demand that the dwelling is restored to the previous condition or that the tenant renounces the reimbursement of the costs.[198] This regulation is applied to both non-profit and market rental relations.

The tenant is obliged to cover the costs stated in the contract and not included in the rental price. These can include individual running costs and common running costs.[199] This regulation is especially important for the non-profit rentals, since the provisions of the 2003 Housing Act and other regulatory acts are mandatory for this type of the rental relations. The individual running costs for non-profit rentals are paid to the supplier and include: costs of

[194] Article 96(2) of the 2003 Housing Act.
[195] Article 97(1) of the 2003 Housing Act.
[196] Article 97(2) of the 2003 Housing Act.
[197] Article 97(3) of the 2003 Housing Act.
[198] Article 97(4) of the 2003 Housing Act.
[199] Article 91(1/8) of the 2003 Housing Act.

heating, costs for water and sewage, costs of electricity and power consumption, costs of telephone, cable, television and radio bill, costs of used gas, costs of compensation for the use of the construction land[200] and other costs related to the use of the apartment.[201] The common costs are paid to the manager of the building and encompass: costs of electricity for running common appliances and lightning of common areas, costs of cleaning common areas, manager costs, costs for landscaping, other running costs and costs of regular maintenance work of smaller value in the common parts of the building, which are charged from the manager in accordance to the regulatory acts.

In market rentals the parties may agree upon the range of the costs that are to be paid by the tenant; the level of the rent price is usually in accordance with the scope of other costs borne by the tenant.[202]

In practice, the tenant and landlord in market rentals may agree that the tenant is to pay a lump-sum, covering both rent price and running costs. In that case, the tenant has no other costs, unless otherwise stated in the contract or annex.

Pursuant to Article 24(4) of the 2003 Housing Act, the tenant is obliged to pay all the costs regarding the management of the multi-apartment building (for management of common parts, for costs for which individual assessment of consumption is not possible, costs of pest control, cleaning of common parts and protection against fire, etc.[203]), while the landlord must cover all other costs (e.g. payments into the reserve fund[204]), unless the tenancy contract states

[200] This cost is paid to the Tax Administration of Republic of Slovenia.

[201] Rules on Standards for the Maintenance of Apartment Buildings and Apartments (*Pravilnik o standardih vzdrževanja stanovanjskih stavb in stanovanj*), *Uradni list Republike Slovenije*, no. 20/2004; Stanovanjski sklad Republike Slovenije, 'Splošni pogoji za oddajo stanovanj v najem' (Stanovanjski sklad Republike Slovenije, Ljubljana, 2013), http://www.najem.stanovanjskisklad-rs.si/doc/Splosni_dokumenti/20130221-Splosni_pogoji_najema.pdf.

[202] A. Vlahek, 'Vzdrževanje najemnega stanovanja,' *Pravna praksa* 26, no. 23 (2007): 19–20.

[203] Article 25(3) in the 2003 Housing Act.

[204] Reserve fund are compulsory monthly payments by condominium owners. The fund is intended for possible maintenance work on the building and cannot be used for other purposes. The manager of the building is in charge of the fund. He must open a special banking account only for storage of these payments. These

otherwise. Notwithstanding this regulation, the landlord[205] is subsidiary liable for the operational costs.[206] However, the landlord is not subsidiary liable for costs of utilities, if the tenant is stated as the user (for instance, services of internet provider or any other services, which are charged directly from the tenant) and provided he informed the manager of the building about the tenancy contract. Otherwise, the landlord is liable for these costs directly (and not subsidiary), since he failed to inform the manager on renting the apartment. Pursuant to Article 20 of the Rules on Multi-Dwelling Buildings Management (*Pravilnik o upravljanju večstanovanjskih stavb*),[207] the manager of the multi-apartment building must send a written notice to the tenant, who is in delay with the payment of bills. At the same time, he must send the information on the notice and delay to the landlord as well.[208]

Neither the Rules, nor the 2003 Housing Act, do not answer the question when does the subsidiary liability of the landlord occur. According to the 2009 Opinion of the Ministry for Space and Environment, the subsidiary liability of the landlord occurs in the moment that all legal, court and enforcement procedures against the tenant are finalized unsuccessfully. However, Pavlina challenges this view, arguing that the subsidiary liability must occur earlier in the procedure. Otherwise, the subsidiary liability of the landlord loses its purpose – duly and efficient payment of creditors' claims. He supports his view with the fact that it is reasonable to expect from the landlords to secure the possible claims towards tenants due to failure to pay their debts (for instance, with a deposit).[209]

Allowing the occurrence of the subsidiary liability of the landlord

means are not part of the manager's financial assets, nor are the condominium owners entitled to divide the fund among them.

[205] Article 24(5) in the 2003 Housing Act expressly referred only to landlords in market and employment based rentals. However, the 2008 amendment of the Housing Act (*Uradni list Republike Slovenije*, no. 57/2008) deleted the reference to the market and employment based rentals. Therefore, according to the valid Housing Act, the subsidiary liability is determined for all landlords, irrespective of the status of the rentals.

[206] Article 24(5) of the 2003 Housing Act.

[207] *Uradni list Republike Slovenije*, no. 60/2009 and later amendment.

[208] U. Pavlina, 'Subsidiarna odgovornost etažnega lastnika za obratovalne stroške,' in *Pravna praksa* 31, no. 40 (2012): 18–9.

[209] Ibid.

after legal, court and enforcement procedures are finalized, may be too late, since the prescription period may expire. It would be sounder to allow the occurrence of the landlord's subsidiary liability upon the unsuccessful attempt to collect the debts from the tenant after the written notice.[210]

The bills for utilities can be addressed to either the landlord or the tenant. For non-profit rentals the bills are addressed to the tenant. He is obliged to conclude contracts or annexes to the contracts, concluded with the landlord, with individual suppliers upon the request[211] within the set deadline. Non-compliance with this provision is a liability based reason for termination of the non-profit apartment.[212]

For market rental contracts, which are usually concluded for limited period of time, the bills are often addressed to the landlord. This is probably due to the time consuming procedures for changing the addressee with the supplier.[213] However, for certain bills (for internet, telephone, cable), the addressee is the tenant, if he was the one introducing the utility to the dwelling.

Increase of prices for utilities is relevant only for the cases when the tenant and landlord agreed on the lump-sum rent, covering both rent price and running costs. In that case, the landlord is entitled to increase the rent. Thus, the increase of prices of utilities does not usually influence rentals, since the tenant receives the bill (either from the landlord, landlord's authorized person or his own).

The 2003 Housing Act and regulatory acts do not regulate the matter directly. The disruption of supply can be regarded as a material defect of the leased asset (in this case, of the dwelling). For the analysis of legal consequences it is important to determine what or who caused the disruption.

[210] Ibid.

[211] Probably from the landlord.

[212] 'Splošni pogoji za oddajo stanovanj v najem,' Stanovanjski sklad Republike Slovenije.

[213] For instance, for the supply of electricity, the supplier and the new addressee must conclude a new contract on the supply of the electricity and contract on the access to the electricity network. Concurrently, the old addressee must terminate his contract with a statement containing the following data: the reason for termination, the identification number of the meter, account credit, the date of the change, data on the new addressee.

If the tenant is liable for the disruption (for example, due to the non-payment of the bill for the supplied good or services), the landlord's liability for a material defect is ruled out.[214] This is in accordance with Article 100(1) of the CO, stating that in 'a bilateral contract each contracting party shall be liable for material defects in the party's own performance.'

Another important point is that the landlord is subsidiary liable for the bills, which tenant fails to pay. For instance, if the tenant does not pay the electricity bills, the landlord is liable; otherwise, the provider may enforce the payment from the landlord as the owner. The provider may also stop the supply of the service.[215] The Higher Court of Ljubljana found[216] that it would be too burdensome for the landlord to keep paying the tenant's bills and at the same time not being able to prevent the accumulation of the bills. Therefore, it allowed the interruption of supply following the landlord's request to the electricity provider, deeming the conduct of the landlord as allowed self-help.

However, the Constitutional Court of Republic of Slovenia found that disruption of supply in multi-apartment buildings, in which there is no technical possibility to individually stop the supply of water, is not allowed, if only certain units failed to pay the bills. Allowing the general disruption of supply would violate Article 33 of the Constitution (the right to private property). In addition, disruption of supply as a manner of compelling debtors to pay the matured bills represents an excessive measure and is unconstitutional.[217]

It has to be stressed, however, that the issue here was not paying the bills for running costs and the rent price (as remuneration for the use of the dwelling, without the running costs).

According to Article 92(1/2) of the 2003 Housing Act, the landlord is obliged to maintain the dwelling and building, in which the dwelling is located, in a condition to provide the normal use. Supply of utilities (especially electricity, water, sewage, heating, gas supply) certainly falls within the scope of the 'normal use.' Therefore, if a

[214] Juhart, 'Zakupna (najemna) pogodba,' 651–2.

[215] Article 50 of the Decree on General Conditions for the Supply and Consumption of Electricity.

[216] Decision of the Higher Court in Ljubljana, no. I Cp 3167/2006 from 26 October 2006.

[217] Decision of the Constitutional Court RS, no. Up-156/98 from 15 June 1998.

certain utility is not provided, the landlord bears the liability. This liability is objective. The landlord is liable irrespective of the fact whether he is responsible for the situation or not. This interpretation is in line with the interpretation of Article 592 of the CO, regulating liability for material defects for lease contracts in general. The liability, as interpreted, is not a penalty for the landlord, but rather an instrument, adjusting distribution of risk between the parties.[218]

The legal concept behind the deposit is that it is mainly a guarantee to cover potential claims of the landlord after the termination of the contract. The 2003 Housing Act does not regulate (the manner or the amount) of the deposit. In market rental relations, it is possible for the parties to agree that the deposit is returned after the termination of the contract or that it be offset with one or more last rents.

For the non-profit rentals the legislator has anticipated two types of duties: own participation of the tenant and deposit. They are intended for the applicants, whose level of income exceeds the level for obtaining an apartment without one's participation according to the Rules on Renting Non-Profit Apartments. The level of the two is regulated with this act. The deposit is regulated in Article 13 of the Rules. It is defined as financial means intended for restoration of the original state of the apartment, bearing in mind the normal use of the apartment. Its value is limited with the level of maximum three monthly rent prices. The landlord and the tenant must determine the mutual obligations regarding the deposit in the tenancy contract. Contractual terms must define the payment, reimbursement and revaluation of the deposit. In certain cases the landlord may approve the payment of deposit in instalments. The deposit is returned or calculated into the remaining debt of the tenant, considering the revaluation of the amount of paid deposit. Provided that the tenant did not restore the state of the apartment to its previous condition or failed to cover the rent or running costs, the deposit is not returned.

The value of deposit in non-profit rentals is set at maximum three monthly rents.[219] In market rentals, when the landlord is not a legal

[218] Juhart, 'Zakupna (najemna) pogodba,' 658.
[219] Article 13(2) of the Rules on Renting Non-Profit Apartments.

person, the value of deposit is usually between one to three monthly rents, but can also be more.[220] When the landlord is a public legal person (the HFRS, municipal housing funds or non-profit organizations), the value of deposit is usually six monthly rents.[221]

There are no special provisions regulating the storage of the deposit. Interest rates are not anticipated. However, the revalorization is regulated for public landlords, while private landlords may agree on valorisation according to Article 372 of the CO.

The revalorization is important in certain circumstances, since prior to the introduction of Euro in the year 2007, the formal currency in Slovenia was Slovenian Tolar (SIT). The deposits, given before 2007, must therefore be revaluated upon the return.

Landlord is allowed to use the deposit to restore the dwelling to the condition, in which it was before the tenant started his residence. If the tenant properly maintained the apartment, taking into account the normal use, the landlord can offset the deposit with the due rent price and other costs.

Articles 92 and 94 of the 2003 Housing Act regulate the obligations of the landlord and tenant, in addition to some regulatory acts, regarding the repairs in the dwelling, as well as the maintenance in general.

Article 92 of the 2003 Housing Act and the Rules on Standards for the Maintenance of Apartment Buildings and Apartments[222] regulates the obligations imposed on landlords. These provisions are intended for both non-profit and market rental landlords. However, the landlords of market rentals are able to determine their obligation in a different manner, if they reach an agreement with the tenant. If a maintenance issue is not regulated in the contract, the provisions of the 2003 Housing Act and the Rules on Standards for the Maintenance of Apartment Buildings and Apartments apply.

[220] 'Sklenitev najema,' Slonep, accessed 13 March 2013, http://www.slonep.net/vodic/najem/sklenitev-najema.

[221] 'Splošni pogoji za oddajo stanovanj v najem,' Stanovanjski sklad Republike Slovenije

[222] This act regulates the standards of maintenance of the multi-apartment buildings and other dwellings. These standards refer to the anticipated period of use of elements, installations, appliances and equipment, as well as description of maintenance work needed for reaching maximum using period of each element (Articles 1(1) and 1(2) of the Rules).

The primary concern of the landlord is to maintain the dwelling and the building in such a manner that the normal use of the dwelling is possible.

According to Article 94 of the 2003 Housing Act and Article 6 of the Rules on Standards for the Maintenance of Apartment Buildings and Apartments, some of the maintenance work and repairs are responsibility of the tenants. Article 6 of the Rules refers to the two annexes attached to the Rules for the more precise determination of the scope of the tenants' and landlords' obligations. The Rules apply only to the tenants in non-profit rentals and not to other categories. Such interpretation is not based on any provision of the two acts, but is evident from the heading of the tables in the annexes.[223]

Tenants are, for instance, obliged to repair the broken glass windows;[224] to repair entry and indoor doors (key-locks, doorknobs, frameworks, etc.);[225] to repair the chipped tiles, walls and floors (only smaller scale repairs);[226] to regularly paint the walls and ceilings;[227] to change broken siphons, wires and fuse;[228] to service the seals for gas fire.[229] They are also obliged to regularly check and clean appliances and equipment in accordance with the Annex 1. All of the enlisted works are of a smaller scale, whereas the manager of the building (or the landlord) is obliged to conduct bigger scale repairs. The same applies to the building land in front of the building. Tenants are obliged to regular cleaning, whereas the landlord or the manager is obliged to repair and maintain the elements enlisted in the Annex 2.

The relation between the tenant and the mortgagee depend on the time of the foreclosure of the mortgage. If the tenancy preceded the conclusion of the mortgage contract, the rights of the tenant in relation to the buyer (after the mortgagee initiated the enforcement procedure) remain the same, even after the buyer enters into the position of the landlord.[230] Hence, there is no direct connection

[223] Vlahek, 'Vzdrževanje najemnega stanovanja,' 19.
[224] Annex 1, point 110.
[225] Annex 1, points 123–41.
[226] Annex 1, points 142–75.
[227] Annex 1, point 192.
[228] Annex 1, points 213–42.
[229] Annex 1, points 244–8.
[230] Article 175(1) of the Enforcement and Securing of Civil Claims Act.

between the mortgagee and the tenant. On the other hand, if the tenancy contract was concluded after the mortgage contract, the position of the buyer (i.e. the new landlord)is protected. He has a right to terminate the tenancy contract with one month notice without stating the reason for termination.[231]

6.5 Implementation of Tenancy Contracts

The 2003 Housing Act does not regulate the disruptions of performance prior to the handover of the dwelling in relation to tenancy contracts. On the other hand, this matter is regulated in reference to the pecuniary relations between investor and buyers of dwellings (Articles 122 and 123 of the 2003 Housing Act). According to Article 122, investor, who is constructing a new multi-apartment building, is to designate a manager of the building within sixty days from the completion of the construction. The investor may start to sell the individual units before the completion of the multi-apartment building; however, he may not begin until he obtains a final building permission.[232] The buyer may rent his dwelling prior to the completion and handover from the investor, with an obligation to handover the dwelling to the tenant afterwards.

If the investor is in delay with the handover and the parties (investor and buyer) agreed upon the penalties, provisions of the CO are used (Article 247 to 254).[233] General rules are contained in Article 247:

> (1) The creditor and debtor may agree that the debtor will pay the creditor a specific monetary sum or will provide any other type of material benefit thereto if the debtor fails to perform the debtor's obligation or is late in performing the obligation penalty.
> (2) Unless it follows otherwise from the contract, the penalty shall be deemed to have been agreed for the case when the debtor is late in performing. (3) A penalty may not be agreed for a pecuniary obligation.

[231] Article 175(3) of the Enforcement and Securing of Civil Claims Act.
[232] Article 123(1) of the 2003 Housing Act.
[233] M. Juhart, 'Pogodbena kazen,' in *Obligacijski zakonik* (OZ) *s komentarjem*, vol. 2 of *Obligacijski zakonik* (OZ) *s komentarjem*, ed. M. Juhart and N. Plavšak (Ljubljana: GV založba, 2004), 231.

The breach of the contract, according to the CO, can be either improper performance (performance with a delay or performance with legal or material defect) or failure to perform (which emerges when the non-defaulting party withdraws from the contract due to the improper performance).[234]

In order for the creditor (the non-defaulting party) to obtain the right to penalties, two general assumptions of liability for the breach of the contract must be proven: that the breach of the contractual obligation is objectively unlawful[235] and that the reason for the breach lies with the party, who was to perform the obligation.[236] It is not required, however, that the damage actually occurred.

If the parties do not agree upon the penalties, the non-defaulting party is left with only a general civil action for damages due to the breach of the contract. In this case, the non-defaulting party is at a disadvantage, since he must also prove an additional assumption of debtor's business liability for damages - the damages sustained due to the breach of the contract.[237]

However, 'the creditor may not demand a penalty, if the non-performance or delay occurred for a reason for which the debtor is not responsible.'[238] For instance, when the buyer demands that the dwelling or its parts are altered in accordance with his preferences. If the handover of the dwelling is delayed exclusively due to extensiveness of the alterations ordered by the buyer, the investor is not responsible for the delay.[239]

When the landlord is in delay with the handover of the dwelling due to the delayed handover from the investor, the tenant may not

[234] Ibid., 233.

[235] However, some (also objective) contractual breaches are not unlawful. These include situations, in which the defaulting party is entitled to refuse to perform the obligation: if he raises a plea of simultaneous performance reasonably or a plea of compromised performance or other pleas of creditor's delay of the opposite party; or if he exercised the right to waive the contract (if he is entitled to this right as a consequence of improper performance or failure to perform of the other party, or in the case of exercising the right to withdrawal); or if his obligation ceased due to the impossibility of performance for which he is not liable. Ibid., 240).

[236] It is important to note that it is presumed that the reason for the breach of the contract is always with the party, who is to perform the obligation. Ibid., 232.

[237] Ibid.

[238] Article 250 of the CO.

[239] Decision of the Higher Court of Ljubljana, no. II Cp 993/2011.

demand damages from the investor directly. His contractual relationship is with the landlord (the buyer). The same rules on contractual penalties apply. Therefore, in order to be effective, the penalties for non-performance or delayed performance must be contractually agreed upon between the landlord and the tenant. The landlord then may demand the reimbursement of the penalties from the investor, if they included the penalty clause in their contract. If penalty were not agreed, the buyer may still initiate a civil law claim for damage suffered due to lost rent. However, such claim may be initiated only if the investor could have been aware that the buyer concluded a tenancy contract – if the buyer told the investor that he has concluded a tenancy contract or if it was obvious from the circumstances that the dwelling will be rented. If the penalty is not contractually agreed between the tenant and the landlord, the tenant is left with the general civil action for damages, under the condition that he suffered actual damages due to the delay.

Refusal of handover by landlord is not regulated by the 2003 Housing Act, but by the CO (*lex generalis*). Article 101(1) of the CO stipulates:

> In bilateral contracts neither party shall be obliged to perform their own obligations if the other party is not simultaneously performing the latter's obligations or is unwilling to do so, unless agreed otherwise or stipulated otherwise by law, or unless it follows otherwise from the nature of the transaction.

