

Plenary session 1: TENURE TYPES IN POST-SOCIALIST COUNTRIES

Country Report: Estonia

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Objective: To present the main types and attributes of rental tenures – both private and public – in post-socialist countries: terms, termination of the contract, allocation methods, rent regulation, rent/housing allowances; including intermediary tenures (such as rent-to-buy schemes).

I. A very brief overview of tenure related legal environment:

Rental tenure is regulated in the Law of Obligations Act (LOA, 2002) which is the main and the only basic legal act in the field. There are no special laws on tenure in specific economic sectors. Housing tenure in Estonia can be divided as (1) home ownership (private ownership and common ownership of houses, condominiums eg. apartment ownership) and (2) rental tenures (with a public task and without a public task).² In most cases dwellings used for public purposes are in the ownership of local governments but also other ownership schemes are used (for example established usufruct on buildings by local government).

Private rental relations are regulated by the provisions of residential lease contracts in the Law of Obligations Act (Art. 271 ff of the LOA). Renting with public task includes social rental housing and other municipal housing. Social housing is regulated by the Social Welfare Act (1995) which delegates the right to establish the procedure of provision and conditions of use of apartments to the municipalities. Municipal tenure in purposes outside of the Social Welfare Act is based mainly on lease contracts provided for in the LOA.

II. A brief mapping of tenure types in Estonia:

Private rental sector in Estonia can be divided as following:

1. Home ownership
2. Rental bases tenures
 - (1) private rental tenure
 - (2) public rental tenure
 - 1) rental tenure with a public tasks (Social Welfare Act)
 - 2) rental tenure for other public purposes

There are still some building associations left as intermediate tenures but today all residential buildings are being transferred into the apartment ownership.

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² Final data about the proportion between these two forms will be available in October 2013.

2.1. Private rental tenure

2.1.1. Private rental tenure based on lease contract

1) Private rental contracts are regulated by the Law of Obligations Act (Art.-s 271-338 of the LOA). Lessee as a weaker party is protected under the general principle that all agreements derogating from the provisions of law regarding the rights, obligations and liability of the parties to a residential lease contract to the detriment of the lessee are void and under specific limitations on freedom of contract (limited right to terminate the contract etc)³. Landlords of the privately rented dwellings may be either legal entities or natural persons. Business entities can provide either commercial rental tenures, or rental tenures on other purposes. Rental tenures on other purposes can involve for instance employers' dwellings.

2) Contracts for more than one year, and not in writing, are automatically unspecified term contracts. The lease contract becomes an unspecified term contract if the lessee continues to use the dwelling after the expiry of the contract, unless either landlord or tenant expresses some other intention to the other party within two weeks.

3) Unilateral right to terminate the contract is limited to fundamental breach and good reasons if the termination is extraordinary. A lessee of a dwelling may contest the cancellation of the lease contract by the lessor in a lease committee or court if the cancellation is contrary to the principle of good faith (Art. 326 of the LOA). Lessor is protected by the rules of termination on good reasons.

4) Upon expiry of a specified term lease, or cancellation of a lease contract, the tenant may demand that the contract be extended for up to three years, if the termination of the contract would result in serious consequences for the tenant or his family. The tenant can in fact repeatedly demand extension, but may be required to show that he has done all that is reasonable in order to find new housing.

5) Parties' freedom of contract is limited also in regulating the payment of rent in the contract. In the case of a lease contract for an unspecified term, it is presumed that the lessor may raise the rent if the dwelling is immovable, after each six months as of entry into the contract (if furnished room or separately leased parking places, each month as of entry into the contract). The lessor shall notify the lessee of any increase in the rent and provide reasons to that.

6) Rent and housing allowances are provided on different grounds. For example the State Family Benefits Act⁴ provides a special life allowance to support start of independent life and living services. In private sector the subsidy for renovation of small houses are provided⁵, also housing loan guarantees by Kredex, there are local subsidies and tax free loans provided by banks, energy audit, building design and expert evaluation grant (Kredex) for apartment associations formed in apartment buildings, building associations or communities of apartment owners planning to begin the renovation of their building⁶. Also local governments often establish allowances and financial assistance to support housing policy⁷.

³ Problem of overprotection of lessees.

⁴ State Family Benefits Act, passed in 14.11.2001, entry into force 01.01.2002.

⁵ See for example: <http://www.kredex.ee/apartment-association/laen-ja-kaendus-2/renoveerimislaen/>.

⁶ The grant terms have been established with a regulation of the Minister of Economic Affairs and Communications. See: <http://www.kredex.ee/apartment-association/toetusd/energiaauditi-ehitusprojekti-ja-ekspertiisi-toetus/>

⁷ Tartu Housing Fund (established in 1997) provide financial assistance for housing purchases, loans (on very good conditions, like period 20 years, mortgage 90 % from the value of the property, 10 % of the loan may be deleted if 90 % is paid, etc.) and moving support. Financial assistance for housing purchase is in the amount of 2600 €. Amount of the moving support is 1300 €. Some local municipalities provide housing services (renovation, reparation etc.) for families with children or for children.

