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SELECTED PROBLEMS OF TENANCY HOUSING IN SLOVAK REPUBLIC

Abstract

The problems of housing and beneficial estates related to housing are still relevant, because everyone needs to live somewhere. The entitlement to use an apartment in an apartment building in the Slovak Republic in accordance with the current legislation may be caused by several reasons: tenancy, subtenancy and ownership of an apartment. This contribution is focused on the issue of rental housing because it is necessary to take into consideration that not everyone can afford to buy his own apartment. It deals with the current legislative concerning tenancy, conditions of occurrence and termination of a lease contract, describes the rights and obligations of subjects of a rental relationship, relations between landlord and tenant pointing out problems, which may occur when renting an apartment.

Introduction

Housing belongs to the essential human needs. People usually satisfy this need by acquiring of a residential area – an apartment, either in a family house or apartment building. From the point of view of the vast majority of the population is an apartment the largest investment and housing in addition to food is the largest consumer spending, claims Vagač. [1]

Based on available data concerning the current status of housing solutions with a focus on housing in residential buildings in the Slovak Republic, it can be concluded that living in apartment buildings may occur in two basic ways:

- use of apartments based on a legislative reason, which is a proprietary right - in practice, the term owner-occupied housing is also being used
- use of apartments based on a lease contract – in such cases the term rental housing is common

The real estate market for residential property in the Slovak republic has its own specifics. Currently, the issue of housing is being solved mostly on the basis of proprietary housing. Up to 90% of households in Slovakia own a real estate that they live in and that represents the highest ratio in the whole Eurozone. In Germany and Austria it is less than a half – according to a survey published by the European Central Bank (ECB).

However, in Slovakia there are also such groups of people, who cannot solve their housing need for serious reasons (for economic, health, social and other reasons) by acquiring an apartment into their ownership. These population groups are solving their housing issues through rental housing.

The aim of this contribution is to analyze the conditions of rental housing in apartment buildings, to highlight their positive and negative aspects as well as shortcomings in the legislation and its consequences which negatively affect and to a large extent limit disposal rights of both subjects of the lease contract which are the landlord of the apartment and tenant

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of the apartment. This restriction relates in particular to the owners of apartments in restituted apartment buildings in connection with regulated rents.

The structure of the real estate market

The real estate market offers a wide range of supply of housing that differs from others thanks to type of the real estate, its location, quality, price, type of the owner etc. The experts in the field of real estate are using different criteria according to which they divide the real estate market and thus the housing market. These criteria of division of the real estate market are not uniform and may vary.

The basic types of housing in the real estate market can be derived from the legal reason for use of the flat or house, ergo from the degree of implementation of the ownership rights and the rights for use of the real estate:

- owner-occupied housing/proprietary housing - involves family houses and flats in flat buildings, housing where the user of the housing is also the owner of the house or flat,
- rental housing – the rights for use of the apartment come into being based on the rental contract with the landlord who owns the flat building or the flat.

The rental housing can be divided into following basic sectors:

- public rental sector – owner of the housing stock is a municipality or state, primarily performs a social function, regulation of rent, which is below the market level. The municipalities as owners and managers of the public rental sector must combine two roles while performing their functions: the role of the owner of the housing stock and the role of the entity that defends a public interest and fulfils social roles,
- non-profit rental sector - the owner of the housing stock is a non-profit housing organization, performs primarily social function, mostly the cost rent. In order to make the non-profit rental housing available, the cost rent has to be reduced either via some form of support of the construction and financing (non-refundable grants, interest subsidies for credits, state credits etc.),
- private rental housing - the owner of the housing stock is a private entity that leases apartments for rent of a market value and is interested in maximum profit from renting. An exception in the Slovak Republic is private rental housing in restituted residential homes where the owner - restituent is obliged to rent the apartments to the present tenants, but the rent is regulated.

To better understand the structure of the real estate market it is necessary to recognize subjects that are performing various activities on the real estate market and are playing an important role at disposing and trading with real estate. To the main participants belong:

- subjects on the side of supply – they are entities that have ownership rights to the real estate. It is a natural person – individual owner, legal entities – entrepreneurs and the state that are represented by their authorities and organizations. The target of these subjects is to maximize the profit of using the real estate and minimizing costs associated with the use of the real estate,
- subjects on the side of demand. This group includes investors whose target is to estimate the availability of financial resources. Here are also included tenants who are interested in short-term or long-term rental real estate where they can satisfy their needs with minimum rent,
- financial institutions - this group includes banks and other financial institutions. They are important subjects in the real estate market. Their role is to work and participate in the financing of building real estate within the investment process, the purchase of real estate or real estate renovations,

- controlling institutions – It includes state and local governments that regulate the real estate market and the behaviour of some participants by issuing decisions and permits, as well as by issuing restrictive measures they affect the construction and using of the real estate,
- intermediaries - in this particular group we include real estate agencies, notaries, lawyers, experts in the field of the property evaluation as well as developers.