Tenancy contracts are bilateral and, above all, mutual contracts: on one side, there is an obligation of the landlord to hand over the dwelling and on the other, an obligation of the tenant to pay the agreed compensation for the use of the dwelling. Thus, it is important to determine whether the tenant performed his contractual obligations prior to qualifying the conduct of the landlord (why he refused to hand over the dwelling). If it was agreed that the tenant must pay a certain amount (a deposit or a certain number of rents), and he failed to do so, the landlord is entitled not to handover the dwelling. If no such agreement was made, the parties must perform their obligations simultaneously.[240]

However, if the landlord's obligation to hand over the dwelling is unconditional with respect to tenant's obligations, the tenant may

[240] Cigoj, *Obligacijska razmerja*, 111.

demand the handover or withdraw from the contract, if the landlord fails to do so. In any case, the tenant is entitled to damages.[241]

None of the statutory provisions explicitly regulates the case of a 'double lease.' Theoretical standpoint is that in such cases the priority is given to the 'first' tenant, to whom the dwelling was handed over (who took the possession), taking into consideration the good faith of that tenant. The good faith is presumed; hence, the other party must prove otherwise.[242]

Both contracts are legally valid, at least for some time. The inability of the 'second' tenant to take the possession of the dwelling represents a legal defect of the dwelling (the legal defect occurs when the first tenant takes possession of the dwelling).[243] Legal defects are regulated in Articles 100 (the general provision)[244] and 599 of the CO.[245] [246] The first tenant, of course, does not have a right to terminate the contract on the account of legal defect.[247]

Pursuant to Article 599(2) of the CO, the contract with the second tenant is terminated *ex lege* as soon as it is established that he is

[241] Article 103 of the CO.

[242] Juhart, 'Zakupna (najemna) pogodba,' 649.

[243] The possession is not necessarily physical, but also valid is the symbolic handover (handing over the keys of the dwelling).

[244] (1) In a bilateral contract each contracting party shall be liable for material defects in the party's own performance.

[245] (1) When a third person owns any right on the leased thing or a part thereof and turns to the lessee with the claim or arbitrarily takes the thing from the lessee, the lessee must inform the lessor of such, unless he already knows of such; otherwise the third lessee shall be liable for damage.

[246] Legal defect is any third person's claim which can be successfully exercised against the tenant or excludes or limits tenant's right to use the dwelling. Article 599(1) may also apply to situations, which are not qualified as legal defects (when a third person arbitrarily takes the dwelling from the tenant). In these cases, the primary obligation of the tenant is to notify the landlord of the claims. However, in such cases the second tenant will not be successful, since the first tenant has a right to protect the possession of the dwelling, being a first direct non-owner possessor. The form of the notification is irrelevant, but it must necessarily contain the description of the claim, as well as the factual and legal indications. There is no deadline in which the tenant is obliged to notify the landlord, nor is the tenant precluded from claiming the landlords liability if he fails to notify the landlord. The tenant is liable for any damages inflicted on the landlord due to his failure to notify the landlord. M. Juhart, 'Zakupna (najemna) pogodba,' 676–8.

[247] Kerestes, 'Slovenia.'

completely prevented from using the apartment.[248] In such case, the landlord is obliged to reimburse any possible damage sustained by the second tenant.

When tenancy contract is terminated (due to any lawful reason), the legal basis of the tenancy relation no longer exists. Consequently, the tenant is obliged to leave the dwelling. The 2003 Housing Act in Article 111 stipulates:[249]

> (1) A person, who uses a dwelling not to have a tenancy contract concluded or prolonged with the owner of the dwelling, is using it unlawfully.
> (2) The owner is entitled to file an action for emptying the dwelling with the Court of general competence. These disputes are solved on a primary basis.
> (3) These provisions are not used for the former holders of housing rights and their family members, if the failure to conclude the tenancy contracts was due to the owner's conduct.

The tenant, whose right to use the dwelling has ceased, must hand over the dwelling to the owner in the condition, in which the dwelling was obtained in the first place (taking into account the regular use of the dwelling and alternations, for which the owner gave his permission).[250] In case the tenant does not move out, the landlord may file an eviction claim. The competent Court for filing the eviction claim is the Local Court in the municipality, in which the defendant's residence is registered.[251]

The second tenant has no claim towards the previous tenant. He is only entitled to demand from the landlord to fulfil his obligation. He may also choose to withdraw from the contract. In any case, the landlord is liable for damage inflicted due to the breach of the contract in accordance with Article 103 of the CO.

Pursuant to Article 92(1/1) of the 2003 Housing Act, the landlord must hand over the dwelling in a condition allowing normal use of the dwelling in accordance with the standards and norms.[252]

[248] Ibid.
[249] Translated by the author.
[250] Article 113(1) of the 2003 Housing Act.
[251] Article 30 of the Civil Procedure Act (*Zakon o pravdnem postopku*), *Uradni list Republike Slovenije*, no. 26/1999 and later amendments.
[252] Vlahek, 'Pohištvo v najemnem stanovanju,' 18.

The standards of construction of dwellings are contained in the Rules on Minimum Technical Requirements for the Construction of Apartment Buildings and Apartments (*Pravilnik o minimalnih tehničnih zahtevah za graditev stanovanjskih stavb in stanovanj*). This act regulates the standards for construction of dwellings in general and not only for rental dwellings. The standards refer to installations and equipment, height and width of individual spaces in a dwelling, lighting provided, entrees, transitions, minimal equipment of rooms, etc. Control over the implementation of the Rules is given to the Inspectors for Construction (*Gradbena inšpekcija*).

If a tenant considers that a dwelling cannot be normally used, he is entitled to propose to the Housing Inspection to order the owner to take measures for providing a normal use of the dwelling or common parts of the building.[253] According to the Annual Report of the Housing Inspection for 2012,[254] there were sixty six regulatory orders on the maintenance and repair works of common parts and individual units of multi-apartment buildings (out of eighty-nine orders issued and 141 inspections conducted altogether).

The 2003 Housing Act regulates this matter only in Article 103(1/10) regarding culpable reasons for termination of tenancy contracts. It states that the landlord is able to terminate the contract if the tenant does not take over the possession of the dwelling for unduly reasons or he does not begin to reside in the dwelling in thirty days from the conclusion of the contract. This is a new reason for termination compared to the 1991 Housing Act. It applies both to non-profit, as well as market rentals.[255] The ratio behind this provision is probably the purpose of dwellings, which is to be occupied and not left to deterioration.[256]

The refusal of the tenant can be an issue especially in non-profit rentals. In market rentals, the landlord can find a new tenant relatively quickly, so his loss of income is negligible. However, landlords of non-profit units are in more difficult position, since they

[253] Article 93(1) of the 2003 Housing Act.

[254] *letno poročilo Inšpektorata Republike Slovenije za okolje in prostor 2012* (Ljubljana: Inšpektorat Republike Slovenije za okolje in prostor, 2013).

[255] Unlike Article 103(1/11) which refers exclusively to non-profit rentals. This provision addresses the issue of not using the dwelling by any of the rightful claimants for more than three months continuously.

[256] Vlahek, 'Odpoved stanovanjske najemne pogodbe.'

must follow strict procedure for finding the tenant, which is also connected to certain expenses.

On the whole, stemming from the general provisions of the CO, the basic obligation of tenants is to pay the compensation (rent) for the use of the dwelling. Tenants are not obliged to take the possession of the dwelling, whereas owners are obliged to hand it over.[257] The refusal of tenant of handover does not interfere with his obligation to pay the rent, if the owner handed over the dwelling properly. This is also in accordance with the consensual nature of tenancy contracts: contracts are concluded upon the mutual agreement of the parties and not with the actual handover of the dwelling.[258] However, Article 103(1/10) strives to protect landlords and their dwellings from potential damages, if the dwelling is left unsupervised.

Pursuant to Article 300 of the CO, the tenant is in delay if, without justifiable grounds, he refuses to accept performance or prevents it. The tenant is also in delay if he fails to perform his own due obligation (paying the rent) upon the landlord's handover of the dwelling. If the tenant is in delay, the landlord's delay ceases, while the risk of accidental destruction or damage to the dwelling is transferred to the tenant.[259] Moreover, interest cease to be charged from the day the tenant is in delay.[260] The tenant in delay is obliged to reimburse the landlord for damage inflicted due to the delay, for which the former is liable, as well as any costs in connection with the further preservation of the dwelling.[261]

Therefore, the landlord is entitled to the reimbursement of damage due to the tenant's delay, irrespective of his decision to terminate the tenancy contract.

Slovenian 2007 Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (*Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju*)[262] introduced the possibility of civil insolvency for natural persons. Article 386(1/1) stipulates that the initiation of the civil insolvency proce-

[257] Juhart, 'Zakupna (najemna) pogodba,' 647.
[258] Ibid., 640.
[259] Article 301(1) of the CO.
[260] Article 301(2) of the CO.
[261] Article 301(3) of the CO.
[262] *Uradni list Republike Slovenije*, no. 126/2007.

dure limits the capacity to contract in such a manner that the person is not allowed to conclude contracts and performs other legal transactions or acts, whose subject is disposal with his assets, which are part of the insolvency assets. Such legal transaction or other legal act is without any legal effect,[263] unless the other party was unaware and could not be aware of the insolvency procedure.[264] However, it is deemed (unchallengeable presumption) that the other party was aware of the insolvency procedure, if the contract or other legal transaction was performed after the eight day from the public announcement of the edict on the initiation of the civil insolvency in accordance with Article 122 of this Act.[265]

Nevertheless, certain incomes of the insolvency debtor are exempt from the insolvency assets. These include incomes from: lawful alimony, damages, pecuniary social assistance, parental benefits, scholarships, compensations for war and civil services, medals and awards, compensation for disabilities and allowances.[266] In addition, the enforcement is forbidden on salary, pension, compensation for salary, benefit for unemployment and remuneration for work of convicts up to two thirds of incomes. The debtor must be left with at least the amount of one minimal salary, decreased for the amount of taxes and contributions for social security (if the debtor is legally obliged to financially assists other persons, the amount is higher).[267]

Therefore, the tenancy contract is not automatically terminated due to the insolvency of the tenant, if he is able to cover the amount of rent price from the remaining monthly incomes.

In addition, Article 102 of the CO regulates situations when the tenant is not in the insolvency procedure, but only in poor financial situation. Paragraph 1 stipulates that if it is agreed that one party will perform his obligation first, but after the contract is concluded the material circumstances of the other party deteriorate to the ex-

[263] Article 386(2) of the 2007 Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act.

[264] Article 386(3) of the 2007 Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act.

[265] Article 386(4) of the 2007 Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act.

[266] Article 101 of the 1998 Enforcement and Securing of Civil Claims Act.

[267] Article 102 of the 1998 Enforcement and Securing of Civil Claims Act.

tent that it is uncertain whether he will be able to perform his obligations or this is uncertain for other serious reasons, the party that undertook to perform the obligations first may delay performance until the other party performs his obligations or until he provides sufficient security that the obligations will be performed. The same applies also if the material circumstances of the other party were so serious before the contract was concluded, but the other party was not aware and could not be aware of this (paragraph 2). In such cases the party that undertook to perform the obligations first may request security by a suitable deadline; if the deadline is not met, the party may withdraw from the contract (paragraph 3). If the financially disadvantaged party files an action for the performance of the other parties' obligation, the debtor has a claim due to the threat of non-performance of the other party. The debtor must prove the financial hardship of the other party.[268]

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

There is no specific definition of defects of the dwelling. The only requirement from the 2003 Housing Act is that the dwelling should be capable of being normally used by the tenant. The term normal use is assessed in accordance with the valid normative and standards.[269]

Landlord is responsible for the protection of tenant in cases of material and legal defects of dwelling, pursuant to principle of equal value of performance.[270] He guarantees that the dwelling has all the necessary elements for normal and peaceful possession.[271] In addition, landlord is also liable for non-obvious material defects interfering with the normal use, irrespective of his knowledge of such defects (e.g. smell from shafts).[272]

The crucial element in assessing the normal use is the inten-

[268] Cigoj, *Obligacijska razmerja*, 113.
[269] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 169.
[270] Article 8 of the CO.
[271] Ibid., 170.
[272] Ibid.

tion of the parties, which stems from either the contract itself or from circumstances or the purpose of the contract.[273] If the parties agreed on certain characteristic of the dwelling, which are usually not relevant for rental contracts, the landlord is liable for the absence of these characteristics, especially if he claimed that the dwelling contains these.[274] However, the landlord is exempt from the liability, if the tenant was aware or could have been aware of the defects upon the conclusion of the contract.[275]

A third person's claim on the dwelling, which excludes or limits tenant's right to use the dwelling, is deemed as legal defect. The tenant is obliged to notify the landlord of such disturbances, unless the landlord was aware of the claims of the third party. Failing to do so, the tenant is liable for any damages due to such claims.[276]

The provisions on material defects may be excluded in the tenancy contract, as long as this is in accordance with the general principles of civil law. However, such exclusion is null and void, if the landlord was aware of the material defects, but nevertheless withheld this information from the tenant. This contractual term is also null and void, if the defects prevent the tenant from the normal use or if landlord exploited his monopolistic position upon the conclusion.[277]

Article 94(1) of the 2003 Housing Act enlists the obligations of tenants. Among others, the tenant is responsible for the damage inflicted by improper or negligent use of the dwelling. This responsibility refers also to the damage inflicted by other users of the dwelling as well as individuals having tenant's permission to be in the dwelling. Moreover, according to Article 103(1/1) of the 2003 Housing Act the owner/the landlord is entitled to terminate tenancy contract, if tenant or other users inflict damage on the dwelling and the common areas.[278]

In addition, the Law of Property Code in Article 74 stipulates that all provisions regarding neighbourly law (including provisions

[273] For the explanation on the legal standard 'normal use of the dwelling,' see section 6.1.
[274] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 170.
[275] Ibid.
[276] Article 599 of the CO.
[277] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 171.
[278] Ibid., 174.

on immissions) and referring to owners, apply to other direct possessors (tenants being the direct possessor) as well.[279] Therefore, tenants (in the same manner as owners of real estate) are obliged to restrain from mutual disturbances and inflicting damages to other connected properties.[280] Rights, which limit ownership right on other connected properties, are to be performed in accordance with local customs imposing as little burden as possible on other owners.[281]

Tenants enjoy the same level of protection as owners. They have two possibilities for defence against immissions: prohibition injunction (*actio negatoria*) (Article 99 of the Law of Property Code) or request for disposal of risk of damage (Article 133 of the CO). Injunction is used for protection of owner's (tenant's) position for disturbances from others, except for taking possession. The owner (tenant) usually requests the cessation of disturbances, prohibition of future disturbances or restoration of previous condition. He is also entitled to damages according to the general rules.[282] The following may be requested pursuant to Article 133(1) of the CO:[283]

> (1) Any person may request that the other person disposes the source of danger that threatens to inflict a major damage to the former or an indeterminate number of persons and refrain from the activities, which cause the disturbances or damage, if the occurrence of disturbance or damage cannot be prevented with appropriate measures.

The Court then orders appropriate measures to prevent the occurrence of damage or disturbance or to dispose of a source of danger to be taken at the expense of the possessor thereof, if he fails to do so.[284]

Exposure to noise is not regarded as a defect, but rather as immission.[285] In cases when tenants are disturbed by the outside noise from 22 p.m. to 6 a.m. (as well as in other cases when there is a vio-

[279] Tratnik, *Stvarnopravni zakonik*, 96–7.
[280] Article 73(1) of the Law of Property Code.
[281] Article 73(2) of the Law of Property Code.
[282] Tratnik, *Stvarnopravni zakonik*, 104.
[283] Article 133(1) of the CO.
[284] Article 133(2) of the CO.
[285] Tratnik, *Stvarnopravni zakonik*, 97.

lation of public law and order at this time), they are entitled to notify the police. Article 8 of the Protection of Public Order Act stipulates that individuals, who illicitly disturb the peace and rest of others by making noise, except in cases of emergent maintenance and intervention, are to be fined between 83,46 to 208,65 EUR (paragraph 1). If the noise is a result of television, radio or other acoustic set, except in cases of authorized activity, the fine is 104,32 EUR (paragraph 2).

Tenants are also entitled to the protection of possession against third persons in the same extent as owners, since they are regarded as direct non-proprietary possessors. One is entitled to the legal protection from disturbances of possession, if he proves that he had a possession of the thing prior to the disturbance, that there actually was a disturbance, that the other party disturbed the possession, that the action of the other party was disturbing and that the action was unlawful.[286] [287] The Court concluded that the five conditions (possession of the thing prior to the disturbance, actual disturbance, the other party disturbed, the action was disturbing and unlawful) must be fulfilled to allow the protection of possession. The Court recognized the tenant's motion as justified and prevented the landlord from future disturbances.

Both direct possessor (tenant) and indirect possessor (owner) are entitled to legal protection of possession for disturbances from the third parties.[288] The action is to be filed within thirty days from the day that the possessor becomes aware of the disturbance and within one year from the disturbance.[289]

Article 92(1/2) of the 2003 Housing Act obliges the landlord to

[286] The Court recognized tenant's (direct possessor) right to the protection of possession even against the landlord (non-direct possessor). In this case, the landlord changed the lock in the tenant's absence, although the tenant still had his movables in the dwelling and keys to the dwelling. He was, though, in the process of moving out. The landlord defended that she was making sure that the tenant was going to leave the electric appliances in the dwelling, as agreed upon in the contract. However, the Court refused the landlord's right to self-help in this case, stating that the conditions were not met. For instance, the landlord would have a right to self-help against the tenant only, if the tenant would unlawfully hand over the dwelling to a third person.

[287] Decision of the Higher Court of Ljubljana no. II Cp 4104/2011 from 20 June 2012.

[288] Tratnik, *Stvarnopravni zakonik*, 54.

[289] Article 32 of the Law of Property Code.

maintain the dwelling and common parts of the building in a condition offering normal use of the dwelling and common parts during the entire period of tenancy, in accordance with the Rules on Standards for the Maintenance of Apartment Buildings and Apartments. Pursuant to Article 92(1/3), the landlord is liable for legal and material defects of the rented dwelling.

Article 93 of the 2003 Housing Act further determines that if the tenant cannot normally use the dwelling, he is entitled to propose to the Housing Inspection to order the landlord to perform the repairs of either the dwelling or the common parts of the building (paragraph 1). If the owner refuses or fails to perform such repairs, tenant may perform them himself. Afterwards, he is entitled to the reimbursement of any costs as well as the interests thereof and can offset them with the rent price (paragraph 2). Other possibility for tenant is to request that landlord provides him with another suitable dwelling[290] (paragraph 3).[291] However, this provision has been criticized, since many landlords do not hold a possession of another (suitable) dwelling.[292]

In addition, Article 100(1/2) of the 2003 Housing Act entitles tenant to perform the repairs in the dwelling, which are necessary, in order to protect lives and health conditions of other residents or the dwelling itself as well as the equipment therein. Tenant is entitled to the reimbursement of costs thereof. Pursuant to Article 100(1/3), the tenant is entitled to claim reimbursement of any damages inflicted due to the owner's failure to comply with his obligations from Article 92(2). He is entitled to a lump sum of damages or to the decrease of the rent price. Moreover, the tenant is entitled to request a proportional decrease of the rent price for the period,

[290] According to Article 10 of the 2003 Housing Act, a suitable dwelling is a dwelling, which is a part of a one- or more-unit building, constructed in accordance with the minimal technical conditions for the construction of housing buildings. An operating permit must be issued for the dwelling. It is to be comprised of one separate sleeping and residential part (except for a studio) and must comply with housing needs of the owner or tenant and their closer family members residing in the same household. In addition, it must be in accordance with the normative from the Rules on Renting Non-profit Apartments.

[291] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 172.

