Tenancy Law and Housing Policy in Serbia

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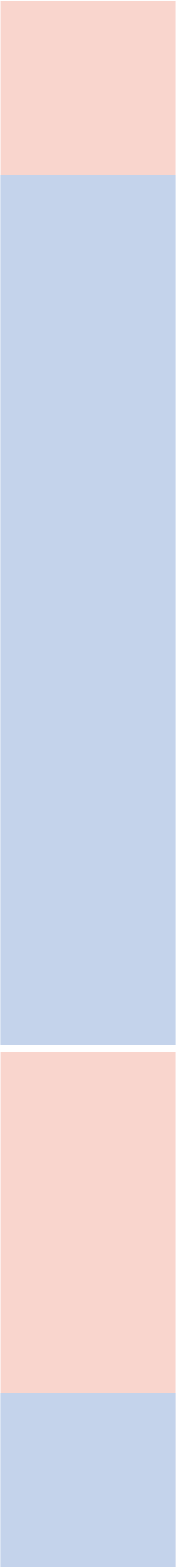

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Chapter One

Housing Situation

1.1 General Features

Serbian housing stock is characterized by high ownership rate, caused primarily by the process of privatization in the early nineties and the numerous Government's incentive to citizens to purchase dwellings. After the privatization of the public (state) housing stock, the Government stopped almost entirely to invest into public housing. The very few investments were intended usually for addressing the needs of numerous IDPS and refugees from the wars during the nineties. As a result, public housing stock is virtually non-existing. The market rental sector has also not developed. Therefore, market rentals are mostly performed in the informal sector, with very few written and registered contracts.

The economic crisis weakened the construction sector to a certain extent. However, the effects of the crisis on the housing sector were not as pervasive as in other countries, since the general economic circumstances in Serbia were not promising not even before the crisis. The mortgage defaults of citizens have increased, however the situation is not alarming.

1.2 Historical Evolution of the National Housing Situation and Housing Policy

Former Yugoslav socialist countries (Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia) set collective rights as their major priority, while individual rights were neglected to a certain extent. In addition, housing and property were considered as social goods and not economic ones. The right to adequate housing was emphasized, putting lesser importance onto the right to property in the sense of civil right. Housing policy of former Yugoslavia was explicitly oriented towards the social aspect of housing. The legislation and policies regarding housing had some unique characteristics that were introduced during the socialist era. The 'social ownership' was developed as a Yugoslav specific kind of ownership right and a special legal institute. Unfortunately, it

was greatly misunderstood and often simplified in meaning as 'state ownership.'[1]

Serbian housing system and policy as such, similar to other former Yugoslav republics, has its roots in the beginning of the twentieth century. Until 1953, the main role in managing housing policy was centralized and assigned to the Federation. In 1953 the process of decentralization changed the role of the Federation and transferred it to the republics and municipalities.[2] The new approach eradicated state monopoly and founded specific non-state institutions (social-political communities). This model of social self-governance established the institute of social ownership that became the prevailing form of tenure in Yugoslavia. The social property was owned by all citizens of the Yugoslav society. In addition, the society transferred the right of disposal with the socially owned property to Yugoslavia. The social ownership was comparable to 'the common good' of all Yugoslav citizens. The institutions that were in charge of acquiring and allocating dwellings to tenants were enterprises, the Self-Managing Interest Communities for Housing (*Samoupravno interesno stambeno udruženje*), municipalities and different state agencies.[3]

It must be acknowledged that Yugoslav socialism also considered private ownership as an existing necessity, whereas the restrictions on private property were mainly imposed in order to prevent capitalist exploitation.[4] Social ownership was a dominant and basic type of ownership, although the Constitution also guaranteed the right of ownership of citizens and legal persons.[5]

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

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

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

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

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

[5] O. Stanković and M. Orlić, *Stvarno pravo* (Belgrade: Naučna knjiga, 1986), 100.

building dwellings and nationalization of apartment buildings and building lands. Another important year was 1973, when the new statute regulating housing issues was introduced, the 1973 Housing Relations Act (*Zakon o stambenim odnosima*).[6] The new statute preserved almost all provisions of the previous federal housing legislation. The statute was amended in 1980 and 1990, further filling the gaps from previous legislation.[7]

In 1980, after almost twenty years of preparations, the Basic Ownership Relations Act (*Zakon o osnovama svojinskopravnih odnosa*)[8] was enacted on federative level, trying to regulate all ownership relations in one comprehensive statute. Its goal was to incorporate some European continental civil law elements into the concept of social ownership. The privilege was mostly given to social ownership and there were rules completely contrary to traditional western civil law institutes. Some examples included acquisition of things, which was not possible through adverse possession and cessation of ownership rights with transfer of a good into social ownership.[9]

Social ownership over housing property was transferred into the 'housing right' as a specific tenure type. In comparison to the civil law, the housing right holder could be described as 'a beneficiary of rights, which go beyond those of a protected lessee, but which do not include all those of a private owner.' The Housing Relations Act SRS (*Zakon o stambenim odnosima* SR *Srbije*)[10] defined the housing right as the right to permanent and undisturbed use of the dwelling for satisfying personal and family housing needs, as well as the right to participate in the management of the multiunit buildings.[11] The housing right holders were subject to concrete legal protection which, at least until the dissolution of Yugoslavia, was regarded as secure tenure[12] The duration of the right was unlimited. In addition, it was transferable. Thus, it allowed housing right holders to enjoy socially owned apartment without interference from others, though they could not use it in the same manner as an

[6] *Službeni glasnik Socijalističke Republike Srbije*, no. 29/1973.
[7] Nelson, *Housing and Property Rights*, 107.
[8] *Službeni list Socialističke Federativne Republike Jugoslavije*, no. 6/1980.
[9] Nelson, *Housing and Property Rights*, 18.
[10] *Službeni glasnik Socijalističke Republike Srbije*, no. 29/1973.
[11] Article 2(1) of the 1973 Housing Relations Act SRS.
[12] Nelson, *Housing and Property Rights*, 19.

owner could.[13] Nevertheless, the landlord was able to terminate the contract, although the reasons for that were rather limited. In addition, the holder of the right was able to buy the dwelling out (only those owned by the state or social ones) under very favourable conditions. The housing right is no longer obtainable. For the dwellings in private ownership it was abolished in 1959, for the dwellings in social or state ownership yet in 1992. However, those that obtained it are still able to enjoy it (unless the contract was terminated due to some of the legally determined reasons or the dwelling was purchased). The private owner of the dwelling has the same rights and duties as the state or social owner. The only exception is that the private owner has no obligation to make available the selling of the dwelling to the housing right holder. The rent is determined depending on the area and quality of the dwelling or the building. The value is changed two times a year.[14] [15]

In general, during the socialist era, the real property regime of Yugoslavia was marked by two tenure systems: private ownership and social ownership. Due to the ever growing industrialization and urbanization in the 1960s and 1970s, the housing rights were prevailing in urban areas. Rural areas, on the other side, remained privately owned and were subject to be inheritance.[16] However, there were rigorous restrictions imposed onto the private ownership through the Constitution, the Basic Ownership Relations Act and other statutes. The main restriction was that the ownership right cannot exist on the things that can only be state-owned. These were the things that 'were of particular importance for our socialistic society:' minerals and other natural resources, goods for general use, construction land in towns and municipalities.[17] For other things there was a statutory maximum imposed. For instance, the housing maximum was imposed in reference to the number of dwellings and the structure of the building that can be owned by private persons. The dwelling was defined as a set of premises intended for residential purposes, which make a construction whole and have a

[13] Ibid., 25.
[14] More on this right in section 1.3.
[15] 'Šta je stanarsko pravo?' *Upravusi online*, accessed 12 October 2012, http://upravusi.rs/kuca/stanarsko-pravo-kuca/sta-je-stanarsko-pravo/.
[16] Nelson, *Housing and Property Rights*, 20.
[17] Stanković and Orlić, *Stvarno pravo*, 100.

separate entrance. 'Smaller dwellings' were dwellings up to two separate rooms, with additional areas, regardless of the area calculated in square meters. The 1958 Nationalization of Rental Buildings and Building Lots Act (*Zakon o stambenim odnosima* SR *Srbije*)[18] set the maximum housing assets owned by the individuals (legal or natural persons): a multiunit building with maximum two bigger or three smaller apartments, maximum two apartments as special parts of a building, two family buildings with maximum two housing units and one small, or one family housing building and one housing unit as a special part of a building.[19] The maximum assets owned referred to one person, regardless of it being a minor or an adult or whether other family members were also owners or the manner in which he obtained the ownership. Co-ownership was also allowed.[20]

Yugoslav housing policy also had a category of 'solidarity apartments' for low-income citizens that were unable to resolve their housing needs on their own. Enacted legislation allocated the responsibility of determining the eligibility of candidates for solidarity apartments to centres for social work. It is important to stress that, with the exemption of Slovenia, none of the republics actually had such statute.[21]

Apart from housing construction of socially owned apartments, the system approved of personal investments into construction and purchases of dwellings.[22]

The beginning of nineties of previous century on the territory of former Yugoslavia was marked by war and numerous other atrocities, which greatly affected citizens and economy of Serbia. Not just the rising inflation, but also embargos, the displacement of citizens, privatization and denationalization left great effect on the social and economical conditions, changing the property rights regime and

[18] *Službeni list Federativne Narodne Republike Jugoslavije*, no. 52/1958 and later amendments.

[19] D. Hiber, *Prestanak stanarskog prava na stanu u svojini građana* (Belgrade: Faculty of Law, 1979), 2–3.

[20] Stanković and Orlić, *Stvarno pravo*, 103-104.

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

[22] B. Begović, G. Matković, B. Mijatović, and M. Paunović, *Socijalno stanovanje u Srbiji* (Belgrade: Službeni glasnik / Centar za liberalno-demokratske studije, 2010), 48–9.

other tenure types. Especially the migration of ethnic minorities led to deprivation of property rights.

Since the war was taking place in other parts of Yugoslavia and not on the territory of Serbia, there was no need to enact legislation in regard to the restitution or repossession of property for refugees and internally displaced persons (IDPS hereinafter).[23] Thus, Serbia did not encounter such a mass flight of individuals,[24] but rather a mass arrival of refugees and IDPS that were now in need of accommodation. Albeit the fact that the war is almost two decades behind, Serbia is yet to find a comprehensive solution to address the problem of refugees and IDPS, which do not want or cannot return to their previous homes.[25] Some have already been accommodated, the rest are still to be.

The ongoing war shadowed the fact that there was a shift of regime and specific tenure system, which from then on stemmed from the principles of the market economy and on the real property rights regime of the civil law. This transition especially affected underprivileged groups, since the previous socialist state approach provided them with secure housing tenures.[26]

The Constitution of the Republic of Serbia (*Ustav Republike Srbije*) that was passed in 1990 included numerous provisions regulating property. The right to own property and the right to inheritance is derived from Article 34. Article 56 enacted the equal protection for every type of property: state, social and private. Article 63 tolerated the expropriation of property, however exclusively in exchange for reasonable compensation in accordance with market value. Article 72(4) gave full powers to the Government to 'regulate property and obligation relations' and to assume 'the protection of all forms of ownership.' The inviolability of home was regulated with Article 21. However, the Constitution had no provisions on the right to adequate housing.[27]

After the final breakup of the state union between Serbia and Montenegro in 2006, a new Constitution[28] was passed. This act

[23] Nelson, *Housing and Property Rights*, 101–2.
[24] As opposed to other former republics, e.g. Bosnia and Herzegovina and Croatia.
[25] Nelson, *Housing and Property Rights*, 1.
[26] Ibid., 2.
[27] Ibid., 102.
[28] *Službeni glasnik Republike Srbije*, no. 98/2006.

somewhat altered the provisions of the 1990 Constitution regarding housing. The inviolability of the home is determined in Article 40. Article 58(1) guarantees the peaceful enjoyment of ownership and other property rights obtained on the basis of the law. The expropriation of property is regulated with Article 58(2) in the similar manner as the previous provision. Article 86 guarantees private, cooperative and public ownership. The Republic of Serbia is authorized with Article 97(7) to regulate and provide security for property and obligation relations, as well as the protection of all forms of property. The right to adequate housing is not included neither in the 2006 Constitution.

In 1992 a new statute was enacted that has been in force since then, namely the Housing Act (*Prestanak stanarskog prava na stanu u svojini građana*).[29] This law replaced the twice amended and somewhat deficient Housing Relations Act from 1970s and set the basis for privatization of socially owned housing stock.[30] It also replaced housing rights with private ownership or rental contracts.

As far as the privatization of socially owned dwellings is concerned, it was similar to other republics. Those, who obtained their rights before the statute was enacted, could request to purchase socially owned apartments from the holder of the disposal right. The purchase was to be done within thirty days upon the buyer's purchase request. The buyer was protected in the sense that he was allowed to initiate a civil procedure before the competent court, if the seller refused to sell the dwelling. The purchase price was determined on the basis of the buyer's average net income, the location of the dwelling, its general condition and the space surface of the building.[31]

Article 27 of the 1992 Housing Act stipulated that the revenues from the sales had to be used for loans to citizens intending to buy or construct their own apartment or house. Article 31 specified that housing right holders, who did not purchase their socially owned dwellings up to the end of 1995, could use the dwellings as reg-

[29] *Službeni glasnik Republike Srbije*, no. 50/1992 and later amendments.

[30] The process of privatization was initiated as early as the late 1980s. However, the existing law allowed the existence of several tenure types concurrently, e.g. private property, lease and occupancy rights.

[31] Nelson, *Housing and Property Rights*, 110.

ular tenants.[32] On the down side, this statute did not regulate the problem of social housing accordingly. Moreover, it allowed only some citizens to use dwellings, which had still been in the ownership of municipalities, cities, provinces or the Republic. This group did not include a significant number of citizens, many of which were otherwise eligible for social assistance or part of vulnerable groups.[33]

Serbia regulated the issue of denationalization with the Denationalization Act (*Zakon o vraćanju oduzete imovine i obeštećenju*),[34] which was enforced only recently, namely on 6 October 2011. The process of restitution is led by the Agency for Restitution (*Zakon o vraćanju oduzete imovine i obeštećenju*), which was specially established on the basis of Article 51 of the mentioned act. The statute endorses the principle of 'restitution before compensation,' allowing also some exceptions in form of a substantial protection for the current users. The properties must be restituted in nature or subsidiary as compensation in form of state bonds and money. In case of inability to restitute the property immediately, there is an obligation for the rightful claimant to conclude rental contract under market conditions with the current user of the property, unless the law provides otherwise.[35] Excluded from the restitution is nationalized property which is used by the state institutions (cultural, health or educational) and whose restitution would jeopardize the exercise of their regular tasks.[36] Moreover, the principal of restitution in kind is somewhat limited with the provisions that favor the current user of the denationalized dwellings when ownership was obtained by its current owner through purchase of the dwelling at a public auction, through adverse possession (acquisitive prescription, *usucapio*), or 'when the ownership over that apartment was obtained by purchasing the apartment according to the Housing Act.' These cases entitle the owner of the nationalized property to compensation in money from the Government of RS.[37] The restitution procedure is initiated with the claim of the former owner, who

[32] Ibid., 111.
[33] Ibid.
[34] *Službeni glasnik Republike Srbije*, no. 72/2011.
[35] Article 8 of the Denationalization Act.
[36] Nelson, *Housing and Property Rights*, 115.
[37] Article 9(3) of the Denationalization Act.

pursuant to Article 42, must file the claim to the Agency within two years from the public notice given by the Agency.

The mass influx of refugees and IDPS has put a major social and economic burden on Serbia after the dissolution of the SFRY. The issue was further deepened after 1999, when another mass arrival of IDPS came from Kosovo.

According to a survey in 2002, at the time there were approximately 700,000 registered refugees, war affected persons and IDPS in the country, while the total number of inhabitants at the time amounted to 7,498,001.[38] A half of all registered refugees arrived in the FRY[39] after the various crises in the Balkans between 1991 and 1995. According to the report of the Government of Serbia, National Strategy for Resolving the Problems of Refugees and Displaced Persons (*Nacionalna strategija za rešavanje problema izbeglica i unutrašnje raseljenih lica*) from May 2002, there were 377,431 registered refugees[40] in Serbia. The main arrival was in 1995, when 190,000 people fled Croatia and 80,000 Bosnia. The arrivals were directly caused by military actions in Croatia and the change of control in Bosnia and Herzegovina after the signature of the Dayton Peace Agreement (*Dejtonski mirovni sporazum*).[41]

According to the IDP Needs Assessment Survey carried out by the Serbian Commissariat for Refugees (*Srpski komesarijat za izbeglice*) and UNHCR in 2011 there are now nearly 71,350 registered refugees from the conflicts in the 1990s, many of whom are still in need of durable housing solution. In addition, there are also approximately 210,000 IDPS from Kosovo, some 97,000 in need of assistance.

As many as 2,500 people (500 refugees and 2,000 IDPS) are still residing in twenty four collective centres. A vast number of refugees and IDPS reside in poor quality temporary housing or in illegal set-

[38] SORS, '2011 Census of Population, Households and Dwellings in the Republic of Serbia, First Results,' RZS *Bulletin*, no. 540 (2011).

[39] Thus this number includes also refugees that fled to Montenegro.

[40] This term refers to persons who obtained the refugee status pursuant to Serbian legislation. The term 'war affected persons' refers to those who had a residence in one of the former SFRY republics and fled to Serbia as a consequence of the war, but who were not eligible for refugee status. This included those who obtained the Yugoslav citizenship or whose request for refugee status was rejected.

[41] Nelson, *Housing and Property Rights*, 120.

tlements lacking basic facilities.[42] For the majority of refugees the private ownership of homes is intangible. A survey by the Serbian Commissioner for Refugees from December 2008 stated that only 29.5% of refugees owned their own dwelling. The largest percentage lives in rented dwellings (41.75%), while 19.75% live with family or friends. The remaining collective centres offer accommodation to 1.5%. In social welfare institutions and other forms of social housing there are 6% of refugees. Around 1.5% live in other forms of accommodation. The situation has improved with construction of individual houses and multi-apartment buildings for refugees during the period 1996–2004. The government published strategic documents to shed some light on the issue and gather international assistance. Accordingly, some new housing concepts were introduced. The European Commission implemented a series of projects through its CARDS program between 2004 and 2007. In addition, UN-Habitat implemented a new housing program, funded by the Italian government, which supported the capacity of few municipal housing agencies at the local level, the Program of Implementation of the National Strategy for Solving the Situation of Refugees (*Program stanovanja i trajne integracije izbeglica*). Due to the absence of a national housing policy, UNHCR explored possibilities for further housing models. The result has been the Social Housing in Supportive Environment model (*Socijalno stanovanje u zaštićenim uslovima*). The model relies greatly on local resources, including the purchase of rural houses and micro-loans for housing. These programs and initiatives have gradually led to improvement in this sector. Since the time of the refugee registration carried out in 2004 and 2005, there is an increase in property ownership and a decline in the numbers of refugees staying with family or friends. On the other hand, the number of vulnerable refugees in social welfare institutions and social housing has increased. This was in large part caused by the several housing projects by the European Agency for Reconstruction, UN-Habitat, UNHCR and others, which decreased the number of refugees in collective centres.[43]

[42] '2012 UNHCR Country Operations Profile – Serbia (and Kosovo: SC Res. 1244),' UNHCR, http://www.unhcr.org/pages/49e48d9f6.html.

[43] M. Teržan and D. Kladarin, 'Local Integration for Refugees in Serbia,' *Forced Migration Review*, no. 33, (2009): 42–3.

It is impossible to obtain precise data on how many refugees have solved their housing issues in Serbia. The Statistical Office of the Republic of Serbia (SORS hereinafter) does not keep special records on refugees, but rather only records on those who obtained Serbian citizenship. Even if the data were known, they could be hindered with the illegal construction, which is a wide spread phenomena, especially in Belgrade.

It is known that in 2009 1,358 families were provided with housing, helped economically or in some other way. One part of the refugees sold or exchanged their previous property, enabling them to buy land and build houses in Serbia.

The typical examples of refugee settlements in Belgrade include Busije and Grmovac. Busije was set in 1997, when the district of Zemun sold land for favourable prices to refugees from Croatia and Bosnia. The settlement emerged on the land which was not intended for urban construction. This settlement encompassed 5,000 inhabitants in 2009, most of them (80%) being refugees from Croatia and Bosnia. The number may seem small. However, one should bear in mind that meanwhile the majority of inhabitants obtained Serbian citizenship or lost refugee status. Another example of a refugee settlement is Grmovac. The one was established in the end of 1996, when local authorities of the district of Zemun sold 2,800 lots, on which 600 apartments emerged.[44]

In November 2011 a Joint Regional Program on Durable Solutions for Refugees and IDPS (*Zajednički regionalni program za trajna rešenja za izbeglice i interno raseljena lica*) was signed by governments of Serbia, Croatia, Bosnia and Herzegovina and Montenegro. Programs goal is to:[45]

> [...] comprehensively contribute towards completion of the protracted displacement situation in Bosnia and Herzegovina, Montenegro, Republic of Croatia and Republic of Serbia by providing durable and sustainable housing solutions with full respect for the rights of refugees and internally displaced

[44] S. Vujadinović, D. Šabić, S. Stojković, and M. Milinćić, 'Year of Refugee Life in Serbia – Challenges for a New Beginning: Stay or Return Home?' *Trames* 15, no. 3 (2011): 251.

[45] The full text is available at http://mhrr.evlada.ba/izbjeglice/Donatorska_konferencija/Framework%20Programme.pdf

> persons and the mutual obligation to closely cooperate and synchronize activities in order to ensure durable solutions for them, either through voluntary return and reintegration or local integration.

An international donor conference was held in Sarajevo in April 2012, on which approximately 300 million EUR were collected for housing accommodation of the most vulnerable refugees in the four states. The states demanded 583 million EUR with a promise to donate a part of the funds themselves. Serbia, having the largest number of refugees, is to receive 57% of the funds. This money, however, is not going to be on disposal for the refugees from Kosovo, since the four states reached agreement only for the refugees from the period from 1991 to 1995.

For the Kosovo refugees, Serbia has offered a project for resolving the housing problems of 16,780 refugee households. The project is to start in 2013 and will last until 2018. This project offers accommodation for the most underprivileged, which are now in collective centers, rental units or live in terrible conditions. The project encompasses a construction of social housing with protected conditions across Serbia. Some refugees are going to receive a construction material, whereas for some rural real estate are to be bought. All refugees are going to be eligible to apply for the funds.[46]

As far as the emigrations to foreign countries are concerned, it is difficult to determine the actual number. According to the SORS, the number of working emigrants in 2002[47] was 414,839. This number includes all individuals employed by the foreign employer or self-employed in a foreign country for more than one year, as well as the family members of these individuals. The number refers to all individuals, who left Serbia since 1970s up to 2002.[48] However, this number does not include the individuals who left Serbia for reasons other than employment. Therefore, no relevant data can be deduced from this number.

[46] 'Akcija za stambeno zbrinjavanje izbeglica,' *Politika Online*, 20 September 2012, http://www.politika.rs/rubrike/Drustvo/Akcija-za-stambeno-zbrinjavanje-izbeglica.lt.html.

[47] New data (from the 2011 Census) are still unavailable.

[48] 'Građani Republike Srbije na radu u inostranstvu,' Republički zavod za statistiku, accessed 17 September 2013, http://webrzs.stat.gov.rs.

1.3 Current Situation

One of the consequences of privatization of socially owned apartments was that approximately 98% of dwellings in Serbia are privately owned. According to the census from 2002, owner occupied housing increased to 92% of the total stock in 2002 from 77% in 1990. Only 7% of the housing stock in 2002 was rental units, 4.3% of which was private, and 2.7% publicly-owned rental units. Thus, according to 2002 Census, the privately owned stock encompassed 97.9% of the housing stock, whereas the publicly owned was 2.1% of the stock.[49]

The newest data are available from 2011 Census, accounting for 3,243,587 dwellings altogether. Dwelling is defined as a construction structure with a purpose of habitation, regardless of the fact 'whether it was used at the moment of the Census, for habitation and performing an activity, only performing an activity, rest and recreation, or to be also a non-occupied but fit construction structure.' Apart from dwellings as defined, the Census included also rooms that did not match the very 'definition of a dwelling, but were used at the time of the Census for habitation (occupied business premises and premises occupied out of need), as well as collective housing units (collective dwellings) intended for cohabitation of several persons.' According to the census from 2011 there are 2,487,886 households.[50]

Not all data have been available from the 2011 Census, thus many information in this monograph are cited from the 2002 Census. According to the 2011 Census, the exact number of dwellings, intended only for residential purposes, is 2,423,208. Number of units in private ownership is 2,380,810 (or 98.3%). The remaining 1.7% is owned publicly.[51] Percentage of dwellings with owner-occupied tenure status is 87.5% (or 2,121,484 units), while 1.7% of dwellings are publicly rented. Market rented dwellings encompass 5% of the stock, while 5.7% of the stock is used by relatives of the owner.

[49] 'Stanovi prema svojini i osnovu po kojem domaćinstva koriste stan,' Republički zavod za statistiku, accessed 17 September 2013, http://webrzs.stat.gov.rs. There was clearly an omission on the behalf of the SORS, since the total amount is 99% and not 100%.

[50] 'Popis stanovništva, domaćinstava i stanova,' Republički zavod za statistiku, accessed 20 February 2012, http://webrzs.stat.gov.rs.

[51] 'Stanovi prema svojini i osnovu po kojem domaćinstva koriste stan.'

TABLE 1.1 Tenure Structure in Serbia, 2002

Home ownership	87.5%
Renting with a public task	1.7%
Renting without a public task (market)	5.0%
Other (relatives)	5.7%

NOTES Based on data from SORS (http://webrzs.stat.gov.rs/WebSite/).

However, since there are no official data on the number of renters, these numbers are a mere approximation. It should be mentioned that a part of the dwellings, used by relatives, might be taken as hidden market rentals due to the prevailing unofficial market in the rental sector.

Serbia, a typical post-transition country, has a high share of homeownership and an irrelevant portion of public housing. The SORS identified sixteen various types of tenure. Neither homeownership nor rental tenure follow the usual patterns, since housing scarcity, increased by inflows of refugees and IDPS, have led to various housing arrangements. For example, homeowners' units are often shared with tenants, sub-tenants or relatives. The same goes for rental units.

1.4 Types of Housing Tenures

Financing of housing in Serbia could be done through own funding, by savings or with a selling of previous real estate. Not negligible is also the role of family (parents and grandparents), as well as inheritance. Since many individuals cannot save enough for the purchase, different housing loans are also available: from commercial banks, mortgage or state-subsidized, and from the 2011, when amendment of the Financial Leasing Act (*Zakon o finansijskom lizingu*)[52] was introduced, citizens can also use a lease to finance their dwelling. The basic idea behind this type of financing is that there is no mortgage on the loan. The leasing company is the formal owner of the dwelling, while the user of the leasing is the renter of the dwelling, until he repays all of the leasing instalments.[53]

In period between 2005 and 2010 there were 70,000 housing

[52] *Službeni glasnik Republike Srbije*, no. 31/2011.

[53] This option is still rather theoretical, since the costs connected to the leasing are somewhat higher that the costs of mortgage loans. 'Stan na lizing ili stambeni kredit,' *Politika Online*, 20 january 2011, http://www.politika.rs/rubrike/potrosac/Stan-na-lizing-ili-stambeni-kredit.lt.html.

loans endorsed. This was before the possibility of housing leasing was introduced.[54]

A possibility that was introduced in 2004 is the National Corporation for Securing Housing Loans (*Nacionalna korporacija za osiguranje stambenih kredita* – NKOSK),[55] which also contributed to the promotion of housing loans. It is a state organ which secures mortgage loans given to natural persons from commercial banks or other financial organizations. The purposes of the loans are purchases, adaptations and constructions of dwellings. The Corporation has concluded contracts with several commercial banks in Serbia and set conditions under which it is to secure loans. When an individual obtains a mortgage loan from the bank, the corporation obliges to secure it, if the loan fulfils the set conditions. Providing that the individual fails to pay the installments, the bank is entitled to activate the mortgage. In the period of three months after the activation, the Corporation pays the installments. After the property is sold, and only if it is sold for the purchase price which is lower than the loan itself, the Corporation is to cover 75% of the loss to the bank. With such an arrangement, the risk taken by banks is somewhat lower and banks are encouraged to lower the interest rates.[56]

In addition, the Government has been subsidizing the individuals who are purchasing a home, but have not enough means to cover the needed 25% of the participation for the loan. Thus, the Government covers 20%, whereas the individual is to cover 5% of the participation.[57] After the loan has been repaid to the bank, the individual continues with the installments to the Government for further five years with the annual interest rate of 0.1%. Due to the introduction of this measure, the market of mortgage loaning has been significantly revived. However, since the conditions are favoring mostly individuals with higher incomes, the measure has left less well-off individuals without adequate solutions to their housing issues.[58]

[54] 'U Srbiji odobreno oko 70,000 stambenih kredita,' *Blic Online*, 11 October 2010, http://www.blic.rs/Vesti/Drustvo/211377/U-Srbiji-odobreno-oko-70000-stambenih-kredita.

[55] *Službeni glasnik Republike Srbije*, no. 55/2004.

[56] Begović et al., *Socijalno stanovanje u Srbiji*, 50–1.

[57] More on this see section 3.6.

[58] Begović et al., *Socijalno stanovanje u Srbiji*, 51.

The main reason for so marked difference between the percentages of owned versus rented dwellings is to be found mainly in the beginning of nineties, which brought two processes: privatization and denationalization. Both of them consequently resulted in the increased number of homeowners in Serbia, as well as in the other former Yugoslavian republics.

Privatization in particular started with the enactment of the new statute, the 1992 Housing Act. It offered citizens, who had housing right, to purchase the dwelling in use under very profitable conditions. The price was usually as low as 10–20% of a fair market value, which made these purchases particularly favorable. Exceptions to this were the cases of dwellings that were owned by individuals, who were eligible for restitution of denationalized properties.

As stated before, during the socialist period, many users of dwellings had a special housing right. This right was a sui generis right of a socialist order. The only difference with tenancy right was that housing right was transferable to a limited circle of lawfully determined rightful claimants. There were two 'types' of this right.

One was obtained on the dwelling, which was in social ownership. The Constitution of SFRY in Article 164(1) even guaranteed that citizens may obtain housing right on the dwellings from the social housing stock, under the conditions from the statute.[59] The strong prevalence of this type of housing right reflected also in the jurisprudence. According to the Supreme Court of SR Croatia,[60] none of the state enterprises or other state organizations (owners or holders of disposal right of dwellings from the social housing stock) cannot offer their vacant dwellings on legal basis other than the housing right, such as right to habitation. The argumentation of the Supreme Court was twofold: if it would be allowed to allocate the dwellings also on other legal basis, it would undermine the implementation of the Housing Relations Act; and, the housing right represents a general manner of use of socially owned dwellings and is the only manner in which the dwellings may be allocated to the individuals.

Other type of housing right, with the equal contents and rights,

59 Stanković and Orlić, *Stvarno pravo*, 471.

60 Decision of the Supreme Court of SR Croatia, no. Rev. 280/69 from 15 March 1970.

was obtained on the dwellings owned by the individuals – legal or natural persons (which were not in social ownership). Article 164(2) of the Constitution only stipulated that citizens may use the dwellings owned by individuals in accordance with the statute, without guaranteeing such use. Thus, use of private dwellings was not guaranteed, although it was not excluded either.[61] The housing right on privately owned dwellings was characterized as an acquired right and was available for acquisition until 1959.[62]

In 1959 several federal statutes regarding housing were enacted, two of which were particularly important: the 1959 Housing Relations Act[63] and the Ownership on Parts of Buildings Act (*Zakon o svojini na delovima zgrada*).[64] The housing rights obtained until the date that the two statutes were put into force (23 July 1959) were deemed as being stronger than the ownership right. For housing rights on socially owned dwellings, such characteristic was valid also after this date. The private owner was left with nuda proprieta and was unable to move into the dwelling, to sell it or rent it, as long as the holder of housing right is residing therein.[65] After 1959, the administrative organs were no longer competent to allocate the privately owned dwellings to holders of housing rights. Only the owner was entitled to allow the use of his dwelling to another individual. This relation was also called housing right and not rental relation. However, this type of relation was weaker than the relations before 1959, since the owner was able to terminate the contract.[66] The housing right stemmed from the post-war housing legislation and was developed from the regular rental contract. The contracts were at first limited by determining the maximum rent price and duration of the rental period. Moreover, the duration of the contracts outgrown to permanent contract with below market rents, leaving owners of dwellings with *nuda proprietate*. The characteristic that contributed to the permanency of contracts was the restriction of reasons for termination of contracts.

[61] Begović et al., *Socijalno stanovanje u Srbiji*, 51.
[62] Hiber, *Prestanak stanarskog prava na stanu u svojini građana*, 1.
[63] *Službeni list Federativne Narodne Republike Jugoslavije*, no. 16/1959.
[64] *Službeni list Federativne Narodne Republike Jugoslavije*, no. 16/1959.
[65] Stanković and Orlić, *Stvarno pravo*, 482.
[66] Article 12 of the 1959 Ownership on Parts of Buildings Act.

In addition, it was not possible to conclude a limited in time contract on the use of the dwelling. Three conditions had to be fulfilled in order for the housing right to be established: the act of the administrative organ on the allocation of the dwelling to the holder of housing right, the conclusion of contract on the use of the dwelling and actual moving in.[67] This contract was an obligation contract characterized by force conclusion (i.e. forced determination of contractual parties), force contents and form, and determined reasons for termination.[68]

The contract on the use of the dwelling was terminated with: cancellation (by either party), due to the ruination of the dwelling or decision on the demolition, mutual agreement between the parties or death of the holder of the housing right. The holder of the housing right was able to give the notice at any time, without stating the reasons thereof. On the other hand, the owner (state or private) was able to give notice only due to reasons stated in the statute.[69] What is more, if the contract was terminated by the owner, it was necessary to file a lawsuit on the termination.[70] Hence, when the privatization process had started in the beginning of nineties, anyone with housing right on dwelling in state or social ownership was given an option to buy the dwelling at a moderate price. Due to the hyperinflation,[71] which hit Serbia in the period 1992–1994, the prices of dwellings were further reduced.

Other option was to become a regular tenant. If the seller (state organ, municipality, etc.) rejected to sell the dwelling or did not do so in thirty days from the offer, the claimant was able to refer

[67] Hiber, *Prestanak stanarskog prava na stanu u svojini građana*, 6. Such regulation derived from the 1973 Housing Relations Act.

[68] Ibid., 7.

[69] If the holder of the housing right or his family household members use the dwelling in contrast to the contract on use, if they inflict the damage to the dwelling or common parts of the building, if they disturb others in peaceful residence, if the holder fails to pay more than three consecutive rents or running costs, if he sublets the dwelling without the owner's consent, if the dwelling is not used for more than six month in a row without a justifiable reason.

[70] Stanković and Orlić, *Stvarno pravo*, 515–6.

[71] The hyperinflation lasted for twenty five months and is the second most intense hyperinflation in the history. On average, the inflation amounted to 760.7% monthly. 'Lista najčešće postavljanih pitanja,' National Bank of Serbia, accessed 9 April 2013, http://www.nbs.rs.

to the Court. The Court's order could substitute the contract on purchase.[72]

As far as housing rights on privately owned dwellings were concerned, there were numerous constrictions. One of them was that many considered that those who had housing right on privately owned apartments were in worse situation than those, whose apartments were state or socially owned, since the latter group was given a possibility to purchase their homes, while the former were not. They obtained merely status of protected tenants. Therefore, they turned to the Constitutional Court RS and requested that it decides on the constitutionality of Articles 41 through 43 and Article 48 of the 1992 Housing Act. In addition, they requested that the Court decides whether these provisions are in accordance with the Constitutional Charter of Serbia and Montenegro and the European Convention on Human Rights. The Court rejected their claim.[73] [74]

The other problem was that the owners of the dwellings have only limited ownership right, since it is burdened with the protected tenants. They are not able to use it, nor are their revenues from renting the dwelling appropriate. They are able to sell it, though.[75] However, since its usability is limited, they cannot obtain a fair market

72 M. Dobrić, 'Stanarsko pravo,' Institut pravo/finansije, accessed 10 October 2014, http://ipf.rs/wp-content/uploads/2012/07/STANARSKO-PRAVO-Institut-za-pravo-i-finansije-www.ipf_.rs_.pdf, 2.

73 The Constitutional Court in the Decision IU-371/2005 from 26 January 2006 considered that it was not competent to decide whether the 1992 Housing Act was consistent with the Constitution, the Constitutional Charter and the European Convention on Human Rights. The Court had already decided upon the matter in the Decision IU-230/92 from 13 July 2000. In this decision the Court considered that the disputed provisions regulate previously established legal situations, which stem from the previous legal order. The goal of these provisions is to regulate these relations in the contemporary legal system. According to the Court, the legislator did not exceed its competencies. It did not alter the already established housing relations, but it also did not guarantee for their invariability. The legislator only enacted temporary solution and created basis for future regulation. The Court considered that the differentiation of the tenants was not discriminatory, but rather the consequence of different legal situations in which the tenants were. Therefore, it took a legal position that these provisions are consistent with the Constitution.

74 Hiber, *Prestanak stanarskog prava na stanu u svojini građana*, 3.

75 There are no restrictions for giving such dwelling as a gift, inheritance, exchange, establishing a mortgage. However, the new owner must respect the tenant's protected position.

price. The protected tenants can be removed from the dwelling only upon offering an adequate rental dwelling with indefinite period of rent. Regardless of the fact that the statute enacted an obligation for local government to obtain dwellings for the moving of the protected tenants until 31 December 2000, only Novi Sad presented a suitable program for solving the abovementioned housing problems.[76] The similar program was enacted also in 2012, stating that the tenants are to be moved until 31 December of 2016. Therefore, all protected tenants will be provided with adequate homes. Their obligation is to file a claim with the municipality, in which the dwelling is situated, until 29 July 2013. The right is given to individuals that obtained housing right before 26 December 1958 or their heirs. In addition, the right is given to holders of housing right or their heirs, which started living in the dwelling before 29 July 1973. The funding for the dwellings will be provided from the state and municipal resources in relation 60%:40%.[77]

The process of restitution of the nationalized properties has been initiated only recently, upon EU's initiative, as a pre-condition for the membership status. Restitution is a process of returning property and compensation for the property, which was dispossessed from the individuals and endowments on the territory of Republic of Serbia after 9 March 1945 according to several acts. This property was transferred to state, social or cooperative ownership. The principal of in kind restitution takes precedence over the pecuniary (determined in EUR) and state bond compensation. The restitution is only to be paid off, if the property in question is exempt from restitution or was sold or demolished. Exempt from the restitution are real estate, which their present owner obtained legally after the dispossession (by purchase, exchange, etc.). Owners of properties that were demolished due to the higher force have no right to compensation. This right is not given to foreign citizens, who were already restituted, as well as to collaborationists and their heirs.

The obligation for natural restitution is on the present owner of the property (liable party in the denationalisation process), whereas compensation is given by the Government. Liable party in the de-

[76] Hiber, *Prestanak stanarskog prava na stanu u svojini građana*, 2–3.

[77] 'Stanarsko pravo na određeno vreme,' Pravni portal, 25 February 2012, http://www.pravniportal.rs/index.php?cat=159&id=3226.

nationalisation process can be: the Republic of Serbia, autonomous province, local self-government unit, public enterprise, a business organization or other organization, whose founder is either the Republic of Serbia, autonomous province or local self-government unit, business organization whose majority owner is the state and cooperative, regardless of whether they are in the process of liquidation or bankruptcy. The liable party must have the right to dispose with the property (e.g. to be the owner, possessor or holder of right to use the property) on the day of the enactment of the Denationalization Act.[78] Even though one received a substitution for the repossessed property, he is entitled to the entire value of the compensation or whole restitution, without returning the substitution.[79] The restitution claimant receives the property in ownership and possession. Real easements remain, whereas personal ones are abolished.[80] Mortgage also ceases to exist, while the state must guarantee for the debt.[81] If the property to be returned is occupied with a protected tenant, the denationalized owner becomes the landlord to the tenant under the same conditions as the previous one.[82]

The claim for restitution is to be filed with the Agency for Restitution.[83] The public notice was given on 6 February 2012 and it is to be opened for two years. The process is free from all taxes and fees. The Agency must decide in six months from the claim, except in the complicated cases, when it has one year available to decide.[84] The decision is prone to appeal. The right to appeal is given to claimant, liable party in the denationalisation process and state's attorney.[85] Jurisdiction for the first instance appeal is given to the Ministry of Finance, which is obliged to decide upon in ninety days.[86] It is to be filed in fifteen days from the date that the decision was delivered to

78 Article 9(1) of the Denationalization Act.
79 'Restitucija,' *Upravusi online*, accessed 7 November 2012, http://upravusi.rs/kuca/restitucija-kuca/sta-je-restitucija/.
80 Article 21(3) and (4) of the Denationalization Act.
81 Article 21(2) of the Denationalization Act.
82 Article 27(3) of the Denationalization Act.
83 Article 40(1) of the Denationalization Act.
84 Article 46 of the Denationalization Act.
85 Article 48(1) of the Denationalization Act.
86 Article 48(2) of the Denationalization Act.

the claimant. The first instance decision is also subjected to appeal in front of the Administrative Court. This procedure is considered as an urgent matter.[87]

Condominium in Serbia is defined as the ownership of a single unit in a building and common non-divisible ownership of common areas, along with a right on the land.[88] Thus, it is a real property right,[89] which is not an intermediate form of tenure.[90] Company law schemes are not present in Serbia.

As far as cooperatives are concerned, Serbia has several housing cooperatives. However, these differ from the traditional meaning of the housing cooperatives. They are rather legal entities, which operate in the same manner as construction businesses, except the fact that they function accordingly to 2005 The Cooperatives Act (*Zakon o zadrugama*),[91] and not the 2004 Companies Act (*Zakon o privrednim društvima*).[92] The Cooperatives Act does not distinguish among different types of cooperatives (health, constructional, housing, etc.), but regulates cooperatives in general in Article 2. Article 1 defines cooperative as an organization of previously undefined number of members with a purpose of promoting economical benefit of its members and is based on voluntary access, free withdrawal, equal collaboration and management of the members. These cooperatives account for as many as 300,000 members and function in the same manner as private entities. The main purposes of cooperatives are construction of smaller scale dwellings situated mostly in hinterland. They are not profit oriented and are led only by the real costs of business. The financial plan is constructed annually, thus offering a priori insight into the costs for the cooperators.[93]

[87] Article 48(3) of the Denationalization Act.

