Tenancy Law and Housing Policy in Croatia

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Chapter One

Current Housing Situation

1.1 General Features

In 1990 Croatia declared its independence from the former Socialistic Federal Republic of Yugoslavia. After the Declaration of independence the Yugoslav Army aggression and occupation of large parts of the country followed. The first decade following the independence was subsequently significantly marked by the war and the post-war events. After the war large scale post-war rebuilding followed. The post war rebuilding programmes encompassed different groups of citizens; war veterans, IDPs and refuges (mostly Serbian minority members).

After the Independence two important processes on the housing market were undertaken: privatisation of socially owned housing stock and denationalization; both deeply affecting the housing market. Firstly, the stock of apartments previously owned by the companies and the state was sold to the holders of the 'housing right' for about 10–15% of its market value, resulting in 82,9% of apartment users as legal owners (Census 2001). Thereafter, the denationalization returned the apartments and homes to its rightful owners, from whom the apartments and houses were confiscated in the beginning of socialistic era, following the end of World War II.

In 1996, the new Housing Act was passed, which regulates the rights and duties of both market and 'protected tenants.' Citizens who could not afford to buy (or in some cases did not have the right to buy) the apartments, in which they were leaving in in times of socialistic era, were categorized as 'protected tenants' paying the 'protected rent.' The right to protected rent was given to its holders permanently, but such a right cannot be sold or inherited.

At present there exists no state housing policy in Croatia. In the late 90s three large housing programmes were launched: Long-Term Financing of Residential Construction with Government Subsidies, Government Incentive to Housing Savings and Publicly Subsidised Residential Construction. Up until today, there is no re-

search on the economic and social impacts of these three programmes. Systematic approach towards housing in Croatia is still lacking.

1.2 Historical Evolution of the National Housing Situation and Housing Policies

As can be found in relevant literature and research materials, the first texts on this subject date back to the end of nineteenth century and deal with the housing situation in Zagreb. Housing matters emerge relatively late in comparison to the developed European countries. The lack of literature and information ends with the beginning of the World War II.

This historic review will be divided into three periods: first, from the 1900s to till the World War II, second, the Socialistic period and, third, the Independence and the transition period.

At the beginning of the twentieth century, the authorities in Zagreb began to deal with the problems of the housing situation in the city caused by the fast growth of its population. From 1918 to 1941, significant changes in the housing standard are recorded and housing policy became a recognizable part of the social policy. Some forms of protected tenants existed; social housing was built by the civil organizations and co-operatives, with the city of Zagreb acting as a partner to housing co-operatives in extensive projects of building settlements with family houses. Significant increase observed in construction of housing unit blocks at the end of 1920s was connected with cheap (affordable) housing loans.[1] At the end of this period, especially during the World War II confiscation of housing was practiced.

After the end of the World War II, Croatia became a part of socialistic Federal People's Republic of Yugoslavia (FPRY[2]). Housing situation and housing policy were influenced by the change of the social, legal and political regime. 'Housing policy in the socialist period was under distinct ideological pressure.'[3] State declared its

[1] G. Bežovan, 'Stanovanje i stambena politika' in *Socijalna politika Hrvatske*, edited by V. Puljiz (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2008), 338.

[2] The FPRY became Socialistic Federal Republic of Yugoslavia (SFRY) with the new Constitution from the 1963, *Službeni list Socialističke federativne republike Jugoslavije*, no. 14/63.

[3] Bežovan, 'Stanovanje i stambena politika,' 339.

own responsibility and care for the housing situation of citizens in the Constitutions.[4]

World War II left many people homeless and caused massive migration from the rural to the urban areas. In the post war period, quick renovation and construction of indispensable new housing was needed. However, due to the lack of finances, the scope of such endeavours, especially the construction of new housing, was small. To alleviate housing crisis, 'the Yugoslav authorities assumed the power to determine the amount of rent in order to protect the tenants, who were mostly homeless or displaced persons. Furthermore, the state retained the exclusive power to allocate residential units to people with housing needs.'[5] This also applied to the private property and private owners were forced to accommodate families in up to a half of the surface of their dwellings. The accommodated families paid rent to the private owners. This practice was based on administrative decisions (of administrative bodies), not on the law.[6] 'The power of administrative organs in deciding on the allocation of "surplus living space" in private houses to homeless and internally displaced persons was practically unlimited.'[7]

Once the emergency housing situation was handled, the attention shifted to improving the legal security of tenure. Thus, with the Decree on Administration of Residential Units (*Uredba o upravljanju*

4 See: Article 20 of the Constitution of FPRY from the 1946, *Službeni list Federativne narodne republike Jugoslavije*, no. 10/46 and Article 242 of the Constitution of SFRY from the 1974, *Službeni list Socialističke federativne republike Jugoslavije*, no. 9/74.

5 P. Nelson (ed.), *Housing and Property Rights: Security of Tenure in Post-Conflict Societies*, (Nairobi: UN-Habitat, 2005), 20.

6 From the year 1945 apartment buildings were forcibly rented, *inter alia*, for the housing purposes, on the basis of the acts of local authorities. Management and renting with limited rent were regulated by federal laws, especially by the Regulation on the management of apartment buildings, *Službeni list Federativne narodne republike Jugoslavije*, no. 52/53. See more in P. Simonetti, *Denacionalizacija* (Rijeka: Pravni fakultet Sveučilišta u Rijeci, 2004), 82–92.

7 Nelson, *Housing and Property Rights*, 20. Furthermore, this administrative practice of allocation of housing units was practiced until 1974 and these tenants would acquire housing right on these housing units (from 1974 it was not possible any more to acquire housing right on private housing). This former practice later in time led to serious problems – problem of legal inability of these tenants to buy housing units in question in the process of the privatization in the 1990s and their unenviable status arisen from this inability.

stambenim zgradama)[8] in 1954, the 'right to an apartment' was introduced, which gave the users a subjective right to the permanent usage of the allocated dwellings, in accordance with the general rules on residential units.[9] 'The right to an apartment was not a real property right, nor the right of every citizen to get an apartment, but a right that entitled its holder to permanently use the apartment as long as the housing need existed and while he performed his statutory and contractual obligations.'[10]

In accordance with the new socialistic ideology, the following solutions were nationalization and confiscation (although, it is important to note that the biggest part of confiscation was practiced during and immediately upon the World War II) of the existing housing stock. The general rule of the nationalization was that one household could own only two bigger or three smaller apartments (the so called 'housing maximum').[11]

The abandonment of the Soviet model of socialism in the 1950s influenced further development of the housing policy and the housing situation. In order to reduce the state power, the FPRY abandoned the model of state ownership over production means and real property and introduced a concept of social self-governance (*društveno samoupravljanje*) and the institute of social ownership as a new socio-economic category. Idea of workers' self-management (*radničko samoupravljanje*) was one of the basic forms of the social self-governance model and the principal driving force of the social and economic development. In time, social ownership became the dominant form of tenure, especially in the urban areas. De-

[8] *Službeni list Federativne narodne republike Jugoslavije*, no. 21/54.

[9] Nelson, *Housing and Property Rights*, 21.

[10] T. Tumbri, 'Stambeno pravo u doba uključenosti u socijalistički pravni krug' in *Teorijske osnove građanskog prava: građansko pravo i pripadnost hrvatskog pravnog poretka kontinentalnoeuropskom pravnom krugu*, edited by N. Gavella (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2005), 127.

[11] In 1958 FPRY passed Law on Nationalization of Rental Housing Units and Construction Land, *Službeni list Federativne narodne republike Jugoslavije*, no. 52/58. Art. 2 of this Law specified that the citizen's private residential ownership was limited to: (1) one family house, i.e. a house with two apartments or with three small apartments; (2) a maximum of two apartments as separate residential unit; (3) two family houses composed of maximum two apartments and a third small apartment; (4) one family house and one apartment as a separate part of a building. See more in Simonetti, *Denacionalizacija*, 82–92.

centralization was conducted through the establishment of specific non-state institutions, named socio-political communities. These communities comprised of all non-state institutions at municipal, national and federal level (a good example of such non-state institutions are socially owned companies and other non-economic institutions like museums, libraries, etc.).[12]

In time, with further development of the idea of workers' self-management the companies and other non-economic institutions took over the role and responsibility for the housing needs of their employees from the state.[13] 'Until 1953 the construction of residential units was exclusively financed by the state, but the 1956 Contribution to the Housing Fund Act (*Zakon o doprinosima za stambeni fond*)[14] imposed a compulsory contribution of 10% of the employees' salary[15] to a newly established particular fund for housing construction. The subsequent increase of financial resources significantly stimulated the housing construction.'[16] The stronger the company was, the higher the wages were the richer (bigger) the funds for housing needs were. So in time, the housing policy became one of the development priorities[17] and depended largely on the material strength of individual company and other non-economic institution. In general, the housing contribution was distributed between three different housing purposes:

1. for purchase of public (socially owned) housing units,[18]

[12] Nelson, *Housing and Property Rights*, 17.

[13] Employees' self-management was introduced in 1950 with the Basic Law on the Management of State Enterprises and Economic Associations by work collectives, *Službeni list Federativne narodne republike Jugoslavije*, no. 43/50, and the Constitutional Law on the Basis of Social and Political Organisation of the Federative People's Republic of Yugoslavia and Federal Bodies of Power, from 1953, *Službeni list Federativne narodne republike Jugoslavije*, no. 3/53.

[14] *Službeni list Federativne narodne republike Jugoslavije*, no. 57/55.

[15] This contribution was paid by all employed persons, i.e. employees of socially owned enterprises and other, non-economic, institutions. It was paid to the housing funds of their SOE or institution.

[16] Nelson, *Housing and Property Rights*, 21.

[17] A new housing policy in the form of the Federal Resolution on the Further Development of the Housing Economy (*Službeni list Socialističke federativne republike Jugoslavije*, no. 21/65) declared housing as a priority for the Yugoslav society and confirmed housing enterprises to be of particular social interest.

[18] On the process of purchase and allocation see more in Nelson, *Housing and Property Rights*, 18–9.

which would then be allocated to their employees in housing right;

2. for housing loans approved to employees for the renovation of the existing individual house or building of a new one;
3. for the construction of social housing (solidarity flats) at the local level (the smallest amount was used for this last purpose).[19]

'It is important to stress that in the socialist period there was no relevant practice of social housing construction for lower income households, as housing programmes – public housing and others, were mainly intended for the middle classes.'[20]

Under the influence of socialistic ideology, a special right called 'housing right' was introduced in the legal system. 'The Yugoslav system included the recognition of private ownership including tenure types derived from it, such as lease or authorized use. However, the model of social ownership became the most dominant form of ownership in all sectors and realms, including residential property. Social ownership over residential property was further developed into the "housing right" as a specific tenure type.'[21]

The housing right was formally introduced in 1959 with the Housing Relations Act (*Zakon o stambenim odnosima*[22]). 'This right was much more substantial than the previous, limited "right to an apartment," which it replaced.'[23] 'This right was not a pecuniary right of civil law, but a special right construed in a Socialist Law.'[24]

[19] Bežovan, 'Stanovanje i stambena politika,' 339.

[20] G. Bežovan, 'Assessment of Social Housing Programmes in Croatia As a Part of Residual Social Care' (paper presented at the European Network for Housing Research Conference on Changing Housing Markets: Integration and Segmentation, Prague, 28 July–1 August 2009), 2.

[21] Nelson, *Housing and Property Rights*, 18.

[22] *Službeni list Federativne narodne republike Jugoslavije*, no. 16/59. Later on, In Croatia this Law was replaced by the republic law, the Housing Relations Act (*Zakon o stambenim odnosima*) *Službeni list Socialističke Republike Hrvatske*, no. 52/74. This act was replaced by a new one with the same name (*Službeni list Socialističke Republike Hrvatske*, no. 51/85).

[23] Nelson, *Housing and Property Rights*, 22.

[24] T. Kerestes, 'Slovenia,' European University Institute, accessed 5 January 2014, http://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/TenancyLawProject/TenancyLawSlovenia.pdf, 1.

It gave citizens a right to use dwellings in social ownership in a way that was permanent, inheritable and very close to the right of ownership[25] (hereinafter public housing with housing right). The housing right was established (acquired) by the act of actual moving into the dwelling on the basis of final decision on allocation of dwelling into usage or conclusion of contract of use depending on the time of acquisition of the right.[26] The tenant paid rent utilities and the general building expenses.

It is important to note that after 1974, it was not possible to acquire housing right on private housing any more (private housing was usually allocated on the basis of administrative decisions, see more above), but only on public housing.[27] The practice of allocation of private housing later in time led to serious issues. Firstly, the issue of legal inability of these tenants to buy these dwellings, in the process of the privatization in the 1990s, and then, to theirs unenviable status arisen from this inability.

'During the rapid industrialization and urbanization in the 1960s and 1970s, public housing with housing right became prevalent in urban areas. In rural areas, private ownership remained, but was subject to severe restrictions.[28] [29]

[25] 'The determination of the nature of the housing right within the civil law doctrine is difficult. It may be best described as a *sui generis right*, which includes both elements of the obligation rights and the real rights regime. On the one hand, the obligation or contractual part was introduced through the contract of use as a prerequisite for the acquisition of the housing right. Other obligations of the housing right holder included the obligation to pay "rent," utilities and the general building expenses. On the other hand, the housing right provides for elements of the real rights regime. Thus, it allowed the housing right holders to exercise this right *erga omnes*, which means that they could exclude not only their contractual party, the public housing enterprise, but any third person from the use or the disposal of their apartments. The second real or absolute element of the housing right was its indefinite duration as a right for life which could be inherited. Furthermore, the family character of the housing right extended it to other family members. Finally, the housing right holder was allowed to change or modify the apartment by all legal means, apart from transfer, sale or mortgage.' Nelson, *Housing and Property Rights*, 19.

[26] See more on the procedure of allocation of dwellings, acuisition of the right and rights and obligations of the tenants during different periods in Tumbri, 'Stambeno pravo u doba uključenosti u socijalistički pravni krug,' 127–40.

[27] *Ibid.*, 133–4.

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

[29] Restrictions on housing maximum played an important role even in rural areas;

Housing market gradually grew and in the 1980s was partially subjected to the laws of supply and demand.

A system of subsidies of rent and costs of housing (housing allowance or housing benefits) also existed in the housing policy of socialistic period. This system had several problems. The first problem laid in the fact that:

> [...] the rents for public housing were so low that there was no point to subsidize them, therefore the accent was on subsidies for housing costs (electricity, water, heat) which in part had the economic price. The system was led on the local level and was based on the verification of income and property status (means test). Ideologically subsidies were justified as a concern for the standard of the working class. Subsidies were generally realized by the privileged tenants in public housing.[30]

Another problem in the system was that the tenants who rented dwellings on the private market were not able to use these subsidies in practice. Because the general rule was renting without concluding a rental contract in a written form, these tenants could not prove their status in order to get subsidies. The possibility of housing costs subsidies for the home owners remained only on the level of discussion.[31]

Since the end of the 1970s, and especially in the early 1980s, the SFRY was facing a serious economic crisis which affected the housing sector as well. 'For the first time since the 1950s, the housing construction assumed a negative trend. During this crisis, the private sector became the principal investor into the housing construction.'[32]

One of the actors in the private sector were the housing co-operatives which, as non-profit housing organizations, have a certain tradition in Croatia (cooperatives existed in Croatian system before World War I, as briefly mentioned in the text above). From the late 1970s until the end of 1990s, housing co-operatives played a

however some restrictions were less strict for the rural areas in order to be compatible with the needs of the farmers. Therefore more private housing in the rural areas remained. This was not the case in the cities, where allocation of the 'surplus living space' was practiced more rigorously.

[30] Bežovan, 'Stanovanje i stambena politika,' 340.

[31] Ibid.

[32] Nelson, *Housing and Property Rights*, 24.

recognisable role in meeting the housing needs, due to the decrease of public housing construction caused by the economic crisis.[33]

According to Bežovan,[34] at the end of the 1980s, the following housing programmes existed in Croatia:

- public housing construction,
- marginal social housing construction for the lower income citizens,
- housing allowance and housing loans under favourable conditions.

Furthermore, the following types of subsidies existed: manufacturing subsidies for the purchase of building material VAT-free, subsidies for construction of dwellings in socially organised construction and subsidies for building of dwellings and family houses through housing co-operatives. Subsidies also existed to obtain the building sites, nationalized at the time, under favourable conditions for public housing construction.[35]

To summarize, after World War II, housing needs in Croatia were mostly addressed in two ways:

1. by building family houses with one's own funds and work (the so-called self-help construction)[36] and by purchasing dwellings from building companies and housing cooperatives; and
2. by allocation of publicly-owned housing through companies, institutions or other organisations.[37]

[33] G. Bežovan, 'Neprofitne stambene organizacije i izazovi njihovog razvoja u Hrvatskoj,' *Revija za socijalnu politiku* 15, no. 1 (2008): 49; Tumbri, 'Stambeno pravo u doba uključenosti u socijalistički pravni krug,' 131.

[34] Bežovan, 'Neprofitne stambene organizacije i izazovi njihovog razvoja u Hrvatskoj.'

[35] Bežovan, 'Assessment of Social Housing Programmes in Croatia,' 2.

[36] The so-called self-help construction was a form of house building largely practiced in the Yugoslav times. Such construction was not regulated in any way. It was barely a model, by which people would gather friends and family to help them with building of their family house. Mostly the system worked in a way that one would return the favour when others built their house. Such a built was possible also due to working hours in these times. One would start with his working hours very early in the mornings; at 5 or 6 AM and therefore finished already at 1 or 2 PM, leaving plenty of time in the afternoons.

[37] M. M. Tepuš, 'An Analysis of Housing Finance Models in the Republic of Croatia,' *Surveys*, S-12 (2005): 4.

Type of house built during socialistic times as the so-called self-help construction. Usually more than one generation, in some cases up to three, live under the same roof.[38]

The following tenure types existed in the socialist period:

1. homeownership,
2. public housing with housing right,
3. private rental housing,
4. social housing,
5. renting a part of dwelling,
6. housing with relatives, and
7. other forms (such as private housing with housing right).

In 1991, public housing with housing right made 25% of the total tenure structure and was mostly concentrated in bigger cities, for example in Zagreb it made 45% of the tenure.[39]

In the 1990s Croatia underwent through major change, from socialism to capitalism, from social to private ownership. The social and political changes of 1990s resulted in the implementation of comprehensive housing reforms and reassessment of housing rights. Contributions paid by the employees were cancelled in 1993. Thus, the role of the companies in providing for the housing needs of their employees was diminished. That change was accompanied by the changes in the institutional framework of housing policy; instead of socio-political communities the housing funds (*stambeni fondovi*) on municipal level were formed. Unfortunately, the practice showed that the later did not have adequate means nor will (personal, professional, infrastructural nor financial) to take over such a competence. 'Withdrawal of the state from the housing policy, deregulation, privatization and strengthening of free market relations were the characteristics of the housing policy in Croatia in the beginning of the 1990s.'[40]

The following illustration of the reforms and programmes of the housing policy implemented by the authorities in Croatia from the 1990 till the present days serves as confirmation of this claim.

[38] 'Prodaja kuće ili zamjena za stan u zc (prednost Novi Zagreb),' Njuškalo, 23 November 2014, http://www.njuskalo.hr/nekretnine/stan-zagreb-savski-gaj-64-m2-prodaja-ili-zamjena-kucu-oglas-9828320.

[39] Bežovan, 'Stanovanje i stambena politika,' 340.

[40] Ibid., 341–2.

The new Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*)[41] does not explicitly mention the responsibility of the state to help its citizens in meeting their housing needs. Its provisions mention neither public ownership nor tenancy. With the new Constitution, the care for housing has been shifted from State to the Local authorities.

The Article 134 of the Constitution prescribes: 'Units of local self-government shall carry out the affairs of local jurisdiction by which the needs of citizens are directly fulfilled, and in particular the affairs related to the organization of localities and housing, area and urban planning' Some authors (non-lawyers) however believe that this provision does not contain the explicit responsibility of the units of local self-government in meeting the housing needs of their population.

Although the Constitution does provide for quite some other provisions in accordance with which it can be said, that a legal obligation of Croatian state to provide for housing of its citizens does in fact exist,[42] this did not play a significant role in the field of housing up until today.

New housing regime was regulated with a series of acts passed in the period from 1990-6, especially with:

1. the Sale of Apartments with Housing Right Act from 1992 (*Zakon o prodaji stanova na kojima postoji stanarsko pravo*),[43]
2. the Lease of Flats Act[44] from 1996 (*Zakon o najmu stanova*),[45]
3. the Compensation for Property Taken During the Time of the Yugoslav Communist Regime Act from 1996 (*Zakon o*

[41] *Službeni list Republike Hrvatske*, no. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10.

[42] Personal interview with Professor Tatjana Josipović, 1 April 2013.

[43] *Službeni list Republike Hrvatske*, no. 43/92, 69/92, 87/92, 25/93, 26/93, 48/93, 2/94, 44/94, 47/94, 58/95, 103/95, 11/96, 76/96, 111/96, 11/97, 103/97, 119/97, 68/98, 163/98, 22/99, 96/99, 120/00, 94/01, 78/02.

[44] Definition of 'an apartment' in accordance with the Lease of Flats Act is: 'An apartment is considered a set of rooms combined with essential additional spaces, which are as a whole intended for housing. These rooms and spaces combined have to represent one housing unit with a separate entrance.'

[45] *Službeni list Republike Hrvatske*, no. 91/96, 48/98, 66/98, 22/06.

naknadi za imovinu oduzetu za vrijeme jugoslavenske komunističke vladavine),[46]

4. the Ownership and Other Proprietary Rights Act from 1996 (*Zakon o Vlastništvu i Drugim Stvarnim Pravima*),[47] and
5. the Sell of Apartments that were used by Janitors Act from 2006 (*Zakon o prodaji stanova namjenjenih za nadstojnika stambene zgrade*).[48]

With this acts the fortress of socialistic era, the housing right, was abolished through its 'transformation into the right of purchase and further either into ownership or into right of tenant to conclude a contract with protected rent'[49] (protected tenancy). The most important part of the housing reform implemented during the 1990s in Croatia (similar to other countries in transition, for example Hungary, Slovenia, Serbia, etc.) was the sale of public housing with the housing rights.[50] The sale of public housing started in the middle of the 1991 with the Sale of Apartments with Housing Right Act.[51] This extremely important Act, entitled the housing rights holders to purchase socially owned apartments (public housing) they were living in, and to acquire ownership over them by entering it in the Land register. There were some apartments which were exempt from the possibility of being purchased. These were the apartments to which statutory prohibition of disposal or impossibility of purchase pursuant to this Law was established.[52] It is important to note that this Law does not refer to private housing with housing right (these were the privately owned apartments on which the housing right was established during socialist era mainly on the administrative basis all upon 1974) due to the fact that they were already in the private

[46] *Službeni list Republike Hrvatske*, no. 92/96, 39/99, 42/99, 92/99, 43/00, 131/00, 27/01, 34/01, 65/01, 118/01, 80/02, 81/02.
[47] *Službeni list Republike Hrvatske*, no. 91/96, 68/98, 137/99, 22/00, 73/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12.
[48] *Službeni list Republike Hrvatske*, no. 22/2006.
[49] M. Franić, 'Stambeni odnosi u svjetlu reintegracije hrvatskog pravnog poretka u kontinentalnoeuropski pravni krug,' *Zbornik radova Pravnog fakulteta u Splitu* 46, no. 4 (2009), 813.
[50] Bežovan, 'Assessment of Social Housing Programmes in Croatia,' 3.
[51] Croatia, however, did not have the power to implement the privatization laws in its whole territory until 1995.
[52] Franić, 'Stambeni odnosi u svjetlu reintegracije,' 814.

ownership of natural persons – private owners. By virtue of the fact this was one of the groups of apartments exempt for the sale. Thus, the tenants with housing right on privately owned apartments were not entitled to buy apartment units they were living in.

When the privatization started, 25% of households had the housing right on the apartments in social ownership. At the beginning of this process, there were a total of 393,242 apartments in social ownership; 249,000 of them could be bought in the privatization process, which amounted to 63% of the stock. With the sale of public housing, the tenure structure in Croatia changed significantly. In 1991, 66.5% of the households owned apartments they were living in. Mostly due to the process of privatization, this percentage grew to 82.9% in 2001. By the end of 2004, the overall number of 317,831 apartments with housing right was sold. Of this number, 197,852 (62.2%) were sold by instalments and 116,305 (36.6%) with one-off payment. The average sold dwelling had a surface of 59 m^2 and was purchased at 10% of the market price. Thus, the privatization in Croatia can also be marked as the 'give-away privatization.'[53] The Sale of Apartments with Housing Right Act (from 1992) defined the methodology of calculation of the price in accordance to which each of the apartments was sold.

Such low prices enabled many to buy the apartments. On the other hand it nowadays leads to problems (legal and other, such as maintenance issues) when some of the owners are unable to maintain the apartment building they co-own. In accordance with the transitional and final provisions of the Ownership and Other Proprietary Rights Act (Art 370) the persons who became owners of the apartment and have entered the ownership agreements into Land register or Register of Contracts until the 1.1.1997, when the Act was passed, became co-owners of the whole apartment building with the land on which it stands. They therefore have an obligation to pay for maintenance costs of their building (Art 89 and 380). The problems for the owners not paying the maintenance costs can occur, since non-payment can result in expulsion from the co-ownership by the other co-owners of the apartment building (Art 89).

The Lease of Flats Act entered into force at the end of the 1996 (5 November 1996) and a set of rules for modern lease of apartment

[53] Bežovan, 'Stanovanje i stambena politika,' 342–7.

were introduced into the legal system. With this Law housing right ceased to exist and the Housing Relations Act was partly derogated.

The housing right ceased i.e. was *ex lege* transformed into a status of the tenant-lessee[54] for:

1. housing right holders on privately owned apartments acquired until 26 December 1974, and
2. housing right holders on the public housing that did not purchase units they lived in (although they were entitled to by the Sale of Apartments with Housing Right Act).

In addition, these two groups of tenants were given the right to conclude a tenancy contract with protected rent. In the following text this tenants will be referred to as protected tenants (protected tenancy) in order to distinguish this type of tenure from the social housing (on the importance of this distinction see more in Regulatory Types of Rental and Intermediate Tenures).

Thus, one can argue that this Act solved the problem of housing rights statuses acquired on the privately owned apartments, but, as it shall be explained later, in practice such tenancy contracts are problematic up to today.

The privatization of public housing was taking its course concurrently with the process of denationalization, i.e. restitution of dwellings nationalized and confiscated during the socialism. The restitution is prescribed by the Compensation for Property Taken during the Time of the Yugoslav Communist Regime Act. This Law sets the following rules:

1. the general rule is that the dwellings that were taken are not restituted into ownership of their former owners, with the exception of housing units that were confiscated or nationalized and on which tenancy does not exist – the apartments in which there were no sitting tenants; tenants with housing right (these are restituted into the ownership and returned into the possession of their former owners);[55]
2. the former owner of the nationalized dwellings on which tenancy exists was entitled to reimbursement, and the sitting tenant was entitled to purchase the housing unit,[56] if

[54] Pursuant to the Article 30 of the Lease of Flats Act.
[55] Pursuant to the Article 22 of the Compensation Act.
[56] Pursuant to the Art. 22, para. 3 of the Compensation Act.

the tenant did not buy the dwelling, he acquired the status of protected tenant pursuant to the provisions of the Lease of Flats Act,[57] and the dwelling in question was returned into property of the former owner;

3. the dwellings that were confiscated and on which tenancy exists are restituted into the ownership, but not into the possession of their former owners, and the former holder of the housing right acquires the status of the protected tenant pursuant to the provisions of the Lease of Flats Act.[58]

Thus, the protected tenancy is a result or combination of the two processes; privatization as well as restitution.

In the existing structure of restituted end privatized housing, about 4,500 (some sources mention number 2,600) households have a particularly unfavourable status. This refers to the tenants former holders of housing right on privately owned apartments (private units allocated during the socialist times) that were during the socialism; either allocated to tenants in need on the basis of different administrative decision (thus, never were nationalized) or the housing that was confiscated or nationalized and now have been restituted into the ownership of their former private owners. Due to the above described statutory solutions, these people are protected tenants in private housing, with a contract to pay protected rent. Their unfavourable situation derives from the fact that they were not able to buy the houses they live in, due to the fact that they are not entitled to do so by law or do not have the means. On the other hand, private owners claim their property back, do not accept such low rents and often force tenants to leave their houses without legal basis. 'Tenants in these housing units are at risk, are victims of the denationalization process and bear the stigma of people who live in private property without paying the level of real cost rent. The whole problem is also partly related to unwillingness of the government to deal with this issue.' In the year 2013/2014 changes to the Lease of Flats Act on this topic have been prepared and sent to the Parliamentary procedure.

The apartments which were not returned to its previous owners

[57] Pursuant to the Art. 26 of the Compensation Act.
[58] Pursuant to the Art. 32 and Art. 33 of the Compensation Act.

or their heirs[59] in accordance with the Compensation for Property Taken during the Time of the Yugoslav Communist Regime Act (Art 77) became ownership of the Republic of Croatia. These apartments were then also sold in accordance with the rules of Sale of Apartments with Housing Right Act.

With the Ownership and Other Proprietary Rights Act, social ownership over the remaining smaller part of the public housing stock was transformed into private ownership, and with that finally derogating the Housing Relations Act.

Through interpretation of these laws, two variants of abolition of the housing right can be determined:[60]

1. in the first variant, the housing right on socially owned and nationalized housing units was transformed into the right to purchase and consequently into ownership;
2. in the second variant, the housing right on socially owned and nationalized housing units that had not been sold during the privatization and on confiscated and private housing was transformed into tenancy right with further right to conclude open ended tenancy contract with protected rent (protected tenants).

A special stock of apartments – Janitors' apartments were also sold in the process of privatisation of housing stock, but later (2006). Such apartments were sold to former (or still in place at the time of the sell) Janitors in accordance with the Law on Sell of Apartments that were used by Janitors. In cases when the former housing right holder did not buy the apartment he acquired the status of tenant-lessee, with a possibility to conclude an open-ended tenancy contract and pay protected rent (protected tenants). As a result of the privatization and restitution, 'the Croats have become a nation of home owners with an extremely low share of households living in social housing, in fact housing with protected-controlled rent. The tenure structure is similar in country with capital.'[61]

[59] Cases when no return request was made or the request was unsuccessful.

[60] Franić, 'Stambeni odnosi u svjetlu reintegracije,' 816–7.

[61] P. Sunega and G. Bežovan, 'Regional Differences in Housing Availability and Affordability in the Czech Republic and in Croatia' (paper presented at the European Network for Housing Reaserch Conference on Sustainable Urban Areas, Rotterdam, 24–8 June 2007), 5.

After the privatization and restitution, a very limited number of housing units, that were not sold and on which no protected tenancy was formed remained in the ownership of local authorities. These apartments are used for social housing.

In accordance with the Sale of Apartments with Housing Right Act, the major part of the money from the sale of public housing was supposed to be spent on social housing construction and on social groups-victims of the denationalization process (protected tenants). However, a very small number of local authorities acted in accordance with this legal provision.[62] Social housing today, having in mind the recent practice of sale, comprises less than 2% of the housing stock.[63]

Statutory term for social housing is protected rent housing (not to be confused with protected tenancy for former housing right holders). However, the general public and local authorities use the expression social housing. These housing units are predominantly owned by local authorities and the government determines the level of rent, thus the name controlled rent. The rent is very low, amounting to 2.61 HRK/m² (0.35 EUR/m²),[64] which is not sufficient for basic maintenance and thereby partly contributes to low standard and devastation of these housing units. Some tenants are not willing to pay even such a low rent and landlords (local authorities) have no means to effectively deal with this issue. This is why some local authorities are selling this stock.[65]

It is also important to note that restitution of the land to the previous owners caused problems with urban planning. The price of urbanized land was before the crisis in constant increase. In such circumstances, local authorities were faced with the problem of ensuring the land for the social housing.

Unfortunately, authorities, neither national nor local, were interested in the offered programmes of foreign assistance that aimed to promote social housing construction and development of non-profit

[62] The City of Rijeka is a positive example. See http://vijesti.hrt.hr/najmodavcima-stan-natrag-zasticenim-najmoprimcima-zamjenski, 5 January 2014.

[63] Sunega and Bežovan, 'Regional Differences,' 10.

[64] 1 HRK = 7.571771 EUR on 14 January 2013, http://www.hnb.hr/tecajn/htecajn.htm.

[65] D. Baturina, G. Bežovan and J. Matančević, 'Local Welfare Systems as part of the Croatian Welfare State: Housing, Employment and Child Care' (WILCO Publication 5, Zagreb, 2011), 11.

housing organizations. A part of the professional public considers that such actions protect the interest of the construction lobby, as it is not in their best interest to show that affordable housing can be constructed.[66]

When looking into the private renting sector, the black market[67] played an important role in the housing situation following the independence of Croatia, although the Lease of Flats Act introduced modern rules on tenancy. According to the data from the 2011 Census, 59,786 (3.9%) households lived in private rental housing (this number is the sum of private renting and renting a part of the housing unit). However, the officials from the Croatian Bureau of Statistics (hereinafter CBS) believe that this number is much higher in reality, due to the black market phenomena.

The most recent development in the rental sector has been the introduction of public rental programs. Through these programmes some local authorities (mostly bigger cities)[68] are starting to rent out municipal housing to families/households that are not eligible for the housing with protected rent, but do not have the means to rent on private market. Public rents are higher than social (protected) rents and lower than private rents.

In accordance with the Art 24 of the Publicly Subsidised Residential Construction Act (*Zakon o društveno poticajnoj stanogradnji*)[69] – also called Publicly Subsidised Residential Construction Program (POS programme) the Agency for Transactions and Mediation in Immovable Properties (*Agencija za pravni promet i posredovanje nekretninama*) passed new Rules in accordance with which it launched a new rent-to-buy scheme. According to this new programme the apartments that were build, but not sold in the POS programme are offered. This is a completely new programme, since the Rules were passed on 16th of May 2013. It had a big success

[66] Ibid., 6.

[67] When referring to notion of black market we refer to situations when the tenancy contract is not signed in writing; or is signed, but not reported to the local community and to the nearest tax office (in accordance with Art 26 of Lease of Flats Act). This will then have some repercussions for the tenants, e.g. the impossibility to apply for housing allowance or to use the tenancy contract (rent level) as a basis for reducing income taxes etc.

[68] This program has been first introduced by the City of Zagreb in the 2009.

[69] *Službeni list Republike Hrvatske*, no. 109/01, 82/04, 76/07, 38/09, 86/12.

among the citizens so far, since all the offered apartments have been already taken before the 15th of August 2013.

Today's housing allowance is a part of the social care system and is the responsibility of local authorities. The regional authorities subsidise the costs of fuel. Approximately 2.4% of Croatian households are included in these programmes. Housing allowance program is visible only in larger cities, but in smaller places in fact it does not exist.[70]

Contrary to the previous period, Value Added Tax (VAT) was introduced in 1996 for building material and services, thereby partly contributing to the increase of the prices of newly built housing units.

In 2003, the government introduced a tax exemption from the real property tax for individuals buying their first housing unit. Also, a tax incentive was introduced, through which investments into purchase or construction of an apartment or a house, investments in maintenance of a housing unit, and interest rates for housing loans were accepted as income tax expenditures. Total tax incentives till the mid-2010s were restricted to the amount of 12,000 HRK. In 2010 the government abolished these tax incentives, due to the decrease budgetary incomes and the on-going economic crisis. While they were in force, these tax incentives were especially important for the first-time home buyers. At the same time, a tax benefit for the payment of rents has been introduced. Tenants can use tenancy contracts as a basis for income tax benefits. As limited number of landlords is willing to sign (conclude) the contract with their tenants, this measure has not produced adequate effects.

Concrete steps in the development of housing finance models are discernible after 1997, when the government adopted the Law on the Fund for the Long-Term Financing of Residential Construction with Government Subsidies (*Zakon o Fondu za dugoročno financiranje stanogradnje uz potporu države*)[71] the Housing Savings and Government Incentive to Housing Savings Act (*Zakon o stambenoj*

[70] Bežovan, 'Assessment of Social Housing Programmes in Croatia,' 4.

[71] *Službeni list Republike Hrvatske*, no. 109/97. This Law introduced in 1998 a long-term loan programme for families younger than 35, but lasted for two years only. Simply and without any explanation, the next government stopped the programme. See more in Bežovan, 'Stanovanje i stambena politika,' 360–1.

TABLE 1.1 The Number of Newly Built Housing Units in Croatia, 2004–2008

2004	2005	2006	2007	2008
18,240	19,995	22,121	25,609	25,368

štednji i državnom poticanju stambene štednje[72]) and the Publicly Subsidised Residential Construction Act (*Zakon o društveno poticajnoj stanogradnji*)[73] – also called Publicly Subsidised Residential Construction Program (POS programme).

The enactment of these acts has marked the beginning of an active housing policy in Croatia. Results up to now have shown that commercial banks' lending activities in the area of housing finance have become intense and that saving with housing savings banks has become more attractive, which is observable in a continuous increase in the number of newly-concluded housing savings contracts and the collected amount of savings. The POS programme has raised great interest among the citizens, whereas the Fund for the Long-Term Financing of Residential Construction with Government Subsidies has stopped functioning in the meantime.[74]

The domination of unregulated market supported by favourable housing loans, in circumstances of the limited role of local authorities in urban policy during this period, increased housing prices. In such circumstances, affordability is a crucial developmental issue.[75]

Even the housing building boom (housing bubble) that started around 2004 (see table 1.1) in Croatia did not prompt the Government and local authorities to invest more in social rental housing. Increase of housing construction in larger cities was and still is driven by demand of well off families who are investing money in real estate. The housing market started to decline in 2008 due to the economic recession. Furthermore, limited ability to raise money for purchase and credit crunch are bringing housing prices down. According to estimations from 2008, only in the Capital city there were 6 to 7 thousand unsold housing units on the housing market, which illustrates housing market crisis and pressure for price decrease.[76]

[72] *Službeni list Republike Hrvatske*, no. 109/97, 117/97, 76/99, 10/01, 92/05, 21/10.
[73] *Službeni list Republike Hrvatske*, no. 109/01, 82/04, 76/07, 38/09, 86/12.
[74] Tepuš, 'An Analysis of Housing Finance Models,' 4.
[75] Bežovan, 'Assessment of Social Housing Programmes in Croatia,' 6.
[76] Bežovan, 'Assessment of Social Housing Programmes in Croatia,' 4–6.

According to the Ministry of Environmental Protection, Physical Planning and Construction, there was 10,000 unsold housing units, finished or in construction, worth about 5.2 billion HRK (around 700 million EUR) on the real estate market in 2011.[77] The government's answer to the crisis on the housing market will be discussed below.

First in 2010 the former government passed the Promotion of the Sale of Housing Units Act (*Zakon o poticanju prodaje stanova*).[78] Under the provisions of this law, a buyer could, in the process of purchase of a new house, obtain a government loan in the amount of 100–300 EUR per square meter. Due to further provision that this subsidy was designed only for the newly built houses of the licensed contractors who were also the investors, its use did not produce the expected results. Instead of the planned 1,000 housing units, in reality only 68 were sold.[79]

Due to its inefficiency, the current government derogated this law in 2011 by passing the Subsidies and State Guarantees for Housing Loans Act (*Zakon o subvencioniranju i državnom jamstvu stambenih kredita*).[80]

In the modern Croatia the following tenure types exist:

1. homeownership,
2. private rental housing,
3. social housing – renting with protected rent,
4. protected tenants (former housing right holders),
5. public rental housing,
6. renting in POS rent-to-buy scheme,
7. renting a part of a dwelling,
8. housing with relatives, and
9. other forms.

Reflecting on the above said on the today's housing policy in Croatia; one can notice that Croatia's position from the beginning of

[77] 'Akcije za "buđenje" tržišta nekretnina,' *Poslovni dnevnik*, 14 March 2011, http://www.poslovni.hr/akcije-za-buenje-trzista-nekretnina-174554.
[78] *Službeni list Republike Hrvatske*, no. 38/10.
[79] 'Planiralo se prodati 1000 stanova, a kredit dobilo samo 68 kupaca,' *Limun.hr*, 5 January 2011, http://www.limun.hr/main.aspx?id=665025&Page=8.
[80] *Službeni list Republike Hrvatske*, no. 31/11.

1990 as a country that retreated from the active role in the housing policy is still mostly true. The housing policy measures described above can be seen as reactions to the problems emerging primarily from the state's passive role and predominant free market influence on the housing situation, than as instruments of a planned and well thought out housing policy. The fact that Croatia has no national housing program even twenty years after the independence can serve as a further confirmation. In the programmes of the last two governments, the questions of housing and housing policy are addressed only partially, as a part of other social policies (policies toward family, young people, veterans of war, victims of war and refugees and returnees). In Croatia, similar to trends recorded in other transitional countries, housing programmes and tax incentives for housing support higher income households.

The war in Croatia 1991–5 caused numerous problems, quite some related to housing. Influx of refugees and displaced persons, demolition of housing units and infrastructure were just some of them.

With regard to housing policy in the second half of the 1990s, the renovation of housing units and accommodation of the victims of war was a priority. From 1997 to 2006, approximately 5,500 housing units have been built through the housing programme for war veterans and victims of the war. Some believe that this programme 'is more a part of the clientelistic political agenda than well targeted and efficient programme of housing subsidies for families with housing needs. On one hand, this investment is a kind of substitution for the national social rental housing programme.'[81]

In summary, ethnic conflicts and hostilities in the period of 1991–7 caused displacement of about 950,000 Croatian inhabitants (out of about 4.5 million total population). According to Mikić [a researcher on this field], there were about 550,000 Croatian citizens of mostly Croatian nationality and some 400,000 citizens of Serb nationality among the displaced persons in that period.[82]

In this part of the monograph a particular attention shall be paid to the housing legislation that affects returnees who are former

[81] Bežovan, 'Assessment of Social Housing Programmes in Croatia,' 4.

[82] M. Mesić and D. Bagić, *Minority Return in Croatia: Study of an Open Process* (Zagreb: UNHCR, 2011), 23.

housing right holders. The prevailing conviction is that one of the main obstacles for the return of Serb refugees to Croatia was the non-acknowledgement of their housing rights, as this was the predominant form of possession of housing units in urban areas of the former socialist state. In Bosnia and Herzegovina, due to the interventions by the international community regarding the issues on the property rights and the new legislation adopted in that country, there was a significant and observable change in the rates of property return, related to both private property, and the exercise of the former housing rights on public housing. In Croatia, on the other hand, although some private owners were able to repossess their properties, housing rights of the refugees and displaced persons were abolished in two ways. By the application of the Housing Relations Act and with the adoption of the Lease of Flats Act on Liberated Territories (*Zakon o davanju u najam stanova na oslobođenom teritoriju*)[83] in the 1995 and the *Lease of Flats Act* in 1996.

First, in the parts of Croatia, which remained under the control of the Croatian authorities during the war (1991–5), the courts issued decisions (often *in absentia*) annulling the housing rights for persons who have not used their houses for longer than 6 months. This was done on the basis of the Article 99 of the Housing Relations Act which regulates the termination of the housing right in such cases. In accordance with this Article a termination notice can be given due to the non-usage of the housing unit.

In a landmark *Blečić vs Croatia* case[84] ruling of the European Court of Human Rights in 2006, the Court has ruled against Krstina Blečić in her bid to repossess her property in the Croatian city of Zadar. The Grand Chamber ruled that the case was not admissible, not at all discussing the case's merits, which was the original reason for re-opening the case in 2004. The Court considered that the European Convention for Human Rights does not apply in this specific case as the events complained of occurred before its entry into force in November 1997, therewith reversing its admissibility decision in first instance. The judgement stops short of defining the obligations of Croatia towards former occupancy rights holders.

[83] *Službeni list Republike Hrvatske*, no. 73/95.

[84] 'Grand Chamber Judgment Blecic v. Croatia,' http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=003-1601997-1677316

Secondly, in areas, which had been under the occupation of rebel Serb Army until mid-1995 (the military operation Storm returned the control of the occupied territories into the hands of Croatian State), housing rights were abolished for the former holders of housing rights, who had not returned within 90 days of the entry into force of the Lease of Flats Act on Liberated Territories, i.e. from 27 September 1995 till 27 December 1995 (mostly the Serb minority population that has been forced to leave during the operation Storm).

It is estimated that this led to the annulling of housing rights for about 29,800 housing units, of which the majority (23,800) was located outside of the Areas of Special State Concern and 6,000 in the Areas of Special State Concern (ASSC).[85] According to the estimations of the OSCE, around 100,000 people were affected by the abolition of the housing rights in the described manner. In addition, as shown above in section on historical evolution, by the adoption of the Lease of Flats Act in 1996 the housing right was finally and completely abolished from the Croatian legal system.[86]

Two housing care models, initially based on two different pieces of legislation, were developed for former housing right holders in and outside of ASSC.

Housing care in the ASSCS is regulated by the new Areas of Special State Concern Act (*Zakon o područjima posbene državne skrbi*),[87] which replaced the Areas of Special State Concern Act adopted in 1996. It is worth mentioning that this Law did not exclusively relate to displaced former housing right holders, but also to other groups of citizens, who fulfilled the envisaged (set) criteria.