[292] Therefore, this provision is to be interpreted in such a manner that the landlord is left with choosing the possibility for arranging the situation. Vlahek, 'Vzdrževanje najemnega stanovanja,' 19.

in which he was unable to normally use the dwelling due to the owner's omission to perform the repairs in accordance with Article 93. [293]

Tenants are obliged to allow entering into the dwelling due to repairs and improvements (for instance, installations and reconstructions of central heating, electricity and sewage, satellite, cable, etc.). Tenant may refuse the entry, if it would impose a great burden on him and his family in relation to the scope and length of the work, increased costs of the rental and if it interferes with prior investments of the tenant into the improvement of the dwelling.[294] In either case, the proportionality test is to be taken into account, i.e. whether the encumbrances of the action are less or equal to the benefits thereof.

The maintenance and repair work must be performed in the shortest possible period and with the least disruptive burdens. Landlord is to notify tenant on the intended activities in a due time and provide for a normal use afterwards.[295] If the intended activities require that tenant must temporarily move out,[296] landlord is obliged to perform the activities promptly and in the period agreed with the tenant. If there is a disagreement, the Court is to determine the period in a non-contentious procedure.[297] The Court is competent to settle other disagreements as well.[298] The intervention of the Court is prescribed for such cases, in which the tenant would oppose the entry, although the performance of maintenance or repair work is necessary. This competence of the Court is important, since in some cases there could be a conflict of two important values (the right of the tenant to inviolability of home on one side and a need for repair or maintenance due to the protection of property and other residents).[299]

Tenant is liable for any damages inflicted due to the improper or

[293] Article 100(1/5) of the 2003 Housing Act.
[294] Article 99(1) of the 2003 Housing Act.
[295] Article 99(2) of the 2003 Housing Act.
[296] The owner is to provide the temporary accommodation of the tenant at his own costs. (Article 99(3)).
[297] Article 99(3) of the 2003 Housing Act.
[298] Article 99(4) of the 2003 Housing Act.
[299] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 182.

negligent use of the dwelling.[300] Therefore, he is obliged to cover the costs of any repairs needed due to such improper use.[301] Additionally, there is an obligation to maintain the dwelling in accordance with the standards from the Rules on Standards for the Maintenance of Apartment Buildings and Apartments.[302]

After termination of tenancy contract, tenant is obliged to return the dwelling in the same condition as it was handed over, taking into account alternations due to the normal use and others, performed with landlord's consent.[303]

All of these provisions are not mandatory and therefore only apply when there is no specific agreement between the parties.[304]

Furthermore, the statutory regulation from the 2003 Housing Act is in accordance with the general provisions of the CO (Articles 589 through 599). However, due to the social and economic importance of housing conditions for the citizens, certain provisions of the 2003 Housing Act are more favourable for tenants. For instance and contrary to the 2003 Housing Act, the CO does not contain any provision regarding a possibility of the tenant to demand that landlord provides him with another suitable dwelling, if the rented dwelling is not allowing tenant a normal use (Article 93/3). Moreover, there is a special type of inspection for housing matters (the Housing Inspection), whereas there is no such authority for general leases.

Landlord's omissions to repair and maintain the dwelling qualify as public law offenses. Article 124(2) of the 2003 Housing Act expressly stipulates that providing normal use of the multi-apartment building is a matter of public interest in housing sector. According to Article 125, the inspection authority may order certain activities to be performed, as well as the reasonable deadline for their execution, if the common parts of a multi-apartment building are not maintained in accordance with the normative for maintenance of dwellings and multi-apartment buildings. The manager of the building has a right to be heard with respect to the decision. The decision is forwarded to the condominium owners, who must authorize the manager for the activities in accordance with the decision.

[300] Article 94(1/2) of the 2003 Housing Act.
[301] Article 94(1/4) of the 2003 Housing Act.
[302] Article 94(1/9) of the 2003 Housing Act.
[303] Article 113 of the 2003 Housing Act.
[304] Vlahek, 'Vzdrževanje najemnega stanovanja,' 19.

Article 126 provides a legal base for interventions of the inspection regarding individual housing units in a building. If the owner of the housing unit does not provide for the repairs in his own unit or if he does not maintain the rented unit in accordance with the normative for maintenance of dwellings and multi-apartment buildings and such repairs are necessary to prevent damage for other units or common parts or to prevent damage, which jeopardize or make impossible the normal use of the unit, the inspection authority may issue a decision. In both situations (from Articles 125 and 126) the inspection authority may propose to competent municipal authority to enforce the execution of the decision against those.[305]

Another point must be taken into account. While all of these provisions refer to both types of rentals (market and non-profit), it seems that the obligations, imposed on non-profit tenants, are somewhat more severe. The appendix 1 (column 7) of the Rules on Standards for the Maintenance of Apartment Buildings and Apartments provides only non-profit tenants being responsible for certain maintenance and repair work.[306] On the other hand, the scope of tenant's responsibilities in market rentals is the result of the mutual agreement between the parties. Therefore, in certain cases, the responsibilities of a market tenant may be even broader, if the parties agree so.

Pursuant to Article 94(1/3) the landlord (or his representative) may enter the dwelling in order to check whether the dwelling is properly used. However, the tenant is obliged to allow such entry at most twice a year, unless other arrangement is made between the parties.

In addition, tenant must grant the entry to the landlord, if there is a need for repair or improvement work (such as installation or reconstruction of central heating, sewage, cable, and similar). However, the tenant may deny the entry, if such activities would impose a great burden for the tenant or his family members in relation to the scope of the activities, increased rent price, the tenant's own investments, and if the investments are not in accordance with the benefits of the tenant and other residents in the building.[307]

[305] Article 127 of the 2003 Housing Act.
[306] Vlahek, 'Vzdrževanje najemnega stanovanja,' 19.
[307] Article 99(1) of the 2003 Housing Act.

Denying the entry unlawfully in these two cases is deemed as a culpable reason for termination of the contract, pursuant to Article 103(1/9) of the 2003 Housing Act.

The landlord is not prohibited from keeping a set of spare keys of the rented dwelling, since there is no such prohibition in the legislation. In addition, the courts also do not oppose to a set of spare keys of the rented dwelling.[308] However, parties may agree on this matter in the tenancy contract.

The landlord may not legally lock the tenant out of the premises. For any breaches of the contract, the landlord must give a warning to the tenant. Given that the tenant does not comply with the requirements from the warning in the given deadline, the landlord may file a lawsuit for termination of the contract and tenant's moving out of the premises.

The rent is determined in tenancy contract and needs to be based on certain mandatory provisions of the 2003 Housing Act.[309] These include provisions on the usurious rent, methodology for determining non-profit rent and its gradual increase. The rent for market rentals is formed freely[310] (as a result of the mutual agreement of the parties), while the non-profit rent is subject to special methodology from Article 117.[311]

Pursuant to Article 181 of the 2003 Housing Act, the non-profit rents were gradually increased from 2003 (the year of the enactment of the 2003 Housing Act) until 31 December 2006, when they reached the levels determined by the methodology. The Decree on the Methodology of Determination of Rents for Non-profit Housing and the Criteria and Procedure for the Implementation of Subsidised Rents set precise percentages, for which it was allowed to increase non-profit rents on the annual basis.[312]

The level of non-profit rents may only be increased with the amendment of the Decree on the Methodology of Determination of Rents for Non-profit Housing and the Criteria and Procedure for the Implementation of Subsidised Rents. If a landlord of a non-

[308] Decision Decision of the Higher Court of Ljubljana no. 11 Cp 4104/2011 from 20 June 2012.
[309] Article 115(1) of the 2003 Housing Act.
[310] Article 115(2) of the 2003 Housing Act.
[311] Article 115(3) of the 2003 Housing Act.
[312] Articles 19 and 20 of the Decree.

profit unit wants to increase the rent, the Government must first amend the Decree, setting different value of elements of non-profit rent. The increase of market rents is subject to the agreement between the parties.

Increases to compensate inflation/increase gains are not specifically regulated. In market rentals, they are a matter of agreement between the parties. On the other hand, the increases of non-profit rents are enacted through the Decree on the Methodology of Determination of Rents for Non-profit Housing and the Criteria and Procedure for the Implementation of Subsidised Rents.

It is important to stress that prior to the enactment of the 2001 CO, the automatic revalorization was foreseen by the legislation in some cases. The obligations, which were explicitly subject to revalorization, were: pensions, social security contributions, taxes, insurance premiums, etc.[313] Article 371 of the 2001 CO stipulates that the revalorization is subject to the agreement between the parties. As a principle and unless something different was agreed, the tenant is to pay the same amount of rent that was agreed upon at the conclusion of the contract (in accordance with the law). Therefore, the parties are free to agree on rent increase to compensate inflation or increase gains.

Article 99(1) of the 2003 Housing Act obliges a tenant to allow the landlord to enter the dwelling in order to conduct improvements of the dwelling (such as installation or upgrade of central heating system, electric system, water supply system, telephone wiring, TV-cable, security cameras, etc.) or works for energy saving measures. However, tenant is also entitled to refuse the entry, if such works are to increase costs of the rental (as well as if the works would impose great burden onto the tenant and his household members or would interfere with his own investments into the dwelling).[314] When assessing whether tenant's refusal is lawful, it is important to weight the benefits of the tenant and his household versus the benefits of the landlord and other residents in the building in every individual case.

The 2003 Housing Act does not regulate the issue of rent increase

[313] Cigoj, *Obligacijska razmerja*, 371.

[314] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 182. However, it remains unclear whether this Article encompasses also rent price or only running costs.

in such cases. Article 112 of the CO, may be applicable, regulating the termination of the contract due to changed circumstances. If, after the conclusion of a contract, circumstances arise that make the performance of obligations by one party more difficult or due to which the purpose of the contract cannot be achieved (in both cases to such an extent that the contract clearly no longer complies with the expectations of the contracting parties), the party, whose obligations are more difficult to perform, or the party that cannot realise the purpose of the contract due to the changed circumstances, may request the dissolution of the contract (rebus sic stantibus clause). Pursuant to this provision, the tenant could request the dissolution of the contract if, due to the improvement of the dwelling, the rent increases to such extent that he would be unable to pay for it.

'Houses with public tasks' in Slovenia include non-profit rentals, as well as the accommodation units intended for those with extreme social and financial hardships. In both cases, the level of rent is set (and increased) in accordance with the methodology from the Decree on the Methodology of Determination of Rents for Non-profit Housing and the Criteria and Procedure for the Implementation of Subsidised Rents.

There is no special procedure for the rent increases in market rentals as they have been negotiated. The rent in non-profit rentals may be increased only with amendments of the Decree on the Methodology of Determination of Rents for Non-profit Housing and the Criteria and Procedure for the Implementation of Subsidised Rents.

According to Article 141 of the 2003 Housing Act, housing sector tasks and responsibilities of the state include, among others, monitoring the rent price according to the rental type on the regional and state level. Until the amendment of the 2003 Housing Act in 2008, there was a Registry of rental contracts, which contained the information from the Cadastre of Buildings (*Kataster stavb*) and the Registry of Dwellings (*Register stanovanj*), as well as the tenancy contracts.[315] All tenancy contracts had to be registered. Since 2008 the rent prices in market rentals are no longer monitored. The only available data may be found on the web page specialized for the real estate market, *SloNep, dom in nepremič-*

[315] Article 164 of the 2003 Housing Act.

nine (http://www.slonep.net/), which is a private company. In 2013 the Government showed certain interest in regulating the real estate market. As a result, the Real Estate Market Registry has been established. This registry will enable interested individuals to determine the rent price in the neighbourhood of their interest.

Objections of the tenant against the rent increase are relevant only in non-profit rentals as Article 120 of the 2003 Housing Act strictly refers to tenants in non-profit rentals when governing verification of the rent price. According to paragraph 1, tenant is entitled to request that municipal authority, competent for housing matters, verifies the level of the rent price. The authority is obliged to verify the rent price in fifteen days, taking into consideration not only Article 117, but also all circumstances from the particular tenancy contracts.[316] The tenant, whose rent price was overly charged, has a right to demand that the contracted rent price is decreased to the appropriate level. In addition, he is entitled to the reimbursement of the overly paid rent price.[317] This demand is filed with the Court of general competence.[318]

Tenants may improve and change the dwelling, its equipment and devices only with the written consent of the landlord.[319] This consent is at the same time deemed as an authorization from the landlord, necessary for the tenant to obtain the administrative permit.[320]

Landlord may refuse the consent, unless the following conditions are met: the intervention is in accordance with the contemporary technical demands; it is in tenant's personal interest; the costs are borne by the tenant; the alternation will not jeopardize landlord's interest or the interest of other condominium owners and the intervention is not to harm other common parts of the multi-apartment building and its exterior.[321] The following situations are deemed as meeting those conditions: modernization or appropriate reconstruction (for meeting the needs of the household) of sewage, electricity, gas, heating or sanitary equipment; rearrangement intended to optimize the usage of electricity or increasing the functionality;

[316] Article 120(2) of the 2003 Housing Act.
[317] Article 120(3) of the 2003 Housing Act.
[318] Article 120(4) of the 2003 Housing Act.
[319] Article 96(1) of the 2003 Housing Act.
[320] Article 96(2) of the 2003 Housing Act.
[321] Article 97(1) of the 2003 Housing Act.

improvements which are subsidized or loaned from public funds; wiring of telephone; installation of necessary antennas or other equipment for radio and television reception, if the connection to the present device is impossible.[322] If the landlord refuses to give the consent in those cases, tenant is entitled to demand the consent from the Court in a non-contentious procedure.[323] In some situations (enlisted in Article 97(2)), the landlord is allowed to condition the consent with a statement of the tenant that he will return the dwelling in the previous condition or that he is not to demand the reimbursement of the investments in accordance to Article 98 of the 2003 Housing Act. The tenant is entitled to the reimbursement of the unamortized part of the useful and needed investment into the dwelling, performed with the consent of the landlord, unless otherwise agreed.[324]

Performing the improvement and changes without the landlord's consent is a culpable reason for termination of the tenancy contract.[325]

One of the landlord's most important obligations (apart from handing over the dwelling) is to properly maintain the dwelling during the entire time of tenancy. In order to comply with this duty, he is to conduct certain alternations to the dwelling. The legal basis for such alternations is governed in Article 99 of the 2003 Housing Act.

There are no specific requirements with respect to the energy performance of the house by the landlord. These are subject to the general requirements described below.

The tenant must allow the landlord entry into the dwelling in order to conduct the necessary renovations or repairs (for instance, installations and reconstructions of central heating, electricity and sewage, satellite, cable, etc.). Tenant is entitled to refuse the entry, if it would impose a great burden on him and his family in relation to the scope and length of the work, increased costs of the rental and if it interferes with prior investments of the tenant into the improvement of the dwelling.[326] The maintenance and repair work must be

[322] Article 97(2) of the 2003 Housing Act.
[323] Article 97(3) of the 2003 Housing Act.
[324] Article 98 of the 2003 Housing Act.
[325] Article 103(1/6) of the 2003 Housing Act.
[326] Article 99(1) of the 2003 Housing Act.

performed in the shortest possible period and with such encumbers, which are the least disruptive for the tenant. Landlord is to notify tenant on the intended activities in a due time and provide for a normal use afterwards.[327] If the intended activities require that tenant must temporarily move out,[328] landlord is obliged to perform the works promptly and in the period agreed with tenant. If there is a disagreement, the Court is to determine the period in a non-contentious procedure.[329] [330] The Court is competent to settle other disagreements as well.[331] The intervention of the Court is prescribed for such cases, in which tenant would oppose the entry, although the performance of maintenance or repair work is necessary.

The provisions of the 2003 Housing Act do not include any specific limits of the use of the dwelling during the tenancy. The limitations (including pets, guests, smells, etc.) must therefore be agreed upon in the tenancy contract.[332]

As far as guests are concerned, Article 94(7) of the 2003 Housing Act stipulates that tenant must obtain consent from landlord, if the dwelling is to be used by another person, not stated in the tenancy contract, for more than sixty days within the course of three months. In addition, Article 94(8) obliges tenants to propose the landlord a conclusion of an annex to the tenancy contract, if the number of users of the dwelling is to change. Disrespecting these duties may result in a unilateral termination of tenancy contract. Shorter visits by others do not pose a problem and are in most cases allowed by the landlord.

Commercial use of the dwelling is subject to special set of provisions of the 2003 Housing Act. Pursuant to Article 14, condominium owner or tenant is allowed to use the dwelling for a commercial activity in a part of the dwelling in accordance with the provisions of the Housing Act, if he meets the conditions for performing such

[327] Article 99(2) of the 2003 Housing Act.

[328] The owner is to provide the temporary accommodation of the tenant at his own costs. (Article 99(3)).

[329] For more on the court structure in tenancy law, see section 6.1.

[330] Article 99(3) of the 2003 Housing Act.

[331] Article 99(4) of the 2003 Housing Act.

[332] Article 94(1/1) of the 2003 Housing Act; Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 174.

activity.[333] In order to obtain permission for the activity, the condominium owner or the tenant must obtain consent from other condominium owners, whose ownership share represents more than one half of condominium ownership in that multi-apartment building. With such consent, the owner or the tenant is able to apply for the administrative permit issued by the state authority or municipal authority competent for housing matters (for territory of that municipality).[334] The competent authority may refuse the permit, if the owner or the tenant did not obtain the consent from other condominium owners and the activity would disturb other residents and would impose an excessive encumbrance of the common parts of the multi-apartment building or the environment.[335] In case of the refusal, the tenant has a right to appeal to the Ministry competent for housing matters. Municipalities may issue a decree governing activities, which may be pursued in parts of dwellings.[336]

If the tenant pursues activities without the consent from the landlord or contrary to the consent, the landlord may terminate the contract.[337] In addition, if the commercial activity is performed contrary to the permit of the administrative authority or without such permission, the Housing Inspection may issue an order for estoppels of the activity until proper permit is obtained.[338] If the illegal activity is performed by the tenant, the landlord has to be notified.[339] The fine for such offense is from 500 to 1,200 EUR.[340]

The obligation of the tenant to live in the dwelling is governed by Article 103(1/11). If the tenant and the individuals, enlisted in the tenancy contract as users, are not using the dwelling and have not lived there for three months without a break, the landlord may terminate the contract. Exemptions may apply in the following situations: if the tenant is being medically treated, if he is in a nursing home for less than six months, or if he does not use the dwelling

[333] Article 14(1) of the 2003 Housing Act.
[334] Article 14(2) of the 2003 Housing Act.
[335] Article 14(3) of the 2003 Housing Act.
[336] Article 14(5) of the 2003 Housing Act.
[337] Article 103(1/2) of the 2003 Housing Act.
[338] Article 129(1) of the 2003 Housing Act.
[339] Article 129(2) of the 2003 Housing Act.
[340] Article 31(1) of the amendment of the 2003 Housing Act (*Stanovanjski zakon*), *Uradni list Republike Slovenije*, no. 57/2008.

due to other legitimate reasons (for instance, official employment transfer or schooling in another place, military service, incarceration and similar situations).[341]

Surveillance of (a part of) a building is regulated with Article 76 of the Personal Data Protection Act (*Zakon o varstvu osebnih podatkov*).[342] In order for the video surveillance in a multi-apartment building to be lawful, a written consent of co-owners with at least 70% of the co-ownership share in the building is needed.[343] The surveillance is lawfully introduced only for the purposes of protection o people and property.[344]

The statute allows only the surveillance of access to the entries of multi-apartment buildings, as well as their common areas. Janitor's premises, in addition to the entries to the individual apartments, must not be monitored.[345]

The statute forbids enabling or carrying out simultaneous or subsequent viewing of recordings via an internal cable television, public cable television, the Internet or by any other means of telecommunication that can transmit these recordings.[346]

One of the most important conditions for carrying out the surveillance is the public notification on the video surveillance. Pursuant to Article 74 of the Personal data Protection Act, any person (natural or legal) conducting the surveillance must offer a duly notification thereof. The notification must be visible and distinctly posted in such a manner so to enable individuals to be acquainted with it upon the initiation of the surveillance at its latest. The notification must contain the following information: that the surveillance is being conducted, the name of the legal or natural person conducting it and a telephone number for information on where and for how long the recordings are being kept. It is deemed that the individuals are also informed on the processing of the data obtained through the video surveillance.[347] The surveillance system must be protected from the unauthorized entry.

