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RESTITUTION – THE ACTUAL PROBLEM OF RENTAL HOUSING POLICY

Abstract

The issue of rental housing and related problems in the Slovak Republic is recently the subject of several discussions, which should be perceived on several levels. The priority is the construction of rental housing with the state support for vulnerable group of young people, for whom loan financing (including mortgage) is not affordable. Another group consists of people who live in apartment buildings that have been restituted to former owners (and these owners are usually not interested to retain tenants paying "non-market" rent). The solution of this problem concerns not only the Slovak Republic, but also other post-socialist countries. The problem has its roots in housing policy realized before 1990. At that time in former Czechoslovakia there were no private rental apartments. Only state, cooperative, or enterprise rental apartments existed. In such conditions the rental housing market did not exist. Institute of "regulated rent" was applied on the territory of the Slovak Republic as well as the Czech Republic after the fall of communism in 1989 when blocks of flats were returned to their original owners by so-called restitution law. The aim of regulated rent was to protect tenants in flats against arbitrary increasing of rent and on the other side regulated rent restricted the property rights of owners. For reason given both republics adopted legal regulations to solve the situation with regulated rent and allow owners to dispose of their own property at their own discretion. This article presents the current deficiencies in the rental housing policy in Slovakia and suggests possible solutions to these problems.

Introduction

Housing is one of the basic living needs of each person. It creates conditions for improving the quality of life, the better use of territorial potential and it attracts the skilled labor to urban areas.. Worldwide experience shows that the current market environment does not enable to satisfy the housing needs of all population groups. For this reason, national governments seek and finally implementing a variety of incentives for increasing the housing affordability for selected population groups. It is expected that these incentives would be sustainable and efficient. State housing policy creates institutional environment that enable the growth of quality and affordability of healthy living for the general population (Ivanička, K., 1997). Well functioning rental housing market requires:

- Adoption and implementation of fundamental systemic measures in macro-and microeconomics,

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- the adoption of new legislation on the financing of rental housing, linking social,
- economic and technical requirements through input and cooperation of governmental and executive bodies etc.

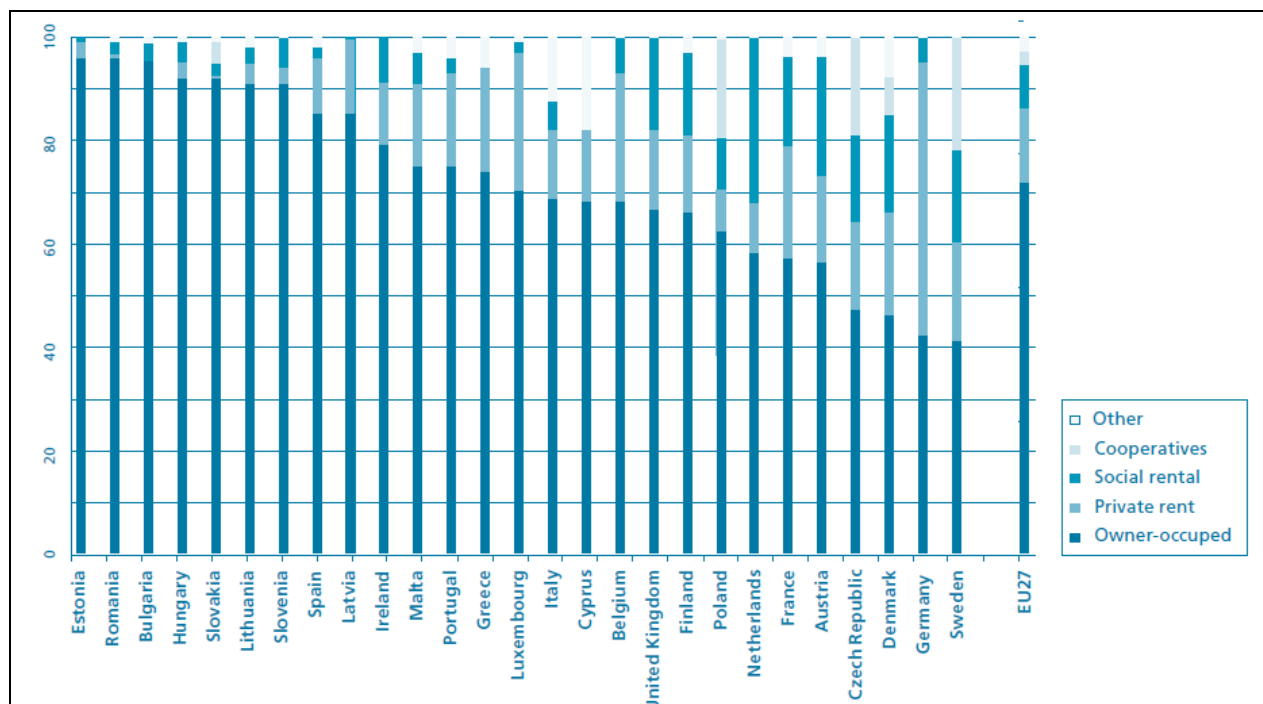
Table 1 Development of privately owned dwellings in Central and Eastern European countries following the privatization process

