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TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

National Report for

ITALY

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1. HOUSING SITUATION

1.1 General Features

This chapter provides a brief introduction to the development of housing situation and housing policies in Italy, focusing on some social changes that affected this process. Further considerations concern the housing stock, tenure structure and general aspects of the housing situation.
Population in Italy is composed by almost 59.5 million people, grouped in 24.5 households. The housing stock is composed by 28.8 dwellings; the difference with the number of households is mainly represented by 'secondary homes' but there is also a percentage of vacant dwellings.
The percentage of households living in ownership is quite high (about 67,2%) as a consequence of both the wide sale of public dwellings carried out especially in past decades and the accessibility to bank loans to buy houses for many years since 1990s. After the onset of the economic crisis and the cut of new home loans there was a slight decrease in the percentage of ownership and an increase in the percentage of households living on rent. The latter, according to 2012 data, account for about 21,8% of the total, a number composed by 16,3% households living in private tenancies and 5,5% living in public dwellings.

1.2 Historical evolution of the national housing situation and housing policy

- *Please describe the historic evolution of the national housing situation and housing policies briefly.*
    - *In particular: Please describe briefly the evolution of the principal types of housing tenures from the 1990s on. Explain the growth and decline of the different tenures and the reasons why that happened (e.g. privatisation or other policies).*

The evolution of the Italian housing situation can be described by distinguishing three different time periods
Firstly, from the end of the Second World War to the beginning of the 1980s, the housing question was essentially rooted in the housing shortage, which resulted from war damage and the urban migrations to the towns within Italy. In this period, corresponding to the golden age of the Welfare State, the housing question was at the top of the political agenda, and this resulted in a huge increase in public housing (*i.e.* residential dwellings specifically built for households who cannot afford to buy or rent a house on the market). A fundamental step in this evolution was Law no. 43/1949 (so called *legge Fanfani*) which gave rise to the '*Ina–casa*' (Ina-housing) program. In this way a huge number of new dwellings was built through public institutions to be rented or sold to low and medium-income households. The subsequent Law no. 60/1963 founded '*Gescal*' (*Gestione case lavoratori*) which replaced the *Ina-casa* program and financed the building of new dwellings by withdrawing employees' contributions. Law no. 167/1962 and Law no. 865/1971 should also be mentioned: the former allowed municipalities to define areas

appointed for public housing according to local zoning legislation while the latter favored the housing cooperatives and regulated grantees' rights to dwellings. Finally, Law no. 457/1978 reinforced the role of the housing cooperatives and Law no. 513/1977 favored rental tenure by abolishing the right of redemption of housing grantees which had been constantly provided for in past statutes (see for example Law no. 2/1959). In this period, also, the so called *Legge sull'Equo Canone* (Fair Rent Act) came into force (see below).

Secondly, from the 1980s to the 2000s the state started to neglect the housing policy issue and stopped financing it. The last legislation to provide centralized public financing was Law no. 21/2001[1]. In the same period also rent levels in the private sector were completely liberalized by Law no. 431/1998 (see below). The housing question was, in actual fact, a long way from being solved. From the beginning of the 1990s population increases due to migration (see below) stepped up the demand for housing from low-income groups. In the last decade of this period (1997 – 2008) a speculative bubble in the housing market provided incentives for building new dwellings but led to price increases especially in highly populated municipalities.

Thirdly, from 2008 up to now the economic crisis has caused a collapse in the housing market[2] and impacted on the income of a large percentage of population. Consequently, housing demand from medium and low-income households unable to find affordable dwellings has increased. This is mainly due to the fact that the price of rents, though affected by the crisis, for the moment has not sufficiently diminished for a number of reasons that will be analyzed in greater depth below. As a consequence, further state intervention in public and social housing has become urgent. So it is not surprising that a new housing plan has been set in motion by the central government with Law no. 133/2008 (see *amplius* below).

As regards the role and evolution of the principal types of housing tenures, the Italian situation can be described as follows.

A. Traditionally the main feature of the Italian housing market has been a high percentage of home ownership. This is due to a number of concurrent reasons.

a) Political choices:

- From the end of the Second World War onwards, as the housing shortage obliged new dwellings to be built, legislation favored home ownership in a number of ways. Statutes on public housing largely conceded grantees (*assegnatari*) a right of redemption (*diritto di riscatto*) which allowed them to become owners of the flats assigned them at prices which were lower than their market value. As a result, redistributive goals were pursued in the wrong way, as economic incentives for families to become homeowners were given regardless of whether the recipients were low income or not[3]. Furthermore, sale of public housing stock caused reductions in the number of dwellings which could be granted to other households in need. Despite these objections, this policy was the result of a public choice which can be summarized with the Christian–Democratic slogan: 'Better a home owner than a proletarian'[4].
- A concurrent reason lay in the fiscal measures which provided incentives for buying flats (see below).
- As regards the credit market, bank loans have constantly been favorable to buyers. Despite this, in Italy, unlike in other European countries, until the

[1] Stefano Civitarese Matteucci, 'L'evoluzione della politica della casa in Italia', *Rivista trimestrale di diritto pubblico* (2010): 12.
[2] Emiliano Sgambato, 'Istat e Assofin-Crif-Prometeia: mutui ancora a picco', *Il Sole 24 Ore*, 12 December 2012.
[3] Massimo Baldini, *La casa degli italiani* (Bologna: Il Mulino, 2010), 154.
[4] *Ibid.*, 153.

beginning of the 1990s a comparatively low percentage of home buyers applied for a loan. This is another cultural feature of the Italian housing situation that will be analyzed in greater depth below. From the 1990s onwards the percentage of bank loans as a mean of financing home ownership started to increase in importance as a consequence of low interest rates in the credit market. In the 2001 – 2009 period loans went up by 70%. Since 2009, however, the percentage of loans has begun to decrease again as a consequence of the financial crisis[5].

- Finally, from the 1990s several statutes allowed urban properties belonging to the state and other public entities to be put on the market. In practice this resulted in selling-off public real-estate to families, professionals or corporations. This privatization process has to be clearly distinguished from the transfer of public dwellings to recipients exercising the right of redemption described above. In fact, it does not concern low-cost houses situated in working-class neighborhoods, as in the former situation. It rather concerns properties used as offices or employees' dwellings of several public entities which have been sold for financial reasons. This privatization process made an important contribution to increases in home ownership.

b) Cultural reasons: house buying has always been the main way of investing savings in Italy and property is traditionally handed down to heirs[6].

c) The speculative bubble in the housing market (1997 – 2008): the percentage of home ownership increased in the 1997-2008 decade as a consequence of the speculative bubble. In this period sale transactions constituted 37% of Italian housing stock as a whole[7]. At the same time, new dwellings were built. For example in 2007 337,000 new dwellings were built (in 1999 the corresponding figure was only 193,000)[8].

B. A concurrent trend in Italian housing policy is a progressive decrease in 'social' housing[9]. In this paragraph we assume a broad definition of social housing which comprises all the housing solutions provided to households whose needs cannot be satisfied by market conditions and calls for legal allotment rules[10]. As pointed out above, after the end of the Second World War housing supply was insufficient to meet the demand for it. Therefore, the state invested in reconstruction and determined to increase the housing stock. Public housing legislation was particularly plentiful in the 1950 – 1980 decades.

Conversely, since 1980s the state and other public entities have reduced investment in public housing[11]. As a consequence of this new trend, housing demand from low-income groups has constantly increased.

In addition, for a ten year period after about 1997 a speculative bubble in the housing market caused constant and huge rises in rents and selling prices. In particular, rises in selling prices amounted to 51% and rises in rents to 49%[12]. At

[5] Sgambato, 'Istat e Assofin-Crif-Prometeia'.
[6] Baldini, *La casa degli italiani*, 89 et seq.
[7] Lorenzo Bellicini, 'Il mercato dell'affitto in Italia', <http://www.nelmerito.com/index.php?option=com_content&task=view&id=1353&Itemid=145>, 15 April 2011.
[8] *Ibid.*
[9] Massimo Baldini – Teresio Poggio, 'Housing policy toward the rental sector in Italy: a distributive assessment', *CAPPaper*, no. 76 (2010), 1 et seq.
[10] Cecodhas, 'Housing Europe Review 2012. The Nuts and Bolts of European Social Housing Systems' (Brussels: Cecodhas Housing Europe, 2011), 22.
[11] Bellicini, 'Il mercato dell'affitto in Italia'.
[12] *Ibid.*

the same time, the income levels of Italian families did not grow correspondingly. As a result, affordable housing in the private sector has become even more difficult to find for low-income groups.

In the last five years, the financial crisis and the economic recession have impacted on inequality and poverty levels in Italian households and caused a reduction in the employment rate and an increase in the number of employees in *Cassa Integrazione Guadagni* (a job reduction scheme that is part of the backbone of Italian employment protection)[13]. As a consequence, the number of housing sale transactions has decreased (-30%) and, correspondingly, rents and sale prices have also gone down (-15%). However, up to now they have remained above pre-crisis levels and still remain too high for several thousands of families.

C. People who cannot afford to become home owners and have no access to public housing (e.g. immigrants in some cases do not have requirements to apply) need to rent housing on the free market. Therefore, although Italy's home ownership rate is rather high, the private rental sector still concerns over 16% Italian households[14]. Many of them experience problems of rent affordability. In 1998 legal limitations on the amount of rental prices were completely abolished and the rental market was liberalized (see below). As a consequence, the proportion of family income spent on rent increased: 24% on average, 47% for low-income families in 2005[15]. The economic crisis has worsened this situation.

To summarize, despite the high rate of home ownership, the current housing situation in Italy is quite critical. This is not due to the housing shortage, as it was in the post Second World War period. Rather it is due, on one hand, to the high percentage of low-income families who cannot afford to pay the price of accommodation and, on the other hand, to the replacement of public investment in housing with fiscal incentives to private investment over more recent decades.

In addition to this, the policy pursued in the public housing sector in the years 1950 – 1980 is open to criticism, as it was almost exclusively directed at increasing ownership rates as much as possible. The recent economic crisis has impacted significantly on housing affordability for medium and low-income groups and calls for further public intervention in the housing market.

- *In particular: What is the role of migration within the country, immigration or emigration from/towards other countries inside and outside the EU (including war migration as in ex-Yugoslavia)*

Migration within the country has been a massive phenomenon for many decades now and especially during the Italian 'economic boom' of the 1950s and 1960s it brought millions of people from the countryside to the factories in industrialized areas. This migration in particular attracted people from regions in the south to regions in the north of Italy. On one hand this phenomenon represented, for an important part of that generation, the chance to leave behind them conditions of severe hardship in the countryside and earn higher salaries. On the other hand, such massive and rapid migration created very extensive housing problems with thousands of workers concentrated in inadequate dwellings in the

[13] Massimo Baldini – Emanuele Ciani, 'Inequality and poverty during the recession in Italy', *CAPPaper*, no. 95 (2011), 1.
[14] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', *Supplementi al Bollettino Statistico. Indagini campionarie* 24, no. 5 (2014), 27 et seq.
[15] Bellicini, 'Il mercato dell'affitto in Italia'.

fast growing and disorganized suburbs of the industrialized cities. In addition, at least initially, there were significant difficulties in integration for people from the south into the northern cities. The refusal to rent houses to 'southerners' was one of the most evident expressions of a quite common mistrust linked to this internal migration[16].

It is worth considering that, over the same years, millions of Italians also migrated abroad in search of a job especially to South America, Australia and Belgium.

Since the second half of the 1970s internal migration has drastically reduced as an effect of both de-industrialization in the north and improvements in living conditions in the south[17]. Nevertheless, in recent years some conflicting signs have emerged. In particular, differences between economic trends in northern and southern regions has worsened over the years of the crisis. According to 2012 data, unemployment is 17.2% in the south and 8% in the center-north. Since 2007 GDP has gone down 10% in the south and 6% in the center-north. Southern industry's percentage of national GDP is constantly decreasing and in 2012 it was only 12%[18]. In consideration of these dramatic figures, as we have already underlined, internal migration towards the most developed areas of the country has restarted, a tendency which is expected to continue over next few years. This phenomenon is very different from worker migration during the economic boom. It is almost always young people with high levels of education who find very different and atypical forms of employment often of a temporary nature. This makes an overview of the situation and further developments in it rather difficult[19].

At the beginning of the 1970s Italian migration abroad started to decline and in about a decade Italy moved from a country of emigration to a country of immigration.

Immigrants into Italy mainly come from Second and Third World countries especially in Eastern Europe and North Africa. Migration from 'rich' countries has remained substantially constant over the years and for this reason it is an increasingly limited phenomenon in comparison to the former and the considerations which follow do not apply to it. The composition of the foreign population in Italy can be summarized as follows in accordance with citizenship: 28.7% from Africa, 26.2% from non EU European countries, 20.7% from the EU, 18.2% from Asia and 5.9% from the USA[20].

Imigration into Italy has always been from a wide variety of countries of origin with prevailing nationalities changing over the years[21], a characteristic which also affects housing accommodation, as will be explained below. Increases in immigration were particularly evident in the years after 2000. In 2013 there were an estimated 4.9 million immigrants in Italy[22] while in 2002 there were 1.5 million, a great and sudden increase which has no equal in Europe[23]. In 2009 immigrants resident in Italy were on average 7.1% of the whole Italian population[24] although percentages vary considerably from one area to another.

Nevertheless, since 2010 annual increases have been significantly diminishing. Only 67,000 new permissions for working reasons were granted in 2012[25], a change imputed to the general economic crisis and to a certain saturation in the job market traditionally

[16] Enrico Pugliese, *L'Italia tra migrazioni internazionali e migrazioni interne* (Bologna: Il Mulino, 2010), 55.
[17] *Ibid.*, 69 et seq.
[18] Diste Consulting-Fondazione Curella, Report Sud 2013 <http://www.fondazionecurella.org/news-eventi/22-sintesi-report-sud.html>, 16 January 2013.
[19] Pugliese, *L'Italia tra migrazioni internazionali e migrazioni interne*, 151 et seq.
[20] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 10.
[21] *Ibid.*, 79 et seq.
[22] Fondazione ISMU, XIX Rapporto sulle Migrazioni, <http://www.ismu.org/5831-2/>, 10 December 2013.
[23] Baldini, *La casa degli italiani*, 82 et seq.; Irene Ponzo, 'L'acquisto di abitazioni da parte degli immigrati', in *Immigrazione: segnali di integrazione*, ed. G. Zincone (Bologna: Il Mulino, 2009), 157 et seq.
[24] Nomisma, 'La condizione abitativa in Italia. 2° Rapporto Nomisma 2010', (Rome: Agra, 2010), 25.
[25] Fondazione ISMU, XIX Rapporto sulle Migrazioni.

occupied by immigrants[26]. These people are traditionally employed in factories, construction activities and agriculture although in this case too with significant differences between north and south. In the latter, factories play a very limited role for immigrants.
According to 2013 data, unemployment rates among immigrants have been increasing and have been badly affected by the crisis and at the moment are rather high: 18%[27]. A particularly positive trend is represented only by the demand for foreign women for domestic and personal aid, significantly for old people, as a consequence of a lack of social assistance policies aimed at dealing with such situations.
For these reasons the new trend of slight increase in immigration into Italy is expected to continue over the coming years. Immigrants in the country are expected to be 7 million in 2020 and almost 10 million by 2035[28]. Nevertheless migration will continue to represent the main source of the population increase in Italy. From 2008 to 2009, for example, the population increased 0.5% almost exclusively as a consequence of immigration from abroad[29].
This increase is not uniform but it has been especially strong in the north and center of Italy as an effect of both migration from outside and within the country. Demographic increases in the north-western area amount to 26% of the total increase, in the north-east to 19.2% and in the center to 19.7%[30].
This situation will necessarily affect housing needs and corresponding regional policies and it is due to the fact that immigrants tend to be highly concentrated in certain areas of the country in particular in the most developed regions in the north. For example, each of the provinces of Rome and Milan are home to about 10% of the overall number of immigrants in Italy. More than 62% of the total number of immigrants live in the north, in the center 25% and in the south 12.8%. Immigrants tend to settle in the main cities of the country but there also several smaller towns where specific economic activities attract a high number of foreign workers (for example, the textile district of Prato for the Chinese community or the ceramics district in Sassuolo).
A further characteristic of migration is the progressive stabilization at least of the oldest communities present in the country which implies family reunion, children of foreign families in Italian schools, mixed marriages and so on[31].
The approximate figure of 5 million immigrants indicated above also includes estimated illegal immigrants, about 300,000 according to ISMU in 2013[32], about 500,000, according to the European Migration Network in 2012[33] mainly concentrated in the south[34]. Despite these rather different estimates on this topic, numbers of illegal immigrants have definitely been reducing over recent years thanks to regularizations and reductions in new illegal entry. Illegal immigrants surely represent the most problematic segment of this community because their situation implies irregular employment, often in situations of mistreatment, and additional problems in finding suitable accommodation as will be described in greater depth below.
A last trend which is worth mentioning is represented by Italians who are emigrating abroad once again. This new form of migration is mainly young people who cannot find a

[26] Michela Finizio, L'identikit degli immigrati in Italia, Il Sole 24 Ore, <http://24o.it/Zum5g>, 9 December 2013.
[27] *Ibid.*
[28] *Ibid.*
[29] Nomisma, 'La condizione abitativa in Italia', 17.
[30] *Ibid.*,18.
[31] Pugliese, *L'Italia tra migrazioni internazionali e migrazioni interne*, 136 et seq.
[32] Fondazione ISMU, XIX Rapporto sulle Migrazioni.
[33] European Migration Network, Canali migratori. Visti e flussi irregolari. Quarto Rapporto. Scheda sintetica, <http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/22/0171_Scheda_EMN_IV_Rapporto_DEF.pdf>, 4 March 2012.
[34] Pugliese, *L'Italia tra migrazioni internazionali e migrazioni interne*, 112 et seq.

job in Italy or are taking advantage of greater European integration[35]. The figures on this phenomenon are evidently increasing in these years of crisis (officially 40,000 in 2010, 50,000 in 2011 and 68,000 in 2012) and favorite destinations are the most highly developed European countries[36].
Migration both within and towards the country has certainly been playing a key role in the tenancy market trend. Obviously the mobility of young Italians and the arrival of foreigners looking for jobs have very different implications but for both of them tenancy contracts would appear a natural solution and this is also one of the main reasons why demand for rents is nowadays mainly concentrated in the low-income segments of the Italian population.

1.3 Current situation

- *Give an overview of the current situation.*
  - *In particular: What is the number of dwellings? How many of them are rented vs. owner-occupied? What would be the normal tenure structure (see summary table 1)? What is the most recent year of information on this?*

According to the national census of 2011, there are 28,863,604 dwellings in Italy, occupied by 24,512,012 households, with a whole population of 59,433,744 people. Unfortunately, available data do not provide indications about the kind of tenure for these dwellings. In the absence of other recent data about this topic, the share of households per type of tenure will be provided. These data were gathered by the Bank of Italy in 2012 through a survey carried out among 8,000 households, composed by 24,000 people[37].
The most widespread tenure structure in the country is ownership, which concerns about 67,2% households. A percentage which is 1,2% below the result found in 2010 by the same survey[38]. This seems to be mainly due to the new trend of the housing market, whose number of transactions, after the beginning of the economic crisis, has drastically decreased, together with the reduction of new home loans.
This is still a quite high percentage in comparison with other big European countries, such as Germany, France and United Kingdom. Nevertheless, it is slightly below the EU-27 average, which is 73,5%[39].
The rental sector represents the second most widespread form of tenure with a percentage of about 21,8%. In this field, after many years of progressive reduction, there has been a slight increase since 2010, when it represented 21,1%. This sector is divided in private tenancies (16,3%) and public tenancies (5,5%). As a whole, about 5 millions households live on rent.
The remaining percentage of households who neither own nor rent are estimated at about 10% and are made up as follows:
- about 7.4% live in a dwelling with a commodatum (free loan);
- about 3.3% have an usufructor tenancy or a right of housing.

[35] *Ibid.*, 76 et seq.
[36] Fondazione ISMU, XIX Rapporto sulle Migrazioni.
[37] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 27.
[38] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2010', *Supplementi al Bollettino Statistico. Indagini campionarie* 22, no. 6 (2012), 29.
[39] Anna Ribkowska & Micha Schneider, 'Housing conditions in Europe in 2009', *Eurostat. Statistics in focus*, no. 4 (2011): 9.

These tenures in many cases represent an instrument to provide younger generations with houses owned by relatives or older members of the family; in similar cases they are very similar to homeownership. In other cases these tenures, which are normally free, hide normal tenancy contracts in order to avoid the payment of taxes on the corresponding income. Finally, it has been noticed a recent increase in the number of usufructor tenancies, which is considered the consequence of many households' economic difficulties: an increasing number especially of old people sells the ownership of the house and keeps a life usufructor tenancy.
Finally, about 0,3% households have tenancies with the faculty to redeem the dwelling after a certain period of time and about 0,17% households live in dwellings provided by housing cooperatives.

1.4 Types of housing tenures

- *Describe the various types of housing tenures.*
    - *Home ownership*
        - *How is the financing for the building of homes typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)*
        - *Restituted and privatised ownership in Eastern Europe*

Home ownership is the most widespread form of housing tenure and regards almost 70% of Italian households (see above). Most of the market consists of already existing houses and only a more limited percentage of new buildings. In particular, from 2001 to 2011 in Italy, about 1,674,000 new dwellings were built most of them assigned for ownership. These buildings tend to be put up by building firms in part with bank loans and in part with sums given in advance by the buyers. The frequency of similar operations and problems relating to the bankruptcy of building firms, which involved about 200,000 families from 1995 to 2005, led Parliament to issue a specific regulation for the purchase of houses still to be built[40]. This law establishes further protection for buyers such as guarantees for sums paid as deposits and insurance on the building.
In order to afford the purchase of a house, the importance of bank credit progressively increased since 1990s until 2006. After the crisis, on the one hand there was a significant reduction in house transactions and in the overall amount of loans given for this purpose. On the other hand, there were reductions also in percentages of houses bought with mortgages and in percentages of the house value covered with each loan (see below). These numbers reveal that many potential buyers gave up the idea of purchasing because they could not find access to credit.
As a whole, in 2011, existing loans related to 13.4% of Italian dwellings which means about 2.3 million of them[41]. We can also observe that the mortgage debt level of Italian families is rather low in comparison with other European countries. In 2009 the residential debt to GDP ratio was 21.7% while the EU-27 average was over 50%[42]. This reveals another characteristic feature of the Italian situation: the important role played by family savings - which means also money borrowed from or donated by parents or grandparents - in house purchase. In any event, the crisis has surely badly affected the wealth of Italian

[40]Leg. Decree 20th June 2005, no. 155.
[41] Osservatorio sull'Abitare Sociale in Italia (OASIt), 'Rapporto sull'Abitare Sociale in Italia', <http://www.oasit.it/documenti/Rapporto-Abitare-Sociale.pdf>, 4th November 2011, 106.
[42]Cecodhas, 'Housing Europe Review 2012', 11 and 59.

families and so, according to a survey carried out in 2012, practically all the families interested in buying a house declared that they would need, at least in part, a bank loan[43].
Building or purchasing houses integrally with equities provided by the owner or the buyer represents an increasingly small percentage of the whole market.
A significant role in increasing the level of home-ownership has been played, especially in the past decades, by the wide sale of dwellings owned by public entities. As already described above, at the beginning these measures mainly regarded 'public dwellings' and were the consequence of a political choice aimed to give grantees the faculty of buying the dwellings where they lived at a favorable price. More recently, approximately since 1990s, the sale has interested also different properties owned by public entities and it has been mainly due to State budget reasons. These measures have in common the fact that properties are sold at low rates, in comparison to market prices, with questionable redistributive effects of the already limited resources for housing policies.
The progressive sale of public dwellings, generally to the occupants, is a measure which has been always continuing, even though in these last years it has been usually decided at local level, involving more limited stocks of dwellings. The last Housing Plan, adopted in March 2014, contains a significant innovation, which could represent the beginning of a new clearance of 'public dwellings': a general right for grantees to redeem the public dwelling where they live after seven years of tenancy.

- *Intermediate tenures:*
  - *Are there intermediate forms of tenure classified between ownership and renting? e.g.*
    - *Condominiums (if existing: different regulatory types of condominiums)*
    - *Company law schemes: tenants buying shares of housing companies*
    - *Cooperatives*

The most significant intermediate tenures in Italy are the following and regulations on them will be analyzed in greater depth below:
a) commodatum or loan for use (Arts. 1803-1812 Civ. Cod.): a cost-free contract which gives a person the right to use a dwelling in accordance with a certain purpose and for a certain period of time. Once terminated it obliges the tenant to give the dwelling back to the owner. Commodatum is frequently used among relatives. Outside the family it is often simulated and therefore used as a mean of evading taxes on rental income.
b) usufructor tenancy (Arts. 978-1020 Civ. Cod.): this contract gives rise to a real tenancy right (*ius in re*) and assigns tenants very extensive powers, leaving to the original owner only what can be literally translated as 'naked ownership' (in Italian *nuda proprietà*). Tenants may personally use the dwelling as well as exploit it in other forms (for example, renting it to third parties) provided that they do not change its destination of use and that they carefully preserve it. Tenants may also pass on their rights to another person. Usufructs are necessarily limited in time. They cannot exceed the life of the tenant or thirty years if the tenant is a juridical entity.
c) right of housing (Arts. 1022-1026 Civ. Cod.): this is a real right (*ius in re*) too, giving a person the right to live in a dwelling with his or her family. In contrast to usufruct, those entitled cannot indirectly exploit the dwelling or assign their rights to others.

[43] Nomisma, 'Il rapporto sul mercato immobiliare 2012. Comunicato stampa', <http://www.nomisma.it/fileadmin/User/OMI/CS_10_luglio_2012.pdf>, 13 July 2012, 3.

d) rents with the faculty of redemption: these kinds of contracts allow occupants to become owners of the dwelling after a certain period of time on payment of a certain amount. This juridical instrument has long been used by the state as a means of selling public dwellings and increasing home-ownership. More recently, since the beginning of the economic crisis, this instrument, often called 'rent to buy', has been spreading in the private market as a way of overcoming difficulties in getting bank loans.
e) co-operatives: these aim to provide their associates with houses to buy or rent at cost prices, building them without profit through the personal contribution of the associates and through tax privileges which have traditionally been granted by the state for such initiatives.
On the contrary, condominiums, in which about 55% Italian households live, cannot be properly considered as an alternative form of tenure, in accordance with the Civil Code rules. The owner of a single flat has the same right to ownership as any other home owner, apart from the fact that the former is limited to the floor of the dwelling and not extended to the whole land below. This ownership, however, is combined with the co-ownership of the parts of the building used in common (e.g.: entrance, stairs, roof). Special provisions for this co-ownership are indicated in the Civil Code (Arts 1117-1139 Civ. Cod.), as an exception to the general rules on co-ownership (Arts 1100 et seq. Civ. Cod.). The co-ownership, through the condominium, of some of the flats is rather unusual in Italy: this may happen, for example, for the caretaker's flat, as this is considered functional to a common service for the condominium.

- *Rental tenures*
  - *Are rental tenures with and without a public task distinguished? If so, how are they called and what is their share in the housing stock?*
  - *How is the financing for the building of rental housing typically arranged?*

The main difference is between private house rentals ('private tenancies') and public housing rentals ('public tenancies').
The former follows the general rules provided by the Civil Code and other special national statutes and represents the vast majority of tenancy contracts made in Italy: almost 75% according to 2012 data[44].
In Italy real estate companies have a quite limited role in the rental market therefore the financing of new private buildings expressly for rents is in most cases demanded from building firms, which often use bank loans.
Public tenancies (in Italian called *assegnazione di alloggi pubblici*) concern residential dwellings, generally owned by municipalities and managed by specific public agencies (usually called 'ex-IACP'). Their financing is entirely arranged through public means. Nowadays their regulation is above all issued by the Regions, in accordance with general principles expressed by national rules, and further specified at local level. These rules indicate both administrative law aspects, such as the procedures to follow in order to select grantees and to assign the available dwellings, and civil law aspects, such as the requirements for the contracts, the amount of rent, the rules for termination and so on.
According to 2012 data, public tenancies concern about 5,5% households, which means about one fourth of the households living on rent. More exactly, 4,8% live in dwellings

[44] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 27 et seq.

owned by local entities and managed by 'ex-IACP', while 0,7% live in dwellings provided by other public entities, such as social security entities[45].
For some years new forms of partnership among public authorities, private investors and builders have been introduced with the purpose of providing buildings to offer at discounted rates especially on rent but also for sale. These measures in Italy are generally indicated as 'social housing' in order to distinguish them from the more traditional 'public housing' described above. As will be analyzed in greater depth below, these different forms of mixed financing also affect rules of access to the dwellings. In general, it could be said that similar houses are all offered on rent with a public task, even though rates are not as cheap as in public housing. Unfortunately the recent introduction of these measures and the wide variety in them makes it difficult to find reliable data on their frequency at national level.

- *What is the market share (% of stock) of each type of tenure and what can be said in general on the quality of housing provided?*
  Please consider the following criteria: type of building (single family versus multifamily versus high-rise; plus definition); construction period; number of rooms, number of square meters or average number of rooms or average useful floor area per dwelling and per person; availability of bath/shower, hot running water and/or central heating, etc.)

  - *For EU-countries, Housing Statistics in the European Union would be a possible source, although more updated data would be preferred, if available*

We have already seen above the various forms of tenures and their percentages in the housing market. Differences among them are, first of all, quite evident in terms of housing type: 78.1% of renting households live in flats, while only 50.5% homeowners and 44% of people in usufruct or commodatum live in this kind of housing.
A significant aspect affecting the quality of a dwelling is its size in relation to the number of occupants. The average floor area of houses on rent is 74 sqm, while for houses inhabited by owners it is 110 sqm[46], the average number of rooms per person is 1.4 for owners and 1.2 for renters[47].
According to Eurostat data in 2012[48], the percentage of Italian population living in overcrowded houses is 26,2% - higher than the EU-27 average, which is 16,9% - but with significant differences between tenants with rent at market prices (41,6%) and owners without outstanding mortgage or loan (20,2%). This problem affects low-income groups living in bigger cities more seriously. It has also been noted that overcrowding tends to be undervalued by occupants[49]. In this sense, a survey carried out in 2007 on a group of five thousand households living in rented property is worthy of mention: the vast majority of

[45] *Ibid.*, 27.
[46] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2010', 31.
[47] Eurostat, 'Average number of rooms per person by type of household and income group from 2003', <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_lvho04&lang=en>, 19th February 2013.
[48] For Eurostat statistics regarding 'overcrowding rate', see <http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database>.
[49] Nomisma, 'La condizione abitativa in Italia', 33 et seq.

tenants (66.8%) declared themselves satisfied with the size of the dwelling and only 8% declared themselves totally unsatisfied[50].
As far as other aspects concerning the quality of dwellings are concerned, according to Eurostat data on 'housing deprivation' in 2012[51], the main problems with Italian houses are leaking roofs and dampness: indicators for which the percentage of total population affected (21,4%) is rather higher than the EU-27 average (15,1%); also for darkness of the dwelling, criminality, pollution and other environmental problems in the neighbourhoods the Italian average is slightly worse than the EU-27 average; on the contrary, equipment of bathrooms and noise both from neighbours and from the street are better than the corresponding European averages. With regard to the state of repair of the dwelling, we can again refer to the survey cited: tenant satisfaction percentages are rather low: 51% are not satisfied, and with specific regard to housing accessibility (the so called 'architectural barriers') only 30,4% are satisfied[52].
As a consequence, the 'severe housing deprivation rate' calculated by Eurostat regards a higher percentage of Italian people (8,4%) than the EU-27 average (5,1%)[53], but with significant differences per tenure type: from 5,3% for owner without outstanding mortgage or housing loan to 16% for tenants at market prices.
Low building quality and a lack of adequate maintenance affects a wide range of Italian houses. These numbers do not consider separately owners and households with other tenures but in general terms, despite a lack of specific numerical data, it can be said that the problems cited are definitely much more common in rental dwellings than in houses occupied by owners. In the 2007 survey we can see that, as an overall judgment, almost half of tenants in private houses are unsatisfied or fairly unsatisfied with their accommodation[54].
As far as the construction period is concerned, 54.9% of those in rental property live in houses built between 1950 and 1989 while 60.2% of owners (and 61.6% of people in usufruct and commodatum) live in houses built in the same period. The percentage of owners living in newer houses is higher than the corresponding percentage of tenants while the percentage of owners living in older houses is lower than the corresponding percentage of tenants[55].

- *Which actors own these dwellings (private persons, profit or non-profit organisations, etc.)?*

According to 2008 data, in Italy about 70% of rented houses are owned by private owners, 22% by public entities and 7/8% by corporations[56]. These figures reveal that the rental market in Italy is fragmented into numbers of small or medium sized private owners, even if it has been estimated that one fourth of the whole housing value belongs to about 5% of

[50] Censis – Sunia – CGIL, 'Vivere in affitto. Più case in affitto, più mobilità sociale e territoriale', <http://www.censis.it/censis/attachment/protected_download/362?view_id=35>, 4 April 2007, 20 et seq.
[51] For Eurostat statistics regarding 'housing deprivation', see <http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database>.
[52] Censis – Sunia – CGIL, 'Vivere in affitto. Più case in affitto, più mobilità sociale e territoriale', <http://www.censis.it/censis/attachment/protected_download/362?view_id=35>, 4 April 2007, 21 et seq.
[53] Cecodhas, 'Housing Europe Review 2012', 19: 'the severe housing deprivation rate corresponds to the share of the population living in a dwelling which is considered to be overcrowded, while also exhibiting at least one of the following housing deprivation measures: leaking roof, neither a bath nor a shower nor an indoor flushing toilet, or a dwelling considered too dark'.
[54] Censis – Sunia – CGIL, 'Vivere in affitto', 23.
[55] Nomisma, 'La condizione abitativa in Italia', 33.
[56] *Ibid.*, 37.

owners, while about 50% of the latter own just 18,7% of the whole value[57]. The majority of landlords (53%) own one dwelling, while 35% have two or more[58]. As for the age of these owners, the majority is between 35 and 50 of age (41%), the over 50s make up 37% and under 35s are 20%[59].

Corporations in Italy have a limited interest in the rental market, especially of residential dwellings. This is mainly due to the return on similar investments, which is not particularly high and badly affected by fiscal policies[60] and probably also by lengthy eviction procedures.

The consequences of this situation include the highlighted fact that the housing market in Italy is quite rigid. This means that even in periods of crisis like the present one, housing costs do not fall rapidly as stakeholders are not large scale and thus forced to allocate their properties following the trend of the market but families who in most cases simply decide to wait for better times[61]. Certainly such a course mainly affects purchase values but it also plays a role with regard to rents.

1.5 Other general aspects

- *Are there lobby groups or umbrella groups active in any of the tenure types? If so, how are they called, how many members, etc.?*

In Italy there is a quite wide number of associations operating in the housing field for home-owners, owners of public dwellings, tenants and grantees. The most representative associations include:

- Confedilizia, the main association of real-estate owners, whose members are not only private owners but also condominiums and the big corporations operating in this field such as banks and insurance companies.
- Uppi, an association which represents small real-estate owners.
- Federcasa, an association whose members are 114 public entities which manage public houses for social purposes all over Italy.
- Sunia, the most important Italian organization representing private and public tenants.
- Sicet, Uniat, Unione Inquilini are other associations which represent tenants.

- *What is the number (and percentage) of vacant dwellings?*

Only approximate estimates have been made of the number of vacant dwellings in Italy. This is due to the fact that it is not easy to distinguish between truly vacant dwellings, houses used by owners only in certain periods of the year (e.g. holiday homes), dilapidated houses that cannot be rented or even houses that are just temporarily without tenants. In addition, we have to consider that almost 1 million houses are estimated to fall

[57] Ferruccio Pinotti & Carlotta Zavattiero, 'Gli italiani e la casa. Un amore sepolto sotto tasse e mutui', *Sette*, 23 November 2012.
[58] Solo Affitti, 'Canoni di locazione in calo in Italia', <http://www.newspages.it/newspages/27112012/Report-Canoni-locazione-italia-2012-SoloAffitti.pdf>, 14 November 2012.
[59] *Ibid.*
[60] Nomisma, 'La condizione abitativa in Italia', 14 and 37.
[61] Nomisma, 'Il rapporto sul mercato immobiliare 2012', 2.

within the 'black rental market' which means that in most cases they appear vacant but are actually rented out illegally.
In Italy there are about 4,9 million houses that are not used as 'primary homes' by owners, tenants or other subjects (about 17% of the total). From this number we should detract 'black market houses' and 'holiday homes'; the former, according to some researches, are almost 1 million[62], while the latter about 3,5 million[63]. The result would be in the range of 400,000 vacant dwellings, but, as these numbers are based on rough estimates, it is likely that number of vacancies is even higher.
This would still be nevertheless a number of dwellings, that, if available on the market, would probably solve the problems of part of the estimated 3,3 million people in a situation of housing difficulty in Italy.
In the field of public dwellings the number of vacancies is also rather high but it varies significantly from one place to another. Take the case of Milan, for example, where of about 90,000 houses owned by the agency for public dwellings (Aler) and the municipality, about 7000 are vacant[64]. The reasons for these vacancies are that dwellings do not fulfill the necessary requirements to be rented out or are under restoration or waiting to be assigned, sold or demolished. The consequence of such a high number of empty dwellings – while 22,000 families are on the list to receive public housing in Milan[65] – is that the number of illegal occupations is growing fast: 3,575 dwellings according to the most recent data[66].
Similar situations, which do not concern only the big Italian cities, where housing problems are simply more evident, require a particular effort by the public authorities in order to increase the number of dwellings available because often there is not sufficient money to restore them. For example, the municipality of Milan has been attempting to involve grantees in restoration work in return for rent reductions[67].

- *Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?*

The black market is a problem which seriously affects the Italian rental market, as, according to recent statistics data, it regards about 950,000 contracts, which means about 20% of the whole sector[68]. This number does not consider the situation of students, who formally reside with their parents but actually attend college in other towns, in most cases living in rented accommodation: these people are estimated between 1 – 1,5 million. And the situation of students, together with the situation of immigrants, is considered one of the most critical as far as the black market is concerned.

[62] CGIA Mestre, 'Quasi un milione di affitti in nero', <http://www.cgiamestre.com/wp-content/uploads/2013/02/affitti-in-nero.pdf>, 1 February 2013.
[63] Casa 24 Plus, 'Il mercato della seconda casa in Italia elaborato da Reag', <http://www.casa24.ilsole24ore.com/art/mercato-immobiliare/2011-02-01/mercato-seconda-casa-italia141325.php>, 1 February 2011, which refers to a research carried out by FIMAA, the association of Italian real-estate agents.
[64] Luca De Vito, 'A Milano è emergenza casa: 11mila sfratti, ma 20mila alloggi privati rimangono sfitti', *Repubblica.it*, 23 February 2014.
[65] *Ibid.*
[66] Franco Vanni, 'Milano il racket delle case occupate: 3.500 alloggi agli abusivi, più 20% in un anno', *Repubblica.it*, 7 March 2014.
[67] Luca De Vito, 'A Milano è emergenza casa'.
[68] CGIA Mestre, 'Quasi un milione di affitti in nero'; 'Affitti, quasi un milione sono in nero', *Corriere della Sera*, 2 February 2013, sec. Economia.

In response to this problem, over recent years a range of legal and fiscal measures have been adopted in order to encourage both owners and tenants to legalize contracts (see below). In any event to date results have been more limited than expected.
Another significant phenomenon in the 'black market' context is illegal detention or occupation of public dwellings. It is estimated that, on average, 4.6% of these dwellings are abusively occupied[69]. This situation is particularly serious in certain cities of the country and in many cases insufficient action is being taken. For example, in cities like Palermo and Catania the percentage of illegal occupation rises respectively to 27.3% and 2.9%[70].Illegality may be due to a range of reasons:

- non-payment of social rents by the grantee;
- detention of the dwelling by the person originally entitled to it also when the necessary requirements are no longer fulfilled;
- sub tenancy to third parties by the grantee;
- occupation by people who are not entitled to it.

It is evident that such situations, on the one hand, cause financial damage to the agencies entitled to manage public housing (estimated at about 50 million Euro per year[71]) and, on the other hand, prevent families in need from benefitting from this service[72]. Occupation often concerns vacant public dwellings but it is a problem all the same because it is likely that the housing does not fulfill habitability requirements or occupation prevents other possible uses such as restoration, assignation or sale.

Summary table 1 – Tenure structure in Italy, 2012

Home ownership	Renting			Interme-diate tenure	Other (tenancy with faculty of redemption)	Total
		Renting with a public task, if distinguished	Renting without a public task, if distinguished			
67,2%	21,8%	5,5%	16,3%	10,7%	0,3%	100%

Note: The assumption is that the overall tenure structure is based on the stock of non-vacant principal dwellings. If this is not the case in your country, please specify what type of accommodation the numbers include (think of holiday dwellings, second homes, collective homes, hotels, caravans, ships, vacant dwellings, non-permanent habitation). Moreover, please mention if the numbers are not based on dwelling stock, but on households.

[69] Nomisma, 'La condizione abitativa in Italia', 41, which refers to data from 2008.
[70] *Ibid.*, 41.
[71] Guerrieri & Villani, *Sulla città, oggi*, 37 et seq.
[72] OASIt, 'Rapporto sull'Abitare Sociale in Italia', 81.

For EU-countries Housing Statistics in the European Union would be a possible source, although more updated data would be preferred, if available.

2. ECONOMIC URBAN AND SOCIAL FACTORS

2.1 Current situation of the housing market

- *What is the current situation of the housing market? Is the supply of housing sufficient/insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)? What have been the effects of the current crisis since 2007?*

Over the last thirty years the number of houses has increased in Italy by about 32%, by exactly the same proportion as the number of families. Actually, the population has increased by just 5% in the same period but the average number of family members has drastically decreased from 3 to 2.4[73]. As a consequence, the number of houses (29.4 million) is considered substantially coherent with the number of families (24.8 million): the surplus of about 5 million houses, as we have already seen, is mainly represented by second homes but also by abandoned or vacant dwellings[74].

This, unfortunately, does not mean that the housing market in Italy is perfectly balanced: the number of families in housing need is estimated at 2.5 million: 56% owners and 44% renters[75]. The 'housing need' situation can be summarized as follows.

First of all, there is a situation of economic difficulty in affording a house. After several years in which Italian families tended to buy houses, the crisis which began in 2007 has drastically reduced the number of potential buyers. As a consequence, the number of people looking for houses to rent has increased once again. At the same time, also, the number of houses potentially to rent has increased due to the property investments made by Italian families in recent years.

Nevertheless, supply and demand do not always balance. On one hand, rental costs have significantly increased and do not at the moment seem likely to decrease significantly. On the other hand, families looking for a house to rent in most cases belong to the poorest segment of the population. In the past they could not afford a loan to buy a house and now they have difficulties paying market rents. Furthermore, the number of families in economic difficulty has increased during the years of the crisis.

Despite the crisis, it has been estimated that there are over 900,000 families still looking for a house to buy, for a range of personal reasons. 87% of them have a medium or high income and 80% already own another house but only 46% will succeed, at least in the

[73] Censis - ABI, 'Osservatorio sulla società italiana/1. Gli italiani e il mattone', <http://www.censis.it/5?resource_23=116960&relational_resource_24=116960&relational_resource_26=116960&relational_resource_396=116960&relational_resource_78=116960&relational_resource_296=116960&relational_resource_342=116960&relational_resource_343=116960&relational_resource_405=116960>, 16 June 2012, 1.

[74] Baldini, *La casa degli italiani*, 14.

[75] Censis, 'Atlante della domanda immobiliare. Sintesi dei risultati', <http://www.censis.it/censis/attachment/protected_download/4461?view_id=35>, 9 November 2012, 2.

main cities[76]. Research confirms that at this moment the weakest segment of the population has abandoned the idea of buying a house. For this reason, the number cited gives us an indication of housing demand but tells us nothing about what can be called 'housing need' for which we must refer to other figures.

First of all, we have to consider 17,000 homeless people, according to research dating to 2001[77], and 71,000 people living in dwellings such as caravans, tents, huts and the like[78]. The increasing number of evictions for non-payment of rent gives further evidence of a widespread situation of difficulty connected with the tenancy market. From 2008 to 2011 the number of evictions carried out rose 14.7% (from 24,959 to 28,641)[79]. In addition to this, over recent years about 150,000 families have received eviction notices for non-payment of rent which have not been executed yet. Then, we also have to consider about 650,000 families who asked for public housing but have not received it mainly because there are not enough houses available[80].

Further categories potentially with economic problems related to housing are the 900,000 families of owners for whom housing costs exceed one third of their income[81] and 1.2 million families who pay for rent accounting for more than 30% of their income.

Finally, we should also consider at least part of the 2.6 million people between 18 and 34 years old who declare that they are still living with parents because of their inability to afford to live on their own[82]. Research confirms that one of the principal reasons for such a high number of over-18s still living with their parents, in comparison with the European average, is difficulty in finding accommodation especially to rent, at affordable prices[83]. There is also concern for the approximately 800,000 university students who do not live with their parents as they can rely only on 46,800 beds in public dwellings[84].

This data refers to the national situation but local differences are extremely evident in the Italian housing market too. The most problematic areas are the biggest cities and their surroundings: Rome, Milan, Turin, Genoa, Venice, Trieste, Bologna, Florence, Naples, Bari, Palermo and Cagliari where about 35% of the Italian population is concentrated, including an above average percentage of immigrants.

In these cities higher demand for houses, together with higher prices, creates a great many difficulties. It is evident if we consider that, according to research carried out in 2006, more than 77% of eviction notices are issued here. At the same time public dwellings offer very limited help: only 8% of demands coming from households living in these areas are accepted.

In big cities, families, especially from the middle class, tend to move far from the center in order to find lower prices and a better standard of living. On one hand this means that areas of the city centers are losing their original population. In many cases houses are replaced with offices or other commercial activities, in other cases new people come in to

[76] Censis, 'Quasi un milione di famiglie vuole comprare una casa: rimuovere i blocchi esistenti per far ripartire il mercato', <http://www.censis.it/10?resource_50=118549&relational_resource_51=118549&relational_resource_385=118549&relational_resource_52=118549&relational_resource_381=118549&relational_resource_382=118549&relational_resource_383=118549&relational_resource_384=118549>, 9 November 2012.

[77] Baldini, *La casa degli italiani*, 81.

[78] Istat, '15° Censimento generale della popolazione e delle abitazioni. 9 October 2011. Sintesi dei primi risultati', <http://censimentopopolazione.istat.it/_res/doc/pdf/primi-risultati-censimento_opuscolo.pdf>, 27 April 2012, 16.

[79] Censis, 'Quasi un milione di famiglie vuole comprare una casa'.

[80] OASIt, 'Rapporto sull'Abitare Sociale in Italia', 107.

[81] *Ibid.*, 102.

[82] Nomisma, 'La condizione abitativa in Italia', 25.

[83] Letizia Mencarini, 'Giovani italiani e scelte abitative', *Meridiana. Rivista di storia e scienze sociali* 62 (2008): 137 et seq.

[84] Censis, 'Quasi un milione di famiglie vuole comprare una casa'.

the area, for example high-income groups in the case of restoration of valuable historical areas, and immigrants looking for cheap dwellings in dilapidated areas.
On the other hand, the population is growing in a wider area around the city, but this has negative effects in terms of commuting (costs, time, pollution) and of land waste. These problems are frequently worsened by poor town planning in the suburbs and by an inadequate public transport system.
On the contrary, other areas of the country tend to be abandoned by the population. It is a phenomenon which began after the Second World War when most people living in the countryside moved to the industrial cities to work in the factories. Peripheral areas of the country which managed to develop profitable farming or tourism successfully combated this tendency. Other places, especially mountain areas where connections with bigger centers are more difficult, seem destined for further depopulation. In the south people tend to concentrate in lowland areas which represent the most vital parts of these regions abandoning the poorest areas[85].
Recently we have been facing a more general and worrying tendency. Forecasts are for a reduction of about 1 million in the southern Italian population by 2020 while the population in the north is expected to increase by about 4 million[86]. Migration within the country towards the more economically dynamic regions of the north has always been a characteristic of Italy but now that immigrants from other countries also tend to concentrate in those areas to find a job the imbalance is growing further.

- *How is the demand for housing expected to develop? What is the expectation about the growth and decline in number of households in the future in a scenario of average economic development? Is there a year forecasted where growth in number of households will stabilize or will start declining?*

As regards the evolution of the housing market, the recent economic crisis has impacted on poverty and unemployment rates. Therefore the need for rented accommodation is mainly expected to increase for low-income households.
At the same time, the number of households is also expected to grow with a consequent need to find more dwellings. From 2006 to 2011 there was an average increase of about 359,000 per year[87]. This is the consequence of young people going to live alone, of marriages and also of a rise in the separation and divorce rate but a central role, at least over recent years, has been played by the immigration situation too.
All the forecasts concur that the indigenous Italian population will decrease over the next few years as a result of a low birth rate. On the other hand, immigration will continue, even though at lower rates than over the last decade. Globally there should be a slight and gradual increase in the population living in our country[88]. Therefore, although overall drastic changes are not forecast for the coming decades, the growing incidence of the foreign population and their tendency to concentrate in certain areas of the country will cause a number of specific problems which are also evident in the housing context.

[85] Pugliese, *L'Italia tra migrazioni internazionali e migrazioni interne*, 152.
[86] Censis, 'Atlante della domanda immobiliare', 2.
[87] *Ibid.*, 2.
[88] Nomisma, 'La condizione abitativa in Italia', 29: the population in 2050 is forecast to reach about 61,700,000 and the percentage of immigrants should reach 17.2%.

- *What is the number/percentage of families/households depending on rental housing (vs. owner-occupancy and other forms of tenure)? What is the number/percentage of immigrants among them?*

Over the last fifteen years the percentage of Italian households living in a house they own has reached almost 70%[89]. At the same time the number of households living in rented property has decreased to slightly over 20%, a percentage which rises for weaker categories such as single parents with children (35,2%) and immigrants (62,8%).
The remaining 10% of households which are neither owners nor renters are made up as follows[90]:
- about 7.4% live in a house with a commodatum;
- about 3.3% have an usufructor tenancy or a right of housing;
- about 0.3% live in rented property with the faculty to redeem the dwelling after a certain period of time.

In this context the situation of immigrants is highly specific. In particular, as already described above, numbers of these have more than tripled over the last ten years, they almost always come from poorer countries and become part of the weakest segment of the population and they tend to live near big cities where housing problems are more serious. Given all this, as we have already said, the vast majority of immigrants (62.8%) live in rented property[91].
As in private tenancies, immigrants tend to occupy houses left by Italian families who move into better dwellings so the quality of immigrants' accommodation is on average worse. In many cases the minimum requirements for habitability are not fulfilled. The vast majority of immigrants live in dwellings shared among a plurality of households with problems of overcrowding. In addition, most contracts are not legally registered or contain illegal clauses[92]. Despite this, paradoxically, rents tend to be higher than those paid by Italian families as landlords tend to be diffident towards immigrants who are considered potentially problematic parties to tenancy contracts[93].
Many immigrants apply for public housing and, in consideration of their situation of difficulty they often have the necessary requirements at least to be put on the waiting lists for housing. This situation has sometimes created tensions with Italian applicants who are overtaken in the waiting lists by foreigners who have recently arrived in Italy. The topic, though in some cases exploited and overstated by both politicians and media, is in any case the subject of public debate. For these reasons rules for access to social and public housing, both at national and regional level, have sometimes introduced some limits for foreigners (such as a minimum period of residence in the country). The legitimacy of these measures in light both of national, European and international rules is matter of debate and will be deeper analysed below.
About 9.8% immigrants live with relatives or other compatriots while 8.3% live at the workplace[94].

[89] Baldini, *La casa degli italiani*, 54; Nomisma, 'La condizione abitativa in Italia', 37; Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 27.
[90] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 27.
[91] According to 2012 data: Scenari Immobiliari, 'Immigrati e Casa. 9° Rapporto', <http://www.integrazionemigranti.gov.it/archiviodocumenti/casa/Documents/IMM_Osservatorio%20Nazionale_Immigrati_e_Casa_2012.pdf>, July 2012.
[92] These data were gathered in 2009 through a survey regarding 1,000 immigrant families all over Italy: SUNIA, 'Gli immigrati e la casa', <http://www.sunia.it/documents/10157/498f2546-06ed-4f69-902a-3e0154c6a9e8>, 12 July 2009.
[93] Baldini, *La casa degli italiani*, 84.
[94] Scenari Immobiliari, 'Immigrati e Casa'.

Finally, there is a percentage of immigrants who, years after arriving in the country, manage to buy a house to live in. They make up about 19.1% of the total[95]. This is considered an effect also of the problems connected with the Italian tenancy market: a limited number of houses, poor quality, high prices.
It is not easy to find percentages of need connected with the housing situation which consider only immigrants, but, given what we have said, the number must certainly be very high.
In particular, there is a number of illegal immigrants (between 300,000 and 500,000, according to the latest estimates[96]) who have additional problems with regard to the housing situation to face particularly in view of the fact that renting a house to an illegal immigrant became a crime in 2008[97]. This provision is not only a deterrent to illegal immigration but it also aims to prevent the exploitation of these people by home owners who demand high rents for unsuitable and overcrowded accommodation.

2.2 Issues of price and affordability

- *Prices and affordability:*
  - *What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)? (Explanation: If rent is 300€ per month and disposable household income 1000€ per month, the rent-to-income ratio is 30%).*

The average cost of rents increased significantly during the years from 1993 to 2008 and has been calculated at about 56%[98]. The situation changed with the onset of the crisis, even though prices on average continued to rise even after 2008 for a certain period of time. A series of surveys of the 19 Italian regional capitals obtained the following reductions from the previous year for residential dwellings: in 2011 – 2.2%[99], in 2012 -

[95] *Ibid.*
[96] Fondazione ISMU, 'XIX Rapporto sulle Migrazioni'; European Migration Network, 'Canali migratori. Visti e flussi irregolari'.
[97] Art. 12, subs. 5 *bis*, Leg. Decree 25th July 1998, no. 286, (provided by Art. 5, subs. 1, Law Decree 23rd May 2008, no. 92 and modified with Art. 1, subs. 14, Law 15th July 2009, no. 94) '*Salvo che il fatto costituisca più grave reato, chiunque a titolo oneroso, al fine di trarre ingiusto profitto, dà alloggio ovvero cede, anche in locazione, un immobile ad uno straniero che sia privo di titolo di soggiorno al momento della stipula o del rinnovo del contratto di locazione, è punito con la reclusione da sei mesi a tre anni. La condanna con provvedimento irrevocabile ovvero l'applicazione della pena su richiesta delle parti a norma dell'articolo 444 del codice di procedura penale, anche se è stata concessa la sospensione condizionale della pena, comporta la confisca dell'immobile, salvo che appartenga a persona estranea al reato. Si osservano, in quanto applicabili, le disposizioni vigenti in materia di gestione e destinazione dei beni confiscati. Le somme di denaro ricavate dalla vendita, ove disposta, dei beni confiscati sono destinate al potenziamento delle attività di prevenzione e repressione dei reati in tema di immigrazione clandestina*'.
[98] Baldini, *La casa degli italiani*, 64.
[99] Solo Affitti, 'Il mercato della locazione in Italia nel 2011', <http://www.soloaffitti.it/docs/pdf/Nomisma_2011.pdf>, 18.

6%[100] and in 2013 - 4,5%[101]. Therefore, in these cities the average rent in 2013 is 516 Euro per month[102].

If we consider a different statistic, found at national level on a sample of 8000 households (composed of 24,000 members) in 300 Italian municipalities, the average rent in 2012 was 348 Euro per month[103], a reduction of about 5% from 2010 when it was 366 Euro per month[104] but still over the average rent in 2008 which was 336 Euro per month[105].

These two different surveys, among other things, also give us an idea of the importance of local differences in rent levels.

For further evidence about this topic, it is, unfortunately, necessary to consult older data. Another research project carried out in 2008, which calculated the average national rent at 440 Euro[106], is worthy of note The highest average rents were to be found in the center of Italy where they were 580 Euro per month. The lowest rents were in the south of Italy at 376 Euro per month. In the north east, average rents were 454 Euro per month and in the north west, 426 Euro per month. The differences between cities with more than 250,000 inhabitants and smaller towns were even more significant. In the former the average rents were 600 Euro per month while in the latter they were 392 Euro per month but also in this case with the regional differences mentioned above[107]. Though rent values have changed since 2008, these figures still give an idea of established local differences within the country which do not seem to have significantly altered in recent years in the crisis.

The other relevant element to house affordability calculations is household income. Average income in the period between 2010 and 2012 reduced by 7.3%, which means that, according to 2012 data, its net annual value is 30,380 Euro (about 2,500 Euro per month)[108]. It is worth considering that in this statistic an important factor in income reduction is the 'imputed rents' reduction – 13.3%[109].

In any case this general data also conceals considerable and determinant differences between the incomes of rental households and those of home-owners.

In Italy in 2008 rents accounted on average for 20% of household income. This percentage had constantly increased in previous years alongside the above mentioned increase in rents (for example, in 1995 it was 13.8%). This means that the parallel rise in Italian income in the same period did not manage to keep pace with it[110].

The crisis, as we have already said, has lowered both rents and income but in this context rent affordability has significantly worsened at least for the poorest tenant segment. This is shown by the percentage of tenants for whom rent accounts for more than 30% of their income usually considered as the limit beyond which families may experience difficulties in payment. The average percentage in 2002 was 22%, in 2008 26%, in 2010 31% and in

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[100] Solo Affitti, 'Il mercato della locazione in Italia nel 2012', <http://www.soloaffitti.it/docs/pdf/Nomisma_2012.pdf>, 18.

[101] Solo Affitti, 'Il mercato della locazione in Italia nel 2013', 14.

[102] Solo Affitti – Nomisma, 'Il mercato della locazione in Italia nel 2013', <http://www.soloaffitti.it/docs/pdf/Nomisma_2013.pdf>, 14. This rent refers to dwellings in good conditions without furniture and garage.

[103] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 12.

[104] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2010', 31.

[105] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2008', 36.

[106] Censis – Sunia – CGIL, 'Vivere in affitto', 10 et seq.

[107] Other differences between rent costs can be seen in consideration of the length of the tenancy contract: *ibid.*, 12.

[108] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 12.

[109] 'Imputed rent' indicates the sum that the household should pay as a rent for its own dwelling. This sum is calculated as a part of household income. In the survey mentioned imputed rent is given by interviewers' self-evaluation and this might have brought a certain over-estimation of the reduction: see for these considerations: Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 12 and note 11.

[110] Baldini, *La casa degli italiani*, 73.

2012 37%[111]. In the event that the head of the household is a foreigner, this percentage reaches 42%, according to 2012 data[112].
This data gives a first insight into some of the most critical aspects of tenancy in Italy which will be analyzed in greater detail in the following pages.
Firstly, the fact that tenure contracts in the long term are diminishing, although with a slight increase after the beginning of the crisis, and tending to become typical of the poorest parts of the population who cannot afford the purchase of a house in recent years. This is clear if we consider that in 2007 about 77% of rental households earned 20,000 Euros or less while only the remaining 23% earned more[113].
Secondly – and in apparent contrast – rental costs, despite following the general economic trend of increase and decrease, have gradually become a heavier burden for tenants and especially for the poorest segments.

- *To what extent is home ownership attractive as an alternative to rental housing*

In 1961 the number of renters and owner-occupiers was practically identical. As we have already seen, nowadays the latter make up about 70% of Italian families while renters are about 20%[114].
These numbers give evidence of a significant phenomenon of financial investment in houses which has been characteristic of Italy in recent decades and has brought the number of people living in rented accommodation in our country to one of the lowest percentages in Europe.
As we have emphasized above, this process is coherent with a traditional trend in Italian society and has been deepened by a number of recent factors.
Firstly, for many years in Italy as well as in several other countries, a significant factor was relatively easy access to credit. In particular, the level of interest rates, the possibility to take out loans with adjustable rates and the increasing length of loans stimulated many families to shift from tenancy contracts in order to take out loans to buy a house (see *amplius* below).
Secondly, a decisive role in Italy was played by the widespread availability of houses on the market.
A significant number of these properties came from public institutions and their sale was a consequence of two different policies both adopted by the national government in different periods of recent Italian history. On one hand, in the decades after the Second World War there was a will to increase the number of home owners by progressively selling dwellings built and owned by public authorities at affordable prices. Since approximately the 1980s, on the other hand, the selling off of public assets has become a means of covering public debts and, more generally, of raising funds. This is why the sums gained were very rarely reinvested in social housing policies. In both cases these operations became huge sales of houses at very affordable prices. The result was that these measures mainly favored purchasers, generally the people who already occupied the dwellings, but were not a good deal for the state, which sold off its assets without making a particular profit.
In any case, the private sector has also played an important role: good house value performance – which increased continuously from the end of the 1990s until the crisis[115] –

[111] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 29; Baldini, *La casa degli italiani*, 72 et seq.
[112] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 30: this figure also includes a indefinite percentage of households whose problems are due not to rents but to bank loans to purchase a house.
[113] Censis – Sunia – CGIL, 'Vivere in affitto', 14.
[114] Nomisma, 'La condizione abitativa in Italia', 37.

led both large scale private owners to put part of their properties on the market and builders to construct new houses for sale.
Thirdly, these housing market development factors also stimulated an already well-established preference in Italian society for buying the family house and, more in general, for investing in real-estate (see above).
All these circumstances have managed to outweigh opposing factors such as, in particular, rising house costs, with the result that this kind of transaction constantly increased from 1998 to 2006 reaching 845,000 in 2006[116].

- *What were the effects of the crisis since 2007?*

The onset of the crisis in 2007 had an immediate cooling down effect on the housing market. The number of transactions rapidly decreased in a couple of years and since 2009 it has stabilized at an amount which is slightly higher than that calculated for 1998 and, for the moment, there are no signs of recovery. In 2013 it is estimated that there were about 407,000 transactions[117]. In any case, the reduction is now more limited than in previous years. It is estimated at -8,3% for 2013 while in 2012 it was -25%[118]. The reduction is more limited in the 13 main Italian cities (-5,6%) and, if we consider only the third trimester of 2013, even positive (+0,4%) thanks to northern cities. Such a drastic and immediate impact of the crisis on the housing market is due to reliance on bank loans for purchases. The importance of this instrument has constantly increased since the 1990s and when banks suddenly limited new mortgages the market was immediately affected.
Despite this, prices during the crisis only partially followed the sales trend. So called 'repricing' did not begin immediately, but will probably last for some more years. This is because the Italian housing market is regarded as rather rigid, made up of many small owners who, at least at the beginning, preferred not to sell rather than reduce prices. Since 2008 prices have decreased by approximately 10.5%, although with significant differences between city centers and peripheral areas which have suffered more[119]. In 2013 there was a further reduction of 5.3% for used dwellings and 4.8% for new housing. In 2014 and 2015 decreases respectively of 3.1% and 1.4% are expected. By 2016 values should be positive once again[120]. Nevertheless, economists tend to believe that prices will not fall to the level of ten years ago because increases were due also to factors that the crisis has not affected and to the fact that flats and houses are in the hands of small owners who prefer to wait out the crisis rather than sell in the middle of it as most of their wealth is immobilized in property[121].
In addition, analysts stress that in elegant areas and for the best housing, discounts and selling times are already diminishing. So a dual-speed market is noticeable now: one for elegant property in good locations and in the main cities, which suffered less in the crisis and is now recovering more rapidly, and another for low value housing in peripheral areas

[115] Over ten years house prices increased on average by about 40%: Baldini, *La casa degli italiani*, 32. See also Aitec, 'Il mercato immobiliare italiano: tendenze recenti e prospettive', http://www.aitecweb.com/Portals/0/pub/Repository/Area%20Economica/Pubblicazioni%20AITEC/IL_MERCATO_IMMOBILIARE.pdf>, February 2012, 3 et seq.
[116] Censis, 'Gli italiani e il mattone', 4.
[117] Nomisma, 'Osservatorio sul Mercato Immobiliare. Comunicato Stampa', <http://www.nomisma.it/uploads/media/20131120-Comunicato_stampa.pdf>, November 2013.
[118] Nomisma, 'Osservatorio sul Mercato Immobiliare. Comunicato Stampa'.
[119] Nomisma, 'Il rapporto sul mercato immobiliare 2012. Comunicato stampa', <http://www.nomisma.it/fileadmin/User/OMI/CS_10_luglio_2012.pdf>, 13 July 2012, 5.
[120] Nomisma, 'Osservatorio sul Mercato Immobiliare. Comunicato Stampa'.
[121] For a more in-depth investigation into this topic, see Baldini, *La casa degli italiani*, 33 et seq.

or small towns which has been badly affected by the crisis and for which there are no signs of recovery as yet.
Another factor to consider is that despite the lowering of prices the traditional Italian attraction to the housing market is quite limited at the moment. In 2012 only 17.3% of Italians thought that property investment was money well spent. This was due to difficulties in affording such purchases, even with a bank loan, but also to the fact that investment in housing no longer seems a safe harbor for family savings as it did before the crisis. This is also the logical consequence of the 'rush' to buy a house in the ten years leading up to 2007.
This is why an influential Italian statistical studies center believes that the percentage of home-owners will not increase any further over the next few years[122]. And in fact statistics already show that since 2010 the percentage of home-owners has slightly decreased to the advantage of rental and usufruct contracts[123]. Other surveys still register, in theory, significant Italian interest in buying a main home over the coming years but its affordability is almost always linked to the possibility of a bank loan[124].
That is why, in Law 28th October 2013, no. 124 (which converted Decree Law 31st August 2013, no. 102), the government introduced a number of tools aimed at stimulating the recovery of the bank loan market. The former provision regards the possibility that Cassa Depositi e Prestiti (or CDP: a stock corporation 80% owned by the Ministry of the Economy which manages the Italian postal savings bank) will give loans to the banks so that the latter can offer mortgage loans for residential dwellings at favorable conditions. The second provision is represented by the possibility that CDP purchases from banks could cover bonds or other instruments linked to mortgage loans on residential dwellings so that banks can offer new home loans. Thirdly, the Government has financed two funds aimed at helping families respectively to maintain or set up home loans. The effects of these home-ownership encouragement policies – which are starting to be adopted at the beginning of 2014 – will only be clearly visible over the coming years.
The attractiveness of home-ownership at this moment of difficulty involving both private budgets and public finances will surely be affected also by fiscal policies on housing. Over recent years Italy has faced a somewhat schizophrenic attitude to this matter which is the consequence of the different governments which have rapidly succeeded one another and the variegated political forces which have supported them from time to time.
In 2008 the Berlusconi government decided to abolish Municipal Tax on Property (ICI) for 'primary houses', even though it is not clear how much this measure influenced housing market trends which were already suffering from the crisis. On the contrary, in 2012, the new Monti government, in a much more difficult situation for the national budget, decided to consider house taxation as a key measure to gain further income. Subsequently, instead of ICI, a new tax was introduced (IMU) both for primary and secondary houses, which was much higher than the previous one. In 2013, the Letta government decided to abolish IMU on 'primary houses' once again. But at the same time, in addition to IMU, a new tax (TASI), affecting primary and secondary houses, was introduced. The application of TASI since 2014 has been confirmed by the new Renzi government.
Even without considering the impact of this uncertainty on the housing market, the fact that house taxation has increased overall during these years and will probably increase further in future is likely to affect market trends even though it is still too early for data about this. Theoretically, more taxes on vacant houses should induce owners to sell, but who knows?