[88] Article 19 of the Basis of Property Relations Act (*Zakon o osnovama svojinsko-pravnih odnosa*). *Službeni glasnik Republike Srbije*, 115/2005.

[89] Real rights regime in Serbia is based on *numerus clauses* system. The law recognises ownership and real rights on things of others (*iura in re alliena*) – personal and real servitudes and lien

[90] 'Savremeno stanovanje – kondominijum,' Dekor Report, accessed 15 November 2012, http://www.decorreport.com/a344430-savremeno-stanovanje-kondominijum.

[91] *Službeni glasnik Republike Srbije*, no. 101/2005 and 34/2006.

[92] *Službeni glasnik Republike Srbije*, no. 36/2011.

[93] 'Stambene zadruge nude stanove,' B92, 2 October 2009, http://www.b92.net/biz/vesti/srbija.php?yyyy=2009&mm=10&dd=02&nav_id=384395.

This sector in Serbian housing policy is rather neglected. Until recent economic crisis, the construction of dwellings for selling was very profitable for private investors. At the same time, the state was also encouraging the spending, while not offering adequate support for non-profit housing and market rental sector.

There is a distinction between rental tenures with and without a public task. With public task are dwellings owned by the state and other state organs and institutions (municipalities, ministries, etc.), which are usually rented to socially vulnerable individuals. These encompass less than 2% of the entire housing stock in Serbia.

Rentals without public task are market or private rents. These consist of renting or sub-renting a dwelling by individual private landlord. These are so-called 'small' landlords – meaning unprofessional landlords, who are not investors or professionally engaged in renting the dwellings. These are individuals, who own several properties or empty rooms, so they rent it at (or even under) market prices. The price is determined in relation to supply and demand, in accordance with the purchasing power of households in need. For example, in Belgrade, annual rent was approximately one thirtieth of the price of the house, or 75% of the annual instalment for the house. Due to the fact that this sector is not legally regulated and controlled, a large portion of it is realized on the black market.[94]

The proportion of landlords with several dwellings obtained as an investment strategy is rather rare. Thus, prevailing are subsistence landlords that are typically income-poor owners, usually unemployed or retired, renting out their own unit or individual rooms in it. Most such landlords are not commercially oriented, calculating the return of their capital. Nevertheless, they are well informed about the market rent price nearby. Due to this, the supply of private renting is unstable and unaffordable. Some exception can be found only in Belgrade, where a very small proportion of rental market is served by corporate investors. However, they cater to other corporations, foreigners, embassies and other high-income clients.[95]

[94] Đ. Mojović and B. Žerjav, *Stanovanje pod zakup* (Belgrade: Program za urbani razvoj, 2011), 10.

[95] M. Petrović, 'Affordable Rental Housing' (paper presented at the National Housing Conference, Belgrade, 2006, 5.

Employment based apartments are present, but encompass only minuscule proportion of the public rental tenures. These do not have a public task per se, even thought the rent is somewhat lower compared to the market prices. These apartments are only available for the public employees (those appointed by the ruling political parties). The Government has enacted an order in 2010, regulating the employment based housing, the Order on Solving Housing Needs of Elected, Set and Employed Persons with Users of State Owned Assets (*Uredba o rešavanju stambenih potreba izabranih, postavljenih i zaposlenih lica kod korisnika sredstava u državnoj svojini*).[96] According to this act, the apartments can be awarded for definite term rent or for the duration of official duties.[97] Article 6(4), however, determined that persons, employed by the Ministry of Internal Affairs, the Public Prosecutor with special competencies and the Security and Informative Agency, are able to purchase their apartments. Article 40 further determined that these employees can request in writing to purchase their apartments under market conditions, if a rental contract for definite period has been concluded. It must be noted that such arrangements have been used as a hidden bonus scheme for these categories of employees, as a compensation for the modest salary. The Constitutional Court deemed these two provisions as unconstitutional,[98] since they discriminate against other categories of state employees based on the type of employment and not on the severity of their housing situation.[99] Employment based apartments are not available in the private sector, since that would impose a large tax burden on the employers.

A special group of tenants is the abovementioned group of protected tenants. They pay special non-profit rent, determined in a particular manner.

The housing fund in Serbia is relatively new with 72.3% of all dwellings in Central Serbia having been built after 1960. As little as 10% of the housing stock was built after 1995, whereas 60% of the housing stock dates back to the period before 1975.[100] Two thirds

96 *Službeni glasnik Republike Srbije*, no. 102/2010.

97 Article 6(1).

98 Decision of the Constitutional Court RS, no. 109/2011 from 8 November 2012.

99 *Službeni glasnik Republike Srbije*, no. 117/2012.

100 'Inflation Grounds Serbia's Housing Market,' Global Property Guide, 21 July 2008,

of dwellings were built in the period between 1961 and 1990. The 2011 Census indicated that Serbia, including Vojvodina, accounted for 2,743,996 dwellings (intended only for housing purposes) and 2,487,886 households.[101]

As a result of the housing standards from socialist period, Serbian housing stock is supplied mostly with two-room dwellings both in private (due to the privatization of common property housing stock) and public sector.[102] The average area of the dwelling in Serbia is 72,3 m^2 with 25,2 m^2 per inhabitant.[103] More than one household (usually two) is accommodated in 1.7% of the occupied stock. On the other hand, 22.3% of households consist of only one household member.[104] One-room housing units[105] represent 15.3% of the stock. The proportion of two-room housing units is the largest, with 34.6% of the stock. Three-room housing units follow with 27.9%. Four-room housing units amount to 12.7% of the stock, while five and more-room housing units represent 9.5% of the stock.[106]

Even though the new construction has improved availability of

http://www.globalpropertyguide.com/Europe/Serbia/Price-History-Archive/Inflation-grounds-Serbias-housing-market-542.

101 Nelson *Housing and Property Rights*, 102.

102 J. Hegedüs and N. Teller, 'Management of the Housing Stock in South-Eastern Europe,' Metropolitan Research Institute, March 2003, http://www.coe.int/t/e/social_cohesion/strategic_review/publications/housing_network/final_report_5th_javversion%20-%20r%C3%A9un%202-housing%201.asp.

103 'Popis stanovništva, domaćinstava i stanova 2011 godine u Republici Srbiji: knjiga 22,' Republički zavod za statistiku, accessed 20 February 2014, http://webrzs.stat.gov.rs/WebSite/public/PublicationView.aspx?pKey=41&pLevel=1&pubType=2&pubKey=1615.

104 'Popis stanovništva, domaćinstava i stanova 2011 godine u Republici Srbiji: knjiga 13,' Republički zavod za statistiku, accessed 20 February 2014, http://webrzs.stat.gov.rs/WebSite/public/PublicationView.aspx?pKey=41&pLevel=1&pubType=2&pubKey=2118.

105 The term 'housing units' is used, since the SORS included a broader definition of a dwelling when calculating the structure of the housing stock. This included not only units intended for residential purposes, but also other units (in collective centres, shacks, etc.). As a comparison: dwellings for residential purposes amount to 2,423,208 units, while the housing units amount to 3,012,923. For more on the definition of dwelling used in the 2011 Census, see section 1.3.

106 'Popis stanovništva, domaćinstava i stanova 2011 godine u Republici Srbiji: knjiga 22,' Republički zavod za statistiku, accessed 20 February 2014, http://webrzs.stat.gov.rs/WebSite/public/PublicationView.aspx?pKey=41&pLevel=1&pubType=2&pubKey=1673.

TABLE 1.2 Structure of the Housing Stock, 2011 Census

Category	Number	Percentage
Entire stock	3,012,923	100.0
One-room	461,316	15.3
Two-room	1,043,949	34.6
Three-room	840,734	27.9
Four-room	381,691	12.7
Five or more-room	285,233	9.5

NOTES Based on data from SORS (http://webrzs.stat.gov.rs/WebSite/).

basic amenities, the provision of piped water and sewer is a problem in some parts of Serbia, especially in the rural ones. According to data from the 2002 Census, only 2% of urban housing (approximately 30,000 units) has remained without piped water indoors. On the other hand, the number for rural housing is yet 18%. Gas supply and central heating are also underdeveloped in both rural and urban areas. More than one half of dwellings (around 54%) still use hard fuels as a source of heating. About 1% (over 28,000 units) has no auxiliary facilities and basic amenities, whereas 40% of rural housing lacks flush toilet or shower. Moreover, disparities in service levels are present among cities. Belgrade has better situation than other municipalities regarding most basic utilities. Informal interviews indicate that the costs and reliability of some networks (water and electricity supply especially) aggravate the living conditions in majority of the dwellings in the stock.[107]

Data from the 2011 Census indicate the following situation regarding energy sources for heating in dwellings. Coal is used in 723,733 dwellings; while wood is used in 1,618,585 dwellings. Crude oil and other oils are used in 408,176 dwellings. Gas as energy source for heating is present in 712,986 dwellings, while electricity is present in 376,672 dwellings. Other sources are present in 16,706 dwellings.[108]

[107] Economic Commission for Europe, *Country Profiles on Housing Sector, Serbia and Montenegro* (Geneva: Economic Commission for Europe, 2006), 17.

[108] 'Popis stanovništva, domaćinstava i stanova 2011 godine u Republici Srbiji: knjiga 30,' Republički zavod za statistiku, accessed 20 February 2014, http://webrzs.stat.gov.rs/WebSite/public/PublicationView.aspx?pKey=41&pLevel=1&pubType=2&pubKey=2131. The calculations did not take into account whether certain dwellings used more than one type of energy source for heating.

TABLE 1.3 Energy Sources for Heating in Dwellings

Energy source for heating	Number of dwellings
Coal	723,733
Wood	1,618,585
Crude oil and other oils	408,176
Gas	712,986
Electricity	376,672
Other sources	16,706

NOTES Based on data from SORS (http://webrzs.stat.gov.rs/WebSite/).

Central heating from the district heating plant is present in 535,456 (or 22,1%) occupied dwellings (out of 2,423,208 in total). Central heating from the buildings' boiler room is present in 498,835 dwellings (or 20,6%). Without any form of central heating there is 1,386,460 (57,2%), while the type of energy used for heating is unknown for 2,457 of dwellings.[109]

Electric installations are present in 3,176,690 dwellings[110] (or 98,3%). Water supply system is installed in 2,990,163 dwellings (or 92,5%), while sewage is present in 2,989,693 dwellings (or 92,5%). Heating installations are present in 1,580,838 dwellings (or 48,9%).[111] There is a difference between the provision of basic amenities in the rural and urban areas, as evident from table 1.4.

In general, the quality of dwellings in Serbia is very low, since there is a predominance of pre-modern dwellings, the quality of construction was low; there are many unfinished houses, the communal infrastructure is imperfect, while the energy efficacy and maintenance are on a low level.[112]

The largest proportion of dwellings in Serbia is owned by private persons (natural and legal),[113] due to the privatization of the hous-

109 'Popis stanovništva, domaćinstava i stanova 2011 godine u Republici Srbiji: knjiga 30,' Republički zavod za statistiku, Republički zavod za statistiku, accessed 20 February 2014, http://webrzs.stat.gov.rs/WebSite/public/PublicationView.aspx?pKey=41&pLevel=1&pubType=2&pubKey=2131.

110 Again, a broader definition of dwellings was used.

111 'Popis stanovništva, domaćinstava i stanova 2011 godine u Republici Srbiji: knjiga 24,' Republički zavod za statistiku, accessed 20 February 2014, http://webrzs.stat.gov.rs/WebSite/public/PublicationView.aspx?pKey=41&pLevel=1&pubType=2&pubKey=1733.

112 Begović et al., *Socijalno stanovanje u Srbiji*, 37.

113 Monasteries are deemed legal persons, as well as the Serbian Orthodox Church.

TABLE 1.4 Provision of Basic Amenities in Urban and Rural Areas

Category	Total		Urban areas		Rural areas	
	(1)	(2)	(1)	(2)	(1)	(2)
Total number of dwellings	3,231,931	100.0	1,839,557	100.0	1,392,374	100.0
With electricity installations	3,176,690	98.3	1,836,212	99.8	1,340,478	96.3
With water system supply	2,990,163	92.5	1,817,367	98.8	1,172,796	84.2
With sewage system	2,989,693	92.5	1,817,631	98.9	1,172,062	84.2
With heating installations	1,580,838	48.9	1,220,151	66.3	360,687	25.9

NOTES Column headings are as follows: (1) number, (2) percentage. Based on data from SORS (http://webrzs.stat.gov.rs/WebSite/).

ing stock in the early nineties (around 98.3% according to data from the 2011 Census). Smaller proportion of dwellings is state owned – 1.7%. Regardless of the fact that some new apartments in state ownership have been built (social housing) in the last five years, the ratio has not changed significantly, since the number of privately owned dwellings has increased as well.

1.5 Other General Aspects

There are several organizations of tenants in Serbia. Some of them are organized on the national level, whereas other are organized on the local level. However, their actual role in the political and social sphere in Serbia is insignificant.

The Association for the Protection of Rights and Needs of Tenants in Serbia (*Udruženje za zaštitu prava i potreba stanara Srbije*) is a non-profit organization situated in Belgrade. Its goal is educating the citizens about their rights as tenants, offering support to local administrations, development of housing culture, abiding the laws and realization of the law in practice.

Another organization on the national level is the Association of Users of Apartments in Private Ownership (*Udruženje stanara u privatnim stanovima*). This organization is dedicated to resolving the issues of protected tenants and owners of apartments.

Velegrad is an organization of tenants located in Belgrade. It was registered in 1994 with goals of helping the tenants with their prob-

lems by informing them, educating and consulting on the subject matter. They also represent tenants in need before the courts, offering their legal service for smaller tariffs. The number of members is around 100. In order for an individual to become a member, he must pay a fee of approximately 5 EUR per year. This organization also files initiatives and suggestions with the Government of Serbia in order to increase the quality of housing conditions of tenants. Some of their projects include proposal for the amendment of the 1992 Housing Act in 2005, amendment of the Residence of the Citizens Act, the Social Housing Act, taxing laws, etc. They also helped residents of the Ledina neighbourhood to avoid demolition of their homes. In addition, they are sponsoring an action on housing compensation for elderly renters and others, whom had been for years taken a part of their salaries for housing funds, yet they received nothing. Every year they commemorate the World Day of Housing.[114]

According to Tsenkova's Council of Europe Development Bank Regional Housing Survey in 2005, the percentage of vacant dwellings in Serbia is around 11%. Due to the fact that some additional dwellings were built since then and taking into account the economic crisis, which lowered the housing commerce, it is plausible that the number of vacant dwellings is even higher.[115]

It must be noted that the number of vacant dwellings is much higher in the rural areas than in some larger municipalities. In rural areas the percent of vacant dwellings is 13.7%, whereas in urban areas it is 9%.[116] One of the main reasons is definitely the process of urbanization, which is still present, even though it has not been very expressed in the last decade. Other reasons include influx of refugees and IDPs, which are mostly residing in the larger cities and municipalities.[117]

The data from the 2011 Census indicate that the number of empty dwellings is 587,715 (as opposed to 2,423,208 occupied dwellings).

[114] 'Sve o nama,' Udruženje podstanara Velgrad, accessed 7 November 2012, http://www.podstanar.org.

[115] S. Tsenkova, 'Trends and Progress in Housing Reforms in South Eastern Europe,' United Nations Human Settlements Programme, 11 February 2012, http://www.unhabitat.org.rs/download/Tsenkova_ENG.pdf.

[116] Both data are from the 2002 Census.

[117] Begović et al., *Socijalno stanovanje u Srbiji*, 30.

The number of empty dwellings encompasses 475,759 temporarily unoccupied dwellings and 113,956 deserted dwellings. The portion of empty dwellings is around 18% of the entire dwelling stock in Serbia (amounting to 3,231,931, encompassing also other dwellings, such as secondary homes, collective centres, dwellings used for commercial activities, premises inhabited out of necessity).[118]

Illegal construction is often related to small sheds, unhygienic suburbs and areas unregulated by urbanity plans. However, Serbia is facing with illegal construction also in some other areas, even in centres of some towns. Some of the largest problems in housing sector in Serbia are definitely the problems of illegal construction and flourishing black rental market.

Since there is no register of rental contracts or any similar data base, the only obligation for landlords is to register the rental contract with the Tax Office. However, not many landlords opt to register the contract due to a rather high tax rate (20% of the rent price). Therefore, the majority of rental relations in the market sector are realized through 'black market.' Nevertheless, such state does not lead to invalidity or nullity of contracts.

The rudiments of the illegal construction in Serbia (and former Yugoslavia as a whole) can be traced back to sixties years of twentieth century. At first, this anomaly was mostly present in peripheral parts, which were later on with the expansion of towns integrated into the urban area. Afterwards, the problem extended to illegal construction of additions, reconstructions and adaptations of and to existing buildings. According to some experts there are over 150,000 illegal dwellings in Belgrade alone or 40% of the area intended for the housing, according to the General Urban Plan for Housing.[119] For the entire Serbia this number is around 700,000; without complete paperwork yet one million.[120] Furthermore, during the nineties, the number of illegally built dwellings equalled

[118] 'Broj i površina stambenih jedinica,' Republički zavod za statistiku, accessed 20 February 2014, http://webrzs.stat.gov.rs.

[119] Đ. Mojović, V. Čarnojević, and Ž. Stanković, *Lokalna stambena politika* (Belgrade: Program za urbani razvoj, 2009), 7.

[120] 'Bespravna gradnja i uzurpacija,' Arhitektonski fakultet Univerziteta u Beogradu, accessed 11 November 2012, http://www.arh.bg.ac.rs/upload/0708/Osnovne_akademske_studije/semestar_06/Sociologija_1/13%20Bespravna%20izgradnja%20i%20uzurpacija.pdf, 2.

those constructed with a permit.[121] The legalization process of such dwellings has been initiated in 2003, after the Planning and Construction Act (*Zakon o planiranju i izgradnji*)[122] was enacted. This act was amended on several occasions, delaying the final deadline for the applicants to file the claim for legalization. The last amendment was enacted in 2011[123] and 2012[124] with purpose of simplifying the process of legalization.

However, the amended provisions set out in Articles 185 to 200 solutions for dealing with illegal construction, which were deemed unconstitutional by the Constitutional Court RS.[125] The 2009 amendment introduced the right to legalization of illegally constructed buildings, whose construction was initiated before 13 May 2003 (when the original Planning and Construction Act was enacted), as well as construction initiated after 2003. This meant that the illegally constructed buildings were not to be demolished, if the investors filed claims for legalization within the legally set deadline. The 2003 Planning and Construction Act, on the other hand, contained a provision, according to which illegally constructed buildings were to be demolished, while the investor was charged with criminal offense. The criminal offense charges were anticipated also with the 2009 Planning and Construction Act. The Constitutional Court RS deemed the solution from the 2009 Planning and Construction Act as unconstitutional, since it treated differently the same types of illegal construction. Before the 2009 Planning and Construction Act was enacted, the illegal construction would be demolished without the possibility for legalization. Therefore, those whose illegally constructed buildings were not demolished obtained a kind of an additional deadline for legalization, which was not in accordance with the principle of unity of the legal order. What is more, the solution from the 2009 Planning and

121 M. Petrović, 'Residental Segregation in Post-Socialist Belgrade: New Forms and Dimensions' (paper presented at the conference Following Transition: Urban Restructuring in Eastern Europe, Budapest, 27 November 2010), 7.

122 *Službeni glasnik Republike Srbije*, no. 47/2003.

123 *Službeni glasnik Republike Srbije*, no. 24/2011; Lj. Pljakić, 'Građenje i legalizacija, izmene i dopune zakona,' *Pravni informator*, no. 6 (2011): 41.

124 *Službeni glasnik Republike Srbije*, no. 121/2012.

125 Decision of the Constitutional Court RS, no. IUZ-295/2009, *Službeni glasnik Republike Srbije*, no. 50/2013.

Construction Act was not anticipated as an interim solution, but rather as a systematic solution. The Court, however, acknowledged the fact that there are a vast number of illegally constructed buildings and that they are to be legalized in order to cease the present state of affairs. However, it stressed that the Government ought to introduce such a solution, which would demand from the investors of illegally constructed buildings to fulfil all of the obligations as other investors, in order to avoid the discrimination.

Also, other conditions for realization of the provisions were not met: criteria for legalization, types of illegal construction, the status of building lot,[126] subdivision, ownership status of multi-apartment buildings that were socially or state owned and are now privately owned, ownership status of communal parts of multi-apartment buildings, borders of such buildings, etc. Also, there were no criteria for distinguishing between illegal construction, which is in accordance with urbanity plans and is not jeopardizing other properties, and the construction, which violates all urbanity norms and standards.[127] From 2000 to the end of 2003 there were over 400,000 filed applications for legalization. Considering the fact that it was possible to file a single application for more units, it can be concluded that there was more than 400,000 illegal buildings. Also, one should take into account that for some buildings it was impossible to file such application. These were mostly dwellings in rural parts or in areas for which urbanity plans had different purposes.[128]

Another legal anomaly on housing market was caused mainly due to the inadequately written Real Estate Act (*Zakon o prometu nepokretnosti*). Namely, cases of multiple sales of apartments in the process of construction (some even as much as ten times) were

[126] This issue is especially topical in Serbia, due to the complex regulation in this regard. Up until recently, all of the construction lots in Serbia were in state ownership. The 2006 Constitution and several other statutes were amended (among others, also the 2009 Planning and Construction Act) in order to allow for the private ownership of construction lots. However, the process of conversion continues up to the present day, due to the Constitutional decisions thereof (Decision IUZ no. 68/2013 from 10 October 2013).

[127] 'Bespravna gradnja i uzurpacija,' 3–4.

[128] V. Milić, K. Petovar, and R. Čolić, 'Bespravna izgradnja u Srbiji: geneza i perspektive rešavanja problema' (paper presented at the Ministerial Conference on National and Regional Policies and Programs, Vienna, 28 September–1 October 2004).

rather common, since there was no legal mechanism for the future buyer to verify whether the apartment had already been sold. Therefore, on 29 December 2009[129] amendment of the act was enacted, which put in force Article 4a. This provision introduced a register of certified selling contracts with the first instance courts in municipalities, in which the dwelling is located. Hence, every selling contract is to be certified in front of the court. The certification is possible only in the case that there is no other prior certification done with the same transferor of the ownership right on the same dwelling. However, regardless of the provision, it is still possible to commit a fraud due to the imperfections of the law, even though it is now a slightly more complicated process.[130]

[129] *Službeni glasnik Republike Srbije*, no. 111/2009.

[130] M. Živković, 'O kvalitetu novijih građanskopravnih propisa u Srbiji,' *Pravni zapisi*, no. 1 (2010): 129–30.

Chapter Two

Economic Urban and Social Factors

2.1 Current Situation of the Housing Market

Since the crisis, there has been a larger supply of dwellings, leading to a decrease in the prices of rentals. According to a newspaper article from August 2011, the rentals have never been more affordable. Since 2007 the rents have decreased for 50% on average. In Belgrade alone, the rents were some 30% lower compared to 2010. The same trend was observed also in Kragujevac (10% lower) and Novi Sad (40% lower).[1]

As far as the ownership market is concerned, the decrease in purchase price is obvious. For instance, a luxurious apartment, which was approximately 100,000 EUR in 2008, can now be purchased for 70,000 EUR.[2] Still, according to many real estate experts, prices have not drastically declined due to the economic crisis. The crisis is mostly seen in the construction sector and is to affect demand and supply, especially due to the decreased possibilities of obtaining banking loans.[3]

According to Rodić, there are around 934,000 dwellings under mortgage in Serbia. Many individuals are no longer able to cover the costs of instalments.[4] Prediction is that the prices of square meter are to decrease, if the banks decide to dispossess the dwellings and sell them, due to the higher supply on the market.

Local market divergences are present on the market (profit)

[1] 'Kirije niže od 20 do 40 odsto,' *Blic Online*, 9 August 2011, http://www.blic.rs/Vesti/Ekonomija/270329/Kirije-nize-od-20–do-40-odsto.

[2] 'Kvadrat jeftiniji za trećinu padaće još,' *Telegraf*, 24 May 2012, http://www.telegraf.rs/vesti/220047-kvadrat-jeftiniji-za-trecinu-padace-jos.

[3] 'Kriza zaustavila cene kvadrata,' *Vibilia*, accessed 13 November 2012, http://www.vibilia.rs/srpski/izvestaj/0508/Kriza%20zaustavila%20cene%20kvadrata_081008.pdf.

[4] 'Dugovi: pod hipotekom milion stanova u Srbiji,' *Naslovi.net*, 28 July 2012, http://www.naslovi.net/2012-07-28/telegraf/dugovi-pod-hipotekom-milion-stanova-u-srbiji/3703319.

rental and purchase markets. Internal migrations within Serbia are not as influential as they were in the previous periods, e.g. periods of urbanization and industrialization, when there were a considerable number of individuals migrating from rural to urban parts in search for an adequate employment. Divergences are predominant in cities, which are educational centers, especially in late August through the end of September, since there is a larger influx of students (and consequently larger demand for room and apartment rentals). Such cities are Belgrade, Niš, Novi Sad, Kragujevac, Vranje. According to some real estate agents, in summer time there is a decrease in the purchasing demand for dwellings, whereas the demand is somewhat increased at the beginning of the year and in the spring time.[5]

The rental housing sector in Serbia is affected not just by the high costs of housing, but also with the lack of adequate supply. The trend of increase in the number of households has been observed since 1991 in some larger municipalities, whereas it is in decline in some smaller ones, especially in Eastern Serbia. All together, the number of households declined between 1991 and 2002 due to the situation with Kosovo and Metohija region.

This increase in the number of households has not been followed by larger supply of affordable dwellings in the larger municipalities. Some estimation for 2005 indicated that there were 120,000 households in need in cities across Serbia.[6]

Some would argue that there are enough dwellings for renting in Serbia, regardless of the fact that there was an increase in the number of households, since the construction activity was also increased. In addition, the number of vacant dwellings is also large (around 18% of the entire dwelling stock).[7] However, much of the above construction was done by private investors, who did not take into account some social constraints and implications (e.g. low purchasing power of citizens, economic crisis, unstable labour market influencing also the mortgage loan market). Namely, non-profit and social housing in Serbia has been neglected since the dissolution

[5] 'Stambena sezona i van sezona,' *Politika Online*, 5 February 2010, http://www.politika.rs/rubrike/Nekretnine/Stambena-sezona-i-van-sezona.lt.html.

[6] Petrović, 'Affordable Rental Housing,' 5.

[7] For more on this see section 1.5.

of former Yugoslavia. Thus, the scarcity is the largest in this part of the rental sector. Some improvements have been seen recently, with around 1,500 dwellings built in 2010 in various cities across Serbia.[8] However, this is far from satisfactory supply due to emerging economic state in the country. Also, owners of vacant dwellings are either reluctant to rent their dwellings or are doing so in the unofficial market, reporting the dwellings empty out of fear of tax burden.

The largest deficiency of rental housing is observed in Belgrade and other larger cities, especially in northern and central part of the country (Novi Sad, Kragujevac, Kraljevo). The main reason for this is that these cities are hosting educational (universities and secondary schools) and other important public institutions. Another reason is the fact that many IDPs have settled in these cities, for instance, many IDP from Kosovo moved to Kraljevo and Niš. On the other hand, the need for rental dwellings in Eastern Serbia is rather low. Particularly some smaller municipalities (especially in Negotinska Krajina region) are faced with major emigrations of citizens, leaving some of the settlements totally uninhabited.

According to the SORS, the projections of population number until 2020 and 2030 estimate that the number is going to decrease: from 7,258,753 in 2011, to 7,117,038 in 2020 and 6,888,888 in 2030. The crucial processes leading to such situation are negative population growth and emigrations of population. However, considering that the average number of persons in a household is in decline, it is not necessary that the number of households is going to decrease, leading to smaller housing demands. On the contrary, since there is a trend of increase in the one- and two-member households, the demand for smaller houses and apartments is likely to increase. For instance, until 1970 the average number of persons in a household was around four. Afterwards, a decline has been observed, while at the present, this number is below three.[9] Furthermore, since the population is aging, there is likely to be a larger demand for purpose dwellings (intended for institutionalized care of elderly).[10]

[8] Mojović and Žerjav, *Stanovanje pod zakup*, 24.

[9] *Statistical Yearbook for 2012* (Belgrade: Republički zavod za statistiku, 2012).

[10] G. Penev, 'Projekcije stanovništva Srbije, 2002–2052,' *Pregled - Republika Srbija*, no. 3 (2007): 9–26.

Albeit the fact that many IDPs have arranged their situation by returning to their country or integration, there are still some 70,550 refugees and 210,146 IDPs in Serbia.[11] Out of these, there are approximately 21,420 households or 79.4% in need of assistance in solving their housing problems. When analyzing the ethnical structure of those in need, it can be concluded that 90.7% of Roma vs. 78% of non-Roma are in need for solving their housing issues. The demand for social housing is expressed for 6,643 households, whereas some are in need of construction material (7,033). However, one must bear in mind the definition of need that was used in the research. Namely, the notion 'IDPs in need' included only three types of households. First one were those that owned a dwelling with less than 15 m² per household member, no running water, electricity, bathrooms or toilets, and whose housing has damp trouble, leaky roof, damaged walls/floors and rotten joinery, and in addition to all this household earns less than 8,526 RSD (75 EUR) per household member a month. Second were households that were living in buildings not intended for housing and earning less than 8,526 RSD per household member a month. Third were households living in the dwelling that is not owned by them and earning less than 8,526 RSD per household member a month.[12] Thus, if other conditions were to be considered as well, the number of households in need would be significantly higher.

2.2 Issues of Price and Affordability

Since the rental housing sector in Serbia is under-regulated, prices are usually determined freely on the market. There is no official information on the market rents. However, a study done for UN-Habitat indicates that the rent to income ratio exceeds 0.50[13] in larger towns. The rent is taken as median for private rental sector, whereas income is taken as average for the entire population.[14] A

[11] M. Teržan, 'Alternative housing solutions for the displaced in Serbia,' Europe Housing Forum, 25 April 2012, http://ecahousingforum.eu/2012/04/alternative-housing-solutions-for-the-displaced-in-serbia/.

[12] UNHCR, 'Assesment of the Need of Internally Displaced Persons in Serbia' (UNHCR, 2011), http://www.unhcr.rs/media/IDP_Needs_AssessmentENGLISH.pdf, 2.

[13] The number represents the proportion of the rental expenses in monthly income of the household, disregarding other expenses.

[14] Petrović, 'Affordable Rental Housing,' 4.

study done by the World Bank stressed that among the analyzed countries[15] in that report, Serbia had the rent (in market rentals) to income level of 18.8%,[16] whereas the housing costs to income were 27.6% for private rentals and 10.1% in public ones. For owners, these were 9.1%. As far as methodological constraints are concerned, it is important to note that these calculations were done for urban dwellings only, while the cost excluded heating/energy. Average housing costs included rent/condominium fees and utilities.[17]

Social housing is more affordable. In Belgrade the rent is based on social criteria and does not include actual costs. The price is 0,4 EUR/m², accounting for 10% of the market price. In other cities the rents are set based on the costs and are ranging from 1,3 to 1,6 EUR per m². In 2010 this accounted for 50 to 75% of the market price.[18] However, since these apartments are awarded only to those in severe social distress, the price is merely more affordable, since this group of people usually has lower income at its disposal.

As it is common in many post-socialist countries, there is an extremely high preference of home-ownership over renting in Serbia. Many reasons have contributed to such situation. One is certainly the process of privatization and its described implications. In general, a massive affordability problem exists, as the housing price to income ratio exceeds 17[19] [20] However, since the conditions for obtaining a housing loan are not very favorable, many are forced to rent dwellings in the market, since public rental stock is almost non-available. The Government has taken some measures in order to support and promote loans and possibilities for households to obtain a dwelling. Nevertheless, many households still are not able

[15] Armenia, Russia, Poland, Romania, Lithuania and Serbia. Used were Living Standards Measurement Surveys (LSMS) and annual Household Budget Surveys (HBS). The obtained data were enhanced by other evidence from national statistics, analysts' reports and findings, as well as interviews with experts and market participants from these six countries.

[16] Average rent payment divided by average income proxy value.

[17] H. J. Dübel, W. J. Brzeski, and E. Hamilton, *Rental Choice and Housing Policy Realignment in Transition: Post-privatization Challenges in the Europe and Central Asia Region*, (Washington, DC: The World Bank, 2006), 38.

[18] Mojović and Žerjav, *Stanovanje pod zakup*, 24.

[19] The number represents the number of years that the household should work in order to afford an average size dwelling.

[20] Petrović, 'Affordable Rental Housing,' 4.

TABLE 2.1 Investors and Their Activity Levels

Types of investors	Activity level
Subsistence landlords	Very active
Restitution beneficiaries	Active
Small private landlords	Active
Small businesses	Active
Employer	None
Institutional	Some new construction in major cities
Non-profit rental	None
Public rental	Inactive
Debt investors	No lending

NOTES Adapted from Dübel, Brzeski, and Hamilton, *Rental Choice and Housing Policy Realignment in Transition*, 44.

to afford a monthly payment of the mortgage, thus they remain in rented dwellings.

2.3 Tenancy Contracts and Investment

The investments into construction of dwellings for renting are not profitable in Serbia. As a result, the number of investors of such dwellings is negligible. Majority of them are seated in Belgrade and few other larger towns.

The results indicate that rental sector in Serbia is mostly run by private individuals in search of some additional revenues, who determine rent level in negotiations and not according to returns on investments. Nevertheless, since almost entire of the activity in rental sector is a part of informal market, all revenues are collected by the landlords (they pay no taxes or other fees, they have no obligations to fulfil equipment standards, etc.).[21]

REITS or similar instruments are not present in Serbia. There is no securitization system related to tenancies in Serbia.

2.4 Other Economic Factors

In Serbia many insurance companies and banks offer insurance for dwellings, parts of multi-unit dwellings, condominiums and equipment, as well as garages, garden sheds, pools, etc. Nevertheless, the number of insured dwellings is very small, due to the low finan-

[21] Mojović and Žerjav, *Stanovanje pod zakup*, 25.

cial standard of citizens and insurance habits.[22] Amongst insured ones, there are many which are insufficiently insured. For instance, during the floods in 2010 in Belgrade, many individuals that had insurances for dwellings were denied refunds, since their basic insurance did not include insurance from floods.[23] The prices of the insurances are noticeably different. The insurances are mostly in the form of a package, with several hazards included. It is also possible to add a hazard or increase the insured amount. The above mentioned insurances can be concluded on behalf of landlord, which is more common, or on behalf of tenants. Thus, there are no separate insurances only for tenants.

In order for an individual to purchase, sell or rent a dwelling in Serbia, he is not obliged to use services of a real estate agency. According to a research done by Century 21, a large franchised real estate agency working in Serbia, the work of the real estate agencies in the country is on a very low standard. Only 10% of the agencies advertise in local newspapers, whereas 80% is advertised in specialized magazines. 77% of the agencies do not have their own web page. Majority of them do not have their brand explicitly marked. On average, an agency has five agents, which are poorly educated; 90% of them are educated on terrain. As little as 4% actually done a course and passed the exam.[24]

Moreover, there are numerous agencies that operate on the black market, offering lower commissions and lower security at the same time. In Belgrade alone, there are around 800 agencies, 300 of which are illegal. The latter deceive the client by taking the money, while not securing the contract.[25]

This situation is a consequence of the under-regulation of this

[22] 'Raste interesovanje građana za osiguranje imovine i osiguranje života,' *Economy.rs*, 27 January 2011, http://www.economy.rs/finansije/7758/Raste-interesovanje-gradjana-za-osiguranje-imovine-i-osiguranje-zivota.htm.

[23] S. Marić, 'Miran san samo uz dodatno osiguranje,' *Politika Online*, 26 March 2010, http://www.politika.rs/rubrike/Nekretnine/Miran-san-samo-uz-dodatno-osiguranje.lt.html.

[24] 'Bez veb sajta, prepoznatljivosti brenda i kvalitetne edukacije kadrova – Kako posluju agencije za nekretnine u Beogradu?' Century 21, 17 January 2012, http://www.century21.rs/public/news/view/102.

[25] D. Mučibabić, 'Agenti za nekretnine nestručni, agencije tehnološko neopremljene,' *Politika Online*, 18 January 2012, http://www.politika.rs/rubrike/Beograd/Agenti-za-nekretnine-nestrucni-agencije-tehnoloski-neopremljene.lt.html.

sector. Namely, the act regulating work of the real estate agents and agencies, the Real Estate Agencies Services Act (*Zakon o posredovanju u prometu i zakupu nepokretnosti*)[26] has been enacted only recently, in November 2013. It stipulates that an agency is to have at least one agent that has passed the adequate education and obtained the licence.[27] Also, a registry of agents is planned,[28] which is going to be publicly displayed.

In general, the services of the agency are without charge, unless there is a brokerage contract concluded. In that case, a buyer must pay additional 3% for the agency fee. Some unfair agencies also charge visits to the dwellings, which decreases the possibilities of actual purchase or rent. The commission is usually paid at the conclusion of a pre-contract. Some agencies additionally charge the services of the lawyers, which assist with the conclusion of the contract. If both sides have engaged the agency, a half of commission is paid by each, unless there is some other arrangement. Agent that works for the other side in contrary to the arrangement or interest of his client does not have a right to commission or refund of other expenses.[29]

Since there have been numerous scams happening in the past, individuals are reluctant to hire an agency in search of the housing or buyer/renter. In addition, many of them are not prepared to pay the commissions, since the services of the agencies do not guarantee for the higher protection.

In 2011 the Public Notaries Act was enacted[30] and is to take the effect as of 1 September 2014. This act prescribes that legal transactions of disposal with real estate are to be composed in the form of notarial record.[31] Unless such form is complied with, the legal transaction (a contract or a statement) is without any legal effect. For tenancy contracts the form of notary record will not be mandatory, but rather optional. Therefore, introducing notaries may increase

[26] *Službeni glasnik Republike Srbije*, no. 95/2013.

[27] Article 5(1/1) of the Real Estate Agencies Services Act.

[28] The Government is to set up the registry in eighteen months following the enactment of the act.

[29] 'Agencija za nekretnine,' *Upravusi online*, accessed 8 November 2012, http://upravusi.rs/kuca/kupoprodaja-nekretnina/agencije-za-nekretnine/.

[30] *Službeni glasnik Republike Srbije*, no. 31/2011.

[31] Article 82(1/5) of the Public Notaries Act.

the legal security in the rental sector, provided that the parties decide on the notary form of the tenancy contract.[32]

2.5 Effects of the Current Crisis

The mortgage credit has not been restricted to a larger extent due to the crisis. However, there is a lower demand for the housing loans, since the crisis has affected the labour market and many individuals are unemployed.

There have been 90,347 mortgage housing loans altogether in 2012, 68,662 of which are without state subvention, or 76% of all housing loans in Serbia, and 15,851 with the subvention, or 18% of all housing loans.[33] The subventions have been canceled as of 2014 due to the lack of budgetary means.[34] The rental sector was not affected to a large extent. Since the crisis, as mentioned above, the rents have decreased due to the increased supply of dwellings. One of the reasons might also be that some owners, which previously had intention of selling their dwelling, were now forced to rent it, since the demand for purchases has declined.

There are no precise data on the number of repossessed dwellings in Serbia since the crisis has started. More significant repossessions are noticed in terms of business debts. In general, there is not much repossession from individuals in Serbia.[35] According to a newspaper article, there are around 4,000 dwellings (with total debt of 5.6 billion RSD or 50 million EUR) that are to be repossessed. These amount to around 1.6% of all individuals having a mortgage.[36]

The entire number of mortgage based loans is 934,000. However, not all were intended for purchases of dwellings, but also of other goods (cars, furniture, etc.). Unless the housing loan is secured with

[32] The Public Notaries Act has prescribed a number of a hundred notaries in order for the Chamber to be established (Article 179).

[33] Udruženje banaka Srbije, 'Pregled osiguranih stambenih kredita stanovništva' (Udruženje banaka Srbije, Beograd, 2012), http://www.ubs-asb.com/Portals/0/vesti/113/18-09-12-8.pdf.

[34] 'Bez subvencija u 2014,' Nacionalna korporacija za osiguranje stambenih kredita, 14 December 2013, http://www.nkosk.rs/content/bez-subvencija-u-2014.

[35] 'Sve češće se aktiviraju hipoteke,' Krediti, accessed 12 November 2012, http://www.krediti.rs/vesti/sve-cesce-se-aktiviraju-hipoteke/5637.

[36] S. Moračević, '4,000 stanova ide na doboš,' *Večernje novosti*, 22 September 2012, http://www.novosti.rs/vesti/naslovna/aktuelno.290.html:398139-4000-stanova-ide-na-dobos.

the National Corporation for Securing Housing Loans, banks are able to initiate the repossessions at any time.[37]

The process of selling the dwellings with default mortgage instalments can be court or out-of-court. The court process is in accordance with the 2011 Execution Procedure Act (*Zakon o izvršenju i obezbeđenju*)[38] and is a longer (approximately 635 days) and more expensive path (around 30%). The out-of-court procedure is enacted in the 2005 Mortgage Act (*Zakon o hipoteci*)[39] and is faster. However, it includes larger responsibility of the initiating side.

As a mean of combating the ongoing crisis, the Government adopted the Regulation on Measures of Support to Construction Industry Through Long-Term Housing Loans in 2012 (*Uredba o merama podrške građevinskoj industriji kroz dugoročno stambeno kreditiranje u 2012. godini*).[40] This regulation reduced the citizens' participation in housing loans from 10% to 5%, enabling the housing loans under much lenient conditions.[41] The Regulation adopted for 2013 increased the participation again to 10%.[42] According to the new Regulation, 10% of the loan is covered from the budgetary means, in form of a subsidy. The remaining 80% is given by the commercial bank, in form of a loan, with the National Corporation for Securing Housing Loans securing the loan. The user of the loan must first repay the instalments to the bank, in the period of no more than twenty-five years. Afterwards, the subsidy is to be repaid, within following five years without any interests. The interest rate for commercial banks' loans is maximum of 4.5% plus six-month EURIBOR.[43]

37 'Aktiviranje hipoteka oboriće cene stanova,' *Naslovi.net*, 28 July 2012, http://www.naslovi.net/2012-07-28/mondo/aktiviranje-hipoteka-oborice-cene-stanova/3702340.