Depending on their housing situation, applicants could apply for one out of five housing care models:

[85] ASSC relates to the areas of the Republic of Croatia that were outside of the control of the Croatian authorities during the war 1991–5.

[86] R. Bubalo and Lj. Mikić, 'Analiza pristupa stambenom zbrinjavanju izbjeglih i raseljenih bivših nositelja stanarskog prava u Republici Hrvatskoj u 2007,' Centar za mir, pravne savjete i psihococialnu pomoć, accessed 5 January 2014, hppt://www.center4peace.org/Various%20document%20for%20web/Web%20materijali%20septembar%202006/RLAP%20FINAL%20version/RLAP%20ANALIZA%20hrv%20final%20maj%202008.pdf, 6–7; and Mesić and Bagić, *Minority Return in Croatia*, 30–1.

[87] *Službeni list Republike Hrvatske*, no. 86/08 and 57/11.

1. lease of a state-owned individual house;
2. lease of a damaged state-owned individual house;
3. lease of a state-owned housing unit;
4. receiving land and construction material from the state as a donation;
5. receiving basic construction material for renewing one's own damaged house or for building a house on one's own land as a donation from the state.

Initially, the housing care outside of ASSC had not been regulated by law, but by a series of governmental Conclusions that did not have mandatory legal effect. In June 2003, the government adopted the Conclusion on housing for returnees who did not own a house or apartment, and who lived in public housing units (former housing right holders) on the area of the Republic of Croatia, which are outside ASSC (*Zaključak o načinu stambenog zbrinjavanja povratnika koji nisu vlasnici kuće ili stana, a živjeli su u stanovima u društvenom vlasništvu (bivši nositelji stanarskog prava) na područjima Republike Hrvatske, koja su izvan* PPDS).[88]

This Conclusion was applied so as to include minority (Serb) returnees only when the next government adopted the Conclusion on the implementation of the housing care programme for returnees – former housing right holders outside of ASSC in August 2006 (*Zaključak o provedbi programa stambenog zbrinjavanja povratnika – bivših nositelja stanarskog prava na stanovima izvan* PPDS).[89]

The plan was to build about 3,600 flats until 2011 (under the POS program), whereas 400 flats were to be purchased on the market. This programme did not, however, satisfy the spokespersons of the Serb community in Croatia. The main criticism referred to the fact that they were to obtain the status of protected tenants, which did not include the right to purchase the compensatory apartments [housing units], to inherit them (after the death of the right holder, it would be returned to the state), nor to rent it out. In addition, there was a threat of concentration of these apartments [housing units], in designated areas and, thus, the risk of ghettoization of the Serb returnees. However, according to the assessment of key inter-

[88] *Službeni list Republike Hrvatske*, no. 100/03,179/04, 79/05.
[89] *Službeni list Republike Hrvatske*, no. 96/06

national organizations, the housing care process still did not evolve in a satisfactory way for the minority returnees.[90]

Therefore, in 2008, the Government adopted the Decision[91] on the implementation of the Provision of housing for returnees – former holders of housing rights on housing units outside of the ASSC (*Odluka o provedbi stambenog zbrinjavanja povratnika – bivših nositelja stanarskog prava na stanovima izvan područja posebne državne skrbi*[92]) and the Action Plan for the accelerated implementation of the Housing Care Programme in and outside of ASSC (*Akcijski plan za ubrzanu provedbu Programa stambenog zbrinjavanja na i izvan područja posebne državne skrbi za izbjeglice – bivše nositelje stanarskog prava*).

Mostly due to the general economic crisis and crisis in the housing construction, just a part of the commitments from the 2008 Action Plan were fulfilled, so the Government adopted a Revised Action Plan for accelerated implementation of the Housing Care Programme in and outside of Areas of Special State Concern in mid-2010.

It contained a plan for providing housing care for 1,265 families former housing right holders by the end of 2010. In ASSCS, it was planned to construct or renew housing units for another 709 families, and they should have been completed by mid-2011. In the same period, a plan was to purchase another 143 housing units. With all these measures, housing care should have been provided to a total of 2,117 families – former housing right holders – within the above mentioned period.[93]

In 2011, the Government passed two Decisions on housing care for returnees – former holders of housing rights outside of the ASSC (*Odluka o stambenom zbrinjavanju povratnika – bivših nositelja stanarskog prava izvan područja posebne državne skrbi*[94]) and extended the deadline for submitting an application for housing care outside of the ASSCS until the 30th of April 2012. However, no fi-

[90] Mesić and Bagić, *Minority Return in Croatia*, 32.
[91] This Decision put out of force the Conclusion of the Government on the implementation of the housing care programme for the returnees – former holders of housing rights of houses outside the ASSC, which had been adopted in 2006.
[92] *Službeni list Republike Hrvatske*, no. 63/08.
[93] Mesić and Bagić, *Minority Return in Croatia*, 32–4.
[94] *Službeni list Republike Hrvatske*, no. 29/11 and 139/11.

nal deadline has yet been set for applications regarding the ASSCS.

By its two Decisions on the purchase of state-owned housing unit (*Odluke o prodaji stanova u vlasništvu Republike Hrvatske*)[95] adopted on the 2010 and 2011 and the Regulation on terms for the purchase of the family house or housing unit owned by the state in the ASSCS (*Uredba o uvjetima za kupnju obiteljske kuće ili stana u državnom vlasništvu na područjima posebne državne skrbi*),[96] the Government finally made it possible to purchase awarded housing units and family houses, and also under much more favourable conditions than the market prices, so one can say that former housing rights were at last effectively treated as real property rights.

From the Strategic plan of the Agency for Transactions and Mediation in Immovable Properties (*Agencija za pravni promet i posredovanje nekretninama*), as the latest data on this subject, it is visible that the process of purchase of housing units by the state, in order to fulfil the goals of described programmes and meet the needs of former housing right holders, started at the end of 2006. By the end of 2011, 1,409 housing units have been bought. In accordance with the ensured financial budget, the plan was to buy 110 housing units in 2012. The final goal is to buy the total number of 2,939 housing units by the end of 2015 in proportion to the currently manifested needs.[97]

The fact remains that, although rather slow, the restitution was for the most part accomplished by 2005. Of 19,280 private homes that were taken, 19,256 were returned, and 24 cases are still pending, currently in the appellate proceedings before the Croatian courts. One ought to bear in mind that since 1995, Croatia rebuilt or repaired 146,520 family houses, 35% of which belonged to Serb returnees. About 6,700 applications by families remained unresolved in the appellate proceedings, and in 2,423 cases, the decision on renewal is yet to be implemented.[98]

[95] *Službeni list Republike Hrvatske*, no. 109/10; *Službeni list Republike Hrvatske*, no. 109/11 (the later put out of the force the former one).

[96] *Službeni list Republike Hrvatske*, no. 19/11.

[97] Agencija za pravni promet i posredovanje nekretninama, 'Strateški plan Agencije za pravni promet i posredovanje nekretninama za razdoblje 2013–2015' (Agencija za pravni promet i posredovanje nekretninama, Zagreb, 2012), http://www.apn.hr/content/uploads/strateski-plan.pdf.

[98] Mesić and Bagić, *Minority Return in Croatia*, 30.

1.3 Current Situation

The last Census of Population, Households and Dwellings conducted in Croatia took place in the April of 2011 (hereinafter Census 2011). However, the complete data on housing dates from the 2001 Census of Population, Households and Dwellings.

In 2011, there were 2,246,910 housing units in total, of which 1,923,522 were for permanent habitation and of which 1,496,558 were inhabited. In the same year, the total number of households was 1,535,635, of which 1,534,148 were private household. Two types of households were present in the Census 2011: private and institutional. 'Institutional household is the one consisting of persons living in e.g. homes for the elderly, institutions for the permanent accommodation of children and adults, hospitals for the permanent accommodation of the terminally ill, convents; as well as any group consisting of more than ten persons permanently accommodated in a foster family etc.'[99]

The tenure structure from the Census 2011 is based on the number of households. Of the total number of 1,517,249 (100%) households; 1,356,109 (89.4%) own or co-own the housing unit they lived in, 45,366 (2.9%) rent in the private rental sector, 27,413 (1.8%) rent with protected rent, 14,420 rent a part of a flat (0.9%), 64,007 (4.2%) are living with relatives and 9,934 (0.6%) referred to other forms.[100] It is important to note that these data does not distinguish social housing from protected tenancy so the number of 27,413 households encompasses both tenure types due to the fact that in both cases the protected rent is paid.

Furthermore, it is important to note that the professionals from the Bureau of Statistics believe that 60% of tenants living with relatives are actually renting on the private rental market (this refers to the data from the Census 2001, but we can say this claim stands also for data from Census 2011 considering much has not changed in the private renting sector).[101] This is due to the fact that in cases when one claims to be living with the relatives (such claims are not

[99] 'Popis stanovništva, kućanstava i stanova 2011. godine,' Državni zavod za statistiku, accessed 5 January 2014, http://www.dzs.hr/Hrv/censuses/census2011/censuslogo.htm.

[100] Ibid.

[101] Sunega and Bežovan, 'Regional Differences,' 5.

tested in any way) one is able to register at the local authorities' office (to get residency), but at the same time in such cases no need for registration of the tenancy contract exists (since there should be none). This then enables the landlord not to pay taxes on the rent he collects.

In summary, according to the Census 2011, 89.4% of households lived in their own housing unit, and 5.6% rented their housing in some form. Taking into account the impact of the black market on the private rental sector, the rental tenure could be as high as 5.4%.

The fact that there are so many Croatian citizens living in housing units they own, can be largely contributed to the process of privatisation of the previously socially owned housing stock (public housing with housing right). Most privately owned apartments today represent a group of apartments that were privatised in accordance with the Sale of Apartments with Housing Right. As mentioned before, the biggest part was paid with instalments.

Today's possibilities of purchasing an apartment or a house are however similar to those in western countries. There is no official data regarding the typical arrangement of the home building financing, but it can be said that, in general, Croatian citizens build and buy their homes with loaned funds and only a smaller percentage of them have and use own funds (own equity) for this purpose.

The following results of one market survey support this claim; of those who purchased their property, most of them paid it with a combination of cash and loan (45%), 35% of the purchases was financed by a loan only, while almost one fifth of respondents (19%) financed the purchase of the property by cash only.[102]

Today the main housing finance models in Croatia are:

1. banking finance;
2. housing savings programme;
3. Publicly Subsidised Residential Construction Programme – POS Programme; and
4. model of governmental subsidies and guarantees for housing loans.

'However, housing finance in Croatia provided through present

[102] 'Kvadrati po glavi stanovnika,' Centar nekretnina, 26 November 2009, http://www.centarnekretnina.net/HR/wiki-Vijesti/kvadrati-po-glavi.htm.

models is inadequate.'[103] 'Given the fact that Croatian citizens are traditionally more inclined to buy their housing, compared to renting it, housing loan market in Croatia is very developed.'[104]

At the beginning of the transition period, in conditions of high inflation and unemployment, war uncertainties, slow and inefficient judicial system, asymmetric information and incomplete Land registry, the commercial banks granted loans under very strict conditions and at the same time used various loan repayment insurance instruments. Although, in time, the situation became considerably better and the number of granted loans was in constant increase, banks were reluctant to give up on additional instruments of loan repayment insurance, especially since these instruments proved to be very efficient in practice.[105]

So, when looking at the type of loans granted and used for housing purpose, we can generally say that mortgage based loans and loans with other instruments for the repayment insurance dominate over the personal loans. 'Today almost all commercial banks in Croatia regularly offer long-term housing loans, which are the fastest and simplest means of financing a purchase of a housing space on the domestic financial market.'[106]

The main criteria for obtaining a home loan are the client's income and the quality of the firm where he/she works (continuity of stable operations is appraised). Depending on these criteria, additional requirements have to be fulfilled: a down payment, solidarity debtors and/or guarantors with adequate income, specific type and value of collateral (such as residential real estate at least in the value of the approved loan), a debtor's life insurance policy assigned in favour of the bank, etc. Thus, insurance of home loan repayment might be perceived as excessive. As explained before, this is related to the fact that banks are reluctant to give up on additional instruments of insurance due to their effectiveness.[107]

'Unfortunately, many Croatian citizens still cannot meet the market conditions for obtaining home loans required by certain banks

[103] Tepuš, 'An Analysis of Housing Finance Models,' 1.
[104] Državna geodetska uprava, *Studija tržišta nekretnina u Republici Hrvatskoj* (Zagreb: Državna geodetska uprava, 2009).
[105] Tepuš, *An Analysis of Housing Finance Models*,' 8–9.
[106] Ibid., 7.
[107] Ibid., 8–9.

and often opt for completely unacceptable solutions.'[108] For example, these individuals resort to short term loans, often at several banks, that are by their virtue more expensive than home loans (in the end this practice additionally increases the housing affordability).

In Croatia, home loans contracted by commercial banks are mostly indexed to the Euro. Around 2005, commercial banks started to offer home loans indexed to Swiss Franc and these were very attractive, especially to young people, since the interest rates were lower than of those indexed to the Euro leading to lower monthly payments. Since creditworthiness is always connected to possibility to pay for the monthly payments such credits were granted to many who had no possibility to be eligible for credits paid in euro or kuna. Because the recent economic crisis caused the exchange rates of the Swiss Franc to grow rapidly and uncontrollably, these housing loans became additionally expensive. It is estimated that a monthly instalment of such loans has increased for up to 60%.[109] On 4th of June 2013 a historical verdict of Commercial Court of Republic of Croatia on the admissibility of loans with Swiss Franc (as have been offered by the banks in Croatia) has been passed. The verdict was passed in favour of the loan takers, since the Court believed, that such loans were not concluded in accordance with the law. One of the problematic aspects of these contracts derives from the fact that these loans had no fixed principle nor fixed interest rates. Since in the time of writing of this monograph the verdict in writing is yet to be issued, more on this will be included later.

In November 2013 the amendments on the Consumer Credit Act (*Zakon o potrošačkom kreditu*)[110] were unanimously passed. These amendments came into force with 1 January 2014, and determined

[108] Ibid., 10.

[109] D. Baturina, G. Bežovan, and J. Matančević, 'Welfare Inovations at the Local Level in Favor of Cohesion, City report: Zagreb' (WILCO Publication 32, zagreb, 2011), 25. The estimations of Association Franc (*Udruga Franak*) is that monthly instalment of such loans has increased by 50%. See 'Rezultati istraživanja – priopćenje za medije' available at http://udrugafranak.hr/index.php/stavovi-udruge/item/424-rezultati-istra%C5%BEivanja-priop%C4%87enje-za-medije, 8 January 2013.

[110] *Službeni list Republike Hrvatske*, no. 75/09, 112/12, 143/13, 147/13.

that the average initial interest rate on housing loans indexed in CHF is 4.62%. Furthermore, for existing housing loans indexed in CHF annual interest of 4.62% will be decreased for 30%, thus a new interest rate of 3.23% is to be applied from 1.1.2014. This means that approximately 55,000 debtors will be paying 11–24 percent lower monthly loan installments.[111]

The passing of these two acts raised certain false perceptions in the general public. Firstly, it is believed that the court's decision will have direct effect on all the debtors with housing loans indexed in Swiss franc. This is contrary to the general principals applied in Croatian legal system, that the court's decision binds and creates a concrete legal norm only for the parties of the process (*res iudicata facit ius inter partes*), thus, the final decision will directly influence only the debtors that were the party of the proceeding. Secondly, it is believed that this amendment to the Law will have a retroactive effect, i.e. that it will be applied on the already paid loan installments. Finally, it is questionable how these two acts will be combined in cases where both are applicable.[112]

The model of contract savings for housing through housing savings banks that is modelled after the housing savings banks in Germany and Austria (German *Bausparkassen*) was introduced in Croatia to develop housing finance. It supports the use of citizens' funds to solve housing needs. Housing Savings and Government Incentive to Housing Savings Act was passed in 1997 and introduced housing savings programme in Croatia. According to this Law, housing savings are special-purpose savings defined as collection of monetary deposits from domestic natural and legal persons in order to satisfy housing needs of Croatian citizens by extending government subsidized loans for residential construction on the territory of the Republic of Croatia. State stimulation of housing savings is observable in direct incentives (hence the term 'a government incentive'), i.e. the allocation of budget funds to all savers with housing savings banks in the prescribed amount of own funds deposited in savings accounts with housing savings banks in the

[111] 'Evo koliko će iznositi nove rate kredita u švicarcima,' *Večernji list*, 21 November 2013, http://www.vecernji.hr/hrvatska/evo-koliko-ce-se-smanjiti-rate-kredita-u-svicarcima-904297.

[112] Personal interview with Tatjana Josipović, 24 December 2013.

preceding calendar year. The base on which the government incentive is added is limited by Law to HRK 5,000. When compared with the level of interest rates on regular savings, the level of interest rates and incentives given on own deposited funds for housing savings are extremely attractive for savings deposits up to HRK 5,000 per citizen.[113]

Within this model, saving banks approve, upon the expiry of the savings period, loans for financing of purchase, construction, renovation or furnishing of house or apartment, and purchase of building land.

The government, under the influence of debates on the efficient spending of the state budget, reduced the government incentives in 2005. Now they amount to a maximum of 15% (instead of former 25%), i.e. 750 HRK (prior to that 1,250 HRK) per depositor who saves 5,000 HRK per year. Approximately 10% of the citizens are involved in the savings banks programme. Some researches show that this programme is not very competitive on the housing market and that its beneficiaries mainly come from households with good housing.[114]

In the period of adoption of the Law the loans provided by housing saving banks were with respect to the interest rates competitive with the loans provided by the commercial banks. However, the housing loans provided by commercial bank soon achieved the same or even lower interest rate, achieving thus the priority in housing financing.[115] In 2008, of the total number of approved housing loans 5% were approved by housing savings banks.[116]

In November 2013 the amendments on the Housing Savings Act were passed. With these amendments the payment of government incentives is abolished for the funds that will be saved during 2014. This is a temporary measurement of fiscal policy due to the current crisis and the need to cut back budget expenditures. It was established that the funds collected in this programme have been very often used for other purposes than the housing matters and usually served as a very quick and efficient way of capital increase.[117]

[113] Tepuš, 'An Analysis of Housing Finance Models,' 14–6.
[114] Bežovan,'Assessment of Social Housing Programmes in Croatia,' 5.
[115] Bežovan, 'Stanovanje i stambena politika,' 358–60.
[116] Državna geodetska uprava, *Studija tržišta nekretnina u Republici Hrvatskoj*, 96.
[117] 'Poticaji za stambenu štednju ukidaju se samo za 2014. godinu,' *Jutarnji list*, 24

This programme was introduced in 2001 with the Publicly Subsidized Residential Construction Act. Shortly, it is described as 'a state subsidized housing construction [...] a centralised, top down programme for helping families that are buying their first housing unit.'[118]

The prices of the housing units and the favourable loan conditions are emphasized as the main advantages of this programme. The prices of housing units constructed within this programme are considerably lower than the market prices. In addition, the buyers have the possibility to pay the price in instalments with loan conditions more affordable than the regular commercial bank loans.

The investor in this project is the *Agency for Transactions and Mediation in Immovable Properties*, i.e. the government. Buyers should ensure the minimum amount of 15% of the value of the housing unit, 45% is financed by commercial bank loans, and the remaining 40% of the funds is to be ensured from the state budget and the funds of local authorities. Local authorities should ensure land and infrastructure, and the state ensures favourable loans.[119]

Initially, this program was intended only for meeting housing needs through the construction of apartments in apartment buildings. Amendments to this Law in 2004 introduced a possibility of usage of state funds for construction and reconstruction (upgrade and extension) of family houses and for purchase of construction material.[120] Unfortunately, these amendments did not achieve significant results in practice, mostly due to the complicated procedure and a numerous documents required.[121] More importantly, the mentioned amendments from 2004 introduced the possibility for local authorities to set up non-profit organizations that would

October 2013, http://www.jutarnji.hr/poticaji-za-stambenu-stednju-ukidaju-se-samo-za-2014–godinu-/1135103/.

[118] Bežovan, 'Assessment of Social Housing Programmes in Croatia,' 5.

[119] In addition, local authorities can use this programme for the social housing construction. Unfortunately, only one city (Varaždin) has used the resources for these purposes and constructed some 60 housing units. See Bežovan, 'Stanovanje i stambena politika,' 361–4.

[120] Agencija za pravni promet i posredovanje nekretninama, 'Provedbeni program poticanja gradnje i rekonstrukcije (dogradnje i nadogradnje) kuća' (Agencija za pravni promet i posredovanje nekretninama, Zagreb, 2011).

[121] Agencija za pravni promet i posredovanje nekretninama, 'Strateški plan Agencije za pravni promet i posredovanje nekretninama za razdoblje 2013–2015.'

plan and implement these programs at the local level and use the funds from the state budget. This amendment was welcomed more positively, although only few local authorities used this possibility, among which the City of Varaždin showed the most initiative and even developed further possibilities and practices within this programme.

> The recent changes within the POS programme to achieve decentralization and the concept of non-profit housing organisations might have, under certain conditions, some developmental potential. But it is believed that some local authorities do not have the capacity to be efficient stakeholders in a decentralised programme.[122]

During its application this programme has had its ups and downs; this is in most part related to the fact that it is a programme of one political party.[123] Within this programme, from 2000 to 2011, a total number of 5,553 housing units was built (of that, in 2011 only one apartment building with 28 housing units was completed). In the course of 2012, 704 housing units should have been completed.[124]

The City of Varaždin constructed the biggest number of housing units within POS programme in relation to the size of its population. With 495 constructed affordable housing units this programme made a visible impact on the local housing market and improved the living standard of young people.[125]

On 25th of April 2013 with the changes of the Publicly Subsidized Residential Construction Act, the POS plus programme was introduced.[126] In accordance with the POS plus programme the already build apartments can be purchased. The selection of the apartment can be made by the buyer, but some limitations do exist on the part of the price of the apartment as well as on the financial possibilities of the future owner.

[122] Baturina, Bežovan, and Matančević, 'Local Welfare Systems as part of the Croatian Welfare State,' 14.

[123] Tepuš sees this as a disadvantage.

[124] Agencija za pravni promet i posredovanje nekretninama, 'Strateški plan Agencije za pravni promet i posredovanje nekretninama za razdoblje 2013–2015,' 4.

[125] D. Baturina, G. Bežovan, and J. Matančević, 'Welfare Inovations at the Local Level in Favor of Cohesion, City report: Varaždin' (WILCO Publication 30, Zagreb, 2011), 18.

[126] *Službeni list Republike Hrvatske*, no. 356-01/13-1.

A new POS Programme rent-to-buy scheme has been introduced on 16th of May 2013. The offer includes unsold apartments from the POS Programme. The apartments are on the locations: Zagreb, Novi Jelkovec-Sesvete, Ogulin, Bjelovar and Nerežišča on island of Brač. Due to large demand, the application process was already concluded before 15th of August 2013. The procedure is made in accordance with the rule 'first come first served,' but the tenants (and their family members living in the same household) cannot own an appropriate apartment or a house in the same area, have to be Croatian citizens and must exceed the census of 30% BDP per a family member.[127]

Subsidies and State Guarantees for Housing Loans Act[128] was passed in 2011 to overcome the unfavourable situation in housing construction (significant decrease in construction, lack of investments, big number of unsold housing units, loss of employment in the construction sector and other related sectors) resulting from the recent economic crisis and to help citizens in meeting their housing needs.

To this end the Law prescribed two measures:

1. subsidies for housing loans from commercial banks; and
2. state guarantees for the repayment of interests on housing loans from commercial banks in case a person loses means for the repayment due to the loss of employment.

The first measure consists of State paying half of the monthly instalment during the first four years of housing loan repayment. The second measure consists of state's obligation to pay interest on overdue instalments, starting from the first instalment repayable after onset of the reasons for inability of repayment to the termination of this reason, but not longer than one year after the start of the inability to repay the loan.

Both measures were designed for the housing loans concluded for the purchase of newly built apartments. According to its provisions, citizens were entitled to apply for the subsidies until the 31 December 2012, while the deadline for the guarantees was until the

[127] 'Javni poziv za prikupljanje zahtjeva za davanje u najam,' Agencija za pravni promet i posredovanje nekretninama, accessed 19 November 2012, http://www.apn.hr/hr/javni-poziv-za-prikupljanje-zahtjeva-za-davanje-u-najam-64.

[128] *Službeni list Republike Hrvatske*, no. 31/11.

31 December 2011. In practice, the citizens were entitled to apply for both subsidies and guarantees until the 15th of June 2012.

In the period from 2011–2, a total number of 2.253 (1,462 in 2011[129] and 791 in 2012[130]) subsidies was realized, on which around 43 million HRK (around 28 million HRK in 2011 and 15 million HRK in 2012) was spent. However, we have to bear in mind that the amount spent in one year should be ensured for the following three years as well, since the subsidy applies to the period of four years from the first year of loan repayment. There is no available official data on the number of realized guarantees and the amount of funds spent on them.

As mentioned before, the process of privatization was taking its course concurrently with the process of restitution of the housing units nationalized and confiscated during the socialism. Both of these processes, but especially the privatization, influenced the tenure structure in Croatia making the Croatian citizens the nation of home owners (more than 90% of the tenure).

It should be emphasized once again that the process of restitution in Croatia was and still is accompanied by various human rights issues and problems, especially in regard to the issue of protected tenants living in private housing units. Some resources mention that about 4,500[131] housing units with protected tenants – former housing right holders have been restituted to their former owners. Other sources mention 7,000 households[132] in the status of protected tenants. The last number most likely encompasses the total number of protected tenants as the result of both the restitution and privatisation. The issues arise in the cases when the landlord is a private person. The last estimation is that the number reaches around 2,600[133] of households. The existing statutory solu-

[129] Agencija za pravni promet i posredovanje nekretninama, 'Strateški plan Agencije za pravni promet i posredovanje nekretninama za razdoblje 2013–2015,' 7.

[130] Agencija za pravni promet i posredovanje nekretninama, 'Izvještaj o provedbi Zakona o subvencioniranju i državnom jamstvu stambenih kredita za 2012' (Agencija za pravni promet i posredovanje nekretninama, Zagreb, 2013).

[131] Bežovan, 'Stanovanje i stambena politika.'

[132] 'Preko 200 zaštićenih stanara čeka deložaciju,' *Deutsche Welle*, 8 October 2012, http://www.dw.de/preko-200-za%C5%A1ti%C4%87enih-stanara-%C4%8Deka-delo%C5%BEaciju/a-16286841-1.

[133] The number of 2600 households is an estimation of the competent Ministry. 'Država mijenja Zakon o najmu stanova – evo koje su novosti!' *Večernji list*, 7 De-

tion of protected tenancy has brought diverse problems for parties, the protected tenants and the owners-private landlords. The former housing right holders are now tenants in private housing with an obligation to pay protected rent – non market rent. The rent is too low and in practice lower than the maintenance costs and utility charge that the owner-private landlord has to bear. Thus, naturally, landlords are not satisfied and in the end do not have any economic benefit from their ownership of the real estate. We can often find in media stories that the owners, who claim their property back, do not accept such low rents and, often, with no legal basis, force tenants to leave their apartments.[134] We can also find the cases in which private landlords are in housing need (and sometimes even have to rent on the private market) while at the same time own housing units with protected tenants.[135] Therefore protected tenants 'bear the stigma of the people who live in private property without paying the real rent cost.'[136]

Even graver was the constant uncertainty of prospective eviction due to the statutory provisions on the termination of tenancy contracts with protected tenants resulting from the many years pending 'legislation gap.' In 1998 the Constitutional Court past the Decision no. U-I-762/1996 and deleted the obligation of the landlord to provide for additional adequate housing for his protected tenant in cases when he is terminating the tenancy contract due to the fact that he himself needs the apartment in question (Article 40 (2) of the Lease on Flats Act). The intention of derogation was to pass a new legislation clarifying the adequate requirements for the contract termination in this case. The Parliament was given 6 months period to pass a new legislation, but up to today amendments haven't been passed. Consequently, since the passing of this

cember 2013, http://www.vecernji.hr/hrvatska/drzava-mijenja-zakon-o-najmu-stanova-907276.

134 'Do kraja godine čak 200 obitelji bit će izbačeno na ulicu; Splićanin Ivo Blažević: Ostaje mi klupa u parku!' *Slobodna Dalmacija*, 25 September 2012, http://www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/188548/Default.aspx.

135 'Najmodavcima stan natrag, zaštićenim najmoprimcima zamjenski,' HRT *vijesti*, http://vijesti.hrt.hr/najmodavcima-stan-natrag-zasticenim-najmoprimcima-zamjenski, 6 December 2013.

136 Baturina, Bežovan, and Matančević, 'Local Welfare Systems as part of the Croatian Welfare State,' 15.

decision a number of cases of unlawful evictions have been allowed by the Courts,[137] allowing the termination of the tenancy contracts with protected tenant solely on the reason that the landlords needs the apartment for himself. In many cases protected tenants had to turn to the Constitutional Court with constitutional lawsuits against such decisions. The Constitutional Court would then stop the execution of the eviction until reaching a Decision on the matter.[138] Finally the Constitutional Court passed another Decision, no. U-III-25429, on 29th of April 2010 clarifying the criteria that need to be fulfilled in such cases.

There is no official data on the number of dwellings that were denationalized (restituted).

1.4 Types of Housing Tenure: Rental Tenures

In Croatia, rental tenures with and without a public task can be found. We can distinguish:

1. private market rental housing as the rental tenure – without public task;
2. protected tenants rentals (former housing right holders) – tenancy with a special form of public task;
3. social housing (renting with protected rent) – with public task
4. public rental tenures (for young families) – with public task
5. POS Programme rent-to-buy scheme – with public task

Public rental programme is an innovation in the housing program of two cities, Zagreb and Varaždin. In the City of Zagreb, it was introduced in 2009. This program aims younger families with more children and without proper housing. Public rents are higher than in social housing (renting with protected rent) and lower than on the private rental market while tenants tend to get five-year contracts. In the City of Varaždin public rental programme was introduced as an answer to the crisis in the POS programme.

The official data on the share of different rental tenure dates from the Census 2011 and is based on the number of households. In addition, there is no official data on the share of public rental hous-

[137] See for example the Decision of the County Court in Rijeka Gž. 1258/00-2.
[138] See for example the Ruling of the Constitutional Court no. U-III-135/2003.

ing. In 2011, of the total number of households 1,517,249 (100%); 45,366 (2.9%) rented on the private rental sector, 27,413 (1.8%) lived in housing with protected rent, and 14,420 rent a part of a flat (0.9%). It is also important to note that the professionals from Bureau of Statistics think that a significant percentage of those who declared as living with relatives are actually on the private rental market. This seems to be a common situation nationwide.

If we look at the private rental sector, we can say that there is no general rule regarding the model of financing of the construction of rental housing. This is mostly due to the fact that the private rental sector is under the influence of black market and the typical landlord is a natural person that, due to various circumstances, has an extra apartment or a house and is willing or in most cases, due to the financial distress, has to rent that extra space. There is also data on cases from the practice where the apartments from POS programme were not sold within the programme but on the private market and an extra profit was made.

Because of the general lack of rental activities conducted as commercial (professional) activity, the banks have not developed special financing instruments for this purpose.

When it comes to social housing – housing with protected rent and the new public rental housing, we can say that the financing of their construction depends on the period they were built in.

The existing social housing was either built during the socialism with the contributions of employees or after the 1990s with the funds raised in the process of the privatization. Only very recently several cities got involved in the POS programme (the City of Varaždin) or have developed their own programme (the City of Zagreb) to construct both social housing – housing with protected rent and public rental housing.

In May 2013 a new rent-to-buy scheme within the POS programme has been launched. In this programme the unsold apartments built in the POS Programme are offered with a possibility to be bought during the time of the lease period. Since the launch of this programme has been very successful, the Agency started to collect data on question of how many Croatian citizens would be interested in entering in such a scheme in the future.

Renting on private market is in Croatian coastal area especially problematic. This is due to the fact that these regions (Istra and

Dalmatia) are traditionally very touristic. Since no legal limitations on the period for which the tenancy contract can be concluded, exists, private persons rent the apartments solely for the non-touristic period (which depends on the region but it can be as long as from May to October). These enables the landlords to rent in two ways: to private persons from 1st of October to 1st of May; and then to tourists in the touristic period. This situation however leads to a situation where the private tenancy market, especially for families, becomes non-existent.

In the Croatian legal system the term *condominium* is used as a general term for *co-ownership* and it is a real right defined as a participation of more persons in the ownership of one thing. The right of ownership is ideally divided into fractions (individual shares). Each co-owner can dispose of (sell, give away or bequeath) his fraction individually. In the residential real estate in Croatian legal system a special form of co-ownership called *tabulati possesio-etažno vlasništvo* exists and it is defined in accordance with the solution of Austrian Law (*Wohnungseigentum*). *Tabulati possesio* is a form of co-ownership of a real estate (in this case the apartment building and the land on which it is built). It derives from the co-owners individual share. The co-owner of an apartment building has the exclusive right to execute the powers deriving from his co-ownership on a single apartment in the building i.e., he has the exclusive right to use a certain apartment. Thus, we (can) say he is the owner of the single apartment in the apartment building. The ownership of the single apartment is inextricably linked to co-owners individual share, thus it can be transferred, mortgaged and inherited only together with that individual share. At the same time the co-owner is entitled to use the common parts together with other co-owners.

The tenure in the new rent-to-buy scheme of the POS programme can be also classified as an intermediate form of tenancy. In these cases the tenants are the future potential buyers of the apartments they rent.

The tenure structure from the Census 2011 is based on the number of households. Of the total number of t 1,517,249 (100%) households; 1,356,109 (89.4%) own or co-own the housing unit they lived in, 45,366 (2.9%) rent in the private rental sector, 27,413 (1.8%) rent with protected rent, 14,420 rent a part of a flat (0.9%), 64,007 (4.2%) are living with relatives and 9,934 (0.6%) referred to other

TABLE 1.2 Number of Apartments for Permanent Residence, Average Floor Area in m² per Capita and Average Number of Persons per Dwelling from 1951 till 2001

Category	1951	1971	1981	1991	2001	2011
Apartments for permanent residence*	882	1,189	1,381	1,576	1,660	1,913
Average floor area in m² per capita	9.8	14.1	19.5	23.2	27.2	–
Average number of persons per dwelling	4.4	3.7	3.2	3.0	2.74	–

NOTES *In 000's. Based on data from CBS (http://www.dzs.hr).

forms.[139] It is important to note that these data does not distinguish social housing from protected tenancy so the number of 27,413 households encompasses both tenure types due to the fact that in both cases the protected rent is paid. The last data on the quality of housing is also from the Census 2001.

The following data was processed and analysed by Bežovan. Standard of living in Croatia has been growing steadily in the second half of the twentieth century. Number of housing units for permanent residence in Croatia in the past 50 years has more than doubled (the number has doubled from 882,000 in 1951 to 1,660,000 in 2001). The average floor area per capita has increased by almost three times and the number of persons per dwelling has reduced significantly.

In 2001 the average size of inhabited housing units in Croatia was 74.43 m² and of the total number of inhabited housing units 96.06% were owned by the citizens. In 2011 average size of inhabited apartment is 80.94 m² and of total number of inhabited apartments 97.3% is privately owned. The structure of housing according to the capacities is relatively unfavourable. In 2001 two-bedroom housing units prevailed, which together with one-bedroom houses made up to 45.56% of the inhabited housing stock. In 2011 34.4%, of apartments had three-bedroom, while two-bedroom apartments made 27.5% of the total inhabited housing stock.

Equipment of housing units in Croatia is relatively satisfactory and has noted positive trends in the past decade. It should be noted that 2.11% of housing units have neither toilet nor bathroom, and 1.56% of housing units have no bathroom.

[139] 'Popis stanovništva, kućanstava i stanova 2011. godine.'

TABLE 1.3 Ownership and Room Number of Permanently Occupied Housing in Croatia 2001

Permanently occupied housing	Number of housing	Average floor area in m² per unit	Percentage
Total	1,421,623	74.43	100.00%
Owner. of Natural Person	1,365,650	75.22	96.06%
Owner. of Legal Person	55,973	55.22	3.94%
1-room	178,852	34.12	12.58%
2-room	468,813	54.22	32.98%
3-room	396,831	74.65	27.91%
4-room	269,449	103.74	18.95%
5-room	77,519	144.57	5.45%
6-room	22,458	164.47	1.58%
7-room	4,569	210.03	0.32%
8 and more rooms	3,132	277.34	0.22%

NOTES Based on data from CBS (http://www.dzs.hr).

TABLE 1.4 Ownership and Room Number of Permanently Occupied Housing in Croatia 2011

Permanently occupied housing	Number of housing	Average floor area in m² per unit	Percentage
Total	1.496.558	80.94	100.00%
Owner. of Natural Person	1,455,914	81.54	97.28%
Rest	40,644	59.44	2.72%
1-room	133,489		8.92%
2-room	411,755		27.51%
3-room	514,160		34.36%
4-room	283,133		18.92%
5-room	106,475		7.12%
6-room	36,755		2.46%
7-room	6,287		0.42%
8-room	2,951		0.19%
9 and more rooms	1,533		0.10%

NOTES Based on data from CBS (http://www.dzs.hr).

More than 80% of the housing stock was built after World War II, and the average age of the housing would be about forty years. Unfavourable age of the housing stock is associated with an adverse trend of building new housing in the 1990s.[140]

[140] Bežovan, 'Stanovanje i stambena politika,' 372–84.

TABLE 1.5 Equipment of Permanently Occupied Housing in 2001

Category	Number	Percentage
Kitchen, toilet and bathroom	1,229,976	86.52%
Kitchen and toilet, without bathroom	26,846	1.89%
Only kitchen, without bathroom and toilet	121,973	8.58%
Without kitchen, bathroom and toilet	4,986	0.35%
Other combination of utility rooms	37,842	2.66%
Electricity	1,414,274	99.48%
Running water	1,331,431	93.66%
Sewers (sanitations)	1,318,594	92.75%
Central heating	514,386	36.18%

NOTES Based on data from CBS (http://www.dzs.hr).

TABLE 1.6 Equipment of Permanently Occupied Housing in 2011

Category	Number	Percentage
Kitchen, toilet and bathroom	1,432,121	95.71%
Kitchen and toilet, without bathroom	23,411	1.56%
Only kitchen, without bathroom and toilet	31,589	2.11%
Without kitchen, bathroom and toilet	597	0.04%
Other combination of utility rooms	8,540	0.57%
Electricity	1,494,021	99.83%
Running water	1,469,497	98.19%
Sewers (sanitations)	1,466,341	97.98%
Central heating – gas	547,011	36.55%

NOTES Based on data from CBS (http://www.dzs.hr).

TABLE 1.7 Occupied Apartments

Year of Construction	Number	Percentage
Before 1919	129,901	9.14%
1919–1945	104,333	7.34%
1946–1960	154,672	10.88%
1961–1970	285,451	20.08%
1971–1980	329,028	23.14%
1981–1990	244,908	17.23%
1991–1995	47,911	3.37%
1996 and later	70,817	4.98%
Unknown	49,603	3.49%
Unfinished, new	4,999	0.35%

NOTES Based on data from CBS (http://www.dzs.hr).

In general, social housing has the lowest quality. Next to that households that became protected tenants, because they could not afford to buy their housing units in the process of privatization, are in an even worse situation. These housing units are small (55 m^2 on average), poorly maintained, older and inhabited by marginal social groups. In total they comprise about 50,000 housing units or about 2.5 percent of the housing stock.[141]

In public information on the poor quality of newly built housing units within the POS programme can be often heard. The quality of construction is also questionable in newly built housing units on private housing market. This is often the consequence of insatiable desire for extra profit of private housing constructors (EU Building directive did in these past cases not apply due to the fact that Croatia joined the EU only on 1st of July 2013.)

From the Census conducted in the 2001, we can see that of the total number of permanently occupied housing units, 96.1% was in the ownership of natural persons, and 3.9% was owned by the legal persons, in fact the local authorities.

From the Census conducted in the 2011, we can see that of the total number of permanently occupied housing units, 97.3% was in the ownership of natural persons, and 2.7% was owned by the legal persons. In addition, the total number of housing units was 2,246,910, of which 1,912, 901 was for permanent habitation and of which 1,496,558 were inhabited. In the same year, the total number of households was 1,535,635, of which 1,534,148 were private households. Two types of households were present in the Census; private and institutional.

From what has been said so far, we can draw the following conclusions:

1. social housing-housing with protected rent – is in the biggest part owned by the local authorities (cities), whereas a smaller part is in private ownership of natural persons. There is no data (literature) on other forms of non-profit organizations as owners of social housing; and
2. public rental housing is owned by local authorities.
3. private rental housing is generally owned by private land-

[141] Baturina, Bežovan, and Matančević, 'Local Welfare Systems as Part of the Croatian Welfare State,' 14.

lords – there is no official data on renting as commercial activity conducted by profit organizations (companies).

4. protected tenant rentals are comprised with two groups. Those where the owner is a private person (most problematic), and those where the owner is the Local authority.
5. rent-to-buy scheme where the owner of the apartments offered is the State (Agency).

1.5 Other General Aspects

Because the process of restitution raised a lot of conflicts among tenants in the status of the protected tenants on one side, and owners on the other side, both groups set up their associations acting as a lobby groups and exercising pressure on the government to make visible steps in solving problems arising from the restitution. Most active once are Alliance of Tenants' Associations of Croatia (SUSH – *Savez Udruga Stanara Hrvatske*) and the Croatian Association of Tenants (Udruga stanara Hrvatske) for the tenants, and the Croatian Association of owners of property confiscated during the fascist and communist regimes (*Hrvatska udruga vlasnika otuđene imovine za vrijeme fašističkog i komunističkog režima*) for the landlords.

We can mention one more general group, Associations of Tenants – Co-Owners of Apartment Buildings (*Udruga stanara – suvlasnika stambenih zgrada*) and one that advocated the interests of Serb minority, the Serbian National Council – National Coordination of Serb National minority councils in Republic of Croatia (*Srpsko narodno vijeće – nacionalna koordinacija vijeća srpske nacionalne manjine u Republici Hrvatskoj*).

In addition, lately a very active group has been the Assotiation Franc (*Udruga Franak*) established to help resolve problems of individuals that raised bank loans (primarily home loans) indexed in Swiss Franc. The ruling on inadmissibility of some contractual terms of these loans was reached (also) due to their activities (see more above).

According to the 2011 Census, the number of vacant dwellings for permanent residence was 416,343 (342,349 dwellings were temporarily vacant and 73,994 were abandoned). That makes 21.8% of total number of dwellings for permanent residence (1,912,901).[142]

[142] 'Popis stanovništva, kućanstava i stanova 2011. godine.'

TABLE 1.8 Tenure Structure in Croatia, Census 2011

Home ownership	89.4%
Renting with a public task (renting with protected rent)	1.8%
Renting without a public task (private renting)	2.9%
Renting part of the flats	0.9%
Housing with relatives	4.2%
Other	0.6%

NOTES Based on data from CBS (http://www.dzs.hr).

One must keep in mind that many of these buildings are not in reality vacant, but are leased on black market.

Unfortunately, the black market and other irregular phenomena and practices are present on the housing market in Croatia and are one of the main reasons for the poor situation on the housing market.

Maybe the best illustration of general problems is given in one recent project[143] that brings the following report on this subject:[144]

> The housing market in larger cities is controlled by speculative interests of different stake holders who are not willing to follow urbanity rules. Fighting for extra profit, developers misuse their position and use bribe to get building permits with higher density. Government made decisive steps to make more order in the housing construction market by setting up the criteria for developers-investors eligible to be involved in construction of larger housing building. In such circumstances, quality of construction has also become a serious issue.
>
> The private rental market, as an important part of the housing provision in larger cities, has traditionally belonged to illegal renting [some studies show that only 27,000 of tenancy contracts, out of 120,000, are registered]. Landlords are not willing to conclude tenancy contracts and pay the tax, and tenants without the contract are not eligible for housing allowance.
>
> During the war, part of the local authorities' housing stock was illegally occupied. In the City of Zagreb there are almost

[143] 'Welfare Innovations at the Local Level in Favour of Cohesion,' Wilco Project, accessed 27 December 2012, http://www.wilcoproject.eu.

[144] Baturina, Bežovan, and Matančević, 'Local Welfare Systems As Part of the Croatian Welfare State,' 13.

2,000 such cases. As war veterans are very often illegal tenants, eviction is politically a very sensitive issue.
Illegal construction of family houses, without building permits, on the edges of cities became a problem during the war.

Chapter Two

Economic Urban and Social Factors

2.1 Current Situation of the Housing Market

In Croatia, rental market is mostly concentrated in the bigger cities, while in the smaller places the market is not developed. The City of Zagreb is the largest rental market due to the biggest possibilities for employment and education, so the tendency among citizens of Croatia, especially the young people, is to choose the City of Zagreb as their final destination.[1]

According to the real-estate agencies the level of rent in bigger cities is similar (Dubrovnik and Split are most expensive) and the level of demand and supply is stable.[2] The current crisis has, in general, resulted in the decrease of rent levels, with the exception of cities in Dalmatia. The demand for rental housing in bigger cities increases every year from August to October due to the beginning of new academic year and arrival of student population. Another group that increases the demand in bigger cities (primarily in the City of Zagreb) are foreigners, and among them, especially the representatives of different international organizations, missions, delegations and foreign investors. This group usually rents bigger, luxurious and more expensive dwellings in the centre of the city. The current economic crisis has resulted in decrease in the level of foreign investments to Croatia, so in the last few years the level of demand for these dwellings has declined.[3]

2.2 Issues of Prices and Affordability

In Croatia we can distinguish private rental housing as rental tenure without public task from protected tenants' renting, renting with

[1] Državna geodetska uprava, *Studija tržišta nekretnina u Republici Hrvatskoj*, 100.