[122] Censis, 'Gli italiani e il mattone', 1.
[123] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 27.
[124] Nomisma, 'Il rapporto sul mercato immobiliare 2012', 2 et seq.

2.3 Tenancy contracts and investment

- *Is the return (or Return on Investment (RoI)) for rental dwellings attractive for landlords-investors?*
  - *In particular: What were the effects of the crisis since 2007?*

Investments in real-estate have generally been considered favorably by Italian families and not only from the domestic use point of view.
This outlook is due in particular to factors which were much more evident in past decades: the rather high percentage of income saved by Italian families and a low inclination to speculate on the stock exchange which became a mass phenomenon in our country only during the 1990s.
Therefore, property has long been considered a way of protecting capital and earning returns through both increases in value and rents. In other words, property in Italy is mainly regarded as a conservative not speculative investment in the long run.
At present it is evident that real estate still plays a significant role in Italian families' assets: if we exclude the family home, which constitutes, on average, 68% of family wealth, the remaining 17% is invested in other property and only 15% in financial activities[125].
If we focus on rental earnings, we can see that, until the onset of the crisis, despite the significant increase in rents, returns for landlords remained substantially unaltered mainly because of the parallel increase in the value of houses: in 2010 the gross Return on Investment (RoI) was 2.9%[126]. In recent years the gross RoI has increased (3.2%, according to 2012 data), which means that rents have diminished less than house values[127].
On average, percentage returns have risen for smaller houses and are highest for dwellings of up to 60 sqm (3.6%) and just 2.3% for dwellings over 120 sqm[128].
Net returns are affected by fiscal policies, as will be analyzed in greater depth below.
Here we can anticipate that sums coming from rent have been traditionally taxed as part of personal/company income. Therefore tax rates can vary widely in consideration of the global volume of each landlord's income. For example, in 2014 taxation rates of natural persons incomes (IRPEF) went from 23% for annual incomes below 15,000 Euro to 43% for income over 75,000 Euro with three intermediate income brackets.
As evasion of this tax is a serious and widespread problem, in 2011 the possibility to adopt a different fiscal regime (called *cedolare secca*) was introduced, but only in the event that those affected are natural persons. On a voluntary base, earnings from rents can be taxed at a fixed rate of 21% (for 'free market tenancies') or 19% (for 'assisted tenancies') but the choice of this form of taxation prevents any form of rent increase. For these reasons the new regime is not always a better deal for landlords but its application has definitely risen over the years and it related to 52.7% of new tenancy contracts in 2011, 56% in 2012 and 64% in 2013[129]. It is worth mentioning that, since 2013, rates for assisted tenancies have

[125] 'Baldini, *La casa degli italiani*, 91.
[126] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2010', 31 and 79 et seq.
[127] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 29.
[128] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2010', 31 and 80; *Ibid.*, 29.
[129] Solo Affitti-Nomisma, 20

been cut to 15% in municipalities with a 'scarcity of dwellings' (Law no. 61/1989) or with 'serious housing problems' (Resolution CIPE no. 87/2003)[130].
Moreover, the attractiveness of returns for landlords is affected by expenses on the house. Firstly, these include taxes that owners are liable to pay for the house itself, notwithstanding its possible income, and these, as we mentioned above, are clearly increasing at the moment in Italy. Secondly, we have to consider expenses for the maintenance of the building which fall completely on owners, apart from the so called *piccola manutenzione* (literally 'small repairs', which means minor maintenance works) which are tenants' responsibilities according to Art. 1576 Civ. Cod.. Maintenance costs are generally offset by increases in the value of the house too, but this does not happen when prices are falling, as in recent years. In addition to this, considering that most Italian houses were built between the 50s and the 70s in many cases to low quality standards, analysts expect that over the coming years considerable investment in restoration work will be required.
Another noticeable consequence of the crisis has been considerable increases in the number of evictions for non-payment of rents[131]. Such situations obviously affect the attractiveness of such investments for landlords who not only lose rent but also incur legal costs which cannot always be recovered as well as risking lengthy procedures to get houses back and difficulties in finding new tenants.
In consideration of all these aspects, forecasts about future RoI for landlords in Italy do not seem to be particularly positive.

- *To what extent are tenancy contracts relevant to professional and institutional investors?*
  - *In particular: may a bundle of tenancy contracts be included in Real Estate Investment Trusts (REITS) or similar instruments?*
  - *Is the securitization system related to tenancies in your country? Are commercial (or other) landlords allowed to securitize their rental incomes? If yes: Is this usual and frequent?*

In Italy professional investors do not find the rental market particularly attractive mainly because of the fiscal rules mentioned above. This will be explained further below. In particular, this kind of investor has always preferred building projects assigned sooner or later for sale, as this is the quickest way to cover expenses and earn an income. Moreover, corporations tend to concentrate their business on rents for commercial purposes as this is considered a less risky and more remunerative market.
Building cooperatives are a specific case of corporations involved in the housing market. They are set up with the specific purpose of building houses and offering them both for sale and rent at affordable prices and for this reason they have always been given preferential treatment from the fiscal point of view. In any event, with total assets at the national level of about 50,000 dwellings to rent they cannot be considered 'major players' on the national market.
As a result of this global situation only 7/8% of dwellings nowadays are owned by corporations.
The aims of the 2009 National Housing Plan included incentives for long-term investors (such as banks, insurance companies, investment funds) to finance projects in which new

[130] See Art. 3, subs. 2 Leg. Decree 14 March 2011, n. 23, as modified by Law 28th October 2013, no. 124.
[131] Baldini, *La casa degli italiani*, 82 and 85.

dwellings for social purposes are built in partnership with public authorities but it is too early as yet for an understanding of whether this will be successful.
As far as the regulatory system is concerned, Real Estate Investment Trusts and other Real Estate Funds are entitled to include tenancy contracts in their assets but this, as we have already said, is not frequent and relates to commercial rents in particular.
The same can be said of securitization, which has been often used in our country to sell public or private corporation property, but it would appear to be much more unusual with regard to tenancy incomes.

2.4 Other economic factors

- *What kind of insurances play a role in respect to the dwelling (e.g. insurance of the building, the furniture by the landlord; third party liability insurance of the tenant?)*

In Italy home insurance is not compulsory. Proposals were made to introduce it by the government at the end of 2012 especially as a solution for damage connected with natural disasters. This is due to the fact that a large percentage of Italian houses are in high risk areas – for example because of floods, landslides, earthquakes and even volcanoes – and most of them lack the necessary requirements to cope with such exceptional events. In any case, it is not clear whether this proposal will be implemented.
For the time being, the cost of insurance must be considered when applications for loans to buy a house are made. Banks or other credit institutes always require insurance against fires or explosions which may occur during the period of the loan. Contracts are made by owners and banks are direct beneficiaries. The annual cost of this insurance is generally rather limited but in some cases complete payment is required immediately.
Other kinds of insurance in the event of loans are less frequent but may be required in consideration of the amount to be loaned or in particular risk situations such as insurance for third party damage or in the event of the owner's death or job loss.
Insurance is also compulsory when expressly required by the rules of the condominium. The assembly, voting with the majority provided by Art. 1136, subs. 1 and 2 of the Civil Code, may decide to undertake insurance for damage caused to the building or to third parties[132]. With regard to the payment of this sum, Art. 9, Law no. 392/1978 does not include it among the expenses incumbent on the tenant, therefore, in the absence of agreement to the contrary, payment must be made by the owner. In any case agreements for an alternative distribution of these so called 'additional burdens' are frequent. For example a scheme approved by the representatives of owners and tenants – to which parties may refer in their contract – provides that the sum is split 50-50 between the two parties[133].
In the event that other specific insurance is required by the landlord (for example for damage caused by the tenant to the dwelling or for non-payment of rent) the legal framework is identical and parties may freely agree on who will be responsible for such expenses. Traditionally, in tenure contracts provision has been made for tenants to pay owners deposits when contracts are stipulated (no higher than three months' rent,

[132] Cass., 3 April 2007, no. 8233, in *Giustizia civile Massimario*, no. 4 (2007) decreed that such decisions cannot be taken simply by managers of condominiums.
[133] Confedilizia, 'Tabella di ripartizione oneri accessori tra locatore e conduttore', 22 November 1994.

according to Art. 11, Law no. 392/1978) which owners have the right to retain in the event of damage or breach of contract but this does not exclude the need for legal action to determine the exact amount of compensation due. In consideration of this aspect but also of the fact that non-payment of rents is more and more frequent because of the crisis (from 2007 to 2012 this kind of eviction increased by about 70% and in 2012 it represented about 90% of all eviction procedures[134]) an increasing number of landlords is opting to secure rents. This measure generally covers a certain number of rental payments or a certain amount of money. As we have already said, payment may be incumbent on landlords or tenants: in the latter case it is considered an alternative to deposit payment[135]. Similar guarantees may also be made directly by tenant to guarantee rents in the event of events such as accident, illness, loss of job or death[136].

- *What is the role of estate agents? Are their performance and fees regarded as fair and efficient?*

In the Italian system, estate agents are called *mediatori immobiliari* and their activities are regulated both by the Civil Code and other special statutes.
In particular, the Civil Code contains regulations concerning *mediazione* contracts. This applies to those drawing up contracts between two or more parties to a deal. This general scheme can be considered a form of brokerage and is applicable also to estate agents.
A reform has recently been implemented in order to facilitate access to the profession: Leg. Decree 26th March 2010, no. 59, which converted directive 2006/123/CE, abolished the special register which all those engaging in this type of activity were bound to be registered on[137]. According to these new rules, those intending to work as estate agents, even if not continuously, must send a declaration (called SCIA) to the Chamber of Commerce in the province they want to work in stating they have all the necessary requirements. As was once the case for the register, this declaration would appear to be necessary to obtain the right to fees and those without it can only work on a courtesy basis'[138].
According to Civil Code regulations, estate agents have right to charge fees in the event that an agreement is reached as a consequence of their intervention so their principal role is to bring landlords and potential tenants together. In any event, as this activity can be easily be carried out also through newspapers, web sites and so on, estate agents tend to provide additional services such as special advertisements, checking the condition of the dwelling, visiting it with the potential tenant and suggesting an asking price.
In general, estate agents can be useful in the event of tenancy contracts when they can provide the information that the parties to the contract lack: for landlords by selecting potentially interested tenants, for the latter, making an objective and accurate evaluation of the dwelling.
In addition to this, a statute in 2006 established that estate agents are responsible for registering contracts agreed as a result of their intervention, when these are not drafted or

[134] Emiliano Sgambato, 'Emergenza sfratti per morosità: +70% dal 2007, *Casa 24 Plus - Il Sole 24 Ore*, 25 July 2013
[135] Teresa Campo, 'A guardia del canone', *Milano Finanza*, 9 February 2013.
[136] *Ibid.*
[137] This provision found application with the Ministry of the Economic Development Decree 26th October 2011.
[138] Angelo Luminoso, 'La Mediazione', in *Trattato di Diritto Civile e Commerciale*, edited by A. Cicu, F. Messineo, L. Mengoni, P. Schlesinger (Milano: Giuffrè, 2006).

authenticated by a public notary. In such cases, agents are also responsible for the payment of the related taxes[139].
The amount of the fee payable depends on the agreement between the parties. In the event that the parties fail to reach agreement, the sum is decided by a Chamber of Commerce body taking account of fixed rates or 'local customs' if these exist. Lastly, judges can be asked to calculate fees in accordance with 'equity'[140].
The Civil Code also says that both parties pay fees to the agent. This means that, in the absence of agreement to the contrary, agents can require payment from both landlord and tenant. Nevertheless, the parties may decide that only one of them will bear all the expenses and therefore the other party, in the event that fees to the agent have already been paid, can ask to be refunded. Also in this case, if no agreement is reached, the Chamber of Commerce and, lastly, a judge can decide how much of the overall fee each party is liable to pay.
In consideration of these rules, which leave autonomy to the parties, it is not easy to determine the average fee demanded for tenancy contracts by agents. Generally, the sum is a percentage of the rent, in most cases the equivalent of a month's rent or 10% of the annual rent for each of the two parties. But it can also depend on the length of the contract and be higher if this lasts for many years. On the other hand, in the event of seasonal rents, which are very common for holiday homes, the percentage required is often one fifth or one quarter of the overall cost, but often a minimum fee for agents is required in any case.
In most cases expenses are divided equally between tenants and landlords. They are rarely paid entirely by just one of them.

2.5 Effects of the current crisis

- *Has mortgage credit been restricted? What are the effects for renting?*

The onset of the economic crisis in 2008 had an extremely profound impact on mortgage credit and, after a continue rise from 2001 to 2006, numbers of mortgages have been drastically decreasing over years[141]. The global amount of new loans given for this purpose passed from 60.4 billion Euro in 2006 to 56 billion in 2010 and to 24 billion Euro in 2012 (in this last year alone the reduction was 47%)[142]. Reductions regarded the whole number of new operations, the percentage of houses bought with a mortgage loan (57.2% in the third trimester of 2013 and 64.7% in 2012) and the loan to value ratio (57.9% in the third trimester of 2013 and 67.2% in 2012)[143]. As for 2013, in the first semester a further

[139] See D.P.R. 26 April 1986, n. 131, as modified by Art. 1, subs. 46, Law 27 December 2006, no. 296: for a commentary see Marco Krogh, 'I nuovi obblighi a carico dei mediatori introdotti dalla finanziaria 2007', in *La prassi della contrattazione immobiliare tra attualità e prospettive*, (Milano: Il Sole 24 Ore, 2007), 78 et seq. Registration must be done at the *Agenzia delle Entrate*.
[140] In this sense, see art. 1755 Civ. Cod.
[141] See Lanfranco Olivieri, 'Lo spread condiziona i mutui', Unione Sarda, 7 October 2012; Nomisma, 'La condizione abitativa in Italia', 77.
[142] Gino Pagliuca, 'Casa: vale meno ma comprarla costa di più', *Corriere della Sera*, 22 April 2013.
[143] Banca d'Italia, 'Sondaggio congiunturale sul mercato delle abitazioni in Italia. Ottobre 2013', <http://www.agenziaentrate.gov.it/wps/content/Nsilib/Nsi/Documentazione/omi/Pubblicazioni/Sondaggio+congiunturale+mercato+immobiliare/>, 11 November 2013, 6.

decrease in new mortgages was calculated. It would appear that a recovery took place in the second part of the year but the available data on this topic is still quite conflicting[144].
Reductions in new credit have been the main reason for the parallel reduction in home sales. At the root of this drastic change of policy are the problems of the banking system which has to cope with general economic trends, difficulties by debtors in regularly repaying loans and the new requirements of Basel III. In Italy in recent years banks have opted to invest huge sums of money in treasury bonds (with high interest rates and, in theory, low-risk) rather than make loans to families or enterprises. So they have strictly limited the number and the amount of loans and raised their cost, on average, by about 200%. Finding it more difficult to get bank loans or to afford their conditions, families, on their side, are tending to delay purchase.
In such a situation, households who cannot afford housing loan payments anymore are a matter of particular concern. The percentage of households who own a house and spend over 30% of household income on mortgage repayments was 1.2% in 2002 and 2.4% in 2012 but if we do not consider 'imputed rent' the numbers above are respectively 2% and 5%[145].
In order to cope with the threat of default for the weakest families, the state and also the banks themselves, has introduced a number of measures which will be analyzed below.
It is not easy to forecast how deeply this situation will affect the tenancy market. For the moment rent prices are diminishing (-11,7% in four years for used dwellings) and times to find a tenant are increasing (on average 3.5 months)[146]. Reductions in home purchases have not increased demand for houses to rent, which is also declining, but the percentage of households living in rented property between 2010 and 2012 increased by 0.7%, while the percentage of households who own their houses decreased by 1.2%[147].
These figures suggest that at the moment households are tending to limit changes and investments despite the decreasing cost of houses and rents. Nevertheless, for the first time in several years, the crisis has inverted the trend which saw the progressive reduction of tenancies in favor of sales. These changes seem to be mainly due to difficulties in accessing credit so we will need to wait a few years to see if we are facing just a temporary situation or a permanent change in Italian household habits.

- *Indicate the current figures on repossession (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?*

In this adverse economic context, the number of house seizures of homes bought with mortgage credit is increasing, despite the fact that such solutions are not regarded favorably by banks and financial institutions because of the difficulties of the housing market and so it tends to be used as a last resort. Between 2008 and 2011 repossessions by banks increased by about 75% (38,000 houses in 2011 and about 100,000 over the last four years) and in 2012 a further rise of about 22.8% was expected[148].
It is worth mentioning a provision introduced in 2013 with regard to the repossession of houses in the event of fiscal debts: Art. 52, subs. 1 Decree Law 21 June 2013, no. 69 (later converted into Law 9th August 2013, no. 98) established that the competent agency

[144] Banca d'Italia, 'Sondaggio congiunturale sul mercato delle abitazioni in Italia. Ottobre 2013', 1.
[145] Banca d'Italia, I bilanci delle famiglie italiane nell'anno 2012', 29. For the definition of imputed rent see above.
[146] Nomisma, 'Il rapporto sul mercato immobiliare 2012', 5: data refers to the first half of 2012.
[147] Banca d'Italia, 2012, 27
[148] *QN. Quotidiano Nazionale*, 2 December 2012.

cannot repossess a dwelling if the following conditions are met: it is the only dwelling owned by the debtor, it is classified as a residential dwelling and the debtor resides there provided that it is not a luxury dwelling or a dwelling included in cadastral categories A/8 (villas) or A/9 (castles). Of these cases, repossession of property has been limited to debts exceeding 120,000 Euro (the previous limit was 20,000 Euro) and it cannot be required within six months of mortgage registration.

- *Has new housing or housing-related legislation been introduced in response to the crisis?*

The onset of the crisis coincided with a renewed interest at national level in housing policies some years after the initiative in this field was almost completely left to regional authorities[149].

In 2007 the Centre-Left Government approved a 'Special Program of Public Housing' aimed at increasing the number of public dwellings first of all through restoration and adaptation of houses which are already owned and in part through new building. The following year this program was partially confirmed by the new Centre-Right Government, which decided to approve a different 'National Housing Plan'.

The common aim of these projects, which will be analyzed in greater depth below, is to create a wide ranging program of 'social housing' based on various forms of partnership between public authorities and private investors. Traditional 'public housing' tends to play a more limited role in these programs. In this field attention is mainly given to plans for so called 'agreed' and 'assisted housing' (for a definition see below), which may more easily attract private funds. Nevertheless in 2013 we have to face the fact that this national plan has not really taken off yet. Although most recent social housing projects have been carried out in accordance with these new forms of partnership, building would appear still to be quite limited. Besides, as these programs are decided locally or at most at regional level, they are widespread all over the country and it is difficult to get a global view of their present development[150].

In 2009 the Government also introduced a completely different option, giving home owners the chance to enlarge their homes. Clearly such a program is not designed to provide new dwellings for social purposes but to stimulate family investment in already existing houses, in order to support the building industry which has often been considered by politicians as a way of sustaining economic growth in Italy. In any case, this project, too, had a rather limited application. This is in part due to the fact that the national statute had to comply with regional and local rules which often prevented further home enlargement.

More recently, the Letta government would appear to have focused its attention on incentives to the home loans market considering this as a key measure for dealing with housing problems and, more in general, with the economic crisis.

In particular, Law no. 124/2013 provides, as we have already seen, for the possibility that Cassa Depositi e Prestiti (or CDP: a stock corporation 80% owned by the Ministry of the Economy, which manages the Italian postal savings bank) will be able to give loans to the banks so that the latter can offer mortgage loans for residential dwellings at favorable

[149] The different national and regional competences in the field of housing policies will be described below.

[150] Delays and other problems in bringing this plan to fruition have been clearly stressed by the Corte dei Conti (an organ of magistrates empowered to check and revise the national balance sheet): Corte dei Conti, Sezione centrale di controllo sulla gestione delle Amministrazioni dello Stato, Deliberazione n. 20/2011/G 'Programma residenziale di edilizia residenziale pubblica e Piano Nazionale di edilizia abitativa', <http://www.corteconti.it/export/sites/portalecdc/_documenti/controllo/sez_centrale_controllo_amm_stato/2011/delibera_20_2011_g_e_relazione.pdf>, 20 December 2011.

conditions. These loans will be mainly (but not exclusively) assigned to the purchase of primary houses preferably in energy classes A, B or C, or to restoration in order to improve house energy classification. Recipients will be first of all young couples (this has been interpreted as referable also to un-married or homosexual couples provided that they have a sufficiently stable and long-lasting relationship), families with a disabled member or families with three or more children.
On 21st November 2013, the CDP and the Italian Bank Association (ABI) formulated an agreement according to which, from January 2014 onwards, 2 billion Euro will be paid to banks requiring it for the above described purpose (no more than 150 million per bank and with preference given to small and cooperative banks). Uncertainties regard the fact that the kind and the amount of advantages to clients, as well as recipient selection, are exclusively demanded by the banks.
The second provision is represented by the possibility that CDP purchases from banks should cover bonds or other instruments linked to mortgage loans on residential dwellings. The possible effects of this program are even more difficult to forecast. It is expected that CDP will provide a further 3 billion Euro for this program but this has not yet been officially stated. In addition it is not clear how this instrument will achieve its ultimate purpose: to make banks offer new home loans.
The Association of Builders (ANCE) has recently expressed its approval for this program providing an accurate study of its possible effects. According to the current parameters adopted by banks the former measure could facilitate the purchase of 16,000 dwellings and the second a further 18,000 (the estimate considered a disposable fund of 2 billion Euro) with a total investment in the housing market of about 6.4 billion Euro. In a best case scenario, if other partners of CDP are involved, the market could benefit from 44,000 additional transactions[151].
The first impression is that these measures can be considered as a quick and in a certain sense 'easy' solution which is attempting to sustain some signals of possible recovery in the housing market using the huge sums of small savers managed by CDP. They help banks by providing them with new funds and offering them the possibility to securitize and give back to the CDP credits arising from home loans in an increasing percentage which is difficult for families to pay regularly. Finally they will help a certain number of families to afford the purchase of a house or improvement work on it. Anyway it is obvious that in a market which has lost over 400,000 transactions in the last few years, these measures, even at their best, provide only limited help. In addition much will depend on how, in practice, the program will be managed by banks and CDP.
We will now look at the provisions, again adopted with Law no. 124/2013, which finance funds helping families to sustain or to obtain home loans.
The first is called *Fondo di solidarietà per i mutui per l'acquisto della prima casa*. It is a fund created in November 2010 by the Ministry of the Economy to finance payment suspensions for families in particular situations. It initially received 10 million Euro per year and a further 40 million for 2014 and 2015, in particular for families with three or more children. Until the end of 2012 it was used to suspend about 6,000 home loans.
The second is the *Fondo per l'accesso al credito per l'acquisto della prima casa*. This fund was created in 2008 and is used to guarantee banks half of home loans for some families in particular conditions. To date this measure has not been successful (by December 2012 only 111 families had been assisted). For this reason the latter provision in part extended its field of application to young couples, single parents with children under 18 and workers

[151] Giorgio Santilli, 'Ance: «con l'effetto Cdp sui mutui, possibile un balzo del 10% in più sulle compravendite»', *Edilizia e Territorio*, 30 September 2013.

aged under 35 with atypical contracts and in part limited the new funds for 2014 and 2015 to 20 million Euro.
Once again with regard to home loans, a provision in Leg. Decree no. 385/1993 (called *Testo Unico Bancario*) which establishes that banks are entitled to discharge contracts by breach after only seven delays (from 30 to 180 days) in the payment of the rates (Art. 40) is worthy of mention.
Another initiative was taken directly by the Italian Bank Association (*ABI*), granting the debtor the chance to suspend mortgage loan repayments for up to twelve months[152].
It is also worth mentioning the so called statutes for the suspension of evictions. In fact this measure has a very long tradition in Italian housing policies. Initially introduced to deal with emergency situations, it has in practice become chronic through a series of temporary extensions year after year, each time waiting for some new emergency to pass and, more recently, for the National Housing Plan to become effective. The latest suspension expired at the end of 2013 but it has been already extended until the end of 2014[153]. This help is granted only to certain categories of tenants with particular difficulties and provided that they live in provincial capitals, in towns around them or in towns with high housing problems[154]. As partial compensation, some fiscal reductions are granted to the owners.
It is evident that the use of such a measure by authorities is an inappropriate way of dealing with housing emergencies which burdens some owners with the related expenses. At the same time this endless extension of the measure reveals the inability of other public policies to counteract the crisis[155].
We should, finally, mention the fact that during 2012 the Monti government announced its intention of selling a further stock of public houses, which could help people interested in homeownership, but for the moment very little is known about this proposal.

2.6 Urban aspects of the housing situation

- *What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)*

Such differences are very evident in the Italian market. Rented houses are mainly concentrated in the most dilapidated parts of towns, in accordance with the fact that this kind of contract has been becoming more and more typical of the poorest parts of the population. According to research carried out in 2006, in these neighborhoods there are almost as many rented houses (42.7%) as there are owner occupied houses (42.9%)[156]. Similar areas can generally be found in the suburbs of the towns, where, for example, public dwellings were also normally built. On the contrary, city centers tend to be restored to supply offices, shops and dwellings of good quality.
Obviously there are exceptions: there are dilapidated areas or areas that have become typical of some communities who normally live in rented accommodation in the city

[152] This measure, called *Piano Famiglie*, was provided until 31 July 2012. After that it was substituted by the above mentioned fund for the suspension of payments financed by the Ministry of Economy.
[153] Art. 4, subs. 8 Decree Law 30th December 2013, no. 150, converted into Law 27 February 2014, no. 15.
[154] See, in particular, Law 8 February 2007, no. 9.
[155] The matter of suspension and graduation of evictions will be analyzed in greater depth below.
[156] Vincenzo Guerrieri & Andrea Villani, *Sulla città, oggi. Per una nuova politica della casa* (Milano: Franco Angeli, 2006) 50.

centers: for example students near university sites or immigrants often near railway stations and other transport hubs.
There are also differences between different sorts of towns. Rent percentages increase in relation to the size of towns. In the biggest cities (over 500,000 inhabitants) they constitute 35.6%. In towns with populations between 40,000 and 500,000, 25.3% live in rented accommodation, which is over the national average[157]. Then, in smaller towns it rapidly decreases, bringing the national average to about 20%.

- *Are the different types of housing regarded as contributing to specific "socio-urban" phenomena, e.g. ghettoization and gentrification*

The most significant socio-urban phenomena connected with housing in Italy probably includes the effects of segregation produced by some neighborhoods or areas of the town.
Traditionally, major criticisms have been leveled at neighborhoods made up entirely of public housing which for many years, especially during the 50s, 60s and 70s, were concentrated in certain peripheral areas of the towns where there was low priced space available. Even the location often implied a sort of separation from the rest of the town. Such problems were increased by the fact that these places were globally identified with low-income groups and problematic situations. Over the years, in some cases, further problems were added such as starvation, dilapidation, criminality, phenomena which were often encouraged by specific concentration in these neighborhoods, all factors leading to high risk of social exclusion. In order to overcome these negative implications, policies aimed at building public housing neighborhoods were progressively reduced and substituted with different forms of aid for households in need.
More recently, with regard to public and social housing, a new approach has been developed, inspired by the principle of creating a social mix, putting grantees of these dwellings together with home-owners or private tenants in the same neighborhood if not in the same building.
Nowadays, the segregation issue is given particular attention for communities of immigrants and Roma. While the peculiar situation of the latter will be described in a specific paragraph below, we will briefly consider the condition of the former here.
Communities of immigrants originally settled in the most dilapidated parts of the city centers near railway stations and other transport hubs which provide cheap means of transport. These areas have been progressively abandoned by the Italian population which has moved to better neighborhoods. The rapid and significant increase in the number of immigrants over the last ten years has also brought them to new areas such as, in particular, the most populous and largest suburbs of the town where some of the poorest Italian citizens also live. This concentration of poverty surely creates problems connected with the use of social services (such as nursery schools and social assistants) which are in any case rather limited in Italy. More recently the tendency of immigrants to spread through the country has been observed although with different attitudes in different ethnic groups. The result is that the traditional concentration of these communities in Rome and Milan is slightly diminishing and the towns surrounding the metropolitan areas are becoming new areas of settlement[158].
Immigrants often face further problems with specific regard to housing conditions: difficulties in finding a dwelling on the market because of a widespread distrust by owners

[157] *Ibid.*, 50.
[158] See Flavia Cristaldi, Immigrazione e territorio: la segregazione residenziale nelle aree metropolitane, *AGEI – Geotema* 43-45 (2012): 17 et seq.; *Id.*, Immigrazione e territorio: lo spazio con/diviso (Bologna: Patron, 2012).

towards them, higher prices demanded by owners against risk of damage or escape[159], overcrowded dwellings shared among many tenants in order to split the expense and inadequate structures lacking the necessary services. This situation is evidence of the fact that in the field of the housing market ethnic discrimination and subsequently residential segregation is a still current problem[160].
From another point of view, it has often been observed that the Italian situation has until now prevented the formation of big mono-ethnic neighborhoods. This is more a question of fortuitousness than the deliberate effect of a policy. In part the varied provenience of immigrants and in part the lack of public subsidies concentrating these people into certain neighborhoods has helped to avoid the formation of uniform communities and encouraged a mix between immigrants of different ethnic origins and the Italian population. Therefore ethnic concentration can be generally observed at the level of blocks or single buildings[161].
As for gentrification, this phenomenon is also present in Italian cities, although it started some time later than the international trend. It initially began in the biggest Italian cities in the north and later affected the smaller towns too in the center and in the south often regarding restoration of dilapidated but valuable parts of historical centers. For this reason, even though these processes usually imply the movement of low income households to other neighborhoods, generally speaking, public opinion does not appear to be particularly concerned by the social implications and positive evaluation of the requalification carried out usually prevails. Only in specific towns and circumstances, have policies to limit this phenomenon been adopted, as will be explained below

- *Do phenomena of squatting exist? What are their – legal and real world – consequences?*

Squatting in Italy exists and has been on the increase recently. It is not limited to residential building, but includes factories and public areas which are occupied for non-residential purposes.
Occupants generally invoke the right to housing and the social function of property (Art. 42, para. 2 Italian Constitution) as the legal basis for occupation[162]. However, in the Italian legal system squatting in a residential building is qualified as an offence (Arts 633 and 639 *bis* Crim. Code). Furthermore, the owner is entitled to exercise the remedies provided for by property law (Arts. 948 et seq. Civ. Code) and by tort law (Art. 2043 Civ. Code).
Nevertheless, the Italian Appeals Court recently affirmed that, if the occupants of a public dwelling are in housing need, the offence of squatting is excluded, as occupation is held to be prompted by necessity (Art. 54 Crim. Code)[163]. Another subsequent decision of the Appeals Court, however, pointed out that a permanent occupation cannot be considered an act prompted by necessity, which requires that the occupants are in a temporary and urgent danger of injury to health[164]. This means that squatting cannot replace social or public housing in satisfying the housing needs of low-income groups.

[159] Massimo Baldini & M. Federici, '«Non si affitta agli immigrati»', La Voce, 3 July 2010.
[160] Cristaldi, Immigrazione e territorio: la segregazione residenziale nelle aree metropolitane, 21.
[161] *Ibid.*, 28 et seq.; Baldini, *La casa degli italiani*, 84.
[162] A recent case has been the occupation of an ex-paint factory in Pisa, which has received attention in the country as influential Italian jurists and other intellectuals have supported the initiative. Despite the fact that this occupation has no residential purpose, it has been the occasion to draft a document which asserts an interpretation of the Italian Constitution and of other national statutes favorable to widening legal protection for similar activities: <http://www.inventati.org/rebeldia/spazi-sociali/appello-dei-giuristi-contro-lo-sgombero-dellex-colorificio.html>, 1 February 2013.
[163] Cass. pen., 26 September 2007, n. 35580, in *Foro Italiano*, 2007, II, 678.
[164] Cass. pen., 7 August 2012, no. 14222.

Squatting is a significant problem for public dwellings, especially in certain cities. For example, in Rome illegal occupations are in the range of over 5,000 dwellings[165] and in Milan about 3,575 dwellings[166]. It is likely that public dwellings represent the vast majority of residential dwellings occupied in the country. These episodes often concern vacant dwellings, which are waiting to be restored, assigned or sold but there have been also cases of grantees finding houses occupied by strangers after a short absence. The crisis is certainly an important contributing factor in the increase of squatting. The presence of large numbers of vacant public dwellings in places with serious housing problems and with thousands of households waiting to receive one of them has been a further factor in such behavior. The public authorities, on the other hand, have not always promptly counteracted this phenomenon. More recently its wide diffusion has probably led to a stronger action also because it has become clear that behind such occupations there are more or less organized groups which do not always have humanitarian purposes but sometimes exploit people in need and receive money in return for housing[167].

2.7 Social aspects of the housing situation

- *What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (e.g. is renting considered as socially inferior?) In particular: Is only home ownership regarded as a safe protection after retirement?*

In Italy over recent decades we have witnessed a significant increase in the number of owner occupiers. This process is due to a number of economic, political and cultural factors (see above). Despite this, it cannot be said that living in rented accommodation in our country is regarded negatively also considering that a significant percentage of homeowners were tenants in the recent past.
Opinions on renting public houses has always been seen differently because these dwellings are traditionally associated with low income families and sometimes further problematic situations. In addition, such buildings and their neighborhoods were in many cases built in the most peripheral areas of the town and now are not in good condition. All these aspects have created a sort of separation from the rest of the town and may imply prejudice against people living there. Nowadays new forms of social and public housing tend to favor a social mix and limit the concentration in certain areas of households in need. This should reduce the negative connotations of life in public housing and also the negative perception of them from outside.
As for opinions of both private and public tenancies, it may also be relevant to consider that the percentage of Italian households living in rented accommodation has been constantly decreasing for many years with a slight reverse trend since the beginning of the crisis. For these reasons nowadays it regards only about 20% of households. The percentage of those who have an annual income lower than 12,500 Euro is 75% and is increasing[168]. In addition, a large number of these households is made up of non-Italian, recent immigrants.

[165] Ilaria Sacchettoni, 'Alloggi occupati abusivamente, 780 indagati', *Corriere della Sera*, 16 September 2013.
[166] Vanni, 'Milano il racket delle case occupate', *Repubblica.it*, 7 March 2014.
[167] *Ibid.*, with regard to the situation of Milan.
[168] Guerrieri & Villani, *Sulla città, oggi*, 62.

All these aspects show a situation in which tenancy is more and more a contract typical of a rather limited section of the population and significantly its weakest part. In case this situation remains unaltered, public opinion towards rents could become worse, especially with regard to the private sector.
A further aspect is represented by the opinion that home ownership would be a protection after retirement. This idea has surely always been widespread in the countries also in past decades, and it is one of the reasons for the significant financial investment in property made by Italian households. The result is that, as we have already seen, the percentage of Italian households' wealth composed by properties is on average even 85%[169]. Such an imbalance in relation to current assets implies negative consequences, especially in moments of crisis like the present one, with increasing difficulties for some older households in affording their own house expenses and to have enough money for healthcare or for personal care expenses. These problems explain the increasing number of usufruct contracts[170], which are often used by old people in order to sell the mere property (in Italian called 'naked property') of their dwellings, keeping the right to live there lifelong and obtaining an immediate income to use for every day necessities. The risk in these cases is that these people lose most of their wealth selling the house at low prices with an opposite effect respect to savings protection.

- *What is the typical attitude of tenants towards different forms of tenure (e.g. owners of privatised apartments in former Eastern Europe not feeling and behaving as full owners)*

According to a 2009 survey of 2000 families, 80% of people living on rent are not satisfied with their situation and would prefer to buy a house if they could afford it. Of the same sample of people, 95.2% said, in more general terms, that they prefer home ownership to renting[171].
The reasons for which people say they prefer property are: first of all, the stability and safety connected with it, next investment reasons, and finally, personal satisfaction. Renters' reasons, on the other hand, are: cheaper accommodation and the possibility to move easily[172].
In addition, we have to consider a significant difference between renters in private houses and renters in public dwellings. The latter generally enjoy a much safer and more stable position as, once they have obtained the house, they tend to keep it throughout their lives provided that they comply with the rules established by local authorities. The effect is that people living in public dwellings consider themselves to be in a situation which is much more similar to ownership than all other tenants.

Summary Table 2 – Attitudes toward different tenures

	Home ownership	Renting **with a public task**	Renting **without a public task**
Dominant public	Positive	Negative	Neutral

[169] Baldini, *La casa degli italiani*, 91.
[170] Between 2010 and 2012 the number of Italian households living in usufruct increased of 0,5%: Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', *Supplementi al Bollettino Statistico. Indagini campionarie* 24, no. 5 (2014), 27.
[171] Nomisma, 'La condizione abitativa in Italia', 96 and 99.
[172] *Ibid.*, 100 et seq.

opinion			
Tenant opinion	Positive	Negative	Negative
Contribution to gentrification?	Yes	No	No
Contribution to segregation?	No	Yes, especially in the past decades	Yes, it is possible in particular for certain communities
Squatting?	Yes	Yes	Yes

3 HOUSING POLICIES AND RELATED POLICIES

3.1 Introduction

- *How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?*

The role of housing policy in Italy has progressively become secondary in comparison with other welfare state policies. This situation became particularly evident during last years. According to data gathered from Eurostat in 2007, only 0,02% of the Italian GDP is dedicated to housing policies, which is just 0,1% of the whole expenses for social policies[173]: in Europe only Portugal has lower percentages.
These figures give a clear view of the fact that Italy, after the years of reconstruction following the Second World War, has had other priorities as far as the Welfare State was concerned, such as social security, especially pensions, and health.
Anyway we have also to consider that the probably most important housing policy adopted in Italy has been represented by the indirect helps given to Italian families for the purchase of the house and that is why nowadays in our country there is such a high number of people who own the house where they live.
Governments traditionally boosted this result, which was pursued, first of all, through funds or concessions for people who wanted to build or buy a house; secondly, through the continuous sale at very convenient prices of a wide percentage of properties originally owned by public entities. In particular, since 1960s, a part of the stock of public houses, mainly built in the decades after the Second World War, has begun to be progressively sold, generally at low prices to the people who were already living there. Since 1990s this phenomenon has become even more massive, as also other publicly owned buildings, used, for example, for institutional activities or for public employees, begin to be sold, in particular for public deficit reasons (above 1.1.A).
A similar approach has some characteristic consequences: a low level of funds dedicated to public housing and to other welfare policies for families. For example, in the last decade just one-thousand new public dwellings were built every year [174]. In this way the number of

[173] Baldini, *La casa degli italiani*, 137.
[174] *Ibid.*, 156.

dwellings that the State can use for social housing policies, which has never been particularly high in comparison with other European countries, further decreases, so that at present public houses are 800,000 and about 5% Italian households live there.
The dismissal of policies based on the building of public houses was common also to other European countries and was also based on studies which underlined some negative aspects of this kind of policy: risk of segregating families in neighbourhoods especially built for social purposes and of limiting their possibility to move freely, on the one side; preference for policies with a more limited role of the State and a less direct impact on private life of people, on the other side[175].
Since then, policies concerning the house mainly focused on subsidies to families to pay the cost of rents. In particular, 1998 became a turning point in Italian policies concerning the house.
In that year the fund GESCAL was abolished: since the 1960s it had been the main instrument to finance the building of public houses by means of contributions paid by employers and employees. At the same time, the tenancy market was liberalized, annulling some strict provisions concerning the amount of rents, which had been introduced in 1978 with the so called *Legge sull'Equo Canone* (Fair Rent Act).
In response to so relevant changes a Social Fund for Rents was created (*Fondo Sociale per l'Affitto*) with Art. 11, Law n. 431/1998. This instrument is financed by the State, the Regions and the Municipalities and is managed locally by the latter. Its aim is helping people to pay rents, taking account of two elements: the amount of the income and the incidence of the rent on it. The fund is given by each Municipality to all the people who have the said requirements and who ask for it, dividing among them the funds at disposal every year.
During the years after the beginning of the crisis, when the State adopted strict measures to limit deficit, contributions for the Social Fund at national level were drastically cut: they were 440 millions Euro in 2000 and just 33,5 millions Euro in 2011[176]. The consequence was that despite the increasing efforts made by the Municipalities, the cut has not been compensated and differences about the incidence of this instrument in various parts of Italy have become more evident. At the same time, the number of demands has been increasing, especially in the biggest cities of the country[177]. The result is that the Social Fund did not reach its goal of reducing the incidence of rent to 14% of the lowest incomes and to 24% of the others and in many cases it is just a very limited help for families[178].
Recently the approach towards the Social Fund has been changing: initially, for 2014 and 2015 the national contribution to the fund was slightly increased to 50 million Euro per year; lately, the new Renzi Government, in March 2014 approved its Housing Plan, indicating, among the other measures, the doubling of the national contribution for 2014 and 2015[179].

[175] David Clapham, 'Housing Policy and the Discourse of Globalization', in *European Journal of Housing Policy* 6, no. 1 (2006): 55 et seq.
[176] Cfr. Sunia, 'Il Fondo Sociale per l'Affitto', <http://www.sunia.it/documents/10157/4f9ce507-7c1d-46f2-b6bb-1f6b835b5a7f>, e CGIL, 'Finanziaria_Casa_fondo_sociale', <http://www.cgil.it/Archivio/Ambiente-Territorio/Casa/Finanziaria_Casa_fondo_sociale.pdf>.
[177] The demands increased of 148% from 2002 to 2010 (Nomisma, 'La condizione abitativa in Italia', 116) and in 2010 they were about 400,000.
[178] For some statistics about the average amount of this aid, see Sunia, 'Il Fondo Sociale per l'Affitto',<http://www.sunia.it/documents/10157/4f9ce507-7c1d-46f2-b6bb-1f6b835b5a7f>, 2007, 4.
[179] It is worth anyway mentioning that a recent economic research, after having analysed the developments of housing policies in Italy and Europe, concluded that programmes of social and public housing should be preferred respect to other social measures, such as subsidies: Massimo Baldini – Marta Federici, 'Il social housing in Europa', in *CAPPaper* , no. 49 (2008), 1 et seq.

The most recent developments in the field of housing policies regard the so called «social housing». This expression identifies the projects to promote the building of houses to offer on rent or on sale at favourable conditions to people in need. A similar solution differs from «public housing» because the building is carried out by private owners and not directly by public authorities. Differences lie also on the people to whom this offer is directed: families that are not so poor to have access to public housing but not rich enough to afford market prices[180].
A programme of social housing was adopted by the Government in 2009 with the purpose of assuring a minimum standard of living in all the country. This plan aims to gather funds, especially coming from private institutions interested in similar real-estate investments, which shall be managed locally on specific projects.
Nevertheless public authorities play an essential role and can follow different solutions in order to achieve this aim. In most cases Municipalities decree that in certain areas, assigned to new buildings, a number of dwellings shall be given on rent at special conditions. In other cases, Municipalities provide builders with land for buildings free of charge or at favourable conditions, so that new buildings are totally or partially erected for social purposes. The range of reductions given by public authorities for similar operations may regard also taxes and other burdens. That is why in 2008 the Government approved a decree in order to avoid that public funds for these purposes were considered State aid, forbidden by the EU competition rules[181].
Despite this, social housing has not been sufficiently developed in Italy until now[182]. This is in part due to the fact that the '*Fondo investimenti per l'abitare*'[183], the most important Italian fund dedicated to social housing, cannot participate local funds which develop similar projects for more than 40% of the capital[184]. This provision has been criticised as a serious restraint to the development of the plan but change of the decree has not been approved yet.
On the other side, there is concern that houses built in this way could soon be sold to the occupants, preventing the possibility to create a sufficiently wide market of rents at special rates for families in need[185].

- *What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)*

In the Italian Constitution, which came into effect in 1948, a right to housing is not expressly mentioned. Despite this, some other provisions play a role with regard to this topic.
A clear reference to housing policies can be found in the chapter dedicated to the 'Economic Rights and Duties':

[180] 'Social Housing. Vademecum della Cassa Depositi e Prestiti', in *Edilizia e Territorio*, no. 19 (2010): 7.
[181] Ministry of Infrastructure Decree, 22 April 2008. Civitarese Matteucci, 'L'evoluzione della politica della casa in Italia', 9.
[182] See Fabio Savelli, 'Perchè non decolla l'housing sociale. I giovani senza casa e la legge (bloccata)', *Corriere della Sera*, 22 November 2012, which relates the opinion of Giuseppe Guzzetti, President of the Italian Bank Foundations, according to which social housing in Italy could attract investments for about 2 billions Euro, which means the possibility to build about 20-30 thousand new dwellings.
[183] This fund is financed by *Cassa Depositi e Prestiti*, a publicly owned company which manages a significant percentage of Italian families savings, but also by the Minister of Transports and by banks, insurance companies and private provident funds.
[184] 'L'edilizia privata sociale. Vademecum n. 2 di CDPI sgr', in *Edilizia e Territorio*, no. 21 (2011): 28.
[185] Baldini, *La casa degli italiani*, 170.

Art. 47, subs. 2 Const. – [The Republic] *promotes the access to the homeownership through the use of the popular saving*

Since the first comments it has been stated that this provision does not provide a general right to obtain a dwelling, as such a solution would not be possible in a society where houses are subject to the free market rules[186]. Subsequently the rule has been generally considered as the expression of an interest of constitutional level that the public authorities shall protect and encourage but that is not directly enforceable before a Court.

According to this opinion, the above mentioned provision would simply reflect the idea, pursued by political forces in the decades after the Second World War, of creating a situation of widespread homeownership[187]. Therefore, in a wider perspective, Art. 47, subs. 2 has become the justification of the policies aimed to support the access of people to the house: helps for the purchase, but also provisions for public and social housing and helps for payment of rents.

From a different point of view, the housing right has been seen as a necessary prerequisite in order to achieve and maintain some of the fundamental rights directly granted by the Constitution. In other words, the housing right, even though not expressly mentioned by the Constitution, can be combined with other social rights and become directly enforceable in some particular circumstances: for example, the right to create a family (Art. 31 Const.), to support and educate children (Art. 30 Const.), to the inviolability of one's home (Art. 14 Const.), all require that a person can dispose of a dwelling.

In a more general perspective, the lack of a place to live may jeopardize the principle of 'human dignity' and 'substantial equality', granted at the maximum level among the 'Fundamental Principles', respectively by these two following provisions:

Arts 2 Const. – *The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled.*

Art. 3, subs. 2 Const. – *It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country.*

Furthermore, an indirect constitutional basis of the right to housing has been individuated in Art. 42, subs. 2:

The private property is recognised and guaranteed by the law, which prescribes the ways it is acquired, enjoyed and its limitations so as to ensure its social function and make it accessible to anyone.

Through this provision, the property has been considered as a non inviolable right, which can be limited by the legislator through different means in order to grant prevailing rights. For example, the statutes limiting the property right introduced in the field of tenancy contracts have been justified through this provision: in particular it is worth mentioning the Fair Rent Act, which, among the other things, introduced a mechanism of legally established rents, and the several statutes which periodically prorogued the duration of tenancy contracts or excluded the possibility of eviction[188].

At the end of the 1980s the Italian Constitutional Court, sharing this evolution, has begun to declare that among the fundamental rights granted by Art. 2 Const. there is a social right to housing, which is necessary to guarantee a life in accordance with the principles of

[186] Antonio Baldassarre, 'Diritti sociali', in *Enciclopedia Giuridica Treccani*, 1988, 27.

[187] Gastone Baschieri, Luigi Bianchi D'Espinosa & Carlo Giannattasio, La Costituzione italiana: commento analitico (Firenze: Noccioli, 1949) 234.

[188] These statutes will be analyzed below.

human dignity and to ensure the 'substantial' equality principle. The Court adds that this right produces a collective duty − as opposed to legal enforceable right against a certain individual − to avoid that people remain homeless[189].

In practice, this rationale cannot be regarded as a general and immediately enforceable right to receive a dwelling, but it has been invoked by the Court with reference to some specific circumstances. The most significant for our issue concerns the so called '*de facto* families': on the basis of the right to housing, the Court stated that non married partners habitually cohabiting (living *more uxorio*) are entitled to succeed in the dead partner's tenancy contract concerning their dwelling, although this possibility was not expressly mentioned by Art. 6 of Law n. 392/1978[190]. The same principle was later applied by the Court also in case of tenancy regarding a public dwelling[191].

These decisions show the role played by the right to housing in order to protect the tenant/grantee's interest to preserve the dwelling as home at particular conditions. This has been considered important because for the people who already occupy a dwelling, its value is surely higher than for anyone else. So the fact that this interest was not protected outside the boundaries of the legal family was considered unconstitutional.

In addition to this, scholars individuated further aspects in which the right to housing may become relevant with regard to a tenancy contract: the interest to receive a dwelling on rent at fair conditions and the interest to be granted an enjoyment correspondent to the people's needs[192].

In this perspective, the right to housing is seen as an instrument to interpret both legal provisions and contracts in order to limit possible excesses of the legislator or of the contractual autonomy. This approach requires balance among different interests granted by the Constitution which may interfere with the right to housing, such as the property, in order to evaluate which one shall prevail in the given circumstances.

The topic is clearly linked to the controversial debate on the so called 'contractual justice' and to the question to what extent fundamental rights can be enforced to modify the content of a contract freely negotiated by the parties. According to the Italian experience, an approach oriented to pursue 'contractual justice' was adopted by some local Courts, especially at the end of the 1970s[193], but it has been shared by the Constitutional Courts, only in specific circumstances.

In conclusion, the right to housing has not been often expressly invoked and recognised by the legislator or before the Courts. Nevertheless, considering the global development of tenancy law, this is surely one of the fields where the Italian legislator more frequently used its power to limit private property and contractual autonomy in accordance with the principle of 'social function of property'. This approach was particularly evident in the past decades, but it is in part present even today.

[189] See in particular Const. Court, 7 April 1988, n. 404, in *Giustizia Civile*, 1988, I, 1654. In the same sense: Const. Court, 25 February 1988, n. 217; Const. Court, 20 December 1989, n. 559, in *Giustizia Civile*, 1990, I, 612; Const. Court, 19 November 1991, n. 419, in *Giustizia Civile*, 1992, I, 313.
[190] Const. Court, 7 April 1988, n. 404.
[191] Const. Court, 20 December 1989, n. 559.
[192] Umberto Breccia, *Il diritto all'abitazione* (Milano: Giuffrè, 1980), 12.
[193] For example, Pret. Torino, 19 October 1977, mentioned in Baldassarre, 'Diritti sociali', 27-28.

3.2 Governmental actors

- *Which levels of government are involved in housing policy (national, regional, local); what are they called; how many are there of each?*
- *Which level(s) of government is/are responsible for designing which housing policy (instruments)?*
- *Which level(s) of government is/are responsible for which housing laws and policies?*

After the reform of tenancy law carried out in 1998 and even more after the constitutional reform regarding the powers of the different levels of government in 2001, the competence for housing policies in Italy was significantly changed, involving practically all the levels of government, according to a model which is defined 'multi-level protection of social rights'. This new system, in which a central role is played by the regional authorities, at the beginning created some problems of competence, which were solved by some decisions of the Constitutional Court.
The fundamental principle inspiring the reform was that the legislative power of the State concerns only the matters expressly indicated by the Constitution, while all the other matters are left to the regional competence. At the same time, housing policies are surely considered as an essential service provided by the State and integrant part of the welfare state system.
On these basis and in accordance with the new Art. 117, subs. 2, lett. m) Const., the Constitutional Court cleared that the State, in order to protect the human dignity, still has an exclusive competence to determine the minimum level of offer (both for quantity and for standard of quality) concerning the dwellings destinated to the weakest part of the population[194]. The State also shares with the Regions the competence for the 'government of the territory', which means that it gives the national guidelines concerning the offer of public houses for residential purposes[195]. Besides, the State coordinates the Regions for programs of national relevance and splits among them the national funds destinated to housing policies (in particular, the Social Fund for helping people to pay rents).
After the reform the Regions – which in Italy are ninenteen, plus two self-governing Provinces – play a more direct role with regard to housing policies: they program the targets, carry out the undertakings and decide the destination of the funds, even if received from the State, in some cases. The regional decisions also concern the management of public buildings destinated to housing policies, for example with regard to criteria of access and amount of rents[196]. Therefore, it has been stated that public services concerning the right to housing nowadays depend almost integrally on regional rules[197].
Municipalities are the principal owners of the public dwellings offered on rent for social purposes and, in accordance with the regional rules, give regulations regarding the management of and the access to these structures. Municipalities are also entitled to

[194] Const. Court, 21 March 2007, n. 94, in *Foro Italiano*, 2009, I, 1720. Baldini, *La casa degli italiani*, 162.
[195] Const. Court, 28 December 2006, n. 451, in *Giurisprudenza Costituzionale*, 2006, 4552. Further specifications of national powers in this subject can be found in Const. Court, 23 May 2008, n. 166, in *Giurisprudenza Costituzionale*, 2008, 1999.
[196] Civitarese Matteucci,'L'evoluzione della politica della casa in Italia', 178; Baldini, *La casa degli italiani*, 162.
[197] Civitarese Matteucci, 'L'evoluzione della politica della casa in Italia', 8.

provide different solutions for local problems concerning housing situation, such as houses to provide temporary hospitality. Furthermore, Municipalities are competent to decide, through the adoption of special urbanistic plans, the localization in their territory of the urbanistic interventions decided at the upper levels of government. Finally, local authorities may provide policies for helping people to pay rents, for example by means of reduced rents arranged with the owners.
A final mention must be given to the specific agencies (in the past all called *IACP* and now differentiated on local basis) established by Regions and Municipalities to manage and take care of public owned dwellings for residential purposes, generally on a provincial area.

3.3 Housing policies

- *What are the main functions and objectives of housing policies pursued at different levels of governance?*
  - *In particular: Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation)?*

After having favoured home-ownership for many decades, the State, with the Constitutional reform carried out in 2001, began to neglect housing policies for some years, considering they mainly became a Regions' task. But, at the same time, not all the funds that the State previously had in order to deal with similar competences were transferred to Regions. These two circumstances are the origin of a more varied national asset with regard to housing policies, as Regions started to develop different programmes in accordance with each one's political choices and possibilities.
At the beginning of 2005 it was clear that a wide national intervention in the housing market was necessary again. As a consequence, a variety of measures was worked out to grant a decent house to households in need. These purposes can be summarized with the definition, provided in 2008, according to which social housing consists 'mainly of dwellings rented on a permanent basis; also to be considered as social housing are dwellings built or rehabilitated through public and private contribution or the use of public funding, rented for at least eight years and also sold at affordable price, with the goal of achieving social mix'[198].
In the same year the Government proposed a National Housing Plan, which was ultimately confirmed in 2009[199]. The aim of this project was, first of all, increasing the offer of social dwellings on rent and, secondly, helping people to purchase a house.
The approach followed in this program seems aware of the fact that Italy needs a higher number of dwellings to give permanently on rent for social purposes and that homeownership has reached a level that should not be increased any further. Anyway, the statute establishes that dwellings built with this programme should be given on rent for 'at

[198] Ministry of Infrastructure Decree, 22 April 2008.
[199] Leg. Decree 25 May 2008, n. 112, converted in Law 6 August 2008, n. 133; after that, in order to put into effect this law, the Government approved the PCM Decree 16 July 2009. The previous Government had already approved in 2007 the *Programma straordinario di ediliziare sidenziale pubblica* (Extraordinary Program of Public Housing) which did not find practical application and was only in part confirmed with the new National Housing Plan.

least eight years', so observers advise of the risk that, as it happened in previous similar occasions, part of these new buildings could be sold sooner or later.
Among the different measures indicated to reach the purposes of the Housing Plan 2008/09 we can mention: creation of real estate funds for the building of new dwellings to offer on rent, restoration and building of public houses, helps to housing cooperatives and other incentives to develop social housing projects.
For the moment, as we have already anticipated above, the main attention has been focused on the creation of the so called Integrated System of Real-Estate Funds (in Italian also called *SIFI*): a number of funds, partially financed by public authorities, which should attract above all private investors of long term interested in developing real estate plans for social housing. The favour towards these programs is due to the fact that they have the aim to reduce the efforts of public finances, involving private funds in programmes of social housing. Obviously projects in this field with both public and private forces had been realized even before but the importance of this new plan is due to the fact that it gives to this form of partnership a leading role in the development of future policies concerning housing problems. What is more, private investors should become the main contributors of these projects, in a percentage and for an amount that has never been tried earlier. The building for social purposes should then go towards a mixed strategy: advantages are expected not only in economic terms for the public finances but also in terms of more balanced neighbourhoods, not built up exclusively for social purposes anymore.
These projects are adopted through 'integrated programs', directly managed by the Ministry of Infrastructure and Transports in collaboration with the interested Regions and Municipalities and by means of 'project financing' (specific contracts based on a partnership among public authorities, building firms and financiers in order to develop projects of public interest).
This agenda has the ambition to reach a fairly wide number of people: in particular, families with low income, young couples, old people, students who do not live in their families' town, people subject to eviction and regular immigrants resident in Italy from ten years or in the same Region from five years[200].
Despite the fact that the National Housing Plan 2008/09 was the most innovative and wide project concerning social housing since many years, for the moment it has not been sufficiently developed yet. This is mainly due to the difficulties of coordination among national authorities, on the one side, and regional or local authorities, on the other side: first of all many of the latter contested before the Constitutional Court the national competence to develop such an housing plan but their claims were substantially rejected; further delays were due to the difficulties of executing with each Region protocols regulating the development of the housing plan[201]. Therefore, this experience rises questions about the capability of the national multi-level system of social housing created in 2001 to properly and efficiently work.
The different fields of intervention with regard to housing policies can be summarized as follows.
The first branch is represented by the so called *Edilizia Residenziale Pubblica* (or *ERP* or *Edilizia sovvenzionata*), that we can translate as 'public housing'. This field deals with the management of publicly owned houses, integrally or largely built with public funds. It represents the most traditional way of dealing with housing problems and it is now directed to the weakest part of the population. Dwellings are managed by specific public agencies

[200] Art. 11, subs. 2, Law 6 August 2008, n. 133.
[201] Corte dei Conti, 'Programma straordinario di edilizia residenziale pubblica e Piano nazionale di edilizia abitativa' (Delibera n. 20/2011/G), <http://www.corteconti.it/export/sites/portalecdc/_documenti/controllo/sez_centrale_controllo_amm_stato/2011/delibera_20_2011_g_e_relazione.pdf>, 23 December 2011, in part. 43 et seq.

in accordance with criteria established by the various level of government (Regions and Municipalities, in particular) and are given on rent at a low rate (called 'social rent'). Policies in this field are aimed in part to restoration of old dwellings in order to improve their standard of quality, in part to their implementation, even though, as already seen, the number of new public dwellings built every year in Italy has decreased to very low figures[202]. According to 2012 data, 5,5% Italian households live in public dwellings, which compose nearly 25% of all the dwellings on rent[203].

A second branch is represented by the so called *Edilizia Residenziale Sociale* (or *ERS*), that we can translate as 'social housing'. The different programs indicated with this expression have in common the idea of establishing various forms of partnership between public authorities and private investors in order to offer dwellings for sale or on rent for social purposes. These programmes are generally classified as follows:

- *Edilizia agevolata* or 'assisted housing' can be promoted by private investors, cooperatives or public agencies and is partially based on public funds of different nature (for example, sums of money but also fiscal discounts and easier access to credit), that cannot exceed 50% of the whole investment[204]. The aim is offering dwellings on rent or on sale at lower rates than the market price. These prices and the people who can have access to these dwellings are established in accordance with rules given by public authorities.
- *Edilizia convenzionata* or 'contracted-out housing' is realized by private investors with their own funds; public authorities (esp. Municipalities) participate granting the land to build for free or at discounted prices for ninety-nine years[205]; in alternative or in addition they may give discounts on the sums required to grant authorizations to build. Then prices to buy or to rent these houses are decided in accordance with the Municipalities.

The target of both these programmes is different from the one of public housing: they deal with families that are not wealthy enough to afford the rent or the price of a house on the market but that have not such a low income to have access to public housing.

The importance of similar policies is increasing in these years, in which the economic crisis is affecting also a significant percentage of the middle class.

Another field of housing policies is represented by contributions for paying rents.

The most important is the *Fondo Sociale per l'Affitto* (Social Fund for Rents), financed by the State and by each Region. As already described above this instrument during last years suffered from a drastic cut of funds coming from the State. In March 2014 the Government expressed the intention to refund this measure with 200 million Euro in two years, but this decision still has to be approved by the Parliament, so next months will be fundamental in order to understand the future of this Fund.

Other contributions depend on each Region's or Municipality's initiative. Just to make some examples, funds for people/families under eviction have been adopted by some local authorities with the aim of helping for a limited period of time in situations of temporary difficulty to pay rents: the city of Rome pays about 30 million Euro per year to provide a dwelling in private residences to 1,400 families; the Region Tuscany helps young people who leave their parents' house to pay rents: in this case the contribution depends on the personal and family income, it cannot be given for more than three years and its range is from 1,200 to 4,000 Euro per year[206].

[202] Regione Toscana, 'Abitare in Toscana. 2012. Primo rapporto sulla condizione abitativa', <http://toscana-notizie.it/wp-content/uploads/2012/04/Rapporto-condizione-abitativa-2012.pdf>, 2 April 2012, 88.
[203] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 28.
[204] OASIt, 'Rapporto sull'abitare sociale', 7.
[205] *Ibid.*, 8.
[206] Regione Toscana, 'Abitare in Toscana', 92.