38 *Službeni glasnik Republike Srbije*, no. 21/2011 and 99/2011.

39 *Službeni glasnik Republike Srbije*, no. 115/2005.

40 *Službeni glasnik Republike Srbije*, no. 4/2012 and 77/2012.

41 'Residential Market,' Expat Serbia, 4 December 2012, http://www.expatserbia.com/once-youre-here/accommodation-and-housing/438-residential-market?start=1.

42 Article 6(3) of the Regulation on Measures of Support to Construction Industry Through Long-Term Housing Loans in 2013. *Službeni glasnik Republike Srbije*, no. 124/2012.

43 Article 7 of the Regulation on Measures of Support To Construction Industry Through Long-Term Housing Loans in 2013.

The loans have been available to marital couples older than forty-five years, whereas the maximum period of instalments is thirty years. The debtor must not be older than seventy when paying out the last instalment. The subventions are given only for purchases of newly constructed or dwellings in the process of construction.[44]

The conditions for obtaining the subsidy (apart from the above described) are that the applicant or his marital partner do not possess a suitable dwelling or have already taken a loan for purchase of a dwelling. Their incomes per person must not exceed on average 150,000 (1,300 EUR) RSD net per month in the last three months prior to the application.[45]

The commercial bank providing the loan must include the following provisions in the contract: that the dwelling is not to be rented out, that the dwelling is not to be additionally burdened with a lien, that the user is to register his address on the address of the purchased dwelling in fifteen months following the purchase or completion of the dwelling.[46]

2.6 Urban Aspects of the Housing Situation

It was not until the beginning of nineties that the proportion of inhabitants in urban areas exceeded the proportion in the rural areas. The gradual influx of rural inhabitants to urbanized areas was mostly influenced by the process of industrialization. During the last two decades in Serbia, the process of urbanization was widely present, since the possibilities for agricultural activities were reduced. These days the proportion of citizens in urban areas is larger than in the rural ones.[47]

Parallel to this process, another one has been present, namely de-urbanization (ruralization) of suburbs, which is an indirect consequence of the urbanization. It is caused by the mass illegal con-

44 'Vlada usvojila uredbu o subvencionisanju stambenih kredita,' *Blic Online*, 9 January 2012, http://www.blic.rs/Vesti/Ekonomija/302345/Vlada-usvojila-uredbu-o-subvencionisanju-stambenih-kredita.

45 Article 3 of the Regulation on Measures of Support to Construction Industry through Long-Term Housing Loans in 2013.

46 Article 4 of the Regulation on Measures of Support to Construction Industry through Long-Term Housing Loans in 2013.

47 S. Vujović, 'Urbano i stambeno pitanje u svetlu svojinskih promena,' *Luča* 12, no. 1–2, (1995): 272–3.

struction of the rural migrants, taking place on the edges of the cities.[48] Since the building lots have been quite expensive in the urban areas, there was a higher influx of population to outskirts around larger municipalities and towns.

Suburbanization, especially in larger cities (Belgrade, Niš, Novi Sad), is not as extensive as it could be, regardless of the promising spatial possibilities. There are several reasons for this. Namely, the lack of infrastructure (roads, communal facilities, etc.) in Serbia is the main cause hindering the development of the suburban areas. For instance, around Belgrade there are several suburban areas, with lower prices of real estate (Surčin, Rakovica, Višnjica, etc.). However, due to the inadequate infrastructure, the demand for the properties is relatively small. Usually, these suburbs are inhabited by lower middle or working class, making them less desirable place to live. Moreover, the mentality of citizens has been oriented towards living downtown.[49]

Rented houses and apartments are mainly situated in the centers of the bigger towns, whereas owner occupied are mainly in the outskirts and smaller municipalities. One of the reasons is certainly the fact that the prices of dwellings are lower in the latter two. For example, a purchase price of a squared meter of a dwelling in Belgrade varies from 800 to more than 2000 EUR per m^2, while in Zrenjanin, which is relatively near Belgrade, but has fewer inhabitants (around 130,000 compared to Belgrade's 1,500,000), it is ranging from 450 to 900 EUR per m^2.[50]

Furthermore, there is a larger influx of students in university centers and towns hosting faculties and high schools, for instance Belgrade, Novi Sad, Niš, Kragujevac, Leskovac, etc. These are all larger cities in Serbia. Consequently, there is a higher demand for room and apartment rentals in town centers of these municipalities, since students usually do not possess a car.

The process of residential segregation can be observed in Serbia due to the general social transformation in transitional period. It has been influenced mostly by increased social differentiation in general, post-industrialization, privatization of housing and mass

48 Ibid.

49 M. Petrović, 'Residental Segregation in Post-Socialist Belgrade,' 13.

50 'Residential Market.'

influx of IDPS and war refugees. Since the lower income citizens, including IDPS, refugees, Roma and rural migrants tended to inhabit less expensive areas of cities, some other downtown or other neighbourhoods are mostly inhabited by some middle class to higher class inhabitants.

However, apart from Belgrade, Niš and Novi Sad (but latter two rather as exceptions), there is no gentrification present. For instance, Oaza and Belville in Belgrade are investment projects with luxurious apartments, 24/7 surveillance system, pools, etc. Especially Belville in New Belgrade was constructed near Roma settlement, making them leave the site.[51] However, majority of these areas are half empty or inhabited by celebrities and other well-off individuals, and not middle class.[52] Another example is Grbavica neighbourhood in Novi Sad.

As far as ghettoization is concerned, there are some settlements in Serbia that can be regarded as ghettos. Definitely the prevailing group in this regard is Roma community. Many of Roma are part of IDPS from Kosovo, with even worse housing situation due to the lack of financial means. In addition, many of them are without any documents and are ineligible for social assistance. This group lives not only in ghettos, but also in numerous slums within or around many municipalities.

According to 2002 Census there are 110,000 Roma in Serbia, whereas some public officials in 2008 estimated the number to be 500,000. Percentage of those living in urban areas is 53, whereas the remaining percentage lives in villages. There are approximately 590 Roma settlements altogether, hosting more than fifteen dwellings or 100 inhabitants each. Only in Belgrade there are 100 of such settlements. Alarming fact is that only one third of the settlements were planned, whereas illegal and spontaneous construction was present in 35% cases. Around 44% of the settlements do not possess a basic infrastructure. An average dwelling has around 40–60 m^2, whereas a shack has 20–30 m^2.[53] Almost all of the Roma

[51] More on this will be discussed bellow.

[52] M. Petrović, 'Residental Segregation in Post-Socialist Belgrade,' 14.

[53] 'Guidelines for Improvement and Legalization of Informal Roma Settlement,' in *Challenges of the Roma Decade – Action Plans – Annual Reports* (Belgrade: Agency for Human and Minority Rights / Roma National Strategy Secretariat, 2007), 4.

dwellings are situated in the outskirts of the cities and towns or are condensed on a particular smaller area. Usually, other inhabitants refuse to live nearby. The cases when citizens prevent the local government's intention of settling Roma in their neighborhood are not isolated and rare. For instance, in Ruma the Government intended to arrange housing for inhabitants of the settlement Rupa, inhabited only by Roma. However, inhabitants of the neighborhood, where the construction of the dwellings was planned (which is inhabited mostly by Roma's themselves), stopped the construction with a petition.[54] Such situation is common, since the inhabitants are concerned with the value of their properties, which would be diminished with the Roma settlements. Thus, Roma are forced to move and group themselves in the parts of the municipalities, which are usually uninhabited and lack infrastructure, constructing ghettos.

Another very important issue is forced evictions conducted in recent years on the territory of Belgrade. The evictions pertained mostly to informal Roma settlements.[55] According to the Report of the Commissioner for Human Rights of the Council of Europe,[56] in many cases the authorities failed to comply with the legal standards when conducting the evictions. Moreover, in many cases the legal remedies for challenging the decision on the evictions were not provided, while the authorities destroyed property of evicted individuals, without any compensation.[57]

One of the eviction cases was particularly exposed in media. It tackled thirty three Roma households (in which 159 individuals resided, around eighty of them children) located in one of the Belgrade's neighborhoods, Blok 72. The authorities decided on evicting the Roma households from their settlements due to the planned construction of a residential-commercial building. As much as 87% of these individuals were not entitled to the social assistance, while 29% were not entitled not even to the basic health care. The ad-

54 S. Kostić, 'Romi neće Cigane,' *Večernje novosti*, 30 October 2012, http://www.novosti.rs/vesti/srbija.73.html:403604-Romi-nece–Cigane.

55 I. Krstić, 'Prinudno iseljenje – univerzalni međunarodni standardi,' *Anali Pravnog fakulteta u Beogradu* 61, no. 2 (2013): 103.

56 'Report of the Commissioner for Human Rights of the Council of Europe,' (CommDH(2011)29, Strasbourg, 22 September 2011).

57 Krstić, 'Prinudno iseljenje,' 102.

ministrative organs decided in the similar manner in each of these cases. In one particular case, the Construction Inspector ordered the removal of the building in one day from the day that the party received the decision on removal. Therefore, the party was given a mere one day to remove its belongings from the premises. No consultation was being conducted with the injured party, until the Ombudsman suggested so.[58] The party also filed an appeal to the second instance (the Secretariat for Property and Legal Issues – *Sekretatijat za imovinsko pravne poslove*), invoking the constitutional provisions and international instruments (predominately Article 11 of the International Covenant on Economic, Social and Cultural Rights). The appeal was rejected without any reference to the arguments from the appeal.[59] The party then filed a lawsuit in front of the Administrative Court. He argued that the premises were demolished during the period of bad weather, leaving five-member household (with three small children, one being a one-month baby) without any shelter. The Court rejected the lawsuit, stating that the Inspector acted in accordance with the Planning and Construction Act. As far as the international instruments are concerned, the Court concluded that it took them into consideration. However, these are of no importance for the final decision, since the Planning and Construction Act does not contain the obligation of the authority to provide for the shelter after the demolition of the illegal construction.[60]

As far as the other households were concerned, similar decisions were brought. The shelter was provided only for the households, which have had registered the residence in Belgrade. The containers in which the households were accommodated were not equipped with either electricity or infrastructure and were located on the outskirts of Belgrade. Alarming was the fact that the contracts for use of the containers contained a provision stating that the contract can be rescinded, if the individuals do not act in accordance with the 'rules of good conduct' towards the representatives of the state and authorities. The Ombudsman found this provision to be discriminatory, since it was prone to arbitrary in-

[58] Ibid., 104.
[59] Ibid.
[60] Decision of the Administrative Court, no. 13, U 4164/12.

terpretation, while the entire procedures violated the basic human rights.[61]

Another social phenomenon that has been developing recently refers to the construction of gates around properties. The phenomenon is especially present in Belgrade. Contrary to the gated communities per se, which were walled directly by their developers (like government facilities and embassies), the other estates had the walls added by their owners or users afterwards.[62] Experts offer many explanations for this situation, including 'search for security and status' and 'conscious departure from the values of socialist egalitarianism and collectivism.'[63]

The phenomenon of squatting is present in Serbia, albeit the fact that it is not as widely pervasive as in some other countries. Usually it refers to Roma population occupying vacant factory warehouses or old houses. For instance, a number of Roma, who were evicted from their settlements around Belgrade's neighbourhood Belville and other neighbourhoods, occupied an empty factory warehouse of former 'Borac' factory. Other examples include houses with unsettled ownership status, which are then inhabited with refugees, IDPs, homeless, underprivileged, etc. Contrary to some other countries, squatting in Serbia has not developed into a social movement, but is rather an individual phenomenon. Moreover, there are examples of squatting in the suburban areas, where citizens occupy a part of a land and build a shack or similar dwelling and use it as a second home. For instance, such dwellings are present in forest of Miljkovica.[64]

According to the Article 28(4) of the Basic Ownership Relations Act, ownership can be obtained through adverse possession within twenty years by a conscientious possessor. However, since squatters are not conscientious about the legal base for their possession, they are not able to obtain ownership in this manner. Owner of the dwelling has a legal claim against the intruders, which is filed with the local self-government unit, in which the dwelling is located.

[61] Krstić, 'Prinudno iseljenje,' 106.

[62] S. Hirt and M. Petrović, 'The Belgrade Wall: The Proliferation of Gated Housing in the Serbian Capital After Socialism,' *International Journal of Urban and Regional Research* 35, no. 4 (2011): 754.

[63] Hirt and Petrović, 'The Belgrade Wall,' 773.

[64] D. Pavlica, *Skvoterski pokret* (Belgrade: Faculty of Political Sciences, 2007), 36.

The procedure is to be considered as an urgent matter. The officials of the local government then settle the case on the terrain, when needed also with the assistance of the police.[65]

2.7 Social Aspects of the Housing Situation

The dominant public opinion in Serbia is that ownership of dwellings offers a higher standard of living. All types of renting are considered as inferior to ownership. This is especially promoted with the housing policies of the Government, which constantly support homeownership and neglects rental sector.

Furthermore, the fact is that homeowners bear smaller housing costs compared to the renters. Renters pay, in addition to the communal and other utility costs, also the rent price. It is true that owners are burdened with the costs of taxes, maintenance, utilities, etc. However, these costs are usually subsidized or are imposed at a rather low level. Moreover, many owners refuse to pay some of the costs, for instance maintenance of the buildings. Renters, on the other hand, have no option on whether they are to pay the rent. It is not rare that the landlord demands a half or one year rent in advance, worsening the financial situation of the renters.[66]

One of the problems in Serbia, apart from the rental sector being neglected, is the maintenance and managing of the multi-apartment buildings, which have been legally under-regulated. What is the most relevant issue is that some of the owners (residing in the housing unit or renting it) still consider the state as the owner of the common parts of the building. The legal gap in this sector is the consequence of the decision[67] of the Federal Constitutional Court of the FRY from 1996.[68] With this decision the Federal Constitutional Court of the FRY abolished the 1966 Ownership over Special Parts of Buildings Act,[69] proclaiming that common areas of

65 'Bespravno useljenje,' *Upravusi online*, accessed 9 November 2012, http://upravusi.rs/kuca/u-kuci/bespravno-useljenje/.

66 K. Petovar, 'Stanje socialnih prava u Srbiji' (lecture at the Architectonic Faculty of Belgrade, 2007), 7.

67 Decision IU no. 23/1995.

68 *Službeni glasnik Federativne Republike Jugoslavije*, no. 33/1996.

69 *Službeni list Socialističke Federativne Republike Jugoslavije*, no. 43/1965; *Službeni glasnik Socijalističke Republike Srbije*, no. 51/1971, 52/1973, 29/1973, 33/1996 – Decision of the Federal Constitutional Court.

multiunit buildings were socially owned. What is more, the citizens could be owners of the common areas only in the accordance with the limitations set with the Nationalization of the Rental Buildings and Building Lots Act (*Zakon o nacionalizaciji najamnih zgrada i građevinskog zemljišta*). However, the Court ruled that this was not in accordance with the guarantees of ownership and non-limitations of the ownership, proclaimed by the Article 69(2) and (3) 1992 Constitution of the FRY.

In 1995 the Maintenance of the Residential Buildings Act (*Zakon o održavanju stambenih zgrada*) was passed.[70] Its Articles 18, 21 and 22 gave owners of the housing units and other areas, as well as other users of the rights in the building[71] (the so-called Assembly of Tenants),[72] to decide on the important matters of the maintenance. This was especially important for the owners of the housing units, who wished to expand their apartment, or to investors wishing to construct new or adapt old apartment and roofs. The only condition was that these owners owned more than a half of all areas in the building.[73]

Less than a year later an amendment of the 1980 Basic Ownership Relations Act was enacted,[74] stipulating that the common parts of the multi-apartment buildings and other installations are a common non-divisible ownership of the owners of the special parts of the multi-apartment building.[75] This amendment made the previous three Articles of the 1995 Maintenance of the Multi-apartment Buildings Act redundant. However, these provisions were deemed

[70] At the time of the enactment, the old Article 19 of the 1980 Basic Ownership Relations Act was in force, which stipulated that the common areas of a multi-apartment building were socially owned.

[71] This term refers to owners of other parts of building not being the housing units (e.g. garages, commercial units). Renters may participate only if the owner assigns then as his representatives or if the owner is not present at two consecutive meetings.

[72] The term refers to the type of management of the multiunit buildings.

[73] N. Mihajlović, 'Nova odluka ustavnog suda Srbije o ustavnosti odredaba o nadziđivanju stambenih zgrada,' accessed 10 April 2013, *Pravni informator*, http://www.informator.rs/nova-odluka-ustavnog-suda-srbije-o-ustavnosti-odredaba-o-nadzidjivanju-stambenih-zgrada.html.

[74] *Službeni glasnik Republike Srbije*, no. 29/1996.

[75] In other words, the common parts of the multi-apartment buildings were now privatized.

unconstitutional only recently.[76] Following this decision, the Parliament enacted an amendment of the act, changing the unconstitutional provisions.[77] The main novelty is that the majority required in the Assembly of Tenants for a decision to be passed is the majority of all tenants (and not those who owned more than a half of all area in the building).

Due to the legal instability in this sector, many multi-apartment buildings these days are neglected and ruined.[78] In case of an urgent matter and matters demanding prompt intervention, it is possible that the local self-government finances the repair and then reimburses the costs from the owners.[79] [80]

[76] Decision no. U I 95/2006; *Službeni glasnik Republike Srbije*, no. 27/2011.

[77] *Službeni glasnik Republike Srbije*, no. 88/2011.

[78] Mojović and Žerjav, *Stanovanje pod zakup*, 26.

[79] Article 29 of the Maintenance of the Multi-apartment Buildings Act.

[80] N. Mihajlović, 'Novi ustav Srbije i pravo raspolaganja i upravljanja zajedničkim delovima stambenih zgrada,' *Pravo: teorija i praksa* 25, no. 1–2 (2008): 30–3.

Chapter Three

Housing Policies and Related Policies

3.1 Introduction

Serbian Constitution has no provision on the right to adequate housing, as it is stipulated, for example, in the International Covenant on Economical, Social and Cultural Rights.[1] Moreover, there is no definition of minimal standards of what constitutes a dwelling, not even in the 1992 Housing Act. The provision in the 1992 Housing Act defines the dwelling as 'one or more living areas intended and adequate for housing, which commonly constitute a construction unit and have an individual entrance,'[2] which is rather vague. Recently enacted 2009 Social Housing Act (Zakon o Socijalnem Stanovanju)[3] regulates the support of the state to the households, which cannot afford market dwellings due to social, economical or other reasons, and has no provisions on the quality of the housing. The described circumstances allow for random interpretation of the housing standard in the country, depending on the individual interpretation of the term dwelling.[4] Such situation can hinder the genuine state of the housing stock and its quality, since any construction with walls, a roof and a door could be regarded as a dwelling.[5]

The most startling fact is that Serbia does not have an official, comprehensive national housing policy, even though it is a relatively large country with many refugees, IDPs, underprivileged, elderly people, etc. Apart from this, it still lacks the concrete strategy

[1] M. Radenković, *Ustav na prekretnici* (Belgrade: Komitet Pravnika za Ljudska Prava – YUCOM, 2011), 15.
[2] Article 3 of the Housing Act. Translated by the author.
[3] *Službeni glasnik Republike Srbije*, no. 72/2009.
[4] V. Dimitrijević, *Ljudska prava u Srbiji: pravo, praksa i međunarodni standardi ljudskih prava* (Belgrade: Beogradski centar za ljudska prava, 2011), 205.
[5] M. Đorđević, 'Reducing Housing Poverty in Serbian Urban Centers,' in *Too Poor to Move, Too Poor to Stay: A Report on Housing in the Chech Republic, Hungary and Serbia*, ed. J. Fearn (Budapest: Open Society Institute, 2004), 104.

for social housing, despite the fact that the statute was enacted in 2009.[6] Indeed, the National Housing Agency (*Republička agencija za stanovanje*) has been established and is working. Nevertheless, since it has been formed only recently, a period of time is needed before one can assess its work and effects. It did prepare the program for 2012,[7] but its implications have been minor to this day. In support of this claim, it is important to state that little is written in media about the agency, even though its role in Serbia should be a rather important one.

The only provision dealing with the aim of the housing policy to a certain extent is available in the 2009 Social Housing Act. The provision indicates the objective of solidarity housing: it is intended for renting and selling purposes. Dwellings intended for renting are not to be sold or subtended. Thus, the legislator attended these apartments for the most underprivileged, those that are without any dwelling at all or those without adequate dwelling. In addition, it determines the priority order of awarding assistance: present housing situation, income level, health conditions, invalidity, number of household members and financial status of the claimant. Additional criteria is being categorized as one of the socially endangered group (youth and children, refugees, invalids, Roma, etc).[8] However, the statute does not define the term 'social housing,' nor does it distinguish between the social housing and affordable (non-profit) housing. Another important constrain of the statute is that it does not provide for the means of the financing, leaving this question entirely up to each future Government to decide on the scope of the funds. There is also a provision determining an establishment of both local and national housing agencies, which are to be funded from the national budget, donations, loans and other means. This is a rather vague provision, since the amount of funding available for the organizations is not known, making the preparation of programs a difficult task.[9]

It must be noted that there have been fifteen municipal hous-

6 Dimitrijević, *Ljudska prava u Srbiji*, 206.

7 'Opšti akti,' Republička agencija za stanovanje, accessed 27 November 2012, http://www.rha.gov.rs/opsta-akta/.

8 Dimitrijević, *Ljudska prava u Srbiji*, 206.

9 Begović et al., *Socijalno stanovanje u Srbiji*, 52.

ing organizations established (in Kragujevac, Niš, Kraljevo, Užice, Smederevo, Pančevo, Kikinda, Zrenjanin, Kruševac, Pirot, Čačak, Zaječar, Beograd, Novi Sad and Smederevska Palanka). These address the issues of social housing in their own self-governed unit. In the rest of the municipalities across Serbia, these issues are left to the public communal enterprises for the construction and urbanism. Thus, the main concerns of these organizations are the generation and awarding of social apartments to the applicants. Each of these has its own housing strategy enacted alongside the rules for allocating these apartments, according to which the public tenders are executed. For instance, the organization from Niš has generated over 300 new apartments for social purposes, over 200 for purchases and only one hundred for renting. The organization has enacted Rules on the Conditions and Manner of Participation in the Process of Selling Social Apartments Built on the Teritory of Niš (*Pravilnik o uslovima i načinu učešća u postupku kupoprodaje stanova za socijalno stanovanje na teritoriji grada Niša*).[10] Thus, larger emphasis is again put on the ownership and not rentals. Similar situation is present in other municipalities. Albeit the fact that the purchase of these apartments is available under very lenient conditions and under much lower price than the market one, still this instrument refers to 'the middle' class and not the most vulnerable groups of citizens.

Precisely the problem of these marginalized groups is an eyesore of the housing policy in Serbia. Many of them are forced to live in unhygienic and inadequate dwellings, since there is no particular institution which would offer the temporary form of accommodation or shelter. The exception is only in the cases of domestic violence and trafficking of human beings.[11] Another possibility for institutionalized housing is given by the 2011 Social Protection Act (*Zakon o socijalnoj zaštiti*)[12] for the following groups: disabled persons with bodily and sensory malfunctions, chronically ill, mentally disabled, elderly and others not able to live independently.[13]

[10] The exact number of the Official Gazette is not available.

[11] 'Country Fact Sheet, Serbia' (International Organization for Migration, August 2012), 10.

[12] *Službeni glasnik Republike Srbije*, no. 24/2011.

[13] Dimitrijević, *Ljudska prava u Srbiji*, 206.

The 2010 Refugee Act (*Zakon o izbeglicama*)[14] provides for state measures for combating the housing needs of the refugees and former refugees in order to help them integrate. These measures include: offering state owned real estate for temporary usage or rent, as well as purchase, funding better housing conditions, purchases of village houses, etc. However, the number of state owned dwellings is considerably low, while their quality is poor. Therefore, the measures taken are far from satisfactory. This is especially true, when considering the fact that the numerous collective centres, which hosted refugees and IPDS, are being closed, increasing the number of the individuals in need. The few centres that are still opened host predominately the most underprivileged, elderly and invalids. The similar situation is evident for the Roma ethnicity. There is a large percentage of illegal and unhygienic settlements. Furthermore, Roma are faced with constant fear of evictions.[15] As a result, housing policy and welfare in Serbia are both faced with some major challenges and are in need of immediate attention from the Government.

Some action was indeed taken in 2002 during the preparation of the National Housing Policy (*Nacionalni stambeni program*) (NHP hereinafter) by the Ministry for Urban Planning and Housing Policy. However, there have been no visible and concrete effects. The policy was intended as a strategic document. The role of the Social and Refugee Related Housing Secretariat was to integrate the housing policy for the refugees into the housing problems of the socially and economically deprived in the entire population. In addition, the Program of Implementation of the National Strategy for Solving the Situation of Refugees was developed and accepted by the Government in May 2002. The program was financed by the Government of Italy with the assistance of the UN-Habitat Program. The main objective was the construction of 670 housing units. The program demanded establishment of seven local housing agencies (Čačak, Kragujevac, Niš, Pančevo, Stara Pazova, Valjevo), which then chose the households able to cover the expenses of non-profit rent. As much as 80% of the apartments were intended for the refugees,

[14] *Službeni glasnik Republike Srbije*, no. 30/2010.
[15] Dimitrijević, *Ljudska prava u Srbiji*, 206.

whereas the 20% were for local underprivileged households.[16]

One of the rare programs that was brought to life and had a considerable effect to the welfare and housing policy was the establishment of the National Corporation for Giving Guarantees for Housing Loans.[17] However, instead of focusing on the actual problems of the housing in Serbia, for instance, rental sector and solidarity apartments, the corporation only further promoted homeownership by enabling relatively affordable housing loans.

Another program worth consideration is the Poverty Reduction Strategy (*Strategija za smanjenje siromaštva*), supported by UNDP and the World Bank from May 2002. Even though the strategy was accepted in 2003, the same could be said as for the NHP – there were only trivial effects up to this day.

As far as taxation policy is concerned, it is important to stress that it has a negative effect on the rental sector. It is true that the 2004 Value Added Tax Act (*Zakon o porezu na dodatu vrednost*)[18] acquits services of renting of dwellings for housing purposes from the VAT. However, there is a 20% tax rate imposed on the value of the monthly rent, in the form of the income tax. Since the inspection is derisory, many landlords decide to evade the payments, supporting the black market in the rental sector.

In November 2011 the government enacted amendment of the Residence and Domicile of the Citizens Act (*Zakon o prebivalištu i boravištu građana*),[19] enforcing the registration of temporary and permanent residence. In order for an individual to register, he must enclose ownership document and identity card of the landlord. However, many landlords refuse to allow their tenants to register their residence on the address, since they are afraid that the income tax will be imposed. However, such obligation is imposed only if the contract is certified on the Court or the landlord himself files a tax report.[20] Thus, it is understandable why the black market

[16] Begović et al., *Socijalno stanovanje u Srbiji*, 55.
[17] This is an abbreviation in Serbian.
[18] *Službeni glasnik Republike Srbije*, nos. 84/2004, 86/2004, 61/2005, 61/2007, 93/2012.
[19] *Službeni glasnik Republike Srbije*, no. 87/2011.
[20] D. Mučibabić, 'Prijava podstanara ne povlači poresku prijavu,' *Politika Online*, 12 January 2012, http://www.politika.rs/rubrike/Beograd/Prijava-podstanara-ne-povlaci-poresku-prijavu.lt.html.

is so vivid. It is estimated that the state is deprived of some 1.6 million EUR a month on the account of the evasions of the income from this tax.[21] Annually, the amount is rather large and would probably suffice for one part of the extraction of the solidarity apartments, if the inspection would be more rigorous.

Another negative effect is caused by the 2001 Property Tax Act (*Zakon o porezu na imovinu*),[22] which provides that the property tax is paid for the rental contracts, which are longer than one year and indefinite. Thus, many renters, and not just owners, are to evade concluding rental contract, at least the ones offering longer periods of residence.

A positive effect on welfare can be attributed to Article 13(3) of the 2001 Property Tax Act, which determines a tax relief (credit) of 75% for the dwellings up to 60 m², located outside of the municipal construction lots and not rented, if they are inhabited exclusively by individuals older than sixty-five years.

As a final assessment of the concept of welfare state in connection to the housing policy in Serbia, it can be said that the overall situation, observed from the nineties on, has moved further away from the welfare part and got closer to the neoliberal part.[23]

The right to housing is not enacted in any of the relevant statutes or the Constitution.

3.2 Governmental Actors

All levels of government are involved in the housing policy: national, regional and local. The national level has been concerned with programs and policies for refugees, has financed the apartments for the officials and has provided secured loans, subsidies and tax reliefs. Local level (with municipalities as main actors) financed construction and obtaining of solidarity housing. Only recently this level provided funds for non-profit housing and rentals. In addition, in some larger municipalities, local level co-financed renewals of the multi-housing buildings. International institutions have also contributed to the development of the housing sector in Serbia, supporting mainly construction of housing for refugees and

[21] Mojović and Žerjav, *Stanovanje pod zakup*, 10.

[22] *Službeni glasnik Republike Srbije*, no. 26/2001 and later amendments.

[23] Mojović, Čarnojević, and Stanković, *Lokalna stambena politika*, 6.

IDPs, as well as Roma ethnicity.[24] It is also possible that several municipalities join and manage the question of housing together through one Municipal Housing Agency (MHA hereinafter).

As far as regional level is concerned, there are no concrete tasks regarding housing policy, apart from offering apartments and accommodation for some officials and students.

In general, the 1992 Housing Act in Article 2 asserts that the state is to take measures for creating favourable conditions for housing construction and provide conditions for addressing housing needs of socially endangered persons in accordance with the law. On the behalf of the state there is the National Housing Agency, which is concerned with the conditions for development of the social housing, as well as obtaining the funds for the development of this sector.[25]

The housing sector in Serbia was reformed with the transformation of Solidarity Funds for Housing Construction (*Fondovi solidarnosti za stambenu izgradnju*) into MHA. According to the Draft version of the Social Housing Act, the aim was to establish quality management at municipal level, which would allow establishment of the regulatory framework for licensing of non-profit housing organizations in the country.[26] Each is established by the municipality in which it is located and is a non-profit organization. Funds are allocated from the municipal budget, donations, credits, selling of the non-financial assets of the municipality, etc. At the moment, fifteen MHAS are established throughout Serbia. In municipalities, in which MHAS have not been formed yet, their functions are performed by the public enterprises, which are to be reformed into the MHAS.[27]

How efficient these agencies have been must be assessed on an individual level. For instance, the MHA from Valjevo successfully built seventy-seven apartments in three buildings for refugees in-

[24] Ibid., 12.

[25] *Službeni glasnik Republike Srbije*, no. 56/2011.

[26] J. Hegedüs, 'Links of Housing Policy to the Forming Welfare Regimes in the Transition Countries' (paper presented at the International Conference Sustainable Urban Areas, Rotterdam, 25–28 June 2007), 13.

[27] 'NSO,' Republička agencija za stanovanje, accessed 27 November 2012, http://www.rha.gov.rs/nso.

habited in Valjevo, but is now abolished, since its task was done.[28] MHA from Pirot, on the other hand, is yet to accomplish its first task: construction of sixty-four housing units in Pirot.[29] MHA from Kraljevo was also very successful in obtaining five buildings with social apartments for renting to the socially endangered citizens.[30]

The 1992 Housing Act allocates direct concern for providing social housing to the municipalities. The provision obliges municipalities to obtain dwellings for citizens in need: those unable to work, sitting tenants in denationalized apartments (when restituting the apartments to their owners), those living in non-hygienic conditions, soldiers and families of soldiers, who died in the courses of wars after the 1990's.[31] As mentioned above, municipalities, which established MHAS, allocated the concern for social housing to them. The ones that did not establish them empowered their public enterprises for the same purposes. Therefore, the official role of the local government is only in maintaining the buildings in their ownership and eviction of individuals residing without legal basis from the dwellings.[32]

The National Parliament is concerned with enactment of the national legislation and strategies, prepared by the Government. On the other hand, each municipality is concerned with the housing policy on its territory. In that regard, each municipality may pass orders and regulations, which are in force only on its territory.

3.3 Housing Policies

Important turnover in housing policy in Serbia had not been seen until the 2003, when the Government initiated some systematic changes. Nevertheless, this had no major impact on the overall situation in the housing sector, as was presented in section 3.1. The

[28] P. Vujanac, 'Dobijali platu iz budžeta, a dve godine nisu radili,' *Blic Online*, 30 June 2011, http://www.blic.rs/Vesti/Srbija/263035/Dobijali-platu-iz-budzeta-a-dve-godine-nisu-radili.

[29] V. Veljković, 'Formirana stambena agencija u pirotu,' *Južne vesti*, 26 February 2011, http://www.juznevesti.com/Drushtvo/Formirana-Stambena-agencija-u-Pirotu.sr.html.

[30] Hegedüs, 'Links of Housing Policy to the Forming Welfare Regimes in the Transition Countries,' 13.

[31] Đorđević, 'Reducing Housing Poverty in Serbian Urban Centers,' 108.

[32] Mojović, Čarnojević, and Stanković, *Lokalna stambena politika*, 13.

main constrictions were that the policies were usually not in accordance with each other or presented merely a short-term solutions or programs. In some cases, several policies were targeted at the same group of citizens, yet awarding different conditions of eligibility for the assistance.[33] Housing policies in general prefer and promote homeownership to a large extent. The subsidies for the housing loans, provided by the state since 2006, are exclusively awarded for purchases of dwellings. However, instead of benefiting the lower class, the subsidies benefited only the more well-off citizens, public officials and young families with above average loaning possibilities.[34]

On the other hand, there is seemingly entirely opposite policy of constructing the dwellings for the socially endangered. Some of the MHAS, for instance in Pirot, are yet to build affordable apartments. However, these too are intended for selling to financially less able citizens.[35] Only few programs and strategies have been oriented towards obtaining the dwellings for rental sector. The majority of these 'social apartments' are intended for purchases from the underprivileged, refugees and IDPS. However, the price of the square meter is around 600-700 EUR, which is rather high for these groups.[36] Thus, the term 'social housing' is somewhat incorrectly used. Non-profit housing would probably be a more appropriate term.

There are no direct measures against vacancies. The only measure is the tax relief (credit) awarded for the assessment of the property tax. It must be noted, however that this measure is not intended as a means of combating the vacancies per se, but rather as a general relief. According to Article 13 of the 2001 Property Tax Act, the calculated property tax for a dwelling, in which the tax payer resides, is decreased for 50%, but not more than 20,000 RSD (180 EUR).

There are no concrete strategic documents regarding housing in Serbia, let alone special housing policies. However, other strategic documents and action plans tend to include housing sector into

33 Ibid., 6.
34 Ibid., 11.
35 V. Veljković, 'Formirana stambena agencija u pirotu.'
36 T. Todorović, 'Po nižim cenama 400 stanova,' *Politika Online*, 11 October 2011, http://www.politika.rs/rubrike/Srbija/Po-nizim-cenama-400-stanova.lt.html.

their discussions. Many national acts do address housing of the vulnerable groups in Serbia. Yet, until the 2009 Social Housing Act, there was no concrete provision on the type or measure for the housing of these groups. Nor did the local communities have enough finance to appropriately resolve the problems. Thus, they have usually been accommodating them in the social care institutions or collective centres.[37]

Kosovo crisis caused many social implications, one of them being influx of Roma ethnicity to Serbian towns and villages. Around two thirds of the Roma population from Kosovo moved to Serbia, whereas 19,000 of them officially declared as IDPS in the Census 2002. However, the actual number is estimated as few times higher, since many Roma refuse to register. Considering their weak status in the society, it does not come as a surprise that their housing issues are amongst the worst in the country.[38]

There are four key measures for addressing housing of Roma population: activities of the Government of the Republic of Serbia and the competent ministry (the Ministry of Human and Minority Rights), the actions of local self-governments, cooperation with international organizations and the work of civil associations. The Poverty Reduction Strategy is one of the most important documents, since it is the first national document addressing problems of vulnerable social groups in general (Roma, refugees, IDPS). What is more important, the document considers solving housing issues as priority of social development, proposing provision of smaller loans, low-cost locations for building dwellings and especially social housing. The Action Plan for Roma Housing set the directions, as well as basic activities for addressing the housing problems of Roma in the Republic of Serbia. The Guidelines for Improvement and Legalization of Informal Roma Settlements (*Smernice za unapređenje i legalizaciju neformalnih romskih naselja*) gave local governments some technical instructions on how to address problems of Roma. In September 2007, the Ministry of Urbanism and the Human and Minority Rights Service encouraged local government units to prepare urban development plans for informal Roma

[37] *Strategy for Improvement of the Status of Roma in the Republic of Serbia* (Belgrade: Ministry of Human and Minority Rights, 2010), 16.

[38] Nelson, *Housing and Property Rights*, 128.

settlements. Planning documentation for ten Roma settlements in eight municipalities was prepared in 2008. A part of the finance for implementation of the programs for addressing the housing problems of Roma and their settlements is provided with the National Investment Plan.[39]

The Belgrade Master Plan until 2021 particularized Roma as population which needs special assistance in the provision of adequate housing conditions. As part of the SIRP program, many local communities have prepared local housing strategies which include also the housing of Roma.

In some of the cities in Serbia (for instance: Vranje, Niš and Zrenjanin) Roma settlements are not regarded as special issues. Rather, they are dealt with as part of lower-level urban development plans. Some other local authorities (Apatin, Bujanovac, Novi Sad, Smederevo, Vrnjačka Banja, Bač, Bela Palanka, Ada, Veliko Gradište, Loznica, Zemun, Knjaževac, Prokuplje, Valjevo, Kragujevac, Gornji Milanovac, etc.) have shown interest in the problems of Roma, but have no financial means for concrete actions. Hence, they usually provide building material, assist to the families, whose homes were destroyed in natural catastrophes, etc.[40]

International organizations and civil associations are involved in the housing situation of Roma. They often propose possible solutions for the housing issues or resolve individual cases. A rare program, involving broader group of individuals, was done through UN-Habitat SIRP (Settlement and Integration of Refugees Program – *Program stanovanja i trajne integracije izbeglica u Srbiji*). This project has been executed from 2002 until 2008. Its main goal was to offer support for the establishment of national and local policies, as well as institutional mechanisms to reactivate the social housing sector, both self-owned and rental.[41] The program was especially successful with the improvement of Roma settlement Grdička Kosa 2 in Kraljevo. The project included preparation of urban development plan, improvement of infrastructure in the settlement and improvement of housing conditions for a certain number of fam-

39 *Strategy for Improvement of the Status of Roma in the Republic of Serbia*, 18.
40 Ibid., 18–19.
41 'SIRP,' United Nations Human Settlements Programme, accessed 9 November 2012, http://www.unhabitat.org/content.asp?cid=721&catid=129&typeid=13&subMenuId=0.

ilies. In addition, it enabled participation of the settlement inhabitants and representatives of local government throughout the execution. Some housing programs were implemented also in Valjevo and Čačak, involving work on the development of settlements and improvement of housing capacity. Civil associations were primarily concerned with implementation of programs aimed at the improvement of living conditions and the quality of life in poor Roma settlements. The Roma Humanitarian Organization of Obrenovac executed especially prominent action by installing water supply network in seven Roma settlements in five municipalities.[42]

Numerous refugees and IDPS are another group in Serbia that demands assistance regarding housing. There have been several actions supporting this group. One is the Foundation of Vojvodina for Assistance to Refuge, Outcast and Displaced Persons (*Udruženje Vojvodine za pomoć izbeglicama, prognanim i unutrašnje raseljenim licima*), established in 2007. Its aim was to offer assistance for refugees and IDPS in Vojvodina, with subsidized loans for purchases of properties in villages and awarding of construction material. The value of loans is 6,000 EUR, whereas only 50% are to be paid back in ten years period. The value of the construction material is 5,000 EUR, and is 50% repayable in eight years. Non-returnable packages of construction materials were also awarded, valuing 1,500 EUR per person.[43]

Several actions were executed on the behalf of the National Commissioner for Refugees, foreign investors and municipalities, encompassing construction, reconstruction, purchases, donations from village households, packages of building material, etc. In addition, the construction of 636 dwellings (mostly in Vojvodina) was financed from the budget, whereas UNHCR and local communities financed program for permanent integration of refugees. For these purposes 1,661 dwellings were built, predominantly in villages and smaller municipalities across the country.

These projects were mostly done through two models: building of multiunit buildings with four smaller apartments and model of self-help. The latter included building lot with all communal in-

[42] Ibid., 19.

[43] D. Damjanović and Ž. Gligorijević (eds.), *Socialno stanovanje* (Belgrade: Palgo Centar, 2010), 34.

frastructure provided by the local government, construction material and expert help given by the donors, whereas the construction was task of the household itself. These apartments are state-owned, while their 'user' is the National Commissioner for Refugees. Until 2009 there were 4,900 dwellings provided for the needs of refugees and IDPS.[44]

A very important and useful program was presented in 2007 – Social Housing in Supportive Environment, established by the Swiss governmental organization SDC. The program resolves the housing issues of older vulnerable households with lower incomes, predominately from refugee population previously inhabiting collective centres. The peculiarity of this program is that there is a young family living in the building, which has also lower incomes. The young household assists the other older inhabitants with their everyday tasks and is employed by the national welfare system. There are approximately 930 such buildings in forty-two municipalities across Serbia.[45]

3.4 Urban Policies

There are no special policies targeted at preventing ghettoization and gentrification. The only measure that is taken is that construction of social housing and other non-profit dwellings is located amongst other, 'non-social,' dwellings. However, there are no particular plans regarding these issues. Since the rental sector is underregulated and neglected, there are no provisions which determine the quality or standards of rental dwellings.[46]

No regional housing policy exists in Serbia. Hence, there are major discrepancies in regional development in Serbia in general, and particularly in the housing sector. It is stated that Serbia is ranged as number one in EU regarding unequal regional development, with ratio 1:3 between regions and even 1:10 between certain municipalities.[47] Indeed, after 2000 there has been a considerable strength-

[44] Ibid., 36–7.

[45] 'Socijalno stanovanje u zaštićenim uslovima,' Hausing centar, accessed 17 September 2013, http://www.housingcenter.org.rs/index.php/socijalno-stanovanje-u-zasticenim-uslovima.