Rental housing

Rental housing in Slovakia is one of the key problems that need to be solved, especially from the point of view of its physical and price availability. By educated guesses is currently in the ownerships of municipalities and state approximately 2,7% of the apartments. In the countries of European Union the share of rental apartments ranges from 19 % to 62 %, at the same time public rental sector presents at average 18 % from housing unit fund. From these facts results, that the access to the rental housing in Slovakia is very limited, therefore it is needed from the side of the state to pay increased attention to its development, not only in the public rental sector, but also in private rental sector.

Rent of an apartment

Under the concept of the rent of an apartment it is necessary to understand a contractual relation, based on which the renter leaves the flat to the tenant in exchange for rent, either for a limited period of time or without designated period of use and renter is paying rent to the tenant. Legal basis of the use of an apartment is a lease contract, from which the tenant derives his free right enabling him economic possession of the utility value of an apartment as property of someone else, i.e. thing, which belongs to other (generally to the renter). The renter can be the owner of an apartment in the apartment building, owner of the apartment building, municipality. A tenant can be a personal entity - citizen or a corporate entity, which needs an apartment for example for his employee.

The lease contract must include:

- accurate determination of the parties, i.e. name, surname, date of birth and permanent address of the renter and tenant,
- the amount of rent and reimbursement for services associated with the use of flat or method of calculation as well as their maturity dates,
- the period for which the apartment is rented. If the rental period is agreed in the contract, it is presumed that the contract is concluded for an indefinite period.

The lease contract between the renter and tenant should also include a description of the flat and a description of the state of the apartment. The additional content of the agreement is available to the parties. Until the contract is appropriate to include additional elements, such as the right of the renter under certain conditions, to enter the apartment at the agreed deadlines in order to control the state of the apartment and the purpose of compliance with the lease. It is important to agree upon and to who pays any repairs or remodeling of an apartment.

Rights and obligations of the subjects of the rental housing

Between the renter and the tenant of the apartment arise based on the lease contracts various rights and obligations. These rights and obligations are reciprocal and mutually corresponding, which in practice means that one party (e.g. renter) doesn't have only rights and the other party (tenant) not only obligations. Each of the parties does not have only rights,

but should also fulfill the obligations, while to the authorization of one contracting party corresponds the obligation of the other contracting party (for example, the renter has the right to the settlement of the rent and the tenant is required to pay rent to the renter within the deadlines agreed in the contract).

The renter is obliged to hand over the apartment at the agreed condition for use, ie functional apartment and ensure to the tenant full and unhindered exercise of the rights associated with the use of the apartment. The tenant of the apartment, along with those who live with him in the household has the right to use not only the flat, but also the common areas and facilities of the house. However, those people at the exercise of their rights under the lease contract shall not restrict or interfere with the rights of other tenants in the apartment building. Without the approval of the renter the tenant is not allowed to sublet the apartment to other people and carry out construction work in the apartment without permission, not even at their own expense.

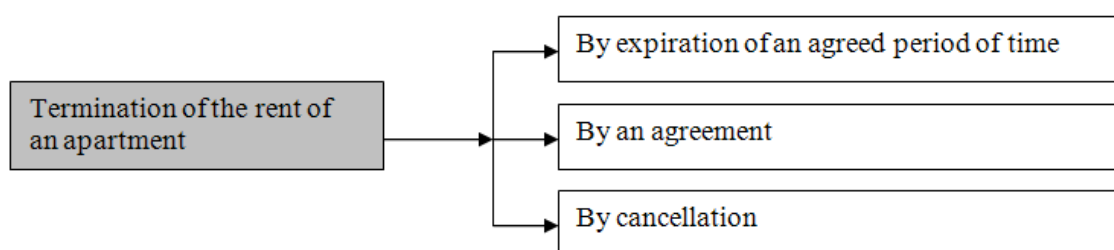
Since the inception of the lease contract until the end of the lease contract the tenant is obliged to pay to the renter the rent and reimbursement for services that are associated with the use of flat.

If the renter fails to fulfill its obligations under the lease contract to a tenant, the tenant may exercise the right to a reasonable discount on the rent when due to defect in an apartment or house, possibly due to poor service provision associated with the use of the apartment there is a temporary worsening of use of the dwelling. The tenant has a right only to a reasonable discount, but not for the remission of rent or payment for all services associated with the use of the apartment.