COUNTRY	% dwellings privately owned (beginning of reference period)	% dwellings privately owned (end of reference period)	Reference period
Bulgaria	92.9	9.8	1993-2001
Estonia	Nav	95	2002
Hungary	Nav	97.7	1997
Latvia	43.1	83	1993-2002
Lithuania	84.4	97.6	1993-2002
Czech Republic	Nav	47	2001
Poland	44	58.9	1988-2006
Romania	90.8	97.5	1993-2002
Slovakia	50	89	1991-2004
Slovenia	66.9	88	Before-after privatization

Source: Housing Europe Review - The nuts and bolts of European social housing systems, CECODHAS, 2011)

The rental housing policy in Slovak Republic

The operation of housing and housing policy in the Slovak Republic is divided between the public sector, which represents the state, municipalities and the private sector, which represents the business community and citizens. However, specific tasks of each participant changes with the evolution of the economic and social situation. Determinants of the development of the rental apartments constructions in Slovakia are mainly requirements for labor mobility, low income structure of citizens and high property prices. It should be emphasized that the rental housing market can not solve the problem of defaulters. For the majority of the population in Slovakia is flat a most accessible solution to meet the lifetime needs housing. Particular attention should be paid to specific tenants in rental sector, such as lower income and marginalized groups, tenants living in houses returned to the original owner under restitution laws, tenants in municipal rental dwellings inaugurated after 1 February 2001 acquired with public funds etc. Rental housing sector in the Slovak Republic in comparison with the developed countries of Europe is considerably undersized (demonstrated by the chart 1).



Graph 1: Structure of home ownership in selected European countries by the 31 of December 2010

Source: Housing Europe Review - The nuts and bolts of European social housing systems, CECODHAS, 2011)

Rental apartments in Slovakia can be divided into two groups:

1. flats built before 2000, which were originally public rental housing and in 90s passed into the ownership of municipalities,
2. second group consists of apartments whose construction is since 2000 provided by municipalities and funded by the Housing Development Programme. These apartments must retain the character of a tenant at least 30 years and their tenants may be households with income up to a certain figure.