[46] Mojović and Žerjav, *Stanovanje pod zakup*, 24.

[47] 'Radulović: naš zadatak je smanjenje regionalnih razlika,' 6 November 2012, http://www.mrrls.gov.rs/lat/radulovic-nas-zadatak-je-smanjenje-regionalnih-razlika.

ening of the process of decentralization in Serbia. The Local Self-Government Act (*Zakon o lokalnoj samoupravi*)[48] has been enacted in 2002 and amended several times since, offering increase in financial independence of local self-governments. A special national organ was established in 2009, the National Council for Decentralization, whose primary task is to prepare the Strategy for Decentralization of Republic of Serbia. There is currently a draft version of National Strategy for Regional Development in Serbia for period 2013–2022.

3.5 Energy Policies

Serbia does not have a national energy policy, nor do the local self-government units deal with the issue accordingly. There are certain endeavours on the national level to address this issue, since Serbia is at the moment among the leading countries in Europe according to the energy consumption. As much as 30% of the housing stock in certain municipalities is non-plastered, while there is a possibility to reduce the energy consumption in 40% of the stock.

The National Strategy on Development of Energy Sector of Republic of Serbia until 2015 (*Strategija razvoja energetike Republike Srbije do 2015. godine*)[49] was adopted, as well as some other strategies (on sustainable use of natural resources and goods, on sustainable development, etc.). However, all of these documents are non-binding and represent only dead letters. None of these have resulted in some significant change in the energy or housing policies of Serbia.

There are, however, certain favourable loans offered by commercial banks for the energy-efficient renewals of dwellings. For instance, Volkbank Serbia offered such loans in 2009. The effective interest rate for natural persons was 7.08% annually for reconstruction of the dwelling. These loans were given under the condition that they must be secured with the National Corporation for Securing Loans. The maximal burden on person's income was 50%, whereas the instalment period was set to maximum of thirty years. The participation provided by the person was at least 10% or with-

[48] One of the most important amendments was in 2006. *Službeni glasnik Republike Srbije*, no. 129/2007.

[49] *Službeni glasnik Republike Srbije*, no. 44/2005.

out any, indexed in EUR.[50] Since 2013, all the newly built dwellings must have 'energetic passport,' which offers insight into the energetic efficiency of the dwelling and is a condition for obtaining the operating permit. Such document is also mandatory for the older dwellings, which are intended for sale, renting or reconstruction. The initial 'energetic passports' indicate only the heating consumption of the dwelling and not the other consumptions.[51]

3.6 Subsidization

The only type of housing subsidies available in Serbia is for approval of housing loans from commercial banks to citizens. The subsidy was introduced in September 2009 with the Program on Subsidies of Loans for Newly-constructed Dwellings, as a measure for combating the ongoing crisis and supporting the construction industry, as well as the citizens. The program stipulated that commercial banks are to award loans for purchases of newly constructed dwellings and those in the process of construction. The maximum amount of the loans was set at 100,000 EUR with maximum instalment period of thirty years.[52] The participation of citizens is 10%, whereas the state provides 10% of the participation. The remaining 80% is loaned by the commercial bank, which concluded a contract with the Government. The amount provided by the commercial bank is secured by the state. The first three and the last five years of the instalments are interest-free, since the Government is subsidizing the interest rates in full amounts. The first three years are interest-free provided that the loan was awarded in October 2009. The later the loan was taken, the shorter is the interest-free period, since the state was covering the interest rates only until 31 October 2012. The renting of the dwelling prior to full repayment of the loan is not allowed. The owner is obliged to register his residence on the address of the purchased dwelling and reside there until the end of the instalment period. The subsidy may be awarded

[50] 'Kredit za fizićka lica,' accessed 3 February 2013, http://www.seea.gov.rs/Downloads/Vesti/11_09_Kredit_za_fizicka_lica.pdf, 1.

[51] 'Danas se dodeljuju prvi energetski pasosi u Srbiji,' Portal za energetsku efikasnost, accessed 17 September 2013, http://www.efikasnost.com/2013/04/09/danas-se-dodeljuju-prvi-energetski-pasosi-u-srbiji/.

[52] Article 6 of the Regulation on Measures of Support to Construction Industry through Long-Term Housing Loans in 2013.

only once. In 2009 the Government provided 750 million RSD (approximately 6,731,386 EUR). The amount provided in 2010 was considerably higher, 2 billion RSD (17,950,365 EUR).[53] As described in section 2.5, the conditions were to some extent changed since the introduction, being slightly more lenient in the year 2012. The subsidization for 2014 is not available due to the lack of budgetary means. Other housing subsidies are not available, even though the subsidies of rent are provided for in the description of the competence of Belgrade Secretariat for Social Protection (*Beogradski sekretarijat za socijalnu zaštitu*), for instance. However, no concrete acts are available. There have been no legal challenges of the subsidies. However, some criticize the scale of subsidises for housing loans, since these have only been supporting homeownership and some households, who are actually able to solve their housing issue on their own.[54]

There is a possibility of obtaining financial social assistance for citizens whose financial situation deteriorates. The assistance is awarded in accordance with the Social Assistance Act (*Zakon o socijalnoj pomoći*).[55] The competent authority for applying for this type of assistance is centre for social work in the municipality of applicant's residence. The basic amount of the assistance is 6,050 RSD (52 EUR) and increases accordingly for every other dependable family member (0.5 of the basic amount for every adult, 0.3 for minors bellow 18 years).[56] Housing costs of the family are not taken into account. None of the subsidies have been challenged on legal grounds.

3.7 Taxation

The range of taxes applying in Serbia is mostly oriented towards taxing the ownership and not renting. The following taxes are im-

[53] M. Bošnjak, 'Globalna finansijska i ekonomska kriza i njen uticaj na privredu i finansije Srbije,' accessed 25 November 2012, http://mfp.gov.rs/UserFiles/File/dokumenti/GLOBALNA%20FIN_i%20ek_kriza%20i%20njen%20uticaj%20na%20priv_Srbije_17_2_2011_.pdf, 57.

[54] 'Lakše do kredita za stan,' 21 January 2013, *Radiotelevizija Srbije*, http://www.rts.rs/page/stories/sr/story/13/Ekonomija/1017532/Lak%C5%A1e+do+kredita+za+stan.html.

[55] *Službeni glasnik Republike Srbije*, no. 24/2011.

[56] Articles 87 and 88 of the Social Assisstance Act.

posed: the Property Tax, the Absolute Rights Transfer Tax, the Tax on Inheritance and Gifting. These taxes are listed in Article 1 of the 2001 Property Taxes Act (*Zakon o porezima na imovinu*).[57]

The tax base for the Property Tax of natural persons is the value of the property, as determined by the municipality in which the property is located.[58] The tax rate depends on the tax base: for the property up to 10,000,000 RSD (86,956 EUR) it can amount up to 0.40%, for the property worth between 10,000,000 RSD and 25,000,000 RSD (217,391 EUR) it is 0,40% + 0,6% of the amount exceeding 10,000,000 RSD, etc.[59]

The tax base of the Tax on Inheritance and Gifting is the value of the inheritance or the gift minus the possible costs that are born by the person receiving the inheritance or the gift. The tax rate is proportional: for keens in the second order, it is 1,5% of the tax base, while for keens in the third or further order, it is 2,5%.[60] The tax base of the Absolute Rights Transfer Tax is the contractual price of the property sold, unless the price is lower than the market.[61] The tax rate is 2,5% of the tax base.[62]

Rental tenure is taxed only with the Income Tax.[63] The tax payer is the landlord and not the tenant. The tax base is equal to the amount of rent minus 20% on the account of standardized costs (or actual costs, if the landlord can enclose evidence on these).[64] The tax payer is only natural person, while legal persons, whose primary activity is renting apartments, are not subject to the income tax, but rather to profit tax in accordance with the Tax on Profit of Legal Persons Act (*Zakon o porezu na dobit pravnih lica*).[65] However, if the tenant is a legal person, it is obliged to pay the withholding tax, after the landlord files the tax notification.

Tenants in rental tenancies pay the Property Tax only, if the rental

57 *Službeni glasnik Republike Srbije*, no. 26/2001 and its amendments.
58 Article 5 of the 2001 Property Taxes Act.
59 Article 11 of the 2001 Property Taxes Act.
60 Articles 16, 18 and 19 of the 2001 Property Taxes Act.
61 The price is checked by the competent tax authority and can be changed if the authority determines that the contractual price is lower than the market.
62 Articles 27 and 30 of the 2001 Property Taxes Act.
63 *Službeni glasnik Republike Srbije*, no. 24/2001 and its amendments.
64 Article 68 of the Citizens' Income Tax Act.
65 *Službeni glasnik Republike Srbije*, no. 25/2001 and later amendments.

contract is concluded for the period longer than one year or for indefinite period (Article 2(1/5)) and is paid irrespective of the Property Tax by the landlord. There are no contracts for market rentals concluded for period longer than one year or for indefinite period. Rather chain contracts are concluded (if any). Contracts for indefinite period are only concluded with the protected tenants.

The provisions on the Property Tax contain several subsidies given in the form of tax reliefs and credits (Articles 12 and 13). The tax is not paid by: state and other public entities, which are direct or indirect users of the budgetary means, diplomatic and consular branches with the condition of reciprocity, church and other religious communities for sermon purposes, cultural and historic monuments, agricultural and forest land that is reintroduced into its purposes (in the period of five years from the start of the purpose), infrastructure, land that is under a object which is taxed, shelters, farmers' land, objects for communal activities, objects exempted with a multilateral contract.[66]

The 100% relief is also given to the tax payer, whose sum value of the tax bases of all properties on the territory of that self-government unit does not exceed 400,000 RSD (around 3,500 EUR). The exemption from this rule applies in the cases when the property is given for permanent use to other persons. Very important relief, which has also a social purpose, is given to the tax payer, who discloses his property for non-refundable use to the person exiled after 1 August 1995 and without any other sources of income. Tax is not imposed on the property, which is in the business books of the tax payer and is intended for future sale.

Tax credits are given to the tax payer, who resides in the building or the dwelling, on which the tax is imposed. The value of the tax credit is 50% of the value of the tax, but not more than 20,000 RSD (around 180 EUR). This means that the tax payer is entitled to pay 50% less of the tax, provided that the 50% of the credit do not exceed 20,000 RSD. If the credit exceeds this amount, the tax payer is entitled only to decrease the tax burden for only 20,000 RSD. This credit is given to every occupier, who is a tax payer; if there are more of them (e.g. co-owners of the dwelling), they pay in

[66] Lj. Milanković-Vasović, 'Oporezivanje imovine (nepokretnosti): utvrđivanje i naplata poreza za kalendarsku godinu,' *Pravni informator*, no. 5 (2011): 8.

accordance with their share. A credit with a social effect is given to persons older than sixty five years, who live in dwellings with areas up to 60 m^2. Additional condition is that the dwelling is located outside of the municipality's construction area or outside of the land, which is in the construction area,[67] and that the dwelling is not rented out. The value of the tax is in that case decreased for 75%.

For every following year from the year of the construction or reconstruction of the dwelling, the value of the property is decreased on the account of the amortization for 0.8% proportionally. The maximum value of the amortization is 40% (Article 5).

The Tax on Inheritance and Gifting is regulated in Articles 14 through 22 of the statute. The tax relief is given to: heir or recipient in the first inheritance level, the spouse and the parents of the deceased or giver, heir or recipient of the second inheritance level who is a farmer and receives property for agricultural activities under the condition that he lived with the deceased or giver at least one year prior to the receiving, heir or recipient of the second inheritance level who had lived with the deceased or giver at least one year prior to the receiving and inherits or receives one dwelling, receiver in the inheritance procedure for the inheritance which would otherwise be given to the heir, endowment for the purposes of its establishment, the Republic of Serbia or self-governed unit, receiver of the donation which is exempted on the ground of multilateral contract signed by Serbia, on the property received by the Republic of Serbia or self-governed unit. The tax relief is also given in the case that one of the inherited or received properties is the one in which the deceased or the recipient resided.

If the heir or recipient resides in a foreign country and is obliged to pay the tax in Serbia, he has a right to receive a tax relief in the maximum value of the tax in Serbia, if he already paid the tax in the foreign country (Article 22).

The Absolute Rights Transfer Tax is regulated in Articles 23 through 31b of the statute. Article 31 regulates tax reliefs. The tax is not paid: when the property is transferred as a part of the state revenue, when the property transferred is owned by the diplo-

[67] Thus, the dwelling must be located either on the outskirts of municipalities or in the area, which was not predicted for construction.

matic or consular branch under the condition of reciprocity, with investments into capital of Serbian tax resident, when natural person buys out a dwelling or a building in public or state ownership on the grounds of housing right, on the property given as a part of a lifetime support contract by the person in the first inheritance level, when the tax payer is the Republic of Serbia or self-government unit, when such exception is set through multilateral contract signed by Serbia.

Article 31a specifically introduces the relief for the transfer of ownership rights on a dwelling or part of the dwelling on a natural person, who is buying his first home. The subsidy is given for the area of 40 m^2 and for the members of his households, who had no adequate home after 1 July 2006, for the area of 15 m^2 per member. Basic conditions are that the buyer is Serbian citizen residing in Serbia and that he had no other dwellings after 1 July 2006. For the remaining area over 40 m^2, the tax is paid. The buyer and his household members are eligible for the tax relief only once.

As far as the Income Tax is concerned, the landlord is able to deduce the value of standardized costs of 20% from the tax base. It is also possible to deduce the value of actual costs, if the landlord claims these and submits the evidence. If the taxpayer is the tenant, who sublets the dwelling, he is able to deduce the amount of the rent that himself pays to the landlord from the tax base.

The tax subsidies negatively influence rental markets. Since there is a tax relief for the owner occupying his dwelling, many do not register rental contract, but rather register themselves as having residence on the address of the dwelling. With such action, they obtain 50% tax relief on the Property Tax. The landlords, who do register rental contracts, usually transfer the value of the Income Tax to the tenant in the sense that the rent is higher for the value of the tax (20% higher than it would be, if the rental contract was not registered).

Tax evasion in Serbia is a major setback, since it is estimated that 30% of Serbian economy is executed in black market. As far as housing and tenancy is concerned, it must be noted that there have been many cases of tax evasions. For instance, citizens have registered more valuable dwellings as being owned by their companies. Thus, they paid the Property Tax on the tax base calculated from the accounting value and not the market value. However, the re-

cent amendments of the Property Taxes Act[68] determined that the tax base is calculated from the market value and not the accounting value, making such evasions irrelevant for the legal persons. Since the Tax Administration issues orders in second half of the year instead in the first trimester, many tax payers pay the tax in arrears, if they pay it altogether. Illegal construction is another example of widespread tax evasions. Illegal constructors did not pay any of the construction fees and taxes. With the new process of legalization of this construction, the fees are largely reduced. Hence, those that had paid the fees on time actually overpaid. Considering everything, it is understandable why the tax evasion problem exists.[69]

[68] *Službeni glasnik Republike Srbije*, no. 47/2013.

[69] B. Raičević, 'Neosposobljena poreska uprava,' *Politika Online*, 27 May 2011, http://www.politika.rs/rubrike/Sta-da-se-radi/Neosposobljena-poreska-uprava.lt.html.

Chapter Four

Regulatory Types of Rental and Intermediate Tenures

4.1 Classifications of Different Types of Regulatory Tenures

The types of tenure that are regulated in Serbia are non-profit (social) rentals, employment based and market rentals. Their shares in the rental dwelling stock are: 1.7% for non-profit and employment based rentals (public) together and 5% for market rentals. According to SORS, there is also a category of users (meaning individuals, who reside in a dwelling, but do not pay the rent and it applies to usufructuars and users of real right of habitation usually), encompassing 5,7% of the stock. However, due to the prevailing unofficial market in the rental sector, these may be taken as hidden market renters, at least to a certain portion. There is no data on how many dwellings are for social use and how many are employment based separately. The rental dwelling stock encompasses 6,7% of the total dwelling stock in Serbia increased for the portion of the 5,7%, which represents hidden market rentals.

4.2 Regulatory Types of Tenures Without a Public Task

Market rentals and employment based rentals do not have a public task. Real rights of habitation and usufructuary lease are also present, although in a very limited scope.

Market rentals are regulated in the legislation. However, great proportion of the activity in this sector is informal due to the inadequate inspection and non-existing registers. The landlords are usually persons having more than one empty dwelling or an empty room(s) (small or subsistence landlords). Therefore, they rent the houses and apartments in order to obtain some extra earnings. The period for which the dwelling in this sector is available for rent is undefined, although not indefinite (except if the landlord and tenant agree so). It depends on the needs and preferences of tenants and landlords. There are no regulatory differences between profes-

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

Employment based rentals are provided by the employer. They are more commonly awarded in the public sector (public administration, officials, electives, etc.) than in the private sector. The provisions on public employment based rental are contained in Article 9 of the 2011 Public Ownership Act (*Zakon o javnoj svojini*)[1] and the Regulation on Solving Housing Needs of Elected, Set and Employed Persons with Users of State Owned Assets (*Uredba o rešavanju stambenih potreba izabranih, postavljenih i zaposlenih lica kod korisnika sredstava u državnoj svojini*). Every employer (state or municipal authorities, ministries) determines the conditions and criteria for the eligibility of individuals for obtaining these apartments.[2] Other features are also determined, for instance procedure, period for which the apartment is rented, the rent and security price, cancelation of rentals and time limit for emptying the dwelling. The applicants must usually be employees of the owner or other public officials. The priority order is determined based on a marking system. There are several features, which are differently assessed (the importance of the employment position, housing deprivation, years of service, result of work, health condition, invalidity, bodily defects and number of household members). The total sum of the points then gives the order on the list. The prerequisite is that the person does not have his housing situation already settled. There is a special committee formed in every of these authorities, which is responsible for the election of the applicants. The documentation for applying is set with every public notice of the tender. After careful examination of the applications, a final priority list is determined. There is a right of appeal to the steering committee of the organ in fifteen days from the announcement of the preliminary list. After the appeal's process, a final list is produced and the apartments are awarded with new decisions. There is another appeal process against the decision on the awarding, again with fifteen days deadline. When the process is terminated, final decisions are produced and rental contracts are concluded. The size of the apartment that can be awarded to the employee is a priori set in

[1] *Službeni glasnik Republike Srbije*, no. 72/2011.
[2] Article 54(2) and (3) of the Public Ownership Act.

the Regulation, while the smaller apartment can be awarded only upon the applicant's consent. The written rental contract is concluded for the maximum period of five years and can be prolonged for the same period of time. There are some exceptions to this: if the employee terminates his employment willingly or he settles his housing issue in other manner. The Regulation does not mention the possibility of premature termination of the contract by the employer. The rental contract includes data on the landlord and tenant, data on the apartment and household members, period of rent, rent price, obligations and rights of both parties concerning the rental relationship, date, signatures and other important features regarding the rent. It is also possible to award the apartment only temporarily in the case that there is appeal in progress or the adequate apartment is temporarily unavailable. In the former case only temporary rental contract is concluded. Prior to the moving in, a security is paid. The rent price is paid monthly for the previous month until the fifteenth of the month. The rent price for the square meter is determined by multiplying the market value[3] of the square meter of the apartment by 0.00242. The value of the rent is adjusted annually. The change of the rent must be notified in the written manner to the tenant.[4]

The employer can award the apartment also outside the official process. This can be done in the exceptional cases. For instance, the apartment can be awarded to the employee's family members in need, if the employee lost life during the course of official task while being employed by the state authority. Also, the apartment can be awarded to the disabled person with over 80% of bodily impairment, if the former was inflicted during the course of official tasks or war operations. The priority list is established, if there are more eligible applicants. The tenant in the apartment can apply for buying out the dwelling under the market price. The purchase price can be paid at once or in monthly instalments in maximum twenty years period. Apart from the definite term rent, the organs also offer the apartments to the officials for the course of their election term. These are awarded based on the application of the officials and in

[3] Determined from the Property Tax of the natural persons' decision.

[4] Article 37 of the Regulation on Solving Housing Needs of Elected, Set and Employed Persons with Users of State Owned Assets.

the case of the need of the official. If the official already has an adequate housing provided, he is entitled to the dwelling from the organ only if the execution of the official tasks is bound to that dwelling. The same committee is responsible for the selection of the eligible officials. The officials pay merely the running costs of the residence in the dwelling.

The usufructuary right is regulated in the Basic Ownership Relations Act[5] in Article 60. This Article is penurious, since it only stipulates that the personal servitudes (servitude of residence being one of them) are to be regulated with the law. However, such statute has not been enacted yet. Instead, Articles of the 1844 Serbian Civil Code (*Srpski građanski zakonik*) and the 1888 General Property Code of the Duchy of Montenegro (*Opšti svojinski zakonik za Knjaževinu Crnu Goru*) are used in accordance with Article 4 of the Invalidity of the Provisions Enacted prior to April 6 1941 and Alien Occupation Act (*Zakon o nevažnosti pravnih propisa donetih pre 6 aprila 1941. godine i za vreme neprijateljske okupacije*).[6] [7] This Article stipulates that provisions contained in legal acts, which lost their legal validity on April 6 1941, can still be used for the legal relations not regulated with the new acts, unless they are contrary to the Constitution of the FPRY, the Constitutions of the Peoples' Republics, laws and other valid legal acts, as well as the principles of the FPRY and the Peoples' Republics. The ususfructus is constituted with either a written contract, a testament or through adverse possession. The rights of usufructuary holder are broader than those of a holder of habitation right. The holder of ususfructus is entitled to use the dwelling for himself and his family members, but also to lease the dwelling in question. The holder of the right must preserve the essence of the dwelling, but is not liable for the regular wear and tear, vis major and deterioration due to the passage

5 There is an intention of the Government to replace the Basic Ownership Relations Act with the new, more extensive Property Rights and Other Real Rights Code (hereinafter the Code). The draft version of the Code is already completed and passed to the legislator. However, it is not known when this act is to be passed by the Parliament.

6 *Službeni list Federativne Narodne Republike Jugoslavije*, no. 86/1946 and 105/1947.

7 D. Lazarović, *Komentar Zakona o osnovama svojinsko-pravnih odnosa* (Belgrade: Poslovni biro, 2012), 363.

of time. The owner of the dwelling has *nuda proprieta*. He is able to burden the dwelling with lien or with real servitudes or even to transfer the ownership. However, the usufructus is not terminated thereof. The usufructus is terminated with the passage of the time, for which it was established, with death of the holder of the right to usufructus, with the destruction of the dwelling or due to failure of the holder of the usufructus to exercise his right for three years.[8] [9]

The right of habitation (right of servitude of residence) is also regulated in Article 60 the Basic Ownership Relations Act. The same explanation as above regarding provisions, which are used, applies.

In order to constitute a real right of habitation, the parties must conclude a contract in writing and sign it. Other possibility for establishing this right is a court decision, usually in the divorce procedures. Since this right does not represent the transfer of ownership right, no other requirements, as stipulated in Article 4 of the 2009 Transfer of Property Act (*Zakon o prometu nepokretnosti*),[10] are needed.[11] The most important difference between the usufructus and right to habituation is the fact that the holder of the habitation right is not entitled to lease the dwelling. He is entitled to reside therein with the members of his family though.[12] Other rights and obligations of the holder of the habitation right are the same as the rights of the usufructus holder.[13]

The practical use of the real right of habitation is today limited. Article 194 of the 2005 Family Act (*Porodični zakon*)[14] stipulates that the child and the parent, who executes the parental right, have a right of habitation on the dwelling owned by the other parent, if the two have no property right on other available dwelling. Such right is given until the child's eighteenth birthday. The right is not assigned, if such act would represent a major and obvious injustice for the other parent. The main condition is that the parent not executing the parental right is the owners of the dwelling (and is not

[8] In this case, the owner must file a claim to the court.
[9] Stanković and Orlić, *Stvarno pravo*, 340–50.
[10] *Službeni glasnik Republike Srbije*, no. 111/2009.
[11] Decision of the Court of First Instance in Zrenjanin, no. Gž. 1358/96.
[12] Stanković and Orlić, *Stvarno pravo*, 354–5.
[13] Ibid., 355.
[14] *Službeni glasnik Republike Srbije*, no. 18/2005.

merely a tenant).[15] The 2005 Family Act does not contain any provision on a premature termination of this right (before the child turns eighteen years). However, there are no obstacles for the parent to file a lawsuit, demanding the termination. The right also ceases, if the parent executing the parental right or the child obtains ownership of another dwelling; if the decision on the execution of the parental right is changed; if the right to habitation is clearly imposing too much burden onto the other parent. The 2005 Family Act also does not oblige the owner (the other parent) to move out from the dwelling. However, the Court may decide so in the final decision on the right to habitation, taking into account the best interest of the child. The Court must be careful when assigning this right. The assignment of the right must be in accordance with the best interest of the child, pursuant to Article 266 of the 2005 Family Act.[16]

There are no regulatory differences between professional/commercial and private landlords. In addition, proportion of professional landlords in Serbia is extremely small. Mix of market and commercial renting is not subjected to any special regulative form.

No intermediate form of tenure is present in Serbia (e.g. cooperatives, company schemes).

4.3 Regulatory Types of Tenures With a Public Task

Non-profit rentals in Serbia do have a public task, although their share is rather modest. The situation has improved since execution of the program Social Housing in the Supportive Environment and the enforcement of the 2009 Social Housing Act, although not enough, since there are still many individuals in need of more affordable housing.

The 1990 Housing Relations Act regulated establishment of the Funds for Construction of Solidarity Housing, which would address the needs of persons that were unable to do so on the market. Contrary to the expectations, these did not have such an important role.[17] The main problem was that the rent for these apartments

[15] Decision Rev. 1443/2010 of the Supreme Cassation Court of RS.

[16] V. Jovanović, 'Pravni položaj deteta nakon prestanka braka i vanbračne zajednice,' Pravosudna akademija, accessed 21 February 2014, http://www.pars.rs/ddownload/_params/file_id/1088.html?.

[17] M. Lalošević, *Studija socijalnog stanovanja* (Belgrade: Institute for Urbanism of Belgrade, 2007), 20.

was too low and insufficient to enable further construction of solidarity housing.

The 1992 Housing Act, on the other hand, regulated in Article 44 establishment of temporary obligation of extrication of funds for settling housing needs of all employees in need amounting to 1.3% of the gross salary (solidarity funds). This obligation was terminated in 2004.[18] Until the proposal of the Social Housing Act was presented, there was nothing done regarding solidarity housing.[19] The main objective of the new statute is to establish basic instruments, both on republic and local level, which would allow for the public intervention in the field of housing policy. This act introduces the term 'social housing,' as well as the scope of the state intervention when providing this type of housing. The scope is rather unlimited and includes the broadest definition of the social housing: from construction of these dwellings to different subsidies available.[20] The definition of the social housing is a dwelling 'with state subsidies, of a suitable standard to be provided to all those who are unable to access the housing market.'[21][22] Thus, the definition does not distinguish between solidarity housing for the most vulnerable and housing rented or sold without profit.

Non-profit rentals are dwellings awarded by the local self-governed units or non-profit housing agencies (if such agency is established in the particular municipality). The basic conditions of eligibility is given to individuals based on their housing situation, income level, health conditions, invalidity, number of household members and property situation. The priority is given to more vulnerable groups: youth, families with children, elderly over sixty-five years, single parents, invalids, war invalids, IDPS and refugees, Roma and others. State users of these apartments (local self-governed unit or municipal housing agency) determine the specific conditions for eligibility, apart from the basic ones.

The project Social Housing in Supportive Environment (*Socijalno stanovanje u zaštićenim uslovima*) has introduced a new

[18] Ibid., 35.
[19] *Službeni glasnik Republike Srbije*, no. 72/2009.
[20] Lalošević, *Studija socijalnog stanovanja*, 20–1.
[21] F. Giofrè and I. Miletić, 'Tra passato e futuro: Il Social Housing in Serbia nel processo di transizione,' *Techne*, no. 4 (2012): 70.
[22] Article 2 of the Social Housing Act.

model of social housing and has been introduced in 2004. The main object of the project is to offer an adequate housing for socially underprivileged persons, as well as IDPS and refugees. Hence, a chosen individual is regarded as a host, whose responsibility is to help others in the building.

Every municipality, in which the apartments are available, determines the eligibility of the applicants (apart from the already prescribed conditions from the act), as well as the procedure of applying. Some municipalities demand that applicants reside on their territory for a certain period of time (for instance, Belgrade and Vranje). The period for which the apartment is awarded also varies. In Belgrade it is five years with a possibility of renewal of the contract, if the social conditions of the household have not changed. In some municipalities, residents of these apartments are obliged to cover the running costs of their residence, whereas in others residents are partially or totally exempt from this obligation.

The Rules on Criteria and Measures for Determining the Priority List for the First Election of Users of Social Housing in Supportive Environment (*Pravilnik o kriterijumima i merama za utvrđivanje liste reda prvenstva za prvi izbor korisnika socijalnog stanovanja u zaštićenim uslovima*)[23] for the city of Belgrade determine the procedure for awarding the available apartments on the territory of Belgrade. Users can be socially endangered refugees and IDPS from the collective centers, who fulfill one of the following conditions: socio-economic jeopardy, single-parenthood, elderly, households with children with developmental issues, households with severely ill and bodily harmed member, victims of domestic violence and households with schooling children. In addition, every building has a host of the social building. Members of his family are also users of the building. The household is defined as a unity of living, earning and spending of assets. Each of the criteria is assessed with certain number of points. The procedure is carried by the Committee, formed by the mayor of Belgrade and consisting from five members (two are representatives of municipality, whereas the remaining three are each representatives from the UNHCR, the Center for Social Work and the Committee for Refugees). The Rules also determine the manner of work of the Committee.

[23] *Službeni list grada Beograda*, no. 19/2012.

The socio-economic jeopardy is assessed with maximum of twenty points. The income per household member must not exceed the level of income determined for receiving social security payments for one-member household increased for twenty percent. Applicant must file evidence on incomes and earnings, including certificate on unemployment issued by the National Employment Agency (*Nacionalna služba za zapošljavanje*) or verified statement not older than thirty days that he is unemployed. The evidence also includes a certificate from the employer on the level of incomes for the last three months preceding the application or verified statement that a member of the household infrequently receives some income. In the case of retired applicant, the evidence includes certification on the level of pension or not receiving it.

Single parents obtain twenty points. The former are defined as parents who live with their children in an incomplete family (if the other parent is passed, unknown or has abandoned the children). Certificates must be provided, including death certificate, acts of judicial organs on the death or dispossessing the parent rights. If these are not available, the single parent must provide a verified statement on the situation in the family.

Elderly receive ten points. The elderly are those who are sixty years for women and sixty-five years for men. The evidence filed is a copy of a valid identification card. Households with children who have developmental issues receive forty points per such child and file a decision from qualified organ. Households with member who is severely ill receive twenty points per such member. The list of illnesses is also determined, although the illnesses are not listed exhaustively. The condition is proved with opinion from a medical institution and signed by three different specialists. The opinion must be issued for the purposes of the application for the social housing and must not be older than six months.

Household with member who has a severe bodily harm receives thirty points per member, who is completely incapable for working. The points awarded for other forms of bodily malfunction are lower: twenty points for 100% malfunction, eighteen points for 90% of malfunction and sixteen points for 80% malfunction. The invalidity is proved with the certificate from the Republic's Fund for Pension and Invalidity Insurance (*Republički zavod za penzijsko i invalidsko osiguranje*), which has become final prior to the date of application.

Victims of domestic violence receive twenty points per abused member of the household. The evidence that must be enclosed is the court's decision.

Families with schooling children receive ten points per child that is enrolled in some form of schooling (junior, high school or faculty), which is proved with the certificate on regular schooling from the educational institution.

The Committee announces the notice in newspapers, on bulletin boards of municipalities, the Commissariat for Refuges, collective centers and City Center for Social Work (*Gradski centar za socijalni rad*) in Belgrade. Applicants must enclose all necessary documents to the City Centre for Social Work within thirty days from the public notice. After the thirty days period, the Centre delivers the applications to the Committee. The Committee is in charge of the consideration of the applications and awarding of points. Afterwards, the Committee must form the preliminary list of rightful claimants based on the number of points of each applicant. If more than one applicant (a person or household) has the same number of points, the priority is given to the applicants according to the number of points awarded in the following order: socio-economic jeopardy, single-parenthood, age, households with children with developmental issues, households with severely ill members, households with member with bodily harms, victims of domestic violence, households with schooling children. The preliminary list contains the name of the Committee, legal base for the notice, generalities of the applicants, the number of points for each of the categories, the sum total of all points, information on the complaint and the date of the formation of the preliminary list. The preliminary list is announced in the same manner as the notice itself.

The complaint is filed with the Mayor of Belgrade through the Committee within eight days from the public announcement of the preliminary list. After the complaint procedure has been completed, the Committee forms the final priority list of the rightful claimants. The Director of the City Center for Social Work then issues the decisions on the allocation of the apartments. The Mayor or other authorized person concludes the contracts on mutual rights and obligations with future users. The complaint against the final priority list is not available.

As far as the host is concerned, he or she is defined as the person

capable of working, who is a member of socially vulnerable family household. This person may be either a refugee or IDP. The host is determined by the City Center for Social Work, based on the proposal of the Committee. The written consent of the future host is also required. The host's work is coordinated and controlled by the City Centre for Social Work. The mutual rights and obligations between the host and the Centre are determined in the contract on cooperation on the realization of the project.

The above described procedure is valid only for the allocation of the social housing on the territory of Belgrade. However, other towns have similar procedure and criteria for eligibility.

Apart from the apartments available for renting through the program Social Housing in Supportive Environment, there are also apartments available for purchases with non-profit price. Similar conditions for eligibility are demanded for the purchaser. However, the square meter of such apartment, although 30% lower than the market price, is still rather high for the majority of individuals, to whom the apartments are intended. In Niš, the price is around 600 to 700 EUR per square meter. Even with the subsidy and loans given by the Government[24] and commercial banks, the monthly installment is some 150 EUR, which is considerably a lot for a socially endangered household. This is also the reason why many buyers of these apartments are falling behind with their monthly installments.[25]

[24] More on this in section 3.6.
[25] 'Počinju iseljenja iz Kamendina,' *Večernje novosti*, 16 October 2012, http://www.novosti.rs/vesti/beograd.74.html:401599-Pocinju-iseljenja-iz-Kamendina.

Chapter Five

Origins and Development of Tenancy Law

Prior to the dissolution of the former SFRY, tenancy law in Serbia (and the entire SFRY) had a minor importance for the citizens and the society as such, since the predominant type of tenure was based on the housing right. The remaining part of citizens had their own dwellings; therefore, the proportion of genuine rental relations was minor. The existing rental relations were named 'contracts on the use of the apartments,'[1] in order to diminish the economic element of renting.

Even towards the end of the Federation, there was a widespread opinion that the system of housing rights and constitutionally proclaimed guarantee of every citizen to obtain this right on the dwelling from the social housing stock was unsustainable and unrealistic. As the society moved towards more market oriented economy, the change of the housing sector became more and more evident.[2] Therefore, the enactment of the 1990 Housing Relations Act represented a cornerstone of the new housing relations. First of all, it abolished the compulsory deductions from employees' salaries for the construction of social dwellings (although such deductions for solidarity apartments remained until 2004). In addition, it set the parameters for the process of privatization of the housing stock, as well as for the re-introduction of the market rentals.

After the dissolution, Serbian political and economical sphere was more concerned with the war and other violent acts taking place on its territory. Serbia was faced with rising inflation, embargos, displacement of citizens, privatization and denationalization. Nevertheless, the need for change in the property rights regime and tenure types was evident.

In 1992 a new statute was enacted, regulating among other issues

[1] Stanković and Orlić, *Stvarno pravo*, 473.

[2] D. Nikolić, 'Zakon o stanovanju' *Privredno pravni priručnik* 30, no. 9–10 (1992): 6.

also tenancy law – the Housing Act. This act replaced the formerly valid 1990 Housing Relations Act and continued with the process of privatization of socially owned housing stock. After the privatization, the housing rights were replaced with private ownership or rental contracts of socially owned dwellings. This act is *lex specialis*, containing more specific requirements for the conclusion of rental contracts between the landlord and the tenant, as well as other elements of tenancy relations. The general contents of rental contract are regulated with the 1978 Obligation Relations Act (*Zakon o obligacionim odnosima*).[3] Thus, provisions of the 1978 Obligation Relations Act should apply to tenancy contracts only, if the 1992 Housing Act does not regulate a certain matter.[4]

The role of the 1992 Housing Act was supposed to be to completely reform the existing tenancy relations deriving from the housing rights and replace them with the market relations. However, this did not happen. The structure of the act regarding tenancies is as following: Articles 7 to 11 regulate the new relations, as they should have emerged after 1992; Articles 30 through 39 represent transitional provisions, regulating the existing relations (based on housing rights).[5] Comparing the two sets of provisions, one would be stricken with the similarity of the regulation and solutions between the provisions for new rental relation and the old relations. Not only that the legislator failed to provide for the autonomy of the parties regarding the conclusion of the new contracts, but it also preserved majority of solutions from the previous system. For instance, although the landlord was now free to set the period for which the contract was concluded, he was still obliged to conclude the contract with some of the tenant's family household members after tenant's death or moving out. This does not

[3] *Službeni list Socialističke Federativne Republike Jugoslavije*, no. 31/1978 and later amendments.

[4] Decision of the Appellate Court in Belgrade, no. Gž. 7443/2011(1) from 27 June 2012.

[5] According to Article 30(1), it was no longer possible to obtain the housing right after this Act was put into force (1 June 1992). Thus, this Article is used only for the tenants who obtained the housing right up to this date. If the previous holders of housing right did not buy out their dwellings up to 31 December 1995, they continued to use the dwelling as tenants with open-ended rental contracts (Article 30(2)).

refer only to partners and possibly children, but also to some other relatives (siblings of the deceased, grandparents, etc.). The wide definition of family household members reflected the traditional values, while neglecting the market orientation of the rental market. Furthermore, reasons for terminating the contract by the landlord remained almost identical to the ones regulating contracts of housing right holders.[6] The new statute did reintroduce the market rental relations, however, it regulated in the virtually same manner as the previous housing right.[7]

As a result, the tenancy law in Serbia did not develop as anticipated. Today it represents only a minuscule portion of tenure types, reserved for less well-off citizens and students. The case law is not a formal source of law in Serbia, which is a part of the continental law system. However, lower instance courts usually follow the legal stance of the higher courts, especially decisions of the Supreme Court. Tenancy law has not been influenced by some special legal or political philosophy. Many provisions regarding tenancy and housing law are, however, influenced by the formerly present socialist regime (status of former housing rights holder regulated in the 1992 Housing Act and the 2011 Denationalization Act).

Housing and tenancy policy in Serbia was marked by one radical transformation immediately after the dissolution – compared to the socialist state, it adopted a more neoliberal concept.[8] This can especially be observed with the scrutiny of the Constitution enacted in 1990. This act no longer obliged the state to provide the citizens with adequate housing, neither market nor social. Thus, the foremost reform was done in 1992 through the process of privatization of the public housing stock. When privatization was completed, virtually entire housing stock was privately owned and the public rental housing stock was diminished to a very minimum.

Due to a series of unfortunate events (war and numerous IDPS and refugees from other Yugoslav republics, conflicts on Kosovo, NATO intervention and new IDPS, etc.) there was a need for new

[6] Nikolić, 'Zakon o stanovanju,' 7.

[7] Ibid, 8.

[8] The main consequence of this changed approach was that the state was no longer responsible to provide the housing for the citizens. Instead, the citizens should cater for themselves within the market conditions. Mojović and Žerjav, *Stanovanje pod zakup*, 6.

reforms in the housing and rental sector in Serbia. However, no long-term and significant change has taken place since the process of privatization. What is more, there have been several attempts of addressing housing issues in accordance with the changes in the social and political sphere in Serbia, but none of them introduced a serious U-turn in this sector.[9]

Another important change was brought about with the Housing Relations Act in 1990 – the abolition of the obligation of employees to contribute a portion of their incomes to the social housing funds. According to the new system, the individuals were to arrange their housing situations by themselves. This reform was in accordance with changes adopted in the new Constitution.

A further reform was done in the sector of financing. Due to the unstable financial market in Serbia, followed by unregulated real estate sector, there were not many possibilities for mortgages and other forms of loaning. Thus, the state introduced the system of securing the loans for citizens obtaining a home, enforced the 2005 Mortgage Act and established a registry of real estates. In 2006 the Government introduced a system of subsidies for the purchase of the first home, which additionally promoted housing loans.[10]

Other reforms included mostly solutions for housing situations of IDPS and refugees. However, all of these had a short-term effect or were done on a small scale, with the help of international community and NGOS.

The most recent reform was made with the enactment of the Social Housing Act in 2009. The provisions of this act reintroduced the concept of solidarity housing in Serbia, which was neglected since the early nineties. The legislator's main objective was to offer housing to the most underprivileged, those that are without any dwelling at all or those without an adequate one. However, the act failed to define the term 'social housing,' as well as to distinguish between the social housing and affordable (non-profit) housing. Another important constrain of the act is that it did not define the manner in which funds are provided, leaving this question entirely up to each future government to decide on the scope of funding. One of the provisions provides for the establishment of both lo-

[9] Ibid., 19.
[10] Ibid., 26.

cal and national housing agencies. Since the introduction of the act, fifteen municipal housing organizations have been established (in Kragujevac, Niš, Kraljevo, Užice, Smederevo, Pančevo, Kikinda, Zrenjanin, Kruševac, Pirot, Čačak, Zaječar, Beograd, Novi Sad and Smederevska Palanka). The main concerns of these organizations are the generating and awarding of social apartments to the applicants. Up to the present day several projects have indeed been executed. However, the result was again increase in the number of home-owners, whereas the rental sector has been left out.

The Constitution of the Republic of Serbia does not contain a right to housing or any other similar right. There are some provisions regarding housing, for instance the right to ownership of property and the right to inheritance. The ECHR did not have a significant influence on the tenancy law, since at the moment of enactment of the 1992 Housing Act Serbia was not a Signatory State of the ECHR. Even today, referring to provisions of the ECHR by courts is rare. For instance, in Decision of the Appellate Court in Belgrade, no. 1838/10 from 17 February 2010, the Court argued that it would be in contrary to Article 8 of the ECHR to allow eviction of an individual, who moved into a shack forty years ago and adapted it into an apartment. The Court considered that the previous owner (due to the period of the former state) should have opposed to such residence and demanded the eviction. Since the previous owner failed to do so, it is considered that it agreed with the change and the residence of that person. It would therefore be in contrast with the individual's right to protection of the home to allow the eviction.