[341] Article 103(2) of the 2003 Housing Act.
[342] *Uradni list Republike Slovenije*, no. 86/2004 and later amendments.
[343] Article 76(1) of the Personal Data Protection Act.
[344] Article 76(2) of the Personal Data Protection Act.
[345] Articles 76(3) and (5) of the Personal Data Protection Act.
[346] Article 76(4) of the Personal Data Protection Act.
[347] Article 74(4) of the Personal Data Protection Act.

TABLE 6.6 Termination of Tenancy Contracts

Item	(1)	(2)	(3)
Mutual termination	Possible.	Possible.	The same.
Notice by tenant	Without reason with 90 days notice period (or notice period from the contract).	Without reason with 90 days notice period (or notice period from the contract).	The same.
Notice by landlord	Reasons, notice period and procedure in the contract; if not determined in the contract, Housing Act applies.	Reasons, notice period and procedure in Housing Act.	Non-profit; market.
Other reasons for termination	Demolition of the dwelling, urban renewal, expropriation.	Demolition of the dwelling, urban renewal, expropriation.	The same.

NOTES Column headings are as follows: (1) main characteristic(s) of market rentals, (2) main characteristic(s) of non-profit rentals, (3) ranking from strongest to weakest regulation, if there is more than one tenancy type.

Every legal or natural person, engaged in the surveillance activities, must determine organizational, technical and logically technical measures for the protection of personal data. Additionally, the internal acts of these persons must determine a particular individual, who is to be responsible for keeping the record of video recordings, as well as persons, who are allowed to process the data due to the nature of their work.

A special registry must be established, which is to show when were the data from the recordings used or otherwise processed and by whom. This registry must be kept for such period, during which there is a lawful protection of right of an individual due to the unauthorized communication or processing of the personal data.[348]

6.6 Termination of Tenancy Contracts

The parties of tenancy contracts are free to arrange their mutual rights and obligations, unless a specific question is already regulated by a mandatory provision. Article 102 of the 2003 Housing Act determines that, unless otherwise agreed, tenant may terminate the contract always, without stating reasons, if he gives written ter-

[348] Article 24 of the Personal Data Protection Act.

mination notice with a ninety days termination period. Thus, the only prerequisite is that the tenant respects the ninety days termination period, whereas he is not obliged to state any reasons for the termination. This provision applies only in situations, in which the parties did not specifically agreed on this issue in the contract. In general, parties may agree upon the reasons for termination, termination period (if any), procedure for notice, etc.[349]

However, according to Šinkovec and Tratar, the parties cannot agree upon different notice period (shorter or longer than ninety days). The same authors also believe it is not possible to use the notice period provided by the CO, which is eight days. The reason for the two restrictions is that the landlord must also be protected. That is why he must be given an adequately long period to find another suitable tenant.[350]

Juhart and Vlahek disagree. In their opinion, the notice period is a dispositive element. The statutory periods only apply in the absence of the agreement between the parties. In that case, the relevant notice period is ninety days (Article 102 of the 2003 Housing Act). If it is impossible to use this period, the parties are to consider a general eight day notice period (Article 616(2) of the CO).[351]

The position of the landlord is marked with the social function of tenancy relations. Majority of provisions regulating the obligations of the landlord are mandatory, preventing him to misuse his (usually) superior position in relation to tenant.[352] This especially refers to landlords in non-profit apartments, whereas the position of the landlord in market rentals is somewhat more lenient. Article 105 of the 2003 Housing Act stipulates that landlords in market, employment based and purpose rentals may terminate the contract for any reason, provided it is governed in the contract, in addition to reasons from Article 103(1) and (5).[353]

[349] Vlahek, 'Odpoved stanovanjske najemne pogodbe;' 'Najem neprofitnega stanovanja.'

[350] Šinkovec and Tratar, *Komentar Stanovanjskega zakona*, 187.

[351] Juhart, 'Zakupna (najemna) pogodba,' 717; Vlahek, 'Odpoved stanovanjske najemne pogodbe.'

[352] Vlahek, 'Najem neprofitnega stanovanja.'

[353] This paragraph explicitly does not refer to the market rental, since it regulates situations, when the tenant or some of his household's members has an ownership right over another dwelling, which is irrelevant for market rentals.

Since the tenant is the (usually) economically and legally weaker party, the 2003 Housing Act imposes less strict obligations onto him. Article 102 of the 2003 Housing Act stipulates that tenant may terminate contract at any time, without stating reasons thereof, with a ninety days notice period, unless otherwise agreed in the contract. This provision applies only to situations, when the parties did not determine the reasons, different deadlines or procedure for termination in the contract.[354] It must be noted that one part of the theory interprets Article 102 in the sense that it refers exclusively to open-ended contracts.[355]

The notice period and/or procedure agreed in the contract are to be strictly respected, unless the parties subsequently agree otherwise. The general provision in the CO in Article 616(3) (referring to leases in general, and not only to rented residential dwellings) stipulates that the lessee is entitled to terminate the contract without a notice period, if the leased asset represents a hazard to the health, even though he was aware of this upon the conclusion. Therefore, considering the social function of the tenancy law, it can be argued that the tenant is granted the same right.[356]

Pursuant to Article 102, the tenant may terminate the contract at any time. However, he must comply with the notice period, either the agreed[357] or the statutory notice period. In that case, the landlord has no right to compensation, unless it is agreed in the contract.

It could be argued that Article 102 is also applicable to contracts limited in time, since it does not explicitly limit its scope to open ended contracts. According to this view, tenant could terminate the agreement with ninety days termination period even in case of contract limited in time. Case law regarding tenancy contracts on this issue does not exist.

There is, however, a decision of the Supreme Court RS answering the same question in case of commercial leases. In its decision,[358] the Court ruled that the lessee does not have a right to terminate

354 Vlahek, 'Odpoved stanovanjske najemne pogodbe;' 'Najem neprofitnega stanovanja.'
355 Juhart, 'Zakupna (najemna) pogodba,' 717.
356 Vlahek, 'Odpoved stanovanjske najemne pogodbe.'
357 Decision of the Higher Court of Ljubljana, no. I Cp 1182/2011 from 21 April 2011.
358 Decision of the Supreme Court RS, no. III Ips 1/2011 from 20 March 2013.

a limited in time contract before the agreed date, even though the provision governing the lessee's right to termination (with thirty day notice period) is conceptually the same as Article 102 of the 2003 Housing Act.[359] The Supreme Court asserted that the lessee's termination right applies exclusively to open ended contracts. Therefore, the same line of argumentation may be used for limited in time tenancy contracts. If the parties agreed to a certain time period of tenancy, it is in the interest of both parties to prevent unilateral early termination.

Penalty payments may be imposed by the landlord only if they were agreed in accordance with Article 247 of the CO.[360]

The only precondition for the tenant is to give a written notice to the landlord in due time, as it follows from the contract or the statute.[361] Any other preconditions depend only upon the prior agreement between the parties.

The 2003 Housing Act differentiates the reasons for termination according to the type of rental relation (market or non-profit) and does not explicitly distinguish between the ordinary and extraordinary notice.

Extraordinary reasons (the so-called culpable or liability based reasons) for termination of non-profit rental contracts are exhaustively enlisted in Article 103 of the 2003 Housing Act. Market rentals may be terminated for other reasons as well (liability based or regular), as long as they are clearly governed by the rental contract.[362] [363]

There are twelve culpable reasons for termination:[364]

[359] The contract on the lease of commercial premises was concluded for the period of one year. Only two month after the conclusion of the contract, the lessee terminated the contract. The Court argued that due to the protection of both parties in limited in time commercial lease contracts, it is impossible to terminate them prior to the expiration of the period for which they were concluded.

[360] See section 6.5.

[361] Vlahek, 'Odpoved stanovanjske najemne pogodbe.'

[362] However, such agreement is excluded as far as the non-profit rentals are concerned. Vlahek, 'Najem neprofitnega stanovanja.'

[363] Article 105 of the 2003 Housing Act.

[364] It is important to stress that these reason must also be stated in the tenancy contract in accordance with Article 91 of the 2003 Housing Act, regardless of the fact that they are stated in the 2003 Housing Act, to ensure that both parties are aware of them. A. Vlahek, 'Odpoved stanovanjske najemne pogodbe.'

1. causing significant damage to either the dwelling or common areas by the tenant or other users;[365] [366]
2. pursuing commercial activity in the dwelling without the permission or contrary to it;[367]
3. not maintaining the dwelling in accordance with the Rules on Standards for the Maintenance of Apartment Buildings and Apartments;
4. not paying the rent price or other running costs within the deadline set with the contract or, if such deadline is not set, within sixty days from receiving the bill;[368]
5. grave violation of fundamental rules of neighbourly cohabitation by the tenant or other users'[369] manner of use, which are regulated with the house rules, or severe disturbance of other cohabitants' peaceful use;
6. performing alternations of the dwelling or installed equipment without the landlord's permission, apart from the cases regulated with Article 97;[370]
7. use of the dwelling by other person(s), not enlisted in the tenancy contract, without landlord's consent, during more than sixty days within three months period;
8. sub-renting the dwelling without the landlord's permission;
9. refusing the entry to the landlord in cases regulated with Articles 94 (3)[371] and 99;[372]

[365] Although the provision does not mention other individuals, who are present in the dwelling with the tenant's or users' consent, and inflicting the damage, it is deemed that in that case, the tenant or the users are held culpable for the actions of third individuals. Vlahek, 'Odpoved stanovanjske najemne pogodbe.'

[366] Decision regarding causing damage to the common areas: Decision of the Higher Court of Ljubljana, no. II Cp 484/2000 from 20 March 2000.

[367] Breach of Article 14(6).

[368] It is irrelevant if the unpaid amount represents only certain proportion of the rent price or the running costs. Decision of the Higher Court of Ljubljana, no. II Cp 4850/2010 from 24 May 2011.

[369] Or by third individuals, who are in the dwelling with the consent.

[370] Technical modernization, which is in accordance with the tenant's interests and which do not present threat to other users of the building and the exterior of the building.

[371] Two times a year, to check the condition of the dwelling.

[372] For performing maintenance and repair work.

10. refusing to take over the dwelling or reside in the dwelling within thirty days after the conclusion of the contract;
11. ceasing to use the dwelling for three months consecutively by the tenant or other users;
12. providing false information for obtaining the rent subsidy in accordance with Article 121.

It is important to note that even in such cases the tenant may prove before the Court that the reason was incurred due to circumstances beyond his control or that he was unable to resolve it without fault at his part in due time.[373] The Court may then deny the landlord's request for termination.

Conditions from 103(1/11) are not met, if the tenant is in institutional treatment due to an illness, in a retirement home for a period shorter than six months, or due to other justified reasons, such as official employment relocation or schooling in another place, military service, incarceration, etc.[374] Additional extraordinary reason, applicable only to non-profit rentals, is regulated by Article 103(5). If the tenant or his partner (marital or extra-marital) owns a dwelling or a multi-unit residential building, the landlord is entitled to terminate the contract. However, if the dwelling is to be rented for unlimited period for non-profit rent on the day of the enactment of the 2003 Housing Act, the termination is not possible.[375] The termination is not possible as long as the tenant or his partner is obliged to rent it out. If they charge a profit (market) rent, they must also pay the profit rent to their landlord.[376]

In order to lawfully terminate[377] the contract due to the extraordinary reason, the landlord must notify the tenant on the breach of the contract in writing. The warning must contain the breach and the manner for removal of the breach. In addition, the warning must contain the adequate deadline for the removal of the breach, which must not be shorter than fifteen days.[378] If the deadline is

373 Vlahek, 'Odpoved stanovanjske najemne pogodbe.'
374 Article 103(2) of the 2003 Housing Act.
375 Article 108 and 195 of the 2003 Housing Act.
376 Article 195(2) of the 2003 Housing Act.
377 Lawful termination is given with a lawsuit in front of the competent Court. See supra/infra.
378 Article 103(3) of the 2003 Housing Act.

not stated, the warning is not valid and the termination is unlawful.[379] The warning is given only once for the same breach, unless there has been more than one year between the consecutive breaches.[380] According to the case law, tenant must be acquainted with the notice (warning). If the tenant failed to take the letter with warning from the postal office and the landlord was aware of that, this condition is not fulfilled. Consequently, the contract cannot be terminated.[381] It is not necessary to serve the warning in accordance with the provisions on the service of judicial documents. A written warning, sent or handed over to the tenant by a regular mail, is sufficient.[382]

Reasons for ordinary notice (not liability based) are regulated in Article 106. This Article applies to both profit and non-profit rentals. If the landlord terminates the contract for any 'other' reason (reason neither enlisted in Article 103 nor in the tenancy contract),[383] he has to provide an adequate dwelling for the tenant.[384] However, the tenant's rental position must not deteriorate. The adequate dwelling is the dwelling, which does not deviate from the present dwelling regarding any important feature and does not significantly reduce housing conditions of the tenant and other users. In addition, the dwelling must be in accordance with Article 10 of the 2003 Housing Act.[385]

The landlord may terminate the contract for 'other' reasons to the same tenant only once.[386] If a reasonable reason is given, it is possible to terminate the contract regardless of whether the landlord has already terminated the contract to the same tenant.

The reasonable reasons are the following: own housing needs of

379 Decision of the Higher Court in Celje, no. Cp 1721/2006 from 16 August 2007.

380 Article 103(4) of the 2003 Housing Act.

381 Decision of the Supreme Court of RS, no. II DoR 379/2012 from 19 December 2012; reference number of the second instance: Decision of the Higher Court in Ljubljana no. I Cp 591/2012 from 19 September 2012.

382 Decisions of the Higher Court of Ljubljana, no. I Cp 2014/99 from 11 January 1999 and no. I Cp 591/2012 from 19 September 2012.

383 If certain not liability based reasons are agreed in the contract, Article 106 is not applicable.

384 Article 106(1) of the 2003 Housing Act.

385 Article 106(2) of the 2003 Housing Act.

386 Vlahek, 'Odpoved stanovanjske najemne pogodbe.'

the landlord or his closer family member[387] and objective circumstances regarding the dwelling, due to which it is no longer habitable (anticipated demolition, change in the purpose of the building, endangered safety of residence, etc.). The costs of the moving are borne by the landlord.[388] Any disagreement is to be settled by the Court in a non-contentious procedure.[389]

It must be stressed that the described restriction on terminating the contract to the same tenant only once does not refer to the dwellings owned by municipalities, non-profit housing organizations, the HFRS or the state, if they are performing the changes so to assure rational occupancy of the housing stock.[390]

The 2003 Housing Act demands that the landlord must act in certain manner when notifying the tenant on the termination. The statute differentiates between termination in the case of liability based and other reasons, as well as in the cases of dispute as opposed to consensual termination of the contract. In general, it is important to take into the consideration Article 616 of the CO stating that the termination cannot be given at improper time.[391]

Article 112(1) of the 2003 Housing Act stipulates that the landlord is entitled to terminate the contract with a notice period of at least ninety days. This refers to the cases in which there is no disagreement between the parties on the reasons for termination (either the liability based or any other reasons). The provision is mandatory, in order to protect the tenant's position.[392] It is unclear, though, whether this refers also to the termination stipulated with Article 106, since in that case, the new dwelling is already provided for. However, the theory supports the view that the minimum ninety days deadline is to be secured as well, in order to allow the tenant to adjust to the newly emerged circumstances.[393]

Upon such termination, the landlord must reimburse any un-

[387] As such, the statue deems the needs caused by the increased number of closer family members, increased number of households in accordance with the Rules on Renting Non-Profit Apartments.
[388] Article 106(5) of the 2003 Housing Act.
[389] Article 106(6) of the 2003 Housing Act.
[390] Vlahek, 'Odpoved stanovanjske najemne pogodbe.'
[391] Ibid.
[392] Ibid.
[393] Ibid.

amortized part of the tenant's investments into the dwelling.[394] This refers to the investments performed with the consent of the landlord and needed and useful for the dwelling, unless otherwise agreed between the parties.[395]

The notice on termination is to be given in writing, even though the 2003 Housing Act does not contain any provision on this. However, in accordance with Article 53 (on the rescission of contracts concluded in certain form) of the CO, the notification is to be given in writing due to the importance of the consequences thereof.[396]

It is not entirely clear from the provisions of the 2003 Housing Act whether the landlord is obliged to file a lawsuit with a Court of general competence in order to effectively terminate the contract.[397] According to Article 112(3) of the 2003 Housing Act, the contract has to be terminated by the court judgment 'in case there is a dispute between the parties.'[398] The wording is obviously unclear. Some courts have therefore ruled that for a termination of a tenancy contract to be valid it has to be requested by a court claim (constitutive effect of the judgment).[399] [400]

Prior to terminating the contract due to liability based reasons by a court claim, the landlord must notify the tenant on the breach with a written warning. Apart from the precise definition of the breach, the landlord must provide for an adequate deadline for

394 Article 112(2) of the 2003 Housing Act.

395 Article 98 of the 2003 Housing Act.

396 Vlahek, 'Odpoved stanovanjske najemne pogodbe.'

397 Article 112(3) of the 2003 Housing Act; Plavšak, 'Neposredna izvršljivost notarskega zapisa,' *Podjetje in delo* 38, no. 8 (2012), 1642.

398 It is deemed that there is a dispute, if the tenant does not move out from the dwelling within the set deadline in the termination notification.

399 Decision of the Supreme Court RS, no. II Ips 521/2000 from 19 April 2001, Decision of the Higher Court of Celje, no. Cp 446/2008 from 20 August 2008 and Decision of the Higher Court of Ljubljana, no. II Cp 3987/2008 from 10 October 2009.

400 The argumentation for such a view is the following. In case of the justifiable reasons, the landlord may not demand from the tenant to move out unless he reimburses the costs of investments performed by the tenant in accordance with Article 98. The dispute may arise, if the landlord does not agree with the tenant on the scope or reimbursement altogether, or if the tenant does not believe that the reasons are justifiable. In case of liability based reasons, the dispute is usually regarding the existence of such reason. N. Plavšak, 'Neposredna izvršljivost notarskega zapisa,' 1642.

the elimination of the breach, not shorter than fifteen days. Even though the demand for the warning is contained in the provision on the statutory liability based reasons for termination of the contract, there is no valid reason not to demand such warning also for other liability based reasons, enlisted in the contract.[401]

In a lawsuit, the claimant (landlord) must explicitly request the termination of the tenancy contract. It is insufficient to request from the tenant to only vacate the dwelling, without the prior termination of the contract.[402] In addition, it is insufficient to demand that the Court only establishes that the contract was lawfully terminated.[403] Such claims will be denied as unjustified.

The Court is to determine the deadline for the moving out of the tenant, which must not be shorter than sixty and longer than ninety days.[404] The procedures are deemed as urgent matters.[405] The claim is rejected if the tenant proves that he is not liable for the termination reason or that he was not able to remove it in due time.[406]

If the tenant continues to use the dwelling after a limited in time tenancy has expired and the contract was not prolonged, he is using it unlawfully. In that case, the Court is not obliged to offer sixty to ninety days period for the moving out.[407]

An important restriction is contained in Article 104 of the 2003 Housing Act, referring only to the non-profit rentals. Pursuant to this Article, in certain cases it is not possible to terminate the tenancy contract, even though the tenant failed to cover the rent price or the price of other running costs. This includes the cases when the tenant or other household members are faced with extraordinary circumstances, due to which they were unable to cover the expenses for the dwelling. This refers only to such circumstances, which were unpredicted and which were beyond their control. For

[401] Vlahek, 'Odpoved stanovanjske najemne pogodbe.'
[402] Decision of the Higher Court of Celje, no. Cp 446/2008 from 20 August 2008.
[403] Decision of the Higher Court of Maribor, no. I Cp 1823/2009 from 28 September 2009.
[404] Article 112(4) of the 2003 Housing Act.
[405] Article 112(5) of the 2003 Housing Act.
[406] Article 112(6) of the 2003 Housing Act.
[407] Decision of the Higher Court in Ljubljana, no. VSL II Cp 1770/2012 from 18 September 2012.

instance, included are the following circumstances: death in the family, unforeseen loss of employment, serious illness, natural disasters, etc.