- *Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?*

In Italy the introduction of fines or even forced assignments against vacant dwellings has been proposed in some occasions, especially when, like now, economic crisis and increase in evictions worsen the housing situation. Anyway similar measures have never been adopted.
The principal role in the field of vacant dwellings is then played by the ordinary fiscal system. Italian laws do not provide a definition of 'vacant house': fiscal rules use the different expression of 'available houses', which equally considers houses that could be rented, houses that could not be inhabited (for example, because they are in ruins[207]) and 'second houses' (not rented and directly used by the owner). So it is clear that the effect of these rules on vacancies is only indirect.
In 2012 the fiscal system regarding houses was importantly changed by the Government introducing a new and heavier tax (called *IMU*). The reform has a double incidence on available houses.
First of all, with regard to rates: houses at disposal and houses on rent at market prices are formally considered in the same way: in both cases the rate is 0,76%, that can be increased or reduced of 0,3 (*i.e.* from 0,46% to 1,06%) by choice of each Municipality. This means that the State delegated to the latter the decision concerning a tax system that punishes vacant houses. Anyway, we have to consider that the percentage of the tax exceeding 0,38% is retained by the Municipalities[208]. So in many cases rates for houses on rent at market prices and houses at disposal were fixed identically, often at the maximum rate. In other cases, houses at disposal are taxed with the higher rate, while houses on rent are subject to a lower percentage.
The second significant effect of the reform carried out in 2012 regard the fact that the payment of the income tax (in Italian called *IRPEF*) was abolished for all the houses that are not rented. Previously the owner had to pay a tax calculated on the cadastral rent, increased of one third, in order to provide a disincentive to vacant houses.
Even though this tax was based on a fictitious income, its abrogation was criticised by people who approved its deterrent effect on vacant houses. As a consequence, some Municipalities decided to reduce the *IMU* rate on houses on rent so that houses at disposal do not have a more favourable fiscal treatment.
In a more general perspective, economists tend to say that such an increase concerning the taxes on the house could stimulate a wider offer of houses on rent, in order to gain an income also from the previously available houses.

- *Are there special housing policies targeted at certain groups of the population (e.g. migrants, Sinti and Roma etc)?*

We have already seen above some peculiar problems connected with the housing needs of immigrants, whose number in Italy has increased suddenly and significantly since the end of 1990s.

[207] Anyway, in similar cases tax can be reduced to 50%: see Art. 13, subs. 6, lett. b) Decree Law 6 December 2011, n. 201 (converted in Law 22 December 2011, n. 214).
[208] From 2013 the *IMU* tax will be integrally received by Municipalities: Art. 1, Law 24 December 2012, n. 228.

The most important provisions under this aspect can be found in Leg. Decree 25 July 1998, n. 286 (Immigration Act), which has been reformulated several times during last years.

First of all, it is worth noticing the importance given to the availability of a suitable dwelling: when a foreign person (non EU-citizen) regularly living in Italy in employed, the employer shall guarantee that the employee has the availability of 'a dwelling with the minimum requirements indicated for public dwellings' (Art. 5-*bis*, lett. a); when a foreign person (non EU-citizens) wants to work in Italy as self-employed, he shall give evidence that he dispose of a 'suitable dwelling' (Art. 26, subs. 3); in order to be recognized the status of 'long-term resident', in accordance with Directive 2003/109/EC, it is required, among the other things, that the person has a 'residency permit' for five years and 'a suitable dwelling with minimum requirements indicated by the regional rule for public dwellings or with suitable hygienic requirements ascertained by the local Sanitary Agency' (Art. 9, subs. 1); a further provision concerns family reunion and indicates, among the other requirements (minimum income and health insurance), that the foreigner shall give evidence that he has 'a dwelling with hygienic requirements and habitability, ascertained by the competent municipal authorities' (Art. 29, subs. 3, lett. a).

A second significant aspect regards the right of foreign people to receive social housing services provided by the State.

Art. 2 of the Immigration Act indicates Right and Duties of the Foreigner:

> *1. The human person fundamental rights provided by national rules, by international agreements and by generally recognized international principles are acknowledged to the foreigner at the border or within the country territory.*
>
> *2. Civil law rights granted to the Italian citizen are granted to the foreigner who is regularly living in the country, save that international conventions binding Italy and the present act provide otherwise.*
>
> *…*
>
> *5. Equal treatment with the citizen is granted to the foreigner with regard to judicial protection of rights and legitimate interests, in the relationships with public authorities, in the access to public services, in accordance with limits and modalities provided by the law.*

Therefore, with regard to welfare services, such as housing, the general rule is that regular immigrants have the same right of access as Italian citizens, provided that the law does not contain different provisions.

Limitations cannot be probably adopted for EU-citizens, in accordance with the general principle of non-discrimination. In compliance with Directive 2003/109/EC, possibility of limitations seems to be excluded also for third-country nationals who are long-term residents (Art. 9, subs. 12, lett. c) Immigration Act).

Limitations arise, for example, from Art. 40 subs. 4 and 6 of the Immigration Act. This rule, with specific regard to social and public dwellings, further specifies:

> *4. The foreigner who is regularly living in the country has the right to access to social dwellings, both public and private, provided in accordance with criteria indicated by regional rules, municipalities with high number of foreigners or by associations, foundations, organizations or other public or private entities, within buildings mainly organized as an institution for both Italians and foreigners, with the purpose to provide a decent accommodation with controlled fees, while waiting to find an ordinary and definitive dwelling.*
>
> *6. The foreigners with residence card or at least biannual residence permit, regularly employed or self-employed, have right of access, at equal conditions with Italian citizens, to public dwellings and to the services of brokerage provided by social estate agencies provided by every Region or local entities in order to help*

access to rental housing and to facilitated bank loans for building, restoration, purchase, renting of the primary house.

With regard to public dwellings, Art. 40, subs. 6 requires that foreigners have a 'residence card' or a biannual 'residence permit' to live in Italy and a regular job.

Regional rules have sometimes introduced further requirements to grant public dwellings to foreign people, such as a minimum period of residence or of work in the Region. With regard to these latter parameters the Constitutional Court said that they do not create an 'unreasonable and unjustified discrimination' as they are coherent with the finalities pursued by the legislator and operate a fair balance among different relevant constitutional interests[209]. On the contrary, other limiting parameters were not accepted. The Court of Milan considered illicit a rule granting to Italian citizens a higher number of points in order to receive a public dwelling[210]; the Administrative Court of Lombardia (sect. Brescia) considered in contrast with the principle of equality treatment granted by Art. 2, subs. 2 Immigration Act a Municipal provision which granted public dwellings only in case of reciprocity with the country of the foreigner[211].

Under this matter a last mention shall be given to the National Housing Plan Act 2008, where it is specified that social dwellings realized in execution of this statute are offered 'with priority', among other categories, to regular immigrants resident in Italy for 10 years or in the same Region for 5 years[212]. Despite different interpretations[213], also this statute seems to require a minimum period of stay in order to grant this kind of dwellings.

Surely the debate about the boundaries of legitimacy of similar limitations is still open. The conditions of access for foreigners to public and social housing have become a quite awkward aspect. The wide number of low income immigrants who could apply for public or social dwellings is detected as a threat by part of the Italian population who has been waiting to receive them for years. Therefore the above mentioned rules rules try and find a balance between the interests of the parties involved.

It is worth noticing that specific provisions against discrimination can be found again in the Immigration Act:

> Art. 43 – *1. For this chapter, discrimination is any behavior which, directly or indirectly implies a distinction, exclusion, restriction or preference based on race, color, ancestry, national or ethnic origin, religion, and which has the purpose or the effect to destroy or jeopardize the acknowledgment, the enjoyment or the exercise, on equal terms, of the human rights and the fundamental freedoms in political, economic, social and cultural fields and in any other field of the public life.*
>
> *2. It is in any case a discriminatory act:*
>
> …
>
> *c) whoever illegitimately impose more unfavourable conditions or refuses to give access to occupation, dwelling, education, formation and social and welfare related service to the foreigner regularly present in Italy only for his condition of foreigner or person bearing to a certain race, religion, ethnic group or nationality;*
>
> …
>
> *3. This article and article 44 applies also to xenophobic, racist and discriminatory acts towards Italian citizens, stateless and citizens of other European Union countries present in Italy.*

[209] Const. Court, 21 February 2008, n. 32, in Foro italiano, 2008, I, 3055.
[210] Trib. Milano, 21 March 2002, Foro italiano, 2003, I, 3175
[211] TAR Lombardia (Brescia), 25 February 2005, n. 264.
[212] See Art. 11, subs. 2 Decree Law 25 June 2008, n. 112 (as converted with Law 6 August 2008, n. 133).
[213] Walter Citti & Paolo Bonetti, 'L'accesso degli stranieri all'alloggio', <http://www.asgi.it/home_asgi.php?n=documenti&id=274&l=it>, 13 March 2009.

Art. 44 then clears that in case of discriminatory behaviors the victim has the right to claim the injunction for the illicit behavior and the removal of the effects.
A further provision against discrimination, not only towards foreigners, can be found in Leg. Decree 9 July 2003, n. 215, introduced in application of Directive 2000/43/CE and regulating the principle of 'equal treatment'. In particular Art. 3 indicates, among the fields in which this principle must be respected, 'access to goods and services, including dwelling'.
The problem surely exists, both in private and public rents. It has been already described above that, according to many researches, immigrants coming from Second or Third World countries tend to be seen with suspect by landlords, which means that in several cases dwellings to these people are not given or are given at heavier conditions than for Italian citizens. It is possible to find some Italian decisions that, in accordance with these rules, considered discriminatory and therefore illicit the refusal of a private landlord to execute a contract of rent and the refusal of public authorities to give on rent public dwellings, in both cases clearly because of the nationality or of the ethnic origins of the people interested[214].
The Immigration Act provides also further measures directed to foreigners in a situation of housing need:

> Art. 40 – 1. *Regions, in collaboration with provinces, municipalities, associations and voluntary organizations, provide accommodation centers with the purpose of accommodating, also in premises hosting Italian or other EU-citizens, foreigners regularly living in the country non for holiday reasons, who are temporarily unable to afford house and means of sustenance.*
>
> 1-*bis. Access to measures of social integration is only for non-EU citizens who are regularly living in Italy in accordance with this act and the other rules in force.*
>
> 2. *Criteria of accommodation have the purpose to make foreigners independent as soon as possible. Accommodation centers provide, if possible, suitable social and cultural services in order to help guests' autonomy and social integration. Every Region indicates the management and structural requirements of the centers and allows agreements with private entities and grants funds.*
>
> 3. *Accommodation centers are the premises which, also for free, provide for housing and edible necessities, as well as offering, if possible, learning of Italian, vocational training, cultural meeting with Italians, health and social assistance for foreigners who are unable to arrange for them for the strictly necessary period of time in order to reach autonomy both for food and housing in the area where the foreigner lives.*

'Accomodations centres' are thought to provide an immediate and temporary help for regular immigrants in need. They can provide not only a dwelling but also further aids in order to make the integration of these people easier.
The practical results of measures to provide immigrants with a dwelling significantly depend on local authorities' initiative and therefore vary from city to city all over Italy. It is often important the partnership between public authorities and private institutions, normally non-profit, that provide various services to help immigrants looking for a dwelling: some organizations put in contact these people with owners or agents in order to outweigh the frequent mistrust towards them and to avoid frauds, in some cases even giving legal guarantees for the tenants; other organizations have the aim to find or build dwellings to give on rent to immigrants, in some cases even through the so called 'self-building' in specific areas appointed for this purpose. In general we can say that accommodation

[214] Trib. Milan, 30 March 2000, in *Foro italiano*, 2000, I, 2040; Trib. Milan 20 December 2010 and Trib. Milan, 24 January 2011, in *Foro italiano*, 2011, I, 583.

policies tend to be more developed in the northern part of the country, where the vast majority of immigrants lives.

Among other provisions concerning immigrants and house it is important mentioning the following:

a) In 2008 a criminal provision was introduced in the Immigration Act in order to deter irregular immigration and to counteract exploitation of irregular immigrants with housing need:

> Art. 12, subs. 5-*bis* – *Save that the behavior represents a more serious crime, anyone who, asking for a reward in order to gain an illicit profit, hosts or provides, even for rent, a property to a foreigner who has not a regular permission to live in the country upon the execution or the renewal of the tenancy contract, is punished with imprisonment from six months to three years.*

The conviction implies also the seizure of the dwelling. This rule may however create some further difficulties also for regular immigrants looking for a house to rent, as the duration of the contract (which in Italy is always legally determined) may not accord with the duration of the 'residence permit'. This situation can be a disincentive for owners to rent their house to people that might become irregular immigrants during the course of the contract.

b) Immigration Act provides also a duty of communication:

> Art. 7, subs. 1 – *Any person who provides a dwelling or accommodates at any title a foreign or stateless person, even if this is a relative or a spouse's relative, or assigns the property or provides the right to enjoy a real estate, both urban and rural, within the State territory, shall give written communication to the local authority of public security within 48 hours.*

This communication shall indicate the personal data of both the person who makes the communication and the foreign or stateless person, together with the latter's passport, the location of the dwelling and the reason of the communication. In case of violation, a fine between 160 and 1.100 Euro is established.

The condition of Roma, Sinti and Caminanti living in Italy deserves some further considerations. These communities, differently from African or Eastern European immigrants, have a long tradition of settlement in Italy, as in many other European countries, so that most of them are Italian citizens. Nevertheless, new recent immigrations, especially from Balkan countries, as a consequence of the war in Jugoslavia and of the European enlargement, had an important impact: first of all, their number increased and, even though not exactly calculated, it is thought to be around 150,000; this, anyway, means about 0,2% of the Italian population, one of the lowest percentages in Europe. More relevant is that most of these newcomers settled in the hundreds of camps widespread all over Italy, where the poorest part of these communities has traditionally lived. These places nowadays host about 40,000 people: they can be found especially in peripheral areas or immediate outskirts of the cities, are mainly not authorized and represent a real housing emergency, as they generally lack of all the minimum facilities (such as regular supply of water, electricity, heating and sewerage system). This situation explains the condemnations given to Italy in 2005 and in 2010 by the European Committee for Social Rights: our country was considered guilty of discriminatory acts against Roma, Sinti and other nomadic populations, with particular regard to the right of housing, in contrast with the provisions of the European Social Charter[215].

[215] For an analysis of these decisions, see Giovanni Guiglia, 'Il diritto all'abitazione della Carta Sociale Europea: a proposito di una recente condanna dell'Italia da parte del Comitato Europeo dei Diritti Sociali', in *Rivista telematica giuridica dell'Associazione dei Costituzionalisti Italiani*, no. 3 (2011), in part. 8 et seq.

The proliferation of camps has been long tolerated, and in some cases even supported by public authorities, until it became clear that it was creating dangerous ghettos. Similar sites, originally thought to comply with the nomadic life of these communities turned out to be absolutely unfit for the necessities of a population which is nowadays largely not nomadic.
In consideration of the severe degradation of these areas, in 2008 the Government decided to hold a census of the camps in the Italian Regions where most Roma and Sinti live (Lombardia, Lazio and Campania), giving about 30 million Euro for further aid activities. The project is directed to reduce progressively illegal camps and to create better conditions of living in the regular ones. Although such an idea surely represents an improvement of the previous situation, it was criticised because it does not have the aim of abolishing completely camps providing people with other kinds of dwelling[216]. For example, it was suggested to consider these people as 'under eviction' in order to give them an easier access to public houses but this proposal was not accepted.
At the same time, many difficulties can be found in providing Roma and Sinti with private houses on rent, as owners generally tend to have a deep mistrust towards these people as potential tenants. As a consequence it has been suggested that the most suitable solution would be a public aid to afford a loan for buying a house[217].
If we consider local experiences, we can see that different attempts to go beyond the system of camps have been done. In Tuscany, for example, two Regional statutes managed to reduce the number of Roma and Sinti in camps from 2,500 to 1,000 in 15 years, providing these people in part with public dwellings, in part with specifically built villages, in part with temporary dwellings.
The building of dwellings or small villages destined to these communities, in some cases also through 'self-building', has been planned or realized also in other places (for example, near Turin and in Padua). Anyway these solutions still regard a rather limited number of people and represent just an experiment of how policies towards Roma and Sinti could be developed in the following years.

3.4 Urban policies

- *Are there any measures/ incentives to prevent ghettoisation, in particular*
- *mixed tenure type estates*[218]
- *"pepper potting"*[219]

[216] Amnesty International, 'La risposta sbagliata. Italia: il Piano nomadi viola il diritto di alloggio dei Rom a Roma', <www.amnesty.it>, January 2010.
[217] Cittalia, 'Le politiche di integrazione urbana e la marginalità: il caso dei Rom e Sinti a confronto', <http://www.lavoro.gov.it/NR/rdonlyres/67FB0B61-D7A8-4923-9E7C-1DB0DD9C2934/0/INTEGRAZIONE_URBANA.pdf>, 2011, p. 57; Alfredo Augustoni & Alfredo Alietti, 'Dimmi dove abiti e ti dirò che immigrato sei', in *Libertà civili*, no. 5 (2010): 68 et seq.
[218] Mixed tenure means that flats of different tenure types: rented, owner-occupied, social, etc. are mixed in one estate, it is the simplest way of avoiding homogenised communities, and to strengthen diversification of housing supply.
[219] This mechanism is locating social housing flats among open market ones, so as not to gather lowest income families in one place. The concept is quite controversial, however in English affordable housing system was used for a long time to minimize the modern city ghettos problem.

- *"tenure blind"*[220]
- *public authorities "seizing" apartments to be rented to certain social groups*

Other "anti-ghettoisation" measures could be: lower taxes, building permit easier to obtain or, in especially attractive localisation - as a condition to obtain building permit, condition of city contribution in technical infrastructure.

For many decades politics thought that the best way to deal with the housing problems of the weakest part of the population was to build public houses specifically for these people. A similar approach created in every town neighbourhoods of varying size all composed of public houses, often in peripheral and cheap areas. Surely this created in many cases a certain separation with the other parts of the town and in the worst cases the paradoxical effect that public neighbourhoods have become symbols of dilapidation, social degradation and criminality.

Such negative results have been partially limited by the fact that public housing in Italy rarely realized particularly wide projects, so that these neighbourhoods tend to be not too big and concentrated but are generally widespread in different parts of the towns. In addition to this, the fact that many public dwellings were progressively sold to the occupants, indirectly favoured a certain social mix.

Anyway, the negative experiences of traditional public housing surely influenced the decision to develop different forms of aid for housing needs: they can be summarized with the expression of 'social housing'.

In most descriptions of these new projects attention to social mix is, at least in theory, stressed: for example in the Min. Decree 22 April 2008, which provides the definition of 'social dwelling', it is expressly indicated the attention to 'pursue the integration among different social groups'. This aim can be reached through different means. For example, in some cities the permission to build new dwellings is granted provided that a percentage of them are destined to social purposes[221]. In other cases public authorities support private firms which realize new buildings in part for social purposes with other instruments, such as land or discount on taxes. In all these cases the result is that dwellings are destined to different tenures.

In more limited cases local authorities provide families in need with dwellings rented on the private market: this does not mean necessarily that the rent is paid by public finances, as this is quite expensive, but also that local authorities support in other ways the access of families to private rent[222], equally reaching an effect of social mix.

Finally, we have to consider also a change in the way of building new public houses, even if their annual figure in Italy is very low nowadays: they tend to be realized not through new neighbourhoods but inserting them in smaller areas of the town once dilapidated or abandoned, which makes easier to connect and mix them with the rest of the town.

[220] This is a mechanism for providing social housing in a way that the financial status of the inhabitants is not readily identifiable form outside. It is used to avoid/minimize stigmatization and social exclusion which could be caused by living in a (openly identifiable) social stock.

[221] For example, in cities like Florence this is now a general rule. A similar mechanism is used for new residential projects in many other cities like Milan and Venice.

[222] For example, we can mention a project developed by the Municipality of Bologna, which offers to private owners who give their house on rent at legal rates a guarantee concerning damages or rent arrears: Nomisma, 'La condizione abitativa', 136 et seq.

- *Are there policies to counteract gentrification?*

As already said above, the impression is that in Italy social implications and potential problems connected with phenomena of gentrification have not been deeply considered yet.
In particular, the requalification of areas or neighbourhoods of the cities, even if it implies the move of their traditional population, it is generally seen with favour and does not find many opponents. Generally speaking, attention tend to be concentrated on the positive aspect of restoration of the sites, often historical and valuable, rather than on the difficulties of households who have to move to other, more peripheral areas of the town[223]. So it is difficult to find policies that counteract these processes.
Greater concern is dedicated to the loss of some traditional shops or activities in the historical centres of the cities, replaced, for example in the most elegant and commercial streets, by shops of the biggest international fashion firms, the only one which can afford the very high prices of rents in similar areas. Anyway, this situation deals with the loss of identity and the risk of homogenization of certain Italian cities but does not have much to do with residential problems.
In our country this latter problem seems to have been tackled until now in a limited number of cases and in slightly different situations. In particular we should consider some famous holiday resorts by the sea or on the mountains: they are generally small, traditional villages where the price of houses, in consequence of the demand coming from wealthy Italian and foreign buyers, has become very high. As a consequence, local people, and in particular young couples, tend to sell their houses and to move to less expensive places. In some resorts local authorities have recently begun to consider this situation a problem to counteract: the risks are drastic depopulation, no more traditional activities, loss of identity of the community. One example of policy introduced against this peculiar form of gentrification can be seen, for example, in Forte dei Marmi, a renowned seaside resort along the Tuscan shore: here in 2010 the town approved a housing plan to offer houses at affordable prices only to people resident or born in the Municipality, forbidding the selling of the same for twenty years[224].
This solution was adopted also in other similar situations but it does not seem equally used when gentrification implies only move from one neighbourhood to another inside the same Municipality.

- *Are there any means of control and regulation of the quality of private rented housing or is quality determined only by free market mechanisms? (does a flat have to fulfil any standards so that it may be rented? E.g.: minimum floor area, equipment, access to technical and/or social below structure and/or public transport, parameters such as energy efficiency, power/water consumption, access to communal services such as garbage collection. If so: how are these factors verified and controlled?)*

In Italy every dwelling used for residential or non-residential purposes must respect some minimum standards of safety, healthiness and energy saving, recognized by the release of a specific certificate of conformity to standards (in Italian *certificato di agibilità*). This

[223] One of the most famous examples of gentrification in Italy regards Testaccio in Rome, once a neighbourhood of public houses inhabited by workers: Irene Ranaldi, *Testaccio. Da quartiere operaio a Village della capitale* (Milano: Franco Angeli, 2012).
[224] Marco Gasperetti, 'Piano casa a Forte dei Marmi: nuove abitazioni per i residenti', *Corriere della Sera*, 27 June 2010.

instrument was first introduced in 1934 but the necessary requirements to obtain it obviously evolved during the years.
First of all, the hygienic requirements of the dwellings were established. Under this aspects the Min. Decree 5 July 1975 is still the fundamental provision: among the other things, it establishes minimum height of the rooms, minimum floor area for every occupant and for certain kinds of rooms, necessary facilities for the bathrooms and the kitchens, protection against noises, guarantee of sufficient natural light and air for the rooms, but also of sufficient temperature provided by the heating system.
Other requirements have been later introduced with further provisions. Among these, we can mention:

- rules concerning the accessibility of the houses and the prevention of damages for the occupants, especially for people on a wheel chair or with limited capacity of movement[225];
- provisions for the safety of technical equipment (heating, electrical and gas system)[226];
- rules regarding water and energy saving[227].

Further checks regard the stability of the building, the damp of the walls and, when required, the respect of building rules concerning earthquakes[228].
Art. 4 of the Pres. Rep. Decree n. 425/1994 states that '*In order to use buildings or part of them ... it is necessary that the owner asks the mayor the certificate of conformity*'.
The procedure to obtain this certificate is indicated in Arts 24-26 Pres. Rep. Decree 6 June 2001, n. 380. It must be asked only in the following cases: a) when a new building is erected, b) when an existing building is totally or partially rebuilt or new floors are totally or partially added, c) when works on existing buildings may affect health and safety conditions (Art. 24, subs. 2).
The demand with all the certificates attesting the compliance of the building with the above mentioned requirements shall be sent to the Municipality where the building is set within fifteen days from the end of the works. The applicant shall also include a declaration of conformity of the building to the project presented to the Municipality and authorized (Art. 25, subs. 1).
Within the following 30 days the authority may ask a technician to visit the house and check the situation, otherwise the certificate of habitability is automatically released verifying the documents received (Art. 25, subs. 3).
In case the demand is not done, the person entitled to ask for the permission to build may incur in a fine, which anyway is not particularly high (from 77 to 464 Euro) (Art. 24, subs. 3).
Pres. Rep. Decree n. 380/2001 abolished sanctions for occupation of a dwelling which has not the conformity to standards.
From the contractual point of view, it is generally excluded that the lack of the certificate or of the standards of health and safety affects the validity of the contract of sale or of rent regarding the dwelling. Therefore, similar circumstances tend to be considered by the Italian Courts as a breach of contract[229], though with differences according to the

[225] Min. Decree 14 June 1989, n. 236.
[226] Law 5 March 1990, n. 46.
[227] Law 5 January 1994, n. 36 and Law 9 January 1991, n. 10. The rules on energy saving have been significantly increased in execution of Directives 2002/91/EC and 2010/31/EU: see Leg. Decree n. 192/2005, which will be analyzed below.
[228] Art. 25 and 67 Testo Unico Edilizia (Law 6 June 2001, n. 380).
[229] Cass. 19 July 2008, n. 20067, in *Giustizia Civile*, 2010, I, 156.

awareness or not by the tenant, to the kind of use of the dwelling agreed and to the kind of lacking standards[230].

- *Does a regional housing policy exist? (in particular: are there any tools to regulate housing at regional level, e.g.: in order to prevent suburbanisation and periurbanisation? Is it possible to distribute local taxes so that villages can afford the limitation of housing areas?)*

We have already seen above that after Law n. 431/1998 and even more after the constitutional reform carried out in 2001, the Regions and the Autonomous Provinces play the main role with regard to housing policies. This is evident also considering that, according to Eurostat data, in 2008 85% of subsidies for housing in Italy were provided by regional or local authorities and only the remaining 15% by the State[231].
Therefore, since the approval of the said reforms, twenty-one different housing policies have begun to be realized in the country, with the only limit represented by the respect of the general principles established by the national Parliament. We have also seen in above that the State during the about ten years from this sort of federalist reform approved two National Housing Plans, and the third one has been just approved by the Government in March 2014; anyway the practical accomplishment of these programs is mainly demanded to regional and other local authorities, in accordance with their rules.
Therefore, nowadays Regions, Provinces and Municipalities surely have the competence for what is called 'territory government', which means the power to regulate the settlement of activities, infrastructure and buildings. In accordance with art. 117, subs. 3 Const., every Region approved a specific statute which establishes the competences of the different authorities involved in this field and the instruments to follow these purposes.
In general, the system follows the principle of subsidiarity: Regions act only to fix programs and principles of regional interest, while the other activities are left to the competence of the lowest authority that can deal with it. The results in term of territory government are reached through the adoption of regional, provincial and municipal plans of development, each one in accordance with the rules established at the higher level.
It is clear that these authorities may adopt rules that prevent or limit suburbanisation and peri-urbanisation, for instance establishing that certain specific areas around the town shall be left to non residential uses.
The same result can be in part reached also by means of fiscal policies. In case of building or restoration of houses, a tax, called 'building contribution' must be paid; this sum, in particular, is composed of the 'urbanization charge', which is, in theory, the compensation for infrastructure provided by local authorities to the house (streets, waterworks, drainage system and so on). Its amount is fixed by the Municipality, in accordance with regional schedules and in consideration of the different kinds of houses and areas. Therefore, this instrument can be used to provide an incentive or, on the contrary, a disincentive to build in certain areas.

[230] The solutions adopted by the Courts under this topic will be analysed below.
[231] Eurostat, 'Housing Statistics in the EU', 106.

3.5 Energy policy

- *To what extent do national and or local energy policies affect housing?*

Until 1991, there were no provisions concerning energy saving in Italy. The first rules introduced in that year[232] were substantially increased with the following Leg. Decree 19 August 2005, n. 192, adopted in execution of Directive 2002/91/EC. Anyway, as a general rule, these technical measures must be respected only when a building is erected or restored. That is why about 85% of Italian dwellings are not compliant with the said rules, yet[233].

In order to incentive the improvement of dwellings' energy saving, the 2005 regulation introduced, among the other things, the 'certificate of energy classification', which certifies the annual energy consumption of a dwelling.

The latest step in this field is represented by the adoption of Directive 2010/31/EU; a process which should have come to an end, after a rather complicated course, in the first months of 2014. Among the other things, the 'certificate of energy performance' was introduced in substitution of the previous certificate and in general the duties for owners or landlords, upon the execution of a contract regarding a dwelling, have been increased[234].

The application of the technical measures provided for by the law implies significant savings in the expenses for energy, so it is expected that characteristics of energy saving will increasingly affect market and prices of dwellings both for sale and for rent.

In addition, it is worth considering that in order to promote house works in accordance with the latest rules on energy saving, a rather wide range of concessions have been provided duringlast years.

Relevant activities are, for example, works for heat insulation, installation of new heating systems, of solar panels or other equipment which use renewable energy sources. The subsidy consists in the possibility to deduct a certain percentage of the expenses (within a maximum limit): before June 2013 it was 55%, since then until December 2014 it is 65%, in 2015 it will be 50% and since 2016, 36%, as for ordinary house works.

All the people who bear the expenses are entitled to receive the aid, provided that they own, possess or detent the dwelling; therefore also tenants, even though similar expenses are generally paid by the owner, in accordance with Art. 1576 Civ. Cod.

Summary Table 3

	National level	Regional level	Municipal level
Policy aims	1) Determination of the minimum level of offer (both for quantity and for standard of quality) concerning 'social' dwellings. 2) Territory government (together with Regions).	1) Scheduling and realization of housing policies. 2) Territory government (together with the State). 3) Decision about the destination of funds. 4) Rules for access to	1) Ownership and management of public dwellings. 2) Execution of selection procedures to assign public dwellings. 3) Provision of alternative, temporary

[232] Law 9 January 1991, n. 10.
[233] Nomisma, Il rapporto sul mercato immobiliare 2012', 7.
[234] The specific provisions will be analyzed below.

	3) Coordination of Regions for programs of national relevance. 4) Distribution to Regions of national funds for housing policies.	public dwellings.	solutions for housing problems. 4) Decision, through the adoption of special urbanistic plans, of the localization in the territory of the urbanistic interventions. 5) Measures for helping people to pay rents.
Instruments	National laws Legislative decrees Law decrees Ministerial decrees	Regional laws Regional regulations	Municipal regulations

3.6 Subsidization

- *Are different types of housing subsidized in general, and if so, to what extent? (give overview)*

Subsidies in Italy are directed to help both people to pay rents and owners to afford the purchase and the maintenance of their houses.
In the latter category, many different policies, that will be better analyzed in the following answer, can be considered: the building of public houses, the incentives to private builders or owners that offer social housing or anyway dwellings at discounted rates, the contribution for the payment of rents in particular conditions and a range of tax deductions for certain categories of tenants and for landlords.
In the former category, we can mention: funds and guarantees for people in order to afford bank loans to buy a house (for example, the fund to finance the suspensions of payments for families in particular situations or the fund used to guarantee to the bank part of the home loan, but similar helps are often provided also by Regions or Municipalities), contributions to builders who may offer houses on sale at cheaper prices for certain categories of people, tax deductions regarding some kinds of expenses paid for the restoration of a house (for example, concessions are given for works regarding energy saving, aseismic measures, elimination of asbestus or structural barriers, measures against housebreakings, house accidents, noises).
Finally, a particular consideration should be given to the sale of public houses: a process which regards both dwellings built for residential purposes and dwellings simply owned by public authorities and corporations. According to a research carried out in 2008 by Federcasa, the association which represents public agencies entitled to manage public dwellings, the average discount in this kind of sales is 68%, with an average price of less than 26,000 Euro per dwelling; other researches sustain that, considering the real market

value of these houses, the average discount would be in the range of 84%[235]. In view of the fact that since 1993 about 200,000 public dwellings have been sold and that, more in general, about 4% dwellings nowadays owned by Italian households were bought by public entities, this measure is probably the most important form of indirect housing subsidization in Italy. Despite this, many criticisms have been often directed at a system which favours so considerably a rather limited number of households[236].
Nowadays, about 85% of the amount of subsidies depends on regional and even local policies, so the situation can be quite different from one place to another, and this makes an outcome of the whole housing subsidization and its results at national level rather complicated. For example, in 2008 the whole amount of direct housing subsidies was estimated in 3,506 million Euro but similar helps may vary considerably in length and in amount year by year, depending so much on local political choices and budgets[237]: in 2008 the national expense for housing policies was estimated in 78 Euro *pro capite* but this sum resulted as an average among very distant figures (from 8 Euro *pro capite* in Region Marche to 370 Euro *pro capite* in the Autonomous Provinces of Trento and Bolzano)[238].

- *Explain the different forms of subsidies for tenants, (certain) landlords and, if relevant, housing associations or similar entities acting as intermediaries (e.g. direct, by means of investment loans, tax privileges). Which level of government is competent to assign the subsidies? Is there a right to certain subsidies or does the public administration have discretion in whom to assign the subsidy?*

With specific regard to tenancy, the different forms of subsidization can be grouped as follows in accordance with the subjects who receive them.
1) Tenants:
   a) Aids are, first of all, directed to provide houses to offer on rent at social or reduced rates.
      i) The most traditional activity in this case is represented by subsidies for building public houses. Their funding depends on different sources both national and local. Their management as well is attributed to regional and local authorities, in accordance with general principles established at the national level. This means that the criteria of access may vary from one Region to another: in some cases, for example, only the household income is considered, in other cases, financial or real estate assets are relevant, too. Then a list for each Municipality is realized in accordance with these criteria and the available dwellings are granted on its basis. In general, we can say that public houses are assigned to the weakest part of the population but especially during last years the number of applications significantly exceeded the number of available dwellings[239].
      This form of subsidization concerns about 900,000 households – *i.e.* about 20% of the households who live on rent, a number which rises to 25% in the biggest cities

[235] OASIt, 'Rapporto sull'Abitare Sociale in Italia', 105.
[236] Baldini, *La casa degli italiani*, in part. 154.
[237] Eurostat, 'Housing Statistics in the European Union 2010', 106. According to this research 'Subsidies should be interpreted as public expenditures for the production and renovations of housing'.
[238] OASIt, 'Rapporto sull'Abitare Sociale in Italia', 109.
[239] This number is of about 650,000 households: *ibid.*, 107.

of the country, where most public dwellings are concentrated[240].The value of such an aid for people who receive it is estimated in more than 1 billion Euro per year[241].

ii) Other subsidies are assigned to private builders, so that they can put on the market a number of dwellings at discounted rates: there is a distinction between the so called 'assisted housing' and 'contracted-out housing'. In the former case, contributions from public authorities are more relevant and subsequently also criteria of assignation and amount of rents are fixed in accordance with general rules given by public authorities: these rules are generally similar to the rules for public houses but the group of potential receivers is wider and rates are not as low as in public houses. In the latter, subsidies mainly consist of land concessions and tax reductions, so the rules of assignation and the price of rents are different and tend to be established through agreements between private investors and public authorities decided each time.

b) Another field of subsidies is represented by sums given by public authorities so that households can afford the payment of rents on the free market.

i) The best known project is the *Fondo Sociale per l'Affitto* (Social Fund for Rents), financed both at national and local level. As already described above the contribution of the State in the financing of this instrument has been drastically decreasing in the last years. This measure considers the amount of the family income and the incidence of the rent on it. The fund is given without discretion by each Municipality dividing the funds at disposal every year among all the people who have the said requirements and who ask for it. According to 2009 data, this aid regards 4,36% of households living on rent[242].

ii) Other subsidies of the same kind depend on each Region's or Municipality's initiative. For example, funds for tenants under eviction, funds for young couples, funds for students and so on. Anyway, it is difficult to find national figures or statistics concerning similar measures in consideration of their variety and local application. Therefore, it is not easy either to evaluate their effective relevance in a national perspective. Anyway, according to some researches, they regard just 1,92% households living on rent[243].

c) The third form of subsidy for tenants is represented by tax deductions in consideration of the rent paid: if the principal house where the household lives is on rent and its global income is under a certain amount, it is possible to deduct a fixed sum from the income before calculating the due tax payments. This sum is higher in case of 'assisted tenancies' with controlled rents and even higher if the tenant is a person in his twenties living without parents. A similar deduction is provided also for employees who move for job reasons from another Region or from a place distant more than 100 km. Students living far from their family house, at certain conditions, may deduct from the income a percentage of the rents paid. Tax deductions are surely the most widespread form of housing aid and regard 56,41% of the households on rent[244].

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[240] *Ibid.*, 104.
[241] *Ibid.*, 104: it represents the difference between the sum paid and the sum that should be paid in the free market.
[242] Massimo Baldini & Teresio Poggio, 'Le politiche rivolte all'affitto e i loro effetti', in *Dimensione delle disuguaglianze in Italia: povertà, salute, abitazione*, ed. A. Brandolini, C. Saraceno & A. Schizzerotto (Bologna: Il Mulino, 2009), 6 et seq.
[243] *Ibid.*, 6 et seq.
[244] *Ibid.*, 6 et seq.

As a whole, it was calculated that all these forms of subsidies to tenants on average reduce of 17,39% the incidence of rents on the household income[245].

2) Landlords:

a) Rents directly paid on behalf of tenants in the cases described above can be considered subsidies also to landlords.

b) In some Municipalities further aids are given to owners in order to incentive the offer of dwellings on rent[246].

c) Apart from these measures the most significant form of subsidy for landlords is probably represented by tax deductions on the income from rents. The law favours a particular kind of tenancy contract in which many clauses, and in particular the amount of rents, are fixed in accordance with legal parameters: 'assisted tenancies' (in Italian *locazione a canone concordato*)[247]: reductions regard both income taxes and the annual registration tax.

In case the rent is at market prices ('free market tenancies'), the deduction for income tax was about half than in case of 'assisted tenancies'. In 2012 there was a further reduction, so nowadays just 5% of the rent can be deducted from the income[248].

3) Finally we consider the position of owner-occupiers:

a) The helps for the purchase and the maintenance of the house indicated in the previous answer can be considered subsidies towards these people.

b) In addition to this, the principal house where they live is subject to a lighter fiscal regime, as long as the Municipal Tax (IMU) is involved.

c) Two national funds have been created in order to favor home-ownership: the first one (Fund for Access to Credit) is used to guarantee to the bank part of the home loan required to buy the 'primary house', the second one (Fund for Home Loan) is used to finance the suspensions of payments for families in situations of difficulty.

- *Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?*

The Italian law had to face potential problems of compliance with European rules on State aid with regard to social dwellings[249]. For this reason in 2008 a Ministerial Decree gave a definition of housing programs that are entitled to receive public funds[250].

It was cleared that social dwellings are principally assigned on rent (for at least eight years), but in some cases may also be given on sale. They are realized by public or private builders selected with a public procedure and their purpose is integration of social classes and improvement in life conditions of the occupants. Criteria of access and amount of rents are established by Regions in accordance with the assembly of the Municipalities (regional *ANCI*).

Problems of compliance with European rules arouse also from the exemptions established for *ICI* tax, which preceded the similar *IMU* tax now in force. The payment was excluded for all the buildings 'not exclusively commercial', with the effect that also a very limited non-commercial activity was sufficient in order to exempt from the tax the whole building,

[245] *Ibid.*, 6 et seq.

[246] Massimo Sbardella, 'Contributi a chi affitta abitazioni', *Giornale dell'Umbria.it*, <http://www.giornaledellumbria.it/article/article51280.html>, 14 September 2012.

[247] It is also necessary that dwellings are in Municipalities classified among the ones with particular housing needs (so called *Comuni ad alta tensione abitativa*): art. 8, Law n. 431/1998.

[248] Art. 74, subs. 4, Law 28 June 2012, n. 92.

[249] See in particular Decision of the European Commission 2005/842/CE of 28 November 2005.

[250] Ministry of Infrastructure Decree 22 April 2008.

notwithstanding other different uses. Criticisms in particular arouse as this provision was considered an indirect aid to the commercial activities carried out by the Church in its properties.
The introduction of *IMU* led to a change in the exemption, which nowadays is granted only to buildings where exclusively non-commercial activities are carried out[251]. In case of both uses, the tax is reduced in proportion to the non-commercial activity.

Summary Table 4

Subsidization of landlord	'Free market tenancies'	'Free market tenancies'
Subsidy before start of contract		
Subsidy at start of contract	Tax exemptions	Tax exemptions
Subsidy during tenancy	Tax deductions	Tax deductions

Summary Table 5

Subsidization of tenant	'Free market tenancies'	'Assisted tenancies'
Subsidy before start of contract		
Subsidy at start of contract	Tax exemptions	Tax exemptions
Subsidy during tenancy	Social Fund for Rent, help for paying rents Tax deductions	Rent regulation Social Fund for Rent, help for paying rents Tax deductions

Summary table 6

Subsidization of owner-occupier	
Subsidy before start of contract	Fund for Access to Credit, to guarantee to the bank part of the home loan required to buy the 'primary house'
Subsidy at start of contract	
Subsidy during ownership	Fund for Home Loan, to finance the suspensions of payments for families in situations of difficulty

[251] Art. 91 *bis*, Law 24 February 2012, n. 27.

3.7 Taxation

- *What taxes apply to the various types of tenure (ranging from ownership to rentals)?*
    - *In particular: Do tenants also pay taxes on their rental tenancies? If so, which ones?*

In case the landlord is also the owner of the rented dwelling, he is subject to two principal taxes regarding the house: an income tax (*IRPEF*) and a value tax (*IMU*). Actually, in case the landlord is an entity, the income taxes are *IRES* and *IRAP*.
Income taxes are calculated on the income gained from rents. In the past years, also non-rented houses had to pay the same tax, calculated on the cadastral rent: this provision was abolished for the principal house where the owner lives (so called 'primary house') in 2001 and for all the other non-rented houses in 2012[252].
Since 2012 the natural person who has an income from rents may decide between two different systems of taxation. The traditional one provides that the income from rents is added to all the other personal income of the person and then it is subject to the normal *IRPEF* rates, which go from 23% to 43%. The new possibility (called *cedolare secca*) is that rent incomes are taxed apart at the fixed rate of 21% (in case of 'free market tenancies') or of 19% (in case of 'assisted tenancies'); as for the latter it is important considering that if the contract is executed in a Province capital Municipality or in a neighbouring Municipality with over 10,000 inhabitants or in a Municipality with 'high housing problems'[253], the rate has been reduced to 10% in order to incentive their adoption. In addition, in case of 'cedolare secca', registration tax and stamp duty are not due. This concessional system was introduced to counteract tax evasion and limit phenomenon of non-registered contracts.
The *IMU* tax is due in case of ownership of a house in Italy, even though with some exceptions regarding, for example, publicly owned buildings used for institutional activities or buildings used for cultural and non-profit purposes). It is calculated on the house value, as it is fixed in the cadastral rents, which in many cases do not match with the current market values of the property. Rates are different in consideration of the use and of the classification of the house; besides Municipalities are entitled to increase or decrease rates of a certain amount: for example, the ordinary rate is 0,76% but it can be modified from 0,46% to 1,06%.
The ordinary rate is used for 'secondary houses', houses on rent, houses given in gratuitous loan for use to relatives. For the 'primary houses' the rate was originally 0,4% (a percentage which could be increased or decreased of 0,2), but in 2013 *IMU* on 'primary houses' was abolished[254].
TASI is another tax paid to Municipalities for 'indivisible services' such as lighting, road repairs, maintenance of public gardens, security services and so on. It is paid both by the owner and by the tenant. It is calculated on the house area and varies also in accordance with the house classification.

[252] In 2012 the whole taxation system regarding the house was modified, introducing a new and significantly higher tax on the house value (*IMU*).
[253] These latter Municipalities are indicated by the decision of a specific commission: CIPE, Resolution 13 November 2003, n. 87/2003.
[254] According to data referred to 2012, the average cost of *IMU* on the primary houses was 225 Euro per taxpayer and the average cost of the whole tax was 918 Euro per taxpayer, considering also commercial buildings: 'Lo Sato incassa 23,7 miliardi dall'IMU', *La Repubblica*, 12 February 2013.

TARI is the tax for waste collection and exclusively bears on the occupant of the dwelling.
In addition to this, tenants and owners are jointly and severally liable for the payment of the 'registration tax'. Anyway parties have faculty to decide a different tax sharing between them. The sum is 2% of the annual rent and must be paid every year. Anyway, in case the owner opts for the taxation system called *cedolare secca*, the registration tax is not due.
In 2012 there was a change also in the provisions concerning VAT, which regard rental incomes from residential dwellings of people or corporations subject to the VAT regime: these incomes are generally exempted, but in some specific cases the owner has faculty to opt for the VAT system (with a rate of 10%). The cases where this is allowed are: rentals from the person or the corporation which built or restored the dwelling, rentals of social dwellings and rentals of dwellings functional to a commercial activity (called *immobili strumentali*)[255].

- *Is there any subsidization via the tax system? If so, how is it organised? (for instance, tenants being able to deduct rent from taxable income; landlords being able to deduct special costs; homeowners being treated favourably via the tax system)*

- *In what way do tax subsidies influence the rental markets?*

The range of tax deductions regarding the house is quite variegated. We have already seen above the possibility for the owner to deduct certain expenses paid for the restoration of a house.
With specific regard to tenancy contracts, households whose primary house is on rent are entitled to deduct a fixed sum from the income, in case their global income is under a certain amount. In particular, the sum is higher for contracts with controlled rents and in case the annual income is lower than 15,493,71 Euro, while it is excluded when the annual income is over 30,987,41 Euro[256]. A higher deduction of 991,60 Euro is provided for young people until thirty years old, living on rent without their parents, in case their annual income is lower than 15,493,71 Euro. For employees who change their residence for job reasons and move from another Region or from a place distant more than 100 km, a specific deduction lasting three years is provided, having regard to the income tax. Finally, students who attend a college far from their parents' house more than 100 km or in a different Province, in case they live on rent, may deduct from the income 19% of the rent paid.
Tax deductions for landlords mainly regard the income from rents: when a dwelling is located, the landlord shall pay a tax calculated on the higher sum between the cadastral rent and the income rent reduced of 5%[257]. Anyway this deduction is not considered an allowance but a forfeited deduction of the expenses paid by the landlord to gain this income[258]. In case of 'assisted tenancies', deductions are more generous: a further

[255] For this reform, see Art. 10, subs. 8, D.P.R. 26 October 1972, n. 633 (as modified by Art. 9, subs. 1, let. a) Decree Law 22 June 2012, n. 83).
[256] For free rents, the sum to deduct is Euro 300,00 or 150,00. For controlled rents, the sum is Euro 495,80 or 247,90.
[257] Before a change in 2012 this sum was 15% and earlier was 25% (the latter percentage is still granted for houses in Venice and its outskirts).
[258] Anyway associations of private owners point out that real costs for landlords would actually be in the range of 30%: see Emiliano Ribacchi, 'Deduzione IRPEF per i locatori limitata al 5%', in *Pratica fiscale e professionale*, no. 34 (2012), 34.

deduction of 30% on the higher sum is granted and also the annual registration tax is calculated on the amount of rents reduced of 30%.
Despite the said tax deductions surely favour 'assisted tenancies' with controlled rents, in most cases they do not manage to compensate the difference with free market rents, which, in some cases, are more than double than the controlled rents. Therefore, the market system is largely prevalent in Italy and covers about 80% of the private rents[259].
Anyway, the complex system of deductions and aids is surely a help, though limited, for some particularly weak categories of people who live on rent.

- *Is tax evasion a problem? If yes, does it affect the rental markets in any way?*

Tax evasion concerning renting contracts is a well-known problem in Italy. Its impact is estimated at about 20% of the whole market[260].
The most problematic fields are rents regarding immigrants, students and holiday houses. In most cases this is due to the fact that the landlord does not want to pay the income and the registration taxes on these sums and often finds an agreement with the tenant for a reduction of the rent. In other cases evasion is used to hide further problems: for example rents to irregular immigrants or rents of dwellings lacking of the necessary requirements.
In order to counteract the first attitude, in 2011 the so called '*cedolare secca*' was introduced as an alternative taxation system. In this way, as already seen above, income from rents do not cumulate with other personal incomes, excluding that the landlord may incur in higher income brackets and tax rates. For this reason, this new taxing system has been increasingly adopted in these years, at least with regard to new contracts.
As for the effects towards the legalization of 'black contracts' executed in the past, this is more limited. This is probably due to the fact that dodgers fear that the registration of the contract may set up investigations on the incomes of the previous years. Anyway, as the *cedolare secca* system is absolutely reasonable and the attention by the Fiscal Police towards these forms of tax evasion is increasing, this new system is expected to lead in next years to a further decrease of 'black contracts'.
In other cases rental contracts are hidden because the tenant cannot be declared. Therefore we can consider as an instrument to counteract evasion also the provision, introduced in 2008, according to which renting houses to irregular immigrants is a crime.
Several other legal provisions have been adopted by the legislator in order to counteract black market and they will be described analysing the rules of tenancy law.
As for the effects of this significant percentage of rent evasion, on the one side, we have to admit that for a number of people this illegal possibility is a decisive stimulus to offer a house on rent. Besides, this situation may turn out in cheaper rentals. On the other side, evasion and non-registered contracts facilitate further violations in prejudice of the tenants: for example, no respect of mandatory rules concerning duration and amount of rents or minimum requirements of healthiness and safety of the dwellings. In addition, evasion obviously reduces the amount of funds received by the State and implies a higher level of taxation, which, at least in part, burdens also on regular contracts.

[259] Baldini, *La casa degli italiani*, 188.
[260] CGIA Mestre, 'Quasi un milione di affitti in nero'.

Summary Table 7

	Home-owner	
	Name of taxation	Does it contain an element of subsidy, if any? If so, what?
Taxation at point of acquisition		
Taxation during tenancy	IMU TASI (part of)	IMU is not due on 'primary houses'
Taxation at the end of tenancy		

	Landlord of 'free market tenancies'	Tenant of 'free market tenancies'
Taxation at point of acquisition	Registration tax + stamp duty, save in case of 'cedolare secca'	Registration tax + stamp duty, save in case of 'cedolare secca'
Taxation during tenancy	IRPEF or 'cedolare secca', in case of natural person possibility of deducting part of the rent gained IRES + IRAP, in case of legal entity IMU, in case landlord is also owner TASI (part of)	IRPEF, possibility of deducting part of the rent paid from the income TASI (part of) TARI
Taxation at the end of tenancy		

	Landlord of 'assisted tenancies'	Tenant of 'assisted tenancies'
Taxation at point of acquisition	Registration tax + stamp duty, save in case of 'cedolare secca'	Registration tax + stamp duty, save in case of 'cedolare secca'
Taxation during tenancy	IRPEF or 'cedolare secca', in case of natural person possibility of deducting part of the rent gained IRES + IRAP, in case of legal entity IMU, in case landlord is also	IRPEF, possibility of deducting part of the rent paid from the income TASI (part of)

	owner TASI (part of)	
Taxation at the end of tenancy		

4. REGULATORY TYPES OF RENTAL AND INTERMEDIATE TENURES[261]

4.1 Classifications of different types of regulatory tenures

- *Which different regulatory types of tenure (different regulation about contracts and tenant security) do you classify within the rental sector? What are their shares in dwelling stock (compare summary table 1)?*

Regulation in Italy regards the following types of tenure: private tenancies, which can be with market rates ('free market tenancies') or with limited rates ('assisted tenancies'), public and social tenancies, commodatum (free loan), usufructor tenancy, right of housing.
Among these, the rental sector includes only private and public or social tenancies. In addition, we can mention tenancies with faculty of redemption, but they cannot be considered a regulatory type of tenure, at least from the contractual point of view, as the legislator has not regulated this kind of contracts yet. Also tenancies executed with cooperatives should be included among private or social tenancies, as for them the legislator mainly provides fiscal incentives and not a really different regulatory type.
As already described above, for Italy it was not possible to find recent data indicating for each kind of tenure the shares in dwelling stock. Therefore also in this case data regarding the share of households per type of tenure are provided.
According to 2012 data gathered by the Bank of Italy with a survey through 8,000 households[262]:
- private tenancies account for 16,3% (about 1/5 are 'assisted tenancies')[263],
- public tenancies for 5,5%,
- commodatum for 7,4%,
- usufruct and right of housing for 3,3%.

Therefore, the rental sector concerns 21,8% Italian households. In addition, about 0,3% households have tenancies with faculty of redemption and about 0,17% households live in cooperatives.

[261] **I.e. all types of tenure apart from full and unconditional ownership.**
[262] Banca d'Italia, 'I bilanci delle famiglie italiane nell'anno 2012', 27.
[263] Baldini, *La casa degli italiani*, 188.

4.2 Regulatory types of tenures without a public task

- *Please describe the regulatory types in the rental sector in your country that do not have a public task. This category may be called private or market rental housing.*[264]
  - *Different types of private regulatory rental types and equivalents:*
    - *Rental contracts*
      - *Are there different intertemporal schemes of rent regulations?*
      - *Are there regulatory differences between professional/commercial and private landlords?*
        - *Briefly: How is the financing of private and professional/commercial landlords typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)*
      - *Apartments made available by employer at special conditions*
      - *Mix of private and commercial renting (e.g. the flat above the shop)*

Together with private tenancies, commodatum, usufructor tenancy, right of housing, tenancies with redemption and cooperatives can be classified as forms of tenures without public task, even though also these contracts may provide some forms of facilitated access to the dwelling for households in need:

a) Private tenancy in Italy represents the most widespread form of tenure after ownership and its regulation dates back to the 1942 Civil Code (Arts 1571-1614). In this set of rules, after a general part, which is valid for every rented thing, both movable and immovable, some specific provisions are indicated for rents of urban dwellings, both residential or not.
In particular, in the general part the following aspects are established: rights and obligations of each party, the duration of the contract, the defects of the thing and their restorations, the loss of the thing, the effects of the tenancy contract towards third parties purchasing rights over the dwelling, the guarantees towards third parties' activities, the sub-rental agreements and the termination of the contract. In the second part, further rules are given with regard to the duration of the contract, the guarantees for the payment of rent, the responsibility for small repairs and some particular cases of loss of the dwelling or termination of the contract.
Despite this wide regulation, the Civil Code has a substantially liberal approach: it completely leaves the decisions concerning the economical clauses of the contract to the parties, as well as the decision regarding the execution and the termination of the contract, apart from some minimum requirements in the latter case.
Actually, the practical application of these tenancy rules, since the end of the Second World War was immediately limited with special statutes initially introduced to cope with the exceptional situation of emergency following the war, but later constantly reiterated for

[264] Market rental housing means housing for which the rent price determines the conclusion of contracts and not some social rules of allocation based on need.

decades: in particular, limits regarded the maximum amount of rents, the minimum duration of the contracts, the possibility of evictions towards tenants.
A second phase for private tenancies begins in 1978 when the Fair Rent Act is introduced. This statute generalizes a system in which the amount of rentals and the duration of the contracts related to urban dwellings are not decided by the market but are legally fixed. The strictness of this system, together with the low rates established, turned out in a limitation of the number of dwellings on rent and in a worsening of their conditions but also in the diffusion of black market and in an increase of house purchases.
In 1998 this statute was overcome by Law n. 431/1998, which introduced contracts with legally established rents ('assisted tenancies') as a voluntary alternative to free market rentals. The former solution, as seen above, is supported by the legislator through measures, such as fiscal concessions and a shorter minimum duration of the contract. Despite this, the increasing gap between market rents and legal rents has limited the application of the latter to about one fifth of all the contracts[265].

As a consequence of the above mentioned evolution, the current tenancy contracts are potentially subject to different regulations: contracts stipulated before that Law n. 431/1998 came into force are still regulated by Law n. 392/1978, in case they have been automatically renewed (which means that neither the owner nor the tenant have given notice).

As for differences between professional and commercial landlords in private tenancies, it is, first of all, worth mentioning the fiscal regime, as their respective incomes are subject to different taxes.

Apart from this, some further dissimilarities can be found in the special statutes regulating rents for residential purposes. Law n. 431/1998 provides, among the legitimate reasons to refuse the renewal of the contract after the first four years, the necessity to use the dwelling personally by the owner or by his relatives. Obviously similar provision cannot be invoked when the landlord is an entity.

Another difference is represented by the regulation on unfair terms in consumer contracts, introduced in Italy in accordance with Directive 1993/13/EEC, which must be complied also in case of tenancy contracts, provided that the landlord does not act for professional purposes.

b) Commodatum or free loan for use (Arts 1803-1812 Civ. Cod.) is a contract which gives a person the right to use a dwelling in accordance with a certain purpose and for a certain time and then obliges to give it back to the owner. This contract is normally free of charge and it is frequently used by parents towards children who go to live alone, as in Italy many houses are owned by the older part of the population and free loan becomes an alternative to the donation of the house. This instrument is also used to provide people with a house because of their job or service. In some cases free loans are also illicitly used in order to hide costly tenancy contracts for fiscal purposes.

c) Usufructor tenancy (Arts 978-1020 Civ. Cod.) is a contract which originates a real right (*ius in re*) to the tenant, and gives him a very extensive power, leaving the ownership (called *nuda proprietà*) to the original owner. It may also be a lifetime right. The tenant may personally use the dwelling as well as exploit it in other forms (for example, giving it on rent to third parties), provided that he does not change the use of the thing and that he carefully preserves it. The tenant may also assign the right to another person. The usufruct is necessarily limited in time: it cannot exceed the life of the tenant or thirty years in case this is a legal entity.

[265] Baldini, *La casa degli italiani*, 188.

d) Right of housing (Arts 1022-1026 Civ. Cod.), as the previous one, is a real right (*ius in re*) but it gives a person the more limited faculty to live in a dwelling with his own family. Therefore the person entitled cannot indirectly exploit the dwelling or assign his right to other people.

e) Rents with faculty of redemption: these kinds of contracts were initially used with regard to public houses in order to allow occupants to become owner of the public dwelling after a certain period of time. During last years they have become quite popular again in the private sector as an alternative to bank loans, which have become much more difficult to obtain since the beginning of the economic crisis. There is no a model of contract expressly provided for by the law; that is why it is better to talk about different possible models used in business praxis. Anyway they all share the idea of a renting contract, which gives the faculty or the duty, after a certain period of time, to redeem the dwelling.

f) Cooperatives have the aim to provide their associates with houses to buy or to rent at favorable prices, building them without profit, with the personal contribution of the associates and using some tax privileges. Therefore we have to distinguish between:

- cooperatives maintaining the ownership of the houses and giving them on rent to the associates (called *cooperative a proprietà indivisa*), which at the moment offer in Italy about 50,000 dwellings with an average rental cost between 50 and 60 Euro/sqm per year[266];
- cooperatives building dwellings later sold to the associates (called *cooperative a proprietà divisa*), which in Italy until the crisis offered for sale about 8,000 dwellings per year, now reduced to about 5,000[267].

4.3 Regulatory types of tenures with a public task

- *Please describe the regulatory types of rental and intermediary tenures with public task (typically non-profit or social housing allocated to need) such as*
  - *Municipal tenancies*
  - *Housing association tenancies*
  - *Social tenancies*
  - *Public renting through agencies*
  - *Privatised or restituted housing with social restrictions*
  - *Public entities (e.g. municipalities) taking over private contracts, typically for poor tenants to counteract homelessness*
  - *Etc.*

Tenures with a public task can be summarized with the definitions of *Edilizia Residenziale Pubblica* (or *ERP*, that we can translate as 'public housing') and *Edilizia Residenziale Sociale* (or *ERS*, that we can translate as 'social housing').

a) Public housing is represented by the offer on rent of dwellings owned directly by the State or, more often, by other public entities, such as Municipalities.
The main national legislative reference under this matter is still Law 18 April 1962, n. 167, which regulates the building of public houses. The most significant reforms were carried

[266] OASIt, 'Rapporto sull'abitare sociale in Italia', 104.
[267] *Ibid.*, 104.

out with Law 22 October 1971, n. 865, which introduced the concept of *ERP* and demanded to each Municipality further competences, and with Leg. Decree 31 March 1998, n. 112, which demanded the main competence in the field of public housing to the Regions. If we consider that the State has now only the power to indicate the general principles concerning this sector, it is clear how much differentiated and fragmented the situation in Italy is.
In general terms, we can say that *ERP* controls about 900,000 dwellings. They are generally owned by Municipalities and managed by specific public agencies operating in every Province. This kind of houses is assigned to the weakest part of the population, in accordance with criteria established by the various competent level of government. The rent (called 'social rent') is normally very low: despite regional and local differences are rather high, a 70 sqm dwelling is on average rented for less than 100 Euro per month (while the market price would in the range of 800 Euro)[268].

b) Social housing gathers a variety of different programs which all have in common the idea of establishing various forms of partnership between public authorities and private investors in order to offer dwellings for social purposes with different forms of tenure.
This category comprises the projects elaborated in accordance with the National Housing Plan 2008 but also the more traditional projects of 'assisted housing' and 'contracted-out housing' (for their definitions see above). The main role is given to regional and local authorities: this makes even more difficult than in the case of public housing to find a global evaluation at national level of the rules adopted and of the projects funded and realized. For example, it is not easy to find a recent and precise quantification of the number of dwellings provided for rents with this kind of measures.
Prospective tenants are families that do not fall within the requirements to receive a public dwelling but that have not a sufficient income to find a suitable house on the free market. In consideration of this, rentals are on average of about 430-470 Euro per month for a 70 sqm dwelling, which is a sum halfway between social and market rents[269].

- *Specify for tenures with a public task:*
  - *selection procedure and criteria of eligibility for tenants*
  - *typical contractual arrangements, and regulatory interventions into, rental contracts*
  - *opportunities of subsidization (if clarification is needed based on the text before)*
  - *from the perspective of prospective tenants: how do I proceed in order to get "housing with a public task"?*

a) Public housing: every Municipality is competent to select people entitled to receive a public dwelling; although this selection shall be carried out in accordance with general national principles and, above all, regional rules, it is difficult to examine in details procedures and requirements of such a fragmented system.
As a general rule, we can say that usually every year Municipalities publish a notice for people who need a social dwelling, indicating the procedure to follow and the necessary requirements. The publication is made in the register of the Municipality and since 1 January 2013 the publication on the Municipal web-site is also necessary.
The following conditions of eligibility are practically identical in all Regions:

[268] *Ibid.*, 109.
[269] *Ibid.*, 109.

- Italian or EU citizenship; other foreign people need a 'residence card' or a biannual 'residence permit' to live in Italy and a regular job;
- residence or job in the Municipality; in some cases notices allow applications also from people living in neighbouring Municipalities; in other cases a similar possibility is allowed only at special conditions;
- compliance with the fixed economic parameters regarding the global wealth of the household (generally it is not considered only the income);
- the applicant and his family do not have in Italy or abroad an adequate dwelling for the necessities of the family;
- the applicant and his family have not already received a public house on rent or for sale; they have not been evicted for non-payment of rents in a similar dwelling and they have not illegally occupied it.

Lists are redacted taking into account personal conditions of the applicants in the light of parameters and other priorities established by competent public authorities (for example, older people, young couples, families with many children, people in bad living conditions generally have a priority).

The list elaborated on the basis of the applications received is then published. From that moment on it is possible for a certain period of time to file a petition against the list; also in this case, times and modalities of the opposition are fixed by every Region, so they change from one place to another. Available houses are assigned following the definitive list and in accordance with tables fixing the useful floor area per number of occupants.

Contracts are executed by the public agencies which manage the dwellings on behalf of the Municipalities, following standard contracts approved by the Region.

Contracts generally do not have a time limit or are automatically renewable: their duration is only subject to the compliance with some established rules; in particular, just to mention the rules which seem to be required in every Region, the tenant and his family shall maintain the necessary requirements to have access to public dwellings, the rent shall be regularly paid, dwellings shall not be damaged, left or given to other subjects.

In cases of emergency, connected for example with particular kinds of eviction, calamities, serious health problems, Municipalities are entitled to assign public dwellings in exception to the list. Anyway this measure cannot generally exceed a certain percentage of the whole assignments.

b) Social housing: in general terms, we can say that the procedure of awarding social houses resembles the one adopted for public houses. It is made through public notices concerning the available dwellings. The notices indicate the procedure to file the applications, the necessary requirements of the applicants and the conditions at which dwellings are assigned.

Summary Table 8

Rental housing **without a public task** (market rental housing for which the ability to pay determines whether the tenant will rent the dwelling)	
	Main characteristics
1) 'Free market tenancies'	Dwellings are mainly provided by small private owners. Amount of rents and other clauses are freely decided by the parties, save in

	case of mandatory rules (e.g. the duration is necessarily 4 years + 4 years). They concern about 13% of the Italian households.
2) 'Assisted tenancies'	Dwellings are mainly provided by small private owners. Fiscal policies tend to favour its adoption in bigger cities and in Municipalities with housing problems. The amount of rent is calculated in accordance with legal parameters having regard to the location of the dwelling and its characteristics. Also other contractual clauses shall be in accordance with legal model contracts. Duration is 3 years + 2 years. They concern about 3,3% of the Italian households.
Rental housing with a **public task** (housing for which government has defined a task; often non-profit or social housing that is allocated according to need, but not always)	
	Main characteristics
1) 'Public housing'	Dwellings are provided by public entities (in particular Municipalities). Their assignment follows procedures regulated by local and regional rules, in accordance with national principles. Grantees tend to belong to the poorest segment of the population. Rent is very low in comparison to market prices. These contracts are not subject to terms of duration. This kind of tenure concern about 5,5% of the Italian households.
2) 'Social housing'	Dwellings are realized through different forms of subsidies or even partnership between public and private subjects. They are assigned through different procedures of selection regulated locally. Grantees are households who cannot afford market prices but are not so poor to apply of a public dwelling. Rents are generally halfway between market rents and public dwellings rent. There are no exact figures about the number of households living in this kind of dwellings at national level.