Analyzing legal documents, which address the issue of housing and tenancy, it is obvious that the right to adequate housing, enshrined in numerous international acts (whose signatory state Serbia is)[11] are not transferred into Serbian legislation accordingly or are not applied accordingly. 'State authorities are unfamiliar with the status of international law within the domestic legal order and the obligations specifically arising thereof for all state authorities when deciding on these cases.'[12] What is more, they clearly neglect several Articles of the Constitution: Article 18(3) stipulating that

[11] The Universal Declaration on Human Rights, The Declaration on the Right of the Child, etc.

[12] Krstić, 'Prinudno iseljenje,' 107.

provisions on human and minority rights are to be interpreted in light of the improvement of human rights, respecting international instruments and practice of international organizations thereof; Article 16(2) indicating that ratified international instruments and customary international law are part of the domestic legal order and apply directly; Article 194 stipulating that domestic legislation must not be in discordance with the generally accepted rules of international law and ratified international treaties.[13]

The number of socially underprivileged – persons without an adequate dwelling – is large. The data on social exclusion and poverty indicate that the conditions and the quality of housing of vulnerable groups of citizens (Roma, IDPs, refugees, elderly, youth, etc.) are inadequate. Moreover, the housing stock (especially rental, non-profit and social) is old, scarce and neglected.

[13] Ibid.

Chapter Six

Tenancy Regulation and Its Context

6.1 General Introduction

Central rules for regulating tenancy are included in the section 11 of the 1992 Housing Act. Issues not regulated within the 1992 Housing Act are subsidiary regulated in the provisions of the 1978 Obligation Relations Act on the lease contract (Articles 567 through 599).

The provisions of the 1992 Housing Act differentiate between two types of rental relations: Articles 7 through 11 regulate all rental relations (market and public); Articles 30 through 39 represent transitional provisions, regulating the relations based on housing rights (which should have disappeared after the 1995, after which date Articles 7 through 11 were supposed to apply to these relations as well).[1] However, over the course of time, provisions of the 1992 Housing Act have become obsolete, at least as far as market rental relations are concerned. Thus, this statute is used merely for the protected tenants (former holders of housing rights, who did or could not buy out their apartments), regulating their relations. In addition, it refers to public rentals (although their number is rather small). In practice, market tenancy relations are based on the provisions of the 1978 Obligation Relations Act, even though the relavent statute is (or should be) the 1992 Housing Act. There is no case law to support this. The courts have declared that the provisions of the 1992 Housing Act should be used for residential contracts. However, parties do not follow this. The prime cause of the described anomaly probably lies in the fact that provisions contained in the 1992 Housing Act are overly protective of tenants (since they were based on the regulation of housing right).[2] For instance, Article 10(1), point 2 of the 1992 Housing Act states that the termination of the contract can be given, if the tenant does not pay the rent for the consecutive three months or four months in a year,

[1] Nikolić, 'Zakon o stanovanju,' 12.
[2] Ibid.

whereas the 1978 Obligation Relations Act in the Article 584 allows the termination of the contract, if the tenant does not pay the rent in fifteen days from the landlord's warning. If the tenant pays the due rent prior to the termination, the contract remains valid. The other cause lies in the fact that disputes regarding market tenancy contracts are rarelly disputed in front of the courts due to the high costs connected to the proceedings, as well as their length.

Therefore, when describing the non-profit rentals, we will refer to the 1992 Housing Act (and to some extent to the 1978 Obligation Relations Act, when certain issue is not regulated in the 1992 Housing Act). When describing market rentals and relations thereof, we will refer to provisions of the 1978 Obligation Relations Act.

The autonomy of parties is the primary principle used for concluding the contracts. Hence, the contract is the result of mutual agreement on the contents of the contract, with respect to the mandatory provisions[3] (e.g. on the minimum notice period). If the parties do not regulate a certain issue in the contract, default rules of the 1992 Housing Act and the 1978 Obligation Relations Act are applicable.

According to the 1992 Housing Act, the landlord and tenant are obliged to conclude a written rental contract, encompassing at least the following elements: information on the parties, date and location of conclusion, information on the dwelling, reasons and notices for termination, mutual obligations, maintenance of the dwelling and the building, the rent price, the manner of paying and the scope of running costs, the period of tenancy and the individuals residing in the dwelling. The contract, in which the period of rental is not defined, is considered as open-ended term contract. The notice on the increase of the rent must be communicated to the tenant at least one month before the intended increase. There is no obligation to register the contract.

As far as the termination of the contract is concerned, certain requirements must be fulfilled. The 1992 Housing Act regulates only

[3] The wording of the provisions of the 1992 Housing Act indicates that these are mandatory provisions, since it does not provide for possibility of other agreement between the parties. However, since the idea behind the statute was the liberalization of rental relations, it may be concluded that other agreement is also possible. For more on this, see D. Hiber, 'Zakup stana po Zakonu o stanovanju Republike Srbije,' *Privredno pravni priručnik* 30, no. 9–10 (1992): 20–34.

the reasons due to which the landlord is entitled to terminate the contract. The reasons are: the tenant has been using the dwelling for business activities, for subletting or he allowed other persons to use it without the knowledge of the landlord; the tenant failed to pay the rent for three months in succession or four months in a year; the tenant is harming the dwelling, common areas or building; the tenant is disturbing other tenants' residence. The landlord is obliged to terminate the contract in writing. At least ninety days' notice must be provided in months March through November, whereas the 120 days' notice is a minimum provided period, if the termination of the contract is given in December through February. The tenant, on the other hand, must provide the landlord with a thirty days' notice in writing prior to his moving out. If the period until the moving out is shorter than thirty days, the tenant must pay the rent for the following month. This is not meant as a punishment for the tenant, but rather as a security for the landlord, if he is unable to find a new tenant within such a short period.

The 1978 Obligation Relations Act does not require written form of the contract, nor does it contain general elements that must be agreed upon. These follow from the general features of lease relations: the information on the parties and the dwelling, the payment of the rent, maintenance of the dwelling, agreement on the scope of the use of the dwelling and the sublease, reasons on termination. The legislation does not contain any provision on habitability of dwellings.

The social orientation of the law is primarily seen in the provision on the termination of the contract on the behalf of the landlord, enforcing the longer period of notice, if the notice period is to expire in the months December through February. With this provision the legislator has provided tenants with the longer period for searching the appropriate dwelling in the coldest period of the year.

Tenancy law is governed by national, regional and local level of government. However, since market relations are under-regulated, the described competencies will mostly refer to social rental relations. The national Government (*Vlada*) is competent for the enactment of the National Strategy and Action Plan based on the proposal of the ministry in charge of housing matters. The objective of these acts is the long and medium-term development of social housing, as well as other elements of social housing, in addition to

the operative goals and activities. The main executor of these activities is the National Housing Agency (*Republička stambena agencija*). The agency is concerned with managing the finance for social housing and programs, control of the finance, providing expert and technical support, etc. The national level is also concerned with providing rental housing for the officials and other government employees. Regional level – represented by the Autonomous Region Vojvodina – is mostly concerned with the urbanism and other planning issues,[4] whereas its role in the tenancy is merely indirect.

The provision, allocation, managing and renting of solidarity dwellings is the concern of the non-profit housing organizations. These organizations are established by the local self-governmental units, housing cooperation or other organizational structures. Apart from this, the local level's competencies in the housing sector include merely maintenance of the apartment-buildings and evictions of unlawful tenants. Therefore, it can be said that tenancy law in Serbia is not a direct concern of any level of governance, with the exception of socially oriented tenancy.

Position of the tenant is twofold: it has both characteristics of obligatory right and real property right. The real property aspect of the tenant's position is especially important after the tenant obtains the possession of the dwelling, having then both legal and factual control over the leased asset. The tenant exercises a direct possession over the dwelling, which has *erga omnes* effect. Consequently, the tenant's position approximates the position of usufructus holder or holder of the right to habitation. Another argument for recognizing the real property aspect of the tenant's position is in the fact that the change of the landlord after the dwelling is in tenant's possession does not terminate the tenancy, as it would were it just an obligation.[5] [6]

There are two principal statutes regulating tenancy law in Serbia. General provisions are contained in the the 1978 Obligation Relations Act (*lex generalis*), whereas more specific ones (*lex specialis*) are to be found in the 1992 Housing Act.

[4] According to Article 10 of the Determining the Competencies of AR Vojvodina Act, *Službeni glasnik Republike Srbije*, no. 99/2009 and later amendments.

[5] Decision of the Appellate Court of Novi Sad, no. Gž. 1705/2011 from 1 November 2011.

[6] Stanković and Orlić, *Stvarno pravo*, 461.

However, as stated above,[7] over the course of time, provisions of the 1992 Housing Act have become obsolete, at least as far as market rental relations are concerned. Thus, this statute is used merely for the protected tenants (former holders of housing rights, who did or could not buy out their apartments), regulating their relations. The practice of courts, dealing with tenancy relations, relays on the provisions of the 1978 Obligation Relations Act, even though the relavent statute is the 1992 Housing Act. The prime cause of the described anomaly lies in the fact that provisions contained in the 1992 Housing Act are overly protective of landlords. For instance, Article 10(1), point 2 of the 1992 Housing Act states that the termination of the contract can be given, if the tenant does not pay the rent for the consecutive three months or four months in a year, whereas the 1978 Obligation Relations Act in the Article 584 allows the termination of the contract, if the tenant does not pay the rent in fifteen days from the landlord's warning. If the tenant pays the due rent prior to the termination, the contract remains valid.

Other special statues and acts in this regard are the 2009 Social Housing Act and the Order on Solving Housing Needs of Elected, Set and Employed Persons with Users of State Owned Assets. However, their practical use is minor, since social rentals are yet to be established in their full scope, whereas the employment based apartments encompass a very small number of rentals overall.

Cases of tenancy disputes are enforced before ordinary courts (on the first instance). These courts have jurisdiction in criminal and civil matter (for the latter, if no other court is competent and in non-contentious proceedings). There is no special jurisdiction of the courts for the tenancy disputes.

Higher courts are competent for appeals on the decisions of ordinary courts. These courts can act as both first and second instance courts. Appellate courts are competent to decide on the appeals on the decisions of higher courts and ordinary courts, for which higher courts are not competent. In both cases the appellate courts act as the second instance. The Supreme Court is competent for extraordinary legal remedies. However, the possibility of legal remedies is not unlimited. There are special requirements (required for all proceedings, appeals and extraordinary remedies) to be fulfilled in

[7] See section 6.1.

order to have an access to the second or third instance. However, when landlord is a legal person in a bankruptcy procedure or procedure of winding up the business, and tenant is a natural person, the commercial court in charge of these two procedures is also competent for the disputes arising from the tenancy relation of these two parties.[8]

Municipal authorities competent for the housing matters are in charge of unlawful residence. The proceedings are considered as urgent matters, where appeal does not withhold the execution of the decision. The Ministry competent for the housing matters deals with the appeals on the decisions of municipal organs.

The possibility of alternative dispute resolution in general is available, although there are no specific procedures developed precisely for tenancy matters. At the moment, the disputes regarding lease relations are deemed as not being arbitrable. This follows from Article 56 of the 1982 International Private Law Act (*Zakon o rešavanju sukoba zakona s propisima drugih zemalja*)[9] determining the exclusive competence of courts for lease relations and relations regarding the use of dwellings. Article 5(1) of the 2006 Arbitration Act (*Zakon o arbitraži*)[10] stipulates that the property disputes regarding the rights with which parties dispose freely may be subject to arbitration, unless the exclusive competence of courts is established. There is a possibility that the arbitration would be allowed also for tenancy disputes due to the first part of the provision. However, for the time being, there are no such procedures.

There are no special public law duties or requirements influencing tenancy contracts. There are only rules regulating the standards of construction of dwellings, the Rules on Conditions and Normative for Planning of the Housing Buildings and Dwellings (*Pravilnik o uslovima i normativima za projektovanje stambenih zgrada i stanova*).[11] This act regulates the standards for planning and construction of dwellings and not tenancy directly.

According to the 2011 Residence and Domicile of the Citizens Act (*Zakon o prebivalištu i boravištu građana*), the landlords are

[8] Decision of the Supreme Court RS, no. Prev. 144/98 from 29 April 1998.
[9] *Službeni glasnik Republike Srbije*, no. 43/1982.
[10] *Službeni glasnik Republike Srbije*, no. 46/2006.
[11] *Službeni glasnik Republike Srbije*, no. 58/2012.

TABLE 6.1 Preparation and Negotiation of Tenancy Contracts

Category	(1)	(2)	(3)
Choice of tenant	Freely, depending only on landlord's preferences	Obligatory, after special procedure for selecting eligible applicants is conducted	Non-profit, market
Ancillary duties	Optional; upon the agreement	Regulated in the legislature	Non-profit, market

NOTES Column headings are as follows: (1) main characteristic(s) of market rentals, (2) main characteristic(s) of non-profit rentals, (3) ranking from strongest to weakest regulation

obliged to allow their tenants to register temporary and permanent residence. In order to register, a tenant must enclose ownership document and identity card of the landlord. Both landlords and tenants acting against this provision are to be fined (280 to 1.300 EUR for landlords and 90 to 450 EUR for tenants). This registration does not affect the obligation of paying taxes, since the tax is paid only if the tenancy contract is in writing. Nevertheless, many landlords are unaware of this and refuse to allow the tenant to register due to the fear of tax inspection and fines that may be imposed thereupon. In addition, the landlord cannot on his own unregister the tenant from the address (but the tenant must do so himself). If the tenant is still registered on the address, all the bills, fines, and similar documents are still sent to the registered address.

As far as energy saving regulation is concerned, it must be stressed that there are none. As of 2013, all the newly built dwellings must have 'energetic passport,' which offers insight into the energetic efficiency of the dwelling and is a condition for obtaining the operating permit. This passport indicates only the heating consumption of the dwelling and not the other consumptions.

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 tenants. The only exception is Article 599 of the 1978 Obligation Relations Act, stipulating that the contract continues with heirs of the deceased party, unless it is agreed otherwise.

Landlords in non-profit rentals must follow the proper procedure

of selecting the tenants. After the selection procedure is conducted, there is an obligation to conclude the contract with the selected rightful claimants. The procedure of choosing tenants is carefully regulated. Every municipality, in which non-profit apartments are available, determines the conditions for the eligibility of applicants (apart from the already prescribed conditions from the 2009 Social Housing Act), as well as the procedure of applying. After the appeal process, the final list of rightful claimants is comprised and rental contracts are concluded with these individuals. In addition, Article 9(2) of the 1992 Housing Act obliges landlords to conclude the contract with one of the members of the deceased tenant's family household. The choice of individual, who is to conclude the contract with the landlord, is left to the agreement of the family household members. The following individuals are entitled to conclude the contract as family household members: tenant's spouse, birth or adopted children, parents of the tenant or his spouse, individuals, whom the tenant must support according to the law. If there is no such family household member, the new contract is concluded with the individual, who used to be a member of the tenant's family household or individual, who used to be a family household member of the previous tenant and has continued to reside in the dwelling (e.g. siblings and other). The new contract must be concluded within sixty days following the death of the tenant; otherwise, the rental contract is terminated.

The exception from the autonomy of the parties was present in the past, during and following the privatization process. There was an obligation imposed on owners of dwellings or holders of disposal right of socially and privately owned dwellings to conclude the open-ended contracts with the former holders of housing rights, unless they purchased the dwellings. Such obligation stemmed from Articles 31 and 40 of the 1992 Housing Act.

Landlords in possession of available market rental dwellings usually submit an advertisement in the local newspapers, ad networks or proceed to one of the numerous real estate agencies for the services. The services offered by the real estate agencies include finding potential tenants, passing the information on the landlord, conclusion of contracts, etc.

Awarding available dwellings in the non-profit sector includes more strict procedure. Firstly, a formal public notice on the allo-

cation of available dwellings is announced in the media and on bulletin boards of: municipalities, the Commissar for Refuges, collective centers and City Center for Social Work in the municipality. The notice must state the necessary documentation that is to be submitted by the applicants. There is a special Committee established on the behalf of the landlord, whose concern is to form the list of eligible applicants. Applicants must enclose all necessary documents to the authority within thirty days from the public notice. The Committee is in charge of considering the applications and awarding points, according to which the priority lists are formed. The preliminary list is announced in the same manner as the notice itself.

Market landlords usually question the potential tenants on their incomes, financial situation, their employment, etc. No special requirements are prescribed in the legislation. In non-profit sector there is a list of evidence that must be enclosed upon the application. This include, aside from the application form: evidence on incomes and earnings, including certificate on unemployment issued by the National Employment Agency or verified statement not older than thirty days that the applicant is unemployed; a certificate from the employer on the level of incomes for the last three months preceding the application or verified statement that a member of the household infrequently receives some income; the certification on the level of pension or not receiving it, if the applicant is a retired person.

There are no lawful possibilities of gathering information on the potential tenants, nor are there blacklists of 'bad tenants.' Tenants do not have any possibility to check the landlord, unless they engage the services of a rental agency. The landlords, who offer their dwelling through real estate agencies, must provide the agent with the certificate on the ownership or other right of disposal. Therefore, only in this case may the tenant be assured (to a certain degree) that the landlord is not a swindler landlord. Bigger problem are swindler real estate agents, who demand advance payments, but fail to provide the tenant with the information.

The activities of real estate agencies in Serbia are regulated with recently enacted Real Estate Agencies Services Act. Prior to its enactment, the sector was driven mostly by common practices. The services of real estate agents regarding tenancy are not obligatory.

What is more, many refuse to use the services of agencies, since it is less expensive to find a landlord or tenant merely through media or other forms of advertise (through internet sites). The services of agents are engaged only when landlords/tenants are not able to find a suitable tenant or landlord on their own. The advertisements on available dwellings or the needed ones can be offered through the local newspapers or their special issues.

A new set of conditions for performing the services of real estate agents are prescribed by the 2013 Real Estate Agencies Services Act. The main condition is the registration of the agency (or the agent, if he is a private entrepreneur) in the Registry of Real Estate Agents (*Register posrednika*).[12] In order for the registration to be allowed, at least one of the employees or founder of the agency must pass the professional exam, as determined by the statute. In addition, the agency or the entrepreneur must conclude a contract on insurance of liability against damage,[13] have an adequate business premises[14] and there is no prohibition of conducting services (issued in the minor offense procedure due to violation of the provisions of the 2013 Real Estate Agencies Act).[15] This Registry is to be publicly displayed, without any restrictions.[16]

Brokerage contract is concluded in writing (also possible is the electronic form) between those, who opt for the services of agents, and agencies.[17] This contract is regulated in the 2013 Real Estate Agencies Services Act, Articles 15 and following, and also in the 1978 Obligation Relations Act, in Articles 813–26, as a general regulation to be applied if nothing specific is provided in special legislation. It ought to contain, apart from the rights and obligations

[12] Article 4 of the 2013 Real Estate Agencies Services Act. The Registry is yet to be established. The statute anticipates eighteen months period for its establishment from the day of the enactment of the statute (roughly in April 2015).

[13] The contract is to be concluded with one of the insurance companies from Serbia. The value of the insurance policy is 15,000 EUR per individual loss event or 45,000 EUR for all loss events within one year. Article 13 of the 2013 Real Estate Agencies Services Act.

[14] The business premises must be functionally separated from the residential premises and fulfil technical standards. Article 14 of the 2013 Real Estate Agencies Services Act.

[15] Article 5 of the 2013 Real Estate Agencies Services Act.

[16] Article 7(1) of the 2013 Real Estate Agencies Services Act.

[17] Article 15(1) and (3) of the 2013 Real Estate Agencies Services Act.

of the parties, also information on the estate agent and his registration number, personal information of the ordering party, type of the services engaged (selling, buying, renting, looking for a dwelling), on the commission and deadline for payment, period for which the contract is concluded, and information on additional costs that may arise.[18]

Estate agent's obligations are enlisted in Article 16. They encompass endeavors to find and connect the suitable contracting party to the ordering party, informing the ordering party on the relevant issues regarding the premises (price/rent to be expected, circumstances on the market, etc.), reviewing the relevant documentation (e.g. ownership documents) and warning the ordering party on possible issues, advertizing the dwelling, providing for an overview of the dwelling, mediating in the parties' negotiations, informing the ordering party on all the circumstances relevant for the services engaged, and keeping all the information as confidential.[19]

The right to commission is obtained in the moment of the conclusion of the contract for which the services were engaged (tenancy or sale contract), unless the parties agreed that the right is obtained upon the conclusion of the pre-contract.[20] The value of the commission is not set with the statute. The usual commission for rental contracts ranges from 50% to 100% of one monthly rent. The commission of other local real estate agents in the matters of rental activity is between 30% and 50% of the monthly rent.[21] The estate agent may not demand the partial prepayment of the commission, before the contract (tenancy or sale contract) is concluded. In addition, the estate agent does not have a right to commission, if the contract (tenancy or sale contract) is concluded with him as a contracting party.[22] If authorized in writing by the ordering party, the estate agent may conclude the contract (tenancy or sale contract) on the behalf of the ordering party.[23] The ordering party's obliga-

[18] Article 15(4) of the 2013 Real Estate Agencies Services Act.
[19] Article 16 of the 2013 Real Estate Agencies Services Act.
[20] Article 20(1) of the 2013 Real Estate Agencies Services Act.
[21] M. Nikić, 'Lovci na brzoplete podstanare,' *Politika Online*, 12 February 2010, http://www.politika.rs/rubrike/Nekretnine/Lovci-na-brzoplete-podstanare .lt.html.
[22] Article 20(2) and (5) of the 2013 Real Estate Agencies Services Act.
[23] Article 22 of the 2013 Real Estate Agencies Services Act.

tions include giving information relevant for the services engaged, providing relevant documentation (e.g. ownership documents), enabling viewing of the premises, paying the commission, informing the estate agent on any relevant change in three days following the change. The ordering party is in no way obliged to conclude the contract (tenancy or sale contract) with the party provided by the estate agent. Provision in the brokerage contract stating otherwise is null and void.[24]

There are several agencies, especially in Belgrade, whose predominant activity is concentrated on offering for rent luxurious villas and estates for foreigners.[25] However, these agencies rarely offer some less expensive dwellings and do not represent average agencies in Serbia. Some international agencies (for instance, CBRE, Jones Lang LaSalle, Century 21, Colliers, etc.) offer exclusive contracts to their clients.

There used to be a system of membership, in which potential tenants paid membership of 10 to 20 EUR a month. If the rental contract was concluded, they were to pay additional amount of a half or the whole of one month rent price. However, there were numerous frauds and misuses of the system – agents taking the membership without any serious commitment to provide the members with offers – thus, the system was abolished.

The scope of the services provided ranges from merely revealing the information on the dwelling and contacts from the landlord, to the provision of all necessary services (viewing of the dwelling, conclusion of contract, legal representation, etc.). The scope of services also determines the level of commission.

No ancillary duties of the parties in the phase of contract preparation and negotiation are regulated. However, the parties are able to agree upon this matter and set some duties. These could include painting the apartment, furnishing or repairing certain equipment prior to the tenants moving in, etc.

'Culpa in contrahendo' situations are not regulated especially for the rental sector. There is only the possibility of general lawsuit for the reimbursement of damage. However, such possibility is only

[24] Article 24 of the 2013 Real Estate Agencies Services Act.

[25] To name a few: LuxHome (http://www.luxhome.rs/sr), Vos Mediator (http://www.vosmediator.rs/about.php), etc.

TABLE 6.2 Conclusion of Tenancy Contracts

Category	(1)	(2)	(3)
Requirements for valid conclusion	Written form; information on the parties, the dwelling and the tenancy	Written form; information on the parties, the dwelling and the tenancy; procedure for selection of tenants	Non-profit, market
Regulations limiting freedom of contract	Only with decedents of deceased tenant	Only with decedents of deceased tenant	The same

NOTES Column headings are as follows: (1) main characteristic(s) of market rentals, (2) main characteristic(s) of non-profit rentals, (3) ranking from strongest to weakest regulation.

theoretical, since it is almost impossible to fulfill the preconditions for such claim. The intent (that he never intended to conclude the contract and negotiated in bad faith) must be proven.

6.3 Conclusion of Tenancy Contracts

Licence as a type of tenure is not present in Serbia. The contents of lease of a dwelling (as a right) and real right of habitation (servitude of residence) are different. Lease has characteristics of both law of obligations and law of property right, while real right of habitation is purely a property law right. Therefore, the main difference between the two stem from the general characteristics of these two branches of law. For instance, users of right to habitation (as well as ususfructus holders) do not pay any type of remuneration to the landlord, while tenant pays rent to the landlord. Rent is the basic characteristic that distinct the lease from other similar arrangements.[26] Tenant is usually allowed to rent at least a part of the apartment, while holder of the habitation right (but not also the holder of the ususfructus) may not further lease the dwelling. However, in both cases, at the end of the period for which the dwelling was given, it must be returned to the owner, without changing its substance. Both rights can be registered in the Real Estate Cadastre (*Kataster nepokretnosti*).

Neither the 1992 Housing Act nor the 1978 Obligation Relations

[26] Decision of the Appellate Court in Belgrade, no. Gž. 7443/2011(2).

Act distinguishes among different types of tenancy contracts. All of the statutes provide that the lease contracts can be concluded on a part of a dwelling or on the whole dwelling. Furnish in the dwelling is the matter of agreement between the parties and is not determined as mandatory requirement in none of the statutes. Upon the conclusion of the tenancy contract, the parties are also to conclude a record of the handover, stating the overall condition of the dwelling and the equipment therein.[27]

The formal requirements for a valid conclusion of tenancy contracts are regulated with two different statutes, depending on the type of rental relation.[28]

Non-profit rentals are regulated with Article 7 of the 1992 Housing Act. The most imperative requirement is certainly that the contract is concluded in writing between the parties, in addition to the general requirements for conclusion of contracts (legal capacity of parties, absence of misunderstanding between parties, etc.). The written form is a condition for the existence of the contract (*forma ad solemnitatem*) and is not intended merely for proving.[29] Oral contracts do not have a legal effect.[30] A mandatory requirement for the conclusion of contracts for non-profit apartments is the compliance with the procedure for selection of the rightful claimants. There is no obligation to register the contract with an authority.[31]

Contents of market rental contracts are regulated with the 1978 Obligation Relations Act, Articles 567 through 585. General requirements for the conclusion of contracts must be obeyed with (legal capacity of the parties, absence of the misunderstanding between the parties, etc.). The provisions on the lease in the 1978 Obligation Relations Act do not require a contract in writing between the parties. However, since the written form is necessary for residential contracts in accordance with Article 7 of the 1992 Housing Act, it can be argued that the contract ought to be concluded in the written form. Nevertheless, pursuant to Article 73 of the 1978

27 Article 7(4) of the 1992 Housing Act.

28 R. Lampe and Z. Stefanović (eds.), *Građa za urbano pravo* (Belgrade: Čigoja štampa, 2011), 200.

29 For more on the contents of the contracts see section 6.3.

30 S. R. Vuković, *Komentar Zakona o stanovanju (sa sudskom praksom, obrascima i registrom pojmova)* (Belgrade: Poslovni biro, 2004), 41.

31 Ibid., 40.

Obligation Relations Act, if the written form of the contract is not complied with, but the obligations following from the contract were performed (in the whole or in their most part), the contract is valid. Thus, if both landlord and tenant fulfilled their obligations, but the written contract was not concluded, their contract cannot be deemed null and void.

None of the statutes prescribes the obligation of registration of tenancy contracts. The State Land Survey and Cadastre Act (*Zakon o državnom premeru i katastru*)[32] stipulates in Article 77 that the right to lease may be registered in the Real Estate Cadastre (*Katastar nepokretnosti*). The former State Land Survey and Cadastre Act (*Zakon o državnom premeru i katastru i upisima prava na nepokretnostima*)[33] explicitly determined that only long-term lease (of ten and more years) was to be registered with the Cadastre. However, these provisions were not set as requirements for the validity of lease contracts.[34] The new Rules on the Cadastral Land Survey and Cadastre of Immovable are yet to be passed by the director of the National Geodetic Institute (*Republički geodetski zavod*). The formerly valid 1999 Rules on Preparation and Keeping of the Cadastre of Immovable (*Pravilnik o izradi i održavanju katastra nepokretnosti*)[35] were enacted on the basis of the 1996 State Land Survey and Cadastre Act, which prescribed only the registration of the long-term leases. According to Article 198(3) of the 2009 State Land Survey and Cadastre Act, until the new regulatory acts are passed, the provisions of the old regulatory acts are to be used. Therefore, at the present, it is possible to register only the long-term leases (of ten and more years).The fee for registration is around 30 EUR (3,256.00 RSD).[36] There are no legal consequences if these provisions are not complied with.

There is a legal obligation for all residents to register their tem-

[32] *Službeni glasnik Republike Srbije*, no. 72/2009.

[33] *Službeni glasnik Republike Srbije*, no.12/1996.

[34] Court's Decision no. Gž.1197/04.

[35] *Službeni glasnik Republike Srbije*, no. 46/1999.

[36] Article 2(1) of the Order on the Level of the Fees for the Use of the Survey Data and the Land Cadaster and the Services Offered by the National Geodet Institution (*Uredba o visini naknade za koriščenje podataka premera i katastra i pružanje usluga Republičkog geodetskog zavoda*), *Službeni glasnik Republike Srbije*, no. 45/2002.

porary residence with the police. Landlords are obliged to enable their tenants to do so by providing them with the necessary documents (ownership document or lease contract and identity card of the landlord). The fee for such registration is around 2 EUR (250.00 RSD).[37]

The 2006 Constitution in Article 14 prohibits any kind of direct or indirect discrimination, on the reason whatsoever. In addition, Serbia passed the present antidiscrimination act, the 2009 Prohibition of Discrimination Act (*Zakon o zabrani diskriminacije*).[38] This act *is lex generalis,* covering a broad specter of personal characteristics as a base for the discrimination, but at the same time leaving possibilities to regulate other specific sectors, in which the discrimination is impending. Thus, there are also other acts prohibiting discrimination on the territory of Serbia, for instance Preventing Discrimination of Persons with Disabilities Act (*Zakon o sprečavanju diskriminacije osoba sa invaliditetom*).[39] [40]

Article 2(1) of the Prohibition of Discrimination Act defines discrimination and discriminatory treatment as:

> [...] any unwarranted discrimination or unequal treatment, that is to say, omission (exclusion, limitation or preferential treatment) in relation to individuals or groups, as well as members of their families or persons close to them, be it overt or covert, on the grounds of race, skin color, ancestors, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership in political, trade union and other organizations and other real or presumed personal characteristics (hereinafter referred to as: personal characteristics).

The act particularly emphasizes several cases of discrimination which could be relevant regarding tenancy, especially non-profit rentals. These include: discrimination in the course of proceedings conducted before public administration organs (Article 15),

[37] For more, see section 6.1.
[38] *Službeni glasnik Republike Srbije,* no. 22/2009.
[39] *Službeni glasnik Republike Srbije,* no. 33/2006 from 17 April 2006.
[40] Dimitrijević, *Ljudska prava u Srbiji,* 61.

discrimination in the sphere of labour (Article 16), discrimination in the provision of public services and in the use of premises and spaces (Article 17), discrimination against national minorities (Article 24), discrimination of disabled persons (Article 26), etc. The EU directives are not directly included in this act.

Mandatory minimum requirements in tenancy contracts differ for non-profit and market rentals. The contents of non-profit contracts are regulated in Article 7 of the 1992 Housing Act. The contract is concluded in writing. This is a mandatory provision. The contract must contain information on the parties, date and place of the conclusion, information on the dwelling in question, the duration of the rental relation, rights and obligations of the parties regarding the use and maintenance of the dwelling, the amount of the rent price, the manner and deadline for payment, conditions and deadlines for the notices of termination of the contract, and the persons who are to use the dwelling apart from the tenant. A constituent part of the contract is also the record on the condition of the dwelling, which is composed upon the handover of the dwelling. The content of the contract is a semi-mandatory provision and regulates only the minimum of what needs to be stated therein.

Article 7(2) stipulates that the period of rental relation is deemed to be open-ended, unless the contract determines otherwise. Therefore, it is in the parties' interest (especially landlord's) that the period of tenancy is set with the contract. The contract must also contain the information on all the persons, who are going to use the dwelling apart from the tenant. Otherwise, it is deemed that they are using the dwelling unlawfully.[41]

As far as market rentals are concerned, the provisions of the 1978 Obligation Relations Act are used. The contract must contain the essential elements in accordance with Article 26 of the 1978 Obligation Relations Act, regulating the manner in which contracts are concluded in general. The essential elements of lease contracts in general are similar to those stipulated with Article 7 of the 1992 Housing Act, but are scarcer. The contract must contain information on the parties, date and place of the conclusion, information on the dwelling in question and the amount of the rent price. Other elements (for instance, rights and obligations of the parties regarding

[41] Decision of the Appellate Court in Belgrade, no. Gž. 3550/2011(1).

the use and maintenance of the dwelling, manner and deadline for payments, conditions and deadlines for the notices of termination of the contract) are already regulated in the provisions of the 1978 Obligation Relations Act and are not mandatory. Therefore, in the absence of other agreement, the provisions of the 1978 Obligation Relations Act are to be used. Such interpretation is in accordance with the dispositive nature of majority of provisions of the 1978 Obligation Relations Act.

The contractual terms of tenancy contracts are not subject to any special control and protection. The following explanation refers to both market and non-profit rentals. The 1978 Obligation Relations Act stipulates in Article 100 that in the case when the contractual terms have been written in a standard form or otherwise prepared by one contractual party solely, their meaning is to be interpreted in the interest of the other contractual party. However, since tenancy contracts are rarely concluded in practice, this provision bears little practical implications.

In addition, the 1978 Obligation Relations Act regulates the basic principles governing the obligation relationships contained in this and other acts. These principles are applicable to private parties concluding tenancy contracts as well. Article 10 provides for the autonomy of will of parties, while Article 11 proclaims the equality of contractual parties. The principle of conscientiousness and fairness is contained in Article 5, obliging parties to consider this principle when concluding obligational relationships and when exercising rights and performing obligations deriving from such relationships. Article 13 prohibits abuse of rights by parties. Such provision could be important for preventing the parties (either the landlord or the tenant) to impose disproportionate obligations on the other party. Similar to this provision is the provision of Article 15 proclaiming equal value of mutual performance.

Duty to perform obligations is set with Article 17(1), stating that the party acting in contrary to this provision is liable for its own actions. Article 17(2) stipulates that a contract can be terminated only upon the consensus of the parties or in accordance with the law. Article 18 imposes obligation on parties to act with the diligence required in legal transactions for the relevant type of obligation relationship (the diligence of a good businessperson or the diligence of a good householder). Important is the provision of Article 18(3),

stipulating that each party must refrain itself from aggravating the other party's legal position when exercising its rights from the obligational relation.

The consequences of invalidity of contracts are regulated in the Subsection 4 of the 1978 Obligation Relations Act. Invalid contracts can be either null and void (Articles 103 through 110) or challengeable (Articles 111 through 117). For instance, tenancy contract is null and void, if the rented dwelling is a deteriorating shanty, which does not fulfil conditions for obtaining operating permit, since it is hazardous for residence. The tenancy contract is challengeable, if the tenant, for example, is a fifteen-year old student, whose parents were not present upon the conclusion of the contract.

Neither the 1992 Housing Act nor the 2009 Social Housing Act contains any provision on the pre-emption right of any category of tenants. Such right of the lessee is also not contained in the 1978 Obligation Relations Act. The only possibility is given with Article 527 providing a contractual pre-emption right. However, there are no records of such agreement in practice.

The provisions preventing the mortgagor to lease his apartment or similar restrictions are not present in the legislation. However, following from the Program on Subsidies of Loans for Newly-constructed Dwellings,[42] the buyer may not rent the dwelling before all the instalments are returned.

Services provided by real estate agencies regarding conclusion of rental contracts are rarely used. The reason for such situation can be found in the fact that the commission for services is mostly regarded as high. The commission is usually paid at the conclusion of the contract and ranges from 50% of one month to one month rent price. Some agencies additionally charge the services of lawyers, who compose contracts. Some agencies charge the commission from the landlord solely, while other charge a half of commission from each (if both sides have engaged the agency), unless other arrangement is made.

Once the provisions of the 2011 Public Notaries Act are put to effect, tenants and landlords will be exposed to additional expenses, if they decide to conclude the contract in the form of the notary record. Notarial tariff is yet to be prepared by the Minister in charge

[42] For detailed information on this program, see section 3.6.

TABLE 6.3 Contents of Tenancy Contracts

Category	(1)	(2)	(3)
Description of dwelling	Mandatory requirement	Mandatory requirement	Non-profit, market
Parties to the tenancy contract	Mandatory requirement	Mandatory requirement	Non-profit, market
Duration	Usually definite term, even though open-ended is also possible	Both open-ended and definite term are possible	Non-profit, market
Rent	Mandatory requirement	Mandatory requirement	Non-profit, market
Deposit	Not a mandatory requirement	No deposit	Non-profit, market
Utilities, repairs, etc.	Not a mandatory requirement	Mandatory requirement	Non-profit, market

NOTES Column headings are as follows: (1) Main characteristic(s) of market rentals, (2) main characteristic(s) of non-profit rentals, (3) ranking from strongest to weakest regulation.

along with the Notarial Chamber,[43] so the level of the fee is not known.

6.4 Contents of Tenancy Contracts

Description of the dwelling is a mandatory requirement of tenancy contracts according to both statutes (the 1992 Housing Act and the 1978 Obligation Relations Act). Neither of the two statutes enlists the indication of the habitable surface as a mandatory requirement of tenancy contracts. However, following from the general provisions of the 1978 Obligation Relations Act on the subject of the contractual obligation, it is important to define it in such a manner, so that the subject is at least specifiable. Otherwise, the contract is deemed null and void.[44] The area of the habitable space is an important element of the tenancy contract, since some expenses could be based on it (for instance, the rent price, if it is expressed in units per square meter). The same applies for the description of the dwelling. If the description is unspecifiable and it is unclear to

[43] Article 135 of the 2011 Public Notaries Act.
[44] Article 47 of the 1978 Obligation Relations Act.

which dwelling the contract is referring to, the contract is deemed null and void. If it is clear to which dwelling the contract is referring to and the omission of the data or its ambiguity does not affect other provisions of the contract, the contract is still valid and obliges the parties.[45] Therefore, omitting to indicate the description or habitual space of the dwelling could lead to the nullity of the contract in cases when these are the essential elements of the contract, for instance, when the rent price is calculated based on the ground plan of the apartment, on whether there is a terrace, on the area of the dwelling, etc.[46] However, in practice this does not represent a problem.

The wrongful provision of data on the dwelling's description and habitual surface could lead to two situations, depending on whether the wrong data was provided by accident or on purpose. The accidental provision of wrong data is deemed as a significant mistake in Article 61 of the 1978 Obligation Relations Act. A mistake is regarded as significant, among other, if it is related to the essential characteristics of the subject and otherwise the mistaken party would not have concluded the contract with such content.[47] This party is allowed to request the annulment of the contract for the reason of significant mistake, given it acted in accordance with the diligence required for that type of transaction when concluding the contract. In addition, the party that acted in good faith has the right to demand reimbursement for damages incurred for this reason, regardless of whether the other party was culpable for the mistake. If the party causing the mistake is willing to perform the contract as if there had been no mistake, the party that acted in good faith may not make reference to the mistake.

Indication of the wrong data on purpose is regarded as deceit.[48] In such case, one party causes the other party to be mistaken or keeps the other party mistaken for the purpose of leading the latter to conclude the contract. The deceived party may request the annulment of the contract even when the mistake is not significant

[45] Article 105(1) of the 1978 Obligation Relations Act.

[46] S. Cigoj, *Obligacijska razmerja: Zakon o obligacijskih razmerjih; s komentarjem Stojana Cigoja* (Ljubljana: Uradni list, 1978), 65.

[47] For instance, such case could be, if the habitable space was indicated as larger than it was and the tenant was charged higher rent price accordingly.

[48] Article 65 of the 1978 Obligation Relations Act.

and has the right to demand the reimbursement of any damage that occurred.

There is no provision in the currently valid legislation, which would distinguish between the residence contracts and mixed (residence/commercial) contracts. The provisions regarding the performance of the commercial activity in dwellings are contained in Articles 6(2), 10(1/1) and 35(1/1) of the 1992 Housing Act. Article 6(1) provides that dwellings and housing buildings are to be used in accordance with their purpose. Article 6(2) contains an exception: a commercial activity can be pursued in a part of a dwelling in such a manner so to avoid inflicting harm and disturbing the peace and safety of the building and residents therein.[49] Articles 10(1/1) and similarly 35(1/1)[50] stipulate that the landlord is able to terminate the contract, if the tenant pursues the commercial activity without the consent from the landlord. However, there is no provision on a requirement that this consent is a part of the tenancy contract or another contract.

As far as market rental contracts are concerned, the commercial use must also be agreed upon by the parties. Otherwise, the contract may be terminated without the notice period due to Article 582 of the 1978 Obligation Relations Act regulating use of the leased dwelling contrary to the contract. The landlord has the right to terminate the contract, if he unsuccessfully warned the tenant on the unlawful use, and if the landlord is to suffer substantial damage thereof.

There are no specific requirements on who can lawfully be a landlord. Landlord can be any natural or legal person, who owns the dwelling or has a right to lease the dwelling (such as usufructuary or tenant, whom the landlord allowed to sublet the dwelling).[51] In addition, the individual must have a required capacity to conclude contracts. Individuals with general legal capacity are able to conclude contracts freely and without limitations. On the other hand, individuals with limited capacity to contract are allowed only to conclude certain contracts, set by the law, without the permission

[49] For instance, having a law office in a part of the dwelling.

[50] The provision of 35(1/1) requires a prior warning from the landlord. This Article refers to the lease of the apartments in common ownership and it is meant as a transitional provision.

[51] Decision of the Supreme Court of RS, no. Rev. 285/2003.

of their personal representative.[52] Otherwise, contracts must be approved by the personal representative of the person with limited capacity to contract. If not, the contract is deemed challengeable and is valid only upon the approval of the legal representative.