The condition for enforcing this provision is that the tenant initiated proceedings for obtaining subsidy of the rent price and exceptional assistance for the expenses with the dwelling. The deadline for initiating the proceedings is thirty days from the emergence of the circumstances. The proceedings are initiated with the municipal authority competent for housing matters. Furthermore, the tenant must inform the landlord on these circumstances within the same thirty days deadline. If he is unable to do so due to justifiable reasons, he must notify the landlord in thirty days after the cessation of the reasons.

If the circumstances of the case indicate that the emergent situation is to last for longer period of time, the municipality is entitled to move the tenant to other suitable dwelling (or even smaller). Moreover, it may move the tenant to the housing unit intended as temporary solution for socially underprivileged.[408] The tenant is to invoke this issue and prove it in front of the Court in the case of the possible action from the landlord. Invoking it in the appeals procedure is belated.[409] In addition, according to the general rules on lease contained in the CO, the contract remains valid, if the tenant covers the amount of rent price and running costs prior to the landlord's notification on arrears in the payment.[410]

Prolongation rights are not granted by the virtue of the 2003 Housing Act.

A special problem emerges due to the work overload of Slovenian Courts and delay thereof. If the tenant fails to comply with the Court decision and the deadline set with the decision, the landlord is able to request an enforcement order. The eviction can be executed in eight days after the order was handed over to the tenant.[411] A possible objection to the Court order does not withhold the execution of the order.[412] However, due to the Court delays, it may

[408] Vlahek, 'Odpoved stanovanjske najemne pogodbe.'
[409] Decision of the Supreme Court RS, no. 11 Ips 504/2008 from 15 November 2009.
[410] Article 603(2) of the CO.
[411] Article 221 of the 2007 Enforcement and Securing of Civil Claims Act.
[412] Article 9 of the 2007 Enforcement and Securing of Civil Claims Act.

take certain time before the order is handed over to the tenant.[413]

As admissible reasons, the 2003 Housing Act deems the liability based reasons stipulated in Article 103 and other reasons (liability based or not) enlisted in the tenancy contract. Additional admissible reasons include the reasons from Article 106(3): the own housing needs of the landlord or his closer family member (increased number of closer family members, increased number of households), and objective circumstances regarding the dwelling, due to which it is no longer habitable (anticipated demolition, change in the purpose of the building, endangered safety of residence, etc.).

Possible objections by the tenant are to be settled in front of the competent Court. For tenancy disputes, competent are Local Courts in the municipality, in which the dwelling is located.[414]

Execution proceedings against the landlord do not influence the position of the tenant. However, the tenant is entitled to terminate the contract in accordance with Article 613 of the CO, if the person of landlord is changed. However, the tenant must comply with the statutory notice period of ninety days.[415]

The expropriation of the landlord is not regulated with the 2003 Housing Act, but with the Spatial Management Act. After the decision on the expropriation is final, the administrative organ, which was in charge of the proceedings, calls upon the parties to reach an agreement on the damages or compensation in no later than fifteen days.[416] Pursuant to Article 107(1) of the Spatial Management Act, if the expropriated property was used for housing purposes, the expropriation claimant must provide the expropriated person with another equal dwelling, unless he demands the pecuniary compensation.

Irrespective of the compensation in nature, the expropriated person is entitled to the lost profit caused by the moving out and other

[413] In general, the average length of the enforcement proceedings is over twenty months. However, there are no precise data on the average length of enforcement proceedings only for tenancy contracts. We believe that the average time span for enforcement of tenancy disputes is shorter. Such a long period refers to proceedings in which the creditor tries to achieve the enforcement on several different types of assets (e.g. pecuniary, movables, immovable).

[414] Article 30 of the 1999 Civil Procedure Act.

[415] Article 613 of the CO; Juhart, 'Zakupna (najemna) pogodba,' 711–2.

[416] Article 106 of the 2002 Spatial Management Act.

nuisances thereof.[417] The decision on the expropriation must contain the provision on the validity of obligatory and real property rights and their rightful holders.[418] In order for these rights to terminate, the expropriator claimant must explicitly demand so. The holders of these rights are granted the position of parties in the proceedings.[419] The same rules apply to holders of the obligatory (e.g. tenants) and real property rights (e.g. holders of habitation right, usufructuary) as for the owners of the expropriated properties (contained in Article 107). If the holder had a permanent tenancy housing right (the so-called protected tenants), the expropriator claimant must therefore provide for an equal right, due to which the holder's position must not deteriorate. This means that the same factual and lawful position is guaranteed, as far as the dwelling, rent price, termination conditions, etc. are concerned.[420] The holder with a permanent tenancy housing right may also opt for damages instead of another dwelling.[421]

Urban renewal falls within the scope of Article 106(3) of the 2003 Housing Act described in section 6.6.

6.7 Enforcing Tenancy Contracts

Eviction procedure is governed by Articles 111 and 112 of the 2003 Housing Act. Pursuant to Article 111(1) of the 2003 Housing Act, a person using a dwelling without a valid tenancy contract or without an annex to the expired limited in time contract, is using the dwelling unlawfully. The owner is entitled to file an action for vacating the premises with the Court of general jurisdiction at any time. These disputes are handled with priority.[422] It is important to mention that these two provisions are not used for the previous holders of housing right and their family members, if the reason for not-concluding the tenancy contract lies with the landlord.[423]

When the tenancy contract has been concluded, the precondition for filing the action for vacating the premises is the termination of

[417] Article 107(2) of the 2002 Spatial Management Act.
[418] Article 108(1) and (2) of the 2002 Spatial Management Act.
[419] Article 108(3) of the 2002 Spatial Management Act.
[420] Article 108(6) of the 2002 Spatial Management Act.
[421] Article 108(7) of the 2002 Spatial Management Act.
[422] Article 111(2) of the 2003 Housing Act.
[423] Article 111(3) of the 2003 Housing Act.

TABLE 6.7 Enforcing Tenancy Contracts

Item	(1)	(2)	(3)
Mutual termination	Possible.	Possible.	The same.
Eviction procedure	Termination of the contract; deadline for moving out voluntarily; action for vacating the premises, new deadline set by the Court; enforcement procedure.	Termination of the contract; deadline for moving out voluntarily; action for vacating the premises, new deadline set by the Court; enforcement procedure.	Equal.
Protection from eviction	Only in cases from 104 Article of the 2003 Housing Act.	Only in cases from 104 Article of the 2003 Housing Act.	Equal.
Effects of bankruptcy	No effect.	No effect.	Equal.

NOTES Column headings are as follows: (1) main characteristic(s) of market rentals, (2) main characteristic(s) of non-profit rentals, (3) ranking from strongest to weakest regulation.

the tenancy contract (due to either culpable reasons or expiration of the period, for which the contract was concluded). Unless the parties agreed on the termination of the contract (or the period, for which the contract was concluded, expired), the landlord must first file an action for termination of the contract with the Court of general jurisdiction.[424] These disputes are governed with priority as well.[425] The Court then determines the deadline for the tenant to move out, which must be between sixty and ninety days.[426] If the tenant proves that the culpable reason was not his fault or that he could not resolve it in due time without his fault, the landlord may not terminate the contract.[427]

As the Courts have declared on numerous occasions,[428] landlord cannot file the action for vacating the premises unless the tenancy contract has been terminated beforehand. After the contract is ter-

[424] Article 112(3) of the 2003 Housing Act.
[425] Article 112(5) of the 2003 Housing Act.
[426] Article 112(4) of the 2003 Housing Act.
[427] Article 112(6) of the 2003 Housing Act.
[428] For instance, Decision of the Higher Court of Maribor, no. I Cp 1823/2009 from 29 September 2009 and Decision of the Higher Court in Ljubljana, no. II Cp 855/2010 from 16 June 2010.

minated, the tenant must vacate the dwelling within the set deadline.[429] If the tenant fails to comply, the landlord may file an action for vacating the dwelling. The Court is then competent to determine another deadline for vacating the dwelling, which may not be shorter than sixty and longer than ninety days – provided that the termination of contract was lawful.

In practice, it is usual that landlords join the two claims (for termination of the tenancy contract and vacating the premises) in one action. In addition, they may also pursue tenants for possible payments or reimbursement of expenses (for instance, if the reason for the termination is the arrears with the rent or running costs or inflicting damage to the dwelling).

However, many non-commercial landlords are unaware of these procedural requirements. Therefore, they might request only a decision for vacating without requesting the termination of the contract. In some cases, they even fail to warn the tenant on the breach and give him a deadline for correcting actions. Such omissions lead to the rejection of their claims by the Courts.

Tenant may object the termination of the contract by proving that the culpable reason was not his fault or that he could not resolve it in due time without his fault. For instance, the tenant may try to prove that the damage inflicted on the dwelling was not his fault or that he was not able to prevent it.

If the tenant does not comply with the deadline, set by the Court in the decision for vacating the premises, the landlord may file application for enforcement[430] of the Court's decision in front of the Local Court on the territory of which the premises are located.[431] [432] The Court's decision on enforcement must also specify the enforcement officer, who is to execute the enforcement decision.

[429] If the contract is terminated by filing a claim, the Court also determines the deadline. If the contract is terminated by mutual agreement between the parties, the deadline is set by the parties.

[430] Article 40 of the 1998 Enforcement and Securing of Civil Claims Act.

[431] Articles 5, 152 and 220 of the 1998 Enforcement and Securing of Civil Claims Act.

[432] The Court allows the enforcement based on the executive instrument. Executive instruments are an enforceable Court decision or Court settlement (Article 17). The decision is enforceable, if it has become final and if the time limit for voluntary compliance with the decision has expired (Article 19(1)).

Enforcement is to be executed on weekdays, during the daytime, unless it would be dangerous to delay the enforcement.[433] The enforcement decision must be delivered to the tenant at least eight days before the date of enforcement.[434] If the tenant (or his legal or authorised representative or adult member of the household) is not present upon the enforcement, two adult citizens must be summoned to witness the procedure.[435] If the enforcement is to be done in the locked premises and the tenant is not present or refuses to open them, the enforcement officer may open the premises, if two adult citizens are present.[436] In addition, the enforcement officer may seek the cooperation of the police during the enforcement, if necessary.[437]

The tenant may object to the enforcement decision with a statement of reasons. He must also enclose the evidence for his objection.[438] Reasons for objection are enlisted in Article 55 of the 1998 Enforcement and Securing of Civil Claims Act.

Pursuant to Article 71 of the 1998 Enforcement and Securing of Civil Claims Act, the tenant may propose the Court the partial or complete postponement of the enforcement. The tenant must plausibly demonstrate that he would suffer an irreplaceable or hardly replaceable damage due to immediate enforcement. The damage must as well be greater than the damage, which is to be inflicted to the landlord. The list of reasons, due to which the Court may accede to the request, are exhaustively enlisted in Article 71(1) of the 1998 Enforcement and Securing of Civil Claims Act.

The movables, which are to be removed, are handed over to the tenant (or an adult member of his household or his representative). If they are not present or refuse to take the possession of the movables, the movables are to be handed over into storage upon the tenant's costs.[439] The tenant is also given a deadline for claiming the movables, after he covers the costs of storage. Otherwise, the movables are to be sold and costs of storage repaid from the

433 Article 48 of the 1998 Enforcement and Securing of Civil Claims Act.
434 Article 221(2) of the 1998 Enforcement and Securing of Civil Claims Act.
435 Article 49(2) of the 1998 Enforcement and Securing of Civil Claims Act.
436 Article 49(3) of the 1998 Enforcement and Securing of Civil Claims Act.
437 Article 51 of the 1998 Enforcement and Securing of Civil Claims Act.
438 Article 53 of the 1998 Enforcement and Securing of Civil Claims Act.
439 Article 222(1) and (2) of the 1998 Enforcement and Securing of Civil Claims Act.

value thereof.[440] If the evicted tenant re-moves into the dwelling, the landlord is entitled to request the tenant's eviction again. The Court then issues a new enforcement decision based on the existing enforcement order. The landlord must only be aware of the prescription period of the enforcement decision, which is ten years. This is in line with Article 229 of the 1998 Enforcement and Securing of Civil Claims Act, which determines similar solution for cases of possessory disturbances. The remaining part of the procedure is the same.[441]

The HFRS, which rents around 3,000 dwellings, both market and non-profit, pursues in the following manner regarding evictions of tenants. First, a warning is sent to the tenant, stating the breach (usually the non-payment of the rent or other costs), the deadline for payment and consequences for not complying. If the tenant proposes an arrangement for the payment, the HFRS considers the proposal and, if possible, accepts it. A written agreement is then concluded. If the tenant fails to comply with the new agreement, the HFRS warns the tenant once again and continues with the procedure in front of the Court. The HFRS also engages in the mediation process, if the Court suggests so. If the tenancy contract is terminated in front of the Court, the tenant is invited to voluntarily vacate the premises within the deadline, set with the Court decision. If the tenant fails to comply voluntarily, the HFRS initiates the enforcement procedure.

Tenancy contracts concluded in front of the public notary lead to a more effective eviction. The contract has to be concluded as a directly enforceable notary deed, to which the tenant must agree. The direct enforceability refers usually to all the obligations arising from the contract, for instance for the payment of rent, moving out and vacating the premises after the notice period expires. As a consequence, the landlord is not obliged to terminate the contract in front of the Court, but is entitled to file a direct motion for eviction.

However, the direct enforceability of the tenancy contracts is recognized only for limited in time contracts[442] as the parties are aware

[440] Article 222(3) and (4) of the 1998 Enforcement and Securing of Civil Claims Act.
[441] 'Varstvo upnika po opravljeni sodni deložaciji,' *Pravna praksa*, 25, no. 42 (2006), 27.
[442] Decision of the Higher Court in Maribor, no. I Ip 1003/2012 from 11 October 2012.

of the date on which the tenant's obligation (to return the dwelling to the landlord) will arise (i.e. the date on which the contract expires). In open-ended contracts it is unclear at which point exactly the tenant will have to hand over the dwelling. Therefore, directly enforceable notary deed cannot suffice as the enforceable instrument for the eviction in case of open-ended tenancy contracts.[443]

Article 104 of the 2003 Housing Act explicitly prevents termination of the tenancy contract to a non-profit tenant due to failure to arrears regarding rent and other expenses. Certain conditions must be fulfilled, however: the tenant is in arrears due to exceptional circumstances, to which he and other users of the dwelling were exposed; the circumstances were unforeseeable or he could have and cannot influence them (for instance, death in the family, loss of employment, serious illness, disasters and similar); he initiated procedures for obtaining a subvention of non-profit rent[444] and exceptional financial aid for housing within thirty days from the occurrence of the circumstances and notified the landlord thereof.[445] [446]

The procedure for obtaining the financial assistance is filed with the Center for social work.[447] If the circumstances are such that there is a possibility of a long-term inability of the tenant to cover the rent, the municipality may move the tenant to another non-profit dwelling, which is more adequate, or to a housing unit, intended for temporary accommodation of individuals in need.

Pursuant to Article 106 of the 2003 Housing Act, if the landlord terminates the contract from a reason other than culpable reasons

443 Plavšak, 'Neposredna izvršljivost notarskega zapisa,' 1644.

444 Nevertheless, since the subvention may amount to between 0.1 and 80% of the rent, the tenant himself must cover the remaining part, pursuant to Article 121(5) of the 2003 Housing Act. Otherwise, he may not invoke Article 104 of the 2003 Housing Act (Decision of the Higher Court of Ljubljana, no. 111 Cp 1212/2009 from 13 May 2009).

445 The case law on this matter upholds this provision, for instance, Decision of the Higher Court of Ljubljana, no. 1 Cp 2062/2011 from 25 January 2012; Decision of the Higher Court of Celje, no. Cp 317/2011 from 22 September 2011.

446 If the tenant could have not notified the landlord within thirty days from the occurrence of the circumstances due to justifiable reasons, he must do so within maximum thirty days from the day that he was able to notify him.

447 Article 6(1/7) of the Exercise of Rights to Public Funds Act (*Zakon o uveljavljanju pravic do javnih sredstev*), *Uradni list Republike Slovenije*, no. 62/2010 and later amendments.

from Article 103 or reasons contained in the tenancy contract,[448] he is obliged to provide another adequate dwelling for the tenant.[449] Nevertheless, the tenant's rental position must not deteriorate. If the reason for termination is not justified, the landlord may terminate the contract under such conditions to the same tenant only once.[450]

If the reasonable reason is provided, it is possible to terminate the contract regardless of whether the landlord has already terminated the contract to the same tenant.[451] Therefore, tenants in both profit and non-profit rentals are (in theory) protected from being unjustifiably evicted by the landlords.

The rules on bankruptcy of consumers[452] do not influence the enforcement of tenancy contracts. With the initialization of the civil bankruptcy procedure, the tenant (or any other consumer) still has the capacity to be a party to a civil procedure, although his capacity to contract is limited in accordance with Article 386 of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act.[453] The tenant is prevented from concluding contracts which represent disposal with his property and are part of the bankruptcy estate, then he may not take loans, give guarantees, open new bank accounts or renounce inheritance or other property rights. Legal transactions, which are not in accordance with this provision, are null and void.[454] If the landlord was unaware and could not have been aware of the limitation, the legal transaction is valid. It is deemed that the landlord was aware of the limitation, if the contract was concluded eight days or more after the public announcement on civil bankruptcy procedure.[455]

Forceful handing over of the dwelling does not influence the

[448] If certain not liability based reasons are agreed in the contract, Article 106 is not applicable.
[449] Article 106(1) of the 2003 Housing Act.
[450] Vlahek, 'Odpoved stanovanjske najemne pogodbe.'
[451] For more on this Article, see section 6.6.
[452] General rule on bankruptcy of consumers are described in section 6.5.
[453] Decision of the Higher Court in Ljubljana, no. 1 Cp 2062/2011 from 25 January 2012.
[454] Article 386(2) of the 2007 the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act.
[455] Article 386(3) and (4) of the 2007 the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act.

scope of the tenant's bankruptcy estate, since he does not have a real property right on the dwelling.[456]

6.8 Tenancy Law and Procedure 'in Action'

The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in this field ('tenancy law in action') is taken into account:

- What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?
- What is the role of standard contracts prepared by associations or other actors?

Both organizations (the Association of Owners of Real Properties in Slovenia and the Association of Tenants of Slovenia) have a legal status of non-governmental organizations. Their role is mostly consultative. The tasks include proposals of amendments of legislation and rendering opinions on the proposed amendments. The Association of Tenants of Slovenia is also active in raising awareness regarding housing position of protected tenants and former janitors in Slovenia.[457]

Standard tenancy contracts are not prepared by associations, but may be bought in bookstores. These contain only the most essential and mandatory contractual terms in line with the provisions of the 2003 Housing Act. There is no exact data on the proportion of use of these contracts in practice, when compared to contracts made by parties or lawyers.

Ordinary Local Courts are competent for solving tenancy disputes on the first instance, since there is no special jurisdiction for tenancy disputes. Parties have a possibility to appeal to the Higher Courts on the second instance, while the possibility of extraordinary remedies is subject to strict restrictions. Slovenia is confronted with a backlog of court cases, therefore the tenancy disputes, although prioritized, are usually solved within several months after the initiation of the procedure (six to ten months). As a result, natural persons are reluctant to bring their disputes in front of the

[456] Decision of the Higher Court in Koper, no. I Ip 61/2012 from 12 April 2012 and Decision of the Higher Court in Ljubljana, no. I Ip 785/2010 from 23 June 2010.