- *For which of these types will you answer the questions in next chapters; which regulatory types are important in your country?*

Next paragraphs of this Country Report will be mainly focused on the different forms of private tenancies without a public task, as these are largely the most widespread rental types in Italy (see above). In particular, our attention will be dedicated to 'residential tenancies', which are unitarily and organically regulated at national level by the Civil Code, by Law n. 431/1998 and, to a more limited extent, by other special statutes. Conversely, public and social tenancies represent about one fourth of the Italian rental market: their regulation, apart from a common core they share with private tenancies, is demanded to a rather intricate and fragmented mixture of different regional and local statutes and regulations. However, in next paragraphs reference to this latter type of rent will be provided from time to time when it will be useful for a comparison.

5. ORIGINS AND DEVELOPMENT OF TENANCY LAW

- *What are the origins of national tenancy law and where was and is it laid down (civil code, special statute, case law)?*
- *Who was the political driving force? Was it based on a particular legal philosophy (e.g. socialism)? Is there a particular philosophy behind the rules (e.g. protection of the tenant's home as in Scandinavia vs. just a place to live as in most other countries)*
- *What were the principal reforms and their guiding ideas up to the present date?*

The primary rules regarding tenancy law were originally indicated in the Civil Code of 1865 and later in the Civil Code of 1942, among the 'typical contracts' in the Fourth Book on Obligations. The former Code was adopted a few years after the unification of Italy in order to substitute the rules of the different pre-unification states composing the country and closely resembled the French Code Napoleon. The 1942 Code, which is still in force, was instead mainly inspired by the German Civil Code (BGB). Despite having been adopted during last years of the fascist regime, the rules regarding tenancy law still basically follow, as in 1865, the liberal principle of private autonomy; for this reason they are mainly of a non-mandatory nature.

Nevertheless, in the same years, regulation of tenancy law has been pursued also through a series of 'special statutes', following a completely different approach, which limits, at least under certain aspects, free market rules in order to pursue a compromise between the conflicting interests of tenants and landlords. These rules have been inspired by principles both of government control and protection towards tenants and it is significant considering that, despite obvious changes during the years, they have crossed the decades and are still present in nowadays regulation.

The story of this legislation can be grouped in three main steps.

The first 'special statutes' on tenancy law were introduced after World War I (1921). Despite being called 'statutes', these laws included merely exceptional and temporary provisions, which, in practice, continued to be reiterated until 1970s. In particular, two

special features concerning termination of contracts and rent increase were introduced: law provided the automatic renewal of tenancy contracts, denying free termination and rent increases were similarly prevented. These provisions were, at least originally, a consequence of the World Wars, which provoked, together with an economic crisis, a shortage in the housing stock and a high demand. Landlord's imposing consistently high rent further exacerbated this bleak situation. The statutes were therefore founded on the rationale of distributive justice and presupposed a failure of the free market to provide for sufficient housing provision; as a result, State interventionism was seen as essential. Nevertheless, this legislation created a great deal of legal uncertainty and greatly reduced the attractiveness of rented properties, both for landlords and investors[270].

This regime was also heavily criticized as an excessive limitation for individual property rights and began to be reviewed by the Constitutional Court in the 1970s[271]. Although the Court did not find the regime to be unconstitutional, it stated that the reiteration of provisions to legally renew tenancies should have been substituted by a systematic and definitive legislation as soon as possible, otherwise the regime would have become incompatible with the protection granted by the Constitution to the right of property.

The second step in special statues regarding tenancy law was represented by Law n. 392/1978, which, according to the indications given by the Constitutional Court, for the first time introduced a complete set of rules for residential and commercial tenancies. This statute was similarly founded upon the rationale of distributive justice and contained several mandatory rules, in order to protect tenants. Among these, we can mention the duration of the contracts and the amount of rents, which were both legally fixed. As far as the latter is concerned, the statute introduced some legal standards to determine the rent: for this reason it was called the '*equo canone*' act, which means 'Fair Rent' Act. On the other side, the statute did not introduce any special requirement for the formation of a valid tenancy contract.

Law n. 392/1978 was also influenced by Art. 42 of the Constitution, which articulates 'the social function of property'. During this period the debate on the Constitutional 'right to housing' arose[272]. This right was finally affirmed by the Italian Constitutional Court, which ruled that such a right is derived from articles 2 and 3, subs. 2 Const.[273], or from Art. 42, subs. 2 Const.[274].

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[270] Bruno Inzitari, 'Locazioni e mercato immobiliare', in *Le locazioni urbane. Vent'anni di disciplina speciale*, ed. V. Cuffaro (Torino: Giappichelli, 1999), 160.

[271] See Const. Court, 25 February 1975, n. 30, F*oro italiano*, 1975, I, 798; Const. Court, 15 January 1976, n. 3, *Giurisprudenza italiana*, 1976, I, 1, 880; Const. Court, 18 November 1976, n. 225, *Foro italiano*, 1976, I, 2945.

[272] L. Barbiera, *Dal diritto di abitazione al diritto di proprietà: un nuovo statuto di «proprietà» urbana nella legge sulla riforma della casa, Rivista di diritto civile*, 1973, I, 365 et seq.; Temistocle Martines et al., 'Il «diritto alla casa»', in *Tecniche giuridiche e sviluppo della persona,* ed. N. Lipari (Bari: Laterza, 1974, 391 et seq.; D. Sorace, 'A proposito di «proprietà dell'abitazione», «diritto d'abitazione» e «proprietà (civilistica) della casa»', *Rivista trimestrale di diritto e procedura* civile, 1977, 1175 et seq.; Mario Bessone, 'Equo canone e «diritto» all'abitazione nella prospettiva delle norme costituzionali', *Foro padano*, 1978, II, 83 et seq.; Guido Alpa, 'Equo canone e diritto all'abitazione', *Politica del diritto*, 1979, 155 et seq.; Lucio Francario, 'Bisogni sociali e diritto all'abitazione', *Democrazia e diritto*, 1981, V, 128 et seq.; Umberto Breccia, *Il diritto all'abitazione,* (Milano: Giuffrè, 1980); Anna De Vita, *Il rapporto di locazione abitativa fra teoria e prassi*, (Milano: Giuffrè, 1985); Mario Trimarchi, *La locazione abitativa nel sistema e nella teoria generale del contratto*, (Milano: Giuffrè, 1988), 9 et seq.

[273] See Const. Court, 7 April 1988, n. 404, in *Giurisprudenza italiana*, 1988, I, 1, 1627, with comment of Antonio Trabucchi, 'Il diritto ad abitare la casa d'altri riconosciuto a chi non ha diritti!'; Const. Court, 20 December 1989, n. 559, in *Foro italiano*, 1990, I, 1465; Const. Court, 19 November 1991, n. 419, in *Foro italiano*, 1992, I, 302, with comment of F. DONATI. Some previous decisions had denied the constitutional

Nevertheless also this regulation for many aspects did not result fit to solve the problems of tenancies. In particular the regime was considered excessively strict and its negative effects on the rental market – especially the dissuasion of landlords from letting their property and thus the reducing supply – were widely criticized.
These results led to its overcome and introduced the third step in special statues regarding tenancy law, inspired to a wider liberalization and partial deregulation of the market.
Firstly, Law n. 359/1992 excluded newly built premises from the application of 'fair rent' mechanism and allowed the parties to derogate from it, provided that they accepted the compulsory assistance of landlord and tenant associations. However, the Constitutional Court held this provision to be unconstitutional as it imposed upon the parties the obligation to accept the assistance of these associations[275].
In 1998 a second intervention introduced a new set of rules for residential dwellings, which substituted most of the Fair Rent Act: Law 9 December 1998, n. 431. This statute tries to find a new balance between property rights and protection of the weaker party (tenants). It has therefore introduced a mixed system with both mandatory and dispositive rules: limits to the amount of rents remain only in case parties opt for the regime of 'assisted tenancies', favoured by the legislator with fiscal and other provisions; limits to minimum duration are instead still mandatory.
However, Law n. 392/1978 still has a partial field of application also with regard to residential dwellings, where the 1998 Law does not derogate from it, thus creating a combination among Civil Code rules and different special statutes that will be deeper analyzed in the following paragraphs.

- *Human Rights:*
    - *To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in*
        - *the national constitution*
        - *international instruments, in particular the ECHR*
- *Is there a constitutional (or similar) right to housing (droit au logement)?*

The Italian Constitution, which was adopted in 1948 after the end of the fascist regime, of the II World War and of the monarchy, did not mention the 'right to housing' but introduced some provisions regarding the matter of property and housing.
Among these, we can mention, first of all, Art. 47, subs. 2 Const.:

> [The Republic] *promotes the access to the homeownership through the use of the popular saving ...*

The impact of this provision is mainly linked to the measures to promote home-ownership and more in general house affordability.
Another important rule is indicated by Art. 42, subs. 2:

> *The private property is recognised and guaranteed by the law, which prescribes the ways it is acquired, enjoyed and its limitations so as to ensure its social function and make it accessible to anyone.*

The express acknowledgment of the social function of property has surely been one of the most important bulwarks for the introduction of the several special statutes limiting

protection of «right to housing»: see Const. Court, 28 July 1983, n. 252, in *Foro it*., 1983, I, 2628, with comment of D. Piombo; Const. Court, 18 July 1984, n. 216, in *Giur. cost*., 1984, 1467.
[274] See Const. Court, 25 February 1988, n. 217, *Archivio delle locazioni*, 1988, 291.
[275] Const. Court, 25 July 1996, n. 309, *Foro italiano*, 1996, 2601.

the property right introduced in tenancy law. For this reason, even though in last years there has been a progressive liberalization in this field, it is still one of the most regulated in Italian contract law.
Finally the Constitutional Court, invoking both the above mentioned rules and the general principles of 'human dignity' and 'substantial equality', respectively protected by Arts 2 and 3, subs. 2 Const., recognised that our Constitution implicitly grants also a social 'right to housing'. So far this principle has found rather limited applications in Court, above all in order to grant equality of treatment to non-married couples in aspects of tenancy law such as succession in the contract[276].
International principles, on the contrary, seem to have played a role above all in protecting owners/landlords towards excessive limitations of property rights. In this perspective it is worth mentioning the European Convention on Human Rights (ECHR) and its First Protocol, both implemented by Italy with Law 4 August 1955, n. 848.
In particular, Art. 1 of the Protocol, concerning protection of property, and Art. 6 of the Convention, concerning the right to a fair hearing within a reasonable time have been several times invoked by Italian citizens before the European Court of Human Rights in order to contest the measures for suspension and graduation of evictions[277]. The several convictions received by Italy for these policies have played a determinant role in order to improve the protection of owners' and landlords' rights.

6. TENANCY REGULATION AND ITS CONTEXT

6.1 General introduction

- *As an introduction to your system, give a short overview over core principles and rules governing the field (e.g. basic requirements for conclusion, conditions for termination of contracts by the landlord, for rent increase etc.; social orientation of tenancy law in force; habitability (i.e. the dwellings legally capable of being leased).*

The conclusion of a valid tenancy contract requires all the elements provided for by the law for contracts in general, which means consensus between the parties, a possible, licit, determined or determinable subject matter of contract, a licit consideration and a written form, when required by the law.
First of all, it is important that the contract is concluded with a person which can dispose of the dwelling, even though this aspect does not necessarily affect the validity or the effects of the contract, as we will see with more details below.
The parties shall indicate in a sufficiently precise way the dwelling which is given on rent and the amount of the rent, so that they are immediately determined or at least can be subsequently determined.
Another crucial aspect is the duration of the contract: Law n. 431/1998 provides that rents for residential purposes shall last for a fixed number of years, which varies for 'free market tenancies' and 'assisted tenancies'. Exceptions are provided only for

[276] Const. Court, 7 April 1988, n. 404; Const. Court, 20 December 1989, n. 559.
[277] This matter is examined in details below.

particular kinds of residential rents, such as tenancies for holiday houses and tenancies for University students.

The same 1998 special statute, in exception with the rules in the Civil Code, provides that these kinds of rents shall be always concluded in writing, otherwise the contract is invalid. It is interesting to consider that in case the landlord did not want to respect this rule the tenant can always ask a judge to validate the contract; at the same time the judge is entitled to legally determine the amount of rents, which cannot exceed a very low rate.

In a similar way, also violations regarding the minimum duration of contract or the legal amount of rents grant to the tenant the right to ask for the judicial amendment of the contract, without risking that the whole contract is declared invalid. This rule gives an example of the protective approach towards the tenant adopted by the legislator.

As far as termination of a tenancy contract is concerned, we again face general contract rules and other specific provisions. Among the former, it is necessary mentioning the breach of contract; among the latter, the expiry of the contract, provided that one of the parties objects in writing to the renewal of the contract: more precisely, after a first period of time legally established, the landlord can give notice to quit only for some particular personal reasons indicated by the law. On the other side, the tenant can terminate the contract at any time, provided that there are 'serious reasons' and with six months notice.

Rules regarding rent increase are different according to the type of contract. If the parties opt for a 'free market tenancy', most scholars retain that they are also free to provide clauses which gradually increase their amount[278]. On the contrary, in case of 'assisted tenancies', increase must be allowed by local agreements stipulated by associations of representatives of landlords and tenants; in any case this increase cannot exceed 75% of the inflation rate per year as calculated by the Italian Institute of Statistics (*ISTAT*). Finally, in case of contracts for which law allows a shorter minimum duration, such as tenancies for University students, rent increase is not allowed.

In Italy there are no specific provisions indicating the necessary requirements for rented dwellings. This means that the ordinary rules regarding standards of safety, healthiness and energy saving of every dwelling shall be respected. The presence of all these requirements is recognized by the release of a specific certificate of conformity to standards (in Italian *certificato di agibilità*). The effects on contracts which dispose of the building (for example, both sale and rent) in case of lack of the certificate is discussed. It tends to be considered by the Italian Courts as a breach of contract[279], as the landlord shall deliver the dwelling in 'good state of repair' (Art. 1575, n. 1 Civ. Cod.). Different agreements between the parties are allowed, provided that they do not concern defects a) which were negligently not said by the landlord, b) which make the use of the dwelling impossible, c) which may seriously affect the health of the occupants (Arts 1578 and 1580 Civ. Cod.)[280].

As we can see from these preliminary indications, Italian tenancy law, even after the liberalization of the market carried out with Law n. 431/1998, still has a rather protective approach towards tenants, which are considered weaker parties of the contract, except in some particular cases such as rent of luxury houses to which most of the rules we have just seen are not applicable.

[278] Giovanni Gabrielli & Fabio Padovini, *La locazione di immobili urbani*, 2nd ed. (Padova: CEDAM, 2005), 364 et seq.

[279] Cass. 19 July 2008, n. 20067, in *Giustizia Civile*, 2010, I, 156.

[280] This topic will be analyzed in more details below.

- *To what extent is current tenancy law state law or infra-national law (if legislative jurisdiction is divided: what is the allocation of competencies and for which subject matters)*

In Italy private tenancy law is regulated at national level by the Civil Code and other special statutes. The role of infra-national law is limited to aspects which may indirectly interfere with tenancy law: for example, also local authorities may implement the requirements for the certificate of conformity to standards. In addition to this, some Regions provide specific subsidies to deal with difficulties to find and afford dwellings[281].
The situation is much different for tenancies of public houses. As we have already seen in the previous paragraphs, the rules in this field are mainly demanded to regional and municipal authorities, a circumstance which makes this field of public welfare quite fragmented in a national perspective.
As far as jurisdiction is concerned, in Italy there are no special Courts for cases regarding tenancy law. Nevertheless there is a special procedure provided by Art. 447-*bis* Civ. Proc. Cod. for cases of tenancy law in urban dwellings. Other summary proceedings are expressly provided for particular cases such as notice to quit in default of payment or when the contract terminates.

- *Is the position of the tenant also considered as a real property right (and therefore also governed by property law) or (only) as a personal (obligatory) right?*

The position of the tenant is considered by Italian scholars neither a property right nor a personal right.
At the same time its position cannot be entirely classified as a '*diritto personale di godimento*'. This expression – which can be translated as 'personal right to use the thing' – was elaborated to indicate a third kind of rights, which share aspects of both property and personal rights. This particular position is generally explained saying that at the beginning of the contract there is a subject who has a claim towards another, in order to receive the agreed thing and use it. Anyway, after the delivery, the receiver has an absolute protection against any third subject which threatens its juridical situation, just as in case of a property right[282].
The position of the tenant for many aspects resembles this scheme, but it also contains some exceptions, which are the consequence of some specific rules introduced by the legislator.
It is worth mentioning the fact that in case of factual nuisances in the use of the dwelling, the tenant is entitled to file a proceeding directly against the molesters (Art. 1585, subs. 2 Civ. Cod.); most decisions and jurisprudence retain that the tenant may invoke not only the monetary compensation but also the injunction, just as the owner[283].
On the contrary, in case of juridical nuisances which affect the use of the dwelling, the tenant shall be granted in his detention by the landlord, as the former is not entitled to institute an action personally.

[281] An example is the Tuscan Regional Law, 12 December 2012, n. 75, which established special commissions to contrast housing problems.
[282] Francesco Gazzoni, *Manuale di diritto privato* (Napoli: ESI, 2013), 64. According to a different opinion, the protection of the subject who has a personal right to use the thing requires, anyway, the intervention of the owner: Giovanni Gabrielli & Fabio Padovini, *La locazione di immobili urbani*, 2nd ed. (Padova: CEDAM, 2005), 141 et seq.
[283] *Ibid.*, 146 et seq.

Another aspect is represented by the right for the tenant to oppose his contract to a third party who purchased the dwelling from the original landlord (*emptio non tollit locatum*). Also this rule resembles the characteristics of a property right, but it is subject to some limits: for example, in case of rentals concerning properties, if the contract is not transcribed, it cannot be opposed to the purchaser for more than nine years from its beginning (Art. 1599, subs. 3 Civ. Cod.).

- *To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?*

The Italian legislation regarding tenancy law is the result of different interventions which occurred over the decades.
The oldest rules still in force can be found in the 1942 Civil Code: apart from the general rules on contract law, which find application as far as it is not differently provided, a specific set of rules can be found in Arts 1571–1606, which are valid also for movable things. In particular, the aspects established are: right and obligations of each party, duration of the contract, defects of the thing and their restorations, loss of the thing, effects of the contract towards a third subject obtaining rights over the dwelling, guarantees towards third party activities, subletting and termination of the contract.
In addition to this, a specific set of rules is provided for rents of urban dwellings (both residential or not) by Arts 1607-1614 and regards the duration of the contract, the guarantees for the payment of rent, the responsibility for small repairs and some particular cases of loss of the dwelling or termination of the contract.
In general these rules are dispositive and reflect the liberal principle of private autonomy; this is evident also considering that, for example, nothing is said with regard to the economical clauses of the contract.
Actually, the practical application of these rules was since the beginning heavily influenced by some special statues introducing limits with regard to the maximum amount of rents, the minimum duration of the contracts, the possibility of evictions towards tenants. In 1978 this restrictive approach was definitely adopted with the so called Fair Rent Act, which introduced also a distinction between the rules for dwellings with residential purposes and rules for dwellings without residential purposes.
The strictness of this system led to its progressive overcome. In particular, in 1998 Law n. 431 abrogated most of the rules provided for residential dwellings. This means that nowadays Law n. 392/1978 is still in force only with regard to aspects such as subletting, termination and breach by the tenant, succession in the contract, prohibition of clauses of termination in case of sale of the dwelling, registration fees and other burdens of the contract and so on. The 1998 Act abrogated also the rule according to which all the dispositions in the 1978 Act were 'unilaterally compulsory', which meant that could be derogated only in favour of the tenant.
The abrogation carried out in 1998 has created a difference between residential tenancies and non-residential tenancies, as for the latter the rules and the limits provided for by the 1978 Law are still in force; a circumstance which arouse suspects of contrast with the Constitution[284].

[284] *Ibid.*, 10.

Anyway, it cannot be said that the new statute introduced a completely dispositive system, since some imperative rules still exist, such as in particular Art. 13, regarding the minimum duration of the contracts.
In addition to this, the 1978 Act still regulates contracts stipulated before that Law n. 431/1998 came into force, in case they have been automatically renewed (which means that neither the owner nor the tenant have given notice).
Therefore, nowadays the 1998 Act is surely the most important reference for private rentals, but some problems of coherence with the parts of the 1978 Act still in force can be found. The most general problem is the following: as already said, the express nullity for clauses derogating in favour of the landlord the 1978 Act limits was abrogated (Art. 79); the debate is whether the still in force limits provided by the 1978 Act can now be freely derogated by the parties or some compulsory rules still exist. The solutions to this matter will be analysed case by case in the following paragraphs.
A much more specific problem of coherence regards the faculty for the tenant to terminate the contract at any moment 'for serious reasons'. This rule is still in force in both statutes but with a slight difference: only in the 1978 Act it is required that the tenant gives notice through 'recorded delivery', so the question is whether this specification is still valid or not; another question regards the possibility for the parties to derogate such provision[285].
Anyway, as a whole, we can say that the relationship between general and special rules does not create a high level of legal uncertainty[286].
Some other problems of relationship among different rules arise with regard to procedural aspects and will be analyzed here below.

- *What is the court structure in tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?*

In Italy there is no a special Court dealing with tenancy law, nevertheless the Civil Procedure Code indicates some special rules for proceedings regarding tenancy law.
In general terms, Art. 447-*bis* Civ. Proc. Cod. provides a quicker procedure for all the proceedings regarding tenancies of 'urban dwellings'. As for its field of application, this rule, on the one side, applies only to tenancy contracts in a strict sense, which means not atypical agreements or other forms of tenure (apart from commodatum)[287]; on the other side, it is considered applicable to all the residential dwellings, even if not 'urban'[288]. The procedure in part resembles the so called 'labour procedure'.
In addition to this, Art. 657 et seq. Civ. Proc. Cod. provides special rules to use in case of notice to quit. This procedure can be used as an alternative to the above mentioned procedure in order to obtain an execution judgement against the tenant who has to leave the dwelling, both in case of expiration of the contract and in default of regular payment.
For all the other proceedings regarding tenancy law parties shall use the ordinary procedure.

[285] The opinions about these topics will be examined below.
[286] Umberto Breccia & Elena Bargelli, 'Italy', *Tenancy Law and Procedure in the European Union*, <http://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/TenancyLawProject/TenancyLawItaly.pdf>, 3
[287] Mauro Di Marzio & Michele Di Mauro, *Il processo locatizio*, (Milano: Giuffrè, 2007) 1043, 1098, 1100 et seq.
[288] Giuseppe Trisorio Liuzzi, *Tutela giurisdizionale delle locazioni* (Napoli: ESI, 2005), 50 s.

- *Are there regulatory law requirements influencing tenancy contracts*
  - *E.g. a duty to register contracts; personal registration of tenants in Eastern European states (left over of soviet system)*

The most important regulatory requirement provided for by the Italian Law with regard to tenancy contracts is the registration by the so called 'Agenzia delle Entrate'.
This procedure is compulsory for all the contracts regarding properties which last more than 30 days in a year. The registration shall be done by 30 days from the execution of contract or from the running of its effects, if earlier. In case the contract is written or authenticated by a public notary, the latter is responsible for its registration, otherwise the registration shall be done by one of the parties.
At the same time parties shall also pay the registration fee, which is 2% of the annual rent for every year of duration. Parties may decide in the contract who has the duty to pay the fee; nevertheless for the 'Agenzia delle Entrate' they are always jointly and severally responsible for the payment. This payment can be excluded in case the parties opt for a particular fiscal regime (called 'cedolare secca'), according to which the landlord's income from rents is taxed apart with a fixed rate, instead of being cumulated with his other personal incomes.
Very strong measures were introduced in order to prevent the lack of registration and so to counteract black market.
According to a rule introduced in 2004, a contract which is non-registered is null and void[289]; this effect is the consequence of the lack of registration and cannot be invoked just in case of lack of regular payment of the registration fee[290]. According to a certain opinion, the contract shall not be considered radically invalid but unenforceable until the registration is not done[291].
In addition, the law in 2011 introduced the possibility of a particular validation of the contract, but only in order to pursue a further punitive effect[292]:

> Art. 3, subs. 8 Leg. Decree n. 23/2011 – *When a tenancy contract of residential dwelling ... is not registered within the term indicated by the law, the following discipline applies:*
> *a) the tenancy duration is established in four years from the moment of the registration, done voluntarily or by the office;*
> *b) as for renewal, the discipline of Art. 2, subs. 1 Law n. 431/1998 applies;*
> *c) since the registration the annual rent is fixed in three times the cadastral rent, save rent increase in the amount of 75% of the ISTAT index since the second year. In case the contract provides a lower rent, the agreed rent applies.*

This rule was particularly strict both under the point of the duration, which could easily become of eight years since the moment of the registration, and under the point of the rent, as the cadastral rent is a particularly low value in comparison to nowadays market prices. A similar punitive procedure which avoids the radical nullity of the contract was already introduced by the 1998 Act in case the contract is not made in the written

[289] Art. 1, subs. 346, Law 30 December 2004, n. 311: "Tenancy contracts, or in any case contracts which give the faculty of enjoyment, regarding dwellings or their portions, in any way executed, are null and void, if they are not registered, when this is required".
[290] Vincenzo Cuffaro, 'Violazione di obblighi tributari e nullità del contratto (di locazione)', *Rivista di diritto civile*, 2011, 357 et seq.
[291] Cristina Ulessi, 'Commento sub Art. 1 Legge n. 311/2004', in *Codice Commentato di Locazione e Condominio – Locazione*, ed. V. Cuffaro & F. Padovini (Torino: UTET Giuridica, 2013), 636 et seq.
[292] Art. 3, subs. 8 and 9 Law 14 March 2011, n. 23, which introduced the 'cedolare secca' regime.

form[293]; in case of lack of registration a significant peculiarity was introduced as the effect was automatic and did not require the intervention of a judge.
The first application of this latter rule cleared that it could not be considered retroactive but that it operated only for contracts executed after the rule was come into force (7 April 2011)[294]. In addition this punitive regime was considered applicable also when, according to the contractual agreement, the tenant (and not the landlord) had the duty to register the contract and did not do it regularly[295]. This is due to the fact that parties are always considered jointly and severally responsible also for this obligation. The risk that this instrument could be abusively exploited by the tenant in order to reduce the rent was highlighted[296].
Finally, the punitive regime was expressly extended to two further cases of fiscal irregularities: registration of the contract indicating a lower amount of the rent and simulation of a free loan (commodatum) in order to hide a costly tenancy contract (Art. 3, subs. 9 Leg. Decree n. 23/2011).
These provisions (both subs. 8 and 9 of Art. 3) have been declared unconstitutional on 14 March 2014 by the Constitutional Court, so they are not enforceable anymore[297]. The local Courts proposed the unconstitutionality of these provisions stressing also aspects of their content, such as excessive limitation of property right, unequal treatment of tenant and landlord etc.; but the Constitutional Court took into consideration only a procedural irregularity, finding that the Government, which had approved these rules through a legislative decree, had gone completely out of the boundaries authorized by the Parliament. The Court expressly defines these provisions as 'revolutionary' under the point of view of civil law, but it does not seem to consider them unconstitutional *per se*. For this reason it is possible that the Government will try to adopt them again following the correct procedure, but it is too early to make predictions.

- *Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented - e.g. on minimum size, number of bathrooms, other mandatory fittings etc.*

In Italy there are not specific provisions regarding the standards of dwellings on rent. This means that also for for these houses, both private and public, it is necessary to consider the general rules provided for every residential dwelling.
The law, through a series of different provisions introduced during the years, requires some minimum standards of safety, healthiness and energy saving, which are all recognized by the release of a specific certificate of conformity (in Italian *certificato di agibilità*). More in detail, hygienic aspects are established: minimum height of the rooms, minimum floor area for every occupant and for certain kind of rooms, sufficient natural light, air and temperature provided by the heating system, necessary facilities for the bathroom and the kitchen, protection against noises[298]. Other requirements concern the accessibility of the houses and the prevention of damages for the occupants, especially for people on a wheel chair or with limited capacity of

[293] See below.
[294] Trib. Napoli, 16 October 2013, n. 11429, *Il Sole 24 Ore*.
[295] Trib. Roma, 21 January 2013, in *Corriere del Merito*, 2013, 624 ss.
[296] Marco Rizzuti, La nuova normativa sulla nullità delle locazioni non registrate: profili problematici, in *Corriere del Merito*, 2013, 627 s.
[297] Const. Court, 14 March 2014, n. 50, <http://www.cortecostituzionale.it/actionPronuncia.do>.
[298] See Min. Health Decree 5 July 1975.

movement[299]; the safety of technical equipments (heating, electrical and gas system)[300]; the stability of the building, the damp of the walls and, when required, the respect of building rules concerning earthquakes[301]. As far as energy saving is concerned, recent legislative developments have occurred and will be analyzed below.

With regard to public dwellings, regional rules generally provide further rules regarding minimum amount of surface per number of people.

The role of the certificate of conformity to standards is cleared by Art. 4 D.P.R. n. 425/1994, according to which '*In order to use buildings or part of them ... it is necessary that the owner asks the mayor the certificate of conformity*'.

There is a debate about the contractual consequences when the sold or rented dwelling lacks of the above mentioned standards or of the corresponding certificate, also in consideration of the fact that the original sanctions provided for people living in a dwelling without the standards of conformity were abolished[302].

It is generally excluded that this situation may affect the validity of the contract, because the above mentioned Art. 4 D.P.R. n. 425/1994 has regard to the 'use' of the dwelling but does not prevent the execution of a contract concerning a dwelling which has not the certificate of conformity[303]. Therefore the lack of this element tends to be considered by the Italian Courts as a breach of contract by the landlord, the party who shall be normally considered obliged to provide the certificate[304].

This principle shall be coordinated with the general rules on tenancy law.

Art. 1578 Civ. Cod., in case of 'vices' affecting the rented thing, states that the tenant can discharge the contract (or ask a reduction of the rent) only at certain conditions: firstly, it is necessary that the vices make the dwelling 'significantly unsuitable for the agreed use'; secondly, it is necessary that the tenant was not aware of these problems or that they were not easily recognisable[305]. This rule is considered applicable also in case of lack of conformity to standards and this means that Art. 1578 Civ. Cod. cannot be invoked when the tenant accepted the risk about the future granting of the certificate from the competent authorities, or when a specific use of the dwelling, for which certain standards are necessary, was not indicated in the contract, because in this case the landlord cannot be required to provide these standards[306].

However, it is worth considering another tenancy law provision which can be invoked in case of non-conformity of the dwelling to the legal standards: when the vices of the rented thing are risky for the health of the occupants, the tenant may in any case terminate the contract, notwithstanding awareness or different agreements (Art. 1580 Civ. Cod.).

[299] Min. Decree 14 June 1989, n. 236.
[300] Law 5 March 1990, n. 46.
[301] Art. 25 and 67 Testo Unico Edilizia (Law 6 June 2001, n. 380).
[302] It was initially a criminal and later administrative sanction (Art. 221, subs. 2 Royal Decree n. 1265/1934) and was abrogated by Pres. Rep. Decree n. 380/2001.
[303] Cass., 11 April 2006, n. 8409, in Foro italiano, 2008, I, 831
[304] Cass. 19 July 2008, n. 20067, in *Giustizia Civile*, 2010, I, 156.
[305] Cass., 7 June 2011, n. 12286, in Archivio locazioni, 2011, 537
[306] This case normally regards non-residential uses of the dwelling for which particular requirements are necessary: Cass., 13 March 2007, n. 5836, in *Rivista giuridica dell'edilizia*, 2007, I, 1506; Cass., 25 January 2011, n. 1735, in *Giustizia Civile*, 2011, 337

- *Regulation on energy saving*

One of the first Italian interventions in the field of energy saving is represented by Law n. 10/1991, which in particular introduced some requirements regarding, for example, restoration of buildings or use of suitable heating systems in order to save energy[307].
This regulation was later implemented through the Leg. Decree n. 192/2005, which gave execution to Directive 2002/91/EC on the energy performance of buildings, and in particular introduced the 'energy classification certificate'.
The adoption of the new Directive on the energy performance of buildings (2010/31/EU) has been having a rather complicated course. The delay in the execution of the Directive led to the opening of an infringement procedure in September 2012 against Italy. After that, in order to avoid penalties, a series of different acts have been urgently adopted.
In particular, it is worth mentioning the Decree Law 4 June 2013, n. 63 (converted in Law 3 August 2013, n. 90), which introduced the 'certificate of energy performance' of the dwelling, substituting the previous 'certificate of energy classification'.
These new rules are now included in Leg. Decree 19 August 2005, n. 192. According to the original formulation of Art. 6, subs. 2, the owner should provide the certificate in any case of transfer (also gratuitous) and of new rent concerning a building or a single dwelling (in case such a certificate had not been already produced before). In addition, the owner should exhibit the certificate to the other side at the beginning of the negotiations and deliver it at the conclusion of the contract. In case of a dwelling under construction, the certificate should be provided (by the owner, but in this case expressly also by the landlord) within 15 days from the delivery of the certificate of conformation to standards. According to Art. 6, subs. 3, the recipient (purchaser, tenant and so on) should confirm, through a written clause in the contract that the certificate was exhibited during negotiations and then delivered at the conclusion of the contract.
When in August 2013 the Decree Law n. 63/2013 was converted into law, a new subsection (3-*bis*) was introduced, providing that in case the certificate was not enclosed this should have been considered null and void. Such a drastic provision has been widely contested, for example by the association of estate agents, also because it is still lacking the Intermin. Decree which, according to Art. 6, subs. 12 Leg. Decree n. 192/2005, shall indicate in details the new criteria to follow to calculate the energy performance of buildings[308].
The result was that, at the end of 2013, new modifications to Leg. Decree n. 192/2005 were introduced through Decree Law n. 145/2013 (converted into Law 21 February 2014, n. 9). In particular the duty to insert a clause in the contract confirming that the recipient was given 'information and documents, including the certificate, regarding the energy performance of the buildings' is limited to contracts of transfer for valuable consideration or to rents of buildings or of single dwellings subject to registration. The duty to enclose the certificate to the contract is further limited: it is not necessary for rents of 'single dwellings'; this provision will probably create some problems of interpretation as it is not always easy to distinguish between 'buildings' and 'single dwellings'.
Finally the reform cancelled the sanction of nullity, introduced in August 2013, and provided for the violations of these new duties a significant fine, from 3,000 to 18,000 Euro; again, for 'rents of single dwellings' the fine is reduced to an amount between

[307] Law 9 January 1991, n. 10.
[308] Attestato energetico: Appello Fiaip al Governo "Eliminare immediatamente la nullita' dei contratti sprovvisti di APE" - http://www.fiaip.it/sala-stampa/news/attestato-energetico-appello-fiaip-al-governo_8203.html#sthash.LiEudKu0.dpuf

1,000 and 4,000 Euro and if the rental contract does not exceed 3 years there is a further reduction to half this amount.
The sudden and continuous changes in this matter reflect the uncertain political situation of the country during last Governments and are arising several critics.
A mention shall be finally given to Art. 6, subs. 8 Leg. Decree n. 192/2005, for which, in case of offer on rent or on sale of a property, all the corresponding commercial communications shall indicate the energy performance indicators of the whole building and of the single dwelling, together with the energy efficiency class. This rule does not apply to residential dwellings used less than four months per year (*i.e.* holiday houses).

6.2 Preparation and negotiation of tenancy contracts

Table for 6.2 – Preparation and negotiation of tenancy contracts

	Main characteristic(s) of private tenancies	Main characteristic(s) of public tenancies
Choice of tenant	Contractual autonomy	In accordance with lists of applicants
Ancillary duties	Good faith and fairness during negotiations Non discrimination	Good faith and fairness during negotiations Non discrimination

- *Freedom of contract*
    - *Are there cases in which there is an obligation for a landlord to enter into a rental contract?*

In private rentals, on the one side, there are not exactly cases in which a landlord is obliged to enter into a contract, as in this field the general principle of contract law, according to which a party may freely choose his counterpart, is valid[309].
On the other side, this does not mean that any refusal to stipulate a contract is licit. It is worth mentioning a decision of the Tribunal of Milan in 2000, which said: 'It is a discriminatory act for racial reasons ... the refusal to execute rental contracts with non-EU citizens expressed by a real estate company'[310]. Therefore the Court ordered to stop the discriminatory behaviour and to compensate damages. This does not probably mean an order to execute the contract, but surely at least the duty to negotiate with the party at fair conditions.
A different situation, which will be fully analyzed below, is when the parties enter into a preliminary contract (even if in praxis this is rather unusual for tenancy contracts). In this case the duty to stipulate the final tenancy contract with a certain party has been previously decided by the parties. If then one of them refuses to stipulate the contract, the other party, at certain conditions that will be better described below, has the faculty to invoke Art. 2932 Civ. Cod., according to which the judge gives a decision which has the same effects of the definitive contract.

[309] Breccia, *Diritto all'abitazione*, 149 et seq.
[310] Trib. Milano, 30 March 2000 (ord.), *Foro italiano*, 2000, I, 2040.

Courts have dealt with similar problems also with regard to cooperatives, whose aim is to provide associates with dwellings. In similar cases the Italian Cassazione said that in order to invoke the instrument provided by Art. 2932 Civ. Cod. it is necessary that the parties have already stipulated a specific contract which reserves the assignment of the dwelling to a member of the cooperative; if this is not the case the latter can use only other remedies, such as the monetary compensation[311].
Assignment of the contract or succession in the contract are situations, which imply a change of the tenant, but they cannot be exactly considered as obligations to enter into a contract, so they will be analysed in other paragraphs.
The situation changes with regard to rental contracts of public houses. It has been already said above that, after the selection of the applications, available houses are assigned following the list and in accordance with tables fixing the useful floor area per number of occupants. Therefore we can say that for the public agencies which manage the dwellings on behalf of the Municipalities there is an obligation to enter into a tenancy contract with the people indicated in the list.
In case law it is possible to find a certain number of decisions concerning a different problem: the duty to sell the public dwelling to the occupants. For reasons we have already described in the previous chapters, during the last decades a wide number of public houses has been progressively sold to the occupants; technically this solution was often pursued through 'agreements for future sale' enclosed in the contracts of assignment of the public dwelling. In some cases the competent agencies refused to sell the dwelling at the agreed time, so the occupants invoked the application of Art. 2932 Civ. Cod.[312].

- *Matching the parties*
    - *How does the landlord normally proceed to find a tenant?*

Traditionally landlords tend to ask estate agents to find possible tenants. This means that interested people are searched through advertisement in the shop-windows of the agencies, in local newspapers (or even national in case of particularly important properties), in specific papers, on Internet through the agency site or other web-sites.
Anyway during last years the development of media such as Internet in particular has led a growing number of people to look for potential tenants by themselves, through web-sites which gather private announcements.

    - *What checks on the personal and financial status are lawful and usual? In particular: May the landlord ask for a salary statement? May he resort to a credit reference agency and is doing so usual?*

Asking for a salary statement or resorting to a credit reference agency are surely rather unusual practices in Italy, especially for small private owners, which compose the wide majority of Italian landlords.

[311] Cass., 6 November 2012, n. 19080, in Giust. civ. mass., 2012, 1271; Cass., 15 February 2006, n. 3279, in Guida dir., 2006, 18,83; Cass., 24 January 1997, n. 752, in Giust. Civ. mass., 1997, 127.
[312] Among the others we can quote: Cass., 8 January 2007, n. 85, in Giust. Civ. mass., 2007, 1; Cass., 11 September 2003, n. 13348, in Riv. Giur. Ed., 2004, I, 1351; Cass.,sez. Un., 1 October 2002, n. 14079, in Giust. civ. mass., 2002, 1751; Trib. Salerno, 16 January 2009, n. 379, <www.dejure.it>.

Anyway, in case the tenant agrees to give this kind of information to the other side, this agreement should not find particular limits, as it regards personal but not sensitive data, according to Art. 4, subs. 1, lett. b) of the Data Protection Act (Leg. Decree 30 June 2003, n. 196).
For the same reason, the landlord should have the right not to enter into the contract in case the other side refuses to give him this kind of information. Currently, Courts in Italy do not seem to have taken decisions regarding this problem.
Nevertheless, there is a decision of the Commission for access to administrative documents, which in 2008 acknowledged the right of a landlord to have access to her tenant's tax income return. This right was recognized, after the termination of the contract in default of regular payment, so that the landlord could carry out the execution on the tenant's goods. The decision says that access to the document is granted provided that the person has a 'personal, effective and immediate interest' to examine them. For this reason, a similar principle does not seem applicable during negotiations of the contract, as in this phase the landlord has no enforceable decision and no credit towards the other side, yet.

- *How can information on the potential tenant be gathered lawfully? In particular: Are there blacklists of "bad tenants"? If yes, by whom are they compiled? Are they subject to legal limitations e.g. on data protections grounds?*

During last years, the economic crisis and subsequently the drastic increase of non-regular payment of rents led to a debate regarding the possibility to develop blacklists of non-performer tenants.
At the end of 2012 a group of private people created a web-site called *Registro Nazionale degli Sfratti* (i.e. National Register of Evictions: www.registronazionalesfratti.com) with the aim to publish on-line all the Italian decisions regarding notices to quit in default of regular payment.
Data are gathered from landlords, estate agents, managers of condominium, associations and can be checked for free by anyone registering to the site. It is also possible to highlight a good tenant.
This site collects only judicial decisions so their publication is subject to Arts 51 and 52 of the Data Protection Act: this kind of documents can be generally published integrally through any mean; the people mentioned in the decision may ask – during the proceedings and for 'lawful reasons' – that their names are cancelled in case of publication of the decision. So, apart from this particular case, data gathered by this web-site seem to be disposable for the public without any particular limitation.
A different approach is followed by the web-site www.referenzepubbliche.it, where anyone can give a good or bad reference regarding a tenant. The writing person shall give his personal data and pay a sum: this person is obviously legally responsible for his claims. The web-site does not show the whole reference but simply says if a certain person has a positive or negative reference and then suggests to contact the author of the reference for further information.

- *What checks may and does the tenant carry out on the landlord (e.g. to avoid being trapped by a swindler landlord)*

Checks regarding the landlord are surely less usual and organized than checks regarding landlords. They depend on each tenant's initiative, so they generally do not

go beyond information collected through the estate agents or other personal contacts of the party.
Obviously, in case the landlord is a professional operator, especially a company, checks regarding its assets and situations may become easier. Anyway, as it has been already said, in Italy only a very limited number of landlords, especially with regard to residential dwelling, belongs to this category.

- *Services of estate agents*
  - *What services are usually provided by estate agents?*

The traditional role of estate agents, according to the 1942 Civil Code, is make landlords and potential tenants meet each other.
This is confirmed by Art. 1755 Civ. Cod., concerning the so called 'contract of mediation', within which also the contract with an estate agent is included:

> *The mediator has right to the fee by both parties in case the bargain is concluded as a consequence of its intervention.*

Actually the activity of an estate agent nowadays is more complex: on the one side, because the activity of connecting people can be easily done also through newspapers, web sites and alike, so estate agents tend to provide their clients with additional services; on the other side because during the years the law has introduced new duties for estate agents.
In general, estate agents make an evaluation of the dwelling, deal with its advertising, keep contacts with potential tenants and refer to the owners about offers received. They help the parties with advices during the negotiations, may look for relevant documents regarding the dwelling or the parties and assist them when the contract is concluded. In any case, they shall provide their clients with all the relevant information they know or they could have known using the required diligence, as it will be better described in the following answer. In addition to this, agents often put the parties in contact with banks or other financial institutions which provide funds, but obviously this is much more common in case of a sale than in case of a rent.
Other specific duties were specifically introduced by the law during last years. Since 2006 estate agents have become responsible, together with the parties, for the registration at the 'Agenzia delle entrate' of the contracts concluded because of their intervention, when these are not drafted or authenticated by a public notary. In similar cases, the agent is also responsible, jointly and severally with the parties, for the payment of the related taxes[313].
Estate agents are then required to follow the procedure against 'money laundering', which means the necessity to identify the clients, make some checks about them and, in case of suspicious activities, send data to the competent authorities.
A difference between roles and competences of the agents has arisen in the praxis and has been recognized by some decisions of the Court of Cassazione.
The distinction is between the agent who is a simple broker, in accordance with the rules provided by the Civil Code, and the agent which operates on behalf of one of the parties (so called 'atypical mediation'), in some cases even through a specific mandate given by one of the parties (*i.e.* authorization to represent).

[313] See Arts 10, lett. d-*bis*) and 57, subs. 1-*bis* D.P.R. 26 April 1986, n. 131, as modified by Art. 1, subs. 46, Law 27 December 2006, n. 296: for a comment see Marco Krogh, 'I nuovi obblighi a carico dei mediatori introdotti dalla finanziaria 2007', in *La prassi della contrattazione immobiliare tra attualità e prospettive*, (Milano: Il Sole 24 Ore, 2007), 78 et seq.

In the latter case, the agent has a duty to actively look for people potentially interested in the bargain. As a consequence, he will receive a reward by the person who gave him this task, generally notwithstanding the conclusion of the contract (according to Arts 1709 and 1720 Civ. Cod.)[314]. On the contrary, the agent regulated by the law ('typical mediation') has not a juridical duty to do it, because he is regarded as an impartial person who has not received a specific assignment by one of the parties[315]; therefore in this case the commission is due by both parties in case the contract is executed, provided that this is not null and void[316].

In consideration of these rules, in practice estate agents are often regarded as atypical operators who combine aspects of both brokers and people who work according to a specific mandate, undertaking particular obligations towards the parties. For this reason, in most cases, even though this is not 'typical mediation', the fee is equally due by both parties. This situation is confirmed by the model contracts generally used for this activity[317].

An important clause which sometimes is used by estate agents is the exclusivity. This means that the owner undertakes not to assign the activity of mediation regarding a dwelling to other agents. In some cases not even the owner has the faculty to look for potential tenants, so they have in any case to be channeled through the authorized agent.

- *To what extent are estate agents regulated? In particular: are there rules on how an agent should present a house, i.e. on the kind of information which needs to be given?*

We have already said that the contracts of mediation and of mandate provide rules which may find application also to estate agents. Nevertheless the Civil Code rules are dispositive and can be freely derogated or combined by the parties.

Law 3 February 1989, n. 39 introduced some requirements in order to work as mediator and created a Register for Mediators which included also estate agents. Among the other things, it is established that only subjects enlisted can receive a fee for their activity[318]. In case the contract of mediation is concluded by a non-inscribed person, it can be null and void. This regulation was thought to regulate the access to the profession in order to protect the public interest to deal with qualified operators.

In 2010 the special Register for Mediators was abrogated, in accordance with Directive 2006/123/EC on services in the internal market, so since May 2012 estate agents have been gathered in the general Register of Enterprises. This directive did not anyway change the requirements to become agent and the other rules provided by Law n. 39/1989.

This aspect is relevant because after 1989 judges have often connected the particular standard of diligence required to estate agents in the performance of their duties to the fact that this was a restricted profession, with a specific register. Anyway, in consideration of its limited impact on the substantial regulation of the profession, it is not sure that these recent changes regarding the register will affect next decisions.

[314] Cass. 14 July 2009, n. 16382, in Guida al dir., 2009, 35, 20.
[315] Trib. Milano, 11 April 2013, n. 5025.
[316] The commission is not due also in case of a sospensive condition until the event, or in case of a *falsus procurator* without ratification.
[317] Alberto Sesti, Responsabilità aquiliana del mediatore-mandatario nei confronti del soggetto promissario acquirente del bene, in Resp. civ. prev. 2009, 2286.
[318] Law 3 February 1989, n. 39, which found application through the Ministerial Decree n. 452/1990.

According to the prevalent doctrine, mediation is a contractual relationship among two or three parties[319]. This implies that, in case the clients are non-professional operators, it is necessary to respect the rules for consumer contracts.
Finally, it is important to remember that in this sector, where most rules are dispositive and judicial decisions frequently determine the standards to respect, an important rule can be played by the deontological codes. These sets of rules are created by the different private associations which in Italy gather estate agents and become compulsory for subjects who join them.
These codes introduce best practices regarding all the aspects of the agents' activity, such as relationships with clients, colleagues, financial institutions. Among the other aspects, we can highlight the duty of the agent to say the truth and to fully inform his clients about all the relevant information he knows or he could know according to the professional diligence[320]. It is also suggested that the agents operate on the basis of a written contract, which clearly indicates, among the other things, rights and obligations, fee and refund of the expenses[321].
This is the set of rules regulating estate agents' activity, therefore on its basis also the limits of the duty of information pending on the agents have been defined.
Art. 1759 Civ. Cod. says that the mediator shall communicate to the parties all the circumstances he knows regarding the evaluation and the safety of the bargain, which may affect the execution of the contract. Decisions have then cleared that this means also information for which the parties would enter into the contract at different conditions[322].
Law n. 39/1989 cleared that the agent shall respect the particular standard of diligence required from a professional operator, which extends the duty of information also to all the circumstances that the agent could have known using this kind of diligence. At the same time the agent shall not refer circumstances that are not sure and he has not ascertained. Several Court decisions have explained what this means in practice. They generally regard mediation for the sale of a house but many aspects can be considered valid also in case of mediation for rent. The prevalent doctrine retains that the above mentioned standard of diligence does not imply that the agent shall do particular technical or juridical checks regarding the dwelling or the parties, save in case he received a specific assignment for this task[323]. On the contrary, a minor doctrine requires a more detailed check by the agent: for example, joint ownership of the dwelling, insolvency of the parties, mortgages or other inscriptions regarding the dwelling, priority or option rights[324].

- *What is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?*

The amount of the commission for the agent's activity can be freely decided among the parties. Just in case the parties do not find an agreement, the amount is decided by an

[319] See for example Cass. 25 May 2001, n. 7126. But we have to remember that, according to other, more recent opinions, mediation is not a contract but simply a juridical act, at least in certain cases: see Cass., 14 July 2009, n. 16382, in Giust. Civ. mass., 2009.
[320] FIAP, Codice deontologico, Arts 3 and 17 .
[321] FIAP, art. 5.
[322] Cass., 15 March 2006, n. 5777, in Resp. Civ. Prev., 2007, 857.
[323] Cass. 6 November 2012, n. 19075, in Giust. Civ., 2012, I, 2541; Cass., 19 September 2011, n. 19095, in Riv. Notariato, 2012, 114; Cass., 16 July 2010, n. 16623, in Guida dir., 2010, 46, 86.
[324] Cass., 14 July 2009, n. 16382, cit., which regards a case of mediation for sale of a dwelling.

authority of the Chamber of Commerce, taking into account fixed rates or 'local uses', in case they exist. At last, people can ask a judge to calculate the fee in accordance with 'equity'[325].
The Civil Code says that both parties shall pay the fee to the agent. This means that the payment can always be asked from both the landlord and the tenant. Nevertheless, the parties can decide that only one of them bears all the expenses, so the other one, in case he anticipated the fee to the agent, can ask to be refunded. Also in this case, if people do not reach an agreement, the Chamber of Commerce and, lastly, a judge can decide how much of the global commission each party shall pay.
In consideration of these rules, which leave autonomy to the parties, it is not easy to determine the average fee asked for tenancy contracts by the agents. Generally, the sum is a percentage of the agreed rent: in most cases the equivalent of a monthly fee or 10% of the annual fee for each of the two parties. But it can also depend on the duration of the contract and become higher if this lasts for many years. On the other side, in case of seasonal rents, which are very common for holiday houses, the percentage required can be a fifth or a quarter of the global fee, but often a minimum fee for the agent is required in any case.
With regard to the party obliged, in practice in most cases the commission is equally divided between the tenant and the landlord; it is more rarely all paid by one of them.
For the refund of expenses made by the agent, Art. 1756 Civ. Cod. says that, unlike for the fee, in case the expenses are done on behalf of a client, this shall refund them even if the bargain is not executed.

- *Ancillary duties of both parties in the phase of contract preparation and negotiation ("culpa in contrahendo" kind of situations)*

During negotiations, first of all, parties have a mutual duty to correctly inform each other about circumstances which are relevant having regard to the content of the agreement.
This obligation descends from the general principles of good faith and fairness, which shall always be respected during negotiations, but have different implications in accordance with the specific contract involved. Some rules in the Civil Code suggest a specification of such a duty with regard to some information which needs to be given during negotiations.
Arts 1578-1580 regulate the case of defects of the dwelling, which already existed when the contract was executed. These rules say that in case of defects which significantly reduce the suitability of the dwelling for the use agreed, the tenant may discharge the contract or reduce the rent, except if the defect was known or easily recognizable; anyway this exception does not operate in case of defects which are seriously dangerous for the tenant's or his family's health. The landlord shall also refund possible damages which are consequence of the defects, apart in case he was not aware of the latter without any fault. The liability cannot be excluded by convention if the landlord was in 'bad faith' or the use of the dwelling becomes impossible.
In other words, this articulate set of rules tries and find a balance, sharing between both parties the duty of verifying and communicating to the other side, in accordance with diligence and good faith, possible defects of the dwelling.
Another duty of the parties is not to interrupt advanced negotiations without a reasonable justification. This rule can be applied to both the prospective landlord and

[325] In this sense, see art. 1755 Civ. Cod.

the prospective tenant and means that the refusal to execute the contract shall comply with the rules of good faith and diligence. In defect, if the party who interrupts negotiations generated in the other side a legitimate trust in the contract execution, the former will be liable for potential damages occurred to the latter[326].

6.3 Conclusion of tenancy contracts

Table for 6.3 – Conclusion of tenancy contracts

	Main characteristic(s) of private tenancies	Main characteristic(s) of public tenancies
Requirements for valid conclusion	- Consent (at least two parties); - subject matter of the contract (licit, possible, determinate or determinable); - consideration (licit); - written form (when required by the law).	- Consent (at least two parties); - subject matter of the contract (licit, possible, determinate or determinable); - consideration (licit); - written form (when required by the law).
Regulations limiting freedom of contract	Antidiscrimination rules (Arts 43-44 Immigration Act and Art. 3, Leg. Decree 9 July 2003, n. 215). Pre-emption right of the tenant (Art. 3, subs. 1, lett. g).	Antidiscrimination rules (Arts 43-44 Immigration Act and Art. 3, Leg. Decree 9 July 2003, n. 215).

- *Tenancy contracts*
  - *distinguished from functionally similar arrangements (e.g. licence; real right of habitation; Leihe; comodato)*

In Italian law, tenancy contracts shall be distinguished from the following similar arrangements: commodatum, usufructor tenancy, right of housing.
a) Commodatum or loan for use (Arts 1803-1812 Civ. Cod.) is a contract which grants a person the right to use the dwelling in accordance with a certain purpose and for a certain time, and then obliges to give it back to the owner. This contract is normally free of charge and it is frequently used by parents towards children as an alternative to donation. This instrument is also used to provide people with a house because of their job or service. In some cases free loans are simulated and are used to hide normal renting contracts as a mean for evading the payment of taxes on the rent income.
b) Usufructor tenancy (Arts 978-1020 Civ. Cod.) is a contract which originates a real right (*ius in re*) to the tenant, and gives him a very extensive power, leaving to the owner limited powers: it is called *nuda proprietà*, which literally means 'naked ownership'. It may be a lifetime right. The usufructor tenant may personally use the dwelling as well as exploit it in other forms (for example, giving it on rent to third parties), provided that he does not change the use of the thing and that he carefully preserves it. The tenant may also assign the right to another person. The usufruct is

[326] See, for example Trib. Roma, 7 July 2007, dejure

necessarily limited in time: it cannot exceed the life of the tenant or thirty years in case this is a legal entity.
c) Right of housing (Arts 1022-1026 Civ. Cod.), as the previous one, is a real right (*ius in re*) but it gives a person the more limited right to live in a dwelling with his own family. Therefore the person entitled cannot indirectly exploit the dwelling or assign his right to other people.

- *specific tenancy contracts, e.g. contracts on furnished apartments; student apartments; contracts over room(s) only (e.g. student rooms); contracts over rooms or apartments located in the house in which the landlord lives himself as well. Please describe the legal specificities in these cases.*

Special statutes identify a range of tenancy contracts which are not subject to their ordinary rules provided for residential dwellings or for commercial premises.
First of all, Law n. 431/1998 excludes that most of its rules find application in case of renting of 'dwellings of cultural interest' according to Law n. 1089/1939 (now Code of Arts and Environment: Leg. Decree n. 42/2004) and of dwellings bearing to the cadastral categories A/1, A/8 and A/9, which means palaces, castles, particularly significant villas and other dwellings[327]. These categories comprise a rather limited number of some thousands of buildings all over Italy: 74,430 for the three cadastral categories, according to the latest data[328]. For them the law says that only the rules of the Civil Code can be invoked: actually, it has been cleared that this provision should be interpreted as an exclusion only of the Fair Rent Act (Law n. 392/1978), as far as its parts still in force are concerned, and of the Law n. 431/1998[329]. It is clear that the rules provided for by these special statutes in order to protect the primary longing of people to find a suitable dwelling, would have not much sense in case of a tenancy contract regarding similar buildings. Anyway, in partial derogation of this principle, Law n. 431/1998 finds application also to these dwellings in case they are rented with the regime of 'assisted tenancies'.
Exceptions are provided also for dwellings exclusively rented for touristic purposes ('holiday tenancies') and regard again most provisions of Law n. 431/1998: Arts 2, 3, 4, 4-*bis*, 7, 8 and 13.
Another special category is represented by public dwellings: for them the specific national or regional rules find application; but where it is not differently provided, also the Civil Code rules and the parts of the Fair Rent Act still in force can be invoked.
A further exception is made for dwellings which public authorities rent in order to 'satisfy temporary residential necessities'. This expression means premises which Municipalities, for example, put at disposal to citizens in particular situation of necessity, such as evictions or calamities. Also in this case the Civil Code and the Fair Rent Act rules still in force find application.
A specific regulation is then provided for 'temporary tenancies', according to Art. 5, Law n. 431/1998. This expression identifies contracts which need to have a duration below

[327] More exactly, Art. 1, subs. 2 Law n. 431/1998 excludes that Arts 2, 3, 4, 4-bis, 7, 8 and 13 can find application in similar cases.
[328] Confedilizia, 'Case dette di lusso: Confedilizia, numeri senza criterio', Comunicato stampa, <http://www.confedilizia.it/CS%2014.11.2013.pdf>, 14 November 2013.
[329] Gabrielli & Padovini, *La locazione di immobili urbani*, 37. Anyway, according to some opinions, the rules of the 1998 Law providing formal requirements for these contracts, and contained in art. 1, subs. 4, are not included in this exception, as it will be better explained below.

the minimum legal term, for tenant's or landlord's purposes, such as, in particular, job reasons. These contracts can be stipulated only in accordance with the Interministerial Decree 30 December 2002, which indicates some general criteria and a model with some standard clauses to respect. For example, a rule, which is criticized for its rigidity, establishes that the duration of these contracts shall be between one and 18 months (Art. 2, subs. 1); furthermore the temporary contract shall be stipulated with clauses that are consistent with the model enclosed in the Decree, otherwise such a contract will be null and void. Particular attention is focused on the personal reason for which it is necessary to stipulate a shorter contract: it is necessary to expressly mention it in the contract and to enclose documents giving evidence of it, at least in case it depends on the tenant (Art. 2, subs. 4). This reason shall be confirmed, through registered mail, by the party interested before the expiration of the contract, otherwise the contract will be automatically converted into a contract with the minimum legal duration. As for the rent, in the metropolitan areas (the eleven biggest cities in Italy and their neighbouring Municipalities) and in every provincial capital Municipality it shall be established within the regime of fixed rates indicated for 'assisted tenancies' (see Art. 2, subs. 2).

A particular kind of temporary contract that the legislator expressly mentions is the tenancy contract for students. It finds application to University students who have residence in a Municipality and attend University in another one. Also in this case the contract shall comply with the legal model and therefore, in particular, the rent cannot exceed the legal limit. As for duration, in this case the period is from six months to three years, and in the absence of a notice by the tenant, it is automatically renewed for the same period of time.

Finally, there are some kinds of tenancy contracts which have not exactly a residential purpose, but are not even included among tenancies for professional or commercial activities. Similar contracts, which are rather limited, follow only the rules indicated in the Civil Code. Among them we can mention: renting of a garage, in case it is not considered as an annex of the dwelling, renting of a dwelling which is not used for living nor for a professional activity, but for a different purpose, such as a tenant's hobby[330].

- *Requirements for a valid conclusion of the contract*
  - *formal requirements*

According to the 1942 Civil Code, tenancy contracts do not normally require any particular form in order to be validly executed. An exception is provided by Art. 1350, n. 8 in case of contracts which regard properties and last more than nine years: in this case the written form is necessary, which means a simple written document or a written document authenticated by a public notary or a public document.

In the absence of this requirement, the contract is null and void. Nevertheless, Art. 1419, subs. 1 Civ. Cod. states that if the nullity concerns a clause or a part of the contract which was not essential for the parties when it was executed (*i.e.* the parties would have executed the contract even without that clause/part), the invalidity does not affect the whole contract. Therefore, in many cases it is possible that the contract remains valid and effective, save for its duration, which is automatically reduced to nine years, term for which the written form is not required[331].

[330] *Ibid.*, 44.
[331] *Ibid.*, 128.

The Fair Rent Act did not introduce innovations with regard to formal requirements of the contract.

On the contrary, the 1998 Law established the written form in order to execute 'valid tenancy contracts' (Art. 1, subs. 4). This provision has outweighed the rules in the Civil Code practically for all the residential dwellings. Discussions regard only 'dwellings of cultural interest' and dwellings with cadastral category A/1, A/8 and A/9: law says that contracts regarding these dwellings are subject only to the rules in the Civil Code; nevertheless, in another sentence the statute does not mention the rules regarding formal requirements among the rules which do not find application for similar dwellings. That is why authors tend to suggest that the written form is necessary also in these cases[332].

Jurisprudence and Courts discuss about the role of this invalidity and therefore about its enforcement. According to one opinion, it protects the public interest to avoid black market contracts and subsequently that their income cannot be taxed; this means that the nullity can be invoked by the judge or everyone who may have an interest in doing it, *i.e.* even the landlord[333]. A different opinion retains that the rule of invalidity protects the weaker part of the contract (*i.e.* the tenant) and in particular its interest to be fully and correctly informed in written form about the clauses of the contract[334]: the consequence is that the invalidity is considered enforceable only by the tenant itself, apart in case the landlord gives evidence that the other side was the only responsible for the lack of the written form[335].

Another important aspect regards the consequences of such a violation. Courts normally retain that the contract should be null and void[336].

Nevertheless the law introduced an exception in case the lack of the written form is due to the landlord. In this case the contract is valid because the law expressly recognizes to the Court the power to modify it, fixing the rental in an amount that cannot exceed the amount established for 'assisted tenancies'; in case the tenant previously paid a higher rent, he has also the right to have the difference refunded (Art. 13, subs. 5 Law n. 431/1998). In order to obtain the judge's corrective decision it is necessary to give evidence that the landlord did not want to sign a written agreement but also that the tenant was effectively delivered the dwelling[337].

This is a protective measure for the tenant and a punitive measure for the landlord, aimed to avoid black market contracts (or *de facto* tenancies, as they are called in Italian): the lack of the written form means that parties do not register the contract and, almost surely, that the landlord does not pay taxes on the corresponding income[338].

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[332] *Ibid.*, 131. Maria Virginia Maccari, 'Commento sub Art. 1 Legge n. 431/1998', in *Codice Commentato di Locazione e Condominio – Locazione*, ed. V. Cuffaro & F. Padovini (Torino: UTET Giuridica, 2013), 558.

[333] In this sense, Gabrielli & Padovini, *La locazione di immobili urbani*, 133, even if criticising the opportunity to use a rule of invalidity to protect a fiscal interest.

[334] In this sense, Mauro Di Marzio, in M. Di Marzio & M. Falabella, *La locazione*, I (Torino: UTET Giuridica, 2010), 268.

[335] In this sense, Trib. Catanzaro, 27 May 2008, *Il civilista*, 2010, 11, 19; Trib. Nuoro, 21 June 2007, *Riv. giur. sarda*, 2009, 143.

[336] Maccari, 'Commento sub Art. 1 Legge n. 431/1998', 559.

[337] Gabrielli & Padovini, *La locazione di immobili urbani*, 136.

[338] Among the decisions that applied this rule, we can mention: Trib. Pescara, 14 October 2010, in *Giur. Merito*, 2011, 657; Trib. Reggio Calabria, 2 December 2002, *Giur. Merito*, 2003, 911; Trib. Verona, 21 June 2000, *Arch. Locazioni*, 2001, 131.

Even though it is not expressly governed by the law, it is suggested that in similar cases also the duration of the contract, if lower, will be automatically fixed to the minimum legal level[339].