The legal transactions, which must be approved by the personal representative of the person with limited capacity, are those, whose subject is vital for that person's property and life conditions after reaching the adulthood.[53] [54] The short-term tenancy contracts could be regarded as non-vital for the person's property and life conditions after reaching the adulthood, while long-term contracts could be regarded as vital. However, these issues are less relevant in practice. In addition, the case law is scarce and no definite answer could be given. In the case of the non-profit dwellings, the landlords can be only authorities (state, regional or municipal), who are empowered by the legislator: non-profit and municipal housing organizations, centres for social work, ministries.

The position of tenant in non-profit rentals is not affected with the respective change of the landlord, according to Article 11 of the 1992 Housing Act. The new landlord enters into the legal position of the former party and is entitled to all rights and obligations. The similar is stipulated with the provisions of the 1978 Obligation Relations Act in Article 591 in the case that the dwelling is transferred to the new landlord after the start of the market rental contract. If the contract between the original landlord and the tenant does not stipulate the period of the lease, nor is the period set by a statute, the new landlord cannot terminate the lease prior to the termination of the statutory period of notice.[55] Both the old and the new landlord are jointly and severally responsible for the obligations from the tenancy contract.[56]

However, if the dwelling is alienated prior to its delivery to the tenant, the position of the tenant is not changed only if the receiver was aware of the tenancy contract at the time of the conclusion of

[52] Article 56(2) of the 1978 Obligation Relations Act.

[53] As vital legal transactions the legislation considers disposal with real estate, while concluding an employment contract is allowed without any approval for minors between fifteen and eighteen years.

[54] S. Cigoj, *Obligacije* (Ljubljana: Uradni list, 1976), 255.

[55] Article 591(2).

[56] Article 591(3).

the contract on alienation.[57] Otherwise, he is not obliged to deliver the dwelling to the tenant. The tenant is, however, entitled to the reimbursement from the landlord (previous owner).[58] In any case, the tenant is entitled to terminate the tenancy contract, respecting the statutory period of notice.[59]

There is no relevant case law on which of the two relevant acts is to be used in these situation regarding the period of notice (the 1978 Obligation Relations Act or the 1992 Housing Act), since the two determine different periods. In accordance with the social function of housing, the period of notice which is more favourable for the tenant is to be used, which is the period from the 1992 Housing Act.

As far as inheritance is concerned, Article 599 of the 1978 Obligation Relations Act provides that the contract is continued with the deceased party's inheritors, unless other arrangement is reached in the contract. As far as the non-profit rentals are concerned, the 1992 Housing Act does not use the term 'inheritance.' Article 9(2) of the 1992 Housing Act obliges landlords to conclude the contract with one of the members of the deceased tenant's family household.[60]

Articles 112 and 113 of the Enforcement and Securing of Civil Claims Act (*Zakon o izvršenju i obezbeđenju*)[61] stipulate that the lease relations are not terminated with the sale of the subject of lease (dwelling). The condition set with Article 112(2) is that the lease contract had been concluded and tenant obtained the possession of the dwelling before the decision on the enforcement. Article 113 regulates the position of the protected tenants having open-ended rental contracts. If the mortgage or other legal base for the enforcement (for instance, the Court decision), have been constituted after the conclusion of the rental contract, the position of the tenant is unchanged.

No lawful restrictions exist regarding who can be a tenant. Tenant can be any individual, who has a required capacity to conclude contracts. For the non-profit rentals, tenants must be first selected

57 Article 593(1).
58 Article 593(2).
59 Article 594.
60 For more on this, see section 6.2.
61 *Službeni glasnik Republike Srbije*, no. 31/2011 and 99/2011.

by the competent authority in accordance with the selection procedure, as described in the sections above. Market rentals can be concluded by every individual with general legal capacity. Individuals with limited capacity to contract require approval by their personal representative, if the legal transaction is to affect this individual's life after reaching the adulthood; otherwise, the contract is deemed challengeable and is valid only upon the subsequent approval of the personal representative. Usually, landlords refuse to conclude tenancy contracts with minors, thus the approval of the personal representative is always needed[62] as providing the security for the landlord.

Tenants in non-profit rentals must provide the list of individuals who are to use the dwelling with them. Such provision is contained in Article 7(2) of the 1992 Housing Act. According to Article 36 of the 1992 Housing Act (referring to protected tenants), the members of the tenant's family household are also entitled to use the apartment under the conditions from this act. The act regards as family household members of the tenant: his marital spouse, children (born during the course of the marriage or outside, adoptees or stepchildren), parents of the tenant or his spouse, as well as the individuals, whom the tenant is legally obliged to support.[63] However, it is not necessary that the members actually reside in the dwelling. If, for instance, children (up to eighteen years or twenty six, if they are still involved in regular schooling) are attending a school in another municipality, it is deemed that they are still family household members and should be enlisted as users.[64]

For market rentals, the 1978 Obligation Relations Act does not contain similar provisions, but stipulates in Article 581 that the tenant is obliged to use the dwelling in accordance with the standard of a good householder. He is allowed to use the dwelling in the manner stipulated by the contract or the purpose of the dwelling. In addition, the tenant is responsible for the damage inflicted by the individuals, whom he allowed to use the dwelling. It can be argued that the purpose of the lease of dwellings is to provide housing to the tenant and his household members. The assessment of who is

[62] At least oral approval.

[63] Article 9(4) of the 1992 Housing Act.

[64] Decision of the Supreme Court RS, no. Rev. II 394/2009.

entitled to the family household member status is obviously left to the Court to decide in each individual case.

The provisions on the changes of parties must be distinguished according to the type of rental relation. Article 9(2) of the 1992 Housing Act for non-profit rentals regulates the matter of the death of the tenant in the following manner. The members of his family household are to continue to use the dwelling. This right is given only to those members residing in the dwelling with the deceased. The new tenancy contract is concluded with the member of the family household, who is determined by all the members consensually. If there is no other member of the family household left, the new contract is concluded with the individual, who is no longer the member of the family household or the individual, who was a member of the family household of the previous tenant, if he continued to reside in the dwelling (for instance, a brother, a sister, etc.).[65] Family household members of the tenant are: his marital spouse, children (born during the course of the marriage or outside, adoptees or stepchildren), parents of the tenant or his spouse, as well as the individuals, whom the tenant is legally obliged to support.[66] These individuals have a right to conclude the new contract in sixty days from the death of the tenant; otherwise, the contract is terminated.[67]

There is a separate provision arranging only situation of rentals based on the housing right (protected tenants). In the case of the death of the tenant or his moving out from the dwelling, the new tenant becomes a member of the family household, who continued to use the dwelling. The order of the individuals, who are to become the next tenant, is the following: marital spouse, a marital child, a child outside the marriage, an adoptee, a stepchild. If none of these members is present, the new tenant could also be previous tenant's parent, a parent of previous tenant's spouse or an individual whom the tenant is legally obliged to support financially, if he resided in the dwelling and does not have his housing situation arranged.[68] If neither of these secondary rightful claimants

[65] Article 9(3) of the 1992 Housing Act.
[66] Article 9(4) of the 1992 Housing Act.
[67] Article 9(5) of the 1992 Housing Act.
[68] Article 34(1) of the 1992 Housing Act.

is present, the new tenant could also be an individual who is no longer the member of the family household or an individual who was a member of the family household of the previous tenant, if he continued to use the dwelling and does not have his housing situation resolved.[69] Given that there are two or more individuals, who have the same entitlement, the new tenant is the individual whom they select consensually. Otherwise, the new tenant is the individual who is determined by the owner of the dwelling.[70] Individuals, who remain in the dwelling after the death of the tenant, must inform the landlord on the newly arisen situation in sixty days at the latest.[71] The landlord is obliged to conclude the tenancy contract (and determine the new tenant if needed) in thirty days from the information on the death or moving out of the previous tenant. Otherwise, the entitled individual may file a motion to the competent Court to render a decision in the non-contentious procedure, which would substitute the tenancy contract.[72] In the case of the divorce between the spouses, they must agree upon who is entitled to use the dwelling as tenant. If they fail to reach the agreement, the competent Court will reach the decision in the non-contentious procedure. The Court must take into consideration the housing needs of the ex-spouses and their children, their financial and health condition, etc.[73] As for the market rental relations regulated with the 1978 Obligation Relations Act, the relevant is Article 599. This Article stipulates that the contract is continued with the past tenant's inheritors, unless other arrangement is reached in the contract.

There are no special provisions on the separation of the non-marital partners or same-sex partners.[74] The only exception is Article 198 of the Family Act, stipulating that the court may order that the violent partner moves out of the premises, regardless of his ownership or tenancy right. The order may be imposed for maximum one year. However, it is not clear whether the tenancy contract must be changed in this case.

69 Article 34(2) of the 1992 Housing Act.
70 Article 34(3) of the 1992 Housing Act.
71 Article 34(4) of the 1992 Housing Act.
72 Article 34(5) of the 1992 Housing Act.
73 Article 35(4) of the 1992 Housing Act.
74 Same-sex partners are not legally recognized in Serbia.

There are no special provisions on the matter of one of the students moving out from the apartment. Such situation is arranged with an agreement between the tenant and the landlord. Demands of different landlords vary. Some do not allow for the other students to choose the new user or tenant on their own and are keener on finding one themselves. Other landlords are indifferent on this issue and leave the decision to other users and/or the tenant.

The regulation of non-profit rentals in reference to subletting is lacking in the 1992 Housing Act. It refers to this matter solely in two Articles: 10(1/1) stipulating that the landlord can terminate the contract provided that the tenant sublets the dwelling without his consent; and 35(1/1) with similar contents (referring exclusively to protected tenants). The sole difference is in the landlord's warning, which is needed prior to the termination based on Article 35(1/1). Thus, it could be concluded that subletting is in general allowed, but with the consent from the landlord.

According to the commentary of the 1992 Housing Act, the landlord (the main tenant) and the sub-tenant conclude a sub-lease contract in writing. The landlord (the main tenant) must register the contract with the competent Tax Office. The sub-lease contract is concluded for definite or open-ended period of time. The contract must include: parties, the part of the dwelling that is being sub-leased, use of the furniture, users of the part of the dwelling apart from the sub-tenant, period of sub-lease, compensation for the use, notice period, date and time of the conclusion. Otherwise, it is null and void.[75] Sub-sub-lease is not allowed. It is possible to have more sub-tenants for the same part of the dwelling, who have separate sub-lease contracts with the landlord (the main tenant). Open-ended contracts are terminated with cancellation by either party without stating the reasons thereof. The notice is given orally, in writing, through Court or via mail. The notice period must be agreed upon the conclusion of the contract between the parties. The parties are as well able to agree that the contract may be terminated at any time during the open-ended sub-lease, if such action is in accordance with mutual interests. Limited in time contracts are terminated upon the expiration of the period for which they were concluded. If the sub-tenant continues to use the part

75 Vuković, *Komentar Zakona o stanovanju*, 41.

of the dwelling after the expiration of the period and the landlord (the main tenant) does not object, the sub-lease is deemed as open-ended. Terminating the contract before the expiration of the sub-lease period is possible only in cases in which it is possible to terminate the tenancy[76] or in cases determined with the contract. Sub-lease limited in time contract may be terminated by the sub-tenant at any time, if the landlord (the main tenant) does not fulfil his obligations from the statute or the contract, if the sub-tenant obtains a new employment in another municipality and other cases from the contract. The landlord (the main tenant), on the other hand, must state a reason for termination of the limited in time sub-lease. If the sub-tenant does not accept the termination, the landlord (the main tenant) files a law-suit to the competent court. If the sub-tenant terminates the limited in time contract without a reason before the expiration of the period, the landlord (the main tenant) may demand reimbursement of the damage. In any case, the sub-lease is terminated with the termination of the original tenancy contract (between the owner and the main tenant) from any reason whatsoever.[77] The argument is that the sub-lease is based upon the original lease, and once the original lease is terminated, all the sub-leases deriving from the former (main) tenant – sub-lessor – must be terminated as well. This is due to obligation nature of the (sub) lease. This refers also to cases when the sublease was limited in time, while the original tenancy contract was open-ended. Sublease is nevertheless terminated. Landlord is not obliged to reimburse any damages to the subtenant, if the termination was justified and lawful (e.g. if the main tenant breached the contract by not paying the rent).

The 1978 Obligation Relations Act is more extensive regarding sublet in market rentals (Articles 586 through 590). Differently from the 1992 Housing Act, Article 586(1) of the 1978 Obligation Relations Act stipulates that subletting is allowed, unless otherwise agreed in the contract and unless it is to harm the landlord.[78] If it is necessary to obtain the permission from the landlord, he could

[76] For more see section 6.6.

[77] Vuković, *Komentar Zakona o stanovanju*, 38–39.

[78] For instance, if the dwelling might suffer greater wear and tear than economically acceptable for the landlord. (Cigoj, *Obligacijska razmerja*, 1719).

refuse to give it only from the justified reasons.[79] The tenant guarantees the landlord that the sub-tenant will use the dwelling in accordance with the tenancy contract.[80] These reasons could refer to the leased asset in question, the personal characteristics of the sub-tenant or some other.[81] If the permission was not obtained, but was needed according to the law or on the contractual bases, such contract provides no legal effects and the landlord is entitled to terminate tenancy.[82] Article 589 authorizes the landlord to demand payment of any tenancy related debt owed by the sub-tenant to the tenant directly from the sub-tenant. Nevertheless, there is no direct legal relation between the owner and the sub-tenant.[83] The same rules regarding rights and obligations of tenant and landlord apply also to relation between tenant and sub-tenant, unless otherwise agreed. Subletting is necessarily terminated with the termination of the tenancy.[84] Thus, the sublet contract is a separate contract from the tenancy contract, but the existence of subletting depends on the existence of the tenancy relation.

Abuse of subletting is not an issue in Serbia, since majority of market rental relations are concluded without formal contracts, nor are there recordings of the misuse of subletting in the non-profit sector.

Examining the provisions of the 1992 Housing Act on both non-profit rentals and protected rentals, it follows that tenancy contracts may be concluded only with one tenant, since in all of them only singular form is used for the term tenant. Vuković also supports this view, although he fails to provide the arguments thereof.[85] If more persons reside in the dwelling, the contract is concluded with only one person among them, while others are enlisted as users. This is the remnant of the previous system, in which housing rights were prevailing. Only one person was awarded the housing right (exceptionally two, in case of the married couples). Other house-

[79] Article 587 of the 1978 Obligation Relations Act.

[80] Article 586(2) of the 1978 Obligation Relations Act.

[81] M. Milenković, 'Podzakup,' Sudska praksa, accessed 21 April 2013, http://www.sudskapraksa.com/9953-PODZAKUP.html.

[82] Article 588. Decision of the Higher Commercial Court Belgrade, no. Pž. 1654/98.

[83] Milenković, 'Podzakup.'

[84] Article 590 of the 1978 Obligation Relations Act.

[85] Vuković, *Komentar Zakona o stanovanju*, 35.

hold members were regarded merely as users and were not parties to the contract. This was retained in the 1992 Housing Act, since the influence of the old system was still strong. In certain cases, if the users cannot agree on the matter of who is to be the new tenant, the Court is competent to decide.[86] As far as the market rentals and provisions of the 1978 Obligation Relations Act are concerned, there are no special arrangements on the matter. In general, there are no restrictions on the number of tenants.

In non-profit rentals, according to Article 7(3) of the 1992 Housing Act, if the tenancy contract does not determine the period for which it is concluded, the period is deemed as open-ended (meaning indefinite). More relevant is Article 31 of the 1992 Housing Act referring to the privatization process and redemptions thereof. This Article stipulates that housing right holders,[87] who did not buy out their apartments before 31 December 1995, continue to reside in the apartment as tenants with open-ended contracts. This Article applies also for the tenants of privately owned apartments (apartments of rightful claimants for the restitution of the denationalized apartments).[88] [89] Market rental contracts may as well be concluded for either limited period or as open-ended. However, in practice, the contracts are usually concluded as limited in time.

Other agreement on duration and the validity of non-profit contracts are not present. Provisions of the 1978 Obligation Relations Act do not contain any limitation as to the period for which market rental contracts are concluded. The only exception is represented with Article 596 which regulates tacitly renewed lease contracts. If the tenant continues to use the dwelling after the termination of the agreed period, while the landlord does not object, the law considers that the new open-ended contract was concluded, under the same conditions as the previous contract. However, guarantees, given by the third parties for the period of the first tenancy, cease.

System of rent control is present only for non-profit rentals. The same rules apply as for the protected tenants. According to Arti-

[86] For instance, see Article 35(4) of the 1992 Housing Act.
[87] Those, who obtained the housing right up to the date the 1992 Housing Act was put into force (1 June 1992).
[88] Article 40 of the 1992 Housing Act.
[89] For more on this, see section 1.3.

cle 32 of the 1992 Housing Act, the rent price for the protected renters is determined based on the area of the dwelling, quality of the dwelling and the building in which the dwelling is situated. The manner of calculations is set in the regulatory act enacted by the competent Minister. The rent price is determined two times a year for a six-month period (January-June and July-December). The relevant regulatory act is the Directions on the Manner of Determining the Rent (*Uputstvo o načinu utvrđivanja zakupnine*),[90] prepared by the Minister of Construction and Urbanism.

Article 7(2) determines the rent price as an indispensable element of tenancy contracts. In Article 8(2) it is stipulated that the rent price is to be paid until fifteenth of the present month, unless otherwise agreed. The rent for market rentals is not subject to any control. It is a result of the negotiation between the parties, depending on the location, size and equipment of the dwelling. According to Article 583 of the 1978 Obligation Relations Act, the tenant is to pay the rent price in deadlines set by the contract or with the law. If such provisions are not stipulated in neither of the two, the rent price is due as it is customary in the place where the dwelling is handed over to the tenant. If the dwelling is rented for the period of one or more years, the rent is to be paid half-yearly. If the period of tenancy is shorter, the rent is due after the termination of that period. The two provisions are used only if there is no other agreement between the parties or if it is not contrary to the local customs.

Article 141 of the 1978 Obligation Relations Act regulates usurious contracts and may be used for both types of contracts. The contract is deemed usurious, if one of the parties (usually the landlord) exploits other party's (usually the tenant's) necessity or financial hardship, his lack of experience, levity or addiction, to obtain a benefit for himself or the third party, if such benefit is apparently disproportionate to the other party's duty. Therefore, the tenancy contract, which would impose a very high or a very low rent for such a dwelling, would be deemed as usurious, if it fulfils other conditions of usurious contracts. The legal consequences of such doings are that the contract is deemed (entirely or partially) null and void. The damaged party has a right to demand that his obliga-

[90] *Službeni glasnik Republike Srbije*, nos. 27/97, 43/01, 28/02 and 82/09.

tion is reduced to the fair amount and the contract remains valid. Such claim is possible within five years from the conclusion of the contract.

The rent for non-profit apartments is based on the number of points, area of the dwelling and the coefficient.[91] The formula for calculation is the following:

$$Mr = Np \cdot Ad \cdot Co,$$

where *Mr* represents monthly rent, *Np* is the number of points, while *Ad* stands for the area of the dwelling. *Co* represents the coefficient, which is calculated every year. For the period January-June 2013 the coefficient is 0,189263.[92] The coefficient is calculated by dividing the amount of 15% of the average monthly salary in the Republic of Serbia without any taxes and contributions with the product of the number of points of the average equipped apartment (600 points) and average usable area of the apartment (56 m^2). The number of points of each individual apartment is determined in accordance with the List for Determining the Quality of the Building and the Apartment (*Lista za utvrđivanje kvaliteta zgrade i stana*).[93]

Article 32(3) of the 1992 Housing Act determines that the rent is determined, calculated and paid by and to: the landlord of the apartment, the holder of the disposal right, the housing service companies or other legal persons, to whom these tasks are delegated.[94] The cases of agreement on the excessive rent are not especially regulated in any of the statutes. The only relevant provisions are provided with Article 141 of the 1978 Obligation Relations Act on the usurious contracts and refer to all contracts. In the case that the usurious rent was set, the tenant is entitled to file a motion with the Court for the reduction of the rent in five years from the conclusion of the contract. In this case, the contract is still valid, while the nullity refers only to the contractual term on the rent price (partial nullity). The landlord is to return the amounts of the excessive rent to the tenant, in accordance with Article 104 of the 1978 Obligation relations Act.

[91] Article 2 of the Directions on the Manner of Determining the Rent.
[92] *Službeni glasnik Republike Srbije*, no. 14/2013.
[93] This List is the constituent part of the Directions as its annex.
[94] This Article refers to the protected tenants' rentals.

The non-profit rent is paid monthly, until the fifteenth of the present month, unless otherwise determined in the contract.[95] For market rentals Article 583 of the 1978 Obligation Relations Act stipulates that the tenant is to pay the rent price in deadlines set by the contract or by the law. If there are no such deadlines, the rent price is due as it is customary in the place where the keys to the dwelling are handed over to the lessee. If the dwelling is leased for the period of one or more years, the rent is to be paid half-yearly. If the period of lease is shorter, the rent is due after the termination of that period. The two provisions are used only if there is no other agreement between the parties or if it is not contrary to the local customs. However, in practice, the rent is almost always paid monthly. There are no special provisions in the case of delayed payment but the Articles on the termination of the contract.

If the tenant fails to pay the non-profit rent for at least three consecutive months or four months in a year, the landlord is entitled to terminate the contract.[96] Article 35 refers only to the notice of protected tenants[97] and their delayed payments. The notice from the landlord is possible, if the tenant fails to cover the rent for two consecutive months in spite of the landlord's admonition.[98] However, such notice is not lawful, if the tenancy contract stipulates that the landlord cannot give notice due to the unpaid rent for the period that the tenant was unemployed (due to the reasons beyond his scope) or was employed, but did not received the salary for at least two months and he and his family households members did not receive any income. In such case, the tenant is to repay the rent in two times longer period than the period for which the rent was owed. The period is calculated starting from the day of the next employment or receiving the income.[99] Therefore, regulation of protected tenants is clearly more lenient, requiring both the landlord's admonition and offering a protection from unemployment (although only if stated so in the contract).

Article 584 regulates the notice in the case that the tenant in

[95] Article 8(2) of the 1992 Housing Act.
[96] Article 10(1/2) of the 1992 Housing Act.
[97] For more on protected tenants, see section 1.3.
[98] Article 35(1/2) of the 1992 Housing Act.
[99] Article 35(2) and (3) of the 1992 Housing Act.

market rentals fails to pay the rent. Such notice is possible if the tenant fails to pay the rent in fifteen days after the landlord calls on him to pay. The following paragraph, however, provides that the contract remains, if the tenant pays the owed amount prior to the delivery on notice.

The 1978 Obligation Relations Act regulates the set off in Articles 336 through 343. The conditions for set off are regulated in Article 336. The claims, which are to be set off, must be declared in cash or in other replaceable things of the same type and the same quality and that both are matured. The parties (the landlord and the tenant) could offset their mutual debts only if both are pecuniary (for example, the rent price and the reimbursement of costs for repairs).[100] The very fulfilment of the conditions for the set off is not enough. One of the parties must declare the set off to the other party.[101]

The right of retention allows the creditor of a claim that is mature (either the landlord or the tenant) to retain a certain thing of the debtor that is in the creditor's hands until the claim is paid.[102] If the debtor became insolvent, the creditor has the right of retention, even if the claim has not yet matured.[103] Exceptions are determined in Article 287. The creditor does not have the right to retain the asset, if the debtor demands the return of the asset that against the debtor's will is no longer in the debtor's possession or if the debtor demands the return of the asset that was handed over to the creditor for safekeeping or as a loan. Moreover, the creditor may not retain an authorisation obtained from the debtor, other documents, cards, letters or similar assets belonging to the debtor, or other assets that cannot be placed on sale.

The creditor has the retention right only if the asset in his possession is given with the consent of the debtor and the debt is mature. Both parties of the tenancy contract may be creditor or debtor, depending on the circumstances. However, the tenant is prevented from selling the dwelling to repay landlords debt due to the fact that he is not the owner of the dwelling and cannot have the ownership

[100] Such situation is regulated with Article 570(2) of the 1978 Obligation Relations Act.

[101] Article 337 of the 1978 Obligation Relations Act.

[102] Article 286(1) of the 1978 Obligation Relations Act.

[103] Article 286(2) of the 1978 Obligation Relations Act.

right at his disposal. If debtor offers adequate security for the claim, the creditor is to return the asset to him.[104] When the creditor decides to repay the debt from the value of the asset in retention, he must notify the debtor on time regarding his intention.[105] The repayment of the debt is conducted in accordance with the provisions regulating the rights of the lien holder. The creditor in this case must refer to the court to issue a decision on the sale of the asset in retention on the public auction or under market or stock exchange price. If the anticipated price of the asset in retention is small compared to the costs of the public auction, the court may allow that the asset is sold under price as determined by a court appraiser or to be retained by the lien holder.[106]

There are no restrictions for the assignment of claims from rental contracts. Some exceptions of claims are recognized; however, these refer to the 'claims whose transfer is prohibited by law and those that are connected to the creditor's personality or whose nature opposes transfer to another individual.' Claims from the rental contracts do not fall within these categories. Therefore, general provisions for assignment of claims apply to both non-profit and market rentals.[107]

Pursuant to Article 436(1) of the 1978 Obligation Relations Act, the landlord may conclude a contract with the bank, assigning it the claims from the rental contract. However, the assignment has no legal effect, if the landlord and the tenant agreed that the landlord may not assign the claims or may not assign them without the consent from the tenant (Article 436(2)). Assignment of the primary claim includes also the assignment of the mature, but not yet paid, interests.[108] However, the parties may also determine otherwise – that the landlord may not assign the claims to the third party (a bank or another) (*pactum de non cedendo*). The only exception is the assignment of payment.[109] Therefore, if the landlord assigns only the collection of rent, then the assignment is valid, irrespective of the agreement on non-assignment.

[104] Article 288 of the 1978 Obligation Relations Act.
[105] Article 289 of the 1978 Obligation Relations Act.
[106] Article 980 of the 1978 Obligation Relations Act.
[107] Articles 436 through 445 of the 1978 Obligation Relations Act.
[108] Article 437(3) of the 1978 Obligation Relations Act.
[109] Cigoj, *Obligacijska razmerja*, 400.

Tenant's approval of the assignment is not needed (unless otherwise agreed); however, the landlord must inform him on such contract. If the tenant pays the debt to the landlord prior to the landlord's information on the assignment, the payment is valid and the tenant is freed from obligation. If the tenant knew of the assignment of the claim to the bank, the payment is not valid, until it is paid to the bank.[110] If the landlord assigns the claim to more than one individual (for instance, to two or more banks), the valid assignment is the one, on which the tenant was first informed.[111]

The bank has the same rights towards the tenant, as the landlord had towards the tenant. The tenant may lodge any objections against the bank that stem from their mutual relationship, as well as the objections that he could have lodged against the landlord prior to the information on the assignment.[112] The landlord must hand over to the bank the acknowledgment of the debt, if he has one and all other evidence on the assigned claim and ancillary claims.[113] If only one part of the claim is assigned, the landlord must enclose a certified copy of the acknowledgment of the debt.[114] The bank may also demand that the landlord issues a certified confirmation on the assignment.[115]

The landlord is liable for the existence of the claim upon the conclusion of the contract on assignment.[116] The landlord is also liable for the enforceability of the assigned claim, although only to the amount that he received from the bank, as well as for the enforceability of the ancillary duties against the tenant.[117]

If the landlord assigns a claim or a part thereof to the bank instead of performing his obligation, the obligation for the amount of the claim assigned expires when the assignment contract is concluded.[118] If the landlord assigns a claim to the bank for collection only, the obligation expires or is reduced when the bank collects

[110] Article 438 of the 1978 Obligation Relations Act.
[111] Article 439 of the 1978 Obligation Relations Act.
[112] Article 440 of the 1978 Obligation Relations Act.
[113] Article 441(1) of the 1978 Obligation Relations Act.
[114] Article 441(2) of the 1978 Obligation Relations Act.
[115] Article 441(3) of the 1978 Obligation Relations Act.
[116] Article 442 of the 1978 Obligation Relations Act.
[117] Article 443 of the 1978 Obligation Relations Act.
[118] Article 444(1) of the 1978 Obligation Relations Act.

the assigned claim.[119] In both cases the bank must deliver to the landlord the amount exceeding the assigned claim.[120]

None of the statutes contains a provision which would enforce the performance in kind in neither of the rentals (non-profit or market). This is also extremely rare in practice as well, although not impossible. The lien is established by the virtue of either a contract, court order[121] or a statute pursuant to Article 61(2) of the Basic Ownership Relations Act. The tenant may not establish a lien for the contractor, since he does not have a right of disposal with the dwelling.

Since there is no special regulation of non-profit rentals, provisions of the 1978 Obligation Relations Act apply both types of rentals. The landlord does not have a statutory lien on the tenant's (movable) property. However, the landlord and the tenant may establish a contractual lien, pursuant to Article 966 of the 1978 Obligation Relations Act. Following from Article 980 of the 1978 Obligation Relations Act, after the debt is matured, the landlord may demand from the Court that the movables are sold at the public auction or according to their current price, if the movables have a market or stock value. If the costs of the public auction would exceed the value of the movables, the Court may decide that the movables are sold according to the price set by the expert or that the landlord keeps the things for himself, if he wants to. If the landlord loses the possession of the movables, his loses also his right to be repaid first.[122] When the tenant's debt is paid, the landlord's lien ceases.[123]

There is not distinction between the open-ended and limited in time contracts regarding the rent increase. Pursuant to Article 8(1) of the 1992 Housing Act obliges the landlords in non-profit rentals to inform the tenant on the intended increase at least one month prior to the increase. As far as market rentals are concerned, the

[119] Article 444(2) of the 1978 Obligation Relations Act.
[120] Article 444(3) of the 1978 Obligation Relations Act.
[121] The court lien is established in the enforcement procedure against the debtor, who failed to comply with the deadline within he was to perform his duty. The court order is only *iustus titulus*, while for the lien to be constituted, it must be registered in the Land Registry. Stanković and Orlić, *Stvarno pravo*, 367–8.
[122] Article 986(1) of the 1978 Obligation Relations Act.
[123] Article 987 of the 1978 Obligation Relations Act.

1978 Obligation Relations Act does not regulate the matter. It is left solely to the discretion of the parties.

There is no automatic increase clause or index-oriented increase clause present in the legislation. Increases of market rents are based upon the agreement between the parties. Increase of non-profit rents is imposed every year with the announcement of the coefficient in the Official Gazette of RS every six months.

Majority of dwellings are already offered with all the necessary utilities installed. Therefore, the conclusion of contracts for utilities is usually in the domain of the landlord (for instance, contracts for electricity, water, central heating, gas supply, garbage removal, etc.). Other utilities and supply contracts are a matter of agreement between the parties, for example telephone, internet, television and cable. When these are not provided at the start of the contract, the tenant is usually allowed to acquire them on his own costs.

Neither of the statutes regulates the scope of other costs to be paid by tenant. The tenant is to cover the costs in the scope agreed upon with the landlord. This refers to the costs not included in the rent price. Such costs usually include individual running costs, following from Article 570(3) of the 1978 Obligation Relations Act, stipulating that in general costs for the use of the leased asset are borne by the lessee. If nothing is stated in the contract, the agreed amount covers only the rent, while running costs are paid separately. Following from the current legislation, protected tenants and non-profit pay separately the rent and the running costs. Certain tenants in non-profit rentals (for instance, tenants in the Social Housing in Supportive Environment) pay only the running costs of apartments, while they are freed from paying the rent. The tenant and landlord in market rentals may agree that the tenant is to pay a lump sum (a kind of compensation for the use of the dwelling), covering both rent price and running costs. Accordingly, the tenant has no other costs, unless otherwise agreed. The bills for utilities can be addressed to either the landlord or to the tenant. For market rental contracts, which are usually concluded for limited period of time, the bills are often addressed to the landlord. This is probably due to the time consuming procedures for changing the addressee with the supplier. However, the addressee is the tenant for the bills of utilities, which he introduced in the apartment (for internet, telephone, cable).

Increase of prices of utilities is relevant only when the tenant and landlord agreed on the payment of lump sum, covering both rent price and running costs. However, the rent does not increase automatically. The landlord is entitled to higher amount only if the increase is significant and he manages to negotiate with the tenant a higher amount of rent. The consequence of this is that this type of rent determination is rare in practice. The vice versa also applies, if the costs are reduced – this is only relevant, if the decrease is significant and represent a starting point for renegotiation of the rent. There are no procedural steps prescribed if the landlord wants to increase the rent. Other rentals are not influenced by the increase of utility prices, since the tenant receives the bill (either from the landlord, landlord's authorized person or his own) and is obliged to pay it.

The issue of a disruption of supply by the external provider is not regulated directly. The disruption of supply can be regarded as a material defect of dwelling. For the disruption of supply it is important to determine what or who caused it. The following explanation refers to both non-profit and market rentals. If the tenant is responsible for the disruption of supply (for example, if he did not pay the bill for the supplied good or services), the landlord cannot be held liable. This is in accordance with Article 121(1) of the 1978 Obligation Relations Act, stating that in bilateral contracts each party is liable for material defects in the party's own performance.

Nevertheless, if a certain utility is not provided due to reasons not caused by the tenant, the landlord bears the objective liability in accordance with Article 573 of the 1978 Obligation Relations Act, regulating liability for material defects for lease contracts in general. The liability, as interpreted, is not a penalty for the landlord, but rather an instrument, adjusting the distribution of risk between the parties.[124]

The right of the landlord to restrict the supply of utilities to the tenant due to unpaid bills is not regulated in the valid legislation. In practice, this is not possible. The supply of utilities is performed by utilities companies, who act on their sole discretion when restricting the supply due to unpaid bills. They do not differentiate if the actual occupier is the owner or a tenant.

[124] Cigoj, *Obligacijska razmerja*, 521.

The deposit is primarily a guarantee, covering future claims of the landlord after the termination of the contract on the account of possible damages. Neither the 1992 Housing Act nor the 1978 Obligation Relations Act provides for the manner or the amount of the deposit. It is usual for market tenancy contracts that the parties agree on the deposit. After the termination of the contract, the amount of deposit is returned or it is offset with one or more final rents, depending on the amount of both. If there were certain damages inflicted to the dwelling, the amount of deposit is used for covering the costs of repairs. There are no relevant provisions on the amount of the deposit for the non-profit rentals. Other types of security are also legal (e.g. guarantors, lien, etc.), but in practice only deposit is used. For market rentals the value of deposit is usually one (sometimes two) monthly rent(s), but it can also be higher. There are no special provisions regulating the storage of the deposit. Interest rates are not anticipated.

Landlord is allowed to use the deposit to restore the previous condition of the dwelling upon the termination of the contract. If the tenant maintained the apartment in the proper state, considering the normal use, the landlord can offset the deposit with the due rent price and/or other costs, depending on the agreement between the parties.

Since the provisions of the 1992 Housing Act regulate only the maintenance of the housing buildings and apartments and not the repairs of non-profit dwellings, the general provisions on repairs from the 1978 Obligation Relations Act apply. Maintenance of the multi-unit buildings in general is governed by the provisions of the 1995 Maintenance of the Residential Buildings Act, in addition to the few provisions of the 1992 Housing Act. The provisions contained in the 1992 Housing Act and the 1995 Maintenance of the Residential Buildings Act are default rules, while the provisions of the 1978 Obligation Relations Act are customary.

Pursuant to Article 12 of the 1992 Housing Act, the owners of the housing buildings, apartments and other individual parts of multi-buildings are to provide for the maintenance of the buildings with all the installations, equipment and appliances, as well as the apartments and the special parts of the buildings. The main guiding principle is that the costs of repairs are borne by condominium owners according to their ownership share and not according to their ac-

tual use of the asset that needs the repair (whether it is an elevator, roof, common are). The main goal of the maintenance is to allow safe usage of the building and apartments therein (the so-called investment maintenance). This maintenance is in the public interest. The owners are also responsible for other undertakings: painting, cleaning of the stair halls, entrances and common areas, repairs and changes of common lightening, as well as other works for providing the maintenance of the building for its proper use (the so-called current maintenance). This means that the landlord (non-profit and market) is responsible for this type of repairs.

The 1995 Maintenance of the Residential Buildings Act does not specifically determine which works and repairs are to be performed by landlord or tenant respectively. The statute determines what works and repairs must be done regarding the maintenance and use of the building, individual units and common parts thereof. In addition, the statute determines the maintenance work, which is necessary for the prevention or elimination of the hazards for the life and health of residents, as well as the work, which provides security of the residents and environment. The third part of the statute is devoted to the management of the multi-unit buildings.

The 1978 Obligation Relations Act contains a wider scope of provisions regarding the repairs. The landlord is obliged to maintain the dwelling in proper condition for the entire period of the tenancy and is obliged to undertake necessary repairs.[125] If the landlord fails to conduct the necessary maintenance work, the tenant is entitled to undertake them himself,[126] while the landlord is obliged to reimburse any costs that emerged.[127] However, the costs of small repairs, caused by the regular use of the dwelling or caused by the tenant or other person present in the dwelling with tenant's permission, as well as the other running costs, are borne by the tenant.[128]

If the necessary repairs are such so as to hinder the use of the dwelling to a large extent and for a longer period of time, the tenant is allowed to terminate the contract.[129] In addition, the tenant is

[125] Article 570(1) of the 1978 Obligation Relations Act.

[126] However, the lessee must inform the lessor on such repair. (Article 570(4) of the 1978 Obligation Relations Act).

[127] Article 570(2) of the 1978 Obligation Relations Act.

[128] Cigoj, *Obligacijska razmerja*, 518.

[129] Article 571(1) of the 1978 Obligation Relations Act.

entitled to the decreased rent in proportion to the limitations of the use due to the repairs.[130] In any case, the tenant has a right to choose what type of sanction he is going to use (or is he going to use them both, under the condition that all the requirements are fulfilled – that the repair is such so that is hinders the use and that the hindrance is present for a longer period of time).[131]

The landlord is liable for all the deficiencies of the dwelling if he claimed that it was without any defects. However, the parties can rule out the liability for the material defects of the dwelling with the contract, unless the landlord was aware of the defects and intentionally misinformed the tenant or the dwelling's usage is disabled altogether.[132]

Tenant's responsibility is to inform the landlord on any defect during the period of tenancy, as soon as possible, unless the landlord is already aware of it.[133] In addition, the tenant is obliged to inform the landlord on any unexpected hazard which could threaten the dwelling during the period of tenancy, so as to allow him to react in due manner. Otherwise, the tenant is not entitled to the reimbursement of the damage to which he was exposed, while he is obliged to reimburse the damages to the landlord.[134]

If the dwelling contains such defect which is beyond repair at the time of the handover, the tenant could terminate the contract or demand decrease of the rent.[135] On the other hand, if the defect is such that it could be removed without major difficulties for the tenant, and the handover on certain date was not an issue, the tenant could demand decrease of the rent or repair of the dwelling. If the landlord fails to do so, the tenant opts between terminating the contract and demanding the decrease of the rent price.[136] In both cases the tenant is entitled to the reimbursement of damages.[137] These provisions are also used for the cases when certain

[130] Article 571(2) of the 1978 Obligation Relations Act; M. Juhart and N. Plavšak (eds.), *Obligacijski zakonik* (OZ) *s komentarjem* (Ljubljana: GV založba, 2004), 655.
[131] Juhart and Plavšak, *Obligacijski zakonik*, 655.
[132] Article 576(1) and (2) of the 1978 Obligation Relations Act.
[133] Article 577(1) of the 1978 Obligation Relations Act.
[134] Article 577(2) and (3) of the 1978 Obligation Relations Act.
[135] Article 578(1) of the 1978 Obligation Relations Act.
[136] Article 578(2) and (3) of the 1978 Obligation Relations Act.
[137] Article 578(4) of the 1978 Obligation Relations Act.

defect emerges during the course of tenancy or when the dwelling does not have a certain feature, which is customary, stated in the contract or it is lost during the tenancy.[138]

However, the landlord must not conduct any change of the dwelling for the period of the tenancy, without the tenant's consent, if such change would impede the use of the dwelling.[139] If the change would reduce the use of the dwelling, the tenant can demand the proportionate decrease of the rent price.[140]

Therefore, it may be concluded that landlords are obliged to conduct current and investment maintenance and repairs of the common parts in accordance with the 1992 Housing Act. As far as individual units are concerned, landlords are obliged to conduct repairs that are not deriving from the tenants' use of the dwelling, but rather derive from the dwelling itself (such as changes of windows). Tenants are obliged to conduct repairs of broken items, which are the consequence of their use (for instance, to repair a broken chair that got broken during the tenancy).

According to Article 112(2) of the Enforcement and Securing of Civil Claims Act, applying to both market and non-profit rentals, rental relations are not terminated with the sale of the dwelling, if the rental contract had been concluded and tenant obtained the possession of the dwelling prior to the decision on the enforcement. In the case of the protected tenants the position of the tenant in relation to the mortgagee remains unchanged, provided that the mortgage or other legal base for the enforcement (for instance, the Court decision) has been constituted after the conclusion of the tenancy contract.[141]

However, pursuant to Article 15 of the Mortgage Act, there is a possibility of an out-of-court enforcement for mortgage defaults. Mortgage based on the enforceable contract or enforceable lien statement is recorded in the registry of real estate as an 'out-of-court enforcement.' The enforceable mortgage contract and enforceable lien statement must contain the consent of the tenant for the conclusion of the mortgage or lien contract. The reason is that in case of

[138] Article 579(1) and (2) of the 1978 Obligation Relations Act.
[139] Article 572(1) of the 1978 Obligation Relations Act.
[140] Article 572(2) of the 1978 Obligation Relations Act.
[141] Article 113 of the Enforcement and Securing of Civil Claims Act.

TABLE 6.4 Implementation of Tenancy Contracts

Category	(1)	(2)	(3)
Breaches prior to handover	Tenant may demand fulfilment; tenant may demand reimbursement of damages; tenant may demand termination of the contract	Tenant may demand fulfilment; tenant may demand reimbursement of damages	The same
Breaches after handover	Tenant may demand reducing the rent or withdraw from the contract	Tenant may demand reducing the rent or withdraw from the contract	The same
Rent increases	Agreement, one month notice in writing	Two times a year	Non-profit, market
Changes to the dwelling	Consent of the landlord or only those that may be removed without major damage to the dwelling	Consent of the landlord or only those that may be removed without major damage to the dwelling	Non-profit, market
Use of the dwelling	In accordance with the contract (usually the consent from the landlord)	In accordance with the contract (usually the consent from the landlord)	Non-profit, market

NOTES Column headings are as follows: (1) main characteristic(s) of market rentals, (2) main characteristic(s) of non-profit rentals, (3) ranking from strongest to weakest regulation.

the sale, the new owner may demand that the premises are vacated in fifteen days following the sale. Only in this case is the tenancy, established before the mortgage, influenced by the mortgagee.