[2] 'Veća potražnja nije zamjetnije povisila cijene najamnina,' *Limun.hr*, 10 March 2010, http://www.limun.hr/main.aspx?id=565775.

[3] 'U Splitu cijene ne padaju: najam dvosobnog namještenog stana u centru stoji 800 eura,' *Slobodna Dalmacija*, 20 February 2012, http://www.slobodnadalmacija.hr/Split/tabid/72/articleType/ArticleView/articleId/164958/Default.aspx.

protected rent (a form of social housing) and the public rental housing as the rental tenures with public task (next to that a new rent-to-buy scheme is being launched). Due to difference in their purpose, the levels of rents in these rental types are different.

The Lease of Flats Act distinguishes two types of rents:

1. freely determined rent and
2. protected rent.

In accordance with the Article 7 of the Lease of Flats Act the level of protected rent is determined on the basis of conditions and measures set by the government,[4] but at the same time cannot be lower than the amount necessary to cover the costs of the maintenance of the building, as determined by a special regulation. Furthermore, the Law prescribes the cases in which the protected rent is to be paid and defines that the freely determined rent is to be paid in all other cases,[5] while the level of freely determined rent is left for the contractual parties to determine (with an additional rent level control instrument for rent increase in open-ended contracts).[6]

The public renting was introduced recently in Zagreb and the Decision on Renting of Public Rental Housing (*Odluka o najmu javno najamnih stanova*)[7] defines the rent for these housing as freely determined rent. At the same time, this Decision prescribes that the level is to be determined by the City Government. The level of the rent was proscribed by public call.[8] When we compare its level to the level of freely determined rent on the private rental market and the protected rent we can see that it is significantly lower than the market one, and, at the same time higher than the protected rent. So, although the rent for public rental housing is formally defined as freely determined rent when looking at the definitions of freely

4 Pursuant to the Article 7 of Lease of Flats Act see the Regulation on Conditions and Criteria for Determining Protected Rent (*Uredba o uvjetima i mjerilima za utvrđivanje zaštićene najamnine*), *Službeni list Republike Hrvatske*, no., 40/97 and 117/05.

5 Pursuant to Articles 8 and 9 of Lease of Flats Act.

6 Pursuant to Article 10 of Lease of Flats Act.

7 'Odluka o najmu javno najamnih stanova,' Zagreb.hr, 26 February 2009, http://www.zagreb.hr/UserDocsImages/ODLUKA%20javno%20najamni%20stanovi.pdf.

8 'Natječaj za davanje u najam javno najamnih stanova u naselju Sopnica-Jelkovec,' Zagreb.hr, accessed 5 January 2014, http://www.zagreb.hr/UserDocsImages/stanovi/Natjecaj%20-%20javno%20najamni.pdf.

determined rent and protected rent and the levels they reach in practice, we could say that the rent for public rental housing does not fall under neither of them and could be defined as a third type, intermediate type or as a hybrid type in which the rent level control is additionally emphasized with the aim of achieving housing affordability (which is one of the aspects of the public task of this rental type).

For the purpose of this part of the monograph it is important to note that in Croatia real data on the level of the freely determined rent does not exist. Thus, in the following text the data collected and used in the literature by the researchers from the area of housing policy will be used. For example, in Zagreb the freely determined rent on the semi-attractive location amounts to around 50 HRK/m² (6.85 EUR/m²).[9] The rent level varies depending on the floor area.

The present amount of protected rent is 2.61 HRK/m² (0.36 EUR/m²),[10] what is extremely low compared to the levels of freely determined rent. In addition, it has to be pointed out once again that the protected rent cannot be lower than the amount necessary to cover costs of the maintenance of the building, as determined by a special regulation.[11] The minimum level of maintenance costs is 1.53 HRK/m², but in practice it is higher.[12] So, if the level of maintenance costs is higher than the level of protected rent, protected tenant is obliged to pay the protected rent in the amount of the maintenance costs. According to the available data the rent of public renting in the City of Zagreb monthly amounts:[13]

- 80 EUR + 2.00 EUR/m² for the dwelling up to 59,99 m²;
- 115 EUR + 1.75 EUR/m² for the dwelling from 60–99,99 m²;
- 135 EUR + 1.50 EUR/m² for the dwelling from 100 m² and larger.

[9] G. Bežovan, 'Analiza sustava subvencioniranja najamnina i troškova stanovanja te prakse gradnje socijalnih stanova u Hrvatskoj,' *Hrvatska javna uprava* 10, no. 3 (2010), 731; 'Ipak jeftinije: najam prosječnog stana u Zagrebu je 3.433 kune,' *Večernji list*, 1 October 2012, http://www.vecernji.hr/zagreb/ipak-jeftinije-najam-prosjecnog-stana-zagrebu-je-3-433-kune-clanak-458476.

[10] This amount is aplicable since 2005.

[11] Pursuant to the Article 7 paragraph 3 of the Lease of Flats Act.

[12] 'Zajednička pričuva,' *Zagrebački holding*, accessed 26 November 2012, http://www.gskg.hr/default.aspx?id=172.

[13] 'Natječaj za davanje u najam javno najamnih stanova u naselju Sopnica-Jelkovec.'

TABLE 2.1 Rent Level

Category	Size of flat in m²		
	≤59.99	60–99,99	≥100
Rent on the free market	378	513	757
Rent of public housing	199	253	283
Rent of social housing	29	38	48

NOTES In EUR per month.

One recent research project[14] brings the comparison between the rent level of public rental housing, social rental housing and private rental housing in location Novi Jelkovec, Zagreb (table 2.1).

In addition, similar rent levels of private renting for the City of Zagreb were published by the internet portal Crozilla.com. According to their data, the average monthly amount of rent on private sector in August 2012 for an apartment from 20–40 m² amounted to 289 EUR per month, for an apartment from 40–60 m² to 410 EUR, for an apartment from 60–80 m² it amounted to 499 EUR per month, and for an apartment from 80–100 m² 633 EUR per month.[15]

According to the Croatian Bureau of Statistics the average net salary in 2011 was 5,441 HRK[16] (724.5 EUR[17]) monthly. At the same time, there is no official data on the average disposable income of households living in social housings.

If we calculate the rent-to-income ratio for the apartment of size up to 60 m² in location Novi Jelkovec, Zagreb using the values of rents from the mentioned research and two average net salary per household 10,882 HRK (1,449 EUR), we get the following results:

- rent-to-income for private renting is 0.26 or 26%;
- rent-to-income for social renting is 0.02 or 2%; and
- rent-to-income for public renting in capital city Zagreb is 0.14 or 14%.

Nevertheless, in order to get a real picture, these further facts should be taken into account:

[14] Baturina, Bežovan and Matančević, 'Welfare Inovations at the Local Level in Favor of Cohesion, City Report: Zagreb,' 26.

[15] 'Ipak jeftinije: najam prosječnog stana u Zagrebu je 3.433 kune.'

[16] Croatian Bureau of Statistics, *Statistical Information* (Zagreb: Croatian Bureau of Statistics, 2012).

[17] 1 EUR = 7,510430 on the 31 December 2011, http://www.hnb.hr/tecajn/h281211.htm.

1. The biggest percentage of renters on the private market are young people, young families and students (this is particularly true for the capital city Zagreb),[18] who, in general, by the virtue of things have an income that is lower than the average salary. In addition, due to the current economic crisis and the high unemployment rate, it is more likely that only one member of the household has a regular income. Furthermore, due to the traditional tendency of Croats towards home ownership, the rule is that renting is a temporary solution, so Croats rent until they can afford to buy or build their own housing unit, what, in practise, means until the can afford to get a housing loan.
2. The purpose of protected rent-social housing is to try to meet the housing needs of the most vulnerable groups of society, who are often households with the lowest income, so it is not realistic to use average net salary in this calculation. On the other hand, due to the fact that there is no data on the average income disposed by the households living in social housing, we cannot get a real calculation.
3. This calculation does not include the housing costs and the costs of the amortization of the home appliances that are in the relation to the average income relatively high. According to the calculation of the Independent Croatian Unions (*Nezavisni hrvatski sindikati*) these costs in August 2011 amounted in average to 1,752.46 HRK (240.06 EUR),[19] and in the City of Zagreb they amounted to 1,764.5 HRK (241.71 EUR).[20] One research from 2006 showed that 20.5% households in Croatia had a problem with paying these costs.[21]

[18] According to the market research more than half of the tenants on private renting sector are 30 years old or younger, 26% are less than 25 years old, and 31% have between 26 and 30 years. Centar nekretnina, 'Istraživanje o iznajmljivanju nekretnina' (Centar nekretnina, Zagreb, 2008), http://www.centarnekretnina.net/download/istrazivanja/2009/01_Istrazivanje_o_iznajmljivanju.pdf.

[19] 1 HRK = 7,470858 EUR on 31 August 2011, http://www.hnb.hr/tecajn/h310811.htm.

[20] 'Sindikalne košarice – godina 2011,' Nezavisni hrvatski sindikati, accessed 26 November 2012, http://www.nhs.hr/gospodarstvo/kosarica/izvjesca/.

[21] Z. Šućur, 'Ekonomska situacija,' in *Kvaliteta života u Hrvatskoj: regionalne nejednakosti*, edited by L. Japec and Z. Šućur (Zagreb: UNDP, 2007), 17–30.

This percentage has surely increased since then, especially in the light of the current economic and financial crisis.

Price-to-earnings ratio[22] shows that the affordability ratio of newly built apartments was 2.16 in 2011 (in 2011 the average price per square metre of newly built apartment was 11,764 HRK (1556.44 EUR)[23] and the average net salary was 5,441 HRK (724.5 EUR)).[24]

As already pointed out, the Croats are traditionally more inclined towards home ownership as to living as tenants in a rental housing. Thus, in Croatia prevails an attitude that 'an individual simply feels better living in his own house'[25] and the rule is that renting is a temporary solution, so Croats rent until they can afford to buy or build their own housing unit, what, in practise, means until the can afford to get a housing loan.

A good illustration of this attitude gives one market survey on renting conducted in 2008. According to this survey, almost half of tenants on private renting sector (43%), rents because their financial situation does not allow them to get a housing loan in order to buy their own property. In phase of raising funds for housing loan are 20% of tenants, while 16% of them believe that it pays better to rent rather than to buy property. Furthermore, among the tenants who no longer rent, more than half of them (54%) stopped renting because they bought their own property. Quarter of them (25%) returned to their parents, and 11% has, in the meantime, inherited property. Ten percent (10%) of respondents no longer rent for other reasons, such as moving in with a partner or into a student dorm.[26]

Thus, in Croatia, renting is a temporary alternative to home ownership. This is understandable from the point of view of low security of tenure on private rental sector (as explained above this is even

[22] Defined as the ratio of average price per square metre of newly built dwellings sold in a given year on the market and average monthly net earnings in the same year.

[23] 1 EUR = 7,510430 on 31 December 2011, http://www.hnb.hr/tecajn/h281211.htm.

[24] Croatian Bureau of Statistics, *Statistical Information 2008* (Zagreb: Croatian Bureau of Statistics, 2008), http://www.dzs.hr/Hrv_Eng/StatInfo/pdf/StatInfo2008.pdf; Croatian Bureau of Statistics, *Statistical Information 2012* (Zagreb: Croatian Bureau of Statistics, 2012), http://www.dzs.hr/Hrv_Eng/StatInfo/pdf/StatInfo2012.pdf.

[25] Državna geodetska uprava, *Studija tržišta nekretnina u Republici Hrvatskoj*, 100.

[26] Centar nekretnina, 'Istraživanje o iznajmljivanju nekretnina,' 4–5.

TABLE 2.2 The Prices of Sold Newly Built Apartments per m² in Croatia 2007–11 in HRK

2007	2008	2009	2010	2011
11,252	12,095	11,944	10,971	11,764

NOTES Based on data from CBS (http://www.dzs.hr).

more true in Coastal region where the private market does not even exist throughout the whole year), but incomprehensible from the point of affordability.

The economic crisis has gravely affected the sector of commercial housing construction and the housing market in Croatia. According to the data of Croatia Bureau of Statistic from the 2007 the number of issued building permits for construction of housing units has dropped for 54.2% (from 24,877 in 2007 to 13,470 in 2011)[27] and estimation is that only on the housing market of the capital city in 2011 there were around 6,000 to 7,000 unsold newly built housing units. (This situation can be contributed to high selling prices, low quality of buildings and general bad economic situation among the population; among other high unemployment rate).

In the years after 2008, the surplus of unsold apartments together with the decline of purchasing power of citizens and the increase of interest rates on housing loans of commercial banks has resulted in the decrease of the prices on the housing market, both, the prices of renting and the prices of purchase in the most parts of the country.

According to the data of Croatia Bureau of Statistic, the average price per m² of new housing units sold started to increase in 2011 and this trend continued in 2012.

From the presented data we can see that in the period from 2008 to 2010 the average selling price has decreased for 9.29%. At the same time, different real-estate agencies publish data showing that, from 2008 till now, the prices of housing units are constantly decreasing and the estimations are around 20%.[28] This discrepancy could be partly explained by the fact that the data from Croatia Bureau of Statistic refers only to newly built apartments, while, the data of real-estate agencies refers on all types of housing units (old,

[27] Croatian Bureau of Statistics, *Statistical Information 2008*; Croatian Bureau of Statistics, *Statistical Information 2012*.

[28] 'Rastu cijene novih stanova,' *Tportal.hr*, 12 October 2012, http://www.tportal.hr/biznis/novaciulaganje/219903/rastu-cijene-novih-stanova.html.

new, apartments and houses) and relies on the data gathered from the adds they published and the transactions they concluded.

The crisis on the housing market – surplus of unsold apartments and, thus, the decrease in the prices of housing units – has led to the decrease in the level of rents on the private renting sector in most cities, especially in the City of Zagreb. Unfortunately, there is no official data, only the data analysed and published by different real-estate agencies.

According to the most recent data for the City of Zagreb, the average monthly rent for an apartment from 20–40 m^2 in August 2012 was 289 EUR, which is 16.8 EUR (5.49%) less than in the same period the year before. The cheapest is Novi Zagreb (the suburban part of the city) and the most expensive is the centre of the city.[29]

Nevertheless, there are exceptions, and some cities record the same rent levels or an increase in the level of the rents. This especially refers to cities in Dalmatia, such as Split, Dubrovnik and Šibenik. For instance, in Split, unfavourable home loan conditions and lack of favourable sale conditions for unsold newly built dwellings, force people into renting, what in the end resulted in the increase of rent levels despite the current crisis and different trends in Zagreb and some other cities in the continental part of Croatia.[30]

The current crisis has also gravely affected the labour market. On one side; the unemployment rate has grown from 14.9% in 2009 to 17.8% in 2011 and continued to grow in 2012, while, on the other side; the level of average net monthly salary has insignificantly increased from 5,311 HRK (727.53 EUR) in 2009 to 5,441 HRK (745.34 EUR) in 2011.[31] Thus, the affordability is an issue, especially for the young people and young families that are one of the most vulnerable groups.[32]

Young people's access to adequate housing is closely related to problems of unemployment. In Croatia, young people have difficulty in acquiring economic independence from their parents and accessing financial resources to provide themselves accommoda-

[29] 'Ipak jeftinije: najam prosječnog stana u Zagrebu je 3.433 kune.'

[30] 'U Splitu cijene ne padaju: najam dvosobnog namještenog stana u centru stoji 800 eura.'

[31] Croatian Bureau of Statistics, *Statistical Information 2012*.

[32] Baturina, Bežovan, and Matančević, 'Local Welfare Systems as part of the Croatian Welfare State,' 16.

tion. Many of those who have good employment and are economically independent, do not have enough resources to purchase a home. Although measures were adopted by State and Local governments to subsidize housing and provide tax benefit for young people to purchase their first home, only a small number of young people can actually afford to buy a home.[33]

Recent developments on the financial market and the overall economic instability made the housing situation in the city [Zagreb] more complex and uncertain. Fewer and fewer people of younger generations are eligible for housing loans. Many young generation households, who have already bought very expensive housing units using housing loans in Swiss francs, found themselves in trouble because of the increase of the exchange rate of the Swiss francs. On average, a monthly instalment of such loans increased by 60%.[34]

Although some analysis and research show that, in the light of the present economic and financial crisis, renting is more affordable and even can be profitable,[35] for the biggest part of citizens of Croatia renting is still just a temporary housing solution.

For instance, the mentioned research project brings also the comparison of the rent level of public rental housing, social rental housing and private rental housing with the level of monthly loan instalment in location Novi Jelkovec, Zagreb (table 2.3). From these data it is visible that in location Novi Jelkovec, Zagreb renting is more affordable than purchase with home loan, even the renting on private market.

[33] R. Rolnik, 'Report of the Special Rapporteur on Adequate Housing As a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Mission to Croatia' (Report from the 16th session of the Human Rights Council of the United Nations, Geneva, 28 February–25 March 2011), http://www2.ohchr.org/english/bodies/hrcouncil/16session/reports.htm.

[34] Baturina, Bežovan and Matančević, 'Welfare Inovations at the Local Level in Favor of Cohesion, City Report: Zagreb,' 25. The estimations of Association Franc (*Udruga Franak*) is that monthly instalment of such loans has increased by 50%. See also 'Rezultati istraživanja – priopćenje za medije,' http://udrugafranak.hr/index.php/stavovi-udruge/item/424-rezultati-istra%C5%BEivanja-priop%C4%87enje-za-medije, 8 January 2013.

[35] 'Najmom, umjesto kupnjom, može se uštediti vrijednost stana,' *Lider*, 7 November 2012, http://www.liderpress.hr/biznis-i-politika/hrvatska/najmom-umjesto-kupnjom-moze-se-ustediti-vrijednost-stana/.

TABLE 2.3 The Comparison of the Rents in Novi Jelkovec, Zagreb

Category	Size of flat in m²		
	≤59.99	60–99,99	≥100
Rent on the free market	378	513	757
Rent of public housing	199	253	283
Rent of social housing	29	38	48
Monthly instalment of bank loan	505	674	843

NOTES In EUR per month.

2.3 Tenancy Contracts and Investment

There are very scarce data on the return on investments for rental housing. In Croatia there are only few commercial construction investments into rental housing (two such projects were realized in Zagreb) due to the prevailing opinion that this kind of investment is simply not profitable for investors.[36]

The main reason for such an opinion is too low and slow return on investments in the light of present conditions of; rent prices, construction costs, credit costs, taxes (VAT) and contributions (utility fees), low interest in long-term renting due to the traditional preference in home ownership and the prevailing attitude that renting is not a secure form of tenure.[37]

When looking into return on investment of renting for private (individual) landlords as investors, there is also no available data (especially not an official one). The prevailing opinion is that renting is a secure and a profitable source of income (in some cases the only source). So, if one has; (1) an extra housing unit or (2) extra funds for investing into purchase of extra housing units, renting is a smart and a profitable choice.[38]

On the other hand, the investments of private landlords into the (existing) housing stock with protected tenants is hard to expect considering that in these cases they often do not have any economic

[36] 'Gradnja stanova za najam još nije unosno ulaganje,' *Lider*, 30 August 2008, http://www.liderpress.hr/arhiva/53113/.

[37] Državna geodetska uprava, *Studija tržišta nekretnina u Republici Hrvatskoj*, 100–101.

[38] Accordintg to the survey on renting more than half of landlords (58%) rent rather then sell extra property because they believe the same day they will need it, and for a third of landlords (33%) it is a constant source of income. See Centar nekretnina, 'Istraživanje o iznajmljivanju nekretnina,' 5.

benefit of their ownership (because the protected rent is being paid, and this rent is too low, often in practice lower than the maintenance costs and utility charge that the owner-private landlord has to bear).

As already mentioned, the economic crisis has gravely affected the sector of commercial housing construction and the housing market in Croatia. From 2007 the number of issued building permits for construction of housing units has dropped for 54.2% (from 24,877 in 2007 to 13,470 in 2011). This refers especially to Zagreb[39] and an estimation is that only on the housing market of the capital city Zagreb in 2011 there were around 6,000–10,000 unsold newly build housing units.

On the other hand, there have been some interesting developments under the influence of crisis. Some private investors have started to rent unsold housing stock to avoid further financial losses. But this type of renting is just a temporary solution because it has been designed as renting with a right to purchase after a certain period (12, 18 or 24 months). Because long-term renting is not profitable for investors, the ultimate goal is to sell. The point of this model is that after the expiration of the tenancy contract the rent will be deducted from the price. Depending on the equipment of the apartment rental price is from 9 to 12 EUR per square meter. However, this model has its risks for both parties, the buyers and the investors, primarily in the event that the buyer after the expiration of the tenancy contract is not eligible for housing loan or withdraws from the purchase. In these cases, the buyer loses the high rents, while the investor cannot sell these housing units as new ones anymore, and is back again into the same, if not worse, situation as before the tenancy contract. Therefore, investors do not offer all the extra housing units under this model. Initially, this project raised significant interest among buyers and according to the investors proved itself as a good transitional solution.[40] Data on further results and evaluations of this model does not exist at this time.

[39] 'Snažan pad stanogradnje u Zagrebu,' *Poslovni dnevnik*, 23 September 2011, http://www.poslovni.hr/vijesti/snazan-pad-stanogradnje-u-zagrebu-187093.

[40] 'Model najma s pravom kupnje stanova uspješniji od akcija banaka,' *Poslovni dnevnik*, 4 May 2009, http://www.poslovni.hr/hrvatska/model-najma-s-pravom-kupnje-stanova-uspjesniji-od-akcija-banaka-115226.

The current crisis has introduced innovations in the POS programme as well. In the City of Varaždin the non-profit organization conducting this program has started to rent the unsold apartment within the public rental programme. Next to that a new rent-to-buy scheme in the POS Programme has been launched.

From the fact that the prices of renting have in most cities decreased under the influence of the economic and financial crisis, we can draw a conclusion that the profitability of renting for private-individual landlords has dropped in the last few years.

According to the 2001 Census, the number of private households was 1,477,377, the total number of dwellings for permanent residence was 1,660,649 and the number of the vacant dwellings for permanent residence was 239,026 (196,633 dwellings were temporarily vacant and 42,393 were abandoned). Thus, the number of permanently occupied dwellings for permanent residence was 1,421,623.

According to the available data from the 2011 Census, in 2011, there were 1,912,901 dwellings for permanent habitation. In the same year, the number of private households was 1,534,148. These data could lead us to conclude that there was a surplus of dwellings for permanent habitation and that in Croatia there is no shortage of dwellings.[41]

But, due to the fact that in practice the private rental housing market in Croatia is uncontrolled and that the biggest part falls under the 'black market,' there is no accurate data on the overall size of this market and the supply and demand relations on it.[42]

This is so, although the Lease of Flats Act bounds the landlords to deliver tenancy contracts and all the changes regarding the level of rents to administrative departments of the local authorities and the competent tax office. The records of Tax Administration on the number of taxpayers of the tax and contributions on the income from renting are partial since these records contain only those taxpayers that register themselves. In 2008 in the records of Tax administration around 27,000 tenancy contract were registered.

The estimation is that that the overall number of households that are renting housing units on private market is around 120,000

[41] 'Popis stanovništva, kućanstava i stanova 2011. godine.'

[42] Državna geodetska uprava, *Studija tržišta nekretnina u Republici Hrvatskoj*, 100.

(30,000 in Zagreb, 20,000 in Split).[43] This corresponds to the number estimated by the professionals from the Bureau of Statistics.

Thus, the term 'households in need' as used here, is the number of households that are renting on private market due to the inability to buy ones home since renting is not a secure form of tenure and the fact that the Croats are traditionally inclined towards ownership.

Private rental market is mostly concentrated in the bigger cities,[44] especially in Zagreb, while in the smaller places the market is not developed.[45] The demand for rental housing is higher in bigger cities due to the bigger possibilities for employment and education. According to the real-estate agencies the level of rent in these cities is similar and the level of demand and supply is stable.[46]

Despite the surplus of unsold housing, the housing crisis is most evident in Zagreb and other bigger cities, partly because here lives the biggest part of the biologically reproductive population, young people and families, who are one of the most vulnerable groups. This especially refers to young families whose level of income does not make them eligible for social housing and, at the same time, does not give them enough funds to purchase housing on the market. Therefore, they are usually forced to rent on private market.[47] (As explained in text above in the Coastal region a special problem due to renting for period excluding summer time exists).

Another vulnerable group in need is the student population. The accommodation capacities in the dorms have not increased for years. This forces the students to rent on private rental sector where the rents are drastically higher than the prices of dorm accommodation. Estimation is that only in the City of Zagreb there are around 20,000 students renting on 'black market.'[48]

In addition, besides the shortage of supply on market rental

[43] 'Pitanja stanara,' Pragma, accessed 26 November 2012, http://www.udruga-pragma.hr/index.php?option=com_content&view=article&id=112%3Apitanja-stanara&catid=44%3Astanovanje&Itemid=202&lang=hr.

[44] This refers to Zagreb, Split, Rijeka and Osijek.

[45] Državna geodetska uprava, *Studija tržišta nekretnina u Republici Hrvatskoj*, 100.

[46] 'Veća potražnja nije zamjetnije povisila cijene najamnina.'

[47] 'Gradnjom socijalnih i stanova za najam srušila bi se cijena stanova,' *Jutarnji list*, 26 January 2012, http://www.jutarnji.hr/gradnjom-socijalnih-i-stanova-za-najam-srusila-bi-se-cijena-stanova/1002537/.

[48] Bežovan, 'Stanovanje i stambena politika,' 371.

housing, the shortage of public and social rental housing is also visible. For instance, in the City of Zagreb, in 2009, within the project of public renting 608 households applied for 548 available apartments[49] and for social housings 3,235 households applied.[50] The final priority list for social housing has been published in 2012 and contains 2101 approved request.[51] Furthermore, need for social housing in the four larger cities, has been estimated at 3 to 5 percent of the local housing stock.[52]

There are no precise data on the number of immigrants in need, but it is important to note the following. The foreigners residing in Croatia, permanently or temporarily, constitute less than one per cent of the total population (according to the Census 2011, out of total number of 4,284,889 inhabitants, Croatian citizenship have 4,259,476, thus, 25,413 are foreigners).[53] Due to the demographic and work conditions, and especially, with the approaching accession to the EU, Croatia is becoming an immigration country, much as some new EU member states (Slovenia, Poland and the Czech Republic).

In the period from 1999 to 2008, the net migration was positive, however, in 2009, for the first time, it was negative (−1,472). The decline in the number of immigrants in the period from 2009 till now, is mostly caused by the economic crisis, especially, by reduced demand for employees in the sectors of construction, catering and tourism, in which immigrants are traditionally employed. It is a curiosity that, among immigrants, 90% have a Croatian citizenship (many Bosnia and Hercegovina inhabitants have dual citizenship. Next to having Bosnian citizenship they additionally have a Croatian or a Serbian one). In the last decade, the largest number of immigrants (57.6%) came from Bosnia and Herzegovina, followed by immigrants from Serbia and Macedonia. In the last few years, a

49 'Kasne i Bandićevi najamni stanovi u Sesvetama,' *Limun.hr*, 26 September 2009, http://www.limun.hr/main.aspx?id=476861.

50 'Na listu za "socijalni stan" čekali dvije i pol godine,' *Večernji list*, 25 May 2012, http://www.vecernji.hr/regije/na-listu-socijalni-stan-cekali-dvije-pol-godine-clanak-413375.

51 'Konačna lista reda prvenstva za davanje stanova u najam,' Zagreb.hr, accessed 26 November 2012, http://www.zagreb.hr/default.aspx?id=35533.

52 Baturina, Bežovan, and Matančević, 'Local Welfare Systems as part of the Croatian Welfare State,' 11.

53 'Popis stanovništva, kućanstava i stanova 2011. godine.'

significant increase in the number of immigrants from China has been recorded. The Aliens Act (*Zakon o strancima*)[54] regulates entrance, movement, residence[55] and work of foreigners. If looking at the reasons of immigration, from 2008, temporary residence permit were obtained primarily for the purpose of work (44.5%) and family reunion (44.5%). The temporary residence permit for purpose of work is issued as a permit for residence and work.[56] It is also important to note that, the foreigner that obtains the temporary residence permit for family reunion (with certain family members), is also entitled to work, and does not need an additional permit for work.[57] Thus, it can be said that immigrants to Croatia are economic immigrants.[58]

In the last two decades, the demographic picture of Croatia has been characterized by the trends of depopulation and population aging. Data on population trends are negative and show that the already poor demographic situation is continuously deteriorating. According to Census 2011, Croatia has 4,284,889 inhabitants, 3.43% less than in 2001, when it had 4,437,460.[59] In addition, the decline in the share of younger population and the increase in the share of elderly population continue. In mid-2009, the proportion of inhabitants older than 64 years was 17.31%, while, in 2008, that share was 17.28%, and in 2007, it was 17.19%.[60] The results of one projection indicate that, if these trends continue, Croatia will, in 2031, have 3,680,750 inhabitants and 22.6% of them will be older than

[54] *Službeni list Republike Hrvatske*, no. 113/11.

[55] The foreigner that intents to reside in Croatia longer than 90 days needs a temporary residence permit. Upon a certain period of temporary residence, the foreigner is eligable for permanent residence under the condition of fuffilment of additional prerequesits.

[56] Pursuant to Article 47, paragraph 2 of the Aliens Act.

[57] Pursuant to Article 73, paragraph 3, subparagraph 3 of the Aliens Act.

[58] 'Izvješće o provedbi Zajedničkog Memoranduma o socijalnom uključivanju Republike Hrvatske (JIM) u 2010. godini' (Ministarstvo zdravstva i socijalne skrbi, Zagreb, 2010), 2; Baturina, Bežovan and Matančević, 'Welfare Inovations at the Local Level in Favor of Cohesion, City Report: Zagreb,' 28–34.

[59] 'Popis stanovništva, kućanstava i stanova 2011. godine.' However, the professionals from the Croatian Bureau of Statistics emphasize that; the data from the Census 2011 cannot be directly compared with data from the Census 2001. This is so, because the statistical definition of total population has been changed and the number of inhabitants would be about the same if the same method was applied.

[60] 'Izvješće o provedbi Zajedničkog Memoranduma o socijalnom uključivanju,' 1–2.

65 years.[61] These trends should be taken into account when the future housing policies are being drafted.

2.4 Other Economic Factors

The results of one market survey showed that a very small percentage of people voluntarily insure (not because of obligations towards the bank or the manager of the building) their residential property (only 20%). When looking by regions, the smallest percentage of insured residential property is in Dalmatia (13%), while most is in Northern Croatia (30%). The further finding of this survey is that the ones with high educated and highest incomes more often insure their homes.[62] There is no data on the percentage of insured dwellings depending on the use (depending on the fact whether it is being rented or not).

Due to the fact that the biggest part of renting is on the 'black market' with all the negative consequences deriving from it, especially lower level of housing standard in rental housing, it can be said, in general, that the insurance does not play a big role.

It is important to note that there is no statutory obligation on neither party (landlord nor tenant) to conclude insurance policy of any kind nor does the fact that the house is being rented influences the cost of insurance according to the terms of insurance companies.

The literature and relevant data on the role of estate agents on the rental market in Croatia is very scarce. The percentage of renting relationships concluded through real-estate agencies is small. Results of the survey on renting shows that only 7% of the tenants came across the information on the property they are renting over the real-estate agency, whereas 14% of landlords found the tenants through the real-estate agencies.[63] Foreigners, especially foreign companies and various types of international organizations use the services of estate agents. According to the real-estate agencies, the crisis on the housing market, decline of purchasing demand,

[61] 'Kamo ide Hrvatska: buduće kretanje broja stanovnika,' accessed 8 January 2013, http://www.cpi.hr/hr-13450_kamo_ide_hrvatska_buduce_kretanje_broja_stanovnika.htm.

[62] 'Kvaliteta života istanovanje,' *Nacional*, *Nacional.hr*, 27 November 2012, http://www.nacional.hr/clanak/117853/kvaliteta-zivota-i-stanovanje-tek-20-posto-hrvata-osigurava-svoje-nekretnine.

[63] Centar nekretnina, 'Istraživanje o iznajmljivanju nekretnina,' 12.

resulted in the shift in the structure of their business, so at the present, they are mediating more in rental sector than in sales.[64] Since the rental relations are in most part in 'the black market,' those established through estate agents are usually established in accordance with the Lease of Flats Act, thus, it can be argued that estate agents play an important role in providing a certain level of security of tenure to tenants.

The rules of engagement for real estate agencies in Croatia are regulated by the Real Estate Brokerage Act (*Zakon o posredovanju u prometu nekretninama*[65]). The profits of the Real estate agencies are maximized to 6% of the selling price. In practice agencies usually take 2% of the buyer and 2% of the seller.

In cases of renting, the take of the real estate agency is not regulated by the law. Usually however one month's rent is paid to the agency.

2.5 Effects of the Current Crisis

Data of the Croatian National Bank on the trend of housing loans shows that the total amount of housing loans increased from about 17 billion HRK in 2003 to about 55 billion HRK in 2008. The most significant growth was recorded in the period from 2005 to 2008 in the amount of 144%. This is also the period in which the biggest growth of the amount of charged real-estate transfer tax was recorded. The reason for this lies in the increase of housing construction and in bigger demand of citizens for new dwellings, which together with other positive macroeconomic factors (increase in foreign investment and capital, decrease of interest rates, increase in net wages, employment growth, migration to larger cities) made it possible for larger part of population to buy bigger or better housing. From the start of 2008, as the time of the onset of the economic crisis, the growth of approved housing loans begins to stagnate.[66]

The overall economic slowdown in 2009 had a profound impact on developments in credit aggregates. For the first time since 1999, bank placements to the private sector dropped on an annual basis.

[64] 'Podstanarstvo ili stambeni kredit,' *Gorila.hr*, 31 January 2011, http://gorila.jutarnji.hr/vijesti/2011/01/31/podstanarstvo-ili-stambeni-kredit.

[65] *Službeni list Republike Hrvatske*, no. 107/07, 144/12.

[66] Državna geodetska uprava, *Studija tržišta nekretnina u Republici Hrvatskoj*, 94–5.

Bank placements to the households recorded an annual decline of 2.9% in regard to 2008. The negative impact of the global financial crisis at the beginning of 2009 and the overall economic slowdown led to a fall in the supply of as well as the demand for loans. Faced with the rise in the ratio of non-performing loans to total loans and a higher degree of uncertainty, banks were more cautious in taking new risks; they raised lending rates and tightened other lending terms. On the other hand, household demand for new loans slumped under the pressure of negative trends and expectations in the real sector as well as the increased burden of servicing existing loans. Housing loans remained almost unchanged in 2009.[67]

In the 2010 adverse economic developments, particularly those in the labour market-growth of unemployment, high price of borrowing and uncertainty as regards future developments, continued to prevent a noticeable recovery in household demand for loans. Household loans grew by 3.8% in nominal terms. However, excluding the exchange rate effects, loans to this sector actually dropped by 1.4%. Exchange rate changes affected most the balance of housing loans, which account for the largest share of Swiss Franc indexed loans.[68]

Overall bank loans granted to households continued to decrease in 2011. The reasons for the again delayed recovery in household lending are the same; weak demand for loans due to unfavourable economic conditions. Household loans increased by 0.9% in nominal terms, but with the exchange rate effects excluded they fell by 1.1%. Home loans, which accounted for the largest share of total household loans granted, remained almost unchanged in comparison to 2010. Stagnation in this category was recorded at the annual level despite the government incentive programme for home loans; although successful, it had a slight effect on the volume of total household lending.[69]

Croatian Chamber of Economy (*Hrvatska gospodarska komora*) runs a Register of real estates and movables sold in foreclosure and

[67] Croatian National Bank, *Anual Report 2009* (Zagreb: Croatian National Bank, 2010), 27-9.

[68] Croatian National Bank, *Anual Report 2010* (Zagreb: Croatian National Bank, 2011), 24.

[69] Croatian National Bank, *Anual Report 2011* (Zagreb: Croatian National Bank, 2012), 22.

bankruptcy procedure (*Očevidnik nekretnina i pokretnina koje se prodaju u ovršnom i stečajnom postupku*).

The figures from this register show that from September 2009 until September 2012, the number of real-estates that have been put to auction in the process of foreclosure increased by 110%.[70]

The data from this registry from the end of November 2012 shows that 134 housing units and 335 individual houses are to be sold on public auctions in the remaining part of this and the following year due to the non-payment. It has to be stated that this registry shows just the number of future (active) auctions (data changes from day to day showing just the active state). Furthermore, it is not possible to search and extract data from this register on the basis of/by different sorts of non-payment. But in most cases it is due to the non-payment of mortgage credit.

As a response to the crisis, and especially in the sector of housing construction, the former government first passed in 2010 the Promotion of the Sale of Apartments Act.[71] Under the provisions of this law, a buyer could, in the process of purchase of a new house, obtain a government loan in the amount of 100–300 EUR per square meter. Due to the further provision that this subsidy was designed only for the newly built houses of the licensed contractors who were also the investors, its use has not produced expected results. Instead of the planned 1,000 housing units, in reality only 68 were sold.[72]

Since the Promotion of the Sale of Apartments Act was inefficient, the current government derogated it by passing the Subsidies and State Guarantees for Housing Loans Act[73] in 2011. This Law was introduced to overcome the unfavourable situation in housing construction[74] resulted by the recent economic crisis and to help citizens in meeting their housing needs. It prescribes two measures (subsidies for housing loans and state guarantees for the repayment of interests on housing loans).

[70] 'Sve vise nekretnina na "bubnju" zbog ovrhe,' *Lider*, 13 September 2012, http://liderpress.hr/biznis-i-politika/hrvatska/-sve-vise-nekretnina-na-bubnju-zbog-ovrhe-/.

[71] *Službeni list Republike Hrvatske*, no. 38/10.

[72] 'Planiralo se prodati 1000 stanova, a kredit dobilo samo 68 kupaca.'

[73] *Službeni list Republike Hrvatske*, no. 31/11.

[74] Significant decrease in construction, lack of investments, big number of unsold housing units, loss of employment in construction sector and other related sectors.

The first measure consists of state paying half of the monthly instalment during the first four years of housing loan repayment. The second measure consists of states obligation to pay interest on overdue instalments, starting from the first instalment repayable after onset of the reasons for inability of repayment to the termination of this reason, but not longer than one year after the start of the inability to repay the loan.

Both measures were designed for the housing loans concluded for the purchase of newly built apartments. In addition, they were designed as temporary measures, so, in practice, the citizens were entitled to apply for both measures until the 15 June 2012.

From 2011 to 2012, total number of 2.253 subsidies was realized and for this purpose around 43 million HRK was spent. But we have to bear in mind, that the amount spent in one year should be ensure for the following three years, since the subsidy applies to the period of 4 years from the first year of loan repayment. There is no available official data on the number of realized guarantees and the amount of funds spent on them. In addition, in 2012 the current government announced the introduction of real-estate tax and the program of state (public) renting as further measures of overcoming the effects of crisis. At this point these measurements are still in the development phase..

Local authorities in the City of Varaždin introduced a public rental programme within the POS programme as a response to the crisis on the housing market of the housing units built within the POS program. Next to this, the Governmental Agency in charge of the POS Programme launched a new rent-to-buy scheme in order to sell the unsold apartment units build in the POS Programme.

In November 2013 the amendments on the Consumer Credit Act were unanimously passed in order to alleviate the financial pressure of housing loans indexed in Swiss franc. In addition, the amendments on the Housing Savings Act were passed in November 2013 also. With these amendments the payment of government incentives is temporarily abolished.

In December 2013 the Government passed the amendments to the Profit Tax Act (*Zakon o porezu na dobit*)[75] and to the By-Law on

[75] *Službeni list Republike Hrvatske*, no. 177/04, 90/05, 57/06, 146/08, 80/10, 22/12, 148/13.

Profit Tax (*Pravilnik o porezu na dobit*)[76] which enable the banks to write off debts of the users of housing loans and use it as a tax deductible expense.[77] Now the banks have to adopt criteria and procedures for writing off debts. In general, this measure is aiming the debtors to whom the payment of instalment loans threatens the fulfilment of basic needs or to whom the execution (seizure) of the only residential property threatens. In addition, write-offs can be applied to companies in which liabilities to credit institutions significantly threaten the development of investment projects or significantly threaten the continuation of business.

2.6 Urban Aspects of the Housing Situation

The following data on the distribution of tenure/housing types on the city scale refers to Zagreb and dates from the Census 2001. The city of Zagreb can serve as an illustration, since it is the biggest Croatian city and in many ways gravitation point (administratively, economically, and educationally).

The structure of housing tenure is quite uniform by different city districts. Home ownership dominates in peripheral city districts where family housing construction and partly rural space prevail. A slightly higher percentage of social housing (housing with protected rent) is allocated in the fourth city districts (Trešnjevka – Sjever 6%, Gornja Dubrava, 5.2%, Donja Dubrava 5.2% and Stenjevac 5%.). Private renting housing is predominant in the structure of tenure types of Gornja Dubrava 13%, Donja Dubrava 12.9%, Podsused – Vrapce, 10% and 10% Sesvete, which are all peripheral city districts (suburbs). Therefore, in these neighbourhoods rental housing is associated with family housing construction. Of the total number of tenants in private renting housing Gornja Dubrava has the biggest percentage (11.1%).

Partial renting (renting of a part of an apartment) has the highest percentage in the structure of tenure types in central parts of Zagreb, respectively, in the districts of Donji Grad 8.2% and Gornji Grad – Medveščak 8%. Donji Grad has 15.4% of the total ten-

[76] *Službeni list Republike Hrvatske*, no. 95/05, 133/07, 156/08, 146/09, 123/10, 137/11, 61/12, 146/12, 160/13.

[77] Before the bank had to prove that all legal actions were futile. In practice that ment; law suit, attempt of enforcement and only then banks could deduct.

ants renting of a part of housing unit in Zagreb. This is so due to the more frequent presence of large (specious) and more-bedroom dwellings owned by elderly, often one-person households, who rent-out part of their dwelling.[78]

It is important to note that a part of residential stock in the central parts of the city was adapted for business purposes and this is one of the reasons for the decline of population in the centre. With the investments into the construction of new business units this trend is expected to increase.[79] The preliminary results of the Census 2011 also show that the centre of the city is being depopulated and that the share of older people in these parts is growing.[80]

The data shown is from the Census 2001, from that time in the Zagreb there have been built around 68,000 apartments (68,270),[81] out of which around 38,000 are vacant (bought out of speculative reasons), while 10,000 are unsold.[82] A significant part of them has been built under projects encompassing gross construction of apartment buildings. Most part of the latter were constructed on the marginal outskirts of the city (Lanište, Špansko, Sopnica Jelkovac, etc.) and some of them in the wider centre (Kajzerica). At the same time, on the northern side of the city an elite residential area with prevailing 'urban villas' grows ('podsljemenska zona'). It is important to note these developments, because one can reasonably expect that they brought about changes in the distribution of tenure types on the city scale. Because the data from the Census 2011 has not yet been processed, this cannot be argued with absolute certainty.

If we look at the region scale, we can see that: in the cities/urban areas there are more rental houses than in the villages/rural area, since the rental market is mostly concentrated in the bigger cities, while, in the smaller places it is undeveloped.

[78] G. Bežovan, 'Procjena standarda stanovanja u Zagrebu kao ravojnog resursa,' *Revija za socijalnu politiku* 12, no. 1 (2005): 30.

[79] Ibid., 41.

[80] 'Popis stanovništva u Zagrebu otkriva u centru vode starci i ateisti, na periferiji više mladih katolika,' *Jutarnji list*, 20 December 2012, http://www.jutarnji.hr/popis-stanovnistva-u-zagrebu–u-centru-vode-starci-i-ateisti–na-periferiji-vise-mladih-katolika/1073588/.

[81] 'Popis stanovništva, kućanstava i stanova 2011. godine.'

[82] Bežovan, *Upravljanje promjenama u postsocijalističkom gradu: primjer grada Zagreba* (Zagreb: Institut za društvena istraživanja, 2012), 165.

At the same time, owner-occupied dwellings are more present in the rural areas than in the urban ones. Surely, this is influenced by multiple factors. First of all, in the rural areas land and construction are much cheaper than in urban areas. In addition, this is associated with professional status of rural and urban population.[83]

Roma settlement in the City of Rijeka where no political will to legalize such settlements exists (even though the Roma community fulfilled all the necessary criteria in order for the settlements to be legalized).[84]

There is evidence that social and public rental housing and housing built for war veterans and refugees are contributing to the development specific of 'socio-urban' phenomena, primarily to ghettoization. For instance, in the City of Varaždin, social rental housing and housing built for war veterans have contributed to the development of social segregation and ghettoization. Besides these more recent phenomena, it should be pointed out that settlements with Roma population are traditionally very segregated in the City of Varaždin.[85]

In the City of Zagreb, social segregation is also evident in some downtown areas inhabited mostly by older people, in parts of the city with illegally constructed settlements of family houses with poor public infrastructure and in settlement with Roma population. In addition, the construction of social and public rental housing in the location Novi Jelkovec, intended as a social mix, aimed also at social integration of socially marginalised families, but in the end resulted in the opposite effect.[86]

The process of gentrification is present in Croatia since the beginning of 1990s, especially in bigger cities, Zagreb and Split. Shopping malls, multifunctional complexes such as Importanne galerija, Kaptol centre, Ban centre, Prebenderski vrtovi, and Cvjetni prolaz-

[83] Z. Šućur, 'Stanovanje,' in *Kvaliteta života u Hrvatskoj: regionalne nejednakosti*, edited by L. Japec and Z. Šućur (Zagreb: UNDP, 2007), 32.