[457] For more, see section 1.5.

Courts. More frequent are lawsuits initiated by the legal persons, such as the HFRS and the Housing Fund of Ljubljana.

The possibility of alternative dispute resolution is available as well, but no procedures are developed specifically for the tenancy disputes.[458] Court-annexed mediation is available to the parties at any time and is being used more and more frequently.

The data on the average length of tenancy procedures is not available. The only data available is on the average length of civil procedures in front of the Local Courts (in charge of tenancy cases) and is 13.2 months.[459] Since tenancy disputes are deemed as prioritized, the actual length of these procedures is somewhat shorter (six to ten months).

There are no peculiarities regarding the execution of tenancy law judgements. In practice, it is possible that the landlord (usually legal person, such as the HFRS) and the tenant agree on the suspension of termination of the contract and eviction, if the tenant obliges to repay the default payments or correct other breaches. The average length of the enforcement procedure is twenty months.[460]

Problems of fairness and justice or access to courts due to tenancy disputes are not particularly exposed, at least no more than other types of disputes. Both parties may be eligible for free legal aid or exemption, deferral or instalment payment of fees, provided they fulfil the general conditions set with the law.

Legal fees are paid in accordance with the Court Fees Act (*Zakon o sodnih taksah*).[461] Pursuant to Article 7 of the Court Fees Act, the fees are determined in relation to the value of the dispute or subject of proceedings, or as a fixed amount. If the relevant statute determines so, the payment of the court fee is the pre-condition for the execution of the proceedings.[462]

[458] Kerestes, 'Slovenia,' 6.

[459] 'Zaveza za izboljšanje stanja v sodstvu med Vlado Republike Slovenije in Vrhovnim sodiščem Republike Slovenije, 4. junij 2013,' Ministrstvo za pravosodje Republike Slovenije.

[460] 'Zaveza za izboljšanje stanja v sodstvu med Vlado Republike Slovenije in Vrhovnim sodiščem Republike Slovenije, 4. junij 2013,' Ministrstvo za pravosodje Republike Slovenije.

[461] *Uradni list Republike Slovenije*, no. 37/2008 and later amendments.

[462] Article 8 of the 2008 Court Fees Act.

TABLE 6.8 Court Fees According to the Value of the Dispute

(1)	(2)	(1)	(2)	(1)	(2)
300	18	2,500	60	6,000	95
600	26	3,000	65	7,000	105
900	34	3,500	70	8,000	115
1,200	42	4,000	75	9,000	125
1,500	50	4,500	80	10,000	135
2,000	55	5,000	85	13,000	153

NOTES Column headings are as follows: (1) the value of the dispute up to (and including), (2) the fee amounts to (EUR).

Article 22 of the Court Fees Act determines the manner of calculation of fees for lease relations, as well as the disputes regarding vacating and handing over the premises. The value of the subject of dispute is determined in reference to the amount of the tenancy remuneration owed for the period in question. The value must not exceed the value of one-year remuneration. The tenancy remuneration includes, apart from the basic net remuneration, also the additional costs, if they are not calculated separately from the basic remuneration. In addition, for claims for the increase or decrease of the rent, the value of the dispute is determined in reference to the difference in the remuneration. In proceedings regarding the determination of damage, the fees in front of the first instance courts are paid according to the amount, set by the Court, or agreed amount of damages.[463]

If the fees are determined in reference to the value of the dispute, the fee for the value of the dispute up to 300 EUR is 18 EUR. The value of the fee increases respectively for each additional 300 EUR of the value of the dispute. Table 6.8 may serve as an illustration.

Persons, who are exempted from paying the fees, are the state and state authorities, local self-government units and their authorities, humanitarian organizations, as well as foreign countries and their citizens, if the international treaties determine so or the principle of reciprocity is applied. The fees are not to be paid in the proceedings for granting free legal aid or when a special statute determines so.[464]

[463] Article 26 of the 2008 Court Fees Act.
[464] Article 10 of the 2008 Court Fees Act.

Conditions for exemption, deferral or instalment payment of fees are governed by Article 11 of the Court Fees Act. The Court exempts the party from the fees, if the party is the receiver of financial social assistance in accordance with the statute regulating social welfare benefits and the statute governing entitlement to the public funds. Otherwise, the party may be eligible to the partial waiver of the fees, if the payment of the entire amount would significantly reduce the available financial means for living. The Court may also grant the party the deferral or instalment payment of the fees, if the immediate payment would significantly reduce his/her available financial means for living. The payment may be deferred until the decision is rendered (for enforcement motions until the expiry of six months from the date of issue of the enforcement decision). The same provisions apply for sole traders and legal persons.

When rendering the decision on the exemption, deferral or instalment payment of fees, the Court must carefully consider all the circumstances, especially taking into consideration the property of the party and his family, the value of the procedure and the number of individuals supported by the party. When deciding on a partial exemption, deferral or instalment payment of fees for sole traders and legal persons, the Court must take into account the material, financial and liquidity situation of the parties.

The proceedings for granting the exemption, deferral or instalment payment of fees are initiated by the party. The decision is rendered by the Court of first instance.[465] The party must enclose written evidence on his and his family member's financial and asset status, which is subject to criminal and property liability (the so-called statement on property status).[466] The statement contains information on the party and his family members, their property, savings and revenues (inheritance, gifts, etc.) in both Slovenia and foreign countries.[467]

The decision on the exemption, deferral or instalment payment of fees is valid only in the proceeding, for which the decision was rendered. The decision may as well be rescinded during the proceedings, if the Court determines that the party is capable of bearing

[465] Article 12(1) of the 2008 Court Fees Act.
[466] Article 12(2) of the 2008 Court Fees Act.
[467] Article 12(3) of the 2008 Court Fees Act.

the expenses.[468] The party that failed to succeed in the proceedings bears the costs, for which the exemption was granted.[469] If the party, which was granted the exemption, succeeds only partially in the proceedings and receives property, which exceeds the value of the court fees, he is obliged to refund the fees.[470]

Free legal aid is regulated by the Free Legal Aid Act (*Zakon o brepl̆ačni pravni pomoči*).[471] Under this Act, the free legal aid refers to the right of the beneficiary to a total or partial provision of financial sources to cover the costs for legal assistance and exemption from payment of expenses for the court proceedings.[472] The Act determines the procedure, conditions and criteria for granting free legal aid.

Free legal aid may be granted as regular, extraordinary, exceptional, special or urgent.[473] The decision on the application is rendered by the President of the District or specialized Court.[474]

Free legal aid may be granted for the following legal actions: legal counseling, legal representation, all types of juridical protection in front of courts of general jurisdiction and specialized courts in Slovenia, which have jurisdiction over out-of-court settlements, exemption from court fees, as well as other legal services set by the law. Free legal aid may be granted also for procedures in front of international courts or arbitrations, if such aid may not be granted thereof or the applicant is not eligible for it.[475]

The aid does not cover the costs incurred during the court procedure (such as production of evidence), actual expenses and other party's attorney fees.[476]

The following individuals are eligible for free legal aid: Slovenian citizens with a permanent residence in Slovenia; foreigners or stateless persons, lawfully residing in Slovenia, with a permit for permanent or temporary residence therein; other foreigners under

[468] Article 13 of the 2008 Court Fees Act.
[469] Article 15(2) of the 2008 Court Fees Act.
[470] Article 15(4) of the 2008 Court Fees Act.
[471] *Uradni list Republike Slovenije*, no. 48/2001 and later amendments.
[472] Article 1(3) of the 2001 Free Legal Aid Act.
[473] Article 2(2) of the 2001 Free Legal Aid Act.
[474] Article 2(3) of the 2001 Free Legal Aid Act.
[475] Article 7 of the 2001 Free Legal Aid Act.
[476] Article 9 of the 2001 Free Legal Aid Act.

the condition of reciprocity; non-governmental organizations and associations acting in public interest and in non-profit manner and registered in accordance with valid legislation for the disputes regarding their business activities;[477] other individuals, for which law or international treaty determines the eligibility for free legal aid.[478]

Application for free legal aid may be submitted at any stage of proceedings (at the very beginning or later in the process).[479] Free legal aid may be granted only for the expenses, which occur after the submission of application.

One of the conditions for granting the aid is that the applicant's financial status is below the statutory threshold.[480] The financial state is determined in reference to the incomes, revenues and property of both applicant and other family members. The financial state is not determined, if the applicant is the receiver of the financial social aid.[481] [482] The threshold for determination of the financial situation is the monthly income of the applicant or the average monthly income of family members, which must not exceed the level of the double of the basic minimal income, set by the law.[483] [484]

In addition, the property of the applicant and his family must not exceed a value of forty-eight basic minimal incomes (or the value of the property must not exceed 13,780 EUR). This property does not include the dwelling, in which the applicant resides, as well as the vehicle worth up to twenty-eight basic minimal salaries (or the value of the vehicle must not exceed 8,060 EUR).[485]

Notwithstanding the above provisions, free legal aid is not to be granted, if the applicant or his family has savings or property in the value of twenty minimal salaries. The same value of dwelling and vehicle is exempt from determining the value of the property.[486]

[477] The financial state of these applicants is not determined.
[478] Article 10(1) of the 2001 Free Legal Aid Act.
[479] Article 11(1) of the 2001 Free Legal Aid Act.
[480] This type of free legal aid is deemed as regular.
[481] This type of free legal aid is deemed as exceptional.
[482] Article 12 of the 2001 Free Legal Aid Act.
[483] As of January 2013 the double of the basic minimal income is 523,12 EUR per month.
[484] Article 13(2) of the 2001 Free Legal Aid Act.
[485] Articles 23, 27, 27.a, 27.b, 27.c, 27.č, 28., 28.a, 30. and 30.a(1) of the 2007 Social Security Act.
[486] Article 19 of the 2001 Free Legal Aid Act.

Exceptionally, free legal aid is granted to the applicant although his and his family's incomes and revenues exceed the threshold, but their family, health or exceptional financial situation conditions their material hardship.[487]

Essential condition for granting free legal aid is that the case is not manifestly unreasonable,[488] that it is vital for applicant's personal and socio-economic status, that the expected result of the case is vital for the applicant or his family, that the case has probable chances for success and is therefore reasonable to file it or defend or object thereof, or that the unresolved case is the reason for the applicants financial hardship.

Special free legal aid is granted for the cases in front of the Constitutional Court or other International Courts for alleged violations of human rights or fundamental freedoms, if the conditions for filing such claims are fulfilled. Other conditions are not requested (from Article 26(1)).

If the decision on the application for legal aid would lead to the applicant missing the deadline for certain legal action and, as a result, losing the right to perform this action, the Court may immediately grant free legal aid only for the urgent action.[489] The applicant may apply for this type of free legal aid orally on the record in front of the District Court. He must also prove the circumstances, to which he refers (for instance, the deadline for filing a complaint).[490] The applicant, to whom such free legal aid was granted, must immediately or within eight days after free legal aid was approved, prove compliance with all the conditions required under the Free Legal Aid Act.[491]

Free legal aid is usually granted separately for each case, although it is possible to grant it for more joined cases (if the cases are re-

[487] Article 22 of the 2001 Free Legal Aid Act.

[488] The case is deemed as manifestly unreasonable, if the expectation or the application is in a clear disproportion with the actual statement of affairs, that the applicant is misusing free legal aid for a case, for which he is not to use the legal services, that the expectation or the application is in a clear contrast with the result of similar cases, or that the case expectation or the application is in a clear contrast to the principles of justice and morale. (Article 26(1) of the 2001 Free Legal Aid Act).

[489] Article 36(1) of the 2001 Free Legal Aid Act.

[490] Article 36(2) of the 2001 Free Legal Aid Act.

[491] Article 36(3) of the 2001 Free Legal Aid Act.

lated, e.g. civil and criminal case).[492] The application is filed with the competent Court.[493] The applicant must be eligible for granting the aid during the entire period, for which it is granted. If the conditions change, the applicant is to inform the granter of the aid.[494] Unduly received free legal aid is governed by Articles 41 through 43 of the Free Legal Aid Act.

More and more insurance companies in Slovenia are offering insurance for legal costs. Since actual premium is not favourable, while at the same time general terms and conditions are strict, negligible number of individuals opts to conclude this insurance.

Legal certainty in tenancy law has not been raised as a general problem, although there are several ambiguous provisions in the 2003 Housing Act.

One of such provisions is related to the written warning, which is a pre-condition for the termination of tenancy contracts due to culpable reasons. Article 103(3) does not specify the contents of the warning, nor does it determine the manner in which the warning must be delivered to the tenant (with a registered letter, with advice on delivery, through special courier deliverer, etc.). Landlords use a number of methods to deliver the warning, while the courts used different criteria when assessing whether the warning was duly served upon. As a result, the case-law of the Higher Courts on the issue was not uniform.[495] [496] The decision on the method of delivery is left to the landlord. It is the actual familiarity of the tenant with the warning which is crucial.[497] Still, none of these decisions contains a straightforward answer to the proper method of delivery, which imposes an unnecessary burden onto landlords.[498]

[492] Article 27 of the 2001 Free Legal Aid Act.

[493] Article 34 of the 2001 Free Legal Aid Act.

[494] Article 41 of the 2001 Free Legal Aid Act.

[495] Decision of the Supreme Court RS, no. II DoR 379/2012 from 19 December 2012.

[496] In 2006, The Supreme Court RS decided that the onus of proving that the tenant is acquainted with the warning is on the landlord. (Decision of the Supreme Court RS, no. II Ips 575/2006 from 12 June 2006).

[497] Decision of the Higher Court of Ljubljana, no. I Cp 591/2012 from 19 September 2012.

[498] For instance, it was adjudicated that the landlord did not apply himself for the actual familiarization of the tenant with the warning, since the delivery notice stated that the tenant did not claim the letter from the postal office, containing the warning (Decision of the Higher Court of Ljubljana, no. II Cp 1261/2012 from

Further on, Article 106 regulates the non-culpable reasons for termination of the contract by the landlord. Article 106(1) provides that the landlord may terminate the contract for other reasons only if he provides the tenant with another appropriate dwelling. It can be assumed from Article 106(3) that 'other' reasons may be reasonable or reasonable. While the landlord may only terminate a contract for unreasonable reason once to the same tenant, the law seems to allow him to terminate the contract many times in case of reasonable reasons. It remains however unclear whether the landlord has to provide the appropriate dwelling also in case of termination for 'reasonable reasons' (for example, his own housing needs).

The statutes regulating tenancy are not contradicting. There are different solutions in the CO and the 2003 Housing Act. However, they derive from the fact that renting of dwellings for residential purposes (regulated by the Housing Act) has a social function, while lease of movables (regulated by the CO) usually does not.

The lack of secondary literature represents a problem for lawyers, as well as parties, who are consequently unaware of their rights and obligations. The majority of literature primarily deals with housing right. Other issues are almost never referred to in the secondary literature.

Even though the 2003 Housing Act was enacted recently, there are certain provisions, which call for amendments. Article 95 regulates the prolongation of the limited in time tenancy contracts. The obligation to propose the prolongation is imposed onto the tenant. Unless he requires the prolongation of an expired tenancy, the tenant is using the dwelling unlawfully and the landlord may request to vacate the premises at any time. This provision puts tenants in unproportionally difficult position, when the landlord postpones the conclusion of the annex to the tenancy contract. The legislator opted for this solution even though the general statute (the CO) has an adverse rule: if the tenant continues to use the premises after the expiration of the contract and the landlord does not object, the contract is tacitly renewed.

22 May 2013). The Court stated that the landlord has numerous methods for the delivery, but did not specify which these were.

Termination of tenancy contracts should also be revised as soon as possible. The main arguments are described in the answer to Legal certainty above.

Since the registry of tenancy contracts was abolished in 2008, there was no lawful way for the Courts to determine the value of the rent for the purposes of determining the usurious rent in accordance with Article 119 of the 2003 Housing Act. This situation is expected to improve with the recent establishment of the new registry of the CORS. However, the problem remains for the intermediate period, between 2008 and 2013.

Articles 136–8 of the 2003 Housing Act regulate the Councils for Protection of Tenants' Rights. However, apart from Ljubljana, none of the municipalities has established the council. Even in Ljubljana, the Council is vested with limited, almost irrelevant tasks. Considering the wide-spread endeavors for the development of the rental sector in Slovenia, it would be sound to redefine and broaden their tasks.

All things considered, the 2003 Housing Act regulates majority of relevant issues in tenancy law. However, certain issues are regulated perfunctorily (such as termination of contracts). Currently, tenancy relations in Slovenia are not as pervasive. However, it is expected that this sector will be more and more important in the years to come. Therefore, the issues, which may represent ambiguities for both courts and parties, should be dealt with as soon as possible.

One of the crucial problems in tenancy law is that tenancy, as a tenure type, is not desired by the individuals and that ownership rate has been very high during the last two decades. Hence, rentals are seen as a measure of last resort. This led to a situation in which both parties are unaware of their rights and obligations, in spite of the valid legislation.

Numerous truisms are present in the society regarding tenancy.[499] One of such is that market rentals are executed primarily through black market, without written contracts. However, written contracts are concluded in 87% of market rentals. It is questionable whether all of these contain essential contractual terms, as required by the 2003 Housing Act. Parties are usually reluctant to engage the services of lawyers for the preparation of the contract,

499 For more, see section 2.7.

due to the relatively high attorney's costs. In addition, associations of landlords and tenants (or any other similar organizations) have no actual importance as far as tenancies are concerned. As a result, parties are usually left to their own interpretation of legislation.

Other problem is the non-existence of a registry of tenancy contracts. The recently established registry with the GORS will contribute primarily to the better fiscal discipline. However, there is a possibility that landlords would report lower values of the rent in order to decrease the tax burden. Again, a distortion on the rental market is likely to occur.

Related to these problems is the lack of rental standards. None of the valid statutes determines the quality of dwellings, which may be rented out. Consequently, there have been certain cases of inadequately furnished and maintained dwellings rented, especially to less well-off individuals and migrants.

As far as fiscal burden is concerned, it must be noted that Slovenia is among the countries with the highest tax rate for tenancies in Europe (25% of the rent price with only 10% of acknowledged costs). With the new property tax imposed as off 2014, the fiscal burden of landlords will increase and may deepen the fiscal indiscipline.

As far as the enforcement of tenancy contracts is concerned, Slovenia is faced with a backlog of court cases. This issue affects tenancies, as well. Although tenancy disputes are to be dealt with priority, the completion of the procedure may in some cases take a few years (taking into account proceedings on second instance and enforcement procedure). One reason for this is that there is no specialized Court.

Another problem is the ambiguous regulation of the termination of tenancy contracts, as described above. Even though the 2003 Housing Act is extensive and detailed in certain regards, there are still provisions, such as the ones (mostly addressing the termination), which are insufficient and unclear. With a more sound regulation, the number of disputes regarding the termination in front of the courts may decrease as well.[500]

One of the greatest weaknesses of the 2003 Housing Act and accompanying legislation is the fact that the provisions on non-profit

[500] These cases are by far the most numerous in front of the Courts.

rentals are more extensive and detailed, while market rentals are neglected. This is especially observed in reference to the provisions on maintenance and repairs.

In order to resolve majority of these issues, it is of immense importance to improve the insufficient provisions. In addition, greater role should be given to associations of landlords and tenants (or similar bodies), in order to acquaint the citizens with their rights.

The most topical issue in Slovenia at the moment is the introduction of property tax. The introduction of this tax has been planned for several years, however, the political will lacked.