- *is there a fee for the conclusion and how does it have to be paid? (e.g. "fee stamp" on the contract etc)*

Two different fees shall be paid upon the execution of a tenancy contract.
a) The first one is the 'registration fee', which is due for the service of registration. As it has been already said above, it is compulsory for all the contracts regarding properties which last more than 30 days in a year. In case of residential dwellings, its amount is 2% of the annual rent for every year of duration and both parties are always considered jointly and severally responsible for its payment by the competent office ('Agenzia delle Entrate'), even though they are free to decide in the contract how to divide it among them. This sum can be paid year by year or all at once for the whole duration of the contract; in the latter case there is a reduction and in case the contract expires before the agreed time, it is proportionally refunded.
The payment shall be done within 30 days from the execution of the contract; it can be done in banks, post offices or other offices authorized, filling with the required data a form, called 'F23', which is used for the payment of several different taxes.
b) The second one is the 'stamp fee', which is due for the production of juridical acts (i.e. for the paper consumtpion connected to the drafting of the contract). Therefore, it shall be paid for every kind of tenancy contract (notwithstanding its duration) in proportion with the number of pages of the contract: one stamp (16 Euro, at present) for 4 faces. In case of 'assited tenancies' the payment is due by the tenant; in the other cases parties are free to make a different agreement. It shall be paid before the day 30 of the month in which the contract is executed. There are several modalities of payment: using stamped paper, buying a stamp to put on the paper, paying the fee separately, for example at post offices or 'Agenzia delle Entrate'.
The payment of both these fees is excluded in case the landlord opts for a particular fiscal regime (called 'cedolare secca'), according to which the income from rentals are all taxed with a fixed rate, instead of being cumulated with other personal income of the landlord. Such a provision is aimed to stimulate the use of this fiscal regime, which should reduce phenomena of black contracts.

- *registration requirements; legal consequences in the absence of registration*

  Note: If relevant, please distinguish the various existing registers, e.g. land register, tax register, register of domicile.

The most widespread form of registration regarding tenancy law shall be done at the 'Agenzia delle Entrate'. As it has been already explained, almost every tenancy contract is subject to this procedure, which has a fiscal purpose.
As black contracts are a significant problem in Italy, during the years very strong measures have been introduced in order to prevent the lack of registration.

[339] *Ibid*. 139. On the contrary this possibility is excluded by Court of Appeal Florence, 18 March 2010, n. 400, *Arch. Locazioni*, 2010, 629.

In 2004, it was established that non-registered contracts are null and void[340]: this provision is surely unusual as fiscal irregularities, such as non registration, should not affect the validity of a contract, according to the traditional civil law rules[341].

Then, in 2011, the possibility of a validation of the contract was introduced, but always in order to pursue a punitive effect for the landlord.

Art. 3, subs. 8 Leg. Decree n. 23/2011 established that in case the tenant registered a contract which was not regularly registered before, the content of this contract was automatically changed: the duration became four years from the moment of the registration; at the expiration, the contract was automatically renewable for other four years, at the conditions of Art. 2, subs. 1, Law n. 431/1998; the rent was reduced to an amount which was three times the cadastral rent (a particularly low value in comparison to nowadays market prices, which in the country are on average eight times the cadastral rent[342]).

These measures were expressly extended also to tenancies registered indicating a lower rent or to costly tenancies registered as free loans (commodatum): in other words, these are two cases of contractual simulation, respectively partial and total, regarding the reward of the contract (Art. 3, subs. 9 Leg. Decree n. 23/2011).

The rules of both subsection 8 and 9 have been recently declared uncostitutional by the Costitutional Court, because the Government adopted them through a legislative decree without respecting the boundaries authorized by the Parliament[343]. In next months it will be clear whether the Government will propose the same rules again, following the correct procedure, or also their content will be changed.

It is also important to remember that the registration – together with the written form, obviously – is necessary also with regard to rent increase. That is the consequence of Art. 13, subs. 1 Law n. 431/1998:

> *Any agreement indicating an amount of rent exceeding the amount indicated in the written and registered contract is null and void.*

According to some authors, this rule wants to protect the tenant and prevents any form of rent increase which has not been decided between the parties at the beginning of the contract, but vice-versa an original agreement, even if non registered (i.e. a simulation), would be valid[344]. According to another opinion, on the contrary, this rule wants to prevent simulations for fiscal purposes: parties indicate a fictitious rent in the registered contract and establish the real rent in another agreement[345]; through this provision the legislator prescribes that the rent can be legally enforced only if registered.

Since 2011 this provision found application together with the above described Art. 3, subs. 9 Leg. Decree n. 23/2011, but after the declaration of incostitutionaliy it has remained the only rule again.

Another kind of registration, called 'transcription', regards tenancy contracts which last more than nine years. As a similar duration is rather unusual for dwellings, its practical

[340] Art. 1, subs. 346, Law 30 December 2004, n. 311.

[341] For this reason some authors and decisions consider it not as invalidity but simply as unenforceability until the contract is not registered: see for a review of the positions about this topic, see Cristina Ulessi, Commento sub Art. 1 Legge n. 311/2004, in *Codice Commentato di Locazione e Condominio – Locazione*, ed. V. Cuffaro & F. Padovini (Torino: UTET Giuridica, 2013), 634 et seq.

[342] CGIA Mestre, 'Quasi un milione di affitti in nero', 2.

[343] Const. Court, 14 March 2014, n. 50. See above for further details

[344] Nunzio Izzo, 'La rilevanza degli adempimenti tributari', *Rassegna Locazioni e Condominio*, 1999, 372. Cass., 3 April 2009, n. 8148, *Giustizia civile Massimario*, 2009, 583; Cass., 27 October 2003, n. 16089, *Foro Italiano*, 2004, I, 1155.

[345] Cristina Grassi, Commento sub Art. 13 Legge n. 431/1998, in *Codice Commentato di Locazione e Condominio – Locazione*, ed. V. Cuffaro & F. Padovini (Torino: UTET Giuridica, 2013), 619.

role is quite limited. Anyway it is expressly provided by the Civil Code, according to which similar contracts can have effect towards a third subject obtaining rights over the dwelling only in case the tenancy contract was registered before the registration of the sale contract; in the absence of this publicity, the tenancy contract can be opposed only for nine years from its beginning (Art. 1599, subs. 3 and Art. 2643, n. 8 Civ. Cod.). The transcription shall be done in the so called Register of Properties, kept in every 'Agenzia del Territorio', where, for example, also modifications of property and other specific rights regarding real estate properties are indicated.
Doctrine has questioned about the possibility to oppose a tenancy contract for more than nine years in case it is registered before the sale of a dwelling but actually executed after the sale. The positive answer, admitted by important authors, means that the tenancy right, in this case, is exactly regarded as a real property right.[346]

- *Restrictions on choice of tenant - antidiscrimination issues*
  - *EU directives and national law on antidiscrimination*

One of the most important fields where antidiscrimination policies regarding tenancy law have been adopted is represented by foreign people. It has been already described in above that, according to many researches, immigrants coming from Second or Third World countries tend to be seen with suspect by landlords, which means that in several cases have more difficulties in finding dwellings on rent and find them at heavier conditions than Italian citizens.
As for the rules which can be invoked in order to protect the position of foreigners as prospective tenants, first of all, it is widely accepted by legal doctrine that the principle of equality and the other fundamental rights that the Italian Constitution recognizes to human beings applies also to non-Italian citizens.
Specific provisions against discrimination also in the field of housing have been introduced in the Immigration Act (Leg. Decree 25 July 1998, n. 286):

> Art. 43 – *1. For this chapter, discrimination is any behavior which, directly or indirectly implies a distinction, exclusion, restriction or preference based on race, color, ancestry, national or ethnic origin, religion, and which has the purpose or the effect to destroy or jeopardize the acknowledgment, the enjoyment or the exercise, on equal terms, of the human rights and the fundamental freedoms in political, economic, social and cultural fields and in any other field of the public life.*
> *2. It is in any case a discriminatory act:*
> …
> *c) whoever illegitimately impose more unfavorable conditions or refuses to give access to occupation, dwelling, education, formation and social and welfare related service to the foreigner regularly present in Italy only for his condition of foreigner or person bearing to a certain race, religion, ethnic group or nationality;*

Art. 44 clears that in case of similar discriminatory behaviors the victim has the right to claim the injunction for the illicit behavior and the removal of the effects. Despite the abrogation in 2011 of Art. 44, subs. 7, which expressly mentioned the right for the victim to claim compensation of damages, including non-pecuniary damages, it is evident that this is still possible, as discrimination compromises an inviolable personal right, protected in the Italian legal system at the highest level.
It is worth noticing that these provisions are expressly applicable also to Italian and EU citizens and to stateless people:

[346] Gabrielli & Padovini, *La locazione di immobili urbani*, 177 et seq.

Art. 43 – *3. This article and article 44 applies also to xenophobic, racist and discriminatory acts towards Italian citizens, stateless and citizens of other European Union countries present in Italy.*

A further provision against discrimination, again not only towards foreigners, can be found in Leg. Decree 9 July 2003, n. 215, introduced in application of Directive 2000/43/CE and regulating the principle of 'equal treatment'. In particular Art. 3 indicates, among the fields in which this principle must be respected, 'access to goods and services, including dwelling'.

It is possible to find some Italian decisions that, in accordance with these rules, considered discriminatory and therefore illicit a private landlord's refusal to execute a contract of rent and public authorities' refusal to give on rent public dwellings, in both cases clearly because of the nationality or of the ethnic origins of the people interested[347].

Another field which is protected against discriminatory acts also in tenancy law is the family unit, recognized by Art. 29 Const. and similarly by Art. 8 of the European Convention of Human Rights and by Art. 9 of the European Charter of Fundamental Rights. This principle can be violated in case, for example, the landlord refuses to execute the contract because of the prospective tenant's children or partner, but under this aspect it seems there is no case law.

The Constitutional Court expressed against a discrimination introduced by the legislator through Art. 6 Law n. 392/1978: the provision grants the spouse the right to succeed in the contract in case of tenant's death, but it did not take into consideration the tenant's cohabitant *more uxorio* (a Latin expression used in the Italian law to indicate a person who live with another 'as if they were spouses'). The Court considered the provision unconstitutional under this aspect and founded its justification in the need not to discriminate people who reside in a property alongside the legally recognized tenant, invoking the principle of equality (Art. 3, subs. 2 Const.) and the right to housing (Art. 2 Const.)[348].

- *Limitations on freedom of contract through regulation*
  - *mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract*

The necessary minimum content of a tenancy contract is the consequence of both the general rules of contract law and the specific provisions for this kind of agreements.

The elements indicated here below are not only the necessary requirements to avoid invalidity of the contract or other sanctions, but also, more in general, the elements that parties should clearly provide in order to avoid serious uncertainty about the content of their agreement.

First of all, parties shall be clearly identifiable through name, surname, place and date of birth, place of residence and fiscal code. Trade name, registered office and vat number will be necessary in case the party is a legal entity.

Also the dwelling shall be unambiguously individuated through the indication of Municipality, street, number and, if necessary, floor, stairs and so on. All the cadastral data are necessary too, in order to identify the dwelling, its class and cadastral rent. The landlord shall also specify the number of rooms, bathrooms, kitchens and other

[347] Trib. Milan, 30 March 2000, in *Foro italiano*, 2000, I, 2040; Trib. Milan 20 December 2010 and Trib. Milan, 24 January 2011, *ibid.*, 2011, I, 583.

[348] Const. Court, 7 April 1988, n. 404.

annexes which compose the dwelling given on rent and the residential purpose for which the contract is stipulated.
As far as energy saving is concerned, since 2014, in case of rents regarding entire buildings or single dwellings subject to registration it is necessary to insert a clause in the contract confirming that the recipient was given 'information and documents, including the certificate, regarding the energy performance of the buildings'. The duty to enclose the certificate to the contract is limited to rents of entire buildings[349].
The amount of rent is another fundamental aspect. This is usually indicated in the contract with its annual amount and then it is specified how often it shall be paid. It is possible that parties do not fix the rent but ask a third party, who is for example an expert of local values, to determine it: a similar procedure is expressly recognized in general contract law by Art. 1349 Civ. Cod.. Problems arise when the rent is not determined and not even determinable otherwise: in this case the prevailing opinion considers the contract null and void for lack of the subject matter of the contract, as there are no mandatory provisions which can be invoked to integrate the contract[350].
In addition, it is also important that parties indicate which expenses bear on the tenant and on the landlord, but in the absence of an express provision by the parties, the ordinary rules in the Civil Code and in the Fair Rent Act find application.
In case the contract does not specify how often the rent and the expenses are due by the tenant, they shall be paid according to the general rules of the Obligation Law in the Civil Code[351].
Parties shall then indicate the duration of the contract, in accordance with the kind of tenancy they are stipulating. As it has been already said and will be better analyzed below, under this aspect there are mandatory provisions which leave to the parties a limited autonomy or which find automatic application in the absence of an express provision by the parties.
Finally, the contract shall indicate the date of its execution and, if different, the date of its legal effects. The limit of 30 days to register the contract runs from the earlier of these two dates.

- *control of contractual terms (EU directive and national law); consequences of invalidity of contractual terms*

Tenancy contracts are subject to the ordinary rules of contract law, according to which an agreement is null and void in case it lacks one of the following 'essential elements' or their characteristics (Art. 1325 Civ. Cod.):
- the consent of at least two parties;
- a licit, possible, determinate or determinable subject matter of the contract;
- a licit consideration;
- the written form, when required by the law.
In particular, for the subject matter of the contract, it is necessary that the parties clearly individuate the content of their respective promises (which dwelling is delivered, for which purpose, the reward) or at least that they give sufficient elements in order to individuate them. The determination of this aspect can be demanded also to the law, to a third subject or to a judge.

[349] Art. 6 Leg. Decree 19 August 2005, n. 192.
[350] In this sense, Gabrielli & Padovini, *La locazione di immobili urbani*, 339 et seq., who remember that the faculty to ask a judge to determine the consideration of the contract is provided for by the law only with regard to some specific contracts, such as building contracts ('appalto' in Italian) and labour contracts.
[351] These rules will be better analyzed below.

The object shall also be possible in the concrete; it can regard also something which will come to existence in the future: in this case the contract is valid but without effects until the dwelling is realized.
Finally, the contract shall be licit, which means, according to the Italian law, that it cannot violate mandatory rules, 'public order' and 'good morals'.
The consideration in the Italian contract law can be defined as the concrete function of the contract that the parties pursue. With specific regard to tenancy contracts, it can be used to verify that the promises are fit to realize the mutual exchange agreed by the parties. Problems may arise in case of lack of a promise or in case its amount is symbolic or insignificant; but also in case the contract grants a party faculties that actually the latter already has. Furthermore, the consideration shall be licit, in the same sense seen for the subject matter of the contract.
As for the written form, it has been already said above that after Law n. 431/1998, according to the prevailing opinion, this has become a general requirement for the validity of every tenancy contract regarding residential dwellings.
Other special cases of invalidity were expressly introduced by the legislator as an exception to general civil law rules, mainly in order to counteract black market phenomena.
In particular the following clauses or contracts are expressly declared null and void by the legislator:
- any contract indicating an amount of rent exceeding the written and registered rent (Art. 13, subs. 1 Law n. 431/1998);
- any clause indicating a duration below the legal minimum (Art. 13, subs. 3 Law n. 431/1998);
- any clause granting a rent exceeding the legal limit, in case of 'assisted tenancies'; any tenant's duty or any clause or any other economic or legal advantage granting the landlord a rent exceeding the contractually agreed rent, in case of 'free market tenancies' (Art. 13, subs. 4 Law n. 431/1998);
- any non-registered tenancy contract (Art. 1, subs. 346 Law n. 311/2004)[352];
- any registered contract indicating a fictitious lower amount of rent; any contract fictitiously registered as a free loan (Art. 3, subs. 9 Decree Law n. 23/2011)[353].
Also the consequences of these invalidities vary in consideration of their particular characteristics and of the specific provisions introduced by the legislator.
According to the traditional Civil Code rules, the lack of one of the four mentioned 'essential elements of the contract' or of one of their requirements makes the contract null and void. This means that the agreement will not produce effects and its invalidity can be enforced by every subject interested or by a judge in every moment; the null and void contract cannot be validated and parties cannot renounce to the corresponding action (Arts 1418 – 1424 Civ. Cod.).
Nevertheless it is possible that the parties perform the invalid contract, for example delivering the dwelling and paying the rent; in this case a peculiarity for tenancies is represented by the fact that the landlord, unlike the tenant, cannot have his performance returned. For this reason decisions tend to exclude the tenant's right to be refunded for the paid rent, save the right to an indemnity in case the landlord received an 'unjustified enrichment'[354].

[352] Even though the interpretation of this provision in terms of invalidity of the contract is not accepted by a significant part of jurisprudence and Courts: see for a review of the positions about this topic, see Cristina Ulessi, Commento sub Art. 1 Legge n. 311/2004, in *Codice Commentato di Locazione e Condominio – Locazione*, ed. V. Cuffaro & F. Padovini (Torino: UTET Giuridica, 2013), 634 et seq.
[353] But this provision has been declared unconstitutional by Const. Court, 14 March 2014, n. 50.
[354] Cass., 3 May 1991, n. 4849, Trib. Catanzaro, 27 January 2011, <www.iusexplorer.it>

The nullity of a clause does not necessarily mean that the whole contract is null and void, also according to Civil Code rules. We have already described that the lack of the written form in tenancy contract lasting more than nine years may only imply that the contract is reduced to a shorter duration, if the parties would have agreed in this way: this is what Art. 1419, subs. 1 Civ. Cod. provides. Anyway this example is now only theorical for residential dwellings as Law n. 431/1998 introduced for all of them the burden to use the written form, notwithstanding the duration.
Another, still existing possibility is that the null clause is automatically substituted by a legislative provision (Art. 1419, subs. 2 Civ. Cod.): this is what happens with the duration of the contract, in case the parties agree a term which is shorter than the legal minimum term. In this case the content of the clause is changed but the contract remains valid. The same mechanism operates with regard to the amount of rents for contracts which are still subject to the corresponding mandatory provisions of the Fair Rent Act.
In addition to these general rules, the legislator introduced some special provisions:
- in case of violations regarding the amount of rent indicated by Art. 13, subs. 4 Law n. 431/1998, the law grants the tenant a protective procedure in order to obtain the validation of the contract (which is normally not possible for null and void contracts), the modification of rent in accordance with legal limits and the refund of the sums paid in excess;
- the same procedure of validation can be invoked by the tenant also in case the contract lacks the required written form (Art. 13, subs. 5 Law n. 431/1998); a further punitive procedure is that the amount of rent shall be established by the judge and cannot exceed the amount indicated for 'assisted tenancies'. Furthermore, according to certain opinions, in case of lack of the written form, only the tenant would have right to claim the nullity of the contract: this interpretation is considered coherent with the protection of the weaker party pursued by the legislator through Law n. 431/1998; exceptions would be possible only in case the landlord gives evidence that the lack of the written form is due only to the tenant's responsibility[355];
- a further procedure of validation, in exception to the rules of invalidity, was introduced by Art. 3, subs. 8 and 9 Decree Law n. 23/2011, but it has been declared unconstitutional in March 2014, so, at present, it is unenforceable[356].
According to general Civil Code rules on contract law, tenancy contracts can be subject also to a different kind of invalidity, with less serious consequences: voidability. This is in particular the consequence of vices of the will or of the party's incapacity. In case the consent expressed by one of the parties is the consequence of a mistake, of a fraud or of moral violence (to be intended as a threat), the contract, at certain conditions, can be declared null and void; the same in case the contract is executed by a person which is not fully capable, without his legal guardian.
The main differences with nullity are that the contract produces its effects, until the party who is legitimated does not ask the contract to be declared invalid: in this case it will become retroactively void. The legitimated party has also the possibility to confirm the contract, despite the invalidity. The action of voidability is subject to a term of prescription of five years.
A further control about the validity of tenancy contract terms depends on consumer law, which has been introduced in Italy through the EU directives and is now gathered in Leg. Decree n. 206/2005 (generally called 'Consumer Act').

[355] In this sense, Di Marzio, La locazione, I, 268. Among the decisions: Trib. Catanzaro, 27 January 2011, <www.iusexplorer.it>; Trib. Catanzaro, 27 May 2008, *Il civilista*, 2010, 11, 19; Trib. Nuoro, 21 June 2007, *Riv. giur. sarda*, 2009, 143.
[356] See above.

These rules require that the contract is concluded between a consumer and a professional supplier and this is quite unusual in Italy as the number of professional dealers in tenancies is rather limited, especially with regard to residential dwellings. Anyway, if these conditions are met, the contract shall comply with the rules of consumer law. Among the most relevant for tenancy contracts, it is worth mentioning unfair contract terms. Italian law provides the following general definition for this concept:

> Art. 33, subs. 1 – *In the contract executed between a consumer and a professional dealer, the clauses that, despite good faith, causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer, are considered unfair*.

In addition, the legislator introduced two lists of clauses: one of terms which are surely invalid (Art. 36, subs. 2) and the other one of terms which are invalid if it is not given evidence of the contrary (Art. 33, subs. 2).
The consequence of a similar violation is called 'protective nullity' because it has important elements of speciality compared to the invalidity provided by the Civil Code: in particular, it can be enforced only by the consumer or by the judge in the consumer's interest (Art. 36, subs. 3), it necessarily affects only the single clause and not the validity of the whole contract; on the other hand, it shares with the traditional nullity the fact that it cannot be object of confirmation or renounce and that the action is not subject to a term of prescription.

- *statutory pre-emption rights of the tenant*

Law n. 431/1998 introduced a pre-emption right for the tenant of a residential dwelling with Art. 3, subs. 1, lett. g):
The duration of tenancy contracts, both in case 'free market tenancies' and in case of 'assisted tenancies', is determined by the law in a period respectively of four and three years. After that, the contract is automatically renewed, respectively for four and two years, apart in case the landlord gives notice of termination six months earlier.
This notice can be given only for some reasons expressly indicated by the law. Among these, there is the necessity of the owner to sell the dwelling. This provision considers that the market value of a free dwelling is surely higher than the one of a dwelling on rent; anyway this aspect is then balanced with other prescriptions: the landlord shall not own other residential dwellings, apart from his own house, and the tenant is given a pre-emption right.
The rules which regulate this right can be found both in Law n. 431/1998 and in the Fair Rent Act, where a similar right for non-residential dwellings is provided (Arts 38 and 39).
The owner has the duty to inform the tenant, through public officer, of the intention to execute the sale with a third party, indicating the price, the other conditions and inviting to use the pre-emption right. The tenant has 60 days to communicate, with the same modalities, his acceptance.
In case of more than one tenant, they all have the right to purchase the dwelling.
If the dwelling is not sold within twelve months from the moment in which the dwelling was left by the tenant, the latter can alternatively ask to restore the tenancy contract or to receive a compensation, which is determined by the law in 36 times the last monthly rent paid (Art. 3, subs. 5 Law n. 431/1998).
Art. 39 of the Fair Rent Act provides also a right to redeem the dwelling in case the landlord did not do the notification of the sale or the price communicated was higher

than the real price indicated in the selling contract. In similar cases, the previous tenant, within six months from the transcription in the Register of Properties of the selling contract, may redeem the dwelling from the purchaser or even from other third subjects who may have obtained a right over it in the meantime.
The only aspect of Arts 38 and 39 of the Fair Rent Act, whose application to the pre-emption right of residential dwelling is contested, is the exclusion of this right in case of pre-emption right of the coheirs and in case of sale of the dwelling to the married partner or to relatives within the second level[357].

- *are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?*

The mortgage, according to the Italian law, grants to the creditor the right to levy to execution on a real property and to be compensated with the reward of the sale. At the same time the mortgage leaves the debtor the possession of the thing and the right to dispose of it. This mechanism is possible because a system of legal publicity, through the Register of Properties, is necessary in order to constitute a mortgage, so other people can be easily informed about existing mortgages.
The Civil Code expressly considers the position of the purchaser of a thing under mortgage, saying that the credit can be opposed to him (Arts 2858-67); other similar rules are indicated for the following real rights over the thing: easement, usufructor tenancy, right of habitation, building lease, long lease (Art. 2812).
On the contrary, with regard to tenancies, the only specific disposition is the following:

> Art. 2812 – 4. *The assignment of a non-expired rent or the release from the duty to pay the rent on a thing under mortgage, when they are not transcribed or last less than three years, can be opposed to the creditor with the mortgage only in case they have been certainly done before the attachment* [the procedure which opens the execution] *and for not more than one year from the beginning of the attachment.*
> 5. *The transcribed assignments and releases can be opposed to the creditors who previously inscribed the mortgage only within the term indicated in the above subsection*[358].

This provision indicates the boundaries within which assignment of the rent to third parties and release of the tenant from the payment of the rent have effect towards the owner/landlord's creditors with mortgage. That is due to the fact that similar creditors have an interest on the rent and they can avail on it in order to obtain the compensation of their credit[359]. On the contrary, there are no specific rules limiting the faculty of the debtor to rent the dwelling under mortgage.
Nevertheless, it is important considering that there are general rules regarding the forced sale of a dwelling, notwithstanding the existence of a mortgage on it, which indicate to what extent tenancy contracts can be opposed to the purchaser. These rules, in other words, do not prevent the owner from renting the dwelling, but specify extent and limits of the principle *emptio non tollit locatum*, which will be analyzed below in para. 6.4.

[357] Gabrielli & Padovini, *La locazione di immobili urbani*, 578 et seq. contest the opportunity to use this rule outside the field of not residential tenancies.
[358] Some decisions cleared that in order to oppose these limits to the tenant it is necessary that to the latter it is given notice of the fact that the creditor with mortgage began the execution on the dwelling: Cass., 28 August 2007, n. 18194, in *Guida al diritto*, 2007, 45, 105.
[359] Cass., 11 May 2013, n. 11025, *Giust. civ. Mass.*, 2013; Cass., 12 December 2011, n. 26520, *Giust. civ. Mass.*, 2011, 12, 1761; Cass., 10 August 1992, n. 9429, in *Giust. civ. Mass.*, 1992, fasc. 8-9.

Art. 560, subs. 2 Civ. Proc. Cod. says that after the attachment the dwelling can be given on rent only in case the judge of the execution gives his authorization.
Art. 2923 Civ. Cod., instead deals with tenancy contracts executed before the attachment. The provision says that it is possible to oppose a contract, first of all, if it was executed by the debtor in a date which is surely before the attachment (it is considered 'sure' – according to Art. 2704 Civ. Cod. – the date indicated in a document written or authenticated by a public notary or in a simple written document when there are some further conditions, such as the registration). Then, tenancy contracts that last more than nine years, if not transcribed before the attachment, can be opposed only within nine years from the beginning of the contract[360]. Tenancy contracts which do not have a certain date, but whose detention by the tenant is before the attachment, can be opposed only for the duration legally established for open-ended tenancy contracts: for residential dwelling this implies the application of the minimum legal terms indicated by the special statutes[361]. In any case the purchaser is not bound to a contract whose rental is more than three times lower than the 'fair price' or the price of a previous contract.
In addition to this, decisions retain that, at the same conditions, tenancy contracts cannot be opposed neither to the purchaser nor to the creditors. This interpretation gives the right to the creditors to send notice to quit to the illegitimate tenant also before the forced sale[362].

6.4 Contents of tenancy contracts

Table for 6.4 – Contents of tenancy contracts

	Main characteristic(s) of private tenancies	Main characteristic(s) of public tenancies
Description of dwelling		
Parties to the tenancy contract	Landlord and tenant	Public agency and grantee
Duration	Minimum legal term of duration	The contract automatically renews until the grantee has the necessary requirements
Rent	'Free market tenancies': parties are free to fix rent and rent increase 'Assisted tenancies': rent and rent increase fixed in accordance with legal parameters	
Deposit	Not more than three months rent	

[360] Cass., 9 January 2003, n. 111, in *Giust. civ.*, 2004, I, 1831.
[361] Trib. Torino, 27 February 2006, in <www.dejure.it>; Trib. Monza, 23 February 2000, in *Arch. Locazioni*, 2001, 272.
[362] Giovanni Gabrielli & Fabio Padovini, *La locazione di immobili urbani*, 2nd ed. (Padova: CEDAM, 2005), 96.

Utilities, repairs, etc.	Landlord: ordinary and extraordinary maintenance Tenant: small repairs	Landlord: ordinary and extraordinary maintenance Tenant: small repairs

- *Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)*

In the Italian tenancy contracts the exact habitable surface of the dwelling is not often indicated. It is much more frequent that the contract indicates the number of rooms, bathrooms, kitchens, other services and annexes.
This solution is probably due to the difficulty for many landlords of having something more than an approximate idea of the squared meters of their dwelling and so this surely limits the possibility of contracts with wrong data.
Anyway also in similar cases there are some rules to respect, which are indicated for the cadastral classification of properties: only the spaces used as bedrooms, living rooms, dining rooms and so on, which have the minimum surface required by the law, can be properly defined as 'rooms'. All the other spaces, such as bathrooms, kitchens, entrances, corridors, even if bigger than required, cannot be classified in this way. It may happen, for example in advertising, that dwellings with a bedroom and a big kitchen are indicated as a two-room flat, while they should be considered a single-room flat.
Wrong information relating to the number of rooms or to the surface of the dwelling may be relevant during negotiations but, if indicated in the contract, can also affect the latter.
As far as the possible consequences, in defect of decisions regarding tenancy contracts, we can consider similar problems occurred in case of sale of a dwelling. In particular, discussions concern whether such a wrong indication should be considered as a lack of quality of the thing or as the delivery of a completely different thing: this is important, as legal remedies – and especially terms of prescription – are different[363].
A similar difference seems to be relevant also in the field of tenancy contracts. The Civil Code contains a special provision for defects of the thing given on rent, which finds application also in case of lack of qualities of the thing[364]. The remedies – discharge of the contract or reduction of the rent, as well as compensation, at certain conditions – require that the dwelling is 'significantly unsuitable' for the agreed use and that the defect was 'not known or easily recognisable' by the tenant (Art. 1578 Civ. Cod.).
Instead, if the dwelling, whose number of rooms or habitable surface is wrongly indicated, is considered as a completely different thing from the one agreed, the ordinary rules on discharge by breach find application: this simply requires that the breach is not of 'limited importance', having regard to the creditor's interest (Art. 1455 Civ. Cod.).

[363] Cass., 30 May 2013, n. 13612, in *Giust. civ. Mass*., 2013, in a case regarding the sale of an area suitable for building, where the potential building resulted smaller than indicated, said that this was a case of defect of quality. In a different case, regarding the sale of a 36 squared meters dwelling, described in the contract as of 54 sqm, the general rule of discharge by breach of contract seems to be used: Cass., 3 December 2007, n. 25250, in *Giust. civ. Mass*., 2007, 12.
[364] In this sense Gabrielli & Padovini, *La locazione di immobili urbani*, 249.

Finally, we cannot exclude that in a similar case also a bilateral mistake of the parties may occur: jurisprudence in Italy retains that at these conditions the contract can be declared null and void[365].

- *Allowed uses of the rented dwelling and their limits*

- In particular: to what extent are mixed (residence/commercial) contracts lawful and usual (e.g. having a shop, a legal office or a doctor's studio in the dwelling)

It is not easy to determine the diffusion of mixed tenancies in Italy, but this phenomenon is surely present in the country, where it is considered lawful.
Evidences about its use come, first of all, from a certain amount of case law regarding this matter. These cases often deal with small professional studies or small handicraft activities, jobs which are quite widespread in Italy, and this suggest that mixed tenancies might be a not insignificant number.
The legal possibility of a similar contract is confirmed by Art. 80 of the Fair Rent Act, which incidentally says, dealing with the use of dwellings given on rent, that, in case there is only a partial use different from the use agreed between the parties, the rules of the 'prevailing use' find application. On these basis, we can say that parties are free to rent a dwelling both for residential and commercial use and to indicate which one will be the prevailing use so that the corresponding discipline can be applied, derogating the other.
A similar express provision, introduced when the whole subject was under the 'fair rent' regime, is even more important today because residential and non-residential tenancies are mainly regulated by two different special statutes, which have both mandatory rules, that are not consistent: for example about the minimum duration of the contract.
That explains why, in case the actual use of the tenant is different from the use declared by the parties in the contract, the judge is entitled to evaluate the prevailing use and, in case, change the applicable rules[366]. As for the criteria to be used in this evaluation, it has been said that it is not correct to simply consider the surface used, but it is better to make 'a whole evaluation of the importance, under the economical point of view above all, of the different uses'[367].
On the contrary, in case of public dwellings the non-residential use of the granted dwelling is traditionally excluded.

- *Parties to a tenancy contract*

- Landlord: who can lawfully be a landlord?

It is generally said that anyone can assume towards another party the duty to give a specific dwelling on rent and that a similar contract is effective, notwithstanding the existing right of the landlord over the dwelling. This is due to the fact that, in order to

[365] Cass., 15 December 2011, n. 26974, in *Giust. civ. Mass*., 2011, 12, 1775; Cass., 12 November 1979, n. 5829, in *Giust. civ. Mass*., 1979, fasc. 11.
[366] Among the others, we can mention: Cass., 9 June 2005, n. 12120, in *Giust. civ. Mass*., 2005, 6; Cass., 16 June 2003, n. 9612, in *Giur. it.* 2004, 960; Cass., 2 July 1998, n. 6456, in *Giust. civ. Mass.* 1998, 1443; Cass., 14 November 1997, n. 11266, in *Giust. civ. Mass.* 1997, 2170; Cass., 17 October 1994, n. 8463, in *Giust. civ. Mass.* 1994, 1231.
[367] Cass., 28 March 1997, n. 2768, in *Giust. civ. Mass.* 1997, 486.

regularly perform the contract, it is sufficient that the party delivers the dwelling and guarantees its enjoyment to the tenant; otherwise he will be considered defaulting.
Anyway, it is obvious that for a prospective tenant it is safer to make an agreement with a person who can legally dispose of the dwelling for tenancies. This right is granted to the people who can use the thing not only directly, for their personal use, but also indirectly, exploiting it. In general, this is the owner, but there can be some exceptions.
First of all, the owner is not entitled to rent the dwelling in case on the premise there is an usufructor tenancy or a right of use or habitation. Other limitations can be the consequence of an easement, whose content must be respected, of an execution, whose effects on tenancy contracts has been already described above, or of a plurality of owners.
In this latter case the general principle is that everyone can freely dispose of his own share of the common thing, even through tenancies, provided that this use does not limit the rights of the other owners. Instead, in order to dispose of the whole dwelling, the law makes a distinction: if the rent is over nine years, it is necessary to obtain every owner's consent (Art. 1108, subs. 3 Civ. Cod.); in case the duration is more limited, the contract can be considered as an act of ordinary administration, for which the majority of the shares is sufficient (Art. 1105 Civ. Cod.)[368]. A further possibility is that one of the owner executes a tenancy contract within the limits of the *negotiorum gestio* (Arts 2028-2032 Civ. Cod.).
The other subjects entitled to execute tenancy contracts are the following:

- the holder of a building lease can give on rent the buildings realized over the land which is subject to the building lease; the only difference respect to the owner is that its right is limited in time and this may create a problem of effects of the contract towards the land's owner when the right terminates. It is worth remembering that several public dwellings to give on rent were built over plots, generally given by public entities, following this legal procedure;
- the holder of an usufructor tenancy has the faculty to exploit the thing and so also to give it on rent. Limitations can be provided with the act which constitutes this right: according to some opinions, the fact that similar limitations are expressly provided by Art. 980 Civ. Cod. means that they can have effect also towards third parties (*i.e.* the tenant)[369];
- the holder of a right of use or of a right of habitation is not usually considered capable of disposing of the dwelling through tenancy. As use and habitation are thought for the personal necessities of the holder and his family, they cannot imply the right to give the thing on rent to other subjects, but some authors retain that a similar possibility can be expressly granted by the owner of the thing[370].

The last considerations regard the position of subjects which have not a real right over the dwelling: the tenant and the bailee.
For the tenant, Art. 1594, subs. 1 Civ. Cod. says that, in case of immovable things, this subject has the right to sublet the thing to another subject; so in similar cases the tenant can become at the same time landlord (in case of movables, the rule is the opposite: Art. 1594, subs. 2 Civ. Cod.). Partial subletting is allowed also by Law n. 392/1978 (Art. 2, subs. 2).

[368] Gabrielli & Padovini, *La locazione di immobili urbani*, 105 et seq., which challenge the opinion expressed in some decisions, according to which in defect of evidence to the contrary a silent mandate by the other owners could be affirmed: Cass., 26 March 1983, n. 2158, in *Repertorio Foro italiano*, 1983, voce «Comunione e condominio», n. 45.
[369] Gabrielli & Padovini, *La locazione di immobili urbani*, 116.
[370] *Ibid.*, 118.

For the bailee, on the contrary, subletting is forbidden without the owner's consent (Art. 1804, subs. 2 Civ. Cod.). The reason of these opposite solutions is considered the fact that commodatum, unlike tenancy, is normally a gratuitous contract, executed with a specific person.
Anyway rules in both cases can be freely derogated by the parties limiting or extending the right for these subjects to become landlords.

- does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?

The Italian law regulated the position of the tenant in case of change of the landlord basically following the general principle '*emptio non tollit locatum*', which means that the tenancy contract is normally not affected by these changes, even though with important specifications and exceptions that will be here analyzed.
Art. 1599 Civ. Cod. contains the rules regarding the 'acts of disposal of the rented thing': so its field of application comprises the sale of the dwelling, but also the particular form of hereditary succession represented by legacy and even the constitution of real rights over the dwelling. In this latter case we should distinguish between rights, such as the usufructor tenancy, which surely imply the respect of Art. 1599 Civ. Cod. and other rights, such as the easement, for which there is a debate: according to some authors, the constitution of a similar right cannot be limited by a previous tenancy contract; according to other opinions, also in these cases it is necessary to respect the rules of Art. 1599 Civ. Cod.[371].
The following circumstances are instead excluded from the application of Art. 1599: the hereditary succession in all the rights and the obligations of a person (for which the ordinary rules find application), the forced sales and execution (for which there is a specific provision: Art. 2923 Civ. Cod.) and the acquisition of a right as a consequence of possession and limitation of actions (in Italian law called '*usucapione*'). In this latter case the right of the new holder does not derive from the position of the previous holder; this implies that the new holder is not normally bound to the tenancy contract executed by the previous owner; the situation changes in case the adverse possess over the thing, that led to the limitation of actions, was exercised knowing and respecting the tenancy: in this case also the new owner shall continue the contract.
The main rule indicated by Art. 1599 Civ. Cod. is the following:

1. *The tenancy contract can be opposed to the purchaser if it was executed at a certain date before the sale of the thing.*

This rule means that the tenancy contract has effect also towards the new holder of the thing in case it was certainly executed before the sale of the thing. As it has been said with reference to the similar provision in Art. 2923 Civ. Cod., it is considered 'certain' – according to Art. 2704 Civ. Cod. – the date indicated in a document written or authenticated by a public notary or in a simple written document when there are some further conditions, such as the registration.
The following subsections provide two exceptions to the main principle:

2. *The provision above does not find application to tenancy of non-inscribed movables.*
3. *The non-inscribed tenancies of properties can be opposed to the purchaser within the limit of nine years since the beginning of the tenancy.*

[371] For this contrast, see *Ibid.*, 162.

As for dwellings, the second one is relevant and states that in case of tenancies lasting more than nine years, it is necessary a further requirement: the transcription in the Register of Properties. In defect, the contract can be opposed only for nine years, also in this case provided that it has a certain date before the sale.

Art. 1600 Civ. Cod. introduces a further exception:

> *In case the tenancy has not a certain date but the detention by the tenant is before the sale, the purchaser shall not respect the tenancy for more than the duration established for open-ended tenancies.*

This rule, in the absence of a suitable document attesting the beginning of the tenancy, gives relevance to the fact that the tenant was already possessing the dwelling before the sale. In the Civil Code system this was a last possibility which granted the tenant the right to continue the contract for a rather limited period of time: according to Art. 1574 Civ. Cod., tenancies for which the parties have not indicated any term last for one year in case of dwellings without furniture and the time for which the rental is agreed in case of dwellings with furniture. After the introduction of Law n. 431/1998, this rule, in case of residential dwellings, implies the application of the minimum duration there indicated; in practice this means that in most cases the result will be the same granted by Art. 1599, subs. 1[372].

The last rule is indicated by Art. 1599, subs. 4:

> *The purchaser is in any case bound to the tenancy in case he accepted this duty towards the seller.*

This means that the original and the new landlord can always stipulate an agreement for which the latter undertakes to continue the tenancy contract, even in the absence of the conditions indicated by Arts 1599 and 1600.

As for the consequences in case the contract produces its effects also towards the new owner of the thing, Art. 1602 Civ. Cod. clears that this subject replaces the former both 'in rights and in obligations', which means that also the tenant is bound to the contract, when the conditions indicated above are met, and cannot decide to freely withdraw from it.

The opposite agreement between landlord and tenant, for which the tenancy contract is discharged in case the dwelling is sold, allowed by Art. 1603 Civ. Cod., is now forbidden by Art. 7 of the Fair Rent Act both for residential and professional tenancies; scholars discuss whether the Civil Code rule maintains a limited field of application for contracts regulated only by the Civil Code rules[373].

This means, in other words, that in the Italian law the principle '*emptio non tollit locatum*' has become a mandatory rule, which is expressly derogated by the legislator only in limited situations.

Art. 2923 Civ. Code, regulates the effects of tenancy contracts in case of forced assignment of the dwelling. This rule, which has been already described above, has a content which is pretty similar to Arts 1599 and 1600.

First of all, it is confirmed the rule that the contract continues to produce its effects in case it was certainly executed by the debtor before the attachment (the procedure which opens the execution). Then, also the necessity to transcribe contracts that last more than nine years and the relevance of detention by the tenant in the absence of a suitable document attesting the date of the contract are both confirmed. In addition, there is a specific rule to prevent cases in which the debtor does not manage correctly its property or tries to avoid the effects of the forced sale:

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[372] Trib. Torino, 27 February 2006, <www.dejure.it>; Trib. Monza, 23 February 2000, in Arch. *locazioni* 2001, 272.

[373] F. Lazzaro, 'Limiti di forma e c.d. derogabilità nelle tipologie locatizie abitative', *Giustizia civile*, 1999, II, 118.

Art. 2923, subs. 3 – *The purchaser is not bound to the tenancy contract in case the agreed rent is more than three times lower than the fair price or than the rent agreed for previous contracts.*

As a whole, we can see that also in case of force sales the continuity of the tenancy contract is widely protected.

The last option regards the hereditary succession in all the rights and the obligations of the landlord (in Italian law called '*successione a titolo universale*'). In this case the general rule, even though not expressed by a specific provision, is that contracts regarding the dead person continue with his heirs and also tenancies do not constitute an exception, at least from the landlord's side.

- *Tenant:*

  - *Who can lawfully be a tenant?*

Every person and legal entity can potentially become a tenant.

The most important limit regards the possibility to execute a valid contract and this depends, among the other things, on the capacity of the parties. Incapable people shall be assisted by a legal guardian in similar activities; a principle which obviously finds application both for the tenant and the landlord.

The Italian law distinguishes two forms of incapacity.

The first one, defined as 'legal incapacity', includes three very different situations: the person who is not able to take care of himself because of health problems; the person who is sentenced to serious criminal penalties and to legal incapacity as a further penalty; the person under 18. All these different forms of legal incapacity share the fact that they can be easily checked in the public Register of the Civil Status: in the latter case, this is evident; in the two former cases because incapacity is the consequence of a judicial decision which shall be registered. For this reason, the other side, before executing a contract, is able to verify in every moment the capacity of its counterpart.

With reference to the under-18 children, we can mention the fact that, according to Art. 320, subs. 1 Civ. Cod., the consent of both relatives in order to stipulate a contract such as tenancy is always necessary; in case the contract is considered an extraordinary act (*e.g.* a tenancy lasting more than nine years), also the authorization by a probate judge is necessary.

The second form of incapacity is defined as 'natural' and depends on a defect to fully understand and exercise the will during the execution of the contract. A circumstance which might be less detectable than legal incapacity for the other side.

The contract executed by a legally incapable person without respecting the procedures regulating the role of the legal guardians or the contract executed by a naturally incapable person are voidable. This means that, at certain conditions, they can be declared null and void.

- *Which persons are allowed to move in an apartment together with the tenant (spouse, children etc)?*

Tenancy law does not expressly indicate which people may occupy the dwelling together with the tenant. Nevertheless there are several provisions implying that the latter is normally free to grant use of the dwelling to other people.

First of all, tenants are entitled to sublet the dwelling, at least at certain conditions, according to Art. 1594, subs. 1 Civ. Code and Art. 2 Law n. 392/1978. Secondly, Art. 1588, subs. 2 provides for the liability of tenants for any damage caused by third parties who are granted use of the property. Thirdly, a number of rules relating to tenancy contracts seek to protect the position of tenants' family members, even if they are not parties to the tenancy contract (Art. 1580 and Art. 1584 Civ. Cod.; Art. 6 Law n. 392/1978).

On these basis, the prevailing doctrinal position states that tenants, in the absence of an agreement to the contrary with the landlord, are entitled to reside in the dwelling with other people, as this is coherent with the exclusive right to use and enjoy the dwelling for residential purposes. This does not mean, however, that a spouse and/or other family members become *ipso iure* parties to the contract.

Importantly, the landlord cannot ask for an increase in the agreed rent in case more people go to live with the tenant, apart perhaps in case the landlord, according to the terms of the contract, must pay certain expenses depending on the number of people residing in the dwelling.

Nevertheless, a tenancy contract may contain a clause expressly prohibiting the tenant from taking any other persons into the apartment. The Court of Cassazione had quite recently the occasion to express its opinion about the legitimacy of similar clauses, with regard to a contract which forbade to 'host not temporarily people not included among the family members as resulting from the register office'. The Court invoked Art. 2 of the Italian Constitution, which protects the fundamental human rights both of individuals and collective groups and the duty of solidarity, and said that the above mentioned clause shall be considered null and void as contrasting with this provision[374]. In particular, the Court's arguments are that a similar prohibition prevents the duty of solidarity, which can be expressed taking care, through hospitality, of other people in difficulties; the prohibition can also affect the protected relationships among member of the family, among people who live together and also among simple friends. Furthermore, even the check in the tenant's private life, implied by a similar clause, is another violation of the tenant's personality rights[375].

The specific case regarded a friend of the tenant, but it is evident that the arguments used want to extend this freedom in the widest sense, notwithstanding the effective relationship between the tenant and his/her guests.

We can notice that the decision has been grounded exclusively on the national law, differently from other foreign decisions which, for example, relied on Art. 8 of the European Convention of Human Rights[376].

This decision has provoked some criticisms because it excluded that the situation could be classified as a case of subletting. This has been considered in contrast with the provision of Law n. 253/1950 (Art. 21), according to which a subletting is presumed when the dwelling is not temporarily occupied by a person who is not relative within the fourth level to the tenant or at his service, as in the present case.

[374] Cass., 19 June 2009, n. 14343, *Rassegna di diritto civile* 2011, 3, 992.

[375] This principle has been more recently reminded, even though with an *obiter dictum*, by Cass., 18 June 2012, n. 9931, in *Guida al diritto* 2012, 38, 64.

[376] It is the case decided by the French Cassation which declared invalid the clause of a tenancy contract forbidding the tenant to offer her husband hospitality: Cour Cass., 6 March 1996, III Ch. Civ., in [1997] Dalloz, Jurisprudence, p. 167.

- *Changes of parties: in case of divorce (and equivalents such as separation of non-married and same sex couples); apartments shared among students (in particular: may a student moving out be replaced by motion of the other students); death of tenant*

Art. 6 of the Fair Rent Act, still in force also for residential tenancies, indicates how death of the tenant or crisis of the marriage affect tenancy contracts regarding the family house.

As for crisis of the marriage, the provision is that the spouse to whom the judge recognized the right to live in the family house succeeds in the contract becoming tenant. A similar right is normally granted to the parent who received the children in custody or with whom the over-18 children live. This principle finds application in case of judicial separation and divorce (Art. 6, subs. 2).

In case of consensual separation or nullity of the marriage the same change of the tenant is possible provided that the spouses reach an agreement in this sense (Art. 6, subs. 3).

In 1988 Art. 6 has been partially considered uncostitutional by the Constitutional Court[377], which therefore extended its field of application:

- the principle of subsection 3 is extended to *de facto* separations (*i.e.* a long-lasting interruption of life together between husband and wife, even though not formalized);
- the principle of subsection 2 is extended to interruptions of *more uxorio* cohabitations; the Court said that in this case it is necessary the interruption of a continuous and permanent relationship (*more uxorio*) and the agreement between the partners to leave the family house to one of them, who will live there with the children of the couple.

The presence of children of the couple has been considered a necessary element in order to apply Art. 6 to non-married couples. This implies that people of the same sex cannot invoke this rule. Though criticized by some authors[378], the Court has already confirmed this interpretation in two further occasions[379].

As far as the death of the tenant is concerned, according to the general provisions on succession law, tenancy contracts continue with the heirs of tenants. However, Art. 6, Law n. 392/1978 introduces also in this case a special rule, saying that also other people are entitled to continue the contract in the event of the tenant's death: the spouse and the relatives who lived together with the tenant. This rule is confirmed also in the area of public housing (Art. 12 D.P.R. 30 December 1972, n. 1035 states that the dwelling is assigned to the spouse and the children of the dead assignee) and similarly in the field of commercial tenancies (Art. 37 Law n. 392/1978 states that tenancy contracts are assigned to people entitled to continue the tenant's enterprise).

The succession in the contract regards in the same way all the mentioned people who have the said requirements and for them, as for the landlord's heirs, it is automatic and binding[380].

[377] Const . Court, 7 April 1988, n. 404, *Diritto di Famiglia e delle Persone (II)* 1988, 1559.

[378] Luigi Principato, Il diritto all'abitazione del convivente more uxorio e la tutela costituzionale della famiglia, anche fondata sul matrimonio, in *Giur. cost.*, 2010, 113.

[379] Const. Court, 11 June 2003, n. 204 (ord.), in *Giur. Cost.* 2003, 3; Const. Court., 14 January 2010, n. 7 (ord.), in *Giur. Cost.*, 2010, 109.

[380] Art. 1614 Civ. Code was introduced in case heirs were not interested in continuing the contract: it says that if rent should last for more than one year and subletting is not allowed, within three months from the tenant's death, heirs can withdraw from the contract. Anyway, most decisions consider this rule implicitly abrogated by the provision of Art. 6 Law n. 392/1978; for a critic to this view, see Gabrielli & Padovini, *La locazione di immobili urbani*, 753 et seq.

The 1988 decision of the Constitutional Court extended also this provision to *more uxorio* cohabitants. Even though in this case the presence of children of the couple is not required, in 1988 such a decision was mainly regarded as non concerning homosexual partners. Nowadays the situation seems to be changed: during last years the Constitutional Court, despite denying the right to marriage for people of the same sex, recognized that also long-lasting relationships of this kind are protected as a social group by Art. 2 Const.[381]. Accordingly, some Tribunals cleared that also people of the same sex can be considered *more uxorio* cohabitants[382]. Therefore, following these interpretations, the rule of succession in the contract could now be invoked also for homosexual couples.

The last case regards apartments shared among students.

In case the contract is executed by the landlord and a plurality of students, if one of the latter withdraws from the contract, the other students cannot choose a new tenant without the landlord's consent.

In case the contract is executed by one student who has the faculty to sublet (totally or partially) the rooms of the dwelling, there is no a change of the original parties of the contract, because actually one or more new contracts of subletting are executed between the original tenant and other parties.

A further possibility is the assignment of the tenancy contract to a third party by the tenant. Art. 1594 Civ. Code, as well as Art. 2 Law n. 392/1978, establish, coherently with the general provision for the assignment of contracts (Art. 1406 Civ. Cod.), that the assignment requires the consent of all the parties involved. So, in case the landlord expressly grants this right to the other side in the contract or case by case, the latter is authorized to make a change of parties.

- *Subletting: Under what conditions is subletting allowed? Is subletting being abused e.g. with the aim of circumventing the legal protection of tenants (when the tenant is offered not an ordinary lease contract but a sublease contract only)?*

The original rule regarding subletting in the Civil Code grants tenants the right to sublet (partially or totally) the dwelling without the landlord's consent, unless prevented from so doing by a clause in the contract (Art. 1594, subs. 1 Civ. Cod.). Anyway, this provision in most cases – and, among these, for residential dwellings – has been supplemented by special rules provided with Law n. 392/1978.

Art. 2, subs. 1 says that the tenant has the right to sublet the property in its entirety only with the consent of the landlord. This rule is based on the idea that total subletting demonstrates that the tenant can afford also another dwelling and this would not justify the high level of protection granted by special statutes to tenants, considered as weak subjects. A similar approach is partially confirmed by another special rule: Art. 59, n. 7 Law n. 392/1978, according to which subletting is presumed if the dwelling is inhabited by one or more people who are not employed by the tenant nor are his relatives within the fourth level. In this case, if the original tenant does not even reside in the dwelling, the landlord has the faculty to discharge the contract.

On the contrary, the tenant is normally entitled to partially sublet his dwelling, provided that he informs his landlord about both the identity of the new tenant, the duration of the contract and the rooms given for subletting (Art. 2, subs. 2 Law n. 392/1978). That

[381] Const. Court, 15 April 2010, n. 138, in *Giur. Cost.*, 2010, 2, 1604.
[382] App. Milano, 31 August 2012, n. 407, in *Rivista critica di diritto del lavoro* 2012, 4, 1044.

is because 'partially' shall be interpreted as referred only to some rooms of the whole dwelling and not, for example, to a total subletting limited to a certain period of time.
These rules are dispositive and parties may always agree to limit or extend the faculty to sublet the dwelling.
The contract of subletting shall respect the ordinary rules for tenancy contract, for example for the minimum duration. At the same time it cannot be used to change the destination of the dwelling.
Other specific rules provided with reference to this subject can be found in Art. 1595 Civ. Cod.: in case the tenant is in debt, landlords have the right to ask sub-tenants to pay directly to them the rent. Nullity and discharge of the original contract have effect also towards the sub-tenant and also decisions between the tenant and the landlord can be opposed to sub-tenants.
If the tenant sublets a room without the permission of the landlord, when required, or without informing him, the landlord is entitled to terminate the contract and claim damages. The tenant should probably give the landlord the rent received from the sub-tenant as damage: this is the consequence of the general principle of unjust enrichment or 'enrichment obtained by committing a tort' (Art. 2043 Civ. Cod., a general clause in Italian law). According to this principle, if, for example, someone lives in the dwelling of someone else without the consent of the owner (or, more generally, without being entitled to stay there), he must pay for damages, even if the owner has not suffered an actual pecuniary loss: damages in similar cases are determined by taking into account the hypothetical rent the occupant would have paid in case of a regular tenancy contract.
From the legal point of view, subletting cannot be considered as an instrument to avoid imperative rules protecting or in any case concerning the tenant, as in general terms all the provisions for tenancy contracts shall be respected also for subletting; for example, it has been cleared that also this sub-contract shall be registered at 'Agenzia delle Entrate' at the same conditions of tenancy contracts[383].
From the practical point of view, we have to consider that the sub-tenant has no direct action towards the original landlord: the former can enforce his rights only against his landlord, who is the original tenant. This, on the one side, has a duty towards his sub-tenant but, on the other side, has an equivalent right towards his landlord. A similar mechanism may in practical affect the efficiency of protection towards sub-tenants, for example in case of defects of the dwelling which require a prompt intervention by the landlord[384].

- *Is it possible, and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?*

The execution of tenancy contracts with a multiplicity of tenants is surely possible. In general this phenomenon is not very usual, except in case of student contracts, where it probably represents the most widespread form of tenure.
In similar cases it is necessary to understand whether we have a contract with a plurality of parties or a contract with a multiple party, because this implies the application of different rules. According to the prevailing opinion, tenants, even if more than one, compose a single party.

[383] Even if not expressly provided for by the law, this interpretation has been confirmed by the Circular Ministry of Finance, 10 June 1986, n. 37, part 43.
[384] A decision showing this kind of problems, even though with regard to a not residential tenancy, is Cass., 23 July 2002, n. 10742, in *Giust. Civ. mass.*, 2002, 1321.

Some specific rules find application in this case. As for the conclusion, it is necessary that all the subjects express a consistent consent in order to execute the contract. For the payment of rents, Art. 1294 Civ. Cod., regarding debts with a plurality of debtors, states that they are all jointly and severally responsible for the payment of the whole sum; among the debtors, instead, Art. 1298 Civ. Cod. says that the one who paid can ask to be refunded only *pro quota*. Such a regulation is often recalled in the students' local model contracts. In any case these are dispositive rules and can be derogated by the parties: for example, stating that every tenant is responsible only for the payment of his share of rental.
Another aspect is the withdrawal from the contract: the Interministerial Decree 30 December 2002, with regard to the students' model contract, requires that every subject shall have the right to withdraw. In this case, if the tenants are jointly and severally responsible for the payment of rent, they will have to pay also for the share of the other one.
These solutions could be different in case the contract is considered executed among more than two parties. We should also consider that for similar cases the Civil Code has introduced some specific rules regarding invalidity (Arts 1420 and 1446) and discharge (Arts 1459 and 1466).

- *Duration of contract*
    - *Open-ended vs. limited in time contracts*
        - *for limited in time contracts: is there a mandatory minimum or maximum duration?*
    - *Other agreements and legal regulations on duration and their validity: periodic tenancies ("chain contracts", i.e. several contracts limited in time among the same parties concluded one after the other); prolongation option; contracts for life etc.*

The rules concerning both the duration and termination of tenancy contracts are considered as the most critical in Italian tenancy law, as they are the result of a trade off between the tenants' interest in retaining the right over the property for as long as possible and the landlords' interest in not being bound by contract for a long period of time.
The 1942 Civil Code provides only for a maximum duration of the contract, saying that it cannot exceed 30 years (Art. 1573). In case of contracts lasting more than this term, the clause is null and void and automatically reduced to the legal duration.
The reason of a similar rule is that law retains that people cannot normally make binding promises for such a long period of time, so that it is impossible to forecast whether such an obligation will become excessively burdensome.
Anyway this limitation is not absolute. First of all a tenancy contract may automatically be renewed for one or more time, reaching an over-30 years duration; it is only necessary that both parties have the right to interrupt the contract before that the maximum legal term is reached.
Another possibility is expressly provided for by Art. 1607 Civ. Cod. according to which a tenancy contract for residential dwellings can be executed for the whole life of the tenant and two years more. This rule has the clear intent to give the tenant certainty about the house where he lives for all life long. In this case discussions regard the validity of clauses which exceed the term of 30 years but do not provide exactly a term

linked to the whole life of the tenant: for example a contract lasting 50 years for the case the tenant is still living.

As for the minimum duration, the Code, as already said, did not introduce any particular limitation. There is anyway a difference between open-ended and limited in time contracts. In case the parties did not indicate the duration of the contract, the Code provides some supplementary norms: in case of dwellings without furniture, the duration shall be one year, save for different local uses; in case of furnished dwellings, the duration shall be consistent with the time fixed for the payment of the rental (*e.g.* a week, a month, a year): Art. 1574.

The situation regarding the minimum duration of tenancy contracts significantly changed with the introduction of special statutes, so nowadays the corresponding rules in the Civil Code have a very limited field of application.

The Fair Rent Act already introduced for the first time a minimum duration of four years for residential tenancy contracts (Art. 1). This approach was seen as an excessive limitation of individual property rights, and was subject to review before the Constitutional Court., but without success.

Law n. 431/98 surpassed this rule introducing two different possibilities, both with the aim to guarantee stability to the tenant.

The first one regards tenancies where the rent is freely decided by the parties ('free market tenancies'): in this case the minimum duration is four years; afterwards the contract is renewed for other four years. The renewal can be excluded by the landlord giving notice, but only for one of the reasons expressly provided for by Art. 3, which all have in common the fact that the landlord's interests take priority over the tenant's right to housing[385].

On the contrary, the tenant can terminate the contract after the first four years for any reason and, in addition, he is also entitled to withdraw from the contract at any time 'for serious reasons' and giving 'six months notice' through registered mail (Art. 3, subs. 6). After eight years also the landlord is free to terminate the contract for any reason. But if none of the parties gives notice, the contract is renewed at the same conditions.

The second possibility is represented by contracts where the rental is determined in accordance with local agreements between landlord and tenant associations and so it is cheaper than the market price ('assisted tenancies'). In order to stimulate such contracts the law provides for a shorter minimum duration: three years; after that, if the parties do not find an agreement to renew (or to terminate the contract) this is automatically extended for further two years. Again the landlord may withdraw from the contract only invoking one of the reasons expressly provided for by Art. 3[386], while the tenant can withdraw from the contract at any time but only 'for serious reasons' as required by Art. 3 subs. 6. After five years both parties have right to freely terminate the

[385] The reasons are the following: a) when the landlord wants to use the dwelling for himself or for his spouse, parents, children, relatives within the second level for a residential, commercial, craft or professional activity; b) when the landlord is a public, cultural or religious legal entity which wants to use the dwelling for its own purposes, provided that it provides the tenant with another adequate and fully available dwelling; c) when the tenant has at disposal a free and adequate dwelling in the same Municipality; d) when the building is seriously damaged and needs repairs which are prevented by the presence of the tenant; e) when the building shall be integrally repaired, or destroyed or elevated (in the latter case, the tenant shall live at the top floor and the building needs to be evacuated); f) when the tenant does not occupy continuously the dwelling without a legitimate reason, save cases of succession in the contract; g) when the landlord wants to sell the dwelling, provided that he does not own other residential dwellings, in addition to his own house; a pre-emption right is granted to the tenant in similar cases.

[386] More precisely, in this case only letters a), b), d), e) and g) can be invoked by the landlord: see Art. 3 subs. 5 Law n. 431/1998.

contract, otherwise, also in this case, it will be automatically renewed for the same period and at the same conditions.
In case the parties make an agreement for a shorter duration, the clause is null and void, but this cannot extend to the whole contract, which remains valid and is automatically corrected in accordance with the legal duration.
In addition to these general rules, Law n. 431/1998 introduced the possibility of some exceptions through the category of the so called 'temporary contracts' (Art. 5). This expression identifies contracts which need to have a shorter duration, in order to satisfy tenant's or landlord's necessities, such as, in particular, job reasons, which are already clear when the contract is executed.
The law anyway limits the autonomy of the parties in these contracts under several aspects. First of all, according to a rule which is criticized for its rigidity (Art. 2, subs. 1 Intermin. Decree 30 December 2002), the duration cannot be freely determined by the parties but shall be comprised between one and 18 months, and it is not renewable; then the rent shall be fixed in accordance with the rent ceiling determined by agreements between landlord and tenant associations used also for 'assisted tenancies'; finally the law requires that the temporary need is declared in writing and is formally proved by documentation attached to the contract (Min. Decree 5 March 1999), in order to avoid that these derogatory rules are abusively used.
A particular kind of temporary contract expressly provided for by the law is the tenancy contract for students. It finds application to University students who have residence in a Municipality which is different from the Municipality where they attend University courses. Also in this case the contract shall comply with legal limits regarding rental and duration. Anyway in this case the term is from six months to three years, and in the absence of a notice by the tenant, the contract, just for once, is automatically renewed for the same period of time.

- *Rent payment*

- In general: freedom of contract vs. rent control

From 1978 until 1998 the Italian legal system imposed a legal rent ceiling for residential tenancies. As a consequence, rents were not fixed by the parties, but were calculated and increased or decreased according to legal criteria. A similar procedure was inspired by a purpose of distributive justice and had the aim, on the one side, of reducing the owners' ground rent and, on the other side, of making access to houses easier for tenants. An important influence in this approach was played by the constitutional principle on 'the social function of property' (Art. 42 Const.).
In practice, this political project had limited economic and social benefits and it arouse severe criticisms: the mandatory 'fair rent' dissuaded landlords from letting properties and from investing on them, so that the supply of houses on rent was reduced and their quality worsened; furthermore phenomena of black market significantly increased.
The next statute (Law n. 431/1998) was introduced to solve the problems of the previous one and provides a less radical balance between property rights and protection of the weaker party (tenants). Parties have the faculty to choose between two different possibilities: in one case the rent is freely negotiated ('free market tenancies'), in the other one the rent is determined by local agreements among landlords' and tenants' associations ('assisted tenancies').
In this paragraph it is worth making a reference also to the modalities of payment of rents, a subject which has gone under the attention of the Government recently. In

order to prevent non declaration of income from rents, Law 27 December 2013, n. 147 introduced a provision according to which '*payments regarding rents of residential dwellings … are necessarily done, whatever the amount may be, with forms and modalities excluding the use of cash and ensuring the traceability*'. This provision, in force since 1 January 2014, appeared unequivocal in the sense that rent payments should have been done for the future through bank transfer or bank check. The rule is extended also to 'temporary tenancies', 'students tenancies' and 'holiday tenancies', but not to public dwellings.
Nevertheless, on February 2014, a circular from the Ministry of Finance explained that actually the provision does want to extend the limits to the use of cash already set by the Anti-Laundering Act (Leg. Decree 231/07, in particular Art. 49): in other words, cash for the payment of rents cannot be used only from 1,000 Euro on. In case the payment is under 1,000 Euro, the circular continues, it is sufficient to give written evidence of the payment, through a 'clear, unequivocal and suitable' document[387]. Even though this interpretation seems to go against the literal meaning of the law, it will be surely followed, at least until a new intervention on this matter does not occur. It has been also cleared that in case of a plurality of tenants, the limit of 999,99 Euro shall be calculated having regard not to the whole rent but to the amount bearing on each tenant.