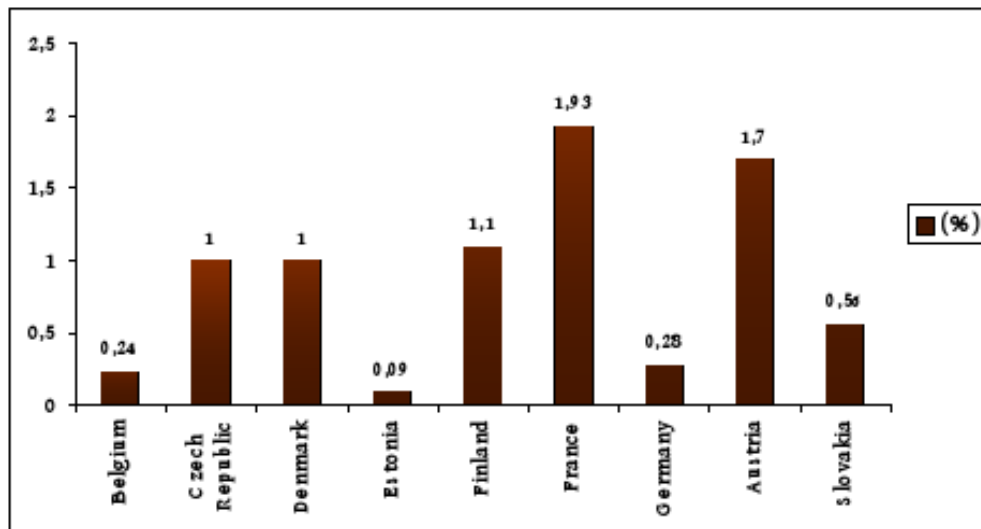
From the statistics of the Ministry of Construction and Regional Development shows that at the end of 2010 were registered 50,247 rental apartments in Slovakia. At present, rental apartments make less than 3% of the total number of dwellings built in Slovakia. The problem of housing in terms of social aspects can now be divided into two main levels:

- problem of people who have flat, but do not have enough financial resources to cover charges associated with its use,
- problem of people who are not able to "get" housing.

As can be seen, the carrier issue is not only its funding, but the actual access to the apartment. Rental residential sector in the Slovak Republic in comparison with developed countries of Europe is considerably undersized, as documented by the percentage support of GDP (see chart 2). The lack of rental housing was and still is the result of:

- improper implementation of the concept of privatization of housing - from the original public housing in a few years became flats on private ownership, whereas the original "landlord" bought them for net book value,

- problems of economic transformation (slow transformation of the housing sector) - rent deregulation was done slowly to avoid disruption of social reconciliation,
- inadequate incentives for the development of rental housing (private apartments for rent and lack of incentives for social housing - unsustainable system of donations),
- lack of tax breaks and preferential credit conditions mainly by commercial banks,
- absence of a non-profit developers in a larger extension, although the legislative preconditions are created.



Graph 2: Support of rental housing in selected EU countries (% of GDP)

(Source: prepared according to the available statistics of listed countries)

Directive planning system, which was characteristic for most transition countries, rejected the position of the market and had a straightforward idea of solving the housing problem. "Cheap apartments" become the advantage of non-market economies. Cheap housing actually appeared before 1989, therefore, the real cost of housing tainted to rent. Cheap housing is inferred from the low rents and administratively set prices. The consequence of this period was the rack and ruin and waste of housing fund.

At the end of 1989, deficiencies of socio-economic fabric of housing began to accumulate sporadically. The first steps were solution-oriented property injustices, rent update, defaulters, the settlement of relations between the state and municipalities, housing support, and so on. Solving the systemic and comprehensive approach to the problem of housing was defined by "reform housing policy" with the horizon in 1993, which determined the legislative rules, which ultimately had to create a legal and factual basis for anticipating the housing market. In 1995 the Government approved the Conception of state housing policy, which identified problems in housing and formulate economic instruments to promote housing and its basic coherence. According to the conception, municipalities have the overall responsibility for the development of the managed area, accounted indirectly responsible for housing development. The tasks of municipalities include mostly preparation of land-use planning, availability of vacant land for housing development, coordination and participation in the development of housing and related technical infrastructure. Acquisition of apartment for middle and lower income segments of the population becoming difficult to access because of the continuous increase in house prices. In the years 1996 - 1997 a turnover occurs in finalizing and launching the construction of apartments a modest recovery in housing occurs.

One of the reasons is the increasing interest of young families in the construction of flats to ownership with the possibility of obtaining favorable credit funds from the State Housing Development Fund.