The right to a reasonable discount tenant must apply no later than six months after the removal of defects.

Termination of tenancy

The rights and obligations in rental housing may be negated by a number of legal factors that are represented in the picture 1.



Picture 1: The ways of termination of the rent of an apartment

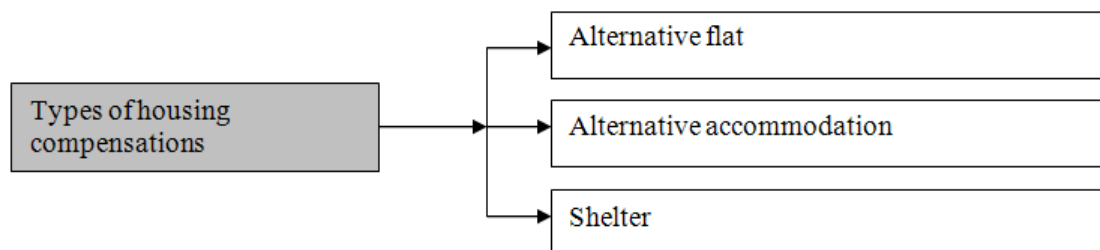
Resource: according to the author of the paper

The rent that has been agreed for a fixed period of time ends after the agreed time. Rent of an apartment may be terminated by a written agreement between the renter and the tenant, the incentive to conclude it can be given by any party. If there is no agreement about the termination of the lease contract between the parties, the lease contract may be terminated by written notice that can be given either by the tenant or the renter. Given that renting an apartment is protected, the renter is not allowed to terminate the lease contract for any possible reason or without a reason. The reasons for termination of the lease contract by the termination notice from the renter are defined in §711 of the Civil Code [2], as amended.

The termination notice of the renter must be made in writing and delivered to the tenant. In case of a written notice the rent of an apartment expires at the end of the notice

period which is three months. The tenant is not required to move out of the apartment and vacate the apartment before there is not ensured an adequate housing compensation for him according to the law.

The Slovak law provides three types of housing compensation as depicted in the picture 2.



Picture 2: Types of housing compensations by termination of the rent of an apartment
Resource: according to the author of the paper

An alternative flat is a flat that with its size and facility provides humanly decent housing for the tenant and members of his household.

Alternative accommodation is an apartment with one living room or living room in a hostel or other facilities intended for permanent living or sublease in a furnished or unfurnished part of the apartment with another tenant, while residential apartment or room can be used by several tenants.

Shelter is a temporary accommodation, particularly in a common dormitory or other devices for this purpose, and storage of household equipment and other things of home and personal needs.

The tenant, who has to vacate the apartment, is obliged to conclude a contract about a housing compensation within 30 days of receipt of the written notice of the assurance of a housing compensation, if the lease contract was not terminated without a reason, his entitlement to housing compensation ceases.

The rental relationship terminates also due to death, but in this case there is a transition of the rent to other person enumerated in the law.

Analysis of the problems with regulated rents

A serious and widespread problem of the owners of apartments in some apartment buildings in the Slovak Republic is a restriction on disposal rights due to the fact that the apartment owner is not entitled to dispose of its own property by making his own decisions, because in his apartment are living tenants.

The term "regulated rent" appeared on the territory of Slovakia after the social changes that occurred in 1989, when based on a so called "restitution act" the apartment buildings were returned to the original owners or their legal successors. The apartment buildings were returned to the authorized persons along with those people who had to every single apartment located in these apartment buildings rental rights.

The role of regulated rent was and currently still persists to protect tenants in houses located in apartment buildings from arbitrary rent increases that tenants would be unable to pay. But nobody thought not only about the economic impact, which causes the regulated rent to the owners of their property, because they can't dispose of their property freely, use it, maintain it, prevent its deterioration or destruction, or to have a reasonable return. Currently, the regulated rents were adjusted by the Ministry of Finance of the Slovak Republic by the

action number 01/R/2011 to regulate prices of the rent. This legislation means that the revenue of the income of the regulated rent is not sufficient for the owners of the apartment buildings not only to cover the costs necessary to ensure proper and safe operation of the home, but also they are not sufficient for the formation of repair fund which would be used for the renewal of housing stock as well as maintenance and modernization of a building. As a result of this are the historical buildings in city centers, which are in a desolate state.

On 15 September 2011 came into force an act no. 260/2011 about termination and the way of consolidation of certain mutual lease relations that includes terms and deadlines for rent in apartments with regulated rents [3], which was changed in October 2012. [4] This law gave those to whom they were houses with flats released in restitution, the possibility to terminate the lease contract without giving any reason, within 31 December 2012. The notice period for such termination is 12 months, beginning on the first day of the month following the month in which the testimony was delivered.