2.1.2. Use of dwellings on the other legal grounds

- 1) Dwelling may be used also on the bases of a maintenance contract (Art.-s 572-577 of the LOA). In a maintenance contract, one person (dependant) undertakes to deliver assets or specific objects into the ownership or possession of another person (maintenance provider), and the maintenance provider undertakes to maintain the dependant and provide him or her with care during the lifetime of the dependant or another period as agreed.
- 2) “Rent to buy” schemes can be used under the rules of lease contract (LOA § 361-366) but this is not common and widely used way to become an owner. Banks provide different kind of loans which can be used for obtaining apartments or houses.
- 3) Hotel services are not the objective of tenancy regulations if used for holiday or on temporary bases (not more than 3 month). Also lease of dwelling which is part of the dwellings used by the lessor and the greater part of which is furnished by the lessor is not tenancy.
- 4) Estonian law provides a real right of habitation as kind of personal servitude and legal ground for private use of dwellings under Art. 227 of the Property Law Act⁸. Personal right of use in residential building encumbers the immovable such that the person for whose benefit it is established has the right to use the residential building or a part thereof situated on the immovable for habitation. From a legal point of view (except tax regulation), there are no differences between the professional and private lease as the rights and obligations of landlords are similar for both kind of renting.

2.2. Public rental tenure

2.2.1. Classification

(1) Social housing (Social Welfare Act art. 14)

- housing for disabled persons
- housing for persons and families with social needs (low income etc.)

(2) Other public housing

- housing for persons from restituted homes (Art. 12 para. 5 of the Principles of Ownership Reform Act)
- other types (regulated by state or local governments)

2.2.2. Social housing and housing on other purposes

- 1) Term social housing did not become a clearly defined in post-1990 Estonia and can be confusing. The term ‘social housing’ is often used in its wider meaning eg. any kind of public housing is covered. In its narrower meaning the social housing does mean social housing only for purposes provided in the Social Welfare Act. I will use social housing in its narrower meaning.
- 2) The implementation of social housing policy is mainly delegated to the level of the local administration (LA): their strategies and actions depend on the political orientation and financial resources of each LA. The capital city of Tallinn is the only LA in Estonia that applied the two new social housing programs created in the post-1990 era (the Residential Construction Program 5,000 Dwellings for Tallinn in 2002 and the 2nd Residential Construction Program for Tallinn in 2008⁹). All other LA-s does not have any special housing programs to perform only different social purposes.

⁸ Property Law Act, passed in 09.06.1993, entry into force 01.12.1993.

⁹ A. Kährik, J. Kõre. Social housing in Estonia after transition: in between the residual of privatization and the new developments. In: J. Hegedüs, M. Lux, N. Teller (eds.), Routledge Taylor & Francis Ltd., 2013, p. 166.

2.2.3. Terms of use, allocation of social rental housing

- 1) Social tenancy contracts are subject to the provisions established by the municipalities on the basis of Art 8 of Dwelling Act (1992¹⁰) which mean that housing on social purposes may be based on renting or on use without remuneration.
- 2) The criteria of eligibility of social housing are set by local authorities and there are two principal ways in which dwelling allocation is handled. In most cases dwellings are allocated according to a priority list. The following households have in general priority: families whose dwellings have been destroyed in an accident, catastrophe, or by demolition; orphans; disabled people or people with special needs; and former tenants in restituted housing. In some cases, each applicant is assessed individually (current housing situation, socioeconomic status¹¹).
- 3) In some local authorities a distinction is made between specific social housing, which means housing that is allotted to social welfare clients, and other municipal housing, which is the residual (unprivatized) public housing with sitting tenants, or dwellings allotted to other households. Some LA-s have based their system on the differences in contractual terms or terms of providing dwellings. In Tallinn, public-private partnership (PPP) schemes have been developed in the field of social housing. Over 90 percent of local authorities subsidize rent to cover the costs of the housing. Recent rents in social housing are estimated to cover on average one-third of total costs. Despite subsidies, rent arrears form a wide-scale problem in social dwellings¹².
- 4) The standard (prescribed) duration of a lease is five years, after which the tenant normally has a right to prolong the lease for another five-year period. This generally applies to sitting tenants in the residual social housing left after privatization. The same law provides landlords with an opportunity to sign leases that terminate after one year, after which the tenant is obliged to leave. New leases for social housing clients most often fall into the latter category. In the case of justified need the lease is prolonged for another year. Short-term leases are preferred because social housing has recently come to be considered a temporary form of housing.
- 5) As referred above, municipal governments are responsible for establishing the procedure for the provision and use of social housing. In practice it means that every local government has its own regulation in the Art. 14 of the Social Welfare Act ruling that social tenancy should be provided for persons or families who are unable or incapable of securing housing for them or their families. At the same time, Art. 272 (4) 4) of LOA excludes application of special tenant protection oriented provisions concerning residential lease contracts to "lease contracts the object of which is a dwelling which the state, a local government or other legal person in public law leases, in order to perform its functions arising from law, to persons who urgently need a dwelling or persons acquiring education, if the lessee is informed of the intended use of the room upon entry into the contract."

2.2.4. Allowances

Social rental housing is financed by municipalities through transfers from the central government or through grants provided by the Estonian Credit and Export Guarantee Fund (KredEx), a public limited company which can finance up to 50% of a project cost. Furthermore, the state allocates housing allowances to unemployed people and to families with many children. People with very low income can get support for utilities payment (electricity, water, etc.).

¹⁰ Dwelling Act, passed in 23.04.1992, entry into force 01.07.1992.

¹¹ See note 9, p.166.

¹² *Ibid.*, pp. 167-168.