In terms of "turnover" of tenants in rented accommodation, in the absence of any statistical data can be based only on estimates. In the municipal rental flats occurs a replacement of generations (contributes to the imperfect legislation, allowing continued living for family members after the death of the tenant, without ties to the criteria of social need) and it is estimated that the change of tenants on average per year is only a small proportion of 3 - 5%. In the private rental sector is estimated movement of tenants compared with the general rental flats significantly higher, at a rate 35-40%.

Height of unregulated rents in the private sector compared to the regulated rent is many times higher, which could be further assessed by available, but highly inaccurate and simplified price maps with dramatically varying the amount of gross rent (including utilities, services) by region. Height of unregulated rent in apartments is further differentiated according to the category of the apartment, whether the apartment is furnished or not, with or without a garage and so on. The less important is the age of dwellings, technical house solution, situated apartment in the house and so on.

Rent deregulation and related relationship arrangements of housing owners and tenants

In the Slovak Republic as well as in the Czech Republic at the beginning of the nineties, private property was returned via restitution law to original owners which they lost in the process of nationalizing under the former socio-political regime. This was the way how original owners or their heirs got into ownership also houses with flats occupied by tenants who gained the right of personal use to flats from the state. By provision § 871 section 1 and 4 of the Civil Code in the Slovak Republic the right of personal use changed to rent; in case of common use of a flat to common rent for an indefinite period [2].

By the Act No. 182/1993 Coll. on Ownership of Apartments and Non-Residential Premises as amended the state allowed for sale of flats in ownership of municipalities to the ownership of natural entities - prime tenants. But flats in restitution houses did not fall into the solution of this act.

According to the provision of the Ministry of Finance of the Slovak Republic of 23 Apr 2008 No. 01/R/2008 on Regulation of Rent Prices of Flats which is effective from 1 May 2008, also to rent of flats in replevied houses was related regulated price of rent according to special regulations. Regulated rent was several times lower than freely agreed rent (market rent) in a comparable flat and so it did not allow flat owners to gain for rent sufficient financial sources to be able to finance necessary repairs and reconstruction of their own houses. On the other side some tenants invested into flats no small amount of own sources during the use of the flat. Also therefore they are not able to pay market rent or to obtain other adequate accommodation because of their low income and financial status. Protection of renting in terms of the Civil Code and rent price regulation on one side and the effort of owners to enforce adequately their ownership which is guaranteed by the Constitution of the Slovak Republic are contrary to each other.

The governments of the Slovak Republic several times devoted to the problem of regulated rent, but they did not manage to find a suitable solution. The objective problem was not possible to be postponed forever as regulated rent did not correspond with market prices and on the other side it did not cover justified demands of owners for settlement of cost for maintenance and operation of houses [3].

The preparation of legal solution of stated rental relationships arrangement started already in 2005, interlocked to resolution of the government SR No. 636 of 24 Aug 2005

which the government adopted to the conception of the flat state politics until 2010. In mentioned provision the minister of construction and regional development was imposed to submit the draft bill for government negotiation, which will regulate conditions for rental relationships in rental residential buildings. Only in September 2009 the Slovak Republic government by its resolution No. 640 approved the conception of arrangement of private owners owning residential buildings and flat tenants touched by flat rent price deregulation. The conception represented a main initial document which is analysing the situation on the base of which it indicates possibilities how to arrange relationships of private owners of residential buildings and tenants of flats with regulated rent. The aim of accepted conception was to allow for private owners, by conditions set up by law, to terminate unilaterally rental relationships, to provide for flat tenants adequate compensation under conditions specified by law and so subsequently to allow owners of residential houses to dispose of own real estate according their own conceptions. The conception in question assumed six possible ways of relationship arrangements of private owners and flat tenants in these houses, namely:

1. financial compensation of private owners of flats in residential buildings or their parts from state resources by a single sum which would be equal to the property value determined according to ME SR Regulation No 492/2004 Coll. on the Estimate of General Value of Property as amended,
2. compensation for all tenants by providing of a single financial sum from state funds equal to value of a used flat stated according to ME SR Regulation No. 492/2004 Coll. on the Estimate of General Value of Property as amended,
3. compensation for all flat tenants in residential buildings of private owners by a single financial sum coming out of percentage of value of used flat stated according to ME SR Regulation No. 492/2004 Coll. on the Estimate of General Value of Property as amended, or coming out of cost for acquisition of comparable flat in term of age, size and quality taking into consideration regional disparity,
4. financial settlement of difference between freely agreed market rent and regulated rent, which they would receive all flat tenants monthly in the form of contribution for housing (or flat tenants chosen according to elaborated measurable social criteria) from the state to be able to pay freely agreed rent to a flat owner,
5. mutual exchange of the flat between the tenant of the flat who cannot afford from his/her income to pay market rent and other natural entity who is able and willing to pay such rent, because he/she is financially sufficient and the flat fulfils his/her imagination about living,
6. providing of compensatory flats from state funds for those flat tenants in mostly residential buildings of private owners who need it regarding their social status.[4].

With effect from 15 Sep 2011 the act No. 260/2011 Coll. on the Termination Process and Structure of Certain Lease Agreements and on amending and supplementing Act of the National Council of the Slovak Republic No. 18/1996 Coll. on Prices as amended. This act regulates termination of rental relationships to flats in houses: issued at restoration of injustice according to special regulations; where there was by action of determination the ownership, which was before considered ownership of the state and subsequently of a municipality, returned to beneficiary; which other person acquired from a restituent or his/her legal representative; which were part of state property transfer to other persons according special regulations and in flats in houses in the ownership of private persons to which under former social structure national committees by their directive decision assigned tenants and in which regulated rent has been applied until now.

The act adopted six and a half year period (until 31 Dec 2017), during which tenants in mentioned houses would release rented flats, under precise conditions concluded by the law, and subsequently it gives to owners the possibility to offer these flats for rent for market rent or to dispose of them according to their own imaginations. The law enables tenants to require from a municipality a compensatory rental flat with regulated rent, in the period stipulated by law. As the basic criterion for the possibility to require such a flat is a tenant's inability to solve own accommodation by his/her own flat in residential or family house in the district where the flat is, which a tenant has in rental or his/her property. At the same time there are stated conditions under which a municipality has to provide an applicant compensatory rental flat and also size structure of these flats.

The act No. 261/2001 Coll. on Providing of Remunerations for Provision of Compensatory Rental Flats was adopted related to the above mentioned act with effect from 1 Sep 2011 and which from the point of view of subject matter and procedures solves providing of compensatory rental flats through grants for special purposes for this field as well as basic characteristics and standards of these flats. Grants can applicants receive not only for obtaining of compensatory rental flats but also for obtaining of appropriate technical equipment and building sites under the buildings with rental flats.

Solving of this question assumes impact on public finances. The amount of these funds is dependent on the size of flats, cost of 1m² of flat area, a number of tenants who will apply in an appropriate municipality for a compensatory rental flat.

On the basis of the questionnaire analysis related to the number of applying number of tenants, the Ministry of Economy of SR processed calculation of estimated expenses from the state budget for providing of 1,000 compensatory rental flats. The calculation of overall expenses, including project preparation of buildings, purchase of building sites and building of technical equipment was elaborated on the basis of limits for cost indexes for 1m² of flat area used at providing of grants for provision of rental flats in the frame of the Programme of Housing Development valid since 2009, or a professional estimate.

Overall estimated financial expenses from the state budget for provision and preparation of 1,000 compensatory rental flats present cca 72,700 thousand Euros.

Out of this sum cca 54,500 thousand Euros would be used for provision of compensatory rental flats, the rest 18,200 thousand Euros would be needed for purchase of building sites, project preparation of buildings and building of technical facilities.