- *Rent control: how is it legally framed; when does it apply; who carries it out; what are the consequences when the parties agree on an excessive rent*

The existing provisions regarding rent control ('assisted tenancies') were introduced in 1998 to surpass the rules of the Fair Rent Act.
Parties – but more realistically landlords – may freely decide to execute a contract with this regulation. The legislator tries to compensate the more limited economic return with incentives regarding the minimum duration of the contract and the fiscal regime.
The choice of fixed rents is compulsory in case of 'temporary contracts' (*i.e.* contracts with a duration below the minimum legal term), allowed by Art. 5 in order to 'satisfy particular necessities of the parties'.
In practice the amount of rents is fixed through local agreements among the most representative landlords' and tenants' associations.
These agreements generally use as parameters the location and the characteristics of the dwelling: more specifically every Municipality is divided in 'uniform areas' which have similar characteristics and similar housing market values; correspondingly dwellings are divided in classes according to parameters such as kind of dwelling, age, conditions, services, parking areas and so on. On the basis of these elements the table provides a maximum and a minimum parameter for every squared meter of the dwelling. The result of this multiplication gives the range of the applicable rent. Actually the only binding limit is the maximum because parties may freely decide to agree an even lower rent.
In case parties agree for a higher rent, the clause is null and void, according to Art. 13, subs. 4 Law n. 431/1998. Nevertheless, the following subsection provides a special protective procedure in favor of the tenant, derogating the ordinary Civil Code rules about nullity: within six months from the moment when the dwelling is effectively

[387] See Circular Ministry of Economy, 5 February 2014, Prot. DT 10492, <http://www.ilsole24ore.com/pdf2010/Editrice/ILSOLE24ORE/ILSOLE24ORE/Online/_Oggetti_Correlati/Documenti/Norme%20e%20Tributi/2014/02/MEF-D.T.circolare_tracciabilit%C3%A0_affitti_2014.pdf>.

returned[388], the tenant can go to Court and claim to have the excessive rent refunded; in case the contract is still effective between the parties, the tenant may ask that the clauses are fixed by the judge in accordance with the legal limits.
Although 'free market tenancies' grant to the parties the right to freely establish the amount of rents, Law n. 431/1998 provides some rules also under this aspect. In this case there is no a form of rent control but some special measures introduced to fight against derogatory agreements which hide the real rent for fiscal reasons:
- Art. 13, subs. 1 and 2 establishes that a non-registered agreement which sets a higher rent than in the registered contract is null and void. The former clause is invalid and within six months from the return of the dwelling the tenant may ask that the exceeding rent is returned; some authors and decisions retain that the aim of this rule is to prevent rent increase decided after the execution of the tenancy contract[389]; according to another opinion, on the contrary, this rule wants to avoid that parties indicate a fictitious rent in the registered contract and establish the real rent in another agreement[390].
- Art. 13, subs. 4 and 5 establishes that '*any tenant's duty or any clause or any other economic or legal advantage granting the landlord a rent exceeding the contractually established rent is null and void*'. Parties are free to fix the rent as they prefer at the beginning of the contract; this provision wants to avoid following agreements that during the contractual relationship increase the burden for the tenant[391]; the prevailing opinion seems to be in the sense that forbidden agreements shall directly affect the amount of the rent[392], but there is also another opinion which considers potentially relevant also agreements regarding, for example, the payment of maintenance or other works in the dwelling, provided that, in any case, they grant an advantage to the landlord.
As already described above, a further provision (Art. 3, subs. 9 Leg. Decree n. 23/2011) regarded cases of simulation of the rent: tenancies registered indicating a lower rent or costly tenancies registered as free loans (commodatum); but this rule has been recently declared unconstitutional by the Constitutional Court.

- Maturity (fixed payment date); consequences in case of delayed payment

Parties are free to decide when the payment of the rental is due, but anticipated payments exceeding three months rents are prohibited (Art. 2-*ter* Law 12 August 1974, n. 351).
In case parties do not specify the exact moment for payment, the general rule on fulfilment of obligations can be invoked. In particular, Art. 1183 Civ. Cod. says that in the absence of a provision in the agreement, the creditor can immediately ask the payment, save that local uses require the indication of a term.
In consideration of this rule the payment shall be done the first day of every period of time agreed for the payment (week, month and so on). In case the parties do not

[388] Other authors retain that the relevant moment is the termination of the contract: Gabrielli & Padovini, *La locazione di immobili urbani*, 379 et seq.
[389] Nunzio Izzo, 'La rilevanza degli adempimenti tributari', *Rassegna Locazione e Condominio*, 1999, 372. Cass., 3 April 2009, n. 8148, *Giustizia civile Massimario*, 2009, 583; Cass., 27 October 2003, n. 16089, *Foro Italiano*, 2004, I, 1155.
[390] Cristina Grassi, Commento sub Art. 13, Legge n. 431/1998, in *Codice Commentato di Locazione e Condominio – Locazione*, ed. V. Cuffaro & F. Padovini (Torino: UTET Giuridica, 2013), 619.
[391] Vincenzo Cuffaro & Stefano Giove, *La riforma delle locazioni abitative* (Milano: IPSOA, 1999), 60
[392] Cristina Grassi, Commento sub Art. 13 Legge n. 431/1998, in *Codice Commentato di Locazione e Condominio – Locazione*, ed. V. Cuffaro & F. Padovini (Torino: UTET Giuridica, 2013), 620 et seq.

indicate periods of time, the whole payment could be demanded at the beginning of the contract. Anyway some authors suggest that for tenancy contracts the applicable rule is the monthly payment (the first day), as this temporal division has substantially become a widespread use all over Italy for tenancy contracts[393].

Rules regarding delayed payments (in Italian called 'morosità') can still be found in the Fair Rent Act. It is generally said that this special statute tried to balance the introduction of legally established rents with a rather severe regulation in case of delayed payment by the tenant.

In particular, Art. 5 says that the contract can be discharged when the tenant failed to pay the rent after 20 days from the due date. The same consequence applies in case of delayed payments of other sums due by the tenant (such as the expenses for utilities and small repairs in the building: they are called 'oneri accessori' (additional burdens) and are provided for by Art. 9 Law n. 392/1978), when their amount exceeds 2 months' rent. Art. 5, in partial derogation of the general rule of contract law – which generally requires a breach of 'non limited importance' having regard to the interest of the other side in order to waive the contract – expressly indicates the necessary delay and amount.

At these conditions the landlord, according to Art. 658 Civ. Proc. Cod., may send the tenant a notice to quit, which is at the same time a writ of summons. Therefore the tenant is required to appear in Court so that the judge ascertains that the contract is discharged and sentences the tenant to leave the dwelling.

Art. 55 Law n. 392/1978 gives the tenant a further possibility: the tenant at the first hearing can offer the payment of the sums due, plus interests and legal expenses; in case of proved difficulties of the tenant the judge can fix a term within 90 days for this payment. A similar procedure gives the tenant the possibility to avoid the discharge of the contract. This procedure cannot be used for more than three times in four years. If the breach is a consequence of economic problems of the tenant, begun after the execution of the contract and depending on unemployment, disease or other serious difficulties, the procedure can be used four times and the judge can fix the above indicated term to pay within 120 days.

- *May the tenant exercise set off and retention rights over the rent payment? (i.e. the tenant withholding the rent or parts of it when the landlord does not respect his contractual duties, e.g. does not repair a defect)*

Case law in Italy is uniform in considering that the tenant does not have the right to make a self reduction of the rent. Even though as a consequence of a breach by the landlord, this is considered a gratuitous and illegitimate behaviour, which can bring to the discharge of the contract[394]. Art. 1578 Civ. Cod. says that in case of defects of the dwelling the tenant has only the faculty to ask a judge the discharge of the contract or, as an alternative, the reduction of the rent, when the defect is not sufficiently serious. Accordingly, Art. 1577, subs. 2 Civ. Cod. says that even in case the tenant pays for some urgent works due by the landlord, the former has not the faculty to reduce the rent for the relative amount, but can only ask to be refunded.

[393] Gabrielli & Padovini, *La locazione di immobili urbani*, 371 et seq.

[394] Among the several decisions in this sense, we can mention Cass., 28 July 2004, n. 14234, in *Giust. Civ. mass.*, 2004, 7-8

In addition to this, it is worth considering that, according to Art. 13, subs. 5 Law n. 431/1998, even in case the parties agreed a rent exceeding the legal limit, the tenant cannot self reduce the payment, but shall order the landlord to appear in Court so that a judge ascertains that the clause is null and void and he can have the exceeding sums paid returned.
Such a legal provision reflects the dominant opinion expressed in case law before 1998. Nevertheless this opinion was not unanimous: some authors suggested that a party cannot be bound by a null and void clause, otherwise this would be a different form of invalidity – which can be translated from Italian as 'voidability' – according to which the contract produces effects until a judicial declaration.
This case further shows how the position against self reduction of rents is firm in Italy.

- *May claims from rental agreements be assigned to third parties (i.e. may the landlord assign his rent claim to a bank?)*

Claims from rental agreements are considered by Italian law as ordinary claims and therefore their assignment to third people is regulated according to Arts 1260-1267 Civ. Cod.
The assignment can be done even without the tenant's consent, as rent is not considered a 'strictly personal credit'. In any case parties may exclude that the rent credit is assigned to third parties: a similar agreement can be opposed to the latter only giving evidence of the fact that they were aware of it when the assignment was executed.
The assignment is effective towards the tenant when he accepts it or when he receives a formal notice of it; from this moment he has the duty to pay to the new creditor. The duty finds application even before if the new creditor gives evidence of the fact that the tenant was aware of the assignment (Art. 1264).
If the credit is assigned to more people, the first one who formally informs the tenant or is accepted by the latter prevails on the others (Art. 1265).
A last mention is for the warranties due by the original creditor: in case he receives a reward, he shall guarantee the existence of the credit, save that the parties excluded it; instead the assignor shall guarantee the debtor's solvency only in case the former expressly accepted this obligation (Arts 1266-1267).

- *May a rent payment be replaced by a performance in kind (e.g. reparation, renovation)? Does the tenant have a statutory right to this effect? Could a lien of the "tenant-contractor" create problems in that case? (a lien is a statutory right of a contractor to ensure his being paid for his performances, e.g. improvements to the house, e.g. § 648 BGB)*

The Civil Code, with regard to tenancy contracts, uses the general expression 'corrispettivo' (i.e. 'consideration'). For this reason it is generally accepted that this kind of contract can equally establish for the landlord a sum of money or another form of reward. Anyway it is necessary that the consideration can be divided in daily performances as some provisions in the Code require a similar characteristic.
Further problems arise for the special statutes (Laws n. 392/1978 and 431/1998) as their rules seem to require a necessarily monetary consideration for the landlord (e.g. the fixed rent or the rent increase). For such reason authors retain that this special

discipline cannot be invoked in case parties agree for different forms of reward: in similar cases only the Civil Code rules will find application[395].
We can now consider the general rule of the Civil Code regarding the replacement of the original performance with another one: Art. 1197 says that this is possible only in case the creditor agrees, even though the offered performance has a higher value.
Tenancy law does not provide any derogatory provision under this aspect: we have already said above that, for example, even in case the tenant pays for some urgent works that the landlord should have done, the former has not the faculty to reduce correspondingly the rent but can only ask for a refund (Art. 1577, subs. 2 Civ. Cod.).

- *Does the landlord have a lien on the tenant's (movable) property in the house (Vermieterpfandrecht as in § 562 BGB, which functions as a guarantee for the payment of the rent by the tenant)? If yes, what is the scope of this right? How is it enforced?*

According to Art. 2764 Civ. Cod., the landlord of a dwelling has got a particular kind of lien – classified as 'movable special privilege' – concerning the things which furnish the dwelling on rent. Its field of application is then limited to furniture and does not concern, for example, sums of money, jewels, clothes and other similar things that can anyway be found in the dwelling.
The privilege regards also the things of the sub-tenant and of third people which can be found in the dwelling. For the latter there is an exception in case the landlord was aware that these things did not belong to the tenant.
It can be used not only for the payment of rents but also for any credit arising from a breach of the contract, such as refund for repairs not done by the tenant or for damages to the dwelling.
As for the content of this lien, it does not limit the right of the tenant to dispose of the things, but it simply gives the landlord the right to be paid first, respect to other creditors of the tenant, in case the thing is attached and sold. Anyway the last subsection of Art. 2764 provides that in case the tenant removes things from the dwelling without the landlord's consent, the latter maintains the lien over them, provided that he seizures the things within 15 days from their removal. In partial derogation of this principle, the privilege has not effect against the third party who bought the things without being aware of the privilege.
A further exceptional faculty for the landlord is then provided by Art. 1608 Civ. Cod., with regard to tenancy contracts of dwellings without furniture: the landlord can discharge the contract in case the other side does not provide the house with sufficient furniture to guarantee the payment of the rent or in case he does not provide another suitable warrant. In presence of similar conditions, the landlord can automatically discharge the contract, and only in case the tenant contests the grounds of a similar action or does not leave the dwelling, a judicial proceeding becomes necessary.

- *Clauses on rent increase*
  - *Open-ended vs. limited in time contracts*
  - *Automatic increase clauses (e.g. 3% per year)*
  - *Index-oriented increase clauses*

[395] Gabrielli & Padovini, *La locazione di immobili urbani*, 354.

The Italian law does not distinguish rules on rent increase in consideration of the duration of the contract. The first difference is between residential and non-residential dwellings: under the aspect of rent increase, while the latter are regulated by the Fair Rent Act, the former follow the rules of Law n. 431/1998. According to these, it is necessary to make a further distinction.
In case of 'free market tenancies', parties are considered free to agree about rent increase clauses in the amount and with the frequency they prefer.
In case of 'assisted tenancies', on the contrary, the content of rent increase clauses shall respect the limits indicated by the Intermin. Decree 30 December 2002. According to these provisions, the contract may contain a rent increase clause consistent with the local agreements between associations of landlords and tenants and in any case not exceeding 75% of the increase of the ISTAT rate: this is the percentage of yearly inflation calculated by the National Institute of Statistics.
With regard to non-residential dwellings, the Fair Rent Act provides that the increase is not automatic but requires an express request by the landlord (Art. 32): as this rule is not provided or quoted by the 1998 Law, it is not considered necessary for residential dwellings.
Finally, with regard to 'temporary contracts', such as the contracts for University students, rent increase clauses are not allowed. As the duration of these contracts is below the ordinary legal term, the legislator excluded the necessity to update the rent during the contract.

- *Utilities*
    - *Describe the usual kinds of utilities (e.g. basic utilities like the supply of water, gas and electricity vs. additional utilities, i.e. services such as waste collection) and their legal regulation*

The Italian law does not use the concept of 'utilities' with regard to tenancy law, so this aspect shall be regulated interpreting more general rules.
Among these it is possible to include 'additional burdens', indicated by Art. 9 and partially regulated by Art. 10 Law n. 392/1978. The 'additional burdens' are also regulated, with specific regard to 'assisted tenancies', by the Intermin. Decree 30 December 2002 (Enclosure G).
Nevertheless these rules are mainly thought in case of a plurality of different tenants which need to use the same systems to receive the utilities: the landlord manages the supply of the utilities for all the tenants and the rules are binding for all of them in the absence of a different common will. On the contrary, in case of a single tenant, there is no need of the landlord's intervention, as the former can normally decide on his own which utilities he wants to receive[396].
Utilities shall be distinguished from the activities for the maintenance of the dwelling or of the building in general, as maintenance cannot be considered as a service for the tenant.
The most common utilities are surely, water, gas, electricity. Further services can be, for example, lift, autoclave, alarm, driveway, waste collection, caretaker and so on.

- *Responsibility of and distribution among the parties:*

[396] In this sense, see Gabrielli & Padovini, *La locazione di immobili urbani*, 368 et seq.

- *Does the landlord or the tenant have to conclude the contracts of supply?*
- *Which utilities may be charged from the tenant?*
- *What is the standing practice?*
- *How may the increase of prices for utilities be carried out lawfully?*
- *Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?*

The landlord has the duty to provide, together with the dwelling, all the systems (heating, plumbing, electrical and so on) and the other necessary facilities in order to provide the due utilities. After that, the supply of the services and their payment are not considered as a duty of the tenancy contract[397].

For this reason, parties normally specify that the tenant has the duty to manage the supply of the utilities and to pay the corresponding expenses. Anyway the landlord can remain party of the contracts regarding the supply of the utilities: in this case he will be formally responsible for their management and payment and he cannot even ask to be refunded by the tenant if they did not expressly agree in this sense in the contract[398]. That is why in practice such a solution is generally avoided, even though this implies that every tenant shall substitute the previous one in the contracts regarding the utilities, generally paying a fee.

Arts 9 and 10 Law n. 392/1978 find application in case of services which are in common among a plurality of tenants or in a condominium. Also in this case landlord and tenant are free to regulate the responsibility as they prefer, but, in the absence of a similar agreement, the rule is that the expenses regarding all this kind of 'common services' bear on the tenant[399].

Despite this, case law cleared that towards the condominium the landlord is the only subject responsible for the payment. This cannot be required directly from the tenant, not even with regard to heating and conditioning expenses, for which, according to Art. 10, Law n. 392/1978, the tenant is personally entitled to vote in the condominium assembly, instead of the owner[400].

The problem is different when the utilities are not implicitly or expressly provided by the tenancy contract, such as, for example, a service of surveillance or caretaker: according to Art. 9, these 'common expenses' bear anyway on the tenant; on the contrary, according to the general rules in the Civil Code, tenants are not obliged to pay expenses that they have not decided. The former rule finds application for the tenancies subject to the special statutes, which means for the vast majority of

[397] In this sense, expressly Art. 9 subs. 4, Law n. 392/1978.

[398] Trib. Salerno, 14 January 2011, <www.jusexplorer.it>: '*l'obbligo di rimborsare al locatore le spese delle utenze concernenti l'immobile locato, laddove i relativi contratti di somministrazione non vengano intestati al conduttore, può discendere soltanto da apposita pattuizione, volta appunto ad accollare le spese di utenza in capo all'effettivo utilizzatore del servizio, come tale non riferibile alla causa tipica della locazione (che consiste nello scambio del godimento di una cosa dietro un corrispettivo), ma piuttosto produttiva di un distinto rapporto giuridico anche se dipendente dalla locazione quanto alla durata*'. On the contrary, Gabrielli & Padovini, *La locazione di immobili urbani*, 366, seem to suggest that the landlord has always the faculty to ask for a refund.

[399] Art. 9 subs. 2 specifies that the service of caretaker bears for 90% on the tenant and for 10% on the landlord.

[400] Cass., 14 July 1988, n. 4606, in *Giustizia Civile* 1989, I,404; Trib. Torino, 14 February 2007, <www.jusexplorer.it>.

residential dwellings nowadays, while the latter has a rather limited field of application[401].
Finally, it is clear that even in case the tenant does not regularly pay the utilities, the landlord cannot autonomously interrupt their supply, as he shall respect the specific judicial procedure for breach of the contract by the tenant. Art. 5 Law n. 392/1978 says that the landlord can discharge the contract in defect of payment of 'additional burdens' for an amount corresponding to two months of rent. In particular cases, the disruption of supply by the landlord has been considered even a criminal behaviour[402]. The solution is obviously the same in case the tenant does not regularly pay the rent.
The situation is different for the supplier of the utilities, which can have the right, according to the rules indicated in the supplying contract, to interrupt the service in case this is not regularly paid.

- *Deposit:*
    - *What is the legal concept (e.g. is the deposit an advance rent payment or a guarantee deposit to cover future claims of the landlord)?*

The deposit, according to the Italian law, is a form of guarantee for any kind of breach of the contract by the tenant, such as non payment of rent, damages to the dwelling and so on.
It is a form of irregular pledge, which differs from the regular pledge because it deals with fungibles goods, such as money, which therefore become a property of the creditor. The latter is obliged to give back the same amount at the expiration of the contract, except in case of compensation with an unpaid credit towards the debtor.
In a similar case the landlord, at the end of the contract, can refuse to give the sum back but he cannot automatically retain it: he shall file a civil proceeding in order to ascertain the amount and to be authorized to retain it.
More exactly, it has been cleared that the duty to give the deposit back arises only when the tenant effectively leaves the dwelling[403].

- *What is the usual and lawful amount of a deposit?*
- *How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant?)*

Art. 11 Law n. 392/1978 indicates that the deposit cannot exceed three months rent and that it produces legal interests which shall be given to the tenant at the end of every year.
Case law cleared that this rule is mandatory and protects the tenant, considered as the weaker part of the contract. Therefore the agreements that excluded the interest or fixed it in a rate lower than the legal one have been considered null and void, in accordance with Art. 79 Law n. 392/1978[404].

[401] See above.
[402] Cass. pen., 8 May 2012, n. 41675, in Arch. Loc., 2013, 3, 326, which applied Art. 392 Crim. Cod.: 'arbitrary enforcement of rights with violence on the things'.
[403] Trib. Modena, 9 March 2012, <www.jusexplorer.it>.
[404] See Cass., 8 January 2010, n. 75, *Diritto & Giustizia*, 2010; Cass., 19 August 2003, n. 12117, *Giustizia Civile Massimario*, 2003, 7-8; Cass., 27 January 1995, n. 979, *Rassegna Locazioni e Condominio*, 1995, 271.

The tenant is entitled to receive the interest every year, even in defect of an express request. Anyway, the landlord can withhold the legal interest at the end of the year in case of breach of the contract by the tenant, if the interest can be compensated with the amount due by the tenant[405]. In the absence of such a condition the withholding of the interest should be considered as a not allowed increase of the rent, again null and void in accordance with Art. 79[406].
Interests on the interests (so called 'anatociscmo') are due at the conditions provided for by Art. 1283 Civ. Cod.: interests shall be due for more than six months and a civil proceedings in order to obtain them shall be filed.
The situation has changed with Law n. 431/1998, which saved Art. 11 of the previous law but abrogated Art. 79. Therefore the rules regarding amount and interests of the deposit are nowadays considered dispositive, with regard to 'free market tenancies'[407].
The only limit, in order not to violate Art. 13, subs. 4 of the 1998 Law, is that parties shall indicate since the beginning of the contract these sums within the amount of rent due to the landlord.
On the contrary, in case of 'assisted tenancies', the model contract of the Intermin. Decree 30 December 2012 establishes that the payment of interests cannot be derogated, save in case the minimum duration of the contract is within four years (without considering the two years' legal prorogation).

- *What are the allowed uses of the deposit by the landlord?*

As the landlord becomes owner of the goods given in deposit, he is free to use and dispose of them as he prefers, save the duty to pay the interests and to return the capital at the conditions described above.
We can here add that, in case the dwelling is sold, the deposit follows the property and remains as a guarantee for the new owner[408]; similarly, in case of assignment of the contract, the new landlord is entitled to receive it.

- *Repairs*
    - *Who is responsible for what kinds of maintenance works and repairs? What kind of repairs or works may lawfully be assigned to the other party (especially the tenant)*

The rules concerning repairs of the dwelling given on rent can still be found mainly in the 1942 Civil Code. That is due to the fact that the first duty of the landlord is to give the thing on rent in a good state of maintenance and then to preserve this condition during the whole duration of the contract (Art. 1575, nn. 1) and 2) Civ. Cod.).
Art. 1576 clears this principle stating that the landlord shall do all the 'necessary repairs', except 'small repairs', which bears on the tenant. It is clear that maintenance

[405] Cass., 15 October 2002, n. 14655, in *Rassegna Locazioni e Condominio*, 2003, 342; Cass., 8 August 1997, n. 7360, <www.jusexplorer.it>.
[406] We have anyway to consider some decisions, which seem to recognize the faculty of the landlord to pay all the interests, together with the capital, at the expiration of the contract: Cass., 27 November 2006, n. 25136, in *Archivio Locazioni*, 2007, 3, 289.
[407] On the contrary, the rules are still mandatory for non-residential dwellings: a difference that has been criticised by Gabrielli & Padovini, *La locazione di immobili urbani*, 444. For an application of these new principles, see Trib. Modena, 23 July 2004, in *Contratti (I)* 2004, 939.
[408] Cass., 11 October 2013, n. 23164, in *Diritto e giustizia*, 14 October 2013.

does not imply repairs of damages determined by the tenant. The latter shall use the things with due diligence (Art. 1587, n. 1) Civ. Cod.) and he is considered responsible for loss and spoiling of the thing, if he does not give evidence of the contrary.
Art. 1609 further specifies this rule with reference to residential dwellings, saying that small maintenance regarding the tenant is limited to spoiling as a consequence of the use and not of the age of the dwelling or of fortuitous events. Jurisprudence and case law have therefore accordingly considered as relevant works such as replacement of glasses, locks, lamps and so on[409]. The second part of Art. 1609 adds that, in the absence of a different agreement between the parties, repairs are due in accordance with local uses.
Also the landlord's duty, which regards both ordinary and extraordinary maintenance, has got some limits. In particular he cannot be required to rebuild the dwelling in case it was totally or partially destroyed: in both cases supervening impossibility of performance can be invoked.
The special statutes have changed these general rules only to a limited degree. In particular we should mention Art. 9 Law n. 392/1978, which, in partial derogation to the above mentioned rules, gives the tenant the duty to pay expenses such as the ordinary maintenance of the lift or the cleaning of cesspits[410].
As far as the variation by agreement of similar rules is concerned, the Civil Code expressly recognizes this possibility in Art. 1609, subs. 2. This means in practice that the landlord or the tenant limit or extend their duties: the former can become responsible also for small maintenance or exclude any responsibility, even for extraordinary maintenance; the latter may accordingly assume all these duties as well as have any responsibility.
Anyway it is necessary to make a distinction: the limitation of responsibility of the landlord is always possible without particular limits; on the contrary the extension of responsibility of the tenant represents a burden which may exceed the limits of Art. 13 subs. 4[411].

- *Connections of the contract to third parties*
    - *Rights of tenants in relation to a mortgagee (before and after foreclosure)*

We have already seen above that in case of sale, building lease or long lease of a dwelling under mortgage, Arts 2858 et seq.. Civ. Cod. give the purchaser of the right only the faculty to pay the debt, to leave the dwelling to the mortgagee, or to free the dwelling from the mortgage. Similarly, in case of easement, usufructor tenancy or right of habitation of a dwelling under mortgage, Art. 2812 Civ. Cod. says that these rights cannot be opposed to the mortgagee.
On the contrary, with regard to tenancies, the only specific disposition says that assignment of a rental or release of the duty to pay it on a thing under mortgage, when they are not inscribed or last less than three years, can be opposed to the creditor only in case they have a certain date before the attachment (the procedure which opens the execution) and for not more than one year from the beginning of the attachment; this

[409] Art. 1610 civ. cod. specifies that the cleaning of cesspits is due by the landlord.
[410] It has been highlighted that this rule leaves the duty to take care of these repairs on the landlord, simply giving the tenant the duty to pay for them: Gabrielli & Padovini, *La locazione di immobili urbani*, 273.
[411] *Ibid.*, 291.

temporal limit is valid also for assignments or releases transcribed after the mortgage (Art. 2812, subs. 4 and 5 Civ. Cod.)[412].

This provision clears that the creditor with a mortgage has an interest to gain the rent and that he can avail on it in order to obtain the compensation of his credit[413]. Anyway, there are no specific rules limiting the faculty of the debtor to rent its dwelling under mortgage.

Limits are instead indicated by general rules regarding the forced sale of a dwelling, notwithstanding the existence of a mortgage on it. Case law retains that these rules can be invoked not only by the purchaser after the forced sale but also by the mortgagees, so that it is possible to send notice to quit to the illegitimate tenant also before the forced sale[414].

In particular, as it has been already said above, Art. 560, subs. 2 Civ. Proc. Cod. states that after the attachment the dwelling can be given on rent only in case the judge of the execution gives the authorization.

Art. 2923 Civ. Cod., instead deals with tenancy contracts executed before the attachment and states that it is possible to oppose a contract, first of all, if it was executed by the debtor in a date which is surely before the attachment (it is considered 'sure' – according to Art. 2704 Civ. Cod. – the date indicated in a document written or authenticated by a public notary or in a simple written document when there are some further conditions, such as the registration). Then, tenancy contracts that last more than 9 years, if not transcribed before the attachment, can be opposed only within 9 years from the beginning of the contract[415]. Tenancy contracts which do not have a certain date, but whose detention by the tenant is before the attachment, can be opposed only for the duration legally established for open-ended tenancy contracts: for residential dwelling this implies the application of the minimum legal terms indicated by the special statutes[416]. In any case the purchaser (and therefore the mortgagee) is not bound to a contract whose rental is more than three times lower than the 'fair price' or the price of a previous contract.

6.5 Implementation of tenancy contracts

Table for 6.5 – Implementation of tenancy contracts

	Main characteristic(s) of private rental	Main characteristic(s) of public rental
Breaches prior to handover	A) Landlord's responsibility: - discharge of contract; and/or - compensation for damages. B) Tenant's responsibility: - injunction to take possession;	The same rules for private rental apply unless Regions do not introduce derogatory provisions.

[412] Some decisions cleared that in order to oppose these limits to the tenant it is necessary that to the latter it is given notice of the fact that the creditor with mortgage began the execution on the dwelling: Cass., 28 August 2007, n. 18194, *Guida al diritto* 2007, 45, 105.

[413] Cass., 11 May 2013, n. 11025, *Giust. civ. Mass.* 2013; Cass., 12 December 2011, n. 26520, *Giust. civ. Mass.* 2011, 12, 1761; Cass., 10 August 1992, n. 9429, *Giust. civ. Mass.* 1992, fasc. 8-9.

[414] Gabrielli & Padovini, *La locazione di immobili urbani*, 96.

[415] Cass., 9 January 2003, n. 111, in Giust. civ. 2004, I, 1831

[416] Trib. Torino, 27 February 2006, <www.dejure.it>; Trib. Monza, 23 February 2000, *Archivio locazioni* 2001, 272.

	or - offer of performance. C) Impossibility: - discharge of the contract; or - reduction of reward.	
Breaches after handover	A) Vices: - discharge of contract; or - reduction of rent; and/or - compensation for damages. B) Failures: - restoration; or - discharge of contract; and/or - compensation of damages. C) Nuisances: - legal, guarantee by the landlord; - factual, direct action by the tenant.	The same rules for private rental apply unless Regions do not introduce derogatory provisions.
Rent increases	A) Free market tenancies: freedom of contract (save exceptions). B) 'Assisted' tenancies: allowed within the limit established by local agreements; in any case not over 75% of the ISTAT index. C) 'Temporary' tenancies: not allowed.	Generally, 75% of the ISTAT index per year.
Changes to the dwelling	A) By the tenant: - changes of use or nature of the dwelling: not allowed; - improvements: allowed, normally no indemnity; - additions: allowed, normally no indemnity but right to remove. B) By the landlord: - alterations: not allowed; - restorations: allowed if cannot be delayed.	The same rules for private rental apply unless Regional rules do not introduce derogatory provisions.
Use of the dwelling	Duty of the tenant to take care of the dwelling and to use it with diligence in accordance with the terms expressly agreed in the contract or implicit given the circumstances.	The same rules for private rental apply unless Regions do not introduce derogatory provisions.

- ***Disruptions of performance (in particular "breach of contract") prior to the handover of the dwelling***
    - *In the sphere of the landlord:*

- Delayed completion of dwelling

Delayed completion of housing is a problem that is solved in accordance with the general principles of the Italian law of obligations and contract law.
If the completion of a rented dwelling becomes temporarily impossible, the landlord will not be held liable unless at fault. The tenant would therefore have no claim against the other side in a similar situation, as the delay cannot be imputed to the landlord. This solution is premised upon Art. 1256 Civ. Cod.: impossibility exempts a debtor from liability if it is due to an unavoidable accident, to *force majeure*, or to the act or omissions of a third party.
In the event that the impossibility is definitive and total, the promise is considered extinguished and the contract is discharged. According to Arts 1463 et seq. Civ. Cod., this means that the other side (i.e. the landlord) cannot ask for the reward and shall return the reward he has already received. In the event of a partial impossibility, two different solutions for the tenant are possible: reduction of reward, if he is still interested in the partial performance, or withdrawal from the contract, in the opposite case.
On the contrary, in the event the delayed completion of housing can be imputed, completely or in part, to the landlord, the latter shall compensate the tenant for damages in proportion to his responsibility. The tenant may also decide whether he wants completion, even if late, or if he wants to discharge the contract for breach. In this latter case the general rules of contract law (Arts 1453 et seq. Civ. Cod.) apply as no specific provisions under this point are indicated in tenancy law.
These general rules normally apply also in case of public dwellings, as the Regions have not introduced derogatory provisions on these matters.

- Refusal of handover of the dwelling by landlord (in particular: case of "double lease" in which the landlord has concluded two valid contracts with different tenants)

In general terms, refusal to handover housing by the landlord can be regarded as an ordinary form of breach of contract in the event that it depends on the landlord's fraud or fault. On the contrary, in the event that it depends on an event which cannot be imputed to the landlord (unavoidable accident, *force majeure*, act or omissions of a third party), as already described in the previous question, it is a case of performance impossibility, and the landlord cannot be held responsible.
In the former case, the tenant can claim compensation for damages and, when the breach is of particular importance from his point of view, the tenant may also discharge the contract (Arts 1453 et seq. Civ. Cod.)
As far as the problem of double tenancy is concerned, the Civil Code provides a specific regulation, which is mainly different from the rules used in cases of double sale of property rights:

> Art. 1380 – *In case a person, with more than one contract, grants to more than one party a personal right of enjoyment of the same thing, enjoyment is due to the party to whom the thing is delivered.*
> *In the event that none of the parties achieved fruition, the party having title with a certain previous date is preferred.*
> *The rules regarding the effects of transcription apply.*

According to this provision, rights are granted to the first of the two tenants who takes possession of the dwelling[417]. Possession, in order to be valid, must be the consequence of voluntary transfer by the landlord and not of an arbitrary behavior by the tenant[418]. Good faith of the parties is not required, so the first to take possession could be aware that a previous tenancy contract was executed.
The contract of the tenant without possession has no effects against the other tenant, but both contracts remain valid and the contract is considered 'relatively ineffectual'. Therefore, the tenant who did not receive the dwelling may only seek damages against the landlord and also against the other party, if the latter was in 'bad faith', which means intentional wrongdoing. But in the event that the prevailing contract is extinguished, the other contract can be fully enforced.
If none of the tenants took possession of the dwelling, the contract which was executed first takes priority over the other one. The relevant moment is when judicial proceedings are introduced: possession achieved by the other party later is not relevant. In order to take priority the contract shall be made in written form and have a sure date of execution. As already seen in other cases above, the date is considered 'sure' when it is indicated in a document written or authenticated by a public notary. In the event of a simple written document – according to Art. 2704 Civ. Cod. – further conditions are necessary in order to consider the date as sure, such as the registration of the document for example.
The final subsection of Art. 1380 Civ. Cod. provides that the first transcribed contract prevails notwithstanding the date of execution or the transfer of possession. This rule finds application only when both contracts last more than nine years, and therefore when both contracts can be transcribed in the Register of Properties according to Art. 2643 Civ. Cod[419].
The rule for which the first contract to be transcribed takes priority over the other one is the same provided in cases of 'double sale' (Art. 2644 Civ. Cod.). For this reason, the last subsection of Art. 1380 is considered evidence of a possible 'real' effect connected to the 'personal' right of the tenant.

- Refusal of clearing and handover by previous tenant

- Public law impediments to handover to the tenant

For refusal of clearing by the previous tenant and public law impediments, the same arguments used in cases of delayed completion of dwelling are valid. These situations cannot normally be imputed to the landlord. Therefore, in the absence of his fault, they shall be considered as forms of supervening impossibility of performance which do not generate a landlord's responsibility. That is confirmed by the fact that, according to Art. 1591 Civ. Cod., tenants who delay handover of the dwelling shall continue to pay the rent and shall also compensate any further damage.
On the contrary, in the event that elements of fault in the landlord's behavior exist, the latter will be held responsible for damage and/or breach of contract.

- *In the sphere of the tenant:*

[417] Cass., 28 November 1987, n. 8872, in *Giust. civ.*, 1988, I, 2954.
[418] Ugo Natoli, *Il conflitto dei diritti e l'art. 1380 del codice civile* (Milano: Giuffrè, 1950), 150. Cass., 28 November 1987, n. 8872, in *Foro italiano*, 1988, I, 1925.
[419] Id., 185.

- *refusal of the new tenant to take possession of the house*

Refusal of handover by a tenant is a typical example of non-cooperative behavior by the creditor, a circumstance which is expressly regulated in the general part of the law of obligations by the Civil Code.

Arts. 1206 et seq. apply provided that the creditor's refusal is not grounded on a legitimate reason. This expression means an event regarding the tenant, which, according to 'good faith', justifies the refusal.

In the absence of similar circumstances, the landlord has the faculty to release from his obligation through a formal offer. With regard to immovable property this is called 'injunction to take possession' (Art. 1216 Civ. Cod.). In order for it to come into effect, it is necessary that such an offer is accepted by the creditor or confirmed by a judicial decision.

The effect of the injunction is that tenants will fulfill their side of the contract even in the event that the corresponding performance has become impossible for an event which cannot be imputed to the landlord, the so called 'passing of risk'. The tenant is also liable to pay damages and expenses due to his illegitimate refusal.[420] After that, the landlord is definitely released from the duty to fulfill the contract when he gives the dwelling to a subject who keeps it under seizure.

As an alternative, landlords may simply offer the dwelling to tenants without particular formalities. In such cases the legal effect is more limited and exempts landlords from liability for delay in performance.

Refusal to take possession of the dwelling can be the consequence of the economic difficulties of the tenant. In any case tenant insolvency which occurred between the execution of the contract and the handover of the dwelling cannot be automatically classified as a breach of contract. This requires that the tenant fails to regularly perform one of his obligations, such as the delivery of the deposit or advance payment of part of the rent.

Despite this, Italian contract law provides some measures to protect creditors in cases of insolvency or risk of insolvency affecting the other side. All these rules may obviously also apply in cases of tenancy contracts.

As for the latter situation, Art. 1461 Civ. Cod. states that, when there is an evident risk of non-performance, because of a change in a party's financial situation, the other side has the faculty to suspend his performance. This rule applies in cases in which the party's performance with economic problems is not yet due. In any event, suspension cannot be used if the latter gives a 'suitable warrant'.

A further possibility is given by Art. 1186 Civ. Cod. In cases in which debtors are insolvent, they lose the chance to avail themselves of the term of performance agreed in their favor and thus creditors have the faculty to require performance immediately. According to prevailing opinions, the insolvency required by this rule is not the same as that required for bankruptcy. A situation of even temporary economic difficulties by the debtor for which it is likely that duties cannot be regularly performed is sufficient[421].

The last possibility is that in which debtors are in such a severe insolvency situation that that they are formally declared bankrupt according to Art. 5 of the Bankruptcy Law (Royal Decree 16 March 1942, no. 267).[422] Tenancy contracts are not automatically discharged but a curator replaces the tenant in the contract and may decide, in certain

[420] Art. 1207 Civ. Cod. finally specifies that interests and outcomes of the thing, in case they are not received by the landlord, are no longer due.

[421] Cass., 18 November 2011, n. 24330, in *Giust. civ.*, 2012, I, 687.

[422] Italian bankruptcy rules apply only to people with a business activity.

conditions, to discharge the contract (Art. 80).[423] In cases of bankruptcy, rent payments are subject to the complex procedure which applies to all the debts of the liable person.

- ***Disruptions of performance (in particular "breach of contract") after the handover of the dwelling***
    - *Defects of the dwelling*
    - *Notion of defects: is there a general definition?*
    - *Examples: is the exposition to noise e.g. from a building site in front of the house or are noisy neighbours a defect? damages caused by a party or third persons? Occupation by third parties?*
    - *Discuss the possible legal consequences: rent reduction; damages; "right to cure" (to repair the defect by the landlord); reparation of damages by tenant; possessory actions (in case of occupation by third parties) what are the relationships between different remedies; what are the prescription periods for these remedies*

The Italian Civil Code provides for a range of remedies according to the type of failure affecting the dwelling. These may be a) 'vices', b) 'failures' or c) 'nuisances' which distinguish between 'factual' and 'legal'.
Note that these topics have not been significantly modified by the statutes which came into force after the Civil Code was drawn up and, therefore, the latter's provisions still generally apply. They are supposed to apply also to public dwellings, as regional rules have not generally introduced derogatory rules concerning housing defects[424].
a) 'Vices' affect the structure of the dwelling and its quality and not simply its state of maintenance. The following may be included among them: damp, when this is due to original defects in the construction of the building, malfunctioning of the building's systems when these were wrongly designed or installed and absence of the habitability license or of other necessary licenses for agreed use[425].
All these vices become relevant if they significantly affect a tenant's ability to use and enjoy the property:

> Art. 1578 – *If, upon delivery, the rented thing is affected by vices which substantially diminish its suitability for the use agreed, the tenant may ask for the contract to be discharged or for the reward to be reduced unless these vices were known or easily recognizable for him.*
> *The landlord shall compensate the tenant for the damage deriving from vices in the thing unless he can give evidence that he was not aware of them without any fault upon delivery.*

Therefore, in such cases, tenant can alternatively ask for contract discharge or rent reduction. On the contrary, tenants cannot ask landlords to carry out work to eliminate the building's vices.
The authors suggest that once the tenant has filed a brief for contract discharge it is no longer possible to ask for rent reduction (i.e. the continuation of the contract)

[423] See below.
[424] With regard to the application of the rules against nuisances to grantees of public dwellings, see Cass., October 1979, no. 5607, in Giust. Civ. Mass., 1979.
[425] Paola Valore, 'Commento sub Art. 1578 c.c.', in *Codice Commentato di Locazione e Condominio – Locazione*, ed. V. Cuffaro & F. Padovini (Torino: UTET Giuridica, 2013), 36 et seq.

anymore.[426] In the absence of specific provisions, an ordinary prescription period of ten years applies.

Vices may already appear when the contract is executed and the dwelling is delivered, as well as becoming evident afterwards (Art. 1581 Civ. Cod.). In both cases they derive from an original problem in the dwelling[427]. In the former case, tenants cannot invoke the above mentioned remedies where vices were known or easily recognizable. Some scholars advocate that a rule provided for sale contracts should apply to tenancy contracts too, i.e. in the event that sellers expressly declare the absence of vices, the above mentioned remedies would apply even if the vice was easily recognizable[428].

A further limitation of the landlord's guarantee occurs in the event of an agreement between the parties:

> Art. 1579 – *The agreement excluding or limiting the landlord's responsibility for vices of the thing is without effect if the landlord did not mention the vices to the tenant with fraud or if vices make the enjoyment of the thing impossible.*

An agreement is therefore invalid if the landlord fraudulently concealed the vices or when these are of an entity which makes the use of the dwelling impossible. According to prevailing opinions, limitations of responsibility are allowed when landlords are negligent, although grossly. The explanation is that the general rule of Art. 1229 Civ. Cod., which excludes the exemption of responsibility both in cases of intention and gross negligence by a party would not apply in this case as they are derogated by Art. 1579[429].

An exception is provided by Art. 1580 Civ. Cod.. In the event that vices are seriously dangerous for the tenant's or his family's or his employee's health, tenant can discharge the contract, even when they knew the vices or had agreed to limit or exclude the landlord's responsibility. This rule is considered mandatory because it protects people's health, notwithstanding any previous knowledge of the problem or limitation by the guarantee. On the contrary, the other rules regarding vices, as well as most of the rules for tenancies in the Civil Code, can be derogated by the parties.

In addition to contract discharge or rent reduction, tenants may ask for damage compensation in the event that landlord cannot prove that they were aware, without any fault, of the vices when the dwelling was handed over (Art. 1578, subs. 2 Civ. Cod.).

b) 'Failures', on the other side, indicates damage to the dwelling deriving from age, fortuitousness and 'wear-and-tear'.

As seen above, according to Art. 1575, no. 2 Civ. Cod.:

> *The landlord shall: … 2) keep* [the rented thing] *in suitable condition for its agreed use;*

Art. 1576, subs. 1 then adds:

> *The landlord shall carry out, during tenancy, all the necessary repairs, save small repairs which are incumbent on the tenant.*

The landlord's duty concerns both ordinary and extra-ordinary repairs, provided that they affect the agreed use of the dwelling. In these cases the landlord shall restore the property to its original state. These include damage to heating and other systems,

[426] Gabrielli & Padovini, *La locazione di immobili urbani*, 253.
[427] Chiara Srubek Tomassy – Luigi G. Vigoriti, Commento sub. Art. 1581, Codice Civile. Commentario, II, ed. G. Alpa e V. Mariconda, 2013, 1264 et seq.
[428] In this sense, Antonio Guarino, 'Locazione', in *Trattato di diritto civile e commerciale*, ed. Grosso - Santoro Passarelli (Milano: Vallardi, 1965), 55; Giuseppe Mirabelli, 'La locazione', in *Trattato di diritto civile italiano*, ed. F. Vassalli (Torino: UTET, 1972), 423.
[429] In this sense, Gabrielli & Padovini, *La locazione di immobili urbani*, 261 et seq.

pipes, external walls, windows, doors and so on. Obviously damage due to the tenant or his family or his guests shall not be repaired by the landlord.
The landlord's duty does not include 'small repairs' either. These are defined as damage caused by wear-and-tear which can be repaired at limited cost.[430] For example, damage to water taps, handles, glasses and so on. These repairs must be done directly by the tenant who cannot ask to be refunded.
A further provision regarding failures is provided by Art. 1577 Civ. Cod.:

> *When the rented thing needs repairs which are not incumbent on the tenant, the latter shall notify the landlord.*
>
> *In cases of urgent repairs, the tenant can carry them out directly and has the right to be refunded provided that he informs the landlord at the time.*

This rule regulates the necessary duty of cooperation between landlords and tenants in cases of failures affecting the dwelling. The need to inform the landlord in order to obtain the refund is disputed. In some case the Courts consider it necessary[431], in other cases they do not.[432]
Of course, it is not always easy to distinguish between 'vices' and 'failures' and this is the responsibility of the Courts. The importance of this distinction is due to the different measures that can be invoked in order to deal with them. As stressed above with regard to vices, the law enables tenants to discharge the contract or ask for a reduction in rent, except damage compensation, in accordance with the special conditions indicated by Arts 1578-80 Civ. Cod. As regards failures, landlords or tenants have to restore the *status quo ante* (restitution in kind). Of course, in the event of non-performance of such obligations, the general provisions of contract law can be used: discharge of the contract, if the breach is of 'significant importance' (Art. 1455 Civ. Cod.) and damage compensation. Also in this case there are no specific provisions for prescription and thus the ordinary terms apply. In any case all these rules can be freely derogated by the parties.
c) 'Nuisances': vices and failures do not cover all the defects affecting the dwelling, at least in a general sense. Problems such as exposure to noise from a building site or from neighbors and so on, as well as damage or occupation by third parties can be classified neither as vices nor as failures according to the Italian law. They all belong to the sphere of 'nuisances' against which other specific rules are provided for by the law:

> Art. 1585 – *The landlord shall guarantee the tenant in case of nuisances diminishing the use or the enjoyment of the thing and made by third parties claiming rights over the thing.*
>
> *The landlord is not obliged to guarantee the tenant in case of third parties' nuisances not claiming rights over the thing, save the tenant's right to personally take action against them.*
>
> Art. 1586 – *In case third parties causing nuisances claim rights over the rented thing, the tenant shall give prompt notice to the tenant, otherwise he shall compensate the damages.*
>
> *In case third parties file a judicial proceedings, the landlord shall turn himself in Court, in case an action is filed against him. The tenant has the right to be excluded, simply indicating the landlord, if he is not interested in remaining in the proceedings.*

These rules are considered specifications of the general duty of the landlord to '*guarantee peaceful enjoyment of tenancy*' (Art. 1575, no. 3 Civ. Cod.).

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[430] Paola Valore, 'Commento sub Art. 1576 c.c.', 29 et seq.
[431] Cass., 22 February 2008, no. 4583, *Giustizia Civile Massimario*, 2008, 274.
[432] Cass., 18 July 2008, no. 19943, *ibid.*, 2009, 1178; Cass., 27 October 2003, no. 16089, *Foro italiano*, 2004, I, 1155.

The important distinction between factual and legal nuisances is immediately clear on reading these provisions, even though such a distinction can sometimes be problematic.

Legal nuisances regard third parties who claim rights over the rented thing affecting the tenant's full enjoyment. The most common such case is a subject claiming a 'real' right over the thing which conflicts with the rights granted to the tenant. In such circumstances landlords shall take whatever action is required to guarantee their tenant's position, when necessary taking the matter to court. Tenants, on his side, shall immediately give the landlord notice of such nuisances so that the latter can promptly intervene.

Factual nuisances, on the contrary, regard third party behaviors which do not involve claiming any right over the thing but simply disturb the tenant. An example of this is water damage from a neighboring property. Landlords have not the duty to guarantee tenants against such nuisances because the latter are entitled to take any action which may be required directly. First of all, the tenant can take out an injunction for recovery, as provided for by Art. 1168 Civ. Cod. (called 'azione di spoglio') in the event he is violently or covertly deprived of possession over the thing. Injunctions must be used within one year of the deprivation or its discovery[433].

Whether the tenant is allowed to invoke the injunction provided for by Art. 1170 Civ. Cod. (called 'azione di manutenzione': possessory action), which can be used in cases in which the enjoyment of the thing is limited or threatened by a third party, without anyway affecting the holder's possession is disputed. Such debates focus on the fact that this remedy is expressly granted only to the owner or to the possessor of the thing. Although tenants are not strictly considered proper possessor of the thing some scholars maintain that Art. 1585, subs. 2 shall be considered an express derogation which extends to the tenant the right to use 'possessory action'[434]. On the contrary, prevailing case law tends to exclude tenants from this faculty[435]. This action is an alternative to the previous 'azione di spoglio' as it deals with necessarily different practical situations. Injunctions must be taken out on both 'possessory actions' within a year .

Finally, tenants can also claim compensation for damage, according to Art. 2043 Civ. Cod.. Whether short term involved in possessory actions applies instead of the ordinary five year term[436].

We can now take a look at some of the examples of defects mentioned in the question.

Noise – as well as pollution, heat and such like affecting a property and coming from a surrounding site – are all defined as 'immissioni' by Italian law and covered by the same provision: Art. 844 Civ. Cod.). They have been long considered as a form of legal nuisance, requiring action by the landlord. In 1992 the Court of Appeal decided that the tenant is also directly entitled to file action to stop them, provided that the decision does not imply a duty to modify the place from which the discharge comes.[437] Remedies in this case are injunctions to stop the nuisance activity, compensation of damages and reinstatement of the previous situation.

[433] In case the deprivation is 'simple' (i.e. without violence or hidden ways) the tenant is not entitled to directly take action.

[434] In this sense: Umberto Breccia et al., *Diritto Privato*, II (Torino: UTET Giuridica, 2004), 890.

[435] Cass., 8 March 2006, no. 4917; Cass., 8 February 200, no. 1824.

[436] Breccia et al., *Diritto Privato*, 891.

[437] Cass., 11 November 1992, no. 12133, in Foro it., 1994, I, 205. See also Gabrielli & Padovini, *La locazione di immobili urbani*, 310 et seq.

Also damages caused to the rented dwelling by third parties are normally factual nuisances for which the tenant can personally file an action of compensation or of reinstatement of the previous situation.
With regard to occupation, it is necessary to distinguish, as this can be both a mere act of violence as well as an action of people claiming rights over the dwelling. In the former case the tenant is also directly entitled to invoke action for recovery (Art. 1168 Civ. Cod.). In cases of people who do not simply occupy the dwelling but also claim rights over it, the landlord's intervention is required in accordance with Art. 1585, subs. 1 Civ. Cod. in order to affirm rights over the dwelling.
Also guarantee regarding nuisances can be derogated by the parties, as can guarantees for vices and failures, with the limits introduced by Art. 1580 Civ. Cod. in order to protect people's health. Therefore, in practice, it may often happen that landlords exclude their guarantee for part of or for all the mentioned defects. For example, also with regard to rented public dwellings, we can find clauses excluding responsibility towards the grantee for damages deriving from vices or failures of the building or of the dwelling.

- *Entering the premises and related issues*

  - *Under what conditions may the landlord enter the premises?*

In general terms, landlords are not allowed to enter a tenant's dwellings without prior permission and would be committing a criminal offence if they did so. In such cases, tenants would probably also be entitled to act against landlords for recovery, provided for by Art. 1168 Civ. Cod. However, no case law exists on this point and the issue can thus not be satisfactorily addressed.
In partial exception to the general principle, there might be exceptional circumstances in which landlords are entitled to enter a tenant's apartment, even without the tenant's permission. For example, if the landlord has to repair the building and the tenant prevents him, without any legitimate reason, from entering the building. The legal basis for the landlord's access would be his property right, as this obliges the owner to maintain the building in a suitable condition in order for it to be used by the tenant (Art. 1575 Civ. Cod.) and prevent any harm to third persons (Art. 2053 Civ. Cod.).

  - *Is the landlord allowed to keep a set of keys to the rented apartment?*

No case law exists with regard to this issue, however, the landlord probably has the right to possess one set of keys. In any case, the fact that the landlord has the keys cannot be considered as an implicit authorization to enter the premises without respecting the conditions described above.

  - *Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?*

In the event that the tenant does not regularly pay the rent or breaches the contract in other ways, the landlord does not have the right to lock him out of the building without a judicial order. In the absence of this, the landlord would legally responsible.

- ***Rent regulation (in particular implementation of rent increases by the landlord)***
    - *Ordinary rent increases to compensate inflation/ increase gains*

Rules regarding rent increases vary according to the kind of tenancy contract the parties decide to stipulate.

If the parties opt for a free market rental contract (Art. 2, subs. 1 Law no. 431/1998), the general opinion is that parties are free to stipulate clauses which gradually increase rents.[438] We have anyway to consider the limits indicated by Law no. 431/1998:

> Art. 13, subs. 1 – *All agreements which establish rent payments exceeding the amount resulting from the written and registered contract are null and void.*
>
> Art. 13, subs. 4 (2nd sentence) – *For contracts executed in accordance with subs. 1, Art. 2, every tenant's duty or every clause or other economic or normative advantage, aimed at granting the landlord a rent exceeding the rent contractually established, is null and void, if it conflicts with the provisions in this statute.*

The first subsection has been interpreted in different ways. According to some authors and decisions, this rule prevents any form of rent increase decided after the execution of the contract[439]; this opinion considers instead valid an agreement, drawn up at the same time of the contract, in which parties establish a higher rent, even if this agreement is not registered, which usually means that it is concealed by the parties for fiscal reasons (it is a case of simulation)[440]. The suggested explanation is that parties are considered free to establish, at the beginning of the contract, the amount of rent and rent increase, and the simple non registration of the agreement cannot affect the validity of the contract, as the only purpose of registration is fiscal. Vice-versa, parties cannot increase the amount of rent during the contract and in this case the following agreement will be null and void: the legislator's worry is that, when the tenant is already occupying the dwelling, the landlord may exploit this situation in order to obtain more favorable contractual conditions.

According to another opinion, on the contrary, this rule wants to prevent that parties indicate a fictitious rent in the registered contract and establish the real rent in another agreement[441]; therefore, also an agreement executed together with the tenancy contract, if it is not registered, will be null and void.

The interpretation of the fourth subsection is equally discussed, but it tends to be considered once again as a ban on later agreements increasing the amount of rent, and not as a general ban on rent increases[442].

The situation is completely different in the case of the so called 'assisted tenancies', i.e. contracts provided by Art. 2, subs. 3 Law no. 431/1998:

> Art. 13, subs. 4 (1st sentence) – *For contracts executed in accordance with subs. 3, Art. 2, any agreement granting landlords a rent exceeding the maximum amount established by local agreements for dwellings with the same characteristics and of the same type are null and void.*

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[438] Gabrielli & Padovini, *La locazione di immobili urbani*, 363

[439] Nunzio Izzo, 'La rilevanza degli adempimenti tributari', *Rassegna Locazioni e Condominio*, 1999, 372.

[440] Cass., 3 April 2009, n. 8148, *Giustizia civile Massimario*, 2009, 583; Cass., 27 October 2003, n. 16089, Foro Italiano, 2004, I, 1155.

[441] Cristina Grassi, Commento sub Art. 13 Legge n. 431/1998, 619.

[442] Gabrielli & Padovini, *La locazione di immobili urbani*, 363; Cuffaro & Giove, *La riforma delle locazioni abitative*, 60; Cristina Grassi, Commento sub Art. 13 Legge n. 431/1998, 620.

The contents of assisted tenancy contracts are partially established by the law and cannot be freely derogated by the parties. Limits concern the amount of rents and the possibility of rent increases in particular. Therefore, the first requirement indicated by Art. 13 above is that parties cannot indicate a rent exceeding the maximum amount allowed by local agreements of tenants and landlords associations for that kind of dwelling, in that particular area of the town.
Further limits are imposed by Intermin. Decree 30 December 2002, which adopted the decisions and the standard contracts approved by the 'national convention' of tenants and landlords associations. According to Arts 4 and 4-*bis* Law no. 431/1998, the national convention fixes a number of general mandatory contents for assisted tenancy contracts and local agreements can then specify some further aspects.
The national model for these contracts states that rent increases need to be expressly allowed by local agreements which also indicate amounts. In any case such increases cannot exceed 75% of the inflation rate per year as calculated by the Italian Institute of Statistics (ISTAT): Art. 2 subs. A.
Another kind of contract is provided for by Art. 5 Law no. 431/1998. These are contracts executed by University students for studying purposes and contracts with a shorter legal duration for particular necessities of the parties. These contracts are also included among 'assisted tenancies' with legally established contents. In this case the model contracts approved by the Intermin. Decree do not mention the possibility of rent increase, so it is considered not allowed. The explanation is that for this kind of contract, all of which have a shorter legal duration, the need to upgrade rents is less important[443].
A final mention will be given to the taxation system called the 'cedolare secca' introduced in 2011, which brought an innovation also in the field of rent increases. We have already seen above that this is a tax regime which favors landlords with the aim of reducing black market and evasion of rental incomes. The law has in any case established that if the landlord opts for this regime, he will be renouncing rent increases in any form.[444] The provision would appear to be interpreted as referring not only to increases which offset inflation but also to any form of variation in rents for the duration of the contract. This rule prevails both in free market and assisted tenancies.

- *Is a rent increase after renovation measures, e.g. upgrading the energy performance of the house, or similar lawful and dealt with in a special procedure?*

It has been already described above that in some cases rent increases are not allowed even when there is an express agreement between tenant and landlord. Certainly they can never be unilaterally decided by the landlord. Even 'free market tenancies', which grant parties the right to freely determine rent increase, this is always the consequence of an agreement between the parties; and, according to the above described interpretations of Art. 13, subs. 1 and 4 Law n. 431/1998, this agreement shall be reached at the beginning of the contract. Not even renovation of the dwelling gives landlords the right to change the rent during the contract, unless this possibility has been specifically agreed between the parties.

[443] Gabrielli & Padovini, *La locazione di immobili urbani*, 363.
[444] Art. 3, subs. 11 Leg. Decree, 14 March 2011, no. 23.

- *Rent increases in "houses with public task"*

In Italy every region has introduced its own rules on rent increases for public housing. However, the rule by which legal rent is increased every year at a rate corresponding to 75% of the inflation rate calculated by the Italian Institute of Statistics is applied (ISTAT). As already seen, this criterion is also used for assisted tenancies (Inter-ministerial Decree 30 December 2012, Enclosure A, Art. 2, subs. A). Furthermore, it is indicated by Art. 32 Law no. 392/1998 as the maximum rent increase for non-residential purposes.
For this reason, 75% of the ISTAT index is also often used by private rent increases.

- *Procedure to be followed for rent increases*
    - *Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel)?*

In previous answers we have already described the conditions by which rent increases can be stipulated between the parties in the different types of tenancy contracts.
We have also seen that the most widespread criteria for rent increase is 75% of the yearly inflation rate calculated by ISTAT. This can be more exactly translated as the index of 'purchase prices for families of workers and employees'.
In this answer we can add that for residential housing, once rent increases have been stipulated between the parties, it becomes automatically enforceable at the agreed terms without any specific claim by the landlord. This is a difference with non-residential tenancies, for which Art. 32 Law no. 392/1978 requires that rent increases, even if they are stipulated in the contract, must be expressly claimed by landlords from tenants. Nevertheless a specific form for the claim is not required

- *Possible objections of the tenant against the rent increase*

The most frequent objections concerning rent increases relate to its compliance with the above described rules, which indicates the limits of validity of this measure in relation to each different kind of contract. Moreover, it should be said here that tenant can appeal to some of the general remedies of contract law against rent increases in the field of economic disproportion between performances, although this is certainly quite unusual: discharge for supervening hardship (Arts 1467 et seq. Civ. Cod.) or rescission (Art. 1447 et seq Civ. Cod.).

- ***Improvements/changes of the dwelling***
    - *Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?*
    - *Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?*

Changes to the dwelling by the tenant are to be distinguished from 'improvements' and 'additions'.

The former can take the form of any effective improvement to the characteristics of the dwelling and which is inseparable from it. For this the following provision is indicated by the Civil Code:

> Art. 1592 – *Tenants have no right to indemnity for any improvements made to the rented thing save particular provisions of the law or custom. Moreover, if the landlord gives his consent, the latter shall pay an indemnity corresponding to whichever of the expenses is the lower between those born by the tenant and the value of the improvement when the dwelling is returned.*
>
> *Also where tenants have no right to an indemnity, the value of improvements can compensate wear and tear by the tenant without gross negligence.*

Therefore, the general principle is that the tenant has no right to compensation for improvements. Exceptions can be provided by the law in particular cases, by local customs or, as almost always for Civil Code rules, by an agreement between the parties. A further possibility is that the landlord may give his consent to the improvement. Consent means express authorization, even if not necessarily a contractual agreement. In this case the indemnity corresponds to the lower amount between the expenses born by the tenant and the value of the improvement when the dwelling is returned.

In cases in which tenants are not entitled to receive the indemnity, Art. 1592, subs. 2 provides the right to compensate their value when the dwelling is returned with sums possibly due by the tenant for damage to the dwelling. In accordance with the general principle of Art. 1229 Civ. Cod., this compensation cannot be invoked when damage was done voluntarily or with gross negligence by the tenant.[445]

'Additions', on the contrary, are something new, not pre-existing in the dwelling, introduced by the tenant and which could, in theory, be removed and maintain some value. For these the Civil Code indicates a partially different discipline:

> Art. 1593 – *Tenants who make additions to the rented things have the right to remove them at the end of the tenancy if this can be done without damage to the thing unless the owner prefers to retain the additions. In this case he shall pay an indemnity corresponding to the lower amount between the expenses and the value of the additions when the dwelling is returned.*
>
> *If additions cannot be removed without damage to the thing and represent an improvement, the rules of the previous provision apply.*

In the event that additions can be removed without any prejudice to the dwelling, the tenant is entitled to do so, unless the owner does not want them to be removed: the latter will then pay a sum, which is again the lower amount between the expenses borne by the tenant and the value of the addition when the dwelling is returned. This means that the tenant will give notice to the owner of his intention to remove the additions.[446]

If additions cannot be removed without prejudice, the above mentioned rules regarding improvements apply provided that the additions can be classified as housing improvements.

Similar provisions imply that improvements and additions by the tenant are allowed, even without express consent by the owner, as an exception to his exclusive right. On the contrary, any other change in the dwelling which cannot be classified as an

[445] Gabrielli & Padovini, *La locazione di immobile urbani*, 469.

[446] Although the provision uses the expression 'owner', most scholars maintain that this rule can be used also in cases in which the landlord is not the owner of the dwelling. The latter's will prevails in the event of contrast: *Ibid.*, 470.

improvement or as an addition is considered illicit. In particular the courts have ruled that the limit is represented by works changing 'the nature and the use' of the rented thing, which are not allowed as they conflict with the rule of Art. 1587, no. 1 Civ. Cod., according to which the tenant shall use the thing '*in accordance with agreed use and with the use which can be deduced by the circumstances*'[447].