[84] 'Grad Rijeka odbija legalizaciju romskih naselja,' *Radio Rijeka*, 25 February 2014, http://radio.hrt.hr/radio-rijeka/clanak/grad-rijeka-odbija-legalizaciju-romskih-naselja/44237/.

[85] Baturina, Bežovan and Matančević, 'Welfare Inovations at the Local Level in Favor of Cohesion, City Report: Varaždin,' 17–8.

[86] Baturina, Bežovan and Matančević, 'Welfare Inovations at the Local Level in Favor of Cohesion, City Report: Zagreb,' 24–6.

Lifestyle Centre are the illustrative examples of gentrification in the City of Zagreb. Some urban sociologists describe the gentrification processes in Croatia as 'the post-socialistic gentrification'[87] in order to emphasize the specific methods and features of its development compared to the gentrification processes in Western Europe and USA. Another sociologist calls it 'a brutal gentrification.'[88]

These particularities reflect in the fact that many projects of urban renovation in Croatia (just as in some other post-socialist countries in transition) are initiated, planned and conducted by private investors, since the state simply does not have enough funds to conduct them itself or in co-operation with other social actors (members of different professions, civil society groups and public). This further results in certain manipulations and non-transparent modes of action, such as: changes in urbanization plans to meet particular interests of private investors, usurpation of public areas for private interests, etc. Thus, because of insufficient involvement of institutions (on local, regional and state level), in the process of urban renovation (due to the lack of funds), private investors with extra funds are shaping urban areas according to their private and particular interests (further extra profit), excluding all other social actors from the process of urban renewal on the expense of public interests. This also contributes to the partial development of process of urban renewal which, at the same time, neglects the wholeness of urban zone and the quality of life of all of its population. Additional particularity of the gentrification in Croatia is the replacement of existing middle and upper classes in the city centre with new upper classes – the wealthiest part of society.[89] Besides the process of gentrification, the process of pauperisation is also present (in and outside the city centre). So, nowadays, the urban planning does not

[87] A. Svirčić Gotovac 'Akteri društvenih promjena u prostoru (2007–2011),' in *Akteri društvenih promjena u prostoru; transformacija prostora i kvalitete života u hrvatskoj*, edited by A. Svirčić Gotovac and J. Zlatar (Zagreb: Institut za društvena istraživanja, 2012) 11–28.

[88] S. Poljanec-Borić, 'Društvena dioba prostora u tranziciji: Tipologija negativnih smjerova i moguće društvene posljedice,' in *Akteri društvenih promjena u prostoru; transformacija prostora i kvalitete života u hrvatskoj*, edited by A. Svirčić Gotovac and J. Zlatar (Zagreb: Institut za društvena istraživanja, 2012) 67–82.

[89] For instance, the city core of Zagreb was never inhabited only by poor segments of the population, quite the opposite, it was mostly inhabited by upper classes.

exist as an interdisciplinary, complex and long-term process, but only as a fragmented and unsystematic one. Some mark this state as the 'death of urbanism.'[90]

Poljanec-Borić, besides gentrification, also notices the phenomena of peripheral favelization and ghettoization in major Croatian cities.[91] The process of peripheral favelization is developing simultaneously and in connection with the process of gentrification. So on one side, we have 'the process of emptying of city centre of its permanent population to clear the historic core and then to commercialize these empty shells while, simultaneously,' on the other side, 'through the adoption of urban programs, which are characterized by radical infrastructural and utility savings, the process of stuffing (with population) the settlements on the fringes of cities is accruing.'[92] So instead of being revitalized, major cities in Croatia are being polarized, what is most evident in Zagreb (Donji grad vs. Kozari bok) and Split (Dioklecijanova palača vs. Sirobuja) where emptying of the city centres in relation to increase of population density in the suburbs is plain obvious. In addition to being economically unsustainable, these processes widely open the door to social segregation. In the absence of 'social glue' major cities in Croatia are faced with the problem of universal ghettoization.[93]

Looking at the urban development in the County of Zagreb we can see examples of suburbanization and periurbanization such as the case of Sesvete, Bistra and Sveta Nedelja. In the surroundings of other major Croatian cities; Split, Rijeka and Osijek, we can find similar phenomena.[94]

The phenomenon of squatting is present in Croatia. Again, most cases refer to Zagreb, where we can find squatting as an expression of alternative lifestyle and squatting out of necessity. The latter is

[90] A. Svirčić Gotovac, 'Aktualni revitalizacijski i gentrifikacijski procesi na primjeru Zagreba,' *Sociologija i prostor* 48, no. 2 (2010): 197–221; O. Čaldarović and J. Šarinić, 'First Signs of Gentrification? Urban Regeneration in the Transitional Society: The Case of Croatia,' *Sociologija i prostor* 46, no. 3–4 (2008): 369–81.

[91] Poljanec-Borić, 'Društvena dioba prostora u tranziciji,' 69-82.

[92] Ibid., 72.

[93] Ibid., 72–80.

[94] A. Lukić, V. Prelogović and D. Pejnović, 'Suburbanizacija i kvaliteta življenja u zagrebačkom zelenom prstenu – primjer općine Bistra,' *Hrvatski geografski glasnik* 67, no. 2 (2005): 85–106.

especially common among the war veterans and the poorest families who are occupying the vacant social housing. Some studies suggest that there are around 2,282 cases in city of Zagreb, which amounts to 30% of the whole social housing stock.[95] This is one of the reasons why some of the cities are considering selling these housing units.

According to Articles 20–7 of the Ownership and Other Proprietary Rights Act squatting is an act of autonomous disturbance of possession (trespass) and thus is prohibited. The possessor from whom the possession was taken (the owner or the tenant) is entitled, in the period of thirty days from the day he found out about the act of disturbance and the trespasser, and within the objective period of one year from the occurrence of squatting, to protect his possession by filing a lawsuit-possessory action (*tužba za smetanje posjeda*) and claim his possession back – claim eviction of the trespasser. The proceeding initiated by this lawsuit is summary and pressing (urgent). Self-defence is also permitted but under very restricted conditions. If the deadline for this special lawsuit is missed, than the owner can resort only to the classical real actions (*vlasničke tužbe*[96]). One can file for a real action in any case, even if the possessory action has not been filed or has been unsuccessful. There exists no statute of limitations for filing a real action lawsuit. However, using a possessory action suit is more favourable and will therefore be used as a first option.

2.7 Social Aspects

As emphasized a few times before, Croats traditionally prefer home ownership over living in rental housing. Thus, living in a rented dwelling is too often seen as 'inferior,' while home ownership implies financial successes.[97]

This preference is very well explained in above mentioned study on housing market in Croatia showing that:[98]

> […] attitude of Croatian citizens is that 'an individual simply feels better living in his own house.' Possession of real-

[95] Bežovan, 'Analiza sustava subvencioniranja najamnina i troškova stanovanja,' 729.

[96] For this purpose primarily the *Rei vindicatio* (*prava vlasnička tužba*) and *Actio publiciana* (*vlasnička tužba predmnijevanoga vlasnika*). Pursuant to articles 161–6 of the Ownership and Other Proprietary Rights Act.

[97] 'Najmom, umjesto kupnjom, može se uštediti vrijednost stana.'

[98] Državna geodetska uprava, *Studija tržišta nekretnina u Republici Hrvatskoj*, 100.

> estate [home ownership], thus, has a certain psychological asset, according to the present experiences, circumstances and the dominant system of values, it gives a certain security, it's a value that will be transferred among generations, only the own' house can be called 'home.' Long-term renting [on private market] does not offer that kind of security (especially in the conditions of minimum legal protection), it is perceived as insecure form of tenure and as a situation in which one has to pay, but 'does not leave anything behind.'

Renting is generally regarded as temporary solution and this is one of the reasons why little attention is being paid to the problems faced by tenants in private renting houses.[99] Protected tenants living in housing that have been restituted to their private owners are perceived as people who live in private property without paying the real cost (market rent).[100]

The above mentioned study on housing market also showed that Croats often neglect the fact that it is necessary to invest into maintenance of their homes, so the maintenance costs are often not included in the feasibility test when planning the investment into home purchase. Therefore, the housing stock is generally poorly maintained.[101] This attitude can be attributed to the historical heritage from the socialism, when the largest part of the housing stock was socially owned.

The examples of the opposite attitude can be also found. The mentioned WILCO project shows that in the City of Zagreb the process of privatization of public housing changed the attitude of the tenants (now homeowners) towards their houses. They maintain this housing stock better, management has also improved and they care more for the environment.[102]

In general, tenants in the private rental housing are often reluctant to invest into the space they are living in since this type of tenure is perceived as insecure and a temporary solution.

[99] 'Zašto su podstanari ljudi drugog reda,' E-podstanar.com, accessed 27 November 2012, http://www.epodstanar.com/o-podstanarstvu/zato-su-podstanari-ljudi-drugog-reda/.

[100] Baturina, Bežovan, and Matančević, 'Local Welfare Systems as Part of the Croatian Welfare State,' 15.

[101] Državna geodetska uprava, *Studija tržišta nekretnina u Republici Hrvatskoj*, 100.

[102] Baturina, Bežovan and Matančević, 'Welfare Inovations at the Local Level in Favor of Cohesion, City Report: Zagreb,' 20.

Chapter Three

Housing Policies and Related Polices

3.1 Introduction

According to Baturina, Bežovan and Matančević when:[1]

> Having in mind the Esping-Andersen typology, it is not easy to provide empirical evidence to classify the Croatian welfare state in terms of the prevailing welfare regime typologies. With Bismarckian roots in social insurance, with the paternalistic state from the communist period imbedded with the egalitarian syndrome and strong trade unions of persons employed in the public sector and in state-owned companies, liberal reforms made under the pressure of the World Bank, and a clientelistic policy towards victims of War and war veterans, Croatia is characterised by a hybrid type of welfare state.

Besides other factors (war, transition, globalization, etc.), the development of social welfare has been significantly affected by the process of accession of the country to the EU. 'The milestone in that process was the preparation of the Croatian Joint Inclusion Memorandum (JIM) which began in the second part of 2005.'[2]

In the process of transition, housing policy in Croatia has been neglected, forgotten and reduced to dealing with individual housing issues of particular groups of population. Even now, twenty years after the beginning of this process, Croatia still has no housing strategy. In the programs of the last two governments the questions of housing and housing policy matters are addressed only partially as a part of other social policies (policies toward family, young people, veterans of war, victims of war and refugees and returnees). 'Housing is fragmented to the point that it cannot be considered a policy, and is mainly left to local governments to deal with.'[3]

[1] Baturina, Bežovan, and Matančević, 'Local Welfare Systems as part of the Croatian Welfare State,' 4.
[2] Ibid., 9.
[3] Ibid., 14.

Housing policy infrastructure, in terms of existence of efficient and responsive state administration on different levels dealing with housing, is underdeveloped. Having in mind capacity of respective ministry (Ministry of Construction and Physical Planning (*Ministarstvo prostornog uređenja i graditeljstva*)) dealing with housing issues and readiness of local administration to take incentives in local housing policy, firstly in land policy and urbanization issues, it can be stated that state has a problem in building up a framework for the modern housing policy.[4]

Decentralisation of competence, in the sphere of housing policy, to the local level as is the case in developed countries, having in mind financial resources of municipalities, remained so restricted that active housing policy could not be prepared and realized. Such circumstances can be seen as 'political deficit' in the process of setting up effective housing policy.[5]

National programme of social rental housing does not exist. This problem is left to the local authorities. The social housing issues belong into the wider area of social policy, which is fragmented, marginalized and deprofessionalized. Thus, social housing became a marginal part of local social care programmes.[6] Housing allowance is a part of the social care system and is the responsibility of local authorities, and regional authorities subsidise the costs of heating. On the state level, the housing allowance system is in the competence of Ministry of Social Welfare Policy and Youth (*Ministarstvo socijalne politike i mladih*). Housing finance programmes and tax incentives for housing support higher income households.

The new Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*)[7] does not explicitly mention the responsibility of the state to help its citizens in meeting their housing needs. Its provi-

4 Sunega and Bežovan, 'Regional Differences,' 10.

5 Baturina, Bežovan, and Matančević, 'Local Welfare Systems as part of the Croatian Welfare State,' 10.

6 Bežovan, 'Assessment of Social Housing Programmes in Croatia,' 15.

7 *Službeni list Republike Hrvatske*, no. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10. The Article 134 of the Constitution prescribes: 'Units of local self-government shall carry out the affairs of local jurisdiction by which the needs of citizens are directly fulfilled, and in particular the affairs related to the organization of localities and housing, area and urban planning […]' Some authors believe that this provision does not contain the explicit responsibility of the units of local self-government in meeting the housing needs.

sions mention neither public ownership nor tenancy. At the same time the Constitution does provide for quite some provisions in accordance with which it can be said, that such a legal obligation of Croatian state does in fact exist.[8] These provisions are embodied in many Arts of the Constitution:

- Values of Constitutional order are (among other): social justice and respect for human rights (Art 3).
- The state shall encourage the economic progress the social welfare of its citizens, and care for economic development of all regions (Art 49/3).
- The state shall ensure the right to assistance for weak, infirm or other persons unable to meet their basic subsistence needs (Art 78/1).
- The obligation to help the sick and the powerless (Art 61/1).
- Ownership shall imply obligations (and not only rights[9]) (Art 48)

In accordance with these provisions a number of laws have been passed. This includes, among others, the Social Care Act (*Zakon o socijalnoj skrbi*[10]) which deals also with the questions of housing.

Art 134 of the Constitution prescribes that the Municipalities and Towns (units of Local self-government) shall administer affairs of local jurisdiction by which the needs of citizens are directly fulfilled; in particular the affairs related to the organisation of localities and housing, zoning and urban planning, social welfare,… This combined with the text of Art 137, by which the State has the duty to provide for financial assistance to weaker local units in compliance with Law, (additionally) makes the State's duty to provide (one could argue trough the Units of local self-government) for adequate housing even stronger. The Constitutional Law for the Implementation of the Constitution proscribes the obligation of harmonization of laws and other regulations with the Constitution.

Bežovan however (as professor of Sociology) on the other hand believes, that the provision of Art 134 of the Constitution does not contain the explicit responsibility of the Units of local self-

[8] Personal interview with Tatjana Josipović, 1 April 2013.
[9] Added by the author.
[10] *Službeni list Republike Hrvatske*, no. 33/12.

government in meeting the housing needs.[11] Although we do not agree with such an understanding it is widely accepted and has undoubtedly contributed to the lack of importance and the development of housing policies and matters in modern Croatia.

3.2 Governmental Actors

In Croatia the public administration consists of state administration, regional and local self-government, and public services (services of general interest, in new European terms).

Housing policy is the responsibility of state administration, regional and local self-government, so we can say that the different issues of housing are dealt with on; national (state), regional and local level.

On the national/state level housing policy is in the domain of:

1. Ministry of Construction and Physical Planning (*Ministarstvo prostornog uređenja i graditeljstva*) and
2. Ministry of Social Welfare Policy and Youth (*Ministarstvo socijalne politike i mladih*).

Counties (*županije*) are regional self-government units, strictly separated from the offices of state administration in terms of organisation and personnel. Municipalities in predominantly rural areas and towns in predominantly urban areas perform local self-government scope of affairs and are first instance governance units.

The system of local and regional self-government consists of 429 municipalities, 126 towns (15 of them have a special status of large towns with over 35,000 inhabitants), 20 counties and the City of Zagreb (which has a twofold status and is allowed to perform both local and regional self-government scope of affairs).[12]

At a national level there are three top-down programmes which are the responsibility of Ministry of Construction and Physical Planning:

1. the Publicly Subsidized Residential Construction (POS programme),
2. the Programme for war veterans, and

[11] Bežovan, 'Stanovanje i stambena politika,' 341.

[12] Baturina, Bežovan, and Matančević, 'Local Welfare Systems as Part of the Croatian Welfare State,' 6.

3. the Programme of governmental subsidies and guarantees for housing loans.

As mentioned above, the implementation of the housing allowance system is the responsibility of local self-government units (municipalities and towns). Besides the implementation of the program, they ensure funds for the costs of rent and other housing costs (power, gas, water, etc.).

At the regional level counties just subsidise the costs of heating (firewood) within the housing allowance system. On the state level, housing allowance system, as a part of social care, is in the domain of Ministry of Social Welfare Policy and Youth (*Ministarstvo socijalne politike i mladih*). Housing allowance is calculated using the same formula at the national level, but the level of benefits can be locally increased.[13]

'National programme of social rental housing does not exist. This problem is left to the local authorities, as a marginal part of local social care programmes.'[14] Local authorities are autonomous in providing social rented housing, while the government only determines the level of rent. The level of protected rent is notably lower than the levels of market rents what leads to additional marginalization of this housing stock. Thus, it is not surprising that the local authorities, with few exceptions (such as Zagreb and Varaždin), lack the means and political will to invest in them.

Pursuant to changes in the regulation of the POS programme from 2004, local authorities can set up non-profit housing organisations and receive a favourable loan.

3.3 Housing Policies

In Croatia there is no housing policy which would aim at meeting the needs of entire population, but just the particular housing programmes that have the objectives of meeting the housing needs of particular groups of population.

The POS programme was first set as a state programme and 'was launched with the aim to enable Croatian citizens housing on terms more favourable than the market with guaranteed quality and completion of work on time, to encourage the development of housing

[13] Ibid., 7.
[14] Bežovan, 'Assessment of Social Housing Programmes in Croatia,' 15.

construction as a multiplier of general development, and to increase the number of employees.'[15] This programme is intended for the first-time buyers and, thus, is considered as a program aimed at young population and families. Through POS programme a part of the dwellings intended for the implementation of housing programs for refugees and returnees and war veterans was built. The changes in the regulation of the POS programme from 2004 (aimed at decentralization), which gave the possibility to local authorities to set up non-profit housing organisations, brought about interesting initiatives, such as ones in the City of Varaždin.

The social rental housing is aimed at meeting the needs of most vulnerable groups of society. The trends in social rental housing (lack of investments into new stock and sale of existing one) show that social rental housing is marginalized and is becoming a part of residual social care system. Research shows that the system of housing allowance, which is aimed at the poorest households, is of residual character also. It encompasses a small number of households and cannot increase demand for housing units.[16]

Taking into account the policies and programmes for housing construction that aim primarily at sale and acquisition of property on one side, and the state and trends of the social rental housing, the on-going and current negligence for private rental sector, timid beginning of practice of public renting on the other side, one can say that national policies favour home ownership over renting.

'Housing programmes in Croatia supported by the state are intended for middle classes and support the households that purchase their first housing.'[17] At the present, in Croatia there are no measures against vacancies; however, the present government announced the introduction of the new legislation on real-estate tax which should also serve as an instrument against vacancies.

As shown before, in Croatia there are particular housing policies that target certain groups of population; housing program for refugees and returnees and housing program for war veterans. In addition, there is a significant (notable) program aimed at

[15] 'Općenito o programu POS,' Agencija za pravni promet i posredovanje nekretninama, accessed 17 November 2014, http://www.apn.hr/poticana-stanogradnja/pos/opcenito-o-programu-pos/.

[16] Bežovan, 'Analiza sustava subvencioniranja najamnina i troškova stanovanja,' 741.

[17] Bežovan, 'Assessment of Social Housing Programmes in Croatia,' 15.

housing (accommodation) of the elderly and disabled population.

The system of accommodation of elderly population was centralized until 1998, when the amendments to the Social Care Act began the process of decentralization, which opened opportunities for the private profit and non-profit sector in this area. Among other reforms, establish of homes for the elderly and disabled people (nursing homes) was transferred to the units of regional self-government.

An accommodation service is a form of care for elderly and infirm persons provided outside their own family/property, which is realized as:

- institutional care in nursing homes or other legal persons, or
- non-institutional care in foster family, family home, organized housing or
- community housing units.

Currently, more than 90 percent of elderly residents live in their own property or with their families. On the other side, approximately 17,500 people (2.31% of the total population of elderly and disabled people) are accommodated in 226 institutional providers and 1003 non-institutional providers accommodate approximately 5,650 people (0.75% of the total population of elderly and disabled persons).[18] Besides these particular programs, due to the ethnic segregation in housing that is visible in cases of the Roma population, the former government introduced the Action Plan for the Decade of Roma Inclusion 2005–15. One of the measures of this Plan is the legalisation of Roma settlements and the improvement of housing conditions. According to the JIM, the Roma suffer from extreme poverty and generally poor living conditions.[19]

3.4 Urban Policies

The trends in urban development in Croatia are showing the increase of ghettoization and gentrification, especially in Zagreb and Split. Moreover, the urbanization and housing policies of local authorities are contributing to it. So, at this time, there are no mea-

[18] 'Katalog prava i usluga,' Ministarstvo socialne politike mladih, accessed 11 January 2014, http://www.mspm.hr/djelokrug_aktivnosti/odrasle_osobe/katalog_prava_i_usluga.

[19] Baturina, Bežovan, and Matančević, 'Local Welfare Systems as Part of the Croatian Welfare State,' 14.

sures to prevent these phenomena. Especially there is no evidence on practice of 'pepper potting,' 'tenure blind' or public authorities 'seizing' apartments to be rented to certain social groups.

In Croatia mixed tenure type estates do exist, but these are not the result of measures aiming to prevent ghettoization and gentrification, but the result of privatization and restitution. The housing units with former housing rights holders that were not sold in the privatization process became public housing units with protected rent. In the process of restitution of housing units with former housing right holders that were not restored into the possession of their former private owners, but just in their ownership, also became part of the housing with protected rent. Furthermore, we can also say that the mixed tenure type estates are the result of the decision of the owners of individual housing units to rent them out, because we can find private rental housing in every multi-unit building across Croatia. One example of where the concept of social mix was implemented are the cases of the Roma people integrating into the newly built social housing estates in Zagreb. This caused problems because of different lifestyle of the Roma population as well as still extremely strong prejudice against this population that exists within the mainstream society. Unfortunately the settlement got a negative image.[20]

In Croatia there are no means of control and regulation of the quality of private rented housing, so the quality is determined and governed only by free market mechanisms. In practice this results in devastating living conditions of tenants in market rental housing.

Looking at the urban development in the County of Zagreb we can say that there is no regional housing policy aimed at preventing suburbanization and periurbanization, just the opposite, we can see many examples of suburbanization and periurbanization such as the cases of Sesvete, Bistra and Sveta Nedelja. In the surroundings of other major Croatian cities: Split, Rijeka and Osijek, we can find the same phenomena.[21]

Due to the fact that the local budgets are mostly very poor and

[20] Baturina, Bežovan, and Matančević, 'Local Welfare Systems as Part of the Croatian Welfare State,' 14.

[21] See more in Lukić, Prelogović, and Pejnović, 'Suburbanizacija i kvaliteta življenja u zagrebačkom zelenom prstenu.'

are 'hungry' for funds it is little possible to expect local authorities to distribute local taxes so that villages can afford the limitation of housing areas.

3.5 Energy Policies

More active national energy policy in Croatia on the field of housing is the result of the implementation of acquis communautaire.[22] Two capital legislation acts establishing the framework for the energy efficiency of new and existing buildings are the Physical Planning and Construction Act (*Zakon o prostornom uređenju i gradnji*)[23] and the Energy Efficiency in Final Consumption Act (*Zakon o učinkovitom korištenju energije u neposrednoj potrošnji*[24]).[25]

These Acts (and their by-laws) set minimum requirements that should be met in construction and renovation of residential units in order to achieve energy efficiency (performance). Furthermore, residential units (new and existing ones) must undergo inspection on energy performance and obtain an energy performance certificate – energy certificate. New buildings must have the energy certificate issued before use. In the case of existing buildings or their separate apartments (bigger than 50 m^2), the valid energy certificate is to be shown to the prospective buyer before the contract of sale is concluded.

From the 1 January 2014, the owner or a licensed real estate agent is required to have an energy certificate when advertising the sale in the media. In the first days of the 2014 from the advertisements 'disappeared' thousands of apartments because advertisers, agencies or individuals, did not obtain the energy certificate.[26] The approximate cost of the energy certificate is from 1700–2700 kunas.[27] For

[22] Especially the Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings.

[23] *Službeni list Republike Hrvatske*, no. 76/07, 38/09, 55/11, 90/11, 50/12, 55/12, 80/13.

[24] *Službeni list Republike Hrvatske*, no. 152/08, 55/12, 101/13.

[25] Ministarstvo gospodarstva, 'Drugi nacionalni akcijski plan energetske učinkovitosti za razdoblje do kraja 2013' (Ministarstvo gospodarstva, Zagreb, 2013).

[26] 'Energetski certifikat ide na Ustavni sud?' *Večernji list*, 1 January 2014, http://www.vecernji.hr/hrvatska/energetski-certifikat-nije-po-ustavu-913083.

[27] Ministarstvo graditeljstva i prostornog uređenja, 'Odluka o najvišim cijenama koštanja provođenja energetskih pregleda i izdavanja energetskih certifikata zgrada' (Ministarstvo graditeljstva i prostornog uređenja, Zagreb, 2013).

breach of these obligations fines are prescribed. Rental apartments will have to have a valid energy performance certificate available for the tenant before entering into a lease agreement from 1 of January 2016.

The consequences of this policy are diverse, some positive, some negative. Unfortunately, in the light of the current crisis, most notable issue raised by the general public is that the energy certification represents an additional financial burden on the already overburdened citizens and that it will additionally decrease the dynamics on real estate market.[28] Positive consequences on the quality, energy efficiency and value of the housing stock are expected from the implementation of the Physical Planning and Construction Act and from the Program for energy renovation of residential buildings in Republic of Croatia for the period 2013–2020.[29]

3.6 Subsidization

In Croatia all types of housing are subsidized (owner-occupied, private rental housing, public rental housing and social housing-housing with protected rent) by the following types of subsidies:

1. within the POS programme the state gives;
   - subsidies in the phase of construction for the first-time buyers natural persons,
   - subsidies in the phase of construction for the local authorities and other legal persons to buy housing units for public or social renting,
   - subsidies for construction/reconstruction of family house, and
   - subsidies for purchase of building material for construction/reconstruction of family house;
2. within the programme of governmental subsidies and guarantees for housing loans the state subsidizes repayment or

[28] 'Energetski certifikat izmišljeni je prihod i sam sebi svrha,' *Večernji list*, 7 November 2013, http://www.vecernji.hr/hrvatska/energetski-certifikat-izmisljeni-je-prihod-i-sam-sebi-svrha-901509.

[29] Ministarstvo graditeljstva i prostornog uređenja, 'Program energetske obnove stambenih zgrada na prostoru RH za razdoblje od 2013. do 2020. godine' (Ministarstvo graditeljstva i prostornog uređenja, Zagreb, 2013).

guaranties for the repayment of housing loan granted by commercial banks;

3. within the housing savings programme the state gives an incentive on the savings; and
4. within the housing allowance system the local and regional authorities subsidize rents and housing costs of private rental housing, social housing-housing with protected rent and owner-occupied housing.

The aforementioned subsidies have not been challenged on any legal grounds.

Within the POS programme the subsidy for first-time buyer natural persons is in the form of lower-than market interest rate for investment loans. The maximum price of the housing unit is set at the amount of 1,125.66 EUR/m². At the start of the construction the buyer must participate in the agreed price with funds in the minimum amount of 15%. The remaining funds needed for the construction are ensured in advance (as prepayment) by the state and local authorities in the amount up to 40% and the commercial banks in the amount up to 60%. The buyer than in the form of instalment loan (mortgage) returns the funds prepaid by the commercial banks and state/local authorities. The average interest rate is around 3.9%, what is significantly lower than the market interest rates. The repayment period is 30 years with 1 year as a grace period. The buyer first returns the funds prepaid by the commercial bank during the period of 15–20 years, and in the remaining period of 15–10 years, returns the funds prepaid by the state/local authorities.[30]

The subsidies for construction/reconstruction of family house and subsidies for purchase of building material for construction/reconstruction of family house are also in the form of interest rate for investment loans that are lower-than market. These two variants of the POS programme have not produced significant results by now.[31] The subsidies from the POS programme are granted to subjects with credit standings solely according to the priority list. The units of local self-government compile this list according to the measures set in the Law on POS.

[30] 'Općenito o programu POS.'
[31] Ibid.

Within the programme of governmental subsidies and guarantees for housing loans the state subsidizes the home owners, first-time buyers of newly built housing unit by means of:

1. direct payments of funds ensured in the state budget to the commercial bank that granted the housing loan in the amount of one half of the monthly instalment during the first four years of housing loan repayment for; and
2. guaranteeing to pay interest on overdue instalments in case of inability of repayment due to the loss of employment, starting from the first instalment repayable after onset of the reasons for inability of repayment to the termination of this reason, but not longer than one year after the start of the inability to repay the loan.

These subsidies are also a right granted to the individuals who fulfil the prerequisites prescribed by the Law, but due to the fact that the funds are limited, the principle first in time, first in right applies.

Within the housing savings programme the state gives an incentive on the amount paid to the savings during the year in the maximum amount of 750 HRK (around 100 EUR).

Within the housing allowance system the local and regional authorities subsidize the costs of; utility charges, electricity, gas, heating, water, drainage and other housing costs in accordance with relevant regulations. The subsidies can be granted in an amount of money that is directly paid to the beneficiary (home owner) or the local authorities pay the costs directly to the providers of services. The subsidy for heating subsidized by the regional authorities can be granted by providing 3 m3 of timber/firewood or in the amount of money directly paid to the beneficiary to cover that cost (the amount is specified by the decision of regional authorities). This subsidy is a right quarantined to home owners who meet the criteria prescribed by the Social Care Act (*Zakon o socijalnoj skrbi*);[32] the housing unit must be within dimensions prescribed as adequate for meeting the housing needs of particular household, the beneficiary must not own extra housing unit, house for vacation or business premises and *means test*.

[32] *Službeni list Republike Hrvatske*, no. 33/12.

TABLE 3.1 Subsidization of Landlord

Subsidy before start of contract (e.g. savings scheme)	Housing savings programme – government incentives on saved amount
Subsidy at start of contract (e.g. grant)	
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee)	POS programme – lower-than market interest rate

NOTES Rental housing with public task – landlords local authorities.

TABLE 3.2 Subsidization of Tenant

Subsidy before start of contract	–
Subsidy at start of contract	–
Subsidy during tenancy	Housing allowances – financial and natural assistance to lower income households

NOTES All rental tenure types.

TABLE 3.3 Subsidization of Owner-Occupier

Subsidy before start of contract (e.g. savings scheme)	Housing savings programme – government incentives on saved amount
Subsidy at start of contract (e.g. grant)	POS programme – prepaid funds (state, local authority and commercial banks)
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee, housing allowances)	POS programme – lower-than market interest rate; programme of governmental subsidies and guarantees for housing loans – direct payments and guarantees to commercial banks (crisis measures); housing allowances – financial and natural assistance to lower income households

NOTES Home owners; first-time buyer natural persons.

The tenants living in any of rental tenure types (private rental housing, public rental housing, protected tenancy and social housing-housing with protected rent) are entitled to the subsidies within the housing allowance system. The costs that are subsidized are the costs of; rent, utility charges, electricity, gas, heating, water, drainage and other housing costs in accordance with relevant regulations. The criteria for obtaining and the means of implementation are the same as for the home owners. As a proof of their status, ten-

ants must have a valid tenancy contract. In practice the tenants in private rental housing rarely exercise this right since the landlords are reluctant to conclude tenancy contracts. Thus, the black market again plays its role in the unfavourable status of these tenants.

The POS programme prescribes the subsidy for local authorities and other legal persons when acting as buyers of housing units for the purposes of social and public renting housing. This subsidy is same as the above described subsidy for first-time buyer natural person. In addition, local authorities can act as savers and borrowers in Housing savings programme in order to accumulate funds for construction of housing for low income families.

3.7 Taxation

Real-Estate Transfer Tax is regulated by the Real Estate Transfer Tax Law (*Zakon o porezu na promet nekretnina*).[33] Taxpayer is the person acquiring the housing unit (the buyer). The taxable base is the market value of the housing unit at the moment the tax liability is incurred. The market value of the housing unit is the price of the housing unit that is obtained or that might be obtained on the market at the moment when the tax liability is incurred. The subject of taxation is the transfer of housing unit. The acquisition of newly built housing unit is not considered the transfer of real estate and is taxed according to the VAT Law. Real-estate transfer tax rate is 5%.

There are four exemptions from this tax:

1. Inheritance, donations and other forms of acquisition without compensation. In these cases the spouse, former spouse when governing their property relations in connection with divorce, descendants and ancestors, adopted children and adoptive parents[34] of the deceased or the donor are exempt from paying this tax in the total amount.
2. Purchase of housing unit for the first-time to meet the housing needs. In this case the buyer is exempt from paying this tax in the amount depending on the size of the purchased housing unit and number of persons in the household.

[33] *Službeni list Republike Hrvatske*, no. 69/97, 26/00, 153/02, 22/11.

[34] Also are exempted legal and natural persons to whom the stae or units of local and regional self-government grant, or give real-estate without compensation for compensation or for other reasons related to Homeland War.

3. Purchase of newly built housing unit for the first-time to meet the housing needs in POS Program. In these cases the buyer is exempt from paying real estate transfer tax in the amount depending on the size of the purchased housing unit and number of persons in the household. In this case the taxable base is not the market value of the newly built housing unit, but the market value of the land and the amount for municipal development of the land at a time when tax liability is incurred. On the rest of the building value VAT is paid – this is believed to be contrary to the principle *superficies solo cedit*.
4. Purchase of land for construction of individual house in order to meet the housing needs. In this case the buyer is exempt from paying this tax in the amount depending on the size of the land.

Value Added Tax is regulated by the Value Added Tax Act (*Zakon o porezu na dodanu vrijednost*).[35] When buying a newly built housing the buyer pays the VAT in the amount of 25% that is already included in the total amount of purchase price. As mentioned before, the buyer is exempt from paying real estate transfer tax on the purchase price; otherwise this would lead to double taxation. According to the provisions of the by-law of tax administration, and contrary to the principle *superficies solo cedit*, buyer pays real estate transfer tax on the market value of land on which the housing is built at the rate of 5%.

Income Tax is regulated by the Income Tax Act (*Zakon o porezu na dohodak*).[36] Taxpayer is the landlord-natural person when renting is conducted as an additional activity. The taxable base is the amount of rent reduced by the 30% on the name of expenses. The tax rate is 12%.

Income Tax (Income from Independent Personal Activities). If the landlord gains an income from the rent that is higher than eighty-five thousand HRK in the period of one year, then the tax is calculated as if the renting is conducted as an independent personal activity (*samostalna djelatnost*), and the income is determined

[35] *Službeni list Republike Hrvatske*, no. 47/95, 106/96, 164/98, 105/99, 54/00, 73/00, 127/00, 86/01, 48/04, 82/04, 90/05, 76/07, 87/09, 94/09, 22/12, 136/12.
[36] *Službeni list Republike Hrvatske*, no. 177/04, 73/08, 80/10, 114/11, 22/12.

TABLE 3.4 Taxation

(1)	(2)	(3)	(4)	(5)
At point of acquisition	5% transfer tax; exceptions: inheritance, newly built, first home (POS Programe or without it), land for building first home	25% VAT for newly built housing (included in the price), 5% on buying land		
During tenure	None	None	12% of VAT on 70% of rent level or 20% profit tax	20% profit tax
At the end of occupancy	None	None	None	None

NOTES Column headings are as follows: (1) taxation, (2–3) home owner, (4) Landlord (natural person) of rental housing without public task – private rental housing, (5) Landlord (legal person) of rental housing without public task – private rental housing.

on the basis of business books as the difference between business revenues and expenditures. The tax rate is 12%, 25% and 40% depending on the level of tax base.

Even if the yearly income from rent is not higher then eighty-five thousand HRK, the landlord can declare that he/she wants to pay the income tax – income from independent personal activities. Furthermore, private landlord can declare that he/she intends to pay Profit Tax instead of income tax. According to the Article 11a of the VAT Act renting of dwellings for housing purposes is exempt from VAT.

Commercial landlord-legal person is subjected to the payment of Corporate Income Tax regulated by The Profit Tax Law (*Zakon o porezu na dobit*).[37] The tax base is profit determined pursuant to the accounting regulations as the difference between revenues and expenditures before the profit tax assessment, increased and reduced in accordance with the provisions of the Profit Tax Law. The tax rate is 20%.

As stated before, private landlord-natural person can declare that he/she intends to pay Profit Tax instead of income tax. According

[37] *Službeni list Republike Hrvatske*, no. 177/04, 90/05, 57/06, 80/10, 22/12.

to the VAT Act renting of dwellings for housing purposes is exempt from VAT. Tenants do not pay taxes on their rental tenancies.

As has been mentioned before, for private landlords in the process of payment of income tax the taxable base is the amount of rent reduced by the 30% on the name of expenses. Up to the mid-2010 the tenants were able to deduct rent from taxable income, after that time, this tax deduction was derogated.

Unfortunately, these tax subsidies do not stimulate private investors to invest into renting (construction of private rental housing). Furthermore, in general the landlords are not stimulated by these tax subsidies to conclude tenancy contract and register them with Tax Administration. Just the opposite, the rental market is in most part on 'black market' because the landlords want to avoid payment of tax. Some estimates suggest that the state loses up to 900 million HRK a year due to this tax evasion.[38]

[38] 'Godina jeftinih stanova,' *Nacional.hr*, accessed 1 December 2012, http://www.nacional.hr/clanak/122286/godina-jeftinih-stanova.

Chapter Four

Regulatory Types of Rental and Intermediate Tenures

4.1 Classifications of Different Types of Regulatory Tenure

Lease of Flats Act does not explicitly distinguish between different rental tenure types.[1] The Law only distinguishes between two types of rents: freely agreed rent and protected rent. The Lease of Flats Act therefore indirectly distinguishes private rental housing and housing with protected rent (for groups of tenants defined under Art 8 of Lease of Flats Act). When looking at the particularities of public rental programmes there is a dilemma where to classify the new public rental housing present in some cities. Additional particularities of public rental programmes are set in the Local Authorities' Rules (by-laws)[2] who are conducting these programmes.

In accordance with the Lease of Flats Act, the level of protected rent is determined on the basis of conditions and measures set by the Government. The Law also prescribes the cases in which the protected rent is to be paid, whereas, it just defines that the freely agreed rent is to be paid in all other cases. Thus, the level of freely agreed rent is left for the contractual parties to determine (with a certain rent level control instrument for rent increase in open-ended contracts).

The cities that have introduced programmes of public renting determine the rent for these cases in their acts[3] as freely agreed rent. Thus, pubic rental housing would fall under the renting with freely agreed rent as is the case in private rental housing. However, when looking at the level of this rent, the purpose of this type of renting, and the procedure for obtaining these dwellings, we could draw a different conclusion. Namely, the level of rent for public

[1] For example Slovenian Housing Act explicitly distinguishes non-profit rentals, market rentals, employment-based rentals and purpose housing.
[2] 'Odluka o najmu javno najamnih stanova.'
[3] Ibid.

rental housing is proclaimed to be defined to up to 50% lower than the market rent, i.e. freely agreed rent and, at the same time, it is higher than the protected rent. The proclaimed purpose of these programmes is to ensure housing for the young families that are not eligible for social renting since the level of their income is too high, and, at the same time, do not have enough funds to rent on the private market, nor to buy a home. In other words, the purpose of this program was to help household in need to meet their needs by controlling the level of rent and setting it on a more affordable level. The additional goal is to influence the rent levels of market (private) rental housing and to put in use the unsold dwellings. In the end, these dwellings are allocated on the basis of priority lists drawn up on the level of need. Therefore, for the purpose of this monograph, the public rental programmes present in practice are classified as particular rental tenures with a public task.

There are several different criteria on which the tenure types under Croatian law can be divided:[4]

First of all, the difference between the tenure types can be made based on criteria of kind of rent being paid. There exist two kinds of rent as defined under Art 6 of the Lease of Flats Act:

- the protected rent (social rent) and
- freely agreed rent.

Protected rent is rent for which the level is determined by the Croatian Government. According to Art 7/1 of Lease of Flats Act protected rent is determined in accordance with the criteria set by the Croatian Government. The criteria has to be based on: how much an apartment is furnished, usability of the apartment, expenses to be paid for keeping of the common areas and the building, as well as the financial status of the tenant and his family (Art 7/2). Protected rent is paid by several groups of tenants (Art 7/3):

- tenants living in social housing,
- tenants that are using the apartments in accordance with the rules set for war veterans,
- former housing rights holders who became protected tenants,
- or group of tenants that is as such defined under special law.

[4] Personal interview with Tatjana Josipović, 1 April 2013.

Freely agreed rent is on the other hand paid by all other tenants (Art 9) that do not form part of one of the groups defined under the Art 7/3 of the Lease of Flats Act.

In practice there exists a separate (third) kind of level of rent paid, which is paid in public tenancy. Public tenancy is a form of tenancy provided by some Local authorities (on different levels), intended for specially protected group of people (for ex. young families), who do not fulfil the criteria for social housing. The level of rent paid is between the protected (social) and freely agreed rent. Legally (under the Lease of Flats Act) it is a form of tenancy concluded with freely agreed rent (although it is in advance fixated with the Rules of Local authority giving such apartments for rent. This is so, since all tenure types which are not concluded with protected rent, are according to Lease of Flats Act, forms of tenancy concluded with freely agreed rent).

Second of all, it is possible to divide the groups of tenure in accordance with criteria of the landlord:

- the tenure where the landlord is a private person or
- the tenure where the landlord is a public person (public person can be: the State or different level Local communities).

Under Croatian law the rent paid in tenures with private landlord can be paid as: protected (social) rent or freely agreed rent. This situation, that the protected or social rent is paid to the private landlords, has been formed (as into detail explained in the text above) due to process of nationalisation and transformation of housing right to protected tenancy. This situation occurs when on the apartment, which was privately owned or returned to its previous owner in the denationalisation process, at the same time the housing right on the same apartment existed. Since such apartments in majority cases could not be bought by the housing right holders, their status transformed into tenancy with a right to demand a tenancy contract with protected rent. (On problems occurring due to such situations see more in text above.)

Third of all, it is possible to divide different kinds of tenure in accordance with the aim of the tenancy:

1. Tenancy concluded between private persons, the aim of which is making of the profit (by the landlord) and resolving the housing need (by the tenant).

2. Protected tenancy concluded between the public or private person (who is the owner of the apartment) and the former housing right owner transformed into protected tenant with conclusion of tenancy contract with protected rent. In such cases the aim of this form of tenancy is to preserve the right of former holders of housing right in their established rights gained during the socialist period. The aim is the protection of tenants, former housing rights owners. Protected tenancy therefore forms part of the group of tenancy for which the protected rent is paid. However this form of tenancy is specific and is governed by the rules of Art 30–49 of Lease of Flats Act. These rules apply only to protected tenancy concluded with former housing right holders as tenants (it does not apply for other tenancy contract for which protected rent is paid – e.g. social tenancy).
3. Tenancy concluded with a social aim between the public landlord and the private person. The level of rent is the same as in cases of protected tenancy; therefore protected (social) rent is paid. In these cases the aim is to provide for adequate housing for socially challenged persons (rent hardly covers even the basic expenses of maintenance).

In some cases a possibility exists that the Local authorities provide for *public housing* for a specific group of people (mainly for young families looking for first apartment) who do not fulfil the criteria for social housing, but are at the same time unable to rent on the market. In these cases the level of rent paid is between the freely agreed and social rent (it is close to non-profit renting as known in some other countries, for ex. Slovenia). The aim of this form of tenancy is to rent in accordance with a rent that is reduced for a specific group of people, who do not fulfil the criteria for social housing, but are still in need to be protected by the State or Local authorities. The tenancy contract will in these cases be concluded in accordance with the Rules of Local authorities renting the apartments. According to such Rules rent level is defined. The selection process of tenants: rules of the procedure, criteria and rules of ranking, are also prescribed with the Local authorities' Rules. After the selection process is done, the tenancy contract is signed with selected individuals.

4.2 Regulatory Types of Tenure Without a Public Task

Depending on the period for which the tenancy contract is concluded, we can distinguish open ended-renting from fixed-term renting. This distinction has further particularities regarding rent modification, termination of the contract and tacit renewal of the fixed-term (time limited) contract.

Rent modification in open-ended contracts is possible after the expiry of the first year and it can be raised up only for a certain amount in accordance with the Article 10 of the Lease of Flats Act.

Rules on termination of the contract are in the most part the same for open ended-renting and fixed-term renting. One particularity refers to one special reason for notice that is prescribed only for open-ended contracts. This special reason is the case when the landlord or members of his family intent to move into the house in question. In this case a 6 months termination period is prescribed. In case of open-ended contracts the tenant has a possibility to terminate the contract without stating any reasons, but with a 3 months termination period.