As not all tenants will fulfil conditions for application and provision of a compensatory flat in the sense of criteria stated in the draft law, it is estimated that real need of financial funds from the state budget in the form of grants might be a bit lower. But at the same time costs related to provision of compensatory flats will be adjusted, related to price growth of building work and materials.

The legal regulation of flat rent in the Czech Republic is regulated by so-called big amendment of the Civil Code - the act No. 509/1991 Coll., as amended.

With effect from 1 Jan 1992 were, by the cited act, abolished provisions of third part, the first head of the Civil Code on personal use of a flat. At the same time the legal transformation of the right of personal use of a flat to flat rent was adjusted in the regulation of § 871 sec. 1 of the Civil Code. But an important precondition of transformation ex lege was that at the force of cited act the right of personal use existed, otherwise there was nothing to transform.

Considering that the legal subject matter of the personal use of a flat was conceptually an indefinite relation, it was transformed to rental relationship for indefinite period with the possibility to transfer the rent, what further represents flat rent so-called "for ever". So the

whole protection of tenants was transformed to flat rent as it provided socialist legislative; it means:

1. regulated rent,
2. termination of rent only with the consent of the court and enumeratively concluded reasons,
3. flat compensations,
4. rent transfer.

The institute of flat rent still represented more or less tenure in the form of public service to a citizen as a private-legal obligatory relation.

Rent legal regulation in the Czech Republic was amended in the general empowering regulation § 696 sec. 1 of the Civil Code which says that special regulation states the way of rent calculation, payment for performance provided with the use of flat, cases when a renter is eligible unilaterally to increase rent and other conditions.

Special conditions for application of rent regulation, thus exclusion of the right to set or negotiate the rent amount freely stated the act No. 526/1190 Coll. on Prices. According its § 20 sec. 1 letter a) the Ministry of Finance of the CR could, by its regulation, to state the way of determination of the rent amount for the flat and payment for performance provided with the flat use and the way of arrangement and payment of rent and price of services between a renter and a tenant. At contract conclusion about flat rental a renter was obliged to respect price regulation because the amount of rent stated by price provision was not possible to exceed. Basically it was not excluded to agree for lower rent.

Since 1995 (since the adoption of Regulation No. 30/1995 Coll., which amended Reg. No. 76/1993 Coll., on Rent from a Flat and Payment for Remuneration provided with Flat Use) beginning of continual, regular deregulation process started, which lasted until 2001. The range of flats in which it was possible to agree on contractual rent was continually widened (all flats were released from regulation, in which a new contract with a new tenant was made after 1 Mar 1995).

The second element of deregulation was an approval of the rule for yearly increase of regulated rent in which there was newly embodied a coefficient for increase of inflation rate for the previous calendar year. In the practice the change authorizes a renter unilaterally to increase rent always as per 1 July until 30 June of the following year by inflation coefficient firmly fixed by the decision of the MF CR. As per 1 July 1995 rent increased by 23% and in the following year by 25%.

On 31 Mar 2006 the amendment of the Civil Code came into force executed by the law No. 107/2006 Coll. on Unilateral Increase in Rent for Apartments and on Alteration to Act No. 40/1964 Coll., the Civil Code, as amended by later regulation (later only "amendment"). This long-expected legal regulation implements sensible changes into contractual relationships of flat rental.

The first part of the amendment which changes § 696 sec. 1 of the Civil Code, aims to eliminate price deformation of rent and to finish so long lasting stage criticized by the Constitutional Court of the Czech Republic. It should happen by repeated implementation of temporary (quarterly) regulation in the form of legal possibility for unilateral increase of rent in the case when there is no contract between a renter and a tenant.

The amendment is related (except exceptions stated in § 1 sec. 2) to flats in which rent has been set until now according to already cancelled regulation No. 176/1993 Coll. or some price bills issued by the MF of the Czech Republic which were also cancelled by findings of the Constitutional Court of the Czech Republic.