In any case, the rules regarding improvements and additions are considered guidelines and it is frequent in practice that contracts limit or exclude the faculty for the tenants to carry out such changes in the dwelling at least without prior consent by the owner or receive compensation for these changes. Similar rules are to be considered licit also for contracts with legally established rents (so called 'assisted tenancies') because they do not introduce a duty for the tenant to carry out work without a reward. According to some authors, this latter circumstance could instead be regarded as a way of derogating the obligatory maximum rent for these contracts and therefore be considered illicit[448].

In contracts regarding public dwellings derogatory clauses can also be found: they may exclude the possibility of the grantee making improvements or additions without the landlord's consent or the grantee's right to an indemnity. Although Regions, also with regard to improvements and changes of the dwelling, can decide their own rules, it would seem that usually they prefer to maintain the Civil Code rules in some cases partially derogating them in accordance with the principle of private autonomy in the model contracts adopted to stipulate public dwelling tenancies.

- *Is the tenant allowed to make other changes to the dwelling?*
    - *in particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc)?*
    - *fixing antennas, including parabolic antennas*

In addition to the above mentioned rules, introduced with specific regard to tenancies, some more general provisions concerning changes to a dwelling are also worthy of mention.

Law 26 January 1989, no. 13 deals with the removal of the so called 'architectural barriers'. This expression includes all the structures of a building, such as stairs, doors bathrooms and so on, which prevent or provide obstacles to access by or the moving a handicapped person. This statute has introduced some standards to respect for new buildings (Art. 1) and lower assembly majorities in the event that such innovations are decided by the members of a condominium (Art. 2). No specific reference is made to the position of the tenant requiring these works. This means that where a single building is concerned, tenants respect the ordinary Civil Code rules for additions or improvements described above. Under this aspect no derogatory provisions can be found and case law does not provide precedents regarding requests for similar changes to dwellings during contracts.[449] In case of condominiums, the courts have ruled that the above mentioned rules for assembly majorities shall be used also in the

[447] Cass., 8 November 1996, no. 9744, in *Giustizia Civile Massimario*, 1996, 1483.
[448] Gabrielli & Padovini, *La locazione di immobili urbani*, 473 et seq.
[449] We can only mention Pretura Busto Arsizio, 21 April 1997, in *Archivio locazioni*, 1997, 467, dealing with the necessity (required by an administrative provision) of a bathroom for handicapped people in a premise used for commercial activities. In that case the Court ruled that the landlord did not have the duty to make the bathroom and the tenant should have it removed at the end of the tenancy contract at his own expense.

event that the work is required in a tenant's interest[450] while Ministerial Decree 14th June 1989, no. 236 specifies that Law no. 13/1989 also applies to public dwellings.
In recent years discussions have above all regarded when the removal of architectural barriers requires a vote by the assembly of the condominium and when this work can be done by the single owner without previous authorization. It is worth mentioning that the Appeals Court, invoking protection of health (Art. 32 Const.) and social function of property (Art. 42 Const.) has recently acknowledged the owner's right to build a lift in a condominium without assembly authorization. The impossibility for the person to reach his flat otherwise prevailed over the more difficult use of the stairs for the other owners.[451] A similar principle could, in theory, be also invoked by a tenant, at least provided that the tenancy contract does not prevent him from carrying out improvements or additions and that the work does not change 'the nature or the use' of the rented thing.
The result reached by the Supreme Court could anyway be modified in the light of the reform of condominium rules introduced in 2013. The new Art. 1120 Civ. Cod. now expressly says that the assembly majorities indicated by Art. 1136, subs. 2 shall be used in order to decide on work relating to the safety and healthiness of the building, elimination of architectural barriers, energy savings, installation of sources of renewable energy, installation of antennas and any another instrument to receive information. The provision, on the one side, rules that for all this work a lower than usual majority is sufficient in the assembly, but on the other hand, it could be seen as a confirmation that an assembly vote is necessary in these cases. Future decisions will show whether the new formulation will change the not yet well stocked case law on this matter.

- ***Maintenance measures and improvements, in particular upgrading the energy performance of the house by the landlord***
    - *What does the tenant have to tolerate?*
    - *What conditions and procedures does a landlord who wants to make renovations need to respect (e.g. giving adequate [i.e. sufficiently long] notice; offer an alternative dwelling; offer a rent reduction to compensate for disturbances)?*

According to Art. 1582 Civ. Cod.:

> *The landlord cannot carry out alterations to the thing which reduces the tenant's enjoyment of it.*

The relevant alterations have been interpreted in a wide-ranging sense. They can regard the quality or the quantity of the agreed enjoyment over the dwelling, and affect it only for a certain period of time. According to some authors, measures regarding an accessory of the dwelling are also relevant.[452] The prohibition surely does not include alterations which are so limited that they will barely be noticed by the tenant. Some scholars suggest that alterations should be 'significant', as in the case of vices, but not everyone shares this opinion.[453]

[450] Trib. Milano, 26 April 1993, in *Archivio locazioni*, 1994, 130.
[451] Cass., 14 February 2012, no. 2156, in *Giustizia civile*, 2012, I, 1454.
[452] Paolo Cosentino & Paolo Vitucci, *Le locazioni dopo le riforme del 1978-1985* (Torino: Giappichelli, 1986), 72.
[453] See for references, Paola Valore, 'Commento sub. Art. 1582 Civ. Cod.', in *Codice commentato*, 49.

In cases of significant alterations, the landlord can do the work only with the other side's agreement. As these Code rules are mandatory, the parties are free to establish in the contract that the landlord has the right to carry out future alterations, also in general terms, without indicating them precisely. In any case, the validity of such clauses has been contested in case alterations are so massive that they modify the subject matter of the contract or *de facto* reduce its minimum legal duration.[454]

The tenant has several instruments to use against illicit behavior by the landlord on this matter. He can, first of all, ask for compensation for damage done. In addition, he can ask that the alteration is removed and, in the most serious cases, he can terminate the contract for breach. When the alteration completely deprives the tenant of the use of the dwelling, the prevailing opinion is that he may also initiate action for the recovery of land ('azione di spoglio').[455]

In the case of measures to improve the energy performance of the dwelling these rules also apply, as no exceptions have been introduced.

Nevertheless, exceptions to the above described rules are provided in general terms in the case of urgent restoration work:

> Art. 1583 – *If during tenancy the thing needs restoration which cannot be delayed until the contract expires, the tenant shall tolerate them even when they imply non-enjoyment of part of the rented thing.*
>
> Art. 1584 – *If restoration work lasts over one sixth of the tenancy duration and, in any case, over twenty days, the tenant has right to a reduction in the rent, in proportion to the whole duration of the restoration and the entity of their non-enjoyment.*
>
> *Notwithstanding their duration, if the execution of the restoration makes part of the dwelling necessary for the landlord's or his family accommodation uninhabitable, the landlord can obtain, according to the circumstances, the discharge of the contract.*

These Civil Code rules, which still generally apply, as the modifications introduced with the Fair Rent Act was later abrogated, try and find a balance between the opposing interests of tenants and landlords. The rules can be summarized as follows: if it is not possible to live in the dwelling because of restoration, the contract can be terminated by the tenant; otherwise, if habitability is not affected but work lasts more than one sixth of the contract or in any case more than twenty days, a proportionate reduction of rent can be claimed. Outside the cases listed here, the tenant will have to tolerate the restoration.

As in the previous case of changes to the dwelling by the tenant, as far as maintenance and improvements by the landlord are concerned, regions do not usually provide different rules. In any case, it has happened that some derogatory clauses have been introduced in regional model contracts, so that works can be carried out even without the limits described above. As we have already cited, such clauses are valid provided that they do not completely alter the performance due to the grantee and that they do not threaten the occupant's health.

- ***Uses of the dwelling***
  - *Discuss allowed vs. forbidden uses such as:*

[454] Gabrielli & Padovini, *La locazione di immobili urbani*, 298 et seq.; Andrea Tabet, 'La locazione-conduzione', in *Trattato di diritto civile e commerciale*, ed. by Cicu & Messineo, XXV (Milano: Giuffrè, 1972), 418.

[455] For a description of this action see above.

Keeping animals; smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside.

The first part of Art. 1587 Civ. Cod. states that:

> *The tenant shall: 1) receive the thing and use it with a good father's diligence in accordance with the agreed use and with the use which can be deduced by the circumstances.*

The tenant has therefore the duty to take care of the dwelling and use it in accordance with the terms expressly agreed in the contract or in a way which is implicit given the circumstances. As a consequence, a tenant who changes the use of the dwelling breaches the contract. In any case some authors suggest that not all changes in the use of the dwelling automatically generate damages or violate the landlord's interest.[456]

The remedies available to the landlord are damage compensation of damages or contract termination, in the most serious cases. The terms of prescription, according to the general Civil Code rules, are respectively five and ten years. Another possibility is an injunction by the owner and any person with a real right over the dwelling. If the use by the tenant can be considered a violation of exclusive rights over the property, this action gives landlords the right to block such behavior.

In any case, these remedies are balanced with a special rule introduced by the Fair Rent Act in 1978 and still in force for residential dwellings too. Art. 80 states that landlords can terminate contracts for breach, in cases in which tenants change the use of the dwelling within three months of discovery.[457] After this term the different legal regime provided for the new use applies, as this is considered to have been implicitly accepted by the landlord.[458] This rule favors the tenant as it significantly reduces the time frame for contesting a use of the dwelling which is different from the agreed use. In addition, prevailing opinion is that this term cannot be interrupted or suspended.[459]

Probably as a consequence of its strictness, case law tried to limit the field of application of Art. 80 to cases in which the change of use implies a change in the legal regime of the contract alone. This means change from residential to non-residential use or the opposite but also changes within these categories which at least imply the application of a different set of rules. Such an interpretation, grounded on the expressions literally used by the provision, is contested by some scholars, but is still dominant in the courts.[460]

After this general introduction to the rules concerning the use of rented dwellings, we will focus on some specific problems:

- animals: parties are normally free to agree in a tenancy contract that the tenant cannot occupy the dwelling with animals. It is possible to discuss whether similar limitations always correspond to an objective interest of the landlord (or of the owner), but it would not appear that Italian Courts have had the occasion to consider similar clauses as abusive.[461]

[456] Gabrielli & Padovini, *La locazione di immobili urbani*, *222* et seq.

[457] The further limit of one year from the moment at which the use was changed notwithstanding the effective knowledge by the landlord was declared unconstitutional by Corte Cost., 18 February 1988, no. 185.

[458] Cass., 19 January 2010, no. 699, in *Guida al diritto*, 2010, 10, 82.

[459] Gabrielli & Padovini, *La locazione di immobili urbani*, 226.

[460] Cass., 11 October 2012, no. 17326, in *Diritto e Giustizia*, 11 October 2012; Cass., 10 March 2010, no. 5767, in *Giust. civ. mass.*, 2010, 3, 347; Cass., 14 October 2008, no. 25141, in *Giust. Civ. mass*., 2008, 10, 1481.

[461] Trib. Piacenza, 10 April 1990, in *Arch. Loc.*, 1990, 287.

A new element was recently added on this matter with regard to condominium rules. In 2012 the Civil Code was changed to state that co-ownership regulations cannot forbid a person to possess or keep domestic animals (Art. 1138 Civ. Cod.).[462] This provision is the result of an evolution towards the protection of the relationship between a person and his/her animal(s), distinguishing the latter from mere objects. Obviously this does not mean that a person can violate rules relating to noises, smells, use of common spaces and so on with his or her pets. Nevertheless, the purpose of this reform is to avoid regulations adopted by the majority of the assembly being used to limit the rights of other co-owners with regard to the use of their exclusive properties. For this reason, it would seem that limits to the presence of animals can be still decided jointly by all the co-owners. Coherently with this tenancy contracts can provide similar limitations through agreements between landlords and tenants.

- smells: in Italian law there are no specific provisions regarding limits to smells in tenancy contracts. Therefore, apart from contractual limits which may result from the above mentioned rules on the allowed uses of the dwelling, rules regarding 'discharges' (in Italian 'immissioni'): Art. 844 Civ. Cod needs to be mentioned. This provision applies to every property and regards not only smells but also noises, pollution, heat and so on. The principle is that the owner cannot avoid these discharges coming from another property unless they exceed normal tolerability with regard to the conditions of the places. This is an elastic parameter that can be evaluated by judges in accordance with the specific circumstances of the case.
- receiving guests: limits regarding the tenant's right to receive guests could in theory be stipulated in the contract, but such limitations would probably be considered abusive if not grounded on an objective and legitimate interest of the landlord (or of the owner). This is the impression given if we consider some recent decisions of the Italian Appeals Court which considered null and void a clause excluding the right for the tenant to host someone from outside the family on a non-temporary basis. This clause has been considered to be in conflict with the duty of solidarity and with the protection of relationships among members of a family, among partners and also among friends.[463] A general ban on hosting guests in the dwelling even temporarily could be equally considered illegitimate in the absence of objective reasons of the party.
- prostitution: a clause prohibiting the tenant to use the dwelling for prostitution should be considered licit because it is in accordance with the landlord's right to limit the possible uses of the thing given on rent (Art. 1587, n. 1 Civ. Cod.).

It is anyway worth considering that the activity of prostitution is on a boundary which may give some problems of interpretation with regard to tenancy contracts. That is why prostitution itself cannot be considered as an illicit activity, according to Law 20 February 1958, no. 75, as confirmed by some recent decisions of Cassazione [464]. Nevertheless prostitution in other decisions is regarded as an activity contrasting with 'good morals'.[465] For this reason, from the civil law point of view, it has been discussed whether a tenancy contract, executed with a person who needs a dwelling for prostitution, can be considered licit and valid or null and void according to Art. 1343 Civ. Cod. (consideration contrary to mandatory rules, public order or good morals) or to Art. 1345 Civ. Cod. (contract executed only for an illicit purpose shared by both parties).

[462] Art. 16, Law 11 December 2012, no. 220 changed in this way Art. 1380 Civ. Cod.
[463] Cass., 18 June 2012, no. 9931, in Guida dir., 2012, 38, 64; Cass., 19 June 2009, no. 14343, cit.
[464] In this sense: Cass. Pen., 20 March 2013, no. 28754, in Dir. Giust., 2013, 5 July; Cass. Pen., 12 March 2013, no. 32097, ibid., 25 July; Cass. Pen., 19 February 2013, no. 33160, ibid., 2 August.
[465] In this sense Cons. Stato, 16 December 2010, no. 9071, in Foro amm. – C.d.S., 2010, 2763; Comm. trib. Milano, 22 December 2005, no. 272, in Giur. merito, 2006, 1301.

From a criminal point of view, the situation is now clearer as a consequence of a certain number of decisions which indicated limits to the landlord's criminal responsibility. First of all, Art. 3, n. 2) Law no. 75/1958 punishes the person who rents out a building for use as a 'house for prostitution'. This expression means that the dwelling shall provide a certain level of organization in the activity of prostitution: for example, at least a plurality of people working as prostitutes.[466] The second provision is Art. 3, no. 8) of the same statute, which punishes anyone who in any way favors or exploits other people's prostitution. The most recent decisions ruled that landlords or owners cannot be convicted for this crime when they simply provide a prostitute with a dwelling at market prices even though they are well-aware of the fact that prostitution will be carried out there. On the contrary, for criminal responsibility, it is necessary that they receive a reward from this activity, such as in the event that they require a rent which is higher than the market price.[467]

When landlords (or owners) are found guilty of one of these crimes, the tenancy contract will be surely considered null and void because it conflicts with mandatory rules.

- commercial uses (e.g. converting one room into a medical clinic): the distinction between rents for residential uses and rents for commercial (*rectius*: non-residential) uses is one of the most important in Italian tenancy law. Therefore, it is absolutely licit and usual that the landlord should limit the use of the dwelling given on rent to one of these, even though mixed uses are possible according to the Italian law.

In the event that the tenant violates prescriptions in the contract, using a residential dwelling for commercial activities, we have already described above the possible remedies and the special provisions in Art. 80 of the Fair Rent Act.

- removing an internal wall: this activity is not classified by Italian law as a matter of use of the dwelling but rather as a change in the dwelling. Therefore, we have already described above within which limits such activities by the tenant are allowed.
- fixing pamphlets outside: in the event that the tenancy contract makes no reference to the right to fix pamphlets outside the dwelling, the landlord can probably not force the tenant to remove them, as this could be included among the possible uses of a residential dwelling authorized by Art. 1587, no. 1 Civ. Cod. Prohibition could anyway derive from a specific clause in the contract. As this could be interpreted as a form of limitation of the tenant's freedom of expression, it would probably be considered legitimate only if grounded on serious and objective reasons. Such arguments are valid also in the event that limitations are inserted into condominium rules. In any case the courts do not seem to have dealt with this specific problem yet. Case law regards only partially the similar matter of signs (e.g. regarding commercial activities) on the front of a condominium. In these cases the importance of such signs not altering the appearance of the building is stressed in accordance with the rules regarding common parts of the building[468].

[466] Cass. pen., 19 May 2005, n. 8600, in Cass. Pen., 2001, 640.
[467] Cass. Pen., 20 March 2013, no. 28754, cit.; Cass. Pen., 12 March 2013, no. 32097, cit.; Cass. Pen., 19 February 2013, n. 33160.
[468] App. Milano, 14 December 2011, no. 3495, in Arch. Loc., 2012, 428

- *Is there an obligation of the tenant to live in the dwelling? Are there specificities for holiday homes?*

We have already seen that, according to Art. 1587 Civ. Cod., the tenant shall receive the dwelling and use it with due diligence, in accordance with the terms expressly agreed in the contract or in any case implicit given the circumstances.
Initially the courts interpreted this provision as a duty for the tenant to occupy the dwelling. More recently opinions have changed and living in the dwelling is now normally considered as a mere possibility for the tenant. Despite this, some disincentives and limits to the tenant's freedom still exist.
First of all, according to Art. 3, subs. 1, lett. f) Law no. 431/1998, in the event that the tenant does not regularly occupy the dwelling without a legitimate reason, the landlord has the right not to renew the contract after the first expiry term of four years.
Secondly, according to case law, the tenant shall use the dwelling when this is a productive property, such as a shop or a plot of land. This is the logical consequence of the fact that such things, if not used, lose their value, but it is unlikely that this principle would apply to residential dwellings.
Finally, the Court of Cassazione has recognized that, in theory, the use of non-productive property can also sometimes be necessary in order to properly take care of the thing with diligence, as required by Arts 1587, no. 1 and 1590 Civ. Cod. In practice, it is probably unusual that the fulfillment of this performance requires that the tenant live in the dwelling.
Parties are in any case free to agree such a duty for the tenant.
As for private dwellings, no other specific provisions regarding this matter exist in Italian law not even with regard to holiday homes.
The situation is different for public dwellings. In the regional rules, non-use of the dwelling is almost always included among the reasons for which the contract with the grantee can be discharged. The relevant term which can lead to such a result is generally six continuing months of non-occupation, provided that the grantee has not received an authorization by the landlord to do so for particular reasons.

- ***Video surveillance of the building***

Is the surveillance of certain parts (e.g. corridors) of the building lawful and usual?

The surveillance of buildings with video cameras is not particularly frequent but it is certainly increasing for better protection of dwellings against criminals. Evidence of this is given by the fact that the condominium reform of 2013 introduced a specific provision regarding this matter: Art. 1122-*ter* Civ. Cod. The rule says that the installation of such equipment can be decided by the assembly with the majority indicated by Art. 1136, subs. 2 Civ. Cod. This is a lower than usual majority, introduced by the legislator also for other improvements regarding the condominium which are positively considered, such as the elimination of architectural barriers, energy saving and so on.
With regard to the privacy implications of video surveillance, it is necessary to make a distinction.
In case video surveillance regards a specific dwelling (such as the entrance of the flat or of the garage) it is not necessary to respect the provisions required by the Privacy Act (Leg. Decree, 30th June 2003, no. 196), provided that the camera view is really limited to the private space and does not include surrounding areas.

On the contrary, in the event that video surveillance regards common areas of the building, a number of prescriptions shall be respected: signs must inform people of video surveillance and specify, where this is the case, camera connection with the police station; camera views should not include public or private spaces outside the building of interest; data gathered must be adequately protected and destroyed after a limited period of time (about 24-48 hours).

6.6 Termination of tenancy contracts

Table for 6.6 –Termination of tenancy contracts

	Main characteristic(s) of private rental	Main characteristic(s) of public rental
Mutual termination	The parties may terminate the contract at any time on mutual agreement.	The parties may terminate the contract at any time on mutual agreement.
Notice by tenant	A) Termination: i) contracts regulated only by the Civil Code: if the parties do not agree otherwise, the tenant may terminate the contract before the legal or conventional deadlines, giving notice; ii) contracts regulated by the 1978 Law: the tenant may terminate the contract at any time for 'serious reasons', with six months' notice; iii) contracts regulated by the 1998 Law: if the parties do not agree more favorable conditions, the tenant may terminate the contract at the legally established terms with six months' notice; in addition the tenant may terminate the contract at any time for 'serious reasons', with six months' notice. B) Discharge: - for breach of contract; - for supervening impossibility of performance; for supervening hardship. C) Rescission	The tenant may generally terminate the contract at any time, giving notice within the agreed term.

Notice by landlord	A) Termination: i) contracts regulated only by the Civil Code: if the parties do not agree otherwise, the tenant may terminate the contract before the legal or conventional deadlines, giving notice; ii) contracts regulated by the 1978 Law: the landlord may terminate the contract at any time for legally established reasons, with six months' notice; iii) contracts regulated by the 1998 Law: the landlord may terminate the contract with six months' notice - at the first legal deadline, for legally established reasons; - at the second legal deadline, freely. B) Discharge (as for tenant, above) C) Rescission	A) *Decadenza* (loss of the right): original lack by the grantee of the necessary requirements in order to receive the dwelling. B) *Annullamento* (invalidation): supervening elements affecting the possibility to continue the contract.
Other reasons for termination	Repossession	

- ***Mutual termination agreements***

According to Art. 1372 Civ. Cod., parties always possess the right to agree the termination of a contract before its natural term. This rule also applies to all kinds of tenancy contracts.
Discussions concern the necessity that the mutual termination agreement is made in written form, when for the tenancy contract the written form is required[469]. The Cassazione has expressed the opinion that when the written form is not required for the validity of the contract, but only to give evidence of its execution, mutual termination can also be done without any particular form[470].
The agreement will normally produce its effects only in the future, while the performances that the parties have already regularly accomplished will not be returned.

- ***Notice by the tenant***

  - *Periods and deadlines to be respected*

[469] Gabrielli & Padovini, *La locazione di immobili urbani*, 582 et seq.
[470] Cass., 11 April 2006, no. 8422, *Giustizia Civile Massimario*, 2006, 4.

- *May the tenant terminate the agreement before the agreed date of termination (especially in case of contracts limited in time); if yes: does the landlord then have a right to compensation (or be allowed to impose sanctions such as penalty payments)?*
- *Are there preconditions such as proposing another tenant to the landlord?*

According to the Civil Code rules (Arts 1596-97 Civ. Cod.), it is necessary to distinguish between open-ended and time-limited tenancy contracts.
According to the Civil Code rules (Arts 1596-97 Civ. Cod.), it is necessary to distinguish between open-ended and time-limited tenancy contracts.
For the former, Art. 1574 Civ. Cod. fixes a legal term of duration which varies according to the type of contract: one year in the case of dwellings without furniture; the time indicated for the payment of the rent in dwellings with furniture. The tenant (but for the landlord it is the same) can terminate the contract before these deadlines, giving advance notice. This notice is fixed by the parties or by local custom. In the absence of notice by the landlord, the contract is automatically renewed.
For time-limited contracts, notice is not necessary, as the contract terminates at the agreed deadline. In any case, if the tenant continues using the dwelling after the contract has expired and the landlord accepts even tacitly this situation, the contract is considered to have been automatically renewed (Art. 1597 Civ. Cod.). Civil Code and case law have ruled that, especially in cases in which the landlord previously gave notice but after expiry left the tenant in the dwelling, the will to renew the contract shall be inferred by a document or unquestionable behavior.[471]
As Code rules have been always considered mandatory, parties have the faculty to grant to one or both of them the right to terminate the contract even before the above mentioned deadlines, freely indicating the minimum terms of notice in addition. These dispositions have limited application in any event in the field of residential dwellings, where the provisions of special statutes generally prevail.
The latter provide a rather different discipline. We have already seen that even after the introduction of the 1998 Law, which abrogated most of the limits of the previous Fair Rent Act, minimum duration and therefore termination of contracts have remained under the provision of mandatory rules.
The 1998 Law in particular distinguishes between 'free market tenancies' and 'assisted tenancies'.
From the point of view of the tenant, the former lasts four years and is automatically renewed for a further four years. At the end of the eight years the tenant has the right to terminate the contract by giving six months' notice to the other side, otherwise the contract is automatically renewed provided that the landlord does send notice (Art. 2, subs. 1 Law no. 431/1998).
'Assisted tenancies' last three years. After that, in the event that parties do not agree renewal or termination, the contract is legally extended for two years. At the end of five years the tenant has the right to terminate the contract giving six months' notice to the other side, otherwise the contract is automatically renewed provided that the landlord does send notice (Art. 2, subs. 5 Law no. 431/1998).
In addition to this, Art. 3, subs. 6 Law no. 431/1998 – as well as previous Art. 4, subs. 2 Law no. 392/1978 – grants the tenant the right to terminate the contract at any time with six months' notice in the event of 'serious reasons'. The latter can be as follows:

[471] Carla Bartolucci, 'Commento sub Art. 1597 c.c.', in *Codice Commentato di Locazione e Condominio – Locazione*, ed. V. Cuffaro & F. Padovini (Torino: UTET Giuridica, 2013), 108 et seq.

unpredictable, supervening to the execution of the contract, not depending on the tenant's responsibility and making the continuation of the contract particularly burdensome.[472] These reasons can regard both the tenant's personal circumstances and the objective conditions of the dwelling. They can include diseases, particular economic difficulties, working, studying, family circumstances which make the dwelling no longer suitable, annoying behavior by the landlord.[473] Courts tend to require that the tenant expressly indicates the reason for the termination, so that its legitimacy can be checked.

These rules are meant to protect the tenant, therefore they can be derogated only in his favor, for example allowing termination at any time without specific reasons or with shorter terms of notice. By contrast, clauses which limit the tenant's rights, for example requiring that another tenant is proposed to the landlord, are null and void.

The Civil Code also provides for some special cases of termination which still apply as they are consistent with the special statutes discipline:

- Art. 1613 rules that public employees are allowed to terminate contracts, in the event that they have to move elsewhere with about two months' notice. The rule is not mandatory. We have anyway to consider that, as nowadays the order to move for an employee is surely included among the 'serious reasons' to terminate a contract in accordance with Art. 3, subs. 6 Law no. 431/1998, for some authors in this case the shorter term of notice (two months) remains applicable[474], while for other authors, even in this case, the longer term of notice (six months) is now to be respected.[475]
- Art. 1614, in case of death of the tenant, grants his heirs the right to terminate the contract if more than one year remains and sub-renting is not allowed. This right must be used within three months of death.

A further special case of termination is provided by Art. 80, subs. 3 of the Bankruptcy Law (Royal Decree 16th March 1942,o n. 267):

> *In case of bankruptcy of the tenant, the trustee in bankruptcy may at any time terminate the contract, giving the landlord an equitable indemnity for the anticipated termination, which in the event of disagreement between the parties, is determined by the judge, after hearing the interested parties.*

In this way the legislator protects the tenant's right to terminate a contract which could have become too burdensome. As we will see below a similar right is granted to the landlord.

In addition to termination Italian law also provides other instruments which have the purpose of interrupting the effects of the agreement: discharge and rescission. In general terms:

- *discharge* can be used in the event of certain supervening events which alter the equilibrium between the performance of the parties;
- *rescission* is a remedy for two specific cases of original alteration of the equilibrium in the contract.

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[472] Lorenzo Pellegrini, 'Commento sub Art. 4 Legge no. 392/1978', in *Codice Commentato di Locazione e Condominio – Locazione*, ed. V. Cuffaro & F. Padovini (Torino: UTET Giuridica, 2013), 369; Francesco Trifone, 'La locazione ad uso di abitazione', in *I contratti di utilizzazione dei beni*, ed. V. Cuffaro, in *Trattato dei contratti* (Torino: UTET Giuridica, 2008), 142 et seq.

[473] Pellegrini, Commento sub Art. 4 Legge no. 392/1978', 370 et seq.; *Ibid.*, 143.

[474] Stefano Giove, 'Della locazione di fondi urbani', in *Commentario del Codice Civile – Dei Singoli Contratti*, vol. 1, tomo II, ed D. Valentino (Torino: UTET Giuridica, 2011) 356.

[475] Maria Concetta Antonica, 'Commento sub Art. 1613 c.c.', in *Codice commentato di Locazione e Condominio – Locazione*, ed. V. Cuffaro & F. Padovini (Torino: UTET Giuridica, 2013), 149 et seq.; Trifone, 'La locazione ad uso di abitazione', 142.

Discharge is regulated by some general provisions in the Civil Code which apply to every contract and are therefore relevant for tenancies too. This measure can be invoked for breach of contract, for supervening impossibility of performance and for supervening hardship of contract.

Breaches have significant importance in relation to the other side's interest (Art. 1455 Civ. Cod.) and with regard to the landlord's performance may concern vices or failures of the dwelling, non-intervention in case of legal nuisances and so-on.[476]

Impossibility means an event which cannot be imputed to the tenant's responsibility and makes the performance impossible. Such cases are more likely in the landlord's sphere. In the event that impossibility regards only a part of performance, the other side has the right to terminate the contract, if he is not interested in receiving the part which is still possible (Art. 1464 Civ. Cod.).

Supervening hardship can be used in cases of extraordinary and unpredictable events which make the performance of one of the parties excessively burdensome. This rule can apply in cases of continuing and not aleatory contract, such as tenancy. In any case generic economic difficulties of the parties usually are not regarded as a relevant event under this provision, so its' possible field of application to tenancy contracts is certainly very limited.

Finally, we can consider rescission, which is allowed for all contracts in two cases, in the following conditions:

> Art. 1447 Civ. Cod. – *Contract by means of which a party accepted unfair terms, as a result of the need, known to the other side, to save himself or other people from current danger of serious personal damage, can be rescinded upon request of the obliged party.*
>
> *Upon rescission, the judge may grant to the other side, according to the circumstances, an equitable indemnity for the performance executed.*

This case refers to an economic disproportion between the performances of the parties, accepted in order to avoid a danger. In case the danger is a threat to execute the contract, this is null and void.

> Art. 1448 Civ. Cod. – *In cases of disproportion between the performance of a party and the performance of the other party, in cases in which disproportion is due to the state of need of one of the party which the other party took advantage of, the damaged party can request rescission of the contract.*
>
> *Such claims cannot be accepted if the disproportion does not exceed half of the value that the performance accomplished or promised by the damaged party had when the contract was executed.*

This case shares some elements with the previous one: disproportion between performance and bad faith on the other side. Conversely, Art. 1448 requires a specific amount of disproportion (more than half the real value) but can refer also to a simple situation of lack of money by the damaged party.

With reference to rescission, no specific rules for tenancy contracts can be found.

Notice by the tenant in the field of public dwellings clearly follows a completely different philosophy than that in the field of private dwellings. Entities managing the former properties clearly do not have an interest in the continuity of the contractual relationship with a specific grantee, unlike private landlords with their tenants. This is the reason for which termination by the grantee does not generally require formalities: the grantee can normally terminate the contract whenever he wants without giving particular explanations. At most, a certain term of notice is required, but it is likely that it will not

[476] See above.

be particularly long. We have also to consider that termination by the grantee in public dwellings is certainly quite an unusual circumstance.

- ***Notice by the landlord***
    - *Ordinary vs. extraordinary notice in open-ended or time-limited contracts; is such a distinction exists: definition of ordinary vs. extraordinary (= normally related to fundamental breaches of the contract, e.g. in cases of massive rent arrears or strong antisocial behaviour)*
    - *Statutory restrictions on notice:*
        i. *for specific types of dwellings, e.g. public dwellings; dwellings recently converted into condominiums (if there exists a special form of protection in this case as in German law) etc.*
        ii. *in favour of certain tenants (old, ill, in risk of homelessness)*
        iii. *for certain periods*
        iv. *after sale including public auction ("emptio non tollit locatum"), or inheritance of the dwelling*
    - *Requirement of giving valid reasons for notice: admissible reasons*
    - *Objections by the tenant*

In Italian law there is not exactly a distinction between ordinary and extraordinary forms of notice. It is rather a matter of different legal instruments: termination, discharge and rescission. As we have already seen with regard to the position of the tenant, they all interrupt the effects of the agreement but can be invoked for different kinds of problems. The role of these legal instruments with regard to the position of the landlord can be analyzed here below in greater depth.
As for termination, we have already seen above that, according to the original Civil Code rules, landlords have the same rights as the tenant to terminate an open-ended or time-limited contract. In addition to this, the Code indicates two further possibilities for the landlord to terminate the contract:
- Art. 1603 rules that parties may agree the right to terminate the contract in cases of sale of the dwelling. The purchaser shall give notice and the tenant has no right to compensation, if not expressly agreed.
- Art. 1612 rules that the landlord can stipulate with the tenant the right to terminate the contract in the event that the landlord wants to live personally in the dwelling. In such cases he shall give notice according to the terms required by local uses.
In any case, these provisions cannot apply in the event that the contract is regulated by special statutes as these violate the mandatory rules protecting the tenant. Scholars contend whether these rules can be invoked for tenancies subject only to Civil Code rules: in any case their field of application is nowadays extremely limited.[477]
The 1978 Law grants landlords the right to terminate the contract at any moment by serving a notice of six months, but only in the event of one of the reasons indicated by

[477] For reference, see above.

numbers 1) to 8) of Art. 59. These clauses have the purpose of guaranteeing that termination is given only when the landlord's interest takes priority over the tenant's right to housing. Such a limitation is consistent with established practice in other European countries (e.g. French and Germany). Also this rule, though still in force, has had rather limited application since the 1998 Law came into force.

This latter act liberalized the rent market but in return it introduced stricter rules for duration and termination of the contract. Therefore contracts regulated by this statute can still be terminated by the landlord only for one of the reasons indicated by Art. 3, lett. a) to g) (which are very similar to the ones in Art. 59 of the Fair Rent Act)[478]; but, in addition, termination cannot be required at any time but only after four or three years from the beginning of the contract (depending on the legal duration of the contract). These rules are considered unilaterally mandatory which means that they cannot be derogated in favor of the landlord. By contrast more favorable faculties can be granted by the parties to the tenant.

After eight or five years from the beginning of the contract, as we have already seen for the tenant, the landlord is free to terminate the contract giving six months' notice to the other side. In the event that neither the landlord nor the tenant asks to terminate the contract, it is automatically renewed with the same conditions (Art. 2, subs. 1 and 5 Law no. 431/1998). Also under this aspect, a clause granting the landlord the right to freely terminate the contract in further circumstances shall be considered null and void.

A further special case of termination of the contract on the landlord's side is granted by Art. 80 of the Bankruptcy Act (Royal Decree 16 March 1942, no. 267):

> *The landlord's bankruptcy does not terminate the tenancy property contract and the trustee in bankruptcy succeeds him in the contract.*
>
> *In the event that the global duration of the contract exceeds four years from the declaration of bankruptcy, the trustee, within one year from the declaration, has the right to terminate the contract giving the tenant an equitable indemnity for the anticipated termination, which in case of disagreement between the parties, is determined by the judge, after hearing the interested parties. The termination becomes effective four years after the declaration of bankruptcy.*

In consideration of the difficulties involved in bankruptcy, the aim of the legislator with this measure was to find a balance between the opposing interests of the landlord to terminate a contract, which might be not sufficiently profitable or which might prevent the sale of the dwelling, and the interest of the tenant to continue to use of dwelling.

We have already seen, in describing the position of the tenant, that discharge can be invoked in cases of breach of contract, in cases of supervening impossibility of performance and in cases of supervening hardship.

From the landlord's point of view, the former remedy can be normally used in cases of breaches such as non-payment of the rent, damage to the dwelling and change in its use, provided that they have a significant importance (Art. 1455 Civ. Cod.).

[478] The reasons are the following: a) when the landlord wants to use the dwelling for himself or for his spouse, parents, children, relatives within the second level for a residential, commercial, craft or professional activity; b) when the landlord is a public, cultural or religious legal entity which wants to use the dwelling for its own purposes, provided that it provides the tenant with another adequate and fully available dwelling; c) when the tenant has at his disposal a free and adequate dwelling in the same municipality; d) when the building is seriously damaged and needs repairs which are prevented by the presence of the tenant; e) when the building shall be integrally repaired, or destroyed or elevated (in the latter case, the tenant must be living on the top floor and the building needs to be evacuated); f) when the tenant does not occupy continuously the dwelling without a legitimate reason, save cases of succession in the contract; g) when the landlord wants to sell the dwelling, provided that he does not own other residential dwellings, in addition to his own house; a pre-emption right is granted to the tenant in such cases.

We have to consider that the 1978 Law partially derogates these Civil Code rules, introducing some stricter provisions for landlord's discharge, which apply also to tenancies regulated by the 1998 Law. In the event that the tenant does not regularly pay the rent or the 'additional burdens', the legislator fixes the minimum delay or amount which is necessary in order to discharge the contract: 20 days delay for the rent and an amount corresponding to two months' rent for the additional burdens (Art. 5). In this way the legislator has excluded judicial discretion in evaluating the importance of the breach. This statutory restriction is in part considered as a form of protection for the tenant, but, at the same time, also as a guarantee for the landlord.
In cases in which the tenant changes the use of the dwelling, Art. 80 Law no. 392/1978 reduces the ordinary term for the landlord to discharge the contract to three months from the moment he becomes aware of this different use instead of ten years. Also in this case the limitation established by the legislator represents an advantage for the tenant.
As far as termination is concerned, parties cannot derogate these rules in order to grant the landlord the possibility to discharge the contract at more favorable conditions.
With regard to discharge by frustration, the possible events affecting the contract, which cannot be imputed to the landlord's responsibility, include: loss of the dwelling, expropriation for public benefit, supervening unsuitability for the agreed use (for example because of new rules introducing further requirements for the dwelling) and inaccessibility.[479] In the event that impossibility regards only a part of the consideration, we have already seen above that the party has the right to terminate the contract, if he is not interested in receiving the still possible part (Art. 1464 Civ. Cod.).
As far as rescission is concerned, it is enough to make reference to the description provided with regard to the tenant's position as also for the landlord no specific rules can be found.

If we consider public dwellings, the situation is completely different, as the necessary conditions for the agencies managing the public dwellings to give notice to the grantees are indicated by the regional rules and do not generally make any reference to the tenancy rules in the Civil Code and in the special statutes.
The first significant difference is that contracts regarding public dwellings are open-ended and do not consider the possibility of termination after a certain period of time. For this reason, notice by the landlord is limited to two main circumstances:
- *decadenza* (loss of the right) which refers to the original non fulfillment by the grantee of the necessary requirements in order to receive the dwelling;
- *annullamento* (invalidation) which refers to supervening elements affecting the possibility to continue the contract.
In the former case, notifications may concern every element required by the law in order to grant the dwelling and the grantee, through an internal procedure with the municipality, has the right to make objections. Once the decision is taken, the grantee can contest it before a court.
In the latter case, the reasons for notice considered by the regional statutes can be practically all classified as forms of breach of the contract by the grantee. The others include: assignment to third parties of the dwelling, non-use of the dwelling for long periods except in the case of authorization for legitimate reasons, illicit activities in the dwelling, change of destination of the dwelling, damage, non-payment of rent, ownership of another suitable dwelling in the province and so on.

[479] In this case Gabrielli & Padovini, 631 et seq. suggest that, in the event that inaccessibility depends on something out of the sphere of the landlord (e.g. along the access road), discharge for supervening hardship would be more correct.

Specific attention is given to the supervening loss of the requirements originally necessary in order to receive the dwelling. In particular when this is due to the tenant contravening the income limits, a number of protective rules are usually introduced. This must be the case for two consecutive years and the amount must generally be 75% over the limit.
In this way the legislator tries to find a balance between the worrying perspective for the grantee of losing the dwelling and the need to provide people who are in greater need with this kind of assistance.
Apart from such cases, regional rules do not appear to provide restrictions for notice in consideration of personal problems of the grantee or other relevant elements. Protection in such situations is mainly demanded at the phase of the execution of the eviction decision, which can be delayed, within certain limits, as will be analyzed in greater depth below.

- *Does the tenancy have "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?*

Prolongation rights in the phase of notice by the landlord are not expressly provided for by the law either with regard to private or to public dwellings. This is probably due to the fact that the attention of the legislator has always concentrated on the subsequent execution phase. As will be described below, a number of temporary rules have been introduced over the years in order to suspend or delay eviction procedures above all with regard to private dwellings. In any case, as with public dwellings, regional rules generally provide the possibility for the public authority to delay the eviction within a certain term order .

- *Challenging the notice before court (or similar bodies)*
- *in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law*

Parties are always entitled to contest the grounds of the notice and, if their claims are recognized, the contract cannot be terminated. These objections are generally presented before a Court but we have already seen that, with regard to public dwellings, an internal procedure before the authority managing the dwellings is generally allowed.
Special provisions implementing this basic scheme can be found, first of all, with reference to delays in the payment of rents. Art. 55 Law no. 392/1978 grants the tenant the right to avoid termination of the contract by offering the sum due (together with interests and legal expenses) before the Court at the first hearing. In cases of evident situations of difficulty, the judge can give a term of up to 90 days for payment. This procedure can be invoked by the tenant no more than three times in four years (four times in cases in which the tenant's difficulties depend on unemployment, illness or other serious problems which started after the contract was executed).
All other exceptional measures which grant the tenant periods of grace regard the subsequent phase of the execution of the decisions: suspension of evictions, graduation of evictions and so on. For this reason they will be analyzed below.

- ***Termination for other reasons***

  - Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)

The Civil Code contains a specific provision regarding repossession of things given on rent:

> Art. 2923 – *Tenancy contracts executed by the person who was subjected to repossession have effect towards the new owner, provided that they were executed at a certain previous date before the attachment* [the procedure opening the forced execution] ... .
> *Property tenancies exceeding nine years, which were not transcribed before the attachment, have effect towards the new owner only for nine years from the beginning of the tenancy.*
> *In any case the new owner is not bound to the tenancy contract when the agreed rent is one third lower than the fair price or than the rent of the previous tenancies* [for that property].
> *If the tenancy contract does not have a certain previous date of beginning but the detention by the tenant is before the attachment, the purchaser is bound to the tenancy only for the duration established for open-ended tenancies.*
> *In case parties agreed that the tenancy contract can be discharged in case of sale, the new owner can send notice to the tenant in accordance with Art. 1603.*

This articulate provision indicates the necessary conditions in which execution proceedings regarding a landlord's dwelling can affect the position of the tenant.
The first provision is that tenancy contracts executed before the attachment (the act notified to the tenant, which sets repossession in motion) are binding also for the new purchaser of the dwelling, if they were executed on a date which is surely before the attachment. According to Art. 2704 Civ. Cod. – a date indicated in a document written or authenticated by a public notary or also indicated in a simple written document, when there are some further conditions, such as its registration, is considered 'sure'.
The second subsection expressly concerns property and introduces a stricter requirement: tenancy contracts lasting more than nine years can be fully opposed to the purchaser if they were transcribed in Public Registers before the attachment. This is due to the fact that transcription in Public Registers is expressly provided for tenancy contracts of properties lasting more than nine years: in consideration of the particular burden over the property, the legislator's aim is that potential purchasers can be easily aware of similar contracts. Therefore, logically, also in case of repossession this system of publicity becomes necessary so that the contract has effect towards the new owner. In case the contract was not transcribed or was transcribed after attachment, it has effect towards the new owner within the limit of nine years from the beginning of the contract, except in cases relating to the provisions of the third subsection[480].
The legislator has introduced a further exception in order to protect the tenant when, even if the contract does not have a certain previous date, the tenant is legitimately holding the dwelling already before attachment. In this case the solution is that the contract can be opposed for a duration which is legally established for open-ended tenancy contracts. This rule was introduced with reference to Art. 1574 Civ. Cod. which expressly refers to tenancies without an exact duration indicated by the parties. After the introduction of minimum limits of duration with Law no. 431/1998, Art. 1574 would have an absolutely marginal application, nevertheless, case law maintains that Art.

[480] Cass., 9 January 2003, no. 111, *Giustizia civile* 2004, I, 1831

2923, subs. 3 can also be used for contracts regulated by the special statutes. In this case the minimum legal terms indicated for every kind of residential tenancy contract apply[481].
A last exception has the aim of avoiding fraudulent agreements between landlords and tenants which may be detrimental for the new owner: this is not bound to a contract whose rent is more than three times lower than the 'fair price' or than the rent of a previous contract regarding the same property.
The last subsection refers to agreements to discharge the contract in case of sale of the dwelling. As we have already seen, although Art. 1603 Civ. Cod. was not abrogated by special statutes, Art. 7 Law no. 392/1978 states that clauses of discharge in cases of sale of the dwelling are null and void. It has therefore been debated whether the Civil Code provision can still have a however limited application for tenancy contracts which are subject only to the Civil Code rules.
The provisions on repossession of rented dwellings are completed by Art. Art. 560, subs. 2 Civ. Proc. Cod.. According to this provision, after attachment, the dwelling can be rented only if the judge of the execution gives authorization, otherwise the contract will not have effect and can be terminated at any time.

- Termination as a result of urban renewal or expropriation of the landlord

Expropriation for public benefit and urban renewal are normally events which do not depend on the landlord's responsibility. Therefore they can be considered as cases of objective impossibility to use the dwelling.
As already seen above, legal remedies change in the event that impossibility to use the dwelling is complete or only partial, according to the modalities agreed between the parties. In the former case, contracts can be terminated in accordance with Art. 1463 Civ. Cod. In the latter, parties may alternatively decide between a corresponding reduction of the rent due or termination, if the tenant is not interested in a partial performance (Art. 1464 Civ. Cod.).
In case of temporary impossibility, Art. 1256, subs. 2 Civ. Cod. states that the debtor cannot be held responsible for the delay. The contract can be discharged if the delay exceeds the time of the landlord's performance or of the tenant's interest.
Urban renewal does not exactly imply performance impossibility by the landlord but other impediments to use the dwelling which do not specifically affect the landlord's performance (such as impossibility in accessing the dwelling), some authors have suggested that discharge by frustration cannot be invoked.[482] In these cases it is necessary to evaluate different legal instruments, such as discharge for supervening hardship, where all the necessary requirements exist.
As far as public dwellings are concerned, it does not seem that regional statutes provide specific rules to deal with this potential problem. For this reason the general Civil Code rules should apply. It is, in any case, likely that the public authorities will find another suitable solution for grantees once they have to evacuate them from the dwellings.

[481] Trib. Torino, 27th February 2006, <www.dejure.it>; Trib. Monza, 23rd February 2000, in *Archivio delle locazioni* 2001, 272.
[482] Gabrielli & Padovini, *La locazione di immobile urbani*, 631 et seq.

- What are the rights of tenants in urban renewal? In particular: What are the rules for rehousing in case of demolition of rental dwellings? Are tenants interested parties in public decision-making on real estate in case of urban renewal?

Italian national law does not specifically provide for the rights for owners or tenants in cases of urban renewal, not even with regard to public dwellings. People's involvement in public authorities' decisions concerning these aspects may in practice occur at local level, but there is no established procedure, at least as far as national laws are concerned.
A provision in the field of expropriation for public benefit is worthy of mention however: Art. 34, subs. 4 D.P.R. 2001, no. 327 states that subjects bearing a personal (but also real) right over an expropriated dwelling, such as a tenant, are not entitled to receive indemnity directly from the State. The provision adds that the latter can claim rights over the indemnity received by the owner, however.

6.7 Enforcing tenancy contracts

Table for 6.7 – Enforcing tenancy contracts

	Main characteristic(s) of private rental	Main characteristic(s) of public rental
Eviction procedure	Two steps procedure: 1) Court ascertains and declares the lawful termination of the contract; 2) execution of the decision.	Three steps procedure: 1) Municipality orders grantee to leave the dwelling; 2) grantee may ask that a Court ascertain and declare the lawful termination of the contract; 3) execution of the decision.
Protection from eviction	1) judicial validation of non-payment of the rent; 2) delay of the effects of the eviction decision; 3) suspension of evictions; 4) graduation of evictions.	1) delay of the effects of the eviction order; 2) non-intervention of police.
Effects of bankruptcy		

- *Eviction procedure: conditions, competent courts, main procedural steps and objections*

In Italy there is no special Court to deal with tenancy law, but there are some special procedures which may apply. The choice of procedure is voluntarily made by the subject who files the proceedings.
In particular, Arts 657 et seq. Civ. Proc. Code provide some special and non-mandatory rules to use in the case of evictions, both in cases of the contract expiring and in default of regular payment. As these summary procedures can be rather rapid

and effective, they are generally preferred to the ordinary procedure for tenancy law disputes, provided for by Art. 447-*bis* Civ. Proc. Cod.

Eviction procedures may be grounded on a) the contract expiring or termination by the landlord, b) non regular payment of the rent.

a) the contract expiring or termination by the landlord. We have already seen that since the introduction of Law no. 431/1998 the termination of tenancy contracts for residential dwellings by the landlord or its expiry are allowed only in certain circumstances and within certain times expressly indicated by the law and which cannot be derogated by the parties. To summarize, at the first expiry date (which is after four years in free market tenancies and after three years in assisted tenancies) the landlord may terminate the contract solely by citing one of the grounds listed under Art. 3, subs. 1 Law no. 431/1998 and giving six months' notice otherwise the contract is renewed. At the second expiry date (which is after four years in free market tenancies, and after two years in assisted tenancies) both parties may ask to continue the contract changing the conditions or to terminate it with six months' notice. If parties do not reach an agreement, the contract is terminated. In the event that neither of the parties expresses intention with six months' notice, the contract is automatically renewed with the same conditions.

Compliance with these substantial rules is a requirement so that the landlord may file an eviction procedure.

The rules in the Civil Procedure Code regulating eviction for termination of the contract are as follows:

> *Art. 657 – The landlord ... may send notice to quit to the tenant ... for termination/expiry of the contract before the expiry date, together with a summons to appear before a judge who validates the eviction, respecting the terms set by the contract, by law and by local custom.*
>
> [The landlord] *may also send notice to quit, together with a summons to appear before a judge who validates the eviction, after the expiry of the contract, provided that, as a consequence of the contract itself or of previous actions or notices, implicit renewal is excluded.*

In other words, the Code gives the landlord two possibilities, which, combined with the above mentioned rules in Law 431/1998, are the following: the landlord may send notice to quit at least six months before the expiry date of the contract (together with a summons to appear) so that he can immediately start a judicial procedure and obtain an order to quit the dwelling. He can then use this decision against the tenant if the latter does not leave the dwelling when the contract expires. Otherwise, the landlord can send notice to quit and summons to appear only after he has already given notice according to the rules in the 1998 Law, just in case the tenant does not spontaneously leave the dwelling. The latter option is certainly the most common apart from cases in which the landlord is already sure that the tenant will not leave the dwelling after expiry.

b) The special procedures in Arts 657 et seq. can also be used in evictions in default of regular payment of the rent.

In this case the conditions to obtain eviction are indicated in the special statutes as well: Art. 5 Law no. 392/1978 states that delay in rent payment for more than 20 days or non-payment of 'additional burdens' corresponding to over two months' rent give the landlord the right to discharge the contract, unless a validation is granted under Art. 55.[483] These rules can be derogated by the parties only by providing more favorable conditions for the tenant.[484]

[483] For further details see above: Maturity (fixed payment date); consequences in case of delayed payment.
[484] Cass., 8 June 2001, no. 8003, *Giustizia Civile Massimario*, 2001, 1186.

For these cases the Civil Procedure Code states:

> *Art. 658 - The landlord may send notice to the tenant to quit with the same processes indicated in the previous article also in the event that rent is not paid in due time and ask, at the same time, for payment of the rent due.*

Although the Code provision expressly refers only to payment of 'rent', the prevailing opinion is that the special procedure for eviction of Arts 657 et seq. can be used also in cases of non-payment of 'additional burdens', coherently with the dispositions of Art. 5 Law no. 392/1978, which deals with both these forms of breach.[485]

As Arts 657 and 658 Civ. Proc. Cod. make clear, the procedure to follow is in many aspects the same in both cases and it is described in the following articles. It begins as a summary proceeding, which may rapidly grant the landlord a decision authorizing him to evict the tenant. Only in the event of opposition by the latter, does it turn into a substantially ordinary proceeding.

Some of the most significant elements are highlighted here:

- the minimum term between the notification of the writ of summons to the tenant and the hearing is 20 days, but it can be reduced to 10 days in cases of evident urgency (Art. 660, subs. 4);
- competence is demanded to the judge in the place where the dwelling is located and this rule cannot be derogated by the parties (Art. 661);
- if the tenant does not appear at the hearing or does not file any opposition, the judge shall validate the eviction. In similar cases, when the eviction is for delays in payment, the landlord shall give evidence that non-regular payment is still continuing. If the tenant has not appeared, the decision becomes executive 30 days after it has been taken (Art. 663);
- the tenant has the right to file an opposition also after the decision, giving evidence that he was not aware of the proceedings because of defects of notification, fortuitous events or *force majeure* (Art. 668);
- in the event that the tenant regularly appears at the proceedings and files opposition, the judge, upon request of the landlord, can in any case order that the tenant leaves the dwelling provided that the tenant has not given written evidence of his opposition and that there are no 'serious reasons' to the contrary (Art. 665). This injunction is only temporary (and can be subject to a deposit by the landlord) because opposition by the tenant opens the second phase of the eviction procedure in which a proceeding, in accordance with the provisions of Art. 447-*bis* Civ. Proc. Cod., shall examine the claims by the tenant and take a definitive decision (Art. 667).

Among the most important differences between the eviction procedure in cases of termination/expiry or in cases of non-payment, the possibility of validation regarding the latter case and provided by Art. 55 Law no. 392/1978 is probably the most relevant provision and will be analyzed in greater depth below in the following answer on social protection against eviction.

Evictions can be due not only to termination/expiry of the contract or non-regular payment of rents/additional burdens but also to other breaches of the contract by the tenant, such as, for example, damage or un-authorized work on the dwelling. In these cases the general principles of the Civil Code apply. This means not only the provisions of Art. 1455 according to which '*The contract cannot be discharged in case the breach of the party is of limited importance, having regard to the interest of the other party*', but also 'avoidance clauses', i.e. agreements between the parties, according to which the

[485] In this sense: Cass., 12 January 2000, no. 247, in *Foro italiano*, I, 2000, 1902; Cass., 18 April 1989, no. 1835, *ibid.*, 1995, I, 2251. On the contrary the possibility to use the procedure also for additional burdens has been excluded, for example, by Trib. Monza, 11 February 2003, in *Giurisprudenza di merito*, 2003, 1104.

breach of a particular performance by one of the party gives the other the right to discharge the contract notwithstanding the limit set by Art. 1455 Civ. Cod. These agreements are also allowed in tenancy contracts provided that they do not derogate mandatory provisions. This generally means that they cannot introduce less favorable conditions for the tenant.

In all these cases eviction shall be asked of the tenant following the procedures of Art. 447-*bis* Civ. Proc. Cod.. This is not a summary proceeding, like the one described above, but neither is it exactly ordinary civil proceedings. It mostly resembles the so called 'labor procedure', used for cases of labor law, which has shorter terms and a faster schedule. For example, proceedings are not introduced with a summons to appear to the other side but with a petition to the judge. This means that the judge shall fix the first hearing in five days, normally within 60 days from its receipt (Art. 415, subs. 3 Civ. Proc. Cod.).

Decision granting the landlord the right to evict a tenant can be not immediately enforceable. According to Art. 56 Law no. 392/1978, the judge indicates the date for the execution and this can be delayed for six months (12 in exceptional cases), with explanations taking into account the situation of the landlord and of the tenant, the reason for eviction and, in cases of termination/expiry of the contract, the time from the notice.

When the tenant does not voluntarily respect an order to leave the dwelling within the terms indicated by the judge, a particular procedure is necessary in order to give execution to the decision. This phase, specifically regulated by Arts 605-611 Civ. Proc. Cod., begins with the notification to the tenant of a notice (called 'precetto'), saying that if the tenant does not comply with the order, forced execution will be carried out. This last phase may require the intervention of the police and finishes with the delivery to the landlord of the keys to the dwelling.

The tenant can also file opposition against forced execution contesting the right of the landlord to carry out this procedure (Art. 615 Civ. Proc. Cod) or its formal regularity (Art. 617 Civ. Proc. Cod.). Obviously this does not mean that the tenant can raise objections regarding the decision which should have been previously brought before the Tribunal, the Court of Appeal or the Cassazione.

Eviction procedures for public dwellings follow a completely different set of rules that will only be summarily indicated here. Also in this case the regions are competent to decide both the requirements to evict grantees and the procedures involved in carrying out these evictions. Therefore in Italy there are 20 different regional acts dealing with these problems.

Generally speaking, the Municipalities have the power to directly order that grantees leave the dwelling. This can be for several different reasons, expressly indicated by the law, which can be generally grouped within the following categories: violations of the rules regarding the use of the dwelling, non-regular payment and original or supervening lack of the necessary requirements to receive the dwelling.

Generally the definitive order is adopted after the interested person has been given the chance to send objections or explanations. A previous judicial phase is not necessary, as the order of the municipality already represents a title empowering execution. The date to carry it out is fixed by the order of eviction but it generally respects maximum terms indicated by regional laws which can be derogated or delayed only in established circumstances.

Judicial control of the legitimacy and fairness of the order of eviction is only potential and consecutive, in the event that the grantee files opposition. Also in this case it is necessary to see whether the jurisdiction belongs to the ordinary Civil Courts or to the Administrative Courts. According to well established case law, the latter is competent in

cases of controversies concerning the administrative phase of the procedure, which includes the list of grantees, the assignation of the dwellings and so on. By contrast, controversies regarding termination or expiry of the contract concern grantee's personal rights and therefore the civil courts are competent.

- *Rules on protection ("social defences") from eviction*

The Italian legislator has always had a certain concern for the social implications of evictions and over the decades it has issued a number of different rules or, more in general, policies in order to prevent such decisions or to mitigate their impact. In any case, as these provisions are required to find a delicate balance between the opposing interests of tenants and landlords, they have always been much debated and in some cases problems of compliance with the Constitution and the ECHR have also arisen.

For many years the legislator adopted the instrument of the legal prorogation of tenancy contracts. This measure was last adopted with Law no. 392/1978 (Art. 58) which extended the duration of already extended contracts for a further four years.

At the same time, the 1978 Law, with the same purpose of preventing evictions, introduced Art. 55. This provision grants tenants, who have not regularly paid the rent, the right to avoid the discharge of the contract. At the first hearing of the eviction proceedings the tenant can offer to pay the sums due plus interests and legal expenses. If these conditions are met, the proceedings cannot lead to eviction. In cases of proven difficulties of the tenant, the judge can fix a term within 90 days for payment. This measure can be invoked by the tenant no more than three times in four years. But in case the breach is the consequence of economic difficulties of the tenant, which arose after the execution of the contract and were caused by unemployment, illness or other serious difficulties, the procedure can be used up to four times and the judge can fix the above indicated term to pay within 120 days.

This rule is still in force, finds application for the vast majority of residential dwellings and has the evident purpose of avoiding evictions when the tenant is able to continue the contract, as well as compensating for the damage incurred by the landlord for his delay in the payment.

Law no. 392/1978 introduced another provision too which is still in force and which can be classified as a form of extension of the eviction. We have already seen above that, according to Art. 56, the judge, in eviction order decisions, indicates the date for its execution. This can be delayed up to six months (12 in exceptional cases) in relation to the situation of the landlord and of the tenant, the reason for eviction and, in cases of termination/expiry of the contract, to the time from the notice.

In the meantime, after the legal prorogation of the contracts had come to an end, a different instrument was introduced by the legislator: suspension of eviction. In actual fact, this expression summarizes a variety of different temporary measures which all share the effect of suspending the execution of eviction decisions. In most cases they apply only to private dwellings, in some cases they are extended also to public dwellings. In some cases they refer only to tenants in particular conditions, or to particular areas of the country; in other cases they consider also the situation of landlords[486].

All these provisions, periodically adopted over the years, were contested before the Constitutional Court and the ECHR as they were seen to contrast with the duty to

[486] Confedilizia recently calculated that since 1978 about 30 suspension provisions with various characteristics have been adopted by the legislator.

protect the right of property and the reasonable duration of judicial procedures. The European Court has therefore started sentencing Italy several times for violation of Art. 1, Prot. 1 and Art. 6 of the Convention, ordering also the payment of damages. At the same time the Constitutional Court, despite never considering these rules unconstitutional, has always warned the legislator about the necessity to use these instruments only for exceptional situations and for a limited period of time. Landlords alone cannot be burdened with the problems of tenants in need.[487] In consideration of these influential interventions, the legislator was convinced to change at least in part the content of its provisions.

We can in particular focus on Law 8 February 2007, no. 9, which is still in force. In order to be granted a suspension, the following requirements are necessary:

- tenancy contract in a private dwelling for residential purposes;
- evictions for expiry of the contract (i.e. not for non-payment of rent);
- residence in a provincial capital municipality or in a neighboring municipality with more than 10,000 inhabitants or in municipality with 'high housing problems'[488];
- global family income lower than 27,000 Euro;
- presence in the family of a person over-65, or of a terminally ill person or of a person with handicap over-66% or of non-independent children (from the fiscal standpoint);
- lack of another suitable dwelling for the family in the Region.

Although these requirements have limited the number of relevant cases, the legitimacy of these suspensions remains doubtful as they have practically become chronic. The original suspension, lasting eight months, has since then always been prorogated, generally year by year, allegedly waiting for the realization of the Housing Plan adopted by the Government in 2008 but which has so far not really emerged. Between the end of 2013 and the beginning of 2014 the suspension was further prorogated until 30th June and then 31st December 2014[489].

'Graduation of evictions' is another similar measure, which can apply when evictions require the intervention of the police, because the tenant does not want to leave the dwelling, not even after the execution of the order has begun. The intervention of the police was for many years decided by the 'Prefetti' (public officials representing the government in every province of the country), who had the power to give priority to more urgent evictions and to delay the others. In this way, though formally dealing with problems of public order, an indirect form of protection of tenants was pursued too. The lengthy procedures and the fact that they were decided by public officials outside legal and judicial control led to further convictions by the European Court for violation of Art. 1, Prot. 1 and Art. 6 of the Convention.

The adoption of Law no. 431/1998 was the occasion to act in this field too. The role of the Prefetti was limited, establishing that eviction decisions already grant the right to receive police aid during execution if necessary. Also the possibility to delay the date of the execution fixed by the judge has been expressly regulated by the law to within six months, in cases of justified request by the tenant, or within 18 months, in cases of particular situations of difficulty of the tenant (Art. 6, subs. 4 and 5)[490].

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[487] We can cite Const. Court, 28 May 2004, n. 155, *Giurisprudenza italiana*, 2005, 1804; Const. Court, 7 October 2003, no. 310, *Giustizia civile*, 2003, I, 2319.

[488] These latter Municipalities are indicated by the decision of a specific commission: CIPE, Resolution 13 November 2003, no. 87/2003.

[489] See Art. 4, subs. 8 Decree Law 30 December 2013, no. 150, converted into Law 27th February 2014, no. 15.

[490] The situations of difficulty indicated by Art. 6, subs. 5 Law no. 392/1978 are the following: the tenant is over-65, has five or more dependent children, is unemployed and registered on the 'list of mobility', receives an indemnity for unemployment or as an integration to his income, is formally the assignee of a public

The same act has ruled that during the period of suspension of eviction tenants shall pay an indemnity, corresponding to the rent, increased by 20% (Art. 6, subs. 6). The landlord cannot require further damage but this sum is automatically recognized by the law without the need for a claim. If tenants are more than 20 days late paying this sum, suspension of eviction is revoked (Art. 1, subs. 5 Law no. 9/2007).[491] The Constitutional Court has finally ruled that this limitation of the indemnity can apply only for the periods of suspension of eviction established by the law or by the judge and not for other possible delays.[492]

In consideration of these measures, over recent years the timeframes for police intervention have become less uncertain and new action before the ECHR has practically stopped too.

Over recent years, as a consequence of the crisis, the number of evictions has constantly increased. For this reason also, debates about measures to protect tenants have come to the forefront once more. Law 28th October 2013, no. 124 introduced policies to help families under eviction, and, with specific regard to the so called 'not guilty default', says that:

> Art. 6, subs. 5 – *Prefetture-local agencies of the Government shall adopt measures for the graduation of police interventions in cases of eviction procedures.*

This formulation would appear once again to transfer to the Prefetti a certain power to decide police intervention in such cases in order to balance the interests of tenants and landlords. On this basis, some Prefetti, for example, have decided suspensions of eviction in the weeks after Christmas.