Tacit renewal of fixed-term contract is presumed for an additional period of time (same as the period of the former contract) if, at least 30 days prior to the expiry of the fixed-term contract, neither contractual party informs the other one that he/she does not intent to conclude the contract for a further period.

Depending on the rented place we can distinguish renting of a housing unit from renting a part of a house. All provisions regarding the conclusion of tenancy contract and tenure security are the same for both types.

These differences can be found in the tax legislation. Private landlords pay different taxes than the commercial ones do. As a rule, private landlords pay Income Tax, while, professional/commercial landlords pay Profit Tax. Since there are exceptions to this rule. Other regulatory differences between these two categories of landlords do not exist. The Lease of Flats Act does not distinguish these two categories of landlords.

If we look at the private rental sector, we can claim that there is no general rule regarding the model of financing of the construction of rental housing. This is mostly due to the fact that the private rental sector is under the influence of black market relations and

the typical landlord is a natural person that, due to various circumstances, has an extra housing unit and is willing or in most cases 'forced' to rent that extra space. Because of the general lack of rental activities conducted as commercial/professional activity, the banks have not developed special financing instruments for this purpose.

The Lease of Flats Act (in the Article 27) explicitly states that its provisions do not apply to the cases when a dwelling is given for usage to a person in relation to the business of the landlord (this is called official apartment). Thus, in the cases when the employer gives a housing unit to the employee for usage, the general provisions of the Civil Obligations Act on leasing an asset are applicable.

The exception is the possibility of the Government and local authorities to give the housing units in their ownership to state and public officials and employees.

The real right of habitation is as personal easement defined and regulated in the Ownership and Other Proprietary Rights Act: 'Real right of habitation is a form of servitudes personales (personal easement) which provides its holder with a right to use someone else's dwelling or its part in such a manner that the substance of the dwelling is preserved.'[5]

Habitation can take two forms: right of usus or usufruct right. Habitation is defined primarily as usus right.[6] If the right to use the dwelling in its whole substance is given, the habitation right holder becomes usufructus right holder. In such cases the holder of usufructus habitation right has a right to sublet the apartment or dwelling (and the right to collect rent).[7] Real right of habitation is given to its holder in three different ways: by the owner of a dwelling (based on the contract), by a court decision, or by process of prescription (in this case a court decision on the matter will have to be passed confirming that the real right of habitation has arisen). The habitation right holder does not pay any rent. Habitation as a personal easement lasts until the death of its holder (time-unlimited period).

Croatian law allows the real right of habitation to be formed for

[5] P. Klarić and M. Vedriš, *Civil Law* (Zagreb: Narodne novine 2006), 328.
[6] Pursuant to Art 271 of Ownership and Other Proprietary Act.
[7] Pursuant to Art 204 para 2 of Ownership and Other Proprietary Act.

more than one person. When the first holder of the right dies, the next person in line becomes its holder.

Habitation is a real estate right and has to be entered into Land registry to become valid. Since, however not the whole Croatian territory has a Land registry, in cases of lack of Land Registry the first instance local Court runs a special Registry of deposited contracts, where such right shall be registered.

4.3 Regulatory Types of Tenures with a Public Task

Under this category in Croatia we can subsume:

1. rental housing with the protected rent-social housing (governed by Local authorities Rules, but the level of rent/social rent is prescribed by the Government), and
2. public rental housing, a new programme in the Cities of Zagreb and Varaždin(Governed by Local authority Rules),
3. next to these two groups, a special form of housing with public task was formed for former housing right holders – protected tenants' renting which is governed by special provisions of the Lease of Flats Act (level of rent is determined by the Government Decree, same as in social housing).

In accordance with the Article 8 of Lease of Flats Act, protected rent is paid:

1. by tenants former holders of the housing rights; more precisely, this refers to:
   - tenants former holders of the housing rights on the former public (socially owned) housing or nationalized housing who did not exercise their right to buy dwellings they were living in,
   - tenants former holders of the housing rights on the private housing who were not entitled by the law to buy housing they were living in, and
   - tenants former holders of the housing rights on the confiscated housing which were restituted to their previous owners (therefore the possibility to be bought by former housing right holder was also excluded);
2. by tenants who use housing units built with funds allocated to address housing needs of the low income households (social housing);

3. by tenants who use the housing units on the basis of regulations on the rights of Croatian war veterans;
4. by tenants in all other cases specified by special regulations (for example, the regulations on housing care for the victims of war, refugees and returnees).

Therefore, the housing where protected rent is paid can be owned by different entities, private (individual) and public ones. In most cases these housing units are owned by local authorities (cities) and the smaller part is in private ownership.

It accordance with the Articles 30 and 31 of the Lease of Flats Act, protected tenants – former holders of the housing rights (listed under point (1)) on the date of entry into force of this Law acquired ex lege a status of a tenant-lessee with the right to conclude tenancy contract for indefinite period (open-ended contract) with protected rent. For this group of tenants Arts 30–50 of Lease of Flats Act apply.

For the allocation of social housing (2,3 and 4) to groups of tenants in need; low income families, the bigger and richer local authorities (towns), as a rule, conduct a public tender/call (for the biggest part of this stock). On the basis of the individual applications for the tender a priority list is drawn up. The rank of the applicant on the priority list depends of the evaluation of the prescribed criteria. The criteria are prescribed on the local level, usually in by-laws and decisions,[8] so each town has its own criteria. In practice, these criteria are very similar and mostly refer to different social conditions of the applicant. However, in most cities, the possibility to apply for social housing even in extra cases, when the situation is urgent (defined as such by social security officer etc.) exists.

For instance, the city of Zagreb has two Decisions (Rules), with eligibility criteria for the bidding process in the allocation of social rental and public rental housing.

The criteria for social housing from the Decision on Renting Housing (*Odluka o najmu stanova*)[9] for the city of Zagreb are:

[8] 'Pravilnik o uvjetima i mjerilima za davanje u najam stanova u vlasništvu Grada Splita,' Grad Split, accessed 5 January 2014, http://www.split.hr/Default.aspx?sec=1027; 'Odluka o najmu stanova,' Zagreb.hr, accessed 5 January 2014, http://www.zagreb.hr/default.aspx?id=2085.

[9] 'Odluka o najmu stanova.'

1. unaddressed housing need (this criteria has further sub-criteria such as: person or a member of his household must not own an appropriate housing unit, residence in the City of Zagreb for the last ten years and means test);
2. current housing status;
3. social and health status (additional means test, number of members in a household, inability for work and possible health problems/conditions); and
4. years of continuous residence in the city and participation in the Homeland war.

Empirical research from 2009 shows that in nineteen cities there were priority lists, based on applications, so that the households that will get social housing in the next several years have already been selected. Since the City of Varaždin has the shortest waiting period on the priority list, it is considered as the most efficient in meeting the needs for social renting housing.[10]

The report from the mentioned WILCO project shows that in the City of Zagreb there are 2,127 households on the current priority list for social housing, while in 2003 the number was 1,900. The authors of the report emphasize that this does not suggest that all households from the previous list have obtained social housing.[11]

Some cities allocate the housing with protected rent outside the priority lists on the basis of a decision or a proposal of the competent body in accordance with the rules and conditions set in their by-laws to individuals in unaddressed housing need with extreme social and health problems (e.g. to victims of domestic violence, invalids or mentally ill who are dependent on nursing care from others and receive social care) or to individuals of special interest for the city (scientific, cultural and public workers, sportsman).[12]

The above mentioned research from 2009 shows that in nine cities allocation of housing with protected rent to scientific, cultural and public was practised. Furthermore, during the past ten years the City of Zagreb has allocated 142 such apartments, the

[10] Bežovan, 'Assessment of Social Housing Programmes in Croatia,' 10–1.
[11] Baturina, Bežovan, and Matančević, 'Welfare Inovations at the Local Level in Favor of Cohesion, City Report: Zagreb,' 25.
[12] 'Pravilnik o uvjetima i mjerilima za davanje u najam stanova u vlasništvu Grada Splita,' Articles 6 and 30; 'Odluka o najmu stanova,' Articles 5–8.

City of Split allocated 41, and the City of Zadar 46. In seven cities, increased rents[13] were paid for these housings (in Koprivnica 12.75 HRK/m², in Zagreb 11.80 HRK/m², and in Rijeka HRK/m²). In the City of Zagreb such allocation of housing units is now a part of public rental housing programme and rents are higher. This practice is seen as an investment in cultural or social development of city.[14]

The tenancy contracts concluded with these tenants are limited in time contracts and are usually concluded for the period of three years with the possibility of prolongation.

For obtaining the social housing allocated on the basis of priority lists one must apply to public tender. Public tender are usually conducted every three to five years, depending on the city. The application is usually issued by the competent administrative body of the local authority as an official form. The application must contain all the documents providing proof of fulfilment of requirements (eligibility) for acquisition of housing listed in the public tender set on the basis of the by-laws. The applicant usually has 30 days to apply and a possibility to put a complaint on the preliminary priority list. Once a finale priority list has been passed, the competent administrative body passes a decision on the allocation of appropriate housing unit to the candidates according to their rank on the priority list. On the basis of this decision a tenancy contract is concluded, usually in the form of a notary act.[15]

For obtaining the social housing allocated outside the priority lists, the prospective tenant must also apply, but there is no public tender. The process is usually conducted under the guidance of different social care bodies that inform and help the prospective tenants to get housing. These bodies are often involved in the process of decision making by to giving an opinion or a proposition on need to allocate social housings to such individuals. On the basis of the elaborated proposal of the competent administrative body,

[13] Although the by-laws formally proscribe that the rents for these housing units are freely determined rents, the further decisions that set the level of theses rents usually define them as a multiple of protected rent. Thus, these rents are in the practice significantly lower than freely determined rents in the private market housing.

[14] Bežovan, 'Assessment of Social Housing Programmes in Croatia,' 12.

[15] 'Pravilnik o uvjetima i mjerilima za davanje u najam stanova u vlasništvu Grada Splita,' Articles 18–29, 31; 'Odluka o najmu stanova,' Articles 8–32.

the decision on allocation of the appropriate housing to these tenants is passed. On the basis of this decision a tenancy contract is concluded, usually in the form of a notary act.[16]

The right to housing allowance is 'tenure blind,' so the tenants living in social housing-housing with protected rent are entitled to the subsidies within the housing allowance system just like tenants living in any other rental tenure types and home owners. The costs that are subsidized are the costs of: rent, utility charges, electricity, gas, heating, water, drainage and other housing costs in accordance with relevant regulations.

Public rental housing is an innovation in the housing policy in Croatia and according to the available data it is practised in two cities: in Zagreb and Varaždin. As explained above, although the by-laws regulating these programmes prescribe that the freely determined rent is to be paid for this type of rental housing, for the purpose of this project this type is classified under regulatory types in the rental sector with a public task. This is done because these programmes include social rules of allocation based on need; the level of rent is controlled and aimed at being affordable for a certain group of population (usually young families that are not eligible for social housing and at the same cannot afford to rent in private market sector or to get a bank loan).[17] In addition, the indirect goal of these programmes is to decrease the level of rent of the market rental housing. In the city of Zagreb public rental program was introduced within the so-called Zagreb model of housing construction as part of the Strategic Plan of Housing Policy in Zagreb (as a virtual opposite to POS programme). Within this project, in location Novi Jelkovec, total of 2,700 apartments has been constructed and of that number around 600 for public rental programme.

In the City of Varaždin public renting was introduced as an answer to the recent crisis on the housing market that also affected

[16] 'Pravilnik o uvjetima i mjerilima za davanje u najam stanova u vlasništvu Grada Splita,' Articles 6, 30; 'Odluka o najmu stanova,' Articles 7–8, 39, 31.

[17] 'The impact of this project on the housing market is visible. The public rental housing programme is a sustainable programme that helps the provision of housing for the most productive part of the population and the large number of such units on offer has brought down the level of rents.' Baturina, Bežovan and Matančević, 'Welfare Inovations at the Local Level in Favor of Cohesion, City Report: Zagreb,' 25–7.

the POS programme. The local government, being aware of the crisis of the local housing market and the fact that there were around 200 unsold newly built apartments, took indicative and passed legislation to create the programme of renting public housing. Thus, the unsold housing units from the POS programme become available for renting. The level of rent for apartment with floor area of 75 m^2 is around 240 EUR.[18]

Both cities, Varaždin and Zagreb, conduct public tenders for the allocation of public rental housing. On the basis of the individual applications the priority list is drawn up.

The selection procedure and eligibility criteria for public renting in Zagreb are prescribed by Decision on Renting of Public Rental Housing (*Odluka o najmu javno najamnih stanova*).[19] According to this by-law, the eligibility criteria are as follows:

1. the applicant must have residence in the city of Zagreb;
2. the applicant or a member of his household must not own appropriate housing unit (an unaddressed housing need);
3. the applicant must have a prescribed minimum of income; and
4. the applicant's current housing status must be one of the proscribed ones (tenant in private rental housing, protected tenant in housing meant for demolition, protected tenant in private housing and living with relatives).

In addition, further elements of tenant's social and health status are evaluated (graded):

1. period of residence in the city area (the more years the better);
2. age (the younger the better);
3. academic or scientific status (if existing the applicant gets additional points);
4. current housing status (the worse the better);
5. number of members in a household (the bigger the better);
6. single parent status (if existing the applicant gets additional points);

[18] Baturina, Bežovan, and Matančević, 'Welfare Inovations at the Local Level in Favor of Cohesion, City Report: Varaždin,' 18–9.

[19] 'Odluka o najmu javno najamnih stanova.'

7. victim of domestic violence (if existing the applicant gets additional points);
8. possible invalidity of the applicant or a member of his household (if existing the applicant gets additional points); and
9. participation in the Homeland war (the longer the better).

The tenancy contracts are concluded for the period of five years with the possibility of prolongation.

For instance, in Zagreb the procedure is as follows: the prospective tenant must apply to public tender. The application is usually issued as an official form. In the application the applicant must specify a floorage area (number of rooms) he is looking for. The application must contain all the documents providing proof of fulfilment of requirements (eligibility) for acquisition of housing listed in the public tender set on the basis of the by-laws. The applicant has a certain period (15 days) to apply and a possibility to put a complaint on the preliminary priority list. Once a final priority list has been passed, the candidates are called according to their rank on the priority list to choose the apartments in accordance with the need specified in his application. If there are no more satisfactory-appropriate apartments, the applicant may choose between remaining apartments. Upon the selection of the apartment, the competent administrative body passes a decision on the allocation of the chosen apartment to the candidate. On the basis of this decision a tenancy contract is concluded, usually in the form of a notary act. After the contract has been concluded, the tenant must pay a down payment in the specified amount to serve as a warranty for the payment of rent and possible damages.[20]

The right to housing allowance is 'tenure blind,' so the tenants living in public rental housing-housing with protected rent are entitled to the subsidies within the housing allowance system just like tenants living in other rental tenure types and home owners.

There are several different criteria on which the tenure types under Croatian law can be divided, based on criteria of kind of rent being paid – the protected rent (social rent) and freely agreed rent; in accordance with criteria of the landlord – the tenure where the landlord is a private person or the tenure where the landlord is a

[20] 'Odluka o najmu stanova.'

TABLE 4.1 Types of Tenancy and Their Characteristics

Type of tenancy	Main characteristics
Rental housing without a public task	
(1) Private rental tenancy.	(1) Mainly private landlords natural persons, main share within private rental market.
(2) Private rental tenancy within rent to buy scheme introduced by some private commercial landlords.	(2) Commercial landlords, a minor, insignificant part of private rental market, a response to current economic crisis and real estate crisis-surplus of unsold newly build apartments).
Rental housing for which a public task has been defined	
(1) Renting with protected rent for former housing right holders.	(1) Landlords are Local Authorities (municipalities and towns) or private landlords natural persons, (the former group is especially problematic type, characterised by various human rights violations). A result of privatisation and denationalization.
(2) Social rental housing.	(2) Landlords are Local Authorities (in a very small part the State). Type aimed at meeting housing needs of different vulnerable social groups.
(3) Public rental housing.	(3) Landlords are Local Authorities, a new type usually aimed at young families that are not eligible for social renting and at the same time are not able to afford private rental housing.
(4) POS Programme rent-to-buy scheme.	(4) Landlords are mainly Local Authorities or State (Agency). This type is a response to current economic crisis and real estate crisis-surplus of unsold newly build apartments.

public person (public person can be: the State or different level Local communities); and it is also possible to divide different kinds of tenure in accordance with the aim of the tenancy.

Chapter Five

Origins and Development of Tenancy Law

Croatian tenancy law originates from the beginning of the nineties. In 1990 the new Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*)[1] was passed, followed by the declaration of Independence in 1991. Passing of these two important documents marked the change in political, social and legal system of the newborn State.

During the previous socialist times the Croatian legal system (as part of SFRY), formed a part of socialistic legal group. After the Independence and change of the system however it returned to the euro-continental legal group system to which it belonged before the WW II.[2]

In times of SFRY tenancy law did not play an important role since the housing right was a predominant form of tenancy. Lease contract as a special civil law contract did in these times not exist; Lease contracts were governed by the rules of the Loan contract (1978 Civil Obligations Act[3]).

In the nineties a list of Acts has been passed in accordance with which the former socialistic legal system has been changed. The predominant form of tenancy, based on the housing right, ceased to exist and became a mere relic of the socialistic past. Housing right was transformed in two ways: into the ownership (privatisation) or into tenancy. With the adoption of the Lease of Flats Act[4] (*Zakon o najmu stanova*)[5] transformation of the remaining housing

[1] *Službeni list Republike Hrvatske*, no. 56/90, 135/97, 8/98.

[2] Gavella, *Građansko pravo i pripadnost hrvatskog pravnog poretka kontinentalnoeuropskom pravnom krugu.*

[3] *Službeni list Socialističke federativne republike Jugoslavije*, no. 29/1978, 39/1985, 46/1985,57/1989; *Službeni list Republike Hrvatske*, no. 53/1991, 73/1991, 3/1994, 111/1993, 107/1995, 7/1996, 91/1996,112/1999, 88/2001, 35/2005.

[4] This translation of the Act has been used in case-law of European Court on Human Rights.

[5] *Službeni list Republike Hrvatske*, no. 91/96, 48/98, 66/98, 22/06.

right holders to tenant-lessees took its course. Adoption of this Act marked a new beginning of the modern Croatian tenancy Law. This Act governs the rules of the leases of apartments (as well as houses or its parts).

Lease of Flats Act passed in 1996 is the most important Act governing tenancy law in Croatia today (special law). Next to forming a new set of rules governing tenancy law in Croatia, the passing of this Act completely abolished the housing right from the Croatian legal system. In accordance with this Act the housing right holders still existing at the time of entering of this Act into force, *ex lege* came into the tenant-lessee status. They additionally acquired a right to demand a conclusion of an open-ended tenancy contract, for which protected (social) rent is to be paid.

Lease of Flats Act is divided into two parts. First part governs tenancy contracts in general (Articles 1–6, 8–29); whereas the second part governs only the special protected tenants' contracts for former housing right holders (Articles 7, 8, 30–50). Some forms of 'short time' leases are however not governed by this Act (Article 27 of the Lease of Flats Act). These are the leases on accommodation for tourists, students (in student dormitories) and for accommodation provided by the companies for their employees. For this kind of leases, in cases where no specific Law has been passed, the rules of the general Law, the Civil Obligations Act, apply.

Apart from Lease of Flats Act the tenancy contracts are under Croatian law regulated also with the general law: the Civil Obligations Act (*Zakon o obveznim odnosima*).[6] A new Civil Obligations Act has been passed in 2005. It originates from the Yugoslav 1978 Civil Obligations Act (*Zakon o obveznim odnosima*),[7] which has its roots in the Austrian Civil Code (ABGB) (Obći Gradžanski Zakonik OGZ) dating from 1853.[8]

With the 2005 Civil Obligations Act the Lease (of assets) contract, as a new form of civil contract, has been introduced into the Croatian legal system. Prior to that, the 1978 Civil Obligations Act (still

[6] *Službeni list Republike Hrvatske*, no. 33/05, 41/08125/11.

[7] *Službeni list Federativne narodne republike Jugoslavije*, no. 29/1987, 39/1985, 46/1985, 57/1989.

[8] Gavella, *Građansko pravo i pripadnost hrvatskog pravnog poretka kontinentalnoeuropskom pravnom krugu.*

in use up to 2005) governed the rules on lease under provisions of Loan contract. 2005 Civil Obligations Act divided previous Loan contract into two different contracts: Loan contract and the Lease of assets contract.

Civil Obligations Act rules on Lease of assets (Articles 550–8) are as general rules applicable to leases of apartments. Where no special rules of the Lease of Flats Act exist, the rules of Civil Obligation Act, therefore apply. Some special forms of 'short time' apartment leases are however governed only by this Act (and not with the Lease of Flats Act, as pointed out in the text above).

For social housing special Rules by the Local authorities offering the social apartments are passed. Usually the Local authorities issue a public tender Rules in accordance with which the selection process of the tenants is made. Next to that the Rules governing these leases are issued at the same time. The level of rent is however fixed (protected rent); in accordance with Article 7 and 8 of Lease of Flats Act determined by the Croatian Government's Decree.

Public housing tenancies, as offered in some cities (Zagreb, Varaždin), are also governed by special Rules issued by the Local authorities. In these cases the level of rent is determined by the Local authorities themselves (usually to a level that is between the market and protected rent; still offering an extremely favourable options in comparison to the level of rents paid in market leases).

Lastly; the new POS rent-to-buy scheme tenancies are governed by the Rules on leases within the POS Programme[9] The Rules were issued by the Agency for Transactions and Mediation in Immovable Properties, i.e. the government (who owns the apartments that are being leased).

The change of the political system from the former socialistic heavily marked the change in the Croatian civil law in general. Socialistic doctrine was changed and the new predominant free-market theory was adopted. 'Constitutionally guaranteed protection of the private property and proclamation of the entrepreneurial and market freedom, form the basis of the new Croatian Civil Law.'[10]

[9] 'Pravilnik o najmu POS stanova,' accessed 5 January 2014, http://archive-hr-2013.com/hr/a/2013-11-23_3221040_5/Pravilnik-o-najmu-POS-stanova-APN-HR/.

[10] Gavella, *Građansko pravo i pripadnost hrvatskog pravnog poretka kontinentalnoeuropskom pravnom krugu.*

With the adoption of the new Constitution the former duty by the State to provide for housing for its citizens has been abolished.

First steps in order to change the Croatian Civil law system to a classical euro-continental system have been made with the changes passed to the 1978 Civil Obligations Act in 1991.[11] The legal institutes, principles and rules on which the socialistic system was based, have been derogated or changed. Other changes of the Act followed in years to come, until the adoption of the new Croatian Civil Obligations Act in the year 2005. 'With this process the reintegration of the Croatian legal system to the euro-continental legal group has been mostly successful.'[12]

The text of the new 2005 Civil Obligations Act was formulated in the period when Croatia already started the process of joining the EU. The text of this Act has been therefore formulated in a way to encompass the changes in accordance with the EU legislation.[13]

Although it still cannot be said that the rules of tenancy law carry particular philosophy behind them as to encompass the protection of the tenant's home (as in Scandinavia) vs. just a place to live, such a position of the legislator appears to be in making. Conformation of such a claim can be found in the recent changes to the Execution Act (*Ovršni zakon*)[14] (where execution on the apartment, the only residence, is possible only under stricter rules. Next to that, the former owner has the possibility to stay in the apartment even after it is sold (as a tenant) if so awarded by the court) and in the new Family Act (*Obiteljski zakon*)[15] (where the parent staying with a child is entitled to use the apartment in which the family previously resided).

With the passing of the new Constitution in the 1990 the processes of denationalisation and privatisation started. The holders of the housing right on the socially owned housing stock were in the process of privatisation able to buy 'their' apartments (this possibility was offered to the sitting tenants). The prices of the apartments were in accordance with the rules of the Law on Sale of Apartments

[11] *Službeni list Republike Hrvatske*, no. 73/1991.
[12] Gavella, *Građansko pravo i pripadnost hrvatskog pravnog poretka kontinentalnoeuropskom pravnom krugu.*
[13] Ibid.
[14] *Službeni list Republike Hrvatske*, no. 112/12, 25/13.
[15] *Službeni list Republike Hrvatske*, no. 116/03, 17/04, 136/04, 107/07, 57/11, 61/11.

with Housing Right (*Zakon o prodaji stanova na kojima postoji stanarsko pravo*)[16] calculated very low; amounting to 10–15% of the real market price. This enabled most former housing rights holders to become owners of the apartments they were living in.

Smaller group of former housing right holders, that did not buy the apartment, either due to economic or legal obstacles, became tenants in the apartments they occupied. In accordance with Lease of Flats Act they were given a possibility to demand a conclusion of an open-ended tenancy contract, for which protected (social) rent is to be paid. The rules governing these tenancies are the special rules of Lease of Flats Act dealing with 'protected tenants' statuses' (Articles 7, 8 and 30–50).

Making a distinction of two different groups within the group of 'protected tenants' is necessary. As was already explained, two different groups of tenants form this group; whereas one group of protected tenants lives in public housing (owned by the Local Authorities or the State) with no major problems occurring, another group lives in a privately owned housing, where the owners of the apartments are private persons. Protected tenants that live in private housing, as well as their landlords, are experiencing some major problems in their relationship. This situation is a product ('left-over') of the socialistic past, a result of allocation of private housing in communist times, as well as the privatisation and denationalisation processes. Firstly; during the process of privatisation the housing right holders living in privately owned housing during the socialistic times (allocation prior to 1974) were unable to buy the apartments they were living in,[17] and therefore became 'protected tenants' in these apartments. Secondly; the housing right holders living in denationalised apartments, who were unable to buy the apartment they were living in (usually due to economic reasons), also became 'protected tenants.'[18] Due to solutions of the legislation, these tenants are 'protected tenants' living in privately owned

[16] *Službeni list Republike Hrvatske*, no. 43/92, 69/92, 87/92, 25/93, 26/93, 48/93, 2/94, 44/94, 47/94, 58/95, 103/95, 11/96, 76/96, 111/96, 11/97, 103/97, 119/97, 68/98, 163/98, 22/99, 96/99, 120/00, 94/01, 78/02.

[17] Since they were already privately owned.

[18] In cases when the housing right holder bought the apartment he was living in, the former owner became entitled to financial reimbursement, as well as to become the holder of a pre-emption right on the apartment.

apartments with an open-ended tenancy contract, paying protected (social) rent. But, since the level of 'protected rent' is extremely low, and due to the fact that many of the landlords want to use the apartments for themselves or sell them this leads to a situation where many landlords use any (even illegal) method to get rid of their 'protected tenants.'

In the year of 2013 changes to the Lease of Flats Act have been prepared and pushed into the parliamentary procedure. The changes include solutions in accordance with which the 'protected tenancies' on privately owned apartments will (or should) be mostly terminated in the period of 10 years after the changes to the Act are passed. Solutions include rise of the 'protected rents' in a way that they reach the level of 'market rents'[19] in the period of 10 years. For each year a rise of 10% is enshrined in the Law. According to the commentary of the legislator to the changes of the Act, for those unable to pay for such rents changes to the Social Care Act enabling such tenants to be eligible for social aid (for such a purpose) will be prepared. Such a solution is problematic, since there is no guarantee that such changes will be prepared and passed in adequate time (or at all).[20] At the same time a solution to offer the 'protected tenants' with the possibility to move into a social apartment or buy an apartment should be offered by the Local Authorities or the State trough apartments they already own or trough build of a new housing stock in the POS Programme. The problem arises from the fact that there are no additional finances available to the Local Authorities to be able to comply with such changes to the law (and build the additional housing stock). The legislator's solution that the finances be used from the funds Local Authorities collected in the privatisation process appears to be unrealistic. Due to very 'shady use' of these founds in the past there appears to be no money left in these founds.

Another group, comprising of two different sets of housing rights owners, were given a possibility to buy-off their apartments only after the Law on Sell of Apartments that were used by Janitors (*Zakon*

[19] In reality this rents will still be much lower than the rents paid on the market, but still quite higher than the 'protected rents' paid now.

[20] Changes to the Law are to enter into force 8 days after being accepted in the Parliament.

o prodaji stanova namjenjenih za nadstojnika stambene zgrade)[21] was passed in 2006. This law enabled housing right holders on Janitors' apartments as well as those with the housing right on the apartments comprised of set of rooms formerly used by all the tenants in the apartment building in question (common spaces turned into apartments), to become owners of such housing. The second group of these tenants: housing right holders on apartments formed out of former common spaces were already partly given this opportunity under the Article 372 of the Ownership and Other Proprietary Rights Act (*Zakon o vlastništvu i drugim stvarnim pravima*).[22] Since however not all such housing right holders fulfilled the criteria needed under the law; that is to be able to prove that the right to transform common spaces into the apartments was given by the owner of the apartment building (it has to be stressed at this point that a huge anarchy and confusion in the socialistic times regarding such questions existed), the passing of the Law on Sell of Apartments that were used by Janitors solved this problem.

The Constitution of Republic of Croatia (*Ustav Republike Hrvatske*)[23] does not recognize the 'right to housing' as known in the socialistic times. Care for housing matters has been with the new Constitution shifted from the State to the Local authorities. Article 134 of the Constitution prescribes that: 'the Municipalities and Towns (units of Local self-government) shall administer affairs of local jurisdiction by which the needs of citizens are directly fulfilled; in particular the affairs related to the organisation of localities and housing, zoning and urban planning, […] social welfare […]' The new Constitution does not explicitly mention the responsibility of the State to help its citizens in meeting their housing needs. Its provisions mention neither public ownership nor tenancy.

Bežovan (main researcher of the field of housing in Croatia, a professor of Sociology) believes that even the provision of Article 134 of the Constitution does not contain the explicit responsibility of the Units of local self-government in meeting the housing needs of its population.[24] At the same time (Josipović)[25] the Constitution

[21] *Službeni list Republike Hrvatske*, no. 22/2006.
[22] *Službeni list Republike Hrvatske*, no. 35/05, 41/08, 125/11.
[23] *Službeni list Republike Hrvatske*, no. 56/90, 135/97, 8/98.
[24] Bežovan, 'Stanovanje i stambena politika,' 341.
[25] Personal interview with Tatjana Josipović, 1 April 2013.

does provide for quite some provisions in accordance with which it can be said, that a legal obligation to take care for housing matters of its inhabitants, by the Croatian state, does in fact exist. These provisions are embodied in many Articles of the Constitution:

- Values of Constitutional order are (among other): social justice and respect for human rights (Article 3).
- The state shall encourage the economic progress the social welfare of its citizens, and care for economic development of all regions (Article 49/3).
- The state shall ensure the right to assistance for weak, infirm or other persons unable to meet their basic subsistence needs (Article 78/1).
- The obligation to help the sick and the powerless (Article 61/1).
- Ownership shall imply obligations (and not only rights[26]) (Article 48).

In accordance with these provisions a number of laws have been passed. This includes, among others, the Social Care Act (*Zakon o socijalnoj skrbi*)[27] which deals also with the questions of housing.

Next to that, the text of Article 134 combined with the text of Article 137, by which the State has the duty to provide for financial assistance to weaker local units in compliance with the Law (as to enable them to fulfil their duties assigned to them by the Constitution or the Laws), (additionally) makes the State's duty to provide (one could argue trough the Units of local self-government) for adequate housing of its inhabitants even stronger.

The Constitutional Law for the Implementation of the Constitution proscribes the obligation of harmonization of laws and other regulations with the Constitution.

With the adoption of the extended POS Programme (with its 2004 Amendments, POS plus and POS rent-to-buy scheme) some shifts in the State providing for housing policies; directly and through the Local authorities, can be seen.

The Croatian Constitution explicitly protects the private apartments on the basis of 'protection of home' (Article 34). It considers

[26] Added by the author.

[27] *Službeni list Republike Hrvatske*, no. 33/12.

one's home to be a special 'private' and therefore specially protected sphere. In this sphere entrance without owner's permission is not allowed. In cases when the entry is based on the Court warrant the tenant has the right to be present at the search. Next to that two witnesses have to be present at any search of the house.[28] However no protection of the home is awarded in the execution procedure as to protect from the homelessness. Private ownership is protected with the Article 14 of the Constitution.

Croatia ratified the European Convention on Human Rights in the 1997. The changes of tenancy law which took place prior to this date were not influenced directly by the ECHR.

The case of Kristina Blečić which concerned a former housing right holder (Montenegrian), to whom the housing right has been abolished during the last war, was brought before the European Court of Human Rights. In a landmark *Blečić vs Croatia* case[29] the European Court of Human Rights has ruled against Krstina Blečić in her bid to repossess her property in the Croatian city of Zadar. The Grand Chamber ruled that the case was not admissible, not at all discussing the case's merit, although this was the original reason for re-opening the case in 2004 (in front of the Grand Chamber). The Court considered that the European Convention for Human Rights does not apply in this specific case as the events complained of occurred before its entry into force in November 1997. With this ruling the Court reversed its admissibility decision in first instance. It ruled with eleven votes against six that 'an examination of the merits of this application could not be undertaken without extending the Court's jurisdiction to a fact which, by reason of its date, is not subject thereto.' The judgement stops short of defining the

[28] Article 34 of the Constitution:
Houses shall be inviolable. Only a Court may by a warrant based on law and statement of reasons, order the search of a home or other premises.
The tenant concerned shall have the right, personally or through his representatives next to two obligatory witnesses, to be present at search of his home or other premises.
Subject to conditions spelled out by law, police authorities may even without a court warrant or consent from the tenant enter his home or premises and carry out a search in the absence of witnesses, if it is indispensable to enforce an arrest warrant or to apprehend the offender, or to prevent serious danger to life or major danger to property […]'

[29] 'Grand Chamber Judgment Blecic v. Croatia.'

obligations of Croatia towards former occupancy rights holders.[30]

On the other hand the Court decided to act in a completely different way in case *Broniowsky vs Poland*[31] (Bug river people).[32] In Broniowsky the Court decided to rule upon merits on a case dealing with the unfulfilled obligations of the Polish State dating even 60 years back; to a situation occurring after the WW II. All due to the fact, as explained in the decision of the court, that the breaches have not been stopped even after the European Convention on Human Rights has been passed by the Polish State.

It is also of interest to note that on a similar case *Teteriny v. Russia* the Court ruled that a claim to a 'social tenancy agreement,' similar to occupancy rights in former Yugoslavia, is protected under Article 1 Protocol 1 of the Convention.[33]

In addition the UN principles on housing and property restitution for displaced persons and refugees state that occupancy rights should be 'recognized within restitution programmes.'[34]

The Acts and Laws passed by the State resolving the situation of (Serb) returnees have been heavily influenced by the international Institutions, specially the EU and the UN.

[30] 'Grand Chamber Judgment Blecic v. Croatia.'

[31] 'Case of Broniowski v. Poland,' 22 June 2004, http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61828.

[32] Polish people forced to move from their homes due to the change of borders after the WW II, when the Bug river teritories came under the Soviet Union.

[33] 'Grand Chamber Judgment Blecic v. Croatia.'

[34] Ibid.

Chapter Six

Tenancy Regulation and Its Content

6.1 General Introduction

The legal history of the today's lease contract dates back to roman *locatio conductio*. A form of this contract; *location conduction rei*, is a legal ancestor of both lease and loan contract.[1]

The former Civil Obligations Act did not regulate the lease contract as a separate contract, but rather only under the regulation dealing with loan contract. With the adoption of the new Civil Obligations Act in 2005, a change to the Loan contract has been made. The new Civil Obligations Act distinguishes between the Loan and the Lease contract. This solution constitutes jet another change in comparison to the solutions of the Austrian Civil Code ABGB (Obći gradžanski zakonik OGZ), from which the Croatian Civil law has been historically derived from. Under the ABGB the Bestadvertrag comprises of both Miete (Lease contract) as well as Pacht (Loan contract).[2]

Main difference between the two contracts according to Croatian legal doctrine lies with the fact that in the Lease contract the tenant is given only the right to use the apartment without at the same time using its usufruct, which seems to be one of the main reasons for which a conclusion of a Loan contract is made.[3]

Central rules regulating tenancy are to be found in the Lease of Flats Act. Issues not regulated by the latter are subsidiary regulated within the 2005 Civil Obligations Act – in its Chapter 8: the Lease contract (Articles 550–69).

The Lease of Flats Act consists of two parts of tenancy legislation. The Articles 7, 8, 30–50; deal only with the questions of the 'protected tenants' contracts.' In these Articles the rules governing

[1] V. Gorenc, *Obvezno pravo: posebni dio 1., pojedini ugovori* (Zagreb: Novi Informator, 2003), 154.
[2] Ibid., 154.
[3] P. Klarić and M. Vedriš, *Građansko pravo* (Zagreb: Narodne novine, 2006), 515.

tenancy contracts of former housing right holders are enshrined. The other Articles of the Lease of Flats Act govern general rules on the leases of apartments.

When concluding a tenancy contract the parties have to fulfil certain legal obligations as defined under the law. According to Lease of Flats Act the tenancy contracts have to be concluded in writing (Article 4 (2)). Next to that an agreement in accordance with Article 5 of the Lease of Flats Act has to be included in the Contract:

- the nomination of tenant and the landlord,
- description of the apartment (or its part),
- the amount of rent and the payment method,
- type of costs to be paid by the tenant and the payment method,
- information on persons living with the tenant,
- duration of the tenancy,
- provisions for the maintenance of the apartment,
- provisions on the use of common areas, common parts and facilities and land by the persons living in the building,
- provisions regarding handing over of the apartment.

The principle of autonomy of the parties applies also to tenancy; therefore, the contract is a result of mutual agreement of the parties. If the parties do not agree upon a certain question, the provisions of the Lease of Flats Act (and subsidiary Civil Obligations Act) are applicable.

However, rules such as the conclusion of tenancy contract in writing are mandatory; therefore the parties have to respect such obligations and cannot agree otherwise. In some cases the Law prescribes for exceptions even in such cases. For example, the tenancy contract not concluded in writing, but at the same time fulfilled in its whole or predominant part, will be in accordance with legal practice (judgements of the courts) recognised as valid.[4]

[4] J. Brežanski, B. Barjaktar, and D. Đikandić, *Najam stanova i zakup poslovnog prostora u praksi* (Zagreb: Novi informator, 2006), 12–3; Citing Decision of the Supreme Court of RC, Rev 208/96, and Decision of the Supreme Court of RC, Rev 219/98. In both cases the decisions were passed in cases of Market Lease, but are applicable also to cases of tenancy contracts governed by the Lease of Flats Act.

According to Croatian Law the tenancy contracts can be concluded with one person and only exceptionally with two persons who are spouses.

In most cases the tenancy contracts are in Croatia concluded for only limited amount of time (however protected tenants' tenancies are by Law always concluded as open-ended). In cases of time-limited contracts, the contracts are prolonged for another same period of time, in case that none of the parties informs the other otherwise 30 days prior to the finish of the tenancy period.

There are several options how a tenancy contract can be terminated. In accordance with the Lease of Flats Act the termination of the tenancy contract by the landlord is possible with:

- cancelation of the tenancy contracts (extreme cases defined under Article 20 of the Lease of Flats Act) or
- termination of the tenancy contracts with a given termination period; termination is possible for culpable as well as for non-culpable reason.

The only non-culpable reason on the side of the landlord is the reason that he himself intends to move into the apartment (in such cases a 6 months termination period has to be given). Next to that this termination reason applies only to open-ended tenancies. An additional criterion, that the landlord has to provide the tenant with another suitable apartment, has been on 31st of May 1998 derogated by the Constitutional Court decision (Decision no. U-I-762/1996).

On the other hand the tenant has the right to terminate the open-ended tenancy agreement at any given time, without stating any reason, respecting a 3 months termination period.

An exception in cases when the apartment is hazardous to tenant's health (in accordance with Civil Obligations Act) exists. In such cases the tenant has the right to terminate such a Contract without any termination period at any given moment. This applies to open-ended as well as time-limited tenancies.

When the landlord is culpable that the tenancy contract cannot be fulfilled, the tenant will be able to cancel the tenancy contract (in these cases the rules of Civil Obligations Act apply).

In accordance with the Lease of Flats Act the former housing rights holders with the entering of the Law in practice, *ex lege* became tenants in apartments they occupied. Next to that they were

given a right to demand a conclusion of an open-ended tenancy contract, for which the protected rent is to be paid. The Contracts are concluded between the former housing right holders, in some cases with both spouses,[5] on one hand and the owners of the apartment on the other hand. In cases when the owner refuses to enter to a tenancy contract with such a tenant, the Court can with its Ruling replace such a contract upon the tenant's demand. Lack of contract in writing does in these cases not constitute a lack of tenancy contract. 'Former owners of housing right have ex lege become protected tenants' statuses. Therefore lack of contract concluded in writing does not interfere with such a status,' decision of the County court in Zagreb no. Gž 1361/99, from 14.11.2000.[6] [7]

A special provision governing termination of tenancy contract by the landlord with a non-culpable termination reason is given under the Article 40 of the Lease of Flats Act. In case that the landlord needs the apartment for his own use he has to fulfil two additional criteria:

- has a housing need and
- has to be older than 60 years or lives from social care.

Next to these two criteria an additional one has to be fulfilled. That is the criteria that the protected tenant has another apartment (Article 40/4).

On subject of termination of tenancy contracts with protected tenants two very important Constitutional Decisions have been passed: already mentioned Decision no. U-I-762/1996, which deleted the duty of the landlord to provide for additional adequate housing for his protected tenant in cases when he is terminating the tenancy contract due to the fact that he himself needs the apartment in question (Article 40 (2)).

Since the passing of this decision a number of cases of unlawful evictions have been allowed by the Courts, as for. ex. Decision of the County Court in Rijeka Gž. 1258/00-2, allowing the termination

[5] Cases when both spouses were the housing right owners.

[6] Decission by the County Court in Bjelovar no. Gž 5930/99.

[7] Brežanski, Barjaktar, and Đikandić, *Najam stanova i zakup poslovnog prostora u praksi.* A question whether the former housing rights holders ex lege became protected tenants or only tenants and only after concluding tenancy contract the protected tenants, remains unsettled. This has not made big problems in practice.

of the tenancy contracts with protected tenant solely on the reason that the landlords needs the apartment for himself. In case of this last decision by the County court in Rijeka, as in some others, an appeal to the Constitutional Court was made. The Constitutional Court stopped the execution process until it reached a conclusion and passed a Decision on the matter (Ruling of the Constitutional Court no. U-III-135/2003). Finally, the Constitutional Court passed another Decision no. U-III-25429 on 29th of April 2010 with it clarifying the criteria (as explained above) that need to be fulfilled in such cases.

In accordance with the Constitution, social (and public) housing is allocated by the Local authorities. Local authorities publish Tenders in accordance with which the selection of social (and public) housing tenants is made. At the same time the Local Authorities publish Rules which govern such tenancy contracts. Usually the conclusion of the tenancy contract is sealed with a public Notary stamp (paid by the future tenant). The level of rent in social housing is determined (fixed) by the Croatian Government Decree (protected rent). The rent paid in social housing is the same as for protected tenants.

In accordance with Rules on Leases within the POS Programme rent-to-buy scheme, the tenants have to fulfil three criteria to be illegible:

- have to be Croatian citizens,
- do not own an appropriate apartment in the area,
- exceed 30% BDP per family member.

In this scheme the tenants have the right to buy the apartments they live in, in the period of the tenancy contract (60 + 36 months).

The quality of houses being rented is not controlled in any Act. However the apartments built in the POS Programme have to fulfil the criteria of quality defined under POS Programme building Rules. (Nevertheless quality of built in POS Programme has been largely criticized by the public).

Tenancy Law is in Croatia predominantly a State law; governed by Lease of Flats Act and Civil Obligations Act. The Local authorities are in charge of social housing. Rules governing Tenders in accordance with which the tenants are selected, as well as Rules defining tenancy contracts for such housing, are defined by the Lo-

cal authorities themselves. The level of 'protected (social) rent' is defined by the Croatian Government Decree (national law).

There exist no special rules under the Lease of Flats Act governing solutions of when lease becomes real property effects. The effects of real property rights of the lease can be achieved with the entering of the Lease agreement to the Land registry. This is governed by the Article 31/1 of Land Registration Act (*Zakon o zemlišnim knjigama*).[8] Lease is entered into the Land registry with the registration (register title) or conditional registration. To enter the lease contract into the Land registry the parties of the contract have to clearly state their will already in the lease contract that such an entry is to be allowed. This obligation is explicitly enshrined in the Law regarding registration (Article 58 of the Land registration Act), but it applies to the conditional registration as well. Next to that the lease contact has to fulfil all the criteria needed for the *clausula intabulandi*, enabling the tenant to enter his lease right to the Land registry.

It is possible that the landlord and the tenant agree upon such a right of the tenant in a separate contract. Even in such case the criteria provided for an efficient *clausula intabulandi* have to be fulfilled. After the lease is entered into the Land registry no-one is able to claim that he or she did not know or could not have known (was unable to come to the information) for the existence of the lease contract. Therefore after entering the lease contract into Land registry it becomes *erga omnes* effect.

Erga omnes effect of the lease is under the Croatian law given also in accordance with some other pieces of legislation. Lease of Flats Act explicitly defines that the lease contract does not terminate in cases of change of the landlord (Article 24. of the Lease of Flats Act) from which it can be claimed that the lease has some *erga omnes* effects already in accordance with Law (not due to the fact that it has been entered into the Land registry). Similarly also in the Civil Obligations Law Article 570.: if the leased asset has been alienated after it was given to the possession of the tenant; or in accordance with Article 572.: if the leased asset has been alienated before handover of the leased asset to the tenant; in both cases the

[8] *Službeni list Republike Hrvatske*, no. 91/96, 68/98, 137/99, 114/01, 100/04, 107/07, 152/08, 126/10, 55/13, 60/13.

lease has the *erga omnes* effect given the new possessor knew of the existence of the lease contract.