6.5 Implementation of Tenancy Contracts

There are no provisions relating to the disruptions of performance prior to the handover of the dwelling in non-profit rentals. The 1992 Housing Act does not contain any provision regarding this issue. Therefore, general provisions of the 1978 Obligation Relations Act apply to both types of rentals.

In general, the primary obligation of the landlord is to handover the possession of the dwelling to the tenant, in addition to the maintenance of the dwelling and protection from material and legal defects.[142] According to the provisions of the 1978 Obligation Relations Act, the tenant (the future creditor in this case) is entitled to demand that the landlord (the debtor) fulfils his obligation (to handover the dwelling).[143] If the timeframe for handing over the dwelling is of immense importance for the tenant (e.g. is he already terminated his previous tenancy contract on a particular day and thus has nowhere else to go), the contract is terminated *ex lege*, provided that the landlord was aware of this.[144] However, the contract is not terminated, if the tenant gives an additional deadline to the landlord for handing over the dwelling.[145] If the additional deadline is not complied with, the tenant may terminate the contract.[146] In addition, the tenant has a right to damages thereof.[147]

If the landlord does not fulfil the obligation or is in delay with it, the tenant has the right to demand the reimbursement of the damages sustained (for instance, that the tenant was forced to rent another, more expensive dwelling).[148] The landlord must reimburse the damages sustained also in cases when the tenant offered him with additional deadline for fulfilment of the obligation.[149] The exculpation from the liability for the damages is possible, if the landlord proves that he was unable to fulfil his obligation or was in delay due to circumstances arisen after the conclusion of the contract, which he was unable to prevent, remove or avoid (for instance, that the investor did not finish certain works on the dwelling).[150] It is also possible to extend the landlord's liability to situations, for which he is usually not liable, unless this is not in accordance with the principle of conscientiousness and honesty (good faith princi-

[142] S. Perović and D. Stojanović, *Komentar Zakona o obligacionim odnosima*, vol. 2 (Kragujevac: Pravni Fakultet, 1980), 246–55.
[143] Article 262(1) of the 1978 Obligation Relation Act.
[144] Article 125 (1) of the 1978 Obligation Relation Act.
[145] Article 125 (2) of the 1978 Obligation Relation Act.
[146] Article 125 (3) of the 1978 Obligation Relation Act.
[147] Article 124 of the 1978 Obligation Relation Act.
[148] Article 262(2) of the 1978 Obligation Relation Act.
[149] Article 262(3) of the 1978 Obligation Relation Act.
[150] Article 263 of the 1978 Obligation Relation Act.

ple).[151] It is not possible to exclude the landlord's liability for intent or gross negligence in advance by contract. The Court may also, upon the request of an interested party, annul the contractual provision on the exclusion of liability for minor negligence, if such agreement derived from the landlord's monopolistic position or in any way from the unequal nature of the relationship between the contracting parties.[152] The tenant's right to the reimbursement includes an ordinary damage and lost profits that the landlord should have expected upon breach of contract as potential consequences of the breach, taking into consideration facts known or those that should have been known to him.[153] In cases of fraud, intentional non-performance or non-performance due to gross negligence, the tenant has the right to demand that the landlord reimburses all the damage that occurred because of the breach of contract, irrespective of whether the landlord knew of the particular circumstances.[154] If the tenant or a person, for whom the tenant is responsible, is also responsible for the damage occurred, the compensation is to be proportionately reduced (e.g. if the tenant insisted on a particular works to be performed prior to his moving in).[155] These provisions apply when the landlord fails to handover the dwelling to the tenant until the agreed deadline.

In addition, the parties can agree on the contractual penalties in the contract. The tenant and landlord may agree that the landlord pays certain amount of money or will provide any other type of material benefit thereto, if the landlord fails to perform his obligation or is in delay.[156] The penalty is deemed to have been agreed for the case when the landlord is late in performing, unless it follows otherwise from the contract.[157] The parties agree on the size of the penalty, either in total or as a percentage, for each day of delay or otherwise.[158] The penalty must be agreed in the same form as it is prescribed for the contract in which the obligation, to which

[151] Article 264(1) and (2) of the 1978 Obligation Relation Act.
[152] Article 265(1) and (2) of the 1978 Obligation Relation Act.
[153] Article 266(1) of the 1978 Obligation Relation Act.
[154] Article 266(2) of the 1978 Obligation Relation Act.
[155] Article 267 of the 1978 Obligation Relation Act.
[156] Article 270(1) of the 1978 Obligation Relation Act.
[157] Article 270(2) of the 1978 Obligation Relation Act.
[158] Article 271(1) of the 1978 Obligation Relation Act.

it relates, originated.[159] The tenant may not demand a penalty, if the non-performance or delay occurred for a reason for which the landlord is not responsible.[160] If a penalty is agreed for the case of a delay in performance, the tenant has the right to demand both the performance of the obligation and the payment of the penalty.[161] The tenant may not demand the penalty for a delay, if he accepted the performance of the obligation, but failed to immediately notify the landlord that he withholds the right to penalties.[162] If the Court finds that the amount of penalties agreed was excessive at the landlord's objection, it may reduce the amount, considering the value and character of the obligation.[163] On the other hand, the tenant has the right to demand the penalty even if it exceeds the damage incurred thereby and even if no damage were sustained.[164] If the damage sustained by the tenant is greater than the penalty, the tenant may demand the difference up to the value of full compensation.[165]

Handover of the possession of the dwelling to the tenant is the main obligation of the landlord, apart from maintenance of the dwelling and protection from material and legal defects.[166] The manner of the handover in the case of rental contracts is usually symbolic and includes the handover of keys.[167] By refusing to handover the dwelling, the landlord is breaching the contract. The same rules apply as discussed in the section above on delayed completion of dwelling. The explanation below applies to both non-profit and market rentals.

The provisions of the 1978 Obligation Relation Act stipulate that the landlord is obliged to handover the dwelling in proper condition, along with its accessories. This refers to both non-profit and market rentals. The proper condition of the dwelling is assessed in relation to the condition agreed by the contract. This is

[159] Article 271(2) of the 1978 Obligation Relation Act.
[160] Article 272(2) of the 1978 Obligation Relation Act.
[161] Article 273(4) of the 1978 Obligation Relation Act.
[162] Article 273(5) of the 1978 Obligation Relation Act.
[163] Article 274 of the 1978 Obligation Relation Act.
[164] Article 275(1) of the 1978 Obligation Relation Act.
[165] Article 275(2) of the 1978 Obligation Relation Act.
[166] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 246–55.
[167] Ibid., 255.

a factual question, which is assessed by the Court in each individual case.[168] If there is no valid contractual provision thereon, the dwelling must be in such condition, so that it could be used for the purpose, for which the contract is concluded (usual properties of the dwelling).[169]

The 1978 Obligation Relation Act stipulates that when a third person claims a right on the dwelling or a part thereof and turns to the tenant with the claim or arbitrarily takes the dwelling from the tenant, the tenant must inform the landlord of the third person's claim, unless the landlord is already aware of that person. Otherwise, the tenant is liable for damages incurred.[170] This is in accordance with the general provision contained in Article 268, stipulating that the party, which is obliged to notify the other party on the facts pertinent to their mutual relation, is liable for the damages incurred, if the obliged party fails to perform his duty. It is irrelevant whether the claims of the third person are factual or legal.[171]

If the third person is entitled to the claimed right that totally excludes the tenant's right to use the dwelling, the contract is terminated *ipso iure* and the landlord must reimburse the potential damages to the tenant.[172] The damages encompass damages that were sustained by the tenant due to the eviction, as well as potential litigation costs. The Court is to take into consideration the conscientiousness of the landlord. Given that the landlord was conscientious, he is to reimburse only the factual damages, whereas the non-conscientious landlord is liable for entire amount of damages.[173] The value of the compensation is assessed according to the prices at the time of the eviction. The liability of the landlord is not set as a punishment, but it rather stems from the bilateral nature of the lease contract.[174]

If the third person's claims merely limit the tenant's right, the tenant may choose to withdraw from the contract or demand a reduction in the rent. The decrease of the rent price is done in ac-

[168] Ibid.
[169] Article 569 of the 1978 Obligation Relation Act.
[170] Article 580(1) of the 1978 Obligation Relation Act.
[171] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima,* 266.
[172] Article 580(2) of the 1978 Obligation Relation Act.
[173] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima,* 267.
[174] Ibid., 268.

cordance with the reduced use of the dwelling due to the third person's claims and is a factual question, assessed by the Court.[175] In any case the tenant may demand the reimbursement of damages sustained.[176]

If a third person is claiming any right on the dwelling, the dwelling is not in a 'proper condition,' so its use is hampered. Therefore, the landlord is obliged to protect the tenant of such claims and provide for undisturbed use. The main issue regarding the 'double lease' situations is that the landlord actually concluded two contracts. The lease contract is a consensual type of contract; thus, it is concluded when the parties agree on the essential elements of the contract (no special form, such as writing, is required): object of the contract, compensation for use and duration of the lease.[177] The handover of the dwelling is irrelevant for the validity of the contract. Therefore, both contracts are valid. However, since the tenant has a right to a protection of his possession, the relevant fact is to whom was the dwelling was handed over to first. The tenant, to whom the dwelling was handed over to first, must notify the landlord on the other tenant's claims. The first tenant may not terminate the contract, nor is he entitled to the decrease of the rent price, since the other tenant's contract does not impose a threat to his use of the dwelling. However, the other tenant's contract is terminated *ex lege*, since his use of the dwelling is totally excluded. The dwelling is a species and not a genus, so substitution in a form of another dwelling is usually impossible (except in the case of public landlord, which may be owner of several equal housing units, or rare cases when a private landlord owns more units). Albeit the landlord is able to offer another dwelling and tenant accepts it, he is also liable for compensation of any damages sustained.

Pursuant to Article 5 of the 1992 Housing Act, the dwellings (multi-apartment buildings and individual units) may be used on the basis of either ownership right or on the basis of lease relationship.[178] [179] If a person moves in into a dwelling or common

[175] Ibid.

[176] Article 580(3) of the 1978 Obligation Relation Act.

[177] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 247.

[178] Contract on keeping the apartment between the owner and keeper is not a valid legal base for using the apartment. Decision of the Supreme Court RS, no. Uvp. I 277/2005.

[179] Article 5(1) of the 1992 Housing Act.

areas of a multi-apartment building without a legal basis or uses a dwelling without concluded tenancy contract[180] or the legal basis was annulled, it is deemed that the person is using the dwelling unlawfully.[181] The Article applies to both non-profit and market dwellings.

The owner or other person with a legal interest (for instance, user)[182] is entitled to request removal of the person, who uses the dwelling unlawfully, from the municipal authorities in charge of housing matters.[183] This procedure is deemed urgent.[184] The potential appeal does not withhold the execution of the order.[185] This refers only to the cases of unlawful moving. The appeal, however, withholds the execution of the order regarding the cases of uses without a contract and when the legal base was annulled).[186] The possible costs (rent, running costs, wear, etc.) during the period of unlawful use, as well as the costs of forced eviction, are to be borne by the evicted person, although the 1992 Housing Act does not contain this provision.[187] [188] Article 54 contains amount of fee for the misdemeanour, which is to be imposed on the person, who moves in into a dwelling unlawfully, though. The amount of fee is between 45 EUR and 450 EUR and may be replaced with thirty days imprisonment.

The legislation currently in force does not impose any public law impediments to handover of the dwelling to the tenant. The only requirement is that the dwelling is handed over in a proper condition together with any accessories.[189]

Stemming from the general provisions of the 1978 Obligation Relations Act, the basic obligations of tenants is to pay the rent for the

[180] However, not concluding the contract with the public company for providing housing services, but paying the rent and running costs regularly, is not deemed as using the dwelling unlawfully. Decision of the Appellate Court in Belgrade, no. Gž. 8077/2012.

[181] Vuković, *Komentar Zakona o stanovanju*, 19.

[182] Decision of the District Court of Belgrade no. U 877/99.

[183] Article 5(2) of the 1992 Housing Act.

[184] Article 5(3) of the 1992 Housing Act.

[185] Article 5(4) of the 1992 Housing Act.

[186] Vuković, *Komentar Zakona o stanovanju*, 19.

[187] Decision of the Supreme Court of Vojvodina no. Rev. 553/84.

[188] Vuković, *Komentar Zakona o stanovanju*, 19.

[189] Article 567(1) of the 1978 Obligation Relation Act.

use of the dwelling.[190] Neither the 1992 Housing Act, nor the 1978 Obligation Relations Act specifically obliges tenants to take the possession of the dwelling,[191] whereas owners are obliged to handover the dwelling. The refusal of handover by the tenant does not interfere with his obligation to pay the rent, if the owner offered to handed over the dwelling properly. This is also in accordance with the consensual nature of tenancy contracts: contracts are concluded upon the mutual agreement of the parties and not with the actual handover of the dwelling. However, the 1978 Obligation Relations Act entitles the tenant to use the dwelling in accordance with the contract. Consequently, it is assumed that the tenant must take care of the dwelling and maintain it in appropriate condition. The tenant must use the dwelling as a good householder.[192] Therefore, it can be argued that he is obliged to take the possession of the dwelling.

A precise definition of defects is not available in none of the statutes. The 1978 Obligation Relations Act regulates the matter of material defects and the liability thereof in Article 573:

> (1) The lessor shall be liable to the lessee for all defects in the leased asset that hinder its agreed or normal use, irrespective of whether the lessor knew of them, and for deficient attributes or features that were expressly or tacitly agreed upon.
> (2) Insignificant defects shall not be taken into consideration.

Since the 1992 Housing Act, regulating non-profit rentals, contains no provision on this, the general provisions of the 1978 Obligation Relations Act apply to both non-profit and market rentals.

The liability of the landlord is a no-fault (strict) liability. The defect, which hinders the normal use of the dwelling, is any defect due to which the dwelling is non-usable. These include, for instance, a leaking roof, insects, excessive immisions, etc. The standard 'normal use' is interpreted in accordance with the type and characteristics of the dwelling, which are to be expected regarding the purpose of the contract. The assessment of the insignificant defect is to be interpreted for each individual case separately, according to the intention of the parties.[193]

[190] Article 567 of the 1978 Obligation Relation Act.
[191] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 269–70.
[192] Ibid., 269.
[193] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 260.

In addition, general provision on defects (material and legal) is contained in Article 121 of the 1978 Obligation Relations Act. It stipulates that in contracts with remuneration each contractor is liable for material defects of his fulfilment. He is also liable for legal defects and is obliged to protect the other party from the claims of third parties thereof. Relevant in this regard are rules regulating liability for material and legal defect within the provisions on the contract of sale. These rules apply also for other contract, unless the law states otherwise.

The landlord is not liable for certain defects. These include defects that were known or could not have remained unknown to the tenant when the contract was concluded.[194] Additional condition is that the defects must be present (although hidden) at the time of the handover.[195] Otherwise, the liability is excluded due to the inadequate concern from the tenant when examining the dwelling. The second standard, that the tenant could have been aware of certain defects, includes defects, which would have been noticed by an average person.[196] However, if certain defects remained unknown to the tenant out of gross negligence, but the landlord was aware of the defect and intentionally withheld the information from the tenant, the landlord is liable.[197] It is deemed that the landlord kept the tenant in deceit. In order to use this provision in front of the Court, it must be established that the landlord's intention was to deceit the tenant.[198]

Liability for material defects may also be excluded or limited by contract. However, such contractual provision is deemed null and void, if the landlord knew of the defects and intentionally withheld this, if the defect is such that it prevents the use of the dwelling, or if the landlord exploited his dominant position.[199] This provision is not to be used, if it would be against the principle of good faith and fairness. In addition, the exclusion or limitation of the liability could be in contrast with the purpose of the contract. The purpose is the use of the dwelling. If the defect is such that it prevents the

194 Article 574(1) of the 1978 Obligation Relations Act.

195 Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 260.

196 Cigoj, *Obligacijska razmerja*, 522.

197 Article 574(2) of the 1978 Obligation Relations Act.

198 Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 261.

199 Article 576(1) and (2) of the 1978 Obligation Relations Act.

tenant from using the dwelling, the contract could lose its purpose as well.[200]

However, the landlord is liable for defects, if he claimed that the dwelling is without any defects.[201] Irrelevant is the fact that the tenant could have been aware of the defects or that the defects are obvious, since the landlord guaranteed that the dwelling is without any defect whatsoever. His guarantees are usually reflected also in the (higher) rent price and therefore he must be held liable also for these defects.[202] Important to note is that the landlord will be held liable even if the defect is to be noticed in the future and the landlord is at the present not aware of it. This liability stems from his guarantee that the dwelling is perfect.[203]

The main responsibility of the tenant, if the dwelling has any defect that became noticeable after the conclusion of the contract, is to notify the landlord without unnecessary delay, unless the landlord is already aware of it.[204] This obligation refers also to any unanticipated danger that threatens the dwelling during the lease, allowing landlord to take appropriate measures.[205] If a tenant fails to comply with this obligation, he loses the right to the reimbursement of damage incurred because of the defect or danger, unless the landlord was aware of the defect or danger. In addition, he must reimburse the damages incurred.[206] Thus, it is of immense importance that the tenant notifies the landlord of the defect. Otherwise, he bears a dual responsibility: he loses the entitlement for the reimbursement of the damages incurred and he is liable for the damages sustained by the landlord.[207]

Possession of a dwelling is regulated with the Basic Ownership Relations Act. Article 70 of this Act stipulates that the possession is given to any individual, who performs factual domination over the dwelling (direct possession), while indirect possessor is the person performing factual domination over the dwelling through other in-

[200] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 263.
[201] Article 575 of the 1978 Obligation Relations Act.
[202] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 261.
[203] Cigoj, *Obligacijska razmerja*, 522.
[204] Article 577(1) and (2) of the 1978 Obligation Relations Act.
[205] Article 577(2) of the 1978 Obligation Relations Act.
[206] Article 577(3) and (2) of the 1978 Obligation Relations Act.
[207] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 264.

dividual, to whom he handed over the dwelling based on a contract or other legal transaction.[208] The tenant is regarded as direct possessor of the rented dwelling. Accordingly, if a third person tries to occupy the dwelling, the tenant is entitled to use some form of possessory protection, pursuant to Article 75 of the Basic Ownership Relations Act. He is also entitled to self-help against the person, who is unlawfully disturbing his possession or has taken it away. The conditions for using self-help are: that the threat to possession is illegal, that the threat is direct, that the self-help is immense and that it is proportional to the threat.[209]

The possessor is entitled to demand a judicial protection from disturbances or taking away of possession within thirty days from the awareness of the interference and the perpetrator. Such action is at his disposal for one year from the disturbance (possessory action).[210] The Court takes into consideration primarily the previous state of the possession, which does not necessarily coincides with the right to possession, legal base or conscientiousness of the claimant.[211]

This means that the possessory action is given also to a possessor, who obtained possession by force, stealthily or by misusing the trust, except against the person from whom he taken over the possession, unless the two deadlines have passed (thirty days and one year).[212] The decision of the Court may impose prevention of further disturbances (as well as a fee) or return of the possession, in addition to other necessary measures.[213] Eviction of squatters is regulated with Article 5 of the 1992 Housing Act.[214]

Examples of the exposition to the noise can be both defect and cause for possession disturbance claim, depending on the circumstances of the case. For instance, if noisy neighbors effectively unable the intended use of the dwelling by the tenant, and the landlord ought to have known about it, it may be considered a defect. Otherwise, the tenant has the right to possessory protection.

[208] Article 70(1) and (2) of the Basic Relations Act.
[209] Article 76 of the Basic Ownership Relations Act.
[210] Article 77 of the Basic Ownership Relations Act.
[211] Article 78(1) of the Basic Ownership Relations Act.
[212] Article 78(2) of the Basic Ownership Relations Act.
[213] Article 79 of the Basic Ownership Relations Act.
[214] For more, see section 6.7.

Mould and humidity are regarded as material defects of the dwelling.[215]

The rights of the tenant, when the dwelling exposes a certain defect at the handover or during the period of lease, depend on the scope of the defect. If the defect is unrecoverable, the tenant can either terminate the contract or demand a decrease of the rent price.[216] If it is possible to remove the defect without any major constraints for the tenant, and the deadline for handover was not an essential contractual term, the tenant is entitled to demand either removal of the defect within a new deadline or a decrease of the rent price.[217] If the landlord fails to remove the defect within the set deadline, the tenant may terminate the contract or demand a decrease of the rent price. The length of the additional period is not determined, but it depends on the particular circumstances in each case.[218] Therefore, the tenant may terminate the contract only if the landlord fails to remove the defect. These provisions apply also for the cases when the dwelling does not have a certain characteristic, which it was supposed to have according to the contract or its normal use, as well as if it loses such characteristic during the lease.[219]

For instance, if the roof is leaking due to a misplaced tile and the dwelling's walls are damp, the tenant is to first notify the landlord thereof. He must provide the landlord with the deadline, within which the roof should be repaired. If the landlord repairs the roof within the deadline, the tenant is entitled only to the lower rent. If the landlord fails to meet the deadline, the tenant may terminate the contract in addition to the lower rent. However, if the defect of the roof is such that it is beyond the repair, the tenant has a right to terminate the contract as soon as he becomes aware of this fact.

Pursuant to Article 581 of the 1978 Obligation Relations Act, the tenant is obliged to use the dwelling as a good businessman or a good housekeeper. He is allowed to use the dwelling only in accordance with the contract or the purpose of the dwelling. He must

[215] For more, see section 6.4.

[216] Article 578(1) and (2) in connection to Article 279 of the 1978 Obligation Relations Act.

[217] Article 578(2) of the 1978 Obligation Relations Act.

[218] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 265.

[219] Article 579(2) of the 1978 Obligation Relations Act.

not perform any activities, which would alter the substance of the dwelling.[220] The tenant is liable for any damage incurred due to the use of the dwelling, which is contrary to the contract or its purpose. It is irrelevant who actually used the leased dwelling: tenant himself or other person with his orders, sub-tenant or other person to whom he allowed to use it.[221] The landlord may warn the tenant of the inappropriate use due to which there is a threat of a substantial damage for the landlord. If the tenant refuses to act in accordance with the warning, the landlord is entitled to terminate the contract without a notice period.[222] However, the landlord must prove that tenant's conduct represented a considerable threat for the landlord, which is a factual question.[223]

The dwelling is to be return to the landlord after the termination of the lease undamaged.[224] This stems from the general nature of the lease contract, which entitles the tenant merely to the use of the dwelling and does not give him an ownership or disposal right.[225] Tenant is not liable for damage incurred due to a regular use or the regular 'wear and tear.'[226] This regular use is in accordance with the contractual or supposed use of the dwelling.[227] This is why it is important to prepare also a record on the condition of the dwelling upon the handover. If the parties fail to prepare the record, it is deemed that the dwelling was handed over in a proper condition and must also be returned in such condition.[228]

If the dwelling was exposed to a certain alternation (e.g. is the tenant installed certain equipment, such as air conditioning system or constructed a temporary bulkhead) during the period of lease, the tenant must return it to its original condition prior to returning it to the landlord. The tenant has a right to take away any additions from the dwelling, but only if it is possible to remove them without damaging it. The landlord may opt to keep the additions, if he reim-

[220] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 269.
[221] Article 581(3) of the 1978 Obligation Relations Act.
[222] Article 582 of the 1978 Obligation Relations Act.
[223] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 271.
[224] Article 585(1) of the 1978 Obligation Relations Act.
[225] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 275.
[226] Article 585(3) of the 1978 Obligation Relations Act.
[227] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 275.
[228] Ibid., 276.

burses their value to the tenant.[229] The value of the reimbursement is assessed in accordance with the actual value of the alternations and cannot be higher.[230] The landlord is able to compensate the value of the reimbursement with the value of any damages inflicted to the dwelling due to the negligence of the tenant (but not due to the gross negligence).[231]

If the tenant returns the dwelling in worse condition, disregarding the regular 'wear and tear,' he is obliged to reimburse the damages. The risk of accidental destruction of the leased dwelling is borne by the landlord, unless the tenant is liable for such destruction.[232]

The conditions, under which the landlord may enter the premises, are not regulated with any of the relevant statutes. This issue must be agreed between the parties and stated in the contract. The same applies also to the issue of keeping a set of spare keys of the rented apartment – the parties are to agree in the contract.

If the tenancy contract is still in force (i.e. the landlord has not notified the tenant on the breach, giving him the deadline to rectify the situation), the landlord may not lawfully lock the tenant out (even though this is a standing practice of some landlords). Such intrusion would be deemed as a disturbance of possession. Therefore, the tenant has a possessory protection also against the landlord.[233]

Increase of the rent price is the matter of agreement between the parties in the market rentals. If the parties do not agree on the increase in accordance with the inflation, the tenant is to pay the amount, which was agreed originally, irrespective of the inflation. If the landlord wants to increase the rent, he must negotiate it with the tenant. Rent in non-profit rentals is determined every six months (the relevant coefficient) and announced in the Official Gazette.[234]

Rent in non-profit rentals is determined every six months according to a special methodology and depends on several elements: area of the dwelling, quality of the dwelling and the building in which the dwelling is situated.[235]

229 Article 585(4) and (5) of the 1978 Obligation Relations Act.
230 Perović and Stojanović, *Komentar Zakona o obligacionim odnosima,* 276.
231 Ibid.
232 Ibid., 276.
233 Stanković and Orlić, *Stvarno pravo,* 464.
234 For more on this, see section 6.4.
235 For more on this, see section 6.4.

Pursuant to Article 8 of the 1992 Housing Act, the landlord is obliged to notify the tenant on the intended increase of the rent price at least one month prior to the increase. The notification must be given in writing and sent with a return receipt.[236] This provision clearly referred to market rentals. Since the 1992 Housing Act is not used for market rentals, while for non-profit rentals the rent is determined every six months by the Government, this provision is obsolete.

There is no registry or a similar data base, which would monitor the level of the rent price of market rentals. The only data in this regard are available with the real estate agencies or through other public media (internet, television and newspaper ads). The agreement of the parties on this subject is based on their familiarity with the prices available from these sources. Tenants do not have a formal possibility to object to the rent increase, if it is made according to the law and the tenancy contract.

The 1978 Obligation Relations Act obliges the tenant to return the dwelling to the same condition in which he was handed over to, if he made any alterations of the dwelling.[237] However, he is allowed to remove the additions, which he introduced to the dwelling, only if it is possible to remove them without damaging the dwelling. The landlord may also opt to keep the additions, if he is prepared to reimburse the value of the additions at the time at which the dwelling is returned.[238] If the tenant returns the dwelling with some major defects (which exceed the normal and regular use), he is obliged to reimburse the damage, except if the defects are the result of circumstances beyond his sphere of control.[239] Thus, the tenant is allowed to make only such improvements on the dwelling without the landlord's authorization, which can afterwards be removed without damaging the dwelling. The landlord is not obliged to compensate their value, although he may, if he opts to do so. For instance, for putting in the new tiles the tenant should obtain the consent of the landlord, since such works demand damaging the floor of the dwelling. In addition, after the removal of the tiles, it would be dif-

[236] Vuković, *Komentar Zakona o stanovanju*, 47.
[237] Article 585(4) of the 1978 Obligation Relations Act.
[238] Article 585(5) of the 1978 Obligation Relations Act.
[239] Perović and Stojanović, *Komentar Zakona o obligacionim odnosima*, 276.

ficult to restore the original state of the floor. If the tenant installs a removable air conditioning system (for which he does not need the landlord's consent, since it may be removed without the damage) the landlord may opt to reimburse the costs of the installation instead of forcing the tenant to remove it.

The landlord may not oppose to the works by the tenant, which are needed for increasing the living conditions in the dwelling and are in accordance with modern housing standards (for instance, installation of central heating).[240] As far as fixing antennas are concerned, the tenant may install them even without the consent, since they can be removed subsequently.

The landlord is required to maintain the dwelling in a proper condition and perform any repairs thereof during the entire period, for which the lease was agreed upon in both non-profit and market rentals.[241] When these works prevent the tenant to use the dwelling considerably and for a longer period of time, the tenant is entitled to terminate the contract with a unilateral statement.[242] In addition, the tenant is entitled to a proportionate reduction of the rent price for the period, during which the use of the dwelling was limited.[243] The option is left to the tenant.

In order for the landlord to perform any maintenance or repair work, which is to disturb the use of the rented dwelling, he must obtain tenant's consent. The rent price must be reduced proportionately for the time of limited use of the dwelling.[244] The conditions under which the tenant may refuse maintenance work are not clearly stated in the statute. These would most likely be circumstances in which the use of the dwelling by the tenant would be hampered to a large extent. If the tenant refuses to allow the maintenance work, he cannot invoke landlord's liability for material defects. If the need is of immense importance, since otherwise the substance of the dwelling could be endangered, the position

[240] Decision of the Supreme Court of Vojvodina, no. Rev. 606/90. However, this decision was brought in favor of a holder of housing right and not regular tenant. Therefore, it is questionable whether the Courts today would follow the same line of argument.

[241] Article 570(1) of the 1978 Obligation Relations Act.

[242] Article 571(1) of the 1978 Obligation Relations Act.

[243] Article 571(2) of the 1978 Obligation Relations Act.

[244] Article 572(1) and (2) of the 1978 Obligation Relations Act.

may be regarded as similar to the use of the dwelling by the tenant opposite to the contract. This then may constitute a reason for termination of the contract, pursuant to Article 582.[245]

Apart from general maintaining and repairing pursuant to the provisions of the 1978 Obligation Relations Act, the owners in general are also obliged by the 1992 Housing Act to maintain the housing buildings and individual units. Article 12 of the 1992 Housing Act stipulates that owners of multi-apartment buildings, individual units and other special parts of buildings must provide for the maintenance of the building, alongside any installations, equipment, devices and appliances, due to the use of the building and dwellings in such a manner so that lives and health of residents, as well as the safety of the environment, are not put into jeopardy.[246] This, so-called investment maintenance, is primarily in public interest.[247] And not just the investment maintenance is the concern of the owners, but the current maintenance as well. Owners are obliged to provide for other maintenance works on the building and individual units: painting; cleaning of stairways, entrances and common areas; repairs and changes of common lightning; other works which provide for maintenance of the building in the satisfactory condition for use.[248]

Pursuant to Article 6(1) of the 1992 Housing Act, the multi-apartment buildings and apartments are to be used in accordance with their purpose. As an exception, only a part of an apartment may be used for pursuing a commercial activity; however, in such a manner so that the safety of the building and residents is not jeopardized.[249] In addition, the building must not suffer any damage thereof, while the other residents of the building must not be disturbed in their peaceful use of the building. An example of allowed commercial activity is law practice.[250] Article 10(1/1) of the 1992 Housing Act stipulates that the landlord is entitled to terminate the non-profit tenancy contract, if the tenant uses the dwelling for pursuing a commercial activity without the consent of the landlord.

245 Juhart and Plavšak, *Obligacijski zakonik*, 651.
246 Article 12(1) of the 1992 Housing Act.
247 Article 12(2) of the 1992 Housing Act.
248 Article 12(3) of the 1992 Housing Act.
249 Vuković, *Komentar Zakona o stanovanju*, 33.
250 Ibid.

Keeping animals, smells, smoking, receiving guests and similar limitations of use of the rented dwelling are a matter of agreement between the parties. These limitations are to be stated in tenancy contract; otherwise, the tenant is entitled to use the dwelling in the manner whatsoever, as long as this use is in accordance with the purpose of the contract.

Nevertheless, there are some public law regulations related to keeping of pets, animals, etc., for each bigger city. For instance, ordinance for Kragujevac (The Ordinance on Keeping Domestic Animals on the Territory of the Municipality of Kragujevac – *Odluka o čuvanju domaćih životinja na teritoriji grada Kragujevca*)[251] stipulates which breeds of animals are allowed to be kept in the particular local communities of the city.[252] The owner or the keeper of the animal is obliged to provide for adequate keeping and supervision, care, nourishment, hygiene and medical treatment of the animal. In addition, he must ensure that environment is not contaminated and that the other residents are not disturbed.[253] Other ordinances contain similar provisions. It is interesting to note that in some of the ordinances there is a provision that keeping and moving of the breed pit bull terrier on the territory of the municipalities is explicitly forbidden.[254] Other municipalities allows keeping and moving of any dangerous breed of dogs only in accordance with a special rules.[255] Some of the ordinances also contain provisions on the number of different animals that is allowed to be kept in a dwelling (e.g. two dogs and two cats in Kragujevac).[256] Not complying with these provisions is deemed as misdemeanour penalized with a pecuniary fee.

The obligation to live in a dwelling does not follow the legislation. However, such obligation may be deduced from the general provisions of the 1978 Obligation Relation Act.[257] Tenant must no-

[251] *Službeni list grada Kragujvca*, no. 8/95 and later amendments.
[252] Articles 2 and 3 of the Ordinance.
[253] Article 3a of the Ordinance.
[254] Article 4 of the Ordinance. The same in Ordinance for Jagodina (*Službeni list grada Jagodine*, no. 2/08).
[255] Article 16a of the Ordinance for Belgrade (*Službeni list grada Beograda*, no. 37/2011 and 55/2011).
[256] Article 7 of the Ordinance.
[257] For more, see section 6.5.

tify the landlord on the possible threats to the dwelling. Otherwise, he may be held liable for the damage. In addition, he is not entitled to request from the landlord the reimbursement of the damage, if he failed to notify him on the threat. If the tenant does not live in the dwelling, he may not be aware of the threat.

None of the statutes regulates the issue of video surveillance of residential buildings. There is the Protection of Personal Data Act (*Zakon o zaštiti podataka o ličnosti*),[258] however, it does not address the issue of processing of data obtained through video surveillance in general, let alone video surveillance of residential buildings. Nevertheless, when introducing the video surveillance, one must comply with the general principles of the Protection of Personal Data Act, as well as the international standards (the proportionality test, to video monitor only common parts, etc.).

According to a research conducted by a NGO Partners for Democratic Changes Serbia, the relevant institutions operating with processing the personal data are still unfamiliar with their duties, therefore conducting their tasks inefficiently.[259]

6.6 Termination of Tenancy Contracts

Parties of tenancy contracts are bound only by the mandatory provisions of the statutes (either the 1992 Housing Act or the 1978 Obligation Relations Act). If such provisions are not contained in any of the relevant statutes, the parties are able to arrange their mutual rights and obligations freely.

Article 9 of the 1992 Housing Act determines that non-profit tenancy contracts can be terminated in one of the following manners: with the expiry of tenancy period, with mutual termination, with a notice, with a final decision of competent authority on the demolition of the (part of the) building in accordance with a statute, with a ruination of the building or in other cases determined by statutes. The mutual agreement on the termination of the contract is to be given in a written form, for the easier proving of circumstances.[260] As far as the rentals of protected tenants are concerned, the pro-

[258] *Službeni glasnik Republike Srbije*, no. 97/08 and later amendments.

[259] U. Mišljenović, B. Nedić, A. Toskić, *Protection of privacy in Serbia* (Belgrade: Partners for Democratic Changes in Serbia, 2013), 47.

[260] Vuković, *Komentar Zakona o stanovanju*, 48.

TABLE 6.5 Termination of Tenancy Contracts

Category	(1)	(2)	(3)
Mutual termination	For open-ended contracts whenever, if notice period is obeyed by; for limited in time, after the expire of the period; pon mutual agreement	Only after expire of the period for which the contract was concluded.	Non-profit; market
Notice by tenant	One month prior to moving out, reasons not required.	Not regulated.	Market; non-profit
Notice by landlord	In writing, ninety days notice period, statutory extraordinary reasons or reasons from the contract	In writing, ninety days notice period, statutory extraordinary reasons or reasons from the contract	Non-profit; market
Other reasons for termination	If the dwelling is health hazard; if the tenant is not using it in accordance with the contract	Not regulated, but the same as for market rentals applies	Market; non-profit

NOTES Column headings are as follows: (1) main characteristic(s) of market rentals, (2) main characteristic(s) of non-profit rentals, (3) ranking from strongest to weakest regulation.

visions of the 1992 Housing Act do not allow mutual termination agreements.

The 1978 Obligation Relations Act does not limit the rights of the parties in market rentals to mutually terminate the tenancy agreement. Pursuant to Article 595, contract limited in time is terminated after the period, for which the parties had agreed, has passed. The termination is *ex lege* and no additional actions by the parties are needed.[261] Parties may terminate the contract mutually at any point during the tenancy. The argument is derived from the principle of

[261] T. Blagojević and V. Krulj (eds.), *Komentar Zakona o obligacionim odnosima*, vol. 2, (Novi Sad: Savremena administracija, 1983), 1486.

autonomy of the parties in respect to their rights and obligations arising from the tenancy contracts.

In non-profit rentals the tenant must give notice at least thirty days prior to intended moving out of the dwelling.[262] The notice must be given in a written form. If the notice period is shorter than thirty days, the tenant must cover the rent price also for the following month. The tenant is not obliged to state any reasons for the termination of the contract. In order for the termination to be legally effective and valid, only general provisions on the declaration of will are applied (not given under threat, free from errors, etc.).[263]

According to the Article 597 of the 1978 Obligation Relations Act, both parties in market rentals are entitled to terminate an open-ended contract with an eight-day notice period, without stating the reasons thereof. However, the notice must not be given at an inconvenient time.[264] [265] The eight-day notice period is dispositive, thus enabling the parties to agree upon different length of the notice period.[266]

There is also a special provision in the 1978 Obligation Relations Act applying to all types of leases, stipulating that the tenant is entitled to terminate the contract, if the leased asset is hazardous in terms of health. In this case, the tenant is not obliged to comply with any notice period, not even if he knew of the hazardousness at the time of the conclusion. In addition, he cannot waive this right.[267] The termination given under these conditions (not complying with any notice period) is meant as a sanction for the landlord, since he failed to fulfil his contractual obligation[268] (providing such leased asset, which is in a proper condition for use).

The matter of premature termination of the non-profit contracts is not regulated in the 1992 Housing Act. Therefore, the same rules as for market rentals, contained in the 1978 Obligation Relations Act, are to be applied.

[262] Article 10(3) and (4) of the 1992 Housing Act.
[263] Vuković, *Komentar Zakona o stanovanju*, 76.
[264] This legal standard is not defined in the statute.
[265] Article 597(2) of the Obligation Relations Act.
[266] Blagojević and Krulj, *Komentar Zakona o obligacionim odnosima*, 1490.
[267] Article 597(4) of the Obligation Relations Act.
[268] Blagojević and Krulj, *Komentar Zakona o obligacionim odnosima*, 1492.

As far as the regulation of market rentals in the 1978 Obligation Relations Act is concerned, limited in time contracts can be terminated prematurely only by virtue of special reasons, provided with Articles 594 and 597(3). Article 594 regulates the situation when the landlord alienates the dwelling, while Article 597(3) regulates the termination due to the hazardousness of the dwelling. The difference between the two articles is in complying with the notice period: in the first case, the tenant must comply with the agreed notice period, whereas in the second, he is freed from this obligation. Additionally, general rules on termination for the case of non-fulfilment of the contract by one party (the landlord in this case)[269] also apply.

Penalty payments may be imposed only, if they are explicitly agreed upon between the parties in the contract.[270] They can be determined as a lump sum, in percents, for each day of delay or in other form.[271] The penalty must be agreed in a written form, as well.[272]

Following from the provisions of the 1992 Housing Act, landlords may not terminate non-profit tenancy contracts, unless one or more reasons, stipulated in Article 10(1), are present. These are: pursuing commercial activity in the dwelling, subleasing the dwelling or allowing persons, not stated in the contract, to use the dwelling without the consent of the landlord; not paying the rent for at least three months in a row or four months throughout the year; inflicting damages to the dwelling, common areas, installations or other equipment in the building; using the dwelling in such a manner, which impedes the peaceful residence of others. These are all deemed as extraordinary notices. The notice is to be given in a written form with a ninety-day notice period.[273]

The reasons for terminating rental contracts of protected tenants with a notice by the landlord are enlisted in Article 35 of the 1992 Housing Act. These are: pursuing commercial activity in the dwelling, subleasing the dwelling or allowing persons, not stated in the contract, to use the dwelling without the consent of the landlord

[269] For instance, if the landlord fails to maintain the dwelling in the proper condition.
[270] Article 270 of the 1978 Obligation Relations Act.
[271] Article 271(1) of the 1978 Obligation Relations Act.
[272] Article 271(2) of the 1978 Obligation Relations Act.
[273] Article 10(2) of the 1992 Housing Act.

despite the admonition from the landlord; not paying the rent for at least two months in a row despite the admonition from the landlord; inflicting damages to the dwelling, common areas, installations or other equipment in the building despite the admonition from the landlord; obtaining an ownership right on an adequate dwelling, suitable for the needs of the household, by the tenant, his marital partner or any other member of the family household,[274] premature cessation of the employment relation due to tenant's request or fault (if the dwelling was awarded based on this relation); not using the dwelling by the tenant and his household's member for more than one and not longer than four years,[275] [276] unless there is other agreement with the landlord. These are also deemed as extraordinary notice reasons. The notice is to be given in a written form.

None of the provisions stipulates to which contract they refer (open-ended or limited in time). The rules for protected tenants refer to open-ended contract, since this is the only type of contracts they can conclude. Ordinary reasons are not defined. For market rentals, the provisions of the 1978 Obligation Relations Act allow the premature termination of the limited in time contracts by the landlord only due to certain special reasons. These are contained in Articles 582, 584 and 588 and are deemed as extraordinary.[277] Ordinary reasons are not defined. In general, the landlord does not need to state any reason for terminating open-ended market tenancy contract.

[274] However, owning a dwelling, which does not represent an adequate housing solution (14 m^2 room in the attic of a building, without water installations and sewage), is not a reason for termination of the contract. (Decision of the Supreme Court RS, no. Rev. 704/2004). Also, obtaining a dwelling, which is uninhabitable (e.g. if there is a protected tenant already residing), is not a reason for termination of the contract. (Decision of the Supreme Court RS, no. Rev. 2145/2008 from 2 October 2008).