The measures to protect tenants from eviction also include the policies adopted by public authorities through public dwellings, even though they do not interfere with the eviction procedure itself. In the regional rules regulating the management of public dwellings, rules in favor of people under eviction are often provided. For example, these people receive additional selection credits in consequence of the fact that they are under eviction, they can receive a public dwelling even though they have not made a relevant application or in derogation of some of the necessary requirements.

Attention to such policies has increased over the years of the crisis because they are useful in dealing with new emergencies involving people who previously did not need to look for a public dwelling. Clearly these rules leave great discretion to public authorities to decide who can benefit from these favorable provisions. In a situation where there are so many people potentially in need and available dwellings so few, the exercise of this power is particularly delicate. Also for this reason in some cases people under eviction for non-payment of rent have been excluded by the provisions cited.

The above mentioned rules protecting tenants under eviction apply to public dwellings only in some cases when this was expressly indicated. For example, the suspension of evictions in Law no. 9/2007 does not refer to public dwellings. This is due to the fact that the statute deals with eviction for termination/expiry of contracts, which is unusual for public tenancies as these contracts generally terminate as a result of loss of the legal requirements by the grantee or for breach of contract.

Regional rules generally state that orders to leave the dwelling can become enforceable after a certain time, which can be decided by the local authority within the

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dwelling, of a dwelling from an insurance or social security entity or of a cooperative, is the owner of a dwelling under construction or of a dwelling from which he is to be evicted.

[491] The tenant can also avoid these consequences in this case by offering the sum before a judge at the conditions provided by Art. 55 Law no. 392/1978, for which see above.

[492] Const. Court, 9 November 2000, no. 482, in *Foro italiano*, 2001, I, 417

maximum limit set by the law (generally six months). After that, regional rules generally state that further graduations and delays cannot be granted.
The purpose of these rules is to limit discretion in the execution of eviction procedures when public dwellings are illicitly occupied. This is due to the fact that in Italy there are a large number of dwellings which continue to be illegally occupied year after year. In conclusion, although rules regarding eviction from public dwelling seem to provide fewer possibilities of 'social defense' for tenants, actually their practical application is subject to an unavoidably wide discretion by public authorities which increases the possibility of extending eviction timeframes. The reasons for this are varied and it is difficult to give a global evaluation of the problem in the absence of national statistics and surveys on this problem. In some cases there are considerations of public order and of convenience, for example where it is difficult to provide another suitable solution and in other cases, there is only a non-efficient organization, which wastes time. In the most serious cases, delays are the consequence of corruption and criminality.

- *May rules on the bankruptcy of tenant-consumers influence the enforcement of contracts?*

As we have already seen above, in cases of bankruptcy, the legislator protects the tenant's right to terminate a contract which may have become too burdensome for him. By contrast, no special rules limiting the landlord's right to evict the other side in cases of bankruptcy are provided for by Italian law.
It would appear that provisions introducing special protection for similar cases cannot be found even in regional laws regarding public dwellings.

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 our field ("tenancy law in action") is taken into account:

- *What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?*

In Italy there are a certain number of landlord and tenant associations which have national relevance. From the legal point of view, they are generally associations, according to the definition by the Civil Code: organizations composed of a group of people whose purposes are non-financial and non-profit, which shall be expressed in detail in their constituting acts and statutes. Associations can both be recognized as juridical persons through a particular administrative procedure (Arts 14 et seq. Civ. Cod.) or otherwise (Arts 36 et seq. Civ. Cod.). The choice implies some differences in discipline but, as the right of free association is expressly recognized by the Constitution (Art. 18), these differences are gradually diminishing. In Italy political parties and trade unions have always been 'non-recognized' associations as well.
These associations are entitled to take action in order to protect the interests of the subjects that they represent as a category, provided that the interest in such action is common to the whole category and not only to a part of it. In the latter case, as has

been expressed in some decisions by the Council of State, the Italian supreme Court for administrative proceedings, there would be a potential conflict of interest among associates.[493]

One of the most important roles for these associations is nowadays recognized by Law no. 431/1998, which has introduced the right for the parties to opt for free market tenancies or for assisted tenancies with legally fixed rents.

Art. 4 provides that the Ministry for Public Works (today Ministry for Infrastructure) meets the most representative associations of landlords and tenants at national level (called 'national convention') in order to approve a national agreement establishing the general criteria to follow in order to fix these rents. This agreement comes into force through a ministerial decree and shall be renewed after three years. The law originally provided a second step in which the representative associations were to meet at local level in order to approve model-contracts which applied the general criteria adopted by the national convention for each municipality.

In actual fact, this procedure has never been used as the introduction of Art. 4-*bis* Law no. 431/1998 in 2002 gave the national convention the task of adopting the model-contracts valid in the whole country for assisted tenancies, the so called 'temporary contracts'[494] and contracts executed by University students. The agreement was executed by ten associations in September 2002 and adopted through Inter-ministerial Decree 30th December 2002, no. 10774. Since then, it has not changed.

Therefore the role of representative associations at local level is now more limited. Art. 2, subs. 3 says that these associations shall fix rental amounts for each municipality, through a further agreement in accordance with national agreements. In particular, in contracts executed by University students, Art. 5, subs. 3 states that students associations, University entities which provide students with grants and other non-profit associations can also take part in these agreements.

In addition local associations may decide some aspects that are expressly left to local decisions in the national model, such as rent increases.

With regard to contracts with free rents, a rather limited role is expressly granted to associations of tenants and landlords. The law states that parties may be assisted by these associations during their negotiations or for contract renewals.

In addition to these legally established tasks, these associations play a lobbying role at local and national level regarding the interests of their associates in several ways such as meetings, demonstrations, interviews and so on.

Another widespread role of these associations regards offering assistance, through local offices, to landlords or tenants with regard to aspects of negotiation, execution, registration and performance of tenancy contracts.

- *What is the role of standard contracts prepared by association or other actors?*

With regard to free market tenancies, in Italy it is possible to find several different standard contracts prepared by associations of landlords and tenants, Chambers of Commerce, legal experts and so on. These are freely accessible, for example, on web-sites as well as on sale.

[493] Cons. Stato, 7 September 2007, no. 4692, *Foro amm. - C.d.S.*, 2007, 2471. In accordance with this principle, for example, the entitlement to take legal proceedings against a municipal rule fixing the charges for the revision of heating systems has been recognized for SUNIA (trade union of tenants): Cons. Stato, 15 October 2003, no. 6317, *Foro amm. – C.d.S.*, 2003, 2977 and 3805.

[494] This expression refers to short-term residential contracts: see above.

There is no legally recognized model which takes priority over the others and therefore parties, though normally landlords above all, are free to choose the model which best fits their requirements.
Despite this, in practice their role is certainly of a certain importance, as most parties *de facto* conform their will to the clauses they find in these models. Therefore in most cases they play a determinant role in the application of some uncertain provisions of tenancy law.
With regard to 'assisted tenancies', the situation is different because Law no. 431/1998, as anticipated in the previous answer, gave the national convention of the most representative association of tenants and landlords the duty to adopt three national model contracts: for assisted tenancies', 'temporary tenancies' and 'University students tenancies'[495].
These models were adopted through Intermin. Decree no. 10774/2002 and are compulsory where parties execute one of these kinds of contract. In particular, these models contain indications on methods on rent payment and other expenses, the possibility or otherwise of rent increases, payment of additional burdens, delivery of the dwelling, deposits and so on.

- *How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?*

Disputes regarding tenancy law are rather common and copious in Italy. For this reason alternative forms of solution to such controversies have been attempted.
Mediation was first introduced in Italy in 2010 (in force since March 2011) as a key instrument for the reform of the civil procedure in order to reduce the amount of judicial disputes (Leg. Decree, 4th March 2010, no. 28). Since it was introduced this instrument has been considered compulsory also for disputes regarding tenancy law. Mediation consists of an attempt to solve the controversy before a mediator; this procedure shall be necessarily attempted before resorting to Court. This does not imply that parties shall reach an agreement and not even that mediator can take a binding decision without both parties' consent.
In any case, in 2012 the Constitutional Court declared such a provision unconstitutional because the Government exceeded the delegation received from the Parliament on this matter.[496] As a consequence the mediation became voluntary.
Since June 2013, after correction by the government, mediation has become compulsory again for some disputes and tenancy law is still included in these. This duty will be in force for the next four years and a mid-term survey of its results will be carried out in order to assess its usefulness.
For these reasons it is still too early for statistics on the impact mediation is having on tenancy law disputes.

[495] For their definition, see above.
[496] Const. Court., 6 December 2012, no. 272.

- *Do procedures work well and without unreasonable delays? What is the average length of procedures? Are there peculiarities for the execution of tenancy law judgments (e.g. suspensions of, or delays for, eviction)?*

Since 1990, with the introduction of Art. 447-*bis* Civ. Proc. Code, a quicker procedure, which in part resembles the so called 'labor procedure', has been introduced for all disputes regarding tenancies of 'urban dwellings'. In practice this procedure applies to all residential dwellings including non 'urban' ones.[497]

In addition to this, Arts 657 et seq. Civ. Proc. Code have provided further special rules, which can be used in alternative to the procedure above in cases of notice to quit for termination/expiry of contracts or for non-payment of rent.

In consideration of these reforms, we can be said that tenancy proceedings, in comparison with the global situation of civil proceedings in Italy, are more rapid. In any case it is difficult to indicate an average length, as procedures can vary significantly in relation to a number of different factors. For example, in cases of notice to quit according to Arts 657 et seq., tenants may not appear before the Court, may appear and offer payment or may appear and file opposition. In addition there are important differences also among the various courts of the country.

For these reasons it can be said that the length of a dispute can be in the range of a few months, in cases of notice to quit, when there are no particular claims by the tenant, while, in cases of more complicated disputes, timeframes are closer to the length of an ordinary proceedings and can be up to a couple of years.

These figures refer to a first instance decision. For a definitive decision, two further degrees of adjudication can be necessary, in the event of appeal against the decision by one of the parties. In this case, in the absence of specific figures regarding tenancy law disputes, it can be said that, according to the latest OECD data, civil proceedings in Italy are particularly lengthy and on average last eight years.[498]

According to Art. 282 Civ. Proc. Cod., first instance decisions can be immediately executed, even if temporarily. In any case, as we have already seen above, in cases of eviction judges can delay the execution by some months in cases of particular necessity (Art. 56, subs. 1 Law no. 392/1978 and Art. 6, subs. 4 and 5 Law no. 431/1998). In addition, as a general rule, parties may ask the judge of the appeal that the execution of the first instance decision be suspended 'for serious and proven reasons' (Art. 283 Civ. Proc. Cod.) and, when the decision is before the Court of Appeal, 'in cases of serious and irreparable damages' (Art. 373 Civ. Proc. Cod.).

After the decision, the execution phase, specifically in eviction cases, can be lengthy and troublesome. We have already said that since the 1980's evictions have been suspended for certain categories of people considered in need, through temporary provisions which have, until now, been periodically renewed, even though the legislator, after the convictions received by the ECHR and the advice given by the Constitutional Court, has gradually limited the extent of these provisions.[499]

A further aspect which may affect the length of the execution is represented by the so called 'graduation of evictions'. This expression indicates the right to limit or delay the intervention of police which is necessary when the tenant refuses to voluntarily leave the dwelling.

[497] Trisorio Liuzzi, 'Tutela giurisdizionale delle locazioni', 2005, 50 s.
[498] OECD (2013), "Giustizia civile: come promuovere l'efficienza?", OECD Economics Department Policy Notes, No. 18 June 2013, 2 et seq.
[499] For further details about suspension of evictions policies, see above.

Public officials called 'Prefetti', who represent the Government in every province of the country, are in charge of managing the police. Between the 80's and 90's, Prefetti were granted the power to decide, according to principles of priority, which evictions should be carried out immediately and which to delay. As these administrative procedures affected the application of judicial decisions, their legitimacy was often contested. For example in 1999 the ECHR found Italy responsible for violation of the right of property (Art. 1 Prot. 1 of the Convention) because as a combined effect of the rules on suspension and graduation of evictions, the execution of a decision was delayed from 1988 to 1996.[500] More generally the Court found that evictions which were not regarded as priority were constantly delayed.

The legislator began to change this system with Law no. 431/1998, limiting the role of the Prefetti. The eviction decision already grants the right to receive police aid during execution if necessary. Also possibility of delays in the date of the execution fixed by the judge have been expressly indicated by the law: within 6 months, in cases of justified requests by the tenant, or within 18 months, in cases of particular situations of difficulty of the tenant indicated by the provision (Art. 6, subs. 4 and 5). Despite this, in 2004 the Committee of Ministers of the Council of Europe found that violations were still frequent as a result 'of legislation suspending or staggering enforcement or simply of the applicants' inability to obtain assistance from the police'.[501] Therefore the Committee, through an Interim Resolution, encouraged the Italian authorities to adopt alternative more effective measures.

In 2007 a new Interim Resolution ascertained that improvements in the situation had taken place due to a range of factors: a general increase in the number of evictions carried out (+46%), while the number of corresponding decisions was decreasing (-52%), a lack of new cases before the ECHR and a number of innovations regarding indemnity for non-return of the dwelling.

Under this last point, Art. 1591 civ. Cod. states that the tenant shall continue to pay the rent as well as compensation for further damage until he leaves the dwelling. Since 1989 the legislator limited the amount of this compensation to 20% of the rent, but in cases of suspension of the eviction, this is automatically granted to the landlord without the need for any specific evidence or claim. In 2007 it was added that in cases in which tenant delays payment for more than 20 days, suspension of eviction is revoked (Art. 1, subs. 5 Law no. 9/2007).[502] Moreover, the Constitutional Court ruled that the limitation of the indemnity can be applied only for the periods of suspension of eviction established by the law or by the judge and not in other cases, such as when eviction is not carried out because the police simply does not intervene.[503]

Finally, a 2004 decision by the Appeals Court is worthy of mention as it clarified the boundaries beyond which the state is responsible to landlords for the non-intervention of the police in cases of evictions. Public authorities shall give evidence of the impossibility of intervention in specific cases and generic reference to other priorities and to lack of personnel cannot be considered sufficient. In order to decide on responsibility and damage, the judge shall then have regard to indications by the police

[500] ECHR, 28 July 1999, no. 22774, www.jusexplorer.it>.

[501] In particular, from 1997 to 2004 Convention bodies found 140 violations by Italy for these reasons and other 160 similar cases were amicably settled: see Council of Europe, Committee of Ministers, Interim Resolution Res DH (2004) 72.

[502] The tenant can also avoid these consequences by offering the sum before a judge at the conditions provided by Art. 55 Law no. 392/1978.

[503] Const. Court, 9 November 2000, no. 482, *Foro italiano*, 2001, I, 417.

of alternative eviction dates, to the number of requests for intervention by landlords refused and the reasons for refusal.[504]

Despite the fact that these legislative and judicial initiatives have certainly greatly limited unreasonable delays in the execution of evictions or, at least, introduced some possibilities for landlords for compensation, graduation of eviction or no prompt assistance by the police is still common.

In 2007, the provisions of Law no. 9, aimed at tackling housing problems, included an the legislator introducing the possibility for every Municipality to create commissions in charge of graduating evictions (Art. 3, subs. 2). In 2008 this provision was in any case declared unconstitutional because it violated regional competences in the field of social policy.[505]

More recently the attention towards this problem has increased once again as a consequence of the crisis, which is affecting tenants' ability to regularly pay rents. Law 28 October 2013, no. 124, regarding policies to help families under evictions, in particular in cases of so called 'not guilty default', introduced a provision which states that 'Prefetture-local agencies of the Government shall adopt measures for the graduation of police interventions in case of evictions procedures' (see Art. 6, subs. 5 Decree Law 31st August 2013, no. 102, after the conversion into Law). On this basis, some Prefetti, for example, decided on suspensions of eviction during the Christmas weeks.

It is too early to forecast the impact of these policies at national level over the coming months. Certainly graduation procedures are still considered by some political forces and associations of tenants as a legitimate and unavoidable instrument to deal with the housing problems of people who risk losing their dwellings. In any case, widespread application of these policies risks leading once again to proceedings both at national and European level against the Italian Public Administration if the limits indicated by the ECHR and the Cassazione are not respected.

- *Are there problems of fairness and justice? Are there problems of access to courts especially for tenants? What is the situation concerning legal fees, legal aid and insurance against legal costs?*

When a subject wants to take civil or administrative action, he shall pay a fee to the State called 'contributo unificato'. Its amount is legally fixed in consideration of the subject of the controversy and of its value.

With regard to tenancy law disputes, it is worth distinguishing two different situations:

a) in order to obtain an eviction against the tenant, both in cases of contract expiry and in regular payment defaults, the amount of the normal fee for an ordinary civil proceeding is reduced by 50%;

b) by contrast for all the other disputes regarding tenancy law, nowadays the normal fee is implemented, while before 2010 these disputes were exempted from the 'contributo unificato'. An example: for the first degree of adjudication, this fee can vary from 37 Euro (for disputes worth up to 1,100 Euro) to 1,466 Euro (for disputes worth over 520,000 Euro).

If one of the parties does not voluntarily respect the decision, the other side can use another procedure to obtain forced execution. In this case the payment of another legal fee is necessary.

[504] Cass., 26 February 2004, no. 3873, *Giustizia Civile*, 2004, I, 1457.
[505] Const. Court, 23 May 2008, no. 166, *Foro amministrativo – Consiglio di Stato*, 2008, I, 1376

We have then to consider costs for legal assistance. Only before the Justice of Peace, which is the lowest level of adjudication, legal assistance is not compulsory, provided that the dispute is worth less than 1,100 Euro (Art. 82, subs. 1 Civ. Proc. Cod.).
All these expenses can certainly be a problem which limits access to justice for certain categories of people. At the end of the trial the party found guilty generally pays the expenses also for the other side. But this cannot always solve all the problems, as each party has in any case to anticipate his own expenses and in addition it is frequent that the payment of expenses is left in whole or in part to both parties.
For this reason associations of tenants and landlords sometimes offer informal assistance for legal matters. In other cases these associations execute agreements with lawyers so that they provide associates with assistance at discounted rates.

- *How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)*

Despite the presence of a range of legal regimes for tenancy law still in force, in general terms, as has already been described in the pages above in more detail, it can be said that in Italy there is not a high level of legal uncertainty. However some provisions still provoke debates, both among scholars and in the Courts.
Art. 13, subs. 4 Law no. 431/1998, which considers null and void clauses imposing the higher rents on tenants than those agreed is worthy of mention. The unclear formulation of the provision may create some difficulties in understanding the extent to which clauses which, for example, exclude the payment of interest on the deposit or which assign some reparations to the tenant, are licit. Similar problems have been created by the abrogation of Art. 79 of the 1978 Law, which expressly considered null and void any clause which conflicted with the rules of the statute. The question is to what extent the prohibitions still in force in other parts of the statute can be considered mandatory or still protected by an implicit nullity.

- *Are there "swindler problems" on the rental market (e.g. flats fraudulently advertised on the internet as rental offers by swindlers to whom the flats do not belong)?*

Fraud is surely a potential problem of which people interested in renting a dwelling should be well aware. It is, however, difficult to give an idea of how often these problems occur in the absence of available statistics.
Associations protecting tenants and in general consumers refer to fraud connected to rented accommodation and give advice on how to avoid them.
Surely people should be very cautious in all the cases in which the presumptive landlord declares he is not able personally to meet the other side or to show the dwelling but at the same time asks for a down payment. Also rents well below the average can be symptom of a fraud or of problems affecting the dwelling. Therefore potential tenants should take great care in similar cases before anticipating money or executing contracts.
Case law includes some cases of fraud in connection with tenancy contracts. Only one case regards the delivery of money to a person who pretended to be owner of rented

flats.[506] Another case concerns money received by a public employee who pretended he could provide a public dwelling to rent at a discounted price[507].

- *Are the areas of "non-enforcement" of tenancy law (such as legal provisions having become obsolete in practice)?*

Under this aspect, it is, above all, evident that some important provisions in the Civil Code, though still in force, have in practice an extremely limited field of application, as they are derogated by the mandatory rules in the special statutes.[508]
In particular the following rules are worthy of mention:
a) The non-necessity of written forms for contracts lasting less than 9 years. Nowadays in cases of rented residential dwellings the written form is always necessary, otherwise the contract is null and void.
b) Similarly, Art. 1574 Civ. Cod., regarding the minimum duration of tenancy contracts, is almost always substituted by the mandatory provisions introduced with Law no. 431/1998. At the same time, also, the rules regarding termination and renewal of the contract in the Civil Code are, at least partially, non-enforceable as substituted by the provisions in the special statute. For example, according to the latter, the contract, even if of limited duration, is automatically renewed with the same conditions in the absence of notice by one of the parties 6 months before its agreed termination. This would not be possible for the Civil Code.
c) As for the right to agree that the rental contract is terminated in case of sale of the dwelling, provided by Art. 1603 Civ. Cod., such agreements were considered null and void by Law no. 392/1978, but nowadays the possibility to use them for tenancies where, according to Law no. 431/1998, only Civil Code rules find application is discussed. In any case their application is absolutely marginal.
d) Also with regard to subletting, while Art. 1594 Civ. Cod. grants the tenant the right to use this, except in case of agreement to the contrary between the parties, Art. 2 Law no. 392/1978 says the opposite, at least with regard to total subletting of the dwelling. The former provision is therefore almost never used in practice for residential dwellings.

- *What are the 10-20 most serious problems in tenancy law and its enforcement?*

The most important problems in tenancy law include:

- rent affordability: especially for young people and families who have been most seriously affected by the crisis. This is probably the most crucial problem in these years. We have seen above that rents have not decreased as much as the average income over these years. The problem does not affect the country in a uniform way. It is particularly evident, with some dramatic cases, in the biggest Italian cities, while it tends to disappear in the smaller towns and in the country. This situation is one of the main reasons for the housing policies which have been developed in these years, even though with still insufficient results.

[506] GIP Torino, 10 May 2013, no. 923, Red. Giuffrè, 2013
[507] Cass., 20 April 2011, no. 20039, Cass. Pen., 2011
[508] For further details about the cases of residential tenancies where only Civil Code rules apply, see above.

- tax evasion: we have already seen above how seriously the black market affects the Italian rental market, probably representing about 20% of the whole sector. We have also seen that these figures do not consider the situation of students who formally live with their parents but actually attend college in other towns, in most cases living in rented accommodation. We have to consider that students and immigrants are considered the categories for whom the problem of the black market is most critical. The expression 'black market' in this context referred to non-registered contracts, which means that taxes are not paid at all on the corresponding income. In a wider concept of 'black market' we can also include registered contracts for which not all income is declared, or free loans, which are registered, but which conceal tenancies for reward.
The law has introduced several instruments in order to combat this widespread phenomenon, providing both sanctions and, more recently, fiscal incentives, such as the 'cedolare secca'. We have to consider that while since the introduction of Art. 1, subs. 346 Law no. 311/04 the lack of registration affected the validity of the contract, since 2011 the legislator has introduced an automatic validation of unregistered agreements, with mandatory and punitive rules for the landlords, once the contract is registered, apart from cases in which the tenant turned out to be the only responsible party for the non-registration of the contract. These provisions are inspired by the principle of the 'contrast of interests' between tenants and landlords. The former are granted discounted rents and other favorable conditions by the law if they declare that the contract is not registered.
With the same purpose of combating the 'black market', Law 27 December 2013 no. 147 introduced a provision (Art. 1, subs. 50) according to which from the beginning of 2014, the payment of rents for residential dwellings can no longer be made with cash but only through wire transfer or bank check. In actual fact, as we have already explained, a Ministerial Circular of February 2014 explained that this provision does not extend to the limits to the use of cash already indicated by the 2007 Anti-Laundering Act (Art. 49), which means that, as previously, cash can be still used for payments below 1,000 Euro.[509] This rule is applicable also for temporary contracts, i.e. students and holiday tenancies but not to public dwellings.
Despite these efforts, which are certainly producing some positive results, and the particular concern in public opinion for tax evasion in a situation of economic crisis, much has still to be done in order to combat the black market.[510]

- illegal occupation of public dwellings: the situation of illegality may be due to non-payment of social rents, detention of the dwelling by the person originally entitled also when the necessary requirements are no longer present, sub tenancy to third parties by people to whom the dwelling is assigned, occupation by people who are not entitled.
These situations are particularly endemic in certain areas of the country and they are some of the reasons for the scarcity of resources for public companies which offer and manage public dwellings. The accumulation of arrears represents a heavy burden for them and when, as at the moment, public institutions cannot sufficiently compensate these losses, the sale of part of the property is often the solution adopted.
Besides, the problem is not being sufficiently counteracted because this would require several evictions with social implications and attention from public opinion that political

[509] For further details about these rules, see above.
[510] For a rather negative evaluation of the results of these measures at the beginning of 2013, see CGIA Mestre, 'Quasi un milione di affitti in nero'. The article also quotes unofficial data from tenants' associations, according to which in 2011 and 2012 only about 3,000 'black' contracts were registered after they were reported by the tenants.

forces often prefer to avoid. In a number of cases, illegally occupied dwellings do not have the minimum requirements for renting out. In the absence of sufficient funds to renovate these dwellings, which would therefore remain empty, their occupation by people who do not have another place to live in, is sometimes seen as a solution which it is best not to counteract too firmly.

- evictions: this problem is crucial because it often sets, on the one side, families of tenants who have no other suitable place to live against, on the other side, families of landlords which bear all the taxes and expenses of a dwelling without receiving any income. Over the years of the crisis the number of evictions has drastically increased, especially in cases of non-payment of rents, creating a situation of emergency and great public concern.
In order to deal with such problems one of the solutions adopted by the government since the 1980s and always periodically renewed is represented by the mere suspension of evictions in particular cases. This solution is a problem in itself: even though the penalties given for many years by the European Court of Human Rights to Italy for these measures seem to have been interrupted, thanks to some correctives, there is increasing disillusionment with provisions which, according also to the Constitutional Court, can only be temporary and which the government has been reiterating for over 30 years.
We have seen also that 'graduation of evictions' raises problems of no small importance, as it lies on the same narrow tightrope between protection of the right to housing, on one side, and the duty to respect private property and to execute judicial decisions, on the other[511].

- *What kind of tenancy-related issues are currently debated in public and/or in politics?*

The above mentioned problems connected to tenancy law are all present, although to varying extents, in the current public and political debate.

- house taxation: this is certainly one of the topics for which there is most concern in Italy in these months. Reforms increasing the level of taxation on houses have been adopted since 2011 in order to tackle state budget problems, which have become more onerous since the crisis. House taxation has generated several heated political debates as opposite positions face each other. This situation has led to subsequent changes in legislation, including recently, but further reforms are expected for 2014. For this reason at the moment it is difficult to evaluate the final effects of these policies. The common impression is in any case that levels of taxation, especially on 'second homes', will remain high, and in some cases will be increased. It is obvious that a heavy burden for home-owners will also affect the rental market on both demand and supply sides.

- 'black market', considered as any non-declaration or unfair declaration of rent income, and the policies adopted to counteract it are partially connected to the previous topic, as governments rely on combating huge fiscal evasion, obviously not only in the housing fields, as a mean of reducing or at least not increasing fiscal pressure. In any case, although during last years these policies have achieved more positive results, they cannot be regarded as decisive yet.

[511] See above.

- house affordability, the policies adopted under this topic include both funds for housing loans and funds for payment of rents.

Over these last months the government has particularly focused its attention on incentives to the home loans market, considering these as a key measure in dealing with housing problems and, more in general, with the economic crisis.

In particular, Law 28 October 2013, no. 124 (which converted Decree Law 31st August 2013, no. 102) introduced the possibility of huge loans from Cassa Depositi e Prestiti (or CDP: a stock corporation owned for 80% by the Minister of Economy, which manages the Italian postal savings) to the banks (the global amount should be in the range of 2 billion Euro) so that the latter can offer mortgage loans for residential dwellings at favorable conditions and to particular categories of households. The second provision is the possibility that CDP purchases from banks can cover bonds or other instruments linked to mortgage loans on residential dwelling (the amount for this measure should be in the range of 3 billion Euro). Further provisions concern funds helping families to sustain or to receive home loans[512].

- energy classification regulations – these are worthy of mention because the adoption of the last Directive regarding this matter (2010/31/UE) was quite complicated in consideration of initial delays and then of different choices made by the legislator over these months. A certain debate has therefore arisen about the impact of these new provisions on tenancy contracts. In particular, although the last intervention in this field at the end of 2013 limited the layered duties incumbent on the parties and the effects of their violation on the contract, the matter is still at the center of attention, because in the coming months these provisions shall be definitely converted into law, and on this occasion further changes may occur[513].

7. EFFECTS OF EU LAW AND POLICIES ON NATIONAL TENANCY POLICIES AND LAW

7.1 EU policies and legislation affecting national housing policies

7.2 EU policies and legislation affecting national tenancy laws

7.1 and 7.2 are supposed to include:

- *EU social policy against poverty and social exclusion*
- *consumer law and policy*
- *competition and state aid law*
- *tax law*
- *energy saving rules*
- *private international law including international procedural law*

[512] For further details see above.
[513] For further details regarding the rules on energy classification see above.

- *anti-discrimination legislation*
- *constitutional law affecting the EU and the European Convention of Human Rights*
- *harmonisation and unification of general contract law (sources such as the Common European Sales Law, the Common Framework of Reference or the Principles of European Contract Law may be considered here)*
- *fundamental freedoms*
    - *e.g. the Austrian restrictions on the purchase of secondary homes and its compatibility with the fundamental freedoms;*
    - *cases in which a licence to buy house is needed – is this compatible with the fundamental freedoms?*

To date, the impact of EU policies in Italian housing and tenancy law can be seen only in some of the fields cited.

The introduction of European State aid rules has generated much debate about the compliance of the Italian policies regarding social housing. In particular, after the decision of the Court of Justice 'Altmarkt'[514] and the Commission Decision of 28 November 2005 (2005/842/CE), it has become clear that both the building and the management of public houses in most cases did not respect the relevant thresholds not to be considered as State aids and not even the percentages of overcompensation indicated by Art. 6 of the Decision[515]. For this reason, it became necessary for these activities to be classified as 'service of general economic interest' in order to benefit from the special exemption of Whereas 16. On 22 April 2008 an Intermin. Decree has therefore provided a general definition of 'social dwelling' as housing which pursue a general economic interest and is exempted from notification[516]. This rather wide-ranging definition considers residential dwellings offered to people and families who cannot afford market prices, coming from both public and private undertakings. The definition gives priority to rental housing, but it then considers dwellings only temporarily on rent (at least eight years) and even for sale as well. The impression given is that this kind of definition substantially covered any kind of social housing policy, in the broader sense, generally adopted in our country.
The new Commission Decision of 20 December 2011 (2012/21/UE), though confirming the exemption for social housing undertakings, has introduced a stricter definition of what is to be considered 'social service of general economic interest'. Therefore it is important to verify whether all the activities included in the 2008 definition are still compliant with the new rules. It is important to highlight that in July 2013 the Conference of Regions and Autonomous Provinces focused on the importance of clarifying the implications of this new decision, also from the point of view of compensation (Art. 5) and overcompensation (Art. 6). This point might indicate doubts about the possibility that all the activities of social housing can be still exempted from notification in application of Whereas 11[517].

Energy saving is certainly one of the fields connected to housing and tenancies in which the role of European rules is most evident. We have already seen above that Leg. Decree

[514] Corte Giust., 24 luglio 2003, C-280/00, in Racc. 2003, I-7747
[515] CNEL, La definizione dell'edilizia abitativa sociale come servizio di interesse generale, 25 January 2007, 10 et seq.
[516] Interministerial Decree, 22 April 2008, in Gazz. Uff., 24 June 2008, no. 146.
[517] Conferenze Regioni e Province Autonome, Documento sulle politiche abitative, 13/066/CR08/C4, 11 July 2013.

no. 192/2005, which introduced the 'energy classification certificate', was adopted in execution of Directive 2002/91/CE on the energy performance of buildings. Over recent months Italy, with a significant delay, has dealt with the adoption of the new Directive regarding this matter (2010/31/UE). The impact of this reform on Italian law is still not completely clear as further changes were introduced at the end of 2013 through a Decree Law adopted by the Government which still needs to be converted into law.
In particular, we can highlight that the 'certificate of energy performance' of buildings substituted the previous 'certificate of energy classification', even though the exact criteria which will distinguish the new certificate shall be issued in a further Interministerial Decree (Art. 6, subs. 12 Leg. Decree no. 192/2005). Initially a particularly extensive application of Directive 2010/31/UE was provided, including duties to provide, exhibit, deliver and enclose certificates with regard to all kinds of transfer contracts and tenancy contracts related to buildings and dwellings. In addition, the duty to give written evidence in the contract of exhibition and delivery of all the relevant information and documents related to the energy classification of the building was introduced. Finally, also, the nullity of the contract without the certificate in enclosure was provided.
A similar approach has provoked several criticisms for its excessive strictness, and that is why the Government, at the end of 2013, decided to simplify the duties connected with the certificate of energy performance through Decree Law no. 145/2013.
Nowadays we can observe a difference between the duties in subsection 2 (provision, exhibition and delivery of the certificate), still regarding all kinds of contracts, and the duties in the new subsection 3. The written evidence of the above mentioned duties is required only in cases of transfers for valuable consideration or in cases of rents of 'buildings' or of 'single dwellings' subject to registration. The enclosure of the certificate to the contract is further limited and is not necessary for rents of 'single dwellings'. Finally, the sanction of nullity has been cancelled in favor of administrative fines, which vary according to the kind of contract involved.
The duty to indicate energy performance indicators for the whole building and of the single dwelling, together with the energy efficiency class in any cases of rented property or for sale in all the commercial communications, has been confirmed.
We have anyway stated that such a change of approach could be further modified, especially when the Decree Law is converted into law.

The rules on consumer law originated in European directives in Italy have been gathered in Leg. Decree no. 206/2005. Despite their important role in many fields of contract law and the express acknowledgement of their applicability in tenancy law[518], their impact in Italy under this matter would seem to have been limited to date. This is probably due, above all, to the fact that professional landlords are not common in Italy, especially with regard to residential dwellings. Therefore it is difficult to find decisions which gave application to these rules with regard to tenancy contracts.
The new Consumer Directive 2011/83/EU, whose conversion has been recently approved by the Italian Government, excludes residential tenancies from its field of application.
Also the global process of harmonization of general contract law has not had evident consequences in tenancy law thus far.

Antidiscrimination issues are certainly another field in which the impact of European rules can be recognized. At the moment of their introduction in Italy rules and decisions

[518] With regard to abusive clauses, recently: Corte Giust., 30 May 2013, no. 488, in *Guida al diritto*, 2013, 31, 94.

regarding this matter already existed. First of all, the equality principle in Art. 3 of the Constitution, which obviously has the widest application, is worthy of mention.
More specifically, Art. 44 *Testo Unico Immigrazione* (Immigration Law) refers to any form of discrimination in which foreign people may incur: discrimination based on race, ethnic group, language, nation, geographic origin or religion[519]. Even though nobody doubts that such a provision should also apply to access to housing, it was only with Art. 3 Leg. Decree 9th July 2003, no. 215 (in execution of Directive 2000/43/CE on the principle of equal treatment between persons irrespective of racial or ethnic origin) that an express reference to access to housing was provided[520]. It is therefore evident that in two recent decisions, which recognized discrimination towards some Roma families in access to public dwellings, both these rules were expressly mentioned[521].
Another field which is protected against possible discrimination is the family unit, as already seen above. This principle can be violated also in the case of tenancy contracts, where, for example, the landlord refuses to execute the contract because of the potential tenant's children or partner. Similarly, even if expressly based on violations of the principle of equality and the right to housing, the Italian Constitutional Court considered unconstitutional provisions regarding succession in the contract, as far as they did not take into consideration the tenant's cohabitant *more uxorio* (i.e. person living with another 'as if they were spouses')[522]. An express acknowledgement of the family unit can be found in Art. 29 Const., but nowadays it is included also among the fundamental rights of both the European Convention of Human Rights (Art. 8) and the European Charter of Fundamental Rights (Art. 9).
Another significant application of the rules provided by the European Convention of Human Rights regards the Italian rules for suspension of evictions. Since they were first introduced during the 1980s, these rules have been contested before the European Court in consideration of Art. 1, Protocol 1, dedicated to the protection of property. The Court has recognized that the State can in theory adopt provisions which suspend for a certain time the possibility of evicting the tenant (in accordance with Art. 1, subs. 2, Prot. 1) provided that this does not imply an excessive burden on the single owners. In order to avoid this effect, in contrast with the Convention, it is necessary that the State should provide sufficient guarantees. For these reasons, until 2006, Italy was frequently sentenced to pay damages and legal expenses to Italian home-owners [523]. These European decisions,

[519] Art. 1, subs. 1 Leg. Decree 25 July 1998, no. 286 (as modified by Leg. Decree 1 September 2011, no. 150: 'Quando il comportamento di un privato o della pubblica amministrazione produce una discriminazione per motivi razziali, etnici, linguistici, nazionali, di provenienza geografica o religiosi, e' possibile ricorrere all'autorità giudiziaria ordinaria per domandare la cessazione del comportamento pregiudizievole e la rimozione degli effetti della discriminazione'.
[520] Art. 3 Leg. Decree 9 July 2003, no. 215: 'Il principio di parità di trattamento senza distinzione di razza ed origine etnica si applica a tutte le persone sia nel settore pubblico che privato ed è suscettibile di tutela giurisdizionale, secondo le forme previste dall'articolo 4, con specifico riferimento alle seguenti aree: a) accesso all'occupazione e al lavoro, sia autonomo che dipendente, compresi i criteri di selezione e le condizioni di assunzione; b) occupazione e condizioni di lavoro, compresi gli avanzamenti di carriera, la retribuzione e le condizioni del licenziamento; c) accesso a tutti i tipi e livelli di orientamento e formazione professionale, perfezionamento e riqualificazione professionale, inclusi i tirocini professionali; d) affiliazione e attività nell'ambito di organizzazioni di lavoratori, di datori di lavoro o di altre organizzazioni professionali e prestazioni erogate dalle medesime organizzazioni; e) protezione sociale, inclusa la sicurezza sociale; f) assistenza sanitaria; g) prestazioni sociali; h) istruzione; i) accesso a beni e servizi, incluso l'alloggio'.
[521] Trib. Milan, 30 March 2000, in *Foro italiano*, 2000, I, 2040; Trib. Milan 20 December 2010 and Trib. Milan, 24 January 2011, *Foro italiano*, 2011, I, 583.
[522] Const. Court, 7 April 1988, no. 404, *Foro italiano*, 1988, I, 2515.
[523] The many decisions include: *Sorrentino Prota vs. Italia* – ricorso n. 40465/98 (decision 29 gennaio 2004); *Bellini vs. Italia* – ricorso n. 64258/01 (decision 29 gennaio 2004); *Fossi e Mignolli vs. Italia* – ricorso n. 48171/01 (decision 4 marzo 2004). *Mascolo vs. Italia* – ricorso n. 68792/01 (decision 16 dicembre 2004), *Lo Tufo vs. Italia* – ricorso n. 64663/01 (decision 21 aprile 2005); *Stornelli e Sacchi vs. Italia* – ricorso n.

together with the decisions by the Italian Constitutional Court[524], have surely played a decisive role with respect to the partial modification of the Italian provisions. The latter have always continued to be periodically renewed over these years, but no further sentences have been issued since 2007 against Italy by the European Court. This is probably due to the fact that some newly introduced elements have probably been considered by the Court as sufficient elements of guarantee for owners: for example, the provision of automatic indemnities for owners, the limitation of potential beneficiaries and the statements of the Constitutional Court about the necessity to limit these measures for a reasonable period of time.

A final mention will be given to private international law as, in relation to tenancy contracts with foreign elements, the European rules concerning applicable law, jurisdiction, recognition and enforcement of civil judgments certainly play a role in cases of disputes. By contrast, European tax law has a significant impact on Italian tenancy law.

68706/01 (decision 28 luglio 2005), *Federici vs. Italia* n. 2 – ricorso n. 66327/01 e 66556/01; *Frateschi vs. Italia*– ricorso n. 68008/01; *Cuccaro Granatelli vs. Italia*– ricorso n. 19830/03 (decisions 8 dicembre 2005); *Mazzei vs. Italia* – ricorso 69502/01 (decision del 6 aprile 2006).

[524] Const. Court., 28 May 2004, n. 155, in *Giurisprudenza costituzionale*, 2004, 1636; Const. Court, 7 October 2003, no. 310, *ibid.*, 2003, 5.

7.3 Table of transposition of EU legislation: Italy

DIRECTIVES	TRANSPOSITION	RELATED SUBJECT	PART QUESTIONNAIRE
CONSTRUCTION			
Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJEU 30.4.2004 No. L 134/114)	Leg. Decree 12 April 2006, n. 163, Codice dei contratti pubblici relativi a lavori, servizi e forniture (Codice degli Appalti).	It envisages a special allocation procedure for contractors when the target is the construction of social housing (art. 61).	
Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJEC 11.02.1989 No. L 40/12)	D.P.R. 21 April 1993, n. 246.	About construction products: free movement and the certificates required.	
TECHNICAL STANDARDS			
Energy efficiency			
Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJEU 14.11.2012 No. L 315/1).		Energy saving targets imposed on the State. It also deals with Public Administration buildings and others that require greater energy savings.	
Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJEU 18.06.2010 No. L153/13).	Leg. Decree 19 August 2005, n. 192, as modified by Law 3 August 2013, n. 90, by Law 27 December 2013, n. 147 and by Law 21 February 2014, n. 9.	Energy efficiency of the new and the existing buildings.	

Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJEU 18.6.2010 No. L 153/1).	Leg. Decree 28 June 2012, n. 104.	Labelling and basic information for household electric appliances' users.	
Commission Delegated Regulation (EU) Nº 874/2012 of 12 July 2012 supplementing **Directive 2010/30/EU** of the European Parliament and of the Council with regard to energy labelling of electrical lamps and luminaires (OJEU 26.9.2012 No. L 258/1).			
Commission Directive 98/11/EC of 27 January 1998 implementing Council Directive 92/75/EEC with regard to energy labelling of household lamps (OJEC 10.3.1998 No. L 71/1).	Min. Decree 10 July 2001, n. 15199.		
Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJEU 5.6.2009 No. L 140/16).	Leg. Decree 3 March 2011, n. 28.	Promotion of the use of renewable energy in buildings.	
Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (DOCE 14.8.2009 No. L 211/55).	Leg. Decree 1 June 2011, n. 93.	Basic standards for electricity sector.	
Heating, hot water and refrigeration			
Commission Delegated Regulation (EU) No. 626/2011 of 4 May 2011 supplementing **Directive 2010/30/EU** of the European Parliament and of the Council with regard to energy labelling of air conditioners (OJEU 6.7.2011 No. L 178/1).		Labelling and information to provide about air conditioners.	
Commission Delegated Regulation (EU) No. 1060/2010 of 28 September 2010 supplementing **Directive 2010/30/EU** of the European Parliament and of the Council with regard to energy labelling of household refrigerating appliances (OJEU 30.11.2010 No. L 314).		Labelling and information to provide about household refrigerating appliances.	

Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJEU 14.8.2009 No. L 211/94).	Leg. Decree 1 June 2011, n. 93.	Basic legislation about natural gas in buildings and dwellings.	
Council Directive 1982/885/CEE of 10 December 1982 amending Directive 78/170/EEC on the performance of heat generators for space heating and the production of hot water in new or existing non-industrial buildings and on the insulation of heat and domestic hot-water distribution in new non-industrial buildings (OJEC 31.12.1982 No. L 378/19).	Law 30 April 1976, n. 373 and D.P.R. 28 June 1977, n. 1052.	Legislation about heating and hot water in dwellings and buildings.	
Household appliances			
Commission Delegated Regulation (EU) No. 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household tumble driers (OJEU 9.5.2012 No. L 123/1).		Labelling and information to provide about tumble driers.	
Commission Delegated Regulation (EU) No. 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household dishwashers (OJEU 30.11.2010 No. L 314/1).		Labelling and information to provide about dishwashers.	
Commission Delegated Regulation (EU) No. 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of household washing machines (OJEU 30.10.2010 No. L314/47).		Labelling and information to provide about washing machines.	
Commission Delegated Regulation (EU) No. 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions (OJEU 30.11.2010 No. L 314/64).		Labelling and information to provide about televisions.	
Commission Directive 2003/66/EC of 3 July 2003 amending Directive 94/2/EC implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJEU 09.07.2003 No. L 170/10).	Min. Decree 21 September 2005, n. 19392.	Labelling and information to provide about household electric refrigerators and freezers.	

Commission Directive 2002/40/EC of 8 May 2002 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric ovens (OJEC 15.05.2012 No. L 128/45).	Min. Decree 2 January 2003, n. 10384.	Labelling and information to provide about household electric ovens.	
Commission Directive 96/60/EC of 19 September 1996 implementing Council Directive 92/75/EEC with regard to energy labelling of household combined washer-driers (OJEC 18.10.1996 No. L 266/1).	Min. Decree 7 October 1998, n. 1153100.	Labelling and information to provide about household combined washer-driers.	
Lifts			
European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJEC 07.09.1995 No. L 213).	D.P.R. 30 April 1999, n. 162.	Legislation about lifts.	
Boilers			
Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (OJEC 22.06.1992, No. L 167). Amended by Council Directive 93/68/EEC of 22 July 1993 (BOE 27.03.1995 N**o.** 73).	D.P.R. 15 November 1996, n. 660.	Legislation about boilers.	
Hazardous substances			
Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJEU 01.07.2011 No. 174/88).	Leg. Decree 25 July 2005, n. 151.	Legislation about restricted substances: organ pipes of tin and lead alloys.	
CONSUMERS			
Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJEU 22.11.2011 No. L 304/64).	Leg. Decree 6 September 2005, n. 206 (Codice del Consumo), as modified by Leg. Decree 21 February 2014, n. 21	Information and consumer rights. Legislation referred to procurement of services, car park. Immovables are excluded: lease of housing, but not of premises.	

Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJEU 18.12.2009 No. L 337/11).	Leg. Decree 30 June 2003, n. 196 (Codice in materia di Protezione dei Dati Personali), as modified by Leg. Decree 28 May 2012, n. 69.	Consumer protection in the procurement of communication services.	
Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJEU 01.05.2009, No. 110/30).		Collective injunctions infringements of Directives Annex I.	
Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers with regard to certain aspects of timeshare, long-term holiday products, resale and exchange contracts Text with EEA relevance (DOCE 03/02/2009 núm. L 33/10).	Leg. Decree 6 September 2005, n. 206 (Codice del Consumo), as modified by Leg. Decree 23 May 2011, n. 79.	**Timeshare contracts**	
Directive 2008/48/EC of the European parliament and of the council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (DOCE 22/05/2008 núm. L133/66).	Leg. Decree 1 September 1993, n. 385, (Testo Unico Bancario), as modified by Leg. Decree 13 August 2010, n. 141.	Credit agreements for consumers	
Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJEU 27.12.2006, No. L 376/21).	Leg. Decree 2 August 2007, n. 145.	Misleading advertising	
Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council (OJEU 01.6.2005 No. L 149/22).	Leg. Decree 6 September 2005, n. 206 (Codice del Consumo), as modified by Leg. Decree 2 August 2007, n. 146. Leg. Decree 2 August 2007, n. 145.	Unfair business-to-consumer commercial practices (Arts 18-27)	
Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (DOCE 07/07/1999 núm. L 171/12).	Leg. Decree 6 September 2005, n. 206 (Codice del Consumo).	**The sale of consumer goods and associated guarantees**	

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJEC 21.04.1993 No. L 095).	Leg. Decree 6 September 2005, n. 206 (Codice del Consumo).	Unfair terms	
HOUSING-LEASE			
Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations - Rome I (OJEU 04.07.2008 No. L 177/6).		Law applicable (art. 4.1.c and d and 11.5)	
Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (OJEC 16.01.2001 No. L 12/1).		Jurisdiction (art. 22.1)	
Commission Regulation (EC) No. 1920/2001 of 28 September 2001 laying down detailed rules for the implementation of Council Regulation (EC) No. 2494/95 as regards minimum standards for the treatment of service charges proportional to transaction values in the harmonised index of consumer prices and amending Regulation (EC) No. 2214/96 (OJEC 29.9.2001 No. L 261/46).		CPI harmonization. Art. 5 includes estate agents' services for lease transactions.	
Commission Regulation (EC) No. 1749/1999 of 23 July 1999 amending Regulation (EC) No. 2214/96, concerning the sub-indices of the harmonized indices of consumer prices (OJEC 13.8.1999 No. L 214/1).		CPI harmonization. Subscript 4: Lease, housing preservation and repair, water and other services.	
Council Regulation (EC) No. 1687/98 of 20 July 1998 amending Commission Regulation (EC) No. 1749/96 concerning the coverage of goods and services of the harmonised index of consumer prices (OJEC 31.07.1998 No. L 214/12).			
Commission Regulation (EC) No. 2214/96 of 20 November 1996 concerning harmonized indices of consumer prices: transmission and dissemination of sub indices of the HICP (OJCE 21.11.1996 No. L 296/8).			
DISCRIMINATION			
Recommendation 65/379/EEC: Commission Recommendation of 7 July 1965 to the Member States on the housing of workers and their families moving within the Community (OJEC 27.07.1965 No. L 137/27).		Discrimination on grounds of nationality. Equality in granting housing, aids, subsidies, premiums or tax advantages to workers who have moved within the EU.	

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJEU 21.12.2004 No. L 373/37).	Leg. Decree 11 April 2006, n. 198 (Codice delle Pari Opportunità), as modified by Leg. Decree 6 November 2007, n. 1960	Dscrimination on grounds of sex.	
Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJEC 19.07.2000 No. L 180/22).	Leg. Decree 9 July 2003, n. 215.	Discrimination on grounds of racial or ethnic origin.	
IMMIGRANTS OR COMMUNITY NATIONALS			
Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJEU 18.06.2009 No. L 155/17).	Leg. Decree 25 July 1998, n. 286 (Testo Unico Immigrazione), as modified by Leg. Decree 28 June 2012, n. 108.	Equality of treatment in housing	
Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJEU 30.04.2004 No. L 158/77)	Leg. Decree 6 February 2007, n. 30.	Discrimination on grounds of nationality. Free movement for european citiziens and their families.	
Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJEU 23.01.2004 No. L 16/44).	Leg. Decree 25 July 1998, n. 286 (Testo Unico Immigrazione), as modified by Leg. Decree 8 January 2007, n. 3.	Equal treatment in housing.	
Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJEU 03.10.2003, No. L 251/12).	Leg. Decree 25 July 1998, n. 286 (Testo Unico Immigrazione), as modified by Leg. Decree 8 January 2007, n. 5.	The reunification applicant shall prove to have an habitable and large enough dwelling.	
Regulation (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJEC 17.04.1964 No. L 257/2).		Equal treatment in housing and access to the housing applicants' lists.	
INVESTMENT FUNDS			

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) Nº 1095/2010 (OJEU 01.07.2011, No. L 174/1).	Leg. Decree approved by the Government on 28 February 2014.	Real estate investment funds	
ADR			
Directive 2008/52/CE of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (DOUE 24/05/2008 no. L136/3).	Leg. Decree 4 March 2010, n. 28.	Mediation	

8. TYPICAL NATIONAL CASES (WITH SHORT SOLUTIONS)

8.1 Formal Requirements of the Contract: Non-Registered Contract

The landlord executes a free loan contract with the tenant. Actually parties agree for a monthly rent of 1,200 Euro. After some months, the tenant claims for the restitution of the sums paid, assuming that, being the tenancy agreement not registered, this would be null and void.

Solution:

Art. 13 Law n. 431/1998 states that any rent agreement over the amount fixed in the written and registered tenancy contract is void. As a consequence, the question whether the registration is a requirement for the validity of the tenancy contract arises. Initially, the answer of the Cassazione was that, even if such registration does not take place, the tenancy contract cannot be considered null and void[525]: the Court reasoned that the above mentioned Art. 13 applies just in case the parties negotiate a higher rent after the execution of the tenancy agreement; in this case, the tenant would have the right to maintain the rent fixed in the written and registered contract until the expiration of the contract. Conversely, case 1) would fall under the heading 'contract simulation', and, therefore, the corresponding rules of the Civil Code would apply. In particular, if the parties originally agreed upon a rent of 1,200 Euro in a written (although not registered and concealed) contract, the tenant should pay that amount.

Actually, in this field the legislator has recently adopted some important changes in order to counteract black market and tax evasion. In particular, firstly Art. 1, subs. 346 Law n. 311/2004 expressly stated that the contract, if not regularly registered, is null and void[526]. Anyway most scholars retain that it would be more correct to consider this invalidity as a form of temporary inefficacy of the contract, until the contract is non-registered.[527]

Later, in 2011, Law n. 23 (Art. 3) established that non-registered contracts, once registered, are automatically validated with the application of some imperative and punitive rules regarding both the duration and the amount of rents. Art. 3, subs. 9 expressly extends this regime to the case, described above, of a free loan simulating a tenancy for reward. We have anyway to consider that, according to a recent decision, this regime can find application only to contracts executed after that the rule has come into force (7 April 2011)[528].

Therefore, in case the contract was executed before this date, it will be simply without effects, as far as it is registered; in case the contract was executed after the date, the legal rent finds automatic application since the moment of the registration. As for the restitution of the sums that the tenant could have paid before the contract is registered, we have to consider the limit indicated by the Cassazione, according to which, even in case of invalidity of the contract, the already paid rent cannot be returned when the tenant has enjoyed the use of the dwelling, otherwise this would become an unjustified enrichment for the tenant.[529]

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[525] Cassazione 27 October 2003, n. 16089, in Nuova giurisprudenza civile commentata, 2004, I, 623, with comment of Cascione.

[526] Art. 1, par. 346, Law 30 December 2004, n. 311: "Tenancy contracts, or in any case contracts which give the faculty of enjoyment, regarding dwellings or their portions, in any way executed, are null and void, if they are not registered, when this is required".

[527] Cristina Ulessi, Commento sub Art. 1, Law n. 311/2004, Codice commentato di locazione e condominio. Locazione, 632 et seq.

[528] Trib. Napoli, 16 October 2013, n. 11429, Il Sole 24 Ore.

[529] Cass., 3 May 1991, n. 4849, Giurisprudenza italiana, 1991, I, 1314.

8.2 Prescription of the Claim for Restitution of the Extra-Rents Paid

Landlord and tenant opt for the type of tenancy contract negotiated by tenants' and landlords' associations instead of the free market contract (Art. 2 Law n. 431/1998). However, the rent the tenant has agreed upon is over the ceiling resulting from the local tenants' and landlords' associations agreement. After the expiration of the tenancy contract, the tenant claims for the restitution of the extra rents paid all through ten years. Can the landlord raise the defence of prescription?

Solution:

According to Art. 13 Law n. 431/1998, the tenant can claim for the restitution of the rents over the ceiling resulting from the local tenants' and landlords' associations agreement within six months from the return of the dwelling. The question is whether the claim falls under the general ten years prescription, and, as a consequence, whether the tenant may ask for the restitution of the extra rents paid ten years before the return of the dwelling. The Cassazione has come to the conclusion that filing the action within six-months from the return of the dwelling stops the plea of prescription raised by the landlord and, subsequently, allows the tenant to claim for the restitution of the rents paid even more than ten years before the return of the dwelling.[530]

8.3 Self-reduction of the Rent over the Mandatory Ceiling

Landlord and tenant negotiate a rent over the mandatory ceiling. After the execution of the contract, the tenant pays only the rent corresponding to such mandatory ceiling. Can the landlord claim for the payment of the difference between the sum agreed upon and the sum paid and discharge the contract for breach?

Solution:

According to the Italian Courts, the landlord can claim for the payment of the difference, and, furthermore, discharge the contract for breach.

The tenant cannot do justice by himself and pay less than the amount agreed upon, unless he brings a judicial action for the assessment of the rent due according to the mandatory rules.[531]

8.4 Rent over the Mandatory Ceiling: coming into force of Law n. 431/1998

The landlord executes a tenancy contract with the tenant in 1982. They agree upon a rent over the mandatory ceiling. The tenant regularly pays. The contract is automatically renewed after that Law. n. 431/1998, which abolishes the so called 'equo canone' (mandatory rent ceiling), has come into force. Can the tenant claim for the payment of no more than the mandatory rent ceiling, and, in addition, for the restitution of the extra-rents he has paid in the past, although such ceiling has been abolished?

Solution:

Provided that the contract is renewed, the tenant may claim for the payment of the rent corresponding to the mandatory ceiling until the expiration of the tenancy contract,

[530] Cass., 17 December 2010, n. 25638, in *Guida al diritto*, 2011, n. 8, 98; Cass., 7 July 2010, n. 16009, in *www.dejure.giuffre.it*; Cass., 6 May 2010, n. 10964, in *Repertorio Foro italiano*, 2010, voce «Locazione», n. 84

[531] Cass., 28 July 2004, n. 14234, Cass., 3 December 2002, n. 17161; Cass., 16 July 2002, n. 10271, Cass., 13 October 1997, n. 9955.

notwithstanding the coming into force of Law n. 431/1998.[532] Consider that the contract is automatically renewed unless the landlord gives notice to the tenant, according to Art. 3 Law. n. 392/1978. Although Art. 2, subs. 6 Law n. 431/1998 states that the contracts stipulated before Law n. 431/1998 and automatically renewed fall under Art. 1 Law n. 431/1998, the Italian Courts hold that the landlord may give notice according to the previous legislation. As a consequence, he does not have to allege a ground to give notice.[533]

8.5 Extraordinary Maintenance Works: Urgent Extraordinary Maintenance Works on the Building

The lift-shaft of the building where the rented dwelling is located needs urgent extraordinary maintenance works and repairs. Who has to bear the costs? What happens if the landlord does not make such urgent works?

Solution:

According to the Italian Courts, it is a landlord's duty to bear the costs of the extraordinary maintenance works and repairs of the dwelling and of the common parts of the building as well.[534] In case the repairs are urgent and the landlord, after having been informed by the tenant, does not fulfil his duty, the tenant himself is allowed to make such works, being irrelevant the authorization or the prohibition of the landlord.[535]

8.6 Extraordinary Maintenance Works: Agreement derogating to Art. 1576 Civ. Cod.

Landlord and tenant execute a tenancy contract in 2000 and agree that all the maintenance works related to the dwelling will be charged to the tenant. Is this agreement valid?

Solution:

A similar agreement would be null and void if Law n. 392/1978 were applicable to the contract.[536] On the contrary, the matter is debated as far as the tenancy contract falls under Law n. 431/1998. In case of contracts with rent ceiling, Art. 13 subs. 4 states that any agreement which grants the landlord a rent over the limit is null and void, therefore also maintenance expenses could bear on the tenant provided that they do not exceed the limit. In case of contracts with free rents, the same provision considers null and void 'any clause or other economic or regulatory advantage aimed to grant the landlord a rent exceeding the amount contractually established'. In the absence of case law under this point, scholars debate whether an agreement which charge the tenant with the payment of the maintenance works can be considered valid or in contrast with this provision.[537]

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[532] Cass. 5 June 2009, n. 12996.
[533] Cass. 25 November 2008, n. 28157.
[534] Cass. 6 March 2012, n. 3454.
[535] Cass., 8 July 2010, n. 16136.
[536] Cass., 9 October 1996, n. 8812. In the field of urban residential dwellings under the provision of Law n. 392/1978, the clause which, derogating Art. 1576 Civ. Cod., charges the tenant with the expenses for the extraordinary maintenance of the dwelling, is considered null and void as in contrast with Art. 79: a similar clause would provide the landlord with a further advantage, exceeding the legal limits of the rent.
[537] Similar clauses are considered valid by Scarpa, 136 ; on the contrary, doubts are expressed by Paola Valore, Commento sub Art. 1576, Codice Commentato di Locazione e Condominio. Locazione, 29; Gabrielli & Padovini, *La locazione di immobili urbani*, 290 et seq.; Giorgio Grasselli, La locazione di immobili nel codice civile e nelle leggi speciali, Cedam, 1999, 122.

8.7 Partial Subletting: Failure to Inform the Landlord

The tenant sublets two rooms of the apartment to a third person. Although Art. 2, subs. 2 Law n. 392/78 requires that the tenant inform the landlord on the identity of the subtenant, the length of the subletting and the subleased rooms, the tenant does not do it. Is the tenancy contract automatically terminated?

Solution:

Art. 2, subs. 2 Law n. 392/1978 still regulates the subletting of the dwelling, as far as it was not abrogated by the subsequent L. 431/1978. This provision states that the tenant shall inform the landlord on the identity of the subtenant, the length of the subletting and the subleased rooms, but does not make clear the consequences, in case this information is not regularly given.

According to Italian Courts, a similar failure is a breach which may lead to the discharge of the contract according to the general rule in the Civil Code (Art. 1453). Therefore, a judicial action for discharge would be necessary. Conversely, no automatic termination would take place, unless the parties agreed upon it.[538]

8.8 Sharing with Third Persons: Non-Married Couples

The landlord rents an apartment to a tenant cohabiting with another person. The couple has no children. After some years, the couple split up, and, as a consequence, the tenant leaves the dwelling, while the partner goes on living there. The latter would like to continue the contract with the landlord under the same conditions. Are contractual rights automatically assigned to the tenant's partner?

Solution:

Contractual rights are not automatically assigned to the partner. In 1988 the Italian Constitutional Court held Art. 6 Law n. 392/1978 in contrast with the Italian Constitution, inasmuch as this provision did not allow the cohabitant to succeed the other one in case they stopped living together, when there are children. As a consequence of this judgement, if a non-married couple has children, the contractual rights are automatically assigned to the cohabitant who stays in the apartment with them, although s/he was not the original contracting party. After this judgement, the question whether the non-married cohabitant may as well succeed in the absence of children arose. In 2010 the Constitutional Court dealt with this question, but rejected the constitutional claim.[539]

8.9 Damages for Breach: Suspension of the Eviction Procedure – Damages for Delay in Returning the Dwelling

The tenant does not return the dwelling at the due time and the landlord starts an eviction procedure. However, since the dwelling is located in a highly populated zone, the eviction procedure is suspended. After the expiration of the suspension period, the tenant does not return the dwelling. Shall the tenant pay damages for the delay in returning the dwelling during and after the suspension of the eviction procedure?

Solution:

[538] Cass., 26 February 1999, n. 1682.

[539] Const. Court, 14 January 2010, n. 7, in *Foro it.*, 2010, I, 1721.

In case of suspension of the eviction procedure, the tenant shall pay the last rent due plus 20%, but he is not required to pay any further damage that he may have caused (Art. 6 Law n. 431/1998), in derogation from the general rule enshrined in the Civil Code (Art. 1591). According to the Italian Courts, the tenant shall pay that sum till when he returns the dwelling. However, as the suspension period expires, the landlord may claim for the higher damages he suffered between the time of expiration and the effective return of the dwelling, provided that he proves them.[540]

8.10 Eviction Procedure: Requirements for the Eviction Procedure

Landlord and tenant execute a tenancy contract in 2000, which is not registered by the landlord. In 2008 the latter gives notice to quit, but the tenant does not leave the dwelling. The landlord begins the eviction procedure: has he the faculty to enforce the eviction order, even if the contract was not registered?

Solution:

Although Art. 7 Law n. 431/1998 included the registration of the tenancy contract as a requirement for the enforcement of the eviction order, the Italian Constitutional Court held this provision as unconstitutional in 2001.[541] The Court argued that the infringement of fiscal duties could not prevent the landlord from bringing a judicial claim for the protection of his contractual rights. As a consequence of this judgment, the landlord has the faculty to enforce the eviction order.

[540] Cass. 6 August 2010, n. 18359, Cass. 18 January 2006, n. 821.
[541] Const. Court, 5 October 2001, n. 333.

9. TABLES

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9.3 Abbreviations

App.	Court of Appeal
Cass.	Court of Cassazione
Civ. cod.	Italian Civil Code
Civ. Proc. Cod.	Italian Code of Civil Procedure
Cons. Stato	Consiglio di Stato (Court of State)
Const.	Italian Constitution
Const. Court	Constitutional Court
Corte Giust.	European Court of Justice
Crim. Cod.	Italian Criminal Code
D.P.R.	President of the Republic Decree
e.g.	*Exempli gratia*
ECHR	European Court of Human Rights
ERP	Edilizia residenziale pubblica ('public housing')
ERS	Edilizia residenziale sociale ('social housing')
EU	European Union
GIP	Judge for Preliminary Investigations
i.e.	*Id est*
IMU	Municipal Property Tax
Interm. Decree	Interministerial Decree
IRAP	Productive Activities Regional Tax
IRES	Legal Entities IncomeTax
IRPEF	Physical Persons Income Tax
Leg. Decree	Legislative Decree
Min. Decree	Ministerial Decree
Para.	Paragraph
Pret.	Pretura
Reg. Law	Regional Law
REIT	Real Estate Investment Trust
Sez. Un.	Sezioni Unite (United Sections of Cassazione)
TAR	Regional Administrative Tribunal
TARI	Garbage Tax
TASI	Indivisible Services Tax
Trib.	Tribunal