It has to be stressed that in accordance with the Execution Act the lease terminates with the sale of the apartment in cases the lease agreement has not been previously entered into the Land registry (in such cases provisions of the Execution Act will be used in accordance with the rule of *lex specislis*).

The Lease of Flats Act is a special statute governing tenancy law. Issues not regulated by the latter are subsidiary regulated within the general law, Civil Obligations Act – in the Chapter 8: the Lease contract (Articles 550–69). In cases of social housing, the Rules adopted by the Local authorities are the ones that are applicable first. In the POS rent-to-buy scheme tenancies special Rules adopted by the Agency for Transactions and Mediation in Immovable Properties apply as *lex specialis*.

In the Republic of Croatia the administration of justice is carried out by Misdemeanour courts, Municipal courts, County courts, Commercial courts, the High Misdemeanour Court of the Republic of Croatia, the High Commercial Court of the Republic of Croatia, the Administrative Court of the Republic of Croatia and the Supreme Court of the Republic of Croatia.[9]

The seat and territorial jurisdiction of courts are regulated by the Law on Territorial Jurisdiction and Seats of the Courts[10] and the Law on Territorial Jurisdiction and Seats of the Misdemeanour Courts.[11]

As of 31th of December 2009 there were 110 Misdemeanour courts, 67 Municipal courts, 13 Commercial courts at the first instance. The High Misdemeanour Court of the Republic of Croatia, the High Commercial Court of the Republic of Croatia and County courts are in general second instance courts (appellate courts). County courts, 21 of them, perform investigation procedures as well and adjudicate certain number of criminal cases at the first instance. The Administrative Court of the Republic of Croatia decides upon appeals against final administrative acts (administrative

[9] 'Judicial Power,' Vrhovni sud Republike Hrvatske, accessed 5 January 2014, http://www.vsrh.hr/EasyWeb.asp?pcpid=282.

[10] *Službeni list Republike Hrvatske*, no. 3/94, 100/96, 115/97, 131/97, 129/00 and 67/01.

[11] *Službeni list Republike Hrvatske*, no. 36/98.

disputes). The Supreme Court of the Republic of Croatia is according to the Constitution the highest court that ensures uniform application of laws and equality of citizens. At present there are 215 courts in the Republic of Croatia.[12] Next to that the Constitutional court decides upon breaches of the constitutionally guaranteed rights.

Courts competent for tenancy law disputes are divided into:

- Municipal courts,
- County courts,
- The Supreme Court of the Republic of Croatia.

Cases of tenancy disputes are brought to trial in front of ordinary local courts on the first instance; which are the Municipal courts. The courts of second degree are the County Courts. Supreme Court decides on the matters as the court of highest instance. The Constitutional Court decides in cases of breaches of the Constitution. There is no special jurisdiction of the courts in the tenancy disputes.

The duty to register a tenancy contract under the Croatian Law exists. Article 26 of Lease of Flats Act prescribes that the tenancy Contracts be registered with the Local authority unit as well as the nearest Tax office. The contract has to be registered by the owner of the dwelling within 8 days after the tenancy contract was signed. In case of breach of such an obligation a fine is imposed in accordance with the Article 29 of the Law.

In practice many tenants are registered as 'family members,' since the payment of taxes in such cases is not prescribed. The area of tenancy law is still mostly regulated by the black market; therefore provisions of the law do not have a desired impact in practice.

6.2 Preparation and Negotiation of Tenancy Contracts

Market rentals are based on the autonomy of the parties; therefore landlords are able to freely choose their tenant. However this is not the case of protected tenants, where a legal obligation for the landlord to enter into a lease contract with the tenant – former housing right holder, is governed by the Lease of Flats Act (Article 30). For public and social housing, after the proper procedure trough ten-

[12] 'Judicial Power.'

TABLE 6.1 Preparation and Negotiation of Tenancy Contracts

Category	(1)	(2)	(3)	(4)
Choice of tenant	Through mass media advertisements or real estate agencies	No choice of tenant is possible, the tenants are the former housing right holders	Special procedure, regulated in the rules by local authorities	Tenancies with protected rent-former housing right holder; public and social housing; market rental
Ancillary duties	Optional; upon the agreement of the parties	Regulated by the lease of flats act	Regulated by the rules of local authorities	Rentals with protected rent-former housing right holders; public and social housing; market rental

NOTES Column headings are as follows: (1) main characteristic(s) of market rentals, (2) main characteristic(s) of rentals with protected rent by former housing right holders, (3) main characteristic(s) of public rental housing and rentals with protected rent (social housing) selected trough tender procedure, (4) ranking from strongest to weakest regulation.

der selection has been executed, an obligation to conclude the lease contract with the selected tenants exists.

Landlords in possession of available market rental dwellings usually submit their advertisement in the local newspapers, to the internet sites specialized for renting and selling of dwellings, through family and friends or real estate agencies.

According to data gathered in Survey on renting,[13] 46% of the interviewed tenants found the rented dwelling through advertisements in newspapers, 43% through family and friends, 28% on internet sites and only 7% with a help of real estate agencies (more than one answer to the question could be given). 49% of landlords found their tenants through family and friends, 43% on the internet and in the newspaper ads, and 14% from real estate agencies (more than one answer to the question could be given).

The landlord has to conclude the tenancy contract with the former housing right holder living in the apartment (sitting tenant). In

[13] Centar nekretnina, 'Istraživanje o iznajmljivanju nekretnina.'

cases when both spouses had been given a housing right, the duty to conclude contract with both of them exists. This tenancy contracts have to be concluded as open-ended, next to that the tenant has a pre-emption right given to him under the Law (Article 44. of the Lease of Flats Act).

Available dwellings in public or social housing are awarded in accordance with a special procedure. The procedure is defined with the Local authorities Rules. Two sets of Rules are passed. First Rules define the procedure of a Public Tender on which the tenants are selected. With the second Rules, the rules governing future tenancy contracts are defined.

For applicability to POS Programme the tenant has to fulfill three set of criteria: (1) is a Croatian citizen, (2) does not own an appropriate apartment in the area, (3) exceeds the min of 30% BDP per family member.

Market landlords usually question the potential tenants on their incomes, financial situation, their employment, etc. In cases of protected tenants – former housing right holders, the landlord is obliged to conclude the tenancy contract with former housing right holder (sitting tenant in the landlord's apartment). An exception is given when the protected tenant already owns an apartment or a house (other than the dwelling in question). Therefore the landlord will in these cases be allowed to check if the tenant already owns another apartment or a dwelling.

In public housing tender procedure a list of evidence must be enclosed to the application. Checks on the personal and financial status are very thorough. In social housing tenders the applicant must not exceed the census, whereas in public housing tenders the applicant must exceed the census to be eligible for the dwelling.

There are no lawful possibilities of gathering official information on the potential tenants. There is no blacklist of 'bad tenants.' Gathering information of this kind would be considered in breach of Personal data protection Act (*Zakon o zaštiti osobnih prava*).[14] On the other hand, the data on potential tenants is usually gathered informally. Landlord usually interviews the potential tenant. In many cases tenants are 'recommended' by acquaintances (family or friends, or even former tenants).

[14] *Službeni list Republike Hrvatske*, no. 103/03,118/06,41/08,130/11,106/12.

Under the Lease of Flats Act, the landlord is obliged to sign the tenancy contract with former housing right holder. An exception is made when the protected tenant already owns an apartment or a house (next to having housing right on the dwelling in question). In cases of concluding the protected tenancy contract the landlord will therefore have the right to check if the tenant already owns another apartment or a dwelling.

Information has to be provided by the tenant at the time of the application. The applicants' data can and will be checked by the officials. The tenants are able to check if the landlord is the owner of the leased apartment in the Land registry (such information is public). Since however personal bankruptcy procedure still does not exist under the Croatian law, no gathering of data of the potentially bad financial situation of the landlord is possible.

The rules of engagement for real estate agencies in Croatia are regulated by the Real Estate Brokerage Act (*Zakon o posredovanju u prometu nekretninama*)[15] from the year of 2007. The Act regulates activities of real estate agencies in the territory of Croatia.

In the year 2013 a new change to the existing Act was passed mostly to include new provisions for Agencies that have their main office outside Croatia but are from EU member state countries and want to engage on the Croatian market. The profits of the Real estate agencies were prior to changes of the Law in 2013 maximized to 6% of the selling price. In practice agencies usually take 2% of the selling price from the buyer and 2% from the seller. In cases of renting, the take of the real estate agency is not regulated by the law. Usually however one month's rent by each party is paid to an agency.

The literature and relevant data on the role of estate agents on the rental market in Croatia is very scarce. The percentage of renting relationships concluded through real-estate agencies is small. Results of the survey on renting shows that only 7% of the tenants came across the information on the property they are renting over the real-estate agency, whereas 14% of landlords found the tenants through the real-estate agencies.[16] Foreigners, especially foreign companies and various types of international organizations

[15] *Službeni list Republike Hrvatske*, no. 107/07.

[16] Centar nekretnina, 'Istraživanje o iznajmljivanju nekretnina.'

use the services of estate agents more often. According to the real-estate agencies, the crisis on the housing market resulted in decline of purchasing demand and shifted the structure of their business. Consequently the agencies are mediating more in rental sector than in sales.[17] Since the rental relations are in mostly still part of 'the black market,' those established through estate agents are usually established in accordance with the Lease of Flats Act, thus, it can be argued that estate agents play an important role in providing a certain level of security of tenure to tenants (and landlords).

Ancillary duties of the parties in the phase of contract preparation and negotiation are not regulated. The parties have the autonomy to freely negotiate the conditions of the contract.

Culpa in contrahendo is not specifically regulated for tenancy contracts. It is governed by Article 251 of Civil obligations Act for all cases, in which one of the parties negotiating a contract changes their mind and does not provide a legally acceptable reason for such a decision. Legally unacceptable reasons are those contrary to the Principle of good faith and fair dealing and Principle of *neminem laedere*. This is especially the case when one of the parties enters negotiations without real intention of closing the contract with the other party.[18]

6.3 Conclusion of Tenancy Contracts

Licence as a special form of tenancy does not exist under Croatian law. Some interesting comparisons between the differences and similarities in the lease of a dwelling and the real right of habituation can be observed.

Under Croatian law lease is considered an obligatory right. It is regulated in the Civil Obligation Act (*Zakon o obveznim odnosima*)[19] (lex generalis) and the Lease of Flats Act (*Zakon o najmu stanova*)[20] (lex specialis). On the other hand, real right of habitation is as personal easement defined and regulated in the Ownership and Other Proprietary Rights Act (*Zakon o vlastništvu i drugim stvarnim pravima*):[21] 'Real right of habitation is a form

[17] 'Podstanarstvo ili stambeni kredit.'
[18] Klarić and Vedriš, *Građansko pravo*, 606.
[19] *Službeni list Republike Hrvatske*, no. 35/05, 41/08, 125/11.
[20] *Službeni list Republike Hrvatske*, no. 91/96, 48/98, 66/89, 22/06.
[21] *Službeni list Republike Hrvatske*, no. 35/05, 41/08, 125/11.

TABLE 6.2 Conclusion of Tenancy Contracts

Category	(1)	(2)	(3)	(4)
Requirements for valid conclusion	Requirements set out in Article 5 of Lease of Flats Act; Contract in writing	Former Housing right holders according to Article 30 of the Lease of Flats Act; *Ex lege* + Conclusion of a contract in writing, with fulfilment of requirements set out in Articles 5 and 7 (protected rent) of the Lease of Flats Act	Persons selected through Local authorities public tender; Conclusion of a contract with requirements set out in Article 5 (and Article 7 – in case of social housing) of the Lease of Flats Act; Contract in writing; Contract certified by the Notary Stamp (usually, not in all cases)	Public rental housing and social housing selected trough public tenders by Local authorities; Rentals with protected rent for former housing right holders; Private rental housing
Regulations limiting freedom of contract	Lease of Flats Act, Civil Obligations Act	Lease of Flats Act, Civil Obligations Act, Government's Decree on Protected Rent	Lease of Flats Act, Rules of the Local Authorities, Government's Decree on Protected Rent	

NOTES Column headings are as follows: (1) main characteristic(s) of private rental housing, (2) main characteristic(s) of rentals with protected rent by former housing right holders, (3) main characteristic(s) of public rental housing and rentals with protected rent (social housing) selected trough tender procedure, (4) ranking from strongest to weakest regulation, if there is more than one tenancy type

of servitudes personales (personal easement) which provides its holder with a right to use someone else's dwelling or its part in such a manner that the substance of the dwelling is preserved.'[22]

Habitation can take two forms: right of usus or usufruct right.

[22] Klarić and Vedriš, *Građansko pravo*, 328.

Article 271 of Ownership and Other Proprietary Act defines habitation primarily as usus right. If the right to use the dwelling in its whole substance is given, the habitation right holder becomes usufructu right holder. In such cases the holder of usufructu habitation right has a right to sublet the apartment or dwelling (and the right to collect rent) according to Article 204 para 2 of Ownership and Other Proprietary Act. Real right of habitation is given to its holder in three different ways: by the owner of a dwelling (based on the contract), by a court decision, or by process of prescription (in this case a court decision on the matter will have to be passed confirming that the real right of habitation has arisen). The habitation right holder does not pay any rent.

Habitation as a personal easement lasts until the death of its holder (time-unlimited period). Croatian law allows the real right of habitation to be formed for more than one person in a way that when the first holder of the right dies, the next person in line becomes its holder. Habitation is a real estate right and has to be entered into Land registry to become valid. Since, however not the whole Croatian territory has a Land registry, in cases of lack of Land registry the first instance local Court runs a special Registry of deposited contracts, where such right shall be registered.

Lease is on the other side an obligatory right. It is formed with a tenancy contract (in some cases by the Court ruling) between the tenant and the landlord. General rules of engagement on leases are defined in the Civil obligations Act in Articles 550–78.

According to Article 551 the rules of Civil obligations Act governing lease (Articles 550-78) shall apply subsidiarily (as lex generalis) to leases regulated by special laws. According to the Commentary of Civil obligations Act,[23] the Lease of Flats Act is one of such Acts. The provisions of Lease of Flats Act will therefore apply as lex specialis (lex specialis derogat legi generali). For example: there are no provisions regulating repercussions following defects in the apartment on the day of lease or governing damage caused by these shortcomings under the Lease of Flats Act. In such cases therefore Civil obligation Act shall apply.

The Lease of Flats Act governs market as well as protected rent

[23] V. Gorenc, ed., *Komentar Zakona o obveznim odnosima* (Zagreb: RRiF-plus, 2005), 883.

leases. It does not however apply to 'short term leases'[24] (Article 27 of Lease of Flats Act). These are leases such as temporary accommodation for tourists, students and similar situations or cases of apartments provided by companies for their employees (the so-called 'official apartments'). In these cases rules of other special Acts will apply (see section on specific tenancy contracts below). In case of non-existence of such special Act the rules of Civil obligations Act are applicable.

Upon entry of the tenancy contract to the Land registry, such a right however becomes publicized (see the part on Foreclosure in text below) and gets erga omnes right effect.

A possibility to conclude a lease contract in a form of directly enforceable Notary deed.under the Croatian Law exists.[25] The landlord and the tenant are free to agree upon directly enforceable clause already in the process of contracting their lease agreement. In such cases a direct enforceability upon the breach by the tenant (non-payment of the rent,…) exists and can be used by the landlord (direct execution process of vacating the apartment is possible). This shortens the prescribed time limits as provided for under the Lease of Flats Act and the Civil Obligations Act. An agreement of *fiducia* is also possible (very rarely used in practice).

Another possibility is given with the use of personal bill of exchange. This possibility can be also used as to alleviate the landlord's problems occurring due to tenant's non-payment of the rent or housing expenses. A list of personal bills of exchange is kept by the Notaries (not used in practice).

Specific tenancy contracts as contracts on furnished apartments, contracts over rooms or apartments located in the house in which the landlord lives, as special forms of tenancy contracts do not exist under Croatian law. Student apartment contracts for room(s) in public student dormitories[26] and apartments rented to Tourists (*Za-*

[24] As defined under the Lease of Flats Act.

[25] Solemnisation of a contract not prepered by the Notary and concluded in front of him is possible as long as it containes a directly enforcable clause stamped by the Notary.

[26] Zakon o sustavu državne uprave, *Službeni list Republike Hrvatske*, no. 150/11; Zakon o znanstvenoj djelatnosti i visokom obrazovanju, *Službeni list Republike Hrvatske*, no. 123/03, 105/04, 174/04, 2/07; Decision of Constitutional Court no. 46/07, 45/09 and 63/11.

kon o porezu na dohodak)[27] are governed by special provisions. All other situations are governed by the Civil Obligations Act.

In practice, some specifics are to be noticed in tenancy contracts for furnished apartments being leased by the Real estate Agencies (usually for high end apartment's leases). In a way that in such cases the tenancy contracts are very detailed.

Lease of Flats Act regulates the rights and obligations of the parties and use of the dwelling or an apartment (or its part).[28] According to Lease of Flats Act an apartment is a set of rooms intended for housing with all the necessary facilities which make a complete unit and have a separate entrance. Minimum requirement for a valid conclusion of a tenancy contract is the agreement between the landlord and the tenant that the landlord will give the apartment to the tenant and the tenant will pay the agreed rent for the duration of the lease (Article 3. Para 1 and 2 of Lease of Flats Act). According to Gorenc,[29] the minimum requirements for a valid conclusion of tenancy contract pursuant to Lease of Flats Act are described in Article 5.[30]

Tenancy contract has to be made in writing to be considered validly concluded (Article 4 of Lease of Flats Act). This provision may represent a problem in light of the fact that some of the market (private) landlords are not willing to conclude tenancy contracts in writing. However, there is an exemption to this rule. According to Brežanski[31] as well as Gorenc,[32] due to lack of legal practice (case-law) on the matter of tenancy contracts, the legal practice on 'office space lease' in accordance with the Law on Lease and Sell of Office Space (*Zakon o zakupu i kupoprodaji poslovnog prosto-*

[27] *Službeni list Republike Hrvatske*, no. 177/04.

[28] Gorenc, *Komentar Zakona o obveznim odnosima*, 853.

[29] Ibid.

[30] Those include (1) the nomination of tenant and the landlord, (2) description of the apartment (or its part), (3) the amount of rent and the payment method, (4) type of costs to be paid by the tenant and the payment method, (5) information on persons living with the tenant, (6) duration of the tenancy, (7) provisions for the maintenance of the apartment, (8) provisions on the use of common areas, common particles and facilities and land by the persons living in the building, (9) provisions regarding handing over of the apartment.

[31] Brežanski, Barjaktar, and Đikandić, *Najam stanova i zakup poslovnog prostora u praksi*, 29.

[32] Gorenc, *Komentar Zakona o obveznim odnosima*, 883.

ra)[33] is applicable. According to legal practice if the tenancy contract is not concluded in writing, the rule of consolidation (Article 249 of Civil obligation Act) may apply: if the contract has been fulfilled in its whole or in its important part, it is validly concluded regardless of its (written or oral) form. The rule of consolidation shall only apply to cases when both parties have fulfilled their obligations. Fulfilment of contractual obligations by one party only, will therefore not suffice.[34]

The rent is to be determined by the contract. In cases of protected tenants the amount of the rent is set by the Decree of the Government of Croatia.[35] The lease can be concluded for time-limited or open-ended period. For protected tenants – former housing rights holders, however, the contract on lease has to be concluded as open-ended.[36] In cases of social housing there exists no uniform rule of time period for which the tenancy contract is concluded.

In cases of market rentals no fee for the conclusion of tenancy contract has to be paid. In cases of public or social renting, where public tender in question prescribes a need for Notary stamp on the concluded contracts, Notary fee will have to be paid by the future tenant. Notary fee will always have to be paid in cases of tenancy contracts concluded in accordance with POS Programme rent-to-buy scheme Rules.

According to Article 26 of the Lease of Flats Act, all landlords have a duty to submit the tenancy contract to the administrative department of the local government (in case of City of Zagreb, to the local authorities of the city) and to the nearest tax office. Department of the local government responsible for housing is in charge of the list of apartments, landlords, tenants, sub-tenants and the amount of rent. Article 29 of the Lease of Flats Act prescribes a penalty in case of non-compliance with the law: 'A fine in the amount of 1.000,00 to 5.000,00 Kn (approximately 130–650 EUR)

[33] *Službeni list Republike Hrvatske*, no. 125/11.

[34] Gorenc, *Komentar Zakona o obveznim odnosima*, 883. According to the Decision of the Supreme Court of RC, Rev 208/96, 'A tenancy contract fulfilled in its predominant part is valid;' similarly also in the Decision of the Supreme Court of RC, Rev 219/98.

[35] Uredba o uvjetima i mjerilima za utvrđivanje zaštičene najamnine, *Službeni list Republike Hrvatske*, no. 040/1997.

[36] Ibid.

shall be imposed on the landlord who does not comply with the provisions of Article 26 paragraph1 of this Law.'

Article 14 of the Constitution of Republic of Croatia (*Ustav Republike Hrvatske*)[37] ensures human rights to everyone regardless of his or her personal status. Discrimination on grounds of race, colour of skin, gender, language, religion, political or other convictions, social status etc is prohibited.

Antidiscrimination Act (*Zakon o suzbijanju diskriminacije*)[38] is a general statute on antidiscrimination. There are several special acts governing antidiscrimination in specific fields, Constitutional Law on Rights of Minorities (*Ustavni zakon o pravima nacionalnih manjina*),[39] Law on the equality of genders, (*Zakon o ravnopravnosti spolova*),[40] Law on homosexual unions (*Zakon o istospolnim zajednicama*),[41] and Criminal Code (*Kazneni zakon*).[42]

Antidiscrimination Act has been amended in 2012 to comply with multiple EU Directives. Article 8 of the Antidiscrimination Act explicitly prohibits the discrimination in the field of housing and prescribes penalties for any breaches. The penalties can go as high as up to 350.000,00 kn (more than 45.000 EUR). In practice however, especially due to prevailing black market (lack of proper regulation) in private renting sector, it is difficult to assess the degree of discrimination in the field of housing.[43] The Ombudsman Report from 2011 states that there were several cases in which the Office of Ombudsman has been contacted due to discrimination in the field of housing.[44] Nationality, race and sexual orientation of the tenant still play an (although legally prohibited) important role.

As already mentioned renting on private market is in Croatian

[37] *Službeni list Republike Hrvatske*, no. 56/90, 135/97, 8/98.
[38] *Službeni list Republike Hrvatske*, no. 85/08, 112/12.
[39] *Službeni list Republike Hrvatske*, no. 155/2000.
[40] *Službeni list Republike Hrvatske*, no. 22/08.
[41] *Službeni list Republike Hrvatske*, no. 116/03.
[42] *Službeni list Republike Hrvatske*, no. 125/11,144/11.
[43] Searching the internet one can find several newspaper articles dealing with this problematic. An interesting 'mini research' on the topic of discrimination in housing leases against Roma and Bosniac (Muslim) population has been done by the national newspaper *Jutranji list*, 19 November 2011, showing that discrimination against these two groups of people is still very strong in Croatia.
[44] Pučki pravobranitelj, 'Izvješće o radu za 2011. godinu' (Pučki pravobranitelj, Zagreb, 2012).

coastal area especially problematic. This is due to the fact that these regions (Istra and Dalmatia) are traditionally very touristic. Since no legal limitations on the period for which the tenancy contract can be concluded, exists, private persons rent the apartments solely for the non-touristic period (which depends on the region, but can be as long as from May to October). These enables the landlords to rent in two ways: to private persons from 1st of October to 1st of May; and then to tourists in the touristic period. These landlords double or triple their profit. Landlords offering such apartments do not only indirectly but in most cases directly exclude families and elderly from the possibility to rent their apartment. This situation can be for example seen in the internet site of the largest Croatian internet renting page www.njuskalo.hr before the summer starts. Posts for renting of apartments are defined with text 'for students only' (extremely high number of cases) or even more direct: 'not intended for families' (in lesser number of cases). This situation however leads to a situation where the private tenancy market, especially for families, becomes non-existent.

Under the Lease of Flats Act, protected tenants have the right to demand a conclusion of a tenancy contract from the owner of the apartment within 6 months period after the entry into force of the Lease of Flats Act. This right was given to former housing right holders under Article 30 of the Lease of Flats Act. If the landlord refuses to conclude the tenancy contract or does not give an answer within 3 months, the protected tenant has a right to demand a conclusion of contract from the court. In such cases court judgement replaces the tenancy contract (pursuant to Article 33 of Lease of Flats Act).

When the tenant has been selected in a public tender for social or public housing, the local authorities have the duty to conclude a tenancy contract. These rules are in practice always respected.

According to Gorenc,[45] requirements for conclusion of the tenancy contract prescribed in Article 5 of Lease of Flats Act limit the contractual freedom of the tenant and the landlord.

For a valid conclusion of tenancy contract pursuant to Lease of Flats Act, the tenancy contract shall contain: description of the apartment in question (or its part), the amount of rent and its pay-

[45] Gorenc, *Komentar Zakona o obveznim odnosima*, 884.

ment method, type of costs to be paid for by the tenant and its payment method, information on persons living with the tenant, duration of the lease, provisions for the maintenance of the apartment, provisions on the use of common areas, common parts and facilities and land used by the persons living in the building, provisions regarding handing over of the apartment.

Requirements of Article 5 of the Lease of Flats Act are a mere reminder to the parties of what should be determined by the contract. The absence of any provision does not cause ex-lege invalidity of the contract.[46]

In case of protected tenants, as well as social and public tenants selected in a tender procedure, the choice of tenant is not within the autonomy of the landlord. Also, the amount of rent in such cases is set by Croatian Government's Decree (or in case of public tenants Rules by the local authorities) and cannot be determined by the agreement of the parties.

With the date of entry into force of Lease of Flats Act the statutory 'housing rights' ceased to exist. If the previous housing rights holders did not purchase the apartment, they *ex lege* acquired the rights and obligations of the tenant (pursuant to Article 30 of the Law). The question whether such persons became *ex-lege* protected tenants remains open. According to Brežanski[47] the opinion, that such persons become only regular tenants, whereas the status of protected tenants is dependent upon the conclusion of the tenancy contract, is shared by some courts and judges. Others[48] however believe that the protected tenancy status shall be recognized *ex-lege* at the moment of entering the Lease of Flats Act into force. According to Brežanski this question has in practice not been proven as problematic.[49]

Pursuant to Article 33 of the Law, the owner of the apartment was obliged to notify the tenant within the period of 60 days (from the entry into force of the Law) about his ownership of the property as well as his place of residence. The former housing right holder then

[46] Ibid., 838.

[47] J. Brežanski, 'Najam stana – položaj zaštićenog najmoprimca' (Vrhovni sud Republike Hrvatske, Zagreb, 2004), http://www.vsrh.hr/CustomPages/Static/HRV/Files/JBrezanski-Najam_stana-2004-02mj.pdf.

[48] Ibid.

[49] Ibid.

had the right to request the conclusion of the tenancy contract in 6 months period (after the entry of the Law into force). If the landlord did not conclude the tenancy contract with the tenant in 3 months period, the tenant could demand from the court to pass a judgement which replaces such a contract. The time periods, prescribed by the Law, are not preclusive in cases when the tenant has not fulfilled his obligation in prescribed time-period due to circumstanced not deriving from his actions or inactions (Decision of County Court in Dubrovnik: Gž 1052/00).

If the tenant is unable to identify the owner of the apartment, the Law enacts the fiction of the person that is considered to be the landlord (Article 33 (4) of Lease of Flats Act). Even with such legal provisions a lot of tenants still have problems with locating the landlord of their apartment.

Under Croatian law no special protection for tenants to control the contractual terms exists. The contract is a result of free will of both parties. General legal principles provide for an unfair term to be declared void. This is provided by general principles of law: principle of equality of parties to obligations (Article 3 of Civil Obligations Act) which provides that parties to obligations shall be equal; principle of good faith and fair dealing (Article 4 of Civil Obligations Act) which prescribes that in creating obligations and exercising the rights and obligations resulting from such obligations parties shall act in accordance with good and fair dealing; principle of prohibition of abuse of rights (Article 6 of Civil Obligations Act) according to which prohibition to exercise any right resulting from an obligation that is contrary to the underlying purpose for which it was established or recognized by law exists; and principle of equal value of performances (Article 7 of Civil Obligations Act) pursuant to which in concluding and fulfilment of legal transactions, parties shall apply the principle of equal value of mutual performances. The law regulates the cases in which a violation of these principles may result in legal consequences such as invalidity of contractual terms or the contract as a whole.

From the 1st of July 2013 when Republic of Croatia joined the EU, mostly all of the EU consumer protection legislation has been introduced into the Croatian domestic legal system.

There are some statutory pre-emption rights of the tenant under Croatian Law. Firstly, in accordance with Article 44 of Lease

of Flats Act former housing right owner possesses a statutory pre-emption right. This right has an *erga omnes* effect even if not entered into the Land registry. Secondly, in accordance with Article 29 of the Law on Compensation for Property taken during the time of the Yugoslav Communist Regime (*Zakon o naknadi za imovinu oduzetu za vrijeme jugoslavenske komunističke vladavine*),[50] the former owner of the apartment becomes a statutory pre-emption right holder. Again, an *erga omnes* effect of the pre-emption right exists without entering of such lease into the Land registry.

Finally, according to the opinion of some scholars, statutory pre-emption right exist in cases of selling of part of common-ownership on the dwelling (*gemeinschaftliches Eigentum, Gesamtheitseigentum* – as in Austrian law).[51] Mainstream legal doctrine[52] [53] however disagrees that statutory pre-emption right in such cases exists.

There are no restrictions on the lease of a dwelling or an apartment charged by the mortgage. The Landlord has no duty to inform the tenant of the fact that a mortgage exists on the dwelling or the apartment. On the other hand, the tenant has a possibility to obtain that information in Land registry at any time. If however the right of the tenant is lost due to foreclosure process (when the contract of lease is not entered into the Land registry), the tenant has the right to sue the Landlord for damages. General provisions of Civil Obligation Act regulating damages shall apply.

Under the Croatian law lease does not cease to exist due to bankruptcy.[54]

The Law on Real Estate Brokerage (*Zakon o posredovanju u prometu nekretnina*)[55] has been changed in 2013. There are two new provisions regarding conclusion of tenancy contracts through estate agents. Firstly, the real estate agency is responsible for the damage to the tenant if the real estate agency has not acted in a good faith. In this case the real estate agency is responsible to pay the damages resulting from such actions. Such damages are lim-

[50] *Službeni list Republike Hrvatske*, no. 92/96, 39/99, 42/99, 92/99, 43/00, 131/00, 27/01, 34/01, 65/01, 118/01, 80/02, 81/02.
[51] Gorenc, *Komentar Zakona o obveznim odnosima*, 976.
[52] Ibid.
[53] Klarić and Vedriš, *Građansko pravo*, 405.
[54] Gorenc, *Komentar Zakona o obveznim odnosima*.
[55] *Službeni list Republike Hrvatske*, no. 107/07, 144/12.

TABLE 6.3 Contents of Tenancy Contracts

Category	(1)	(2)	(3)
Description of dwelling	Mandatory requirement	Mandatory requirement	Mandatory requirement
Parties to the tenancy contract	Private persons	Private persons or local authorities as landlord and private person as renters	Local authorities and private person
Duration	Usually definite term, even though indefinite is also possible	Indefinite term	Usually definite term, even though indefinite is also possible
Rent	Not defined	Protected rent, defined by the Government	Protected rent – social housing or between social and market rent – public housing
Deposit	1 to 2 rents (in practice)	No deposit	Usually prescribed by the Tender
v Utilities, repairs, etc.	Governed by the Civil Obligations Act	Governed by the Civil Obligations Act	Governed by the Civil Obligations Act

NOTES Column headings are as follows: (1) main characteristic(s) of private rental housing, (2) main characteristic(s) of renting with protected rent for former housing rights owners, (3) main characteristic(s) of public rental housing and social housing

ited by the 1/3 (minimum) and to the whole commission fee (maximum). Secondly, the level of commission fee prescribed by the law has been cancelled. In practice conclusion of contracts through estate agencies is considered to be quite expensive for the level and quality of services they provide. Therefore in most cases they are not being used. On the other hand real estate agencies do provide for a more professional approach to leases. Therefore companies or private persons renting high-end apartments will usually use them.

6.4 Contents of Tenancy Contracts

An apartment is (according to Article 2 of the Lease of Flats Act) a set of rooms intended for housing. Other rooms in the building,

such as garage, laundry, drying room, can be subject to lease when so determined by the parties. In such cases an extra fee will be charged. The landlord shall deliver the apartment to the tenant in a condition fit for the agreed use and maintain it as such. When the dwelling is delivered in a condition unfit for the agreed use or in a condition that would significantly limit its use, the tenant may terminate the contract or demand a reduction of rent (Article 12 of the Lease of Flats Act).

According to Civil Obligations Act (Article 553) the landlord has to deliver the leased asset (the dwelling in question) to the tenant in a condition fit for the agreed use and maintain it as such. When the dwelling is delivered in a condition unfit for the agreed use or in a condition that would significantly limit its use, the tenant may terminate the contract or demand a reduction of rent. The tenant may ask the court to decrease the rent. Termination of contract is made by tenant's notice to the landlord. This will have ex-tunc effect since the tenant has not yet started to use the dwelling or apartment. In such cases the landlord will have to return any prepaid rent. The tenant shall be entitled to damages (compensation) due to non-fulfilment of the obligation.[56]

According to Gorenc,[57] whether the leased asset is in a condition fit for the agreed use, is a question of facts (*questio facti*). In the case of lease of dwelling, the necessary conditions may include: the leased apartment has dry and lighted rooms, it is equipped with sanitaria and with (some) needed furniture (if nothing differently was agreed upon). The Contract on lease (pursuant to Article 5 of the Lease of Flats Act) has to provide for a description of the apartment or the part of it that is being leased. If description of the apartment (or its part) is not included into the tenancy contract according to Article 5 of Lease of Flats Act, the apartment has to be handed over in a condition fit for its use. (Such housing standards are frequently unfortunately not enforced.)

There are no mixed residence/commercial contacts under Croatian Law. Under the Lease of Flats Act, running a business without the landlord's approval may be a reason for unilateral termination of the contract. If the landlord gives approval to a tenant to run

[56] Gorenc, *Komentar Zakona o obveznim odnosima*, 837.
[57] Ibid.

business in the apartment, the contract will have to be amended to comply with the Law on lease and sell of office space (*Zakon o zakupu i kupoprodaji poslovnog prostora*).[58]

Since no specific rules exist, Civil obligations Act (as lex generalis) applies. According to Article 551, the owner of the dwelling or any other person in position of real right on the dwelling, which encompasses the right to lease or sublease the dwelling (or its part)[59] may be the landlord. If the co-owner of the dwelling is a sole owner of a part of the dwelling (owners of apartments in multi-apartment buildings) he/she may lease the dwelling without the consent of other co-owners, provided nothing different is agreed upon between the co-owners or entered into the Land registry (Article 81(1) of Ownership and Other Proprietary Rights Act). If, however, the common ownership (gemeinschaftliches Eigentum, Gesamtheitseigentum in Austrian law) on the dwelling is established, the vote of majority co-owners will be needed. In this case the lease will be concluded by all the co-owners or the person representing the owners for the purposes of common management (Article 93 of Ownership and Other Proprietary Rights Act). When a part of a dwelling in co-ownership is being leased for a period longer than one year, the co-owners must agree upon such a decision. In these cases all the co-owners can conclude the tenancy contract, or only one of them-with permission of all the other co-owners. The same applies to cases of common ownership.[60]

The landlord may be any natural or legal person with capacity to conclude contracts. Hence, individuals with general legal capacity (18 years and up) can conclude contracts freely and without limitations. In practice two groups of landlords exist: private landlords (natural or legal) and public landlords (Local authorities or the entities of RC). In cases when the landlord is a legal person registered for providing apartments or dwellings to the tenants as its business the rules of the Consumer protection Act (*Zakon o zaštiti potrošača*)[61] will apply.

[58] *Službeni list Republike Hrvatske*, no. 125/11.
[59] Gorenc, *Komentar Zakona o obveznim odnosima*, 883.
[60] Ibid., 834.
[61] *Službeni list Republike Hrvatske*, no. 79/07, 125/07, 79/09, 89/09, 133/09, 78/12, 56/13.

In the event of a change or death of the landlord or termination of such legal person, the rights and duties of the landlord are transferred to heirs or successor (Article 24 of the Lease of Flats Act of Apartments). In case of public auction pursuant to foreclosure proceedings, two possibilities exist. Article 88 of the Execution Act (*Ovršni zakon*)[62] defines cases in which the rights of the tenant cease to exist when the foreclosure enforcement procedures take place. When tenancy contract is concluded and entered into the Land registry before the acquisition of a lien or right to settlement, the rights of the tenant do not cease once the real estate is sold. The purchaser merely takes the place of the landlord in the moment of acquiring the title of the real estate. On the other hand, if the tenancy contract has not been entered into the Land registry before the acquisition of a lien, the right of tenant ceases to exist once the decision giving the real estate to the purchaser becomes legally effective. In cases of bankruptcy, however, the status of tenant remains unchanged despite the change of the landlord.[63]

A tenant can only be a natural person having acquired capacity to conclude contracts (as defined under Civil obligations Act Article 18). A person gains legal capacity to enter into contracts with 18 years of age.

According to Article 4 of Lease of Flats Act, tenancy contract can be concluded with one person and only exceptionally with two persons: in the case of conclusion of a tenancy contract with both spouses.

In social and public rentals, tenants can only be individuals who are selected by tender procedure and fulfil certain requirements determined by the tender and Rules of the local authorities.

According to Article 31 paragraph 2/2 of Lease of Flats Act, the tenancy contract should specify the persons who are allowed to move in together with the tenant. Article 19 paragraph 1/4 of Lease of Flats Act stipulates that the landlord can terminate the tenancy contract if a person not allowed by the tenancy contract is living in the leased dwelling for a period of time longer than 30 days. This provision does not apply to one's spouse, children, parents or any person for whom the tenant is obliged to provide for by the Social

[62] *Službeni list Republike Hrvatske*, no. 112/12, 25/13.

[63] Gorenc, *Komentar Zakona o obveznim odnosima*, 864.

Care Act,[64] or a person providing aid or care for the tenant, until such need exists.[65]

Article 37 paragraph 1 of Lease of Fats Act provides for a special right: family members (as defined in the former Law on housing relationships) are entitled to be listed in the tenancy contract as having the right to use the apartment.

In both cases (as explained in the two paragraphs above) when the landlord is not willing to include such persons into the tenancy contract, they (by themselves or by the tenant in their name) are able to enforce the right to be included (into the tenancy contract) by a court decision.[66]

In the event of change or death of the landlord or the termination of the legal person (being the landlord), the rights and duties of the landlord are transferred to their heirs or successors. 'In cases when the tenant has concluded a tenancy contract with former landlord (now changed), the new landlord cannot demand a conclusion of a new tenancy contact with the same provisions governing rights and duties of the tenant and the landlord.' Decision of County Court of Šibenik, Gž 1365/2001, from 18th of March 2002.

In the event of the death of the tenant or when the tenant ceases to live in the apartment, his or her rights and obligations are transferred onto his or her spouse. If there is no spouse, the rights and obligations are transferred to a child, stepchild or adopted child. In such cases, the person residing with the tenant shall inform the owner about the change within 30 days of the death or move of the former tenant. Similarly, these persons are obliged to inform the owner in case they do not want to terminate the contract (Article 24 of Lease of Flats Act).

Decision of the Constitutional Court of RC no. U-I-533/2000, from 24th of May 2000: 'Provisions of paragraph 2, 3 and 4 of this Article (Article 24. of Lease of Flats Act) do not govern cases of inheritance of tenancy status of the former tenant. They govern prolongation of tenancy relationship of the same tenancy contract solely by the spouse of the former tenant. Only in cases where no spouse exists, such rights are transferable to some persons, as defined by the law.

[64] *Službeni list Republike Hrvatske*, no. 33/12.
[65] Brežanski, 'Najam stana – položaj zaštićenog najmoprimca,' 15.
[66] Ibid.

The death of the tenant or his move out of the apartment is under the Law not considered to be a reason for termination of the tenancy contract. Therefore paragraphs 2, 3 and 4 of Article 24 govern the procedure of prolongation of such a tenancy contract, with determination of rights and duties of the persons specified in tenancy contract, who lived there with the tenant, but were left behind after the former tenant died or moved out of the apartment.

This Court therefore finds that such prolongation of the tenancy contract, as defined under the Law, does not constitute a breach of Constitutional Guarantee of Private ownership as claimed by the plaintiff.'

The tenant may sub-let the apartment if the landlord agrees with the sub-let (pursuant to Article 28 of the Lease of Flats Act). The tenant is obliged to deliver the sub-let contract to the landlord who then informs the local authorities and the tax office. If the tenant sublets the apartment without the consent of the landlord, the landlord may (According to Article 19 of the Lease of Flats Act) terminate the contract. According to Lease of Flats Act (Article 4) a tenancy contract may be concluded with one person only. The rule has one exception: when the lease is concluded with the both spouses. In reality however the conclusion of contracts with multiple tenants is a common practice, especially in cases of students (renting on the private market).

According to Article 5 of Lease of Flats Act, the duration of the lease is one of the crucial issues the parties have to agree upon. If the lease is open-ended, the specific rules governing the increase of the rent apply. In practice most of the leases are concluded for a limited time period. In such cases rules on tacit renewal pursuant to Article 25 of the Lease of Flats Act may apply:

> A contract on lease for a definite period shall be tacitly renewed for the same duration if none of the parties gives a notice in writing to the other party to enter into a fixed-term contract for a further period, 30 days prior the expiry of the Contract. The landlord wanting to prolong the lease for a further period, under different (changed) conditions, shall notify the tenant within the time and in the manner referred to in paragraph 1 of this Article. If such an offer is not accepted by the tenant within 15 days' time period after receiving such a

notice, it shall be considered that one (the tenant) does not want to prolong the contract for a further period.

In case that the tenant does not accept the changed tenancy contract, he must with the end of the tenancy contract leave the apartment and vacate the premises. In the event that he does not do so, the landlord has the right to legally demand his moving out with a court decision.[67]

The provisions of prolongations as defined above do not apply to cases when the landlord is a person defined under Article 391. of Ownership and Other Proprietary Rights Act – cases in which the landlord is a local community, even in cases when such leases are market oriented.[68]

In cases of protected tenants (former housing rights holders) the lease is always open-ended (until the death of tenant). This brings it close to the personal easement of habituation.

Tenders for social or public lease provide for different solutions. For example, public renting in city of Zagreb is concluded for 5 year period, social renting in Zadar[69] for a maximum of 10 years. Town of Rijeka[70] offers a maximum of 15 years renting period in cases of social housing. On the other hand, in case of social and public housing in City of Vinkovci[71] the contact is open ended.

In the case of the POS Programme, the tenancy contract is concluded for 60 months with a possibility of prolongation for additional 36 months.

Croatian Law regulates two contracts for life: the Lifelong support contract (Article 579 of Civil Obligation Act) and the Contract for support until death (Article 586 of Civil Obligations Act). In both cases the personal easement of habitation is usually agreed upon.

Under the provisions of the Lease of Flats Act the rent is determined as:

[67] Brežanski, Barjaktar, and Đikandić, *Najam stanova i zakup poslovnog prostora u praksi*. 26.

[68] Ibid., 26.

[69] 'Odluka o davanju u najam stanova u vlastništvu Grada Zadra,' Grad Zadar, accessed 5 January 2014, http://www.grad-zadar.hr/repos/doc/najam_stanova.pdf.

[70] 'Odluka o najmu stanova,' *Službene novine Primorsko-goranske županije*, no. 12/11, http://www.sn.pgz.hr/default.asp?Link=odluke&id=22168.

[71] 'Odluka o davanju gradskih stanova u najam,' Grad Vinkovci, 2 December 2008, http://www.vinkovci.hr/f15460/odluka-o-davanju-gradskih-stanova-u-najam.

- protected rent or
- freely contracted rent.

Protected rent is determined according to the conditions and criteria established by the Decree of Croatian Government (controlled rent). According to the Lease of Flats Act it may not be lower than the amount needed to cover the costs of maintenance of the building. Controlled rent is paid by different groups of people; persons in social or public housing (social cases, war veterans) and former housing right holders.