[275] The Court deemed occasional absence due to the care for tenant's ill mother, living in countryside, as a justifiable reason for the absence from the dwelling (Decision of the Supreme Court RS, no. Rev. II 990/2007). In another decision, the Court decided that placement of the ill person in a suitable institution for treatment cannot be a valid reason for termination of tenancy contract (Decision of the Appellate Court in Belgrade, no. Gž. 3550/2011(2)).

[276] This means that the termination is not lawful, if the absence was shorter than year. After four years, the termination is *ex lege* and no notice is required.

[277] Blagojević and Krulj, *Komentar Zakona o obligacionim odnosima*, 1489.

Article 582 refers to termination due to the usage, which is contrary to the contract. If the tenant uses the dwelling contrary to the contract or the purpose of the dwelling or he neglects it, the landlord may terminate the contract without any notice period. The conditions are that the landlord had previously warned the tenant on the breach (but the breach continued) and that there is a possibility of great damages for the landlord.[278] Article 584 regulates the arrears of the rent. As in the previous case, the landlord must first warn the tenant on the arrears and give him a fifteen-day deadline to cover the due amount. There is no provision on the notice period in this case. However, if the tenant covers the due rent before the landlord gives the notice, the contract remains valid. The reception theory applies: the payment must be made before the tenant receives the notice.[279] Article 588 stipulates that the landlord may terminate the contract if the tenant subleased the dwelling without his consent, if the consent was needed in accordance with the statute or the contract. In this case, the landlord must comply with the notice period from either the contract or the 1978 Obligation Relations Act (eight days).[280]

There are no statutory restrictions on notice for market rentals. On the other hand, there is a certain protection for protected tenants. However, this protection applies only, if it is stated in the tenancy contract. The contract may anticipate that the landlord cannot give notice from the reason of not paying the rent during the period, in which the tenant is unemployed without his fault or if he is employed, but he does not receive any wage. In addition, at the same time, his household members, residing in the dwelling, also do not have any income, which would provide for material security in accordance with the legislation on the material and social security of households.[281] In such cases, tenants are obliged to pay the due rent within two times longer period than the period, for which the rent is owned, calculating from the day of the new employment or receiving an income.[282]

[278] This is a legal standard, which must be assessed in each individual case based on the circumstances. Juhart and Plavšak, *Obligacijski zakonik*, 682.

[279] Blagojević and Krulj, *Komentar Zakona o obligacionim odnosima*, 1467.

[280] Ibid., 1473.

[281] Article 35(2) of the 1992 Housing Act.

[282] Article 35(3) of the 1992 Housing Act.

In accordance with Article 10(2) of the 1992 Housing Act, if the landlord in non-profit rental gives notice and the notice period is to expire within the period December through February, the notice period is prolonged for additional thirty days. As far as market rentals are concerned, the 1978 Obligation Relations Act contains only a provision on the tacit renewal of the lease contract in Article 596 (*tacita relocation*). It is applied to the limited in time lease contracts. If the tenant continues to use the dwelling, whereas the landlord does not object, it is deemed that a new tenancy contract is concluded, under the same terms as the previous one.[283] However, the new contract is an open-ended contract, and not limited in time. Moreover, the securities, given by the third parties for the first contract, cease.[284]

In one of its decisions, the Supreme Court RS[285] decided that financial and medical conditions of a person, who is illegally residing in a dwelling, are not compelling and lawful reasons for the postponement of the eviction. The main argument was that the reasons were temporary, but would not have been eliminated until the suggested date of the postponement.

Landlords in both market and non-profit rentals are obliged to comply with certain requirements prior to giving notice. In order for the landlord to give the notice due to non-payment of the rent, he must first demand the payment of the owned amount from the tenant. Such rule is not derived from the 1992 Housing Act, but rather from the 1978 Obligation Relations Act (Article 584) and jurisprudence.[286] Otherwise, the payment falls under statute of limitations in three years from maturity.[287] Payment of the owned amount after the action for termination of the contract has been filed does not influence the termination.[288]

As far as inflicting the damage is concerned, it must be noted that small-scale damage is not considered as a valid reason for the termination of the contract. However, if there are more different small scale damages or damage reoccurs, it is possible to terminate

[283] Article 596(1) of the 1978 Obligation Relations Act.
[284] Article 596(2) of the 1978 Obligation Relations Act.
[285] Decision of the Supreme Court RS, no. U 3297/2002.
[286] Vuković, *Komentar Zakona o stanovanju*, 75.
[287] Article 375 of the 1978 Obligation Relations Act.
[288] Vuković, *Komentar Zakona o stanovanju*, 76.

the contract. Therefore, this is a factual matter, which is determined in each individual case.[289]

For landlords of protected tenants, the requirements are even stricter. Following from Article 35(1/1, 2, 3), the landlord must first give a written admonition.[290] Pursuant to Article 35(4), the contract is terminated, if the tenant, his martial partner or other family household member obtains ownership right on a suitable dwelling.

The term 'obtaining ownership right' is specifically interpreted. There are two possible systems of acquisition of ownership right in Serbia: system of registering in the Land Register (present in Belgrade) and system of title deeds. For the purposes of Article 35, it is not necessary to register the ownership right in the Land Registry – sufficient is the existence of the statutory legal base for the acquisition of the ownership right (e.g. the purchase contract). According to Vuković, as the moment of acquisition it is deemed the moment at which the empty dwelling is at the disposal of the buyer (tenant). For instance, there is to be a factual possibility for using the own family building, while it is not necessary that the usage permit is issued. In addition, it is not possible to bend the law by alienation of the property.[291]

As far as Article 35(1/5) and contracts of protected tenants are concerned, it must be noted that the notice cannot be given, if the employment[292] ceased due to reasons, for which the employee is not accountable. In addition, according to the jurisprudence, if the employee conceded his previous dwelling upon moving into the employer's dwelling, the employee must be provided with a new adequate dwelling after the notice period. The term 'adequate dwelling' is a factual question, which is to be determined by the expertise and 'at scene' investigation.[293]

Possible objections by the tenant are settled in front of the competent Court. For tenancy disputes, competent is Basic Court for the

[289] Ibid., 76.
[290] Ibid., 140.
[291] Ibid.
[292] This article refers only to employees, who obtained housing rights on apartments of their employers, and to all employees (for instance, those who obtained regular employment based rentals).
[293] Vuković, *Komentar Zakona o stanovanju*, 140.

municipality, in which the dwelling is located.[294] The value of the claim is assessed according to the sum of the one-year rent price.[295] Apart from Article 10(2) of the 1992 Housing Act and Article 596 of the 1978 Obligation Relations Act discussed above, there are no other possibilities for extension of the contract and similar actions.

In case of the execution proceedings against the landlord (in non-profit or market rentals), the position of the tenant is not affected, if the tenancy contract was concluded before the execution procedure and the tenant obtained the possession of the dwelling.[296] However, the tenant in market rental is entitled to terminate the contract in accordance with Article 594 of the 1978 Obligation Relations Act, if the person of landlord is changed, respecting the statutory notice period of eight days (or other notice period, agreed in the contract).[297]

Termination of non-profit rentals as a result of urban renewal is regulated in the 1992 Housing Act within the provision of Article 9(1/4), regarding the demolition of the (part of the) building. The same provision is contained in Article 33(1/2), referring to the protected tenants' open ended contracts. In those cases, the tenancy contract is terminated ex lege from the day of the final decision of the competent authority on the demolition.

The expropriation of the landlord is regulated with the Expropriation Act (*Zakon o eksproprijaciji*).[298] The expropriation beneficiary is obliged to provide another suitable dwelling before the demolition of the building. This obligation is imposed only, if the tenant is the tenant of a public or state dwelling with an open-ended contract or a holder of housing right. The new dwelling must also be publicly or state owned and the tenant must have the rights of a tenant with an open-ended contract.[299] Therefore, the tenancy contract is not terminated. There is no provision on the rights of tenants in market rentals.

There is a special provision for the situations when the premises

[294] Article 51(1) of the 2011 Civil Procedure Act (*Službeni glasnik Republike Srbije*, no. 72/2011).

[295] Article 31(2) of the 2011 Civil Procedure Act.

[296] Article 112 of the Enforcement and Securing of Civil Claims Act.

[297] Juhart and Plavšak, *Obligacijski zakonik*, 711.

[298] *Službeni glasnik Republike Srbije*, no. 53/95 and later amendments.

[299] Article 19 of the Expropriation Act.

must be expropriated due to the repairing of damage caused by large-scale natural disasters (e.g. earthquake, floods, fires, environmental accident, etc.).[300] The reasons for expropriation are different: execution of needed repairmen work, setting the temporary objects, etc.

The affected individuals have a right to appeal. However, the appeal does not withhold the execution of the decision on expropriation.[301] If the object of the expropriation is a housing building, a housing unit or a business premise, the expropriation beneficiary is obliged to provide another dwelling or business premise to the previous owner, holder of a housing right or tenant. The new dwelling must be given in ownership, co-ownership, for usage or as a lease. The deadline for providing the dwelling must be no later than in six months from the day of the moving out from the expropriated premises.[302]

The urban renewal is regulated by a special set of regulation. The important feature of the decision on the demolition is that it must be final in order to be executed. The tenant has a right to be involved in the decision-making procedure. Unless there is a possibility of repairing the (part of the) building, the authority must bring a decision on the moving out of the tenants ex officio. The decision is brought in administrative procedure and must be final.[303]

6.7 Enforcing Tenancy Contracts

Pursuant to Article 5(2) of the 1992 Housing Act, if an individual is using the dwelling or common parts of the multi-unit building without legal basis, concluded contract or if the legal basis was annulled, the owner or other individual with legal interest (e.g. tenant, co-owner) may request the eviction from the municipal authority, competent for housing matters.[304] This provision refers to all types of rentals. Thus, the Housing Act differentiates among three different situations:

[300] Section 5 of the Expropriation Act.
[301] Article 38(2) of the Expropriation Act.
[302] Article 39(3) of the Expropriation Act.
[303] Vuković, *Komentar Zakona o stanovanju*, 48–9.
[304] The request is filed with the municipal authority in the municipality, in which the dwelling is located. This is usually the Housing Department of the municipal authority.

TABLE 6.6 Enforcing Tenancy Contracts

Category	(1)	(2)	(3)
Eviction procedure	Request with the municipal authority in charge of housing or lawsuit in front of the Local Court	Request with the municipal authority in charge of housing or lawsuit in front of the Local Court	Equal
Protection from eviction	Longer period, if the notice period expires between December through February	Longer period, if the notice period expires between December through February	Equal
Effects of bankruptcy	No civil bankruptcy	No civil bankruptcy	Equal

NOTES Column headings are as follows: (1) main characteristic(s) of market rentals, (2) main characteristic(s) of non-profit rentals, (3) ranking from strongest to weakest regulation.

1. When there is no legal basis for the use of the dwelling (e.g. no sales or tenancy contract); this is a so-called 'real' illegal occupancy. Such situation in practice is when an individual occupies an empty dwelling without any right to use;[305]
2. When there used to be a legal basis, but it was annulled or the contract was terminated due to the expiration of the period for which it was concluded;[306] the so-called 'extrinsic' illegal occupation or 'unlawful residence.' In practice, this usually refers to situation when there was a tenancy contract, but it expired or was terminated by the landlord;[307]
3. When there was a legal basis for occupation (for instance,

[305] The Court decided that merely receiving a set of keys to the apartment cannot represent a valid legal base for the constitution of a tenancy relation when the keys are handed over by the representative of the public landlord. If there is no contract concluded or at least a decision on the allocation of the apartment, the tenancy relation is not constituted with handing over of the keys. (Decision of the Administrative Court, no. 9 U 15687/2010(2009) from 12 May 2011.

[306] This was confirmed by the Supreme Court RS, Decisions no. U 3002/2003 from 6 May 2004 and no. U 3842/2003.

[307] If the legal base was annulled or the contract was terminated, the tenancy of all users (and not merely the tenant) is terminated and they are to move out of the dwelling (Decision of the Supreme Court RS, no. Uvp. I 540/2005).

administrative decision for allocation of the dwelling to the rightful claimant), but the tenancy contract was not concluded. This situation is rather rare today and refers to previous system, when state employers allocated empty apartments to their employees.[308]

Legal standing is given to the owner of the dwelling or individuals with a legal interest to request the eviction (e.g. tenants of the multi-unit building in which someone occupied the common premises illegally). The reason for putting in charge the municipal authority and not courts lies in the assumption that the municipal authority would settle the situation more promptly than courts. However, the municipal authority limits the administrative procedure exclusively to the indisputable facts of the case, when it is clear that the occupation of the dwelling is illegal. The authority is merely obliged to notify the other party on the request and hear its statement.[309] The owner or other individual with legal interest must enclose the evidence of ownership or other legal interest for the eviction. The fee for filing the request is around 5 EUR.[310]

If the authority assesses that there is a dispute regarding the legality of the occupation, it refers the parties to the litigation in front of the competent court.[311] In one of the decisions, the former Supreme Court RS limited the procedures in front of the municipal authorities to the cases of 'real' illegal occupancy, while the cases of 'extrinsic' illegal occupancy were allocated to the courts.[312] This is a rather controversial standing, since it prevents a more efficient resolving of cases when there is no dispute regarding the termination of the contract. For instance, if it is clear that the tenancy contract was terminated due to the expiration of the period for which

308 M. Davinić, 'Prinudno iseljenje i raseljavanje: upravno-pravni aspekti,' *Anali Pravnog fakulteta u Beogradu* 61, no. 2 (2013): 151–2.

309 N. Cvjetićanin, 'Tužba za iseljenje,' Paragraf, accessed 30 September 2013, http://www.paragraf.rs/100pitanja/kuca/tuzba_za_iseljenje.html.

310 'Iseljenje bespravno useljenih lica iz stanova i zajedničkih prostorija,' Gradska opšina Čukarica, accessed 30 September 2013, http://www.cukarica.rs/index.php?option=com_content&view=article&id=104:iseljenje-bespravno-useljenih-lica&catid=17:stambeni-poslovi&Itemid=33&lang=lat.

311 Davinić, 'Prinudno iseljenje i raseljavanje,' 152–3.

312 Legal standings of the Compartment for Administrative Issues of the Supreme Court RS from 28 December 1994 and 18 January 1995. Similar is stated in the Decision of the Supreme Court RS, no. U 2831/2004.

it was concluded, but the tenant refuses to leave the premises, the landlord would have to turn to the competent court and not the municipal authority.[313]

Important to note is that the municipal authority is competent only for cases of illegal occupation of dwellings (apartments, houses and common areas in multi-unit buildings), while courts are competent for illegal occupation of shacks,[314] studios,[315] illegally constructed buildings,[316] etc. The Housing Act stipulates that the procedure is urgent, but does not provide for greater details on this.[317] The decision also determines the deadline in which the individual must empty the premises, which is usually between one and three days. Interestingly enough, the Constitutional Court of RS already rendered decisions in two cases[318] that even a fifteen-days deadline is inadequate and contrary to the practice of the European Court of Human Rights and Article 8(1) of the ECHR.[319]

The appeal on the municipal decision regarding using the premises without legal basis (but not the other two situations, for which courts are competent) does not influence the enforcement thereof.[320]

The expenses, which have arose during the unlawful use of the premises, are borne by the individual using the premises unlawfully, even though the 1992 Housing Act does not explicitly regulate this.[321] The individual must cover the market rent, regardless of the fact that the owner did not intend to rent the premises.[322]

As described above, notwithstanding Article 5(2) of the 1992 Housing Act, the owner may also file a lawsuit in front of the competent Court, when the legal basis for the use is divisive (for instance, when the existence of the tenancy contract is divisive). The owner then requests from the Court to determine both the existence of

[313] Davinić, 'Prinudno iseljenje i raseljavanje,' 153.
[314] Decision of the District Court in Kragujevac, no. U 148/86.
[315] Decisions of the District Court in Belgrade, no. U 539/98, and the Supreme Court RS Uvp. I 266/98.
[316] Conclusion 8 no. 360-70/12 of the Housing Department of the municipality Zvezdara in Belgrade.
[317] Article 5(3) of the 1992 Housing Act.
[318] Decisions of the Constitutional Court RS, no. Už-4371/2011 and Už-496/2009.
[319] Davinić, 'Prinudno iseljenje i raseljavanje,' 154.
[320] Article 5(4) of the 1992 Housing Act.
[321] Vuković, *Komentar Zakona o stanovanju*, 19.
[322] Decision of the Supreme Court of Vojvodina, no. Rev. 439/84.

the legal basis (or its lawfulness) and vacating the premises.[323] The Court procedure for the eviction does not interfere with the eviction procedure in accordance with Article 5 of the 1992 Housing Act.[324] However, it must be noted that the procedure in accordance with Article 5 of the 1992 Housing Act is a quicker solution.

If the individual does not comply with the deadline from decision on eviction, the owner (or other individual, who filed the eviction claim) may demand from the municipal authority, which rendered the decision on the first instance, to enforce the decision (the so-called administrative enforcement).[325] The municipal authority renders a conclusion authorizing the enforcement, in which it states the manner of the enforcement.[326] Appeal against the conclusion is allowed, although it does not delay the enforcement.[327]

Enforcement may be conducted only on weekdays, between 7 AM and 22 PM, unless there is a possibility of avoiding the obligation by the debtor or if there is a danger due to the delay.[328] The procedure may be performed also with the assistance of the police, if it is necessary.[329] However, there is no obligation to delay the enforcement due to the inapt weather conditions.[330]

The only provision regarding social defences from eviction is contained in Article 10(2) of the 1992 Housing Act for non-profit rentals. If the expiration of the notice period is due in the period from December through February, the landlord must provide the tenant with additional thirty days for the moving out. The institute of civil bankruptcy is not present in Serbia; therefore, there is no influence on the tenancy contracts.

6.8 Tenancy Law and Procedure 'in Action'

The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in this field ('tenancy law in action') is taken into account:

323 Cvjetićanin, 'Tužba za iseljenje.'
324 Decision of the District Court of Novi Sad, no. U 78/95 and the Decision of the Supreme Court of Serbia, no. UVP. I 192/95.
325 Article 267 of the General Administrative Procedure Act.
326 Articles 268 and 269 of the General Administrative Procedure Act.
327 Article 270 of the General Administrative Procedure Act.
328 Article 263(2) of the General Administrative Procedure Act.
329 Article 267(3) of the General Administrative Procedure Act.
330 Davinić, 'Prinudno iseljenje i raseljavanje,' 156.

- What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?
- What is the role of standard contracts prepared by associations or other actors?

All associations of landlords and tenants in Serbia have a legal status of non-governmental organizations. Their role is insignificant and refers mostly to informal legal counselling. What is more, they usually operate locally, dealing only with the issues of the citizens on their territory.

Standard contracts are not prepared by associations, nor are there other actors, which would prepare such contracts. There are only standard contracts, which can be bought in bookstores. These encompass only the most essential and mandatory contractual terms in accordance with the provisions of the 1992 Housing Act. There is no data on the exact number or proportion of use of these contracts by the parties as opposed to contracts made by parties or lawyers.

Ordinary Courts are competent for solving tenancy disputes on the first instance, since there is no special jurisdiction of the courts in tenancy disputes. Parties have a possibility to appeal to the Higher Courts on the second instance, while the possibility of appeal to the Appellate Court is subject to strict restrictions (e.g. precisely determined breaches which can be invoked in front of the court). The same applies also to the access to the Supreme Court.

Tenancy disputes are not deemed as prioritized.[331] Therefore, the actual length of the procedure may be even several months after the initiation of the procedure, although precise data are not available. As a result, parties are reluctant to bring their disputes in front of the courts. The eviction procedures, in front of the municipal organs, are deemed as prioritized.[332] The possibility of alternative dispute resolution is available as well, but no special procedures are developed precisely for the tenancy matters. In addition, alternative dispute resolution is usually used for family matters, under-age delinquency and labour disputes.

Problems of fairness and justice or access to courts due to tenancy disputes are not particularly exposed, at least not more than other types of disputes. The value of legal fees in contentious and enforcement procedures is regulated with Article 21 of the Legal

[331] The disputes regarding protection of possession, however, are deemed as urgent.
[332] Article 5(3) of the 1992 Housing Act.

TABLE 6.7 Legal Fees

Value of the dispute	Legal fee
Up to 10,000 RSD (85 EUR)	1,900 RSD (16 EUR)
From 10,000 up to 100,000 RSD (85 to 855 EUR)	1,900 RSD (16 EUR) + 4% of the value of the dispute
From 100,000 up to 500,000 RSD (855 to 4,200 EUR)	9,800 RSD (84 EUR) + 2% of the value of the dispute
From 500,000 up to 1,000,000 RSD (4,200 to 8,550 EUR)	29,300 RSD (250 EUR) + 1% of the value of the dispute
Over 1,000,000 RSD (8,550 EUR)	48,800 RSD (417 EUR) + 0.5% of the value of the dispute (but not more than 97,500 RSD (833 EUR))

NOTES Based on Annex I of the Legal Fees Act.

Fees Act (*Zakon o sudskim taksama*).[333] It is stated that legal fees are determined according to the value of the dispute upon filing the claim. Relevant is the value of the main claim. If a lawsuit encompasses more claims against the same defending party, regardless of whether they rely on the same legal and factual basis, the value is calculated as a sum of all claims. Value of the claim for property, possessory and the right to use a property claims, is determined according to the market value of the property in question.[334] However, this value cannot be lower than three-years worth rent.[335] For claims regarding termination of tenancy contracts, value of dispute for the purposes of calculating the fee is 4,000 RSD (approximately 35 EUR).[336] Legal fees are evident from table 6.7.

The Free Legal Aid Act has been prepared, but has not been enacted yet. Currently, in civil procedures, institute of exemption from payment of costs applies, regulated by the Civil Procedure Act (*Zakon o parničnom postupku*).[337] This institute is used for all types of civil procedures.

Pursuant to Article 168, the Court may dismiss the party from paying the costs of the proceedings, if the party is unable to bear the

333 *Službeni glasnik Republike Srbije*, no. 116/2008 and later amendments.

334 Article 26 of the Legal Fees Act.

335 Relevant is the rent as stipulated in the contract, if one exists. Otherwise, the rent of a similar dwelling in the same municipality is taken as relevant.

336 Article 27(1/5) of the Legal Fees Act.

337 *Službeni glasnik Republike Srbije*, no. 125/2004 and 111/ 2009.

costs of the procedure due to its general financial situation. Exemption from the costs of the procedure includes the exemption from court fees and exemption from the advance deposit for expenses of witnesses, expert witnesses, investigation and court listings. The Court may dismiss the party only from paying court fees. When rendering the decision on exemption, the Court takes into account the circumstances of the claim and its value, the number of individuals, whom the party supports, as well as income and property of the party and its family members. The decision on exemption is rendered by the first instance Court upon party's written motion.[338] The party must also submit a certificate on property status from the competent authority. The certificate must indicate the amount of tax paid by the household and individual household members, as well as other sources of income and their general financial situation.[339] If it is necessary, the Court may, *ex officio*, obtain the required data and information on the financial status of the party claiming the exemption and the opposing party as well.[340] The decision on the exemption is not subject to appeal.[341]

The party may be exempt from paying the costs in total[342] or only partially.[343] If the party is exempt only partially, the remaining part is subject to general rule on distribution of legal costs according to success in litigation. Exempt from the costs on the first instance applies to the costs of procedure on the second instance, as well. The Court may revoke the decision on exemption, if it finds that the party is able of bearing the costs, in total or partially.[344] Insurance of legal costs is available in accordance with Article 10(1/17) of the Insurance Act (*Zakon o osiguranju*).[345] There are several insurance companies, which offer this type of insurance. However, these insurances are not used in practice.

Costs of legal assistance (of the attorney at law) are regulated with the Attorney Tariffs, Attorney Fee, Prices and Costs in Serbia (*Tar-*

[338] Article 169(1) of the Civil Procedure Act.
[339] Article 169(2) of the Civil Procedure Act.
[340] Article 169(3) of the Civil Procedure Act.
[341] Article 169(4) of the Civil Procedure Act.
[342] Article 168(2) of the Civil Procedure Act.
[343] Article 168(2) of the Civil Procedure Act.
[344] Article 172(1) of the Civil Procedure Act.
[345] *Službeni glasnik Republike Srbije*, no. 55/2004 and later amendments.

ifa o nagradama i naknadama troškova za rad advokata).[346] For the preparation of claims, counterclaims and other submissions to initiate a civil action in the assessable cases, the attorney shall be remunerated according to the value of the dispute as follows: up to 450,000 RSD (3,900 EUR), the attorney fee is 6,000 RSD (52 EUR); between 450,000 RSD and 750,000 RSD (6,500 EUR) it is 9,000 RSD (78 EUR); between 750,000 RSD and 1,500,000 RSD (13,000 EUR) it is 11,250 RSD (98 EUR), etc.[347] The same tariffs apply for court appearances in relation to the claimed filed. In addition, the attorney is entitled to the fee for every started hour spent on the court, from the hour of the scheduled hearing, in the amount of 1,500 RSD (13 EUR). For the preparation of legal remedies, ordinary and extraordinary, attorney is entitled to a fee, plus 100% of the award provided for a motion initiating the proceedings (lawsuits, motions, petitions) in accordance with the above amounts.[348]

Legal certainty in tenancy law is put under question, since the 1992 Housing Act, apart from being obsolete, contains only five provisions on tenancy law, regulating the most vital issues. At the same time, provisions of the 1978 Obligation Relations Act refer to leases in general and neglect the social and economic function of housing for the parties.

Furthermore, the situation regarding the use of the two statutes is unclear. Although the 1992 Housing Act is *lex specialis* statute and should be used for all types of rentals, its application (or more precisely, the application of the tenant protective provisions thereof) is now reserved only for non-profit rentals and protected tenants. The prime cause for such situation is the over-protectiveness of the rules stipulated in the 1992 Housing Act. As a result, market rentals are usually concluded with oral contracts or written contracts based on the 1978 Obligation Relations Act. Secondary literature, apart from articles on housing right and related issues, is non-existing.

Swindler landlords or real estate agents, who rent dwellings, have allegedly been quite frequent. According to newspaper articles, there were cases of renting already rented dwellings, posting ads on non-existing dwellings, posting ads by individuals, who only

[346] *Službeni glasnik Republike Srbije*, no. 121/2012 from 24 December 2012.
[347] Tariff number 13.
[348] Tariff number 16.

act as real estate agents, and similar.[349] However, no official data on this issue exist.

The core statute regulating tenancy law is the 1992 Housing Act. Although the statute has been amended on several occasions, the amendments did not refer to any of the provisions regarding market or non-profit rentals, but addressed the issues of protected tenants, while merely one amendment addressed maintenance of multi-apartment buildings. The amendments failed to address the newly emerged circumstances in the country (influx of refugees and IDPS, rising number of market rentals, lack of public rentals, etc.).[350] Consequently, the statute is utterly obsolete. Furthermore, existing provisions do not offer an extensive legal base for regulating tenancy law. As an illustration: Article 7 deems as landlords only owner of a dwelling or holder of a disposal right on the dwelling from the public stock.[351] The provision does not mention a tenant as a landlord in the sub-tenancy relations. Category of holders of a disposal right on the dwelling from the public stock is irrelevant for today's circumstances, in which the public stock is virtually non-existing. What is more, the state and municipalities are owners of the dwellings from the public housing stock, and not merely holders of a disposal rights.

Prevalence of the former housing right at the time of the enactment of the 1992 Housing Act reflects in several general provisions and not just in the separate section of the statute. As a result, many institutes resemble primarily relations of holders of housing right and landlords, which were more rigid than market rental relations.

One of such provisions is the provision on the termination of tenancy contracts, contained in Articles 9 and 10. Article 9(1) determines different ways, in which the contract may be terminated, while Article 10 further regulated culpable reasons for termination. However, none of the provisions provides for the possibility of non-culpable reasons for termination (for instance, that the landlord

349 G. Avalić, and B. Vuković, 'Izdaju stanove koji su već zakupljeni,' *Blic Online*, 19 June 2010, http://www.blic.rs/Vesti/Srbija/194567/Izdaju-stanove–koji-su-vec-zakupljeni.

350 Majority of amendments addressed the issues of protected tenants, while one amendment addressed maintenance of multi-apartment buildings.

351 This category refers to the state and municipalities, which obtained this status during the process of privatization in the early nineties.

requires the dwelling for himself or have another justified reason for termination).

Article 9(2) regulates conclusion of new contract after the death of the tenant. In paragraph 2 it stipulates that, if there are no living closer family members residing with the tenant, the landlord is obliged to conclude tenancy contract with an individual, who is no longer a family member, or an individual, who was a family member of the previous tenant (such as siblings and similar), if the individual continued to reside therein. Obliging a landlord to conclude tenancy contract with such a broad circle of rightful claimants may excessively limit landlord's right to property.

The situation in the rental sector in Serbia has been conditioned with the high ownership rate since the dissolution of the SFRY, numerous crises (both human and economic) and political instability, which altogether led to the deterioration of the sector. The problems relate not only to the insufficient legislation and government control, but also to the low financial abilities of residents and lack of affordable housing. One of the crucial problems is the legislation, which is obsolete, as described above. Since the 2009 Social Housing Act has been enacted recently and certain projects have already been initiated, it is important to incorporate provisions on non-profit rentals in the Housing Act or another, special statute. Mainly, more precise and transparent procedure for allocation of these dwelling must be determined.

Almost non-existing government control of the sector (and especially market rental sector) is also another problem. There is no inspection authority or similar body controlling housing standards or tenancy contracts. There have been cases of rented dwellings, quality of which was very low.[352] As a result, there is a prevalent opinion that rental dwellings are usually of lower quality, which adds to the stigmatization of renting in general.

According to a research done by Habitat, only 9% of respondents answered that they have concluded a written contract with the landlord, 46% answered 'No,' while 45% refused to answer.[353] It is true that courts may give validity to an oral contract, which was fully or in its larger part realized by the parties. However, a written con-

352 These were rented especially to refugees and IDPS.

353 Mojović and Žerjav, *Stanovanje pod zakup*, 30.

tract is not only important as a proof of the tenancy relation, but also to acquaint the parties with their rights and obligations. Parties usually refuse to engage services of lawyers for the preparation of contracts due to the relatively high costs. For instance, the association of tenants, Velegrad, offers legal consultation for the parties. However, parties turn to them only when there is an actual dispute or a problem. In addition, their office is located in Belgrade, meaning that only citizens in this city benefit thereof.

Another problem is the non-existence of a registry of tenancy contracts. Therefore, it is virtually impossible to determine the actual number of renters in Serbia. What is more important, tax evasion issue is pervasive. Given the rather high tax rate (20% plus deductable costs), it is understandable why this is an issue. Enforcement of contracts in front of the courts is also a problem. Since not many parties have concluded written contracts and payments are usually informal, it is difficult to prove one's claim. Majority of non-professional landlords believe that, since they are owners, they may do as they desire, irrespective of the tenants' right to use of dwellings. For instance, there have been cases that landlord replaced the lock or vacated the premises due to a breach, without formally notifying the tenant thereof. If tenants file a possessory claim in front of the Court, in majority of such cases, they succeed. As a result, there is an opinion that courts are inefficient and overly protective of tenants.

Another reason for the opinion that courts are inefficient and overly protective of tenants lies in the fact that it is almost impossible to terminate the contract and evict protected tenants, although the culpable reasons for termination are present. For instance, courts have decided in several cases that the reason for termination was not present, although it was proven that the protected tenant has been resided outside of the country for two decades.

Even more topical issue is the fact that Serbia has been regulating housing policy spontaneously for over two decades. In addition, after the dissolution of the SFRY, the state has retrieved from providing affordable housing almost entirely. As a result, public housing stock is virtually non-existing. There are also no subsidies available for less financially able citizens. This leads to shortage of affordable housing for those, who are not able to take not even one of the subsidized housing loans.

It may be concluded that in order to develop rental sector in Serbia and attract people to consider this type of tenancy, both legislative and financial reforms must be realized. Only through comprehensive approach may the situation in the future improve.

Tenancy law, as well as housing in general, is not frequently addressed in public and/or politics. Recent tenancy-related issues are mostly related to the newly adopted 2009 Social Housing Act and construction of social dwellings thereof. There have been several projects initiated for the construction of social dwellings for both purchases and renting. The locations of the projects are Pančevo (initiated in October 2013), Čačak (initiated in July 2013) and Novi Sad (initiated in Jun 2013).

Absence of tenancy-related issues indicates the low development of this sector in Serbia, as well as the need for prompt action by government and competent authority.

Chapter Seven

Typical National Cases

7.1 Death of the Tenant in Privatized House

The landlord A (a municipality) and tenant B had concluded a rental contract for A's house on the account of B's housing right. B's wife C, daughter D and son E were also residing in the house. After the death of B, C did not conclude contract with A, nor did she asked the Court to replace the contract with the decision, but has remained in the house with her children. After the death of C, D and E remained in the house. A filed a lawsuit for the eviction of the two on the ground of unlawful residence.

Solution There is a legal obligation to conclude rental contract after the original holder of the housing right is dead or, alternatively, to demand that the Court replaces the contract with the decision. Otherwise, the residence in the house is unlawful and it is impossible for the descendents to inherit the contract.[1]

7.2 Inheritance of the Housing Right

A had a housing right on the house based on a contract signed on 28th April 1956. The house was ownership of P. A's wife S and daughter L were listed as co-residing with him. In 1981 A's granddaughter B, was borne and started living with them in the house. After L's death in 2001, B continued to reside in the house. B demanded from P to conclude the rental contract for indefinite term. P refused and B filed a lawsuit against P.

Solution The Court complied with P. After 1973, it was impossible to obtain housing right on a house in private ownership by the manner of moving into the house. Thus, B, who was born in 1981, is not able to inherit the housing right on the house.[2]

[1] Articles 9 and 34 of the Housing Act, *Službeni glasnik Republike Srbije*, no. 50/1992. Second Instance Court in Niš, Gž, no. 1399/06 from 13 June 2006.

[2] Articles 34 and 40 of the Housing Act and Article 2 of the Basis of Property Relations Act, *Službeni glasnik Republike Srbije*, no. 115/2005. Supreme Court of Republic of Serbia, no. 660/05 from 13 April 2005.

7.3 Absence of Written Rental Contract

A has offered to B a part of his house for B to move in with his family. They did not conclude any contract, nor did they set the conditions for the use of the house, for instance: period of use, compensation, reasons for the termination of use, etc. A needs the house for himself due to the increase of his own family. B refuses to leave the house. A files a lawsuit against B.

Solution Such relation is a loan for use contract and not a rental contract, since none of the obligatory parts of a rental contract are present. It was decided that B must leave the premises.[3]

7.4 Reasons for Termination of Rental Contract

A (natural person) has a rental contract with B (state organ) for a house in B's ownership. B requests termination of the contract and demands from A to leave the house. A files a lawsuit against B due to the unlawful termination.

Solution The Court complies with A and refuses to terminate the contract, since none of the exhaustively listed reasons for the termination are given in the case.[4]

7.5 Absence of Written Contract and Decision on Awarding the House

A (state organ) has awarded a house to B in the proper procedure, based on the housing right. However, they failed to conclude a written rental contract. B bought the house out in accordance with the privatization process. A filed a lawsuit to cancel the buying contract due to the improper procedure, since there was no legal basis for B to buy the house out.

Solution The Court complied with B, since the mistake was done on the behalf of A. It is thus unfair from him to refer to his own mistakes and terminate the contract.[5]

[3] Articles 37 and 70 of the Law on Basis of Housing Relations Act. Articles 7 and 10 of the Housing Act. The Second Instance Court in Čačak, Gž, no. 206/07 from 28 February 2007.

[4] Article 35 of the Housing Act. Supreme Court of Republic of Serbia, Rev. 976/04 from 19 January 2005.

[5] Articles 5 and 7 of the Housing Act. Supreme Court of Republic of Serbia, Rev. 1944/98 from 22 April 1998.

7.6 Automatic Prolongation of a Rental Contract

A and B concluded a rental contract for B's house for the one year term. After the year has passed, A continued to live in the house, whereas B did not counter. Afterwards, B filed a lawsuit for the termination of the contract.

Solution The contract was transformed to the contract with indefinite term, since none of the parties expressed any scruples. The relation is judged according to the rules regulating the indefinite term rental contracts.[6]

7.7 One Year of Non Residing in the Rented House

A and B (state organ) concluded an indefinite term rental contract for B's house. A decided to go to work abroad for a year. A did not give notice on the matter to B. After one year, B filed a lawsuit in order to terminate the contract with A.

Solution The Court complied with B, since A failed to obtain an agreement with B on the usage of the house during the course of his absence.[7]

7.8 Members of Household

A and B rented a house based on the housing right of A. Afterwards, they bought the house out. The two of them lived in cohabitation. After the dissolution of the cohabitation, A continued to reside in the house and decided to sell it. B filed a lawsuit, since A failed to obtain her agreement.

Solution Cohabitation does not fall into the scope of 'household' for the needs of the Housing Act and the Law on the Basis of Housing Relations, thus the selling contract is valid.[8]

7.9 Indefinite Term Rent and Right to Buy Out

A obtained a right on indefinite term rental of B's (state organ) house after the enforcement of the Housing Act (after 2 August

[6] Article 7, Paragraph 3 of the Housing Act. Supreme Court of Republic of Serbia, Rev. 7535/98 from 30 September 1999.

[7] Article 35, Paragraph 6 of the Housing Act. Supreme Court of Republic of Serbia, Rev. 704/97 from 11 February 1998.

[8] Second Instance Zrenjanin, Gž, no. 404/95 from 26 February 1997.

1992). When the decision was brought that all renters of state and common owned houses could buy them out, A applied for the purchase of the house on which he had a indefinite rental contract. B refused to sell the house.

Solution The Court complied with A, since he had a contract concluded after the relevant date in accordance with the Housing Act.[9]

7.10 Definite Term Rent and Right to Buy Out

A concluded a definite term rental contract for B's (state organ) house for one year. After the year had passed, A filed a demand with a Court for the decision that the rental contract is now indefinite term rental contract, since he wanted to buy the house out. The right to buy out was given merely to those with concluded indefinite rental contracts.

Solution The Court decided that the conditions for issuing a decision, which would substitute the indefinite term contract, were not met. Since there is no indefinite term contract, there is also no right to buy out.[10]

[9] Article 39, Paragraph 2 of the Housing Act. Supreme Court of Republic of Serbia, Rev. 503, P/08 from 28 February 1998.

[10] Article 39, Paragraph 2 of the Housing Act. Supreme Court of Republic of Serbia, Rev. 3128/97, from 4 November 1997.

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***)

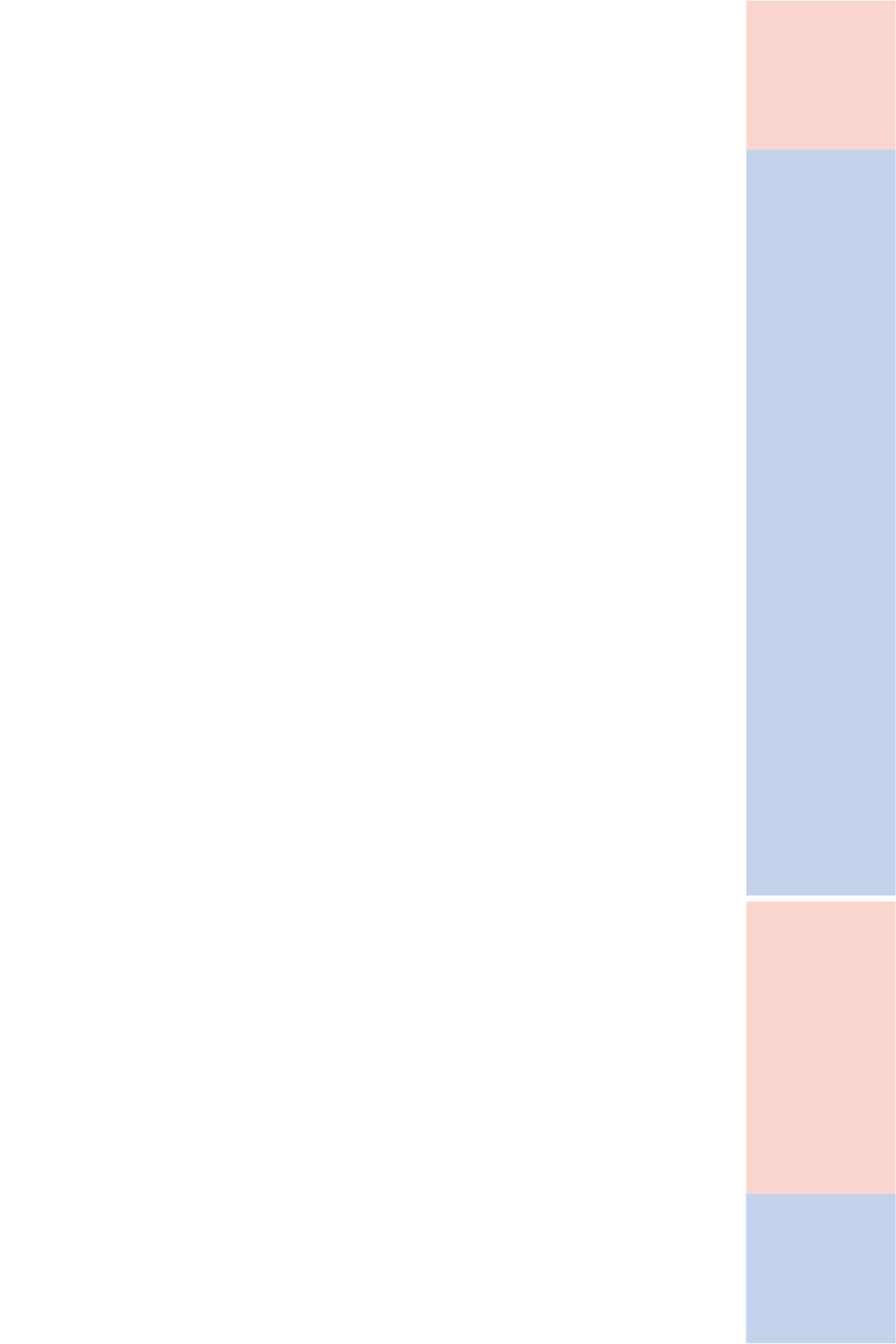
wear and tear *noun* – deterioration caused by ordinary use; the depreciation of property resulting from its reasonable use (also ***fair wear and tear; natural wear and tear***)

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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