The tax is likely to influence not just the costs of home-ownership, but tenancy relations as well. The predicted tax rates for residential and non-residential dwellings are different. The residential dwellings are taxed with lower tax rate (0.15% of the market value), while the non-residential ones are taxed with 0.5% of the market value. Dwellings, the market value of which is more than 500.000,000 EUR, are taxed with 0.5% tax rate, if they are intended for residential purposes, and 0.75%, if their purpose is non-residential. The tax varies depending on the location of the dwelling. As an illustration: an owner of a 80 m² residential dwelling in Ljubljana is to pay 230 EUR of property tax, while the owner of the same dwelling in Murska Sobota is to pay around 65 EUR of property tax. The Tax Office is to take into account the market value of dwellings as calculated by the GORS for the year in which the property tax is collected. Since the first decisions are to be sent to the owners until end of March 2014, the GORS is expected to send the announcements on the market value of the properties by February 2014, with the information on the tax due.[501] Since the tax rates for residential and non-residential dwellings are different, some expect that this may convince the landlords to rent their available dwellings in order to pay lower tax. However, others are skeptical, believing that the new tax may only lead to the conclusion of virtual tenancy contracts or contracts with false statement of rent price.[502]

[501] M. Bizovičar, 'Vlada o davku na nepremičnine še ta teden,' *Delo*, 7 October 2013, http://www.delo.si/gospodarstvo/finance/vlada-o-davku-na-nepremicnine-se-ta-teden.html.

[502] Motl, 'Obdavčitev stanovanj ne bo napolnila.'

Other issues are mostly related to the expected enactment of the new National Housing Programme and insufficient stock of non-profit apartments. The draft of the new NHP anticipates the restructuring of the system of housing subsidies. A new housing benefit is to be introduced instead of the current subsidies, which will be intended for all households with lower incomes. Another measure is also anticipated – attracting the private capital to invest into rental market.[503]

[503] B. Križnik, 'Glavni cilj je več najemnih stanovanj,' *Delo*, 27 November 2011, http://www.delo.si/gospodarstvo/posel-in-denar/glavni-cilj-je-vec-najemnih-stanovanj.html.

Chapter Seven

Typical National Cases

7.1 New Tenancy Contract after the Death of Tenant

A concluded a tenancy contract with B, owner of the dwelling. The contract listed C and D (A's son and daughter-in-law) as users of the dwelling, who had registered their permanent residency on that address and had actually resided therein. After the death of A, C and D enclose a written suggestion to B for a conclusion of a new tenancy contract. B did not reply. Instead, he filed a lawsuit against C and D, requesting that they vacate the premises.

Solution. Pursuant to Article 109 of the 2003 Housing Act, C and D were entitled to a new tenancy contract, since they complied with the conditions set with the statute: they were enlisted as users in the contract, had registered their permanent residency, had actually resided therein. If B did not want to conclude a new contract with C and D, he was obliged to state a justifiable reason for his decision.[1]

7.2 Other Adequate Dwelling

A (tenant) and B (landlord) concluded a limited in time contract (five years). Before the expiration of the period, B decides to move in that apartment himself, since it is closer to his workplace. Therefore, B gives notice on termination to A. At the same time, B suggests A to move into one of his other apartments. However, the other apartment, even though slightly bigger, does not provide for separation of rooms, while the present apartment does. In addition, the rent and running costs in the new apartment would be four times higher. Therefore, A refuses to move out and sign a new contract. B files a lawsuit for termination of the contract and vacating the premises.

Solution. Pursuant to Article 106 of the 2003 Housing Act, landlord is entitled to terminate the contract, although the tenant did not breach the contract, if he provides the tenant with another adequate dwelling. Otherwise, the contract may not be terminated.

[1] Decision of the Supreme Court RS, no. 11 Ips 469/2007 from 19 February 2009.

Pursuant to Article 106(2), tenant's tenancy position may not deteriorate. This means that his housing situation may not significantly deteriorate. In the described case, the termination was lawful. The offered apartment is not, indeed, completely equal to the previous one. However, Article 106 must not be interpreted in the sense that the landlord is prevented from terminating the contract due to justifiable reasons. The adequacy of the new dwelling must not be assessed through a comparison with the previous dwelling, but in accordance with the provisions of the 2003 Housing Act (Articles 10 and Rules from Article 87). Otherwise, the landlord will never meet the criteria for lawful termination.[2]

7.3 Tenant's Financial Hardship and Termination

A (tenant) and B (public landlord). A has had a health condition for several years and has lost her employment, thus she has been unable to cover the costs of non-profit rent. A applies for financial assistance, but fails to notify B on her circumstances. B files a lawsuit demanding termination of the contract due to arrears with rents.

Solution. Pursuant to Article 104 of the 2003 Housing Act, tenants in non-profit rentals, who find themselves in a situation of financial or social distress, for which they are not liable, must file an application for subvention or emergency financial assistance within thirty days from the occurrence of the distress. In addition, they must notify the landlord on their circumstances within thirty days from the occurrence of the distress or as soon as possible. If they comply with these requirements, the landlord may not terminate the contract. However, unless they follow this procedure, the landlord is entitled to terminate the contract.[3]

7.4 Warning Before Termination

A and B concluded a tenancy contract for B's dwelling. A does not pay the rent. B files a lawsuit against A for eviction without sending her a prior warning regarding the breach.

[2] Decision of the Higher Court in Ljubljana no. II Cp 3946/2009 from 6 January 2009.

[3] Decision of the Higher Court in Ljubljana no. II Cp 765/2011 from 15 June 2011; decision of the Higher Court in Koper no. I Cp 685/2004; decision of the Higher Court in Ljubljana no. III Cp 1212/2009 from 13 May 2009.

Solution. Pursuant to Article 103(3) of the 2003 Housing Act, the landlord must first notify the tenant on his breach and give him a deadline to correct the breach and the manner, in which he can do that. Albeit the fact that tenant does not pay the rent, the landlord is obliged to send him a warning on the breach, prior to the lawsuit. If the rent is not paid in fifteen days (or more, if the landlord determines so) after the warning, the landlord can file a lawsuit and demand termination of the contract and eviction. Otherwise, the termination is deemed as unlawful.[4]

7.5 Termination through Court

A and B conclude a tenancy contract for A's dwelling. A notifies B on the termination of the contract, offering him another dwelling. B refuses to accept the new dwelling, but continues to reside therein. C is A's legal follower and takes over the tenancy contract. Since B's contract is no longer valid, C files a lawsuit for vacating the premises.

Solution. Pursuant to Article 112(3) of the 2003 Housing Act, tenancy contracts are terminated in front of the Courts of general jurisdiction in the case of dispute. Since there was a dispute regarding the termination, but the landlord did not terminate the contract with a lawsuit, the claim for vacating the premises is unlawful.[5]

7.6 The Amount of Arrears with Rent for Termination

A is a tenant and loses her job. As a result, she is in arrears with rent for two months. B (landlord) sends her a written warning on the breach, determining a period of fifteen days to eliminate the breach. A fails to pay the rent in default. B files a lawsuit to terminate the contract. After B had filled the lawsuit, but before the Court rendered the decision, A finds a new job and pays the arrears.

Solution. Pursuant to Article 103(1/4) of the 2003 Housing Act, the culpable reason for termination of tenancy contract is also the arrears with the rent or bill for running costs. If the tenant fails

[4] Decision of the Higher Court in Maribor no. I Cp 284/2004 from 29 November 2005; decision of the Higher Court in Ljubljana no. I Cp 3/2013 from 3 July 2013; decision of the Higher Court in Celje no. Cp 448/2009 from 11 June 2009.

[5] Decision of the Supreme Court RS, no. II Ips 36/2007 from 12 September 2008; decision of the Higher Court in Ljubljana no. I Cp 967/2004 from 9 June 2004.

to cover one (or both) of these bills within the deadline from the contract or sixty days, if the deadline is not determined in the contract, the landlord may terminate the contract. The statute does not specify the amount of rent, which is to be due in order for the termination to be lawful. Therefore, the landlord acted in accordance with the law.[6]

7.7 Written Tenancy Contract

A and B conclude a tenancy contract for B's dwelling in 1999. In 2010 they conclude an annex on increase of the rent price, although the increase was agreed upon orally in 2008. None of the contracts contains A's signature. A is in arrears with the rent for eleven months in 2011. B files a lawsuit for the due amount of the rent (as well as termination of contract and vacating the premises).

Solution. Pursuant to Article 84 of the 2003 Housing Act, tenancy contracts are concluded in writing. Pursuant to Article 55 of the CO, if the contract was not concluded in the prescribed form, it is null and void, unless the purpose of the statute indicates otherwise. The written form is prescribed for the protection of parties. The contract was in its most part realized (a partial payment of rent), thus it is valid (Article 58 of the CO). The lack of signature does not lead to the voidance of the tenancy contract, since Article 84 of the 2003 Housing Act does not prescribe a specific form of the contract or require a signature.[7]

7.8 Divorce

A is a tenant in a dwelling, in which her daughters and B, her husband, reside as users. A and B divorce. The daughters had moved out even before the divorce. A and B cannot agree on who is to remain as the tenant in the dwelling. B is of poor health, with lower salary and no children.

Solution. Pursuant to Article 110(2) of the 2003 Housing Act, the ex-partners may initiate a non-contentious procedure for determining who is to remain as the tenant in the dwelling. The Court must

[6] Decision of the Higher Court in Ljubljana no. I Cp 168/2000 from 29 March 2000.
[7] Decision of the Higher Court in Ljubljana no. I Cp 2939/2012 from 8 May 2013; decision of the Higher Court in Ljubljana no. I Cp 1380/2012 from 6 February 2013.

take into account housing needs of the partners, their financial situation, health conditions, etc. Therefore, B's poor life conditions demand that he remains in the dwelling, since A may either reside with one of the daughters or, given her better financial situation, rent another dwelling.[8]

7.9 Investments of Tenant into the Dwelling

Tenant A invests into B's dwelling, on which he had housing right before 1991. Since A refused to conclude open-ended tenancy contract for non-profit rent, it is deemed that he uses the dwelling unlawfully and B files a lawsuit to evict A. During the procedure, A demands reimbursement of the costs of his investments into the dwelling.

Solution. Pursuant to Article 111 of the 2003 Housing Act, a person, who uses a dwelling without a concluded or prolonged tenancy contract, is using the premises unlawfully. The landlord may, consequently, demand the eviction at any time. The provision is not used for former holders of housing rights, if the reason for the absence of the contract lies with the landlord. Following from Article 112(2), the landlord may not demand the eviction of the tenant, unless he reimburses the tenant the costs of the investments into the dwelling, in accordance with Article 98 of the 2003 Housing Act. In this case, the reason for the absence of the contract lies with the tenant. It is true that B must reimburse him the value of the investments, but not pursuant to Article 112(2), since this Article is intended for tenants, which A is not (and has not been). A may demand the reimbursement in a separate procedure, pursuant to Article 190and following of the CO.[9]

7.10 Use of 2003 Housing Act

A and B conclude a limited in time tenancy contract for B's dwelling, from 2.9.2010 through 31.12.2010. After the expiration of the contract, A does not propose to B to prolong the contract. On 15.2.2011 B files a lawsuit for vacating the premises. The Court complies with B. A files an appeal stating that the Court should have taken into consideration Article 615 of the CO on implicitly

[8] Decision of the Higher Court in Celje no. Cp 1750/2005 from 24 November 2005.
[9] Decision of the Higher Court in Maribor no. 1 Cp 2145/2005 from 23 June 2005.

renewed contracts, since the 2003 Housing Act does not regulate this matter.

Solution. A's allegations are incorrect. Pursuant to Article 95 of the 2003 Housing Act, tenant in a limited in time tenancy must demand from the landlord the prolongation of the contract at least thirty days prior to its expiration. Otherwise, it is deemed that the tenant is using the premises unlawfully, as it is the case with A. In addition, the CO is lex generalis and is, thus, used only when the 2003 Housing Act does not regulate a certain matter. Therefore, use of the 2003 Housing Act is correct.[10]

[10] Decision of the Higher Court in Maribor no. I Cp 1319/2011 from 23 November 2011.

Selected Terminology

absentee landlord *noun* – a landlord who lives far away from the rented property and is, therefore, often less engaged in managing the premises (also ***absentee management***)

abuse *noun* – the departure from legal or reasonable use in dealing with a person or thing

accession *noun* – an immovable owner's right to all that is added to the land naturally or by labour, including improvements made by others

advance *noun* – 1. rent paid before it is due (as adjective ***in advance***); 2. rent paid at the start of the rent period for which it is due

annexation *noun* – process by which a fixture becomes a part of the land to which it is attached

apartment *noun* – a part of a block used as a dwelling and separated from other dwellings in the block by both horizontal and vertical divisions (synonym of ***flat***)

appurtenance *noun* – something which is outside the property itself but belongs to the land and adds to its greater enjoyment such as a right of way or a garage

arm's-length transaction *noun* – a transaction between two unrelated and unaffiliated parties; a transaction between two parties, regardless of how closely related they may be, conducted as if the parties were strangers, so that no conflict of interest arises

arrears *noun* – 1. the state of being behind in the discharging of a debt or other obligation (as adjective ***in arrears***); 2. rent paid at the end of the rent period for which it is due

'as is' *adjective* – in the existing condition without modification; a descriptive indication by a seller of property intended to relieve the seller from liability for defects in that condition

assessed value *noun* – a valuation placed upon a property by a public officer or a board, as a basis for taxation

assessment *noun* – a charge against land made by a unit of government to cover a proportionate cost of an improvement such as a street or a sewer

assign *verb* – to transfer a right, property, or a contract from one person to another, especially a lease

assignment *noun* – 1. the transfer of an existing lease; 2. a document that effects the transfer of an existing lease B

bad faith *noun* – dishonesty of belief or purpose, usually in terms of ignoring a claim of which one has notice

block *noun* – a building containing a number of flats

boilerplate *noun* – fixed or standardized contractual language that the proposing party views as relatively nonnegotiable

bona fide *adjective* – in good faith; without fraud; without notice

building code *noun* – a set of regula-

tions established by local governments stating fully the structural requirements for building

building loan agreement *noun* – an agreement whereby the lender advances money to an owner with provisional payments at certain stages of construction

cancellation clause *noun* – a provision in a lease which confers upon one or all of the parties to the lease the right to terminate his or their obligations thereunder upon the occurrence of the condition or contingency set forth in the said clause

caravan *noun* – a vehicle, in which people can live and travel, pulled by car or sometimes by horse and used on holidays or, especially by nomadic peoples, as a permanent abode (also ***mobile home***)

caravan site *noun* – a place where people can stay with their caravans, either on holiday or as a permanent place to live

cause *noun* – the theory of contract developed by the canon law providing a ground for legal action, based on the premise that the validity of a contract requires a reasonable and lawful cause, or moral justification, for making the promise (compare ***consideration***)

caveat emptor *noun* – 'let the buyer beware;' the doctrine holding that a buyer purchases property at his own risk

ceiling rent *noun* – the maximum rent that can be charged under a rent-control regulation

clear *adjective* – free from encumbrances or claims

clear lease *noun* – a lease under which the landlord has no liability for expenses other than tax

clear rent *noun* – a rent that is free of deductions

completion *noun* – the final transaction between the buyer and the seller of an immovable, whereby the documents for conveyance are concluded and the money and the property are transferred (also ***closing***)

completion costs *noun* – the expenses that must be paid at closing, apart from the purchase price

completion date *noun* – the date upon which a buyer takes over a property

collateral *noun* – property pledged as security for the payment of an obligation

commercial *adjective* – non-residential; business or agriculture

common parts *noun* – 1. the property that all tenants may use although the landlord retains control and responsibility over it; 2. the area owned and used in common by the residents of a condominium, subdivision, or planned-unit development

community *noun* – 1.a neighbourhood, vicinity, or locality; *adjective* – 2. joint ownership or joint possession

condemn *verb* – 1. to determine and declare property to be assigned to public use; to take private property for public use, with fair compensation to the owner; to exercise the right of eminent domain; 2. to adjudge a building as being unfit for habitation

condominium *noun* – a single property unit in a multi-unit building in which a person has both separate ownership of a unit and a common interest in the common areas along with the building's other owners

consideration *noun* – anything of value given to induce entering into a contract; it may be money, goods, services, or the promise to provide money, goods or services in the future; (compare ***cause***)

constructive notice *noun* – information or knowledge of a fact imputed by law to a person because he could have discovered the facts by proper diligence and inquiry, such as searching public records

contract for deed *noun* – a conditional sales contract for the sale of an immovable (also ***instalment land contract; land sales contract; land contract***)

cooperative *noun* – a block of flats belonging to a corporation in which shares are owned in proportion to the relative value of the flat occupied

coowner *noun* – a person who is in concurrent ownership, possession, and enjoyment of property with one or more others, such as a tenant in common or a joint tenant

covenant *noun* – a promise or agreement written into a deed or another instrument usually promising performance or nonperformance of a certain act, or stipulating a certain use or non-use of the property

- **affirmative covenant** – agreement that an immovable will be used in a certain way
- **covenant for quiet enjoyment** – promise that the tenant will not be evicted or disturbed by the grantor or a person having a lien or superior title
- **covenant of habitability** – see ***warranty of habitability***
- **leasehold covenant** – a certain agreement between the landlord and tenant contained in a lease
- **restrictive covenant** – an agreement in a deed or lease that restricts the use or occupancy of an immovable

deed *noun* – an instrument in writing duly executed and delivered that conveys title to an immovable

default *noun* – the status of a debt as being overdue

delivery *noun* – the formal act of transferring something, such as a deed; the giving or yielding of possession or control of land to another

demise *noun* – the granting of a right to the exclusive possession of an immovable for a term less than that held by the grantor (synonym of ***lease***)

deposit *noun* – tenant's money placed with the landlord as security for the former's performance of the lease agreement

depreciation *noun* – loss of value of an immovable brought about by age, physical deterioration, or functional or economic obsolescence

descent *noun* – the intestate passing of an immovable to heirs

development *noun* – an activity, action, or alteration that changes undeveloped property into developed property

devise *verb* – 1. the act of giving property by will; *noun* – 2. property that is disposed of by will; 3. the provision in a will disposing of property

dilapidation *noun* – damage to a building resulting from acts of either commission or omission

disequilibrium noun – imbalance of housing supply and demand in a given market

displacement *noun* – forced re-

moval of person from their home or country, especially because of war

dispossess *verb* – to oust or evict someone from property

dispossession *noun* – the act of a squatter who removes the true owner from physical control

disrepair *noun* – a state of being in need of restoration after deterioration or injury

distrain *verb* – to force a tenant by the seizure and detention of personal property to perform an obligation, such as paying overdue rent (note: this action is commonly illegal against residential tenants) (also ***distress***)

domicile *noun* – the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principle, and permanent home, to which that person intends to return and remain even if currently residing elsewhere

dwell *verb* – to reside in a place permanently for some period of time

dwelling *noun* – buildings which are used entirely or primarily as residences, including any associated structures, such as garages, and all permanent fixtures customarily installed in residences; moveable structures, such as caravans, used as principal residences are included

earnest money *noun* – deposit made by a purchaser of land or by a prospective tenant as evidence of good faith

easement *noun* – a right that may be exercised by the public or neighbours on, over, or through the lands of others

economic rent *noun* – rent that yields a fair return on capital and expenses

effluxion of time *noun* – the expiration of a lease term resulting from the passage of time rather than from a specific action or event (also ***efflux of time***)

eminent domain *noun* – a right of the government to acquire property for necessary public use by condemnation; the owner must be fairly compensated

encumbrance *noun* – any right to or interest in land that diminishes its value (also ***incumbrance***)

energy performance certificate *noun* – a document that a builder or owner of an immovable is required to present to potential buyers or tenants containing information about the property's energy use, typical energy costs, and recommendations about how to reduce energy use and save money

enjoin *verb* – to legally prohibit or restrain by injunction

equity *noun* – 1. the interest or value which an owner has in land over and above the charges against it; 2. fairness; impartiality; even-handed dealing; 3. the body of principles of discretionary justice formerly administered in the English Court of Chancery, now part of English law