According to the Decision of Constitutional Court of RC no. U-I-762/1996,

> Determining conditions and rules (of protected rent) in a way as it is done in the Government Decree, does not in any way constitute a breach of Article 3. of the Constitution. These provisions only determinate objective conditions (elements) in accordance with which the level of protected rent is determined, for those entitled to pay such a rent. These conditions and rules are not in any connection to the level of price that would be paid for the apartments in case of buy in the process of privatisation.
>
> With these rules, especially when taking into account the social status of the tenants, the principle of social state (Article 1) is fulfilled.
>
> The applicants – landlords of the apartments, who state that the Articles 7 and 6 of the Lease of Flats Act are in breach of the Constitution, lack to acknowledge that one of the Constitutional provisions is also the one defining that the ownership also stipulates obligations and not only rights. Owners have to also contribute to a greater good. In this case, when the situation is a consequence of the change of the legal system, this means that they have to endure less paid rents,…

All other rents, that are not protected rent, are freely contracted rents. No maximum amount of a freely contracted (market) rent is set. Freely contracted market rents are not subject to any legal (or other) control, apart from the provisions, described in Article 10 of Lease of Flats Act. It prohibits rent changes in cases of open-ended contracts during the first year. Thereafter, any party may propose to amend the amount; the rent however may not exceed 120% of the

average contractually agreed rent in the same village or county for a comparable apartment. The proposal to increase (or decrease) the rent has to be made in writing.

Information on the average rent may be obtained from the administrative department of the local government responsible for housing. If the new proposed rent exceeds the statutory maximum (120% of the average market rent in the same area), the tenant has the right to ask the Court to determine the amount of rent. Such claim must be brought within 30 days following the disagreement on the rent. Moreover, under Croatian law rent is controlled in cases of protected and public rentals. The amount of protected rent is regulated by the Government Decree on protected rent. Local authorities on the other hand adopt Rules to determine the amount of public rent to be paid in public housing.

According to Article 534 and 535 of Civil Obligations Act, the tenant shall pay the rent within the time limits stipulated in the contract or regulated by law. In the absence of such contractual or legal provision, the due payment day will be defined in accordance with the customs of the tenancy location. The landlord may terminate a tenancy contract in case of failure by the tenant to pay the rent within 30 days from the date when he was required by the landlord to make the payment. The contract shall however remain in force if the tenant pays due rent before the termination is communicated.

According to general rules on set off in Civil Obligations Law,[72] a debtor may set off his obligation against his claim against the creditor who has requested performance of the obligation. A debtor may set off a claim against the claim of the creditor provided that both claims are payable in money or other fungible property identical in kind or quality and both are due. Set-off is not effected when preconditions have been met, but rather when statement of set-off is made. After the statement of set-off has been made, it shall be deemed that the set-off has been effected at the moment all preconditions for it are met.

According to Article 15 of Lease of Flats Act, the tenant is responsible for the damages he or other occupants cause in the apartment and common areas and facilities of the building under the general

[72] Articles 44–58 of the Civil Obligations Act.

rules of Civil Obligations Act. A statutory lien (subject to foreclosure proceedings) on the tenant's assets (such as the furniture and other movable property in the apartment) is provided for the unpaid rent as well as the damages claim. The landlord has the right to retain the movable property until the tenant pays the due rent or damages. The other members of the household are considered to be jointly responsible. Enforcement (selling of tenant's assets) is governed by the rules of execution of the monetary claims according to Article 336 paragraph 2 of Ownership and Other Proprietary Rights Act. The Public auction is then made in accordance with Execution Act in a court procedure. The tenant and the landlord can agree that no court procedure is needed. In such cases a direct sell can be made.[73] In accordance with rules on retention right the landlord may sell the tenant's assets only if (s)he informed the tenant of such an intent (Article 75 of Civil obligations Law).

Pursuant to Article 10 of the Lease of Flats Act, changes of rent in the open-ended contract of lease, before the expiration of one year, are not allowed. After the first year any party may make a preposition in writing, proposing the change of the rent. The new rent amount is than maximised to 120% of the average contractual rent paid in the similar apartment in the area (as explained above).[74] If the new proposed rent exceeds the allowed amount, the tenant has the right to ask the Court to determine the rent in a 30 days period.

The Law does not provide for any automatic increase or index-oriented clauses in cases of private/market rentals. In cases of protected and public rent, the rent is however increased automatically when the Governmental Decree or local authority Rules on the amount of protected or public rent are changed.

In accordance with the Ownership and Other Proprietary Rights Act (*Zakon o vlastništvu i drugim stvarnim pravima*)[75] the tenant and the landlord are solidary responsible to pay for the utilities.

One of the essential provisions of the tenancy contract is the agreement on who will pay the apartment utilities (pursuant to Article 5 of Lease of Flats Act). In the absence of an agreement the

[73] Gorenc, *Komentar Zakona o obveznim odnosima*, 851.

[74] Data on the amount of the average rent is given by the administrative department of the local government responsible for housing.

[75] *Službeni list Republike Hrvatske*, no. 35/05, 41/08, 125/11.

utilities such as water, electricity, garbage removal, gas supply etc. will be paid by the tenant. On the other hand, utilities such as fee for mandatory maintenance (pričuva) and taxes will be paid by the landlord (Article 554 of Civil obligations Act).[76] The fee for mandatory maintenance is a fee paid to a common 'housing budget' of every dwelling owned by more than one owner. It is intended to be used for repairs and maintenance of the building itself and of the common spaces.

Unless otherwise agreed, costs of small repairs and regular use of the leased dwelling shall be borne by the tenant. All other costs shall be borne by the landlord.[77] Small repairs are considered repairs of smaller importance and changes of smaller parts (light bulbs). Regular use includes costs such as: heating, electricity, use of water, garbage disposal fee and similar. In practice the division of what costs have to be borne by which party (tenant or the landlord) is usually specified in the lease agreement. Otherwise, the rules of usual (standard) practice in the particular region apply.[78] The fee for mandatory maintenance is however paid by the landlord if no special agreement has been made. Sometimes the parties determine a fixed price for the lease (lump-sum). In such cases the utility costs are included in the lump-sum rent.

Increase of prices of utilities has normally to be borne by the tenant. In case of fixed rent clause (lump-sum) the increase is borne by the landlord.[79] If no agreement to change the rent can be made by the parties to the tenancy contract and the preconditions for the changed circumstances clause (*rebus sic stantibus*)[80] have been met, the tenant or the landlord in a lump-sum contract is entitled to demand a change of rent (or termination of the contract) in the court.

According to Article 369 of Civil Obligations Act:

> (1) Should, after entering into a contract, extraordinary circumstances arise, which were impossible to foresee at the time of entering into a contract, making it excessively onerous for

[76] Gorenc, *Komentar Zakona o obveznim odnosima*, 838.
[77] Ibid., 838.
[78] Ibid.
[79] Ibid.
[80] Article 369 of the Civil Obligations Act.

one party to perform or if under such circumstances a party would suffer an excessive loss as a result of the performance, it may request variation or even termination of the contract.

The disruption of supply is considered a breach of Article 13 of the Lease of Flats Act, pursuant to which the landlord has the duty to maintain the apartment in habitable condition in accordance with the lease agreement.[81] When the dwelling is unfit for the use or its use is significantly limited, the tenant may terminate the contract or demand a reduction of rent (Article 12).

Under Article 557 of Civil Obligations Act the landlord is liable for any defects on the dwelling that interfere with the agreed or regular use, irrespective of the fact whether he knew of such defects or not. The landlord is also liable for any lack of characteristics stipulated in the contract, except minor defects. Unless the landlord is aware of such a defect, the tenant is obliged to notify the landlord without any delay about the defect. Failing that, he loses the right to damages as compensation. Additionally, the tenant is liable for any damage the landlord has sustained as a consequence of not being duly informed about defects. The landlord is not liable for disruption of supply if the tenant was (or should have been) aware of the problems at the moment of entering into the contract. On the other hands, the landlord is liable for any defects of which the tenant remained unaware of due to gross negligence on the part of the landlord in cases when the landlord was aware of such defects, but chose to withhold such information from the tenant. The landlord is also liable for any defects in the apartment where he claimed that there is none.

Pursuant to Article 558 of the Civil Obligation Act liability for material defects on the leased asset (the leased apartment) may be contractually excluded or limited. The provision of the contract excluding or limiting liability shall be null and void in two cases:

1. the landlord knew about the defects and deliberately withheld such information if the defect prevent the use of the apartment;
2. when the landlord has imposed such a provision using his monopolistic influence or favoured economic status.

[81] Gorenc, *Komentar Zakona o obveznim odnosima*, 838.

Accordingly, provisions agreed upon may be considered null in three cases. First, when the landlord knew about the defects and deliberately withheld such information. Such behaviour is not in accordance with the principle of equality of parties to obligations (Article 3 of Civil Obligations Act) which provides that parties to obligations shall be equal. Secondly, if the defect prevents the use of the apartment, the essential contract element – the dwelling or the apartment – is breached. Thirdly, if the landlord has imposed such a provision using his monopolistic influence or favoured economic status, which constitutes a breach of principle of equal value of performances (Article 7 of Civil Obligations Act) pursuant to which in concluding and fulfilment of legal transactions, parties shall apply the principle of equal value of mutual performances.

In accordance with Article 559 of the Civil Obligation Act, in case of failure by the landlord to remove the defect within the time limit set by the tenant, the tenant may terminate the contract or demand a reduction of rent. In both cases he is entitled to compensation – damages (a breach of the principle of equal value of performances (Article 7 of Civil Obligations Act).[82]

There are two kinds of defects which have to be considered:[83] reparable defects and irreparable defects.

In case of reparable defects the tenant has to inform the landlord that a defect has occurred (if the landlord is familiar with the defect the duty to inform does not exist) and set an adequate time period in which the landlord has to repair the leased asset. Time period has to be set in accordance with the nature of the leased asset, the defect of the asset and the nature of repair needed. If the landlord does not repair the leased asset in such period of time, the tenant has the right to terminate the tenancy contract or to demand the lowering of the rent as well as for the payment of damages.

If the defects are irreparable, the tenant has a right to terminate the tenancy contract or to demand decrease of the rent. The right to termination is reserved for cases in which the defect prevents the fulfilment of the tenancy contract in its essential part (otherwise such a termination is considered an abuse of rights (Article 6 of Civil Obligation Act)). In these cases the termination will have the

[82] Ibid.
[83] Ibid., 844.

ex nunc effect since the use of the asset has already started (restitutio in integrum is not possible, Article 323 of Civil Obligations Act). In both cases the tenant is entitled to compensation.

The legal concept behind the deposit is that it is mainly a guarantee coverage of potential claims of the landlord after the termination of the contract. In practice, the usual amount of deposit in private rentals is between one and two monthly rents, although no lawfully defined amount of a deposit is set. The deposit is usually paid by the tenant at the moment of the conclusion of the agreement that the tenant will rent the dwelling. It has dual function in practice. The amount of deposit for social and public tenants selected by tender procedure is set by the tender rules in each case.

According to tender for public housing in Zagreb,[84] two monthly rents have to be paid at the conclusion of a tenancy contract. In case of tenders for social and public housing in City of Vinkovci,[85] tender for social housing in Zadar[86] on the other hand, no deposit is required at the conclusion of the contract.

There are no special provisions regulating the storage of the deposit. Interest rates are not anticipated for the private or public landlords (mostly local authorities). As the deposits are predominantly agreed upon in private rentals, where written contracts are rare (or at least not always a given), a signed receipt is usually handed to the tenant. If a written contract is concluded, the amount of the deposit is usually determined in the contract. The parties have the possibility to agree upon the rules of use of the deposit as well as on its interest rates. In practice such provisions are rarely used.

When the tenant uses the apartment according to its normal use, the landlord is obliged to return the deposit upon the cessation of the contract. Usually this will take place after the landlord checks that the apartment is in proper state and the keys to the apartment are returned. (According to Article 17 of Lease of Flats Act there is a duty to return the apartment to the landlord in the condition in

[84] 'Odluka o najmu javno najamnih stanova.'
[85] 'Odluka o davanju gradskih stanova u najam.'
[86] 'Natječaj za davanje u najam socijalnih stanova,' Grad Zadar, 3 September 201, http://www.grad-zadar.hr/vijest/natjecaji-35/natjecaj-za-davanje-u-najam-socijalnih-stanova-883.html.

which it was received, taking into consideration the changes that have occurred with regular usage of the apartment.) If the apartment is not in a proper state upon return, the deposit may be used for repairs. In practice, deposit is frequently used instead of payment of the last (one or two) rents.

According to Gorenc,[87] the question of who is responsible for repairs can be agreed upon between the parties, although this is not expressly governed by the Law. It is possible that all repair works are charged from the tenant.

If no agreement has been made, according to the Article 554 of Civil Obligation Act (lex generalis) the landlord has a duty to maintain the leased asset in a condition fit for the agreed use. This condition has to be kept at all times as long as the lease agreement is valid.[88] The landlord is accordingly obliged to make the necessary repairs in due time at his own cost, while the tenant is obliged to let him do so. The landlord has to reimburse the tenant for any repair costs borne by the tenant, either because the repairs could not wait or because the landlord failed to make them in due time after being notified. Costs of small repairs and costs of regular use of the leased asset shall be borne by the tenant. The tenant shall notify the landlord without delay about any repair needs; failing that, the tenant is liable for damage arising there from. The landlord is liable for the payment of any taxes or other public burdens in respect of the leased asset.

If – during the term of the lease – the apartment deteriorates to such an extent that it is no longer fit for the agreed use or if its use is significantly diminished over an extended period of time due to the needed repairs and the tenant cannot be held responsible, the tenant has the right to reduction of rent or may even terminate the contract if the leased asset is not made fit for use in significant part within a longer period of time (Article 555 of Civil Obligations Act).

The meaning of the notions 'in significant part' and 'longer period of time' has to be interpreted on a case by case basis considering the amount of repair work needed the kind of repair and the nature of the leased asset etc. Both requirements, the leased asset not being fit for use in significant part as well as longer period of

[87] Gorenc, *Komentar Zakona o obveznim odnosima*, 838.
[88] Ibid., 838.

time-duration, have to be fulfilled at the same time (commutation of both requirements is needed). The tenant can demand from the court that the rent be reduced according to the restrictions of the use of the asset and the duration of such a situation.[89]

If the leased asset is not fit for use due to tenant's culpable behaviour, the tenant does not have the right to demand the termination of the lease or the reduction of rent. In such cases the tenant will have to pay the damages.

The landlord may not make any alterations to the rented asset that might interfere with its use without approval by the tenant. In case of alterations to the asset that cause its diminished use or deterioration of its agreed use, the tenant is entitled to a proportionate reduction of rent (Article 556 of Civil Obligation Act). The landlord has to behave in a manner that will not limit the use of the leased asset as defined under the tenancy contract. The landlord has to refrain from active use of his or her right on the leased asset. Passive behaviour of the landlord is demanded (logic of 'nicht zu stoeren' applies) The changes by the landlord on the leased asset may not disturb the tenant's use unless the consent of the tenant has been given. If the landlord does not comply, the tenant has the possibility to lodge an application for prohibition of disturbance of possession.[90] If the effects of change on the leased asset diminish its use the tenant has the right to ask for reduction of rent.

Rights of tenants before the foreclosure of the mortgage remain the same as if there was no mortgage on the dwelling in question. Mortgagee has no rights in relation to the tenant. Article 88 of the Execution Act (*Ovršni zakon*)[91] defines cases in which the rights of the tenants cease to exist when the foreclosure enforcement procedures take place.

Tenancy contracts concluded and entered in the Land registry before the acquisition of a lien or right to settlement with respect to whose fulfilment the execution is demanded, do not cease, once the real estate is sold. The purchaser takes the place of the landlord as of the moment of acquiring the title of the real estate. Tenancy contracts not entered into the Land registry before the acquisition

[89] Ibid., 840.
[90] Ibid.
[91] *Službeni list Republike Hrvatske*, no. 112/12, 25/13.

TABLE 6.4 Implementation of Tenancy Contracts

Category	(1)	(2)	(3)	(4)
Breaches prior to handover	By the tenant: loss of the right; By the landlord: possible reduction of the rent, damages, termination of the contract	By the tenant: loss of the right; By the landlord: possible reduction of the rent, damages, termination of the contract	By the tenant: loss of the right; By the landlord: possible reduction of the rent, damages, termination of the contract	Same
Breaches after handover	By the tenant: cancelation, termination; By the landlord: possible reduction of the rent, damages, termination of the contract	By the tenant: cancelation, termination; By the landlord: possible reduction of the rent, damages, termination of the contract	By the tenant: cancelation, termination; By the landlord: possible reduction of the rent, damages, termination of the contract	Same

Continued on the next page

of a lien or right to settlement cease once the ruling adjudicating the real estate to the purchaser becomes legally effective.

Tenant whose right ceases to exist is not entitled to demand compensation for damages in the execution procedure. Such compensation can be demanded in civil procedure in cases in which damage to the tenant was made, as a result of such change of his or her status. Tenant is entitled to sue previous landlord for damages he or she suffered.

6.5 Implementation of Tenancy Contracts

The Lease of Flats Act does not contain any special provision regarding the disruptions of performance prior to handing over of the dwelling; no provision dealing with delayed completion of the dwelling exists under Croatian law. General rules dealing with landlord's non-compliance with his obligations will be used in such cases, since delayed completion of the dwelling will result in breach of landlord's obligation to handover the dwelling to the tenant.

The primary obligation by the landlord is handing over the pos-

TABLE 6.4 *Continued from the previous page*

Category	(1)	(2)	(3)	(4)
Rent increases	In open-ended tenancies only after one year, to a maximum of 120% of the average rent	In accordance with the Croatian Government Decree	In accordance with the Croatian Government Decree and in accordance with the change of Local authorities' Rules	Protected tenancies; Social and public tenancies; Market tenancies
Changes to the dwelling	Not allowed	Not allowed	Not allowed	Market tenancies; Protected tenants' tenancies; Social and public tenancies
Use of the dwelling	As agreed under the tenancy agreement, no subletting only if allowed by the landlord	As agreed under the tenancy agreement, no subletting only if allowed by the landlord	As agreed under the tenancy agreement, no subletting only if allowed by the landlord	Same

NOTES Column headings are as follows: (1) main characteristic(s) of market tenancies, (2) main characteristic(s) of protected tenants' tenancies, (3) main characteristic(s) of social and public tenancies, (4) ranking from strongest to weakest regulation.

session of the dwelling to the tenant: The landlord handovers the dwelling or an apartment to the tenant in a state that is suitable to live in and keeps it in such a state.[92]

According to Gorenc,[93] handing over of the dwelling does not constitute the formation of the obligation between the landlord and the tenant but rather its fulfilment. The act of handing over the dwelling enables the tenant to use the leased asset thereby fulfilling the core essence of the tenancy contract. Obligation to handover the dwelling is considered as primary, since it is followed by all the other obligations deriving from the tenancy contract; for exam-

[92] Article12 (1) of the Lease of Flats Act.
[93] Gorenc, *Komentar Zakona o obveznim odnosima*, 837.

ple tenant's duty to pay rent. Therefore no obligation to pay rent prior to handover of the dwelling exists. Even landlord's duties to keep the leased dwelling in a state that is suitable to live in, duty to pay public burdens, responsibility for legal and clerical defects becomes effective after the duty of handover of the dwelling has been fulfilled.[94]

Since in cases of delayed completion of the dwelling the possibility to force the landlord to handover the dwelling in a court procedure is more or less excluded (due to non-existence of the asset being leased) as well as the possibility to demand a reduction of rent (since the rent will have to be paid only after handing over of the dwelling), the tenant is able to use other legal options. The tenant may decide either to keep the contract in place (with changed date of handover of the dwelling) or to terminate the contract. In the latter case, the contract is terminated by a notification, which has an ex tunc effect.[95] In any case, the tenant has the right to demand compensation for the damage he suffered due to late fulfilment or nonfulfillment of landlord's obligation to handover the dwelling.

When the landlord does not fulfil his obligation to handover the dwelling in time, the tenant has the right to damages for the loss he suffered[96] resulting from landlord's non-compliance. Lease of Flats Act Article 12 (3) in this case refers to use of rules on remedies as defined in Civil Obligations Act (Articles 342–56).

Article 342 of Civil Obligations Act defines consequences of non-performance of obligation: A creditor (the tenant) in a binding relationship is authorized to request the debtor (the landlord) to perform the obligation, and the landlord is obliged to fully perform the obligation as it reads.[97] When the landlord does not perform an obligation or is late with the performance, the tenant is also entitled to request compensation for the damage suffered thereby.[98] The landlord having been given by the tenant a reasonable subsequent time-limit for performance is liable for damage due to such late performance[99] (even if the landlord fulfils his obligation in ex-

94 Ibid., 836.
95 Ibid., 837.
96 Article 12 (3) of the Lease of Flats Act.
97 Article 342(1) of the Civil Obligations Act.
98 Article 342(2) of the Civil Obligations Act.
99 Article 342(3) of the Civil Obligations Act.

tra given period of time).[100] The landlord is also liable for partial or full impossibility to perform, although the impossibility was not due to his fault if the impossibility occurred after the delay the landlord is liable for.[101] However, the landlord is not liable for damage if he proves that the subject of the performance would have been lost by accident even if the landlord had performed his obligation in time.[102]

In accordance with Article 346 of Civil Obligations Act the tenant is entitled to compensation for scope of damage comprising of ordinary damage, loss of earnings and to equitable non-pecuniary damage that, at the time of entering into a contract, had to be foreseeable by the landlord as possible consequence of a breach of the contract, considering the facts he knew or should have known at the time.[103]

In case of fraud or deliberate non-performance or non-performance due to gross negligence, the tenant has the right to request from the landlord compensation for the entire damage (not only for the foreseeable one) that was caused due to breach of the contract, regardless of the fact that the landlord did not know of the particular circumstances resulting in the damage caused.[104] The landlord will be released from his liability to pay for damages if he can prove that he could not perform his obligation or that he is late with the performance due to external, extraordinary and unforeseeable circumstances arising after entering into the contract. These circumstances have to be such in nature that he could not have prevented, eliminated or avoided them.[105] In cases of delayed completion of the dwelling resulting from bankruptcy of the building company, the landlord may be able to prove that his inability to fulfil his obligation was caused due to circumstances for which he cannot be held liable for.

In cases when the tenant or a person for whom the tenant is responsible for, is at fault for contributing to the caused damage or its scope or for making the position of the landlord more onerous,

[100] Added by the author.
[101] Article 342(4) of the Civil Obligations Act.
[102] Article 342(5) of the Civil Obligations Act.
[103] Article 346(1) of the Civil Obligations Act.
[104] Article 346(2) of the Civil Obligations Act.
[105] Article 343 of the Civil Obligations Act.

the compensation will be proportionally reduced[106] (for example if the future tenant demanded that some changes be made to the apartment leading to late performance).

Article 344 of Civil Obligations Act stipulates that the liability of a landlord may be extended by contract to cover all cases for which he is not liable for otherwise.[107] However, the fulfilment of such a clause may not be required if it is contrary to the Principle of good faith and fair dealing.[108] According to Gorenc,[109] the parties are able to contractually agree to include responsibilities of all kinds. This could include even the landlord's responsibility for vis major.[110] The possibility to broaden the liability is considered a dispositive provision, as long as the agreement is in accordance with the Principle of good faith and fair dealings. On the other hand, the liability of the landlord may be limited or even excluded. The liability of the landlord for intentional or gross negligence may not be excluded or restricted by contract in advance,[111] however, at the request of an interested contracting party a court may annul even the clause on exclusion or restriction of liability for ordinary negligence if such agreement arises from a monopolistic position of the debtor or from inequality in relations between the contracting parties in general.[112]

When concluding the tenancy contract the parties may agree upon contractual penalties. The tenant will then have the possibility to invoke the penalty if the landlord does not comply with his contractual obligation. The landlord shall have to pay a certain amount of money or shall have to provide for some other material benefit to the tenant in case of non-performance or a delay in performance or a faulty performance of his contractual duties (in this case handover of the dwelling).[113]

Unless otherwise indicated by the contract it shall be deemed that

[106] Article 347 of the Civil Obligations Act.
[107] Article 344(1) of the Civil Obligations Act.
[108] Article 344(2) of the Civil Obligations Act.
[109] Gorenc, *Komentar Zakona o obveznim odnosima*, 508.
[110] Although as commented by Gorenc, the tenant will in practice have a hard time convincing the landlord to sign such a contractual agreement.
[111] Article 345(1) of the Civil Obligations Act.
[112] Article 345(2) of the Civil Obligations Act.
[113] Article 350(1) of the Civil Obligations Act.

the penalty is stipulated for cases when the landlord is late with his performance.[114] The contracting parties may determine the amount for the penalty at their discretion: as a total amount, as a percentage or for each day of the delay or in any other manner.[115] The penalty relating to the performance of an obligation must be agreed upon in a form prescribed for by the contract from which such obligation arises (in this case a lease contract; therefore a written form will be necessary).[116] Such agreement shall cease to be legally effective if non-performance or faulty performance or delayed performance resulted from causes for which the landlord is not liable for.[117]

When penalty is contracted for cases of non-performance of obligation, the tenant may request either performance of the obligation or the contractual penalty.[118] The tenant loses the right to request performance of the obligation if he already requested payment of the contractual penalty.[119] When penalty is contracted for non-performance, the landlord is not entitled to pay the contractual penalty and to rescind the contract, unless such was the intention of the contracting parties when they agreed upon the penalty.[120] When penalty is contracted for cases of the landlord's delayed performance or faulty performance (this will be the case always if not explicitly agreed upon differently – Article 350(1)) the tenant is entitled to request both performance of the obligation and payment of the contractual penalty.[121] The tenant may not request payment of the contractual penalty for delayed or faulty performance if he received the performance of the obligation, but did not notify the landlord without delay that he reserved his right to a contractual penalty.[122]

At the request of the landlord a court shall reduce the sum of the contractual penalty if it finds that the sum is disproportion-

[114] Article 350(1) of the Civil Obligations Act.
[115] Article 351(1) of the Civil Obligations Act.
[116] Article 351(2) of the Civil Obligations Act.
[117] Article 352(2) of the Civil Obligations Act.
[118] Article 353(1) of the Civil Obligations Act.
[119] Article 353(2) of the Civil Obligations Act.
[120] Article 353(3) of the Civil Obligations Act.
[121] Article 353(4) of the Civil Obligations Act.
[122] Article 353(5) of the Civil Obligations Act.

ately high in view of the value and the significance of the subject of the obligation.[123] The tenant is entitled to request a contractual penalty even if the amount of the penalty exceeds the value of the damage suffered, as well as in cases when it did not suffer any damage.[124] When the value of the damage suffered by the creditor exceeds the amount of the contractual penalty, the creditor is entitled to request the balance up to the full compensation.[125] In case of non-performance, faulty performance or delayed performance of an obligation, when the law specifies the compensation amount as penalty, contractual penalty, compensation or otherwise and where additionally the contracting parties have contracted a penalty, the creditor (the tenant) is not entitled to request both the contractual penalty and the compensation determined by law, unless it is allowed by law.[126]

Refusal of handover of the dwelling by the landlord is considered a breach of the tenancy contract. As already explained above, the landlord has the primary duty to handover the dwelling to the tenant. Since lease is a consensual contract, handover of the leased asset (the dwelling) does not constitute the lease contract, but is rather regarded as its fulfilment. There are more possibilities for the landlord to handover the dwelling to the tenant: a real handover of the possession (*tradition de mano ad manu*), handover with signs, symbolic handover (*tradition symbolica*) as well as handover by declaration (tradition per declarationem).[127] Therefore the possibility to enter the lease contract with two different tenants for the same dwelling (apartment) cannot be excluded. In cases of such 'double lease,' when landlord concluded two valid contracts with different tenants, the rules regulating third party claims (legal defects) are applicable.

Article 560 of Civil Obligation Act defines that where a third party claim to the leased dwelling or part thereof and approaches the tenant with such a claim or arbitrarily prevents the tenant to use the dwelling in its part or whole, the tenant shall be obligated to notify the landlord thereof; failing that, he shall be held liable for the

[123] Article 354 of the Civil Obligations Act.
[124] Article 355 (1) of the Civil Obligations Act.
[125] Article 355(2) of the Civil Obligations Act.
[126] Article 356 of the Civil obligations Act.
[127] Gorenc, *Komentar Zakona o obveznim odnosima*, 837.

damage. An exception to this rule exists when the landlord is already aware of such a fact (as will usually be the case in cases of 'double lease').[128] If a third party has a rightful claim that fully excludes the right of the tenant to use the dwelling, the tenancy contract is terminated ex lege (*ipso iure*) and the landlord is obligated to compensate the tenant for the damages he suffered thereof.[129] When on the other hand a right of a third party only restricts the right of the tenant, the latter may, if he so chooses, either terminate the contract or demand a reduction of rent. Next to that he may demand compensation for damage he suffered thereof.[130]

To conclude, the tenant who has the real possession of the dwelling has the right to demand from the landlord that the second tenant (not in possession of the dwelling) does not disturb his use of the dwelling. A claim seeking remedy for any damage suffered is possible (if the conditions are met, the possibility to seek remedy for the entire damages will be possible – see the end of this paragraph). Lease contract between the landlord and the second tenant, the one not in possession of the dwelling, is terminated ex lege (ipso iure). The second tenant will usually be able to prove fraud, deliberate non-performance or non-performance due to gross negligence on part of the landlord. Accordingly, the tenant is entitled to request from the landlord compensation for the entire damage (not only for the foreseeable) that was caused due to breach of the contract, regardless of the fact that the landlord did not know of the particular circumstances resulting in the damage caused.[131]

When the tenancy agreement is fulfilled (completed), the tenant has the duty to return the apartment in the same state it was handed over, taking into account the changes that have occurred with the normal use of the apartment, if the parties have not agreed differently.[132]

If the tenant does not vacate the apartment within the notice period, or within the time specified by the landlord in cases of Article 20 of Lease of Flats Act, the landlord may file a claim for eviction of the tenant before the competent court. The procedure is deemed

[128] Article 560(1) of the Civil Obligations Act.
[129] Article 560(2) of the Civil Obligations Act.
[130] Article 560(3) of the Civil Obligations Act.
[131] Article 346(2) of the Civil Obligations Act.
[132] Article 17of the Lease of Flats Act.

as urgent, which means it has priority.[133] After the decision of the court the tenant can be forcibly evicted in accordance with the rules of Execution Act.

The landlord has the obligation to handover the leased dwelling in an appropriate state and in accordance with the agreement between the parties. Whether the dwelling is in an appropriate state is a question of fact and depends on individual circumstances. The rented dwelling will normally be considered to be in an appropriate state if the rooms of the apartment (the dwelling) are dry, lightened, if the sanitary facilities are included, if the apartment is furnished with the necessary furniture and habitable (nobody else is already living or has the right to live inside).[134]

Personal insolvency procedures have not yet been regulated in Croatian Law. Therefore only the general rules regarding non-payment of the rent will apply in such cases.

The landlord must ensure a normal use of a dwelling during the period of tenancy contract (see more above in the question on delayed completion of the dwelling and the question on public law impediments). Next to that the landlord has the duty to maintain the dwelling or the apartment in an appropriate condition, to restrict himself from the use of the apartment and to guarantee the tenant that the apartment if free from material or legal defects.

Article 13 of Lease of Flats Act defines that the landlord has to maintain the apartment in habitable condition in accordance with the lease agreement. The tenant is obliged to inform the owner of the necessary repairs in the apartment and common areas of the building, which are then borne by the landlord. Tenant and other occupants shall allow the landlord or a person authorized by the landlord to enter the apartment in relation to the control of the use of the apartment.[135]

According to Civil obligations Act the landlord has to reimburse the tenant for any repair costs borne by the tenant, either because the repairs could not wait or because the landlord failed to make

[133] Article 22 (4 and 5) of the Lease of Flats Act.

[134] Gorenc, *Komentar Zakona o obveznim odnosima*, 837.

[135] Or as defined in Civil Obligations Act Article 554(1): to maintain the dwelling or the apartment in a condition fit for the agreed use, the landlord shall be obligated to make the necessary repairs in due time and at his own cost, and the tenant shall be obligated to allow that.

them in due time after being notified.[136] Costs of small repairs and costs of regular use of the dwelling are borne by the tenant.[137] The tenant has a duty to notify the landlord without delay about any repair needed; failing that, he is liable for any damage arising thereof.[138] The landlord is liable for the payment of any taxes or other public burdens in respect of the rented dwelling.[139] When during the term of the lease, the dwelling or the apartment deteriorates to such an extent that it is no longer fit for the agreed use or where its use is significantly diminished over an extended period of time due to the needed repairs and the tenant is not responsible for that, the tenant has the right to obtain a reduction of rent, or even terminate the contract if the dwelling is not made fit for use within an acceptable period of time.[140]

The landlord is not allowed to make any alterations to the rented dwelling that would interfere with its use without approval by the tenant.[141] In case the alterations to the dwelling cause diminished use or deterioration in its agreed use, the tenant is entitled to a proportionate reduction of the rent.[142] Moreover, the landlord is liable for any defects of the dwelling that interfere with its agreed or regular use, irrespective of the fact whether he knew of such defects or not and for any lack of characteristics or traits stipulated in the contract, except minor defects (see more above).[143]

Where a third party puts claim to the rented dwelling or part thereof and approaches the tenant with his claim, or arbitrarily takes the dwelling from the tenant, the tenant is obligated to notify the landlord thereof, except where the landlord is already aware of that; failing that, the tenant is held liable for the damage[144] (see more above).

The landlord has a lien on the things brought in by the tenant for due rent and other claims arising from the tenancy contract (such as

[136] Article 554(2) of the Civil Obligations Act.
[137] Article 554(3) of the Civil Obligations Act.
[138] Article 554(4) of the Civil Obligations Act.
[139] Article 554(5) of the Civil Obligations Act.
[140] Article 555 of the Civil Obligations Act.
[141] Article 556(1) of the Civil Obligations Act.
[142] Article 556(2) of the Civil Obligations Act.
[143] Article 557(1) of the Civil Obligations Act.
[144] Article 560(1) of the Civil Obligations Act.

damage done by the tenant, unpaid rent) that may be the subject of seizure and may retain them until settlement of such obligations.[145] (The landlord may lay claim to the tenant's belongings as well as improvements made to the dwelling).

The tenant is obliged to surrender the leased apartment upon termination of the lease.[146] The tenant is not liable for fair wear and tear of the apartment resulting from its regular use nor for any damages attributable to its ageing.[147] Unless otherwise agreed, the tenant has to, where he has made any alterations to the apartment, restore the thing to the condition in which he received it.[148] The tenant is allowed to take away any accessories he added to the apartment if these can be removed without damaging the apartment, but the landlord shall have the right to keep them; provided he reimburses the tenant for their value at the moment of surrender.[149]

Next to the possibilities described above, the landlord has the right to remedies for the damages he suffered in cases when the preconditions are met to either cancel or terminate the tenancy contract.

No possibilities to unilaterally change the rent in cases of time limited tenancy contract exists under Croatian law. In cases of open ended tenancy contracts, a change of the rent may be proposed by the landlord (or the tenant) upon the expiry of one year. In accordance with Article 11 of Lease of Flats Act when rent increase is proposed by the landlord it cannot exceed the legal amount of 120% of the rent paid in the area for a similar apartment.

Ordinary rent increases to compensate inflation/increase gains can be agreed upon by the parties to the contract either when signing the tenancy contract or at any later stage. Under Croatian law, when such clauses have not been agreed upon explicitly, they do not automatically apply.

Failing an explicit agreement to the contrary, neither party may unilaterally change the rent. This applies to rent increase after renovation works as well – the landlord may not increase the rent even

[145] Article 565 of the Civil Obligations Act.
[146] Article 566(1) of the Civil Obligations Act.
[147] Article 566(2) of the Civil Obligations Act.
[148] Article 566(3) of the Civil Obligations Act.
[149] Article 566(4) of the Civil Obligations Act.

if the dwelling was renovated; unless the tenant agrees with such an increase. However, due to the fact that any alteration by either party on the leased apartment has to be agreed upon by the both parties, usually the parties will define such a change of rent when agreeing on the changes.

Under Croatian law rent increase in rentals with public task is regulated in Article 7 of Lease of Flats Act. A protected rent is determined by the conditions and criteria established by the Croatian Government. The government's Decree determines the amount of protected rent.

In accordance with Article 11 of Lease of Flats Act a rent increase can be proposed by the landlord in case of the open-ended tenancy contracts. It however cannot be proposed prior to the passing of the first year. If the new proposed rent exceeds the legal maximum amount which is set to 120% of the rent paid in the area for a similar dwelling, the tenant has the right, within the time period of 30 days, to demand from the court to define the rent in accordance with the law. Until the court's decision the tenant is to pay the contracted rent. In cases of protected rent the procedure is defined by the Croatian Government Decree (Lease of Flats Act, Article 7).

Data on the amount of the average rent is gathered by the administrative department of the local government responsible for housing and is based on the tenancy contracts registered with the administrative department.[150] Such data will however be deemed as incomplete due to lease contracts generally not being registered.

In accordance with Article 11 of Lease of Flats Act, when rent increase is proposed by the landlord and exceeds the legal maximum amount of 120% of the rent paid in the area for a similar dwelling, the tenant has the right, within the time period of 30 days, to demand from the court to define the rent in accordance with the law. Until the court's decision the tenant is to pay the contracted rent.

Without approval of the tenant the landlord may not make any alterations to the leased dwelling that would interfere with its use. In case of alterations to the dwelling that causes its diminished use or deterioration in its agreed use, the tenant shall be entitled to a proportionate reduction of rent.[151] The landlord shall be liable for

[150] Article 11 of the Lease of Flats Act.
[151] Article 556 of the Civil Obligations Act.

any defects in the dwelling that interferes with its agreed or regular use, irrespective of the fact whether he knew of such defects or not and for any lack of characteristics or traits stipulated in the contract, except minor defects. The landlord shall not be liable for any defects of which the tenant was aware of at the moment of entering into the contract or of which he could not have not known. He is liable for any defects of which the tenant remained unaware of due to gross negligence on the part of the landlord who was aware of such defects but chose to withhold such information from him. The landlord is liable for any defects in the leased asset where he claimed that it had none. The tenant has to notify the landlord without delay about any defect that would appear during the term of the lease, unless the landlord is aware of such a defect; failing that, he shall lose the right to damages compensation on account of such a defect and shall reimburse the landlord for any damage he has sustained because of that. Liability provisions apply also to defects in the dwelling appearing during the term of the lease.[152]

Liability for material defects in the dwelling may be contractually excluded or limited. The provision of the contract excluding or limiting liability is considered to be null and void if the landlord knew about the defects and deliberately withheld such information or if the defect is such that it prevents the use of the thing or if the landlord has imposed such a provision using his monopolistic influence or favoured economic status.[153]

According to Gorenc[154] the right to use the rented dwelling in a non-disturbing way encompasses the prohibition of the landlord's use, since one excludes the other. The landlord has to put up with the tenant's use of the dwelling by remaining passive. Next to that, the landlord must refrain from any action; he may not make changes to the dwelling that would interfere with the tenant's use.

Tenant shall use the apartment in a way that keeps it from being damaged.[155] The tenant must not make changes to the apartment or the common areas and facilities in the building without the prior written consent by the landlord.[156] The tenant is obliged to inform

[152] Article 557 of the Civil Obligations Act.
[153] Article 558 of the Civil Obligations Act.
[154] Gorenc, *Komentar Zakona o obveznim odnosima*, 841.
[155] Article 15(1) of the Lease of Flats Act.
[156] Article 15(2) of the Lease of Flats Act.

the landlord of the necessary repairs in the apartment and common areas of the building, which shall then be borne by the landlord.[157] In these cases the tenant or other persons using the apartment are obliged to let the landlord (or the person he sends) enter the apartment.[158]

Civil Obligations Act regulates the tenant's use in a similar way (Article 561). The tenant is obliged to use the dwelling in accordance with the contract and its intended use. The tenant has to act with diligence of an orderly and conscientious tenant or with reasonable host diligence. The tenant is liable for any damage arising from the use of the dwelling which is contrary to its agreed or intended use irrespective of the fact whether him or another person acting on his behalf, a subtenant or other person to whom he has given the use of the dwelling, is using the dwelling.

Both obligations aim at keeping the leased dwelling in a suitable form for further use. The Lease of Flats Act defines such a purpose explicitly in Article 14, according to which the tenant is obligated to use the dwelling in a way that keeps it from being ruined.

Under the Lease of Flats Act the landlord may unilaterally terminate the lease contract due to anti-contractual use of the dwelling. When the tenant continues, even after being warned by the landlord not to do so, to use the dwelling contrary to the contract or its intended use, neglects its maintenance or causes damages to the dwelling, particularly when he gives it to a third person, the landlord may cancel the contract without notice.[159]

No specific obligation of the tenant to live in the dwelling exists under Croatian Law – neither under Lease of Flats Act nor under Civil Obligations Act. According to Gorenc,[160] to use the dwelling is the tenant's right, not his duty (citing Article 18 (1) of the Lease of Flats Act). The actual use of the dwelling is not considered as essential part of the tenancy contract since one can enter into a valid tenancy contract and never use the apartment provided the rent is being paid.

The tenant is however obliged to use the dwelling if such a duty

[157] Article 15(2) of the Lease of Flats Act.
[158] Article 16 of the Lease of Flats Act.
[159] Article 562 of the Civil Obligations Act.
[160] Gorenc, *Komentar Zakona o obveznim odnosima*, 846.

arises from the nature of the contract (for example if the landlord wants someone to inhabit the apartment, provided that the tenant is aware of this), if the law prescribes such obligation (protected tenants, social renting) or when the parties have explicitly agreed on a tenant's duty to live in the dwelling.

If the parties have explicitly agreed upon the tenant's duty to use the dwelling, a breach of this obligation is governed by Article 561 of Civil Obligations Act, according to which the tenant is obliged to use the leased dwelling in accordance with the contract (the actual use the rented dwelling) and its intended use. In such cases the landlord has the right to remedy for breach of the contract and damage suffered.

6.6 Termination of Tenancy Contracts

The parties to the tenancy contracts are free to arrange all their mutual rights and obligations, unless a specific question is already regulated by a mandatory provision (Article 3 of the Lease of Flats Act). When the parties do not agree upon some of their mutual rights and obligations the rules of Lease of Flats Act (special law) or Civil Obligations Act (general law) will apply.

According to Klarić and Vedrić, there are four main sets of reasons why a tenancy contract may be terminated under Croatian law:[161]

1. *The end of the time period for which the tenancy contract has been concluded.* In cases when a tenancy contract has been concluded only for a limited period of time, it shall be terminated by the end of such a period. For this to take action, an additional condition has to be fulfilled. In accordance with Article 23 of the Lease of Flats Act, at least one of the contracting parties has to inform the other, that he/she does not intent to prolong the tenancy contract. The notice has to be given in writing, at least 30 days prior to the expiration date of the tenancy contract. When a written notice is not given, the tenancy contract will be considered as tacitly renewed for the same period of time as the previous contract was concluded for.

[161] Klarić and Vedriš, *Građansko pravo*, 529.

TABLE 6.5 Termination of Tenancy Contracts

Category	(1)	(2)	(3)	(4)
Mutual termination	Possible	Possible	Possible	Equal
Notice by tenant	Without reason, with 3 months termination period in open-ended tenancies (or notice period from the contract); Termination without termination period; Cancelation	Without reason, with 3 months termination period (always open-ended!); Termination without termination period; Cancelation	In cases of open-ended tenancy contracts (not usual) – without stating reason, with 3 months termination period; Termination without termination period; Cancelation; Rules of the Local authorities	Equal
Notice by landlord	Termination with a termination period (3 or 6 months); Cancelation	Termination with a termination period (3 or 6 months+ additional criteria); Cancelation	Termination with a termination period (3 months); Cancelation; Rules of the Local authorities	Protected tenants' tenancies; Social; Market

Continued on the next page

2. *Termination of the tenancy contract.* In case of open-ended tenancy contract, the tenant has a right to terminate the contract without stating the reason. The tenant is obliged to give a written notice to the landlord at least three months prior to his moving-out of the apartment.
   The landlord is able to terminate the tenancy contract only for two reasons prescribed by the Law. A written statement of reasons for terminating the tenancy contract has to be given in both cases. Under the Lease of Flats Act, the contract may be terminated for culpable and non-culpable reasons by the landlord. The culpable reason is fulfilled when the tenant breaches some of his contractual or legal obligations, as prescribed under Article 19 of the Lease of Flats Act (illegal

TABLE 6.5 *Continued from the previous page*

Category	(1)	(2)	(3)	(4)
Other reasons for termination	Demolition of the dwelling, urban renewal, expropriation	Demolition of the dwelling, urban renewal, expropriation	As determined by the Rules of the Local authorities	Protected tenants' tenancies; Social; Market
Use of the dwelling	As agreed under the tenancy agreement, no subletting only if allowed by the landlord	As agreed under the tenancy agreement, no subletting only if allowed by the landlord	As agreed under the tenancy agreement, no subletting only if allowed by the landlord	Same

NOTES Column headings are as follows: (1) main characteristic(s) of market tenancies, (2) main characteristic(s) of protected tenants' tenancies, (3) main characteristic(s) of social and public tenancies, (4) ranking from strongest to weakest regulation.

subletting of the apartment, non-payment of the rent,…). In such cases a notification and a notice to stop with the breach within 30 days has to be given to the tenant. If the tenant does not stop with the breach, termination letter with a three months move out period can be given. In cases of third sequent breach, no notice to stop has to be given (a direct three months move-out period is possible).

If the landlord terminates the tenancy contract due to the fact that he himself intends to move into the apartment or needs the apartment for his family members, he will be allowed to do so (the non-culpable reason). In such cases a six months move-out period for the tenant applies.