According to § 3 sec. 2 of the Act No. 107/2006 Coll., a renter can unilaterally increase rent once a year beginning since 1 Jan 2007 and then as per each following 1 Jan, until the year 2010. Nevertheless it cannot differ from maximum frame of increase which the act states by a complicated calculation, with exception in the case of agreement with tenants.

The criteria which influence maximum rent increase are mainly flat location and market price of flats derived from statistics of real estates which Ministry for local development CR gains from the Ministry of Finance. In the year 2010 deregulated monthly rent amounted 1/12 out of 5% from the flat market price.

The act imposes to a renter besides the right to increase rent unilaterally also the duty to inform a tenant about increase in writing where he/she has to explain that the increase is on the basis of maximum increase of monthly rent.

The responsibility of a tenant to pay increased rent starts in the day which is stated in the notice, but at the earliest by the first day of the calendar month, which follows after three calendar months since the delivery of the notice to the tenant. This three month period of protection is indicated for tenants who can use it to impugn newly increased rent through legal action for determination of invalidity of increased rent, if they suspect that the maximum frame of increased rent is stated contrary to the act.

In conclusion it is necessary to say that in the Slovak Republic there is known around 923 of restituted flats in which live approximately 1,310 people and their total area is 65, 887m². Adopted legislative adjusted that until 31 Dec 2017 tenants in impacted houses with rental flats will release them under by the law stated conditions what allowed for their owners to rent these flats for market rent.

Changes in the payment of rent in the Czech Republic touched more than 700 000 flats out of which approximately 400 000 are in the ownership of municipalities and 300 000 in private ownership. So the process of deregulation of rent in the Czech Republic finished on 31 Dec 2012. The first phase of rent deregulation started on 1 Jan 2011, when on the majority of the Czech Republic so-called contractual rent started to be in force. The second phase which is valid from 1 Jan 2013 is related to county towns (except Ostrava and Usti and Labem) and towns of Middle Czech County with over 9,999 inhabitants. Since this date it is not possible to increase rent unilaterally, but it is necessary to reach agreement between a renter and a tenant. Long-term goal of the legal regulation of rent was to state rent on the basis of an agreement between a renter and a tenant and this period results from real situation on the market with flats.

Conclusions

The post was developed and based on in-depth analysis of the existing legislation relating to the residential sector in Slovakia and the Czech Republic as well as the interpretation of the housing sector development, using available statistical data for the last 20 years and we have come to the following conclusions:

- Lack of rental housing is mainly caused by poor implementation of the housing privatization - the original state apartments were sold to private ownership for the residual price. Apartments in restituted houses in the solution of the ownership of dwellings and business premises did not fall into individual ownership, which allowed selling state housing of municipal ownership to private ownership (ie the original tenants). Currently these tenants have problems.
- The operation of housing policy in the Slovak Republic is divided between the public sector, which represents the state, municipalities and the private sector. The role of the

public sector is to provide mainly social rented housing with strict limits of law. The other type of rental housing is not ensured by state and municipality. The situation is caused by insufficient opportunities in the Slovak legislation, resulting in a lack of private non-profit developers in this sphere.

- Then there is the incompatibility of the Law on State Housing Development Fund, which enables the provision of credit and non-profit organizations and on the other side of the law on subsidies for housing development and social housing, which allows to provide grants to municipalities and not-for-profit housing organizations.
- The private sector currently has almost no opportunity to get a favorable loan and subsidy resources of government, even if it has proven interest in the construction of rental housing for low and moderate income groups.

Based on these findings, we opened new questions, which will be the subject of our further investigation. We can conclude that the condition of the housing stock and its development reflects the economic situation of the country. For rental housing is necessary to provide appropriate legislative, institutional and also economic conditions. Major deficiencies will remain in financial resources since it is necessary to respect the limits of the budget approved by the government. An important priority for the development of not only social rental housing is to create suitable conditions for private investors, which would increase their interest and motivation to invest in this sphere.

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