estate *noun* – the degree, quantity, nature, and extent of interest which a person has in land

estate agent – a person who represents a buyer or seller (or both, with proper disclosures) in the sale or lease of land (also ***letting agent***)

estoppel *noun* – 1. a bar that prevents one from asserting a claim or right that contradicts what has been legally established as true or

what one has said or done before; 2. an affirmative defence alleging good-faith reliance on a misleading representation and an injury or detrimental change in position resulting from that reliance

evict *verb* – to expel a person, especially a tenant, from property, usually by legal process

eviction *noun* – the process of dispossessing a person of land

constructive eviction – any disturbance of the tenant's possession by the landlord whereby the premises are rendered unfit or unsuitable for the purpose for which they were leased

retaliatory eviction – an illegal eviction commenced in response to a tenant's complaints or involvement in activities with which the landlord does not agree

summary eviction – an eviction accomplished through a simplified legal procedure, without the procedural formalities of a trial

externality *noun* – a social or monetary consequence or side effect of one's economic activity, causing another to benefit without paying or to suffer without compensation (also ***neighbourhood effect; spillover***)

negative externality – an externality that is detrimental to another

positive externality – an externality that benefits another

extraordinary repair *noun* – a repair that is beyond the usual, customary, or regular kind; as used in a lease, a repair that is made necessary by some unusual or unforeseen occurrence that does not destroy the building but merely renders it less suited to its intended use

fair rent *noun* – a rent that is adjusted to remove scarcity value

fee *noun* – absolute ownership of property; a person has this type of estate where he is entitled to the entire property with unconditional power of disposition during his life and descending to his heirs and legal representatives upon his death (also ***fee simple; fee absolute***)

fixture (often plural as ***fixtures***) *noun* – movable items or chattels so attached to the land as to become part of the land (also ***immovable fixture; permanent fixture***; see ***tenant's fixture***)

flat *noun* – a part of a block used as a dwelling and separated from other dwellings in the block by both horizontal and vertical divisions (synonym of ***apartment***)

freehold *noun* – an absolute ownership interest in an immovable

frontage *noun* – the part of land lying between a building's front and a street or highway

gentrification *noun* – the restoration and upgrading of a deteriorating or aging urban neighbourhood by middle-class or affluent persons, resulting in increased property values and often displacement of lower-income residents

ghetto *noun* – a part of a city predominantly occupied by a particular group, especially because of social or economic issues, or because they have been forced to live there

ghettoize *verb* – 1. to set apart in, or as if in, a ghetto; to isolate; 2. to make into or similar to a ghetto

good faith improver noun – a person who makes improvement to land while actually and reasonably be-

lieving himself to be the owner or lawful occupant

gross income *noun* – total income from property before any expenses are deducted

gross lease *noun* – a lease of property whereby the landlord is obligated to meet all expenses regularly incurred through ownership of the property

gross-rent multiplier noun – the ratio between the market value of rent-producing property and its annual gross rental income

habendum clause *noun* – the part of a lease stating the term and rent

habitability *noun* – the condition of a building in which inhabitants can live free of serious defects that might harm health and safety (also ***habitable condition***)

habitation *noun* – a non-transferable right to dwell in the house of another

head lease *noun* – a primary lease under which a sublease has been granted

hereditament *noun* – the broadest classification of immovables, including but not limited to land, buildings, fixtures, and easements

hold over *verb* – to continue to occupy the leased premises after the lease term has expired, often with the effect of creating a renewal of the lease

home *noun* – a dwelling of a particular individual for whom it is their place of abode

house *noun* – a residential building which is detached or semi-detached or terraced and which contains a single dwelling (with only vertical, no horizontal divisions

household in need *noun* – families or individuals affected by poverty or dispossession

housing association *noun* – a private, non-profit organization providing low-cost housing, independent of but regulated by the state, and commonly receiving public funding

housing stock *noun* – the total number of units available for residential occupancy

housing tenure *noun* – the right by which a household occupies the respective dwelling, for example owning or renting (compare ***tenure***)

housing unit *noun* – a measure of housing equivalent to the living quarters of one household

housing with a public task *noun* – provision of housing that is not determined by the free market, but any form of state intervention (see also ***public sector housing***)

hypothec *noun* – a mortgage given to a creditor on property to secure a debt (for common law concept see ***mortgage***)

immigration *noun* – the act of entering a country with the intention of settling there permanently

immovable *noun* – property such as land, buildings and other permanent items that cannot be moved (see also ***land***)

improve *verb* – to develop land, whether or not the development results in an increase or decrease in value

improvement *noun* – a change to an immovable, whether permanent or not, which is beneficial

inalienable *adjective* – unable to be given away or transferred by the possessor; not transferable or assignable

inhabit *verb* – to dwell in; to occupy permanently or habitually as a residence (compare ***reside***)

interest *noun* – a legal share in something; all or part of a legal or equitable claim to or right in property

intermediate tenure *noun* – a form of tenure that is between ownership and renting (for example ***condominium*** or ***cooperative***)

intestate *adjective* – not having made a will before one dies (also as *noun* ***intestacy; intestate succession***)

joint tenancy *noun* – ownership of property by two or more persons, each having the right of survivorship

judgment *noun* – a court's final determination of the rights and obligations of the parties in a case (spelling note: ***judgement*** in all cases other than when referring to a court's or judge's formal ruling)

just compensation *noun* – a payment by the government for property it has taken under eminent domain (usually the property's fair market value, so that the owner is theoretically in no worse of a position after the taking)

key money *noun* – 1. a payment made, often secretly and contrary to law, by a prospective tenant to a landlord or current tenant to increase the chance of obtaining a lease, usually in an area where there is a housing shortage; 2. payment of security required from a new tenant in exchange for a key to the leased property

land *noun* – 1. the three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on or permanently affixed to it; 2. an estate or interest in an immovable (see also ***immovable***)

land-use planning *noun* – the deliberate, systematic development of land through methods such as zoning and environmental impact studies (also ***urban planning***)

landlord *noun* – one who leases an immovable to another (also ***lessor***)

landlord's warrant *noun* – a type of distress warrant from a landlord to seize the tenant's personal property, to sell them at public sale, and to compel the tenant to pay rent or observe some other lease stipulation

landlord-tenant relationship *noun* – the relationship existing between a landlord and a tenant

lawful entry *noun* – the entry into an immovable by a person not in possession, by right and without force or fraud

lease *noun* – a contract by which the rightful possessor of an immovable grants the exclusive right to occupy and use the property in exchange for consideration, usually rent (when short in duration, usual term is ***tenancy***)

lease agreement *noun* – a written instrument memorializing the conveyance of a lease and its covenants (also ***lease contract***)

lease for life *noun* – a lease for the life of the tenant, formerly common but now rare; converted in England into a fixed term of 90 years

leaseback *noun* – the sale of property on the understanding, or with the express option, that the seller may lease the property from the buyer immediately upon the sale

leasehold *noun* – 1. an immovable held for a certain term or on a pe-

riodic tenancy; 2. the ownership tenure under a long lease of an immovable (i.e. longer than 21 years in duration), with payment of a ground rent (contrast ***freehold***)

lessee *noun* – the technical term referring to a person to whom property is rented under a lease (also more commonly ***tenant***)

lessor *noun* – the technical term referring to a person who rents property to another under a lease (also more commonly ***landlord***)

let *verb* – to grant the possession and use of an immovable in return for rent or other consideration

licence *noun* – an agreement granting the use of an immovable which is not exclusive or which otherwise lacks full residential security of tenure

licensee *noun* – one to whom a licence is granted

licensor *noun* – one who grants a licence to another

lien *noun* – a legal right or claim upon a specific property which attaches to the property until a debt is satisfied

lodger *noun* – a person who occupies a designated area in the dwelling of another but acquires no property interest in that area, which remains in the owner's legal possession

maintain *verb* – to care for property for purposes of operation productivity or appearance; to engage in general repair and upkeep of property

market value *noun* – the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction

master plan *noun* – a municipal plan for housing, industry, and recreation facilities, including their projected environmental impact

mature *verb* – to become due (in reference to a debt or obligation)

merger *noun* – the termination of a lease that results when the interests of the landlord and tenant become united

mesne profits *noun* – the profits of an estate received by a wrongful tenant or an occupying trespasser

migration *noun* – the movement of persons from one region to another

mortgage *noun* – 1. a lien upon an immovable created as security for the payment of a specified debt (for civil law concept see ***hypothec***); 2. the instrument specifying the terms of a mortgage transaction

mortgage-backed securit *noun* – a security backed by mortgages, especially a pass-through security

mortgage bond *noun* – a bond that is backed by a mortgage on an immovable (also ***bond and mortgage***)

municipal *adjective* – of or relating to a city or other local government unit

necessities *noun* – things that are indispensable to living, including whatever food, medicine, shelter, clothing and personal services usually considered reasonably essential for the preservation and enjoyment of life (also ***necessaries; necessities of life***)

neighbour *noun* – a person who lives near another

neighbourhood *noun* – 1. the immediate vicinity; the area near or next to a specified place; 2. people living in a particular vicinity, usu-

ally forming a community within a larger group and often having similar economic statuses and social interests

net rent *noun* – the rental price for property after payment of expenses, such as repairs, utilities, and taxes

non-resident landlord *noun* – a landlord who does not live on the rented premises

notice *noun* – notification of the other party by either the landlord or the tenant, in the manner and subject to the restrictions provided for in the lease agreement and under applicable law, of that party's intent to terminate the lease

notice to quit *noun* – 1. a landlord's written notice demanding that a tenant surrender and vacate the leased property, thereby terminating the tenancy; 2. a landlord's notice to a tenant to pay any back rent within a specified period of time or else vacate the leased premises (also ***notice to pay rent or quit***); 3. less often, a tenant's written notice indicating an intent to vacate the leased property

nuisance *noun* – 1. a condition, activity, or situation that interferes with the use or enjoyment of property; 2. the legal action arising from such conditions, acts, or situations that occur unreasonably

obsolescence *noun* – loss in value due to reduced desirability and usefulness of a structure because its design and construction have become obsolete

occupancy *noun* – 1. the act or state of holding, possessing, or residing in an immovable; 2. the period or term during which one owns, rents, or otherwise occupies an immovable

occupant *noun* – one who occupies an immovable

occupation *noun* – the factual possession, control, or use of an immovable (contrast ***possession***)

ordinance *noun* – an authoritative law or decree in the form of a municipal regulation (also ***municipal ordinance***)

oust *verb* – to put out of possession

ouster *noun* – the wrongful dispossession or exclusion of someone, usually a co-tenant, from an immovable

overcrowding *noun* – the situation of more people living in a single dwelling than for which there is space

own *verb* – to have legal title to an immovable or personal property

owner *noun* – one who has the right to possess, use, and convey an immovable or personal property

owners' association *noun* – the basic governing entity for a condominium or planned unit development, usually an unincorporated association or a nonprofit corporation

ownership *noun* – the state of having the rights to possess, use, enjoy, and dispose of a determinate thing (either an immovable or personal property) and the right to exclude others from doing so

parol *adjective* – oral, or written but not under seal; e.g. the creation of a lease does not require a deed

partition *verb* – the act of dividing, especially the division of land held jointly or in common by two or more persons into individually owned interests

periodic tenancy *noun* – a tenancy that automatically continues for successive periods unless termi-

nated at the end of a period upon notice

period of grace *noun* – additional time allowed to perform an act or to make a payment before a default occurs (also ***grace period***)

personal *adjective* – of or affecting a person (contrast ***real***)

personal action *noun* – an action brought against a person rather than property

personal right *noun* – a right regarding a person's legal status or personal condition, as opposed to the person's estate

personal property *noun* – any movable or intangible thing that is subject to ownership and not classified as an immovable

possession *noun* – the right under which one may have or hold property in one's power; the right to exercise exclusive dominion over property (contrast ***occupation***)

possessory interest *noun* – the present right to control property, including the right to exclude others, by a person who is not necessarily the owner

premises *noun* – a tract of land including its buildings; a house or building, along with its grounds

premises liability *noun* – a landowner's or landholder's tort liability for conditions or activities on the premises

private rented housing *noun* – housing owned by a private individual or agency and rented to the occupiers for profit, generally at market rates

private sector housing *noun* – housing provided for by private landlords, for which the free market determines the conclusion of contracts

privity of contract *noun* – the connection or relationship between two parties to a contract, allowing them to sue each other but preventing a third party from doing so, deriving from the doctrine that a contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it

privity of estate *noun* – a mutual or successive relationship to the same right in property, such as between grantor and grantee or landlord and tenant

professional landlord *noun* – a landlord in the business of building or purchasing immovables with the purpose to let for profit

property *noun* – any external thing over which the rights of possession, use, and enjoyment are exercised

property tax *noun* – a tax levied on the owner of an immovable, usually based on the property's value

public housing *noun* – social housing provided by a government agency, usually a local authority (compare ***housing with a public task***)

quiet enjoyment *noun* – the possession of an immovable with the assurance that the possession will not be disturbed by a superior title

quit *verb* – to leave or be forced to leave a property

rack rent *noun* – the highest rent obtainable; rent equal to or nearly equal to the full annual value of the property

real *adjective* – of, relating to, or attached to a thing (movable or immovable) rather than a person (contrast ***personal***)

real right *noun* – a right that is

connected with a thing rather than a person, and are enforceable against the whole world

real estate investment trust *noun* – a company that invests in and manages a portfolio of immovables, with the majority of the income distributed to its shareholders (abbreviated REIT)

re-entry *noun* – a landlord's resumption of possession of the leased premises, usually upon the tenant's default under the lease

registration *noun* – the act or process of recording an instrument, such as a deed or mortgage, into the public registry

rent *noun* – consideration paid under a lease, usually periodically, for the use or occupancy of an immovable

rent regulation *noun* – a restriction imposed, usually by municipal legislation, on the maximum rent that a landlord may charge for an immovable (also ***rent control***)

rent strike *noun* – a refusal by a group of tenants to pay rent until grievances with the landlord are heard or settled

repair *noun* – the curing of defects in a dwelling (also repair *verb* – to cure defects in a dwelling)

repairment *noun* – the act of repairing

repossession *noun* – 1. the action by which a landlord takes back what he held before the lease; 2. a procedure whereby property pledged for a debt is sold to pay the debt in the event of default in payment or terms

reside *noun* – to live in a place permanently or for an extended period

residence *noun* – the place where one actually lives

primary residence *noun* – the dwelling where one usually lives; limited to one primary residence for each person at any given time, although a primary residence may be shared with other people; a primary residence is considered as a legal residence, for example, for income tax purposes or for acquiring a mortgage

secondary residence *noun* – a place where a person lives part time or less than the majority of the calendar year; a person can have more than one secondary residence

resident *noun* – a person who lives in a particular place

residential *adjective* – 1. of or related to a residence; 2. used as a residence or by residents; 3. restricted to or occupied by residences; 4. of a tenancy, non-commercial

restriction *noun* – a limitation, in a tenancy agreement, on the use or enjoyment of an immovable (see ***restrictive covenant***)

right of entry *noun* – the right of taking or resuming possession of an immovable in a peaceable manner

service charge *noun* – a charge for keeping an improvement in working condition or a residential property in habitable condition (also ***maintenance fee***)

servitude *noun* – an encumbrance consisting of a right to the limited use of an immovable without the possession of it; a burden on an estate for another's benefit, usually a neighbour; includes easements, irrevocable licences, profits, and real covenants (see also ***easement***)

site *noun* – a place or location, especially land set aside for a specific use

situs *noun* – the location of an immovable for determination of which court has jurisdiction over actions involving the property

slum *noun* – run-down area of a city characterized by substandard housing, squalor, and a lack of tenure security (often as plural slums)

social housing *noun* – different types of housing provision which respond to administrative procedures providing protection in kind, as opposed to market mechanisms

squatting *noun* – the occupation of a building without any legal claim or title

sublease *noun* – a lease by a lessee to a third party, conveying some or all of the leased property for a shorter term than that of the lessee, who retains a reversion in the lease (also sometimes ***underlease***)

sublandlord *noun* – a tenant who leases some or all of the leased property to a third party

subtenant *noun* – a third party who received by lease some or all of the leased property from a lessee

subsidization *noun* – to provision of protection by money

surrender *noun* – the termination of a lease by returning possession to the landlord

survey *noun* – 1. the process by which a parcel of land is measured and its area ascertained; 2. the blueprint showing the measurements, boundaries and area

tenancy *noun* – 1. possession or occupation of an immovable under a lease; 2. the period of such possession or occupancy

tenancy agreement noun – the document by which a short term tenant holds

tenant *noun* – one who pays rent for the use and occupation of an immovable owned by another under a lease or similar arrangement (also ***lessee***)

tenantable repair noun – 1. a repair that will render premises fit for present habitation; 2. the responsibility of the tenant to show reasonable care for the dwelling so as not to cause damage in excess of normal wear and tear

tenant association *noun* – an organization of tenants who live in a certain building or development, or an organization of tenants belonging to a county or citywide tenants' association

tenant's fixture *noun* – removable personal property that a tenant affixes to the leased immovable but that the tenant can detach and take away

tenement *noun* – a low-rent apartment building, usually in poor condition and at best meeting only minimal safety and sanitary conditions

tenure *noun* – the method of holding an immovable (compare housing tenure)

timeshare *noun* – a type of joint ownership or rental of property, such as a vacation condominium, by numerous persons who take turns occupying the property

title *noun* – 1. the legal link between a person who owns property and the property itself; 2. an instrument that constitutes proof of ownership of property

townhouse *noun* – an attached, single-family dwelling unit which is adjacent to other similarly owned single-family dwelling units that are connected (also ***rowhouse***)

transfer *noun* – the conveyance of title to property from one person to another; 2. the document passing title of a registered immovable; 3. *verb* – to convey ownership of property to another

trespass to land – the unlawful (1) entering onto land that is in the possession of another, (2) remaining on the land, or (3) placing or projecting an object upon it

unconscionability *noun* – extreme unfairness

unconscionable *adjective* – of an act or transaction, extremely unfair; affronting the sense of justice, decency, or reasonableness

unoccupied *adjective* – of a building, not occupied; vacant

urban *adjective* – of or relating to a city or town; not rural

urban renewal noun – the process of redeveloping urban areas by demolishing or repairing existing structures or by building new facilities on areas that have been cleared in accordance with an overall plan

usufruct *noun* – a right to use and enjoy the fruits of another's property for a period of time without damaging or diminishing it, although the property might naturally deteriorate over time

vacate *verb* – to surrender occupancy or possession; to move out or leave

valuable improvement *noun* – an improvement that adds permanent value to the freehold

valuation *noun* – 1. an estimate of the worth or price of an immovable by an appraiser recognized as an expert in this work; 2. the act appraising the value of an immovable

vindication *noun* – an action to recover real rights in and possession of property that is wrongfully held by another

void *adjective* – having no legal force or effect

voidable *adjective* – capable of being affirmed or rejected by one of the parties; valid until annulled

waiver *noun* – the renunciation, abandonment, or surrender of a claim, right, or privilege

warranty *noun* – a covenant by which a grantor promises to secure to the grantee that which is conveyed in a deed

warranty of habitability *noun* – in a residential lease, a warranty from the landlord to the tenant that the leased property is fit to live in and that it will remain so during the term of the lease (also ***covenant of habitability***)

wear and tear *noun* – deterioration caused by ordinary use; the depreciation of property resulting from its reasonable use (also ***fair wear and tear; natural wear and tear***)

welfare *noun* – a system of social insurance providing assistance to those who are financially in need

wrongful-eviction action *noun* – a lawsuit brought by a former tenant or possessor of an immovable against one who has put the plaintiff out of possession, alleging that the eviction was illegal

zone *noun* – an area set off by the responsible authorities for specific use, subject to certain restrictions or restraints

zoning *noun* – the division of a municipality into separate districts with different regulations within those districts pertaining to, for example, land use and building size

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