In cases of a protected tenant, two additional conditions have to be met (Article 40 (1) and (4) of Lease of Flats Act): (1) the landlord is older than 60 years or lives on social services, (2) the tenant has another appropriate apartment in the same area.[162]

3. *Cancellation of the tenancy contract.* According to Lease of Flats Act, cancelation of the tenancy contract is reserved only for the landlord (Article 20). However Civil Obligations Act

[162] Constitutional Court decision U-I-762/1996 and U-III-25429/2009.

prescribes the cases in which cancelation by the tenant is also possible. There are two cases in which the landlord may cancel the lease: (1) when the tenant harms the common area in the building and does not repair it in period of 30 days, (2) when the tenant makes changes to the apartment or common area of the building, without having a written consent by the landlord. In both cases a written notice with an explanation of reasons and a 15 days move-out period has to be given.

Pursuant to Article 12 of the Lease of Flats Act and the rules of Civil Obligations Act, the tenant has a right to cancel the tenancy contract in cases when the leased apartment cannot be used or is not in a state as defined by the parties under the tenancy contract.

4. *Mutual agreement between the parties.* At any given time a mutual agreement between both contracting parties to terminate the tenancy agreement, with or without the termination period is possible.

Article 5[163] of the Lease of Flats Act prescribes that the landlord and the tenant in the process of concluding a tenancy contract are to agree upon, among other things: duration of the tenancy contract and the rules of the handover of the apartment. Such agreement has to be included in the tenancy contract. If such an agreement is not included in the tenancy contract, the rules of the Lease of Flats Act will apply.

The parties are free to agree upon any reason or date of the termination of the tenancy contract (in accordance with the Article 3 of the Lease of Flats Act). No special rules regarding mutual termination agreements under Croatian law exist. In order that such an agreement is to be considered legally binding however, a written form is required.[164]

There are three ways in which the tenant may give his termina-

[163] Article 5 (6) and (9) of the Lease of Flats Act.

[164] Article 576 (3) of the Civil obligations Act. However in accordance with the case law developed in cases of Operating leasings, which are applicable also to cases of leases of apartments; a verbal contract that has been in its whole or in its substantial part already fulfilled, is considered valid. Supreme Court Decision no. Rev208/96 and no. Rev219/98).

tion notice: termination with termination period, termination without the termination period and cancelation of the tenancy contract. Notice by the tenant may or may not include reasons for termination. Notice has to be given in writing.[165]

Pursuant to Article 23 of Lease of Flats Act, the tenant is allowed to terminate the tenancy agreement without stating any reason only in cases of open ended agreements if he respects the obligation to notify the landlord at least 3 months prior to the date on which he intends to move out of the apartment. In cases of contracts limited in time the tenant may not terminate the agreement before the agreed time period. On the other hand, there are several reasons for the tenant to terminate the tenancy agreement due to landlord's 'at fault' behaviour. The tenant may cancel the contract if the dwelling or the apartment that is being leased is not in an agreed or appropriate state to be used (Civil Obligations Act Article 553 (2) and (3)). In such cases the tenant has the right to terminate the tenancy contract if the reasons from Civil Obligations Act are met.

The tenant is also allowed to terminate the tenancy contract at any given time without termination period, if the leased dwelling or the apartment is hazardous to his health. This applies even to cases when the tenant was aware of that situation at the time of entering into the tenancy contract.[166] The tenant may not waive this right.[167] Finally, a mutual agreement between the parties is always possible. For example an agreement between the parties that a different (new) tenant will continue the tenancy contract is possible.

As already explained, the tenant has the right to terminate the tenancy contract concluded for an indefinite period of time at any given moment, without stating any reason. In cases of contracts limited in time, the tenant does not have the possibility to terminate the contract prior to the expiration date, unless otherwise agreed by the contracting parties. Contracting parties may in theory agree upon any termination period and sanctions for their breach, including penalty provisions. Such agreements are not common in practice and there is no case-law on this issue. The landlord has no statutory right to compensation.

[165] Article 576 (3) of the Civil Obligations Act.
[166] Article 576(4) of the Civil Obligations Act.
[167] Article 576(5) of the Civil Obligations Act.

The first precondition is that the termination notice is given in writing.[168] A 3-months termination period given in a written notice prior to the move-out of the apartment is also mandatory.[169]

Under Croatian Law a distinction between reasons for terminating tenancy contracts can be subsumed under the notions of ordinary and extraordinary notice reasons. The distinction is made between termination and cancellation of tenancy contracts. Termination of tenancy contracts (ordinary notice) applies to cases of breach by the tenant (Article 19 of the Lease of Flats Act). A period of min. 30 days, in which the tenant may react to the breach and repair it, has to be given by the landlord. If the tenant does not stop with the breach or does not repair the damage he caused, the landlord may give a written three months move-out period notice. When this period has passed, the eviction procedure may be started.

On the other hand, Cancelation (extraordinary notice) can be made by the landlord only in cases of major breaches of the tenancy contract by the tenant. There are only two such cases under the Croatian Law.[170] In cases of cancelation a direct move-out period of only 15 days can be given by the landlord (in a written form).

Pursuant to Article 19 of the Lease of Flats Act, the landlord has the right to terminate (ordinary notice) the lease if the tenant or other occupants of the apartment use the apartment contrary to the provisions of the Lease of Flats Act or the tenancy agreement, and in particular:

- if the tenant fails to pay within the agreed period of time the rent or other (contractual) costs in relation to housing,
- if the tenant subleases the apartment without the permission of the landlord,
- if the tenant or other occupants of the apartment disturb other tenants or occupants in peaceful use of the dwelling or of their business premises,
- if the apartment is used by a person who is not listed in the tenancy contract for more than 30 days without the permission of the landlord, except when such a person is a spouse, descendants or a parent of the tenant, a person the tenant is

[168] Article 576 (3) of the Civil Obligations Act.
[169] Article 23 of the Lease of Flats Act.
[170] Article 20 of the Lease of Flats Act.

obliged by law to support, or the person who provides for the tenant or other occupant of the apartment with the necessary care and assistance until such a need exists,

- if the tenant or other occupants of the apartment do not use the apartment for housing, but use it in whole or in its part for other purposes.

The landlord may not terminate the tenancy contract prior to giving a written warning urging the tenant to eliminate the reasons for termination within 30 days. In case of non-compliance by the tenant the landlord can terminate the tenancy contract with a 3 months' notice period.[171] The notice has to be given in writing and has to include the explanation of the reasons for the termination. The notice has to be handed over directly to the tenant (who has to sign it to confirm the receipt), or sent to the tenant with registered mail.[172] If the tenant refuses to accept the mail, the termination period starts on the day when the notice was sent.[173] The landlord however has the right to terminate the contract without any notice period if the tenant violates the contract or mandatory rules more than twice (third time no notice period to stop with the breach is necessary).[174]

Pursuant to Article 20 of Lease of Flats Act the landlord may cancel (extraordinary notice) the tenancy contract in cases when:

- the tenant or other users cause damage to the common areas, appliances and parts of the dwelling and do not remedy such a damage in a 30 days period,
- the tenant modifies the apartment, common areas and facilities of the building without the prior written consent of the landlord.

In these two cases the landlord may cancel the tenancy contract in writing, with an explanation and with the eviction date which cannot be shorter than 15 days. Finally, the landlord may terminate an open ended tenancy contract if he, his descendants, parents or persons he is obliged to support under law, intend to move into the apartment. The notice period has to be given in writing and at least

[171] Article 22(2) of the Lease of Flats Act.
[172] Article 19(2) of the Lease of Flats Act.
[173] Article 22(3) of the Lease of Flats Act.
[174] Article 19(3) of the Lease of Flats Act.

6 months in advance.[175] An additional obligation that the landlord is obliged to provide for a tenant alternative appropriate apartment has been abolished by the Constitutional Court in 1998.[176] In cases when the tenant does not vacate the apartment within the notice period or within the time period specified by the landlord,[177] the landlord may file a complaint with the competent court for eviction of the tenant. The procedure is urgent and is treated with priority.

There are two important Constitutional Court decisions regarding the termination of the tenancy contract by the landlord in case of protected tenants. The first decision U-I-762/1996 has been passed in 1998. With this decision several rules (also) regarding termination of tenancy contracts, regulated with Lease of Flats Act, have been derogated (abolished). This specifically affected three provisions:

- Article 21()2, according to which in cases of termination of the tenancy contract the landlord had to provide for another adequate apartment to his tenant, has been cancelled;
- Article 39;
- Article 40(2), which applied only to protected tenants.

Since the derogation of these provisions no changes to the Law have been passed in accordance with the Constitutional Court decision. Even more, the lack of such provisions, protecting the group of protected tenants (former housing right holders), led to several eviction processes. In the eviction procedures the courts have been deciding solely upon the landlord's claim that he or she meets the criteria to evict the protected tenants, due to a need to move into the apartment himself or some of his family members (Article 40/1 of the Lease of Flats Act). In these situations, the landlords did not have to fulfil any additional conditions. One of the controversial court decisions was passed by of the County Court in Rijeka Gž 1258/00-2, on 18. 9. 2002.[178] Thereafter, protected tenant ap-

[175] Article 22(2) of the Lease of Flats Act.

[176] Decision by the Constitutional Court no. U-I-762/1996.

[177] Article 20 of the Lease of Flats Act.

[178] In this case the County Court in Rijeka passed a decision in accordance with which an eviction procedure of protected tenant has been allowed only by the stipulation of the landlord, that he needs the apartment for himself. No additional criteria of Article 40. have been proved as fulfilled by the landlord.

pealed to the Constitutional Court. Constitutional Court issued interim decision (injunction) to stop the execution process, until it passes its full decision on the matter. 'It has been stressed, and not without a reason, that the derogation of these provisions have had an extremely negative consequences on the situation of protected tenants.'[179]

In 2010, the Constitutional Court passed a new decision regarding the derogated Article 40/2, which regulates termination of tenancy contracts in cases of protected tenants. In its decision, the Constitutional Court stressed that in case of termination of the tenancy contract for protected tenants, an additional condition enshrined in Article 40(4) of Lease of Flats Act has to be fulfilled for the landlord to be able to move the tenant out of the apartment. Article 40(4), according to the argumentation of this decision, defines that the protected tenant has to own another adequate apartment before the landlord may move him from the apartment.

There are two different situations when the prolongation of the tenancy contract under Croatian law occurs. Firstly, the prolongation can occur due to change of any of the contracting parties. The regulation of such cases is prescribed under the Article 24 of the Lease of Flats Act. In cases when the landlord dies or ceases to exist (cases in which the landlord is a legal person) the tenancy contract itself does not cease to exist. The rights and obligations of the tenancy contract are transferred to/prolonged with the heir or legal successor of the landlord. The new landlord has to except the same rights and obligations as the landlord he or she replaces.[180]

In the event of the death of the tenant or when the tenant leaves the apartment, the rights and obligations of the tenant are ex lege transferred to his spouse. If there is no spouse, the rights and obligations under the tenancy agreement are transferred to a child, stepchild or adopted child in accordance with the tenancy contract.[181] The beneficiary of such a right has a duty to inform the landlord about such a situation within 30 days after the death (or move) of the previous tenant. At the same time the beneficiary is also obligated to inform the owner if he or she intends to termi-

[179] Brežanski, 'Najam stana – položaj zaštićenog najmoprimca,' 30.
[180] Article 24 of the Lease of Flats Act.
[181] Article 24(2) of the Lease of Flats Act.

nate the tenancy contract.[182] If there is more than one beneficiary, they have to reach a mutual agreement between themselves on the question which of them will assume the rights and obligations of the previous tenant. Failing to do so within 30 days from the death of the previous tenant (or his leave), such a situation will cause the assumption that the apartment is being used without any tenancy agreement.[183] In such cases the landlord will be able to demand that the apartment be vacated.

The second situation concerns cases when a tenancy contract concluded for a definite period of time is tacitly renewed. Tenancy contract is renewed for the same duration (as the previous term) if neither party gives a notice in writing to the other party stating that he or she does not intend to enter into a fixed-term contract for a further period of time.[184] If the landlord wants to renew the tenancy contract for a further period of time, but wishes to do so under changed conditions, he shall notify the tenant of his intents. The notification has to be sent in writing and at least 30 days prior to the expiration of the tenancy contract.[185] In cases when the tenant does not accept such an offer within 15 days, he or she will be considered not interested in prolonging such a tenancy contract under the changed circumstances. In such cases the tenancy contract will expire and will not be tacitly renewed.[186]

The tenant may challenge the termination in a legal procedure before the Municipal court (court of first degree). Possible objections to the termination may include reasons such as:

- there exists no legal or contractual reason for which the termination of the tenancy contract could be given,
- the termination notice was not given in a legally or contractually prescribed manner,
- the tenant did not receive the termination notice,
- the termination notice did not include legally prescribed dead-line in which the tenant has to stop with the breaches of the tenancy contract,

[182] Article 24(3) of the Lease of Flats Act.
[183] Article 24(4) of the Lease of Flats Act.
[184] Article 25(1) of the Lease of Flats Act.
[185] Article 25(2) of the Lease of Flats Act.
[186] Article 25(3) of the Lease of Flats Act.

- the landlord has not respected the legally or contractually prescribed notice period
- the tenant was not given a moving-out time period,

Lease of Flats Act and Civil obligations Act define some other reasons for which the tenancy contract can be terminated. Such cases include those of: cases of destruction of the leased asset (for example, when an earthquake destroys the apartment subject to the lease) and cases when the tenant and the landlord become the same person (e.g., when the tenant buys or inherits the apartment he lives in as a tenant).[187] Next to that, the parties are free to agree upon any other reasons for terminating the tenancy agreement.

In cases of death or change of the landlord, the tenant does, in accordance with the provision of Article 24 of the Lease of Flats Act, not lose his rights. The rights and duties are transferred to the new landlord. The tenant will however be in a possibility to terminate his tenancy contract if the landlord is changed. Although the Lease of Flats Act in its Article 24 stipulates that the death or change of the landlord does not influence the tenancy contract, one has to bear in mind that such a provision is there solely to protect the tenant. Therefore the tenant will have the possibility to terminate such a contract if he chooses so.[188]

In cases of public auction pursuant to foreclosure proceedings against the landlord, the Execution Act[189] defines cases in which tenancy contract ceases to exist due to execution on the apartment. In cases when the tenancy contract is not concluded or entered into a Land registry before the acquisition of a lien or right to settlement, the rights of the tenant cease to exist once the real estate is sold. In such cases the court decides upon the move out period, in which the tenant has to vacate the dwelling. Such period cannot be shorter than three months.[190] In cases of bankruptcy of the landlord, the status of the tenant remains unchanged.

There are no special provisions under Croatian law that regulate cases of rights of tenants in urban renewal. In these cases the general rules on termination will therefore apply.

[187] Brežanski, 'Najam stana – položaj zaštićenog najmoprimca,' 28.
[188] Article 24 of the Lease of Flats Act.
[189] *Službeni list Republike Hrvatske*, no. 112/12, 25/13.
[190] Article 130 of Execution Act.

TABLE 6.6 Enforcing Tenancy Contracts

Category	(1)	(2)	(3)	(4)
Eviction procedure	Termination of the tenancy contract; Notice period prescribed by the law to move out of the apartment; Execution procedure	Termination of the tenancy contract; Notice period; Execution procedure	Termination of the tenancy contract; Notice period; Execution procedure	Protected tenancies; Social tenancies; Market tenancies
Protection from eviction	No protections from eviction possible	The tenant does not own or possess another apartment.	As prescribed by the Rules of Local authorities.	Social tenancies; protected tenancies; market tenancies
Effects of bankruptcy	No effects	No effects	No effects	No effects

NOTES Column headings are as follows: (1) main characteristic(s) of market tenancies, (2) main characteristic(s) of protected tenants' tenancies, (3) main characteristic(s) of social and public tenancies, (4) ranking from strongest to weakest.

6.7 Enforcing Tenancy Contracts

When after the termination of a tenancy contract and expiration of termination (notice) period the apartment is not vacated and returned to the owner, the landlord is entitled to demand eviction of the tenant before the court. Eviction procedures have priority (Article 22 of the Lease of Flats Act). The Municipal Courts are competent at the first instance.

An execution procedure for eviction of the tenant may be started upon a landlord's request after a final Judgement is passed by the Court. A viable possibility to conclude a directly enforceable Notary deed already in the tenancy agreement itself exists. In accordance with the opinion of the legal experts (among them Josipović) such a directly enforceable Notary deed can be agreed upon for number of breaches of the tenancy contract; such as: late payment of rent, late payment of expenses or use of the apartment that is in a breach of the tenancy contract.[191] In case of directly enforceable Notary deed

[191] Personal interview with Tatjana Josipović, 24 December 2013.

a direct execution without prior court judgement is possible.[192]

The execution procedures are, next to the tenant, also possible against other persons using the apartment; for example tenant's family members, visitors etc. The execution may also be initiated against sub-tenants or any other person using the apartment due to contractual right deriving from contract between the landlord and the tenant.[193] The Municipal Courts are competent for execution at the first instance.

The territorial jurisdiction to adjudicate on eviction motions and surrender of real estate (as well as the implementation of execution) lies with the court on whose territory the apartment is located (Article 225 of the Execution Act). The execution procedure is governed by the Section 21 of the Execution Act, Articles 255–9.

In the execution procedure the execution administrator (bailiff) physically removes persons and things from the real estate and then surrenders the apartment into the landlord's possession (Article 226 (1) of the Execution Act). The vacating and surrender can be executed after the elapse of eight days starting from the day of serving the writ of execution to the tenant. If the tenant could not be properly served at his last known address or in the way provided for by the provisions of Execution Act, the court has to, without delay, appoint a temporary representative, on whom the writ of execution is served. If necessary, the court imposes fines or orders the imprisonment against persons who obstruct the implementation of the execution (Article 226 (3) of the Execution Act). At the request of the court, the police and social services provide all the necessary help (Article 226 (4) of the Execution Act). The necessary labour and means of transport for the implementation of the execution are provided by the landlord at the execution administrator's request of which the landlord must be informed at least eight days before the implementation of the execution (Article 226 (6) of the Execution Act).

Chattels (removed things) from the apartment are handed to the tenant or, if he is not present, to an adult member of his household (Article 227 (1) of the Execution Act). In case the persons to whom chattels can be surrendered are not present or if they refuse to ac-

[192] V. Rončević, 'Ovrha na nekretnini i deložacija,' Ius-info, 12. September 2013, http://www.iusinfo.hr/Article/Content.aspx?SOPI=CLN20V01D2013B613.

[193] M. Dika, *Opče građansko parnično pravo* (Zagreb: Narodne novine, 2007).

cept them, they are surrendered to another person for safekeeping at the tenant's expense. The landlord has to ensure the presence of such other person to whom removed things are surrendered. The landlord may himself take over the tenant's things for safekeeping (Article 227 (2) of the Execution Act).

The execution administrator surrenders the removed things to the safekeeping of another person or to the landlord. The court confirms the administrator's action with a conclusion. The court can order that the things be confided to some third party in place of the person they were surrendered to (Article 227 (3) of the Execution Act). The court than notifies the tenant of the surrender to another person and of the safekeeping costs and grant him a suitable time limit within which he can ask for the surrender of things upon payment of the safekeeping costs (article 227 (4) of the Execution Act). The court cautions the tenant that the things will, after the lapse of a certain period of time, be sold and the costs of safekeeping and sale settled from the sales price.

If the tenant successfully defends himself against the execution at a later court procedure (for example: the landlord did not respect the duty to previously warn the tenant to stop with the breaches of the tenancy agreement), he may subsequently start a legal action against the landlord, demanding to restore the previous status or alternatively to initiate a cross-action on the grounds that the prior Judgement has been overturned.[194]

Under Croatian Execution Act, no general protection or social defences are available. However, the Lease of Flats Act limits the reasons for non-culpable termination of the tenancy contract in cases of protected tenants. The termination of the contract is not possible (even if other criteria are fulfilled[195]), if the tenant does not possess an apartment where he is able to move. Before the Constitutional Court decision no. U-I-762/1996, the landlords had an obligation of reassuring another apartment to the tenant.

Since the start of the financial crisis in 2008, the number of eviction procedures forcing tenants and homeowners to move out of the apartments they occupy, has grown rapidly. The comparison of the

[194] Rončević, 'Ovrha na nekretnini i deložacija.'

[195] The landlord needs the apartment for his personal use or for use of his family members and is at the same time older than 60 years or lives on social help.

numbers of evictions in the year of 2006 and 2012 shows an enormous rise. According to statistics of the Croatian board of Commerce (*Hrvatska gospodarska komora*), there were 319 evictions in Croatia in 2006 compared to 375 in 2012 solely in the territory of Municipal Court of the City of Zadar.[196] In 2012 an overall number of 4.784 evictions took place in Croatia, reaching a staggering 1.400% rise in comparison to the year of 2006. According to Ministry of Justice more than 10 such procedures are being executed daily. Execution procedures of vacation and surrender of premises have been in the public focus due to growing numbers of citizens stricken by the financial crisis and unable to pay off their debts. The effect of the crisis has been most strongly felt by the groups of socially most endangered populations: low income households, non-employed, those with big mortgage payments and young families; especially the ones with children.[197]

The media usually depicts those stricken by execution procedures due to extreme poverty. Even more, many evictions are a direct result of unfair contractual terms forced by the banks in the loan agreements, such as those in the Case of Franak. The unfair contractual terms led to an extreme rise in the monthly mortgage instalments (in some cases over 60% in rise). Due to the extreme fall of market prices in the last years, the sell in execution procedure usually covers only a small portion of the debt owed to the bank. The debtors have thus no apartment, but still a huge debt to pay off. In many cases the debtors, even families with small children, become homeless. Media coverage has led to growing number of public debates on the need for more social justice. The need for changes of the legislation that would enable some social defences in the eviction procedure has been pointed out. Two questions deserve particular attention: (1) should social defences such as prohibition of eviction be allowed in cases where the debtor has nowhere to move, (2) should there be a minimum amount of claim set by the Law, below which the eviction from an apartment is not possible.

Debates taking place both in lay public as well as among legal professionals and experts have introduced the issue of inviolability of home in the course of legal actions in connection with fraudu-

[196] Rončević, 'Ovrha na nekretnini i deložacija.'
[197] Ibid.

lent behaviour of some banks. On March 3rd 2013 the President of the Republic of Croatia, Ivo Josipović, sent a List of twenty Recommendations to the Croatian Government. The President urged the Government to amend the legislation in order to ease the on-going pressure of the financial crisis upon the most vulnerable in the population. He urged for more social justice and solidarity, which should be reached (among others) with the introduction of personal bankruptcy procedures, changes to the Execution Act, control over formulating interest rates on bank loans, introducing possibilities of debt cancelation and reprograming, moratorium on paying the banking loans and transformation of the banking loans defined with Swiss Francs.

According to the President's opinion, two problems are connected to execution (eviction) procedures on dwellings. Firstly, due to extreme fall of prices the citizens, while losing their property, are still left with enormous debts. Secondly, many families are left without their home and have nowhere to live.[198] This is especially problematic when a very low amount of debt ended in the execution.

Social Care Act[199] defines criteria in order for a person to be provided with an 'urgent settlement.' The settlement is possible in a social apartment or in any other way. According to interpretation by the Ministry of social policy and youth,[200] article 103(1) and (2) do not however encompass evictions as a result of execution procedures. The only exception is provided for families with young children (Article 105 of the Social Care Act).

The city of Zadar has reported in July 2013, that no applications for urgent settlements have been made. However, even in the case they had been made, the City would be unable to provide for them. This is due to the fact that in situation of a long list of applicants waiting on social apartment, most of them themselves with extreme social and health issues, the idea of an unused apartment set aside for such cases would according to the city government not be possible.[201]

[198] Ibid.
[199] *Službeni list Republike Hrvatske*, no. 33/12, 46/13, 49/13.
[200] Class 022-06/13-01/59, no. 519-03-1-1/1-13-2.
[201] Rončević, 'Ovrha na nekretnini i deložacija.'

However, it has to be stressed that such an obligation of the Local authorities is not limited by the local authorities' possibilities, but has to be always fulfilled (the law does not allow any reasons for not fulfilling such an obligation). In these cases an alternative to settlement into social apartment would have to be found.

Bankruptcy of consumers does not exist under Croatian Law. This lack has been especially problematic in the past few years when the impact of the crisis hit a number of socially most vulnerable people.

6.8 Tenancy Law and Procedure 'In Action'

The three processes; process of restitution, process of privatisation of previously socially owned apartments and the process of the return of the refugees after the last war (especially return of the minority Serb population), raised a lot of political and legal conflicts in the field of tenancy. Therefore several groups of interested public have been formed, among them Croatian association of owners of property confiscated during the fascist and communist regimes (*Hrvatska udruga vlasnika otuđene imovine za vrijeme fašističkog i komunističkog režima*),[202] Alliance of tenants' associations of Croatia (SUSH – *Savez Udruga Stanara Hrvatske*),[203] Croatian association of tenants (Udruga stanara Hrvatske),[204] Association of co-owners of apartment buildings (*Udruga stanara – suvlasnika stambenih zgrada*)[205] and the Serbian national council (*Srpsko narodno vijeće – nacionalna koordinacija vijeća srpske nacionalne manjine u Republici Hrvatskoj*).

These coalitions, groups of tenants and landlords, set up their associations with the aim of acting as lobby groups and exercising pressure on the government to make visible steps towards solving the problems their members face. They are mostly formed as associations as defined under the Associations Act (*Zakon o udrugama*).[206] They do not however have any privileged status under the Croatian law that would enable them to get involved in the

[202] Since the web page of the association cannot be found, the information of the address is given: Preradovićeva 34, Zagreb, tel. 0038514812712.
[203] https://sites.google.com/a/pravonadom.com/public/contact-us.
[204] http://www.ush.hr/USH.htm.
[205] http://www.udruga-stanara.hr.
[206] *Službeni list Republike Hrvatske*, no. 88/01, 11/02.

process of drafting the tenancy legislation. Most of the associations have a status of non-governmental organisation.

Alliance of Tenants' Associations of Croatia. The aim of this association is 'reaching the situation in which the same legal possibilities are afforded to all former housing right holders in the whole Croatian territory.'

Serbian National Council (SNV)[207] is elected political, consulting and coordinating body acting as self-government of Serbs in the Republic of Croatia concerning the issues of their human, civil and national rights, as well the issues of their identity, participation and integration in the Croatian society. Serbian National Council was founded by virtue of the Erdut Agreement, which guarantees stronger local minority self-government to Serbs, particularly by virtue of the special item 9 of 'The Letter' of the Government of the Republic of Croatia on the completion of the peaceful reintegration of the areas under the transitory government as a council of the Serbian ethnic community in Croatia, i.e. as an institution of the minority ethnic self-government of Serbs in Croatia, and finally by virtue of the Constitutional Law on the rights of national minorities in the Republic of Croatia.[208]

In the field of housing the Serbian national council has and still is playing an enormous role, especially with urging the State to

[207] http://snv.hr/about-snv/.

[208] The Council was founded on the basis of the century's long tradition of Serbian self-government, which goes back to the times of first church/popular parliaments, via legal and political acts regulating the position of Serbs in Croatia during the 18th and 19th centuries, to the documents of the State Antifascist Council. The founding assembly meeting of the Council was held on July 19, 1997 in Zagreb at the incentive of the Alliance of Serbian Organizations and its members: Serbian cultural association Prosvjeta, Serbian Democratic Forum, Community of Serbs from Rijeka, Community of Serbs from Istria as well as the Joint Council of Municipalities of Eastern Slavonia, Baranja and Western Srijem. Apart from the founding initiators, founding members were also Serbian Independent Democratic Party, Baranja Democratic Forum, Association of Serbian Refugees and Expellees from Croatia, representatives of some church municipalities of the Serbian Orthodox Church, Members of Parliament of Serbian ethnicity and respectable individuals. The Council was founded on the values of democracy, civil society, tolerance, multiculturalism and interculturalism and as such is opposed to any kind of ethnic, religious or political extremism which endangers tolerance of differences, recognition of different identities and their integration in the entirety of the national culture.

provide for housing related to process of return of Serbian refugees and IDPs to their (former) homes.

No standard contracts are prepared by associations or any other actors. In cases when the landlord and the tenant engage a real estate agency, the agency will usually prepare a tenancy contract, but only for the two parties involved. It is therefore more likely that in such cases all the prescribed rules of the Lease of Flats Act and Civil obligations Act in the tenancy contract will be fully respected. With that minimising possibilities of problems occurring due to improperly prepared contract. However, the agencies do not offer any standard contracts. A form of standard contract can be found on different internet sites. One of such form sheets can be found on the internet site www.iusinfo.hr which is a commercial site for legal professionals.[209] The form sheet they offer would be easily used as a standard prepared contract.

In cases of market rentals, disputes are usually carried out informally, without using legal recourse. This is due to three different reasons. First of all, the legislation appears to be overly protective of tenants in cases of termination. Secondly, the legal procedures for termination and eviction, take almost a year to be solved at the first instance and few years to be finally resolved. This is even more problematic considering that the tenancy contracts are mostly concluded for limited period of time – in most cases for one year. Thirdly and finally, most market rentals are concluded in the black market. Due to such a situation it is very hard to prove what was agreed upon between the parties and that an agreement existed in the first place.

Municipality Courts are competent for solving tenancy disputes on the first instance. There is no special court jurisdiction for tenancy disputes under Croatian Law. When the decision on the first instance has been passed, an appeal can be made to the County Court, acting as the second degree court in such disputes. Supreme Court is, upon the decision is made by the County Court, the last instance court. Only limited possibilities of extraordinary remedies can be used in front of Supreme Court. One of such remedies is revision. Revision is the most commonly used remedy in front of the Supreme Court in tenancy disputes.

[209] The charge is quite high, therefore mostly reserved only for legal professionals.

The tenancy disputes, although qualified as priority cases, are solved within several months after the initiation of the procedure (six and more). As a result, parties are reluctant to bring their disputes in front of the Courts (since most of the tenancy contracts are concluded for short periods of time, among which one year tenancy contract would be the most common). Court procedures are mostly used for disputes in protected tenancies and social tenancies. Alternative dispute mechanisms such as mediation and arbitration are also not offered in tenancy cases under the Croatian law.

The access to Courts is a problem in Croatia due to extremely lengthily legal procedures. Even though the procedures in cases of termination of tenancy contracts as well as their execution are handled with priority, they may take years to be resolved. This is partly due to non-existence of alternative dispute resolution programmes under the Croatian law.

Court fees are defined under the Legal Fees Act (*Zakon o sudskim pristojbinama*);[210] the level of fees seems not to be a problem in tenancy cases. In accordance with the Free legal assistance Act (*Zakon o besplatnoj pravnoj pomoći*)[211] legal aid is given free of charge to those in need. There are no insurances against legal costs available.

Legal certainty in tenancy law appears not to create any problems aside from the issue of contract termination to protected tenants after the Constitutional Court decision passed in 1998.

The Decision by the Constitutional Court number U-I-762/1996 from the 1998, as has already been explained on the termination of tenancy contracts above, derogated some of the social defences installed in the legislation both for market and protected tenancies. After the Constitutional Court decision the provision of forcing the landlord to ensure another appropriate apartment to his tenant in cases when he is terminating the tenancy agreement because he himself needs the apartment (or his children need to use the apartment), has been abolished. This decision let to explosion of terminations of tenancy contracts in cases of protected tenancies. Many problematic Court decisions have been passed,[212] allowing such ter-

[210] *Službeni list Republike Hrvatske*, no. 74/95, 57/96,137/02,26/03, 125/11, 112/12.
[211] *Službeni list Republike Hrvatske*, no. 81/2011.
[212] Decision by the County Court in Rijeka no. Gž 1258/00-2.

minations to take place even when the tenant had no appropriate apartment to move into (as prescribed by the Lease of Flats Act. Execution of such decisions has been in some cases stopped by the Constitutional Court, but not at all in all cases. The Constitutional Court then in the year of 2009 passed a new decision, decision number U-III-135/2003, putting a stop to such problematic interpretation of the Lease of Flats Act. Sadly quite some problematic court decisions (alowing illegal executions to take place) have been passed even after this date.

There are no serious problems of this nature under tenancy law in Croatia. Such cases would probably amount to a criminal offence of fraud, defined under Article 236 of Criminal Act (*Kazneni zakon*).[213] The punishment for fraud is set to up to 8 years of imprisonment.

There are no legal provisions that have become obsolete and therefore not used in practice anymore. This is mainly due to the fact that the Croatian tenancy legislation is rather new; with the Lease of Flats Act dating from 1996 and Civil Obligations Act passed in 2005.

However, the non-enforcement of tenancy disputes in front of courts is very common. Because of time consuming court procedures and strong protection of tenants before eviction, the problems in market tenancies are often not settled before a court, leading to a situation where the tenants are not protected at all, due to the fact that the landlords enforce their 'rights' by force.

The most serious problems in tenancy law and its enforcement are the following:

- Slow and time consuming legal procedures; leading to non-use of court procedure in cases of market rentals, and long time periods in which the tenancy cases brought before the court (such as those involving protected tenants) are solved.
- The lack of possibility to begin enforcement procedures immediately after termination of the tenancy contract, without filing a suit for emptying and vacating the premises beforehand.
- Question of who can legally become entitled to a status of

[213] *Službeni list Republike Hrvatske*, no. 125/11,144/11.

protected tenant has been most challenging question in the legal disputes in the field of tenancy. However, this question is only a *questio facti* and not a legal question.

- Question of returnees and their possibilities to gain status of protected tenants.
- New possibilities for protected tenants to become entitled to protected tenancy contracts on social housing (housing built by the towns).
- Avoidance of paying taxes on renting, leading to black market. In such cases the tenants are unable to apply for housing allowance, a form of social help offered by the Local authorities and the State.
- Lack of social defences for tenants in cases of evictions.
- Lack of personal bankruptcy procedures.
- Lack of alternative dispute resolutions, such as arbitration and/or mediation.
- Lack of Associations and other forms of interested public, to propose changes to the market tenancy legislation.
- Lack of long term tenancy agreements in market and social housing in the practice.
- Lack of social housing due to extreme scarcity of the available apartments.

At the moment there are several debates on topics that are tenancy-related in Croatian public and politics. These debates include questions of solving the issue of protected tenants, further evolvement of POS Programme Rent to buy scheme, introduction of limits to eviction procedures (social defences on evictions) and the need for Personal bankruptcy procedure under the Croatian law.

Chapter Seven

Typical National Cases (With Short Solutions)

7.1 Non Existence of the Tenancy Contract with Protected Rent (Social Renting)

The tenant A lived in the house of the landlord B as a holder of a housing right. The tenant did not set the request to conclude the tenancy contract in the period prescribed by the Law. B filed a law suit against A for eviction due to the lack of legal basis for the usage of the house. In the same proceedings A filed a counterclaim asking the Court to pass a decision which would replace the tenancy contract because he missed the term trying to buy the house in question.

Court's Decision. The eviction was rejected and a decision replacing the tenancy contract was passed. A person whose status of the holder of the housing right was terminated by the entry into force of the Law, at the same time, *ex lege* acquired the rights and obligations of the tenant-lessee. The fact that the tenancy contract does not exist cannot automatically be regarded as a usage of a house without a legal basis due to the prevailing opinion that the term for setting the request for conclusion of the contract is not preclusive, furthermore, the law does not prescribe the loss of *ex lege* status as a consequence for missing this deadline. Thus, the tenant can set the request even after the expiry of the term. It can even be set during the proceeding in the form of counterclaim or a separate law suit by requesting the court to pass the decision replacing the contract. In addition, the reason why the tenant missed the term has to be evaluated *in concreto* for each case. So, only if was established that the tenant did not have the justified reason for not requesting the conclusion of the contract or that the tenant unduly refused to conclude the contract, the courts would order the eviction on the basis of the lack of legal basis for the usage of the house. This opinion was based on the fact that the landlord cannot force the tenant to conclude the contract and is not entitled by the Law to request

the Court to pass a decision which would replace the tenancy contract (only the tenant is), so if the tenant unduly misses to request the conclusion, he loses the status acquired *ex lege* and therefore uses the house without legal basis.[1]

7.2 Right to Protected Rent

A and B (spouses) lived as holders of the housing right in C's house. Upon the entrance into the force of the Law, C called them to conclude tenancy contract with freely determined rent (private renting) because A and B were owners of several real-estates. A and B asked C to conclude the tenancy contract with the protected rent, what C rejected. A and B filed a law suit requesting the Court to pass a decision which would replace the tenancy contract with the protected rent.

Court's Decision. The Court denied their request after establishing that A owned a housing unit suitable for moving-in and habitation, therefore, A and B were not entitled to protected rent. The Court also found that A and B owned a vacation house and a vineyard, but these real-estates were of no influence to this right because they are not considered as houses suitable for habitation.[2]

7.3 Non Existence of the Written Tenancy Contract (Private Renting)

Tenant A lived in the B's house. A and B never concluded the tenancy contract due to some procedural reasons on B's side. A paid certain utility costs regarding the housing, and few times asked B to sign the contract. After few years B sued A for eviction due to the usage of the house without a legal basis. B filed a countersuit asking the Court to declare he acquired the status of lessee and to pass a decision which would replace the tenancy contract.

Court's Decision. The Court rejected eviction and declared that A acquired the status of lessee. Namely, a written form of the tenancy contract is not a necessary condition for acquisition of this status because the Law does not prescribe the consequences for the lack

[1] Articles 30 and 33 of the Lease of Flats Act; County Court in Bjelovar, Gž-1809/2001-2; Municipal Court in Osijek, P 2621/01; County Court in Osijek, Gž-1267/01-2; Costitutional Court of Republic of Croatia U-III-2000/2001, 2002.

[2] Article 31 of the Lease of Flats Act; Municipal Court in Bjelovar, P-2045/99.

of the written form. In addition, the rights and obligations from the contract were executed for a longer period of time (A used the house and paid utility costs). Thus, the tenancy relation exists and is executed on the basis of an oral agreement. The Court also rejected to pass a decision which would replace the tenancy contract because A does not belong to the category of protected tenants who are entitled to set this request due to the fact that he was not the holder of the housing right on the house in question because he moved in after the enforcement of the law.[3]

7.4 Death of the Protected Tenant (Social Renting)

The tenant A and landlord B had concluded a rental contract with protected rent for B's house. The contract also indicated that the house would be used by her unmarried partner C. They inhabited the house until A's death. After A's death, C continued to live in the house, but soon, due to the fear that he would be evicted, turned to B. C and B concluded a contract on temporary usage of the house. This contract stated that after A's death the house had been emptied and that B is now giving the house in possession to the C for the temporary usage until the expiry of a short period. Soon upon this, C sends the B a request for conclusion of tenancy contract with protected rent, all in the period of 60 days from A's death. B rejected his request stating that by concluding the contract on temporary usage C waived his right to conclude the tenancy contract with protected rent. Because C would not leave the premises upon the expiry of set deadline, B filed a lawsuit against C for eviction on the grounds of unlawful residence. In the same proceedings C requested the court to declare his status of protected tenant and pass a decision which would replace the tenancy contract with protected rent.

Court's Decision. The eviction was rejected and the court passed the decision which replaced the tenancy contract. After the death of the protected tenant, the rights and obligations of the protected

[3] Article 73 of the Civil Obligations Act in relation to Article 4 of the Lease of Flats Act and Article 33 the Lease of Flats Act; Municipal Court in Karlovac, P-132/07-46, 1st of May 2007; County Court in Karlovac, Gž-2292/07-2, 27th of February 2008; Supreme Court of Republic of Croatia, Rev 659/08-2, 15th of September 2010.

tenant *ex lege* transfer to the person indicated in the tenancy contract, but that person has to request a conclusion of tenancy contract with the landlord in the period of 60 days from the death of the protected tenant. Since C never left the house upon A's death and requested the conclusion of the contract in the prescribed period of 60 days and, the fact that that he had concluded a contract with contrary content has no legal effect because C never left the possession of the house, that is, he continued to posses the house on the basis of the first tenancy contract concluded between A and B.[4]

7.5 Change of the Landlord

The tenant A and landlord B had concluded a rental contract with protected rent for B's house. During the validity of this contract, C became a new owner of the house in question. C informed A on his ownership. Due to the missed rent payments, C sent A a written warning to pay the rent. A did not comply with the warning. C gave a notice of contract to A and filed a lawsuit against B for eviction.

Court's Decision. The Court accepted the notice and ordered the eviction of A. Since the new landlord C informed A on his ownership, A was in obligation to pay him the rent without any change in the existing contract because the rental relationship is transferred *ex lege* to the new owner. Thus, A is in the breach of the contract and the notice is valid.[5]

7.6 Notice by the Landlord Due to the Intention to Move into the Rented House

Tenant A and landlord B had concluded a rental contract with protected rent for B's house. Upon a certain period, B gives a notice of the contract due to the intention to move into the house in question. B files a lawsuit against A for eviction.

Court's Decision. The Court denies B and refuses to order the eviction. In 1998, the provisions of the Law prescribing this reason for notice were challenged before the Constitutional Court. The

[4] Articles 38 and 33 of the Lease of Flats Act; Municipal Court in Varaždin, P-392/04-15; County Court in Varaždin, Gž-583/07-2.

[5] Articles 19, 22, 24 and 36 of the Lease of Flats Act; Municipal Court in Zagreb, Ps-608/00; County Court in Zagreb, Gž-4094/04-2.

Constitutional Court derogated the additional conditions for application of this reason for notice and ordered the legislator to pass a new legislation in the next 6 months which would lay down the conditions for application of this reason for notice. Namely, before the derogation, the landlord could give a notice to the protected tenant for this reason (intention to move into the house), if he had ensured to the protected tenant another housing unit with same or more favourable conditions (additional condition). The legislator did not pass the new legislation even till present days. Due to this fact, the Courts denied to order the eviction of the protected tenants on the basis of the notice given for this reason, stating that this provision was imperfect and therefore insufficient for application until the legislator passes the new legislation solving this problem.[6]

7.7 Notice by the Landlord Due to the Intention to Move into the Rented House; Landlord Older Than 60 Years and Also in Need for Housing

Tenant A and landlord B had concluded a rental contract with protected rent for B's house. Upon a certain period, B gave a notice of the contract since B is also living as a tenant in a rented house and is older than 60 years. A refused to move out. B filed a lawsuit against A for eviction.

Court's Decision. The Court complied with B and ordered the eviction. The fact that the landlord has no other house suitable for habitation and is also living as a tenant in a rented house means that he is also in need for housing. At the same time he is older than 60 years. Thus, all the reasons for notice were fulfilled and the procedure was also respected.[7]

7.8 Non Payment of the Rent, Usage by an Unauthorised Person, Usage for Other Purposes

Tenant A lived as a holder of the housing right in B's house. Upon the entrance into the force of the Law, A requested B to conclude

[6] Article 21 and 40 of the Lease of Flats Act; Supreme Court of Republic of Croatia, Rev 486/02-2; Supreme Court of Republic of Croatia, Rev 1027/2007-2; Supreme Court of Republic of Croatia, Rev 179/2009-2.

[7] Articles 21 and 40 of the Lease of Flats Act; Municipal Court in Zagreb, Ps-500/06; County Court in Zagreb, Gž-5212/07-2.

the tenancy contract with the protected rent. In the process of negotiations, B learned that the house was also used by C without legal basis and without B's permission for more than 30days. In addition, the house was used for other purposes besides housing and A was late in payment of reimbursement on the name of rent during the whole time of the usage of the house. B sent a prior written warning to A asking him to obviate these problems (reasons for notice of the contract) in the period of 30 days. B did not act in accordance with the warning. A give B a notice of the contract and left him a 3 months' notice period to leave the house. Upon the expiry of the notice period B filed a law suit for the eviction.

Court's Decision. After establishing that the notice reasons existed and that the procedure was respected, the Court ordered the eviction.[8]

7.9 Liability of the Tenant for Non-Consented Works (Modifications) in the Rented House

Tenant A and landlord B had concluded a rental contract with protected rent for B's house. B terminated the contract claiming that the tenant made modifications in the house without his permission and suited A for eviction.

Court's Decision. The Court denied B because the modifications were done 10 years before the enactment of the Law which prescribes this reason for termination (in addition, they were done with landlords consent). Thus, the reason for the termination did not exist and the contract is still valid.[9]

7.10 Liability of the Landlord vs. Liability of the Tenant for the Maintenance of the House

A and B concluded a tenancy contract with C for C's house. A and B had expenses for the maintenance of the house and demanded C to reimburse them. C refused to do so believing that the tenants should bear the costs. A and B filed a lawsuit for the reimbursement of these costs and payment of future ones.

[8] Articles 19 and 22 of the Lease of Flats Act; Municipal Court in Split, P-3929/99-32; County Court in Varaždin, Gž-526/06-2.

[9] Articles 20 and 54 of the Lease of Flats Act; Municipal Court in Zagreb, Ps-10/07; County Court in Zagreb, Gž-3764/09-2.

Court's Decision. The Court partially complied with A and B for the part of the costs that were necessary for the restoration and maintenance of the house in the order proper for the habitation, since this is landlord obligation. For the remaining part of the costs the Court denied A and B because these costs were not necessary for maintenance of the house in order proper for the habitation. In addition, the Court denied the payment of the future costs because they have not occurred yet and because the costs of small repairs for the regular (normal) usage of the house are tenants' obligations.[10]

[10] Article 12 and 13 of the Lease of Flats Act and Article 570 of the former Civil Obligations Act; Municipal Court in Zagreb, Ps-380/02; County Court in Zagreb, Gž-4483/05-2.

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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