Termination of tenancy must be delivered by hand not only tenants, but a copy must be served on the village, in the administrative area where the apartment to be cleaned out.

The tenant could have formally asked for the assignment of a housing compensation until the 30 April 2013. The tenant will be given a housing compensation, which is a rental apartment:

- with one residential room for one person
- with two residential rooms for two to three persons
- with three residential rooms for four to five persons
- with four residential rooms for six and more persons

The housing compensations are enlisted in the chart 1.

NUMBER OF PERSONS	NUMBER OF RESIDENTIAL ROOMS	AREA OF THE APARTMENT (m ²)
1 person	1	45
2-3 persons	2	60
4-5 persons	3	75
6 and more	4	90

Chart 1: Definition of the size of rental housing compensations.

Resource: according to the author of the paper

An entitlement to housing compensation, however, has only the tenant who requests the housing compensation and meets the requirements of emergency housing material. Tenants, who are entitled to housing compensation, will not be required to move out from the apartment and vacate the apartment until the municipality does not provide them with a replacement flat. [5] Thus, even if the tenancy ends with the expiration of the notice period, there is always valid the fiction of existence of a lease contract, during which they controlled tenants paying rent. However, if the municipality does not provide housing compensation no later than the period provided by law (i.e. 31.12.2016), it is obliged upon the written request by the owner of the apartment to pay every month an amount equal to the difference between market monthly rent and regulated monthly rent until a housing compensation is provided.

During this transitional period, thus until providing housing compensation by the municipality, the owner of the apartment with regulated rents unilaterally agreed to increase the monthly rent annually. The increase of regulated rents can be implemented progressively:

- in 2011, about 20% of the rent calculated on 15.9.2011,
- in the period 2012-2015 by 20% annually of the amount of rent calculated in the previous year.

Such legislation is a certain shift in solving problems of the owners in restituted houses, provided, however, that the state creates not only legal, but also financial instruments and the conditions under which it will be possible to realize the construction of new housing compensation for tenants who are obliged to hand over apartments to the owners to ensure adequate housing compensation under that legislative act.

Conclusion

"Regulated rent" in restituted residential buildings is a serious and widespread problem in the Slovak Republic. Regulation of rent that in no way reacts to the development of the situation in the housing market is unsustainable. If the rent in this sector is by regulation kept for a long time under the estimated market level, the tenants can benefit from this situation by actually receiving involuntary hidden subsidy. On the other hand, the regulated rent is not sufficient for the restituted home owners to cover the costs of operation and maintenance of housing stock, with the result that it is not possible to finance reconstruction, restoration and revitalization of the housing stock.

Despite the fact that the Slovak Republic has adopted legislation that creates the way for deregulation of rents in restituted residential houses, neither the owners of flat buildings with regulated rents, nor the tenants for whom the municipality has to obtain replacement rental apartments, are satisfied. Although the regulated rents are ending, but there are missing replacement rental apartments for those tenants who will not be able to pay the market rent. The owners may in accordance with an applicable legislation increase the regulated rent only gradually to the 31.12.2016, while the present tenants will still be using their rented apartments. Until that date, the municipalities should ensure the construction of replacement rental apartments and relocation of present tenants to the replacement apartments. However the problem is that so far there haven't been earmarked sufficient amount of financial resources to the municipality from the state so the municipality can cover the required number of replacement apartments. The owners are not satisfied that their rights of disposal of housing will be before this date still limited, the rent remains regulated and the losses of the owners of due to regulated rents will never be compensated.

The tenants are also not satisfied with the fact that they are limited at choosing the replacement housing by mandatory restrictions on behalf of the authority "ex offio" without being able to affect the size, equipment and location of their replacement housing that will after such a long time become their new home.

Because the need for housing belongs to the basic subsistence needs (food, clothes, housing), no one can be exclude anyone from it. Therefore, the housing is classified among the fundamental social rights with a social character. This right can't be understood as a claimable right of the individual to society, but as a right based on a shared responsibility to the citizen. Based on the presented facts above it can be concluded that:

- housing can't be left only to market forces,
- the process of satisfying the housing needs requires an intervention from public resources so no one is excluded from the housing market,
- for the state intervention there must be ensured the necessary social justice,
- interventions should include housing issues as a complex, which means from the construction of apartments up to the availability of the housing for all segments of the population. [6]

This is the task of the state that should through its housing policy create legislative and economic conditions to improve the quality of housing in the country and also find and maintain an optimal balance between social justice and economic efficiency.

Acknowledgements

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